



AHM News

INTRODUCTION

2017 has been an eventful year for many aspects of New Zealand - politics, resource management, case law, and society have all had their share of challenges and changes. In this newsletter we address:

- findings of the Havelock North Water Inquiry;
- proposed roll-back of RMA amendments in relation to notification and appeals;
- consultation on the Draft Auckland Plan; and
- the significance of the *RJ Davidson* appeal which was recently heard before the Court of Appeal.

We also consider the new coalition government's statements in relation to the environment. Most importantly, we wish all our readers a safe, happy and merry Christmas and summer break.

REPORT ON WATER IN NEW ZEALAND RELEASED – HAVELOCK INQUIRY

The [Havelock North Drinking Water Government Inquiry Report](#) was released in early December 2017, and contained an urgent call for improvements to the regulatory system, as well as changes to be made by drinking water suppliers and others engaged in delivering drinking



water to the public. The Inquiry emphasised the seriousness of the consequences of failing to supply safe drinking water to New Zealand, and that the problems in relation to Hasting District Council's supply of drinking water are not limited to the region of Havelock North – water suppliers in other parts of New Zealand exhibit the same or similar problems:

These findings point to a widespread systemic failure among water suppliers to meet the high standards required for the supply of safe drinking water to the public. The industry has demonstrated that it is not capable of itself improving when the standards are not met. Neither has the Ministry of Health, the government body charged with administering the



provisions of the Health Act governing drinking water, shown an ability to call the industry to account. There is currently no adequate or effective enforcement of the statutory obligations on water suppliers.

The Inquiry recommends that all water suppliers use ‘appropriate and effective treatment without delay’. The Inquiry further recommends the establishment of a Drinking Water Regulation Establishment Unit to maintain momentum, facilitate the establishment of a drinking water regulator which can oversee all other reforms. The Inquiry also recommends amending the RMA to expressly recognise drinking water source protection and management as a matter of national importance and as a function of regional councils.

The Inquiry is careful to caveat these recommendations with the qualification that these are recommendations ‘pending any legislative change’. It is clear that the Inquiry considers the Report to be the first step in a move toward legislative change around drinking water provision and treatment requirements. However, legislative change is not guaranteed – any activity in this area will require leadership and action from the Government.

Criticism of the Report has arisen from various sources, notably from [Local Government New Zealand](#), who are concerned with the affordability and cost to communities of significant infrastructure investment arising from the recommended changes to the drinking water system.

In response to the release of this Report the [Attorney-General David Parker stated](#) that drinking water ‘is a priority for us as a Government. My message to New Zealanders is that we are taking this seriously, and we will be responding quickly to address the issues raised’. Given the scope and magnitude of the issues raised, we suggest that addressing these may be some time in the making. *[Disclosure: Helen Atkins and Rowan Ashton acted as counsel for Water New Zealand in this matter.]*



PROPOSED ROLL-BACK OF RM LEGISLATION CHANGES

As discussed in our May and November newsletters, the National-led Government introduced changes to the Resource Management Act, with some of these changes coming into force in October 2017. The Labour led Government has clearly signalled an [intent to roll back certain of these changes](#), most notably the amendments which restrict appeals to the Environment Court, and the limitations on public notification.

DRAFT AUCKLAND PLAN

‘Not another Auckland Plan’, we hear you cry?

The Auckland Plan is the spatial plan which sets the direction for how, where and when Auckland will grow over the next 30 years. The draft Auckland Plan is scheduled for formal public consultation running from 28 February through to 28 March 2018. The draft is not yet available.

The Auckland Plan’s import and effect on Auckland’s development and future are significant. This space bears watching, and it is likely that a submission on this plan will be relevant for a wide number of interests.

WATER CONSERVATION ORDER – NGARURORO AND CLIVE RIVERS – STAGE ONE HEARING

The Special Tribunal sat to hear arguments in regards to the Water Conservation Order Application as it applies above the Whanawhana Cableway in late November through to early December. The hearing has been adjourned until July 2018, in



order to await the TANK science results and enable the parties time to collaborate and analyse this information. *[Disclosure: Helen Atkins and Nicole Buxeda were involved in the Stage One hearing in Napier representing Horticulture New Zealand.]*

RJ DAVIDSON – COURT OF APPEAL HEARING

As many will be aware there is currently uncertainty over whether there is still a need to refer to Part 2 of the Resource Management Act in resource consent applications. While the Supreme Court in *King Salmon* held that recourse to Part 2 should occur in plan changes where there is invalidity, incomplete coverage or uncertainty of meaning, the High Court in *RJ Davidson Family Trust v Marlborough District Council* extended this resource to Part 2 to include resource consent consideration:

[76]... the reasoning in King Salmon does apply to s 104(1) because the relevant provisions of the planning documents, which included the NZCPS, have already given substance to the principles in Part 2. Where, however, as the Supreme Court held, there has been invalidity, incomplete coverage or uncertainty of meaning within the planning documents, resort to Part 2 should then occur.

Further information on this decision is available in our [July 2017 newsletter](#).

RJ Davidson was appealed to the Court of Appeal, and this was heard on 22 and 23 November 2017. We await the decision in the New Year.



COALITION GOVERNMENT'S APPROACH TO THE ENVIRONMENT

There has been a significant portfolio reshuffle by the new Government. David Parker has taken the Environment portfolio, with Eugenie Sage as Minister for Conservation and Land Information, and James Shaw as Minister for Climate Change Issues, Nanaia Mahuta is the Minister for Maori Development and Minister of Local Government, and Andrew Little is the Minister of Treaty Negotiations.

The new Labour-led Government has dismantled the Ministry for Primary Industries, splitting it into three new ministries covering forestry, fisheries and agriculture. Labour MP Stuart Nash will be the new Minister of Fisheries, NZ First MP Shane Jones will be the Minister of Forestry, and Labour MP Damien O'Connor will be Minister of Agriculture. These changes signal that this Government is focusing not only on the environment in broader terms, but also production (and especially production in the regions). This is a significant change from the previous Ministry for Primary Industries, and the different focus and functionality of these ministries will be interesting to watch.

CHRISTMAS CLOSE DOWN

Our office will close at 12:00pm on Friday 22 December 2017 and reopen at 8:30am on Monday 8 January 2018.

For any urgent matters that arise during the close down period please call Vicki Morrison-Shaw on 0275 720 883, Rowan Ashton on 021 296 5200, or Nicole Buxeda on 021 101 1697.

We wish you all a safe and happy holiday period and we look forward to working with you again in 2018. From all the team at Atkins Holm Majurey.



Questions, comments and further information

If you have any questions, comments or would like any further information on any of the matters in this newsletter, please contact the authors:

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We welcome your feedback!

If you know someone who might be interested in reading this report, please feel free to pass it along.

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