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Kia ora, Hello welcome to our Spring edition of Rural 2024.

With the onset of Spring there may be some relief for farmers with the OCR cuts and reduced interest rates.

Fonterra's September Farmgate Forecast is also promising, but the sheep and beef farmers are still doing it tough with lamb prices much reduced. The recent closure of the Alliance Timaru meat works also highlights strain in the Agri Sector.

Whilst we can't affect prices, we can at least keep our rural clients informed with the latest changes and developments in the law. Our Spring newsletter contains a number of useful articles.

We include an article summarising the Government's proposed further changes to the Water Services Act reducing the regulatory burden to water suppliers. These will be particularly helpful for small rural water suppliers.

We continue with our series of articles on the Climate Change legislation. This article focuses on the second Emissions Plan released for the period 2026 to 2030.

There is another useful article from our Private Client team on trusts which are common in the rural sector, a summary from our Resource Management team on two important decisions on discharge consents and the Government's likely response to these decisions; and lastly, an article from our Commercial Team highlighting a large fine incurred by a Hamilton milk products company for misrepresenting the original of their goods.

Ngā mihi,

David

David Goodman, Partner
Corporate Commercial

Local Water Done Well and changes to the drinking water quality regulations

On 8 August 2024 the Government announced further details on its Local Water Done Well programme. The Government's intention of this programme is to address New Zealand's water infrastructure challenges and is in response to the previous government's Three Waters reform.

Included in the 8 August announcement are details of proposed changes to the existing drinking water quality framework that affect "drinking water suppliers". The proposed changes include aiming to reduce the cost and burden for drinking water suppliers associated with complying with the Water Services Act 2021 (**Act**).

Currently large numbers of drinking water suppliers are regulated by the Act. Those suppliers are not distinguished by size and all suppliers have to provide safe drinking water. Many drinking water suppliers are, by their nature, in rural areas and beyond the reach of a Council managed reticulated "town supply" network.

In our experience, the current "one-size fits all approach" for drinking water suppliers have concerned some directors, managers and consumers of smaller drinking water schemes – as there can be significant compliance costs with the Act that will fall on a small number of consumers in rural areas.

The Government's new proposals include:

1. Providing that some "shared domestic supplies" serving 25 consumers or less are excluded from having to comply with the Act. These smaller suppliers will not need to register with the regulator (Taumata Arowai), prepare a drinking water safety plan or meet the other requirements of the Act. These lower risk small suppliers could include a common situation where a farm supplies drinking water to a small number of other nearby properties. High risk community supplies (such as for community halls and marae) will not be covered by the exclusion. The definition of drinking water suppliers that are included/excluded from the Act will need to be very carefully considered by the Government to ensure the right balance of compliance and water safety.
2. For other drinking water suppliers that will remain captured by the Act, changes include reducing regulatory requirements and compliance costs by:
    a. Requiring renewals with Taumata Arowai every 5 years instead of annually, extending the timeframe for currently unregistered suppliers to register by an extra three years (plus an extra two years to become compliant).
    b. Enabling Taumata Arowai to proactively issue exemptions from certain regulatory requirements, where compliance with the Water Services Act 2021 is impractical, inefficient, unduly costly or burdensome.
    c. Requiring Taumata Arowai to issue drinking water acceptable solutions to a greater number of suppliers. This is to help reduce the regulatory burden and costs for suppliers, by reducing the need for suppliers to develop their own bespoke solutions.
3. Supporting mixed-use schemes that supply a small amount of drinking water and larger amounts of irrigation water. Taumata Arowai is to consider the costs of regulation to ensure the regulation is proportionate to the scale, complexity and risk of each supply.

The above proposed changes will be included in a Local Government Water Services Bill which is expected to be introduced to parliament in December 2024. There will be opportunity for public feedback on the Bill during a select committee process. We will continue to monitor and provide updates for these proposed changes which impact many small rural water supply schemes.

Robert Huse, Partner
Property & Private Client

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Discussion document released on New Zealand's second Emissions Reduction Plan

New Zealand's second "Emissions Reduction Plan" for the period of 2026 – 30 is due to be released by the end of 2024. A discussion document released by the Ministry for the Environment in July provides insight as to how this plan may impact New Zealand's agricultural and forestry sectors.

The purpose of this article is to explain where the second Emissions Reduction Plan (**ERP2**) fits into New Zealand's legislative framework and summarise the Government's signaled policies as they pertain to the agricultural and forestry sectors.

Where does ERP2 fit into our legislative framework?

Climate response framework and emissions reduction targets

The Climate Change Response Act 2002 (CCRA) provides a legislative framework to reduce greenhouse emissions that cause climate change. Under this framework (Zero Carbon Framework), climate change policies are developed to meet our Paris Agreement commitments.

The Zero Carbon Framework establishes the following domestic targets:

- reduce net emissions of greenhouse gases (except biogenic methane) to zero by 2050;
- reduce emissions of biogenic methane to 10% below 2017 levels by 2030; and
- reduce emissions of biogenic methane to 24-47% below 2017 levels by 2050.

The Government is required to sustain net zero emissions from 2050 onwards.

Emissions budgets and emissions reduction plans

A key mechanism in our climate response is the use of “emissions budgets”. Each budget represents the total quantity of emissions that the country is allowed to release during a particular period. They are intended to act as “stepping stones” towards reaching our 2050 targets.

Prior to each budget period beginning, the Government is required to release a new emissions reduction plan. Each plan must detail the policies and strategies to be used to meet the targets of the next emission budget, and may also detail those intended to be used in the two subsequent budget periods. New Zealand’s first Emissions Reduction Plan was released in May 2022 and related to the emissions budget period of 2022 – 2025 (**ERP1**).

Set out in the diagram below is a timeline of the emissions budget periods leading up to 2050 and the associated emissions reduction plans to be released in relation to those budget periods.

Emissions Budgets 1–6

Stepping stones towards our 2050 net zero target

EB1	EB2	EB3	EB4	EB5	EB6
2022 - 25	**2026 - 30**	**2031 - 35**	**2036 - 40**	**2041 - 45**	**2046 - 50**
290 Mt CO_2-e	305 Mt CO_2-e	240 Mt CO_2-e	Due 2025	Due 2030	Due 2035

Emissions Reductions Plans 1–6

Policies and strategies to achieve the emissions budgets

ERP1	ERP1	ERP3	ERP4	ERP5	ERP6
2022 - 25	**2026 - 30**	**2031 - 35**	**2036 - 40**	**2041 - 45**	**2046 - 50**

National climate change risk assessment 1: 2020

Assesses and prioritises the climate change risks we face.

National adaptation plan 1: 2022–28

Policies and strategies to help us respond to climate change risks.

Continued >

Proposed emissions reductions by sector

While ERP1 heavily emphasised emissions reductions in the transport and energy sectors, ERP2 sees reductions in the agriculture sector and the continued sequestering of carbon by the forestry sector as key to meeting the second emissions budget. ERP2 anticipates a 20MtCO_2e reduction in CO2 emissions by the agricultural sector and the removal of an additional 30MtCO_2e of carbon dioxide from the atmosphere by the forestry sector during the second emissions budget period.

The Government has stated that the policies and targets have been set based on the guiding principles of achieving a "least cost" transition to net zero, while also applying a "net-based approach" – meaning that emissions reductions are being targeted which the Government hopes will maximise the emissions reduction achieved for each dollar spent.

The below table sets out the proposed reductions on a sector by sector basis for the second emissions budget period based on the proposed policies for ERP2.

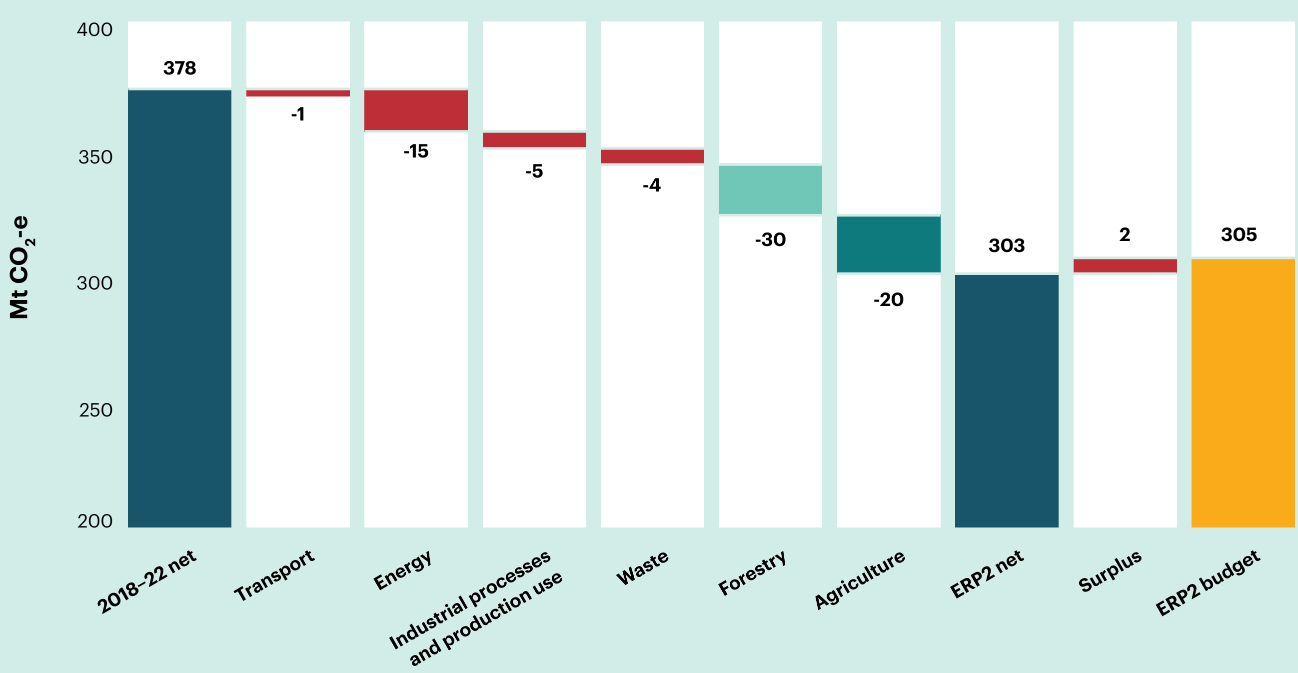
While the reductions as projected are narrowly sufficient to lead New Zealand to achieve the second emissions budget, projections based on ERP2's policies suggest that New Zealand is on course to exceed the 2031 – 2035 emissions budget.

Key proposals in ERP2

The "five pillars" that guide the proposed policies of ERP2

In setting the proposed policies of ERP2, the Government's strategy is based on the following "five pillars":

- **Resilient infrastructure and communities:** Ensuring that New Zealand's infrastructure is resilient to the impacts of climate change and that communities are prepared for adverse climate-related events.
- **Credible and effective carbon markets:** New Zealand maintains credible and effective carbon markets (including the current Emissions Trading Scheme (ETS)) to ensure that emitters are increasingly incentivised to reduce their emissions, while carbon-removal activities are encouraged and rewarded.
- **Green energy:** Ensuring that New Zealand's electricity infrastructure is ready for, and will help to enable, New Zealand's transition towards increased electrification.
- **Innovation:** Recognising that climate change also presents an opportunity to New Zealand's economy and ensuring that New Zealand continues to invest in the development and commercialisation of emissions-reduction technologies.
- **Nature-based solutions:** Recognising that New Zealand is in a strong position to continue to sequester emissions from the atmosphere alongside gross emission reductions, including via forestry, blue carbon and carbon capture.



Agriculture's proposed role in ERP2

At the time that ERP1 was released, the previous Government had intended that the agriculture sector would be subject to an emissions pricing scheme by 1 January 2025. This pricing scheme would either be an industry-specific scheme designed by the He Waka Eke Noa Partnership (Partnership), a project-specific partnership between the sector and the Government, or if the Partnership failed to decide on an acceptable scheme by the end of 2024, the sector would instead simply be added to the ETS on 1 January 2025.

The new Government has instead stated that agriculture will not be subject to a carbon pricing mechanism from 2025, and is instead intending to put in place a carbon pricing scheme for on-farm emissions by "no later than 2030". Rather than pricing agricultural emissions during the second emissions budget period, the new Government instead states that supporting "world-leading innovation" domestically will allow farmers to reduce emissions while maintaining productivity and profitability.

Proposed policies under ERP2 to allow the agricultural sector to meet its target reductions of 20MtCO_2e for the second emissions budget period include:

- investing in the accelerated development and commercialisation of on-farm emissions reduction technologies, including methane inhibitors and vaccines;
- streamlining the process for regulatory approval of emerging technologies;
- agricultural emission reductions through the use of eco ponds (reducing methane emissions from effluent ponds); and
- developing methodologies for recognising the use of on-farm emissions reduction tools within the Greenhouse Gas Inventory, so that on-farm sequestration can be recognised as contributing to New Zealand's emissions reductions targets.

Forestry's proposed role in ERP2

As with ERP1, ERP2 also recognises that the forestry sector has a key role to play in our climate response. This is in part due to the fact that forests act as "carbon sinks", sequestering carbon from the atmosphere. These removals can be incentivised and rewarded within the ETS.

Following the previous Government's decision to stray from the Climate Change Commission's advice on ETS unit limits and price control settings in 2023, confidence in the ETS reduced and a steep reduction in the price of New Zealand Units (NZUs) followed. The Government sees the strengthening of market confidence in the ETS as being critical to achieving the second emissions budget under ERP2.

In proposing policies relevant to the forestry sector, the Government seeks to strike a balance between encouraging afforestation to maximise the sequestration of carbon, while also ensuring that excessive afforestation does not result in productive land being unnecessarily converted into forestry.

Proposed policies under ERP2 to maximise sequestration while attempting to mitigate unintended adverse effects include:

- restoring price stability and confidence in the ETS to provide greater certainty to the forestry sector;
- ensuring that afforestation does not come at the expense of already productive land by limiting the number of ETS registrations for whole-farm conversions to exotic forestry; and
- partnering with the private sector to carry out afforestation, including on Crown land (other than national parks).

Key proposed policies in other sectors

At a high level, key policies proposed by the Government in other sectors to assist in meeting the second emissions budget include:

- providing a pathway for cheaper and faster consents for renewable energy projects and infrastructure;
- targeting the installation of 10,000 new electric EV chargers by 2030 by facilitating private investment in an EV Charging Scheme;
- reducing barriers to the research, development and implementation of carbon capture technologies;
- better public transport (particularly in the Auckland area); and
- investment in the research, development and implementation of resource recovery systems and infrastructure to process organic waste.

Final plan due to be released before the end of 2024

Following a consultation period which ended in late August, the Government is now considering the feedback it received on ERP2 and working towards finalising and releasing the plan prior to the end of December 2024. The release of ERP2 will mark another important milestone in New Zealand's effort to achieve the climate targets legislated in the Climate Change Response Act 2002 and the international commitments New Zealand has made under the Paris Agreement.

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Overseas trustees, executors and beneficiaries – potential tax implications you need to be aware of

Settlors of trusts and will-makers need to be aware that if they move overseas or if any of their trustees, executors or beneficiaries move overseas, there could be tax consequences for their trust, their estate and beneficiaries. Specialist advice should be obtained if this has happened or is contemplated.

There are a number of considerations when deciding how to set up and run your Trust or when updating your Will. One consideration that is often overlooked is the tax implications where settlors, trustees/executors and/or beneficiaries live outside of New Zealand. This is an issue we have been encountering more and more frequently, with many of our clients having children and grandchildren moving overseas temporarily or permanently. Some clients also choose to relocate overseas to be closer to family members.

There may be tax implications for trusts and estates where this occurs, and it is important that appropriate tax advice is sought both locally and overseas.

Trusts

Clients with trusts need to be aware of the potential tax implications on their trusts if any of the below people live overseas:

- the trust's 'settlors';
- an 'appointer';
- a trustee; or
- a beneficiary.

Tax classification

One of the key issues is the tax classification of the trust in New Zealand. Trusts in New Zealand are classified as either as 'complying trusts', 'non-complying trusts', or 'foreign trusts'. This categorisation governs the tax payable by the Trust in New Zealand. And for example, when the 'settlor' moves overseas, the trust could become a 'non-complying trust' in New Zealand and/or tax resident in another jurisdiction with the associated tax consequences.

Distributions to overseas beneficiaries

It is important to consider where the beneficiaries of the trust are residing. If they are in New Zealand but looking to move overseas trustees should consider where they are likely to end up living, especially if they want to assist them with trust funds in the future.

Distributions to overseas beneficiaries can result in tax consequences for those beneficiaries in the country they are living in. That is why it is important for the overseas beneficiaries to seek overseas tax advice, and for the trustees to seek New Zealand tax advice ahead of making any distributions.

In some circumstances trustees may want to loan the beneficiary funds rather than making a distribution of capital. However, problems can also arise with loans from trusts to overseas beneficiaries as they can be assessed as taxable income to the overseas beneficiary.

Some countries have tax exemptions where distributions or loans are sourced from trust 'corpus' instead of being sourced from accumulated income or capital gains. Accordingly, it is important that financial accounts prepared for trusts correctly record the trust corpus and that trustee resolutions record the source of funds for distributions and loans.

Winding up trusts can also have tax implications for overseas beneficiaries, and there are a number of tax issues to be considered and advised on if this is being contemplated by the trustees.

If an overseas beneficiary decides to return permanently to New Zealand careful consideration and planning is also required. In our experience it is not uncommon for a person in this situation to find out they remain overseas tax residents.

Ownership of land in New Zealand

There are also limitations on overseas entities owning certain property in New Zealand (including residential property) under the Overseas Investment Act 2005 (Act). Under the Act, this property can only be purchased by the following classes:

- New Zealand citizens;
- individuals who hold a residence class visa and are 'ordinarily resident' in New Zealand; or
- Australian and Singaporean citizens or permanent residents.

Broadly speaking, a trust will be considered an overseas entity and so will not be able to purchase certain land in New Zealand unless it obtains consent from the Overseas Investment Office, if:

- more than 25% of the trustees or 'appointers' of the trust fall outside of the above classes; or
- all of the trust beneficiaries fall outside of the above classes.

Wills

Clients need to also be aware there can be tax consequences as a result of their Wills, including where:

- they live overseas;
- they appoint someone who lives overseas as their executor; or
- they leave assets to a beneficiary who is based overseas under their Will.

Overseas Will-makers and executors

Depending on the specific country's tax laws, Will-makers who live overseas can be considered 'domiciled' in the overseas jurisdiction. Generally, if this occurs then the inheritance laws of that country will apply to their estate. This is especially important for clients who spread their time equally between a number of countries.

These are important considerations as other countries have different tax positions regarding estates.
For example:

- the United Kingdom has inheritance tax on estates; and
- Australia treats estates in the same way as it would treat a trust. And where the central management control of an estate is in Australia (for example, where a deceased New Zealander appoints their child who is based in Australia as their executor), the estate may inadvertently become a tax resident of Australia.

Overseas beneficiaries

Overseas beneficiaries may also be subject to tax consequences in the jurisdiction they are living in. For example, beneficiaries who are Australian tax residents can be taxed in Australia on the increase in value of estate assets, in certain circumstances.

General

This article is solely intended to provide a high-level overview of potential tax issues, with the purpose of ensuring our clients are aware of these potential issues and of the need to seek specialist tax advice in these circumstances.

We cannot provide tax advice and if you have any questions we recommend that you get in touch with a specialist tax advisor and then contact your lawyer to assist with your trust and estate planning structure.

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Dairy Company fined $420,000 for misleading "100% Pure New Zealand" claims on products sourced internationally

"Commercial Sleepwalking" lands Hamilton based dairy company hefty fine.

In January 2024, the Commerce Commission launched a prosecution against Hamilton-based dairy company Milkio Foods Ltd (Milkio). The case centered on false claims made by Milkio regarding the origin of ingredients used in its ghee products and unauthorised use of the FernMark fern logo.

By April, Milkio had plead guilty to fifteen charges under the Fair Trading Act 1986 (FTA). Eleven of these charges were laid under section 13(j), which relates to false or misleading representations about the origin of goods. The remaining four charges were under section 13(f), which relates to false claims of sponsorship, approval, or endorsement.

Milkio's charges under section 13(j) were laid based on it falsely representing that some of its ghee products were made entirely from New Zealand ingredients, through its use of descriptions such as "from the clean green pasture-based dairy farms in New Zealand", and "produced and manufactured in pristine New Zealand", despite it sourcing key ingredients, including butter, from India.

The charges laid under section 13(f) related to Milkio's misuse of the FernMark logo on its buffalo ghee products without receiving proper authorisation, and its use of false and incomplete information to retain authorisation for the logo and license number on its cow ghee products. The FernMark logo, internationally recognised as a symbol of New Zealand-made goods, was improperly used to give Milkio's products the appearance of authenticity.

On 26 August 2024, the Hamilton District Court handed down its ruling, fining Milkio $420,000 for its misleading representations. In his ruling, Judge Ingram stressed the wider impact of Milkio's misrepresentations by highlighting the significant potential damage that such conduct can inflict on the New Zealand dairy industry, noting that the harm is "not merely to consumers, but also to other producers who rely upon "brand New Zealand" in connection with sales of dairy products".

Judge Ingram described the case as involving a level of "wilful blindness" which could potentially be described as "commercial sleepwalking". Further stating that the use of the FernMark logo was the "cherry on top of Milkio's brand positioning strategy...intended to provide an additional and unassailable layer of quality assurance to the consumer."

Commerce Commission Fair Trading General Manager Vanessa Horne highlighted the significance of the case in protecting the integrity of New Zealand's export brand. "New Zealand's reputation for high-quality dairy products underpins our industry and exports", she said. "Milkio took advantage of this reputation to promote their products with claims that were simply not true".

Ms. Horne further noted that the conviction should serve as a warning to others considering similar deceptive practices. The Commission remains committed to protecting both consumers and businesses that comply with the FTA, ensuring product claims are accurate and verifiable.

The investigation was initiated following a referral from the Ministry for Primary Industries.

The case highlights the importance of being accurate when marketing agri products in New Zealand and the potential fines available for serious breaches.

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Government to clarify discharge consent provisions in the Resource Management Act.

The Government announces more rapid changes are to come for the Resource Management Act, following recent decisions of the High Court.

Two High Court decisions released this year have taken a stringent approach to legislative requirements for discharge permits, as set out in sections 70 and 107 of the Resource Management Act 1991 (**RMA**). In response, the Government has recently announced that it considers these decisions have made the law surrounding discharge consents unworkable and it intends to address this urgently through amendments to section 107. This article sets out the requirements in sections 70 and 107 and how they are impacted by the High Court decisions, before discussing the Government's recent announcement.

Legislation

Section 70 relates to discharge rules in regional plans. A regional council can only make a rule permitting discharges to water, or to land where the discharge may enter water, if the Council is satisfied that this will not lead to several listed adverse effects in the receiving waters after reasonable mixing. The listed effects include the production of conspicuous suspended materials, a conspicuous change in colour or clarity, objectional odour, rendering water unsuitable for consumption by farm animals, or a significant adverse effect on aquatic life.

Section 107(1) sets out restrictions and prohibitions on granting certain discharge consents if, after reasonable mixing, the same effects listed above arise in the receiving waters. Subsection (2) provides limited exceptions to this rule, where there are exceptional circumstances justifying grant of consent, the discharge is temporary in nature, or the discharge is associated with necessary maintenance work. Subsection (3) provides the ability to impose consent conditions to ensure the consent holder meets requirements of subsection (1) upon the consent expiring.

Continued >

Government to clarify discharge consent provisions in the Resource Management Act (Continued).

High Court decisions

Environmental Law Initiative v Canterbury Regional Council

In 2021 Environment Canterbury (**ECan**) reconsented the discharge of nitrogen from farming, across an area served by Ashburton Lyndhurst Irrigation Limited's (**ALIL**) irrigation scheme. One important aspect of the resource consent was that it included a staged reduction in nitrate-nitrogen discharge over time.

The Environmental Law Initiative **(ELI**) filed legal proceedings to judicially review ECan's decision on three grounds, including relevantly the incorrect application of section 107.

The Commissioner appointed to make ECan's decision had determined that the groundwater, associated surface water and ecological values in the lower reaches of the Hakatere/Ashburton River and its hāpua were significantly degraded and continuing to decline. This was due to past and current land use practices in the discharge area. The Commissioner also had no evidence before her that the increases of nitrogen in the receiving waters had stabilised or that the proposed reduction in nitrogen discharges would result in measurable improvements to the groundwater quality and ecological health. Instead, the Commissioner found the consented activity would continue to contribute to significant adverse cumulative effects on aquatic life. However, consent was granted in reliance on a staged approach to reduce the nitrogen load over time, resulting in improvements in water quality and ecological values over the life of the consent.

As noted above, On appeal, ELI submitted that resource consent should not have been granted, as it did not satisfy the s107(1) requirement that a discharge consent must not be granted where this will result in significant adverse effects on aquatic life. The High Court agreed with ELI, stating that the current state of the environment was due to a longstanding history of unsustainable discharge of contaminants which would continue to have ongoing adverse effects. The High Court concluded the prohibition in section 107(1) is clear. If a consented activity will breach subsection (1) then it must meet an exception set out in section 107(2). In respect of section 107(3), the Court ruled this was an avenue for consent authorities to satisfy themselves that adverse effects are not likely to arise if resource consent is granted and it was not Parliament's intention for subsection (1) to be bypassed by issuing a resource consent on the basis that the likely continued prohibited effects would be complying by the time the consent ended.

As a result, the Court found a material error of law in the approach to the application of section 107 (as well as other grounds of appeal argued) and set aside the decision granting the discharge consent. This decision has been appealed to the Court of Appeal. More information about the decision is available here **www.al.nz**

Federated Farmers Southland Inc v Southland Regional Council

This case concerned Rule 24 of the proposed Southland Regional Council Water and Land Plan which permitted incidental contaminant discharges from specified farming activities where they met the standards listed in the Rule. The standards reflected the section 70(1) criteria for permitted discharge rules.

The Environment Court had to determine:

(a) does section 70 apply to both point source and non-point source discharges;

(b) are contaminant discharges from existing farming activities having significant adverse effects on aquatic life; and

(c) does the court have jurisdiction to approve Rule 24?

The Environment Court ruled that the plain and ordinary meaning of section 70 is that it applies to both point source and non-point source discharges. The Court also acknowledged that Rule 24 is worded similarly to section 70, applies to discharge of contaminants onto or into land in circumstances which could result in contaminants entering water, and that the proposed plan defines "receiving waters" as including water bodies that receive run-off. The Court held that the reference to run-off encompasses non-point source discharges of contaminants and that the intention of the plan was to apply to both point source and non-point source discharges.

In respect of the aquatic life, the Court held it was highly likely that the discharge of contaminants, either by themselves or in combination with other contaminants were causing significant adverse effects on aquatic life and that this included discharges incidental to farming activities.

In respect of the Courts jurisdiction to approve the Rule, whilst the Court acknowledged that the policies, rules and methods will have some improvement in water quality, the prediction that ecosystem health will rise above national bottom lines was not put to expert witnesses. The Court was unable to satisfy itself that it would be unlikely that significant adverse effects on aquatic life will result from the discharges. Therefore, jurisdiction to include a rule permitting contaminant discharges was not established. However, the Court gave the parties the opportunity to call expert evidence on the likelihood of the effects of future discharges of contaminants and their significance for aquatic life.

On appeal, the High Court considered:

(a) whether section 70 applies to non-point source discharges, such as those covered by the Rule; and

(b) whether the Environment Court made an error in concluding that section 70 could be contravened by the Rule when the Rule expressly precludes the types of effects referred to in section 70.

In its decision, the High Court confirmed it was clear that s70 applies to both point source discharges and non-point source discharges.

The High Court also found that simply replicating the section 70 criteria and making them conditions of a permitted activity would not meet the procedural requirements of the RMA. A council needs to be satisfied before it includes a rule permitting a discharge, that none of the effects under section 70 are likely to arise in receiving waters. This indicates a need for an inquiry as part of the planning process into the evidence about the effects of the class of discharge being considered. The Court noted that this would be particularly important in instances such as the present case, where there are practical difficulties in determining whether a specific discharge complies because such issues are not readily able to be assessed on a case by case basis and there is a live question regarding cumulative effects.

Proposed changes – watch this space!

The Environmental Law Initiative decision has potential far-reaching implications for discharge consents, including replacement of expiring consents, where the receiving environment is significantly degraded. It increases the risk that necessary consents for a range of discharges, including for farming, primary produce processing, and wastewater discharges, will be declined.

As a result, the Government has announced time-critical amendments will be made to section 107 of the RMA. It is understood that these changes are intended to be brought in urgently to give councils and consent applicants clarity and certainty so they can plan ahead. A bill making the next tranche of amendments to the RMA is expected to be introduced later this year and become law in 2025.

The Federated Farmers decision will necessitate greater consideration of the potential effects arising from discharges that are proposed to be permitted. As a result, permitted activity rules may be more limited in scope, therefore requiring more discharges to obtain resource consent. While the Government announcements have noted the challenges posed by section 70, it remains to be seen whether RMA amendments also address this section.

Georgina Anderson-Brooks, Solicitor
Resource Management

Our Rural and Agribusiness Team

If you have any questions about the topics raised in this newsletter please contact one of our rural and agribusiness specialists:

Anderson Lloyd is a trusted legal advisor to the businesses that support New Zealand's primary sector – from the family farm, through to co-operatives, large corporate farms, and rural service providers.

Our nationally recognised team of rural and agribusiness experts are able to advise you on a variety of legal matters. We form solid partnerships with our clients and are focused on achieving the best possible outcomes. Across our full service firm we also bring together the right people when it comes to banking, construction, litigation, employment, overseas investment and resource management legal advice.

Our lawyers advise on:

- due diligence for acquisition and disposal of farming properties and rural businesses
- finance and ownership structures of farming businesses
- succession and inheritance issues
- agreements for joint venture farming entities
- co-operative company shareholdings
- overseas investment requirements
- industry specific advice for example, dairy, sheep and beef, orchardists, winemakers and grape growers
- resource management including consents for irrigation and effluent discharge
- water rights and irrigation schemes
- submissions on plans and policy reform
- environmental compliance and prosecutions

al.nz

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