

## EDS News: December 2021

### Best wishes for the holiday break from EDS

On behalf of our team at EDS, we wish our supporters the very best for a relaxing holiday break and much improved 2022. It's been tough year for all. Fortunately EDS has been luckier than many in that our work has continued throughout the Auckland lockdowns although with some extensions to deadlines. During the year, we have seen our efforts to encourage resource management reform coming to fruition, and there is now a major new government initiative in conservation reform. We are well progressed with our oceans work with reform likely to be a priority during the next term of government. And last week we have had 2 big wins: the New Chums Beach acquisition and the Court of Appeal's decision in the Port Otago case (see below). But from all of us: Raewyn Peart, Sasha Maher, Greg Severinsen, Cordelia Woodhouse, Deidre Koolen-Bourke, Shay Schlaepfer, Bella Rollinson, Katharina Stickling, Phoebe Parson, Tracey Turner and Gary Taylor – kind wishes and thanks for all the support which is greatly appreciated.

### Wainuiototo New Chums Beach headland now safe from development

EDS has led a successful purchase of the northern headland of the much-praised New Chums Beach on the Coromandel Peninsula by the New Zealand Coastal Trust. The property was sold by the Bank of New Zealand after the then owner reneged on a mortgage commitment with the Bank. EDS worked closely with local interests and mana whenua to put in an unconditional tender for \$2.15 million. The Coastal Trust has 5 trustees: Hon Peter Salmon QC, David MacGregor, Richard Randerson, Raewyn Peart and Gary Taylor. It is a registered charity. The Trust intends to discuss future management of the property with its local partners. Funding decisions from institutional funders are still awaited.

### Otago decision

*Port Otago v Environmental Defence Society* [2021] NZCA 683

In a case that breaks significant new ground on the place of environmental bottom lines within the RMA, EDS has won an important victory in the Court of Appeal. Essentially, the Court reiterated that environmental bottom lines in national direction mean what they say, and attempts at carve outs for infrastructure such as ports will not be entertained.

Putting it simply, the Court considered whether a proposed regional policy statement that provides that adverse effects on outstanding natural landscape areas will be “avoided, remedied or mitigated” gives effect to the New Zealand Coastal Policy Statement (NZCPS) requirement that such effects be “avoided” (in Policy 13). The Court considered the *King Salmon* precedent and found that it was “obvious” that the policy statement did not give effect to the NZCPS as required by s 62(3) of the RMA (at [78]–[79]). But the Court included a caveat that this does not pre-empt decision-making about what activity status should be provided (ie it may not be necessary for activities to have a prohibited status). Rather, it is the *effects* of the activity that must be avoided (at [85]).

The Court also noted that the NZCPS contains its own “directive hierarchy” (at [82]). The avoidance policies (policies 11, 13, 15 and 16) set the bottom lines within which the other policies must operate, including the strategic planning policy (policy 7) and the ports policy (policy 9). Overall, the decision continues to entrench the validity of bottom-lines. It sets a very important precedent for future plans, making it clear that they cannot carve out exceptions to the directive policies of the NZCPS. However, it will be important to watch the implications of the case for the new National Planning Framework being developed under the proposed Natural and Built Environments Act, to ensure the NZCPS is not watered down by weakening its policies. The case could also have implications for potential future oceans reform including the NZCPS’s potential to more strongly influence land-based pollution like sediment.

## **Big conservation reform project announced by Minister**

Conservation Minister Hon Kiri Allan has announced a wide-ranging review of Aotearoa New Zealand’s conservation laws. The significance of this announcement should not be understated – a proper review of the whole conservation system has never really occurred, with the 1987 Conservation Act and related institutional reforms falling short of true system reform. The reform will be staged over several years, starting with a review of the Wildlife Act 1953, the Trade in Endangered Species Act 1989 and steps to improve conservation management planning and related processes. But work will also be going on to take a deeper look at the wider ecosystem of legislation and tools that protects our conservation estate and taonga species.

This announcement follows the release of EDS’s award winning report *Conserving Nature* which established the need for a fundamental makeover of the 25 acts that govern conservation management in this country, most of which are outdated and pose significant implementation challenges. The Minister’s announcement referred to the EDS report, in saying that the case for fundamental reform has been made. The time is now for action.

## **Conserving Nature wins award**

In a related announcement, *Conserving Nature* was awarded the Resource Management Law Association’s Publication Award 2021. This was “for a significant contribution to the advancement and understanding of current conservation issues in New Zealand for consideration and application across a wide range of professions”. Authored by EDS Senior Policy Researcher Dr Deidre Koolen-Bourke and Policy Director Raewyn Peart, the report was launched by Conservation Minister Hon Kiri Allan at the EDS conference in July. It is designed to contribute to a national debate on how to build an effective conservation management system for the future. *Conserving Nature* identifies problems with the conservation system and we are now embarking on Phase 2 our conservation reform project which is identifying solutions (see below). Copies of the report are available [here](#).

## **EDS’s work on conservation law reform in 2022**

With work complete on Phase 1 of EDS’s Conservation Law Reform Project, and the publishing of our issues report *Conserving Nature*, work is now underway on Phase 2. This work will sit nicely alongside the reform process being led by the Department of Conservation (see above). In Phase 2, EDS’s focus is shifting from examining the issues to canvassing possible solutions and options for reform. A broad, future-focused perspective is being taken, looking at the overall architecture of the

conservation system. The project is examining international best practice and will canvas promising new approaches to conservation management. To ensure the work is grounded and contextualised, we plan to engage with stakeholders and regulators actively involved in the conservation system, and to establish a panel of senior Māori advisors. The role of tangata whenua: iwi, hapū and whanau in conservation, and the integration of Te Ao Māori into a future system, will be matters of critical importance.

## Native Forest Coalition

A new coalition focused on halting short-term carbon farming was launched by EDS and partners in late November. The group called the **Native Forest Coalition** includes Pure Advantage, the Rod Donald Trust, the Tindall foundation, Project Crimson, Dame Anne Salmond and Dr Adam Forbes. Although the rise of carbon farming ignited the coalition into action, the overriding concern is the government's separate treatment of the biodiversity crisis and climate change crisis. This is most evident in the unchecked proliferation of exotic tree planting on the back of an ever-increasing carbon credit price under the emissions trading scheme. Rather than being separate, we see these crises as intertwined, and over the next few months we will be rolling out a work plan focused on aligning policies in the two areas. Top of the list is our call for an inter-agency review. We'll update you regularly on the Coalition's progress, but if you have any questions, please contact [sasha@eds.org.nz](mailto:sasha@eds.org.nz).

## Three Waters reforms positive

EDS is broadly supportive of the Three Waters reforms. We have collectively been deep-briefed by the Department of Internal Affairs and see considerable merit in upscaling the provision of Three Waters into new entities. There has been much ill-informed rhetoric from some councils opposing the reforms that reflect naked self-interest. It's clear to anyone looking at the creaking infrastructure run by them that change is needed to protect public health. Scaling up will enable better science, engineering and funding deployment which is needed to bring Three Waters supply up to modern standards. A related benefit is that these new entities should become powerful advocates for freshwater more generally, hopefully standing alongside public interest advocates in seeking to improve water quality across the country.