

EDS News: March 2022

***Port Otago v Environmental Defence Society* [2021] NZCA 683 goes to Supreme Court on fast-track**

Leave for Port Otago's appeal to be heard by the Supreme Court has been granted. In essence, the appeal seeks not to apply the *King Salmon* precedent to the current facts relating to port activities but rather to relitigate *King Salmon* in its entirety. This is deeply concerning. The timetable for the hearing is the shortest EDS has ever encountered and the Court wants the parties to another appeal (concerning the East-West link) to join the hearing on the basis that the issues are similar. The hearing is set down for 11-12 April. Donations to the case are welcome [here](#).

Stage 1 of oceans reform project nearly completed

Stage 1 of EDS's major review of oceans policy is near completion with the penultimate draft out for peer review. The report will be finalised and printed during April and will be launched early May by Conservation Minister Kiritapu Allan. The report explores options for reform and is designed to stimulate thinking about better ways of managing Aotearoa New Zealand's precious marine resources. It sets in place the foundations for a second stage that will identify and describe in some detail a preferred reform option and the pathway to implement it. In that respect the approach mirrors that of EDS's successful resource management reform work.

EDS supports proposed marine reserve at Waiheke Island

EDS submitted in support of an application by Friends of the Hauraki Gulf to establish a no-take marine reserve off the northwest coast of Waiheke Island. The proposed marine reserve spans an area of 2,350 ha. It hosts a diverse range of biogenic habitats (kelp forests, scallop beds and sponge gardens) and unique marine fossil deposits. The site is of ecological, historic and scientific significance and will provide numerous public benefits including enhanced recreation, tourism and educational opportunities. The Hauraki Gulf is in a state of ecological decline and urgent action is required to protect and restore the health of the marine environment. EDS commends Friends of the Hauraki Gulf for taking action to protect important marine values within the Gulf. You can read EDS's submission [here](#).

Local Government Reform through an environmental lens

EDS has been consulted by the Department of Internal Affairs and the Independent Ministerial Review Panel on proposals for the reform of local government. Following that engagement, we were concerned that the review panel was not sufficiently focused on improved environmental

management as a key outcome from the review. This is concerning, because one of the perceived failings of the current resource management system, is local government implementation. EDS is therefore embarking on its own review in which we will explore the preferred configuration of local government through an environmental lens. This work will be completed in time to provide an independent perspective to Ministers.

Wildlife Act report coming in June

In December 2021, the Government announced plans to modernise conservation law to better reflect today's thinking, setting out a 'roadmap' for reform. In setting its priorities, a review of the Wildlife Act 1953 is one of the first elements to be progressed. Off the back of our recent Conservation Law Reform Report: *Conserving Nature*, the Department of Conservation has asked EDS to undertake a detailed review of the Wildlife Act 1953. EDS's review will identify options for reform to enhance biodiversity protection, bring Aotearoa New Zealand into line with international best practice, and reflect our unique cultural landscape. EDS's review will be informed by engagement with regulators, iwi and other stakeholders. The findings of our review will be available in late June.

Concerns about review of stewardship land

EDS has concerns about the Department of Conservation's proposals to amend current processes for the reclassification and disposal of stewardship land under the Conservation Act. In combination, the suite of proposals could create a 'fast-track' disposals process for stewardship land, by curtailing public involvement in the review process and removing a bar on the disposal of stewardship land in the absence of a 'fixed' statutory test to guide ministerial decision-making. The Department's proposals seek to enable existing concession terms to continue for an indeterminate period and could undermine conservation objectives where land is found to have high conservation values that require stronger protection under the Act. There is a general lack of clarity and transparency around the role of national panels and a risk that economic values will influence reclassification and disposal outcomes. You can read our full submission [here](#).

EDS and Environment Canterbury join forces

Concerns by EDS and Fish & Game about apparent breaches of the Rakaia Water Conservation Order by Trustpower were discussed with Environment Canterbury officials earlier this week. EDS and Fish & Game put Environment Canterbury on notice of proposed declaration proceedings in the Environment Court concerning the management regime for Lake Coleridge. At the meeting it was agreed that the parties would cooperate in preparing the questions of law for the court to address. EDS and Fish & Game believe the regional council has allowed breaches of the national water conservation order to occur. EDS was a party to the original hearing for the order in the mid-1980s. Lead counsel for EDS in the case are Simon Berry and Kate Storer from the Auckland law firm Berry Simons.

Parliamentary Commissioner call for action on chemicals

A new report by the Parliamentary Commissioner for the Environment Simon Upton, '*Knowing what's out there: Regulating the environmental fate of chemicals*', examines how Aotearoa New Zealand can better manage the environmental impact of chemicals. The Commissioner says there is a lot we don't know about chemicals reaching our environment, including how much is used, where they are used, and the effects they are having. He makes recommendations to help answer all three questions and integrate them into a common framework to prioritise action on contaminants that pose the highest risk. The recommendations are primarily aimed at the Ministry for the Environment and the Environmental Protection Authority. EDS agrees that chemicals in the environment have become a "sleeper" issue and the report is a big wake-up call for Ministers and agencies. The report is [here](#).

Concern over applications for helipads on Aotea

EDS is concerned about the recent proliferation of helipad consents being applied for on Aotea Great Barrier Island. In the last few months there has been an influx of applications, many of which are on the same street, with two applications already granted consent. The planning framework for air travel to the Hauraki Gulf islands is currently very lax – with helipad consents generally being provided for as a restricted discretionary activity. The narrow matters of discretion preclude a broader assessment of the effects of increased helicopter activity in the area – and the adverse effects this may have on the natural character, wildness and serenity of Aotea. The Hauraki Gulf Islands District Plan remains separate to the wider Auckland Unitary Plan and a review is not planned until 2026. EDS has written to Auckland Council outlining its concern with that timeframe and has asked for an urgent plan change to address the issue.