

Property Speaking



Level 7, Norris Ward McKinnon House
711 Victoria Street, Hamilton, Private Bag 3098, Hamilton 3240
T 07 834 6000 | F 07 834 6100 | lawyers@nwm.co.nz | www.nwm.co.nz

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Welcome to the Autumn 2023 edition of *Property Speaking*, our first issue for 2023.

We hope you enjoy reading this e-newsletter, and find the articles to be both interesting and useful. To talk further about any of these topics, or indeed any property law matter, please don't hesitate to contact us – our details are on the top right of this page.



Storm damage to properties

For landlords, tenants and buyers

With historic amounts of rain and flooding in many regions, this year has so far been challenging for many communities in the North Island. It is anticipated that these extreme weather events are likely to become more frequent in the future.

Many properties have been damaged by flooding, landslides and silt. Some of these may be under sales agreements or leased under residential tenancy agreements. We give some advice on what landlords, tenants and buyers (who have not yet settled) can do.

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Subdivision consents

Recent changes to planning rules

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The purpose of the NPS-HPL is to ensure that highly productive land is protected for use in land-based primary production, both now and for future generations.

Councils are now required to consider the need to preserve highly productive land when determining any application for a subdivision consent.

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Property briefs

Update on legislation

There are several new pieces of legislation relevant to property owners, buyers and developers that are moving slowly through the House. As these bills are subject to the final stages of the parliamentary process, the proposed laws could change before coming into force – or be discarded altogether. Nevertheless, as some of these bills move closer to their final form, it is worth keeping an eye on their progress.

We outline the principles of the Local Government Official Information and Meetings Amendment Bill which proposes changes to LIMs.

Three pieces of proposed legislation are intended to replace the Resource Management Act 1991, although the Climate Adaptation Bill has not yet been introduced to the House.

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Residential tenancies

The responsibility for repairing damage to a property caused by a weather event or natural disaster, including drying a property that has been damaged by flood water (and paying for the electricity to do so), lies with the landlord.

If the landlord and tenant cannot come to an agreement on the next steps, either party may apply to the Tenancy Tribunal for a way forward.

Is the property completely destroyed? If the property is no longer habitable, rent will reduce accordingly and either party may give notice to the other terminating the tenancy. A landlord must give seven days' notice and a tenant must give two days' notice. We recommend taking photos of the damage in case there is a dispute about whether the property is destroyed. Notices from emergency services or council officials (such as red stickers) can also be used as evidence that the property is no longer habitable.

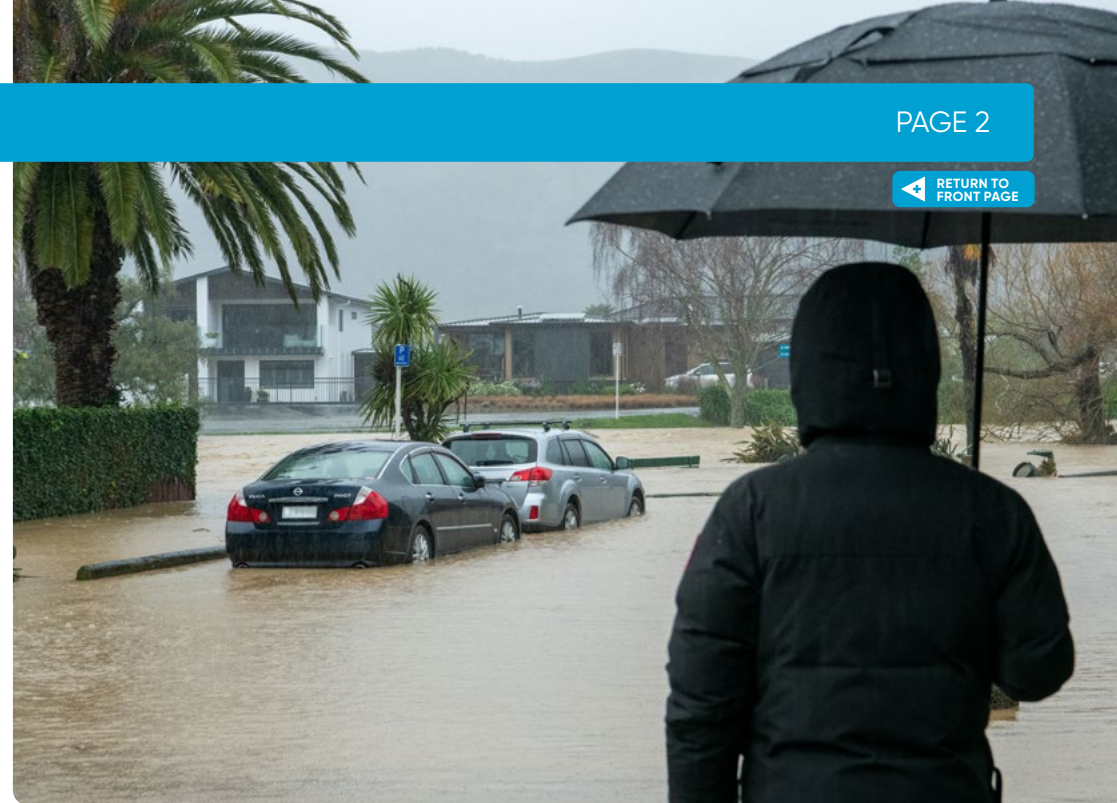
Partially destroyed? If the property is partially destroyed, or part of the property is so seriously damaged that it is no longer habitable, rent will reduce accordingly and either party may apply to the Tenancy Tribunal for an order to end the tenancy. The tribunal may make an order terminating the tenancy if it is satisfied it will be unreasonable to require the landlord to repair the property or the tenant to continue with the tenancy at a reduced rent.

Damaged but can be repaired? The damage should be repaired at the landlord's cost as soon as practicable. The landlord should ask a building professional whether it is safe for tenants to remain in the property in the meantime. If the tenant can remain in the property while the work is completed, the landlord and/or tenant should consider agreeing to a rent reduction to compensate the tenant for any inconvenience while the work is being carried out.

If the tenant needs to move out, the landlord and tenant should negotiate to reach an agreement. The landlord should let the tenant know how long the repairs are expected to take and when the tenant can move back in.

Bought a property but not settled?

Under the ADLS Agreement for Sale and Purchase of Real Estate, the property and chattels remain at the risk of the seller until possession is given and taken (usually on settlement day). If you have bought a property but not yet settled, the cost of repairing the damage usually lies with the seller.



Property is destroyed? If the property is destroyed or damaged so it is no longer habitable, and is not repaired prior to the settlement date, the buyer must decide to either:

1. Complete the purchase at the purchase price, less an amount equal to the insurance payment received or receivable by the seller (unless the insurance company agrees to reinstate the property up to the insurance cover for the benefit of the buyer prior to the settlement date), or
2. Cancel the agreement: the deposit is refunded in full and neither party can make any further claims against the other.

Damaged but can be repaired? If the property is damaged, but is still habitable, settlement takes place on settlement date at the purchase price less an amount equal to the reduction in value of the property.

The reduction in value is deemed to be equivalent to the reasonable cost of reinstatement or repair. If the seller and buyer cannot agree on a reasonable cost of repair, the dispute will follow the compensation dispute procedures under the agreement.

We can help

Insurance companies will be very busy over the coming months assessing properties and processing claims. Given the scale and timing of the extreme weather events this year, this will take some time. There are also likely to be delays in the timeframes for repairs. Both landlords and tenants, and sellers and buyers, will need to be patient, flexible and practical to resolve any issues that may arise. Any agreement made between parties should be recorded in writing.

If you need any help to work through these issues, please don't hesitate to talk with us. +

Subdivision consents

Recent changes to planning rules

In the Autumn 2022 edition of *Property Speaking* we discussed different types of resource consents. Since then, the government has released a new National Policy Statement for Highly Productive Land (NPS-HPL), which you can read [here](#). The purpose of the NPS-HPL is to ensure that highly productive land is protected for use in land-based primary production, both now and for future generations. Councils are now required to consider the need to preserve highly productive land when determining any application for a subdivision consent.

Subdivision consent

If you want to change the size of your section by purchasing some of your neighbour's property and merging it with your own (a boundary adjustment) or you want to split your property into additional property titles, then you will need subdivision consent from your local council.

Requirements

Your region's district plan sets out the requirements that you must meet in order to subdivide your property. In addition to the requirements being different between regions, the requirements are also different depending on the zone in which your property is located. Properties are divided into zones that consider the standard characteristics expected in that area. The zones are:

- + Residential
- + Commercial/retail/town
- + Industrial
- + Rural lifestyle
- + Rural production, and
- + Special purpose.

The names of the zones may differ between regions but there will be a zone for each of those standard characteristics.

Conditions

Consent for your subdivision is likely to come with conditions.

Your local council may also ask that part of your property is transferred to the council; this is known as 'vesting.' Sometimes the council will pay you for that land but other times it will form part of your development contribution.

Areas around waterways may be taken for an esplanade reserve or esplanade strip, whereas areas of land that will become roads may be taken for road reserves.

The council can also require that new subdivisions have certain design specifications which are dictated through the district plan; these are recorded on the property title in a consent notice.

Affected parties

Where your subdivision is not a permitted activity, or it does not fit within the standard requirements for a subdivision in that area, the council may still grant you consent on a 'notified basis.' This means that it provides notice to affected people who can then raise any concerns with your proposed subdivision within a specified time.

The council may add further conditions to the development or even refuse the consent depending on any concerns raised.

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Highly productive land (HPL)

In addition to the prior considerations that councils had to consider, since 17 October 2022, they now must map the land within their region to determine if it is HPL. In general, land will be mapped as HPL if it is:

1. In a general rural zone or a rural production zone
2. Predominantly within an area with a Land Use Capability class of between 1–3. A helpful map shows the current class of land within New Zealand [here](#)
3. Not identified for future development within the relevant district's district plan as at 17 October 2022, and
4. Forms a large and geographically cohesive area.

Councils have the next three years to remap all the land within their region. Until that mapping is completed, all land will be treated as HPL if it falls within categories 1–3 above.

Most of the Land Use Capability class 1–3 land is within Northland, Auckland, Waikato, Bay of Plenty (between Tauranga and Whakatāne), Taranaki, Manawatu,

Canterbury, Otago and Southland, although there are smaller areas of class 1–3 land throughout New Zealand.

What does this mean for you?

If you are applying for a subdivision consent, your local council will consider whether the land is HPL and, where it is, it will be much more difficult for you to obtain a subdivision consent.

Since the NPS-HPL came into force on 17 October 2022, it has caused problems for landowners who had subdivision consent applications for land within class 1–3 areas pending on that date. Councils had to reassess applications taking HPL into account. This, in some cases, resulted in consent being refused.

If you are thinking about subdividing your property, especially in a rural zone, do talk with us and your surveyor early on. We can discuss the specific planning requirements that now apply to your property and help assess whether your subdivision is likely to receive consent before you proceed any further on the development. +

Property briefs



Updates on legislation

There are several new pieces of legislation relevant to property owners, buyers and developers that are moving slowly through the House. As these bills are still subject to the final stages of the parliamentary process, the proposed laws could change before coming into force – or be discarded altogether. Nevertheless, as some of these bills move closer to their final form, it is useful keeping an eye on their progress.

If you have long-term development plans, feel free to talk with us about how these proposed law changes may affect you and we can help you factor these potential changes into your plans.

Changes to LIM information

Somewhat timely given the recent flooding events across the country, the Local Government Official Information and Meetings Amendment Bill is set to clarify the natural hazard information available through local councils.

A Land Information Memorandum (LIM) is a critical document for property buyers to review as it contains information held on council files about a particular property. It is common for property purchases to be subject to the buyer approving the LIM or for real estate agents to provide the LIM upfront to buyers.

As a component of New Zealand's National Adaptation Plan regarding climate change, the bill aims to ensure that LIMs across the country have clear and consistent information to help property buyers and owners understand the natural hazard risks for a property, including the potential impacts of climate change. It introduces clearer requirements in law for councils to provide information in LIMs about natural hazards that affect, or may affect, a property and the effects of those hazards. It formalises information-sharing responsibilities between regional and local councils given that regional councils often hold natural hazard information.

Replacement of the Resource Management Act 1991

There is a suite of bills expected to progress through the House that will replace the Resource Management Act 1991 (RMA).

Together, the three bills aim to significantly update the existing resource management regime by addressing some current complexities as well as taking better account of issues such as climate change, and the need to improve housing supply and infrastructure.

The three key pieces of proposed legislation are:

1. Natural and Built Environment Bill:

This is essentially the main replacement for the RMA. Amongst the bill's many changes, it proposes to shift the resource management regime's focus from managing adverse effects on the environment to achieving positive outcomes.

The proposed legislation would also see the vast array of national policies and standards consolidated into one single National Planning Framework, and local policies and plans into 14 natural and built environment plans. Once in effect, these changes will alter your approach to applications for resource consents.

2. Spatial Planning Bill: The bill proposes the establishment of regional planning committees involving central government, local councils and Māori. These committees will be responsible for long-term regional spatial strategies

which will include certain areas in each region being earmarked for development, protection and restoration, or infrastructure improvement.

The strategies should also identify which areas are vulnerable to natural hazards and climate change. As the strategies will be relevant to, say, resource consent decisions, they may affect the likelihood of any plans for the development or use of property being approved.

3. Climate Adaptation Bill: This proposed legislation will address climate change issues such as the funding to move communities to avoid natural hazards such as flooding or erosion.

The Local Government Official Information and Meetings Amendment Bill, Natural and Built Environment Bill and Spatial Planning Bill have been moving through the House since November 2022. The relevant Parliamentary Select Committees received public submissions on these bills and are expected to report back to the House on 22 May 2023.

The Climate Adaptation Bill has yet to be introduced to Parliament, but it is expected to begin the process sometime this year. +