

THE LAW

LOWDOWN

SPRING 2024



paul gallagher legal



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It's great to see the Spring has well and truly sprung after what for many of our clients has been a long and cold Winter.

The Government is forging ahead with its reform path, and in this, the latest edition of the Law Lowdown, we touch on two significant upcoming changes to the Building Consent and Resource Management systems.

We are often asked to explain the duties of Trustees. We explain which duties are compulsory and which are legally set by default but may be changed under the Trust deed.

Lastly, we provide some practical tips on the law involving boundary issues including overhanging trees and encroaching tree roots.

As always, we encourage you to contact us if anything here, or elsewhere, is causing you concern.

TOP NEWS INSIDE

- Proposed Building Consent System Reform
- New Resource Management Reform: Key Takeaways for Clients
- Understanding the Trustee Duties under New Zealand's Trusts Act 2019
- Overhanging Trees, Boundary Issues, and Ownership of Fruit: What You Need to Know

PROPOSED BUILDING CONSENT SYSTEM REFORM



The Government has announced its intention to reform the building consent system with the aims of improving efficiency and consistency in building consent delivery. At present some 67 Building Consent Authorities (BCAs) - which are usually local and district councils, can also be regional councils (for dams) and private organisations - operate across New Zealand, each with varying practices, leading to delays, costs, and inconsistencies. Building and Construction Minister Chris Penk emphasised that the system is not meeting New Zealand's needs.

ISSUES WITH BUILDING CONSENTS

The existing BCA structure requires inspection and consent for building projects at the district or city council level. However, inconsistencies in interpreting the Building Code across different BCAs have led to project delays and added costs. This situation has been particularly challenging for large-scale builders, modular construction firms, and manufacturers working across regions, who must work with multiple BCAs.

New Zealand's high building costs and restrictive consent process have also contributed to one of the least affordable housing markets globally. Minister Penk stressed that these inefficiencies are among the primary drivers of high building costs, impacting housing affordability nationwide.

PROPOSED REFORM OPTIONS

The Government is evaluating several reform options to create a more integrated building consent system:

- Consolidation of BCAs: This voluntary option would allow

councils to collaborate and pool resources for building control functions, addressing barriers to integration and enhancing efficiency.

- Regional BCAs: This model would establish fewer, larger regional BCAs replacing the present local council BCAs. With economies of scale, regional BCAs would standardise processes, enhance consistency, and reduce duplication across regions.
- Single Point of Contact: A centralised submission system would be introduced for builders, with inspections contracted out to BCAs or private providers. This approach would encourage competition and specialisation, reducing the burden on builders and promoting efficiency.

REVIEWING LIABILITY SETTINGS

The Government is also reviewing liability in the building system. Currently, councils and their ratepayers may bear liability for the cost of remediation of defective work, even though others may also bear responsibility, but be insolvent or harder to pursue legally. This has led councils to take conservative approaches, often adding time and cost to the consenting process. The Government's 2023 options paper noted that BCAs carry excessive responsibility for assuring Building Code compliance, and reform could relieve some of this liability burden.

WHAT'S THE PROCESS FROM HERE?

The Ministry of Business, Innovation and Employment (MBIE) will work closely with building industry stakeholders to

discuss potential reforms. Based on this feedback, further recommendations will be prepared for the Building and Construction Minister, with public consultation scheduled for early 2025.

CONCLUSION

These reforms are part of an effort to address issues in New Zealand's building system. A related amendment, the Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill, was recently introduced to

Parliament. This bill aims to promote competition by recognising certified overseas building products, simplifying the approval process, and reducing barriers to quality imported materials.

If you have questions about the proposed reforms or how they may impact your projects, please contact us for advice. We are here to help you navigate these changes and prepare for the evolving regulatory landscape.

NEW RESOURCE MANAGEMENT REFORM: KEY TAKEAWAYS FOR CLIENTS

The New Zealand government recently announced a major overhaul to the Resource Management Act (RMA) 1991, a move expected to streamline environmental and development regulations. Two new Acts will replace the RMA, targeting environmental management and urban development separately. This article outlines the planned reforms and their implications for property developers, environmental stakeholders, and iwi groups.

BACKGROUND AND PURPOSE OF THE REFORM

The RMA has historically been criticised for prioritising environmental protections over development, which has led to delays and high compliance costs. Infrastructure and RMA Reform Minister Chris Bishop emphasized that these delays—such as three years for housing consents and almost a decade for projects like wind farms—hinder both environmental protection and economic growth.

The new legislation will therefore separate environmental regulation from urban development, addressing the needs of both while ensuring a streamlined, cost-effective approval process. An expert panel, including environmental and legal professionals and economists, will advise the government, with a blueprint expected by December and legislation by next year.

KEY PRINCIPLES OF THE REFORM

The government has set ten guiding principles for the new laws, focusing on balancing environmental protection with development needs. Here are some core principles and how they could affect clients:

Targeted Environmental Management: The new legislation will narrow the focus of environmental regulations to managing direct impacts, reducing the broad scope that has complicated the RMA. National standards will be expanded to simplify council

plans and reduce the need for individual resource consents.

Enhanced Compliance and Monitoring: The new laws aim to reduce upfront consenting requirements, instead prioritising compliance, monitoring, and enforcement during and after development. This could significantly lower project costs and allow developers to start projects more quickly.

Single Regional Plans: Instead of multiple overlapping regulatory documents, there will be one regulatory plan per region, prepared jointly by regional and district councils. This unified approach will streamline planning and potentially reduce costs and delays.

Improved Dispute Resolution: To handle disputes swiftly and affordably, a new Planning Tribunal or equivalent body is proposed. This will facilitate low-cost resolutions between property owners, neighbours, and councils, making dispute management more accessible.

Commitment to Treaty of Waitangi Obligations: Treaty rights will be upheld, reflecting iwi frustration over restrictions under the RMA. The government acknowledges that the new framework must respect iwi rights while enabling the use of Māori land, benefiting both Māori and non-Māori stakeholders.

IMPLICATIONS FOR STAKEHOLDERS

For property developers, the proposed changes aim to facilitate faster project approvals, with fewer hurdles for infrastructure and housing development. With a focus on managing direct environmental impacts, the reform is set to reduce costs associated with compliance and align environmental limits with development needs.

For environmental stakeholders, the emphasis on national standards and environmental limits aims to ensure that

development does not override ecological safeguards. Clear standards across regions are expected to improve accountability and uphold sustainable practices.

For iwi groups, the reformed legislation offers a way to develop and utilise Māori land, alleviating longstanding barriers under the RMA. By incorporating Treaty obligations, the reform presents an opportunity for iwi to actively participate in resource management and land use.

CONCLUSION AND WHAT'S NEXT?

These changes are still under development, with the expert advisory panel working on the final framework. The reforms

will align with ongoing national direction on infrastructure, housing, farming, and hazard management, with an amendment bill anticipated by mid-2025.

This reform will redefine New Zealand's approach to resource management. Clients involved in property development, land use, or environmental advocacy should stay informed about these changes to understand how they may influence future projects. Please reach out to us for guidance on how these reforms may impact your interests.

UNDERSTANDING THE TRUSTEE DUTIES UNDER NEW ZEALAND'S TRUSTS ACT 2019

The Trusts Act 2019 outlines two types of trustee duties: compulsory and default. It's essential for trustees and beneficiaries to understand these responsibilities to ensure the trust functions as intended and complies with the law.

COMPULSORY DUTIES

The mandatory duties, which cannot be changed or excluded, are foundational to trust management. They ensure that trustees:

- Know and adhere to the terms of the trust.
- Act honestly and in good faith, keeping the beneficiaries' interests central.
- Exercise powers for a proper purpose and for the benefit of the beneficiaries.

These obligations are designed to protect beneficiaries and uphold the core purpose of the trust.

DEFAULT DUTIES

In contrast, default duties are flexible and may be modified or excluded if the trust deed permits. Default duties require a trustee to:

- exercise the care and skill that is reasonable taking into account any special knowledge
- or experience they have when investing, exercise the care and skill that a prudent person of business would exercise in managing the affairs of others, again taking into account any special knowledge or experience they have

- not exercise a power for their own benefit
- not fetter (bind or commit) trustees to a future exercise of a discretion they have under the trust
- avoid a conflict between the interests of the trustee and the interests of the beneficiaries
- act unanimously with all other trustees
- act without favour in relation to the beneficiaries
- consider regularly whether they should be exercising one or more of their powers as a trustee
- not make a profit nor take a reward from their role as a trustee

While these duties can be modified, doing so may require a variation in the trust terms, which must be explicitly allowed by the trust deed. If the trust deed does not permit modification, altering these default duties may not be possible.

CONCLUSION

Trustees of existing trusts should review their trust deed to ensure it aligns with the Trusts Act requirements. If modifications are needed, legal advice is recommended to determine whether a deed variation is feasible. Contact us for any assistance you may need in managing or setting up a trust under the current law.



OVERHANGING TREES, BOUNDARY ISSUES, AND OWNERSHIP OF FRUIT: WHAT YOU NEED TO KNOW

In New Zealand, trees planted close to property boundaries can lead to disputes, especially when branches overhang or roots encroach into a neighbouring property. Understanding the law governing these situations can help property owners resolve issues amicably and avoid unnecessary conflicts.

OWNERSHIP OF OVERHANGING BRANCHES AND FRUIT

Legally, the branches, leaves, and fruit of a tree are considered the property of the tree's owner, even if they extend over a boundary into a neighbour's property. This means that while you can trim branches and roots that cross into your property, you must offer any trimmings, including fruit, back to the tree's owner, as they still hold ownership rights. If the owner does not want the trimmings or fruit, you are then free to dispose of them.

RIGHTS TO TRIM OVERHANGING BRANCHES AND ROOTS

As a neighbour, you have the right to remove any branches or roots that cross into your property, as long as the trimming is done at the boundary line. However, it's important to do so

carefully, as improper trimming that damages or destabilises the tree could lead to liability issues. If the tree owner suffers loss due to damage to the tree or if the tree subsequently falls, you may be liable for repair costs or damage.

RESPONSIBILITIES OF TREE OWNERS

Tree owners are generally responsible for ensuring their trees do not cause a nuisance or damage to neighbouring properties. If branches or roots from a tree extend over the boundary and cause damage—such as interfering with structures, causing excessive leaf litter, or affecting underground pipes—the owner may be responsible for addressing the issue or compensating the neighbour for damages.

RESOLVING TREE BOUNDARY ISSUES AMICABLY

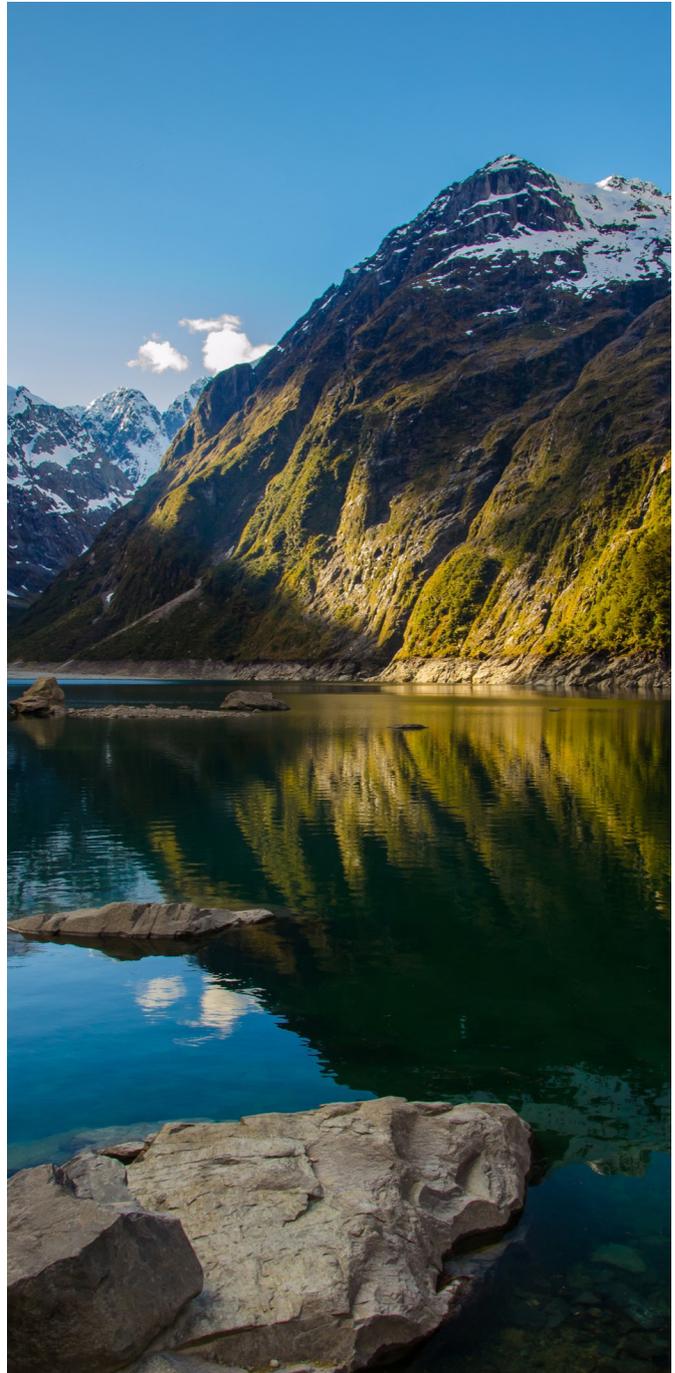
The best approach to tree boundary issues is open communication between neighbours. A polite discussion may resolve the issue without the need for legal intervention. However, if a solution cannot be reached, a formal notice requesting that the tree owner trim the overhanging branches or roots may be issued. In certain cases, mediation or assistance from a local council may help in resolving the dispute.

LEGAL RECOURSE FOR PERSISTENT ISSUES

If the overhanging trees are causing significant nuisance or damage, you may be able to seek legal redress. In New Zealand, disputes involving trees can sometimes be brought before the Disputes Tribunal or District Court, depending on the complexity and financial extent of the damage. Legal advice should be sought to determine the best course of action, as each case may involve unique considerations under the Property Law Act

CONCLUSION

If you are facing issues related to overhanging trees or other boundary concerns, we can provide guidance on your rights and responsibilities under New Zealand law. Please reach out for assistance in resolving any disputes amicably and within the law.



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