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NEW ZEALAND LAWYERS

# NZKS decision – key findings.

AUGUST 2014

## Key findings – EDS decision

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- Environmental protection is a core element of sustainable management
- However, no one factor of "*the use, development and protection*" of natural and physical resources in section 5 creates a general veto
- But, environmental bottom lines may be set to protect particular environments if that achieves sustainable management
- Within section 5(2)(c) "*avoid*" means "*not allow*"
- "*Inappropriateness*" within section 6 is assessed by reference to what is sought to be protected or preserved

## Key findings – EDS decision continued

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- "*Give effect to*" in section 67(3) means "*implement*"
- Within policies 13(1)(a) and 15(1)(a) of the NZCPS "*avoid*" means not allow
- The scheme of the RMA is that the "*Minister sets objectives and policies in the NZCPS and relevant authorities are obliged to implement those objectives and policies*"
- Inappropriateness within policies 13(1)(a) and 15(1)(a) is interpreted "*by avoiding the adverse effects on natural character in areas of the coastal environment with outstanding natural character*"

## Key findings – EDS decision continued

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- Policies 13(1)(a) and 15(1)(a) are directive and the NZCPS contains policies that "*are intended to, and do, have binding effect*"
- NZCPS gives substance to Part 2 so there is no need to refer back to Part 2 unless:
  - the NZCPS is invalid
  - the NZCPS does not cover the field
  - there is uncertainty or conflict
- As none of the exceptions applied the Board was wrong in law to make a "*balanced judgment*" or an assessment "*in the round*"

## AUCKLAND

PwC Tower

188 Quay Street, PO Box 1433

Auckland 1140, New Zealand

DX CP24024

P. 64 9 358 2555

F. 64 9 358 2055

## WELLINGTON

State Insurance Tower

1 Willis Street, PO Box 2694

Wellington 6140, New Zealand

DX SP20201

P. 64 4 499 4242

F. 64 4 499 4141

## CHRISTCHURCH

83 Victoria Street

PO Box 322

Christchurch 8140, New Zealand

DX WX11135

P. 64 3 379 1747

F. 64 3 379 5659

[www.buddlefindlay.com](http://www.buddlefindlay.com)