

RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

RM NEWSLETTER

FEBRUARY 2006

PRESIDENT'S REPORT

Dear Members

Happy New Year – I trust you've all returned refreshed and ready to face whatever is in store for '06.

The new Minister for the Environment, the Hon David Benson-Pope, is off to a keen start to the year. He has expressed a wish to address as many of our members as he can, and we are already in the process of arranging meetings for him in Auckland, Hamilton, Wellington, Christchurch and Dunedin. Meetings in other centres will follow.

Application for the Association's new Fellowship have just closed, and hopefully we'll be able to report more on the applications and possibly the granting of the award in March or April.

I see that applications were invited over the Christmas holidays for the position of CEO of the Ministry for the Environment, Barry Carbon's present position. Having served four years of his initial two year contract, Barry is returning to Australia. We wish him well and hope that he will be able to say his farewells to as many of our members as possible before he departs these shores.

Alan Dormer
PRESIDENT

THE ENVIRONMENTAL LAW ROUNDTABLE OF AUSTRALIA AND NEW ZEALAND

A Joint Project of the National Environmental Law Association (Australia) and the Resource Management Law Association (New Zealand)

A multidisciplinary approach to improve environmental laws and policies across Australia and New Zealand

Preparations are well under way in the production of a list of for the Environmental Law Roundtable of Australia and New Zealand (ELRANZ) Projects for 2006.

For each project, a description and process strategy will be prepared along with a project budget.

ELRANZ seeks to investigate how environmental laws across the 10 jurisdictions of Australia and New Zealand can be harmonised.

One of the benefits of harmonisation is a greater opportunity of shared jurisprudence when the Court or Tribunal in one jurisdiction looks adjudicates on a particular issue. Practitioners will be able to use the

case law to advise clients without having to litigate in the client's jurisdiction.

The more we work on the harmonisation of environmental laws the greater the opportunity there is to reduce litigation and better serve the public interest nature of environmental law. This will take some time to have an effect but is one of the long term outcomes of the harmonisation process.

ELRANZ gives the multidisciplinary memberships of NELA and RMLA opportunity to be involved in improving environmental laws.

If you have any suggestions for projects please send them through to me as Convenor.

The ELRANZ dialogue generated through shared experiences will lead to a better understanding of the current laws and how they operate. Among other things, this will lead to the identification of the "best practice" model that can then be flexibly applied across jurisdictions.

ELRANZ will also look at recommending reform of the current law where our investigations identify the need for improvements to be adopted across all jurisdictions.

John Haydon, Convenor

ELRANZ

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REGIONAL NEWS

Wellington – James Winchester

After a busy year in 2005, the Wellington branch will be aiming to confirm a number of events for 2006. Possible events include a seminar on progress with the Wellington Regional Strategy, and new developments in

renewable energy. We also look forward to confirmation of dates for a national roadshow involving the Minister for the Environment, and will advise members as soon as the Wellington date and venue is finalised.

The Wellington chair is James Winchester.

James can be contacted on e-mail: james.winchester@simpsongrierson.com, or tel (04) 924 3503.

Canterbury – David Collins

The Canterbury Branch held a Christmas drinks function on 19 December 2005 at the Twisted Hop, a boutique brewery in Poplar Street, which was well attended. Poplar Street is part of the High Street precinct, which has had a major revitalisation over the last few years.

From an RM perspective the precinct is an interesting example of partnership between the Council and the building owners. For example the Council organised the coordinated painting and tidying up of facades, and assists with street events.

The AGM for the Canterbury branch will be held in February, members will be advised of the date and venue by email.

RECENT CASES

***By Bal Matheson and Claire Kirman,
Russell McVeagh***

***Outstanding Landscape Protection Society Inc v The Hastings District Council and Hawke's Bay Wind Farm Limited and Unison Networks Limited
Environment Court W109/05 22
December 2005***

This case centred around the ambit of Section 2A of the Resource Management Act 1991, and in particular

whether or not an incorporated society could succeed to the rights of two individual submitters where it was argued that the individuals had acted in concert at the time of the hearing of the matter by presenting a joint submission and evidence, and therefore should be considered to have been a co-ordinated group.

Of particular import in this case was the earlier decision in *Schwass Family Partnership v Marlborough District Council* (22/06/05, CIV2005-4850331, HC), where it had been held that while a society cannot succeed to the submissions of individuals, if it can be factually proven that the individuals who submitted were acting in concert when they lodged the individual submissions then they will be considered to have been acting as a co-ordinated group, and succession is possible.

The issue the Court had to determine was whether the Applicant, by presenting a joint submission and evidence at the hearing, could be said to be acting in concert for the purposes of the RMA.

Judge Thompson found that a group formed after the lodging of submissions cannot succeed as an appellant, therefore declining the Applicant's application. In *Schwass*, the individuals had formed a common purpose before submissions were filed. However, in the present case the common purpose did not begin until the hearing where a joint submission and evidence were presented. Thus, the distinguishing feature in *Schwass* was that the unincorporated group had crystallised and formed a common purpose when the individuals decided to make individual submissions.

***Runciman Rural Protection Society Incorporated v Franklin District Council*, 20 December 2005,**

Courtney J, High Court Auckland, CIV-2004-485-1787

This case considered the relationship between a district plan and a regional policy statement, as well as the validity of consent conditions.

The case involved an appeal of an Environment Court decision to uphold an amended consent for a secondary school in Runciman, in the Franklin District of Auckland. The Respondent had initially declined the proposal however the applicant, the Roman Catholic Diocese of Auckland ("Diocese"), subsequently amended its proposal. The Respondent supported that amended proposal in the Environment Court. The Appellant and the ARC, which was a party to the Environment Court proceedings, continued to oppose the school and appealed the Environment Court decision.

On appeal, the High Court held that the Environment Court had made two key errors of law. Firstly, it had erred in its interpretation of the Auckland Regional Council's ("ARC") Regional Policy Statement ("RPS") which led it to approach the interface between the RPS and the Franklin District Plan incorrectly. Secondly, it had acted unreasonably in imposing conditions related to traffic issues because those conditions, although enforceable, gave no assurance that the work envisaged by them would actually be carried out and were therefore invalid.

Interpretation of the RPS

The Environment Court accepted that the proposed school did constitute "urban development" as defined in the RPS and that, on a plain reading of the RPS, urban development was not permitted outside the Metropolitan Urban Limits ("MUL"). However, the Environment Court also referred to the RPS definition of "rural character" and

reasoned that, because the definition of "rural character" referred to activities provided for in the District Plan and schools are provided for in the District Plan, then urban type activities such as schools must have been contemplated by the RPS as being permitted in rural areas. Accordingly, the Environment Court concluded that the otherwise plain meaning of the RPS, whereby urban development is to be contained within the MUL, was modified and the RPS did actually contemplate urban development outside the MUL.

The High Court considered the Environment Court's approach to be erroneous. The High Court found that the clear intention of the RPS was to contain urban activities within the MUL and that was the context in which the words and phrases should have been viewed. In particular, the Environment Court should not have gone beyond the strict definition of "urban development" contained in the RPS. The High Court concluded that the Environment Court had misinterpreted the RPS, losing sight of its objective regarding urban development in rural areas as expressed through the plain wording of its policies.

The High Court also found that, although the proper construction of the RPS and its interface with the District Plan was only one factor to be considered under section 104 of the RMA, it was significant in this case. The High Court held that the Environment Court's errors in concluding that the RPS anticipated urban development in rural areas was a significant element in the Court's reasoning and those errors must therefore have had a material effect on its decision.

Conditions of consent

The Environment Court also imposed consent conditions relating to increased traffic generation as a result of the

proposed development, especially on pedestrian safety. The Appellant submitted that because those conditions only provided for the applicant and District Council to consult and request, there could be no assurance that the work referred to would actually be carried out.

The High Court found that where the Court has recognised a need for particular work to be done, a condition that leaves it uncertain whether the work will be done undermines the very basis for the consent. The High Court considered that to be a situation which no planning authority could reasonably allow to occur and therefore found that the conditions were invalid because they were unreasonable within the meaning of *Newbury*.

The appeal was allowed and the matter was remitted to the Environment Court for fresh consideration.

More recent cases will follow in the RMLA Journal.

FORTHCOMING EVENTS

CONTINUING PROFESSIONAL DEVELOPMENT

Please see the RMLA Website (www.rmla.org.nz) for all Forthcoming and Future Events – including details of CPD qualifying events.

CHANGE OF ADDRESS?	
To:	RMLA, C/- Karol Helmink, 4 Shaw Way, Hillsborough, Auckland
Please note my new contact details as follows:	
Name:	_____
Firm:	_____
Address:	_____ _____
Ph:	_____ Fax: _____
Email:	_____