

# RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

## RM NEWSLETTER

**AUGUST 2009**

ISSN No. 1178-7791

### REGIONAL NEWS

#### ***Auckland – Bal Matheson***

The Auckland Branch has held two events since we last reported. The first was the travelling roadshow addressing the issue of "The Incorporation of RMA Instruments in Treaty Settlements". The seminar was kindly hosted by Chapman Tripp on 9 June 2009, and featured presentations by Katie Mayes, Bronwyn Arthur, and Paul Majurey. The three presentations were from quite different perspectives, and included pertinent first hand commentary on the unique challenges that arise at the interface of Treaty Settlements and the RMA process.

A rather different seminar followed nearly a month later. On 2 July 2009, the Young RMLA presented a well attended panel discussion entitled "The Three Cs" - Council, Consultant and Corporate. Each of the Cs had a particular presenter addressing life within each of those environments, and one of the presenters had experienced all three! The presenters spoke very frankly about the challenges faced by young practitioners in each of these sectors. The panel discussion was ably chaired by the (not so young) Derek Nolan, and was hosted by Russell McVeagh.

The Auckland Branch is looking forward to this year's Salmon Lecture, which is a presentation by Dr Simone Borg, and which will be held at the Northern Club Wintergarden on 19 August. A flyer will be circulated shortly.

As always, if anyone has any suggestions for seminars or any other feedback, then please let me know.

#### ***Hawke's Bay – Alison McEwan***

The Hawke's Bay Branch has new committee members – Rebecca Blunden, Andrew Short,

Andrew Prosser, Eileen von Dadelszen, Martin Williams and Alison McEwan as Chair. We thank the Hawke's Bay Regional Council for sponsoring the "Resource Management Act and Treaty Settlements" roadshow here. An informal wine and cheese evening hosted by Traffic Design Group is proposed for September.

#### ***Taranaki – Lauren Wallace***

The Taranaki branch ventured to the southern side of the mountain on 9 July 2009 for our latest roadshow event "The Incorporation of RMA Instruments into Treaty Settlements". Our thanks to Mike Avery and the Stratford District Council for helping to organise the event and for the use of the Stratford War Memorial Centre, which served us well. Thanks also to Paul Majurey, Katie Mayes and Bronwyn Arthur for a very interesting and informative presentation.

The event was reasonably well attended with some travelling from Wanganui to attend.

The Taranaki branch committee will be meeting again on 6 August 2009 to finalise our next event, "Rural Zoning Issues in Taranaki". A flyer will be sent round in the next few weeks confirming a date and venue.

Lauren Wallace can be contacted on:

Email: [Lauren.Wallace@gqlaw.co.nz](mailto:Lauren.Wallace@gqlaw.co.nz)  
Phone: (06) 768 3700

#### ***Bay of Plenty – Paul Cooney***

Paul can be contacted on:

Tel: (7) 927 0520 or email:  
[pcooney@clmlaw.co.nz](mailto:pcooney@clmlaw.co.nz)

#### ***Waikato – Dr Joan Forret***

The National Roadshow that focussed on RMA instruments and Treaty settlements was very

well received by the Waikato Branch. Very many thanks to Katie, Bronwyn and Paul who did an excellent job in presenting the issues from perspective of different stakeholder groups. Despite a very icy and foggy morning, there was a very good turn out of members who enjoyed the opportunity to hear the presentations and to enjoy a chat over breakfast.

Hopefully there will be more clarity about the likely changes to the Act within the next few weeks so that members can have an opportunity to meet to consider the likely impacts before the conference in October.

Joan can be contacted on tel: 7 834 4662 or email: [Joan.Forret@harkness.co.nz](mailto:Joan.Forret@harkness.co.nz)

### ***Wellington – David Allen***

The last few months have been very busy for the Wellington Branch Committee. You will have all seen the registration brochure for the upcoming 2009 RMLA conference in Wellington. The Committee has put in a huge amount of time and effort to getting the conference theme, speakers, workshops, fieldtrips and social events developed. We therefore encourage you all to register early.

At the end of June we had a highly successful "Environment Court at home" seminar. This was kindly organised by Commissioner Edmonds and Rachel Staunton. It was a fantastic opportunity to see the new premises for the Wellington based Environment Court, to congratulate Judge Thompson on his appointment as Principal Environment Judge and to chat with Judges, Commissioners and Court staff. About 70 people turned up and the feedback has been excellent.

### ***Canterbury – David Caldwell***

The year is continuing to be a busy one for RMA practitioners in the Canterbury area. The hearings on Proposed Change 1 to the Regional Policy Statement have been progressing and this has involved a large number of our members. The proposed change has raised a number of issues and is a significant instrument for the future growth of Christchurch, Waimakariri and Selwyn Districts.

We hosted the seminar on Incorporation of RMA Instruments and Treaty Settlements. This was well attended and well received.

The NZLS Intensive: Environmental Law; National Issues was also held in Christchurch

recently. As always this has been extremely useful.

On the social front, the Canterbury Branch is looking forward to the Tony Hearn QC memorial lecture which is being held on 20 August at the Arts Centre in Christchurch in conjunction with a dinner.

We are very pleased to have His Honour Justice Fogarty as the guest speaker and we are sure that it will be an informative and entertaining evening.

We look forward to seeing as many practitioners from other areas who may be able to attend.

### ***Nelson/Marlborough – Warwick Heal***

Business is quiet but consistent in Nelson-Marlborough-West Coast area. The branch hosted a very well attended meeting to discuss changes to the Resource Management Act. A total of over 60 people attended to hear the Associations road show which was well presented. There appeared general agreement that although many of the proposed changes were worthwhile, several appeared to be ill conceived and the bill poorly drafted in certain areas. At least one practitioner made a personal submission to the Select Committee. Whether the politicians will listen to the words of wisdom expressed is another matter altogether.

The Association has continued its close relationship with the local branch of the Planning Institute with members receiving an invitation to attend the local AGM of the Institute.

### ***Otago/Southland – Michael Garbett***

The Otago/Southland branch is currently waiting on the next RMLA roadshow seminar to be held in Dunedin.

Details of the next event will be announced as soon as it is finalised.

### **Contact Details**

Contact details for other Regional Chairs and/or National Committee members are available on the RMLA website.

## **Hauraki Gulf Forum publishes guidance on Marine Park Act**

A guide to the Hauraki Gulf Marine Park Act has been published by the Hauraki Gulf Forum.

*Governing the Gulf: Giving Effect to the Hauraki Gulf Marine Park Act through Policies and Plans* shows how the legislation – which aims to sustain the life-supporting capacity of the Gulf – can be applied in practice by councils throughout its catchments and marine area.

The guide explains the nature of environmental impacts on the Gulf, its governance and management frameworks, the requirements of the Hauraki Gulf Marine Park Act, the Act's relationship to the Resource Management Act, and how courts have interpreted the legislation to date.

[www.haurakigulfforum.org.nz/guide](http://www.haurakigulfforum.org.nz/guide)

## **RECENT CASES**

*James Gardner-Hopkins, Associate and Daniel Sadlier, Senior Solicitor, Russell McVeagh*

### **THE GOOD OIL - SENTENCING UNDER THE MARITIME TRANSPORT ACT**

While not decided under the RMA as the offence occurred outside the 12 mile limit, *Maritime New Zealand v Prosafe Production Services PTE Limited and Australian Worldwide Exploration Limited* (CRI-2008-043-002447) is an interesting sentencing decision relating to environmental damage.

The principles applied drew from, and will also be relevant for, further sentencing under the RMA. The defendants were Australian Worldwide Exploration Limited ("AWEL"), an oil exploration and production company, and Prosafe Production Services Pty Limited ("Prosafe"), a company that

owns and operates off shore installations and bulk storage systems. The two companies were operating a joint venture off the Taranaki Coast, mining for oil and gas.

On 21 October 2007 about 30 m<sup>3</sup> of the "black water" (a term used in the decision to refer to the discharged contaminant) was illegally discharged into the sea. The black water was being extracted from sub-sea wells and pumped into a tank on the storage system.

One of the tanks had reached capacity so the black water was diverted to another tank. The defendants were aware that a sensor for detection of oil residue in discharged water was malfunctioning, but still operated the discharge process manually. The discharge occurred due to a lapse in attention from a Prosafe staff member, who was distracted by a cargo offloading procedure that was being carried out at the same time.

AWEL contacted Maritime New Zealand with a notification of the marine oil spill four to five hours after the discharge occurred. However, AWEL failed to contact the Regional Council or any other environmental authorities or agencies (the Court did not specify what other organisations might have been contacted).

The spill was noticed three days after the discharge by members of the general public over a 13km stretch of the Taranaki coastline. Three days after this, AWEL notified the Taranaki Regional Council. AWEL then fully cooperated with the authorities during the clean-up project.

The defendants were charged under s237(b) of the Maritime Transport Act 1994. Under the Maritime Transport Act both defendants were liable, and were charged separately for the same incident.

The maximum fine that could be awarded for the offence under the Maritime Transport Act was \$200,000. Maritime New Zealand argued a fine of between \$150-180,000 was appropriate for each defendant, on the basis of recklessness by AWEL, and the fact that the defendants

had waited six days until contacting the Regional Council and accepting responsibility.

The defendants acknowledged that they were careless, but claimed that their actions were not reckless. They further pointed to a number of acts as decreasing their culpability, including their full cooperation with the clean-up operation, reimbursing the authorities for all costs incurred and a number of good will projects undertaken for the community, including tangata whenua. They argued a fine of \$80-100,000 was more appropriate.

The Court held that, given the "immense risk of dreadful environmental damage" signified by the discharge, it should classify the scale of the incident as serious. It took a starting figure for penalty of \$150,000.

The Court then found that under sections 9(f) and 10 of the Sentencing Act 2002, it was mandatory for the Court to take into account any remorse shown, actions to repair and restore the damage, and the attitude towards the victims. Accordingly, it reduced that amount by 30% to \$105,000.

The key issue was whether the fine should be imposed separately against each defendant, or whether the fine should be divided between the defendants. Maritime New Zealand said apportionment was not appropriate, because each defendant is independently culpable by virtue of their own actions, and that apportionment would erode the significance of the informant's ability to successfully prove separately and independently that each defendant had committed an offence.

The Court referred to a number of RMA sentencing cases which address penalty where there are multiple defendants charged for offences arising out of a single environmental incident. The Court followed *Northland Regional Council v Thalassic Steamship Agency Inc* (CRN 2088016091-3) and found that the fine must be apportioned between the defendants having regard to their culpability.

The fine was apportioned equally, and both defendants were sentenced to pay a fine of

\$52,500. The decision shows that Courts are likely to show a consistency of approach to setting fines for environmental damage under different relevant legislation, as well as confirming the appropriateness of apportionment of fines arising from one incident. This is perhaps unsurprising, given that penalty regimes under the RMA and Maritime Transport Act are so closely aligned with each other.

*More recent cases will follow in the Resource Management Journal.*

## **FORTHCOMING EVENTS**

**RMLA 2009 Conference – “In the National Interest? - Challenges for effective environmental management”**

**1-3 October 2009**

**Wellington Convention Centre**

The conference programme and registration form is now available on the RMLA website: [www.rmla.org.nz](http://www.rmla.org.nz)

## **CONTINUING PROFESSIONAL DEVELOPMENT**

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

### **CHANGE OF ADDRESS?**

To: RMLA, C/- Karol Helmink, 4 Shaw Way, Hillsborough, Auckland 1041

Please note my new contact details as follows:

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Ph: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_