

RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

RM NEWSLETTER

DECEMBER 2005

PRESIDENT'S REPORT

Dear Members

I am sure those of you who attended the Conference in Christchurch will agree that it was an outstanding success, and my thanks and congratulations must go to the Organising Committee who worked so hard to ensure the programme was informative and the entertainment was entertaining!

The inaugural volume of our new annual journal, *Resource Management Theory & Practice* is hot off the press and will be launched at the Association's Auckland Christmas party being held on Thursday 1 December. Distribution to members will proceed after that launch. Limited copies are still available and to order a copy, please contact our Executive Officer, Karol Helmink. My thanks must go to Trevor Daya-Winterbottom for all the work involved in putting together this publication. The 2006 issue of *Resource Management Theory & Practice* will focus on Urban and Regional Growth Strategies.

The RMLA has established a new Fellowship to promote resource management leaders. The aim is to enable leaders and opinion influencers to (a) enhance their ability to bring about change in resource management; (b) benefit from leading edge thinking, new ideas, new practices and new resources; and (c) build global networks.

For further details, criteria and an application form, see the RMLA website (<http://www.rmla.org.nz/fellowships.aspx>).

At the first meeting of the 2005/2006 National Committee, Convenors were appointed for the following Portfolios:

Awards – Mike Foster
Annual Conference – Dave Serjeant
Courts – Bill Loutit
Editorial – Trevor Daya-Winterbottom
Government Information – Dave Brash
Legislation – Trevor Daya-Winterbottom / Camilla Owen
Membership Recruitment / Retention – Mike Foster
Professional Bodies / Government Relations – Blair Dickie / Alan Dormer
Regional Development / Co-operation – Monique Thomas
Roadshow – Dave Serjeant
Scholarships / Fellowship – Jim Wiltshire
Website – Karol Helmink

Further information on these roles and responsibilities can be found on page 40 of the March 2005 RM Journal.

We discussed the idea that one or two Regional Chairs (or nominees from the respective Regional Committee) be invited to attend National Committee meetings on an ex-officio basis to increase transparency and to enhance dialogue between the National and Regional Committees. This concept was adopted wholeheartedly by the National Committee.

The third meeting of the Environmental Law Roundtable of Australia and New Zealand was held in Sydney on Monday 21 November. Matthew Baird, Project Coordinator and President of the NSW NELA Division gave an introduction to the Penalty Infringement Notice (PIN) Project and set out the aim and some suggested matters for discussion. There was then an

open forum seeking comments and ideas and these will be collated into a draft Discussion Paper that will be available for comment on the RMLA website prior to the Christmas holidays.

If you would like to read the briefing paper to the incoming Minister for the Environment, including climate change information for the Minister Responsible for Climate Change Issues, this is available on the Ministry website (www.mfe.govt.nz).

And finally, I wish you all a safe and happy holiday and a very merry Christmas.

Alan Dormer
PRESIDENT

RESOURCE MANAGEMENT NEWS

RMLA SPECIAL INTEREST GROUPS

Earlier in the year the RMLA announced the intention to establish a series of Special Interest Groups (“SIGs”). The SIGs focus on issues which are likely to be the subject of proposals for National Policy Statements (“NPS”) or National Environmental Standards (“NES”).

The purpose of the SIGs will be to assist the RMLA Legislation Committee in preparing and presenting submissions on proposed NPS and NES as they emerge from Government. To date 158 RMLA members have registered as members of one or more of the SIGs.

At its November meeting the RMLA National Committee appointed certain members to act as the inaugural Conveners of the SIGs. The SIGs and their respective Conveners are:

- Biodiversity – Kitt Littlejohn;
- NZ Coastal - Joan Forret;
- Electricity Transmission – Lara Burkhardt;
- Electricity Generation – Vanessa Hamm;
- Telecommunications – Stuart Ryan;
- Land Transport – Cedric Carranceja;
- Fresh Water – Maree Baker;
- Air Quality – David Peart;
- Biosolids – Trevor Daya-Winterbottom;
- Contaminated Sites – Trevor Daya-Winterbottom;
- Drinking Water – Alan Pattle.

Contact details for the SIG Conveners will be posted on the RMLA website. If you have not registered to become a member of one or more of the SIGs you may do so at any time by contacting Karol Helmink.

The SIGs will correspond via email groups. For the larger SIGs with 20 or more members the Conveners may establish a core group of 6-10 members to facilitate the preparation of draft submissions for discussion by the relevant SIG before being recommended to the Legislation Committee for approval as the basis of the RMLA’s submission on a proposed NPS or NES.

It is also intended that SIGs will meet in person once per year on Thursday afternoon at the RMLA Conference. The activities of the SIGs will also be reported in the *Resource Management Newsletter* from time to time to keep RMLA members in general informed about important developments in these areas of law and practice.

Trevor Daya-Winterbottom
Co-Chairperson, RMLA Legislation Committee

REGIONAL NEWS

Auckland – Martin Williams

This year’s annual Branch Christmas function will be held on 1 December 2005, on the roof garden at the Auckland District Law Society building (Chancery Chambers).

As well as being a social function appropriate to this time of year, it will provide an opportunity for the launch of the Resource Management Law Association’s new publication “*Resource Management Theory and Practice*”.

Since my last report, the Auckland Branch Committee has been very busy organising the 2006 Conference including confirmation of the venue (Sky City Convention Centre), the line up of local and overseas speakers to present, as well as putting in place all of the necessary arrangements ranging from sponsorship through to entertainment to ensure that the conference is a success.

All in all it has been a very successful year for the Branch committee, with a large number of seminars convened, generously hosted by the major law firms in the City, to advance members understanding of topical resource management issues which have arisen during the year, and provoking thoughtful debate and discussion around them.

Wellington – James Winchester

The final event of what has been a busy year for the Wellington branch will be our Christmas event. Details of this will be finalised in the near future, but we are hoping to confirm the new Minister of Energy and Transport (and Attorney-General), the Hon David Parker, to speak to members on the challenges raised by those portfolios and topical issues for RMA practitioners. We are looking at a date in the week commencing 5 or 12 December at the offices of Simpson Grierson and a flyer will be sent out as soon as this can be confirmed.

Possible topics for events in the New Year include progress with the Wellington Regional Strategy and new developments in renewable energy. The Committee would also welcome suggestions from members about possible events as well as interest in participating on the committee.

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

Otago/Southland – Michael Garbett

The branch has hosted the Ministry for the Environment on its road show updating members on the changes to the Resource Management Act in late September.

Many branch members also attended a NZPI hosted event presented by Transit New Zealand. Transit presented its new approach to managing its functions under the Land Transport Management Act which was well attended.

The branch is currently organising a Christmas lunch which will be advertised shortly.

RECENT CASES

By Stephanie Browne and Alexandra McNair, Russell McVeagh

SMW Consortium (Golden Bay) Limited and SMW Consortium (Tasman Bay) Limited v Tasman District Council (W86/2005)

In this case, which involved similar questions being raised contemporaneously by declaratory proceedings in the High Court and the Environment Court, the Environment Court decided against adjourning its hearing on the

basis that it would be likely to hear its declaration first, and then its decision would be available to the High Court.

SMW Consortium (Golden Bay) Limited and SMW Consortium (Tasman Bay) Limited (together, the "Applicant"), and other industry parties, made applications to carry out aquaculture activities which the Respondent refused to process.

The Applicant applied to the Environment Court for declarations on 25 May 2005. That application raised many issues relevant to the consideration of the Applicant's resource consent applications, including whether the Respondent was entitled to refuse to process the applications because the Respondent's Aquaculture Management Areas ("AMAs") were not yet the subject of an aquaculture decision.

The application for declarations was set down for hearing during the week commencing 7 November 2005.

On 26 October 2005, Golden Bay Marine Farmers Consortium Limited ("GBMFC") applied to the High Court for declarations. Those proceedings were on narrower grounds than the Applicant's application for declarations and chiefly concerned whether the AMAs were new space as defined in the Maori Commercial Aquaculture Claims Settlement Act 2004.

Both proceedings raised broadly the same issue - whether a resource consent for the activity of mussel farming is able to be applied for in the areas zoned by the Environment Court for that activity, prior to compliance with the steps of section 44 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

It was agreed between all parties that there was a significant amount of overlap between the two applications for declarations. The Applicant applied to have the Environment Court proceedings adjourned on the grounds that its proceedings and the application by GBMFC raised similar issues and, therefore, it would be more efficient and cost-effective, and make better use of the Court's time, if the Applicant's proceedings were to await the findings of the High Court in relation to GBMFC's application.

The Applicant argued that the Environment Court proceedings should be adjourned for various reasons, including: that the High Court proceedings would likely resolve most, if not all, of the issues before the Environment Court in the Applicant's application; adjournment would avoid unnecessary duplication and be more efficient and less costly; and there would be no

prejudice to any party in adjourning the application as the Applicant and the other industry parties agreed that the application should be adjourned. The Respondent opposed the adjournment of the proceedings.

The Court considered that some of the questions raised in the Applicant's application were wider than those raised in GBMFC's application and involved issues with which the Environment Court had already been closely involved.

Accordingly, that background knowledge would assist in determining the matters in the Applicant's application and may result in more efficient use of the parties' time. As a result, the Environment Court's decision could assist the High Court with its determination. The Court also recognised that determination of the Applicant's proceedings was likely to have a significant bearing on the GBMFC declaration proceeding.

The Court rejected the Applicant's argument that having the High Court and the Environment Court decide the same issues would be a duplication of effort and therefore be costly and inefficient. In rejecting this argument, the Court considered that:

If the Environment Court were to decide SMW's application first, then its findings would be available for the High Court in the GBMFC proceedings. If the High Court were to decide the GBMFC proceedings first, then its findings would be available to this Court. The same issues would not need to be argued twice before two Courts. It is only if the High Court and Environment Court proceedings were to overlap in time that the danger of having the same Court argue and decide the same issues arises. This Court is in a position to hear these proceedings next week. The High Court application has only just been lodged. It is highly likely the Environment Court findings will be available before the High Court hears GBMFC's proceedings.

Accordingly, the application to have the Environment Court declaration hearing adjourned was declined.

R E J Dodd v Auckland City Council (A178/2005)

R E J Dodd v Auckland City Council involved an appeal being struck out by the Environment Court as, despite several requests, Mr Dodd did not provide the Court with the necessary

information for the appeal to be processed. This case is a further reminder of the need to diligently pursue any appeals lodged with the Environment Court.

The Registrar received a two page document from Mr Dodd purporting to be an appeal against a financial contribution condition on a resource consent which had been granted by Auckland City Council. The Registrar wrote to the Appellant three times requesting that necessary information which had not been included with the original appeal be provided to the Court so that the appeal could be assigned to a case track. The final letter to the Appellant noted, at Judge Newhook's direction, that if the necessary information was not provided to the Court by 14 October 2005, then the Judge would be "minded to strike the purported appeal out as an abuse of process". A copy of this letter was also sent to a planning consultant who had previously assisted the Appellant with his consent application. Having received no response from the Appellant to any of its correspondence, the Court concluded that the Appellant had no interest in pursuing his appeal. Accordingly, the Court regarded the appeal as an abuse of process and on that basis the proceedings were struck out.

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: _____