

RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

RM NEWSLETTER

FEBRUARY 2007

PRESIDENT'S REPORT

Dear Members

Happy New Year – I trust you've all returned refreshed and ready to face whatever is in store for '07.

One of the key areas the national committee has been progressing is the ways we can bring the best value to our membership. Membership now stands at over 1100 members representing the diverse occupations and roles that bring us together as resource management practitioners. A breakdown shows a third of the association to be comprised of lawyers, a third planning and the remaining third elected representatives, scientists and associated technical disciplines.

Support for such a diverse membership focuses on sustaining the regional branches. Branches in the larger centres have thrived over the last year and it is my commitment, and that of the national committee, to assist the rest of the regional branches with their local activities this year. One of the ways we have done this in the past is through the traveling roadshows and this year is no exception.

The programme for this year is shaping up with events that will provide something for everyone. A number of excellent presentations have recently been secured with agreements by presenters to travel around the country to regional branches. A sampler of some of the topics coming your way in the first half of the year includes:

- The wind energy industry, the technology and the RMA issues, of relevance right around the country;
- An analysis of the evolution of case law with the definition of the environment beyond an application site, originally presented to the Canterbury Branch last year;
- The changing role of Maori under the RMA, The very well received 2006 Salmon lecture by Ms Prue Kapua;
- The IPCC Fourth Assessment Report on Climate Change, in partnership with MfE and presented by NZ representative on the IPCC, Dr David Wratt of NIWA; and
- A DVD presentation showing recent Australian developments for hearing concurrent evidence from experts.

The second half of the year is also looking promising with negotiations progressing on the possibility of securing visiting international experts on Resource Management topics and including them in the Roadshow series.

Remember the dates for this year's RMLA Conference to be held in Napier from 5 – 7 October.

Alan Dormer
PRESIDENT

REGIONAL NEWS

Auckland – Bal Matheson

The Auckland Branch held its Christmas drinks function on 7 December 2006, which was well attended. Thank you to Brookfields for hosting that event.

The Committee has begun setting its schedule of events for the coming year, and an emerging theme is around that of sustainability, energy conservation and renewable energy.

Commencing the year will be a presentation on 6 March 2007 by Rod Oram, who will take a deliberately controversial approach examining how New Zealand's environmental record could be used to damage the country and its exporters.

Other topics that may be on the agenda for this year include marine energy innovations and building sustainable buildings. Later in March, the Auckland Branch will hold its Annual social function commiserating the departure of summer.

The Auckland Branch is adopting a co-chair policy for 2007, and so please feel free to contact either Bal Matheson (bal.matheson@russellmcveagh.com, tel: 09 367 8228) or Theresa Le Bas (theresa.lebas@bellgully.com, tel: 09 916 8627), if you have any comments or suggestions.

Waikato – Phil Lang

The Waikato/BOP Regional Branch will be sending to members a brief questionnaire inviting comment on preferred formats and topics for branch functions. Some options have been discussed with Blair Dickie, who will be coordinating the roadshows for the National Committee.

To meet BOP members needs more effectively, a BOP Committee member is sought and funding will be proposed for BOP functions to ensure better service for those members. Any keen Committee members from BOP please contact Phil

Lang, tel: (07) 834-6251 or email pml@swarbrickdixon.co.nz.

All the best to members for the coming year.

Wellington – Lindsay Daysh

The Wellington branch met recently and is currently confirming dates and venues for a range of nationally organised events for the coming year, so our branch should be fairly busy as a result!

Lindsay can be contacted on e-mail: lindsay.daysh@ghd.co.nz, or tel (04) 495 5825.

Canterbury – David Collins

Our end of year wind-up at the Curator's House Restaurant was very convivial. Always good to have these occasions to catch up with people you haven't seen for a while and to meet some newcomers. This was a joint function with the NZPI, which seems to work well as our memberships overlap to a large extent.

The Branch AGM was held on 1st February and we aim to put together the outline of the programme for 2007.

Email: david@collins-consulting.co.nz
Phone: (03) 365 4082

UPDATE FROM THE RMLA SCHOLARSHIP WINNER 2006

Benjamin Gleisner

I would first like to thank the RMLA for such a generous scholarship; it has really enabled me to extend the scope of my thesis into areas I could have only dreamed of previous to accepting it.

My research relates to a policy called a domestic project-based scheme, which rewards voluntary participants with cash or credits (linked to an emission trading scheme) for reducing greenhouse gas

emissions below 'business as usual'. The aim of the thesis was to develop an optimal set of scheme rules for economically efficient and environmentally effective emission reductions.

With the RMLA scholarship funding I was able to travel for 4 months throughout Europe, conducting interviews with 31 officials who have experience with the design, operation or implementation of project-based schemes.

Some of the highlights were meeting UN officials and spokespeople for the European Commission, as well as conducting interviews with senior public servants from Germany, United Kingdom, France and the Netherlands. I also attended 3 conferences and numerous workshops/seminars in London, Geneva, Cologne and Prague.

I hope the recommendations from my thesis and published papers from the work will enable Governments, such as our own, to be better able to effectively reduce greenhouse gas emissions and mitigate the possible adverse effects of climate change.

Many thanks

Ben Gleisner

Note: Ben will be providing an in-depth article which will link his thesis more closely to the RMA that will be published in *Resource Management Theory & Practice* later in the year.

UPDATE FROM ELRANZ

The **Environmental Law Roundtable of Australia and New Zealand (ELRANZ)** is a joint initiative of the National Environmental Law Association (Australia) (NELA) and the Resource Management Law Association (New Zealand) (RMLA) which commenced in 2005.

It is a multidisciplinary approach to improve environmental laws and policies in Australia and New Zealand by targeting specific environmental or planning - related issues and, through standalone projects,

endeavouring to explore those issues and suggest improvement or reform.

This multidisciplinary forum is open to interested professionals, Government Departments and Agencies, statutory corporations, business, industry, NGOs, academics and students. Local Government is included as many regulatory actions are within the local sphere.

The Roundtable will use facilitation, consensus building and public participation techniques for its projects. An ELRANZ Manual has been developed.

The ELRANZ dialogue generated through shared experiences will lead to a better understanding of the current laws and policies and how they operate. Some issues will be recommended to the Australian and New Zealand Judicial and Intergovernmental Ministerial meetings for implementation.

As a member of RMLA, you are encouraged to become an Associate of the Roundtable which gives you email news on ELRANZ developments.

For further information and to express your interest, please email the ELRANZ Convenor: johnhaydon@ecodirections.com and ask for the ELRANZ manual.

RECENT CASES

By Katie Johnston, Russell McVeagh

Consultation requirements of the new section 293 procedure

In *Robinson v Waitakere City Council (No 3)(A155/06)*, Judge Jackson dealt with the procedure to be followed under section 293 of the Resource Management Act 1991 as amended by the Resource Management Amendment Act 2005 ("Amendment Act").

In this case, as the section 293 application was lodged after the Amendment Act came into force, Judge Jackson applied section 293 as amended, following the earlier decision of *Remarkables Park Limited v Queenstown Lakes District Council* regarding the application of the transitional

provisions in the Amendment Act to section 293.

Discussing procedure, the Court stated that a local authority's duty under section 293(1) comprises of at least three parts: preparing changes to the proposed plan, consulting the parties and any other persons identified by the Court, and submitting those changes to the Court 'for confirmation'.

Judge Jackson dealt with the preparation of changes briefly, stating that it was a drafting exercise to be undertaken by the local authority and commenting that it was "slightly surprising" that this step came before consultation, without any express provision that further changes be made following consultation.

On the matter of consultation, Judge Jackson stated that it was clear that section 293 as amended requires consultation about the directed changes.

Quoting a Court of Appeal and a High Court decision on consultation, and acknowledging that consultation under section 293 "takes place in a fairly cramped environment", the Court considered at paragraph 13 that consultation in this context includes:

- advising persons that they may be affected by the proposed changes;
- informing them what amendments are being considered for the proposed plan;
- adequately informing the persons consulted what the issues are;
- advising how they can become a party (if that is to be permitted - which is the next issue) to any confirmation by the Court.
- Despite section 293 containing no express requirement for the Council to make further changes following consultation, Judge Jackson considered at paragraph 14 that the Council:

...should at least keep an open mind on that issue. It would have to be careful not to extend the scope of the section 293 changes in that further changes might exceed the Court's jurisdiction to confirm.

The Court held that full public notification by way of advertisement was not mandatory under section 293, and "is a question of what is appropriate in the particular circumstances."

The final procedural step discussed by Judge Jackson was the submission of the Council's changes to the Court for confirmation.

If the changes are opposed by any person consulted or existing party, the Court should not confirm the changes without hearing from those opposing.

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 1041

Please note my new contact details as follows:

Name: _____

Firm: _____

Address: _____

Ph: _____ **Fax:** _____

Email: _____