

# RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

## RM NEWSLETTER

OCTOBER 2006

### PRESIDENT'S REPORT

Dear Members

For those of you who attended the Auckland Conference recently, you must all agree that congratulations are due to the Auckland Conference Organising Team – the conference was a real winner – interesting, thought-provoking, challenging – and of course the conference dinner, very entertaining. Well done Auckland!

Now I will relay part of my Presidential report to the AGM for those who didn't attend. It has been my privilege to serve as your President for the last two years. Building upon the sound foundation established by those who have gone before us, the Association's membership has now reached 1,091 - an ultimate record.

I wish to thank the other members of the National Committee, namely Dave Serjeant (Secretary), Camilla Owen (Treasurer), Jim Wiltshire, Trevor Daya-Winterbottom, Dave Brash, Monique Thomas, Bill Loutit, Blair Dickie, and Mike Foster who have assisted greatly in running the Association over the last year and have given generously of their time.

Particular thanks must be given to Dave Serjeant and Camilla Owen for their roles in managing the day-to-day activities of the Association. Special thanks also to Trevor Daya-Winterbottom for his sterling work in chairing the Editorial Committee, and to Caroline Miller, Dr Mike Patrick, Helen Atkins, Mercedes Lentz and Royden Somerville QC for their steadfast contributions.

I would also like to acknowledge the various Regional Chairpersons for organising functions and seminars in their areas, and all their hard work that they have put into serving the Association's members.

My thanks go to this year's Chairs for their work in the regions as follows:

**Auckland** - Martin Williams  
**Northland** - Graeme Mathias  
**Waikato/BOP** - Phil Lang  
**Hawke's Bay** - Alastair Thompson/Jim Fergusson (jointly)  
**Wellington** - James Winchester  
**Nelson/Marlborough** - Brian Dwyer – since his elevation to the Court, this has been taken over by Nigel McFadden  
**Canterbury** - David Collins  
**Otago/Southland** - Michael Garbett

One of the issues to be decided by the incoming Committee is whether the present Awards system is operating to its greatest advantage. The quality of the nominations received is at a high level, but there is a view of the National Committee that perhaps more needs to be done to promote the Awards, if indeed they are to be continued at all. The views of members would be appreciated.

The National Committee members for the 2006/2007 term are:

Alan Dormer – President  
Camilla Owen – Treasurer  
Dave Serjeant – Secretary  
Blair Dickie  
Trevor Daya-Winterbottom  
Bill Loutit  
Dave Brash  
Martin Williams

Gael Ogilvie  
James Winchester

Thanks must go to Jim Wiltshire and Monique Thomas who decided not to stand for re-election this year and to Mike Foster who, as a result of this year's elections, is leaving the Committee this year.

**Alan Dormer**  
**PRESIDENT**

## **RMLA 2006 AWARDS REPORT**

The RMLA Awards were presented at the conference dinner at SkyCity Auckland on Saturday 7 October 2006.

Nominations for the Project Award were received from Maunsell Limited for the Kupe Gas Project Consents and from Tonkin & Taylor and Auckland City's Utility Planning Group for the Seaside Park Project – Brady Road Closed Landfill Rehabilitation.

Nominations were also received for the Documentation Award and two for the Outstanding Person of the Year Award.

Following consideration and evaluation of each of the nominations received, the Awards Panel applied the judgment criteria set out in the RMLA Guidelines and made three awards as follows:

**The Documentation Award for 2006** went to the third edition of Environmental and Resource Management Law published by Lexis Nexis NZ Limited (2005). This publication was first issued in 1980 under the editorship of D. A. R. Williams QC and re-issued in 1997 under the same editorship. This Third Edition under the editorship [and part authorship] of Derek Nolan has significantly expanded the discussion and exploration of the legal issues surrounding environmental and resource management law in New Zealand. It represents the collective wisdom of some fifteen very experienced members of the resource management community.

**The Outstanding Person of the Year Award for 2006** was extended to two recipients this year, **Judge Shonagh Kenderdine** and **Jim Wiltshire** respectively.

Judge Kenderdine's award recognises her lifetime contribution to the practice and development of resource management law in New Zealand, over a career spanning 25 years. In 1990 Shonagh was appointed a Planning (now Environment Court) Judge.

Although Wellington based, her circuit has taken her on a regular basis to Nelson and Marlborough, as well as to the Hawke's Bay region and beyond. Her Honour has delivered judgments, and continues to do so, in diverse areas of environmental law. She coined the term "Aquaculture Management Area" before Parliament ever got hold of it, and is well known for her abilities to both grasp complex subjects and to run a court that made everyone, not just the lawyers and expert witnesses, feel welcome. Judge Kenderdine retired as a fulltime Judge on 6 August 2006 and has since been appointed as an Alternate Environment Court Judge.

Jim Wiltshire will also be known to many of you. Jim worked part-time through much of his University career as a law clerk at Brandon Ward McAndrew & Watts. He continued working for that firm following his graduation and his admission as a barrister and solicitor of the Supreme Court. He subsequently became a partner in that firm and thereafter in a number of successor firms including Brandon Ward Evans-Scott & Hurley, and Simpson Grierson.

Throughout his career, Jim maintained an interest in heritage matters and acted for the New Zealand Historic Places Trust in a number of landmark cases both under planning legislation and the Historic Places Act.

In more recent years, Jim undertook a range of roles as a hearings commissioner and has given tirelessly of his time to training seminars for those involved in the resource management area. His relationships with both the Court and other practitioners were also marked with

unfailing courtesy and he was always prepared to provide a word of advice to younger practitioners who were appearing before consent authorities and the courts on resource management matters.

Jim has been a member of the Association since its early days, and a member of the National Committee since 1995. During that time he has chaired the Legislation Committee responsible for evaluating all proposed legislation and regulations of significance to the implementation and practice of resource management, and when necessary, has made submissions on behalf of the Association on certain aspects of the proposed legislation/regulations.

Since 1997 he has chaired the Scholarship Committee responsible for awarding scholarships which recognise and encourage excellence in people training in resource management professions. Jim chaired the Wellington branch of RMLA from 1995 to 1998 and has acted as liaison with senior management of the Ministry for the Environment and other representatives of professional bodies throughout his term.

## **REGIONAL NEWS**

(Excerpts from Annual Reports to the 2006 AGM)

### ***Auckland – Martin Williams***

This is my final report as Chair of the Auckland Branch Committee, having resigned my position as such on being elected to the National Committee. I have very much enjoyed my time on the local committee, and the support of my associates in organising the regular diet of events scheduled over the past two years.

I would like to extend a very special thanks to David Serjeant for the considerable assistance he provided as Co-convenor of this year's conference. The conference theme was selected by David, as were a number of the speakers and the format of the "Radio Show" on energy which I am sure was enjoyed by all of who attended it.

In addition, a special vote of thanks to the members of the Committee, including those who volunteered to be seconded to it for the purpose of organising the conference, with the

support of their firms, organisations and employers, namely:

- Jennifer Caldwell (Buddle Findlay)
- Alan Happy (Winstone Aggregates)
- Bal Matheson (Russell McVeagh)
- James Gardner-Hopkins (Russell McVeagh)
- Paula Brosnahan (Chapman Tripp)
- James Hassall (Phillips Fox)
- Bronwyn Carruthers (Simpson Grierson)
- Rachel Devine (Brookfields)
- Mercedes Lentz (Ministry for the Environment)
- Bill Burrill (Auckland Regional Council)

Finally thank you to Rachel Cook and the team at Conference Innovators for their simply superb efforts in organising the Conference down to the very finest detail.

Auckland's next seminar involves the topic of Wind Farms and will be hosted at Buddle Findlay on 9 November 2006. The format will be a panel discussion of issues relating to Wind Farm establishment; an issue of increasing importance in terms of sustainable energy provision and potential landscape impact for New Zealand as a whole.

Finally, this year's Christmas function will be hosted by Brookfields, and as in previous years, donations will be collected for Women's Refuge and Auckland City Mission.

### ***Waikato – Phil Lang***

Despite the enthusiasm and intentions of the Committee, 2006 has not been an especially active year for the branch. However, all the events that have been held have been well attended and very well received. Nearly 200 recently attended the advance screening of Al Gore's movie *An Inconvenient Truth*, by far the biggest single attendance at a Waikato / BOP branch function.

A positive development during this year has been some progress towards greater opportunity for involvement of Bay of Plenty members. Efforts have been made during the last 18 months to find ways of improving BOP access to functions, and it is hoped that the combined RMLA function at Tauranga this year will be just the first of an ongoing series of events in the Bay of Plenty. The Committee is working on recruitment of at least one BOP member.

Greater coordination with NZPI is another goal for the Committee for the next year. We have found benefits in combined events and hope to develop other ways of linking the two organizations.

I would like to thank all RMLA members and supporters who have helped with organization of events, provided sponsorship and otherwise made the branch's activities possible. Thank you also to the National Committee for increased communication, funding and the roadshow events. Karol Helmink's help and advice has once again made the Committee's role much easier.

Thank you to all members for supporting RMLA and providing ideas for the future.

### ***Wellington – James Winchester***

2006 has been a reasonably active year for the Wellington branch, with a variety of events and seminars for members.

In March we hosted the Minister for the Environment, the Hon David Benson-Pope. The Minister, in an address entitled "Leading a sustainable development approach to managing the environment", provided members with an outline of the Government's environmental policy initiatives for the next Parliamentary term and the leadership role it intends to take in a number of areas, including urban growth, air quality, freshwater, and oceans.

In early June, Simpson Grierson hosted a branch seminar on "Transit New Zealand and a Sustainable Land Transport System", to which members of the Planning Institute and Institute of Surveyors were also invited. There was phenomenal interest in this event, and Transit's General Manager of Transport Planning Wayne McDonald, accompanied by John Hassan of Chapman Tripp, outlined Transit's statutory role under the Land Transport Management Act 2003 and its implications for the resource management process.

Later that month, in association with the Ministry for the Environment, the branch ran a well-attended Wellington leg of the RMA Enforcement workshop.

Her Honour Judge Kenderdine's official retirement from the bench and her contribution to environmental law was recognised and celebrated in late August at a function jointly hosted by the RMLA and the Ministry of Justice. The evening was attended by a number of Environment Judges and Commissioners, Court

staff, distinguished guests, and senior RMA practitioners and expert witnesses from around the country, as well as Her Honour's family. It was an excellent occasion which was thoroughly enjoyed by Her Honour.

Shortly after the National Conference, the newly released Wellington Regional Strategy will be the subject of an event in mid October, to which NZPI and NZIS members will again be invited. We intend finishing the year on a high note with our Christmas party in late November/early December, with details to be provided as soon as arrangements are finalised.

Thanks to the members of the branch committee for their efforts and support over the two years that I have been local chair. It is increasingly difficult with everyone so busy for committee members to volunteer their time and effort in advancing the Association's aims at a local level, particularly when members have an expectation of high quality events and services.

As such, RMLA members are encouraged to assist (and hopefully acknowledge) the efforts of the committee in dealing with local affairs.

Thanks are of course due to Karol Helmink for whom nothing seems to be too much trouble, and who has very kindly stepped in to assist with administration of branch matters from time to time. This has greatly relieved the burden on committee members and has been warmly appreciated. Otherwise, the branch committee supports and endorses the National Committee in identifying and facilitating national roadshows on topical issues, and welcomes the continuing support of the National Committee in 2007.

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

### ***Canterbury – David Collins***

The Resource Management Law Association is very much alive and well in Canterbury. We have 111 paid-up members, all of whom appear to be kept very busy.

Our committee this year consisted of David Collins as chair, Monique Thomas as secretary, Philip Maw as treasurer, Cindy Robinson, Chris Fowler and Bob Batty. A big thank you to everyone on the local committee, especially for their willingness to step in and help out whenever needed. It is much appreciated.

We have held a range of events throughout the year.

On 27 April 2006, the Minister for the Environment addressed our members.

On 14 June 2006, we hosted a seminar run by MFE on "An Introduction to the RMA Enforcement Manual". The seminar covered a variety of issues relating to enforcement and was very popular among members.

Christchurch's social event of the year – our Winter Dinner – was held on 16 August at Annie's in the Arts Centre. Guest speaker Jim Hopkins gave planners a hard time and regaled us with the lighter side of RMA matters, including his personal experience of restorative justice in action. The food and company was excellent, and feedback received by the committee is that a fabulous time was had by all.

There are a number of other events planned for this year. The Branch will host a joint wine tasting and quiz evening with NZPI on 22 September 2006, and a joint Christmas party at The Curator's House with NZPI on 1 December 2006.

Plans for the Tony Hearn Memorial Lecture are underway, and we are in discussions with Tim Flannery as a potential speaker. We are also planning a seminar on the implications of the Court of Appeal decision in *Queenstown Lakes District Council v Hawthorn Estates Limited*.

### **Otago/Southland - Michael Garbett**

The current committee is comprised of:

Chairperson:	Michael Garbett
Secretary:	Chris Thomsen
Treasurer:	Maree Baker
Committee Members:	Bruce Richards and Phil Page

The current branch bank balance as at 1 October is \$3,883.08.

### **Highlights from 2006**

The major functions hosted by the branch this year have been the MfE roadshows by the Minister for the Environment on the Government's Work Programme and the MFE enforcement training which was held in Alexandra.

### **Proposed Seminars/Functions**

The focus for the rest of the year is to arrange the following:

Inviting the Minister for Climate Change, David Parker to speak to the branch in Dunedin on climate change issues and the Government's commitments and strategies for addressing this.

Hosting members of the Environment Court bench and staff and RMLA Members when the Court is sitting in Dunedin and Queenstown.

### **Nelson/Marlborough – Nigel McFadden**

The year was an eventful year for us, it started with a cruise on the Nelson Haven (in association with NZPI) in November 2005, was followed by a formal breakfast for the Minister of the Environment, David Benson-Pope, who gave a riveting address on policy and legislative initiatives relating to the Resource Management Act in April 2006.

Our AGM was held in May 2006 at which Brian Dwyer (pre-elevation) was elected unopposed as President, supported by a Committee of young Practitioners.

No sooner had we finished our AGM when Brian Dwyer received his elevation to the Environment Court Bench, and it gave this branch particular pleasure to see one of our stalwarts being given the recognition he so richly deserves.

In February 2006 Fiona McLeod of DOC (one of our members) spoke on DOC legislation and its relationship with the RMA, and collaborated with other organisations such as the NZILA. In June 2006 we had a joint RMLA/MfE Enforcement Action Training Workshop. We also farewelled Judge Kenderdine at a function held in Nelson in July 2006.

All in all it has been a busy year for the branch, what with Chairmen coming and going, changes within our Committee, and Judges retiring and being appointed.

However, we are fortunate that a great deal of interest seems to be shown in the Association by younger practitioners, and we are actively encouraging their involvement with us at proposed luncheon meetings during next year.

## RECENT CASES

**By Stephanie Browne, Russell McVeagh**

In a recent decision (*Sir Henry Kelliher Trust v Manukau City Council* (A118/2006)), the Environment Court decided that the factual matrix was such that the lapsing period specified as a consent condition should be calculated as being from the date of the *grant* of consent (regardless of the appeal period), rather than the *commencement* of consent (which is the usual presumption under the RMA). Accordingly, care needs to be taken by applicants to ensure that their consents accurately reflect the lapsing date they intend. Likewise, care should be taken when calculating the lapsing date of a consent so that an extension can be sought if necessary.

In this case, the Council had granted consent on 30 June 2000 enabling the construction of travellers' accommodation and associated works on Puketutu Island in the Manukau Harbour. One of the conditions provided that the consent "shall lapse unless it had been given effect to within 5 years of the *granting* of the consent". Due to a number of appeals the consent did not *commence* until 23 November 2001. When the Trust sought building consent from the Council in mid 2006 the Council advised the Trust that it considered the resource consent to have expired on 30 June 2005, five years after the date of its grant even though the appeal process had taken some 17 months.

The Trust sought a declaration that the consent lapsed five years from the date of *commencement* on the basis that the lapsing date condition should be read as referring to the granting of a consent that was exercisable.

The Court discussed its approach to interpretation of the condition and referred to the Interpretation Act 1999, which provides in s5(1) that the meaning of an enactment must be ascertained from its text and in the light of its purpose.

The issue, therefore, was the *text* i.e. the words used and what they mean, and the *purpose* of their enactment, or in this case the consent condition. The Court considered that as to the text, *granting* means what it says, and the purpose of the condition was to give the Trust a reasonable opportunity to exercise the consent. What is reasonable depends on the point of view.

The Court ultimately decided that while the use of *commencement* in the condition may have produced a tidier result, the wording used was not considered by the Court to be an obvious drafting error, nor was it ambiguous, and the result was not contrary to the scheme or the purpose of the Act and was not logical or absurd.

The application for a declaration was therefore declined.

*More recent cases will follow in the RMLA Journal.*

## FORTHCOMING EVENTS

### CONTINUING PROFESSIONAL DEVELOPMENT

Please see the RMLA Website ([www.rmla.org.nz](http://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: \_\_\_\_\_