We have three categories of awards – Documentation, Projects and our Outstanding Person awards. This year we received a large number of nominations in each category and both judges have reported to the National Committee on the challenge in selecting the winners. The RMLA wish to thank all those members who have put forward a nomination. The strength of our awards rests in the breadth of the nominated entrants and the resultant prestige in being selected as the winning entrant. For those of you who have not been successful this year, we do encourage you, and also other members, to enter next year.

**DOCUMENTATION**

This award was presented to an extremely pro-active industry umbrella organisation which has set a new benchmark in industry-led environmental responsibility. This organisation has prepared both a full manual and an easy to use field guide describing best practice for membership companies in the sector. Both documents are clear, user friendly and appropriately detailed.

The guide, in particular, provides environmental standards and values for the industry operators. The format of the guide allows easy updating as resource management techniques in the sector evolves.

The RMLA is pleased to present the 2009 Documentation award to the **NZ Forest Owners Association**. The New Zealand Forest Owners Association is a voluntary organisation whose members collectively manage 1.4 million hectares of rural land, of which 80% is planted in plantation trees. The Code of Practice will be a key reference document to ensure the forestry sector in New Zealand continues to operate using state of the art best practice resource management.
PROJECTS – FIRST AWARD

The Project category this year was particularly challenging to judge. Nominated entries ranged from different rural, urban and industrial developments through to processes for bi-cultural management of resources. There were two projects which stood out as exceptional examples of best practice resource management, and the judges have decided to award two first places in this category.

The first award was presented to a development and associated resource consenting process which showcases a careful balance between environmental, cultural and social, outcomes within a set of defined engineering and cost parameters. The Assessment of Effects for the development was presented in a range of formats – including models, computer simulations and more traditional plans/paper formats. The project design incorporates a number of innovative environmentally responsible mitigation features to enhance ecological and landscaping values. The developers and range of consultants involved in this project have submitted a joint nomination for the RMLA award and are obviously justifiably proud of this development.

All of the involved consultants have contributed to an excellent example of sensitive residential development enhancing local ecological and community values and robust design, consultation and consenting processes.

PROJECTS – SECOND AWARD

The second award was presented to mark the culmination of an extended resource consenting process – stretching back to its origins in December 2005 through to an outcome in February this year. The process and resultant consent plus attached conditions, reflects a much needed leading approach to managing one of our key resources.

The RMLA is pleased to present the second of the 2009 project awards to the Hamilton City Council, Simon Berry and MWH New Zealand Ltd – for the Hamilton City Council Water supply consent. The consenting process effectively “married together” water demand and supply considerations. A comprehensive Water Conservation Demand Management Plan was developed and used as a basis for a “stepped take” approach to water supply. The result is a set of conditions which will allow security of supply but also serve to incentivise demand management.

This type of infrastructure decision-making taking full account of the need to balance resource use (through secure infrastructure) and protection (through demand management) is a positive example of things to come – as we develop
better processes to minimise any unnecessary resource consumption.

OUTSTANDING PERSON AWARD

The highlight of our Awards process is presenting the Outstanding Person award. This award is only presented in years when we receive one or more nominations for individuals of the calibre befitting our award. This year’s award is for an individual who has contributed tirelessly to resource management practices in New Zealand. This person has been involved in acting for over 20 local authorities, developed RMA legal theory and jurisprudence both at the bar and through various publications, as well as having significant input into shaping Central Government RMA policy. He has contributed greatly to the RMA field best practice in a variety of ways through his roles in RMA education, as an independent Commissioner, as well as being on the RMLA national committee and acting as the RMLA National President for a number of years.

The RMLA is pleased to announce the 2009 award for an Outstanding Person goes to Alan Dormer. Alan’s contributions to the resource management field over the years of his profession are far reaching and he is an inspirational benchmark to all of those who practise at the planning bar.
The November 2009 issue of Resource Management Journal brings a busy year to a close.

The milestone of the year was enactment of the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 that became law on 1 October 2009. The amendment Act is part of an ongoing RMA reform process that will unfold over the term of the present Government.

The 2010 RMLA Conference in Christchurch will focus on water. This is not surprising given the debate regarding allocation of freshwater resources that has continued throughout 2009. A flyer for the conference is included in this journal issue.

The Central Plains litigation that was destined to provide an answer to the question of who should gain priority to finite resources in the face of competition, settled without providing any substantive judicial advice beyond the Court of Appeal decision. While it may be tempting to divine from the 200-page transcript of the Supreme Court transcript how the case may have been decided, the question of priority remains for determination by subsequent litigation or via statutory reform. In this issue, Justine Inns provides a perspective on the case from Ngai Tahu.

Articles from Jacinta Ruru of Otago University and Linda Te Aho of Waikato University focus on freshwater from an indigenous rights perspective. These papers are timely and add depth to the debate.

The first TAG report on aquaculture has been released as part of the Phase 2 RMA reform process. The report raises interesting issues regarding access to water resources in general that may shape the freshwater debate as it unfolds further during 2010.

Other articles traverse a diverse range of topics from building activities to minerals and the conservation estate — another issue that is likely to be of keen interest to resource management practitioners during 2010.

The 2009 RMLA Conference in Wellington was very successful in a constrained economic climate. This is a tribute to enduring interest of environmental and resource management law to a diverse range of professional disciplines, and the skill of the conference organizing committee in putting together a varied and topical selection of speakers. Papers from the conference and transcripts from plenary sessions are now available on the RMLA website.

The conference also provides an opportunity to honour significant contributions in the field of resource management law and practice. This year Alan Dormer was the recipient of the individual award. Alan’s achievements are summarised in our lead article by Gael Ogilvie.

Last, but not least, Jim Hopkins provides his usual injection of wit and wisdom into the resource management system in his regular column.

Finally, on behalf of the RMLA Editorial Committee, I wish you a Merry Christmas and a Happy New Year for 2010.

Trevor Daya-Winterbottom
Chairperson, RMLA Editorial Committee
International Law and Policy on Water Allocation: Does New Zealand comply?

Ruby Moynihan, Anderson Lloyd Lawyers

[Note: This article is a summary of a Masters research project which can be obtained from the author on request.]

THE INTERNATIONAL PERSPECTIVE

In many regions around the world, the demand for freshwater now exceeds the supply. Most water systems are fully or over-allocated. New Zealand is no different; it has been estimated by the New Zealand Business Council for Sustainable Development that by 2012, all the available freshwater resources in New Zealand’s most economically significant regions will be fully allocated to users.

Agenda 21 (A21) – produced by the 1992 United Nations Conference on Environment and Development (UNCED) – is the only international instrument to provide a comprehensive action plan for the sustainable development of the world’s freshwater. New Zealand adopted A21 in 1992 and is thus legally required to take steps to ensure that it manages and allocates freshwater sustainably, efficiently and equitably.

In 2016, the United Nations Commission on Sustainable Development (CSD) will evaluate New Zealand’s water allocation law and policy for compliance with A21. In anticipation, it is appropriate to assess New Zealand’s water allocation framework for compliance with A21 at both the national and regional level. This assessment is informed by six water allocation principles derived from A21 and selected for relevance to the New Zealand context. The Canterbury region is used to test the effectiveness of the framework in practice because Canterbury experiences extreme water shortages.

INTERNATIONAL SOFT LAW PRINCIPLES ON THE SUSTAINABLE DEVELOPMENT OF WATER

International policy instruments which establish conventional principles on the sustainable development and conservation of water continue to evolve. The States which subscribe to these instruments are encouraged to follow the principles although they are not legally binding and there are no enforcement mechanisms. These instruments are known as ‘soft laws’ and are often referred to as morally binding. Over time these principles can become incorporated into ‘hard law’ through legally binding international treaties, or become accepted principles of customary international law. Soft law agreements, once accepted by each nation, are also used as vital references for interpretation of relevant domestic legislation and formulation of national governmental policy.

UNCED produced and adopted by consensus, A21, which is a practical, non-binding 40 Chapter policy instrument to guide the development of the earth in a sustainable manner. Chapter 18 of A21 deals specifically with protecting the quality and supply of freshwater resources and the application of integrated approaches to the development, management and utilisation of water resources. A21 has produced a significant body of soft law principles on the sustainable development of water, has clearly encouraged policy innovation within nations, and has served as a vehicle for sharing information and ideas.
A21 has also resulted in the creation of international freshwater resource institutions such as the World Water Council, a “think tank” for world water resource issues.

The CSD is charged with the responsibility of monitoring national implementation of A21. There is clear evidence that conventional principles for water allocation have developed internationally through the reiteration of principles within the international documents produced at the 1997 United Nations General Assembly Special Session to Review Implementation of A21, the 12th session of the United Nations CSD, the 16th Session of the CSD, the Johannesburg Summit, the Millennium Development Goals and the 2004 General Assembly Resolution which proclaimed the period from 2005 to 2015 the International Decade for Action, ‘Water for Life’.

Many countries have adopted these principles (with varying degrees of success). In Australia’s Murray-Darling Basin, they have introduced effective physical and demand management measures to address water allocation. New water laws enacted in Madagascar, Brazil, Jamaica and Sri Lanka are all changing the decision-making structure for water governance and allocation, involving decentralisation models which promote participatory management at the basin level. Successful policy and institutional reforms have led to better water allocation in Mexico and water trading in Chile. Albania, Armenia and Montenegro are reviewing and revising their tariff and subsidy policies for water in order to reduce government subsidies and improve cost recovery through proper metering, market-based incentives and tariff collection. South Africa, England and the United States have all tackled the issue of allocation with mixed results.

APPLICATION OF A21 TO NEW ZEALAND

In this section 6 key principles of A21 including: integrated water management; devolution; water resources assessment; water as an economic good; water allocation for agriculture; and water allocation for urban development, industry and municipal use are discussed and applied to the New Zealand situation.

**Integrated Water Resource Management (IWRM)** expresses the idea that water resources should be managed and allocated in a holistic way, coordinating and integrating all aspects of water management, so as to bring sustainable and equitable benefit to those dependent on the resource. IWRM includes integrated land and water management at the catchment basin level to enable sustainable and rational utilisation, protection and conservation of water resources.

The order of priorities for water allocation is plainly set out within A21’s proposed programme for IWRM. In developing and using water resources, priority for allocation has to be given to the satisfaction of basic needs and the safeguarding of aquatic ecosystems. Beyond these requirements, however, water users should be charged appropriately. This statement clearly sets out the order of values for national decision-makers to consider. When allocating water for basic subsistence, water should be treated as a social good and arguably as a basic human right, where every citizen has the right to have access to enough water to allow for a fundamental standard of living whilst acknowledging ecological integrity to ensure the long-term survival of the aquatic ecosystems. Beyond these priorities water must be managed and allocated as an economic good to ensure that there is an adequate supply for future generations. Water allocation should be based on long-term planning needs including the prevention and mitigation of water-related hazards e.g. climate change. In a practical sense this includes determination of minimum environmental flow requirements to ensure the survival of aquatic ecosystems, developing appropriate allocation limits for extraction, mandatory consideration of cumulative impacts of extraction, and establishing efficient market-based allocation between competing uses.

The RMA sets out the regulatory system for freshwater allocation in New Zealand. Section 14 states that no person may take, use, dam or divert any freshwater otherwise than for reasonable domestic needs or unless the use is allowed for in a regional plan or resource consent (“water permit”). Decisions in regard to water allocation under the RMA must be made by considering the overall sustainable management purpose in section 5 of the Act. Because section 5 is framed in such wide terms, flexibility occurs in interpretation and application.
This results in value judgments and balancing being made in applying section 5 to water allocation which does not always give priority to IWRM.

The principles of priority have been left largely undetermined by the Act, and the Courts have had to develop them through case law. The first in, first served rule (FIFS), derived from Fleetwing Farms Ltd v Marlborough District Council [1997] NZRMA 385 remains law and the repercussions of this are discussed.

Devolution - Water should be managed and allocated at the lowest appropriate level. This involves the decentralisation of government services to local authorities with full participation of indigenous peoples and local communities in water management policy making and decision making. At the national level, states should formulate national action plans for water allocation to improve IWRM, protection and conservation. It is imperative to allow for the state to conduct constant independent regulation and monitoring of these plans, ensuring standardisation across regions.

The RMA provides for the devolved decision-making structure of A21 by delegating authority and responsibility for the management of water resources to regional councils. This is directly in line with A21, although A21 proposes that an even lower level of delegation of management to community stakeholder groups is needed. In the Canterbury region, as referred to below, there is growing community involvement at this level through catchment allocation committees but they are not directly provided for by the RMA. The RMA also assigns central government potentially significant responsibilities for water allocation through the provisions for national standards for quality, level, and flow (s 43) and for national policy statements (s 45).

Water Resources Assessment - In order to make sound decisions about water allocation, countries need to continually determine the extent, dependability and quality of their freshwater resources and the anthropogenic impact upon these resources.

The RMA does not directly address the need for water resources assessment, although the RMA does place a duty on every local authority under section 35, to monitor the state of the environment in its region to the extent that is appropriate to enable the local authority to effectively carry out is functions under the Act. Regional councils allocate water as a flow rate and as a volume that can potentially be taken, but each region’s ability to monitor water take is varied. Some councils have not undertaken the necessary research to create an understanding of the actual pressures on their rivers and aquifers to which observed changes in flows or levels can be connected. This lack of information, technology and expertise is a major impediment to making integrated, long-term decisions on water allocation and also makes the establishment of an efficient water transfer process almost impossible.

Water as an Economic Good - The list of mechanisms suggested for achieving this objective include: demand-reduction through water pricing policies; water-saving infrastructure (such as drip irrigation), water trading; and regulatory measures including permits and licenses to achieve optimisation of water allocation. Allocation should consider the benefits of investment, environmental protection and operation costs, as well as the opportunity costs reflecting the most valuable alternative use of the water. Putting a price on water should reflect the true cost of water as an economic good and the ability of the community to pay.

The RMA does not provide for the treatment of water as an economic good through the consenting regime as it uses a FIFS mechanism to allocate water which does not reward efficient use. Sections 124A-124C establish priority over new applications when an existing consent holder applies for a renewal and these sections arguably entrench FIFS. The RMA does however make provision for limited level of water trading. Section 136 allows a permit to be transferred to another site in the same catchment if expressly permitted to do so in a regional plan or if approved by a regional authority. However, there has been little uptake of this limited form of water trading by regional plans. Further, the RMA adopts a weak “user pays” system for individual consent applications, provision of information and monitoring. The true value of the resource is not acknowledged as the charges for these activities are minimal, normally consisting of flat fees for consent processing rather than volume-based charges. Finally,
the RMA offers no direction as to the use of water-saving infrastructure and regional councils have also mostly failed to use this mechanism.

Water Allocation for Agriculture - Sustainability of food production depends on sound and efficient water use. Allocation must consider new irrigation development, improvement of existing irrigation schemes and reclamation of degraded irrigation lands. Decision makers must consider the efficiency, productivity and environmental soundness of irrigation schemes when making assessments on water allocation.

Water Allocation for Urban Development, Industry and Municipal Use - Water tariffs which reflect the marginal and opportunity costs of water especially for industrial activities should be implemented. Creating awareness of the need for water conservation and environmental protection of water supplies is vital to aid communities in their understandings of the competing consideration involved in allocating water. This includes promoting schemes for improved water-use efficiency and wastage minimisation schemes including development of water-saving and measuring devices for individual households. The RMA is silent on the issues of water allocation between these different sectors.

REGIONAL COMPLIANCE WITH A21

The compliance of Environment Canterbury (ECan) was assessed to determine regional level compliance with A21 and is briefly summarised below. This assessment included analysis of the planning and consenting procedures, the move towards catchment specific plans, case law, and the potential impact of the Canterbury Strategic Water Study (CSWS).

ECan has developed catchment specific plans including Opihi, Waimakariri, and the Waitaki Plan. Despite these positive planning developments, there has been no fully operative regional plan with clear provisions to manage water in the region as a whole. Therefore there has been huge reliance on the use of resource consents to allocate water using FIFS. Allocation has reached a stage where ECan considers the majority of groundwater zones to be over allocated and where new surface river takes are reaching their sustainable limits.

The uncertain case law surrounding the application of FIFS in the Canterbury region was explored in a recent article (‘Fleetwing Revisited’ RM Journal, August 2009). Arguments in Central Plains Water v Ngai Tahu Properties Limited [2008] NZCA were directed towards practical application of that rule – was it to be determined by which applicant is first to file, first ready for notification, or by some other test? The Supreme Court issued an interim judgment ( [2008] NZSC 24), indicating that the Court wished to hear argument on whether priority should be decided by a rule or instead through the exercise of a discretion and, if so, on what principles? The Court was essentially revisiting Fleetwing and providing the opportunity for debate over the possibility of system which allows competing applications to be evaluated on their merits which would be much closer to the type of system envisaged by A21. These questions were never answered as the parties settled out of Court and it could be some time before the priority issue gets as far as the Supreme Court again.

The Court in Aoraki Water Trust v Meridian Energy Ltd [2005] 2 NZLR 268 found that there are exclusive rights in consents. The combination of exclusivity with the inability to take a merits-based discretionary approach to consents is in direct contravention of IWRM and A21.

In 2000 the CSWS was initiated to assess the ability of the Canterbury region to meet long term requirements for water. Several stages of this study are now complete, and it has moved into a new phase. In September 2009 the draft Canterbury Water Management Strategy was released. The Strategy proposes a shift from effects-based management of individual consents to integrated management based on water management zones. These zones ensure that groundwater and surface water catchments are aligned - a key principle of IWRM.

Future decisions about allocation of new water consents will be made with reference to the relevant water zone implementation programmes which are based on sustainable flow regimes and land management practices tailored to local circumstances and needs. A charging mechanism will also be used. There is evidence of all 6 principles of A21 in this Strategy.
Analysis of the planning and consenting procedures demonstrates that ECan has not adequately complied with the principles of A21 in the past. However, the CSWS may turn this record around.

**[NEW] START FOR FRESHWATER?**

In 2004 the Labour government recognised that water allocation in New Zealand was not sustainable and attempted to address these failures in the Sustainable Water Programme of Action (SWPA). Three new instruments were initiated: A National Policy Statement for Freshwater Management (NPS), a National Environmental Standard (NES) for Measurement of Water Takes and a National Environmental Standard on Ecological Flows and Water Levels. Many of the milestones were not met in the programme and the Proposed NPS has failed to address water allocation in any meaningful sense. The Environmental Standards, if successful, could provide for greater water resources assessment and the ability to implement IWRM. These instruments will continue to be processed in parallel to the current Government’s “New Start for Freshwater management”. The main policy options which are being suggested as part of the new direction include:

- **stronger central government leadership and better national-level direction**
- **identifying the contribution water infrastructure (including storage) can make to improved water use**
- **the science, technical, information and capability gaps which are holding back management changes**
- **water resource limits to shape actions on quantity and quality**
- **an allocation regime that provides allocations to ecological and public values, and then maximises the return from the remaining water available for consumptive use**
- **supplementary measures to address the impacts of land use intensification on water quality, and manage urban and rural demand.”**
- **Although this new direction appears to be based upon principles which have existed internationally for 20 years, it is pleasing that we are making progress.**

**INDIGENOUS PEOPLE AND A21**

A21 states that a framework for water allocation should include full participation of indigenous peoples. Any comprehensive reform of New Zealand’s allocation system, especially if this implies privatisation of freshwater resources, will face a challenge from Maori that goes beyond full participation (Wheen N, Speech at Brisbane International River Symposium, (2009)). The legal status of Maori customary water rights remains undetermined. The Crown’s obligations to Maori under the Treaty of Waitangi could have major implications for ownership of the resource and any new system for water allocation.

**CONCLUSION**

New Zealand’s water allocation framework is not compliant with A21, especially because it employs the FIFS approach to priority of allocation. Also, the RMA offers little guidance on key water planning issues, leaving this complex task to regional councils. The case of Canterbury demonstrates that under conditions of scarcity, the framework is incapable of enabling regional compliance with the principles of A21.

Any comprehensive reform should strengthen commitment to A21 by combining the particular requirements of the New Zealand situation with the vast knowledge gathered from overseas experience. The nation should strive to put this transformation into practice ready for the CSD world review in 2016. New Zealand is incredibly fortunate, it still has an abundance of freshwater and it is certainly not too late to create changes which will enable future generations to continue to enjoy the prosperity ensuing from this precious resource.
Indigenous Peoples’ and freshwater: rights to govern?

Jacinta Ruru, Senior Lecturer in Law, University of Otago

INTRODUCTION

The extent of Indigenous peoples’ rights to govern, manage and even own freshwater is a topical issue in many countries. It is definitely hot in Aotearoa New Zealand. The University of Otago, in association with funding from FRST and Landcare Research pursuant to the Old Problems New Solutions research project, recently brought together a group of legally trained experts to gaze both inwards and outwards on the rights of Indigenous peoples to govern freshwater. This article canvasses what went on at that event: the Indigenous Legal Water Forum, held in Wellington on 27th July 2009.

BACKGROUND

But first some background to explain why this is such a topical issue. Late last year, a general consensus emerged among government officials that Maori have some rights to be involved in any new governance structure for freshwater. For example, the Proposed National Policy Statement for Freshwater Management (released 20 September 2008) accepts that the Treaty of Waitangi is the “underlying foundation of the Crown-Maori relationship with regard to Freshwater Resources”. The Proposed National Policy Statement embraces that it is “one step in the process of addressing tangata whenua values and interests including the involvement of iwi and hapu in the management of fresh water”. Even the New Zealand Business Council for Sustainable Development’s 2008 report entitled A Best Use Solution for New Zealand’s Water Problems recognises iwi as a stakeholder and accepts that the current framework “has proven to be unable to incorporate customary rights under the Treaty of Waitangi into local water allocation and use” and that “iwi rights under the Treaty of Waitangi in respect of freshwater resources have yet to be resolved in many catchments”. Moreover, on 15th December 2008, Prime Minister John Key accepted that in the context of water allocation “Maori, without doubt, will be a clear stakeholder when it comes to that debate” (ODT 15/12/08).

But are Maori simply “very important stakeholders”? According to the Ministry for the Environment Wai Ora: Report of the Sustainable Water Programme of Action Consultation Hui (published July 2005) “[T]here was widespread expectation that the appropriate role for Maori in water management is one of partnership with the Crown rather than a stakeholder relationship”.

Many have recognised that it is unclear in law who owns water – the Crown or Maori – and many Maori in particular stress that this issue “must be addressed before any major changes to water management can be considered” (Wai Ora: Report).

The uncertainty arises in part because the common law relating to flowing water does not recognise ownership possibilities, but the common law doctrine of native title potentially does along with the guarantees made to Maori in the Treaty of Waitangi. Moreover, New Zealand’s legislation (other than the iwi-specific settlement statutes) is silent on the ownership of freshwater.

In regard to management, the Resource Management Act 1991 (RMA) gives regional and local councils the power to assert rules and guidelines for the take, use, damming, and diversion of fresh water (s 14). In formulating these rules and guidelines, and issuing of consents, the RMA directs councils to recognise the Maori relationship with water. Section 6(e) mandates that all persons exercising functions and powers under the RMA must recognise and provide for matters of national importance, including the relationship of Maori and their culture and traditions with water. However, this is one of several factors that councils must weigh in
reaching decisions. Other interests often trump Maori interests, such as the need to have particular regard to “the benefits to be derived from the use and development of renewable energy” (s 7(j)).

There are several instances where Maori have appealed council decisions that approved resource consents to increase the take of water for agriculture and development purposes. Often Maori have been unsuccessful in such cases. However, a recent Environment Court decision favoured the Maori applicants: Te Maru o Ngati Rangiwewehi v Rotorua District Council which was decided 25 August 2008. Here the Court gave strength to section 6(e) of the RMA stating that such a direction “should not be given lip service to”. In that case the Court held that the cultural effects on Ngati Rangiwewehi of the proposed increased take of water from a spring and stream central to their identity are sufficiently significant to warrant serious consideration to be given to alternatives (for more information see: Jacinta Ruru, The Legal Voice of Maori in Freshwater Governance. A Literature Review (Lincoln: Landcare Research, 2009) available to download at www.otago.ac.nz/nrl/law/water).

Other than advancing arguments in the courts, Maori have the option to pursue claims via the Treaty of Waitangi settlement process. For more than 100 years, Maori have been seriously contending for the ownership and governance of freshwater. Maori have had some success with the Crown accepting tribal ownership of lakebeds both in the North and South Islands (e.g. see the Ngai Tahu Claims Settlement Act 1998 and Te Arawa Lakes Settlement Act 2006). Significantly, in 2008, the Government introduced the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill. This Bill is revolutionary because it advances a new co-management regime for the governance and effective management of the country’s longest river, the Waikato River (425 kms long) (for more information see: Jacinta Ruru, The Legal Voice of Maori in Freshwater Governance. A Literature Review (Lincoln: Landcare Research, 2009) available to download at www.otago.ac.nz/nrl/law/water).

MINISTERIAL KEYNOTE

Hon. Pita Sharples, Minister of Maori Affairs, presented a powerful speech reflecting the sentiments of many Maori, such as “the legal framework for managing water has not provided an adequate role for Maori” and that the RMA provisions “do not go far enough”. Sharples interwove whakatauki: (in English) ‘Water is the life giver of all things’; ‘Drink, drink of the bathing waters of your ancestors’. He spoke of water as “the very lifeblood of Papatuanuku, indeed it is the essence of life … when a child is born the water comes first, then the child, followed by the afterbirth”. Sharples strongly stated “[t]he rules and associated rights governing its use – of which the Crown has gradually assumed statutory control – have served to undermine and marginalise tribal authority as tangata tiaki”. He advocated “Maori want a stronger voice in freshwater management and a role in decision-making as befits a Treaty partner”. Sharples’ message to Maori was “Local hapu and iwi need to be full participants in decisions on water management in their areas, and water ownership issues need to be allowed to come onto the national agenda. It is an issue in which leadership resides not just with tribal champions, but...
must be considered on every marae, in every home”. His message to government in terms of reform: “It must be about the protection and preservation of water as a source of food, resources, and opportunities to maintain traditional connections and practices such as manaakitanga”. Sharples concluded “Maori can bring a unique contribution to freshwater management through the ethic of kaitiakitanga. The contribution that tangata whenua can make towards sustainably managing our water resources will be of benefit to all New Zealanders”.

SETTING THE SCENE

Sacha McMeeking, General Manager of Strategy and Influence at Te Runanga o Ngai Tahu, helped to set the political scene explaining how the Iwi Leaders Group is engaging with the government for purposes of preserving the space to ensure that the rights, interests and perspectives of iwi Maori are given effect to in any water policy reform. McMeeking stressed that it is not about saying what those rights ought to be or having the answers, but is about noting and flagging that there are live matters that need to be taken account of regarding iwi and water.

AN HISTORICAL OVERVIEW

Tom Bennion, specialist environmental and Maori law barrister sole, was given the unenviable brief to talk about historical water issues in 25 minutes. He successfully illustrated iwi reliance and relationships with water by drawing on Waitangi Tribunal reports, spoke of the consequences of English common law being incorporated into New Zealand, historical water related statutes, and even the Tongariro Power Development Scheme 1958 Council in Order that essentially permitted anything to be done to freshwater to conduct electricity.

DEVELOPMENTS IN NORTH AMERICA

Canadian Professor of Law Bradford Morse brought alive the horrors on one First Nation’s community in Alberta which “experiences uranium contamination in their drinking water, brown water flowing from residential water taps, and outrageous cancer rates and fish mutations”. He spoke of initiatives in Canada to settle historical grievances with Aboriginal peoples including the James Bay & Northern Quebec Agreement which does recognise Indigenous ownership of water, and other more recent agreements that recognise ownership in waterbeds. Morse concluded his talk by canvassing International solutions to the rights to water, including reference to the UN Declaration on the Rights of Indigenous Peoples.

Senior Law Lecturer at the University of Waikato, Dr Robert Joseph spoke of his recent travels in North America meeting with Indigenous groups concerned about water issues. Joseph provided a key comparative context in which to better understand issues in Aotearoa New Zealand. His message was “the long standing sustainable nature of Indigenous cultures offer key lessons that can be, indeed should be, drawn from to manage and govern our resources in a modern context”.

EXPERIENCES IN AUSTRALIA

The charismatic Steven Ross, an Indigenous Australian, who works for the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) explained how 10 Indigenous Nations had come together to form MLDRIN – a collective voice for the rights and interests of their traditional country and its people. A core principle includes ‘cultural flows’ which are: water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations”. MLDRIN argues that “The overriding objective in determining the type and location of water entitlements acquired and transferred to the Indigenous Nations for cultural flows must be sufficient to ensure that the Indigenous Nations, through their legal and beneficial ownership of the water entitlements, can achieve substantial and measureable cultural flow outcomes” (see www.mldrin.org.au).

Also from Australia, Professor of Law Lee Godden explained recent water law initiatives in Australia, including the enactment of the Water Act 2007(C’th) which provides for
some Indigenous representation. Godden foresees two major ways of conceptualising inclusive legal frameworks. One is through inclusion of Indigenous interests within the existing statutory water law, the other is to look to existing rights-based regimes for land via the Native Title Act 1993 (C’th) and argue that it extends to freshwater. She concluded “The dichotomy of difference which lies at the heart of colonialism and settler ideology has prevailed in Australia throughout the rights-based agenda and into the current narrative of neo-liberal models of economic development. It has with the use of the law, entrenched Indigenous peoples’ continued marginalisation.

BACK HOME – THE WAIKATO RIVER SETTLEMENT

Linda Te Aho, senior law lecturer at the University of Waikato and of Waikato-Tainui and Ngati Koroki Kahukura descent, spoke eloquently of how the Waikato River is for Waikato-Tainui an ancestor and way of life. She spoke of the long 150 years of grievances suffered by Waikato-Tainui and the resulting negotiations that led to the Waikato River Deed of Settlement in 2008. Te Aho recognised that “Maori did not become a key participant in resource management processes as they had expected when the Resource Management Act came into force” and how the Waikato River negotiated co-management deed seeks to give Waikato-Tainui an effective voice in the governance of the river for the first time in colonial history.

NATIVE TITLE POSSIBILITIES

I took the opportunity afforded at the Forum to consider whether Maori customary title to freshwater remains the property of Maori in accordance with the doctrine of native title? The starting point was the Attorney-General v Ngati Apa [2003] 2 NZLR 643 case where the Court of Appeal stated “[w]hen the common law of England came to New Zealand its arrival did not extinguish Maori customary title … title to it must be lawfully extinguished before it can be regarded as ceasing to exist” (p 693). While the Crown claims that at common law no-one ‘owns’ water for it is common property, like air, the Court of Appeal warned against such presumptions (albeit in obiter and in the context of the foreshore and seabed): “The common law as received in New Zealand was modified by recognised Maori customary property interests. If any such custom is shown to give interests in the foreshore and seabed, there is no room for a contrary presumption derived from English common law. The common law of New Zealand is different” (p 668). I concluded that given the right factual mix, there is a distinct possibility that the Court might find native title in freshwater.

CONCLUSION

As the Cabinet paper earlier this year stated, Indigenous peoples and rights to water pose both as a challenge and an opportunity. Government, professionals, Indigenous peoples, business and community need to give these issues serious attention. The Indigenous Peoples Water Forum was a small attempt to engage in a very important dialogue. For more information on the Forum, including a link to view the video recordings of the proceedings on the day at the Forum, see: www.otago.ac.nz/law/nrl/water
This paper focuses upon the co-management solution being developed as part of the Waikato River Settlement. It will address the three aspects of its title: negotiating; co-management; and the Waikato River. But first, a song:

“kei te matakitaki te ao katoa,
mena ko hoe te tangata…”

“the world is watching with interest, to see how well you perform this role…”

The Maori lyrics are taken from a song by illustrious composers Ngapo and Pimia Wehi in honour of King Tuhetia who was raised up as Maori King in August 2006. King Tuhetia’s ascension followed the passing of his mother, Te Arikinui Dame Te Atairangikaahu, who had reigned as Maori Queen for many years and who had become highly regarded and much loved across cultures. The Waikato River settlement and the co-management solution which focuses upon restoring and protecting the health and wellbeing of the Waikato River are under similar scrutiny. This paper was presented at the Indigenous Peoples’ Legal Water Forum in 2009 where Tom Bennion spoke of his excitement about the settlement which seemed to be groundbreaking, but noted his disappointment about the language in one of the strategies around thresholds for water quality.

Sacha McMeeking was cautious about the co-management solution being promoted as the “Rolls Royce” of co-management models on the basis that any New Zealand model would be constrained by other legislation. Moana Jackson questioned whether co-management is an appropriate starting point for discussions when one ‘partner’ has a neo-liberal policy. A question from the floor asked whether co-management can ever work when there is such an imbalance of power and resourcing, and when one partner is the ultimate decision-maker. In contrast, at another conference Guy Salmon, a member of a review panel convened by the incoming National Government, publicly promoted the co-management model (as modified by recommendations made during the review) as one which ought to be applied to all catchments in the country.

This paper is not intended to promote the co-management solution as a precedent to be imposed upon other iwi. It is offered in the spirit of sharing information about an innovative and bold settlement.

**WAIKATO – HE TUPUNA AWA**

For Waikato-Tainui the Waikato River is an ancestor and a way of life. Its spiritual dimension is captured in the words of respected elder Koroneihana Cooper at a tikanga symposium hosted by Waikato University School of Law:

[H]ow do we feel about the Waikato awa? Waikato is living to us, we talk to the river, and we greet the river… we go there we have a karakia, and still to this day we ask that those taniwha look after us. Those who are not familiar with our language would not really appreciate our relationship with our ancestral river. [Translation]

The nature of the special relationship between the Waikato people and their ancestral river is further reflected in the following statement by the late Te Kaapo Clark, another highly respected Tainui elder:

Spiritually the Waikato River is constant, enduring and perpetual. It brings us peace in times of stress, relieves us from illness and pain, cleanses and purifies our bodies and souls from the many problems that surround us…

**KEI WHEA TE TUNA? WHERE IS THE EEL?**

In addition to its spiritual dimension, the river was also a food basket for...
the Waikato-Tainui peoples. Most Waikato-Tainui children raised in our native language will know the following nursery rhyme:

Kei whea te tuna? Kei roto i te awa. Where is the eel? It is in the river

Kei whea te tuna? Kei roto i te hinaki. Where is the eel? It is in the eel trap

Kei whea te tuna? Kei runga i te tepu. Where is the eel? It is on the table

Kei whea te tuna? Kei roto i te puku! Where is the eel? It is in the stomach!

The question posed by the children is a good one. Where are the eels? As a result of commercial fishing; the introduction of predatory fish; hydro-electric dams disturbing migration; and the inability of eels to survive the pollution of industries who have treated the river as a drain for far too long, many of the river iwi are now unable to source eels from the river. Apart from the tangible loss of a food source, other consequences include a loss of transmission of knowledge about species and fishing practices which have not been passed down, a loss of connection between youth and elders who possessed such knowledge, and a loss of vocabulary.

Western scientists confirm what Waikato-Tainui has known for decades. The work of Associate Professor Brendan Hicks of the University of Waikato, for instance, makes plain that there is a desperate need for ‘high quality management’ in relation to the Waikato River. His work over many years has shown that the multi-stranded ecosystem of the Waikato River has been highly modified, fish migrations have been disrupted, deforestation and land use intensification has degraded water quality, and pest fish have invaded the river, its lakes, and its tributaries. The consequences have been devastating on the life force of the river.

NEGOTIATING

The degradation that has occurred while the Crown has had authority over the River is one example of the many grievances that have arisen as a result of the widespread confiscation of Waikato lands in the 1860s, the driving of people away from their villages alongside their ancestral river, and the Crown’s admitted failure to respect, provide for and protect the special relationship Waikato-Tainui have with the river as their ancestor. Historian, Ann Parsonson, identified that, for Waikato-Tainui, one of the greatest impacts of the raupatu (confiscations) in respect of the River has been the removal of their capacity to protect the River in the decades of rapid change that followed. Their authority and their tikanga were ignored, as if they had not existed for hundreds of years. As mining, farming, sewage disposal and hydro-electricity development took their toll on the health of the river, Waikato-Tainui were not consulted.

These grievances have been the subject of negotiations between Waikato-Tainui and the Crown for almost all of the 150 years since the Kingitanga was established with the raising up of King Potatau in the late 1850s. Potatau’s son Tawhiao became the second Maori King and he set sail in 1884 for England in the hope that a meeting ‘monarch to monarch’ with Queen Victoria might assist in having the deeply held grievances of raupatu addressed. The King and his entourage were not able to gain an audience with the Queen. Thirty years later in 1914, Tawhiao’s grandson and fourth Maori King, King Te Rata, also sailed to England in the hope of presenting a petition to the British Crown asking for the restoration of confiscated lands. Whilst he was eventually received by King George V and Queen Mary the British Government declined to entertain any discussions about grievances and directed Maori to look the New Zealand settler government for the redress of their grievances. It was during fifth Maori King, King Korokí’s reign in 1946 that the Tainui Maori Trust Board was established and received 10,000 pounds as redress for the grave injustices of confiscation. Still, a widespread desire for the return of land remained. In 1995, Te Arinui, Dame Te Atairangikaahu signed one of the first major land settlements worth some $170 million. The river claim was excluded and set aside for future negotiation, and on 22 August 2008, the Waikato River settlement was signed between Waikato-Tainui and the Crown in the presence of King Tuheita in relation to the Waikato River. The settlement has taken five generations to achieve. It is a story of patience and determination – and one of incremental progress.

This Waikato River settlement was reached via direct negotiations with the Crown. The major advantage of direct negotiations is that it is usually a speedier and less expensive process for claimants compared with that of the Waitangi Tribunal. The direct
negotiations process has, however, a number of serious shortcomings. The Crown's marked advantage in terms of bargaining power means that it unilaterally decides the conditions of negotiation and claimants are expected to negotiate within those conditions if they want their claim resolved. Another disadvantage when compared with the Tribunal process is that anonymous Government officials rather than independent Tribunal officers make decisions about settlement. Waikato-Tainui mandated co-negotiators Tukororangi Morgan and Lady Raiha Mahuta to engage with Crown Ministers. A large technical team led by Denese Henare and Donna Flavell conducted negotiations with officials. This team had closely examined other models of joint management in New Zealand such as the Ngati Whatua o Orakei model in respect of Okahu Bay; the Hauraki Gulf Forum; and the Guardians of Fiordland. Members of the team also travelled overseas to examine different models. Negotiations were protracted and, at times, gruelling. The negotiation team felt the burden of having to constantly come up with creative ideas in order to work within and around the principles that the Crown was willing to engage on. As former Crown Minister, David Parker, noted during discussion at the Water Forum, the Crown negotiators also faced the difficult task of convincing Cabinet to re-examine boundaries for the negotiations in order the keep the negotiations on foot. The outcome is a negotiated compromise. To the credit of the negotiators on both sides, the settlement deals with some very hard issues. The Waikato River is some 425km long. Unlike other joint management or co-governance models in New Zealand, this settlement encompasses several iwi and several local and regional authorities. For the first time in this country the settlement will attempt integrated management of a whole catchment. It aims to deal with the impacts of hydro-electric dams, and land-use, a particularly complex and sensitive issue in the rich and fertile farmlands of the Waikato.

An interesting point to note about this settlement is that unofficially, the Crown has also set a limit on the overall amount it is willing to spend on settling Treaty claims (the “fiscal envelope”) and early settlements such as the Waikato Raupatu and Ngai Tahu settlements serve as benchmarks. While this settlement arises as a result of raupatu (confiscation), it is not technically called a Treaty settlement and in order to avoid impacting upon the Crown’s fiscal envelope.

Another notable feature of the settlement is that it is not about ownership. A number of speakers at the Water Forum talked about rights and ownership. In the context of the Waikato River negotiations, the Crown insisted that any vesting of ancestral title in the rivers would be restricted to parts of the riverbed. Because of privately owned land rights to the bed, the Crown claims not to have continuous title to the riverbed and therefore adopts the position that it cannot offer continuous title. As to ownership of the water, the Crown maintains that it does not own the water. Rather, it has authority and control over the river which is delegated to local authorities. For these reasons, past settlements such as that enshrined in the Te Arawa Lakes Settlement Act 2006, include the transfer of the lakebeds, but not the freshwater resource. In 2009 a forum convened by iwi, including Waikato-Tainui, is currently proposing a national meeting for all Maori to come together to discuss issues of rights, ownership and the inevitability of privatization of water.

**CO-MANAGEMENT**

With the Crown not prepared to engage on the issue of ownership of water, principal negotiator in the 1990s, the late Sir Robert Mahuta reminded Waikato–Tainui that we did not need the Crown to tell us that we own the water. In any event, what use is ownership or rights if the resource is completely polluted or gone? With ownership assumed, the settlement focuses upon the notion of co-management across a range of agencies and a unity of commitment to focus on the health and wellbeing of the Waikato River for future generations. Waikato-Tainui felt strongly that it was necessary to bring together Maori knowledge systems and western science to measure, monitor, and restore the health and wellbeing of the river, and to co-operate with Local and Regional authorities; for the Crown to take responsibility for resourcing the work that needs to be done; and to garner the support of river iwi and other river communities.

**THE GUARDIANS ESTABLISHMENT COMMITTEE – A TEST MODEL FOR CO-MANAGEMENT**

Maori did not become a key participant in resource management processes as they had expected when the Resource Management Act 1991 came into
force containing statutory provisions which deal with Maori interests. So the aspiration of equal participation at all levels of decision-making is a key feature of the co-management solution as currently negotiated.

The Guardians Establishment Committee (GEC) was set up in 2008 as a result of the Agreement in Principle between Waikato-Tainui and the Crown. Initially, the GEC comprised 16 members, eight appointed by iwi, and eight appointed by the Crown. Waikato-Tainui compromised two of its members during further negotiations which saw the co-management body reduced to 12.

The GEC is currently made up of six river iwi appointments and six Crown representatives and is co-chaired by Tukoroirangi Morgan who also the Chair of the executive committee of Waikato-Tainui’s tribal parliament; and Gordon Blake, a farmer and the former Mayor of South Waikato District Council. Crown representatives include the current Mayors of Hamilton City and Waipa District Councils, a councillor from the regional authority Environment Waikato, and a staff member of Mighty River Power.

The Deed of Settlement signed in August 2008 and the ensuing legislation centres around a Vision and a Strategy which have been developed following public consultation by the GEC. The Vision is intergenerational and sourced from a lament of second Maori King, King Tawhiao:

*Tooku awa koiora me oona pihonga he kura tangihia o te mataamuri.*

*The river of life, each curve more beautiful than the last.*

Our Vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities, who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces for generations to come.

The role of the GEC is to provide to the Crown and to river iwi on the Vision and Strategy; to promote the Vision and Strategy in plans and policies affecting the Waikato River; to develop and implement education programmes in relation to the health and wellbeing of the Waikato River; to promote policies to improve the health and wellbeing of the Waikato River; and to act as the governance group for the Waikato River Independent Scoping Study (WRISS). The WRISS will identify rehabilitation priorities for the Waikato River and the likely cost of those activities.

The National Institute of Water and Atmospheric Research Ltd (NIWA) is the group leading the study. It is a key feature of that study that Matauranga Maori (Maori knowledge and knowledge systems) will be included as a driving factor alongside western science. The study is to be completed by June 2010. The GEC is a forerunner to a permanent body who will be appointed in time and whose scope will apply to the Waikato River and activities in the catchments affecting the Waikato River its catchment from Taheke Hukahuka (the Huka Falls near Lake Taupo) to Te Puaha o Waikato (the river mouth which flows into the Pacific Ocean). The name and the make-up of the permanent guardians is still subject to negotiation but will involve members appointed by Waikato-Tainui and other river iwi, and an equal number of members appointed by the Crown, one of whom will be nominated by regional authority, Environment Waikato.

The settlement as currently negotiated provides for the establishment of Statutory Boards and other entities to support the exercise of mana whakahaere (local authority and rights of control). However, a review commissioned in 2009 by the incoming National government prefers a single entity with ‘teeth’, such as for example the power to write National Environmental Standards. Some of the details of the co-management structure are still the subject of direct negotiations.

Under the terms of the settlement the Vision for the Waikato River is intended to operate at the highest level possible to set the direction for enhancing the health and wellbeing of the river. The Vision and Strategy will be a National Policy Statement for the purposes of the Resource Management Act and a Statement of General Policy for the purposes of conservation legislation and will operate across other statutory frameworks such as fisheries frameworks.

This means that local authorities will be required to give effect to the Vision and Strategy when preparing or changing plans and policy statements, to have regard to the Vision and Strategy when considering a resource consent application, and to have particular regard to the Vision and Strategy for designations and heritage orders. The Director-General of
Conservation will be required to implement the Vision and Strategy when preparing Conservation Management Strategies and Plans. Other decision-makers under a range of other relevant legislation will also be required to have particular regard to the Vision and Strategy.

Other aspects of co-management include a “Kiingitanga Accord” which sets out the joint commitments of the parties to an enhanced relationship, to support integrated co-management and to protect the integrity of the settlement. The Accord includes commitments to:

- develop and agree portfolio-specific accords with the Minister of Conservation, Fisheries, Land Information, Environment, Arts, Culture and Heritage, Local Government, Agriculture, Biosecurity, Energy and with the Commissioner of Crown Lands, and
- explore accords between Waikato-Tainui and other Ministers and agencies after the deed is signed, and to support Waikato-Tainui to establish memoranda of understanding with councils and other relevant agencies.

For marginal strips and river-related Crown-owned land, the settlement provides for the Crown and Waikato-Tainui to discuss:

- the protection or gifting of sites of significance to Waikato-Tainui, and
- provisions for management or co-management of sites with Waikato-Tainui.

The settlement includes provisions for a contestable fund for restoring and protecting the health and wellbeing of the Waikato River. The Crown’s initial contribution to this fund, through the Waikato-Tainui settlement, will be $7 million per year for 30 years. This fund may need to be increased following the outcome of the WRiSS currently being carried out.

**SUMMARY AND CONCLUSION**

The Waikato River settlement and the co-management solution being developed as part of that settlement is an illustration of how far we have come as a nation in dealing with some very complex issues that have been held in abeyance for far too long.

In the eyes and hearts of Waikato-Tainui, the Waikato River is an ancestral river and they have long sought to be included in decision-making processes that affect the river so that their values and ways of viewing the world are afforded priority. Despite expectations that the Resource Management Act would provide opportunities for this occur, the interpretation and application of that Act has seen those values and views being outweighed by other, often economic, considerations.

Though the settlement is a negotiated compromise, and though that compromise has been a painful process, rather than perpetuating decades of conflict and collision, co-management provides an opportunity to bring to an end a ‘paradigm of exclusion’ through the development of a spirit of co-operation and mutual regard towards a single purpose, to restore and protect the health and well-being of the Waikato River for future generations.

The full text of this article including footnote references is available from the RMLA website.
Sustainable Water Management, Are we there yet?

Taking a “hard look” at the issues impacting on sustainable management of our fresh water resource.

Fresh water is the great integrator, connecting sky to sea and flowing through our lands, lakes and rivers. It crosses territorial boundaries and defies traditional zoning techniques. Through principally managed by Regional Councils, water can be critically impacted by change in land use authorised by district and city councils. Water also sits at the centre of competing demands for its cultural, recreational, aesthetic and economic values.

The strong linkage between water abstraction for agricultural use, electricity generation and economic growth has led to unprecedented demand for water in Canterbury and elsewhere in New Zealand. This has caused a raft of issues including water quality and quantity, priority, allocation and ownership, cultural values and governance structures to come sharply into focus.

In response to widespread concern about management of our water resource, the Canterbury Mayoral Forum has released the Canterbury Water Management Strategy and the Government has established the Land and Water Forum. Ideas resulting from these initiatives may lead to significant re-shaping of governance structures relating to fresh water management at a regional and national level.

Against this context, the 2010 RMLA Annual Conference will explore these issues and consider possible responses to better achieve integrated and sustainable management of our fresh water resource.

www.rmla.org.nz

Central Plains Water Trust and Ngai Tahu Properties Ltd advised the Supreme Court in late May of this year that the case had been abandoned, but it continues to be a topic of heated conversation in some circles. It seems that many were anxious for the opportunity it appeared to present to challenge the ‘first come, first served’ rule in respect of water allocation in favour of a more discretionary approach. More particularly, there was an enthusiasm in some corners for engaging on the argument as to what role that the principles of Treaty of Waitangi might play in such a discretionary approach. The New Zealand Maori Council was granted leave to intervene in the case shortly before it was abandoned and has more recently attempted, unsuccessfully, to get the issue back before the Courts (see ‘Postscript’) below.

‘Fleetwing Revisited’ concisely canvassed the arguments for and against the current rule-based approach to determining priority between competing applications for water abstraction on the one hand and the discretionary approach the Supreme Court hinted at in its 26 March “interim judgment” on the other. It is not proposed to revisit that revisitation. Rather, this article’s intent is to look at the case’s suitability as the test case it so very nearly became.

IN THE BEGINNING...

Central Plains v Ngai Tahu Properties did not have a particularly auspicious start for a would-be test case. It began as a simple case of competing commercial interests, of the kind (the Resource Management Act’s prohibition on consideration of trade competition issues notwithstanding) the Environment Court deals with every day. The case was not concerned with fundamental issues of policy in relation to the operation of the resource consent regime, still less with arguments over the treatment of prior interests in freshwater guaranteed by Article II of the Treaty of Waitangi. The case was not even a challenge to the ‘first come, first served’ rule as established in Fleetwing Farms Ltd v Marlborough District Council [1997] NZRMA 385, but dealt with the even narrower question of what, in the particular factual context, “first” might mean.

Indeed, it appears that even when they were before the Supreme Court, neither of the parties to the case sought to call Fleetwing into question, but continued to seek only an interpretation of what its principles meant when applied to the particular facts of their case. This was recognised in the interim judgment of the Supreme Court, which acknowledged that “all counsel took the position that priority as between competing applications should be determined by a rule. Their submissions were directed to the question of what that rule should be”. However, the Court – of its own
volition – determined that it wished to hear argument on “the prior question of whether priority should be decided through a rule or through the exercise by consent authorities of a discretion and, if the latter, on what principles should the discretion be exercised.” [emphasis added] The Court went on to stress that it was not bound by Fleetwing and other precedents and thus to imply that it would consider over-ruling them.

There is no question that it is entirely proper and legitimate for our highest judicial body to take such a step. But it is hardly surprising that the parties to the case opted to find a (presumably) commercial solution to the issues in dispute between them, rather than to take their chances with the judicial equivalent of an “all bets are off” with which they had been presented. Arguments before the Supreme Court suggest that both parties felt that the application of a rule would produce the outcome they sought. The corollary of that is that they could have no confidence as to what outcome the adoption of a discretionary approach might produce. And, as the old lawyers’ adage says, it is best not to ask a question you don’t know the answer to.

None of the factors made the case a good candidate as a test case. In a barrister’s ideal world, a case that sets out to test long-standing precedent is framed as such from the outset. The perfect test case involves only a simple fact situation or one that is so common as to be generic. Central Plains v Ngai Tahu Properties met neither criteria. While the questions posed by the Supreme Court in its 29 May interim decision were posed in a generic way, not tied to the facts of the case, it seems that neither the parties, nor their legal counsel, were aware that they were conducting a test case until the Supreme Court told them they were.

**THE TREATY DIMENSION**

Given the case’s focus on the technical rules for determining priority of applications, it is hardly surprising that arguments around Treaty of Waitangi principles had not come to the fore. Ngai Tahu Properties (which is a commercial entity that happens to be owned by an iwi organisation) might have been surprised to find itself suddenly thrust into the role of leading an argument on behalf of all iwi that priority in processing applications for water should not only be determined as a matter of local authority discretion, but that the principles of the Treaty of Waitangi should weigh heavily on that discretion. That Article II of the Treaty guaranteed pre-existing rights in freshwater (in the same way as those in land and fisheries) is an argument that can be persuasively made, but it may not have been one that Ngai Tahu Properties and their legal team were wholly prepared for. Moreover, there must have been at least a fear that the relatively narrow issue that Ngai Tahu Properties sought to win in the case would have been lost sight of in the attempt.

The question of a Treaty-guaranteed rights to freshwater is one that the Courts or – more likely – the legislature will have to deal with sooner or later. But it is a question that seems too big to be comfortably shoe-horned into the questions posed by the Supreme Court. Maori interests would presumably have argued that priority in respect of competing applications for finite resources should be decided though the exercise of a discretion and that the principles of the Treaty should be a significant consideration in that discretion. Even if those arguments were successful – and the first of them, in particular, would seem to face significant barriers – the result would fall far short of establishing an effective priority for Maori in the allocation of water resources. A ‘win’ might have fallen far short of delivering on Maori expectations and a loss might have done them irreparable damage.

**THE POLICY CONTEXT**

All of this occurs at a time when the government is actively involved in developing “A New Start for Fresh Water” as part of phase two of reforms of the Resource Management Act. As part of that process, government is engaged with an Iwi Leadership Group on freshwater and with other stakeholders through the Land and Water Forum to develop options for reshaping New Zealand’s water management to ‘begin to build the social consensus for change that is needed before proceeding to solutions’ (see the Cabinet paper ‘A New Start for Fresh Water’, available from [http://www.mfe.govt.nz/issues/water/freshwater/new-start-for-fresh-water-paper.html](http://www.mfe.govt.nz/issues/water/freshwater/new-start-for-fresh-water-paper.html)). In addition, policy options are being scoped in a number of key areas, including “an allocation regime that provides allocations to ecological and public...
values, and then maximises the return from the remaining water available for consumptive use.”

The “indicative direction” in respect of allocation issues signalled in the Cabinet paper suggests that an argument over priority of applications under the current regime might be short lived:

“Allocation systems are therefore likely to involve a ‘two-stage’ model: the first stage provides for public values [including ‘Treaty and settlement interests’] through a largely planning-based process, and the second stage then uses other tools (which may include economic instruments) to provide for the allocation and transferability of the available water to its most valued uses. This second stage will need to operate within a well-designed regulatory framework.”

With public consultation on proposals for reform not due until the second half of 2010 it remains to be seen whether the reform process will satisfactorily answer the questions posed by the Supreme Court. At a time when major policy changes in respect of the allocation of water are on the cards, however, it is questionable whether litigating the same policy issues under the current regime would be money well spent.

**POSTSCRIPT**

The New Zealand Maori Council appears to have taken a more optimistic view of the ability of the questions posed by the Supreme Court to resolve the underlying policy issues, particularly in terms of a Maori priority right to freshwater. This led the Council to make an attempt to revive those questions. Subsequent to the parties’ abandonment of the *Central Plains Water v Ngai Tahu Properties* case, the Council filed an application in the High Court for a declaration on essentially the same terms as the question posed by the Supreme Court, namely that “priority as between competing applications under the Resource Management Act 1991 for a finite resource should be determined through the exercise by consent authorities of a discretion”.

The Council recognised that the High Court would be bound by Court of Appeal authority to answer this question in the negative, but proposed (with leave from the Supreme Court) to ‘leapfrog’ the Court of Appeal by appealing the High Court decision directly to the Supreme Court. By this innovative means, the Council sought to effectively get the question back before the Supreme Court for the argument that had been denied by the abandonment of the proceedings in which it was first posed.

The Attorney-General and others sought, and were granted, a strike out of the application for a declaration. Simon France J articulated the main reason for granting the strike out as the fact that the proposition advanced by the Council as applicant was clearly untenable: “It avowedly mis-states the law as it has been known for ten years. It is so unarguable that at this point the applicant does not wish to argue its correctness, knowing that the Court in which it is bought is bound by precedent to reject it”.

The fact that the issue would become arguable on appeal in a higher court could not save it and it failed the test set out in Rule 15 of the High Court Rules that “the proceedings disclose no reasonably arguable cause of action”. Among other factors that Simon France J felt weighed in favour of this conclusion was the absence of any precedent for the process sought by the Council.

So it appears that there the matter might (finally) lie, though there is the possibility of an appeal from the strike out application. In the meantime, the questions will be left at the mercy of the policy (and, of course, political) process, for the time being, at least.
Reviewing the provision for access to minerals in conservation land

Michelle van Kampen, Senior Associate, Simpson Grierson

INTRODUCTION

The National-led Government’s goal to reduce the gap in per-capita income between Australia and New Zealand is well known. A programme of reviews and amendments to legislation has followed in an attempt to address real and perceived issues with the processes, costs and delays associated with doing business in New Zealand, and to make New Zealand more attractive for overseas investors.

As part of these reforms the Resource Management (Simplifying and Streamlining) Amendment Act 2009 came into force on 1 October 2009, with the intention “…to reduce delays, costs and uncertainty associated with the Resource Management Act processes, and thereby help to improve environmental, social and economic outcomes.” The Emissions Trading Scheme (ETS), passed into law shortly before the election last year, has also been reviewed and amendments proposed in the recently introduced Climate Change Response (Moderated Emissions Trading) Amendment Bill 2009, which has the objective, among other matters, to “reduce competitiveness impacts of the NZETS”.

Utilisation of New Zealand’s mineral resources is a further way that the Government sees can help close the income gap with Australia. As expressed by the Minister for Energy and Resources (Minister) in his opening address to the Australasian Institute of Mining and Metallurgy (AusIMM) conference in Queenstown in August 2009 - “as a nation we have neglected the contribution that the resources sector could make to our growth rate, levels of employment, and quality of life.”

With an estimated 70% of the Country’s mineral resources located in Department of Conservation (DoC) administered land, how access to these resources is managed is key. Three joint initiatives (between the Ministry of Economic Development (MED) and DoC) are on foot that review provision for, and the process to obtain, access to minerals in DoC administered land.

This article discusses these three joint initiatives, and the potential outcomes of the work being undertaken.

THE JOINT INITIATIVES

As is the case with any Crown-owned land, the Government has two distinct interests – the land itself (and its values eg. high quality environment, importance to tourism etc) and the Crown-owned minerals on or in that land. The value to be attributed to each of these interests will differ in each situation and needs to be assessed and balanced in each case.

In light of the Government’s view that New Zealand’s mineral resources are underutilised, and the fact that the majority of the country’s mineral resources are located in DoC administered land, the Minister and the Minister of Conservation have agreed that their staff will work together to balance the competing values for conservation land, and make progress on improving access to that land. This is to be achieved in three different ways:

1. undertaking a review of Schedule 4 of the Crown Minerals Act 1991 (the Act);
2. considering options for consultation with the Ministry of Economic Development (MED) on the reclassification of DoC administered land; and
3. making improvements to DoC’s processes for access arrangements.

Each initiative is discussed in more detail below.
INITIATIVE 1: REVIEW OF SCHEDULE 4 OF THE CROWN MINERALS ACT

The Minister indicated in his opening address to the AusIMM conference that he had “directed Crown Minerals to undertake a strategic review to determine areas possessing significant mineral potential that, with the removal of the access prohibition provided by Schedule 4, could through responsible mining techniques contribute considerably to our prosperity”.

In answer to Parliamentary questions, the Minister clarified that “the purpose of the stocktake is to identify areas of land in Schedule 4 where conservation values are relatively low but mineral potential high. The Government will consider removing those areas of land from Schedule 4 so that environmentally responsible mining can take place on very small sections within that land.”

He considered that there is “potential for more flexible arrangements that do not undermine conservation and environmental objectives” and that “…good mining practice can be reconciled with respect for the environment.” The Martha Mine in Waihi, and Pike River and Stockton coal mines located on the West Coast of the South Island were given as examples of where this had occurred.

WHAT IS SCHEDULE 4?

Schedule 4 of the Act lists the DoC administered land for which no access arrangement may be granted by the Minister of Conservation, other than for certain low impact prospecting and exploration activities. The effect of the Schedule is that all mining (other than underground mining with limited surface expressions) and most exploration activities cannot be undertaken on land included in Schedule 4 because access to the land cannot be obtained.

At present Schedule 4 covers approximately 34,500km² of land and 12,670km² of marine reserves, or around 40% of DoC administered land. The land in Schedule 4 includes national parks; nature and scientific reserves; wilderness areas; sanctuary areas; wildlife sanctuaries; Ramsar convention wetlands; and two specified ecological areas. It also includes all Crown conservation land in the Coromandel north of the Kopu-Hikurangi Road; adjacent offshore islands and the Hauraki Gulf Islands. Schedule 4 also includes most marine reserves.

Schedule 4 was included in the Act in 1997 as a result of two separate bills (the Protected Areas (Prohibition on Mining) Bill 1990 and Coromandel Hauraki Gulf (Prohibition on Mining) Bill 1995), and following extensive public and Parliamentary debate on the merits of closing certain areas to mining.

The outcome of the review is still unknown although the Government paper anticipates that recommendations for amendments to Schedule 4 will be made in a joint paper to the Minister and Minister of Conservation by 30 October 2009, and that there will then be consultation with affected parties.

AMENDING SCHEDULE 4

The process for amending Schedule 4 is set out in section 61(4) of the Act and provides that the Governor-General may amend the Schedule (ie. adding or deleting areas) by Order in Council made on the recommendation of both the Minister and the Minister of Conservation. Special provisions apply to areas declared to be ecological areas under section 18(1) of the Conservation Act 1987. No Order in Council may be made for an ecological area subject to Schedule 4 of the Conservation Act 1987, or in respect of Red Mercury Island (Whakau); Green Island; Atiu or Middle Island, or Korapuki Island.
Island (all of which are situated in the Mercury Islands).

Before making a recommendation the Ministers are required by section 61(5) of the Act to consult, to the extent reasonable practicable in the circumstances, with those persons considered to be representative of the interests likely to be substantially affected by the proposed changes to Schedule 4, or representatives of some aspect of the public interest.

POSSIBLE OUTCOMES OF THE REVIEW

As mentioned above, the outcome of the current review of Schedule 4 is unknown. Land may be added to the Schedule, and land may be removed.

While the removal of land from Schedule 4 leaves open the possibility of the Minister of Conservation agreeing to allow access to that land for prospecting, exploration and potentially future mining, it does not mean, as has been the implication in some of the recent media coverage, that a mine will automatically be established on that land. Several hurdles still need to be “jumped”.

First, a financially viable mineral resource needs to be located. Not every prospecting and exploration permit results in a mine. In fact very few do. The figures provided by the mineral industry indicate that only 1 in a 1000 identified mineral prospects are developed into a mine.

Second, an access arrangement needs to be entered into with every owner and occupier of the land. In the case of access arrangements entered into with the Crown, the Act requires the appropriate Minister to have regard to:

1. the objectives of any Act under which the land is administered;
2. any purpose for which the land is held by the Crown;
3. any policy statement or management plan of the Crown in relation to the land;
4. the safeguards against any potential adverse effects of carrying out the proposed programme of work; and
5. any other matters that the relevant Minister considers relevant.

The relevant Minister essentially has to balance the different values of the land in deciding whether to agree to an access arrangement. In the case of conservation land, the Minister of Conservation still has the ability to refuse to agree to an access arrangement.

Finally resource consents must be applied for and granted. A mining proposal (unless the activity is prohibited under the relevant planning documents) is to be assessed under the Resource Management Act 1991 in the same manner as any other activity.

So while removal of land from Schedule 4 removes the certainty that an open pit mine will not be established on that land, it does not mean that the converse is true. There are other checks and balances before a mining proposal can proceed.

INITIATIVE 2: RECLASSIFICATION OF CONSERVATION LAND

The second joint initiative being taken by DoC and the MED relates to consultation with the Ministry when reclassifying conservation land. The reclassification of existing DoC administered land has the potential to make it difficult (and in some cases essentially impossible) for access to be obtained for the exploration and mining of Crown-owned minerals in that land. It therefore has the potential to adversely affect the future development of the Crown-mineral estate and in turn the Crown’s interests as the mineral owner. As a result the Minister and Minister of Conservation have directed officials to develop options to improve processes around DoC consultation with the MED on conservation land reclassification.

At present reclassification of conservation land can take place under several different statutes including the National Parks Act 1980; Conservation Act 1987; Reserves Act 1977; Crown Pastoral Land Act 1998; and the Marine Reserves Act 1971. None of the statutes currently require the Minister to be consulted prior to public notification.

The Government papers released under the Official Information Act identify three options for improving consultation with the MED on the reclassification of conservation land. The options are that:

1. DoC notifies the MED of any DoC proposals for
classifying or re-classifying an area a month before they are publicly notified;

2. DoC notifies the MED of all DoC proposals for classifying or re-classifying land at the time they are publicly notified; or

3. DoC notifies the MED of all other proposals for classifying or re-classifying at the time they are publicly notified by the Department.

There are clearly positives and negatives for each of the three options. The first option is preferred by the MED as the potential effect on the Crown-mineral estate would be drawn to the Minister's attention prior to public notification and would allow inter-portfolio differences to be resolved before public notification. The second option is however preferred by DoC as it would be perceived as a more transparent process, but has the disadvantage of not allowing inter-portfolio differences to be resolved before public notification. The third option is a mid-way point between options 1 and 2.

The Government paper seeks Ministerial direction as to which option is preferred. To date the Ministers have not indicated their agreed preferred option.

**INITIATIVE 3: PROCESS FOR ACCESS ARRANGEMENTS**

The final joint initiative is the development of a new DoC standard operating procedure for access arrangements.

Any holder of a prospecting, exploration or mining permit issued under the Act must also enter into a written access arrangement with all owners and occupiers of the land (with the exception of minimum impact activities as defined by the Act and underground mining if it meets the requirements of section 57 of the Act). If the land is Crown-owned land, the permit holder must enter into a written access arrangement with the relevant minister.

A common complaint expressed by the minerals industry involves the inconsistency in approach between DoC conservancies when applying for access arrangements, particularly in relation to the length of time to process applications; costs (in time and resources); and transparency in the process.

In response, mandatory nationwide DoC standard operating procedures for processing access arrangement applications under the Act are currently being formulated and discussed with the minerals industry.

The Minister indicated in his opening address to the AusIMM conference that the new procedures will provide for:

1. improved clarity regarding the information that needs to be included with an application;
2. improved guidance on the factors that DoC needs to consider under its legislation;
3. specified fees and consistency in setting compensation; and
4. clearer timeframes for each step of the process.

It was the Minister's expectation that the new standard procedures would be operational in early-2010.

Transparency and consistency in the approach to access arrangements would assist both DoC and applicants.

**CONCLUSION**

In conclusion, three joint initiatives between DoC and the MED have been proposed which are intended to balance the Crown's differing interests for conservation land, and to streamline and standardise the process to allow access to minerals on or in that land. The outcomes of these initiatives are not known at this time. However, any proposed amendments to Schedule 4 of the Act are expected to be hotly debated as a balance between conservation and the environment, and the use of New Zealand's mineral wealth, is found.
To bundle or not to bundle?

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INTRODUCTION

"To bundle or not to bundle" is a question facing many planners and lawyers preparing or assessing resource consent applications. The current approach to bundling multiple resource consent activities together under the most stringent activity status derives from the Supreme Court’s decision in Locke v Avon Motor Lodge ((1973) 5 NZTPA 17). In that decision the Supreme Court held that there was no hybrid planning status and this has subsequently been held to mean that the most stringent status would apply (Southpark Corporation v Auckland City Council [2001] NZRMA 350). Although Locke has been cited with approval in subsequent decisions under the Resource Management Act 1991 (“RMA”) (such as Rudolf Steiner School v Auckland City Council (1997) 3 ELRNZ 85), there have been modifications to the approach taken to bundling. This article re-examines the case of Locke and the developments in the case law which have taken place since. To conclude, this article questions the utility in bundling activities and whether we have been left with a muddled approach which does not aid in achieving good resource management decisions.

THE EARLY CASES

In order to understand why we bundle, it is necessary to first revisit the case of Locke and examine the reasons behind the Supreme Court’s decision. The Locke decision was decided under the Town and Country Planning Act 1953. In Locke the first respondent had applied for a conditional use to add a six storey bedroom block to its existing, licensed tourist house called the Avon Motor Lodge. This extension would provide an additional 60 bedrooms and the intention was to have these in place before the 1974 Commonwealth Games. The appellants lived nearby and objected on the basis that there would be noise and parking issues which would adversely affect neighbourhood amenity. The proposed building complied with nearly all of the code of ordinances except that it did not comply with the side yard requirement on one side and for this reason it became a conditional use. The appellants introduced evidence on the effects of noise, parking, traffic and detraction of amenities but did not give evidence regarding the infringement of the side yard requirement and the effects of this infringement. The Supreme Court quoted from the case stated which said that the Special Town and Country Planning Appeal Board premised that an “increase in traffic and parked cars could not be a relevant consideration” (at page 22). The Supreme Court, in an oral decision given by Cooke J then went on to say:

The Board evidently acted mainly on the view that it was only concerned with any detraction from the amenities that might result from the non complying side yard. In my opinion that approach is not warranted as a matter of interpretation of the Act and the ordinance. I agree with Counsel for the City that a use is either wholly predominant or wholly conditional. The hybrid concept would add an unnecessary complication to legislation already sufficiently complicated and it would tend to limit rights of objection. In a case of ambiguity the legislation should not be so construed. On a conditional use application the fact that there is only minor non compliance with predominant use requirements is a relevant consideration, but it is neither exclusive nor necessarily decisive.

Therefore the Court held that the non-compliance with the side yard meant the entire proposal required conditional use consent and ordered that the matter be reheard by the Board.
The Rudolf Steiner case was decided under the RMA. In Rudolf Steiner a resource consent was required for the school hall and gymnasium as the hall would exceed the maximum height and therefore become a discretionary activity. The School appealed the conditions which restricted the use of the hall to be in conjunction with core school activities and imposed hours of use. The case on the lawfulness of the conditions was dealt with as a preliminary hearing. The School argued that the only breach related to the height of the gymnasium and therefore the only conditions could relate to the height. The School said that the conditions therefore infringed the Newbury test (Newbury District Council v Secretary of State for the Environment [1981] AC 578). The respondent said that based on Locke the subject matter of consent was the hall and gymnasium and not just the element of being overheight. The Court noted that “the relevant differences between the two enactments [the Town and Country Planning Act 1953 and the RMA] do not deprive the reasoning in Locke’s case of applicability to the present Act” (at page 87). Judge Sheppard went on to note that since the decision in Locke the RMA had created restricted discretionary activities. The Court said:

It is interesting that the Court has referred to a restricted discretionary activity as being a “hybrid concept” as the reference to hybrid in Locke has more commonly been interpreted to mean a proposal where there are activities with different statuses (for example see Southpark Corp Ltd v Auckland City Council [2001] 8 NZRMA 350 at paragraph 8). The Court emphasised the suggestion that in making submissions on the Plan the School had not sought to make the erection of the hall and gymnasium a restricted discretionary activity (at page 87). The erection of the hall and gymnasium was in fact a discretionary activity and therefore the respondent “was not entitled to restrict its discretion to the excess height of the building” (at page 88). The Court declined to make a declaration that the conditions were unlawful.

In the writer’s opinion there was a leap from Locke to Rudolf Steiner because the Courts had different concerns and different interpretations of what a hybrid proposal would be. In Locke the Court was concerned that the Board had restricted its decision making and had not assessed the adverse effects on amenity (a matter now enshrined in section 7(c) RMA). The Court held that the Board must consider the 6 storey addition in the round, it could not carve off the side-yard infringement and deal with that separately as that would create a hybrid proposal. In Rudolf Steiner the Court noted that the RMA introduced the concept of a restricted discretionary activity. The Court considered this to be a hybrid concept not envisaged at the time of Locke as it restricts the decision maker’s ability to consider a proposal in the round. As the activity in Rudolf Steiner was a wholly discretionary activity the Court held that it was lawful to impose conditions unrelated to the height infringement.

However there is an overriding and common theme amongst these two cases that in discussing “bundling” the Courts have been concerned with what the decision maker can assess in considering the proposal. However this is not so much a question of “bundling” together multiple resource consents of different status since in both cases but for the breach of the height or yard requirements the proposals were permitted activities. In particular, in the case of Rudolf Steiner it was not so much the fact that the consents were bundled, but that the decision maker had a full discretion, not an unrestricted discretion. Instead this is more a concern that the effects of the entire project were and could be considered.

**REFINEMENT OF THE LOCKE APPROACH**

Following on from decisions of the Court of Appeal in Bayley v Manukau City Council ([1999] 1 NZLR 568) and Body Corporate 97010 v Auckland City Council ([2000] 3 NZLR 513) which discussed occasions where the Locke approach may not be appropriate, the bundling approach was refined in the decision of Southpark. In that case Southpark Corporation wished to erect overhead power lines over private land and roads. Under the applicable plan installation of the power lines over private land was a permitted activity and installation over road reserve was a discretionary activity. In Southpark the Court said at paragraph 8:

…”section 76(3B) (inserted by section 40 of the Resource Management Amendment Act 1993) provides for a territorial authority to state in a rule a restriction on the exercise of its discretion on a discretionary activity. That introduced a hybrid concept of the kind referred to in Locke’s case as not then existing (at page 87)”
At least since Locke v Avon Motor Lodge Ltd (1973) 5 NZTPA 17 it has been established and accepted that in general there is no scope for hybrid planning status for a proposal, and that the more stringent classification applies to the whole.

In the writer's opinion this is a slight extension of the Locke decision because in Locke the remainder of the activity was a predominant use and did not require consent. Therefore it was not so much a case of applying the more stringent classification as simply considering the overall effects.

After discussing the previous case law and matters which the decision maker can legitimately consider, the Environment Court in Southpark developed the relevant principles into a three step test. The instances when the Locke approach is generally not appropriate are as follows (at paragraph 15):

One of the consents sought is classified as a controlled activity or a restricted discretionary activity; and

The scope of the consent authority's discretionary judgment in respect of one of the consents required is relatively restricted or confined, rather than covering a broad range of factors; and

The effects of exercising the two consents would not overlap or have consequential or flow-on effect on matters to be considered on the other application but are distinct.

This test has been discussed and applied in subsequent cases including Darby v Queenstown Lakes District Council ([2007] NZRMA 420). The approach taken in these and other cases where activities are bundled raises the question; does the bundling of activities offer much assistance to the resource management process?

WHAT USE IS THERE IN BUNDLING?

In Pigeon Bay Aquaculture Limited v Canterbury Regional Council (unreported, Environment Court, C179/2003, Smith J and Commissioner Howie, 17 June 2003), the relevant plan was structured so that the occupation of the sea bed with structures, disturbance or removal of structures and deposition of shell and other by-products of marine farming was permitted if it was contemporaneous or directly related to a discretionary consent granted for the marine farm structures. The Court considered that such an approach in the Plan was “fraught with difficulties” (at paragraph 10) and noted that “We have continuing concern as to this bundling and out of caution consider that we should examine the effects of all four activities (under section 104(1)(i) at least)” (also at paragraph 10).

Due to subsequent amendment to the RMA, 104(1)(i) is now section 104(1)(c). This provides that in considering an application for resource consent the consent authority must, subject to Part 2, have regard to:

(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

It seems that the Court in Pigeon Bay proposed to address this “fraught” issue by considering the effects of the permitted activities. It is noted that under the permitted baseline test, which has now been “codified” in section 104(2) RMA, the decision maker has a discretion to disregard the adverse effect of an activity if the plan permits an activity with that effect.

In Southpark the Court also considered its ability to consider the overall holistic effects of a proposal without bundling. In that case the Court held that it could consider the extent to which the radiation and visual effects of the line over the road (discretionary activity) were cumulative in addition to the effects of the line that passed over private land (permitted activity) (at paragraphs 22 and 30).

In most of the early cases discussed in this article there have been permitted activities as well as a need for a resource consent. The decision maker has been keen to ensure that the entire project can be considered in the round without artificially splitting off aspects of it. In the writer's experience, the the question of whether to bundle consents is often more complex than these early cases suggest. It will often involve a number of resource consents of varying statuses and no permitted activities. For example, in the Darby case controlled activity consent was required for visitor accommodation, multiple restricted discretionary activity consents were required because of infringements with the continuous building height rule and traffic and parking rules and a non-complying consent was required for exceeding the maximum height rule.

The Southpark test, as modified by subsequent cases, is a strict test
to meet on large projects as there will often be an element of overlap between the consents. This commonly leads to the activities being bundled together under the most stringent activity status as non-complying activities. Under the second limb of the threshold test in section 104D RMA, all the activities are then assessed against the objectives and policies of the relevant plan under which the non-complying activity arises (Tairua Marine v Waikato Regional Council Unreported, Environment Court, A108/05, Sheppard J, Commissioners Catchpole and Edmonds, 1 July 2005). However those activities which are true discretionary activities under the Plan should not be contrary to the objectives and policies of the Plan as these activities are properly envisaged by the Plan. It will then only be the “true” non complying activities which require assessment against the objectives and policies of the Plan. As the Court of Appeal said in Bayley v Manukau City Council in the context of notification, “It would make little sense to require a consent authority to notify an application because it may involve effects which the authority must then disregard at the hearing of the application”. In the same way there seems to be little utility in bundling activities together only to unbundle them when considering the activities against objectives and policies of the Plan.

Whilst some people may suggest that there is no harm in bundling and then unbundling, in practice the entire bundling question (and whether the Southpark test has been met) can occupy considerable time for planner and lawyers alike. This begs the question, if some applications are not bundled, and if some are bundled and then unbundled, what is the use of bundling? It is beneficial to consider proposals holistically, and this is recognised by section 91 RMA which allows notification or a hearing to be deferred pending further resource consent applications. However, where there are already multiple consent applications before the decision maker, and given the ability to consider broader matters under Part II or to consider cumulative effects, this will ensure that the entire proposal is considered in the round. There does not seem to be huge practical use in the bundling approach, and furthermore the question of bundling has moved away from the original question in Locke where the Court was concerned with the limitations on the decision maker’s discretion, to matters involving numerous resource consents and consideration of these matters against the objectives and policies of the relevant plan. It now seems that this concept of bundling has been extended and has become something of a muddle.

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CONDITIONAL ENFORCEABILITY - THE SCOPE OF AUGIER

The High Court's decision in *Frasers Papamoa Limited v Tauranga City Council (CIV 2008-470-465)* considered the scope of the “Augier” principle.

The Augier principle originates from an English planning decision involving the decline of planning permission for sand and gravel extraction. In that case, the applicant gave an undertaking to the Council offering an agreement to provide land for traffic splay to improve visibility at a nearby intersection. It was subsequently argued that the Council had no power to require compliance with the undertaking. The English Court held that where an applicant gives an undertaking, and the planning authority on appeal grants planning permission in reliance on it subject to conditions broad enough to embrace the undertaking, the applicant cannot later say that there is no power to require compliance with the undertaking.

In this case, the applicant owned a large area of land at Papamoa. It developed a proposal for comprehensive mixed residential and commercial development on sites comprising 741 residential units (reduced to 711 units in the Environment Court) and four commercial buildings. The proposal consisted of seven separate precincts for which individual land use consents were sought. The applications were heard together and the Council granted consent to five out of the seven applications. The applicant appealed the Council’s decision to the Environment Court.

In an interim decision, the Environment Court upheld the Council’s decision to grant five out of seven of the resource consents. In its subsequent decision on conditions, the Environment Court imposed a number of conditions by way of agreement. One of the conditions imposed had been strongly contested between the parties. It required the applicant to vest land in the Council for the purpose of widening an existing access way linking with Papamoa beach.

As part of its original proposal, the Applicant had indicated to both the Council and the Environment Court an intention to provide an enhanced access way to Papamoa beach to mitigate the effects of proposed over-height buildings adjacent to the access way, as well as to generally improve pedestrian connectivity. However, resource consent for the precinct adjoining the access way was declined by the Environment Court. The applicant considered that the proposal to widen the access way was similarly removed from the proposal “package”.

The Environment Court held that the intention expressed to provide the enhanced access way was an “undertaking” and was therefore an “Augier condition” and that the applicant was bound by its undertaking irrespective of whether the requirements of s108(10) regarding financial contributions were met. However, it did not analyse the Augier principle in any detail and considered the applicant’s argument, that it could not be required to provide a widened access way because the master plan as a whole had not been approved, was a question of reasonableness rather than an issue of jurisdiction. The Environment Court considered that if that was the applicant’s position, it should have been clearly and unequivocally spelt out at the appeal hearing.

In the High Court it was agreed between the parties that if the Augier principle did not apply, the Environment Court had no jurisdiction to impose a condition requiring the vesting of land for a pedestrian access strip as the condition was neither a financial contribution for the purposes of the RMA, nor a development contribution under the Local Government Act 2002. The legal issue was therefore whether the applicant’s offer to vest the enhanced access way was subject to the rule in Augier when the Court had declined consent for part of the comprehensive development proposal.
The High Court rejected any notion that there was an onus at law that an appellant must spell out clearly and unequivocally the supposed undertaking. After reviewing the Augier decision and decisions applying the principle in the New Zealand planning context, the High Court held that four elements are required to activate the rule in Augier:

a) a clear and unequivocal undertaking to the court and/or the other parties;

b) receipt of the grant of resource consents in reliance on that undertaking;

c) the imposition of a condition on those resource consents which broadly encompassed the undertaking; and

d) detriment to the Court or other parties if the undertaking is not complied with.

The High Court was required to determine whether the material presented in the Environment Court was capable of amounting to an undertaking to provide the enhanced access way otherwise than in the context of a grant of consent to the whole of the proposed development. It held that the Environment Court was incorrect in finding there was an undertaking falling within the Augier principle. It held that the Environment Court appeared to impose the access way condition on the basis that it was reasonable to do so, rather than any clear and unequivocal undertaking by the appellant. The question of reasonableness or even desirability of a condition falls outside the scope of the Augier principle. It further criticised the Environment Court for “pick[ing] through the appellant’s documents for the purpose of constructing what could be no more than an implied undertaking”. It therefore held that the Court had no jurisdiction to impose the condition.

While the Court ultimately found that no clear and unequivocal undertaking was made, applicants should take care when proposing conditions of consent to the Court and/or parties that are general in nature to avoid being tied to undertakings in circumstances where desired outcomes are not achieved. The decision could also create uncertainty for neighbours and other affected persons, who might rely on conditions proposed by an applicant which, if outside the consent authority’s jurisdiction, cannot be imposed without an Augier undertaking. Simply proposing a condition may not amount to an Augier undertaking. The decision was probably also complicated by the fact that 7 separate consents were sought, with the condition at issue linked to only one of those consents.

The defendants in this case (property owners of adjacent land) had opposed the subdivision of land by Omaha Beach Limited. In consideration for the removal of their opposition, a restrictive covenant was registered against the titles of the subdivided lots, restricting the rights of Omaha Beach Limited and any subsequent owner to object or submit on any resource consent or plan change with a 5km radius of their property (which would include the defendants’ land).

The Rodney District Plan 2000 was subsequently notified which significantly reduced the ability to subdivide the defendants’ land by way of imposing a more restrictive zoning. One of the defendants submitted and then appealed the decision to impose the more restrictive zoning. Subsequent owners of the covenanted land applied in these proceedings for a declaration that the covenant was unenforceable against current owners of the subdivided land because it was a covenant in gross. The defendants maintained that when assessed as a whole, and taking into account the intention of the parties, the covenant was clearly intended to benefit the defendants’ properties and as such bind future purchasers of the covenanted land.

In considering whether the covenant was a covenant in gross (ie did not sufficiently describe the benefiting land) the Court recognised that based on the ANZCO v AFFCO decision ([2006] 3 NZLR 351) a covenant
in gross does not bind subsequent purchasers. The Court considered it arguable that the covenant was not a covenant in gross but refused to make a final determination on this point. The Court then declined to make the declaration as there was no actual dispute between the parties at this time and the decision would affect landowners who had not had the opportunity to become involved. While the defendants’ land was proposed to be redeveloped and Environment Court proceedings were on foot to resolve the zoning of the land, the defendants were not seeking to enforce the covenant against any of the current landowners of the covenanted land. The Court’s final conclusion was that the validity of the covenant would be better addressed in the event that the defendants attempted to enforce the covenant in the future.

Unusually, the Court then went on to consider what it described as “potentially another argument open to the applicants”, that being the fundamental issue of whether the covenant was legally a restrictive covenant creating a burden on the covenanted land. Under basic property law owners have the legal right to full use and enjoyment of their land, including rights under the RMA to object to and submit on third party proposals that potential affect their use and enjoyment. The Court recognised that it has been accepted in the past that a covenant removing those rights affects the landowner’s ability to use his or her land, thereby burdening the land.

The High Court, however, set out a countervailing argument. A restrictive covenant has been described as a promise of the servient landowner to the dominant landowner not to do some act in relation to the servient land which they could otherwise do. The High Court, however, suggested it could be argued in this case that the covenant does not restrict the way the owner of the servient land uses their land; it does not prevent them from carrying out any activity or applying for resource consent in respect of their land, rather, it restricts involvement in applications relating to other land. As such, he considered it possible that the covenant may not be a burden on the servient land at all, meaning that the covenant was actually a covenant in gross unenforceable against subsequent land owners.

No-complaints (including no participation) covenants have become widespread in the resource management context as a mechanism not only in the settlement of disputes between landowners seeking to establish similar uses such as in this case, but also as a mitigation measure to deal with reverse sensitivity effects such as in the context of airports, ports, quarries, industrial processes etc. The High Court’s comments could be interpreted as casting doubts on the general use of these mechanisms in any of these contexts. In the authors’ view, the inability to object to the use of another’s land in a manner that affects the use and enjoyment of the objector’s own land, should rightly be considered a restriction on the servient land. However, it remains to be seen how this question is resolved, and when. An appeal to the Court of Appeal has been lodged, but it is unclear whether this aspect of the decision will form any part of legal argument.

SUBMISSION TO EXTEND BUSINESS ZONE - NOT ON

The High Court’s decision in Option 5 Incorporated v Marlborough District Council (CIV-2009-406-144) dealt with the familiar issue of whether a particular submission was “on” a proposed plan (a variation in this case), and therefore whether the Council had jurisdiction to grant the relief sought in that submission.

Variation 42 to the Marlborough District Plan sought to better enable and focus development in Blenheim’s town centre by creating a Central Business Zone (CBZ). The Variation slightly extended the CBZ to include certain vacant Council-owned land. A submission by Mr and Mrs McKendry on the Variation proposed the inclusion of significant further land, formerly zoned Urban Residential 1, within the CBZ (around 50 additional properties). The Council agreed with the McKendrys’ submission, and amended the Variation accordingly.

Some of the owners of properties affected by the McKendrys’ submission, including Mr Bezar, appealed the Council’s decision to the Environment Court. Mr Bezar raised as a preliminary issue that the McKendrys’ submission was not “on” the Variation. The Environment Court agreed and concluded that the submission should not have been considered. This decision was an appeal by Option 5, an incorporated society, against that preliminary determination.

Option 5 claimed that because the Council had proposed extending the CBZ area in the Variation, any
A submission seeking to further extend that zone was automatically “on” the Variation, and the Council therefore had jurisdiction to grant that relief. It claimed the Environment Court had erred in law by adopting a too narrow test for what is “on” a variation.

The High Court disagreed and upheld the Environment Court’s decision. It said (referring to the High Court in Clearwater Resort Limited v Christchurch City Council (AP34/02)) the question of whether a submission was “on” a variation, was subject to the consideration that:

... if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being “on”.

The High Court went on to hold that the issue of whether the submission was “on” the variation must be considered in the context of the policy behind the variation, the purpose of the variation and whether any interested parties would be deprived of the opportunity for participation. The approach in such situations is to be one of “scale and degree”.

Upon receipt of the McKendrys’ submission, the Council’s statutory obligation was advertise the availability of the summary of submissions, and to provide to each submitter a summary of their own submission. It was not obliged to inform property owners that a submission sought to include their land within any particular zone. Once the Council’s decision was made, many non-submitter owners would have no standing to appeal. If the High Court accepted Option 5’s argument, a submission seeking that hundreds of properties be included within the variation would equally be “on” the Variation. It rejected that approach and held that “scale and degree” will be important to provide justice in individual cases, particularly where affected property owners may be shut out of the process.

The High Court held that the submission was not “on” the Variation, and the Council erred in introducing the additional land into the CBZ. It also criticised the Council for not providing sufficient reasons for that decision as required by clause 10 of the First Schedule.

The decision is a largely orthodox application of the settled law on when a submission in “on” a variation. However, it is a reminder of the extent to which significant amendments to planning documents can be sought through submissions, rather than further plan change or variation processes, or exercise of the Court’s powers under s293.
Fancy being gazumped by the October edition of the Air NZ in-flight magazine! And a good review it was too, so perhaps I could stop here?

To quote that review, Castles in the Sand is – “…. a lament for what the author sees as the widespread despoliation of our seaside, as baches have given way to subdivisions and mansions, often placed too close to the water or on ridgelines so that they dominate their surroundings.” And that this is happening because “…. councils [are] often incapable or unwilling to control their proliferation or the damage they do.”

Strong words, considering that the vast bulk of our coastline is not developed nor under the scale of development pressure as the author portrays. Mind you, the example of the “inland” marina development at Marsden Cove, where a coastal fringe community has been cut in two by the entrance channel to the marina, provides graphic evidence that such extremes as the author uses to illustrate her points do indeed occur.

To quote the back cover, “A timely evaluation and call to action, Castles in the Sand concludes that it is not too late to change our management of the coast to ensure continued access for all New Zealanders, the protection of our natural heritage, and responsible, sustainable management.” However I found this to be a book of two halves – the first chapters dealing with the natural coast and historic influences of mankind up to the “bach-building” post-war era read more like a coffee table book, whereas the following chapters, whilst still ostensibly targeted at the wider public audience, specifically aim for a desired outcome, a new regime of coastal management via a Coastal Commission, Coastal Trust and a network of heritage coasts which, like national parks, could not be despoiled. But I found it hard to see just how this book would successfully influence developments (apologies for the pun) in the right direction. Certainly, the author’s proposals for a new management regime are well worth consideration at all levels of government and governance, but I have doubts that this book would be picked up by those interests and utilised accordingly.

Having said that however, this is a thoroughly researched, and extremely well written and illustrated book – including reference to the irony of the enforced removal of old (some claim “historic”) baches yet with the concurrent allowing of “rich-man” coastal mansions. A recommended read.
Book Review

REVIEW - “GOVERNING THE GULF, GIVING EFFECT TO THE HAURAKI GULF MARINE PARK ACT THROUGH POLICIES AND PLANS”

Reviewed by Tama Hovell, Atkins Holm Joseph Majurey

This book will be of interest to those who wish to learn about the governance and management of the Hauraki Gulf – Tikapa Moana. It will be of particular interest to local authorities, stakeholders and practitioners involved in reviewing and implementing Resource Management Act (RMA) policy and planning instruments relating to the Hauraki Gulf and its catchments.

As the title suggests, the book focuses on the relationship between the Hauraki Gulf Marine Park Act (HGMPA) and the RMA and provides practical guidance on how to integrate the HGMPA into RMA policy and planning instruments. A feature of the guide is that it does not focus on minimum legal requirements, but encourages proactive measures to achieve better environmental outcomes for the Gulf.

The initial scene setting chapters support a case for a bespoke legislation to manage the significant and highly valued resources of the Hauraki Gulf – Tikapa Moana:

Highlighting the importance of the Hauraki Gulf and its special association with various communities, including tangata whenua and the wider community.

Outlining the complex myriad of multiple authorities and stakeholders and overlapping statutes that govern the Gulf.

Outlining the various pressures on the Gulf, claiming that the “Hauraki Gulf – Tikapa Moana is probably under more pressure from human activity than any other coastal marine area in New Zealand.” Given the Gulf is on the edge of New Zealand’s largest metropolitan area, and houses the country’s largest international container port this is a fair statement.

This book provides a comprehensive outline of the HGMPA objectives in a way that is easy to read and understand. You gain a good understanding of the HGMPA as a statute that overcomes artificial boundaries and compartmentalising regimes, and focuses on the need to sustain and enhance the life supporting capacity of the Hauraki Gulf and the importance of relationships between people and the resources of the Gulf. It also provides a useful discussion on the case law and challenges faced in applying the HGMPA to date.

However, the aim of this book is to provide practical guidance on how to give effect to the HGMPA through the RMA policy and planning instruments. It achieves this aim via a methodical journey through the layers of RMA planning instruments and suggestions on how the HGMPA can be implemented at each layer. This book is also useful for understanding the relationship between the HGMPA and other legislation governing the Hauraki Gulf, as well as understanding the hierarchy and relationship between the different layers of RMA policy and planning instruments.
Book Review

REVIEW – “ENVIRONMENTAL AND PLANNING LAW IN NEW SOUTH WALES 2ND EDITION (2009)”

Rosemary Lyster, Zada Lipman, Nicola Franklin, Graeme Wiffen, and Linda Pearson

Federation Press

ISBN 978 186287 731 3

Reviewed by Trevor Daya-Winterbottom, Barrister

This book is simply the best legal textbook about environmental law currently in print. Although written from an Australian, and specifically New South Wales, perspective all resource management practitioners should have access to a copy of the book.

It is written by a leading team of legal academics with a track record of successful publication in environmental law, and public law. The style is clear and concise.

More particularly, the chapters are ordered logically – starting with legal principles before moving on to deal with specific sectoral issues (e.g. biodiversity).

Living in a period of major law reform NZ resource management practitioners will be keenly interested in comparative approaches to similar issues. This book provides that focus.

Practitioners will find the chapters on land use planning, development control, and environmental assessment of particular interest from a comparative perspective. Chapter 3 on land use planning, in particular, provides a useful introduction to environmental dispute resolution in New South Wales including the role of the Ombudsmen and the Land and Environment Court (LEC). For example, LEC practice and procedure has had a profound influence on expert evidence and witness caucusing in Australian and New Zealand specialist courts.

Chapter 7 on energy and climate law will be of particular interest to practitioners interested in emissions trading, and the performance and review of the NZ scheme. One specific criticism of the NZ scheme during passage of the legislation in 2008 was the size and effectiveness of the market. This chapter provides the basis for any research on Trans-Tasman harmonization of this area of law.

Allocation of freshwater resources is now a major issue in many NZ regions from Otago in the south to Waikato in the north. Again chapter 8 on water provides a useful overview of Australian approaches to allocation and priority.

Chapters 10, 11, and 12 deal with biodiversity, protected areas, and heritage. Biodiversity, in particular, has been a developing area of environmental law in Australia and chapter 11 reflects recent litigation regarding coal mining in New South Wales and Queensland. As a result these chapters will be of interest to NZ practitioners concerned about mining on the conservation estate.

Finally, the book finishes with a flourish and breaks new ground for a legal text on environmental law by including a comprehensive chapter on corporate social responsibility, and crosses the disciplinary divide between environmental law and company and commercial law.
If “bimbo” is limbo for blondes then “Regional Council” (and certainly “Canterbury Regional Council”) must be the near death experience of local government.

Yes, all right, that makes no sense whatsoever, but when you’ve been smoking rolled-up RMA Amendments all night the strangest things seem meaningful. Besides, we’ve got to start somewhere. And finish sometime too. Sooner rather than later for Regional Councils, it would seem.

Seriously! If Regional Councils were dinosaurs, they’d be scoffing their morning tea, blissfully unaware the massive asteroid EPA was hurtling towards them. And if Regional Councils were glaciers, they’d be melting so fast that hordes of journalists would be clambering over their diminishments, eagerly sharing predictions of doom and oblivion - complete with stock footage of belching chimneys and car exhausts, the supposed causes of this “We must go to Copenhagen” holocaust that, inexplicably, hasn’t turned up yet.

Apropos of that, next time some hand-wringing celeb predicts the imminent end of everything, grab a photo of the Eiger’s fearsome north face, carved umpteen gazillion years ago by a mile high glacier, and ask the lawless fretter what contribution factories and automobiles made to the climatic conditions of that period in the planet’s mercurial history.

But do it next year. Now’s not the time for vexatious debate. ‘Tis the season to be jolly, after all. And, since every ReMaLAn loves a good Karol, let’s have two this Christmas, with the second making the best of the worst - should it ever happen!

*Oh, jingle bells, jingle bells, jingle all the way. But please jingle sustainably.*

*So says the RMA.*

*Yes, mingle gels, mingle gels To shield the burning sun. Three cheers for Global Warming. It makes the summer fun!!*

Unless you’re a Regional Councillor. We shouldn’t forget the Regional Councillors, whatever we’ve been smoking. We started with them, after all, so it’s only fair we finish with them too. Unless the gummint does it first. Which is quite possible, as evidenced by numerous hints dropped at the hugely enjoyable RMLA Conference in October.

(Well, actually, the conference was in Wellington but as all obliged to work there will tell you, anyone trapped in that benighted hamlet would rather be in October. Or Paris, if they’re M.P.’s attending meetings in Brussels. Mind you, true romantics would ex-hone-rate anyone who put Paris before Brussels - you may sprout in the latter, but you only blossom in Paree!)

So, blossoms, there it is. “Apre moi, le deluge,” at least for Regional Councils. The Minister clearly wants to rain on their parade. Perhaps not this term, but after 2011 all bets are off.

Nick Smith hinted at as much in October. Launching the all-new, electric EPA he indicated it could soon assume many responsibilities currently bungled by Regional Councils - with what’s left over going to TLAs.

Clearly, Regional Councils (and Councillors) are an endangered species on the cusp of extinction. Their days are numbered. Dr Smith’s new EPA will destroy their habitat and his principal advisor, Mr G. Salmon, is happy for that to happen - or seemed so at Conference.

But not us. No! Every fan of obfuscation, delay, Draft Strategy Vision Discussion Documents and somnambulism must unite to rescue Regional Councils. And we will!! Let this be our New Year’s Resolution. Let us set aside an offshore island as a predator-proof reserve and begin an urgent breeding programme. Let us mate Regional Councillors with more hardy, agile creatures to produce a resilient hybrid. Let us put our shoulder to the Joint Interim Stakeholder Working Party’s Wheel and facilitate a Draft Integrated Management Policy Statement for extensive public consultation with steering parties engaging in the dialogic process over the next five years so that we do eventually get a sustainably optimised outcome for all concerned. Long live the ETS!!!!
Call for Contributions
Resource Management Journal

The Resource Management Journal's mission is to facilitate communication between RMLA members on all matters relating to resource management. It provides members with a public forum for their views, as articles are largely written by Association members who are experts in their particular field.

Written contributions to the Resource Management Journal are welcome. If you would like to raise your profile and contribute to the Journal, a short synopsis should be forwarded by email to the Executive Officer (contact details below) who will pass that synopsis to the Editorial Committee for their review. Accordingly, synopsis and copy deadlines are as follows:

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The word limits for articles are now max/min limits i.e. 2400 words means 2400 words, not more or less. Articles should be:

- Single page article - 550 words
- Four page article - 2,400 words
- Six page article - 3,600 words (to be by invitation from the Editorial Committee)

Please contact Karol Helmink for a copy of the style guidelines.

The use of footnotes or endnotes is discouraged. All references should appear within the text of the article.

Letters to the Editor are also welcomed.

Acceptance of written work in the Resource Management Journal does not in any way indicate an adoption by RMLA of the opinions expressed by authors. Authors remain responsible for their opinions, and any defamatory or litigious material and the Editor accepts no responsibility for such material.
RMLA Membership Form

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Annual Subscription (GST inclusive) – $150.00 ($70.00 for fulltime students) (This reduces to $70.00 from 1 April and to $35.00 for fulltime students) for a 12 month membership from 1 October. Please make cheques payable to the Resource Management Law Association of NZ Inc.

Resource Management Theory & Practice is published annually. The aim of the journal is to provide a vehicle for in-depth analysis of resource management issues relevant to the New Zealand scene. Subscription to the journal for RMLA members resident in New Zealand is $35 per year. Back volumes are also available. If you would like to subscribe to this annual Journal, or order a back issue, please tick the relevant box. An invoice will be sent to you together with the relevant Journal

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