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**REPORT 6**  
*(1215/52/IM)*

## **RESOURCE MANAGEMENT LAW ASSOCIATION REPORT BACK ON CONFERENCE**

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### **1. Purpose of the Report**

This paper is to back to Council on the Resource Management Law Association Conference attended by Councillors and officers.

### **2. Executive Summary**

Councillor Gill, Councillor Foster standing in for Councillor Wade Brown and various Officers attended different sessions at the Resource Management Law Association Conference. The Conference was held in Wellington on 2-3 October 2009. The theme of the Conference was *Capital Leadership – in the national interest- Challenges for effective environmental management.*

### **3. Recommendations**

It is recommended that Committee

- 1. Receive the information.*

### **4. Background**

The Conference explored how national and local interests could be appropriately weighed in resource management planning and decision making across matters such as major infrastructural projects, natural resource use and allocation and climate change. The leadership from the community, Maori, Industry, Local Government and Central Government is essential and the keynote speakers and workshops were aligned to reflect this view. The conference was held against the background of the first phase of the Resource Management Act being passed the previous day.

The Annual General Meeting of the Resource Management Law Association was held on the first morning.

## **5. Subjects Covered**

### **5.1. *Fran Wilde (Chair of Wellington Regional Council)***

Fran Wilde opened the conference. She outlined issues in the context of climate change and the challenges into the future. She spent some time explaining the establishment of the new committee that had been set up in The Regional Council. This consisted of equal numbers of Maori and Councillors and focused on joint management. There had to be agreement to challenging traditional methods. She also promoted the attractiveness of Wellington and the various attractions people could attend.

### **5.2. *Hon Nick Smith***

Hon Dr Nick Smith, National MP for Nelson, gave a presentation on the Resource Management Act – Phase 1. The bill had been passed the previous day. He talked about the need to streamline consents. The rationale for the Amendments - Councils were ill equipped to issue consents for major projects. It was necessary to streamline to lower costs and delays. The changes are not substantial but give better outcomes. The bill focused on timelines and would speed up decisions. Applicants and Submitters could request Independent Commissioners. Costs have been put up to stop frivolous appeals. He spoke about notification changes to give a better balance of participation. He then spoke about the Environmental Protection Agency – an independent body and the responsibilities it would hold. The Agency would have appointed people and would deal with major national projects. It would also have other duties such as preparing National Environmental Standards and the regulation of Emission Schemes. He concluded by talking about Phase II of the bill which would be passed in the middle of next year. This would involve issues that need consultation such as Urban Development, Designations and Agriculture.

### **5.3 *Al Morrison***

Al Morrison joined The Department of Conservation in 2002 and was appointed The Chief Executive and Director General in 2002. He spoke about the national benefits of conservation and the work done by the department. He spoke about the benefits of protecting ecosystems and the healthy return on the continuous practice of reserving. He gave a history of DOC, that it was set up to protect the environment against development. Changes occurred and DOC started creating places of sanctuary on off shore islands and other areas. Work has been done with a large number of volunteers. He spoke about the difficulties that DOC faced with financial constraints and treaty settlements and how there was now a need to work collaborately with business and Local Authorities. One third of the country is in DOC's hands. He talked about the branding of New Zealand as "clean and green" and how critical that branding is to the tourist business. This branding links straight back to conservation. To date it has been a lot of good luck but there needs to be proper commitment or the brand will be threatened. He also made it very clear that The Government were not interested in single governance bodies anywhere than in Auckland.

#### **5.4. Chief Judge Preston**

Chief Preston is the Chief Judge of The Land Environment Court in New South Wales. He has lectured in Environment Law over 17 years and the author of the first book on Environment law. He has been involved in a number of International Consultancies and capacity building including the Judiciaries of Indonesia, Kenya, China and Trinidad and Tobago. The Judge spoke on the functions of the Judiciary.

The three arms of government are partners in the goal of achieving sustainability. Each plays a leadership role complementing and supporting each other. The Legislative who make the regulations. The Executive who execute the regulations and the Judiciary who judge. He spoke about the functions of the Judiciary.

##### Finding the Law

Ascertaining which rule should apply as more than one rule could apply.

What principles must be applied?

If a new rule should be applied?

##### Interpreting the Law

Going back to case law.

Using ordinary English language.

Legislation having no idea of future circumstances.

Rules must use very general standards so as to be reasonable.

The issue of precedence.

##### Applying the Law

The duty of the court is to define the facts and intellectually find the truth.

Facts as found and the determination will fall out.

The Judiciary can provide leadership in the areas of substantive law, procedural law and court administration.

#### **5.5. Professor Catherine Redgewell**

Professor Redgewell is a Professor in International Law and a Researcher. Her energy focus has been on legal regulation of Energy Actors and Activities – ranging from Environmental Impacts to public participation and corporate accountability issues. Her presentation focused on how to change NIMBY to YIMBY (not in my backyard to yes in my backyard) and how to involve locals in the process at an early stage. She spoke about a case study involving a wood burner – that the lack of consultation and the lack of translating the benefits as to stimulate the NIMBY response. She posed the question of whether International Law recognises or requires Local Government in the formulation and implementation of an international response to global issues. Historically international soft tools ignored the role of Local Government, however the recognition of Chapter 28 of Agenda 21 adopted at the 1992 Rio Conference was a milestone. Although not a statutory document, it recognises many groups and the role in which cities and Local Authorities play in sustainable development and environmental protection.

### **5.6. Peter Neilson**

Peter Neilson was appointed Chief Executive of the Business Council in 2004. The Business Council is known for its work on promoting the use of market instruments to achieve environmental benefits at less cost. He was a former MP. Councillor Foster and I were attending a District Plan meeting at lunchtime. This ran through the time of this speaker. It is my understanding that he spoke on the importance of the “green and clean branding”. “The International drivers in business include buying just not on price but increasingly with a concern for the Environment and the social impact of what is bought. Environmental performance is moving from a cost of compliance to an opportunity to differentiate and increase market share. New Zealand’s 100% pure green and clean is embedded in how we manage the environment and the effectiveness of the RMA.

### **5.7. Phil O’Reilly**

Mr O’Reilly is the Chief Executive of Business NZ. Councillor Foster attended this session as I was still present at the District Plan meeting. Mr O’Reilly considered some basic issues in sustainable leadership.

- a. The Three Levels of Responsibility
- b. How Property Rights support Sustainability
- c. The Generational Implications of Development

He reinforced that business is responsible.

### **5.8. Hon Peter Salmon QC**

Hon Peter Salmon is a retired High Court Judge who acts as an arbitrator and mediator. He sits on the Pacific Islands Court of Appeals. He is a founding member of the Resource Management Law Association. He most recently chaired the Commission in to the governance of Auckland. He gave a report on the Auckland governance. The Government had acted swiftly to implement the Commission’s recommendations albeit that some of the recommendations had been dropped particularly the issue of Maori seats. He gave the reasons why the single Council had been implemented. There was weak leadership at regional level and poor contact with communities. There was an inability to make major decisions between affected bodies and the facing of challenges ahead. Central Government had placed emphasis on Auckland and the competitiveness with Australia. Strong leadership was critical. Submissions totalled 3000 and the Commission heard 750 of them. There had been wide consultation and The Commission had travelled to the Northern Hemisphere and Australia. Auckland will have one Mayor who will promote vision and provide leadership. He through talked through the structures of council which would be put in place.

### **5.9. Bernie Chote**

Mr Chote is the General Manager of Winstone’s. He has worked in the quarry industry for 15 years. He oversees the team of specialists responsible for the planning, consenting and implementing all facets of quarry work related to the RMA.

He spoke about the Winstone Company, that since its conception, it had been at the forefront of quarrying. He talked about the conflict that natural resources often occur in fixed and finite locations and the need to maintain efficient delivery close to the market and the associated environmental costs. He believed the industry needs a long term vision, doing more with less, energy efficiency and getting the most out of low grade and waste materials. He believed there should be an understanding and improving the biodiversity of source sites as sustainability factors help to establish trust and understanding in the community. He spoke about a tract of quarrying being done where there was a tract of regenerating bush. The company had laid down rat bait and an ecological corridor had been established and geckos relocated elsewhere. Engagement with the community is not easy. Perception versus reality is difficult to explain. There should be regular engagement. Strong relationships with Iwi should be fostered. He believed that the RMA had failed somewhat in this. The changes that were occurring in Wellington were correcting this. There had been a lack of mechanisms for Maori and there was a failure of taking up Iwi Management Plans.

#### ***5.10. Justice Joseph Williams***

Justice Williams was appointed Judge of The High Court in October 2008. Prior to that he had been appointed Chief Judge of The Maori Land Court and Deputy Chairman of the Waitangi Tribunal, then Chairman. Justice Williams began his speech on the story of Kupe. He bought to New Zealand its own culture. He also brought non positive effects on fauna and flora as well as the moa. He brought with him the native rat and the native dog. However, the values of Hawiki also came with him. New names emerged, Kiwi, Tui, Pohutukawa. Creative arts emerged reflecting the surroundings eg Koru. Maoritanga had begun. Cook then arrived and following the British with Christianity and the British Law. With the arrival of the British, came maritime shipbuilding, the first stage of the Industrial Era, disease, weapons and an entirely different way of looking at the environment. It was not the kinmanship of the Maori. The British wanted a south sea colony and the Westminster system of law making was established. Maori remained on the margin even though the Treaty was signed. Land had been taken and numbers of Maori declined. Cook's people did not remain British – they became Pakeha – a distinct people. Two founding people in the 21 Century - as one. The RMA was the first attempt to align two cultures side by side. Integrating these cultures further will mean better outcomes. Collective decision making is apparent.

#### ***5.11. Paul Majurey***

Mr Majurey is a partner in Atkins, Holm, Joseph Majurey Limited, having specialised in environmental and Treaty Law. He has been counsel in a number of major cases from the Privy Council case of Maguire in which Rt Hon Lord Cooke of Thorndon affirmed the place of Maori provisions in the RMA to the first wind farm case before the Environment Court. (Awhiti). He is a member of the Environment's Technical Advisory Group on the reform of the RMA and a member of the Minister of Treaty Negotiation's Independent Review Panel on the co management of the Waikato River. He talked about the history of planning as it affects Maori values and how the RMA has included and evolved

Maori values. It has brought about early involvement through consultation, attempts to align RMA matters with Treaty issues through to Maori Applicants involved in Environment Court proceedings through the former. He talked about the tools of cultural indicators (water, discharge and allocations). Co management will be the future direction. The Waikato River will be the test for such an arrangement.

#### **5.12. Guy Salmon**

Mr Salmon is the Executive Director of the Ecologic Foundation. Together with collaborators at the University of Helsinki, he recently led a four year comparative study of environmental governance in NZ, Finland, Sweden and Denmark. He is closely involved in current efforts to establish a collaborate dialogue between environmental and primary sector interests. Mr Salmon spoke about the model of collaboration. He advocated removing regional councils and replacing them with an Environmental Protection Agency. This would be a governing body independent of politicians. He talked about a model of collaborators who found the solutions for themselves and would achieve consensus. He believed that by vesting most policy making to local and regional government entities that it can be quite unrepresentative of their community eg The rural sector has been captured by the farming sector. National Policies have not worked as there is no enforcement. Regional Councils are not protecting waterways, lakes or Treaty Claims. He warned that single councils could lead to fragmented staff. By leaving most policy making with politicians we run the risk of failure in achieving the stated objectives of the RMA.

#### **5.13. Stephen Keim**

Stephen Keim has been a senior counsel for the state of Queensland since 2004. Mr Keim has also had a consistent interest in human rights and access to legal issues. He has been the President of the Queensland Council for Civil Liberties, President of the Legal Aid Commission in Queensland, a member of the Anti Discrimination Commission and a Hearing Commissioner for the Human Rights and Equal Opportunities Commission. “The performance of our political leaders on the issue of climate change has left a lot to be desired. Short term political considerations have prevented most politicians from telling the true story of climate change and the social and philosophical adjustments that we as communities have to make to come to terms with reality and to create a viable future, perhaps for ourselves, but certainly for our grandchildren”. Mr Keim then went on to discuss the work of two scientists – Dave Keeling who solved the problem of reliable carbon dioxide levels in the atmosphere and Jim Hansen, the NASA climate modeller, who has repeatedly blown the whistle on the true dimensions of climate change. He finished talking about Aubrey Meyer, an author, climate campaigner and green party member.

#### **5.14 1<sup>st</sup> Workshop – Community Involvement in the RMA – a Valuable Contribution or a Necessary Evil**

The panel discussed the success and failure of community involvement in the RMA consisted of Sally Baber (Regional Councillor), Di Buchan (Consultant) and Jenny Jorgenson (Chair of Makara Guardians). Jenny Jorgenson’s

presentation consisted of her experience with Meridian Energy and Wellington City Council in relation to the Makara Wind Farm and how unsatisfied she was with the Process and the Decision. She was unhappy how Meridian Energy had gained support from everyone and how the whole process undermined both the essence of the RMA but also the Principles. She believed that there had been no meaningful consultation, that Meridian Energy had denigrated the Makara Community. She believes the final decision of the Environment Court has seen all the concerns of Makara realised. Sally Baber spoke about how hearings take place. She pointed out that Councillors were accredited. There was always the need to bring balance and make sure everyone was heard. She spoke on how most panellists take into account that most applicants have more resources than submitters. She made it clear that all processes, she has been involved in have been fair. Di Buchan talked about consultation and the principles of consultation. She believed that meaningful consultation should take place early in the process even though it was not required under the RMA. This was followed by a question and answer session.

#### **5.15 2<sup>nd</sup> Workshop – update on RMA**

Dr Nick Smith had covered this subject in his keynote speech. The councillors had also been briefed by Phillips Fox on the same subject. I had another community engagement in the Eastern Suburbs so decided not to attend.

### **5. Material for Circulation**

There was very little handout material other than material on the profiles of practitioners.

### **6. Benefit to Council/Elected Members**

The Conference was an opportunity to network with colleagues and practitioners of the RMA and hearing their experiences. The conference was held against the background of the Amendments and challenges ahead. This may have limited the scope it covered. Nevertheless, it was worthwhile to attend.

Report prepared by: Councillor Leonie Gill