
REPORT 5
(1215/52/IM)

2006 RESOURCE MANAGEMENT LAW CONFERENCE: REPORT BACK

1. Purpose of Report

To report back to all Councillors on the Conference including the subjects covered and an opinion of the value of attendance by Elected Members.

2. Details on the Conference

The 2006 Resource Management Law Association Conference was held in Auckland, 5-7 October 2006 and was titled “Pathways to Sustainability”. It is recognised that environmental issues involving the capacity of the earth’s resources to sustain life is vital and there is a need for sustainable management or development of natural and natural resources. The conference first introduced the concept of sustainable development in the international arena, along with its development in international law and then focussed on two pathways. The first involving the traditional planning or regulatory framework whereby decisions are made at central or local government level about how these issues are best resolved, so as to ensure a sustainable outcome. The so called “Smart Growth” approach is an example of this pathway. The second pathway is the market or “laissez faire” approach whereby individuals are enabled through maximising freedom of choice to develop innovative, flexible and diverse solutions to environmental issues on a more voluntary basis. I was the only Councillor in attendance and Warren Ulusele was the only officer.

3. Subjects Covered

KEY SPEAKERS

Nicholas A Robinson – Teaches Comparative and International Law at Pace University School of Law and at the Yale Schools of Forestry and Environmental Science and of Law

Origins and Implications of Sustainable Development within International Law

The speech centred on the history of sustainability development and how it has become the motivating policy and practice of public international law and in the national development regimes of many states. The relationship of nature was historically linked to biblical times until the 19th century. Darwin and Marsh changed these ideas. Darwin wrote about the laws of evolution, Marsh concluded that humans had altered the natural landscape. His book talked about sustainability to yield. At the end of the 19th century there was a realization that yield had to be sustained. There was a concern that wood was running out.

In the USA Roosevelt convened a meeting of Governors to work on managing resources in a sustainable way. In the 20th century, The International Union for the Conservation of Nature and Natural Resources featured sustainability norms for its programme 'Caring for the Earth'. The United Nations World Summit on Environment and Development embraced the core concept in its "soft law" instrument 'Agenda 21' in 1992. In 2002 The United Nation World Summit on Sustainability assumed collective responsibility to advance and strengthen pillars of sustainable development – economically, socially and environmentally – at local, regional and global level (The Johannesburg Declaration). States have embraced many of these 'soft laws' principles as binding obligations through ratifying 'hard law' multilateral agreements (MEAs). Aside from incomplete public international law for energy most environmental norms for sustainable development are embodied in hard law. Intergenerational sustainability is important (The Ozone Hole is an example). What remains is a sufficient number of states to ratify and implement these obligations before they can be considered international law for biosphere. As scientific studies report deterioration in many environmental indicators, the urgency to make international law norms more effective grows. In NZ the Resource Management Act and the Local Government Act is a way of implementing soft law principles. Traditional law 'sanctions' will not bring around the observance of agreed norms; rather environmental crisis will strengthen the currently weak international legal norms for cooperation. The resurgence of environmental cooperation will emerge in new international rules such as managing coastal zones management or managed habitat evolution. (Rebuilding oyster beds, restoring mangrove areas, measuring greenhouse gases) The Earth Charter is guidance to climate change and should be in hard law. Katrina has changed the views in the USA. These legal developments foreshadow fundamental shifts in public international law into the future – we must comply with MEA obligations, because if we don't we will suffer losses. We must make linkages globally now.

Wolfgang Kasper -Emeritis Professor of Economics of the University of New South Wales – Senior Fellow with the Centre for Independent Studies on Australia – New Zealand free market think tank

The Environment, Human Creativity and Sustained Prosperity

The speech centred on the approach that the free market was the way to sustainability. Man and nature have always been in conflict. Human numbers have increased with the equivalent capita. However improving conditions such as clean water and sanitation have followed. He believed that humanity's age old fears are now being revived with regard to natural resources, living space and climate. He believed these are being exploited to control the populace. He called the people echoing these beliefs as doomsayers who are relying on "fuzzy and morally dubious concepts in particular 'sustainability' and 'precautionary principle'". He believed the doomsayers can create an atmosphere in which economic freedom is repressed. Systems analysis has taught us that planned, top –down choices often have unintended, deleterious side effects. The agents of Government benefit from public choice and that is why it is on the rise. Government regulations are taking away freedom (Labour contracts). Global warming has created controls over many aspects and has been promoted as the second coming. The only agreement is from Government climate people not from the private sector. There is data that disputes the findings but climate change is being used to control. Lawyers have made a lot of money from the Resource Management Act. The importance of personal freedom should not be taken away (we are not running out of resources). His speech then went on to talk about the doomsayers who are the

entrepreneurs, who risk innovations and overcome emerging scarcities. Innovative entrepreneurs can only operate in a framework of appropriate institutions: secure property rights, free contracts and the rule of law (economic freedom). He talked about the two opposing world views. Doomsayers with a preference for public choice versus Doomslayers with a preference for innovation and markets – that is now reflected in New Zealand's approach to the Kyoto Protocol, as against the open-ended approach of the Asia – Pacific Partnership (AP-6) in which Australia, the United States and the major Asian economies now cooperate. The Doomsayers applaud the former, the Doomslayers applaud the latter.

**Prue Taylor LLB, LLM(Hons), LLM (Environmental &Energy)
-Teaches Environmental and Planning Law at Auckland University**

Pathways to Sustainability – The Path less Travelled

The speech focused on two particular pathways – market or “laissez faire” and regulatory intervention. The presentation argued that the state versus market debate had failed to address the key issues of sustainability. Reliance upon either, or a combination of both had not achieved more than a slow down of some of the worst environmental impacts of economic activity. She gave examples of recent evidence of the ecological destruction in the pursuit of economic growth and argued that law and states had not yet addressed the issue of ecological limits to growth. Ecosystems were trending downwards. Increasing food production has consequences - using more water and the availability of land. More land has been committed to crop land. There are already effects of climate change. Very little has been done since the Johannesburg Declaration on Sustainable Development 2002. There should be a commitment to act ethically. There are fundamental constraints that need to be taken account of. The earth has a finite limit. Everything is interconnected. Sustainability is the new organisational tool. If greed was not in force there would be enough for everyone. Wealth takes away resources. The overall aim should be to present a case for ethically reflected sustainability law. There is a need to restore ecosystems that have already been destroyed. She spoke at some length about the “Earth Charter” and how this should be the charter in making all decisions and achieving the ecological vision.

Wendall Cox - Principal of Wendall Cox Consultancy (Demographica) an internal public policy and demographics firm. Co author of the Demographica Housing Affordability Study

How Smart Growth Policies threaten Economic Growth and the Quality of Life

The speech challenged the conventional wisdom favouring smart growth policies, that the so called problem of suburbanisation has been exaggerated and that smart growth policies do not achieve their objectives or a better society. Smart Growth has been adopted in a number of urban areas especially in New Zealand and Australia and has been used to stop urban sprawl by land use controls and policies that favour public transport over cars. He believed that there is limited scope for reducing car use. He talked about public transport being only 5% of the problem. Public Transport is slower and only takes people to the core of a city. Cars take people to where they want to go. He believed it was not sustainable in the long term. Portland has traditionally been shown as the wonder city but people are now moving out of the urban growth area. It has now shown that the figures there using light rail have fallen from 8.4% to 6.3%. He believed there had been a focus on urban planning only looking at the core when we should be looking at the suburbs. All growth in Japan has been in the suburbs. He talked about how there is not a shortage of land in New Zealand and that we are different to the rest of the world in population and capita. He believed economic

success is achieved by home ownership and reaching jobs easily. Jobs follow people not the other way around. He believed that housing affordability would be achieved without smart growth and with relaxation of land use. We should be facilitating where people want to live not tell them where they should live. He believed that with the present regulation the next generation would only be able to inherit property. He talked about Infill being degradation in Sydney where the infrastructure was not built for densification. He also made a link between obesity and densification. He talked about how sprawl dilutes traffic congestion whereas densification increases traffic congestion. He believed no one has looked at the economics and have consequently destroyed affordable housing.

Dr Paul Mees - Teaches Transport Planning, Metropolitan Planning and Planning Law at the University of Melbourne

How Transport and Land Use Planning can reduce Automobile Dominance, even in Dispersed Cities

The speech focused on the need to reduce travel and shift travel to more environmentally friendly modes. He used the examples of Vancouver, Canada and Zurich, Switzerland, places where the volume of traffic is lessening despite a growing population. He believed we should take advantage of inner – city living and create higher urban densities without making sure that these developments also promote walking and public transport options. As well as focusing on residential density it is just as important to carefully plan trip ‘destinations’, employment concentrations, retail centres, universities etc. He made the point that more people are now using public transport. He talked about Travel Demand Management, Congestion Charges. He believed that to use best practice we must adopt transport policies to complement “transit – supportive land use. He illustrated the conflict between land – use planners who promote reduced car travel and the transport planners facilitating it by expanding motorways and while land – use planners promote ‘transit – oriented development’ these developments are usually served by poor public transport. He believed that land use planners need to continue to promote transit supportive urban forms but they need to be more involved in transport decisions. He was convinced that public transport should be run by public bodies as there is accountability with this model.

WORKSHOP Urban Sustainability

In the Auckland region, the population is expected to rise from 1.3million people to 2.1million people in 2050. Accommodating this growth through sustainable development is the challenge when faced with protecting resources such as the interface with the Hauraki Gulf, Waitakere Ranges and productive rural land as well as considerable traffic congestion and New Zealand’s most expensive real estate. There was a need to contrast alternative methods of sustainable urban growth and development in that context. Anne Magee from the Regional Council reviewed the “Sustaining the Auckland Region Together” 100 year planning framework currently under development at the Regional Council, along with integrating land use and transportation driven by the Local Government Act 2002. Craig Batchelar, a planner and Senior Principle from Boffa Miskel Ltd in Tauranga spoke about “Smart Growth” which was initiated in the Bay Of Plenty in 2001 in response to community concerns about growth and coordinated arrangements to meet that growth. A fifty year vision focussing on natural and cultural environment, lifestyles, social needs, economy, infrastructure and the public process of managing growth was initiated. The implementation plan brings sustainability into policies and plans across three partner Councils. There are also unique attributes that reflect local communities. This includes

the adoption of the principles to a provincial, rural setting and a role for Tangata Whenua in both resource protection and development. A major benefit of the strategy has been for the Community to understand the consequences of growth and development in the Western Bay of Plenty. Owen McShane, Director, Centre for Resource Management Studies was the last presenter. He did not believe that Smart Growth had delivered all it was meant to and although it had been presented as the only alternative to “carpet sprawl” he believed there were other alternatives. He proposed the alternative of “Green Growth” – a catchment management approach to the development of small rural hamlets in rural areas and near the coastlines. He talked about Kaiwaka and the work of Denis Scott presented to the Kaipara District Council. These are about hamlets within areas of extensive biodiversity, restoration and small farming, without depending on grazing animals to manage large area of pasture. The other alternative was based on “The new Suburbanism” a concept of small new towns around the large cities. This approach envisaged mixed use, diversity of housing and open space. Both models accepted the ongoing use of motor vehicles and roads. He believed that there was no evidence that this would not remain the major form of transport into the future.

Day 2

The morning session began with an improvised Radio Show led by Chris Laidlaw. It was modelled on his Sunday show – The Theme was Pathways to a “Sustainable Energy Future”. On his panel he had Mark Dunphy, lawyer, founder of Greymouth Petroleum - Brian Leyland, an electrical and mechanical engineer specialising in power generation and power systems – John Blakely, a research fellow at Mt Albert Campus in Auckland. His work has included consideration of NZ future energy resources and the potential of hydrogen as a transport fuel. – Cath Wallace, a senior lecturer at Victoria University. She has a particular interest in climate change and specialises in environmental, natural resources and public economics and policy. The panel talked on the future of sustainable energy, the problems facing New Zealand and possible solutions. It was conducted as a chat show between the panellists.

WORKSHOP Sounds like Conflict

This workshop concentrated on noise issues and was chaired by Richard Compton – Consultant in Resource Management and a Civil Engineer. The first speaker was Lisa Rossiter, The National Standards Manager with Transit. Transit’s vision is from conflict to compatibility. Tensions arise between the needs of transport providers and the desire of individuals to develop their land. Sensitive activities close to transport corridors can result in communities experiencing adverse effects such as traffic noise, air pollution and loss of amenity. These effects are from poor integration between land use and transport. They compromise health and well being and jeopardise essential transport links. Transit can not eliminate effects on its own. It has two ways of minimising effects to a reasonable extent – (a) minimising emissions from highways and improving the quality of highway corridors (eg Transit’s Noise Guidelines) (b) minimising the susceptibility of new land use to the effects of highways (eg Transit’s Reverse Sensitivity Policy). Transit also believes that Land Use Regulators, Vehicle Regulators, Property Developers, Land Owners and Road Users all have a role to play. Shared responsibility is essential. Buffer zones are not likely to be an option. The application of performance standards (internal noise levels) is more appropriate. Michael Sullivan a senior Acoustic Engineer gave a presentation on what had occurred in Wellington City where music noise complaints from stereos in nearby residential dwellings and also from commercial bars/entertainment venues in the CBD had represented a huge proportion of noise complaints. He presented survey results from

Wellington City Council and then went on to talk about Plan Change 23. This plan change to Wellington City Council District Plan has resulted in building envelopes having improved noise capabilities for new developments. He suggested there were limitations to this approach, however, as there was nothing that could be done for apartments constructed prior to 2003. He talked about 'good practice' from the United Kingdom where there is a move to limit low frequency noise. He was not able to answer a question on Plan Change 23 so I assisted him as I had been part of the hearing committee for this plan change. Jon Styles an Acoustic Engineer had done most of his work advising Local Authorities. He talked about ways Local Authorities are required to control the emission of noise using a variety of tools and policies. The most common tool was the District Plan which generally stipulates numerical noise limits for different zonings. Local Authorities are required to plan the location and design of noise sensitive activities as well as noise generating activity to ensure growth and intensification remains sustainable. When considering sustainable development from an acoustic perspective it is important that the ambient noise levels do not increase more than is reasonable, e.g. if two developments are approved, each complying with the District Plan Noise Limit, the result will be a 3 decibel increase in the overall noise level in some neighbouring sites. This should also be considered in the context of higher traffic flows. Chris Day an Acoustic Engineer was the last presenter. He started his presentation with a noise clip which he stated was from a deck of a multi unit development next to Wellington Airport and then a noise clip from the inside of the insulated development. There was a clear difference. He concluded his presentation with a film clip from the film "The Castle". He then touched on the noise issues surrounding Western Springs raceway and compared it to issues in the Air Noise Boundary at Wellington Airport. He talked about the requirements to insulate within the Air Noise Boundary and that in fact insulation did little as people still wanted to open their windows. It was apparent that he did not think there should not be further residential development allowed within the Air Noise Boundary. At the end of his presentation I asked him if his noise clip had been taken from Maupuia and that this was probably the worst scenario he could get within the Air Noise Boundary as it was in line with the approach/take off. I also pointed out that my own property could be likened to the house in "The Castle" and noise had never been a problem for me or my neighbours.

OTHER WORKSHOPS

Rural Sustainability

As Agricultural production converts and/or intensifies to compete in the globalised economy, our environment especially the waterways are placed under increased pressure. Nitrogen levels in streams are at an unprecedented level. During this Knight Merz, Shane Lodge of Fonterra and Barclay Rogers of Chapman Tripp examined the potential pathways to agricultural sustainability and considered ways of lessening environmental impacts of agriculture.

DIY Harbour Management

This workshop chaired by Buddy Mikaere explored various options being used by iwi and interested groups to protect and manage their harbours. Te Uri o Hau environmental manager, Juliane Cheltham talked about how the iwi is working on an integrated management plan for Kaipara Harbour with the assistance of Landcare Research. Peter Yardley provided a fisherman's perspective on the Kaipara Harbour's Management Plan and in particular how the quota system is not working. Roger Grace, a marine ecologist addressed methods of monitoring and restoring the fishery to a sustainable level. Fred Lichward shared the experiences of the Raglan residents who have been working on riparian and coastal rehabilitation at Raglan Harbour and told of

their experiences of taking the initiative, managing funding, inspiring landowners and operating their own nursery.

FIELD TRIP Get Smart Presenter Bruce Harland, Manukau City Council

The trip started by having early afternoon tea at the Buddhist Temple in Manukau. The temple is the biggest in New Zealand and well worth a visit. On entering the courtyard, one could believe you are in Thailand.

The Flat Bush area is the last significant “greenfields” area in Manukau City and has provided an opportunity to plan for a new town from an early stage, allowing for an integrated approach in promoting the sustainable development of the city. The area consists of approximately 1700 hectares of land. It is estimated that a population of 40,000 people will be reached by 2018. It has been designed to create a variety of high – quality living and working environments and community facilities, with an emphasis on the sustainable use of a scarce regional and district land resource, using environmentally sustainable design and providing a transport system that provides a range of travelling options. Flat Bush also has a strong emphasis on parks, squares, roads and public spaces.

The Flat Bush area is located immediately to the east of the existing urban development of Manukau City and consists of a basin flanked by steep to moderate hills, the high point some 300 metres above the basin area. Half of the catchment has been identified and protected by Manukau City Council for future urban purposes since early 1970’s and has resulted in the retention of pastoral land uses with little fragmentation. The other half, mostly into the hill areas has been identified as urban purposes since 1997 and therefore seen a considerable amount of fragmentation into “lifestyle” blocks over the last 30 years.

Manukau City Council began the process by community workshops which led to the formation of the Development East Tamaki Concept Plan. This was then followed by Variation 13, into the Manukau District Plan.

Key Features

- A new community containing at least 40,000 people.
- A new Town Centre containing approximately 18ha of land and is intended to sit adjacent to the developing 92ha Barry Curtis Park (\$32 million has been committed to the development of this park over the next ten years). The park will include an outdoor amphitheatre and a cultural lawn for large scale events. Manukau City Council owns the land identified for the new Town Centre and it is envisaged that the centre will be the focal point for the new community. The Council has recently set up Tomorrow’s Manukau Properties Limited to facilitate the development. It is planned to contain a diverse range of activities including residential, retail, office, community, cultural and recreational activities. The Council is committed to building a library, a swimming pool and recreation centre in the town. The Town Centre will be characterised by a compact pedestrian friendly environment, including a “main street”. There will also be the opportunity for living in an “apartment lifestyle” without moving to central Auckland.

- Protection and enhancement of at least 20km of the natural gully/stream areas and their integration into the urban surrounds, including one sided roads that open onto these “green fingers”. This is to provide walking opportunities and all households will be within a five minute walk of a “green finger”.
- Five Neighbourhood Centres are proposed. They will be strategically placed throughout the area on main roads where public transport options and accessibility will make them most viable. Neighbourhood Centres are envisaged to be developed around the principle of being pedestrian friendly “mainstreet” based environment. Centres are likely to include residential apartments above shops.
- It is anticipated that residential densities will be highest closest to the Town Centre and Neighbourhood Centres, around Barry Curtis Park and along arterial road networks.
- Connectivity and permeability of the street systems are to be maximised in order to promote convenience, walkability, social interaction and to enhance user safety in the street and security of property.
- Provide cycle lanes on the main road networks from the beginning of the development in order to provide safe cycle options and genuine alternative transport options.
- Encourage along the main road corridors a wide range of activities including non – residential activities. These mixed use corridors will provide opportunities for residential, employment, local convenience shopping, activities such as medical centres and will support public transport options.
- A range of residential housing types are envisaged including detached or semi detached dwellings, terrace housing, townhouses and apartments. Overall the densities are higher than those found in traditional suburban areas. This is necessary to utilise a finite land resource more effectively in light of a rapidly growing population and to encourage an urban pattern that can support alternative forms of transport including walking, cycling and passenger transport. Higher average densities will also result in a better range of services being available locally such as shops, health and welfare facilities, recreation facilities and child care.
- Buildings should positively address the street and other public spaces by providing good functional relationships to the streetscape and opportunities for informal surveillance (limiting fence heights, limiting garage door sizes on to the street and blank walls).

The drawbacks I observed from this development were that there were limited public transport options in place and the density of dwellings was a theme I would not like to see repeated in Wellington. Dwellings had very small outside areas and relied on public space. Most dwellings were designed alike, mainly rows of brick. This pattern was repeated in Te Atatu where I also visited another new development in my own time. I also visited Sylvia Park, the new retail area. It has a ring road round it and is still in

construction stage. Every business, retail area is gigantic in size. Flying back into Wellington, I was surprised to find out just how much I missed the green hills and the suburban environs.

OTHER FIELD TRIPS

Harbour Dreams – Waterfront Cruise

Participants received a briefing on a draft plan change for the redevelopment of the Western Reclamation/ Wynward Point, located on the western edge of Auckland's CBD. The focus was on matters such as shape, scale and form of the development-including the amount of public and recreational space to be provided, the extent of the residential activity and transport integration. Participants were taken on a harbour cruise of the Western Reclamation Area and then to the Viaduct and Port Area.

Getting To Eden

The Auckland Regional Transport Authority described to participants their vision for creating sustainable transport in light of the World Rugby Matches in 2011.

Participants were taken on a train trip from Britomart to Eden Park, a ferry ride on Auckland's harbour and a bus trip on the Northern Express bus service.

Pathways from the Past (City/Heritage Walk)

Participants were guided on a tour of key historical sites in downtown Auckland, including the 1912 Chief Post Office, a selection of Auckland's earliest commercial buildings and the first street networks in the city.

Fantasy Island

Participants were taken to Waiheke Island. The Island is attracting greater numbers of weekend visitors and permanent dwellers than ever before. To sustainably manage the predicted growth and higher density development a review of the area is being undertaken in the Hauraki Gulf District Plan. The trip examined issues in the District Plan review, participants visited a number of subdivision sites on the island and visited one of the vineyards.

Take It to the Limit

Participants were taken to the Metropolitan Urban Limit to see what happens when development pressures run up against the policies of the Regional Council. The Regional Council strongly defends the Limit.

4. Material for Circulation

Information can be obtained from the website www.rmla.org.nz . A recording of all the speeches is also available.

5. Benefit to Council/Elected Members

CONCLUSION

This conference is in my opinion, one of the most important conferences that Commissioners sitting on Resource Consents should attend. The conference gave different views on the same subject. It was a shame that no other Councillors could attend. Although the conference focused on Auckland issues, the principles could apply to elsewhere in the country. There was the opportunity to mix with other elected people as well as the planning/legal fraternity. It would seem that Wellington is leading through the District Plan many of the principles of good planning discussed at the conference.

Report prepared by: Councillor Leonie Gill