

RESOURCE MANAGEMENT LAW ASSOCIATION OF NEW ZEALAND INC.

RM NEWSLETTER

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PRESIDENT'S REPORT

Dear Members

With only a little over 2 months to go until the conference in October the organisation is largely complete and you will have received information from Karol Helmink regarding online bookings.

As signalled in the regional reports below there is a lot of things happening in the 2nd half of this year starting with the bi-annual Tony Hearn QC sold out memorial dinner at the George in Christchurch on 17 August with guest speaker Austin Forbes QC. Christchurch and Auckland will also host Dr Richard Simmons who is presenting the Salmon Lecture in both these locations in September.

With the election looming the inevitable 'slow down' in central government means there are less policy and legislative matters to submit on so I have nothing to report by way of activity on this front.

Members of the National Committee have been busy:

- receiving nominations for awards (which are presented at the conference);
- receiving nominations for the annual scholarship;
- providing support and input to the conference for this year; and
- considering the focus and theme for the conference next year (which is being held in Queenstown – see the report below).

I look forward to seeing many of you at conference in October.

Helen Atkins
President

REGIONAL NEWS

Auckland – Rachel Devine

In June **Charles Chauvel MP**, Labour's representative for the environment spoke to the branch. Without pre-empting the launch of Labour's environmental policy Mr Chauvel was informative and spoke well. There was a lot of questions and dialogue afterwards. It was interesting to observe which threads of environmental policy that Labour would maintain and expand upon. Remaining on the political front, we will have **Nikki Kaye, MP** speak to the branch about the National party's proposals on 22 September. A flyer on that will be released closer to the time.

In the shorter term we will send out an invitation for the branch to hear from **David Warburton** who will speak about Auckland Transport's vision and goals for Auckland. This will be on 24 August at Kensington Swan.

On 6 September Auckland will host the 10th anniversary of the Salmon Lecture. Our special presenter **Dr Richard Simmons**, previously Chief Executive, Commission for Architecture and the Built Environment in the UK, has significant experience in urban design of sustainable buildings. Given the special occasion we have co-ordinated with Auckland

Conversations (via Auckland Council) and will be hosting the Lecture at Sky City's auditorium. This will be an unusually large event so once the invitations are sent we hope that RMLA members reply quickly. This Lecture will also be presented in Christchurch.

On 2 November we will be hosting a panel discussion about experiences on **Boards of Inquiry**. The panel will have representatives from those who have attended various hearings and will be facilitated by Matt Casey. We are aiming to leave sufficient time for discussion and comment as we know that practitioners have plenty of views to share.

Wellington – Angela Rego

In early August the Wellington Branches of NZPI and RMLA will hold a joint mid winter wine options quiz at Simpson Grierson hosted by Mark St Clair.

Upcoming events for the year include hosting the national road show on Strategic Transport. Chapman Tripp will host the seminar in September with Fran Wilde and John Hassan providing local input.

Angela Rego can be contacted on:
Email: angela.rego@justice.govt.nz
Phone: (04) 494 1083

Taranaki – Lauren Wallace

The Taranaki branch held the Strategic Transport Infrastructure roadshow on the 15th of June 2011. The event was reasonably well attended and the speakers Lindsay Gow, David Silvester (NZTA) and Gray Severinsen (Taranaki Regional Council) were very well received. Our thanks to all three for a very interesting presentation.

We are currently planning a joint social event with the Taranaki branch of the New Zealand Institute of Surveyors. We will be holding a quiz night at the Basement Bar during the week of 22 August 2011. This should be a great night so members, please keep your dairies free.

Our next roadshow event, the "Spatial Planning" seminar will be held on Tuesday 13 September 2011. We look forward to hearing from Ken Tremaine about this topic.

Contacts:

Lauren Wallace – Chair, (06) 768 3712
Rachael McGee – Secretary, (06) 759 6060

Nelson – Shoshona Goodall

The Nelson Marlborough Branch recently hosted the Spatial Planning and Strategic Transport Infrastructure Roadshows. Local input was provided by David Jackson and Martin Workman, both from the Nelson City Council, and Dave Petrie of Traffic Design Group. These roadshows covered some interesting issues, particularly in light of the recent decision by the Local Government Commission to take the next step towards the possible amalgamation of Tasman District and Nelson City.

Queenstown/Central Otago – Robert Makgill

The Queenstown/Central Otago Committee is extremely pleased that the 2012 RMLA conference is to be held in Queenstown. The conference is particularly important as it marks the 20th anniversary of the RMLA.

The Committee has already started making arrangements. Jayne MacDonald and Mike Stevens are to jointly chair a sub-committee tasked with the Branch's organisation of the conference. If you would like to assist with organisation of the conference or have any ideas concerning events, sponsorship or any other issues please contact Jayne or Mike (jmacdonald@mactodd.co.nz or mike.steven@xtra.co.nz).

The Branch has recently circulated its second quarterly newsletter. The purpose of the newsletter is to inform our local members of the latest resource management news from our part of the region, including Environment Court cases, plan changes, local issues that may be of interest, and upcoming events planned by the RMLA and associated organisations.

In our latest edition we report on our mid-winter drinks and the recent strategic transportation planning seminar held in Queenstown. We also include case notes on the Environment Court's decisions in *Ayrburn Farm Estates Limited v Queenstown Lakes District Council* and *Re Application by Queenstown Lakes District Council*. Finally, we provide an update on changes to the Queenstown Lakes District Plan. Many thanks to Brett Giddens (editor) for taking charge of production and Jayne McDonald for her concise and informative case notes.

The Committee recently resolved to accept abstracts for research or interest papers (on locally relevant issues) to be included in our quarterly newsletters. Abstracts may include a link to the full paper on your website. As we have limited with space and editorial time, please keep all abstracts to a 200 word maximum. If you are interested in putting forward an abstract, feel free to get in touch.

Contacts:

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RECENT CASES

Bronwyn Carruthers, Associate, Russell McVeagh

A recent decision of Justice Dobson in *Reuters Homes Limited v Wanganui District Council* (CIV-2010-483-278) is a reminder of the limits of section 92 requests for further information.

Reuters Homes Limited owns a relatively large block of land in suburban Wanganui, adjoining two substantial properties owned by Presbyterian Support Services ("PSS") and Hospice Wanganui ("Hospice"). Reuters developed a subdivision proposal for its land, in consultation with PSS and Hospice, that created 35 small residential sites accessed by a cul-de-sac off the main

road, Virginia Road. The intention was to create small units for elderly occupants in a quiet and secure living environment.

However, the District Plan showed an indicative road running through the Reuters land, connecting Virginia Road through to Edmonds Drive. Council officers expressed a wish for this connection at the first meeting with the developer post-lodgement. Reuters responded by explaining that the concept plan had been under development for two years in negotiations with PSS, and that providing a through road would require significant changes in design involving yet further negotiations with PSS. Reuters advised that in light of the adverse financial implications and adverse effect on the character that Reuters and PSS were hoping to create, the request for road connectivity was unreasonable.

The Council then followed up with a request for further information under s92 of the RMA, seeking "a revised roading layout and configuration showing the connections required." Reuters responded, objecting to the request, and explaining why it was neither desirable nor feasible to provide the roading connection. The Council considered it was left with no option, but to fully notify the proposal under s95C of the RMA.

Reuters judicially reviewed the Council's decision to notify, seeking orders that the request for further information was unlawful, the decision to publicly notify was unlawful, and that the Council had acted in abuse of its powers. In essence, Reuters claimed that the context in which the Council resorted to s92 as a device to force it to introduce a significant change construed a misuse of the power to request information in relation to an application, leading to an unlawful exercise of the default power under s95C to require public notification on account of the perceived inadequacy of the information.

The Court agreed. It held:

"On any view of the proposal, the transformation of the roading servicing it from a relatively small cul de sac, to

a through road, would substantially transform the proposal. Reuters sought to develop a community that was complementary to two existing uses on its boundaries, with both PSS and Hospice supporting the cul de sac formation and being opposed to any through road.

WDC's request did not seek information enabling it to better understand the traffic consequences of the cul de sac proposed. Rather, WDC sought to require the developer to transform its proposal into one that would address WDC's objectives for a much wider area, in terms of roading development."

The Court agreed with Reuter's legal analysis that:

- Power will be abused if it is invoked for a purpose that is inconsistent with, or goes beyond, the purpose for which the statute has created the power;
- A purpose will be improper if it goes beyond the purposes for which the statute has created the power.

The Court held that Council officers had clearly misconstrued the scope of the power available to them under s92 as the request required Reuters to recast, in a substantial manner, the detail and scope of its application. This did not constitute a request for information on the application as lodged, but instead sought to transform that application. The Court noted:

"In other situations, requests for further information that might contemplate rearrangement of details, or inclusion of alternatives for some details, of a proposed development could be justified. Within the present context, the difference is so significant as to require the developer to transform the proposal into a different development."

Reuters was successful, with the Court making declarations that:

- The Council could not require the provision of an amended plan addressing its own road connectivity aspirations pursuant to an information request under s92; and
- The Council had erred in law in treating Reuter's refusal as a sufficient refusal to provide further information for the purpose of the default power to notify in section 95C.

A request under s92 must be for information that relates to the application, which is required to enable the Council to be satisfied as to the nature, scope and extent of the application and its actual or potential effects. This recent decision of the High Court makes it clear that s92 requests cannot be for the purpose of "transforming" the application into something else.

Applicants should take care before responding to s92 requests that appear to be somewhat out on a limb, particularly when the request involves providing a significantly different "alternative" to that applied for. Otherwise, the Council may elect to grant consent to the "alternative" provided in a further information request, instead of to the application before it.

CONTINUING PROFESSIONAL DEVELOPMENT

Please see the RMLA Website (www.rmla.org.nz) for all other Forthcoming and Future Events – including details of CPD qualifying events.

The **RMLA Conference** for 2011 is to be hosted in Hamilton, at the SkyCity river-side conference centre and casino complex from 6-8 October. "**Our place in the world - hei whakapae ururoa**" intends a broad theme that reflects the diversity of the Waikato Region, together with the local and global influences on resource management issues in the 21st Century.

See the RMLA website for further updates.