

## SPEAKERS



### **Mark von Dadelszen, Partner, Bannister & von Dadelszen, Hastings**

Mark is the convener of the NZLS Environmental Law Committee and he specialises in resource management law, local body and public law issues, and dispute resolution and litigation. He acts for local authorities, individuals, companies, and Māori entities, and has appeared in the Environment Court, the District and High Courts, Court of Appeal, and Privy Council.



### **Jo Appleyard, Partner, Chapman Tripp, Christchurch**

Jo is a skilled advocate and civil litigator specialising in resource management. She has acted for a wide range of applicants, local authorities and submitters on a wide range of resource management matters, especially in relation to water resources.



### **Helen Atkins, Partner, DLA Phillips Fox, Auckland**

Helen heads the Environment and Public Law team at DLA Phillips Fox. She has specialised in public, environmental, resource management and local government law for over 15 years advising private sector clients, including large corporates and industries, as well as working for central and local government. Helen has been involved in advising clients on various government policies and legislation changes, including resource management, electricity reform, local government reform, and road reform. She has advised on a number of issues relating to water matters, including changes to policy and law, and obtaining resource consents for water supply and waste water systems.



### **His Honour Judge Bolland, Auckland**

Judge John Bolland was appointed to the Bench in 1988 and as Principal Environment Court Judge in April 2003. He has authored various academic articles, particularly on the Court's function and progress. His judicial work has involved various cases of notable public interest, including the first significant RMA offence trial and sentencing known as Machinery Movers, the location of the Auckland Sky Tower, the One Tree Hill Maori activist prosecution, and the provision of night-game lighting at Eden Park.

## **SPEAKERS**



### **Gill Chappell, Barrister, Auckland**

Gill practises as a barrister specialising in resource management law with a particular interest in forestry and rural planning. She was latterly in-house environment counsel at Carter Holt Harvey for over eight years and is a former member of the Forest Owners Association environment committee.



### **Stephen Christensen, Partner, Anderson Lloyd, Dunedin**

Stephen is the Chairman of South Island firm Anderson Lloyd, and is a partner in the firm's Resource Management Department. He is co-author of "Water, Contaminants and Discharges" in the DSL Environmental Handbook and author of the chapter "The Law and Mining" in Forest & Bird's Handbook of Environmental Law. Stephen has been a presenter of the MfE/LGNZ "Good Decisions" accreditation programme for RMA hearings commissioners and councillors.



### **David Kirkpatrick, Barrister, Auckland**

David has considerable expertise in all areas of local government, building and resource management work and is a specialist in financial contributions. He has considerable experience in litigation at all levels and regularly presents seminars to both clients and professional groups in his specialist areas.



### **Camilla Owen, Duncan Cotterill, Nelson**

Camilla specialises in environmental law, focusing on resource management. Her career has been focused in an area of New Zealand where the resource management issues are varied and complex. Camilla acts for a wide range of bodies, from environmental groups to corporate clients and government departments in all areas of environmental law. She is the Treasurer of the Resource Management Law Association of New Zealand and a current member of the NZ Law Society Environmental Law Committee.

# CONTENTS

<b>RECENT CASE LAW DEVELOPMENTS .....</b>	<b>1</b>
INTRODUCTION .....	1
THE COAST.....	1
<i>Section 119 – Restricted Coastal Activities.....</i>	1
<i>Coastal subdivision/non-complying activities.....</i>	4
<i>Expert Witnesses .....</i>	7
COAL .....	8
<i>Section 17 RMA interface with Coal Mining Act .....</i>	8
<i>Climate change.....</i>	10
FRESH WATER .....	12
<i>Priority .....</i>	12
SUBDIVISION AND RESIDENTIAL DEVELOPMENT.....	14
<i>The “environment” and future development.....</i>	14
<i>Environmental compensation.....</i>	17
ACKNOWLEDGMENT .....	22
<b>HAS THE RESOURCE MANAGEMENT ACT REPLACED THE PROPERTY LAW ACT? .....</b>	<b>25</b>
RESOURCE MANAGEMENT AND PROPERTY .....	25
PRIORITY – PROCESS OR SUBSTANCE.....	33
EFFICIENCY.....	36
PROPERTY LAW.....	41
CONCLUSION .....	43
<b>HAS THE RESOURCE MANAGEMENT ACT REPLACED THE PROPERTY LAW ACT? .....</b>	<b>49</b>
INTRODUCTION .....	49
<i>A resource consent – what is it? - a right or a privilege? .....</i>	49
<i>Substantive legitimate expectation .....</i>	50
<i>“Non-derogation from grant” .....</i>	51
<i>Principle against over-allocation.....</i>	53
<i>RMA authorities support priority of existing users .....</i>	54
WHAT NEXT AFTER AORAKI? .....	56
PRIORITY OF COMPETING APPLICATIONS .....	59
<i>Consequences of allocation.....</i>	60
<b>THE ENVIRONMENTAL IMPLICATIONS OF PRIMARY PRODUCTION – LAND CONVERSION .....</b>	<b>65</b>
INTRODUCTION .....	65
WHAT IS CONVERSION?.....	65
WHAT ARE THE PRESSURES? .....	66
<i>Economic issues .....</i>	66
<i>What has brought about the change? .....</i>	66
<i>Environmental effects of land use for primary production purposes .....</i>	67
THE LEGAL INTERFACE BETWEEN LAND USE FOR PRIMARY PRODUCTION AND WATER RESOURCES .....	68
<i>Controls on land use .....</i>	68
<i>Non point source discharges to land in circumstances where they may enter water.....</i>	69
<i>Compliance with s 15? .....</i>	71
<i>Land use consent versus discharge permit? .....</i>	72
<i>Environment Canterbury (“ECAN”).....</i>	73
<i>Environment Bay of Plenty (“EBOP”) .....</i>	73
<i>Waikato Regional Council (“EW”).....</i>	74
<i>Summary.....</i>	74
PRIMARY PRODUCTION LAND USE AND THE IMPACT OF CLIMATE CHANGE POLICY .....	75
<i>Introduction.....</i>	75
<i>The Impact of land use change.....</i>	75
<i>Government’s response.....</i>	76
<i>How does a carbon trading scheme work? .....</i>	76

<i>Initial allocation</i> .....	77
<i>Key timing issues</i> .....	77
<i>The future for rural production</i> .....	77
<i>Summary</i> .....	78
MANAGING EXISTING AND NEW PRIMARY PRODUCTION LAND USES – ONE AND THE SAME?.....	78
<i>Other New Zealand systems</i> .....	78
<i>The issues</i> .....	79
<i>Sustainable Water Programme of Action</i> .....	79
WHAT DOES THE FUTURE HOLD?.....	80
<i>Rating changes</i> .....	80
<i>Treaty of Waitangi claims</i> .....	80
<i>Loss of access to overseas markets</i> .....	81
<i>Developing technologies</i> .....	81
<i>Where to from here?</i> .....	81
<b>THE ENVIRONMENTAL IMPLICATIONS OF PRIMARY PRODUCTION – WATER ALLOCATION .....</b>	<b>85</b>
INTRODUCTION .....	85
USE OF WATER .....	85
A PLOTTED HISTORY OF THE LAW.....	86
<i>Common law</i> .....	86
<i>The Water and Soil Conservation Act 1967</i> .....	87
<i>The Resource Management Act 1991 (RMA)</i> .....	88
<i>The 2005 amendments</i> .....	88
THE ALLOCATION DEBATE .....	89
AORAKI WATER TRUST CASE.....	90
THE WAITAKI CATCHMENT .....	90
<i>The important values</i> .....	90
<i>The allocation plan</i> .....	91
<i>The process now</i> .....	91
THE WAIKATO REGION .....	92
<i>Overview</i> .....	92
<i>Variation No 6</i> .....	92
<i>Summary</i> .....	93
CENTRAL GOVERNMENT RESPONSE .....	93
<i>An overview of the issues</i> .....	93
<i>Sustainable water programme of action</i> .....	94
<i>What next?</i> .....	96
CLIMATE CHANGE AND WATER ALLOCATION .....	96
<i>Policy consultation to date</i> .....	96
<i>How climate change will affect water allocation</i> .....	97
CONCLUSION.....	97
<b>CONCURRENT CROSS-EXAMINATION OF EXPERT WITNESSES IN THE ENVIRONMENT COURT .....</b>	<b>101</b>
<b>EXPERT WITNESS CAUCUSING AND CONCURRENT CROSS-EXAMINATION .....</b>	<b>105</b>
EXPERT WITNESSES CAUCUSING.....	105
<i>Introduction</i> .....	105
<i>Tactics and strategies</i> .....	106
<i>Addressing the issues</i> .....	107
<i>Concurrent cross-examination</i> .....	110
<i>Conclusion</i> .....	111