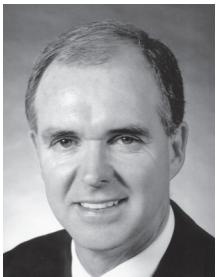


PRESENTERS



CHAIRMAN

Derek Nolan, Partner, Russell McVeagh, Auckland

Derek Nolan is the convener of the NZLS Environmental Law Committee, a past president of the Resource Management Law Association, a past vice chairman of the Environmental Law Committee of the International Bar Association (Business Law Section), editor of the forthcoming third edition of *Environmental and Resource Management Law in New Zealand* (LexisNexis) and a partner in the environmental and resource management law group at Russell McVeagh.



Judge John Bolland, Principal Environment Court Judge

Judge Bolland was appointed Principal Environment Court Judge in April 2003. He has written various 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.



Barry Barton, Professor of Law, University of Waikato

Barry's general fields of research are natural resources law and environmental law, with particular interests in property and natural resources, aboriginal claims to oil and gas, mining, energy, and regulation. He teaches property law, environmental law and natural resources law. Barry is the New Zealand member of the International Bar Association Section on Energy Environment Resources and Infrastructure Law's Academic Advisory Group.

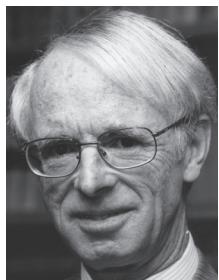


Sally Dossor, Phillips Fox, Wellington

Sally is a partner in the Phillips Fox Environment and Public Law team. Her resource management work primarily involves district plan reviews and appeals for local authorities. Sally advises on Local Government Act 2002 implementation and compliance and is a contributing author of LexisNexis' *Local Government*.

**Jim Milne, Barrister, Hamilton**

Jim has specialised in resource management law for more than 30 years and is a past president of the Resource Management Law Association. He provides advice to a number of local authorities as well as to applicants. Jim has extensive experience before the Environment Court and has been counsel in a number of leading cases.

**Dr Ken Palmer, Associate Professor of Law, University of Auckland**

Ken is also a part time barrister and has law degrees from Auckland, Harvard and Virginia. His special interests are in resource management, environmental law, and local government law. He is the author of books on planning and local government law, and has contributed to many journals on resource management issues. He is editor of the New Zealand Journal of Environmental Law.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. AN ANALYSIS OF RECENT CASE LAW DEVELOPMENTS	1
Notification of resource consent applications	1
<i>Introduction</i>	1
<i>The Westfield / Discount Brands decision</i>	1
<i>Trade competition and amenity values</i>	2
<i>Persons adversely affected</i>	3
<i>Case outcome</i>	3
<i>Progressive Enterprises decision</i>	4
<i>The future</i>	5
<i>RMAA 2005</i>	5
<i>Judicial review</i>	5
Permitted baseline	6
<i>Law prior and after 1 August 2003</i>	6
<i>Permitted baseline and potential development of adjacent properties</i>	7
Precedent issues.....	9
<i>Introduction</i>	9
<i>Cumulative effect and precedent</i>	10
<i>Dye</i>	10
<i>Murphy</i>	11
<i>Gould</i>	11
Urban Design and Heritage	12
<i>Introduction</i>	12
<i>Urban Auckland case</i>	13
<i>Consequences</i>	14
<i>Minimum apartment and room size</i>	14
<i>Landscape in scenic or rural areas</i>	15
<i>Heritage building listing</i>	16
<i>Archaeological sites</i>	17
Maori rights and cultural issues	17
<i>Consultation with Maori</i>	17
<i>Who speaks for Maori</i>	19
<i>Oral submissions</i>	20
<i>Iwi management plans and delegation</i>	20
<i>Maori veto of developments</i>	21
<i>Foreshore and seabed developments</i>	21
Financial contributions	22
<i>Recent decisions on financial contributions</i>	22
<i>Development contributions</i>	23
Water Allocation	23
<i>Waitaki river and Aoraki case</i>	23
<i>Water pressure issue</i>	24
<i>The future</i>	25
National environmental standards	26
<i>New standards</i>	26
<i>Relationship of standards with plans</i>	26
Conclusion.....	26
2. LOCAL GOVERNMENT ACT 2002 – ISSUES FOR RMA LAWYERS.....	29

Introduction and scope of paper	29
Overview: LGA 2002 – core principles (and acronyms!)	30
<i>Background to LGA 2002</i>	30
<i>Principles and purpose of local government</i>	30
<i>Planning and accountability framework</i>	31
<i>Decisions and decision-making</i>	32
Development contributions	40
<i>What are they ?</i>	40
<i>History</i>	41
<i>Policy context</i>	41
<i>Why local authorities will use development contributions in preference to financial contributions</i>	42
<i>Content of the policy</i>	42
<i>How to participate in the policy process</i>	44
Bylaws	45
Opportunities to participate in and / or challenge a decision made under LGA 2002 ..	47
<i>Practical comments for participation</i>	47
<i>Judicial review</i>	48
Conclusion	49
APPENDIX: LGA 2002 PROVISIONS REFERRED TO.....	50
Purpose and principles (and definitions)	50
Decision-making	53
Bylaws	60
Development and contributions	61
3. OUTSTANDING LANDSCAPES.....	67
Legislative Context	69
<i>History</i>	69
<i>RMA context of section 6(b)</i>	71
Different aspects of section 6(b): Evolving case law	72
<i>Landscape: the modified Pigeon Bay criteria and the first Queenstown Landscape decision.</i>	72
<i>Feature</i>	76
<i>Outstanding and the Proper Comparison</i>	77
<i>Natural</i>	78
<i>Scale</i>	80
<i>Landscapes and Views</i>	82
<i>Protection from inappropriate development</i>	83
<i>Can we make the language of section 6(b) more precise?</i>	86
Landscape in making plans	87
Effects	88
<i>Mitigation</i>	88
<i>Compensation</i>	90
<i>Landscape and natural environment in tension</i>	92
<i>Evaluation of the trade-offs</i>	92
<i>Cumulative effects, accumulating effects, precedent effects</i>	93
<i>Permitted baseline</i>	94
The significance of the landscape provisions in plans in resource consent cases	95
Rationality, reasoning, and expertise	96
<i>Rationality and Evaluation</i>	96
<i>Subjectivity</i>	97

<i>Consistency</i>	98
<i>Expertise</i>	99
<i>Court's own judgment of landscape</i>	99
<i>Expertise of the court</i>	101
<i>Facts and value judgments</i>	101
<i>Questions of law</i>	102
<i>Legal reasoning on landscape cases</i>	104
Practical Points	104
<i>Techniques of landscape analysis</i>	104
<i>How to handle a landscape case</i>	107
Possible future directions in the development of the law.....	108
What remains in issue on managing outstanding landscapes.....	110
Conclusions	110
4. PRACTICAL ISSUES AFTER THE COUNCIL HEARING AND BEFORE THE ENVIRONMENT COURT HEARING.....	113
Environment Court Practice Notes.....	113
Alternative dispute resolution	114
Expert witnesses	118
Interlocutory proceedings.....	124