
REPORT 7
(1215/52/IM)

REPORT BACK ON NZPI CONFERENCE

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

New Zealand Planning Institute Annual Conference

Theme: "Pushing the Boundaries"

27 – 30 April 2005

Auckland

Attended by Councillor Gill and members of the Urban Strategy Team.

The conference was about "pushing boundaries", improving and moving past established Resource Management practices – looking at how to further push boundaries both inside and outside the Resource Management Act.

My report will give in depth information on the Elected Persons Workshop held on Wednesday and an overview of the Conference Key Note speakers, workshops and study tour on Thursday to Saturday. The speeches and or power point presentations related to the latter can be found on the CD supplied at the conference and can be obtained from Diana Geerling in Democratic Services.

I Arrived in Auckland on the Tuesday night at the Heritage Hotel. This hotel is a fine example of restoring and complimenting heritage values. A tower block has been added to the original Farmers shop. The old wood from the department store has been retained.

3. RECOMMENDATION

It is recommended that the Committee:

1. *Receive the Report.*

4. CONFERENCE SUBJECTS

Wednesday

The Elected Person's Workshop included six topics:

1. RMA Decision-maker Accreditation Programme

An update was provided by Mark Leggett from the Ministry for Environment on the accreditation process. 571 people have completed the course nationally. A further workshop is to be held in September 2005. The results of the first workshops should be finalised in June and those who have passed will be sent a certificate. For those that fail it is intended that there will be a process for reassessment. The feedback to the Ministry on the programme to date has been very positive.

2. Amendments to the Resource Management Act

Bill Loutit, Partner in the Legal Firm, Simpson Grierson looked at the principal amendments proposed to the Resource Management Act and then gave his picks on outcomes. The Select Committee is due to report back on 15 June 2005.

(a) Proposed amendments to Council hearing provisions

- Increased powers to Consent Authorities and Hearing Committees
- Briefs of Evidence to be supplied prior to Hearing
- Evidence taken as read or limited to that in dispute
- Irrelevant submissions not to be presented
- Vexatious submissions can be struck out
- More detailed processes for requesting further information
- Increased powers to call prehearing meetings
- Increase powers through the course of a hearing

“Our Pick”

The provisions would remain close to current practice. Guidance or practice notes may be issued to clarify process. Delivery could be through the accreditation programme. It may mean different processes for each Council.

(b) Proposed amendments to Central Government intervention

- New Process for Central Government to “call-in” and process/decide applications or plan changes where there is a national interest

“Our Pick”

Will remain but with reworded criteria for when a matter qualifies for a call-in.

(c) Proposed amendments to the Environment Court

- New Powers of Environment Court to call conferences
- Appeals by way of rehearing
- New Evidence precluded
- De Novo Hearings in limited circumstances
- Changes to 1st and 4th Schedules
- Environment Court able to refer matters back to Local Authority on appeals concerning policy statements or plans

“Our Pick”

- DeNovo Hearings would remain
- Environment Court will have to have regard to the Council Hearing
- More rigorous requirements for what Council decisions must contain eg Nature of evidence heard – Recording main findings of fact – Principle issues identified.

- Changes relating to plans will remain. Environment Court will be discouraged from policy making on behalf of Local Authorities
- Interim decisions issued sending matters back to Council

3. Recent Case Law

Bill Loutit spoke on two recent High Court decisions

Rodney District Council v Gould (HC 2004).

This was an appeal of the decision of the Environment Court allowing an appeal against a council decision to refuse subdivision consent. The Environment Court decision was upheld. The High Court held that written approvals can be taken into account when assessing precedent and consistent administration but it would depend on the case. The High Court noted that the RMA does not refer to precedent effects or the integrity of the plan. Therefore a decision that a particular non-complying activity which is not contrary to a District Plan's objectives and policies could not be criticised for legal error simply because it omits reference to the District Plan's integrity or precedent effects. The Court observed that the key issue is whether the particular proposal is truly exceptional and can properly be said to be not contrary to the objectives and policies. The High Court also rejected an argument that precedent could also be relevant as a cumulative effect. The fact that future applications for similar activities might follow is not an environmental effect.

Urban Auckland v Auckland City Council (HC 2004)

This was a partially successful application by Urban Auckland for judicial review of Auckland City Council decision not to notify to build a tower block on St James Theatre. Urban Auckland claimed that ACC had insufficient information to assess the potential adverse effects. The High Court reiterated that the decision not to notify denies the right to be heard of those ordinarily entitled. The High Court held that reasonableness is to be assessed by asking not simply what the consent authority had to decide and what it relied on, but whether the information it had was enough. The High Court also held that the RMA makes aesthetics an indispensable concern for every consent authority and that the Council decision failed to give full attention to the size and proportions of the tower.

4. The Parameters of Good Decisions

Bill Loutit talked on this subject. The place to start was to look at what the courts would consider. There are four key principles

- Apply the correct law
 - Part 6 – LGA
 - Class of Activity - RMA
- Have sufficient evidence/information
 - Substantive decisions require sufficient evidence
 - Notification decisions require sufficient information
- Take into account relevant matters/ignore irrelevant information
 - Part 6 – LGA
 - Section 104/105 RMA

- d. Set out reasons adequately
- LGA – Judicial review
 - RMA – Possible amendment to RMA

Bill Loutit then talked about the three ways in which Local Government decisions can be challenged in Court.

a. Appeals on the Substantive Decision

This type of hearing is in the Environment Court under Section 120 RMA. Under the present Act this is a “De Novo” Hearing which means that the Environment Court makes a fresh decision based on fresh expert evidence. The Court looks at whether all relevant objectives, policies and provisions are considered. It looks at whether all effects on the environment are considered. It looks at the issues of precedent and consistent administration. It looks at Part II of the RMA and could come to a different decision based on expert evidence before the court.

b. Appeals on Points of Law

This type of hearing is a challenge to an Environment Court decision in the High Court under Section 299(1) RMA. The case of Countdown Properties (Northland) Limited v DCC was used

- No evidence to support finding
- Applied a wrong legal test
- Considered irrelevant information
- Failed to consider relevant information
- So unreasonable that Local Authority should have made it

c. Judicial Review

Judicial reviews are the means by which the High Court can exercise a supervisory role over decisions of governmental and other public authorities. At present time these types of hearings are conducted in the High Court, The Court of Appeal and the Supreme Court. Council decisions in the RMA sense cannot be judicially reviewed until all appeal rights have been exercised in the Environment Court. Notification decisions cannot be appealed so they are directly reviewable. Traditionally Judicial reviews are very procedurally based. A Reviewing Court may intervene where the decision or decision making process is

- In excess of its power eg outside statute
- Procedurally unfair bias / predetermination
- Flawed in the sense that it:
 - Is based on a misunderstanding of facts
 - Is based on an error of law
 - Has taken irrelevant matters into account
 - Has ignored relevant matters
 - Has failed to have adequate information
 - Is unreasonable
 - Has failed to adequately set out reasons

5. Environment Court – Judge Newhook

Judge Newhook gave a short talk on his work in the Environment Court. He also talked about relevant practice notes that had come through to streamline the processes in the Environment Court.

6. LGA and RMA

Bill Loutit talked about how part 6 of the LGA could affect the RMA. He concluded that the impact of the LGA on the RMA is overstated. The LGA may add to the RMA decision making requirements where consistent with the approach of the RMA (for example consultation and obtaining community views). Where the LGA duplicates or is inconsistent with the RMA, then RMA provisions have greater weight for RMA matters. There was some confusion on whether the powers of community boards had been extended under the RMA. The LGA describes the role of a community board “to represent and act as an advocate for the interests of the community”. This has been interpreted by some as conferring a power to make a submission in RMA processes different to the parent council however, Mr Loutit did not agree with this stance.

Thursday

The conference proper started with a Powhiri and the handing over of the taonga from the 2004 Conference. This was followed by a welcome to Auckland from the Mayor Mr Dick Hubbard who unveiled his vision of Auckland. His notable quotes “Vision without planning goes nowhere” and “Planning without vision is status quo”.

Key Note Speakers

The opening key note speakers for the conference were:

David Pope Benson: Associate Minister for the Environment

Spoke on the Amendments to the Resource Management Act.

Hon Michael Harcourt: Chair of the International Centre for Sustainable Cities, British Columbia Premier , Mayor of Vancouver, Vancouver Alderman

Spoke on the expansion of cities and growth. The need for sustainability issues including “blueboxing” – our version of green recycling bins. He showcased Vancouver’s CitiesPLUS project.

Mai Chen: Founding member of Chen Palmer & Partners

Spoke about her theory that New Zealanders are tired of the power being with Parliament and may request a change in the constitution via referendum to enact a supreme constitution which could include a Bill of Rights and the Treaty of Waitangi.

Workshops

The following workshops were attended on Thursday:

RMA Review: T Daya–Winterbottom – Lecturer in Law, Waikato University

Spoke on key issues identified in the current review – myths about the RMA (delays in processing and in the appeal process and questioned if further amendments were required to address these matters). He concluded that more focused monitoring of key RMA provisions is required and that national policy guidance is needed.

Improving the RMA: G McDonald & P Gurnsey – Ministry for the Environment

The Workshop covered the reasons for the review, the process that was undertaken and where to in the future.

Notification – Legal Process Pitfalls: P Mulligan - Kensington Swan

Spoke on the notification process and how there was no appeal rights to the Environment Court but how the process could be reviewed through the High Court. He spoke at some length on two cases “Discount Brands” that had gone to the Supreme Court and “St James” in Auckland to the High Court.

Baselines, Bundling and Flow On Effects: Nick Wright - Brookfields

These topics were very confusing as in case law they appear distinct but in reality they overlap and have conflicts. He spoke about the permitted base line and how with bundling there may be different components but the most stringent component dictates. He spoke about the “Aquamarine” case where the Consent Authority must not only consider the effects of a permitted activity but follow on effects. The company had a water permit to take water. The opponents argued that the effects of the ships collecting the water must be considered. The applicant asked for the appeal to be struck out as shipping was covered by alternative legislation – The court held that indeed there would be follow on effects by the ships and allowed the appeal.

Friday

Key Note Speakers

The key note speakers for Friday were:

Shane Jones: Te Ohu Kaimoana

Spoke about issues confronting Maori regarding aquaculture and the concerns there may be from Maori on environment issues. Talked about the tensions between the Maori ethic of stewardship and the pressure for development, how the seabed and foreshore issues would have to be considered. He spoke about his role with the Fisheries Commission. He spoke on how Maori could learn from the Women’s agenda and what this group had achieved since the women’s movement had evolved.

Nick Smith: Opposition Member for Environment

First slammed the RMA citing costs, complexity, delays and uncertainty. He then went on to criticise the Amendments to the RMA He then proposed National’s amendments to the Act including establishing a NZ Environmental Protection Authority, providing nationally consistent standards, more emphasis on property rights, applying one standard of citizenship (removing all Maori references), directly refer major applications to the Environment Court, limit objectors to those with a genuine interest,

scrap legal aid for environmental objectors, put money into mediation, award costs and damages, make available tradable resource rights eg aquaculture space.

Nick Low: University of Melbourne

Spoke about “sustainability” in the context of addressing climate instability and species destruction. He believed that a green economy and a green city go hand in hand. He addressed four aspects of a green city – housing, green space, workplaces and transport. He believed planners have to adopt strategies to remove barriers to sustainability as well as create projects for sustainability. He showed a power point presentation illustrating the points he talked about.

Workshops

The following workshops were attended on Friday:

Upgrade of Auckland Regional Plan: Angela Rego - Ministry for Environment

This workshop was cancelled at the last minute so I replaced it by going out to Botany Downs to view a retail park that had been constructed (my idea of paradise). The design was fantastic with a multitude of shops all next to one another and parking around the perimeter. It was attractive and easy to get around. I was then taken to see the Telstraclear Indoor Stadium at Manukau. The design of this building was exceptional in the shape of a Waka. From there I was taken to a satellite city of new dwellings – very “Los Angeles”.

Are we building sandcastles in the sky: RV Hornsby - Greater Wellington Council

This workshop was about the Wairarapa Coastal Strategy (a non- statutory document) It explored the benefits and difficulties on producing such a document. The benefits are that it encouraged a “best practice” approach rather than a “minimum requirement”. No set legislated timeframes or required consultation. The document incorporated non RMA responses and included what people wanted. There was a good buy –in and sense of ownership. The difficulties are that there is the potential for people to be confused when documents are outside the processes and matters in the RMA. Implementation is not straight forward and becomes a project in itself.

I was told by several people that the workshop Pushing the Noise Boundaries was one of the best workshops in the conference. All speeches are available on the CD.

I did not attend the conference dinner.

Saturday

The Study Tour was a highlight of the conference. I choose to go on the Infrastructure and Growth Tour which took in the Mangere Wastewater Treatment Plant – Development of Auckland Airport – The Stonefields in Manakau and the Villa Maria Winery & Vineyards.

At 9.15am approx 15 delegates left Skycity by bus (with packed lunch) to view the Wastewater Plant.

The Old Mangere Wastewater Plant has been transformed into a new generation facility. The plant is one of the biggest in the Southern Hemisphere and provides primary, secondary and tertiary treatment before wastewater is conveyed to an intertidal basin for discharge into the ocean. The raw wastewater first passes through screens which extract large waste materials. The grit tanks remove grit and sand. Primary tanks separate the bulk of the solids from the liquid waste. The wastewater then passes through the reactor/clarifiers to further separate solids and liquid and remove nutrients. Finally the wastewater is filtered and disinfected for discharge with the tide.

The sludge disposal system is on site and is treated by DAF (dissolved air flotation) sludge thickening process. The thickened sludge is conveyed to anaerobic sludge digesters and the liquid effluent is returned to the reactor/clarifiers. The sludge remains in the digesters for 15 days before being sent to the dewatering plant. The plant treats 100 – 300 tonnes of wet sludge per day. The sludge is spun dry in the centrifuges and any surplus liquid is returned to the front end of the plant. The dewatered sludge is treated with lime and is carried by conveyor to the biosolids storage building prior to landfill disposal or productive re-use. The old sludge drying bed landfills have been excavated and lined with a high density polyethylene layer and are now filled with old lagoon sludge and the process biosolids. This rehabilitation work will be completed by 2006 and then grassed and become open space.

This area was adjacent to the oxidation ponds that had been used, up to when the new plant was commissioned. The ponds are now opened to the sea and most of the foreshore has returned to its original condition. The restoration work done in this area is outstanding and Watercare have worked closely with iwi and the community to achieve the creation of seven beaches, the planting of 260,000 native trees will eventually occur, the rehabilitation of the Oruarangi Creek (boat ramp) and the protection of migratory birds. The bird roost islets have been rebuilt and new roosts have been constructed.

Lunch at the Sewerage Plant was a new and probably never repeated experience.

Back on the bus for a guided tour through the airport. The airport designation encompasses a large tract of land and the development plan is comprehensive. New roading, industrial and retail growth and the construction of a second runway are part of the plan. The second runway will be the length of Wellington Airport runway and primarily cater for the domestic market. Residents within certain noise contours are being offered insulation some being fully compensated but others being offered on a 25/75 split. Several heritage buildings are located on airport land and it is intended to bring them together as a heritage area. The few private dwellings required have been purchased by the airport but residents are still leasing the dwellings.

The International Terminal is to undertake changes. The layout is to be changed as a result of implementing security. The result will be to separate arrivals and departures. Baggage will also be screened before loading on the planes.

The Airport Planning Manager had joined us for this part of the tour and informed me he was familiar with my name. Given my many hats of involvement I have had with Wellington Airport I decided the less said the better.

On to the Otautaua Stonefields. The Manukau City Council had secured this land as a public historic reserve from four private owners at a cost of \$4.7 million. This land covers 100 hectares. All over the land are stone and rock fences (used as property boundaries) and remnants of over 800 years ago of Maori occupation. Garden moulds, cooking areas, house sites, terraces and a pa site of rock still exist today. Some of the reserve is waaka tapu and these two words embody the feelings that occurs standing in the stonefields. It is worth visiting.

On to Villa Maria Winery at Mangere. We were first given afternoon tea and then shown through the winery. The new winery and vineyard park was opened in February and recently won the NZIA Resene New Zealand Award for Architecture. There are plans to extend the facility with an addition of a conference centre and chalets. The plant operates over 24 hours and is a combination of manual harvesting and machinery. The cost of machinery, vats and barrels is mind-blowing. Villa Maria has vineyards in Havelock North and Marlborough but all the bottling is done at this winery.

I learnt some facts from this visit –

- Corking wine is not as good as screw tops
- Barrels are still hand made.
- Storing wine in barrels improves the flavour.
- The indent at the bottom of the wine bottle is so that bottles fit together for storage when laid on their side.
- Wine Tasters are not spitting out the wine. It only appears so. It is about getting air up your nose so the flavour is tasted to the full.

It was obvious from the amount of red wine purchased at a discount rate that the wine was better than “cold duck”. Unfortunately I could not partake in the tasting but the muffins and minted/lemon water were delicious.

Back to Skycity by 5.15pm

Sunday

Home on Air New Zealand – sitting next to passenger who lobbied me on the need of an indoor sports stadium all the way.

5. GENERAL COMMENTS ON AUCKLAND

Pros

- 1 Traffic Boxes noise activated and allow more time to cross
- 2 Great Coffee & Hot Chocolate at Skycity
- 3 Restaurants that provide space for smokers (sort of outside with roll back covers)
- 4 Hotels with smoking rooms

Cons

- 1 Dirty Inner City Streets and a general untidiness
- 2 Infill housing everywhere with little regard to streetscape
- 3 Traffic – congestion at most times
- 4 Unfriendly Taxi Drivers who are not willing to load baggage
- 5 Paving that needs to be replaced
- 6 Signage confusing

6. BENEFIT TO COUNCIL/ELECTED MEMBERS

I feel the conference benefited the Council. Attendance reinforced how well Wellington City operates within the urban design field and in the Resource Management Field. However, Wellington City does not operate in isolation and it is good to find out how other Councils and practitioners operate and what they are trying to achieve in urban design visioning.

I would hope that the conference has added to my ability to act as Chair of the Regulatory Committee especially around legal issues and consent practices. The conference did increase my understanding of the subject area. I learnt and discussed points of the RMA that have been updated by case law (for example permitted baseline and notification issues).

There was an opportunity to network with other attendees. This was a useful opportunity to mix with other elected people from different councils around the country and talk with practitioners on different resource consent matters.

This conference was especially valuable to Councillors and staff who are interested in Resource Management and Urban Design. It may have been beneficial for a larger number of Councillors to have attended and gone to the different workshops offered in order to gain different aspects.

I consider that we had the right number of officers. It was, in my opinion, worthwhile to have elected member(s) attending this conference.

7. CONFERENCE MATERIALS

The CD given out in the conference pack containing conference papers and power point presentations can be obtained by contacting Diana Geerling.

Leaflets on the places visited on the study tour are also available from Diana Geerling.

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