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New Zealand Law Society



# INTENSIVE ENVIRONMENTAL LAW

*October 2021*

## IN THIS INTENSIVE

- *Courts and decision-making*
- *Alternative processes*
- *Māori and Te Tiriti issues*
- *Climate change*
- *Natural hazards and risk*
- *Fresh water reforms*

# ENVIRONMENTAL LAW

## FROM THE CHAIR



*Tēnā koutou*

*With reforms of the Resource Management Act looming, along with lockdowns associated with COVID-19, preparation of this year's Environmental Law Intensive took a slightly different tack. As well as a thematic focus on updates relevant to our day to day practices, we open with a session that lifts the gaze a little higher, to the role of the Environment Court. This is particularly timely given the direction some of the proposed reforms may be heading, in terms of decision-making processes for plan making in particular. We will end the day with a forward looking focus reflecting on, in terms of the day's themes, where these very topical issues might be heading. And sitting between these two sessions, there are a set of presentations on some of the leading and cutting edge issues facing practitioners. One session focuses on processes, namely the alternative processes including the COVID-19 Recovery Act. The first substantive themed session is on developments in case law on Te Tiriti and tikanga Māori issues. And the remaining three themed sessions explore topics that are in the process of breaking new ground in the implementation of national direction – climate change, natural hazards and assessment of risk and implementation of the freshwater reforms. I encourage you all to take a break from your daily practice, and take this opportunity to join the experienced practitioners and His Honour Judge Kirkpatrick, to refresh your understanding and take part in discussions.*

*Hei konā mai*

**Maree Baker-Galloway**

### CHAIR

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#### *Maree Baker-Galloway, Anderson Lloyd, Queenstown*

Maree leads Anderson Lloyd's resource management team and is based in Queenstown. She has particular expertise and interest in freshwater management, marine issues, tourism development, urban development and natural resource use. Maree was on the national executive for the Resource Management Law Association (RMLA) from 2007 to 2017, serving from 2015 to 2017 as President. She is recommended as an environment lawyer in the Legal 500 (Asia Pacific) and Doyle's Guide, and for her expertise in Natural Resource Law in the 'Best Lawyers' rankings. Maree co-authored the LexisNexis text book *Focus on Resource Management Law*, 2015.

8.30-9.00 REGISTRATION - *tea and coffee available*

9.00-9.05 INTRODUCTION: Chair – Maree Baker-Galloway

**9.05-10.00 SESSION 1: COURTS AND DECISION-MAKING**

Why do we have courts determining merits disputes in environmental and resource management law? What value does legal decision-making, ie judicial method and the involvement of legal counsel, add – if anything? In this keynote session, the presenters discuss what specialist environmental courts were intended to do, what they actually do, and – in critiquing current proposals – consider whether things should change.

**Presenters** *Judge David Kirkpatrick and Professor Ceri Warnock*

**10.00-10.30 SESSION 2: ALTERNATIVE PROCESSES**

From an applicant’s perspective, Daniel will look at what works well and what doesn’t with alternative, or fast track, processes including COVID-19 Recovery Act, direct referrals, and proposals of national significance.

**Presenter** *Daniel Minhinnick*

10.30-11.00 MORNING TEA

**11.00-12.30 SESSION 3: MĀORI AND TE TIRITI ISSUES**

In this extended session, Horiana and Maia will examine and discuss the following issues:

- Emerging trends out of case law
- Indirect effects
- Customary marine title – *Whakatōhea* decision – where more than one iwi.

Case law

- *Transpower (Tauranga Environmental Protection Society v TCC, BOPRC and Transpower)*
- *Creswell water bottling (Te Runanga o Ngati Awa v Bay of Plenty Regional Council)*.

**Presenters** *Horiana Irwin-Easthope and Maia Wikaira*

12.30-1.30 LUNCH

**1.30-2.15**

**SESSION 4: CLIMATE CHANGE**

A recap on recent climate change litigation, a discussion of the current legal position in New Zealand, and an outline of where RMA reform may take us.

**Presenters**

*Rachel Abraham (Auck), Matt Conway (Chch) and Gerald Lanning (Auck)*

**2.15-3.00**

**SESSION 5: NATURAL HAZARDS**

An outline of natural hazard management in New Zealand and emerging trends, and discussion of the approach to decision-making now and post-reform.

**Presenters**

*Tim Fischer (Auck) and Mike Wakefield (Auck and Chch)*

**3.00-3.30**

**AFTERNOON TEA**

**3.30-4.15**

**SESSION 6: FRESHWATER REFORMS**

Philip will outline the implementation challenges associated with the NPS Freshwater Management 2020. He will explore the synergies between Te Mana o te Wai and Te Oranga o te Taiao, including the practical application of those concepts to date.

**Presenter**

*Philip Maw*

**4.15-5.00**

**SESSION 7: BRAVE NEW WORLD: TOO BIG TO FAIL**

In this session Martin will reflect on the themes covered by the day's presenters. This will include addressing the nature, attributes and performance of our existing resource management system, and how these elements are being translated, enhanced, improved or abandoned, under the Government's heroically ambitious once-in-a-generation reform programme.

**Presenter**

*Martin Williams*

**5.00**

**CLOSING - CHAIR: Maree Baker-Galloway**



### *Chief Environment Court Judge David Kirkpatrick, Environment Court, Auckland*

Judge Kirkpatrick had, prior to his appointment to the Court in February 2014, been a Barrister sole since July 2004. He specialised in administrative and public law generally, and resource management law in particular. He appeared regularly before consent authorities, the Environment Court, and the High Court. He also appeared before the Court of Appeal, the Privy Council, and the Supreme Court.

From 1994 to 2004 Judge Kirkpatrick was a partner in the Local Government and Environment practice area of Simpson Grierson. In that role he was the primary legal advisor to a number of local authorities in the Auckland region in regard to public administration, the regulation of public utilities and resource management. He has also acted for a wide range of corporate clients, incorporated societies and individuals in those fields. In 2008-09 he acted as counsel assisting the Royal Commission on Auckland Governance.

He has presented numerous conference and seminar papers relating to resource management and local government law, and is a contributing author of the chapter 'Land Use and Subdivision – Resource Consent Procedures, Designations and Appeals' in *Environmental and Resource Management Law*, now in its fourth edition.

Appointed Head of the New Zealand Environment Court on 8 July 2020.



### *Professor Ceri Warnock, University of Otago, Dunedin (LLB(hons), LL.M., Mst, DPhil (Oxon))*

Professor Warnock practised as a public law barrister in England and Wales and appeared before all tiers of court, including the House of Lords, before joining the Law Faculty at the University of Otago in 2006.

She teaches and researches resource management, environmental, energy, and public law. She has been a visiting lecturer at Kings College London and tutored environmental law at Hertford College, University of Oxford. In 2014, Professor Warnock received the 'New Zealand Law Foundation International Research Fellowship – Te Manatū a Ture o Aotearoa Te Karahipi Rangahau A Taiao' for her work into legitimacy and specialist environment courts and tribunals. Outputs from that research project have been published in the *Journal of Environmental Law, Public Law, Legal Studies*, and in a monograph entitled *Environmental Courts and Tribunals: Powers, Integrity and the Search for Legitimacy* (Hart Bloomsbury, 2020). The book she wrote with Maree Baker-Galloway, *Focus on Resource Management Law* (LexisNexis, 2015), won the Resource Management Law Association award for excellence in publications and in 2018, Professor Warnock gave the Salmon Lecture and spoke on the topic of 'Environment and the Law: the Normative Force of Context'.

## PRESENTERS

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### *Rachel Abraham, Simpson Grierson, Auckland*

Rachel is a senior solicitor in the firm's local government and environment group. She joined Simpson Grierson in January 2020 and has a keen interest in environment, planning, climate change and local government. Before joining Simpson Grierson Rachel worked for a smaller law firm in their resource management team and prior to that, for the Ministry for the Environment.



### *Matt Conway, Simpson Grierson, Christchurch*

Matt is a partner in the firm's local government and environment group. He provides strategic advice about how best to navigate environmental and other regulatory processes, and regularly represents clients in mediations and in hearings before councils, boards of inquiry, the Environment Court and the High Court. Matt has particular interests in freshwater management, infrastructure projects and resource management planning, and advises and represents clients on a wide range of policy and planning issues under the Resource Management Act 1991 and other environmental and related legislation.



### *Tim Fischer, Simpson Grierson, Auckland*

Tim is a senior associate in the firm's local government and environment group. He is experienced in all aspects of resource management law, including subdivision, land-use and property development, infrastructure projects, plan-making, and designations. Tim acts for local authorities, corporates, and developers. He also has experience with public law matters and the wider legislative framework affecting the local government sector through the work he has done with local authorities. This work has traversed a wide range of legal matters, from information issues through to alcohol policy and regulation. Tim has often been involved in defending judicial review proceedings in the High Court.



### *Horiana Irwin-Easthope, Whāia Legal, Wellington*

Ngāti Porou (Te Whānau a Putaanga), Rakaipaaka, Ngāti Kahungunu. Prior to establishing Whāia Legal, Horiana worked at Russell McVeagh, in their Resource Management, Māori Legal and Commercial Litigation teams, and at Kāhui Legal. She has appeared in the Waitangi Tribunal, Environment Court, Māori Land Court, High Court, Court of Appeal and Supreme Court. Horiana is also regularly involved in alternative dispute resolutions processes.

## PRESENTERS

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### *Gerald Lanning, Simpson Grierson, Auckland*

Gerald is a partner in the firm's local government and environment group. He advises on all aspects of resource management and local government law, with a focus on large infrastructure projects, land transport management and policy, and Māori/Treaty of Waitangi issues. In addition to providing a wide range of legal and strategic advice, Gerald regularly appears before a range of decision-making bodies, including council hearing panels, Boards of Inquiry, the Environment Court and the High Court. Gerald primarily acts for government entities, including Auckland Transport, Auckland Council, and Waikato Regional Council.



### *Philip Maw, Wynn Williams, Christchurch*

Philip is the National Managing Partner of Wynn Williams and is a partner in the Resource Management and Environmental Law Team. He is experienced in a wide range of resource management and local government matters, with particular expertise in freshwater management.



### *Daniel Minhinnick, Russell McVeagh, Auckland*

Daniel is the Practice Group Chair of Russell McVeagh's Environment, Planning and Natural Resources Team and is a member of the NZLS Environmental Law Committee. He is the author of the 'Water and Minerals' and 'Petroleum' chapters in textbook *Environment and Resource Management Law* (7th Ed) and the 'Minerals and Mining' chapter of the *Laws of New Zealand*. Daniel was admitted to practise in 2005 and has been at Russell McVeagh since. He was made partner in 2016.



### *Mike Wakefield, Simpson Grierson, Christchurch*

Mike is a senior associate in the firm's local government and environment group, based in Christchurch. He advises clients on a range of resource management, local government, building and sale and supply of alcohol issues. Mike has appeared before the Environment Court and High Court in relation to resource consent, plan change and designation mediations and appeals, as well as declaration and judicial review proceedings. He was the ILANZ - Young In-house Lawyer of the Year 2017.

## PRESENTERS

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### *Maia Wikairi, Whāia Legal, Wellington*

Ngāti Tūwharetoa, Te Rarawa, Ngāpuhi.

Prior to joining Whāia Legal, Maia worked for the largest federally recognised tribe in California, the Yurok Tribe. There she was admitted to practise Yurok Tribal Law, and also represented the tribe in engagement with federal, state and other tribal governments. Maia maintains her practising certificate in Yurok Tribal Law. Before her time in the USA, Maia worked at Russell McVeagh, in their Resource Management, Māori Legal and Commercial Litigation teams, and at Kāhui Legal. Maia has appeared in the Waitangi Tribunal, Environment Court, Māori Land Court, High Court and Court of Appeal.



### *Martin Williams, Shakespeare Chambers, Napier*

Martin has over 20 years' experience practising in resource management and local government law. He has represented a wide range of private and public sector clients at local authority and appeal hearings, appearing as counsel in a number of leading Environment and High Court cases as well as in the Court of Appeal and Supreme Court. Martin is a former President of the Resource Management Law Association of New Zealand (Inc), serving on the National Committee of that Association for nine years.

#### LEARNING OBJECTIVES

##### **In this intensive you will be:**

- Updated on the latest issues arising in environmental law.
- Able to apply this knowledge in your practice.

#### WHO SHOULD ATTEND

- All environmental and resource management lawyers. Property lawyers will also find this of interest.



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