

RMA appears rotten at the core

If Environment Minister Nick Smith is serious about improving the RMA, he should start by looking in the mirror.

Last month, Mr Smith was asked by one of his caucus in Parliament: "Will he use his powers under section 24A of the Resource Management Act 1991 to investigate the poor performance of Environment Canterbury?"

Mr Smith replied: "I have announced a formal investigation into Environment Canterbury under section 24A... The powers have previously not been used, but are necessary to get Environment Canterbury back on track."

That statement in the House was not true. During the period that Mr Smith was pushing through changes to the RMA and "talking tough" to councils who did not meet their RMA obligations, the minister whitewashed a section 24A investigation into a complaint I made about one of the other underperforming councils.

Instead of taking the complaint seriously – a 1000-plus page complaint complete with sworn affidavits and evidence filed with the Environment Court – the minister gave the investigation a "low priority" and responded to the complainant with a six-sentence letter.

One of the central concerns in the complaint was that a council was using a consultant planner who was processing the applications of a main competitor. The ministry official who conducted the investigation was a former workmate of the consultant planner.

During the period of the investigation, the ministry also processed and approved an application by the consultant planner for funding to promote and provide free "independent RMA advice" to those who could not otherwise afford it.

The only other organisations approved for the funding were community law groups. The consultant planner, however, placed his ads in home improvement magazines.

The complaint asserted that the council was inconsistent in the processing of some applications while others were pre-determined 'template' decisions. Examples of several similar neighbouring applications with very different decisions were provided while several other very different applications had almost identical decisions.

So what did the investigation find? After a few Official Information Act requests it was revealed that the ministry official



Human Nature

by Grant McLachlan

attacked the complainant for a "lack of understanding of planning principles and practice". The minister in his official response, however, stated that the council's "planning principles that underpin planners' assessments... could be improved".

The quality of an application has nothing to do with the statutory duty of investigating a complaint or the processing of applications.

Why would anyone complain to the minister if the complainant is unreasonably attacked without the ability to respond?

One of the main concerns was that the council had bullied applicants – including inappropriate comments during hearings, threatening phone calls, nasty letters and large unsubstantiated invoices.

When the minister criticised the underperforming council the mayor verbally attacked the minister in the media. The minister, however, recommended in his

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investigation response that the council could use "better communication".

Another complaint was that the council officials weren't truthful. Several witnesses provided sworn affidavits but the ministry official preferred unrecorded casual conversations with council officials.

But what is of considerable concern is that during the investigation, the local MP wrote an article stating that the district had "an efficiently run council" and "the drumbeat I hear about this council is consistently good".

Released documents show that the MP was fully informed of the investigation throughout. He also had mates who held senior positions in the council including councillors who were active National Party members.

Mr Smith has now announced an inves-

tigation into Environment Canterbury – a council chaired by a former National MP Alec Neill. Heading the investigation team is Wyatt Creech, former Wairarapa National MP.

And which councils was my complaint about? Carterton and South Wairarapa District Councils are now working under the Wairarapa Combined District Plan – the first combined plan in the country – a model the minister favours.

Ironically, the ministry official administers a course to train RMA decision makers called Making Good Decisions. The course goes to great lengths to instill the legal principles of transparency and natural justice when assessing evidence and making well-founded decisions. The report to the minister prepared by that official fell woefully short of these principles.

What makes this situation worse is that the Principal Environment Court judge was informed of the investigation and evidence but said it was a separate matter.

How is it a separate matter if witnesses were threatened, evidence was biased and/or withdrawn, council consultants and lawyers drew out the process and several applicants were bankrupted? In one case a council witness withdrew their evidence after they admitted to criminal nuisance.

How can the minister be taken seriously that he genuinely wants to improve the processes under the RMA? All that was asked for was an open and independent inquiry.

Real damage has been done by the minister's handling of the complaint I lodged on behalf of my clients. As a result, the damage runs into millions of dollars.

A complainant should not have to go public against a politician or fork out tens of thousands of dollars in legal costs in order to convince them to perform their statutory duty. If the Minister can't do his job properly then he should pass it to someone else who will.

In response to my columns, I get a lot of feedback from people throughout the country who have also been bullied by councils using ratepayer money. It is difficult to provide advice to those people if there are not robust systems in place under the RMA to deal with such abuses of power.

• Grant McLachlan is a planning law consultant

RURAL DIARY

A selection of events happening around the country this week.

December 8

Handel's Messiah, presented by City of Dunedin Choir, Dunedin Town Hall, 7:30pm. www.cityofdunedinchoir.org.nz

December 8-11

Tectra Level 2 & 3 Wool Handling Course, Winton, contact Robyne Murray, 027 581 8144.

December 9

Southland field walk and Precision Agriculture, Riversdale Ardlussa Road, Gore, 1:30pm. View the latest FAR trials and meet Jim Wilson of Solisentials Precision Farming Solutions in the UK. Contact the FAR office 03 325 6353 or far@far.org.nz

December 12

Rotorua Lakefront Airshow, 11am. See wing walking, skydivers, vintage aircraft, solo and team aerobatics, helicopters, gyrocopters, and the arrival of the inaugural Air New Zealand Airbus A320 which touches down at Rotorua Airport at 2:35pm.

December 12

Morrinsville Christmas Parade, 1:30pm-2:30pm. Parade goes along Thames Street (from Lorne St end) through the town to Canada St, turns and goes back the same way.

December 12

Kihikihi is holding its free Christmas Carnival at the Kihikihi Primary School grounds, Waikato, from 9am. There will be a market, rides, vintage, racing and hotrods on display, and entertainment from 2:30pm until 5:30pm, when the Te Awamutu Brass Band a local singer will lead Christmas carols until 6pm.

December 13

Crusaders Charity Cricket, South Hagley Oval, Christchurch, 11am. Watch a team of celebrities versus the Crusaders in a free, limited over match for the benefit of the Cystic Fibrosis Association. Contact 03 341 8025 or www.cfnz.org.nz

December 13

Christmas Parade, Hamilton CBD, 2pm. Parade runs from Liverpool Street to corner of Anglesea and Knox Street. After the parade come to Garden Place for Santa's Party from 3pm - 4:30pm.

• Send listings to catherine.healy@ruralpress.com



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