

# David Caldwell

## Barrister

LLB, Dip. Hort., University of Canterbury  
Admitted 1989



I practice in resource management, local government, employment law and civil litigation. I have over 25 years' experience in these areas. Whilst an experienced advocate, my practice has focused on obtaining the best outcome for clients. Often, this has meant achieving resolution through negotiation, mediation or other dispute resolution processes. As such, I have an in-depth understanding of both adversarial and non-adversarial processes, as well as the somewhat inquisitorial process of local authority and Environment Court hearings.

### **Resource Management and Local Government**

I have been fortunate to advise and represent a range of clients in this time, including a number of local authorities. This has involved numerous appearances in the Environment Court and High Court in respect of resource consent applications, district and regional plan appeals, water conservation orders, enforcement and declaratory proceedings, jurisdictional and interlocutory matters.

I have held my "Making Good Decisions" accreditation since 2006. I completed my Chairperson certification mid-2015. I have conducted over 30 hearings.

My resource management and local government work, including my commissioner work, is undoubtedly enhanced by my experience in other areas of litigation. In particular, my grounding in general civil and criminal litigation has proven invaluable by providing me with a thorough knowledge of lawful procedure and evidence. Council clients benefit from decisions that are both merits-based and founded on sound process.

## Nature of Experience

### Commissioner Appointments

The appointments undertaken to date have included:

- Chair of Panel for Christchurch City Council on an application for land use consent to construct a dwelling on a High Hazard Management Area. The case raised complex issues of interpretation in light of an apparent policy vacuum for residential dwellings in areas affected by potential sea level rise;
- Chair of Panel for Southland Regional Council on application by Invercargill City Council for global stormwater discharge consent;
- Commissioner for Waimakariri District Council on three notification decisions (with submissions from Applicant received and considered);
- Panel member on application by a Gelita New Zealand Limited for variations to air discharge consent to enable objective and offensive odours to be discharged while remedial works undertaken. This was a controversial and high profile application;
- Sole commissioner for Waimakariri District Council and panel member for Canterbury Regional Council on partly retrospective consent applications relating to storage, processing and application to land of earthquake demolition materials. Regional consents included discharge of contaminants to land, and discharge of storm water to land from processing area. Effects related to surface water quality, ecology, ground water quality, public health, Tangata Whenua values and amenity values;
- Sole commissioner for Waimakariri District Council and chair for Canterbury Regional Council on partly retrospective consent applications for clean-fill site. Again, this was a controversial matter generating considerable opposition and media coverage; regional consents included consent to deposit clean-fill, land use consent to excavate material and discharge for contaminants into air;
- Chair of panel appointed to hear and determine private plan change for Waimakariri District Council. This related to rezoning of rural land to residential;

- Sole commissioner for Selwyn District Council and Canterbury Regional Council on joint hearing for discharge to air, land use, and subdivision consents relating to reconfiguration of a compositing facility, and bulk storage of raw product. I was also appointed by Canterbury Regional Council to determine the associated non notified discharge to ground applications;
- Sole commissioner appointed by Canterbury Regional Council on application to discharge odour and dust into air from an animal food manufacturing plant;
- Chair of panel appointed by Canterbury Regional Council to vary an existing consent to divert, take and use water to increase area of land to be irrigated by approximately 1400 hectares, and to discharge nutrients to land from farming activities. This related to an irrigation scheme, in a complex planning environment;
- Sole commissioner for Waimakariri District Council on application for land use consent to undertake earth works, vegetation clearance and stock piling within 20 metres of a river;
- Commissioner for Selwyn District Council to hear submissions and make recommendations on proposal to exchange part of a reserve held under the Reserves Act 1977 to enable part of the reserve to be used for commercial and community uses for the purposes of developing a town centre. I sat as Chair with a councillor.
- Sole commissioner for Selwyn District Council on application to establish commercial land uses, including a supermarket, on residentially zoned land with primary issues being those relating to retail distribution effects and plan integrity.

### **Advice and representation**

Since 2003 I have considerably extended my experience in resource management and local government law. From a resource management perspective, this has involved numerous appearances in the Environment Court and High Court in respect of resource consent applications, district and regional plan appeals, water conservation orders, enforcement and declaratory proceedings, jurisdictional and interlocutory matters.

I have provided advice and/or representation to developers, infrastructure companies, quarry operators, contractors, Iwi, applicants, Mackenzie District Council, Hurunui District Council, Westland District Council, Christchurch City Council and Canterbury Regional Council.

The type of Resource Management and Local Government work undertaken has included:

- The preparation and presentation of numerous cases in the Environment Court including developing strategy, legal submissions, briefing witnesses, reviewing evidence, finalising evidence and cross-examination;
- Numerous appearances at council (district and regional) hearings in respect of resource consent applications and RMA Plan hearings;
- Representation at Court-assisted and informal mediation;
- Negotiating settlement of numerous appeals;
- Providing strategic advice in relation to potential litigation and risks thereof;
- Advising clients on various resource management issues including interpretation of planning provisions, statutory interpretation, interpretation of resource consents, enforcement proceedings, district plan changes, appeals, local government matters, Building Act and other statutory compliance issues;
- Providing peer review of legal advice and strategic advice on various resource management matters and High Court appeals, particularly for local authorities;
- Advising local authority clients in relation to the duties and functions of councils and elected members including conflicts of interest and pecuniary interests;
- Advising clients in respect of planning frameworks for natural hazards and advising local authorities on the obligations arising from identification of hazards (for example, LIM notations);
- Provision of advice on various local government issues including preparation of bylaws, advising on consultation obligations and strategies, LGOIMA requests, disposal of strategic assets, freedom camping, Reserves Act, road stopping.

## **Employment**

I have acted for employers and employees in various types of employment environments. Clients have included national corporates and individuals. Examples of clients include professional service firms, mining companies, manufacturers, primary industry employers (including farming, forestry and fishing), secondary industries, a trade union, human resource agencies, a state-owned enterprise, hotels and a regulatory services provider.

The type of work undertaken has included:

- Appearances in the Employment Tribunal, Employment Relations Authority and Employment Court.
- Advising on statutory compliance, including the Privacy Act, Holidays Act, Health and Safety, Human Rights Act and Employment Relations Act.
- Drafting and negotiating individual and collective employment agreements and contracts, independent contractor agreements for various types of clients including manufacturers, professional service firms, trade organisations, executive officers, individuals.
- Acting for employers on matters arising from restraint of trade agreements, in terms of confidential information and protection of proprietary rights and non-solicitation provisions.
- Advising on significant restructurings and redundancies and processes to be taken.
- Advising on disciplinary processes and investigations and providing advice on performance matters for employers. The disciplinary and investigation matters have included situations where allegations have been raised alleging dishonesty, sexual harassment, breach of duties and similar. Advising on processes to address concerns relating to poor performance and to address long-term illness.
- Statutory interpretation and interpretation of employment agreements.