

In memoriam

Robert Makgill

Sadly, since the last volume of the Lincoln Planning Review (LPR) Dr Robert Makgill (Barrister) passed away. Although based in Auckland, Robert was a proudly supportive Research Fellow with the Centre for Land Environment and People (hosted in our Faculty of Environment Society and Design, at Lincoln University) and an early publisher in LPR.

Robert was also one of New Zealand's very few internationally recognised experts in resource management and marine planning law. Counsel for the IUCN in its influential submission to the International Tribunal for the Law of the Sea's (ITLOS) advisory opinion proceedings on deep sea mining in 2010, he subsequently chaired the International Seabed Authority's legal working group on Environmental Management of Deep Sea Mining in 2011, assisted with advising a party to the ITLOS advisory opinion proceedings on illegal, unreported and unregulated fishing in 2015 and facilitated the working group on Ecosystem-Based Management and Deep Sea Mining in 2016.

Less well-known is his early work in the development of Marine Spatial Planning (MSP) during a research scholarship under Prof. Frank Maes and Prof. An Cliquet at the University of Ghent's Maritime Institute in 2005. He provided a direct connection between the already well-established regional coastal planning in New Zealand in which he was well-versed. The work of the Institute laid the foundations for MSP in Europe.

Domestically, Robert was an energetic and innovative lawyer who appeared in some of the major planning court cases, notably the appeal of the consents to allow the Rena to be dumped in the Bay of Plenty; the Trans-Tasman Resources multiple attempts to obtain permission to mine iron sands off the west coast of North Island, and the successful challenge of the Minister of Conservation's decision to decline an application for a marine reserve in Akaroa. His arguments were notably cited approvingly in the series of cases that established that councils could control genetically modified organisms through resource management plans. In 2009, he was one of the two establishment Directors of North South Environmental Law which won the Resource Management and Environment Law Award at the 7th annual New Zealand Law Awards 2011.



Robert once said he was “too much of an academic to be a lawyer, and too much of a lawyer to be an academic”. In reality, he was both.

Hamish G. Rennie

Robert completed an LLB at Waikato and an LLM at Auckland. A surfer from Mount Maunganui, he was the legal advisor for Waikato's Artificial Reef Programme in the late 1990s that developed New Zealand's first deliberately constructed artificial surfing reef at Mount Maunganui. His LLM dissertation informed counsel in the Environment Bay of Plenty's successful 2002 High Court defence of its decision not to notifying the reef application. Subsequently, he played a major role in establishing protection for natural surf breaks in New Zealand's marine planning system, especially as Counsel for the Surfbreak Protection Society's influential submission to the Board of Inquiry on the Proposed New Zealand Coastal Policy Statement that came into force in 2010. In 2019, he completed a PhD at Ghent on a jurisprudential approach to understanding integrated coastal management. He used New Zealand as a case study, and I was appointed to his supervision team.

I first met Robert when he was a LLM student at Auckland University and we were both working on the resource consent application for the Mount Maunganui Artificial Reef with Prof. Kerry Black and, soon to be Dr, Shaw Mead. Over the years we became good friends. He was always able to separate his role as counsel working with an expert witness and PhD student working with his PhD supervisor from that of friend. It made for an interesting, at times challenging, relationship full of hour-long telephone conversations/discussions, rigorous testing of evidence, legislation and thesis chapters, beer, good music and food and hearing about his wife, the talented lawyer Ana-Paula, and their child Cosmos.

A passionate advocate for the environment and good resource management law, Robert submitted on a number of Bills passing through Parliament and was disappointed he was unable to convince the Government to extend the Resource Management Act to include the full Exclusive Economic Zone and continental shelf. At the time of his passing in December 2022, he was on the legal advisory board for the NZ Government funded Sustainable Seas research project on implementing ecosystem-based management through policy and legislation. He was also co-authoring two chapters in a book on the law of sea-bed mining (reviewed in this LPR) and the editor provides an extensive and touching tribute to Robert.

Robert once said he was "too much of an academic to be a lawyer, and too much of a lawyer to be an academic". In reality, he was both and to recognise and make more accessible his work, the following is a complete list of his publications and a selection of the more notable of the forty-plus court cases he appeared in during his all too brief life. He is missed.

Hamish G. Rennie, Centre for Land Environment and People, Lincoln University.

Key court cases:

Genetically modified organisms

- [2013] NZEnvC 298 NZ Forest Research Institute Ltd v Bay of Plenty Regional Council
- [2015] NZEnvC 89 Federated Farmers of New Zealand v Northland Regional Council influential
- [2016] NZHC 2036 Federated Farmers of New Zealand Inc v Northland Regional Council
- [2016] NZHC 2776 Federated Farmers of New Zealand Inc v Northland Regional Council
- [2018] NZEnvC 44 Whangarei District Council v Northland Regional Council

Seabed mining

- [2018] NZHC 2217 Taranaki-Whanganui Conservation Board v Environmental Protection Authority
- [2022] NZHC 1813 Taranaki-Whanganui Conservation Board v Environmental Protection Authority
- [2020] NZSC 67 Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board
- [2016] NZEnvC 217 Kiwis Against Seabed Mining Inc v Environmental Protection Authority
- [2021] NZSC 127 Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board

Rena

[2013] NZHC 500 Daina Shipping Co v Te Runanga O Ngati Awa (No 2)

[2016] NZEnvC 164 Ngai Te Hapu Inc v Bay of Plenty Regional Council

[2017] NZEnvC 169 Ngāi Te Hapū Inc v Bay of Plenty Regional Council

Subdivision: long-tailed bat conditions

[2021] NZEnvC 149 Weston Lea Ltd v Hamilton City Council

[2020] NZEnvC 189 Weston Lea Ltd v Hamilton City Council

Heritage protection

[2014] NZEnvC 220 Hamilton East Community Trust v Hamilton City Council

Artificial reefs

ENC Auckland A58/2000, 10 May 2000. In Tandem Marine Enhancement Ltd v Waikato Regional Council

Marine reserve

[2012] NZHC 933 Akaroa Marine Protection Society Inc v Minister of Conservation

Plan change

[2013] NZHC 1268 Motiti Avocados Ltd v Minister of Local Government

[2012] NZEnvC 282 Hoete v Minister of Local Government

[2017] NZEnvC 73 Ngāi Te Hapū Inc v Bay of Plenty Regional Council

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- Makgill, R., Jaeckel, A., & MacMaster, K. (2024). Chapter I. 3 Implementing the precautionary approach for seabed mining: a review of state practice. In V. Tassin Campanella (Ed.) Routledge Handbook of Seabed Mining and the Law of the Sea. Abingdon, Oxon, UK: Routledge. P. 454
- Makgill, R. & Macpherson, E. (2024). New Zealand. In V. Tassin Campanella (Ed.) Routledge Handbook of Seabed Mining and the Law of the Sea. Abingdon, Oxon, UK: Routledge. P. 454
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- Makgill, R., Gardner-Hopkins, J. D., & Coates, N. R. (2020). Trans-Tasman Resources Limited v. Taranaki-Whanganui Conservation Board. International Journal of Marine and Coastal Law, 35(4): 835–845. <https://doi.org/10.1163/15718085-BJA10036>
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- Makgill, R. & Gardiner-Hopkins, J. (2016). 'The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012' in Blakeley S (ed.), DSL Environmental Handbook, online and loose-leaf editions, Wellington: Brookers Ltd.
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