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gallaway cook allan

LAWYERS

Dear Clients and Valued Contacts,

It was with great pleasure that the partners of Gallaway Cook Allan in Dunedin and Blake Horder Gowing in Wanaka recently announced that they have agreed to merge the two practices. The merger will officially take effect from 3 April 2006.

As most of you will know, Gallaway Cook Allan was formed on 1 July 2001 through the merger of the practices of Cook Allan Gibson and Gallaway Haggitt Sinclair - both of which firms could proudly trace their succession back to the early settlement of Dunedin. Blake Horder Gowing is a much newer firm, having been formed in recent years. At present, Tony Horder, Peter Gowing, and Felicity Hayman operate in partnership and with firm founder Ray Blake continuing in the role of a consultant.

Blake Horder Gowing had been looking to expand its range of services in Wanaka and provide better service for its Dunedin clientele. The tight labour market in Central Otago had proved to be a barrier to the firm employing the necessary staff to do so. We had also been exploring ways to better meet the needs of our Central Otago client base, including opening a local office at some time in the future. After an initial discussion between our firms it became apparent a merger would meet the objectives of both organisations.

Clients of the new firm will be able to continue to deal with the partners and staff with whom they have existing relationships. At the same time, Dunedin clients of Blake Horder Gowing, and our Central Otago clients, will gain the benefit of increased accessibility to expert local legal services.

With 15 partners and over 50 staff, including consultants, associates, solicitors, notaries public and registered legal executives, the new firm will be a large one - not only regionally but on the national stage. The size of the firm ensures that we can provide significant legal resources to large businesses, but this doesn't impede on our ability, or desire, to work one-on-one with our smaller family clients. No matter what your legal requirements may be, no matter whether large or small, we are always here to help.

The partners of the new firm will be Warren Alcock, John Anderson, David Brent, Helen Davidson, Peter Gowing, Stephen Grant, Nicky Hay, Felicity Hayman, Tony Horder, Roger Macassey, Phil Page, Rosemary Riddell, Diccon Sim, David Smillie and John Walker. Ray Blake, Iain Gallaway, and Peter Gibson will be consultants to the firm.

The new firm will continue to use the name Gallaway Cook Allan in Dunedin and Blake Horder Gowing - a division of Gallaway Cook Allan, in Wanaka.

You can be assured of the continuation of the high levels of personal service and expertise you currently enjoy. We will keep you fully informed of developments as they occur.

We are delighted by this expansion and look forward to seeing the advantages for our clients. Please feel free to contact the person in the firm with whom you usually deal with any queries you might have about the merger.

We wish you a happy and safe holiday season and look forward to working with you again in 2006.

Kind regards,

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A Little Bit About Blake Horder Gowing

Blake Horder Gowing is Wanaka's largest local law firm with three partners, a consultant, a staff solicitor, and nine support staff. They have a vast local knowledge, which is a huge advantage for the many investors from out of the area looking to buy property or start businesses. They pride themselves on offering considerable experience and expertise in all of the major fields of law, with a special emphasis on:

- Conveyancing and all types of land transactions, property development and subdivision
- Business development, commercial property transactions and leasing
- Resource management
- Trusts, estates, wills, family and relationship property
- Employment law

With us all becoming one team in the near future, it seems like the ideal time to introduce the principals of the firm.

Tony Horder—Partner

Tony hails from Dunedin originally, where he graduated with a LLB from the University of Otago in 1970. In 1987 he established a sole practice as a general practitioner with particular interest in matrimonial law, accident compensation, and property and contract law. He became involved as a consultant for Ray Blake in 2000 and this relationship matured into a partnership in 2002. His practice continues to be of the general nature with focus on all property transactions, commercial transactions, property development and subdivision, and trust work. He also maintains a working interest in matrimonial and general civil matters.



Peter Gowing—Partner

Peter commenced legal practice in 1976 and having had 25 years in a partnership in a Dunedin firm, Peter arrived in Wanaka and joined the partnership in June 2003.

He brings to the practice a wide range of legal services with an emphasis on property law, trusts, estate planning and commercial transactions. He has a particular interest in rural transactions and has had wide experience in numerous farming and forestry ventures.

He has a farming (Lincoln College) as well as a legal background and is also (since 1990) a Notary Public.



Felicity Hayman—Partner

Felicity was born and educated in the UK and moved to New Zealand in 1987 after completing her LLB (Hons) at Birmingham University. She has worked for various law firms in Auckland, Wellington and Oamaru and joined Blake Horder Gowing in 2000 where she specialises in property law, particularly property development and subdivisions, estates, trusts and general commercial law.



Ray Blake—Consultant

Ray grew up mainly in the Otago and Canterbury areas and graduated LLB from the University of Canterbury in 1982. He moved to Alexandra in Central Otago in 1984 and became a partner in a firm there in 1988. In 1996 he moved to Wanaka and as the sole principal opened the current firm where he was later joined by his partners Tony Horder and Peter Gowing before becoming a consultant to the firm in 2005. Ray practices in the areas of urban and rural property conveyancing, commercial transactions, property development and subdivision, trust and estate planning, family and relationship property law and overseas investments in New Zealand.



Notaries Public. Who Are They and What Do They Do?

As a result of our recent merger with Blake Horder Gowing, the firm now has three Notaries Public within its ranks - consultant Iain Gallaway and partner David Brent in our Dunedin office, and partner Peter Gowing in our Wanaka office. As the role of a Notary is highly specialised, we thought it would be useful to let you know what Notaries are, and what they can do for you.

The role of Notaries evolved many hundreds of years ago when it was realised that where officials were not able to determine on sight the authenticity of foreign documents, such documents should be authenticated by some public official. This would then enable the documents to be accepted in the foreign jurisdiction without further proof of authenticity. From this realisation grew the modern principal role of the Notary - their ability to authenticate documents for overseas use is recognised in most countries around the world and is important in enabling international trade, business and personal transactions to be conducted.

Notaries can also work with documents for use in their own country, and there is therefore some overlap with the role of the solicitor. However in many countries only foreign documents certified by a Notary will be accepted - certification by a solicitor is generally not sufficient. In some cases the signature and seal of the Notary will also need to be authenticated by the Department of Internal Affairs or in some other manner. The authentication process depends on the type of document and the requirements of the country in which the document is to be used.

In New Zealand a Notary needs to be a practising solicitor. The authority to practise as a Notary Public is gained from the Court of Faculties of the Archbishop of Canterbury in the United Kingdom. The appointment is based on the fitness of the applicant - their integrity and ability proven through testimonials and certificates, and also on the need for a Notary in the applicant's locality. Once appointed, a Notary must have a notarial seal which is affixed to each document notarised.

The services a Notary provides includes:

- Authenticating documents.
- Taking Affidavits.
- Certifying copies of documents.
- Authenticating and verifying documents for overseas use - taking affidavits and declarations, certifying copies of documents, witnessing formal documents.
- Protesting or noting Bills of Exchange (a written order, similar to a cheque, directing one party to pay a certain sum of money to another).
- Preparing and attesting ships protests (a protest against all losses and damages, made by a ship's master who fears loss or damage from heavy weather or accident during a voyage).

Should you require the services of a Notary - to authenticate company or business documents for use overseas, or in personal matters such as applications for foreign passports, or to assist in an application to marry or to work abroad - please contact David Brent, Iain Gallaway, Peter Gowing, or the member of the firm with whom you usually deal.

Recent Procedural Amendments to the RMA

The Resource Management Act (RMA) was enacted in 1991 and repealed some 78 statues and regulations. During its time, it has been the source of much discussion and, at times, criticism. Parliament has amended the Act over a dozen times since its inception, most recently this year. This amendment was in response to criticism that the process was too slow and unwieldy. The purpose of this article is to give an overview of the processes in the Act and to comment on some effects of the Amendment.

Local (District and City Councils) and Regional Authorities have primary responsibility for administering the RMA, by writing and implementing plans that manage resources. Local Authorities have responsibility for land use activities, whereas Regional Authorities govern the use of air and water. Plans have objectives, which are managed through policies. In turn, these policies are implemented by specific rules. These objectives, policies, and rules differ depending upon the resource type and the particular area; for example, the rules relating to the construction of a house in a rural area differ...*continues*



Chris Thomsen

...significantly from those that deal with development in an urban area. It is interesting to note that one of the criticisms from national businesses is that rules for urban and rural areas differ dramatically from district to district, making regulatory compliance extremely complex.

When a Local or Regional Authority receives an application for resource consent, the first decision it must make is whether to notify the application to the public at large. This is an important part of the process, as the application's status as notified or non-notified governs who makes the decision and who can have a say upon it. A consent may be non-notified, partly notified, or publicly notified. If it is non-notified, council planning staff usually make the decision on the consent and the public do not become involved. If the application proceeds by way of limited notification, people who Council staff consider to be potentially affected (such as neighbours) are advised of the application and invited to make submissions. A publicly notified application is advertised in local newspapers and anyone may make a submission.

If you are not happy with a decision regarding notification, formerly an application was made for Judicial Review in the High Court. The 2005 Amendment transfers this jurisdiction to the Environment Court. The Court will soon be able to consider whether the decision to notify has been properly made, make declarations, and quash notification decisions. The Government has yet to confirm exactly when the Court will be given this task, although it does appear that it will be within the next 12 months. It is anticipated that it will treat the applications in much the same way as the High Court did, and focus upon the process leading up to that decision rather than the merits of the application itself.

If a matter is publicly or partly notified and someone makes a submission, it proceeds to a consent hearing. The Hearings Committee typically has three elected members who currently hold seats on the District or Regional Council. The 2005 Amendment has introduced new powers about how these hearings can be managed.

A major change is that a consent authority now has a greater ability to regulate a hearing. For example, under s 41C it may give directions on the evidence produced by a party (e.g. circulating it in writing in advance). There are some fundamental issues with a decision maker giving such directions and the time spent arguing about these issues may well prolong the process. We anticipate Councils will exercise this power sparingly, allow people to have their say, and move on. A requirement for evidence to be in writing and circulated before the hearing will also have the effect of slowing down the process, though this may be helpful in major or technically complex applications. However, it will be unsuitable for small projects, as the preparation of evidence is often time consuming and expensive.

Once all parties have had their say, the Committee usually retires to make their decision, "public excluded". The RMA requires the decision to be made within 15 working days and all submitters are notified in writing.

If you are not satisfied with the outcome of the consent hearing, the next step is to appeal to the Environment Court. To appeal, you must have made a submission or have an interest in the proceeding that is greater than the public generally, this is most often used by statutory bodies such as Transit New Zealand, or environmental groups such as Forest & Bird.

The Court usually sits with one specialist Judge and two Environment Commissioners, who come from a variety of disciplines such as landscape architecture and engineering. The Court hears the matter "de novo" (afresh), although the Amendment Act now requires the Court to "have regard" to the decision-making authorities' ruling. This requires the Court to consider the Council's decision but not necessarily agree with it.

Unlike the Council's hearings, the rules of evidence and Courtroom etiquette apply, although the Environment Court does have the power to regulate its own proceedings to an extent. Litigants should take care not to expose themselves to order for costs by not adequately preparing their case.

Once the Environment Court releases its decision, there is a right of appeal to the High Court on matters of law only. These matters include the interpretation of a plan or the Act itself.

We doubt that the 2005 Amendment Act will make much of a difference to how most resource consent applications are dealt with or how long that takes. Of interest will be how enthusiastically Council's will use their new hearing powers. Our experience is that it has seldom been the case that Council hearings panels lack the power or experience to run hearings properly. Delays and expense are usually caused by someone actively prolonging the process, or Council's staff lacking the experience or time to manage applications efficiently; the 2005 Amendment Act will not change that.