

Environmental Defenders

The title of the book launched tonight, “Environmental Defenders”, is a nod to the very many people who have carried out the work of the Environmental Defence Society over the last fifty years. The label may suggest caped crusaders, but the photographs which illustrate the book show them to be apparently ordinary respectable people entirely without capes, many of them getting on in years. If referring to them as “Environmental Defenders” strikes you as a little too heroic, reading the book will convince you the description is entirely just.

Raewyn Peart’s book is however much more than a history of the people of EDS and the work they undertook. It charts the history of environmental protection in New Zealand over the past fifty years. It describes changing attitudes and insights, and points to continuing challenges. It is an important social, political, and legal chronicle of our times. It is also a gripping and entertaining story of audacity, high spirits and hard work, beautifully illustrated with wonderful photographs of the dazzling landscapes of home.

The mission of EDS from its founding 1971 by David Williams has been environmental protection through law and scientific knowledge. The achievements and high reputation of the Society have been largely because of its success in bringing together talented lawyers and highly qualified scientists. Not that the scientists stayed in role. As the book describes, they have been pretty good bush lawyers, effective and inventive in shaping arguments and prodding instinctively conservative lawyers to more incendiary thinking. The rigour brought by the EDS scientists exposed deficiencies in the assumptions behind many proposals for development and in the methodologies used to measure environmental impact, as demonstrated in early cases concerned with the development of thermal power and hydroelectricity. Such professionalism established the seriousness of purpose and reputation of the Society.

The story of the Society is one of two halves because of the hiatus in its activities between the late 1980s and its revival in 1999. The link between the two distinct periods of its operation described in the book has been the inimitable Gary Taylor, its principal driving force. And Raewyn Peart, herself a doughty environmental defender, generously but rightly dedicates Environmental Defenders to Gary.

Although Gary brought strategic direction and organisation to the Society, its first half was somewhat more hand to mouth and rather more chaotic than the professional body it has developed into following its reestablishment in 1999. Today the Society is a highly respected and influential independent voice for environmental protection, operating under the outstanding team of Raewyn, Fiona and Gary supported by a fluctuating pool of exceptionally able inhouse lawyers and researchers, whose contribution to the Society’s work is detailed in the book.

In the early days, things were a little different. In the book, Dick Bellamy acknowledges that he often felt out of his depth. Well, most of those involved in EDS at the time were out of their depth. All had to take on work beyond their experience. It was exhilarating in a “Look Ma, no hands” sort of way. It was certainly stretching.

On the legal side the arguments being run were often novel. There was not much law to work with. It is hard now to remember how undeveloped public law principles were in the 1970s and nothing changed overnight. It was 10 years before the Official Information Act laid open the processes by which decisions affecting the environment were made. Decision-making was not transparent. (Indeed, there were shock waves around the legal profession when in the 1970s the High Court ordered disclosure of the report of a planner employed by the Auckland City Council, because such reports had been long thought to be confidential).

The legislation governing environmental matters was a patchwork and inconsistent. The Crown was exempt from much planning regulation. Mining was privileged over environmental protection and not subject to consent processes comparable to those under the Town and Country Planning Act 1953. The culture of the times was pro-development and complacent about much environmental degradation. For years EDS struggled to obtain standing in planning cases. Some of the more significant cases it fought were for other named parties to litigation, such as Forest and Bird or local groups or individuals who had standing.

From its inception then EDS found itself at the forefront of the development of modern administrative law. One of the more dramatic events I have seen in Court was the tussle over disclosure of cabinet papers in the Court of Appeal in the Aramoana Smelter case. The relief of the judges when the Solicitor General indicated that the Cabinet minutes would be disclosed was palpable. It was a constitutional moment.

Almost as important for the development of New Zealand law was *EDS v Mangonui County* which established that matters of national importance under s 3 of the Town and Country Planning Act were not to be balanced against other considerations but had priority. It was a considerable break through at the time, although somehow it seems that this question of hierarchy of values in environmental protection is a fight that is never-ending.

As the book describes, some of the campaigns undertaken by EDS took years of effort. That was certainly the case with the campaign in relation to mining on the Coromandel Peninsula and the campaigns in relation to protection of the McKenzie country later. Perhaps Gary had an overview of what was happening in these long-running cases, but I struggle to remember why he and I spent what seemed like weeks billeted with charming local supporters, Keith and Peggy Purnell, in Thames and why a group of us spent a memorable evening with the Inspector of Mines in his Waihi motel room hearing a passionate defence of coal mining in New Zealand. These sort of experiences pepper the recollections recorded by Raewyn Peart. And the connections they set up with people and places far removed from our largely urban experiences are a large part of why those who undertook EDS work regard it as a highlight of their careers.

As these experiences illustrate, and as the book describes, one of the real strengths of EDS is the connections it has made in the projects it has taken on with people and communities. Some of those connections have been with those adversely affected by developments and swamped by the processes they have had to negotiate. For them, EDS was a life-line. Some connections were with with local and national political figures and officials, many strongly supportive of environmental protection. Still others have been with those whose aspirations for development were questioned or opposed

by EDS. This willingness to engage and understand different views and the pressures faced by owners of land or proponents of development has been part of why EDS has been so effective in achieving practical and incremental gains for environmental protection.

In large part, this culture of inclusiveness and reasonableness has been set by Gary Taylor's own personal qualities and preferences. I mention in the foreword the cheerful and purposeful tone he set for the Society and his respect for others and ability to understand their concerns. As the Wild West days of environmental law have receded, intervention has been able to be more strategic. Securing good substantive outcomes for the environment has become the focus. And in achieving good outcomes for the environment, reasonableness and the ability to understand and respect the concerns of others has been a great strength of EDS.

The substantial cultural shift in attitudes towards protection of the environment, charted through Raewyn's history of EDS, is easily overlooked. It is a shift EDS has consciously worked to bring about. That effort is seen in its conferences on aspects of the environment, starting in 1974 with the conference on energy and continuing to the present with annual and one-off conferences such as that on climate change. Shifting attitudes is the end sought in the substantial work EDS has put into law reform and policy development, work seemingly without end. The same end – developing a climate for environmental protection led EDS to provide handbooks to de-mystify the processes. And publications to raise public consciousness about developing threats, such as Raewyn's superb and very successful book about the Hauraki Gulf. EDS also has organised public meetings on local and regional controversies to let people into the discussion and provide good information.

Because EDS has never been a one-issue campaigner, it has a unique overview of what the issues in environmental protection are. From its beginning it has been conscious of the need for an independent advocate for protection for the environment to look at gaps in protection – what is not being done – rather than simply to react to controversies as they arise. That thinking was behind the work undertaken in relation to agricultural chemicals and storage of LPG. It is seen in the declarations sought as to failure of local authorities in fulfilling their responsibilities under the Resource Management Act, in the protections sought for wild and scenic rivers and unmodified coastline and ecological systems, in the work undertaken on the implications for communities of rising sea levels and on the options for management of the Exclusive Economic Zone. The breadth of the interventions described in the book is breathtaking.

It is sobering to think how environmental protection in New Zealand would fare without EDS. Its absence in the decade before 1999 demonstrated the need for independent defence of the environment. At the time it disbanded, the signs appeared favourable for public agency advocacy for the environment. But lacking independence and resources, they disappointed. It is tempting to speculate whether the disappointments with the implementation and operation of the Resource Management Act might have been moderated if EDS had been operating when precedents for its application were being set. But it may be that the move in the legislation to manage effects rather than outcomes, leaving outcomes for the environment to be settled in the market place, was always going to be a problem, and that the compromises in expression of the legislation inevitably obscured its protective potential.

Although it must be dispiriting after all the hard work to face the prospect of further law reform, perhaps there is now opportunity to push for sensible legislation that is less complex, less turgid and hedged in expression, which can set clear limits or presumptions against the development of unmodified and precious landscapes and ecosystems. Judge Bollard warned 10 years ago that the compromises and trade-offs and continuing cumulative changes he observed in application of the RMA could lead to irreversible degrading outcomes. Those conditions continue. There is still much work to be done in environmental protection by EDS.

Raewyn Peart is to be congratulated on a wonderful history of the Environmental Defence Society. The book holds a mirror up to show how we were and where we have come in environmental protection. It contains lessons for future directions which will be helpful for policy makers and all who care about the environment. It gives confidence that the Environmental Defenders of EDS will be up for the challenges of the next 50 years.