



November 2007

Envirolink

Climate change regulations released

With the recent release of the Climate Change (Unit Register) Regulations 2007 the Government has started putting in place the legislative framework that will be required to implement the Emissions Trading Scheme. The Climate Change Response Act 2002 (“the Act”) anticipates a form of emissions trading and provides for the creation of a register of unit types specified in the Kyoto Protocol. The regulations, made pursuant to the Act, set out various requirements in relation to the Registry and come into force on 19 November this year. The purpose of the Registry is to ensure the accurate accounting of the issuing, holding, acquisition, transfer, retirement, and cancellation of all the unit types.

The Government intends to introduce legislation implementing the Emissions Trading Scheme before the end of the year primarily by amending the Act. Creating regulations under the current Act is an efficient way of creating some of the elementary parts of an emissions trading scheme and it avoids debating the proposal until there are matters of substance to consider. However, constitutionally the public has a right to expect the majority of the scheme to be considered in a thoughtful, public forum.

The early signals that the Government intends to legislate through regulations (without due process) and then rush through legislation is concerning. Although the Government has a wide consultation programme about how the scheme will apply to the different sectors, it is unclear how much of the operational aspects of the trading scheme it intends to create through regulations and without involvement of the public.

We expect that the Government will release draft legislation concerning the scheme’s framework and how that applies to the forestry sector at the same time. The Environment team will keep you posted on further developments on this topic.

Coromandel Watchdog case clarifies use of “prohibited” activity status

A recent Court of Appeal decision has clarified the circumstances in which it may be appropriate for a territorial authority to classify an activity as “prohibited” when formulating a district or regional plan under the Resource Management Act 1991 (“RMA”). Under the RMA a resource consent cannot be granted for an activity prohibited in a plan. If such an activity is desired it can only be undertaken if the planning provisions are changed.

The Thames-Coromandel District Council’s (“TCDC”) proposed district plan classified mining as a prohibited activity in a number of zones. TCDC also recognised that a private party might propose a plan change to alter the situation. The Environment Court found that TCDC was wrong to categorise mining as a prohibited activity in circumstances where it contemplated the possibility of mining occurring. It ruled that prohibited activity status should only be used when a local authority is satisfied that an activity could never be allowed in the relevant place. The High Court upheld this decision which was appealed by Coromandel Watchdog.

The Court of Appeal disagreed with the Environment Court's approach, considering that it unnecessarily elaborated upon the words within the RMA. It also held that the test would unduly limit the circumstances in which the categorisation of an activity as "prohibited" may be the most appropriate option. For example where an authority has insufficient information about the effects of an activity at the time the plan is being formulated.

This decision has been welcomed by territorial authorities as clear guidance that they are able to use a prohibited activity status in circumstances where an "undesirable" activity falls short of being absolutely forbidden for all time.

Maritime matters

The Ministry of Transport is seeking comments on a raft of discussion papers on maritime issues that it has recently released. The first set of papers (charmingly named Sea Change) ties in neatly with the Government's focus on climate change by proposing a draft strategy to double the level of domestic freight carried by coastal ships by 2040. By increasing the amount of freight moved by sea it aims to reduce congestion on roads and oil consumption, and consequently reduce greenhouse gas emissions. The paper suggests that funding will be available and a Maritime Liaison Unit will be established to help co-ordinate and promote opportunities for coastal shipping.

The second paper addresses port and harbour safety, which is currently managed through a voluntary code that has no legal force. The paper looks at the implications of this situation for safety outcomes and considers whether the status quo should be maintained or whether new measures should be introduced, such as statutory provisions or formal recognition of the code. Submissions are sought on these options and also on whether there is scope to improve arrangements for dealing with navigation safety in areas outside ports and harbours.

The Ministry of Transport is also considering adopting four international marine conventions. These conventions provide measures for addressing and responding to the risk of pollution from spills of hazardous and noxious substances, and establish liability and compensation regimes for maritime incidents. The Ministry has released a cost-benefit analysis for the country of adopting these conventions and is seeking submissions on whether it is in New Zealand's best interests to become party to these conventions.

The closing date for submissions on these discussion papers is 19 December.

Innovation fund for energy efficient hot water

Following on from the EECS Strategy mentioned in our last newsletter, the Energy Efficiency and Conservation Authority ("EECA") has since launched a fund to encourage innovations that lead to the uptake of solar water heating and heat pump water heating technologies. The fund is part of the Government's solar water heating programme, and its broader approach to energy sustainability.

Under the new fund EECA will contribute up to 50 percent of the cost of an approved project, with a maximum grant of \$100,000. Grants will be allocated in several contestable rounds, the first of which closes at the end of this month with the second to follow in March-April 2008. In the first round preference will be given to projects that have commercial applications, although the Government has indicated that a different focus may be adopted for subsequent rounds. Projects that are already covered by other EECA funding schemes will not be eligible for further funding.

Licensing brings new era for building industry

Since the beginning of the month various types of building practitioners can now apply to become licensed building practitioners ("LBPs"). The licensing approach was created in the Building Act 2004, with plenty of time allowed for implementation. Initially licensing will be voluntary, however, from November 2010 specific restricted work will need to be done or at least supervised by a LBP. Those without a licence will still be able to work in the building industry, but they will have to be supervised when involved in restricted work. To become licensed people will need to demonstrate their competence within a series of occupational classes.

This approach is intended to deliver greater accountability, and the Building Practitioners Board will have the ability to investigate complaints and take action against a LBP, including making a practitioner undergo more training, imposing a fine or cancelling the practitioner's licence.

For the public's ease of reference there will be an online register of LBPs available which will include details of any disciplinary action taken against a LBP. Options are also being explored to give future house buyers access to information about whether or not a house was built by a LBP.

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further information

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