



February 2010

Envirolink

Environmental Engagement in 2010

We expect a number of changes in environmental law in 2010; particularly in terms of policy development, phase II of the RMA reforms and reviews of legislation. Recent developments and an outlook for 2010 are detailed further below.

Local Governance

- The implementation of the Auckland Super City will be a big issue in 2010 as the 1 November 2010 deadline for Auckland Council to be established draws closer. The **Local Government (Auckland Law Reform) Bill (Bill)**, introduced at the end of 2009, is the third and final bill required to effect the changes to Auckland's governance. As well as containing further provisions relating to establishment of the new regime, it also contains the detail for the operation of the Auckland Council, and various transitional planning, funding and rating arrangements for the Auckland Council. Submissions on the Bill close on Friday of this week, **12 February 2010**.
- Linked to the changes to Auckland's governance, is a voluntary move by councils in the Waikato to consider the possibility of amalgamating to form a 'Waikato Super Council'. Similarly, the governance structure of Wellington local authorities is also under review.

Mining

- The Government's controversial review that considers opening up conservation land to mining will attract further interest in **March** when it releases a discussion paper on proposed changes to Schedule 4 of the Crown Minerals Act, which restricts mining on certain specified land. The public will have the opportunity to provide feedback on the discussion paper before decisions are made. Given that there is strong public sentiment on this issue it is anticipated that the paper will receive considerable feedback.
- In a **statement to Parliament** today John Key has signalled that, notwithstanding the public participation process, he expects the Government will make significant amendments to Schedule 4 and open up some conservation land to mining. He also indicated that the Government will be undertaking a new drive to promote oil and gas exploration.

Heritage

- The Government's ongoing review of the Historic Places Act 1993 has resulted in a decision to disestablish New Zealand Historic Places Trust branch committees, which will no longer continue as part of the organisation. Work on other aspects of the review, including the archaeological consenting process, continues and further changes may yet be announced. The review is expected to be completed in **early 2010**, with a Bill being introduced mid-year.

National Environmental Standards

- It appears likely the Government will continue to use National Environmental Standards (**NES**) to achieve national consistency in decision making during 2010. The NES for **Electricity Transmission** came into effect in January this year, setting out a national framework for existing electricity transmission lines. This raises the question of whether a similar standard will be introduced for other network providers. A proposed **NES for Assessing and Managing Contaminants in Soil** has also been released for consultation, with submissions closing on **19 April 2010**. This NES sets standards at which contaminated land is considered safe, and proposes measures to identify and assess contaminated land. Further, a NES relating to small-scale generation is to be investigated.

Phase II RMA Reforms

- Further work is also underway on the Phase II of the RMA reforms with the Government recently announcing the formation of two new technical advisory groups (TAG) to consider options for reform of the RMA and related legislation. The Urban TAG will consider how to achieve better outcomes for urban planning and design and managing the challenges of urban growth. Issues of land supply and housing affordability will form an important part of the work stream. The TAG will also be looking at integrating and aligning planning statutes and planning mechanisms - specifically the RMA, Local Government Act and Land Transport Management Act. Proposals to improve the interface with the Building Act do not appear to be covered by this work stream although they are in a number of respects closely related. The **Government's terms of reference** require the TAG to report back on **31 March 2010**.
- The **Infrastructure TAG** will review the role of designations and consider other possible approaches. Consideration will be given to better integrating the processes of the RMA and the Public Works Act, and the adequacy of current compensation arrangements will form part of the review. The review provides a unique opportunity for infrastructure providers to influence the environment in which they deliver infrastructure solutions. Suggestions may include the concept of enhanced umbrella approvals with subsidiary consents; creating a one-stop-shop type of designation providing for approvals beyond land

use activities; and restricting those that may benefit from requiring authority status. Those wishing to push the scope of recommendations will probably seek changes to enable easier upgrades of existing assets. An enduring solution which optimised the needs of all stakeholders would be a significant outcome for New Zealand Inc. The Government's **terms of reference** require the TAG report back on **30 June 2010**.

Acquaculture

- This year we can also expect reforms in aquaculture to be progressed following the release of the Aquaculture TAG report last year and the public submissions on the report. The Government expects a Bill will be introduced to the House in **mid-2010**.

ETS

- During 2010 the public will feel the effect of the Emissions Trading Scheme with fuel and energy costs likely to rise as those sectors enter the scheme from the beginning of **July**. In terms of future restrictions on emissions, since our December **EnviroLink**, the Government has announced that it will join the Copenhagen Accord and has submitted a conditional emissions reduction target range of 10% to 20% below 1990 levels by 2020. If the various conditions don't exist, such as an international carbon market and comparable efforts by other countries, then New Zealand's 2010 target will be less. Consequently we expect public discussion on this topic to continue.

Water

- The stakeholder-led Land and Water Forum, tasked with considering issues around fresh water management, is also due to report to the Environment Minister in **July**. The Government has advised that it will seek public input before making final decisions. Shortly, the Government is expected to receive the independent Board of Inquiry recommendations on the proposed **National Policy Statement for Freshwater Management**. The Government will then have significant information by the third quarter to consider changes in this area. We expect potentially small changes in the short-term with more difficult challenges potentially postponed until after the next New Zealand general election, expected to take place in 2011.
- Developments can also be expected in the coastal marine environment this year with several issues currently under consideration, including the Minister of Conservation's decision on the Board of Inquiry's recommendation for New Zealand's Coastal Policy Statement. Environmental legislation for the **Exclusive Economic Zone** remains on the agenda, but not as a high priority. The repeal of the Foreshore and Seabed Act is becoming more likely, with John Key recently announcing that he is 'hopeful' that the Act can be repealed this year and a replacement Act enacted in its place.

Clearly 2010 will continue the momentum of changing environmental regulation in New Zealand. We invite you to contact one of our experts if you wish to discuss any of the issues mentioned above news or would like assistance to prepare a submission on the Local Government (Auckland Law Reform) Bill due this week.

contacts



Daniel Clay - Partner

T +64 9 353 9921
M 021 470 181
E daniel.clay@minterellison.co.nz



Rachel Devine - Partner

T +64 9 353 9912
M 021 521 299
E rachel.devine@minterellison.co.nz



Paul Radich - Partner

T +64 4 498 5019
M 021 673 777
E paul.radich@minterellison.co.nz

MINTER ELLISON OFFICES

AUSTRALIA

Sydney AURORA PLACE 88 PHILLIP STREET SYDNEY NSW 2000 • TELEPHONE +61 2 9921 8888
Melbourne RIALTO TOWERS 525 COLLINS STREET MELBOURNE VIC 3000 • TELEPHONE +61 3 8608 2000
Canberra 25 NATIONAL CIRCUIT FORREST, CANBERRA ACT 2603 • TELEPHONE +61 2 6225 3000
Brisbane WATERFRONT PLACE 1 EAGLE STREET BRISBANE QLD 4000 • TELEPHONE +61 7 3119 6000
Gold Coast * 159 VARSITY PARADE VARSITY LAKES QLD 4227 • TELEPHONE +61 7 5553 9400
Perth * LEVEL 49, CENTRAL PARK 152-158 ST GEORGE'S TERRACE PERTH WA 6000 • TELEPHONE +61 8 9429 7444
Adelaide * GRENFELL CENTRE 25 GRENFELL STREET ADELAIDE SA 5000 • TELEPHONE +61 8 8233 5555
Darwin * LEVEL 4, 66 SMITH STREET DARWIN NT 0800 AUSTRALIA • TELEPHONE +61 8 8901 5900

NZ

Auckland MINTER ELLISON RUDD WATTS * LUMLEY CENTRE 88 SHORTLAND STREET AUCKLAND 1010 NEW ZEALAND • TELEPHONE +64 9 353 9700
Wellington MINTER ELLISON RUDD WATTS * 125 THE TERRACE WELLINGTON NEW ZEALAND • TELEPHONE +64 4 498 5000

UK

London 10 DOMINION STREET LONDON EC2M 2EE UNITED KINGDOM • TELEPHONE +44 20 7448 4800

ASIA

Hong Kong 15TH FLOOR, HUTCHISON HOUSE 10 HARCOURT ROAD CENTRAL HONG KONG • TELEPHONE +852 2841 6888
Shanghai SUITE 4006-4007 40th FLOOR CITIC SQUARE 1168 NAN JING ROAD WEST SHANGHAI 200041 PEOPLE'S REPUBLIC OF CHINA • TELEPHONE +86 21 6288 2171
Jakarta MAKARIM & TAIRA S ** LEVEL 17 SUMMITMAS TOWER 1 JL JENDERAL SUDIRMAN 61- 62 12190 JAKARTA • TELEPHONE +62 21 252 1272

* MINTER ELLISON LEGAL GROUP MEMBER

** MINTER ELLISON ASSOCIATED OFFICE

Disclaimer

The information contained in this update is intended as a guide only. Professional advice should be sought before applying any of the information to particular circumstances. While every reasonable care has been taken in the preparation of this update, Minter Ellison Rudd Watts does not accept liability for any errors it may contain.

SYDNEY
MELBOURNE
BRISBANE
CANBERRA
ADELAIDE
PERTH
GOLD COAST
DARWIN
AUCKLAND
WELLINGTON
HONG KONG
SHANGHAI
JAKARTA
LONDON

www.minterellison.co.nz