Ground Cover

Environment, climate change and consenting law update

CHAPMAN TRIPP

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Ground Cover tracks legislative and regulatory reform in resource management, local government and planning law.

Climate Change

Policy stability on zero carbon?

The Climate Change Response (Zero Carbon) Amendment Act was passed in November 2019 without a dissenting vote (due to the absence from the House of Act MP David Seymour).

The cross-party support suggests that the architecture created by the Act (the Climate Change Commission and the reporting requirements) will survive, as will New Zealand's statutory commitment to the Paris Agreement target of net zero emissions by 2050.

But the consensus is not absolute. National has put on record the changes it would like to the legislation. These would:

- provide that the target for agricultural emissions (biogenic methane) be a matter for recommendation by the Climate Change Commission rather than set down in statute
- make it clear that the aim of the Paris Agreement is for emissions reduction "to occur in a manner that does not threaten food production"
- strengthen the provisions that consider the level of action being taken by other countries and that allow our targets to be adjusted "to ensure we remain in step with the international community"
- ensure that the Commission considers economic impacts when advising on targets and emissions reductions
- ensure that the Commission considers the appropriate use of forestry offsets and has regard to the carbon sink represented by tree crops, riparian planting and other farm biomass
- split emissions budgets between biogenic methane and carbon dioxide as recommended by the Parliamentary Commissioner for the Environment, and
- include a greater commitment to investment in innovation and R&D.

Bill

Further changes to the Emissions Trading Scheme

The Emissions Trading Scheme (*ETS*) would be substantially recast through the Climate Change Response (Emissions Trading Reform) Amendment Bill, which has recently closed for consultation.

The Bill is now before the Environment Committee to be reported back to the House on 2 April 2020. Key changes to the ETS will:

- set unit supply settings over a five year rolling horizon
- limit emissions unit volumes to align the ETS with the five year budgets provided for under the Zero Carbon Amendment Act
- provide for New Zealand Units (*NZUs*) to be auctioned, and remove the fixed price option (often considered a NZU price ceiling) from the start of auctioning
- start the phase-down of industrial allocations, and
- provide for a 'cost containment reserve' to control high prices, whereby extra units can be fed into the market to control prices if a trigger price is reached.

The Bill also provides a 'backstop' arrangement for agricultural emissions, in the event that the industry plan developed by the sector and iwi is unable to arrive at an alternative pricing mechanism for on-farm emissions, or if insufficient progress is being achieved on emissions reduction. This assessment will be made by the Climate Change Commission through a review mandated in the Bill for 2022.

The Bill does not set specific volumes or prices. The settings for these will be determined by regulations, which the Government released for consultation in late December last year, with submissions due by 28 February 2020.

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Proposals include:

- a provisional emissions reduction budget under the ETS of 354 Mt CO_2–e for 2021 to 2025 (which would require emissions reductions above what would be achieved under current policy settings of around 13 Mt CO_2–e). This will only apply to emissions that are regulated by the ETS
- limiting the number of NZUs available for auction, which is intended to force those ETS participants who have stockpiled NZUs to draw on that stockpile to meet their obligations
- raising the effective ceiling set by the fixed price option from $25 to $35 (for 2020 emissions liabilities) and removing it thereafter in favour of a cost containment reserve trigger price of $50, and
- imposing an auction reserve of $20 per NZU (this would not directly impact the secondary market but may impact price expectations on the secondary market).

The Climate Change Commission may recommend different settings, including the floor and ceiling, when it provides its advice to inform the first of the emissions budgets to be created under the normal processes of the new regime.

Bill

Discussion document

Accelerating the shift to renewable energy

Released on the same day as the ETS settings consultation, this discussion document looks at options to accelerate the move to renewable energy and energy efficiency and is subject to the same timeline with submissions closing on 28 February 2020.

The proposals to address market and regulatory opportunities and barriers are built around two objectives – to reduce emissions from burning fossil fuels for process heat used in manufacturing, and to promote new renewable electricity generation.

Process heat

The approach distinguishes among process heat infrastructure according to the temperature requirements of the end production:

- low is less than 100° – used for water and space heating
- medium is between 100° and 300° – drying wood products or milk powder, and
- high is over 300° – steel and aluminium manufacture.

The Government is contemplating a ban on new coal fired boilers for temperatures below 300° and phasing out existing assets supplying temperatures below 100° by 2030.

Promoting new renewable generation

To reach emissions reductions estimated in the Interim Climate Change Committee's analysis, at least 5,500 megawatts of new renewable electricity generation would need to be built by 2035. To augment the New Zealand ETS, non-price options to accelerate renewables investment under consideration include:

- strengthening national direction instruments under the Resource Management Act (*RMA*) (e.g. amending the existing National Policy Statement (*NPS*) for Renewable Electricity Generation, scoping new National Environmental Standards or National Planning Standards and providing for the preapproval of renewable energy developments). This option would reduce uncertainty and delays in obtaining approvals for renewable electricity projects under existing RMA processes
- exploring whether there is a role for the Government in encouraging greater demand-side participation and the forms that this might take
- requiring electricity retailers and/or distributors to deploy energy efficiency technologies across their customer and/or asset base. There is, however, an acceptance that encouraging investments that may not "make sense from a network and system efficiency point of view" may increase costs that would be passed on to the consumer. The costs to the Government of enacting the necessary regulations and funding of an administrative and monitoring agency would also be "considerable"

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- investigating the regulatory and economic requirements to develop offshore wind assets with an initial focus on the Taranaki region
- Improving funding and regulatory conditions for National Grid investment
- requiring retailers and/or large energy users to procure or produce a given quota of renewable energy through a system of Renewable Portfolio Standards and Renewable Energy Certificates, and
- phasing down thermal baseload and placing it in strategic reserve.

The review notes that the last two items would involve substantial government intervention and carry significant risks. Feedback is sought to determine whether further investigation is warranted.

Accelerating renewable energy and energy efficiency

Climate Change Commission members

Rod Carr – former Reserve Bank of New Zealand Chair, Jade Software Corporation Chief Executive and Vice-Chancellor of Canterbury University – will lead the Climate Change Commission. Announcing the appointment, Climate Change Minister James Shaw said he had chosen Carr for the independence, credibility and analytical approach he would bring to the role.

The other members are: Nicola Shadbolt, Chair of Plant & Food Research and a former Fonterra Director; Catherine Leining, Moto economist and policy fellow; James Renwick, climate scientist; Judy Lawrence, senior researcher into climate change adaptation and policy making; Lisa Tumahai, Chair Ngai Tahu, and Harry Clark, Director of the New Zealand Agricultural Greenhouse Gas Research Centre.

Statement

Mandatory disclosure of climate-related risk

The Government has consulted on moving to require listed issuers, banks, general insurers, institutional investors and investment managers to disclose their exposure to climate-related risk.

Chapman Tripp commentary

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Resource Management

Freshwater expert panel report due in February

The Freshwater Independent Advisory Panel chaired by former Principal Environment Court Judge David Sheppard will report to the Government by the end of February. The panel has been tasked with considering the public submissions to the *Action for healthy waterways* discussion document and providing recommendations to Environment Minister David Parker.

Submissions closed on 31 October 2019. The timetable from here has not been specified but we are expecting decisions before the election.

Discussion document

Landfill levy consultation

The Government is proposing a new landfill levy structure which will be both higher and broader than currently applies. The additional revenue will be invested in solutions to support waste reduction, such as New Zealand based recycling and reprocessing infrastructure.

Proposals include:

- increasing the rate for landfills that take household waste from the existing $10 to $50 or $60 per tonne by mid-2023
- expanding the levy to cover most landfill types, including industrial and construction and demolition fills, but not cleanfills or farm dumps, at a proposed rate of $10 or $20 per tonne depending on the type of landfill, and
- improving the data around how waste is created and managed.

Submissions close on 3 February 2020.

Discussion document

Opportunities for change

The Review Panel tasked with producing recommendations to transform the resource management system has put out a 53 page, high level paper for early consultation.

Issues and options include:

- whether environmental management and land use planning should be legislated for separately or whether the current integrated approach should continue
- what changes should be made to Part 2 (including whether the 'hierarchy' should be changed and whether there should be separate statements of principles for environmental values and development – especially housing and urban development
- how the planning, funding and approvals processes under the RMA, Local Government Act and Land Transport Management Act might be better aligned through enhanced spatial planning
- how the RMA should be used as a tool for climate change mitigation and adaptation
- whether there should be greater use of mandatory national direction on nationally important issues
- how the content of plans might be improved and how planning and consenting processes might be made more efficient without undue sacrifice to public participation
- whether the RMA is the appropriate legislative vehicle for economic instruments, and
- how resources such as water and coastal marine space be allocated, and whether allocation should be through the RMA or though dedicated regimes (as now used for minerals and fisheries).

Submissions close on 3 February 2020.

Paper

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Through a looking glass darkly

The Parliamentary Commissioner for the Environment, Simon Upton, says there are "huge gaps" in New Zealand's environmental data collation and knowledge and is calling for amendments to strengthen the Environmental Reporting Act by:

- adding a clearer purpose
- establishing a standing science advisory panel
- developing a set of environmental indicators
- replacing the domain reports with flexible, theme-based commentaries and requiring a formal government response, and
- developing a comprehensive, nationally coordinated, environmental monitoring system with a strategy to prioritise and fill data gaps.

Report

Tourism growth – killing the goose that lays the golden egg

The Commissioner has also questioned the sustainability of New Zealand's burgeoning tourism industry. International visitor numbers are now at 4m a year and, on current trajectories, could reach 10-13m by 2050.

In *Pristine, popular... imperilled?* Simon Upton suggests that we will destroy the qualities tourists most value about New Zealand if we maintain a "business as usual" approach. But he has not made any recommendations at this stage and will instead await public feedback before finalising his thinking.

Report

Overseas Investment Act changes

The Government had two objectives in the Overseas Investment Act (*OIA*) review – to clearly assert New Zealand's right to maintain domestic control and ownership of sensitive and strategic assets, and to reduce the barriers to overseas acquisitions which will confer an unambiguous national benefit.

The reforms will deliver on the first objective and make significant progress toward the second – limiting the number of transactions captured by the screening regime, simplifying the application process and setting specific timelines for consent.

We generally welcome the changes but identify some areas for further consideration.

Chapman Tripp commentary

OceanaGold succeeds at second attempt, Sage sidelined

OceanaGold's application to buy land in Waihi to extend the life of its open pit gold mining operations has been granted after the decision-making roles were transferred to Finance Minister Grant Robertson and Associate Finance Minister David Parker from Land Information Minister Eugenie Sage and Associate Finance Minister David Clark.

The company reapplied on 12 August 2019 after being declined by Sage, against the recommendation of the Overseas Investment Office and in opposition to Clark who was the senior Minister.

Announcing their decision, Robertson and Parker said the investment would benefit New Zealand through the retention of about 340 full-time jobs and export earnings of $2b over nine years.

They noted that they were required to assess only the benefits described in the OIA in determining their response.

Announcement

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LOCAL GOVERNMENT

Inquiry backs status quo on local government funding and financing

The Productivity Commission has ruled out the need for radical reform in its final report on local government funding and financing, finding that there is "significant scope" for councils to make better use of their existing tools and that the rates-based system "remains appropriate".

The Commission acknowledges the funding demands arising from climate change, unfunded mandates and – in some areas – high population growth and a burgeoning tourism industry. It says the scale of some of these pressures is "unprecedented" but that the impact is highly uneven across the country, with the result that they are best addressed through local solutions.

Productivity Commission report

LGNZ – report an opportunity missed

Local Government New Zealand (*LGNZ*) says the Commission's "lack of courage" and "play-it-safe approach" will relegate the report to "a mere repeat of the nine rates reviews that have preceded it since 1945".

Statement

Two more tools for the urban development tool box

Two Bills to expedite urban development were ushered into Parliament before Christmas – one to help overcome the constraints on local authority funding for growth infrastructure, and the other to give Kāinga Ora new powers to promote large scale public projects.

Chapman Tripp's commentary on the Infrastructure Funding and Financing Bill and the Urban Development Bill can be accessed using the link below.

Chapman Tripp commentary

Water Services Regulator

The Government has introduced legislation to create a Water Services Regulator to oversee, administer and enforce the new regulatory system governing drinking water nationwide.

A separate Bill will be introduced early in 2020 to set out the regulator's functions and enforcement powers.

Bill

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Chapman Tripp's national environmental, planning and resource management team offers market-leading expertise and a seamless service for all your commercial projects, land use, infrastructure development and consenting needs.

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