DEVELOPMENTS IN NEW ZEALAND

Draft New Zealand Coastal Policy Statement

The Resource Management Act 1991 ("RMA") requires the preparation of a New Zealand Coastal Policy Statement ("NZCPS") (see AELN 3/1992). Its purpose is to achieve the sustainable management of natural and physical resources in relation to the coastal environment of New Zealand.

Introducing the proposed NZCPS released in October 1992, the Minister of conservation, Denis Marshall, stated:

> "The significance of this document should not b e underestimated. It will contain far-reaching policies to guide regional and local authorities in their day-to-day management of coastal activities. Its policies will affect everyone with an interest in the coast - including recreationalists, developers, and those who appreciate the coast's scenic values."

This is the first national policy statement to be promulgated under the Resource Management Act 1991. When finalised, the NZCPS will have a significant influence on the future use of New Zealand's coastal environment and marine areas. Regional and District Councils are required to implement it through regional policy statements, regional coastal plans and district plans which the Act obliges them to prepare. The NZCPS will therefore play a major role in shaping the coastal provisions of these documents.

An independent Board of Inquiry has been appointed to hear and consider submissions on the NZCPS. The Chairman is Mr Arnold Turner, a retired Planning Tribunal judge. Submissions on the statement may be made by any person in writing addressed to the Board of Inquiry by January 29, 1993. The Board will analyse submissions and prepare a written report with recommendations to the Minister. The Minister must then consider the report and recommendations, before implementing the coastal policy statement by Order In Council.

The proposed NZCPS is essentially a framework document comprising a series of broad general principles to "guide the intent" of the statement, followed by a number of more specific policies or outcomes. Schedules are attached which elaborate on the circumstances where the Minister will retain the ultimate power to grant consent to development activities, referred to under the RMA as "restricted coastal activities".

Principles

Each of the seven principles listed in the NZCPS include details of what they encompass or recognise. In brief, however, the principles are as follows:

Principle 1: The coastal environment is available for sustainable use and development.

Principle 2: The values of the coastal environment shall be protected.

Principle 3: Management of the coastal environment shall be carried out to provide for the social, economic and cultural wellbeing of people and communities, and for their health and safety.

Principle 4: Use, development, and protection of the coastal environment shall sustain the reasonably foreseeable needs of future generations.

Principle 5: Use, development, and protection of the coastal environment shall safeguard its life-supporting capacity.

Principle 6: People shall avoid, remedy or mitigate the adverse effects of their activities on the coastal environment.

Principle 7: Management of the coastal environment under the RMA will be shared between the Minister of Conservation and local authorities.

The noticeable feature of the principles and of the NZCPS as a whole is that, unlike an earlier version prepared by the Department of Conservation in 1991, the principles clearly acknowledge that use and development on the coast are acceptable and not automatically to be discouraged. What is not so clear is the weight to be attached to each principle and how the balance between them is to be achieved. The seven policies or outcomes, which follow the principles, are more detailed and give specific directions as to how the principles are to be achieved in future policy statements and plans, and when decisions are made on resource consent applications.

Because of the importance of the NZCPS, it is likely that many submissions will be lodged and the Board of Inquiry's hearing could be a lengthy process.

Hazardous Substances Law Reform

In November 1992 the Government released a discussion document on proposals for a reform of the law relating to hazardous substances and new organisms. The Acts and regulations which will be replaced under the Dangerous Goods Act 1974, the Toxic Substances Act 1979, the Pesticides Act 1979, the Explosives Act 1957, the Animal Remedies Act 1967, the Animals Act 1967, and the Plants Act 1970.

The existing legal controls on the management of hazardous substances are widely recognised to be unsatisfactory. The objective of the reform is to ensure that a co-ordinated and consistent approach is applied to the reduction of the risk of hazard to health and safety of people in the environment, without unnecessarily restricting the benefits of hazardous substances. The key to this approach is the assessment and setting of controls on hazardous substances by a single authority, to be known as the Environmental Risk Management Authority, ("ERMA").

ERMA will apply a single set of comprehensive criteria to evaluate and manage the potential impact of hazardous substances prior to their importation, development or manufacture. Assessment and licensing will be open to public input. Because potential impacts may vary with different parts of the life cycle, the controls applied will also differ. Stages in the lifecycle for which controls may be imposed include: manufacture and processing, import and export, packaging and labelling, introduction to the marketplace, storage, handling, transport and distribution, advertising and sale, use, release to the environment, and disposal.

As with the Resource Management Act 1991, management is to focus on the adverse effects of hazardous substances and organisms, rather than on the end use to which they may be put. Those who make, sell, transport, import or use hazardous substances or new organisms will also have a duty to society to manage them in ways which minimise risks to human health, safety and the environment. This duty is to include responsibility for any costs of clean-up of damage to the environment, resulting from incidents involving hazardous substances, in accordance with the same strict liability provisions of the Resource Management Act.

Submissions on the reforms closed on 18 December 1992,

Maori Fisheries - Government Proposals For Settlement

In recent years there have been a number of actions by various Maori interests concerning the Quota Management System, the primary policy for the regulation of the New Zealand commercial fishing resource. These actions generally seek the return to Maori of the fisheries resources of New Zealand, under the Treaty of Waitangi 1840. Most of these actions remain unresolved.

A Crown-Maori Deed of Settlement has recently been negotiated by which the Crown has agreed to pay $150M to promote Maori commercial fishing plus assisting Maori in a joint venture purchase of a major commercial fishing company currently for sale. In return, the Maori who signed the Deed have agreed that the settlement will discharge all commercial fishing rights and interests of Maori (at sea or inland) and satisfy all current and future claims. The settlement has rightly been hailed as historic. While it is not the only national settlement of Maori claims under the Treaty of Waitangi, it is the first to extinguish

claims and the first to affect all Maori. Nonetheless, there have been objections to the settlement. In essence, these objections contend that the settlement promotes policies that would be contrary to the Treaty of Waitangi and prejudicial to claimants in proposing the abrogation and substitution of Treaty rights, without adequate consent of Maori people generally.

In addition, the Waitangi Tribunal has recently released a report on these objections. The Tribunal considers that it is wrong for the Crown to propose the effective extinguishment of the Treaty interests. Th Treaty promised protection for Maori fishing interests so long as Maori wish to keep them. However, the Tribunal considered that it would be reasonable for the Crown to place a moratorium on claims for a term not exceeding 25 years (or earlier, on a material change of fish management policies).

The response of the Government to the Waitangi Tribunal report and recommendations is awaited.

Proposed Mining Royalties Regime

The Ministry of Commerce has released a technical paper on a proposed new mining royalties regime for Crown owned resources. The Ministry, in seeking to stimulate investment, has opted for a hybrid system incorporating "ad valorem" royalties ("AVRs"), based on a percentage of sales revenue and accounting profits-based royalties ("ADRs"). The petroleum exploration industry would pay the higher of a 5% AVR, ensuring a minimum basic return to the Crown, or 20% of accounting profits from oil and gas production.

The new regime would replace the present 12.5% AVR, which is seen as an obstacle to marginal drilling, and the Crown's 11% "free carry", giving it a share of profits but not prospecting costs.

Under the Ministry's proposal, miners of non-petroleum resources, who at present have no structured royalties regime, would be liable for AVRs of 1% or 5% of accounting profits. The lower percentages than for petroleum explorers reflect the lesser profitability of non-petroleum minerals.

The response of the Petroleum Exploration Association, while welcoming the move towards certainty, is that the 20% royalty on accounting profits needs to be halved to be internationally competitive and that the proposals would deter foreign investment.

Detailed drafting of the regime is expected to take another five months, after which there will be two months for public submissions.

Non-Complying Activities Under The Resource Management Act 1991

The High Court of New Zealand (Decision AP 189/92 12 November 1992) has confirmed the decision of the Planning Tribunal in *Batchelor v Tauranga District Council* relating to non-complying activities under the Resource Management Act 1991. (See AELN 2/1992).

The effect of the High Court decision is that included in the effects to be taken into account, when considering a non-complying activity application, is the impact that a consent would have on public confidence in a consent authority's consistent application of district plan rules, and the "coherence" of the district plan. Thus, as with the previous legislation, even if the environmental effects of a proposal would be minor, if a consent would call into question a general provision of a district plan, an applicant must establish that the proposal is outside the "generality of cases" or has "some unusual quality", before a consent will be granted.

At the date of reporting, it is not known whether an appeal to the Court of Appeal will be lodged, or whether the Government will amend the Act to ensure greater flexibility in the consent procedures.

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