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## LEGAL UPDATE ON ENVIRONMENT AND RESOURCE MANAGEMENT

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### Mining update

The government released a discussion paper on 22 March 2010 containing proposals to remove 7,058ha of land listed under Schedule 4 of the Crown Minerals Act 1991, which is currently protected from being accessed for mining purposes. For further background and discussion of the paper refer to our **March 2010 legal update**.

The proposal received over 37,000 submissions through the public submission process (which closed in May 2010 after an extended period of submissions) and it also provoked public protest including an estimated 20,000 - 40,000 people marching against it in Auckland.

In response to the submission process and public reaction to the proposal, Energy and Resources Minister Gerry Brownlee and Conservation Minister Kate Wilkinson made an announcement last week which included the following:

- The government no longer plans to remove any land from Schedule 4 for the purposes of further mineral exploration or extraction
- All of the 14 areas proposed to be included in Schedule 4 will be added
- All areas given an equivalent classification to Schedule 4 areas (e.g. national parks and marine reserves) will now automatically become part of Schedule 4
- The government will undertake aeromagnetic surveys for mineral potential in Northland and the West Coast of the South Island (excluding Schedule 4 land) to identify mineral deposits
- Significant applications to mine on non-Schedule 4 public conservation land will be publicly notified
- The process for approval of mineral-related access arrangements over Crown land will be amended so that approval is jointly decided by the land-holding Minister and the Minister of Energy and Resources. This process will take into account criteria regarding the economic, mineral and national significance of the proposal
- The proposed conservation fund will not proceed. This was based on Schedule 4 land being mined with a financial benefit accruing to conservation initiatives, however, now that Schedule 4 land is not to be opened up, this land is considered redundant.

The proposed additions to Schedule 4 are intended to be made by October 2010, with final decisions on the implementation of the other changes to be announced by the Minister at a similar time.

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## Draft New Zealand energy strategy and draft New Zealand energy efficiency and conservation strategy

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On 22 July 2010 Energy and Resources Minister Gerry Brownlee released a draft New Zealand Energy Strategy (NZES) and a draft New Zealand Energy Efficiency and Conservation Strategy (NZECS) for public consultation.

The strategies have been updated in order to align with and reflect the current government energy policy and to reflect a stronger focus on economic development. The draft strategies are succinct and focused statements of government energy policy and are not intended to be treated as action plans.

NZES and NZECS reflect recent government reforms, including a major review of electricity market performance, design and governance, and an Emissions Trading Scheme that provides greater certainty for economic growth.

The NZES directs the strategy for the energy sector and establishes the role of energy in the New Zealand economy. It supports the government's vision for the energy sector to maximise its contribution to the economy.

The 4 priority areas for energy policy contained in the draft NZES are:

- Development of the full range of New Zealand's energy resources
- Ensuring secure and affordable energy
- Efficient use of energy
- Environmental responsibility.

The NZECS is a companion strategy, which focuses specifically on the promotion of energy efficiency, conservation and renewable energy.

To inform the development of the final strategies, the government is inviting submissions on the draft strategies. The submission period closes at 5.00pm on 2 September 2010 and the final strategies will be released in the final quarter of this year.

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## Other items of interest

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### **Hurunui water moratorium**

Environment Canterbury Commissioners passed a moratorium on new water takes from Canterbury's Hurunui River last week, which stops all new resource consent applications to take water from the Hurunui River between 2 August 2010 and 23 July 2011. The moratorium could end earlier if progress on developing a balanced plan for the river is advanced faster than expected.

### **Rugby World Cup 2011 (Empowering) Bill**

To briefly update the status of the Rugby World Cup bill following our [June 2010 legal update](#), the bill had its first reading on 22 July 2010 and the Government Administration Committee is due to report to the House by 23 August 2010.

### ***Waikato Tainui v Hamilton City Council - breach of duty to consult***

In June 2010, Waikato-Tainui succeeded in its application for a judicial review of the Hamilton City Council's (Council) decision to publicly notify a variation to the proposed District Plan. Waikato-Tainui applied on the basis that the Council breached its duty to consult with it as relevant iwi authority under Schedule 1 of the Resource Management Act 1991 prior to notification.

The Court found that in order for consultation to be effective, the consultation obligation must occur prior to public notification and before a decision is made on a proposal. Engaging in consultation after notification negates an iwi's right to prior opportunity to influence the drafting of the plan.

Notification in this case was found to be unlawful, invalid and of no effect, and the decision to notify was quashed. The Council was also ordered to consult Waikato-Tainui on any proposed variation affecting it prior to approval and notification.

This decision will affect local authorities who have relevant iwi authority in their areas.

## Overseas Investment Act review

The government's review of the Overseas Investment Act (OIA), which began in March 2009, is expected to be reported on in the next few weeks.

A recent bid by a Chinese company to buy 16 Crafar farms (over 8,000ha of land) has raised public awareness of overseas investment issues. Such concerns about foreign investment have reportedly prompted a last minute inclusion of farm and other land sale rules into the OIA review.

In light of the public concern, Green Party co-leader Russel Norman has drafted an amendment bill that aims to prevent foreign ownership of sensitive land. The bill seeks to remove the ability for consent to be granted for the acquisition of sensitive land (which includes any rural land that is over 5ha) by overseas persons. Whether the bill will be formally introduced in the House will depend on the upcoming ballot.

If you would like more specific advice on any aspect of the mining, draft energy strategies, or other developments discussed above, please contact a member of the Buddle Findlay team:

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