



Energy Projects under the Kyoto Regime: Key legal issues for new ventures

Vernon Rive, Principal
Chapman Tripp



Overview

- The existing environmental regime: is it working?
- What impact will the recent RMA amendments make?
 - RM Amendment Act 2003
 - RM (Energy and Climate Change) Amendment Bill 2003
- Particular issues for Projects
- Case study: Coal vs Wind in 2008



The existing environmental regime: is it working?

- Life before the RMA
- How is the present system shaping up?
- How are Climate Change issues currently being addressed under the RMA?
- NEECS



Amendments to the RMA

Fiddling while Rome burns?

- RM Amendment Act 2003. A step in the right direction...but is it far enough?
 - Limited notification
 - Changes to consent rules for consent processing
 - National Environmental Standards
 - Environment Court procedure



Amendments to the RMA

Cont

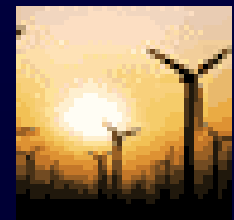
■ RM (Energy and Climate Change) Bill 2003:

- Tipping the playing field in favour of renewables;
- New section 7 requirement to consider energy efficiency & climate change issues

BUT

- Regional Councils' ability to have regard to climate change when making rules or processing consents restricted

■ Further changes in the wings?





Projects

Issues from environmental consents perspective

- Additionality requirement – are the GHG reductions required in any event under separate legislation or existing consents?
- Technical feasibility = key assessment criteria: so early and full investigations re feasibility and timing for environmental approvals important
- Uncertainty regarding timing and value of EUs means maximum flexibility for consents preferable
- Approved Projects status *may* assist in obtaining priority before Environment Court



What might this all mean in practice in 2008 ?

- RM (Energy & Climate Change) Amendment in place
- Kyoto in force

In the black corner...



*In the green
corner...*





Assessment under the RMA:

- Under s104E:
 - May not have regard to effects on climate change of emissions from coal fired station
 - May have regard to positive effects on climate change of promotion of renewable energy
- Under s7:
 - Council/Court must have particular regard to effects of CC & benefits of renewable energy
- All proposals will continue to be subject to s5 and broad assessment against purpose of sustainable management



Other considerations:

- Economic impacts of a carbon charge
- Legal obligations under any NGAs in force
- Projects assistance/obligations for renewable energy projects
- Influence of government CC policy at a strategic level