

The Chair
CABINET POLICY COMMITTEE

PLANNING FOR THE EFFECTS OF CLIMATE CHANGE: THE ROLE OF THE RESOURCE MANAGEMENT ACT

Purpose

1. This paper considers whether the Resource Management Act 1991 (RMA) ensures that resource management decisions and local government RMA plans adequately consider the effects of climate change.
2. It concludes that it does not and recommends that Government agree to an amendment to section 7 of the RMA dealing with matters to which particular regard must be given in RMA processes. The paper also recommends that Government should use the review of the New Zealand Coastal Policy Statement commencing in 2003 to provide a stronger mandate for action by councils in the coastal environment.
3. The recommendations in this paper focus on the effects of climate change on natural resources and hazards. It is not concerned with activities that could influence the global climate, such as greenhouse gas emissions. A related Cabinet paper considers actions required in regard to renewable energy and the RMA.

Executive Summary

4. The RMA currently allows councils to plan for the effects of climate change. But, in common with many resource management issues, there is no explicit requirement for them to do so. There is currently little guidance for councils on the types or degree of changes that should be considered; the methods for assessing the potential consequences of climate change; or the actions councils should or could take.
5. Ways of providing a stronger legal mandate are considered, including amending the Resource Management Act and the use of National Policy Statements. A stronger legal mandate is seen as necessary to better ensure councils consider the effects of climate change and as a way of providing national policy on the existence of climate change.
6. The paper recommends a package of measures:
 - an amendment to the RMA to explicitly refer to the effects of climate change

- use of the New Zealand Coastal Policy Statement to address effects in the coastal environment
- the use of non-binding guidance to provide the detail necessary to support councils.

Background

7. Cabinet agreed in April 2002 to a work plan by the Climate Change Project Team to provide non-binding guidance and assistance to local government on how to plan for the potential effects of climate change. In this work programme, the Climate Change Project Team will produce a series of guidance notes, case studies and best practice examples to help councils incorporate climate change projections (such as sea-level rise, changes in weather patterns etc) in their plans, policies and rules as appropriate. Cabinet also noted the potential need for additional (legally binding) guidance in the future (CAB Min (02) 13/12).
8. In October 2002, Cabinet directed officials to report back by 30 November 2002 on the potential need for a stronger legal mandate for councils to plan for climate change effects, and in particular, whether an amendment of the RMA was warranted (CAB Min (02) 27/3A).
9. Cabinet also directed officials to report back, by 30 November 2002, on the potential need to provide a stronger mandate to councils to encourage energy efficiency and renewable energy generation (CAB Min (02) 27/3A).
10. Cabinet also agreed to amend the RMA to remove the ability of councils to control discharges-to-air of CO₂ in resource consents, to ensure consistency between regions and avoid double jeopardy of emitters who also face a future carbon charge (CAB Min (02) 26/19). This agreed amendment is planned to take place in the first half of 2003 and provides an opportunity to combine any other amendments to the RMA relating to climate change, if they are deemed necessary, in one package.

Key problems, and local government responsibilities

11. The rate of climate change during the 21st century is very likely to be greater than any natural variations over the past 10,000 years, even for the lower end of current emission scenarios and taking uncertainties into account. New Zealand, as an island nation dependent on agriculture, needs more than most to understand and adapt to the effect of those changes on its natural resources.
12. Climate change generally does not create “new” hazards, but changes the intensity and frequency of existing hazards or it may affect the availability of natural resources. Examples are a potential increase in flood risk, a rise in average sea level, and changes in typical rainfall patterns affecting the availability of fresh water. The resulting effects of climate change on resources (including structures, plants and animals) and the changes to hazards are still difficult to predict in quantitative detail, but there is growing certainty about the

direction of the expected changes. The coastal environment is considered particularly vulnerable.

13. Some infrastructure and developments have a long lifetime and need to cope with future climate conditions in 50 or 100 years time. Both new and existing infrastructure and building developments need to take the likely effects of climate change into account, to avoid them becoming unsustainable in the future, for example through more frequent flooding or coastal erosion.
14. In other instances, there is limited scope to make specific decisions at present, but communities and businesses need to build capacity to proactively manage the potential effects of climate change within their regular decision-making processes. This applies, for example, to gradual changes to ecosystems and biodiversity, the primary production sector, health, and water supply.
15. Local government plays a key role in managing the effect of land uses and the use of natural resources, including the consideration of natural hazards. Responsibilities primarily stem from the RMA, although the Building Act and the Local Government Act are also important. For the coastal environment, section 3.4 of the New Zealand Coastal Policy Statement (NZCPS) contains policies about managing the effects of coastal hazards. The two references to the prospect of sea-level rise, however, are considered relatively weak.
16. A review of applicable case law shows that the RMA *allows* councils to plan for the effects of climate change, but it does not explicitly *require* them to do so. Consequently, some councils appear not to have considered the potential effects of climate change at all in their planning and resource consents. Those councils that do consider climate change effects are often unclear about what assumptions to make, and their assumptions and precautionary approach often get challenged in the Environment Court.
17. A number of councils and local government planners have repeatedly requested central government to provide them with a stronger mandate and legally relevant guidance to take climate change effects into consideration. They seek legal support to back up decisions based on climate change predictions. Government direction is also sought to raise the priority of climate change in budget decisions.

Rationale and options for a stronger legal mandate

18. The guidance notes, case studies and best practice examples that are part of the agreed work programme of the Climate Change Project Team will help councils to assess the likely effects of climate change on their regions, towns and districts, and to decide on appropriate responses. However, they will not compel councils to consider the information provided where there is a lack of political will, lack of resources, or competing pressures on council activities; nor is the information likely to have significant legal weight before the Environment Court.

19. A stronger mandate is desirable for two reasons:
 - to ensure that all councils, nationwide, consider the potential effects of climate change as appropriate for their area, and
 - to provide more certainty about the existence of climate change and provide legal back up for councils planning for the effects of climate change.
20. The options, which vary in their ability to give a stronger legal mandate, are:
 - reliance on voluntary uptake of non-binding guidance and further development of case law
 - amendment of the RMA giving climate change greater prominence
 - provision of a National Policy Statement (under the RMA) on climate change effects, and/or amendment of the existing New Zealand Coastal Policy Statement.
 - amendment of other relevant legislation
21. Any of these options would be additional to the current work programme of non-binding guidance and assistance through case studies and best practice examples.

Analysis of Options

22. Officials from the Climate Change Project Team consulted on the need for a stronger mandate, and the relevant options, with a range of local government planners and representatives, RMA experts, developers and resource users, scientists and environmental engineers. Their views, as well as the views of officials from government departments, are reflected in the discussion below where appropriate.

Non-binding guidance

23. There are differing opinions in central and local government on whether reliance on non-binding guidance is sufficient. For some councils climate change effects are very low on their list of priorities. Reasons for this include scepticism about climate change, lack of political will, uncertain definition of the problems caused by climate change and the likely future risk to councils and communities, and general lack of resources (human and financial) to incorporate climate change projections in their planning. For a group of councils the main call is therefore for additional non-binding guidance and resources: the current mandate from the RMA is seen as sufficient.
24. The agreed work programme on non-binding guidance will address the problem of uncertain definition of the risks caused by climate change. It will also provide practical help to councils to make their own well-informed decisions about how to respond to the changes that climate change may cause to natural hazards and resources.
25. The agreed work programme will not, however, address two important barriers that appear to limit planning for climate change in some instances, namely

scepticism and lack of political will to take the issue seriously. A considerable number of local government representatives stated that non-binding guidance was insufficient to allow them to defend their approach, based on considering potential climate change effects, before the Environment Court.

Amendment of the RMA

26. An amendment to the RMA could increase the priority given to managing the effects of climate change, for example in decisions on development proposals (resource consents) and also in determining what matters are addressed by plans. This could be done through an addition to the matters of national importance (Section 6) or an addition to the list of matters that have to be given “particular regard to” (Section 7).
27. A statement in the RMA would necessarily be of a very general and high-level nature, e.g. “identify and provide for the effects of climate change”. It would provide no guidance on what specific effects should be considered, or what appropriate responses are. It would simply be a signal that the effects of climate change must not be ignored.
28. The value of such an addition is that it would support any future guidance provided to councils. By itself such a general amendment may not require councils to change their plans and the extent to which it will provide legal back up for councils planning for climate change (the second bullet reason in paragraph 19 for a stronger mandate) is uncertain. But, along with future guidance it is likely to lead to more councils taking action to address the effects of climate change.
29. Explicitly mentioning climate change in the RMA would also show that the Government’s decision to amend the RMA to remove the ability of councils to control discharges of greenhouse gases, should not be viewed as meaning that climate change (and its effects) is solely a matter for central government.
30. Officials believe that an amendment to the RMA that raises the priority of considering the effects of climate change is appropriate. An addition to the list of “other matters” (section 7) is recommended over including climate change as a matter of national importance (section 6) because section 6 provides for matters that are currently broadly compatible and generally deal with protecting environmental qualities. Adding a reference about climate change could be seen as creating a precedent for including other matters that look at the adverse effects of resource use. Section 7 includes a mix of matters in which managing the effects of climate change would not look out of place. If this approach is adopted, it should be backed up in a timely fashion with guidance that provides detail about how to assess and respond to possible effects.

Provision of a National Policy Statement (NPS)

31. A NPS is another way of providing national direction on how to deal with matters of national importance as envisaged by the RMA. Benefits of a NPS

include a consultative approach, and the fact that it can provide more detailed policies and set out local government responses as well as outlining a general statement on the problem. It can be prescriptive in seeking certain actions from councils. Statements in the form of a NPS have greater legal weight than other more informal comments/documents from government. NPSs must be given specific regard to in decision making and council planning documents must not be inconsistent with them.

32. Matters that could be in a NPS addressing climate change effect include:
 - a general statement on the reality of climate change
 - the appropriate level of risk that should be planned for
 - guidance on how to plan for the effects of climate change.
33. There are disadvantages to NPSs. They are potentially more costly to produce and review than informal guidance; implementation costs for councils could be high; and it would be inappropriate to include in a NPS data and projections that, although important, required continual review and updating – a characteristic of climate change information. The content of a NPS is likely to mimic the more generic information provided to councils more informally through guidelines. It is important to weigh up the advantages of giving certain statements more legal weight, through a NPS, over the advantages of the same information being in guidelines which are cheaper to produce and easier to update.
34. The ability of a NPS, which addresses effects of climate change, to be effective and cost-efficient is uncertain. In particular, the implications and associated cost to councils and developers has not been quantified and preliminary investigations indicate a wide spectrum of likely costs. On balance, officials consider that a NPS addressing the effects of climate change generally could potentially be useful in providing a stronger legal mandate and guidance to local government, but it is not warranted at this time.
35. There is a mandatory requirement, however, under the RMA to produce a NPS covering the coast - the New Zealand Coastal Policy Statement (NZCPS). The current NZCPS is to be reviewed in March 2003.
36. For climate change effects in the coastal environment the review of the NZCPS offers an opportunity, in a process that is required anyway, to provide national direction and a legal mandate in relation to sea level rise, following consultation. Its timely review provides a more cost effective way of developing a NPS on climate change effects – albeit the effects considered are limited to the coastal environment. There is a general consensus within local government that the current policies on sea level rise need updating and strengthening and sea level rise is expected to be a key issue raised in the review. The coast is both particularly vulnerable to climate change effects and an area often subject to intensive development.
37. The review of the NZCPS would be aided by the passing of the current amendment to the Resource Management Bill. The Bill provides for a more

streamlined NPS process and allows for terms of reference to be set for the independent board of inquiry.

Amendment of other relevant legislation

38. There is a range of other legislation that is relevant to planning for climate change effects, including the Civil Defence and Emergency Management Act 2002, and the Building Act 1991 and associated Building Code. Parties consulted suggested that Section 36(2) of the Building Act, which deals with the granting of building consents on properties prone to erosion and slippage, may need strengthening to ensure climate change effects are considered.
39. Officials recommend that more work is done on the consistency of other legislation with the RMA and on whether provisions for climate change are needed, reporting back to Cabinet by 30 June 2003 on findings and recommendations.

Preferred option and timeframes

40. On balance, officials believe that a stronger legal requirement to address climate change effects is needed. This is best achieved by amending section 7 of the RMA. This should be backed up with detailed guidance, which is being prepared by officials as part of approved work programmes and should be available at the time any amendments take effect. In addition, the review of the NZCPS offers an opportunity to clarify the climate change adaptation measures that are appropriate for the coastal environment.
41. The cost effectiveness of doing a generic NPS for the effects of climate change, including for impacts inland of the coast, has not been fully examined. The available information is not of sufficient certainty to provide precise statements on the future scenarios. Rather it is a matter of providing the most up to date picture of data and projections. This is most effectively done through guidelines.
42. Officials recommend that Government agree to continued development of guidelines, case studies and identification of best practice as planned. Officials will report back by June 2003 on progress with the NZCPS and on whether an additional NPS on adaptation to climate change is needed.

Risks of the preferred option

43. Some negative reactions may be expected to the decision to amend section 7 of the RMA. It may be viewed as unnecessary by some other agencies and some councils. The proposal to delay production of a NPS on climate change effects may also cause some concern – because the outcome of the NZCPS process is uncertain and some time away. These negative responses need to be addressed through an explanation of the rationale behind the decision. The time delay in providing a clear and stronger national direction on the effects of climate change, which would back up the proposed general

statement in section 7, is acceptable because of the long time scale of climate change effects becoming significant.

44. Amending legislation alone will not assist those councils whose ability to address climate change effects is limited by lack of resources – knowledge, skills and funds. As part of meeting national objectives, support for some councils may have to be more hands-on. Specific needs will emerge during discussion with councils on guidance notes.

Consultation

45. The following government departments were consulted in this process: Climate Change Project Team, Ministry of Agriculture and Forestry, Ministry of Civil Defence and Emergency Management, Ministry of Economic Development, Ministry for the Environment, Te Puni Kokiri, The Treasury, The Department of Internal Affairs, and the Department of Conservation.

Fiscal implications

46. The cost of amending the RMA will be covered by existing baselines.
47. The costs to councils, communities and developers as a result of changes to the NZCPS will be addressed as part of the forthcoming review. This would include evaluating the cost of directing councils to changes their plans, and potentially any benefits of providing legal support used to defend planning provisions driven by climate change considerations.
48. The cost of the Government's climate change programme providing analysis and information to the review of the NZCPS can be met from current levels of funding available for the climate change adaptation work programme, although ongoing funding will need to be sought as part of the climate change budget bid for 2003/04.

Human rights

49. There are no human rights implications.

Legislative implications

50. An amendment is proposed to the Resource Management Act 1991. If accepted this amendment could be part of a stand alone bill that incorporates those amendments that address climate change matters. (The Government has already agreed to an earlier amendment (CAB Min (02) 26/19) which proposes to remove the ability of regional councils to consider effects on climate change of discharge-to-air activities.)
51. There are no direct legislative implications from reviewing a NPS. Further work on potential changes to other legislation, particularly the Building Act, will be undertaken and officials will report back on any required changes by 30 June 2003.

Regulatory impact and business compliance cost statement

52. A regulatory impact statement (RIS) is attached as an appendix. The implications of the proposed amendment to the RMA are discussed.
53. There are no new compliance costs from this proposal. Future costs may arise from changes to the New Zealand Coastal Policy Statement but they will be assessed as part of the review. An amendment to section 7 does not in itself require councils to actively do anything, such as immediately change their plans (their plans might, however, need changing when they come up for review).
54. The amendment changes the weighting given to a particular matter. As such resource consent applicants will be required to provide information on how their proposal considers the effects of climate change. This requirement is already an implicit requirement of the RMA.

Publicity

55. Information on the reason for the amendment and on the additional matters under consideration will be required for councils, key stakeholders and the general public.

Recommendations

56. We recommend that the Committee:
 - a) **note** that climate change will affect natural resources in New Zealand, could create new hazards or exacerbate existing ones, and that some infrastructure, developments and land uses could become unsustainable due to the effects of climate change where those effects have not been considered;
 - b) **note** that the Resource Management Act (1991) (RMA) currently allows councils to plan for the effects of climate change, but does not explicitly require them to do so and gives no guidance on the types or degree of change that should be considered;
 - c) **note** that at present councils differ in the degree to which they consider the effects of climate change in their planning, and in the specific assumptions they make;
 - d) **agree** that it is desirable that all councils consider the effects of climate change and that an explicit reference to the effects of climate change in the RMA would assist councils in this regard;
 - e) **note** that a National Policy Statement under the RMA is envisaged as a way in which government can provide national and binding direction on matters of national importance;

- f) **note** that national policy on climate change effects in the coastal environment will be discussed and consulted upon as part of the review of the New Zealand Coastal Policy Statement;
- g) **agree** that the production of a NPS specifically on climate change effects be delayed pending the outcome of the review of the New Zealand Coastal Policy Statement and clearer identification of the scope and detail of a NPS;
- h) **agree** to amend the RMA to require all persons exercising functions and powers under the Act to give greater weighting to managing the effects of climate change;
- i) **note** that an amendment to section 7 of the RMA is a likely outcome of paragraph (h);
- j) **agree** to include the amendment outlined in paragraph (h) in the Bill previously agreed to by Government (CAB Min (02) 26/19) so forming a climate change Resource Management Act Amendment Bill;
- k) **note** that the Amendment Bill referred to in paragraph (j) has been accorded priority 5 (drafting instructions to PCO to be provided in 2002);
- l) **direct** officials from the Climate Change Project and Ministry for the Environment to report back by 30 June 2003 on:
 - i. progress with the review of the New Zealand Coastal Policy Statement
 - ii. findings from the current work programme for non-binding guidance notes, case studies and best practice examples on managing the effects of climate change
 - iii. the need for a NPS on managing the effects of climate change, separate from the NZCPS
 - iv. the consistency of other legislation with the RMA and whether provisions for climate change are needed;
- m) **note** the links of this work area with other work programmes, namely the encouragement of greater uptake of energy efficiency and use of renewable energy, the NEECS strategy, and the implementation of the Civil Defence and Emergency Management Act 2002.

Hon Pete Hodgson
 Convenor, Ministerial Group on
 Climate Change

Hon Marian Hobbs
 Minister for the Environment

APPENDIX

Regulatory Impact Statement

1. *Background*

- 1.1 The purpose of the Resource Management Act 1991 (RMA) is to promote sustainable management of natural and physical resources. The RMA is effects-based, that is, concerned with avoiding, remedying or mitigating the adverse environmental effects of activities rather than with activities per se. The RMA currently allows councils to plan for the effects of climate change. But, in common with many resource management issues, there is no explicit requirement for them to do so. There is currently little guidance for councils on the types or degree of changes that should be considered; the methods for assessing the potential consequences of climate change; or the actions councils should or could take.

2. *Statement of the nature and magnitude of the problem and the need for government action*

- 2.1 A large number of councils and local government planners have repeatedly requested central government to provide them with a stronger mandate and legally relevant guidance to take climate change effects into consideration. They seek legal support to back up decisions taken because of climate change predictions. Government direction is also sought to raise the priority of climate change in local government budget decisions. It is prudent to consider increased hazard events and other effects from climate change in RMA decision-making.

3. *Statement of the public policy objective(s)*

- 3.1 The policy objectives are to:
- a) ensure that all councils, nationwide, consider the potential effects of climate change as appropriate for their area
 - b) provide more certainty about the existence of climate change and provide legal back up for councils planning for the effects of climate change.

4. *Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)*

- 4.1 The options for achieving the policy objective include:

- a) reliance on voluntary uptake of non-binding guidance and further development of case law

There is an agreed work programme for guidance for councils. However, guidance is unlikely to be sufficient to defend some resource management approaches taken by councils, which are based on considering potential climate change effects.

- b) amendment of the RMA giving climate change greater prominence

It is recommended that the RMA explicitly refer to managing the effects of climate change as a matter that should be given particular regard.

- c) provision of a National Policy Statement (under the RMA) on climate change effects, and/or amendment of the existing New Zealand Coastal Policy Statement (NZCPS)

The NZCPS is currently being reviewed and is an opportunity to review Government direction in regard to managing the effects of development in the coastal environment.

- d) amendment of other relevant legislation

There are potential implications for the Civil Defence and Emergency Management Act 2002, and the Building Act 1991 and associated Building Code. Consistency of other legislation with the RMA and provisions for climate change is needed and officials will report on this in June 2003.

The recommended proposal is option b) in the form of an amendment to section 7, supported with non-binding guidance (option a) and use of the NZ Coastal Policy Statement (part of option c).

5. *Statement of the net benefit of the proposal, including total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options*

5.1 The groups potentially affected by this regulatory proposal include the developers proposing land use and developments likely to be affected by climate change effects in the future, local authorities and submitters on the consent application process.

5.2 The suite of recommendations (amendment to section 7, utilising of the NZCPS and non-binding guidelines) will potentially have long-term benefits as all councils turn their attention to managing the effects of climate effects. However, actual benefits (and costs) are difficult to estimate. They will likely occur and accumulate over the next 30 to 100 years and beyond, but will also have co-benefits of better planning for currently existing natural hazards and availability of natural resources.

- 5.3 The proposed amendment to section 7 will not in itself create additional costs on property developments. The amendment changes the weighting given to a particular matter. As such, applicants will be required to provide information on how their proposal considers the effects of climate change. However, this requirement is already an implicit requirement of the RMA.
- 5.4 Any costs of properly considering the effects of climate change in decisions and other processes, including plan preparation, should be offset by the avoided costs of avoided damage. Failing to properly recognise the effects of climate change exposes central and local government to fiscal risks, landowners to property damage and the community generally to health and biodiversity risks.
6. *Statement of consultation undertaken*
- 6.1 In addition to consultation conducted by the New Zealand Climate Change Project Team this area of climate change policy, as part of the national consultation rounds in November 2001 and May 2002, Government departments specifically consulted through Cabinet paper process are: Climate Change Project Team, Ministry of Agriculture and Forestry, Ministry of Civil Defence and Emergency Management, Ministry of Economic Development, Ministry for the Environment, Te Puni Kokiri, The Treasury, The Department of Internal Affairs, and the Department of Conservation.
- 6.4 Local Government New Zealand (LGNZ) has also been consulted and a workshop was held in November involving representations from local authorities. Councils have mixed views in regard to amending the RMA.