

[In Confidence]

Office of the Minister of Climate Change

Chair, Cabinet Business Committee

## Adaptation legislation – proposed timelines and process

### Proposal

- 1 This paper outlines a high level timeframe and process for progressing legislation to address the complex legal and technical issues associated with managed retreat and funding and financing adaptation.
- 2 A Managed Retreat and Climate Change Adaptation Act (adaptation legislation) is one of the three pieces of legislation recommended by the Resource Management Review Panel (the Panel), led by retired Court of Appeal Judge Hon Tony Randerson QC. The other two, a Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA), are addressed in the Minister for the Environment's paper *Reforming the resource management system*, also being considered today.
- 3 I seek your in-principle agreement to the high-level approach outlined in this paper to progress policy work on the managed retreat and climate adaptation aspects of the Panel proposals in parallel with policy work on the Strategic Planning Act, although timeframes for passage of legislation may diverge.

### Relation to government priorities

- 4 Reforming the resource management system and enabling a just transition to a climate resilient New Zealand are Government priorities. Passing adaptation legislation, along with the Natural and Built Environments Act and Strategic Planning Act, within this term of government was a stated aim in the Labour Party manifesto. Additionally, Cabinet Business Committee (with Power to Act) has "noted the intention to put the climate at the centre of government decision-making" [CBC-20-MIN-0097 refers]. The accompanying Cabinet paper specifies that this includes the commitment to "introduce and progress legislation on managed retreat and adaptation, to provide coherent climate change outcomes from the resource management system".

### Executive Summary

- 5 As part of its review of the resource management system (the Report), the Panel recommended a suite of changes to enable climate change adaptation and natural hazard risks to be addressed in a more comprehensive and proactive way than is currently provided for.

6 The Panel's recommendations included that new legislation on managed retreat and climate change adaptation be developed to:

- address the complex legal and technical issues associated with managed retreat (where it is required for climate change adaptation or to reduce risks from natural hazards)
- establish an adaptation fund.

7 I am seeking agreement to the high-level approach to progress policy work to inform new legislation on climate change adaptation, using the Report as a starting point for scoping and policy development.

8 The new legislation is needed to address the complex legal and technical issues associated with managed retreat and funding and financing of adaptation. Along with the proposed Natural and Built Environments Act and Strategic Planning Act, this adaptation-focussed legislation is vital in improving New Zealand's ability to adapt to climate change.

9 Significant work is required to determine the scope of and develop the policy to inform adaptation legislation, including which natural hazards the proposed legislation may cover. This needs to be undertaken through engaging with iwi/ Māori as Treaty partners, working with local government and other key stakeholders, and undertaking public consultation. Also, to ensure coherency across the system, adaptation policy should be developed in parallel with the Natural and Built Environments Act and linked, in particular, to the Strategic Planning Act.

10 s 9(2)(f)(iv)

11 The Minister for the Environment is taking a companion paper *Reforming the resource management system*, to Cabinet today. That paper proposes the establishment of a Ministerial Oversight Group to oversee the development of the Natural and Built Environments Act, and for associated matters relating to the Strategic Planning Act and adaptation legislation.

12 s 9(2)(f)(iv)

13 s 9(2)(f)(iv)



## Background

### *The need for reform*

- 14 New Zealand is already highly exposed to natural hazard risk, and climate change will continue to exacerbate many natural hazards in the future. This means, as a nation, we need to not only manage, reduce, and adapt to existing risk, but minimise the creation of new risks.
- 15 We are already experiencing the effects of a changing climate (such as increased temperatures and rising sea levels) on our natural and built environments, people, infrastructure and economy. Future changes will have even more far-reaching consequences across all levels of society. It is vital that we have the right systems in place to support effective adaptation to climate impacts.
- 16 The Climate Change Adaptation Technical Working Group, in its recommendations in 2018, recognised the need for proactive planning, and foundational actions for effective adaptation across all levels of society, the environment and the economy. The foundational areas for action were: leadership, funding, capability and capacity building and information provision to support decision-making.
- 17 The Productivity Commission report on local government funding and financing in 2019 highlighted the need for a national legal framework, high-quality science, and decision-making guidance.
- 18 Building on these reports, the Resource Management Review Panel (the Panel) undertook a comprehensive review of the resource management system and produced a report titled *New Directions for Resource Management in New Zealand* (the Report) in June 2020. The Panel identified systemic issues with the current legislative framework in relation to climate change adaptation. These include:
  - lack of national direction and guidance from central government for managing the effects of climate change
  - difficulties addressing contentious issues in local planning
  - lack of clarity for roles and responsibilities of central and local government for adaptation
  - lack of ability to plan for managed retreat
  - particular issues in relation to risks for Māori.<sup>1</sup>
- 19 The Panel highlighted that climate change needs to be considered more strongly across the whole resource management system to strengthen climate

<sup>1</sup> Issues identified by the Panel include that coastal erosion and sea-level rise can affect cultural values, damaging wāhi tapu or causing difficulty for Māori access to traditional land, coastal urupā or mahinga mātaitai.

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outcomes, provide the necessary mechanisms to achieve these outcomes and to establish clear mandates, roles and responsibilities.

- 20 In order to address these and other identified issues, the Panel proposed replacing the existing resource management system with three new pieces of legislation:
- a Natural and Built Environments Act (NBA)
  - a Strategic Planning Act (SPA)
  - a Managed Retreat and Climate Change Adaptation Act (CA4).
- 21 The Panel emphasised the role of the proposed Natural and Built Environments Act and Strategic Planning Act in ensuring climate impacts are included in decision-making about land and other resource use.
- 22 In addition, it considered the new legislation on managed retreat and climate change adaptation is needed to:
- address the complex legal and technical issues associated with managed retreat (where it is required for climate change adaptation or to reduce risks from natural hazards)
  - establish an adaptation fund.

**Analysis**

*Need for an all of system approach to adaptation*

- 23 The Cabinet paper *Reforming the resource management system* recommends proceeding with resource management reform on the basis of the Panel's recommendations, but recognising that more work and refinement is needed in some areas.
- 24 I agree with the Panel's finding that climate change adaptation and natural hazards need to be addressed throughout the resource management system. There are many adaptation related linkages between the three proposed pieces of legislation.
- 25 Progressing reform on managed retreat and adaptation as part of the wider resource management system reform will help ensure that the resource management system delivers outcomes relating to climate change adaptation and natural hazards consistently. As policy and timeframes are further developed it will be important to ensure linkages between the proposed pieces of legislation are maintained.
- 26 This will also allow for maintaining key linkages to other adaptation related work programmes, such as the development of the National Adaptation Plan.



*Significant policy work on managed retreat and adaptation is required*

- 27 In addition to the development of the Natural and Built Environments Act and Strategic Planning Act, I agree with the Panel's recommendation to progress new legislation on climate change adaptation in order to address the complex legal and technical issues associated with managed retreat and funding and financing of adaptation.<sup>2</sup> I find the Panel's rationale and case for reform convincing, and consider that the government needs to take action to provide clarity, direction and fit-for-purpose processes for dealing with these issues.
- 28 However, the recommendations for discrete adaptation legislation are one of the least developed areas within the Report. Significant policy work is required, using the Report's recommendations as a starting point, to determine the scope and develop the detail of the proposals: s 9(2)(f)(iv)

29 s 9(2)(f)(iv)

30 s 9(2)(f)(iv)

*Strategic planning and climate change adaptation have key linkages*

- 31 Strategic planning can be seen as the 'proactive side' of adaptation as it encourages long-term decision-making to be integrated and climate-resilient. Adaptation legislation could play a role in ensuring funding mechanisms and other decision-making systems are available to support this function of spatial planning.

#### **The process for reform**

*Development of adaptation legislation is to be led by the Ministry for the Environment*

- 32 I propose that the Ministry for the Environment lead the development of adaptation legislation. However, it will be important to maintain close connections with the wider cross-Government climate adaptation work programme.

<sup>2</sup> The Panel identified that issues include funding, land acquisition, compensation, liability, insurance, and infrastructure service provision.

<sup>3</sup> s 9(2)(f)(iv)

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33 In particular, the National Adaptation Plan is an all-of-Government strategy and action plan to respond to the risks identified in the National Climate Change Risk Assessment (Risk Assessment). The National Adaptation Plan will provide the overarching strategy and action plans for how the government will prepare New Zealand for the impacts of climate change.

34 Work to develop the National Adaptation Plan is already underway. A cross-agency project team has been established to develop outcome-based action plans that articulate the actions (policies, projects, proposals) that will be delivered across government to achieve our adaptation goals over the next six years.

35 The adaptation legislation will go some way to addressing some of the risks identified in the Risk Assessment, particularly those that relate to governance, and fitness-for-purpose of legislation and institutional arrangements.

36 s 9(2)(f)(iv)

37 Other relevant work includes the cross-agency Community Resilience Work Programme (the Programme). The Programme, coordinated by the Department of Internal Affairs, has been given a mandate from Cabinet [CAB-20-MIN-0329 refers] to develop a managed retreat policy framework. The Programme also involves developing proposals for managing natural hazards, such as flooding, which are exacerbated by climate change. A report back to Cabinet on the Programme is currently planned for the first quarter of 2021, and I will seek to align my proposed report backs on the adaptation legislation and the National Adaptation Plan with this.

38 s 9(2)(f)(iv)

39 The close link with the Strategic Planning Act and the need for both that Act and the adaptation legislation to complement the Natural and Built Environments Act means all three Acts should be closely tied together as they are developed.

40 The Minister for the Environment's paper *Reforming the resource management system*, also being considered today, proposes the establishment of a Ministerial Oversight Group to make delegated decisions on detailed policy to inform the development of the proposed Natural and Built Environments Act, and for associated matters relating to the Strategic Planning Act and adaptation legislation. s 9(2)(f)(iv)



*Linking adaptation legislation with the Strategic Planning Act*

- 41 In acknowledgement of the linkages between the Strategic Planning Act and adaptation legislation, and the need to keep policy linked as it is developed, I propose that these two areas progress in parallel, s 9(2)(f)(iv)

- 42 I consider it is important that there is sufficient overlap in policy development processes between the Strategic Planning Act and adaptation legislation to maintain policy coherence. s 9(2)(g)(i)

*Comprehensive engagement is required to inform the development of adaptation policy*

- 43 As noted above, there is significant policy work to be done to further develop adaptation legislation proposals.
- 44 Funding and financing, and managed retreat solutions are not something that have been tested with stakeholders, or the public yet, but the issues involved and the potential solutions to them will have a high impact. Local government and iwi/Māori in particular have a critical interest in this work and sufficient time needs to be allowed to work with them.
- 45 Engagement options, including working with iwi/Māori will be developed in early 2021 to guide this work, and linkages with engagement undertaken to inform the wider resource management system reform and development of the National Adaptation Plan will be considered where appropriate.
- 46 To allow for comprehensive policy development, including working with Treaty partners and local government, I propose that public consultation on adaptation policy occur at the end of 2021. Although exact timing would be confirmed as policy development progresses, there are opportunities to align such public consultation with engagement on the National Adaptation Plan.

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#### Implementation

33 There will need to be a significant programme of implementation to support new legislation. I will bring proposals for an implementation programme to Cabinet when policy decisions are sought.

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55 s 9(2)(f)(iv)

### Legislative Implications

56 This paper has no immediate legislative implications, but the policy proposals to be developed will be implemented through new primary legislation or changes to existing legislation.

57 s 9(2)(f)(iv)

### Te Tiriti o Waitangi Implications

58 Officials will work with iwi/ Māori in the development of the policy proposals, in advance of public consultation, to ensure that obligations under Te Tiriti and broader Māori interests are understood and accounted for. A full assessment of Te Tiriti implications of any policy changes proposed will be undertaken to inform the final policy decisions.

### Impact Analysis

#### Regulatory Impact Statement

59 A full regulatory impact statement will be provided at the time policy decisions are made on the proposals.

#### Climate Implications of Policy Assessment

60 This paper does not contain proposals which trigger a need for a Climate Implications of Policy Assessment.

#### Population Implications

61 The first National Climate Change Risk Assessment (Risk Assessment) highlights that climate change is likely to exacerbate existing inequities and create new and additional inequities due to differential distribution of impacts.

62 The Risk Assessment describes the groups shown in **Table 2** as having a particular sensitivity to the extreme events associated with climate change.

**Table 2: Population groups and how they may be affected by climate change**

Population group	How this group may be affected
Māori	Socioeconomic disparities that exist between Māori and non-Māori communities produce conditions that increase sensitivity to climate change impacts and risks for Māori society. Māori communities are more sensitive to climate impacts on ecological systems due to dependence on primary industries for livelihoods, and the impacts of climate change on cultural and spiritual wellbeing, as well as on coastal mahinga kai and proximity of housing and infrastructure to processes such as erosion and inundation.
Ethnic communities and minorities	Ethnic communities are often geographically and economically isolated from jobs, services and institutions. Discrimination also plays a major role in increasing the sensitivity of ethnic minorities. Where minorities are migrants from non-English-speaking countries, language barriers can greatly increase vulnerability to a disaster.
Women	Following disasters, women and children are often vulnerable. Evidence indicates that lower-income women experience and navigate ongoing job and house displacement, increased domestic violence and reduced access to education and childcare for children after extreme events. Unequal participation in labour markets and decision-making processes compound inequalities. Research also shows that incidences of domestic violence increase following extreme events, such as fires
Children and the elderly	Disruptions created by a disaster can have significant psychological and physical impacts on children. The elderly are likely to suffer health problems and experience a slower recovery, and tend to be more reluctant to evacuate their homes in a disaster.
Disabled people	People living with mental or physical disabilities are less able to respond effectively to disasters and require additional assistance in preparing for and recovering from disasters.

- 63 Consideration of impacts on the groups in Table 2 (as well as others such as rural communities), equity and distributional impacts will need to be taken into account in the development of policy proposals for adaptation legislation.

### Human Rights



- 64 The proposals in this paper do not have any immediate human rights implications.

### Consultation

- 65 The following agencies have been consulted on the proposals in this paper: the Treasury, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry of Transport, Te Puni Kōkiri, Office for Māori Crown Relations: Te Arawhiti, Ministry for Primary Industries, Ministry of Foreign Affairs and Trade, Ministry of Business, Innovation and Employment, Department of Conservation, the Earthquake Commission, the Infrastructure Commission and the Energy Efficiency and Conservation Authority. The Department of Prime Minister and Cabinet has been informed.

### Communications

- 66 This paper proposes a high level timeframe and process for progressing adaptation legislation. It does not include any new policy proposals and does not require government advertising or publicity.

### Proactive Release

- 67 I propose to proactively release this paper, subject to redactions as appropriate under the Official Information Act 1982.

### Recommendations

The Minister of Climate Change recommends that the Committee:

1. **note** that the Resource Management Review Panel (the Panel) undertook a comprehensive review of the resource management system and produced a report titled *New Directions for Resource Management in New Zealand* (the Report) in June 2020;
2. **note** that the Report had a strong climate change focus and recommended new Managed Retreat and Climate Change Adaptation legislation (adaptation legislation) to address the complex legal and technical issues associated with managed retreat and establishing an adaptation fund;
3. **note** that the Panel recommended two other pieces of legislation, a Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA), that the Minister for the Environment is discussing today;
4. **note** that the Cabinet paper *Reforming the resource management system* includes a recommendation to “agree to proceed with resource management reform on the basis of the Panel’s recommendations although further work and refinement is needed in some areas”;
5. **note** there are opportunities to strengthen outcomes for climate change adaptation within all three proposed pieces of legislation;

6. **note** that passing adaptation legislation this term of government was covered in the Labour Party manifesto;
7. **note** there are key connections between adaptation legislation and the Strategic Planning Act and a need to keep policy linked as it is developed;
8. **note** that there is significant new policy work required to develop adaptation legislation, which takes time and engagement, particularly for the proposals for managed retreat;
9. **agree in principle**, subject to the report back referred to in Recommendation 10, that the overall approach to progressing the development of adaptation legislation:

9.1. use the Report as a starting point for scoping and policy development  
s 9(2)(f)(iv)

s 9(2)(f)(iv)

11. **note** that broad engagement will also be needed with our Treaty partners, local government and other interested parties, as well as public consultation, due to the need for significant further policy development and high stakeholder interest;
12. **note** that the Cabinet paper *Reforming the resource management system* proposes the establishment of a Ministerial Oversight Group to make delegated decisions on detailed policy for the Natural and Built Environments Act, and for associated matters relating to the Strategic Planning Act and adaptation legislation;

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Authorised for lodgement

Hon James Shaw

Minister of Climate Change

Proactively released under the provisions of the Official Information Act  
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