



Climate Change & Sustainability Update - September 2023

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Environment Committee opens inquiry into climate adaptation

Public submissions on the Environment Committee's Inquiry into climate adaptation are open until 1 November 2023. The Inquiry will look at issues including "community-led retreat" and adaptation funding, and is intended to sit alongside

the separate Government Inquiry into the Response to North Island Severe Weather Events (due to be completed in March 2024).

Recommendations from the Inquiry will support the development of the long-awaited Climate Change Adaptation Bill.

Public submissions will also inform work that is currently being undertaken on new national direction on natural hazard management, including risk assessment and planning measures.

To assist with submissions, Ministry for the Environment (MfE) has released an Issues and Options paper on community-led retreat and adaptation funding. The Issues and Options Paper can be found [here](#).

We provide a brief summary of some of the points raised in the Issues and Options paper below. Interestingly, the paper uses the terminology ‘community-led retreat’, rather than ‘managed retreat’. This is purposeful and the paper says it means *‘moving homes, businesses, sites of cultural significance and taonga out of harm’s way through a carefully planned process that involves community at every step.’* The principles for adaptation action have been taken from the 10 principles outlined in the first National Adaptation Plan (NAP). You can read more about the NAP [here](#).

Te Tiriti-based adaptation

The paper outlines the key points around the disproportionate effects climate change will have on iwi, hapū and Māori. It raises issues around some of the barriers to Māori adaptation including limited resources, institutional barriers and cultural disconnect. It proposes a Te Tiriti based adaptation system that would uphold the Crown’s obligations and Māori rights and interests, integrate Te Ao Māori and mātauranga Māori into risk assessments, local adaptation planning and community-led retreat; and discusses the need for both adequately resourcing iwi, hapū and Māori to participate, but also to ensure they have decision-making roles.

Risk assessment

The paper notes the variation in methodologies used across councils for risk

assessments, and the lack of national direction to support councils to carry out risk assessments. As noted above, the Government is currently developing both a new National Policy Statement (NPS) on Natural Hazard Decision-making; and more comprehensive national direction on a Natural Hazards Planning Framework. The paper says the new NPS is intended to be an interim measure to guide councils on the appropriate weight to attach to natural hazard risk (including climate change) in consent decisions and changes to planning instruments relating to future development. [more on the draft NPS later...]

The Planning Framework would then provide nationally consistent direction, including on methodologies for undertaking risk assessment. The national direction would be incorporated into the national planning framework (NPF) under the RMA replacement, the NBEA.

The paper raises important issues around risk assessments, including feedback on the staging and scale for risk assessments, review frequency, and how risk should be determined as acceptable or unacceptable. It also seeks feedback on whether a central agency should either carry out, or review, risk assessments undertaken by local authorities, and the ability to incorporate mātauranga into risk assessments.

Options for a retreat system

The paper only identifies two options for a retreat system – voluntary; or a mix of voluntary and mandatory parts, but with no real guidance on one of the key issues – what are the triggers for mandatory retreat? It does however identify some of the other issues associated with mandatory retreat, including the ability of councils to withdraw services at a stated point in time (given the current statutory requirements); and the overlap with other areas including mortgage and insurance contracts, land use and consenting, and other property interests (including leases and easements).

Funding

The paper highlights some of the issues with the current approach, including challenges with affordability, uncertainty about central government's approach, reduced incentives to adapt, investment decisions made under urgency, and inadequate information to support decisions. It raises the core issue of whether,

and under what circumstances, central government should provide additional support for adaptation (including retreat). It signals that it may be helpful for central government to indicate in advance what costs it will prioritise and suggests some initial priority areas could include property-level retreat funding; home resilience funding; flood protection and a dedicated fund for iwi, hapū and Maori.

However, it is not particularly clear whether matters like ‘property-level retreat funding’ would also apply to businesses (particularly SME) which might have to relocate as part of a community lead retreat. It is also unclear how (and by whom) post-retreat land might be remediated and managed (for example, could retreat land be used for alternative purposes like sports fields, or as part of wider biodiversity projects? And if so, how might that be funded?).

While there is brief mention of some of the mechanisms central government might use to meet the additional funding, including existing allowances, raising additional revenue or adaptation markets, it’s not as comprehensive as either the Working Group’s report or the EDS’ working paper on funding and financing managed retreat.

Have your say

Public submissions on the Environment Committee’s Inquiry into climate adaptation are open until 1 November 2023.

Proposed National Policy Statement for Natural Hazard Decision-making

Released this week is a proposed NPS-Natural Hazard Decision-making (NPS-NHD), which is open for submissions until 13 November 2023. You can find a copy [here](#).

Central government is taking a phased approach to natural hazard risk planning, with the proposed NPS-NHD intending to be an interim measure to be implemented by early 2024; and a proposed comprehensive National Direction for Natural Hazards to be developed over the next 1-2 years. The interim NPS-NHD is considered necessary to assist with planning and consenting processes in the interim, and would have immediate effect.

In summary, the NPS-NHD would direct decision-makers to take a risk-based

approach to natural hazards when making planning decisions (including resource consents, designations; plans and policy statements). Three natural hazard risk categories are identified (high, moderate and low). Decision-makers would have to address the level of risk based on likelihood and consequence of an event; and then assess the ‘tolerance’ to the event in relation to the proposed new development.

Risks are to be categorised by decision-makers as ‘high’, ‘moderate’ or ‘low’. High means a risk from natural hazards that is ‘intolerable’. However, ‘intolerable’ is not defined. The intention appears to be that matters such as developing and implementing a standardised risk tolerance assessment methodology to define areas that would be ‘tolerable’ or ‘intolerable’ to natural hazard risk; and having a standardised definition of ‘intolerable natural hazard risk’; would form part of the comprehensive National Direction. In the interim, it would fall on councils to determine whether the risk is ‘intolerable’. Policy 2 provides some limited guidance, which is to consider the likelihood and consequence of the event; and then the tolerance to the natural hazard event (considering matters like willingness and capability of those affected to bear the direct and indirect risks and costs of the natural hazard). In areas of ‘high’ risk, new development is to be avoided unless the level of risk can be reduced to a tolerable level, or where certain criteria can be met.

The NPS-NHD also provides for a precautionary approach, meaning that where the natural hazard risk is uncertain or unknown, but could be intolerable, then a precautionary approach is required.

Natural hazard risks will become both matters of control (for controlled activities) and matters of discretion, for restricted discretionary activities. Presumably for controlled activities (where consent must be granted) the intention would be to have consent conditions to mitigate the risk, however it is unclear how that would be achieved in a ‘high’ risk area.

While the draft NPS-NHD provides some assistance to councils grappling with these complex issues, particularly where consent applications continue to be submitted for high risk areas; the lack of definitions could prove problematic. In addition, the NPS-NHD is specific that it will not require changes to the intensification planning instruments currently being progressed to implement the NPS-UD and Medium Density Residential Standards. While many councils are already deep in that process, enabling further development capacity in ‘high risk’ areas could prove

problematic in the future.

Global trends in climate change litigation

Since our last update, the Grantham Institute has released its annual report on global developments in climate change litigation. You can find a copy of the report [here](#).

Some of the key trends are summarised below:

- A significant number of cases (2,341) were filed in the last 12 months. The growth rate appears to be slowing, but diversity in cases is expanding.
- Domestic legal protections (e.g. right to a healthy environment) along with domestic climate litigation play a critical role in cases against governments.
- There has been a growth in ‘climate-washing’ cases challenging the accuracy of green claims and commitments. Some cases seeking financial damages are also challenging disinformation, with many relying on consumer protection law.
- Litigation concerning investment decisions is increasing and can help clarify the parameters within which decisions can be made in the context of climate change.
- High-emitting activities are now more likely to be challenged at different points in their lifecycle, from initial financing through to final project approval.

Some key take-outs from the Climate Change and Business Conference

This week I attended the Climate Change and Business Conference, delivered by the Sustainable Business Council, Climate Leaders Coalition and Environmental Defence Society.

Some key take-outs from the sessions I attended:

- Every action matters; every bit of warming matters; every year matters; every choice matters. There is no ‘silver bullet’ for solving climate change, but there’s a lot of silver buckshot. We have solutions across the spectrum that together can truly tackle this issue at scale – Professor Katharine Hayhoe, Chief

Scientist, The Nature Conservancy;

- There's no shortage of capital to support funding the right projects;
- We are finally 'bending the curve' in New Zealand, but we have a very long way to go and we are not on track to meeting our international commitments;
- Nature needs to be at the centre of solutions – silo thinking is not helping us. There should be a greater focus on biodiversity as well as solving climate change issues.
- Businesses need a transition plan – but credibility and integrity is key. Do the work first. Tell the truth, the whole truth and nothing but the truth; and finally
- “If you don't want to exercise the power to change, then hand it over and get out of the way” – Rod Carr, Climate Change Commission.

If you have any questions about this update, please feel free to call Rachael Zame, or a member of our team.