

3 February 2020

SUBMISSION TO ISSUES AND OPTIONS PAPER: *TRANSFORMING THE RESOURCE MANAGEMENT SYSTEM*

Introduction

1. This submission is made on behalf of Lawyers for Climate Action New Zealand Inc (**LCANZ**). LCANZ is a group of over 250 lawyers from a range of practice areas and backgrounds who seek to:
 - raise public awareness and understanding of the threat of climate change, based on the accepted scientific evidence; and
 - advocate for legislation and policies to ensure New Zealand meets or exceeds its commitment under the Paris Agreement and to achieve net zero carbon emissions as soon as possible and no later than 2050.
2. The focus of this submission to the Resource Management Review Panel's *Issues and Options Paper* is on Issue 5, specifically addressing proposed changes to the Resource Management Act 1991 (**RMA**) considered necessary to enable effective local authority planning responses, better achieving or delivering the Net Zero greenhouse gas emission Target of the Climate Change Response (Zero Carbon) Amendment Act 2019 (**Zero Carbon Act**); as set by s5Q of the Act (**the 2050 Target**).
3. As the Issues and Options Paper records,¹ local authority responsibilities under RMA are currently confined to climate change *adaptation* (i.e., response to the effects of climate change, including natural hazards). Climate change *mitigation* (reduction of greenhouse gas emissions) is essentially beyond the scope of local authority resource management responsibility.² Sections 70A and 104E of the RMA direct consenting and

¹ Page 30-31.

² The exception being through provision for promulgation of a National Environmental Standard (**NES**) to control the effects on climate change of the discharge into air of greenhouse gases, refer s70B and s104F of the RMA – no such NES has been promulgated.

planning authorities to disregard the adverse effects of an activity discharging greenhouse gases *on* climate change.

4. The *Issues and Options* Paper points to debate over whether the RMA should be used “more broadly” as a tool to address climate change mitigation. Reference in that regard is specifically made in the Paper to the Productivity Commission report *Low Emissions Economy* (2018).³ A range of potential options for amendments to the RMA to address climate change mitigation and adaptation are set out in the *Issues and Options* Paper⁴ with the following questions then posed:
 16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?
 17. What changes to the RMA are required to address climate change adaptation and natural hazards?
 18. How should the RMA be amended to align with the Climate Change Response Act 2002?
5. This submission now addresses these specific questions.

The Basic Problem

6. While the Zero Carbon Act requires the setting of budgets to meet the 2050 Target, these budgets are permissive but not mandatory considerations for decision making under any other legislation (s5ZN), and are not legally binding on any sector of the economy (s5ZM).
7. Fundamentally, and for the following reasons, LCANZ submits that a range of amendments to the RMA should be made to enable the setting of policy and regulation over all relevant land, resource use and discharge activities within New Zealand under that legislation – for both climate change adaptation and mitigation purposes. This provision for RMA policy and regulation would then complement other initiatives including price signals under the Emissions Trading Scheme (**ETS**), emission reduction plans (**ERPs**) prepared under the Zero Carbon Act (s5ZG) and other Government Policy initiatives, rather than each dimension of the overall and legislative and policy framework potentially ‘pulling in different directions’.
8. As the Productivity Commission’s *Low Emissions Economy* report (**the Report**) records, a basic concern with the Climate Change Response Act framework (including the ETS) raised by submitters to that report included:

³ Paragraph 91 of the *Issues and Options* Paper.

⁴ Page 32.

- *“No clear plan for reducing domestic emissions and meeting New Zealand’s existing Targets;*
 - *Inadequate Central Government leadership to drive the low emissions transition; and*
 - *Poor policy coherence, including inadequate coordination and “lack of joined-up thinking”.⁵*
9. The Report further identifies that New Zealand’s response to reducing emissions “lacks coherence”.⁶ The Report cites a submission noting that the *“statute book speaks with many voices in New Zealand on climate change”*.⁷
10. Furthermore, while provision for legislated emissions targets and budgets is now in place under the Zero Carbon Act, a potential disadvantage of these statutory mechanisms remains lack of clarity on the measures required to meet them.⁸ The Report cites a submission noting that:
- A target should be seen as a means, not an end, for policy and setting a target is not a substitute for putting in place the measures needed to achieve the objective. It is too easy to applaud the Government’s willingness to set a heroic goal – without testing the feasibility and desirability of doing what it takes to meet that objective.⁹
11. The Productivity Commission Report recommends that statutory targets and budgets of the kind now provided for under the Zero Carbon Act should be supplemented by a specific “low emissions strategy”, stating as follows:
- A low-emissions strategy should be a broad and far-reaching economy-wide document that deals with all sectors of the economy and all relevant policy and regulatory instruments (including emissions pricing, complementary policies, investments and regulations). It should set out detailed policy proposals for the shorter term, particularly how the Government intends to ensure that the country meets the current emissions budget and, if the start of a new budget period is imminent, the intended approach for meeting the forthcoming budget.¹⁰
- (emphasis added)

⁵ Page 207 of the Report.

⁶ Page 210 of the Report.

⁷ Page 210 of the Report.

⁸ Page 218 of the Report.

⁹ Page 219 of the Report.

¹⁰ Page 224 of the Report.

12. A basic thesis of this submission is that the RMA has the potential to provide an important vehicle through which undeniably relevant policy can be set and regulation made as part of a coherent “economy-wide” strategy, to better ensure that the 2050 Target of the Zero Carbon Act is actually achieved. A range of specific amendments to the RMA are however needed to provide for this otherwise foregone opportunity.
13. Examples of the range of topics and issues that could be addressed through such policy and regulation are addressed further below.
14. Conversely, absent these amendments, RMA policy and regulation would not be able to direct land and resource use in a manner consistent with achieving the 2050 Target and budgets set under the Zero Carbon Act (at least, *specifically for that purpose*). Worse, land and resource use would otherwise be able to progress and continue under the RMA in a manner that potentially frustrates or undermines the ability to meet the budgets and 2050 Target.
15. At the practical level, the point can be illustrated further as follows.
16. The Productivity Commission’s *Low Emissions Economy* Report reveals that achieving the 2050 Target is feasible, but will require:
 - A large expansion of forestry (mainly from sheep and beef farming).
 - Changes to the structure and methods of agricultural production; and
 - Switching from fossil fuels to clean electricity and other low emissions energy sources in transport and process heat.
 - Emissions price rising from current levels to between \$150 and \$250 a tonne.¹¹
17. The scale of land use transition is significant (albeit not unprecedented) depending on the modelled scenario applied by the Productivity Commission for the purpose. Forest land would need to increase by up to 2.8 million hectares, with a corresponding shift out of beef and sheep farming, and between a 100% to 200% expansion in horticultural land.¹²
18. The degree of reliance on carbon sequestration from forestry in the modelled scenarios is substantial.¹³ The Report records that the heavy reliance on forestry could create longer term challenges with continued emissions reductions required after 2050 to maintain net- zero emissions.¹⁴

¹¹ Page 41 of the Report.

¹² Page 304 of the Report.

¹³ Page 65 of the Report.

¹⁴ Page 41 of the Report.

19. Similarly, electrification across many parts of the economy would be needed, particularly within the transport sector, supported by an increase in electricity generation of between 45% and 63% (Transpower modelling indicating that 60TWh of new generation would be required, roughly equivalent to 4.5 typically sized windfarms each year).¹⁵
20. The Report advises that ‘early, strong action in the form of higher emission prices be set in the period from now to 2030’.¹⁶ However, the latest proposals for ETS reform would cap the carbon price at \$50 over much of this period,¹⁷ with significantly higher carbon prices (\$150 to \$250, as noted above) needed under all modelled scenarios addressed in the Report, to achieve the Target.
21. The Report further records considerable risk and uncertainty facing New Zealand’s low emissions transition including:
 - The extent of technological change required
 - Fossil fuel prices and commodity prices; and
 - International carbon prices.¹⁸
22. A unique problem facing New Zealand is the substantial contribution of agriculture to New Zealand’s overall emissions profile (nearly half).¹⁹ Whether any solution to the production of methane by livestock will be developed (such as an effective vaccine) is at present unknown.²⁰
23. Conversely, the Report refers to a range of “co-benefits” associated with switching away from fossils fuels and switching land use from dairy to forestry (for example in terms of improving water quality).²¹
24. Finally, and with reference to the Productivity Commission’s Report, farm management practices can play a significant role in reducing agricultural emissions, for example:
 - Reducing stocking rates
 - Reducing nitrogen inputs

¹⁵ Page 99 of the Report.

¹⁶ Page 41 of the Report.

¹⁷ Refer Ministry for the Environment Discussion Document “*Reforming the Emissions Trading Scheme: Proposed Settings*”. December 2019.

¹⁸ Page 49 of the Report.

¹⁹ Page 29 of the Report.

²⁰ Page 311 of the Report.

²¹ Page 126 of the Report.

- Other farm practices – milking once a day, using stand off pads.²²
25. In summary to this point, the scenario testing underpinning the Productivity Commission’s Report reveals that:
- Achieving the Zero Carbon Act 2050 Target is possible, but represents a *very substantial* challenge in terms of overall Government policy settings and the economy generally.
 - There are a number of risks and uncertainties as to whether the key (even *bold*) assumptions as to what is required to achieve the 2050 Target will prove valid (substantial land use transitions and emergence of new technology, international carbon pricing etc).
 - The dominant dimension of the transitions required (land use) is a matter directly relevant to RMA policy and planning – but such policy and regulation is currently not directed to climate change mitigation purposes (nor able to be).
 - There is a clear climate change ‘co-benefit’ relationship inherent to management of a principal activity currently regulated under RMA for water quality purposes, and that responsible for nearly half of New Zealand’s overall greenhouse gas emissions – namely agriculture.
 - A coherent overall policy response with an “economy wide” strategy or plan to achieve the 2050 Target is essential.
26. More simply put, LCANZ submits that it would be unsafe to rely on the Zero Carbon Act and the ETS in isolation. A range of amendments to the RMA are considered essential to ensure an overall broad, comprehensive and *coherent* policy response, to give the greatest prospect of the 2050 Target of the Zero Carbon Act actually being achieved.
27. Against that background, the following specific amendments to the RMA are proposed.

Section 6 – Matters of National Importance

28. The sole reference to climate change in Part 2 of the RMA (purpose and principles) is under s7(i), namely to the effects *of* climate change.
29. Indirect reference to climate change can be said to arise from s6 (h) “significant risks from natural hazards”, but this is again confined to climate change adaptation, rather than mitigation.

²² Page 308 of the Report.

30. Section 6 has a higher place within the Part 2 hierarchy, setting matters of national importance which local authorities are required to *recognise and provide for* rather than just *have particular regard to* (as with s7 matters).
31. Section 6 currently contains a range of matters that are undeniably of a lesser degree of national importance or *significance* than climate change, including preservation of the natural character of the coastal environment, and the protection of outstanding natural landscapes.
32. This is a glaring omission or even anomaly in the RMA. The case for placing the most pervasive and significant environmental concern humanity has ever confronted at the forefront of s6 is compelling.
33. It is therefore proposed that s6 (or its equivalent in a reformed RMA statute) state as the first matter of national importance:
 - (a) Climate change adaptation and mitigation.

Local Authority Functions

34. There is no express reference within s30 or s31 of the RMA to either climate change mitigation or adaptation. As with Part 2, local authority functions set under these sections are currently confined to responding to natural hazards.
35. It is recommended that at least s30 of the Act (functions of regional councils) be amended to provide for both climate change mitigation and adaptation as express functions under the RMA.

Section 32 of the RMA

36. Section 32 of the RMA could be amended to ensure that when evaluating the extent to which the objectives, policies, rules and other provisions of a planning instrument are the most appropriate, efficient and effective to achieve the purpose of the RMA, specific consideration is given to climate change mitigation and adaptation imperatives.
37. That would enable policy setting to be made in a manner whereby, of the given options for an objective, policy or method considered appropriate to address a currently permissible RMA issue (such as land or water management), the option which optimises the climate change response is preferred.

National Direction

38. Section 45 of the RMA establishes the purpose of National Policy Statements (**NPS**), and requires the Minister to have regard to:

New Zealand's interests and obligations in maintaining or enhancing aspects of the national or global environment

in deciding whether such a statement is desirable. However, national policy statements are generally at the discretion of the Minister.

39. It is proposed that s45 be amended to make preparation of an NPS dealing with climate change mitigation and adaptation mandatory (as presently the case for the New Zealand Coastal Policy Statement under s57).
40. The NPS-Climate Change could be prepared jointly by the Minister responsible for Climate Change and Minister for the Environment, having regard to the national adaptation plan (s5ZS of the Zero Carbon Act) (**NAP**) as to adaptation. The mitigation dimension could be prepared having regard to ERPs prepared under s5ZG of the Act.
41. The LKANZ preference would be that the NPS - Climate Change be the primary and preeminent planning instrument prepared under the RMA, with at least the standing of the New Zealand Coastal Policy Statement. All other national policy statements would need to be consistent with that statement, or "give effect to it", as is currently the case for an NPS with respect to regional policy statements, regional plans, and district plans (s62(3), s67(3) and s75(3) of the RMA).
42. This would avoid the conflict or tension that can be experienced in reconciling the various NPS currently in force under the RMA, and as now proposed (e.g. as to freshwater, electricity transmission, urban development capacity, biodiversity and highly productive land).
43. As an alternative to a mandatory NPS - Climate Change, this could be left to the discretion of the relevant Ministers, with that discretion directed at whether such an NPS is necessary or appropriate to implement either the NAP or ERP as in force under the Zero Carbon Act.
44. In exercising that discretion, the Minister might also have regard to:
 - (a) The extent to which the NAP and ERP would be implemented by giving effect to other NPS in any event (for example, the NPS on Renewal Electricity Generation, or Freshwater Management); and/or
 - (b) The additional benefits to be derived by specific objectives directed to implementation of the NAP and ERP, beyond those "co-benefits" indirectly achieved through implementation of the other NPS.²³

²³ Refer paragraph 23 above.

45. LKANZ submits that an NPS - Climate Change (set against the context of the other recommended amendments to the RMA), would enable policy setting and regulation which would materially assist in achieving the 2050 Target and budgets set under the Zero Carbon Act, for example in relation to the following policy dimensions:
- (a) Establishing the ability to require farm environment management plans (as proposed to be mandatory under the Government's *Essential Freshwater* reforms) to include practices that reduce emissions of methane and nitrous oxide.²⁴
 - (b) Enabling specific policy direction over urban growth and form to better secure or sustain efficient transport networks, and maintain compact urban form.²⁵
 - (c) Enabling specific policy direction over urban design (section and street orientation and layout to optimise solar warming / localised power generation, and minimise reliance on centralised electricity generation and/or natural gas).
 - (d) Enabling specific policy and regulation regarding building design and materials (driving energy efficiency).
 - (e) Underscoring the need for protection of suitable land for horticulture (given the significant expansion or transition from other land uses into horticulture likely needed to achieve the 2050 Target).
 - (f) Enabling specific policy and regulation of forestry (including enabling provision) given the substantial land transition into forestry required.
 - (g) The setting of directive enabling policy to otherwise support the transitions necessary, including for example to better provide for the additional amount of wind or solar electricity generation needed to support transition to an electric vehicle fleet.
 - (h) In similar fashion to the draft National Policy Statement for Fresh Water Management (Ministry for the Environment Proposals for Consultation September 2019), setting national targets (consistent with those established

²⁴ The Productivity Commission report noting that in the absence of a price on such emissions (or other regulation) adoption of such methods is unlikely to be secured – page 315 of the Report. Yet agriculture will remain exempt from such price control, at least until 2025 (reference He Wake Eke Noa) .

²⁵ Again with the Productivity Commission report noting that after agriculture, the largest source of emissions in New Zealand is transport, currently by far the biggest contributor to the rise in New Zealand's gross emissions since 1990 – page 32 of the Report.

under the Zero Carbon Act) for emissions reductions from specific activities appropriately addressed within an RMA context (including as itemised above).²⁶

Repeal of Sections 70A and 104E of the RMA

46. The current effect of these provisions is obvious. Notably, these provisions cut across the otherwise permissible consideration of climate change budgets under s5ZN of the Zero Carbon Act, *within New Zealand’s principal environmental statute*.
47. The rationale for these provisions, namely that climate change mitigation is appropriately (and adequately) addressed at a national level²⁷ through the ETS is open to serious challenge.
48. A Ministry for the Environment Evaluation in 2016 reveals that to date the ETS has not “*significantly altered domestic emissions*” and contributed only “*minimally*” to changes in behaviours that have reduced emission below “*business as usual*”.²⁸
49. The Productivity Commission Report notes that the “*current characteristics*” of the Scheme do not meet the criteria for an effective system, and while proposed reform measures would take the Scheme in the right direction, “*important details*” remain to be settled.²⁹ This underscores the ‘uncertainty’ concern raised above about reliance on Targets, budgets and price signals to deliver the substantial land and resource use transitions essential to effective climate change mitigation.

Conclusion

50. With these specific amendments to the RMA in place under a reformed statute, local authorities would be directed to ensure that all policy settings have, as a principal objective, alignment with the 2050 Target, budgets and plans prepared under the Zero Carbon Act.
51. This would not mean that policy setting on other issues (for example water quality and allocation, urban planning, highly productive land, biodiversity or otherwise) is displaced. To the contrary, policy on those topics, along with transport infrastructure, energy generation and the like, is very likely to be improved or enhanced through a preeminent or prevailing focus on both climate change mitigation and adaptation.
52. The approach outlined above would better ensure an integrated and comprehensive response whereby all land use and other relevant activities (agriculture, point source

²⁶ Refer proposed Policy 6 with reference to Appendix 3 of the draft National Policy Statement for Fresh Water Management, Consultation Proposal September 2019).

²⁷ *Issues and Options Paper*, page 30

²⁸ *The New Zealand Emissions Trading Scheme Evaluation* (Ministry for the Environment, February 2016).

²⁹ Page 133 of the Report.

discharges, subdivision, construction of new housing and the like) are considered, planned and provided for under the RMA in a manner effective to actually achieve the 2050 Target and budgets of the Zero Carbon Act, and conversely do not undermine or frustrate their achievement.



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