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Chair, Environment Committee
Parliament Buildings
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Tēnā koe Hon Eugenie Sage

Submission on the Natural and Built Environment Bill

The Commission is pleased that the reform of the resource management system is progressing with the Natural and Built Environment Bill and the Spatial Planning Bill being before the Select Committee. A well-functioning resource management system is an essential part of the transition to a thriving, climate-resilient and low-emissions Aotearoa New Zealand.

The Commission is providing this submission in line with our role to provide independent expert advice on the direction of climate policy.

In particular, the new legislation will impact on how land use, infrastructure and other environmental decisions are made – all of which will have important implications for mitigating and adapting to climate change.

Therefore, the Commission provides comment on several specific points below.

Clear link with Climate Change Response Act 2002

The Natural and Built Environment Bill sets out a series of system-level environmental outcomes, which must be promoted in the National Planning Framework and all plans. The Commission supports these outcomes, including the climate mitigation and adaptation outcome, and the specific inclusion of reducing emissions and increasing removals of greenhouse gases as a new outcome of the resource management system.

The Commission recommends that the climate mitigation and adaptation outcome be clearly linked to the Climate Change Response Act 2002, and its ambition, scope and timing to ensure consistency and alignment between these two pieces of legislation. The Climate Change Response Act 2002 provides a framework for clear and stable climate policy that sets out targets, limits and timelines for national-level climate action in Aotearoa New Zealand.

Clear direction for resolving conflicts between system outcomes

The Commission notes the nine system outcomes in the Bill are diverse and wide-ranging. It is inevitable there will be situations where some outcomes are in conflict with one another.

We have provided several examples below where the climate change outcome (s 5(b)) may come into conflict with other outcomes:

- Renewable electricity will play a key role in decarbonising the wider energy system. New generation will need to be built rapidly to meet an increase in electricity demand. However, building new renewable generation, such as hydropower, wind and geothermal, can be at odds with other outcomes, such as the protection and restoration of waterways (s 5(a)) and Iwi/Māori rights and interests (s 5(e)).
- How urban expansion takes place, where and what gets built, and how it is built can lock in emissions and increase exposure to climate impacts creating further path dependencies for development. Building cities up, rather than out, can allow residents to meet most of their needs within a short walk or bicycle ride from their homes. Good urban design contributes to climate adaptation, such as a city's ability to absorb water from extreme weather events. Further, good urban design brings health, environmental and wellbeing benefits such as reduced air and noise pollution, increased levels of physical activity, reduced congestion, better connected communities, and improved safety. The outcome of making "ample supply of land for development" (s 5(c)) may encourage more building out, rather than up.
- A key part of climate change adaptation is preventing avoidable additional risk. Aotearoa New Zealand needs to take immediate steps to avoid new development in areas exposed to climate-related hazards that increases the adaptation burden and moral hazard. However, avoiding additional climate change risk may conflict with making "ample supply of land for development" (s 5(c)).
- The impacts of climate change, such as sea level rise, are already being felt in many places across the country. Providing ongoing infrastructure (s 5(ii)) may conflict with reducing risk and increasing resilience to the impacts of climate change, particularly in areas where managed retreat is needed.
- Forestry will play an important role in helping Aotearoa New Zealand to meet its emissions budgets and targets and helping sustain a low-emissions bioeconomy. However, large scale planting of monoculture exotic forests may conflict with outcomes for protecting the ecological integrity of indigenous biodiversity (s 5(a)). Further, monoculture exotic forests will help Aotearoa New Zealand meet, but not sustain its 2050 emissions reduction targets, indicating the importance of considering conflicts across different time horizons.

The Commission recommends the Government provides clear direction and approaches for balancing and resolving conflicts between system outcomes. We support the inclusion of a process for resolving conflicts between system outcomes through the National Planning Framework (s 57). This will particularly be relevant for the operation of national direction such as National Policy Statements on coastal policy, renewables, transmission and urban development.

The Commission also recommends the Government consider whether further supporting provisions are needed to ensure clear direction and approaches for balancing and resolving conflicts between system outcomes where an 'inconsistency' with an emissions reduction plan or national adaptation plan may exist (see below for further comments on the "not inconsistent" test).

Clearly scoped and well-defined decision-making principles are important for how climate mitigation and adaptation outcomes will be achieved

Section 6 of the Natural and Built Environment Bill sets out decision-making principles to assist in achieving the legislation's purpose. Further provisions could be included in the Bill to help guide the Minister and regional planning committees in making decisions and achieving these system outcomes, including how to consider the effect of decisions over extended timeframes.

In particular, reducing emissions and increasing removals of greenhouse gases is a recently introduced area of resource management law, so warrants further consideration. The decision-making principles could consider the best leverage points to address greenhouse gas emissions both nationally and locally, whether that be through the National Planning Framework or other policies such as the New Zealand Emissions Trading Scheme.

Further, one of the decision-making principles is the requirement for all persons exercising functions, duties and powers under the Act to favour “caution” in situations where information is uncertain or inadequate (s 6(2)(a)). The term “caution” is not defined, therefore its interpretation could be open to legal challenge and interpretation through the courts.

The term “precaution” has legal jurisprudence within current environmental law in Aotearoa New Zealand and its international climate change commitments. It is about not delaying pro-environmental action when information is incomplete or uncertain. There will always be uncertainty around the climate impacts communities experience, and action must still be taken in light of this uncertainty.

The Commission recommends “caution” be replaced with the term “precaution” in the decision-making principles, and that “precaution” be defined in such a way to ensure that incomplete or uncertain information is not used as a reason to delay taking action.

National planning framework “not inconsistent” test needs to be clearly defined

In the Commission’s first advice to Government in May 2021, we recommended the Government commit to aligning policy and investments to enable local government to make effective decisions for climate change mitigation and adaptation.

The Commission welcomes the requirement in the Natural and Built Environment Bill for the Minister to ensure their decision on the final content of the national planning framework proposal is “not inconsistent” with any provisions in an emissions reduction plan or national adaptation plan (Schedule 6, s 21(3)(b)).

The proposed Bill does not give guidance on how to test whether a National Planning Framework is “not inconsistent” with an emissions reduction plan or national adaptation plan. The current emissions Reduction Plan and National Adaptation Plan have no link that guides their implementation according to this test (though future iterations of these plans could).

The Commission recommends that the test for what is “not inconsistent” be clearly defined. Leaving this test undefined puts it at risk of being defined through the courts. The Government should consider the scope and level of obligation this provision has, and the intended threshold for consideration. For example, is this obligation intended to overcome constraints on our ability to meet emissions reduction targets or manage national climate change risks, or should it be considered alongside sections 5 and 57 relating to how to achieve system outcomes and manage conflicts between outcomes?

Further, local authorities need clarity on how to incorporate changes to the Resource Management Act 2020 that require them to have regard to an emissions reduction plan and national adaptation plan.

We also note that there are errors in the interpretation section of the Bill (s 7). The definition of an emissions reduction plan should refer only to an emissions reduction plan under the Climate Change Response Act 2002 (not 2000) and not also a national adaptation plan. The definition of a national adaptation plan should also refer to the Climate Change Response Act 2002 (not 2000).

The timeframes for transition to the new system are long and transitional measures are needed

The new resource management system will take time to implement and flow through to regional and district planning. There are risks that are not being addressed under the current system – for example, increasing climate risk by continuing to develop in areas that are exposed to climate impacts such as sea level rise and climate extremes, and further infrastructure development that locks in transport choices and constrains low-emissions development. These risks will continue until the new system is fully embedded if transitional measures are not put in place.

The Commission recommends the Government puts in place transitional measures that support local government to take proactive climate mitigation and adaptation steps prior to reforms being implemented. This could include clear direction on what existing levers and tools local government should use to avoid

further development in areas at risk from climate change, and that lock-in maladaptive or emissions-intensive development.

The National Planning Framework and Climate Adaptation Bill will give a complete view of the new system

The Commission eagerly awaits the release of the National Planning Framework and introduction of the Climate Adaptation Bill, which are core components of the resource management reforms.

It will be important to ensure the different components of the new resource management system interact in a coherent way, especially given the components' different timeframes. This includes how national policy statements, such as the New Zealand Coastal Policy Statement and National Policy Statement on Urban Development, relate to the National Planning Framework.

The resource management system needs to enable effective adaptive management. Providing clarity around how adaptation decisions will be funded and financed is also important to avoid uncertainty, and to avoid decisions being made now from locking-in maladaptive outcomes for the future.

An effective resource management system that promotes positive climate outcomes is an important step for a thriving, climate-resilient and low-emissions Aotearoa New Zealand.

The Commission requests to appear before Select Committee to speak to these points.

Ngā mihi nui



Dr Rod Carr
Chair of He Pou a Rangi Climate Change Commission