

Submission by



to the

Ministry for the Environment

on the

Kia urutau, kia ora: Kia āhuarangi rite a Aotearoa Adapt and thrive: Building a climate resilient NZ

3 June 2022

**KIA URUTAU, KIA ORA: KIA ĀHUARANGI RITE A AOTEAROA ADAPT AND THRIVE –
DRAFT SUBMISSION BY BUSINESSNZ¹**

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to provide feedback on the Government’s Draft National Adaptation Plan: Kia urutau, kia ora: Kia āhuarangi rite a Aotearoa (referred to as “the NAP”).
- 1.2 We welcome the Government’s long-term thinking and acknowledge the significant effect climate change will have on New Zealand’s infrastructure.
- 1.3 Through the NAP, the Government aims to provide clear direction to New Zealand’s adaptation to the irreversible impacts of Climate Change.
- 1.4 While greenhouse gas emissions are undeniable, their mitigation is a crucial part of our response to climate change; the adaptation to, and management of, irreversible impacts caused by climate change should not be taken lightly.
- 1.5 The document sets out a proposed future work programme, indicates priorities for the next six years and explores three areas: the reform of institutions to make them fit for a changing climate, the provision of data, information, and guidance to enable everyone to assess and reduce their own climate risks; and embedding climate resilience across government strategies and policies, including proposals for flood insurance and managed retreat.²
- 1.6 This submission will predominantly focus on the Government’s proposals related to managed retreat policies.
- 1.7 Managed retreat is an important issue which has significant implications for property rights and needs to be carefully thought through. We support the Government’s view that *‘Care will need to be taken to manage any perverse or unintended outcomes such as moral hazard (that is, inappropriate incentives to continue developing in at-risk areas)’*.³
- 1.8 Decisions should not be made lightly without full consultation. We note the short consultation period and that the final plan is to be published as early as August 2022.

SUMMARY OF RECOMMENDATIONS

BusinessNZ recommends:

- a. Government should not rush decisions given the potential implications for the New Zealand legal system’s long-established property rights principles (see p. 2);
- b. Setting up an easy accessible, independent risk database tool to enable effective risk assessment, analysis, and planning (see p. 3);
- c. There should be a very high threshold for central and local government requiring people to move in response to climate change (see p 3);
- d. Any regulatory takings and restrictions of land use should be accompanied by compensation within a reasonable threshold framework (see p. 4);

¹ Background information on BusinessNZ is attached as Appendix One.

² Page 15 in [Draft-national-adaptation-plan.pdf \(environment.govt.nz\)](#)

³ Page 6 in [Draft-national-adaptation-plan.pdf \(environment.govt.nz\)](#)

- e. Government should encourage local solutions for local problems where possible (see p. 4);
- f. Setting up a Technical Advisory Group (TAG) to investigate the legal implications of the proposed NAP in more detail (see p. 5);

2.0 COMMENTS

Problem definition

- 2.1 We acknowledge the current and future effects of more frequent extreme weather events on New Zealand and its infrastructure, including transport, energy, water, and others. More long-term thinking is needed to make sure our responses and infrastructure are future-proofed to deal with any additional stress caused by climate change.
- 2.2 Managed retreat is an important issue which has significant implications for property rights and needs to be carefully thought through.
- 2.3 We agree that bearing *'[...] the risk and cost of climate change, including climate change adaptation will fall across different parts of society, including asset or property owners, their insurance companies, their banks, local government, and central government'*⁴ and support the Government's sentiment that more long-term-thinking is needed.

Involvement of central and local government

- 2.4 As a general guiding principle, we suggest that costs and benefits should be internalised and passed on to individuals as much as possible. In other words, individuals should manage their own risk whether through insurance or through normal market mechanisms (i.e., high risk generally means lower cost property). In order to achieve this, data needs to be easily available, consistent, and timely in order for people make informed decisions.
- 2.5 There should be a very high threshold for central and local government requiring people to move. This should be restricted to cases where there is significant public risk to the wider community (e.g., oil tank next to a waterway or where a building is close to the sea and if not moved away from there might be significant environmental and economic damage or public health issues affecting third parties that cannot be mitigated through bonds etc from property owners).

Access to data is key

- 2.6 More data and guidance are needed to provide individuals and businesses with better information to improve judgements and decision-making.
- 2.7 We support the Government's view that *'All New Zealanders need to adapt to the impacts of climate change'* and that a *'first step will be understand and assess the risks that individuals and business face'*⁵
- 2.8 We could not agree more and firmly believe government has a role to play in providing individuals and businesses with access to *'data, information and guidance to enable everyone to assess and reduce their own climate risks.'*

⁴ Page 8 in [Draft-national-adaptation-plan.pdf](#) ([environment.govt.nz](#))

⁵ Page 4 in [Adapt-and-thrive-snapshot-of-the-consultation.pdf](#) ([environment.govt.nz](#))

- 2.9 We recommend setting up an easy accessible, independent risk database tool to enable effective risk assessment, analysis, and planning. This could be similar to the [Australian Cross Dependency Model](#) and [EasyXDI initiative](#), an initiative which delivers on-demand asset level physical risk analysis from now to 2100 to help asset owners or prospective asset holders to accurately assess climate change risks and cost of climate change impacts to an existing or planned asset. In New Zealand, for example, this could be provided through platforms like homes.co.nz.

Compensation

- 2.10 On page 16, the document refers to the importance of being very careful when taking and restricting the property use for Māori as some land cases are associated with Treaty settlements and taking land could be considered the taking of property rights. We agree and would like to see the Government extending this point to all landowners as this applies equally to property rights in general.
- 2.11 All regulatory takings and restrictions on land use should generally be accompanied by compensation within a reasonable threshold framework. We need to incentivise regulators not to be overly cautious, simply minimising their own risk and placing all costs and risks on to property owners.
- 2.12 Negotiation is to be preferred over blanket bans. However, if negotiation is not feasible and there is no other reasonable solution, the Government should use the Public Works Act to compulsorily buy out property owners.
- 2.13 In any case, there can be no 'one-size fits-all approach'. Such an approach could not reflect the unique circumstances facing communities. Therefore, the Government should encourage local solutions for local problems where possible.
- 2.14 There are many possibilities in terms of solutions for local problems and the following might be particularly worth investigating further.
- a. Where the costs of continually providing infrastructure are increasing prohibitively due to climate change, it might be possible for local and/or central government to gift assets to local communities to manage as they see fit (provided standards of hygiene for sewage disposal etc) are met. Alternatively, they could sell the assets to communities for heavily discounted values accompanied (or not) by compensation. Contract details would need to be carefully worked through to ensure each party was clear as to what liabilities would arise from such agreements.
 - b. There are other examples of funding arrangements such as the Lake Taupo 'clean-up' where contributions to reducing nutrient emissions going into the lake have been shared between several parties. This has been necessary because of the difficulty of clearly determining who precisely has caused nutrient leaching where such leaching has taken place over many years and cannot be totally pinned on current landowners.

Current vs Future Investment

- 2.15 We encourage the Government to stay away from retrospective legislation as this might not only undermine existing investment but also disincentivise individuals and businesses from further investing if they know their investment is not reasonably secure from confiscation by the state.

- 2.16 The consultation document on Managed Retreat raises a very important question (referring to Q65) as to whether there is justification for taking a different approach where a property was purchased before a risk was identified (or the extent or severity of the risk was known) and where it was bought after the risk became clear.
- 2.17 While the above issue is difficult, there is a strong argument for grandparenting current rights (i.e., individuals businesses/households compensated if they have to move under a high threshold test). Unless businesses and individuals have reasonable security over their property rights so these are not subject to confiscation or regulatory takings by the state, they will have little incentive to invest. However, given new investors should be aware of the risks of climate change (and other risks), there is a strong argument that in these circumstances, new investors should bear the costs involved (of land erosion etc).
- 2.18 A complicating factor for businesses making decisions on climate change adaptation policies is that several industries (for example energy) are regulated by the Commerce Commission and/or other agencies of Government in terms of their Rate of Return (ROR) and supply/service agreements. This governs the extent to which those businesses would take into account potential climate risks/hazards. New expenditure arising from climate change adaptation requirements should only be undertaken if it is of overall net benefit.
- 2.19 We support the New Zealand Infrastructure Commission projects to "*Develop a methodology for assessing impacts on physical assets and the services they provide*" and "*Scope a resilience standard or code for infrastructure*". Both projects have the potential to share lessons across all infrastructure industries and help continuously improve best practice.

Technical Working Party

- 2.20 Given the potential impact of the NAP on property rights and associated important issues such as compensation for regulatory takings, BusinessNZ would strongly recommend the setting up of a Technical Advisory Group (TAG) to investigate the legal implications of the NAP proposals in more detail to ensure New Zealand's long-standing legal framework is not undermined.
- 2.21 Just to mention a few examples of the issues the TAG should investigate:
- a. Options for applying local solutions to local problems – and any legal ramifications, including boundary issues.
 - b. The establishment of an appropriate threshold above which national/local government would be able to require businesses and individuals to move from their properties.

Appendix One - Background information on BusinessNZ



BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).