THE BIG PICTURE: CLIMATE CHANGE
Getting your business ready

February 2019
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Introduction

The world’s leading climate change scientists have made their case – only far-reaching change in the next 12 years will avert a substantial jump in the risks of “challenging impacts” from global warming, including extreme heat, drought, floods and loss of ecosystems. When the United Nations’ Intergovernmental Panel on Climate Change painted a grim picture of the consequences of a rise beyond 1.5°C last October, they also called for urgent and unprecedented action.

In New Zealand, that call came amid consultation on proposed new and amended legislation on climate change. As with any market disruption, these changes will present risks and opportunities. Who will be the winners and losers? Climate change poses existential challenges for some businesses, and the rising cost of carbon could materially affect asset values and operating costs.

The direction of travel is ultimately one-way: to a low-emissions economy. Business must adapt or risk getting left behind.

These are the considerations that should put climate change high on the boardroom agenda. For many companies, that is already the case; for others, it has been for some time. Those who have yet to consider climate change at all in the context of their business will need to do so now.

In this report, we examine some of the key areas that businesses need to consider in order to face the challenge of climate change. Much will depend on the response of the world’s governments to the call to climate action. But business will also play a critical role, and will determine to what extent New Zealand’s ambitious legislation is effectively translated into real world change.
Certainty and confronting costs

The Zero Carbon Bill, if passed into legislation, will transform New Zealand’s climate change landscape as this country seeks to transition to a net zero emissions economy by 2050. The measures that the Government will need to take to reach the targets that will be set through the Zero Carbon Act will inevitably have implications for how New Zealand businesses operate in the future.

There are three key points businesses need to know:

**CAP ON EMISSIONS**
The Act will introduce a cap on emissions through both a net zero emissions target for 2050 along with a requirement on the Government to have three five-year emissions budgets in place at any given time, as short-term targets.

**EMISSIONS PRICING**
From these caps on emissions, emissions pricing is going to become a much more material issue for business through to 2050 and beyond. Currently, the only eligible emissions unit in the NZ Emissions Trading Scheme (NZETS) is the New Zealand Unit (NZU). NZUs are sitting around the effective legislative cap of NZ$25 on the spot market at present. Some of the more moderate and optimistic scenarios in the Government’s discussion document on the Zero Carbon Bill suggest carbon prices of approximately NZ$100 to NZ$275 per tonne of emissions, depending on the ambition of the particular target.

**LONG TERM CLARITY**
While the costs are confronting, a key objective of the Act is that it will establish a framework now for the transition to a low-emissions economy over the next thirty years. This long-term clarity provides New Zealand businesses with more certainty about future costs and creates incentives for businesses to transition to a lower carbon economy, rather than face sudden price shocks overnight.

The Government does not shy away from the economic impacts of the proposed Zero Carbon Bill and acknowledges in its discussion document that the impacts could be significant. Yet emissions pricing will be a critical driver of achieving a net zero emissions target, so we can expect that price to rise.

Depending on the ambition of the particular target chosen and the rate of transition, economic modelling has suggested a range of potential average carbon prices. Even focusing on the moderate and optimistic scenarios, there is no denying that the figures are confronting. They will have a major impact on businesses.
In practice, a Zero Carbon Act and higher emissions prices will have a number of implications for New Zealand businesses over the coming decades. Many of these have been the subject of discussion for years among specialists in this area, but they are about to hit the wider consciousness as rising emissions pricing starts to have a discernible impact.

The legislation that will put in place the core building blocks to support our transition to a low-emissions and climate resilient Aotearoa New Zealand.”

Hon James Shaw  Minister for Climate Change

Business processes and transactions

Higher prices are likely to drive businesses to consider what business process changes can be made to cut costs and improve efficiencies. This was always an objective of the NZETS, but a sharp increase in costs will make the need for efficiencies more acute. We have already seen renewed interest in the impact of carbon prices on commercial transactions along with price recovery in the past year.

New capital investments

For businesses that rely on emissions-intensive assets, higher prices and increased certainty and predictability around the NZETS will impact future investment decisions. Is there any potential to move towards biofuel? Are there alternative low-emissions options? To some extent this has already started, led by companies with defined views on environmental responsibility and the future impact of carbon pricing. We can expect the environmental impacts of investments to become an increasingly important economic factor in capital investment decision-making.

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CARBON PRICE INCREASE
PETROL PRICE INCREASE

NZ$100 - NZ$275 per tonne of emissions
23c - 63c per litre

The media has also recently been highlighting the likelihood of insurance premiums rising where climate change could pose a risk and suggesting that in some instances, properties may become uninsurable altogether.

Similarly, economic benefit (from emission reduction measures, innovation and damage avoided) lies beyond the direct costs of the transition.

Given the level of cost involved, we support some flexibility around targets, within reasonable parameters. Flexibility has been canvassed in the consultation on the Zero Carbon Bill discussion document: it is likely to be needed to help ensure the longevity of support required to reach a target in 2050.

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The practical implications

**Boardroom considerations**
The greater the impact that rising emissions costs will have on business operations, the more we expect climate change risks to become front of mind for directors in their strategic and other decision-making, as well as reporting practices. We explore the latter further in *Boardrooms on Alert* at page 19.

**International trade deals**
Emissions pricing will increasingly feature as a key negotiation point within international trade negotiations. New Zealand companies won’t want to compete against companies from other countries that don’t face similar regulatory costs. Trade may become an avenue for the Government to try to level the playing field by applying pressure on other countries to introduce reciprocal domestic policies.

**New economic and investment activity**
With increased certainty around emissions targets, there will be a greater incentive for new and existing businesses to move into new and innovative sectors. Growth in electric vehicle use and the need for related infrastructure, public transport, forestry and infrastructure for adaptation purposes are some specific areas to watch. There is real opportunity to create new products and new ways of operating that will reduce emissions.

**International carbon trading**
As a way to ease economic pain, businesses are likely to demand access to international carbon markets. International carbon trading suffered credibility issues stemming from the years in which cheap (and in some cases suspect) offshore credits dragged the NZETS into ineffectiveness. But, given the potential trajectory of carbon prices, a key pressure point for the Government will be how to allow carbon trading that is credible and doesn’t impact on the Government achieving its target of zero emissions by 2050. As the details may have significant implications for individual businesses, we think businesses will need to pay close attention to how changes will apply to their own circumstances.

**Valuations**
Investors will also increasingly consider how high carbon prices impact on the value of a business when deciding which companies to invest in. Responsible investment, where investors avoid investments in companies deemed to have a negative effect on society or the environment, has been around for some time. The impact investment movement – where investment must have a social as well as financial return, and both must be accounted for – is growing in prominence alongside environmental concerns.

**SMEs**
SMEs are a critical segment of New Zealand business. They may not be emissions-intensive, but increased prices will still have a flow-on effect on their operations, as they may face increased costs for transport, electricity and goods. However, SMEs may be in a better position to adapt and move into new areas of business or product development that open up, particularly in an environment where the Government is making funding available through the likes of the Green Investment Fund.

**Innovation**
If prices rise to a point where they start to have a material impact on a business’ returns and can’t be passed on to the consumer, then there will be significant pressure on businesses to innovate in order to avoid high costs (which would otherwise eat into profits). As noted in the Productivity Commission’s report, innovation can and should play a central role in New Zealand’s transition to a low-emissions economy.

**Environmental reporting**
Hand-in-hand with changing investor priorities, there has been a global shift towards financial reporting on environmental, social and governance matters. This has particularly been the case among publicly listed companies, with the move to adopt the NZX Corporate Governance Code in the NZX Main Board Listing Rules in 2017, and the NZX Environmental, Social and Governance Note. While not specifically aimed at climate change, the Code recommends issuers disclose material exposure to environmental risks, and explain how they plan to manage those risks. A number of international organisations are also pushing for climate-related disclosure regimes in mainstream financial reporting, and it is likely that such standards will eventuate for New Zealand businesses in the future.

These are just some of the effects we could expect to see if there is a significant increase in emissions pricing. The numbers are sobering, and businesses will need to take a close look at the material impacts they will face. But starting to adjust now will be far better than facing the worst as the 2050 deadline looms. These changes won’t occur overnight. Provided businesses prepare in sufficient time, it will be possible to adapt to a net zero-emissions economy.
The practical implications

THE OVERSEAS EXPERIENCE

New Zealand may be leading the way with a net zero emissions target for 2050, but many of the key features of the proposed Zero Carbon Act are based on the UK Climate Change Act 2008. Over a decade of UK experience offers a number of useful insights into the potential impacts of a Zero Carbon Act on New Zealand businesses.

During that period, political consensus on the Act has held, the UK has met its first two carbon budgets, and by last year it had cut emissions by 43 percent compared to 1990 levels, while the economy expanded by more than two thirds. A 2018 report by the Grantham Research Institute on Climate Change and the Environment and the London School of Economics’ Centre for Climate Change Economics and Policy found the UK Climate Change Act has helped to improve political debate on climate change and enable strong cross-party support, as well as increasing the UK’s international standing. Meanwhile, there remains good evidence of ongoing private sector support for the climate agenda.

What were the factors that have helped to mitigate the business impacts?

- The relative scale of carbon-related energy costs to date – small compared with other energy-related and business costs.
- The low impact on business competitiveness, and little evidence of ‘carbon leakage’ (the relocation of emissions-intensive activities overseas).
- Ambitious climate policy action among UK competitors.
- Compensation for the worst-affected businesses – but policy mechanisms that helped energy-intensive businesses and businesses exposed to international trade to adjust may need to be more carefully targeted to meet future carbon budgets.
- Increased competitiveness of a low carbon economy – economic benefits from innovation in low carbon and energy efficient technologies.

The UK Climate Change Act has been a major driver of the transformation of the UK power sector over the past 10 years, with the share of low-carbon power up from 20 percent in 2008 to reach 45 percent in 2016. Given the already-high level of energy being generated from renewable sources in New Zealand, the ‘easy wins’ that have helped the UK to date won’t be easily replicated here, and it is likely the UK will find the path to its own targets harder over the coming 10 years than it has over the past decade.

While the goal under the UK Climate Change Act is not net zero emissions, it does cover the whole of the economy and all greenhouse gases. The scope of the Zero Carbon Act is still open, and will be critical in determining the short-term impact on business and how intense the adjustment to the new framework will be.

The experience in the UK to date suggests that NZ businesses do not need to fear for the worst. There will be challenges, but there will also be opportunities for growth.
Putting the right price on carbon

Throughout the past decade, putting a price on carbon through the NZETS has been New Zealand’s main tool to reduce greenhouse gases. But even the most benevolent observer would agree there was a long period in which the scheme was rendered largely ineffective. New Zealand’s acceptance of international units before mid-2015, at times trading in cents rather than dollars, meant the cost to business under the scheme was insignificant: simply too low to effect any meaningful change in behaviour.

The days of carbon costs being an immaterial cost for business are likely to be coming to an end. The Government needs an NZETS that functions in a way that will deliver on its target of zero emissions by 2050. To that end it has recently consulted on a number of proposed changes.

In August 2018, the Government released two consultation documents, one relating to the NZETS generally and one focused on the forestry sector. In December 2018, following the consultation, the Government announced a first tranche of improvements to the NZETS. A further tranche of announcements will occur later this year and a bill is expected to be introduced in the second half of this year.

The Government’s Tax Working Group also made recommendations relating to the NZETS in its ‘Future of Tax’ Final Report released in February 2019. The Tax Working Group expressed its support for an emissions pricing regime with comprehensive coverage, including agriculture. It echoed the Productivity Commission’s recommendation for a reformed NZETS which provided greater guidance on price and auctioned NZUs to raise revenue. It forecast the auction of NZUs would raise approximately NZ$130 million per annum over the coming decade (under current settings and assuming the NZU price rises to NZ$50 in 2030).
The consultation

The key proposals that featured in the general consultation could be grouped into those that would affect supply and those that would directly act on price – though penalties were not overlooked.

SUPPLY

UNIT SUPPLY VOLUME
The introduction of an annual process for setting and announcing NZETS unit supply volumes over a 5-year rolling period. This would set an overall cap on the number of units that would be supplied into the NZETS market (either through Government allocations to foresters and emissions-intensive trade-exposed businesses, or through Government auctioning).

INTERNATIONAL UNITS
The ability for international units to be used to meet NZETS obligations, as well as proposed limits on this, and whether participants would be able to source these directly or only indirectly through Government purchasing and auction.

PHASE-DOWN OF ALL INDUSTRIAL ALLOCATIONS
The phasing down of existing industrial allocation levels over time. Options include a test that would trigger a phase down, establishment of a decision-making process to determine allocation rates, and a set phase-down date from 2021.

PRICE

Auctioning and a price ceiling (as described here) have been confirmed. Auctioning is expected to begin in 2020 and will be held either monthly or quarterly. The announcement indicates that the fixed price option will be retained at its current level (NZ$25) for surrenders due in 2019. However this raises the question of whether the fixed price option will apply only to surrenders due in 2019 (for emissions during 2018) or if it also applies to emissions during 2019 (where surrenders will be due in 2020).

The Government is also investigating introducing a price floor, including the option of setting a reserve price in auctions.

Auctioning and the introduction of Government auctioning of NZUs with the Government’s preferred option being to use a single round, sealed bid, uniform price auction format. Views were sought on the timing and frequency of auctions.

NZU PRICE CEILING
The removal of the existing effective NZU price ceiling and replacement with a “cost containment reserve” (CCR). The current fixed price ceiling gives participants the option of paying NZ$25 instead of surrendering an NZU. A CCR would be incorporated into the auction mechanism and, if a specified price ceiling was reached, the Government would auction additional units held in reserve for this purpose.

First Tranche Announcements

A decision-making process to manage unit supply in the NZETS will be introduced. Unit supply announcements will be made annually, forward-looking for five years.

Flexibility to open the NZETS to high-quality, reputable international units in the future will be retained. However, volume restrictions would be placed on the use of international units.
The consultation

PENALTIES

The Government sought feedback on the introduction of strict liability infringement offences for lower-level non-compliance, and a change to the existing NZ$30 per unit penalty that applies when a person fails to surrender or repay units by the due date. Both the value of the penalty and the Government’s discretion to impose a lower penalty (which may be creating uncertainty for participants) were reviewed.

Infringement offences will be introduced to deter low-level, non-compliance with the rules of the NZETS and the Synthetic Greenhouse Gas levy. These strict liability offences will result in financial sanctions for offenders but not convictions although prosecutions will still be available for the most serious cases of offending.

AGRICULTURE ABSENT

The consultation documents expressly do not consider the role of agriculture in the NZETS. This work has been left for the Climate Change Commission to progress.

MARKET GOVERNANCE, MARKET INFORMATION

Additional feedback was requested on market governance risks and the information available to the market. The consultation looked at whether there are existing or future risks that participants were exposed to as a result of the current market governance arrangements. This sought to understand whether there is, or could be, an issue to be addressed, rather than consulting on specific changes to the existing market governance arrangements.

The general consultation document suggested insufficient information about the NZETS has contributed to regulatory uncertainty. As a result, feedback was sought on the content and usability of the government’s dedicated NZETS website, and on whether individual participants’ emissions data and compliance information should be made publicly available.

Clear rules to govern the NZETS market will be introduced. Market manipulation and insider trading will become prohibited behaviour.
Focus on forestry

With its ability to remove emissions from the atmosphere, the forestry sector is a critical component of the path to zero carbon by 2050. That drove a separate consultation on the proposed introduction of a range of changes to encourage increased carbon storage across different forest types, including permanent and indigenous forests.

**NEW ACCOUNTING MECHANISM**
The introduction of a new accounting mechanism ("averaging") which will apply to all new post-1989 forests and potentially to all existing post-1989 forests, registered in the NZETS. This would be in place of the existing "carbon stock change" accounting mechanism. NZUs would be allocated for forest growth (during the first rotation only) until the forest meets its long-term average carbon stock. These NZUs would not have to be repaid on harvest so long as the land use is not changed – the forest would need to be replanted or allowed to naturally regenerate.

**OPERATIONAL CHANGES**
A number of operational changes are proposed, including, providing more certainty around land classification by mapping and categorising all forest, improving the deforestation offsetting regime, and improving the exemption regimes.

**TRANSITIONAL ARRANGEMENTS FOR EXISTING POST-1989 FORESTS**
This considers whether the new averaging accounting mechanism could apply to existing post-1989 forests, and how it would do so.

**HARVESTED WOOD PRODUCTS**
The introduction of an NZU allocation to recognise the emissions mitigation from harvested wood products.

**PERMANENT POST-1989 FORESTS**
The introduction of a new category of post-1989 forest ("permanent post-1989 forest") to cover forests that are not harvested (or are on very long rotations), and replace the existing Permanent Forest Sink Initiative (PFSI) covenants. How existing PFSI forests should be dealt with was also under consideration. Should the status quo remain, or should they be brought into the new permanent category under the NZETS?

**FIRST TRANCHE ANNOUNCEMENTS**
- A new permanent post-1989 forest activity will be introduced into the NZETS and the PFSI will be discontinued.
- 16 minor and technical changes will be made, including enabling a simpler process for enacting existing exemptions from emissions liabilities and for transfers of post-1989 forest land after legal ownership changes.
- Improving the rules around pre-1990 forest land offsetting to provide pre-1990 landowners more flexibility over their land, including applying enforcement action only to the areas of land that fail to establish.
- Simplifying the process to access exemptions from deforestation liabilities for areas of tree weeds.
- Excluding post-1989 land with predominantly tree weeds from the NZETS.
- Improving access to exemptions from deforestation liabilities for land with multiple owners.
What could this mean for your business?

As the days of low-carbon costs look set to draw to a measured close, the Government is aware of, and is clearly considering, the impact on New Zealand businesses’ competitiveness compared to businesses in markets that do not face equivalent carbon costs.

But trade-offs may need to be made if the Government is to meet its zero emissions by 2050 target. Indeed, the target may also require future governments to take a less measured approach to carbon costs. It will be vital for businesses to plan and consider how they can reduce their emissions now, so they can make early change to position their businesses for the future. Businesses that undertake highly emissions-intensive activities or have direct surrender obligations will need to pay particular attention as this transition occurs.

Pricing and compliance

- If your business is a participant with surrender obligations under the NZETS, there will be multiple and new ways to access units needed for compliance purposes. These include direct contracting with foresters and emissions-intensive and trade-exposed businesses, purchasing from the spot market, and participating in government auctions. You will want to ensure that your business has or contracts expertise to ensure you are sourcing units at the best price, especially as the price is likely to increase significantly over time.
  - You will need to ensure robust compliance systems are in place if your business has surrender obligations, and you will need to be aware of deadlines for meeting surrender obligations as the Government is likely to begin taking a tougher line on compliance.
  - If your business trades NZUs you will want to ensure that you keep a close eye on the Government’s auctioning arrangements and decisions taken about the introduction of international units as the fact of these changes and timing considerations (like when auctions will be run) may impact on NZU pricing.

Forestry

- If you are a forester you may be more inclined to voluntarily enter your post-1989 forest into the NZETS. As long as the land is to remain in forest, you will be able to trade a greater number of NZUs as you will not face a surrender liability at harvest.
- If you are a forester that has entered into long-term NZU sale and purchase agreements, you will need to consider how the commitments you have made under these agreements would be impacted by a change in accounting approach. If you are a forester considering entering into new agreements of this type, you should be careful to ensure your agreements contemplate the possibility of a change in accounting approach.
- If your business is purchasing post-1989 forest land or entering into a forestry right or lease where such land is registered in the NZETS, you should be considering the impact of these changes when negotiating sale and purchase agreements, forestry rights and leases.

New opportunities

New opportunities exist for businesses to be innovative and to invest in research and development activities in order to produce products and develop ways of operating that reduce emissions. Opportunities may exist for existing or new businesses to commercialise these good ideas.

The Government has made, or is in the process of making, funding available to business to assist with this, including the Provincial Growth Fund and the Green Investment Fund. The Provincial Growth Fund expressly targets forestry as well as other industries including food and beverages, and tourism. These are sector-focussed projects but all sectors can apply for funding: it is also targeting regional and infrastructure projects.

Businesses should be aware of opportunities that may be available to them to apply for some of this funding to advance their initiatives.
Next steps

**JUN 2018**
Zero Carbon Bill Consultation launch.

**AUG 2018**
Consultation on NZ ETS improvements opens.

**EARLY - MID 2019**
Zero Carbon Bill introduced. Opportunity for submissions as part of the Select Committee process.vii

**LATE SEP 2018 - MID 2019**
Government considers consultation feedback and drafts amendments to the Climate Change Response Act.v

**LATE 2019**
Zero Carbon Bill passed and becomes law.vi

**LATE 2019 - EARLY 2020**
Amendments to the Climate Change Response Act progress through Parliament.

**2019**
Further consultation on regulations for the technical aspects and unit supply volumes that will set a cap on the NZETS.vi
A change of climate for the RMA

With climate change and renewable energy at the forefront of the Government’s agenda, and with the introduction of the Zero Carbon Bill and an overhaul of the NZETS underway, it would be easy to overlook other areas of law in which consideration of these issues is falling short.

Despite the critical status given to these issues elsewhere in the national policy mix, it remains noteworthy that neither renewable energy nor climate change are identified as matters of national importance in the Resource Management Act (RMA). While there is reference to effects of climate change and the benefits of renewable energy in one section of the RMA, and renewable energy can be considered under two others, the effects of greenhouse gas discharges on climate change can’t be looked at under this legislation at all.

This absence of recognition at the top of the RMA hierarchy has historically not been critical because of the broad discretion afforded to decision makers. However, recent case law has emphasised the importance of clear statutory and policy guidance where desirable outcomes come into conflict. That case law is directive, giving section 6 of the RMA and National Policy Statements’ significant emphasis when developing lower-order policy, which in turn is receiving greater recognition in decision-making.

There were good reasons for the omission of fossil fuels from RMA considerations in the past. Other mechanisms such as the electricity market and NZETS were presumably seen as sufficient tools to manage emissions. There has also been a view that the use of fossil fuels is so embedded and important that management of its use is better left to central government rather than ad-hoc local government regulation. There is still merit in this reasoning, particularly as local government and the Environment Court do not have access to the policy and economic levers available to central government. But is it now time to rethink these positions?

Time to rethink?
We should consider how the resource management rules work in a new environment.

The lack of strong and effective higher-order recognition and guidance needs to be fixed. That could be done through amendments to Part 2 of the RMA, an improved National Policy Statement for Renewable Electricity Generation (the NPS-REG), strong provisions in the National Planning Template or all of these.

Despite being the leading policy document on renewable electricity generation, the NPS-REG has been described by numerous commentators and participants as weak and non-directive, including because it lacks guidance on how local authorities should implement its policies. For it to play its part in achieving the Government’s goal of 100% renewable energy by 2035, provisions should be amended to ensure the development and use of renewable energy is strongly supported, while activities which negatively impact on renewable energy goals are avoided. A good starting point may be to revert to the stronger version of the NPS-REG originally recommended, rather than building on the diluted and non-specific version currently in place.

If decision makers are given the power to consider the effects of fossil fuel emissions on climate change under the RMA, there would need to be an acknowledgement of the role that fossil fuels play in the energy and transport sectors. New Zealand has a high demand for energy, and it will only grow with population increases and greater reliance on electricity generation (which is subject to the variability of hydro, solar and wind). The resilience and reliability of the system becomes even more important as our economic dependency on electricity increases. Fossil fuels will need to be retained as an important part of the energy mix to ensure security of supply and to best make use of existing assets and infrastructure. The practical and economic importance of this should be acknowledged in policy and regulation despite the political challenge its ongoing use may pose.
These issues were at the forefront of a recent decision by the Environment Court when it declined consent for energy company Blueskin Energy to establish and operate three wind turbines in Blueskin Bay. The Court stated that while the NPS-REG directed decision makers to “recognise and provide for” the benefits of renewable energy activities, it didn’t follow that such benefits were necessarily to be given greater weight than other matters addressed in the relevant section of the RMA. Where there was competition between matters, it said the statutory planning documents would indicate the weight to be given to those issues. In this case, however, the planning documents hadn’t implemented the NPS-REG and so when weighed against amenity and landscape effects that had been provided for in the planning documents, the application was declined.

“This case has been a stark demonstration of the lack of strength in national and local policy and planning. If stronger direction is not urgently provided, New Zealand will fall well short of its renewable electricity targets.”

Dr Craig Marchall CHAIR
Blue Resilient Communities Trust
The challenges to a new approach

What kind of approach would be best to promote those activities that support renewable energy and respond to climate change?

Mapping the wind
One suggestion has been to look at spatial planning of the available wind resource, proactively mapping out where windfarms can be located. A similar approach has been successful in some areas of the marine sector. However, in our experience, generators tend to be protective of high wind locations until they are ready to be advanced. Getting widespread agreement between generators, landowners and other interested parties about where windfarms can actually be built, particularly in a realistic timeframe, seems very unlikely.

Additionally, this kind of map can be too crude to show what is actually workable in reality, which may lull decision makers into a false sense of security that there is abundant resource, ready to be used. That risks diminishing the significance of any single application for a windfarm, which in reality is likely to represent the next best opportunity available to a generator. Technology is also opening up sites that may not have previously been thought usable, so such a map would need to be subject to ongoing change.

If this type of spatial planning is to occur, it would need to be implemented in conjunction with mechanisms to overcome potential pitfalls such as: use of conservation or public land; who pays for connection to the National Grid; how conflicts between windfarms and competing environmental outcomes recognised in the RMA are to be reconciled; and the means to gain access to private land. Without those mechanisms, plans for identified areas may not be able to be implemented.

No-go areas
Another suggestion has been to label areas of significant biodiversity as no-go areas. In theory, this would simplify the planning process, but in practice there are often numerous ecological issues at play with a development the size of a commercially workable windfarm, which require careful management. An overt restriction could prove unduly difficult in the light of the weight now being given to renewable energy, climate change policy and biodiversity offsets.

This tension: the need to support biodiversity and the importance of new renewable generation, highlights the need for a level-playing field to enable an appropriate assessment of these competing tensions rather than a blanket approach to protection. That could place too high a hurdle in the way of otherwise sensible, and increasingly necessary, renewable energy development.

The cost challenge
A key challenge is cost. This challenge is also coming from an unexpected quarter - there is ongoing downward pressure on generation costs as a result of changing technology - i.e. generation is getting significantly cheaper. Battery storage could also have a significant impact on the supply and demand equation (assuming significant uptake of EVs). Investment in new generation has been underpinned by the historical assumption that the cost of and demand for new generation will rise. Some in the industry acknowledge that due to these pressures it is now difficult for a rational investor to make an investment decision that now is the right time to construct more renewables.
Climate change presents both risks and opportunities for New Zealand businesses. For boards that have yet to consider how their own company may be affected by this changing physical and regulatory landscape, now is the right time to do so.

While the risks of climate change are now a frequent topic in the media, it is often the physical risks that feature. From rising sea levels to extreme weather events, these are also the most obvious risks to business. But increasingly the conversation is also turning to “transition risks”, the risks raised by a shift away from a carbon-based economy, and “liability risks”, the risks which companies are exposed to if they contribute to loss or damage associated with climate change.

**PHYSICAL RISKS**
- Rising sea levels
- Power outages
- Extreme weather events

**TRANSITION RISKS**
- Changing legislative and regulatory framework
- Changing means of production
- Risk of stranded assets
- Altered consumer attitudes
- Moving to low-carbon economy
- International commitments to reduce emissions
- Implications for insurance
- Rising price of carbon

**LIABILITY RISKS**
- Being held liable for loss/damage related to climate change
- Climate change litigation
- Regulatory non-compliance

**REWARDS**
Opportunities will emerge from the new investment needed to back the expected transition to lower-carbon economies around the world. Full implementation of climate pledges is estimated to require US$13.5 trillion of investment in energy efficiency and low-carbon technologies from 2015 to 2030. The Global Commission on the Economy and Climate has set a target that worldwide, investment in low-carbon power supply and (non-transport) energy efficiency should be at least US$1 trillion per year. It recommends that this is achieved through multinational and national development banks collaborating with governments and the private sector.

In New Zealand, the Government announced a NZ$100 million Green Investment Fund in December 2018—New Zealand Green Investment Finance Limited (NZGIF). It will be set up as a company under Schedule 4A of the Public Finance Act 1989, meaning it can operate independently from Government to respond to the market. The aim of the fund is to stimulate new private-sector investment in low-emissions industries. The Government expects NZGIF to make its first investment commitments by December 2019.
Litigation

Climate change litigation is on the rise worldwide. Although governments have been the main defendants to date, the private sector is beginning to be affected. Alongside the increase in litigation, there has been an associated increase in international arbitrations with a climate change element.

As of March 2017, climate change cases filed in 24 countries:

- **654 cases** filed in the United States
- **Over 230 cases** filed in all other countries worldwide combined
- **16 cases** in New Zealand

**Trends**

**Lin**

**Linking of the Impacts**

of resource extraction to climate change and resilience

**Focus on Governments**

- Governments are almost always the defendants
- Cases frequently suggest governments should honour climate-change related commitments
- A 2017 New Zealand judicial review of emissions reductions targets saw the High Court find that the then Minister for Climate Change Issues was required to consider the most recent climate science in setting the targets, and that it was valid to judicially review the decisions to set the 2030 and 2050 targets

**Potential Flow-on Effect to Businesses**

- Applications in Austria and Norway challenging the issue of permits for airports, and deep sea drilling
- Application in Sweden challenging the sale (rather than decommissioning) of state-owned coal mines and coal-fired plants
- Claims of inadequate climate change risk disclosure
  - August 2017. Two shareholders brought a claim against the Commonwealth Bank of Australia for failing to address climate change risks in its 2016 annual report. They alleged CBA breached obligations to give a true and fair view of the financial position and performance of the company.
  - July 2018. A superannuation entity in Australia faced a claim it failed to provide the requisite information regarding climate-change risk to enable an informed judgement about its management and financial condition.

**Class Actions**

To date, New Zealand has seen few class actions, none of which have related specifically to the impacts of climate change. However, there are factors which indicate that could change in the future. Climate change will affect large numbers of people, including through individual climate-related events. Litigation funders are making their presence felt in New Zealand, and could look to support action where there are significant numbers of people affected. Added to that is the possibility of changes that could affect the environment for class actions directly. The High Court’s Rules Committee has consulted on changes to streamline some of the procedural aspects of class actions, though that is not intended as significant reform. The Law Commission has also announced a review of class actions and litigation funding.
Climate change litigation

NUMBER OF CLIMATE CHANGE LITIGATION CASES

654 UNITED STATES OF AMERICA
80 AUSTRALIA
49 UNITED KINGDOM
16 NEW ZEALAND
13 CANADA
4 FRANCE
3 GERMANY
2 PAKISTAN
1 AUSTRIA, BELGIUM, COLOMBIA, CZECH REPUBLIC, FEDERATED STATES OF MICRONESIA, NORWAY, PHILIPPINES, SOUTH AFRICA, SWEDEN

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Over the past 18 months we have seen building momentum towards disclosure of climate change-related risks, both overseas and in New Zealand.

**October 2017**
The updated NZX Corporate Governance Code recommends that an issuer “should provide non-financial disclosure at least annually, including considering material exposure to environmental, economic and social sustainability risks and other key risks. It should explain how it plans to manage those risks and how operational or non-financial targets are measured”. This was later accompanied by the NZX Environmental, Social and Governance Guidance Note.

**JUNE 2017**
The International Task Force on Climate-related Financial Disclosures chaired by Michael Bloomberg published final recommendations for climate-related financial disclosures. The recommended framework is divided into four key areas: governance, strategy, risk management, and metrics and targets.

**JUNE 2018**
The consultation paper on the proposed Zero Carbon Bill specifically asked whether there should be “a targeted adaptation reporting power that could see some organisations share information on their exposure to climate change risk”.

**JUNE 2018**
Chartered Accountants Australia and New Zealand advocated for appropriate disclosures of climate risk based on the international Task Force recommendations.

**SEPTEMBER 2018**
The Bank of England Prudential Authority released a consultation paper on proposals for enhancing banks’ and insurers’ approaches to managing the financial risks from climate change. These included an expectation that firms monitor their exposure to financial risks from climate change and have a plan in place to manage identified exposures.

**NOVEMBER 2018**
The New Zealand Reserve Bank released its Financial Stability Report which stated the financial system will be affected by both the physical and transitional impacts of climate change, and financial sector participants have a critical role in assessing their own current and future exposures to climate-related risks.

**MAY 2018**
The Ministry for the Environment Climate Change Adaptation Technical Working Group recommended New Zealand follow the international Task Force on Climate-related Financial Disclosures framework.

**AUGUST 2018**
In its Low-Emissions Economy report, the New Zealand Productivity Commission recommended that the Government implement mandatory climate-related financial disclosures.

**SEPTEMBER 2018**
The Australian Securities and Investment Commission recommended that directors and senior managers of listed companies understand and continually reassess existing and emerging risks that may be applicable to the company’s business, including climate risk.

**OCTOBER 2017**
The updated NZX Corporate Governance Code recommended that an issuer “should provide non-financial disclosure at least annually, including considering material exposure to environmental, economic and social sustainability risks and other key risks. It should explain how it plans to manage those risks and how operational or non-financial targets are measured”. This was later accompanied by the NZX Environmental, Social and Governance Guidance Note.
Climate change-related disclosures

In 2017, around a third of NZX listed companies were already engaging in some form of disclosure relating to their environmental practices or targets.\textsuperscript{xxx} However, businesses have not taken a consistent approach to climate-change related disclosures to date. There is no standardised framework for disclosing climate-related risks in New Zealand, which makes it difficult to effectively compare current practice. However, the NZX Environmental, Social and Governance Guidance Note provides information on recommended frameworks for extended reporting.

Disclosure of climate-change related risk is increasingly emerging as a matter of best practice in corporate governance. It will be important for boards to keep up-to-date with the fast-paced developments in this area and understand their obligations in this regard.

The appropriate management and disclosure of climate-related risk raises the question of the relevance of the directors’ duties under the Companies Act 1993. In Australia, legal commentators have concluded that a director’s duty of care and diligence may require directors to inform themselves of the possible effect of climate change on their business (and thus a failure to do so may risk personal liability).\textsuperscript{xxxi} The position in New Zealand warrants close consideration. It is unlikely boards will simply be able to ignore climate-related risks and opportunities that relate to their companies and industries.

Directors should be considering what board practices might need to change.

ii. These include the Sustainable Stock Exchanges Initiative (a UN programme) and the Financial Stability Board and their Task Force on Climate-Related Financial Disclosures.


x. Transpower White Paper 2018 Te Mauri Hiko: Energy Futures at 32.


xii. Dr Keith Turner, Member, Interim Climate Change Committee: RMLA Conference 2018 Workshop ‘Does the RMA enable or hinder New Zealand’s transition to low-carbon energy?’


xxx. McGuinness Institute Building a Reporting Framework Fit for Purpose (November 2018)

Bell Gully’s climate change practice

Bell Gully has been at the forefront of climate change action in New Zealand for the last 20 years. We helped to develop core climate change legislation in New Zealand and have had longstanding involvement with New Zealand’s emissions trading initiatives, including advising the New Zealand Government on the design of the NZETS. Internationally, we worked on the world’s first carbon trade for avoided deforestation and on pioneering emissions trading activity.

Our team of lawyers act for an array of individuals and organisations, ranging from leaders in the emissions trading market and global investment banks to regional governments or government groups in New Zealand and overseas. This has included some of the nations that will be among those most affected by climate change. We advised the Government of Aceh, Indonesia on an avoided deforestation project, and have addressed the Attorneys - and Solicitors-General of 15 Pacific Island states on climate change adaptation and financing. We also advised Bangladesh on a range of climate change issues, providing representation to advance its position at major international conferences such as Copenhagen and Cancun.

That consistency in providing market-leading climate change advice is recognised by international legal directories. Bell Gully’s environment practice is ranked in the top tier for environmental law in New Zealand by the Legal 500 Asia Pacific 2018, while practice leader Simon Watt and resource management specialist Andrew Beatson also hold top-tier rankings as leading lawyers. Simon has also featured in the world-wide climate change rankings of the international legal directory Chambers Global for a decade, and he has been the only New Zealand lawyer to be ranked for the past four years.

We can provide you with:

• Specialist advice on all areas of law involving the regulation and reduction of greenhouse gas emissions.
• Carbon pass-through and trading advice.
• Robust due diligence around the sale or acquisitions of emissions-exposed businesses or assets.
• High-level interpretation of New Zealand’s climate change legislation and the implications of international agreements including the Paris Agreement.
Bell Gully’s climate change team

For further information about this report, please contact one of the partners listed below or your usual Bell Gully adviser:

**CLIMATE CHANGE**

**Simon Watt**  
PARTNER  
Tel: +64 4 915 6854  
Mob: +64 21 605 384  
simon.watt@bellgully.com

**RESOURCE MANAGEMENT**

**Andrew Beatson**  
PARTNER  
Tel: +64 9 916 8754  
Mob: +64 21 223 9170  
andrew.beatson@bellgully.com

**BANKING AND FINANCE**

**David Craig**  
PARTNER  
Tel: +64 4 915 6839  
Mob: +64 21 674 851  
david.craig@bellgully.com

**LITIGATION**

**Tim Smith**  
PARTNER  
Tel: +64 4 915 6520  
Mob: +64 2102 7398  
tim.smith@bellgully.com

**CLIMATE CHANGE**

**Claire Harmsworth**  
SENIOR ASSOCIATE  
Tel: +64 4 915 6821  
Mob: +64 21 947 869  
aclaire.harmsworth@bellgully.com

**RESOURCE MANAGEMENT**

**Natasha Garvan**  
PARTNER  
Tel: +64 9 916 8956  
Mob: +64 21 420 0561  
natasha.garvan@bellgully.com

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