

# CLIMATE CHANGE AND THE RMA

Phil Gurnsey

Ministry for the Environment, Wellington, New Zealand

[phil.gurnsey@mfe.govt.nz](mailto:phil.gurnsey@mfe.govt.nz)

---

## ABSTRACT

The debate about climate change actually happening is over. For the purposes of making policy it is happening. The question to be asked now is: what is our response? New Zealand's economy, environment and way of life are at risk. Indeed, we are perhaps more at risk than many other developed nations because of our dependence on agriculture. This demands a whole of government, economy wide, approach to policy making.

One such an approach was outlined in the Resource Management (Climate Protection) Amendment Bill 2006. This Bill, proposed by the Green Party to fill a "regulatory gap", seeks to reinstate the powers of regional council under the RMA to consider the effect of greenhouse gas emissions on climate change when making rules in plans and when considering consents. These powers were removed in 2004 when the Government passed the Resource Management (Energy and Climate Change) Amendment Act 2004.

This paper outlines the appropriateness of using the RMA to address climate change – are they happy bedfellows? The paper will present current thinking and seeks participant feedback on policy options that involve local government actions – both for mitigation and adaptation of climate change.

## 1 INTRODUCTION

Our climate is changing. How we respond to the issue of climate change now will determine the shape of our future – our economy, environment, and communities. The debate is no longer about whether climate change is happening, but on what we do about it.

Every country now accepts climate change is happening and must be addressed. Trade risks are becoming a reality. "Food miles" "Wood miles", "border taxes", "carbon neutral marketing" are common elements in every day trading. In this environment, New Zealand must be seen to play its part and take action. We are already seeing murmurings from European Union countries that propose potential trade tariffs on countries not meeting their Kyoto target. New Zealand is highly exposed to climate change (environmentally and economically).

Climate change solutions are long-term strategic issues for New Zealand within the broader context of economic transformation, national identity, and other leading issues, for example, water quality and flood control. Climate change is an issue which we cannot solve overnight, nor with any one policy. It is an intergenerational issue which we need to address by ensuring that all policies which impact on how we live on this planet take climate change into account.

The RMA is an intergenerational statute. But is it suited to addressing climate change issues?

## 2 DISCUSSION

### 2.1 THE RESOURCE MANAGEMENT (ENERGY AND CLIMATE CHANGE) AMENDMENT ACT 2004

The *Resource Management (Energy and Climate Change) Amendment Act 2004* was enacted to remove the regulatory means of control. It was now that a fiscal measure is in prospect.

As a result Regional Councils now cannot make rules which control the discharge of greenhouse gases for climate change purposes and any past rules they have made are struck out. Neither can they consider climate issues in relation to resource consents. Past conditions do stand however.

In each case there is an exception in that rules or conditions that involve the reduction of greenhouse gases through the development of renewable energy are allowed.

The Amendment Act added new provisions in section 7, that persons exercising functions under the RMA have to have particular regard to the efficiency of the end use of energy, the effects of climate change and the benefits to be derived from the use and development of renewable energy.

As a result the ability to advance climate issues in RMA consents is very limited other than if they are arguments in favour of a renewable energy project (for example in the Environment Court's decision on Awhitu Wind Farm). The section 7 provisions are also relevant to plan and rule making it possible to discriminate in favour of renewable energy projects.

### **2.1.1 ADAPTING TO CLIMATE CHANGE**

In February 2007 the Intergovernmental Panel on Climate Change's (IPCC) released its latest findings on climate change. New Zealand relies on the IPCC to inform current thinking on climate change issues. The IPCC Assessment Reports are used by New Zealand officials as an authoritative reference in the development of national climate change policies and in debate on the nature, extent and cause of climate change. The 'Summary for Policymakers' section includes the strongest statement yet from the IPCC, saying there is now unequivocal evidence of global warming.

The IPCC now says it is "very likely" that most of the global warming since the mid-20th century has been due to increased greenhouse gases from human activity, and that it is "virtually certain" that most land areas will experience fewer cold days and nights, and more hot days and nights, over the course of the 21st century. Reinforcing expectations that climate change will bring more weather extremes, the report says it is "very likely" that the frequency of heat waves and very heavy rainfall events will increase over most land areas. The areas affected by droughts, the number of intense tropical cyclones, and the incidence of extreme high sea levels are expected to "likely" increase. The report also projects increasing ocean acidification, decreases in snow cover, and a loss of sea ice (including from the Antarctic).

The Ministry for the Environment's Talk Environment Roadshow in November 2006 also discussed climate change adaptation with local government representatives around the country. A priority list of projects has been developed that form the basis of the local government partnership work programme. Examples of projects include:

- Clarification of 50 and 100 year sea level rise figures to help councils determine local impacts;
- Infrastructure guidance notes – storm water, flood protection, urban design including case studies; and
- Model district plan provisions.

This guidance will be reliant on the IPCC assessments and will help Councils meet their functions under section 7 of the RMA to have particular regard to the effects of climate change.

## **2.2 RMA OPTIONS**

The RMA provides various opportunities for central government to intervene in resource management policy and/or regulatory decision-making that is otherwise devolved almost entirely to local government. These include:

- (a) issuing national policy statements (NPS's);
- (b) issuing national environmental standards (NES's); and
- (c) specific responses to individual projects including:
  - i) calling-in applications for resource consent, notice of requirement or requests for private plan changes or regional plans;
  - ii) making a submission on the matter on behalf of the Crown;
  - iii) appointing a project co-ordinator for an application for resource consent to advise a local authority;
  - iv) directing that a joint hearing be held (if more than 1 authority is involved); and
  - v) appointing a hearings commissioner (where a local authority has made a decision to use commissioners to hear an application).

To date the government has only used the ability to make a whole of government submission on behalf of the Crown. There are proposals, however, for consideration of a voluntary mechanism for consolidated consideration of RMA consent applications for wind and geothermal energy generation projects (the Draft New Zealand Energy Strategy refers).

There are other ways that government can influence decision-making that are not specifically provided for in the RMA or which are not specific to government. These include issuing non statutory guidance and making submissions on plans and consent applications and notices of requirements for designations. An example of such non guidance is contained on the Quality Planning website.

The Government can use NPS's or NES's when there are matters of national significance at stake and where it can be demonstrated that they are the most appropriate mechanisms having regard to their efficiency and effectiveness. Before it can adopt either a NPS or a NES, the Government must carry out an evaluation to demonstrate that the statutory 'cost benefit' tests of section 32 of the RMA are met.

As the RMA is currently worded, if NZ wanted to reduce or manage greenhouse gas emissions, an NES is the only effective national policy instrument. A NPS would not be effective alone because it does not contain rules and methods and has no direct effect on consents, and amendment to the RMA may be required.

If the RMA was amended to empower local controls on greenhouse gas emissions because of their effect on climate change, then councils can use rules in plans and conditions on resource consents, applied locally on a case by case basis. Government would also then be able to use the Ministerial powers of intervention outlined above.

### **2.2.1 THE RESOURCE MANAGEMENT (CLIMATE PROTECTION) AMENDMENT BILL 2006**

The Resource Management (Climate Protection) Amendment Bill 2006 proposes to re-empower local controls. This Bill, proposed by the Green Party to fill a "regulatory gap", seeks to reinstate the powers of regional council under the RMA to consider the effect of greenhouse gas emissions on climate change when making rules in plans and when considering consents. These powers were removed in 2004 when the Government passed the Resource Management (Energy and Climate Change) Amendment Act 2004. This Bill is still before select committee at the time of writing.

## **2.3 CLIMATE CHANGE POLICY CIRCA 2006**

Despite the 2004 Amendment to the RMA, the RMA features prominently in the options being considered as a part of the climate change policy. They are part of the mix for regulator options to reduce emissions from the energy sectors and wider. They are also options for consider

### **2.3.1 LAND MANAGEMENT AND CLIMATE CHANGE**

In December 2006, the Minister Responsible for Climate Change Issues and the Minister of Agriculture released the discussion document "Land Management and Climate Change". This document contained a range of options to address climate change issues for agriculture and forestry.

The document placed a heavy focus on using the RMA as a regulatory means. No preferred option was identified so to enable full and frank discussion with stakeholders about the options.

The RMA options appear less than ideal, but their ease for implementation (not requiring legislative change) means they need exploring.

Figures 1 and 2 outline the options being considered.

Figure 1: Options for addressing agricultural emissions.

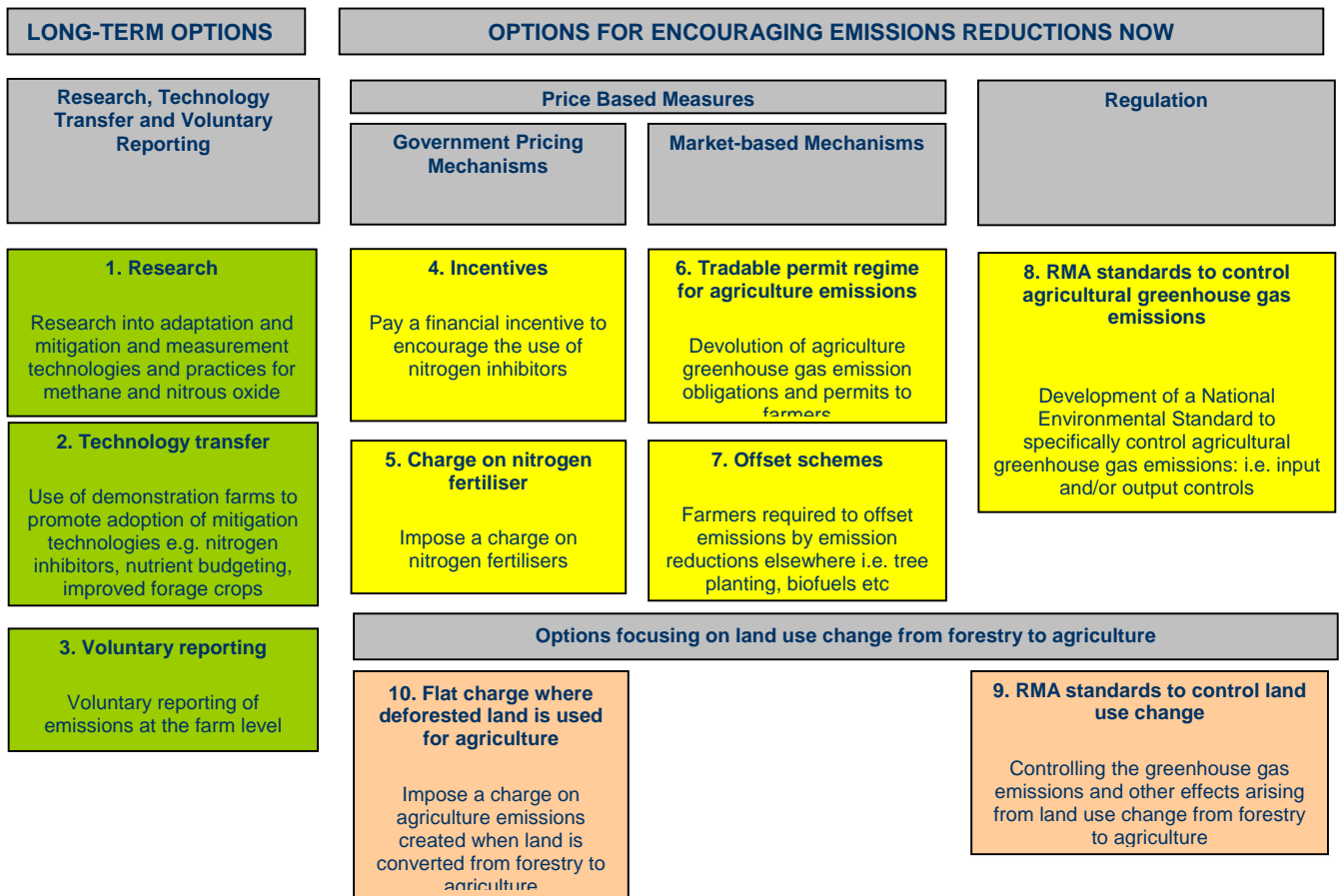
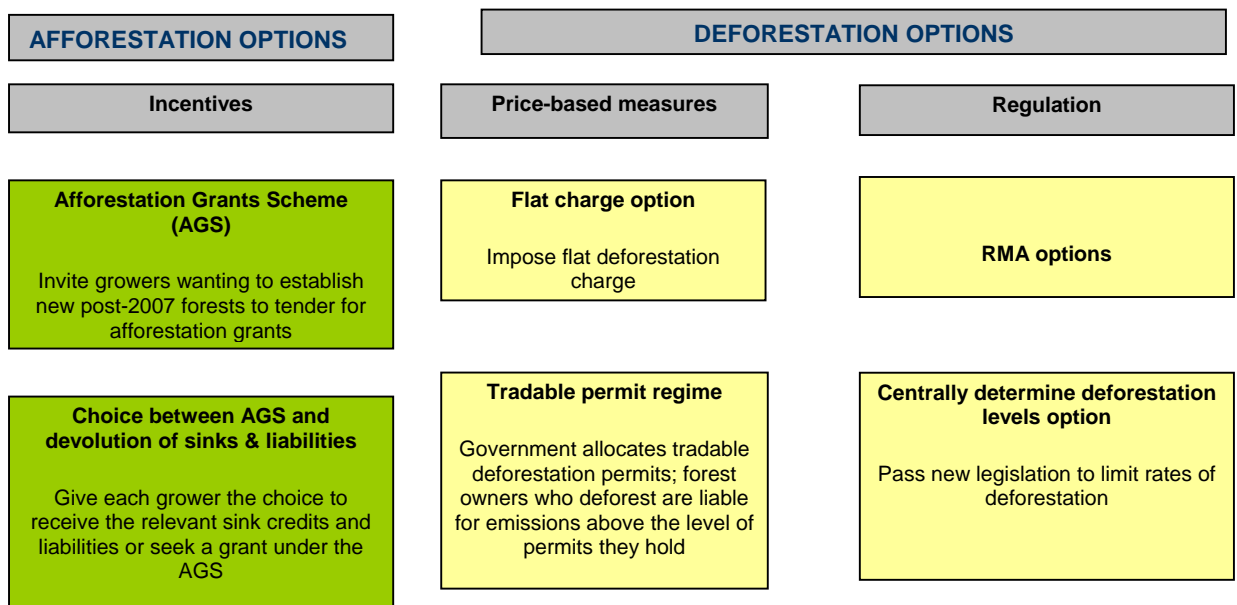


Figure 2: Options for addressing forestry.



### **2.3.2 ENERGY**

Also in December 2006, the Minister of Energy released the draft New Zealand Energy Strategy. This document contained some consideration of regulatory options using the RMA.

In a background paper entitled "Transitional Measures: Options to move towards low carbon electricity and stationary energy supply and to facilitate a transition to greenhouse gas pricing in the future: A discussion paper" options for discouraging fossil fuel electricity generation prior to 2012 were considered. The RMA was considered as part of this to be direct regulatory measure.

In the absence of an economy wide price on carbon, the aim of a direct regulatory measure could be to specifically target new investment generation, with the aim of ensuring that it is lower carbon than business as usual.

Consideration was given to using such regulatory measures to new fossil fuel power plants. The measures would indirectly encourage new renewable energy through their impact on the operational and infrastructural costs of fossil fuel plants, resulting in an increased price of electricity.

## **3 CONCLUSIONS**

The formulation of the climate change policy is still under consideration. Workshop participants will be asked of their views as the utilization of RMA as opposed to other carrots and sticks to be used. There will be opportunity to ask questions of the various discussion documents. The feedback and dialogue will be used as part of the government's processes to refine the climate change policy package. Submissions on the discussion documents referred to in this paper close on 30 March.