

5. CLIMATE CHANGE: DRAFT VARIATION ON FLOOR LEVELS

Officer responsible Environmental Services Manager	Author Bob Nixon, DDI 371-1669
--	--

The purpose of this report is to raise some concerns about the lack of national guidance on climate change.

The Committee will recall that it has decided to postpone notifying a draft variation on "Minimum Floor Levels" until the beginning of next year, and the term of the newly elected Council. This draft variation was intended, among other things, to address the issue of flooding associated with potential sea level rise.

On 29 and 30 August, the writer attended a conference in Wellington on climate change which was addressed by the Hon Pete Hodgson, Minister of Energy and Convener of the Ministerial Group on Climate Change. This has some relevance in regard to the matters to be considered in the Draft Floor Levels Variation, given that there is a clear link between climate change and potential sea level rise. At the conference, the Minister stated emphatically that the government was satisfied that global warming was a reality. While the majority of his address was concerned with the emissions provisions of the Kyoto Protocol (which the government intends to ratify in September 2002), he also expressed the view that associated sea level rise was inevitable.

Although his comments indicated a clear government commitment to the likelihood of global warming and sea level rise, there is no explicit statutory policy in place to support this contention in terms of a council's functions under the Resource Management Act. As the Committee is already aware, the issue of sea level rise is potentially highly contentious for developers, and there may be no bar to any proposed variation being challenged - not simply on the basis of its planning controls, but also as to whether any global warming and sea level rise underpinning the controls is occurring at all. There is still a significant body of skeptics within the scientific community about global warming and sea level rise, and any Council variation could be subject to challenge on the following basis:

- that global warming is in fact taking place;
- that associated sea level rise is likely to occur;
- that any regulatory methods proposed by the Council to address sea level rise are appropriate.

While it seems reasonable that the Council justify the third of these tests, and perhaps the second one insofar as local circumstances are concerned, it seems unreasonable that it be asked to justify the likelihood of global warming itself and associated sea level rise generally. The time and costs involved in doing this could be substantial. It also raises the rather interesting possibility of the Environment Court ruling against the Council on the basis that global warming is not established!

In addition, the New Zealand Coastal Policy Statement, and the Proposed Regional Coastal Plan, are of limited assistance in this regard. This is because both documents pre-dated government commitment to the likelihood of climate change and sea level rise, and accordingly their provisions appear very general and lack specific policy guidance to support that aspect of the Draft Floor Levels Variation associated with sea level rise. They use terms such as "...possibility of sea level rise.." and "...identify areas.."

It is quite possible, for example, that the Council could find itself in the position of having to call and hear evidence on such matters as whether the polar ice cap in Greenland is melting. I consider it ludicrous that this Council, or for that matter the Regional Council, should be expected to "prove" the existence of an international phenomenon which is clearly a matter of national policy and arguably our international obligations under the Protocol. As I noted earlier, in the absence of a National Policy Statement it may be quite open for a submitter or referrer on the Floor Levels Variation to challenge the entire basis of global warming and sea level rise. The fact that regions/districts could have to litigate this issue individually reinforces this concern.

I believe this is an instance where it would be appropriate for the Council to seek legal advice and, depending on this, convey its concerns to the Minister for the Environment and suggest that a National Policy Statement on the matter is necessary, perhaps through strengthening the provisions of the New Zealand Coastal Policy Statement. I believe we should indicate that in the absence of this, the Council would be reluctant to include regulatory provisions in its district plan restricting development in coastal areas. It would instead confine itself merely to incorporating information in its district plan of a warning nature.

Recommendation:

1. That the information be received.
2. That the Council ask the Minister for the Environment to strengthen the provisions of the New Zealand Coastal Policy Statement in regard to matters of climate change and sea level rise.