New Zealand director duties to manage nature-related risk and impact on natural capital

The alarming and accelerating rate of biodiversity loss and ecosystem breakdown is a global and local crisis – one that has the potential to outstrip the impact of the climate crisis. But, unlike risk from climate change, understanding of nature-based risks is at a relatively early stage for most New Zealand companies.

With directors facing an ever-growing agenda, Chapman Tripp's legal opinion seeks to highlight current and anticipated regulatory and market trends, supporting directors who are seeking to stay "ahead of the curve" to anticipate and be resilient to these issues when sitting on the boards of businesses that are particularly reliant on natural capital.

Key conclusion: New Zealand company directors' duties to exercise reasonable care require them to ensure that their businesses are identifying foreseeable and potentially material nature-related risks that could affect their companies, and equally to take nature-related risks with material impact into account in their decision-making.

Whether nature-related risks are foreseeable and material for a particular company will be impacted by:

- Emerging international mandatory corporate sustainability reporting obligations which go beyond climate and cover nature and biodiversity.
- Growing investor interest and voluntary corporate initiatives to spotlight nature and biodiversity risks.
- Anticipated regulatory protection of ecosystems and biodiversity as part of an wider transition to 'nature-positive' regulatory structures.
- Growing understanding of nature-related risk, including through mātauranga Māori.

Prudent directors in sectors highly dependent on nature and the environment for their business model should be starting on the path to ensure the business is in a position to:

Identify direct and indirect dependencies on natural capital, ecosystem services and biodiversity that are at risk or vulnerable

Assess exposure to nature-related risks and the financial materiality of such risk

Manage nature-related risks that may have a financially material impact

Nature-related risk assessment frameworks may be integrated into existing climate-related risk assessment processes

Examples of nature-related risks

Declining bee populations could financially impact companies dependent on pollinators, eg an SME producing Mānuka honey for export

Loss of wetlands and floodplains could financially impact sectors dependent on these ecosystems for flood, erosion and storm protection, eg construction, real estate and infrastructure companies in the aftermath of the Auckland floods and Cyclone Gabrielle

Degradation of soil could financially impact primary sector companies by pushing agriculture on to less productive land, resulting in lower yields or reliance on fertilisers

Kauri dieback has impacted the tourism sector (tour companies, cafes and accommodation providers) through activity and facility closure

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