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Sustainable Impact

Issue 5

MinterEllisonRuddWatts.

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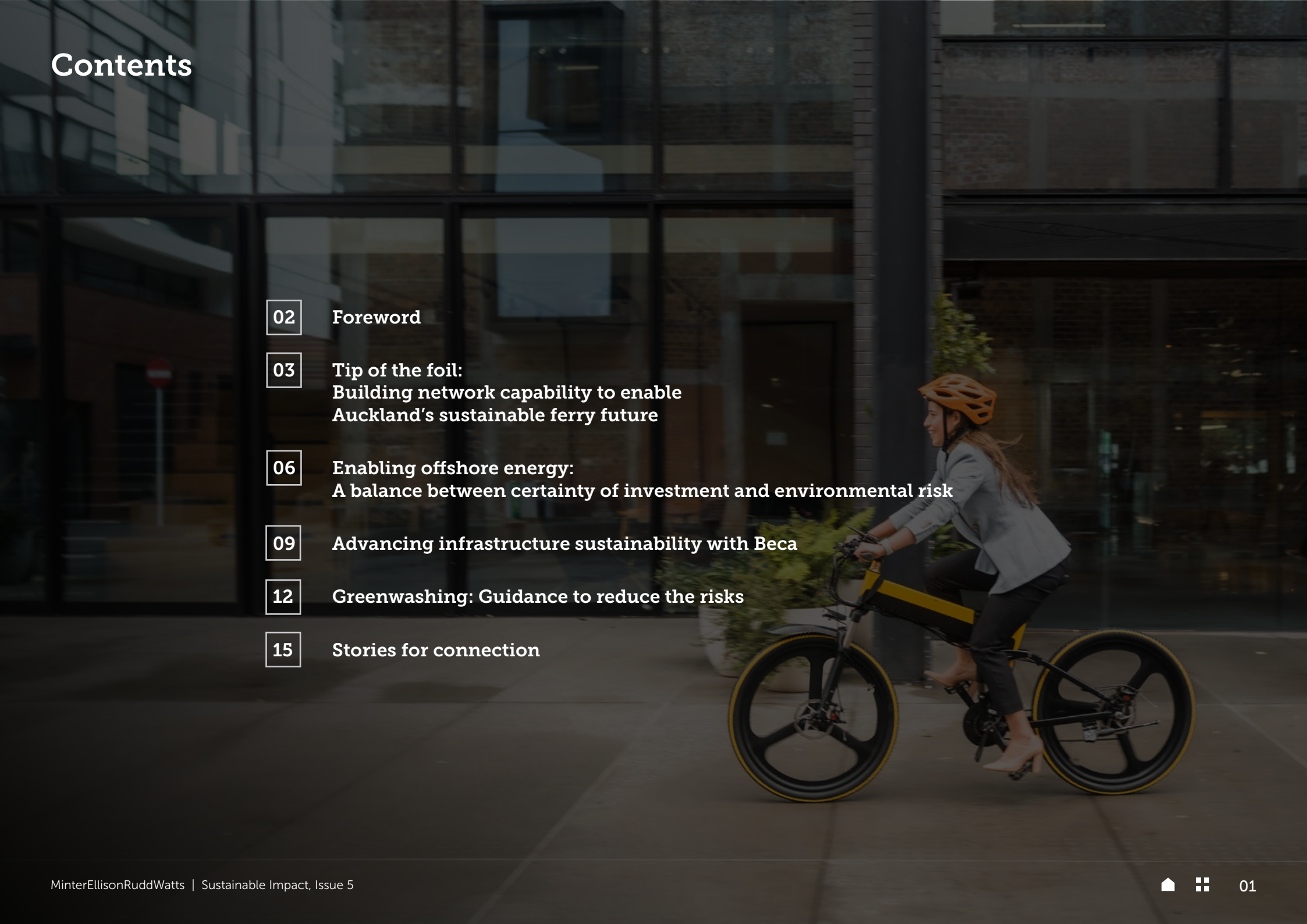


**Holly Hill**
Partner and Sustainability Leader
Kaiurungi me te Kaitātaki Ukauka

# Tēnā koutou ›

Welcome to Sustainable Impact, our publication exploring the conversations and developments in sustainability that are shaping Aotearoa New Zealand's future.

At MinterEllisonRuddWatts, our people, clients, communities and planet are the points of the compass that orient our firm and helps to drive us forward.

This issue of Sustainable Impact, like the ones before it, shares the perspectives of a range of people, across a range of industries, on a variety of topics. The common theme from all our contributors is a desire to do good by the things that matter.

We start at the Hauraki Gulf, where Sustainable Impact chats to Mike Horne, CEO at Fullers Group Ltd about the company's plan to build an entire network of sustainable zero emission vessels. Mike explains how foiling is the future, and why the supporting infrastructure is as important as the vessels themselves.

Treading into deeper waters, Partner Stephanie de Groot and Solicitor Amy Dresser discuss offshore energy investment in Aotearoa New Zealand. With a growing interest in offshore energy development, a balance must be struck between increasing renewable energy supply and the environmental risks of offshore activities.

Back on land, concerns about corporate greenwashing continues. Partner Lloyd Kavanagh offers guidance and insights for business leaders when making ESG claims, and how to avoid making misleading or false claims that could qualify as greenwashing.

Genevieve Smith, Principal – Sustainability Advisory at Beca discusses the new design, procurement and construction practices that are creating better sustainability outcomes on major infrastructure projects – an essential element as Aotearoa New Zealand works to overcome its infrastructure deficit.

We also ask for your support for a new initiative by Who Did You Help Today? The 'Storybook' initiative aims to maintain connections, improve literacy, and build a love for books with incarcerated mothers reading to their tamariki, and it is putting out the call for book donations.

We hope you find this issue of *Sustainable Impact* both engaging and inspiring.

# Tip of the foil

## Building network capability to enable Auckland's sustainable ferry future

In December last year, Fullers360 made waves when it announced a world-first: a new partnership with Seachange to bring the premium 10-seater zero-emission F8 hydrofoiling vessel to the Hauraki Gulf.

Intrigued to learn more, *Sustainable Impact* sat down with Mike Horne, CEO at Fullers360, to learn more about this new vessel – only to discover this partnership is just the tip of a significant piece of work that Fullers360 has underway to develop a network of sustainable zero emission vessels.

While it may seem innovative to be bringing a foiling electric vessel into commercial service in the Hauraki Gulf, the question that occupies the minds of Mike Horne and the Fullers360 team is a much broader, and more ambitious, one.

"While you might think our main focus is on vessels," says Horne, "it is in fact infrastructure that we must prioritise. As a fast ferry business, the question we ask is 'what does it take to build and run an integrated and sustainable fast ferry network?'

"We have been working on this for about four years now. We have developed a deep understanding of what it is that we require, as opposed to what's available, looking hard in the R&D space around alternatives to diesel. When we started looking at zero-emission vessels, we needed to understand what the infrastructure needs to be to support them. And that's become as important, if not more, than the actual vessels themselves."

### Foiling is the future

Before delving into the future of propulsion technology and the networks needed to support it, Horne says that everything Fullers360 is bringing through in vessel design is 'light years ahead of traditional network vessels that are running at the moment, in every aspect'.

"We are asking 'what does each design do for safety? What does it do for reliability? What does that do for emissions? What does that do for a whole range of facts? Can these be built at scale and where? Here in NZ?

Zero-emission foiling vessels offer benefits not only to the environment but to service reliability and customer experience, he says.

"If you look at the Gulf Harbour service for example, the trip currently takes about 60 minutes, and the service is often affected by weather. With foiling vessels we're able to reduce that time to 40 minutes and operate in different sea states than traditional boats. Around 30% of Gulf Harbour services are cancelled because of the sea state; it's a tough piece of water for a traditional vessel. However, a foiling vessel is able to sit up above the waves which gives a much more stable platform in a wider range of conditions. Foiling enables us to extend the operating window for us and do so more safely. By adopting this type of technology we're able to improve reliability in delivery of our services and the customer experience gets better at every level."

## What are the alternatives to diesel?

"A big chunk of what we're doing has been around battery electric and grid electricity," says Horne.

"Electric works incredibly well on vessels with the right loads throughout the inner harbour, and across some of the mid harbour – and it is the cheapest way to do it within available grid electricity at two or three megawatt charges."

To this end, Horne says considerable work has been undertaken with Government, local government and a number of other stakeholders around what's required to build the supporting network to enable an initial fleet of at least seven electric vessels to be operating within the network by 2026.

"We can't think about the project without considering upstream, downstream, and across the network. The difficult part is the electrical infrastructure isn't in place, which is what we're working through currently. Another consideration is new Maritime New Zealand regulations which need to be put in place for a zero-emissions fleet."

Horne then adds that if you need a vessel to operate on a timetable beyond the mid-harbour – as far as Gulf Harbour, Waiheke or the Coromandel for example – 100% battery electric vessels won't be sufficient. Why?

"Because if it's a commuter operation, you need a separate charge every time for half an hour at the end of each leg. All of a sudden, your whole network falls out."

Hydrogen-powered vessels for these longer runs are therefore also a central part of the equation, he says.

"We have spent a lot of time looking at hydrogen propulsion. Hydrogen allows you to run 100% emission-free over greater distances. We are looking at a 100-seat foiling vessel, with the possibility for 400-plus-seat foiling vessels to go to places like Waiheke. Hydrogen is fairly new to the marine landscape, there are only two hydrogen boats in operation in the world; one is in San Francisco which is a vessel built for tourism. It does a limited number of trips a day and requires 10 to 12 hours to refuel. While that's fine for a tourist boat, if you think about a network of vessels working commuter services, having to go backwards and forwards, it doesn't work – we have to get the refueling time down from 12 hours to 20 minutes. There are some outstanding companies in New Zealand who are already addressing this challenge. Give it another couple of years, and you'll see hydrogen being used across the marine industry.

## Refueling is the key

"Investment in hydrogen network assets is a priority," he says. "And this challenge has three parts. Unfortunately, hydrogen doesn't have a supply network at the moment. There is one hydrogen bus operating on the Auckland Transport network, but it's one bus, it's not a network, and it relies on hydrogen gas.

"The second challenge involves getting the hydrogen from where it is made to the ferry terminal, a heavy trucking transport activity. You've essentially got a 50km radius in which it is sensible to truck the gaseous hydrogen to where it needs to be installed. And then, thirdly, we are working on the refueling timeframe for maritime fast ferries. So that's why we're still open to liquid hydrogen, but then you have an increased weight challenge. There are a lot of people around the world working on this. But we know it's something big to crack in the next couple of years within New Zealand.

"We can't just think about the project without thinking upstream, downstream and the network."

**Mike Horne**
**Fullers 360, CEO**


Realistically gas or liquid is the right option for fast ferry application that is available immediately as the most suitable propulsion solution.

"Luckily, we have all the digital IP to build understanding about energy usage across the network. That allows us with 100% confidence to say, 'this is how long that route or those vessels will run under these conditions with this fueling proposition'. I can confidently say if we had one vessel running across a whole network all day it will use hundreds of kilograms of hydrogen. If you then multiply by 30 vessels for a full network, that is quite material.

"If you're designing a network for the next 20 years, you need to know what the electric grid energy your megawatt charges enable. And there are limited places where we can put hydrogen electrolysers to enable hydrogen production on site, so we are looking at the upstream and downstream networks."

## More boats are planned – many more boats

Looking ahead Horne say the goal for next 10 years is the establishment of a completely decarbonised network designed for and by the Fullers360 team.

"We're two thirds of the way there. We have cracked the vessel side of things and now we are focusing on infrastructure. The Seachange F8 is being built now and there are three more vessels under consideration that will be produced once we move through final procurement.

"Fullers360 is unique in the sense that we're building the vessels for us to use as an operator. We're building a lot of in-house IP around energy usage, demand requirements and network requirements – with more than 40 years of operator experience we have the advantage of knowing what works and what doesn't operationally.

"For us, the primary focus here is to design the boats in New Zealand and retain that IP in the country. We are building brand new world-first IP here in New Zealand and it is important to retain it here not sell it overseas. Licensing IP needs to be thought about from government, local government, commercial aspects – that is, how we retain it within New Zealand and not give it away. This work will enhance the boat-building industry for the next 30 years, creating a $1 to $2 billion industry for New Zealand. Additionally, all training, knowledge, engineering and design should be available – for a fee. Soon New Zealand will be at the center of a one maritime standard perspective."

"We're building a lot of in-house IP around energy usage, demand requirements and network requirements."

**Mike Horne**
**Fullers 360, CEO**

This, says Horne, is due to the need to giftwrap the business case for public funding, which is the thing that ties everything together.

"It takes companies like ours to drive the innovation forward. By the time the Government or local government get to it, they want a bulletproof trial completed. Everything must work, to prove value for money to taxpayers and ratepayers, and to gain government funding. What we are doing is progressing ahead with this zero-emission technology and pitching to government what it would look like on a national basis – and then interest comes into us from overseas. There is so much focus on New Zealand it is amazing."

## Enabling offshore energy:

# A balance between certainty of investment and environmental risk

**By Stephanie de Groot, Partner, and Amy Dresser, Solicitor, MinterEllisonRuddWatts**

Offshore energy has the potential to fill some of Aotearoa New Zealand's renewable energy gaps – and there is growing interest from the Government and developers in exploring the possibility. However, existing environmental legislation is not fit for purpose.

The Government has recognised the existing environmental legislation is not fit for purpose and is proposing a new regime to remove barriers and stimulate investment. A key issue to be addressed in the new regime is a tension between the positive benefits of increasing renewable energy supply, and the environmental risks of undertaking offshore activities.

### Renewable energy is a focus for reducing greenhouse gas emissions

The Government has committed to reducing New Zealand's net emissions of all greenhouse gases (except biogenic methane) to zero by 2050. It has also set a target that 50% of total energy consumption will come from renewable sources by 2035 and an aspirational target of 100% renewable electricity by 2030.

These targets are part of the broader strategy to reduce greenhouse gas emissions to achieve New Zealand's international obligations under the Paris Agreement.

### Interest is growing in offshore energy

Developers are exploring opportunities for offshore wind, solar and ocean (wave and tidal) energy development in Aotearoa New Zealand.

The most developed technology is fixed foundation offshore wind. The country has significant potential for offshore wind generation due to strong coastal winds and the ninth largest exclusive economic zone in the world. Taranaki, Waikato and Southland regions have been identified as areas with the greatest potential.

However, large-scale feasibility studies which would provide developer confidence in international offshore regulatory regimes have not yet been completed in Aotearoa New Zealand. This is in part due to the lack of a clear consenting pathway under our existing environmental legislation for both feasibility studies and development.

### MBIE is consulting on new regulatory settings for offshore feasibility studies and development

There is currently no specific regulatory regime for offshore energy development in Aotearoa New Zealand. The primary legislation regulating offshore renewable energy projects in New Zealand is the Resource Management Act 1991 (RMA) out to 12 nautical miles offshore, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) from 12 nautical miles to 200 nautical miles offshore. Both provide for a consenting regime focussed on managing environmental effects.

The Ministry for Business, Innovation and Employment (MBIE) has conceded that these regimes are not fit for purpose and is developing new regulatory settings that will encourage the exploration and development of offshore renewable energy resources. The new settings are expected to be in place by 2024.

MBIE is considering the new regulatory settings in two stages:

- Identifying where offshore generation could potentially occur, and the settings necessary to enable developers to undertake feasibility assessments; and
- Enabling infrastructure to be constructed, operated (and connected to the national grid) and decommissioned.

MBIE's preferred option for the first stage is a system where developers apply for permits to undertake their own feasibility studies for offshore energy in specific areas (like in Germany and the Netherlands). This is instead of Government-led feasibility studies to identify areas for offshore energy development (the approach taken in the United Kingdom).

The proposed criteria for a feasibility permit is:

- the technical, financial and commercial capability of the developer; and
- whether the proposed development is not contrary to Aotearoa New Zealand's national interest.

It is proposed that feasibility permit-holders would then receive a sole first right to apply for consents to construct and operate offshore energy infrastructure (under the RMA, EEZ Act or other legislation) in those areas.

This feasibility permitting system will have a significant impact on the ability to undertake offshore energy projects, and the make-up of the country's future offshore energy sector.

The Government intends to consult on the second stage of the new regulatory settings later in 2023. This will focus on the approach to consenting under the RMA and EEZ Act. It is not yet clear how the consenting regimes will be altered to suit (or if new legislation will be introduced) but we anticipate changes will need to strike the right balance between investment certainty and environmental risk.

## Existing environmental legislation is not fit for the purpose of offshore energy

A key challenge for the consenting of offshore projects is a lack of information about the offshore environment and the potential effects of new activities and technologies that may be employed.

The consenting processes under the RMA and EEZ Act focus on managing the effects of proposed activities on the environment. However, this is more difficult offshore where information about the environment is scarce and data collection can incur significant cost.

The decision-making framework for the EEZ Act reflects the challenges posed by the lack of information. When making decisions on applications for marine consent under the EEZ Act, decision-makers are required to take into account the 'best available information', consider any uncertainty or insufficiency in the available information, and exercise caution when information is uncertain or insufficient. This can result in activities being prevented or restricted in scope where the potential environmental effects are uncertain.

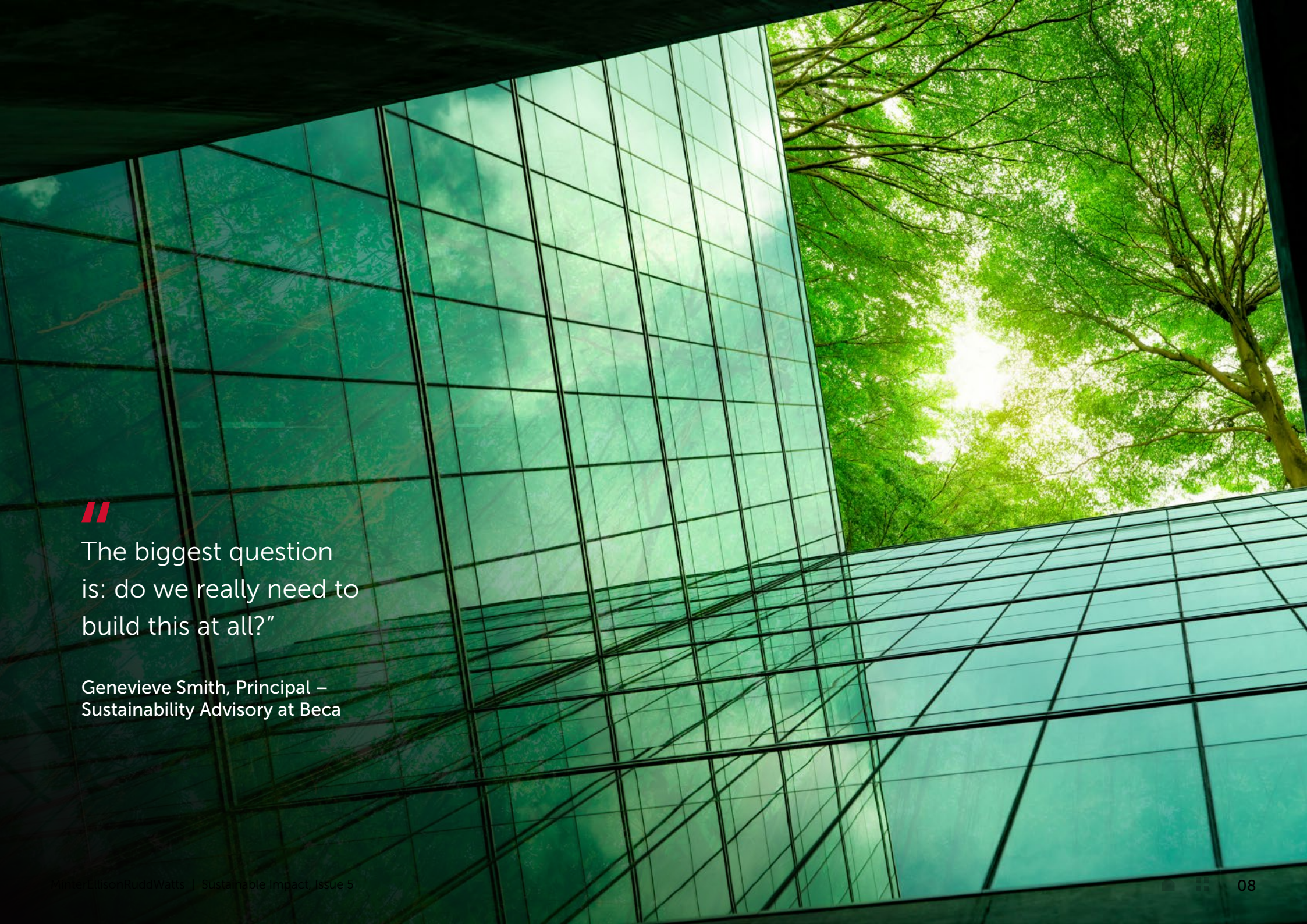
## New regulatory settings will need to balance the positive effects of offshore renewable energy and environmental risk

An essential piece in the new regulatory regime is how consenting can reconcile the policy direction and environmental benefits of renewable energy with the environmental uncertainty and risks of undertaking activities offshore.

The feasibility permitting system will help to fill information gaps and assist developers to obtain consents for construction. But will that information be sufficient to provide certainty for consenting of new offshore renewables projects under the existing regulatory regimes?

The Government could consider taking an approach similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020, which has provided an alternative consenting process to the RMA for the last three years. This Act includes different consenting criteria to the RMA focussed on whether an activity meets the purpose of that Act which was to urgently promote employment to support recovery from the economic and social impacts of COVID-19 and to support the certainty or ongoing investment access New Zealand, while continuing to promote the sustainable management of natural and physical resources. A similar approach could be taken for consenting for offshore energy development. Consent applications could be considered under a bespoke Act which more directly recognises the benefits of offshore renewable energy.

The next stage of MBIE's proposals (expected later in 2023) will shed light on how the Government intends to balance the benefits and risks of offshore renewable energy.



"The biggest question is: do we really need to build this at all?"

Genevieve Smith, Principal – Sustainability Advisory at Beca

# Advancing infrastructure sustainability with Beca

As Aotearoa New Zealand wrestles with how to make inroads into its significant national infrastructure deficit, Sustainable Impact asked Genevieve Smith, Principal – Sustainability Advisory at Beca, one of Asia Pacific's largest independent advisory, design and engineering consultancies, about the positive steps she is seeing in new design, procurement and construction practices for better sustainability outcomes on infrastructure projects.

As an Infrastructure Sustainability Accredited Professional (ISAP), Genevieve has significant experience in major infrastructure projects, providing strategic advice to clients from policy to strategic integration, as well as project level implementation and management.

*Sustainable Impact* asked her four central questions:

**Q What are you seeing in the market that is putting sustainability at the heart of projects?**

"There has been a real shift over the last two to three years in particular, in policy settings and legislation, as well as a change in public mindset around action on climate change. Major public agencies have enacted these policies through infrastructure procurement processes. This includes specific requirements around how critical issues like climate change as well as broad sustainability outcomes are managed and delivered.

"We have moved from sustainability being a side-issue in design and construction over the years, to a fundamental contractual requirement: a big seismic shift. In particular, in earlier phases of projects, we are seeing a focus on carbon emissions reduction, and more recently climate risk assessment. The recognition is that early and strategic investment decision-making stages are where we need to focus to achieve the biggest gains."

"We have moved from sustainability being a side-issue in design and construction over the years, to a fundamental contractual requirement: a big seismic shift."

Genevieve Smith
Beca, Principal – Sustainability Advisory

And this is not the only change that we have seen. A more fundamental concept is pushing its way to the fore.

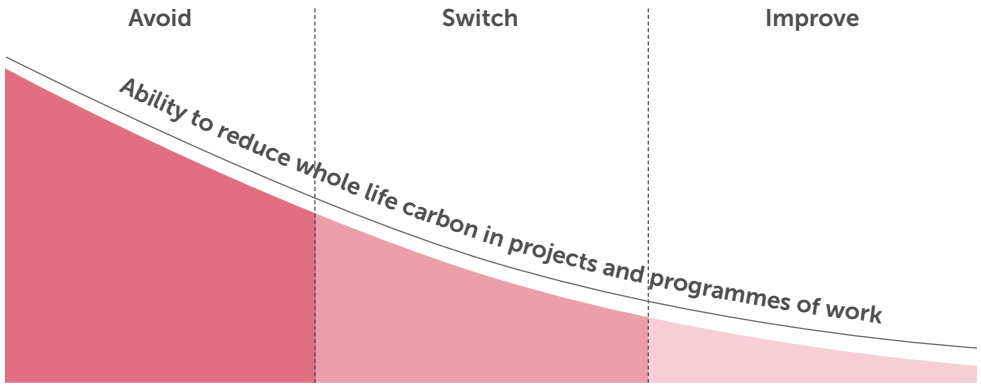
"The IPCC report is clear: we need to fundamentally decouple our reliance on fossil-based energy to operate as a society. This includes how we consume resources, such as in materials-intensive infrastructure. This challenges us to be smarter about how we use what we have already built. If we have a chance to meet our Paris goals, building new things cannot be the automatic starting point."

Smith applies fundamental concepts from international frameworks such as PAS2080 Carbon Management in Infrastructure including a hierarchy of focus on how to reduce carbon.

"At the earliest stages of putting forward options to solve a built environment problem, the most effort should be directed into 'avoiding' building anything at all: meeting the need without any new construction by potentially changing aspects within a wider system. Emissions from wider systems change needs to be balanced into decision making here, such as increased use of existing assets and operational energy use. The focus should then turn to 'switching' to an alternative lower carbon project scope or approach, or prompting consideration of low carbon technologies and materials. Finally looking to 'improve' resource use on the project, finding efficiencies and ways to extend the life of resources on the project.
"There are many carbon reduction gains to be had by systematically stepping through this hierarchy. It's an approach that encourages a wide range of opportunities to be surfaced.

"Ultimately, as many of us will be well across, the most significant long-term impact you can have is at the earliest stage, before a project has even come to light. The biggest question is: do we really need to build this at all?"

A hierarchy of focus on how to reduce carbon.




Source: PAS2080: 2023 Carbon Management in Buildings and Infrastructure

## Q What new trends or breakthroughs are coming through to enable change?

"It's helpful to recognise that it is at a systems level that we need change, rather than just a specific industry challenge."

So how do we unlock that challenge?

"From my viewpoint, there are two aspects to this. First, some flexibility in design specifications could allow use of some of the better -tested new materials, that have overseas implementation track-record. These are low hanging fruit, so the question is how you can trial their use here so we accelerate our learning on how they are used. You need a safe space to trial, and partnership between industry and asset owners is key.

"An example of this would be developing a more responsive risk management process. There is a lot of great work in the supply chain to put forward new materials, products and technology for use in infrastructure projects. Whilst these are gaining traction, it's important there is the right contractual set-up to enable some risk sharing when there is the opportunity to do something new. There are often new aspects of the product, material or technology that have to be worked through, and this can lead to new risks that need to be managed. This can include aspects like design standard modification to be able to use new or different materials, consenting approvals or conditions to monitor possible changes or effects, programme flexibility to bring on a new technology. We are in a transition phase right now where we need the ability to try new products and approaches on projects to support meeting sustainability goals.

"Secondly, at a New Zealand Inc. level, we have really poor data on materials and resources flows within the economy. That is what some of the focus will be from Government with the Waste Minimisation

Act and the circularity lens it's bringing to New Zealand. Our lack of data is hampering our ability to join the dots and understand how we can move more quickly to keep materials and resources circling within the economy. We want to move away from the 'take, make, waste' system we have at the moment."

For example, there are challenges with the supply of on-shore quality reusable materials and new low-carbon products: there are lots of great suppliers out there, but given the scale of what's needed, geographically-imbalanced demand probably outstrips ability to effectively supply.

We've also got huge opportunity at our doorstep to use digital technology to enable alternative lower carbon designs, but we need to deploy them at scale. Building Information Modelling or 'BIM', for example, enables infrastructure to be modelled on software, and for designs to be changed easily. When connected to automated carbon accounting platforms, carbon data can be readily surfaced to inform design changes. Digital Twins are also appearing, as are modern, more modular construction methods, and GPS-enabled excavation; a wealth of ways technology is helping construction be more efficient and helping to make design changes without doing anything on the ground.

"So, to really unlock the challenge we have and enable change, we need more collaborative action to support new ideas making it through the system. We are talking about a number of elements in the planning, designing and construction of infrastructure that need to simultaneously change so we can collectively see these benefits. Everyone, from client organisations, regulators, designers, contractors and suppliers has a part to play: understanding what those specifics are and working together to try to fix them needs to be our focus."

### Q Is structural timber being explored in the infrastructure sector?

"A swap from structural steel to structural timber is a reality in major vertical infrastructure, and there is change happening in the horizontal space too. There are already examples of footbridges and boardwalks that are timber-based, and for retaining walls, swapping out concrete for timber piling, is proving viable from a long-term perspective even factoring in a replacement cycle. Decisions such as this need to include construction energy use and operational energy use (for buildings) over the life of the asset to make sure the best whole-of-life outcome is reached.

What is exciting is the exploration of use of timber in major road-traffic bridges, which is currently happening in the form of potential prototype development for consideration by asset owners. Big changes like this have significant potential to reduce carbon emissions as well as provide demand for new products and expertise in their use."With the changes we've seen over the last three years, the goal posts of the climate challenge have become much clearer, and with challenge there comes the opportunity to innovate and the appetite to consider what previously would have been out-of-scope. We need the diversity of knowledge across our industry to come together to find and work through new solutions."

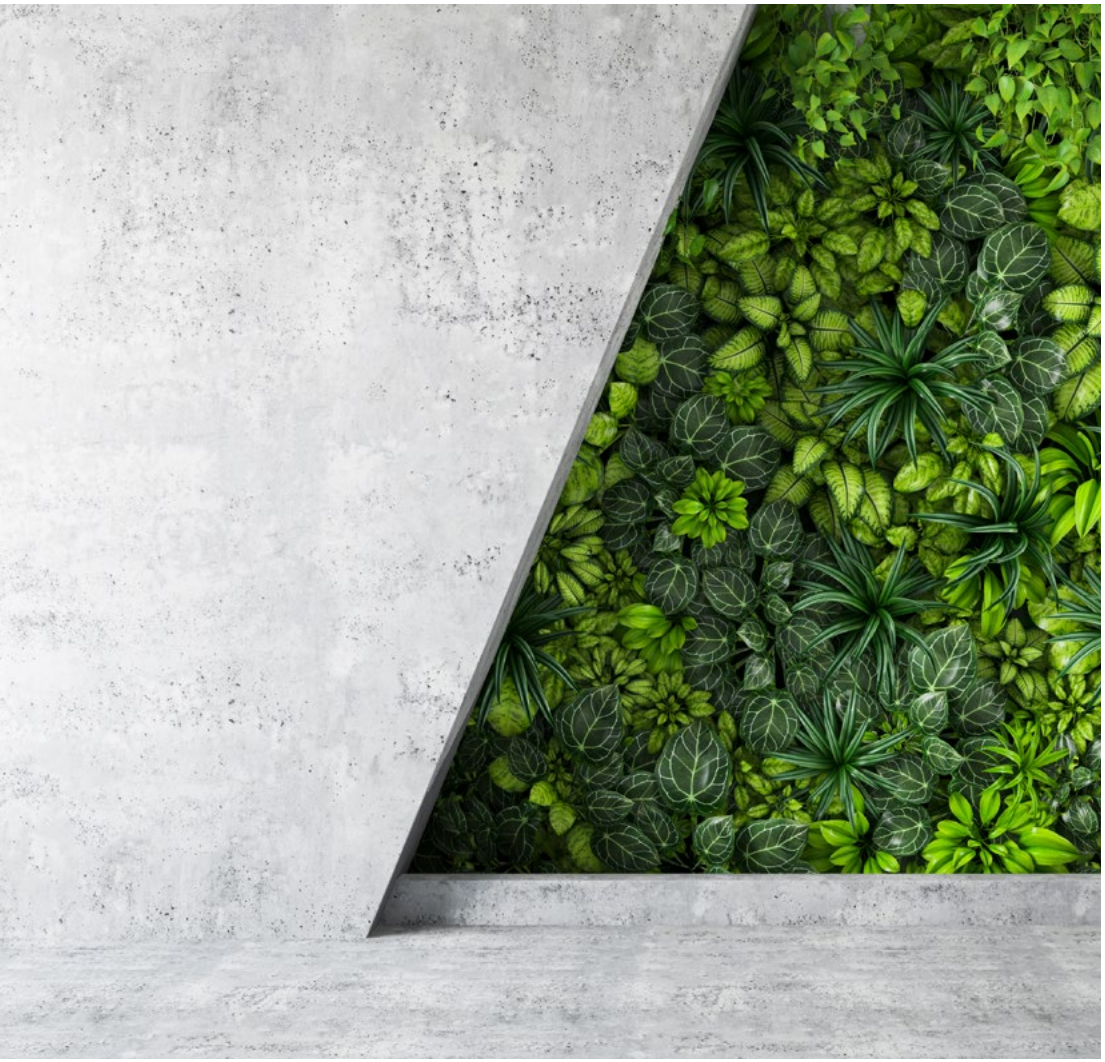
### Q Will it cost more to build things sustainably?

"There are a couple of ways of looking at this. There are always things that are cost savings, such as efficiency measures, and we're all about trying to find efficiency, which is a win for cost and the environment. Then you have cost-neutral activities that make good sense to implement and that won't cost you anything additional.

"Then there are initiatives that might take an additional level of investment where you might be asking what's the return on it. At this point it's important to take a whole-of-life of the asset perspective; the challenge is that relatively short duration design and build contracts are not necessarily long enough to recognise some of the benefits that come from the investment over time.

"The whole-of-life lens helps to answer the question for the asset owner: 'what is the optimal investment now to realise the greatest benefits over the life of my asset?' Infrastructure is typically designed for multi-decades, and it is how the benefits of that infrastructure for the environment and society are realised that matters. Long term, whole-of-life thinking is really at the heart of building sustainable infrastructure.

> "It's important there is the right contractual set up to enable some risk sharing when there is the opportunity to do something new."
>
> Genevieve Smith
> Beca, Principal – Sustainability Advisory



## Greenwashing:

# Guidance to reduce the risks

**Authored by Lloyd Kavanagh**

**At a time when organisations around the world are treading a careful line between publishing reports of their progress in relation to environmental, social and governance (ESG), and straying into the riskier waters of greenwashing, Sustainable Impact shares some of the key risks and insights for business leaders working through the complexities this evolving environment creates.**

### What is greenwashing and what is driving risk in this area?

As the Financial Markets Authority's Executive Director of Response and Enforcement recently pointed out, greenwashing, which he effectively defines as "misleading or false claims about social or environmental benefits or impact", goes to the heart of fair dealing, and the overall impression provided by marketing materials is critical.

ESG statements with no clear achievable programme are becoming high-risk for organisations where adequate internal due diligence is not undertaken. This environment creates two distinct types of greenwashing:

1. Where deliberate ESG claims are made that the person communicating knows or ought to know are untrue. Fortunately, this is rare.

2. Well-meaning aspirations at the board or ELT level to address investor or customer concerns, which are not translated into everyday business.

The potential risk is growing, given the extent of reporting around the world. According to KPMG's 2022 Survey of Sustainability Reporting, based on an analysis of reports and websites from 5,800 companies in 58 countries, territories and jurisdictions, sustainability reporting is growing at pace.

## What are the key greenwashing risks today?

Amid this rapid rise in reporting, greenwashing risk can be seen in four common situations.

### Greenhouse gas emissions reduction targets

Organisations are scrambling to meet net zero emissions targets by 2050, and are sometimes tempted to set aspirational goals without knowing how they are going to get there. This is an area of particular concern right now. Reduction targets and pathways are capable of genuine intention, but they can be deemed misleading if they are not based on reasonable grounds.

### Standards for truthful labelling of products and services

Labelling products as sustainable, ethical or green has moved from being a broad to a more defined and higher standard of conduct. The Commerce Commission acknowledges that consumers are increasingly considering the environment when making purchasing decisions and has released a set of guidelines governing environmental claims. The FMA has recently said that it is "sharpening its focus in this area [greenwashing] and there are broader policy and consumer tailwinds for claims to be articulate, accurate and meaningful". It's notable that in the same media release the FMA referred to response to Russian actions in Ukraine, making it clear the concern extends to ethical and sustainability claims in addition to climate.

### Enterprise branding

Consumer protection regulators, and environmental activists are scrutinising greenwashing in corporate brand advertising campaigns too. Even if the specific statements are technically correct, the overall impression about the business can be misleading. Perhaps the high point of this was in October 2022 when the UK Advertising Standards Authority banned two HSBC advertisements promoting its climate change response, for omitting reference to the HSBC's continued financing of fossil fuel projects and links to deforestation.

### Disclosure in offering documents, financial reports and accompanying narrative

Legally required disclosures present a particular area of risk, because the content is often prescribed. The obvious example is the new mandatory framework for climate-related disclosure (CRD) under Part 7A of the Financial Markets Conduct Act 2013 (FMCA). But other entities may have existing requirements to assess what impact climate change has on their financial statements under current Australian and New Zealand Accounting Standards. In addition, those making regulated offers under the FMCA may need to address physical and transitional climate impacts, and also risk statements in any public offering documents they may have. And the disclosure under different regimes by the same entity e.g. CRD, financial statements and risk descriptions in product disclosure statements, needs to be able to be reconciled.

At the same time, businesses should avoid the temptation to partake in "greenhushing", the latest trend overseas where issuers simply expunge all references to ESG or climate issues. That will not work for those subject to mandatory reporting requirements. But even for others, climate-related impacts or ESG risks to their business may well be material to prudent, but non-expert, investors.

## What can organisations do to improve their ESG performance?

Consider the seven points below when approaching ESG due diligence, governance, and claims.

1. The ESG governance message needs to come from the top. If it's not yet on your agenda, then you're already behind. At the same time, it needs to cascade down to the frontline.

2. Make reporting and disclosure on ESG as important as other risks that are already reported and disclosed.

3. Apply the same due diligence processes (and apply them as rigorously) when making non-financial (i.e. ESG) claims as you would for financial claims.

4. Ensure that aspirational policies/claims are underpinned by detailed programmes that show you can reasonably believe that the policies and claims will be achieved – that they are not "pie in the sky".

5. Stand in the shoes of investors and customers to evaluate what they would expect the claim to mean.

6. Listen to your customers, investors and your people closest to them – do they support or criticise your actions in this area? Also consider how they and your suppliers are likely to be affected.

7. Know your skills or knowledge gaps – if you need more awareness on this topic and the consequences it can have on you and your business, ask your legal team for an education session. Make sure you also have expertise in place as well.

## Four key actions for every leadership team's 'to do' list in relation to ESG claims

1. Identify all your current ESG-related claims made not only in mandatory disclosure (e.g. annual reports, CRD, product disclosure statements and disclose register entries), but also product names and promotional material e.g. on websites, in press releases and advertisements.

2. Undertake a risk assessment of all existing claims against regulator guidance/principles:
   - Be truthful and accurate
   - Be specific
   - Use plain language
   - Do not exaggerate
   - Make information easy to locate and access
   - Remember the overall impression counts, and technical accuracy is not enough if an ordinary investor would be misled
   - Clearly explain and substantiate your claims – e.g. do you have reasonable grounds for a claim? Do you have a plan of action that gives reasonable grounds to believe future claims will be achieved?
   - Be clear how you will measure performance and achieve the claim.

3. If past ESG claims have resulted in misleading or confusing customers, consider options for customer redress - and then take action promptly to address both the past and the future.

4. For the future, ensure you are clear on what your position is, and that future claims meet the tests above.

# Stories for connection

The "Storybook" initiative (run as an extension of the Who Did You Help Today Trust's Mothers Project) is getting children's books into the hands of tamariki and helping maintain connection between imprisoned mothers and their children.

The Mothers Project, run by the Who Did You Help Today Trust (WDYHT), has been sending volunteer lawyers into women's prisons in Aotearoa New Zealand since 2015. The aim of Mothers Project is to help maintain positive and meaningful connections between imprisoned mothers and their tamariki, as research has shown this to have benefits for both mother and child. Our volunteer lawyers use their skill sets to help meet this need for connection in all manner of ways, but it can be as simple as making phone calls to whānau members, caregivers or Oranga Tamariki, or helping the mother engage her own family lawyer or explaining aspects of the family court process.

"Most of the mothers we meet are finding their separation from their tamariki distressing and are looking for ways to connect with their children", says Stacey Shortall (Partner at MinterEllisonRuddWatts and Founder of WDYHT).

"We developed Storybook as a sister initiative to Mothers Project as another means by which mother and child can stay in relationship."

Storybook volunteers attend Auckland Region Women's Corrections Facility once a month with a range of children's picture books so that the Mums can choose something appropriate to their child's age and interests. With the assistance of the volunteers, the Mum makes a recording of herself reading the book aloud which is transferred onto a USB flash drive. The child then receives the book, the recording and a card from Mum.

"As well as a means of connecting mother and child, Storybook aims to foster a love of books and encourage literacy (for both mothers and children)" says Trust Manager, Sarah Jack (herself an ex-lawyer and current Mothers Project and Storybook volunteer).

"Many of the wāhine we meet have literacy challenges and the Storybook volunteers are very sensitive to this, encouraging a "practice run" before we record and helping Mums as needed. We are fortunate to have volunteers who are passionate about books and reading to children."

The Storybook project has had wonderful feedback from Ara Poutama Aotearoa – Department of Corrections and whānau alike. Receiving a book and hearing Mum's voice lets children know that Mum is still thinking of them despite their physical separation. The project also gets children's books into households that may not otherwise have a lot of books.

If you would like to support Storybook, you can donate a children's picture book from a list of suggested authors and titles here, or if you have a favourite title that you think would be great for a Mum to read aloud to her child, please feel free to choose that.

**You can either:**

- purchase a book online at https://shop.timeout.co.nz/. Choose the option to "Click and Collect" and include a note in the "notes" section that the book is for the Storybook project (or purchase a book in person at Time Out Bookstore in Mt Eden, Auckland and ask them to put it aside for the Storybook project);
- purchase a gift voucher at Vouchers (timeout.co.nz). Choose the option to "Click and Collect" and include a note in the "notes" section that the book is for the Storybook project;
- purchase a book from any book seller and drop it off at MinterEllisonRuddWatts reception in Auckland or Wellington; or
- make a donation at "Who Did You Help Today Trust - Givealittle."

Mothers Project and Storybook are initiatives of the Who Did You Help Today Trust (CC53191). If you are interested in volunteering for any of its initiatives (as an individual or a workplace), or would like to support in another way, please contact the Trust Manager at trustmanager@whodidyouhelptoday.org or visit whodidyouhelptoday.org and mothersproject@whodidyouhelptoday.org for more information.

MinterEllisonRuddWatts is taking an active role in Aotearoa New Zealand's sustainability journey.

We are passionate about helping to shape Aotearoa New Zealand's future, and we believe in using our collective skills, time and resources to make a positive impact for our people, our clients, our communities and our planet.

Sustainable Impact is a collection of articles highlighting Aotearoa New Zealand's progress towards a sustainable future, curated by our firm. To discuss any of the themes or topics in this issue, please get in touch.

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