

**Name of submitter:** Dr Jo Horrocks

**Organisation:** Natural Hazards Commission Toka Tū Ake

**Email:** [resilience@naturalhazards.govt.nz](mailto:resilience@naturalhazards.govt.nz)

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Tēnā koutou,

Thank you for the opportunity to submit on the **Resource Management (Consenting and Other System Changes) Amendment Bill** (the Bill).

The Natural Hazards Commission Toka Tū Ake supports the intent of the Bill, in particular the provisions related to natural hazards and emergencies.

In this submission, we are recommending some changes to strengthen the natural hazard and emergency provisions to ensure the Bill achieves its purpose and intent and reduces the impacts of natural hazards on people, property and the community:

1. Align section 106A of the Bill with section 7(1) of the Resource Management Act 1991 (RMA) to have regard to the effects of climate change.
2. Widen the scope of section 106A to manage any risk, including economic, environmental, social or cultural risks, in accordance with the purpose of the RMA.
3. Align sections 106(1)(a) and 106A(1)(a) to ensure a consistent approach between subdivision and land use consents.
4. Clarify the meaning of ‘significant risk’ in section 106A.
5. Consider whether the current drafting of section 106A(2) allows sufficient flexibility so a finding of significant risk on one of the four grounds in that sub-section may be sufficient to support a finding of risk for the assessment as a whole.
6. Clarify the parameters of ‘likelihood’ in section 106A(2).
7. If it is not possible to clarify the meaning of ‘significant risk’ (recommendation 4), amend clause 106A(3) to remove reference to ‘significant’.
8. Develop direction on when Emergency Response regulations are ‘necessary’ or ‘desirable’ (s331AA(2)(a)).
9. Include an additional provision that requires councils to develop a ‘land use recovery plan’.

Should the Select Committee have any questions about our submission or want further information, we are available to speak to our submission. Please feel free to contact us at any time.

We thank the Committee for your consideration of our submission.

Nāku noa, nā,



Dr Jo Horrocks - Chief Resilience Officer

## About the Natural Hazards Commission Toka Tū Ake

The Natural Hazards Commission Toka Tū Ake (NHC) is a Crown Entity responsible for providing insurance to residential property owners with a current contract of fire insurance over their residential property against the damage from natural hazards covered by the Natural Hazards Insurance Act 2023 (NHI Act). NHC provides limited cover for:

- building and land damage from earthquakes, landslides, tsunami, volcanic and hydrothermal activity, and fire following these hazards, and
- land damage only from storm or flood and fire following these hazards.

## Why NHC is providing this submission

NHC's functions, as set out in the Natural Hazards Insurance Act 2023 (the NHI Act), include to facilitate research and education; and to contribute to the sharing of information, knowledge, and expertise (with the Crown, public and private entities, and the public generally), including in relation to:

- natural hazards and their impacts,
- community resilience to natural hazards and
- planning for, and recovering from, natural hazards.

We invest in research and education about natural hazards and are using and translating this information to support evidence-based, risk-informed policy and planning.

By virtue of being the 'first loss' insurer for residential damage resulting from natural hazards listed in the NHI Act, NHC also carries significant financial risk on behalf of the Crown, meaning that NHC has a strong interest in reducing risk from, and building resilience to, natural hazards in New Zealand.

Our focus is on ensuring long-term resilience by encouraging building in areas that will remain safe and sustainable for future generations. Developing in zones at high risk from natural hazards exposes future owners to complex and potentially hazardous situations, which could compromise the longevity and safety of these developments.

The impacts of climate change will increase the occurrence and severity of natural hazards covered by the NHC Scheme. Therefore, we support clear, risk-based policy frameworks that reduce natural hazard risks, allow for resilient and sustainable land use planning to manage risk, and support community education and resilience towards natural hazards.

Our advice and recommendations are not intended to impede much-needed development, but to highlight the importance of careful and precautionary choices to ensure resilient and sustainable communities in the future.

## **NHC supports the intent of the natural hazard and emergency provisions of the Bill**

In our view, the following sections of the Bill will contribute to the long-term resilience of communities by ensuring that buildings and infrastructure are located in areas that are safe:

- Section 86B(3)(f) - proposing that rules in proposed plans relating to natural hazards have immediate legal effect will result in faster risk reduction outcomes for communities.
- Section 80E(2) - adding natural hazards to the list of provisions that may be included in an Intensification Planning Instrument addresses a gap in the current Medium density Residential Standards.
- Section 108AA – referencing section 106A in this section confirms the link between the conditions of resource consents and the consent authority’s ability to refuse land use consent in certain circumstances.
- Section 149N(8)(a) – the inclusion of sub-clause (v) will reduce the time for natural hazard provisions to come into effect and will result in faster risk reduction outcomes for communities.

## **NHC recommends the following changes to strengthen the Bill’s impact on resilience, response and recovery**

### **Section 106A Consent authorities may refuse land use consents in certain circumstances**

We support the intent of Section 106A to allow land use consents to be refused if significant risk is created or increased. We have identified some ways in which the section can be changed to, in our view, better reflect that intent:

#### **Recommendation 1: Align section 106A of the Bill with section 7(1) of the Resource Management Act 1991 to have regard to the effects of climate change.**

Currently section 106A does not explicitly include the effects of climate change, (as per s7(i) of the Resource Management Act 1991 (RMA), where particular regard shall be had to the effects of climate change). Aligning section 106A to section 7(i), it will make it clear that the management of significant risks from natural hazards should include climate change as an exacerbator of many of the natural hazards.

#### **Recommendation 2: Widen the scope of section 106A to manage any risk, including financial, environmental, social or cultural risks.**

Section 6(h) of the RMA requires the management of significant risks from natural hazards is recognised and provided for. Section 106A is narrower than the existing 6(h) of the RMA, limiting the interpretation of ‘management of significant risk’ to ‘material damage’ to land, structures, health and safety. Specifying the management of significant risk this way excludes other possible consequences such as economic, environmental, social or cultural consequences and introduces inconsistency into the legislation, which, by extension, excludes a significant part of the purpose of the RMA

**Recommendation 3:** Align section 106(1)(a) with 106A(1)(a) to ensure a consistent approach between subdivision and land use consents.

Section 106A (Consent authorities may refuse land use consents in certain circumstances) provides a stricter test than for s106 (Consent authority may refuse subdivision consent in certain circumstance), as existing and new risk is managed differently.

For example, in s106(1) subdivision consent may be refused if (a) there is a significant risk from natural hazards, versus s106A(1) a land use consent may be refused if it (a) creates a significant risk from natural hazards if there is no existing risk from natural hazards; (b) increases an existing risk; (c) increases an existing significant risk.

In addition, s106(2) has a wider scope for consent conditions than 106A, which will lead to inconsistent approaches to consent conditions and requirements. These provisions should be aligned to achieve consistency in the legislation, or, if there is a reason to apply different approaches, the reason for this should be clear.

**Specific comments on the current drafting of s106A.**

We also have the following specific comments on, and accompanying recommended changes to, Section 106A as follows:

Provision (emphasis added)	Commentary	Recommendation
(1) A consent authority may refuse to grant a land use consent, or may grant the consent subject to conditions, if it considers that the activity for which consent is sought will— (a) create a <b>significant risk</b> from natural hazards if there is no existing risk from natural hazards; or (b) increase an existing risk from natural hazards to a <b>significant risk</b> ; or (c) increase an existing <b>significant risk</b> from natural hazards.	We support the intent of Subsection (1) as it enables councils to consider the risk created or exacerbated by the proposed development. However, significant is not defined, which could lead to inconsistent decisions on what is significant, and a subsequent increase in risk. For example, it is unclear if the risk to be assessed is significant now, or in the future.	<b><u>Recommendation 4:</u></b> <b><u>Clarify ‘significant risk’</u></b>  Include a definition or metric for determining ‘significant risk’ in the Bill; or ensure that other national direction provides guidance on how ‘significant’ is to be determined.
(2) For the purposes of subsection (1), an assessment of the risk from natural hazards requires a combined assessment of—	We support the intent of Subsection (2) to assess natural hazard risk. However, the combined assessment criteria requires an ‘and’ to be met, which could be interpreted as	<b><u>Recommendation 5:</u></b> <b><u>Combined assessment requirements</u></b>  Consider whether the current drafting of this clause leaves sufficient flexibility to allow a

Provision (emphasis added)	Commentary	Recommendation
<p>(a) the likelihood of natural hazards occurring (whether individually or in combination); and</p> <p>(b) the <b>material damage to land</b> in respect of which the consent is sought, other land, or structures that would result from natural hazards; and</p> <p>(c) whether the proposed use of the land would accelerate, worsen, or result in <b>material damage</b> of the kind referred to in paragraph (b); and</p> <p>(d) whether the proposed use of the land would result in adverse effects on the safety or health of people.</p>	<p>meaning all four criteria are required to be met. Yet depending on the scale of each, if two are met (e.g. (b) and (c)), the assessment of risk should still be considered as meeting the threshold, despite not meeting (d). Therefore, even if the assessment finds a high risk on only one of the grounds, it should be possible to lead to a finding of significant risk. We would propose redrafting this clause to make it clear.</p> <p>In addition, there is no guidance provided as to what likelihood should be considered.</p>	<p>high risk on one or two of the four grounds to allow for a finding of risk for the entire assessment.</p> <p><b><u>Recommendation 6:</u></b> <b><u>Clarify the parameters of ‘likelihood’</u></b></p> <p>Include parameters or a metric for determining likelihoods in this section; or ensure that other national direction provides guidance on what likelihood(s) are to be considered.</p>
<p>(3) Conditions imposed under subsection (1) must be—</p> <p>(a) for the purposes of avoiding or mitigating the effects of any <b>significant risk</b> from natural hazards; and</p> <p>(b) of a type that could be imposed under section 108.</p>	<p>We support the intent of Subsection (3). However:</p> <ul style="list-style-type: none"> <li>• The clause should allow for conditions to be imposed where risk is not considered ‘significant’, but where the risk could still be managed, particularly if that risk can increase over time.</li> <li>• As ‘significant’ is not defined, it is unclear if this clause accounts for risks that will become significant in the future, or just those that are significant now</li> </ul>	<p><b><u>Recommendation 7:</u></b> <b><u>Amend section 106A(3) if Recommendation 4 cannot be met</u></b></p> <p>If Recommendation 4 cannot be met, then Section 106A(3) be amended as follows: (3) Conditions imposed under subsection (1) must be— (a) for the purposes of avoiding or mitigating the effects of any <b>significant</b> risk from natural hazards; and (b) of a type that could be imposed under section 108.</p>

### **Section 331AA Emergency response regulations**

We support the intent of new section 331AA to allow for a regulation making power through Orders in Council for responding to and recovering from a declared emergency. In order to enhance certainty for Councils on when this would be actioned, and to enable better planning, we recommend including:

- legislative direction on when and how this power may be exercised, and
- a requirement for Councils to develop a ‘land use recovery plan’, developed before an event occurs, to aid post-event recovery.

**Recommendation 8: Develop direction on when Emergency Response regulations are ‘necessary’ or ‘desirable’ (s331AA(2)(a))**

Having a clear process for determining whether regulations are necessary, or desirable would benefit being supported by risk thresholds. These would ensure that there is a robust and transparent approach to putting risk-based recovery policies into practice. For example, a determination that it is ‘necessary’ to make Emergency Response Regulations may be triggered if a particular threshold of damage is reached, with another threshold for ‘desirable’.

Having prepared risk thresholds before an event occurs will save time in planning and speed up recovery, as setting thresholds can be complicated and time consuming. NHC has developed risk tolerance thresholds (e.g., acceptable, tolerable, intolerable) and criteria for land use recovery planning, based on learnings from the North Island Severe Weather Events and the Kaikōura earthquake. NHC is happy to discuss this further and to provide these if that would be helpful.

**New provision for land use recovery plans**

**Recommendation 9: Include an additional provision that requires councils to develop a ‘land use recovery plan’**

Requiring a land use recovery plan to be developed will allow councils to understand what land uses and planning provisions may need to change after a natural hazard event, to enable a faster, more efficient recovery. The benefits of having a land use recovery plan include:

- reducing consultation time after an event as consultation with Māori and all other stakeholders would have been completed at the time of preparation of the land use recovery plan
- avoid unnecessary, wide ranging changes to planning provisions as the land use recovery plan would set expectations for what regulations and changes would be required

An example of a provision that could be used as a basis to require a land use recovery plan can be found in the repealed s173 of the Natural Built Environment Act 2023.

NHC has developed a methodology to assist councils with developing these types of plans, which could provide the guidance required to develop land use recovery plans. A summary of the methodology can be provided for your consideration. Please let us know if that would be helpful.