

3 February 2023

Committee Secretariat
Environment Select Committee
Parliament Buildings
Wellington

To the Select Committee,

Thank you for the opportunity to submit on the Natural and Built Environment Bill (NBE Bill) which, together with the Spatial Planning Bill (SP Bill), provides the opportunity to improve how we can reduce risks from natural hazards by locating the right development in the right places.

Toka Tū Ake EQC **supports the intent of the NBE Bill**. However, we consider that the Bill could be improved to provide greater clarity and certainty on how natural hazard risks should be managed.

We would like to appear before the Committee to speak to our submission.

Why is Toka Tū Ake EQC submitting on the Natural and Built Environment Bill?

Toka Tū Ake EQC is a Crown entity responsible for providing insurance to residential property owners against the impact of natural hazards, investing in and facilitating research and education about natural hazards and natural hazard risk, and incentivising and/or implementing methods of reducing or preventing natural hazard damage.

The contingent liability associated with natural hazard risk in New Zealand is high and is carried, in large part, by Toka Tū Ake EQC on behalf of the Crown (modelled at an estimated \$1.36 trillion). We therefore have a particular interest in reducing risk from, and building resilience to, natural hazards in New Zealand.

We deliver on this part of our role by financially supporting research and science (approximately \$20 million per year) and combining it with past claims experience to invest in loss modelling. We share our insights with decision makers – homeowners, local councils, central government agencies and legislators – to reduce the impact of natural hazards on people and property in the future.

New Zealand's natural hazard risk profile is becoming more complex as the effects of climate change become apparent. As a country, we will be exposed to more frequent and more severe weather events as a result. Managing the impacts of climate change and natural hazard risk can, and should, be complementary – mitigating the impacts of one can improve outcomes for both.

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For many New Zealanders, homes are their largest financial asset. If they can no longer be insured due to natural hazard risk, or that insurance becomes unaffordable, then the consequences for people are potentially severe. Insurance withdrawal can be seen as a partial failure of planning system, and keeping natural disaster insurance accessible and affordable to all New Zealanders is one of the key drivers of the EQC scheme. This is why we also invest in research and resilience, and why it is so important to ensure resilience is an integral part of the reform of the resource management system.

Toka Tū Ake EQC submission on the Natural and Built Environment Bill

We have provided detailed commentary below on what we see as the more significant issues for the Committee to consider. We have also have made a number of more minor and technical recommendations, provided in the table below.

Our key recommendations are:

1. Clause 5 – reducing risks from natural hazards is a fundamental issue of people’s health and safety. Where there is a conflict between outcomes to be resolved, we submit that this should be prioritised over other well-being focused outcomes. Additional direction on resolving conflicting outcomes within the Bill itself would be preferable.
2. Part 3 – the National Planning Framework (NPF) needs to be developed as quickly and comprehensively as possible.
3. Clause 7 definition of natural hazard – natural hazard and contaminated soil should be defined separately, and we recommend noting sea level rise explicitly in the definition of a natural hazard.
4. Clause 6(2)(a) – amend wording from “favouring caution” to “taking a precautionary approach”.

These submission points are outlined in more detail below.

System Outcomes

Toka Tū Ake EQC strongly supports the inclusion of natural hazard risk reduction as a system outcome in clause 5(b)(iii). We consider that this will help to elevate the importance of managing natural hazard risks with decision makers and lead to better overall outcomes about where and what kinds of development is enabled.

However, we have concerns about how potentially competing outcomes will be managed. Clause 5 includes a wide range of outcomes, all of which appear to be given equal weight. In practice, decision makers will be faced with the need to trade-off and give different weight to achieving different outcomes – for example, in some areas providing for an ample supply of land for development will conflict with reducing risks from natural hazards and the effect of climate change.

We are concerned that the Bill does not provide sufficient guidance for how these conflicts should be managed. We consider that a hierarchy of outcomes could be an appropriate way to resolve these conflicts. Some of the

outcomes specified in clause 5, while important in their own right, are primarily focused on improved well-being. In contrast, **reducing risks from natural hazards is a fundamental issue of people's health and safety and we submit that this should be prioritised over other well-being focused outcomes where there is a conflict to be resolved.**

Related to the system outcomes point above, the National Planning Framework (NPF) is clearly intended to help provide greater clarity and guidance on resolving conflicts. We support the intent of the NPF and that it will provide direction for each system outcome, as well as guidance on resolving conflicts.

However, there would seem to be considerable risk in passing the Bill in its current form, and relying exclusively on the NPF for guidance on resolving conflicts. Given that the likely form and content of the NPF is still unknown, and will remain unknown until after the Bill is passed, it is difficult to have confidence that it will achieve this intent. We would therefore consider that some **additional direction on resolving conflicting outcomes within the Bill itself would be preferable**, even if this were subsequently expanded on and further clarified through the NPF.

If the current drafting remains, and direction is not included in the Bill itself, we would emphasise the need for the NPF to be explicit and prescriptive about how conflicts should be managed, to ensure there is a consistent approach taken nation-wide, and that the more fundamental system outcomes (e.g. environmental sustainability and people's safety) are appropriately prioritised.

We note that the NPF is intended to incorporate existing national direction, while also developing new content for outcomes where there is currently an absence of direction. Currently there is no national direction on natural hazard risk management, and this has contributed to poor planning decisions that have enabled development in inappropriate locations. The consequences of these poor decisions can be significant, putting people and their homes at risk, and are long lasting, as long as the life of the homes and buildings that are constructed. We have seen the evidence of this with recent flood events in Nelson and Auckland, with some properties impacted by repeated landslides and flooding.

Any delay in developing the NPF, or if transitioning existing direction is prioritised as a first step ahead of developing new content, will mean that there is an increased likelihood of development continuing in areas that are at high risk of natural hazards. We would therefore **strongly emphasise the need for the NPF to be developed as comprehensively as possible**, to reduce the possibility of these poor outcomes. This is particularly important given the 10 year time frame to implement the new system.

Definition of natural hazard

We note that the current RMA definition of natural hazard has been extended to also include naturally contaminated soil in the new interpretation clause 7. It is unclear why these two things have been combined. We consider that they are dissimilar enough that **natural hazard and naturally contaminated soil should be defined separately** – apart from sea level rise, a natural hazard is not continuous, but is rather an individual event, whereas soil contamination is an ongoing condition. The response and treatment of the two are therefore considerably different, and we do not consider that the references to natural hazard throughout the

rest of the Bill are always applicable to contaminated soil. We would also question why soil contamination is included, while air and water contamination is not.

Finally, we question whether sea level rise should also be considered as a natural hazard. It may be that this would potentially fall under the wording of a “water-related occurrence”, provided it was likely to “adversely affect human life, property, or other aspects of the environment” – if so, for the sake of clarity we would **recommend noting sea level rise explicitly in the definition of a natural hazard.**

Precautionary principle

Clause 6(2)(a) states that:

(2) If, in relation to making a decision under this Act, the information available is uncertain or inadequate, all persons exercising functions, duties, and powers under this Act must favour —

(a) caution; ...

The intent of introducing the term “caution” is unclear. It would appear to carry a relatively broad meaning, and implies that in the absence of adequate information, a decision maker should proceed, albeit with care. In contrast, the well-understood “precautionary principle”, as explained in Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) establishes that “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects.” It continues by affirming that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent serious or irreversible damage. In contrast, ‘caution’ means you can proceed with care. **We recommend amending this reference to “favouring caution” to “taking a precautionary approach” or similar wording.**

Other issues

Due to the scope and length of the Bill, other issues we have identified with specific clauses and recommended actions are included in the table below.

Yours sincerely



Tina Mitchell
Te Tumu Whakarae | Chief Executive

Theme	Clause	Relevant wording	Issue	Recommendation
System outcomes	5(b)(iii)	...the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change	Noting that environment includes both natural and built, we support this outcome. We presume all of these outcomes are equal, so how will decision makers weigh up an action that is clearly positive for one outcome, but compromises another? As natural hazards (and the impacts of climate change) can result in loss of life, decreased well-being and loss of property, we recommend that natural hazards and the effects of climate change are given priority above other outcomes.	Provide guidance on how competing outcomes are prioritised. Priority should be given to natural hazards and climate change, due to the risk to life, well-being and property.
System outcomes	5(c)(iv)	...an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities	Well-functioning urban and rural environments should also be sustainable as well as resilient. Clause should also include health and safety (as per current s5 RMA).	Suggest rewording as follows: ... An adaptable, <u>resilient and sustainable</u> urban form <u>that provides for people's health and safety</u> , with good accessibility...
Decision making principles	6(1)(e)	...manage the cumulative adverse effects of using and developing the environment	Assume this includes the adverse effects of cumulative natural hazards at a location e.g. a location that is susceptible to riverine flooding, liquefaction, and has an active fault.	Support this provision
Decision making principles	6(2)(a)	If, in relation to making a decision under this Act, the information available is uncertain or inadequate, all persons exercising functions, duties, and powers under this Act must favour— (a) caution;	The precautionary principle was applied under the RMA, which we support rather than “caution”. Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC) establishes that “parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects.” It continues by affirming that a lack of full scientific certainty should not be used as a reason for postponing measures to prevent serious or irreversible damage. In contrast, caution means being careful which is means you can proceed with care.	Replace 'favour caution' with 'taking a precautionary approach' or similar wording.
Decision making principles	6(2)(b)	...a level of environmental protection that is proportionate to the risks and effects involved.	Assume that 'environmental protection' relates to the interpretation of 'environment', i.e. it includes the natural environment; people, communities and built environment; and social, economic and cultural	Clarify what 'environmental protection' includes

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			conditions? Is this protection <u>of</u> the environment, or protection <u>from</u> the environment, or both?	
Interpretation	7 – natural hazard	(a) means any atmospheric or earth- or water-related occurrence... (b) includes soil that contains concentrations of naturally occurring contaminants...	Part (a) does not explicitly include climate change, which is important for effects from sea level rise (as well as being an exacerbator of coastal hazards); Contaminated soil should not be included as a natural hazard, as their attributes are quite different. For example, a natural hazard event is not continuous, but event focused, whereas soil contamination is there all the time, regardless of a natural hazard event. The treatment options are therefore different. If soil contamination is included, why are other similar contaminants not included, such as air and water contamination?	Reword definition of natural hazard to include sea level rise and other climate related exacerbators of natural hazards; Move (b) into its own definition, or if retained, make clarify that the two parts of the definition are separate by replacing the 'and' after (a) with 'or'.
Interpretation	7 – risk	has the meaning given in section 4 of the Civil Defence and Emergency Management Act 2002	We consider this definition is too narrow. A more appropriate definition could use the IPCC framework and the National Disaster Resilience Strategy definition of disaster risk.	Amend to "The potential loss of life, injury, or destroyed or damaged assets (including the environment) which could occur to a system, society or a community in a specific period of time, determined as a function of hazard, exposure, vulnerability and capacity"
Interpretation	7 – well-being	the social, economic, environmental, and cultural well-being of people and communities, and includes their health and safety	We support the inclusion of health and safety, to broaden this from responsibilities under the Building Act or Civil Defence legislation and make it a planning responsibility as well.	Support this provision.
Duty to avoid, minimise, remedy, offset, or provide redress for adverse	14 / 61	14 – Every person has a duty to avoid, minimise, remedy, offset, or take steps to provide redress... 61 – The effects management framework is a means of	This hierarchy doesn't work for natural hazards, where first we want to avoid, then minimise (reduce) (especially in already developed areas with risk). It is very difficult to 'remedy' or 'offset' a natural hazard (i.e. can't stop an earthquake or intense rainfall, but can reduce the consequences of them through risk-based planning, avoiding active faults, setbacks, etc).	Clarify that not all options are applicable for natural hazards.

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effects / Effects management framework		managing adverse effects as follows...		
Certain existing uses protected in relation to land	26(2)(b)	...the reduction or mitigation of, or adaptation to, the risks associated with— (i) natural hazards: (ii) climate change:	Will be very dependant on how strong the NPF is at directing this clause to extinguish existing use rights. Will it be time-bound for climate impacts e.g. 'imminent'? This is only relevant for the natural environment, not the built environment. The implications of this need further consideration.	Consider if this clause should also include the built environment.
Purpose of NPF	33	(a) providing directions on the integrated management of the environment... (b) helping to resolve conflicts about environmental matters, including those between or among system outcomes...	We support this clause to help ensure a consistent approach to managing all hazards and risks across regions but consider further detail would be helpful here. In particular, some more explanation on how conflicts should be managed, and on how/who determines what is nationally significant. See comments on clause 5.	Natural hazards are a life safety and/or property issue, therefore needs to take priority over other system outcomes. Guidance required on prioritising outcomes, and clarity on how 'nationally significant' is determined.
Targets	47-53		We are unclear about whether targets could or should be used for reducing natural hazard risks (under clause 38(2)?)	Clarification of use of targets.
NPF must provide direction on certain matters	58	The national planning framework <u>must</u> include content that provides direction on...	As natural hazards affect life safety, well-being and property, include an additional subclause to reflect this importance.	Add (f) managing existing and future risks from natural hazards and the effects of climate change.
Standards, methods, and requirements	80	The national planning framework may provide for standards, methods, or requirements in relation to...	Support, as this could be used for setting regulations around assessing natural hazard risk.	Support this provision.
Adaptive management approach /	86 / 110	86 – The national planning framework may direct a plan to	We support these provisions, but note that 'adaptive management approach' is not defined.	Ensure guidance is developed on adaptative management (or update existing guidance)

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Adaptive management approach in plan		direct the use of an adaptive management approach... 110 – A plan may direct the use of an adaptive management approach under section 233 if...		
What plans must include	102(2)(b)	manage the effects of using and developing the environment, including cumulative effects...	We support the requirement to consider cumulative effects – we assume this will also include effects of development on/to climate change and natural hazards.	Support this provision.
What plans must include	102(2)(f)	provide processes to deal with cross-boundary issues...	We consider this will be helpful to manage hazards that are located across local authority boundaries e.g. active faults, coastal erosion/sea level rise, tsunami inundation zones.	Support this provision.
Plans must be consistent with RSSs	104(b)	there is a <u>significant change</u> in circumstances or in the physical environment since the regional spatial strategy was developed...	Support this provision, but we are unclear on how 'significant' change will be measured.	Provide guidance on how 'significant change' could be assessed.
What plans may include	105(d)	include provisions that enable a local authority to respond to, or contribute to, the immediate or long-term recovery from an emergency event...	Support, as this will allow for post-event recovery planning for land use	Support this provision.
Plans must be consistent with RSSs	109		Note this appears to be a repeat of clause 104	Remove duplicate clause.
Purpose and effect of rules	117(7)	Rules may... require persons undertaking the work to achieve performance criteria additional to, or more restrictive than, those specified in the building code.	Support the intent to allow for flood resilience to be undertaken to a higher standard than that in the Building Code	Support this provision.
When rules have legal effect	130(4)	A rule in a proposed plan has immediate legal effect if...	We consider this should include reference to intolerable (or similar) risk, or imminent risk.	Include additional clause (f) 'reduces imminent risk from natural hazards' or similar wording.

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Land subject to controls	139(1)	An interest in land must be treated as not being taken or injuriously affected because of a provision in a plan, unless the contrary is expressly provided for in this Act...	How would this apply when natural hazard information and/or risk is managed through new planning provisions, due to imminent risk?	Clarify how this would be implemented when land is threatened by natural hazard risk, or identified as being high risk in the future (to allow for managed retreat or DAPP options).
Land subject to controls	139(5)	...activity would not be significant on the natural and built environment or on any person other than the applicant.	Clause is focused on the effects of the activity on the natural and built environment, not the effects of the environment on the activity (e.g. a hazard on an asset).	Suggest this clause also includes the effects of the environment on the activity.
Jurisdiction of Environment Court over land subject to controls	140(3)	...the court may assess and take into account the risks or future risks (if any) identified as relevant to the land in question.	Support, as this will allow both existing and future risks to be taken into account	Support this provision.
Power to acquire land	142	A local authority may, by agreement under the Public Works Act 1981, acquire land...	Support allowing at risk land to be acquired through the Public Works Act	Support this provision.
Activities may be permitted with or without requirements	156(3)	Conditions or requirements may include...	Depending on content of NPF, could require all risk assessments to be undertaken by qualified persons and for agreed risk reduction measures to be undertaken as per risk assessment report.	Ensure the NPF requires risk assessments to be undertaken, referring to this clause.
Circumstances when consent conditions can be reviewed	277(3) / (4)	A consent issued by a territorial/regional consent authority may also be reviewed....to reduce risks from natural hazards...	Support allowing for climate changes or new hazard information to be incorporated into consents (i.e. review/change conditions based on new information)	Support this provision.
Decisions of review of consent conditions	281(7)	A territorial consent authority may cancel a land use consent...	Support cancellation of consents if they can't comply with rules or NPF framework relating to natural hazards and climate change	Support this provision.

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Decisions of review of consent conditions	281(8)	A regional consent authority may cancel a regional consent...	Support cancellation of regional consent if significant adverse effects from natural hazards / climate change can't be rectified to a tolerable level.	Support this provision.
Minister may call in matter that is or is part of proposal of national significance	329(3)(e)	...the Minister must have regard to—(e) whether it has the potential for significant or irreversible effects on the environment	Need to consider the effects if the environment on the matter, e.g. effect of hazards on the matter.	Reword (f) or add a new clause e.g. 'whether there are significant natural hazard or climate change risks that could affect the matter'
Purposes of esplanade reserves and esplanade strips	604(a)	to contribute to the protection of conservation values by, in particular, — (v) mitigating natural hazards	Support this provision, to provide a buffer for river, sea or lake inundation	Support this provision.
Requirement for protection against natural hazards	625(a)	to protect land that forms part of the subdivision against natural hazards from any source...	Support provided the protection is appropriate e.g. not setting up a pathway of continued investment in protection. Protection measures should be sustainable in the long term, and residual risk managed.	Include a subclause to ensure protection measures are sustainable in the long term i.e. the life of the subdivision.
Matters for which regional councils / territorial authority and unitary authorities are responsible	644(a) / 646(a)	644(a)(v) – mitigating or reducing the risks arising from natural hazards... 646(a)(i) – mitigating or reducing the risks arising from natural hazards...	This the status quo, which with clause 646 has provided a grey area for hazard information. Responsibilities should be clear between the regional/unitary authorities and territorial authorities for hazard management. Currently, many Regional Policy Statements outline the responsibility of the Regional/territorial authority, but this could be made consistent by including a subclause outlining which authority will do what.	Include subclauses in both clauses, clarifying the roles and responsibilities for regional/territorial or unitary authorities for hazard management
Local authorities and planning committees to	784	If monitoring shows a risk that a local authority or regional planning committee considers is a significant risk...	Significant risk will need to be defined or guidance provided to explain what significant risk is. How does this relate to significant and sufficient significance in the SP Bill?	Provide guidance on how 'significant risk' is to be measured or considered. Ensure that 'significant risk' in this Bill is

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take action in significant risk situations and other circumstances				consistent with how it is used in the Spatial Planning Bill.
Best available information	805	<p>(1) A requirement under this Act to use the best information available at the time is a requirement to use, if practicable, complete and scientifically robust information.</p> <p>(2) If scientifically robust information is not available, the best information may include...</p>	<p>We support requiring the use of best available information, but guidance will be required on what scientifically 'robust' information is, e.g. best practice methodology, peer reviewed, qualified persons.</p> <p>In 805(2), best information could also include Mātauranga Māori if available. We support the use of modelling as information, provided the limitations, assumptions and uncertainties are clearly acknowledged.</p>	<p>Provide guidance required on what scientifically 'robust' information is.</p> <p>Specifically include Mātauranga Māori if available as a subclause in 805(2), and note that modelling in 805(2)(a) should include acknowledgment of limitations, assumptions and uncertainties.</p>
Duty to gather information and keep records	816(4)	(j) records of all natural hazards to the extent that the local authority thinks appropriate for the effective discharge of its functions	This relies on the TA determining what is appropriate. Does this include information the regional council may hold? How does this relate back to clause 805? Could look at requirements under the LGOIMA amendment Bill around LIM information for some wording.	Consider clarifying what information may be included. Could include reference to clause 805.
Emergency response regulations	854(1)	The Governor-General, by Order in Council, may, on the recommendation of the Minister, make regulations (emergency response regulations) for the purpose of...	<p>Support as this will allow for land use recovery/changes in land use in response to an event.</p> <p>It is unclear how this may link to future managed retreat provisions in the proposed Climate Adaptation Act.</p> <p>Note that 'natural hazard event' is a more appropriate term to 'natural disaster', as internationally it's well accepted that disasters are not 'natural' events, it is the vulnerability of communities, infrastructure, etc that makes a disaster. There is a large amount of international literature that argue this point, and the term 'natural disaster' is no longer widely used.</p>	<p>Ensure this clause is connected to any future provisions of a Climate Adaptation Act.</p> <p>Replace 'natural disaster' with 'natural hazard event'.</p>

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Engagement register	Sch.7 cl.15(3)	The following groups, however, do not need to register but are included as having a right to be consulted under this clause...	We are unclear why Government departments and ministries are included, but crown agencies are not.	Amend to include crown agencies in 15(3)(a).
Initiation of urgent process for making plan change	Sch.7 cl.47(2)	The regional planning committee may initiate an urgent plan change process that is outside the 3-yearly reporting cycle if 1 of the following reasons for applying the urgent process is met...	If the natural hazard / environment changes so as to increase risks to 'significant' levels, a plan change could be undertaken under urgency to reduce the risks.	Support this provision.
Incorporation of documents by reference in plans	Sch.12	(1) The following written material may be incorporated by reference in a plan or proposed plan...	We support this provision, as it would allow for risk assessment methodologies to be incorporated by reference e.g. AGS landslide risk assessment methodology; or other guidance.	Support this provision.