

3 February 2023

Committee Secretariat
Environment Select Committee
Parliament Buildings
Wellington

To the Select Committee,

Thank you for the opportunity to submit on the Spatial Planning Bill which, together with the Natural and Built Environment Bill (NBE 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 Spatial Planning Bill**, in particular that Regional Spatial Strategies (RSSs) must include areas that are vulnerable to significant risks arising from natural hazards and climate change, and measures for reducing those risks and increasing resilience.

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

Why is Toka Tū Ake EQC submitting on the Spatial Planning 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, 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 Spatial Planning Bill

Acknowledging that one of the key outcomes of Resource Management reform is to reduce complexity, have clearer roles and responsibilities, and a more efficient planning system, our key issues for Select Committee consideration are:

- Providing advice on risk terminology, to ensure clarity and consistency and to reduce current complexity of the Bill wording;
- Level of detail in RSSs (clause 19);
- Appropriate use of risk information, and the opportunity to not only transfer existing District Plan information over into the RSS development, but also use other information which may be more relevant (noting clause 805 of the NBE Bill);
- Our support in being able to assist Regional Planning Committees (cl64); and
- Our support of Schedule 4(2) and the use of scenarios to develop and evaluate RSS options.

Each of these issues are discussed in the following sections. We have also included a table of our other clause-by-clause secondary submission issues with minor suggested amendments or considerations.

Our key recommendations are:

1. In regard to clause 17:
 - Clarification is needed on if 'areas' refers to just the spatial extent of an area, or if it includes the buildings, people and other assets which are in that area.
 - We support the reference to 'significant risks' in 17(1)(i), however it is unclear if the term 'significant' is interchangeable with 'intolerable' (as used in the National Adaptation Plan), and its relationship with 'sufficient significance' used in clause 18. This needs clarification.
 - Clarification will be required (either through guidance or within the legislation) on:
 - what is 'vulnerable', i.e. buildings, people, cultural assets, infrastructure
 - what 'measures' can be included in RSSs to reduce risks and increase resilience, and how these measures will be applied in RSSs.

- What 'resilience' is, how it can be improved, and how it can be measured.
2. That Clause 18 is reworded so that 'sufficient significance' is replaced with 'importance' or similar (noting other subsequent wording changes may be required), as shown below:

18(1) *A matter is of sufficient ~~significance~~ importance for the purposes of section 16(1)(c)(ii) if the regional planning committee considers that the matter meets 1 or more of the following criteria*

...

(f) the matter relates to a nationally ~~significant~~ important feature or activity:

3. That the precautionary principle is included in clause 19(a) on the level of detail to be included in a RSS, or elsewhere in the Bill, so that it is clear that in the absence of certainty about future risks, a precautionary approach must be taken. We consider that this should be a cornerstone of any approach to spatial planning. Wording from the United Nations Framework Convention on Climate Change (of which New Zealand is a signatory) could be a good basis: *Precautionary is about being prepared for something whose consequences are high but where there is some uncertainty about when it might occur which should not delay action.*
4. That further direction is provided in clause 19 to ensure that the risk assessment process used to inform the RSS is of adequate scale to enable a risk-based approach to any proposed development areas.
5. That Clause 28 (Quality of evidence and other information) is extended to include direction on quality of evidence, similar to Clause 805 in the NBE Bill (principles around best information).

Our key submission points are outlined in more detail below.

Risk terminology

Currently under the RMA, the management of significant risks from natural hazards is a matter of national importance. This is the only level of risk that the RMA explicitly includes, and no national direction has been developed to assist councils in determining what is 'significant'. The National Adaptation Plan (NAP) refers to 'intolerable' risk in regards to natural hazards and climate change (p71, 80, 83 and 120), and the National Planning Framework (NPF) must not be inconsistent with the NAP (NBE Bill Schedule 6, Clause 21). Within the SP Bill, 'significant' and 'sufficient significance' is used, and when combined with 'intolerable' creates a five-tier level of risk framework, which **adds** complexity as to how risks will be managed through the RSSs and the NPF. This complexity is presented in Figure 1.

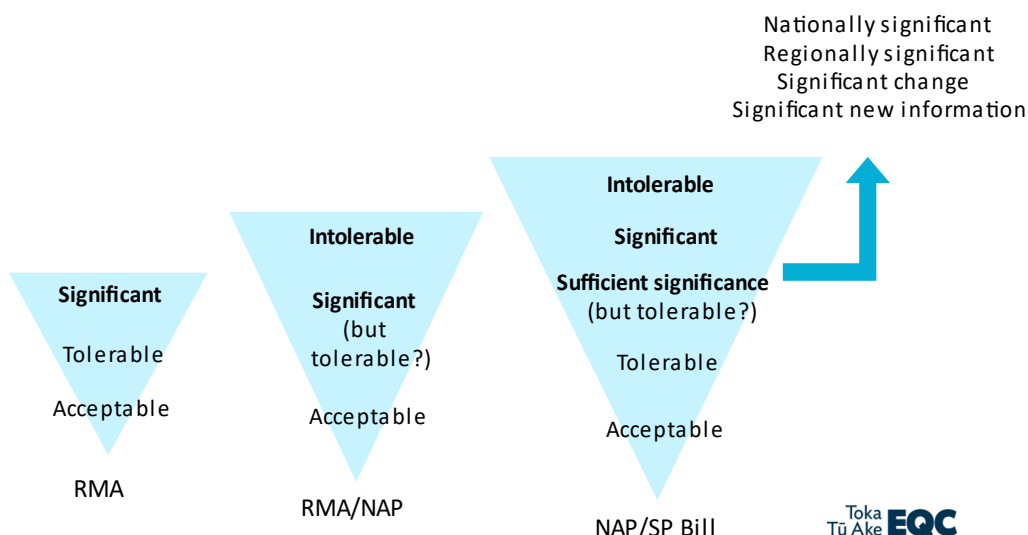


Figure 1: How levels of risk are being categorised across the RMA, NAP and SP Bill.

In addition, the term ‘significant’ is being used in a variety of contexts: in regard to natural hazard risk, whether it is regionally or nationally significant (i.e. features), changes to the environment, and any new information. This mixed use of the term is confusing, particularly as the relevant clauses (cl17 and 18) and mixed uses of the term follow on from each other. If ‘sufficient’ significance is still significant, then is a ‘sufficient’ test required?

A summary of our specific issues on clauses that include these terms is provided in Table 1.

Table 1: Risk terminology issues in clauses 17 and 18.

Clause	Current wording	Issue
17 Key matters	<p>(i) areas that are vulnerable to significant risks arising from natural hazards, and measures for reducing those risks and increasing resilience:</p> <p>(j) areas that are vulnerable to the effects of climate change both now and in the future, and measures for addressing those effects and increasing resilience in the region, including indicative locations for—</p>	<p>Clarification is needed on if ‘areas’ refers to just the spatial extent of an area, or if it includes the buildings, people and other assets which are in that area.</p> <p>We support the reference to ‘significant risks’, however it is unclear if significant is interchangeable with intolerable, or its relationship with ‘sufficient significance’. This needs clarification.</p> <p>Guidance will be required on what is ‘vulnerable’, i.e. buildings, people, cultural assets, infrastructure?</p> <p>Clarification is required on what ‘measures’ will be taken to reduce risks and increase resilience. For example, is this limited to spatially showing areas where risk reduction may be required, or will the RSS determine risk reduction measures</p>

	(i) major new infrastructure that would help to address the effects of climate change in the region;	that are to be undertaken in a spatial area (e.g. avoid, protect, accommodate, retreat)? We recommend that resilience is either defined in cl.8, or provided in guidance with how it can be measured. This will ensure that resilience is actually increased, and measured to evaluate the level of resilience across time. The National Disaster Resilience Strategy ¹ provides a good basis for any definition, direction and/or guidance on resilience.
18 Other matters	(1) A matter is of sufficient significance for the purposes of section 16(1)(c)(ii) if the regional planning committee considers that the matter meets 1 or more of the following criteria ... (f) the matter relates to a nationally significant feature or activity:	The use of 'sufficient significance' adds an additional layer of complexity to the terminology. We assume that this clause does not relate to significant natural hazard risks in cl17. However, if a risk is not 'significant', or of sufficient significance (i.e. it is not of regional or national significance), but is still a risk that should be managed through land use planning (i.e. of sufficient significance to a community), should it be addressed in this clause? And if a matter is of sufficient significance, it is therefore significant?

Toka Tū Ake EQC recommends that Clause 18 is reworded so that 'sufficient significance' is replaced with 'importance' or similar (noting other subsequent wording changes may be required), as shown below:

18(1) A matter is of sufficient ~~significance~~ importance for the purposes of section 16(1)(c)(ii) if the regional planning committee considers that the matter meets 1 or more of the following criteria

...

(f) the matter relates to a nationally ~~significant~~ important feature or activity:

Level of detail in RSSs

Clause 19 stipulates that:

A regional spatial strategy must be at a level of detail that—(a) reflects the level of certainty provided by the evidence and other information available, including the extent of work or planning already undertaken on a relevant activity or proposal;

¹ <https://www.civildefence.govt.nz/assets/Uploads/publications/National-Disaster-Resilience-Strategy/National-Disaster-Resilience-Strategy-10-April-2019.pdf>

While we support the intent of this clause, we are concerned that a lack of certainty could be used to challenge or dilute the natural hazard information used to inform where development in the RSS should occur, be avoided, or proceed with controls/restrictions. The International Institute of Sustainable Development notes that “...rather than slowing down development or obstructing decision-making, [the precautionary principle] ... promotes reflection in the face of uncertainty, arguably leading to better outcomes”². **We recommend that the precautionary principle is included in Clause 19 as a requirement when an RSS is developed.** It could also be considered as a clause in its own right, so that it could be applied to other clauses of the Bill, e.g. clause 28. Wording from the United Nations Framework Convention on Climate Change (of which New Zealand is a signatory) could be a good basis:

Precautionary is about being prepared for something whose consequences are high but where there is some uncertainty about when it might occur which should not delay action.

In addition, the scale of the natural hazard and risk information used to inform the RSS may not be adequate to provide the certainty of the land use being planned for. For example, spatial areas identified at a regional level (rather than at a district plan level) as being suitable for development may have areas within them that are not suitable, and areas identified as being unsuitable for development may have areas that are suitable for certain types of development. As the NBE plans will not be drafted until after the RSS development process, it is critical that the risk assessments that inform the RSSs are adequate to ensure that the right development occurs in the right places. If not, there is a risk that investment decisions will proceed despite the natural hazard risks involved. We therefore **recommend that further direction is provided in this clause to ensure that the risk assessment process used to enable the RSS is of adequate scale to take a risk-based approach to any proposed development areas.**

Use of risk information

We support the inclusion of Clause 28: Quality of evidence and other information, which states that:

In preparing a regional spatial strategy, a regional planning committee must ensure that the strategy is—(a) based on robust and reliable evidence and other information, including mātauranga Māori, that is proportionate to the level of detail required in the particular context; and (b) prepared in accordance with any requirements in the regulations about the methodology and data or other information that must be used.

We support that the RSSs are not only based on existing RMA district plan information (e.g. natural hazard overlays), but also includes other relevant information, such as that held by regional councils and research institutes. This will ensure the best information is used to identify areas susceptible to natural hazards and ‘significant’ risk, both now and in the future. To ensure any other information is robust and reliable, **Toka Tū**

² <https://www.iisd.org/articles/deep-dive/precautionary-principle#:~:text=Article%203%20of%20the%20United,full%20scientific%20certainty%20should%20not>

Ake EQC recommends that this clause could be extended include direction on quality of evidence, similar to Clause 805 in the NBE Bill (principles around best information), shown below:

805 Best information

- (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.
If scientifically robust information is not available, the best information may include—*
- (a) information obtained from modelling; and*
 - (b) partial information; and*
 - (c) local knowledge; and*
 - (d) information obtained from other sources.*
- (3) *If a person uses information obtained from other sources, that person must—*
- (a) prefer sources of information that provide the greatest level of certainty; and*
 - (b) take all practicable steps to reduce uncertainty (as by improving any monitoring or validation models used).*
- (4) *A persons who is required to use the best information available at the time—*
- (a) must not delay making decisions solely because of uncertainty about the quality or quantity of the information available; and*
 - (b) if the information is uncertain. must interpret the information in a way that best achieves the purpose of this Act.*

Following a similar intent of clause 805 of the NBE Bill would provide consistency, particularly given reliance on clause 28 in clauses 31 (process must support quality decision making) of the SP Bill.

Duty to assist Regional Planning Committees

As a Crown entity, Toka Tū Ake EQC supports Clause 64: Duty to assist Regional Planning Committees (RPCs):

- (1) This section applies to the following bodies: (b) Crown entities; (2) A body must provide information or technical support to a regional planning committee if—(a) the committee requests the information or support to assist the committee in performing or exercising its powers, functions, or duties under this Act; and (b) it is practical and reasonable for the body to provide the information or support.*

Toka Tū Ake EQC invests in research and employs subject matter experts, so is well placed to be able to offer assistance to the RPCs if requested. To increase resilience and reduce risks from natural hazards and climate change, it is key that RPCs do use the best information and have the right support to aid risk-based decision making. This will be very important when developing RSSs, and associated measures to reduce risks and vulnerabilities (as per clause 17).

Preparation of draft RSS – use of scenarios

Schedule 4 Clause (2) of the Bill (Step 1 Preparation of Draft RSS) stipulates:

(4) A draft evaluation report must contain—(b) a summary of the scenarios and key options considered by the regional planning committee; and (c) a statement about whether the regional planning committee has a preferred scenario or key option (or both) and, if so, what it is;

Toka Tū Ake supports the use of scenarios and modelling (as referred to in Clause 805(2)(a) of the NBE Bill).

Scenario-based assessments are extremely valuable as they help us to better understand existing and emerging hazard risks, and our preparedness for these. Robust, evidence-based scenario re-incentivise and drive existing conversations across reduction, readiness response and recovery, but also, prompt new action to collectively develop a greater understanding of societal impacts, exposure, vulnerability, and the cost of disasters. Scenarios must be developed to be as credible and accurate as possible, based on our collective, current understanding of hazard risk(s).

The use of multi-hazard scenarios will be built into Toka Tū Ake EQC's Natural Hazard Portal³ functionality, to allow all users to visually and conceptually understand a hazard, anywhere in New Zealand at a given time. Our plan is to develop the Portal over several years and, in time, it could become a key resource for RPCs to test scenarios, informing decisions that support the right development occurring in the right places.

Yours sincerely,



Tina Mitchell
Te Tumu Whakarae | Chief Executive

³ The Natural Hazards Portal will be an online, public education and information sharing tool, offering free natural hazard risk and risk management information for New Zealand, at an individual property, community, local, regional, and national level.

Theme	Clause	Relevant wording	Issue	Recommendation
Scope of regional spatial strategies	15(1)	A regional spatial strategy must— (a) set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region for a time-span of not less than 30 years	<p>We are concerned that 30 years would become the minimum, yet hazards should be considered over longer timeframes, particularly when taking into account climate change. How, for example, would the risk of a <1/30 year hazard be managed? Can it be disregarded if there is a low likelihood of it occurring within a 30 year time period?</p> <p>The New Zealand Coastal Policy Statement has requirement of 100 years for coastal hazards. We suggest RSSs should consider 100 years for natural hazards as part of their strategic direction.</p>	Scope to be broadened to consideration of natural hazards over 100 year timeframe (this may be included elsewhere in Bill)
Contents of RSS: key matters	17(1)	(i) areas that are vulnerable to significant risks arising from natural hazards...	Will depend on the scale of mapping as to which areas will be identified. The clause is very 'now' based, without taking into account those areas that may be vulnerable in the future. Where or how will 'significant' be defined? 'Sufficient significance' is defined in 18(1), but not 'significant'? As worded will this enable hard protection structures along the coast and rivers that may not be sustainable? What are "measures for reducing those risks", and how will they be implemented through the RSS?	Amend wording to ' <u>...areas that are or will be in the future, vulnerable to</u> ' (this keeps it consistent with (j)). Elaborate on what measures can be and how they can be implemented through the RSS.
Contents of RSS: other matters of sufficient significance	18(1)	A matter is of sufficient significance for the purposes of section 16(1)(c)(ii) if the regional planning committee considers that the matter meets 1 or more of the following criteria...	Does 'sufficient significance' have a higher weighting than 'significance'? Does 'sufficient;' include NH risks less that significant?	Amended so that it describes what significant is, as sufficient significance is still significant. Alternatively, merge this clause with 17 and remove 'sufficient significance'. Another option is to

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Theme	Clause	Relevant wording	Issue	Recommendation
				replace 'sufficient significance' with 'importance'.
Contents of RSS: other matters of sufficient significance	18(2)	For the purposes of subsection (1), something may be of regional or national significance regardless of whether it directly affects the entire region or country.	Does not provide any further clarification on what is 'nationally' significant is, which could lead to inconsistent application.	Replace significance with importance to reduce the confusion of the use of the term 'significance'. Alternatively include guidance on what is considered nationally significance, and how it relates to sufficient significance.
Level of detail in RSS	19(a)	A regional spatial strategy must be at a level of detail that—(a) reflects the level of certainty provided by the evidence and other information available...	Guidance will be required as to levels of certainty and scale to represent hazard vs risk. For example, a level of uncertainty rating based on scientific rigour, peer review, timeliness, relevance, scale, etc. Precautionary principle could apply.	Apply the precautionary principle to this clause, and reference 'best available information' as per clause 805 of the Natural & Built Environment Bill.
General considerations: instruments	24(3)	The regional planning committee must have regard to the following, to the extent relevant to the regional spatial strategy: (b) any other strategies, plans, or other instruments made for the purpose of complying with New Zealand's international obligations...	We note this will require the Regional Planning Committees to have regard to the Sendai Framework for Risk Reduction.	Support this provision.
Quality of evidence and other information	28	In preparing a regional spatial strategy, a regional planning committee must ensure that the strategy is—(a) based on robust and reliable evidence and other information...	This could go further, i.e. referring to clause 805 in the NBE Bill (principles around best information). Following this wording would also provide consistency, particularly given reliance on clause 28 in clauses 30-31.	Cross reference or include similar content to clause 805 of the NBE Bill.
RSSs must be renewed every 9 years	46(1)	Not later than 9 years after a regional spatial strategy is adopted, the regional planning committee must start the process to renew its strategy.	The clause header says RSS must be <u>renewed</u> every 9 years, but clause (1) says the RPCs must <u>only start</u> the process to renew.	Amend clause header to 'Process to renew regional spatial strategies must begin after 9 years' or similar.
RSSs must be reviewed if there is significant	48(1)	Refers to clause 104 of the NBE Act, which includes (b) there is a significant change in circumstances or in the physical environment since the regional spatial strategy was developed (for	Support the ability to be able to review and amend the RSS if there has been a significant natural hazard event, to enable recovery and reduce future risks.	Support this provision.

Theme	Clause	Relevant wording	Issue	Recommendation
change in the region		example, a major environmental or economic event).		
Policy for determining if there is significant change	49(1)	A regional planning committee must adopt a policy that sets out the criteria to be applied when determining whether the test for significant change is met, for the purposes of undertaking a review under section 48(2).	Will this lead to a definition of 'significant' being determined by each Regional Planning Committee, leading to inconsistencies? Will this include environmental changes e.g. from an earthquake (liquefaction, landslides, ground movement, tsunami, etc)? What is the test for significant change?	Clarification required within the legislation or through guidance on how to determine criteria around significant change.
Duty to assist RPCs	64(1)	This section applies to the following bodies... (b) Crown entities	As a Crown entity Toka Tū Ake EQC supports this clause, however the implementation of it will be dependent on capability and capacity and the time of the request.	Support this provision.
Interests in land are not taken or injuriously affected by RSSs	66	An interest in land must be treated as not being taken or injuriously affected by any provision in a regional spatial strategy unless this Act provides otherwise.	Does this affect what information can provided in a RSS e.g. Natural hazard information at property level? Could natural hazard information lead to an interest being 'injuriously affected'?	Ensure that natural hazard information or provisions, once been through the correct regulatory process, is not classified as having an injurious affect.
Incorporation of information from RMA planning docs into RSSs	Schedule 1, clause 2	Before incorporating the information, a regional planning committee must consider whether, in the period since the RMA planning document became operative,— (a) there has been a significant change in the relevant environment: (b) any significant new information about the relevant environment has become available.	This provides an opportunity to update natural hazard information with information that is available i.e. Regional council information that is not currently included by a territorial authority. Can information be sourced from out of the Council(s)? How will 'significant new information' be defined?	Clarify if this information can come from any source (i.e. in line with s805 NBE Bill); clarify what the threshold is for 'significant new information'.
Step 1: preparation of draft RSS	Schedule 4, clause 2(3)	While preparing the draft strategy, the regional planning committee must also prepare— (a) scenarios that— (i) are relevant to the matters referred to in section 16(1)(c);	Clause 16(1)(c) refers to natural hazards and climate change. We support use of scenarios to show natural hazard and climate change impacts. As a Crown entity, and an interested party, would Toka Tū Ake EQC have an opportunity to	Clarify the role of interested parties

Theme	Clause	Relevant wording	Issue	Recommendation
			participate in determining relevant matters? If so, how would that work in practice?	
Step 1: preparation of draft RSS	Schedule 4, clause 2(4)	A draft evaluation report must contain— (b) a summary of the scenarios and key options considered by the regional planning committee; and (c) a statement about whether the regional planning committee has a preferred scenario or key option (or both) and, if so, what it is;	Support use of scenarios to show natural hazard and climate change impacts, and how high-risk areas will be avoided and risks reduced (i.e. through 'measures' under c.17).	Support this provision.