

4 August 2021

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Dear Committee Members,

ICNZ submission on the exposure draft of the Natural and Built Environments Bill

Thank you for the opportunity to submit to the inquiry on the exposure draft of the *Natural and Built Environments Bill (Bill)*, which was initially presented on 29 July 2021, with an updated parliamentary paper on the Bill being made available on 2 July 2021.

By way of general background, Insurance Council of New Zealand/Te Kāhui Inihua o Aotearoa (ICNZ) members are general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including about a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

We acknowledge that this Bill constitutes an overhaul of the regulatory system governing how people, communities, businesses and authorities interact with natural resources with a view to amongst other things:

- better protect and restore the natural environment
- enable more development within environmental limits
- give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori including mātauranga Māori, and
- improve the efficiency and consistency of the regime.

We support these goals, provided these are consistent with adapting to or reducing natural hazard and climate change risks or impacts, but leave to others who are best placed to specifically comment on them.

Remarks made in the submission section below relate to aspects of the Bill and the parliamentary paper in respect of which ICNZ and its members have specific knowledge and experience and general observations. ICNZ and its members have been seeing the impacts of natural hazards and climate change and how this affects people, businesses and communities for some time. We have a keen interest in sharing our knowledge and experience when it comes to identifying and engaging with natural hazard and climate change risks and risk management, noting the important role insurance plays in this context, and our desire to ensure this remains available and affordable (including to support lending). We hope this information will assist the Committee with its work and the preparation of its report.

We wish to appear before the Committee to speak to our submission. Please contact Nick Whalley (nickw@icnz.org.nz) if you have any questions on our submission or require further information.

Submission

We support having regard to natural hazard and climate change risks

We support the objective of these reforms to better prepare for risks from natural hazards and climate change adaptation and better mitigate emissions contributing to climate change.¹ In principle, we also support the specific references to the reduction of greenhouse gases, natural hazard and climate change risk reduction and improved resilience, within the environmental outcomes under the Bill, and the inclusion of natural hazards and climate change as topics within the national planning framework.²

We endorse reference being made to both natural hazard and climate change risks and impacts, noting that while separate regard needs to be had to both matters (e.g. considering the risk and impact of fire or earthquake when building denser housing in an area without reticulated water supply or that is prone to liquification), it is also possible for these matters to overlap and/or interact and regard should be had to that as well. For example, climate change increases the likelihood and severity of a range of natural hazards including floods, storms and other weather-related events, is attributable to the sea-level rising and associated issues such as coastal erosion and inundation, and increases the likelihood and severity of droughts, heat waves, water shortages and wildfire. Conversely, land and waterways damaged by an earthquake may be more susceptible to climate change impacts such as increasingly frequent and severe floods, storm surges or the sea-level rising.

However, from a technical/drafting perspective, we query whether the references to ‘significant risk’ of natural hazards, and climate change being ‘reduced’ in clause 8(p)(i) of the Bill, and ‘improved’ resilience of the environment and the effects of climate change in clause 8(p)(ii), are appropriate. These terms are arguably subjective. It is also unclear whether:

- the reference to ‘reduction’ in this context is intended to relate to the impacts of natural hazards or climate change and/or the natural hazard or climate change risks themselves (noting that reducing the risk rather than its impacts may not always be possible or feasible, but should at least clearly apply to reducing natural hazard and climate change impacts), and
- these terms set the appropriate threshold of materiality or would achieve the desired policy outcomes.

As part of the policy development process, to ensure the appropriate regard to natural hazard and climate change risk management is achieved, we see merit in officials testing these proposed requirements against the relevant use-cases (e.g. within the context of the national planning framework and regional plans), alongside other relevant considerations under the Bill, with reference to a number of hypothetical factual scenarios. We expect that there may also be a role for guidance to provide further details and support the intended approach.

Consistent with the precautionary approach and given there is a degree of uncertainty about natural hazard and climate change risks and impacts (as outlined below), we consider that it is imperative that resource management decisions are made with a view to ensuring these risks/impacts are kept within tolerable levels and ideally do not increase. This reflects that while it may not be possible to reduce these risks/impacts in all cases, they should nonetheless be actively managed to a level that

¹ See pages 9 and 80 (objective 1(c)) of the parliamentary paper.

² Clause 8(j), (k)(ii), (m)(ii) and (q) and 13(1)(i).

is tolerable (e.g. within the applicable risk appetite). We recommend that this be included as an explicit requirement under the Bill³ along the following lines:

The risks and impacts of natural hazards and climate change must be managed so that they remain within tolerable levels.

We acknowledge that this approach would need to be supported by guidance (either within the national planning framework, the Bill itself and/or in some other form) detailing what the applicable tolerance levels were and how risks/impacts would be assessed against them.

We support having regard to a long-term view and taking a precautionary approach

The objectives of the reform refer to providing for the well-being of future generations, which is reflected in the purpose of the Bill and strategic directions to be included within the proposed national planning framework.⁴ We support taking such a long-term view, particularly when it comes to managing natural hazard and climate change risks and the impacts these have on the built environment. We also support the precautionary approach as an implementation principle for the national planning framework, and relevant consideration for regional planning committees, under the Bill.⁵ We consider that specific reference should also be made to improving resilience within the implementation principles of the Bill,⁶ given the importance of this concept in terms of managing natural hazard and climate change risks and impacts.

Where there is potential for serious or irreversible harm, it is appropriate to act with a view to avoiding or controlling adverse effects at the outset rather than postponing action on the grounds that there is no scientific certainty. In many cases it may not be possible to conclusively determine what these impacts will be, with views based on scientific developments and research evolving over time and the long timeframes for potential impacts complicating matters.

This aligns with an adaptive pathways approach,⁷ which involves relevant decision-makers under the regime testing a range of responses against possible future scenarios and then mapping pathways that will best avoid, control, accept or transfer risk (see the appendix for more details about these risk management options). A plan is subsequently developed with short-term actions and long-term options with pre-defined trigger points when decisions can be revisited. Ways forward can then be identified despite uncertainty, with flexibility provided should the agreed course of action need to change (e.g. because more scientific information or new technology becomes available). By foreshadowing future change at the outset, without committing to a particular course of action long-term, this approach helps avoid locking in investments early that may be later rendered obsolete or which make future adjustments difficult and/or costly.

Adopting such an approach mitigates avoidable harm. For example, numerous studies show that engaging with issues before disaster strikes is substantially more cost effective than responding after

³ We are not certain about the appropriate place to set out this requirement under the Bill but envisage it could be included within clause 7 (environmental limits), clause 8 (environmental outcomes) and/or within the national planning framework itself.

⁴ See pages 9 and 80 (objective 1(a)) of the parliamentary paper and clauses 5(b) and 14(b) of the Bill.

⁵ Clauses 3, 18(g) and 24(3).

⁶ See clause 18.

⁷ Further details of this approach are set out in the document 'Preparing for coastal change: A summary of coastal hazards and climate change guidance for local government; (December 2017), <https://www.mfe.govt.nz/sites/default/files/media/Climate%20Change/coastal-hazards-summary.pdf>. See also Supporting decision making through adaptive tools in a changing climate: Practice guidance on signals and triggers (2020), <https://www.deepsouthchallenge.co.nz/sites/default/files/2020-03/Supporting%20decision%20making%20through%20adaptive%20tools%20in%20a%20changing%20climate%20Practice%20guidance%20on%20signals%20and%20triggers.pdf>.

the fact.⁸ It is estimated that every \$1 invested in pre-event prevention could save \$5 to \$6 in post-event costs, while also avoiding the wider social and economic disruption.⁹ When a natural disaster strikes, in addition to costs associated with at risk local government owned infrastructure and the emergency response, there is a significant wider economic, social and community impact that it is difficult to put a price on. Lives can be lost, homes destroyed, utility systems wrecked, businesses wound up and jobs lost. Then there is the mental trauma and stress families suffer as they try to pull their lives back together and rebuild, and the impact on the natural environment. Accordingly, the more that can be done to avoid or control these risks upfront and reduce the economic and social impacts, the better.

Taking a long-term view and acting proactively supports a role of insurance and lending

In conjunction with appropriate risk management, taking a long-term view and acting proactively supports a role for insurance and its availability and affordability, noting that insurance only involves risk transfer, it does not avoid or control it. In so far as a risk is taken on by an insurer, the higher the risk, the higher the premium charged. If over time risks are not appropriately addressed and consequently worsen, higher premiums or excesses will need to be applied to ensure insurance offered remains sustainable. In extreme cases, cover for some risks may be withdrawn or no longer be available on the basis that it is not viable at all.

The absence of insurance may put considerable strain on people, businesses and/or local and central government, particularly when financial resources are already stretched. This may also involve situations when the burden of covering losses falls to local or central government (and in turn ratepayers and taxpayers generally), because the specific people and businesses impacted lack sufficient resources to meet these losses themselves.¹⁰ The benefit of ensuring insurance has a role to play is supported by research,¹¹ with well-insured countries spending less on emergencies, freeing up capital for investment and growth.

Ensuring there is a role for insurance in turn supports property lending, with banks and other lenders commonly requiring insurance to be in place for property securing lending as this ensures there are funds available should an insured loss occur. Conversely, if risks become too significant due to insufficient risk management, and insurance and therefore lending is restricted, this would restrict growth, deflate people and business' property values.

Another consideration is that insurance is very much an 'ambulance at the bottom of a cliff'. Whereas resource management decision-making can avoid and/or control known or foreseeable risk over long timeframes, as above, insurance does not, instead responding only to the residual risk presented. Where the residual risk is within an insurer's risk appetite, this risk will be able to be transferred to it. However, if the risk is not sufficiently managed, as above at a certain point cover may be withdrawn

⁸ For example see Building our nation's resilience to natural disasters (June 2013), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/dttl_crs_humanitarian_australia_resilience.pdf.

⁹ Flood Resilience in Numbers: 1-5-13-87-88 The Zurich Flood Resilience Alliance as a mode presentation, Berlin (May 2017). In this presentation it is also commented that they see only 13% going into pre-event resilience & risk reduction, 87% go to post-event relief. Also see, Multi-Hazard Mitigation Council (2019.). Natural Hazard Mitigation Saves: 2019 Report, A. National Institute of Building Sciences. Washington, DC. (www.nibs.org).

¹⁰ In this regard also see comments from the New Zealand Productivity Commission in their report Local government funding and financing (November 2019), https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report_Local-government-funding-and-financing.pdf.

¹¹ Lloyd's Underinsurance Report 2018, prepared by the Centre For Business and Economic Research, https://www.lloyds.com/~media/files/news-and-insight/risk-insight/2018/underinsurance/lloyds_underinsurance-report_final.pdf. This report reinforces the correlation between low insurance penetration and taxpayers required contribution post-disaster.

or no longer be available. At that time, it will likely not be tolerable for property owners to accept the risk or for central or local government to do so.

There is need for clarity on how different considerations and regulation fit together

The Bill lists a number of potentially conflicting considerations that regard must be had to in making decisions.¹² Where conflicts occur, trade-offs must be made, which will need to be carefully worked through and supported by detailed guidance (e.g. under the national planning framework), so that the appropriate outcomes are arrived at while acknowledging that, as indicated above, there are limits to what is foreseeable. From our perspective, it will be important for natural hazard and climate change risks and risk management in these respects to have appropriately significant weighting and priority and, as above, that resource management decisions are made with a view to ensuring natural hazard and climate change risks/impacts are kept within tolerable levels and ideally not increased.

We envisage that working through these conflicting considerations will be an area where the proposed regional planning committees may require particular support and guidance given:

- they will be tasked with producing and maintaining a combined regional and district plan for their region that includes their own guidance on how to resolve conflicts relating to the environment (including conflicts between the proposed environmental outcomes under the Bill),
- while allowing for appropriate regional variation, we expect consistency with national planning framework will be important, and
- in part they will be reliant on the available skills and experience of the local authority representative within each region, as pertinent to the matter at hand, which may vary.¹³

These committees will also need to have the right information, tools, decision and assessment processes and incentives.

From a broader perspective, as acknowledged in the parliamentary paper,¹⁴ consideration also needs to be given to having clear roles and responsibilities across, and interface between this Bill, the Climate Change Adaptation Act (**CAA**) and the Strategic Planning Act (**SPA**), so that they fit together and form one coherent package. We also support the planned co-ordination and alignment between this tranche of resource management reforms and work on emissions budgets, the Emission Reduction Plan and the National Adaptation Plan under the Climate Change Response Act.¹⁵ Our long-term infrastructure planning also needs to be resilient to climate-related risks as do the activities and land uses that infrastructure supports.

A clear and joined-up approach in all these respects will be critical to ensuring that:

- the reform objectives are achieved
- there is effective risk management
- good progress is made towards the Government's climate change goals, and
- there is sufficient clarity from a regulatory perspective, including in respect of relevant parties' legal rights and obligations, with an efficient regime that avoids costly and unnecessary duplication and inconsistencies.

¹² See, for example, environmental outcomes in clause 8 and topics that the national planning framework must include in clause 13.

¹³ Clauses (22)(1)(g) and 23 of the Bill.

¹⁴ Pages 20 (paragraph 61), 26 (paragraph 75), 35 (paragraph 126), 42 (paragraph 162) and 47 (paragraph 172).

¹⁵ See page 21 (paragraph 21) and 26 (paragraph 26) of the parliamentary paper.

In the context of these resource management reforms, it would also assist to reflect upon timeframes that decision-makers must have regard to. One of the current challenges local governments must work through for planning and investment purposes is the different timeframes set out in the applicable legislation. For example, the Local Government Act 2002 refers to a Long-term Council Community Plan with an anticipated 10-year minimum timeframe and the Resource Management Act 1991, providing for a Regional Policy Statement and Regional and District plans, refers to 10-year timeframes. However, the requirement under the Local Government Act 2002 to produce an Infrastructure Strategy identifying significant infrastructure issues refers to at least a 30-year period. Also, there is the former Building Act 1991, which was based on an assumed building life of 50 years. While the current Building Act 2004 does not include an assumed building life; many structures are intended to, or do, last a century or more.

Other comments

We support the development of centralised digital tools, platforms and web portals including national data sets, standardised methods and models (e.g. natural hazard data) as suggested in the parliamentary paper.¹⁶ One of the current challenges is inconsistencies in what modelling and data is available to local governments and how it is presented. We also understand that some local governments may struggle commissioning some of this work themselves. In addition to the noted increase in efficiency, consistency and reduced complexity in the resource management system brought about by such developments,¹⁷ we consider that these outputs could greatly assist in:

- Raising awareness of specific natural hazard and climate change risks within regions. This will assist with bringing communities on the journey and supporting personal action.
- From a specific property perspective, providing current and potential owners with access to quality, transparent and consistent information about natural disaster and climate change risks a particular property faces. This will assist them make more informed decisions about the true costs of property ownership and any risk mitigation work in that respect.

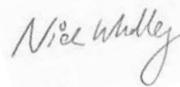
Conclusion

Thank you again for the opportunity to submit on the Bill. If you have any questions, please contact our Regulatory Affairs Manager by emailing nickw@icnz.org.nz.

Yours sincerely,



Tim Grafton
Chief Executive



Nick Whalley
Regulatory Affairs Manager

¹⁶ Pages 23 (paragraph 67) and 81.

¹⁷ See pages 23 (paragraph 67) and 81 of the parliamentary paper.

APPENDIX – RISK MANAGEMENT OPTIONS

A risk management approach, involves an assessment of the likelihood and consequence of each risk with reference to the following treatment options:

Avoid	Changing plans to circumvent the problem. This may involve developing an alternative strategy that is more likely to succeed but which has a higher cost. This may require a judgement call weighing up the cost of avoidance against the cost of impact if not treated.
Control	Taking steps to reduce the impact and /or likelihood of impact. Elements of this option relate to mitigation or adaptation, noting whereas mitigation relates to reducing the likelihood of something occurring (e.g. by reducing greenhouse gas emissions leading to further climate change), adaptation relates to reducing the inevitable impact.
Accept	Assuming the chance of the negative impact and taking this into account.
Transfer	Outsourcing the risk (or a portion of it) to a third party to manage (e.g. via insurance). Simply put, this involves paying someone else to accept the risk. However, as outlined above, risks will not be transferable if they are not sufficiently managed.

Please note that, while we do not consider that this materially affects matters, the terminology used above differs to that used under the Bill. For example, the definition of ‘mitigate’ under the Bill refers to ‘avoid’, ‘remedy’ or ‘mitigate’.¹⁸

¹⁸ Clause 3. Also see the consistent reference in clause 5(2)(c).