

3 February 2023

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Dear Committee Members,

ICNZ SUBMISSION ON THE DRAFT NATURAL AND BUILT ENVIRONMENT BILL

Thank you for the opportunity to submit on the draft *Natural and Built Environment Bill (Bill)*.

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 over 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.

For some time now, ICNZ and its members have observed the impacts of natural hazards and climate change and how this affects people, businesses, and communities. 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 wish to appear before the Committee to speak to our submission. Please contact Greig Epps (greig@icnz.org.nz) if you have any questions on our submission or require further information.

SUBMISSION

The Bill creates a framework for the further development of resource plans and allocations and specifies system outcomes that decision makers will be required to provide for natural and built environments. Many of the comments made by ICNZ in its May 2022 submission on the exposure draft of the legislation continue to be germane.

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. 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 framework¹.

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.

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 is tolerable (e.g., within the applicable risk appetite).

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. 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. In our submission on the exposure draft of this Bill, we called for specific reference to improving resilience, given the importance of this concept in terms of managing natural hazard and climate change risks and impacts. As such, we support the redrafted clause 5, which includes as an outcome *“the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change”* and also the inclusion in clause 854 (emergency response regulations) the recognition that recovery after a natural disaster should consider *“any work required to improve the resilience or standard of assets”*.

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

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

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.² The benefit of ensuring insurance has a role to play is supported by research³, 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.

The legislation and resulting frameworks and plans must provide direction that avoids the use of flood prone land, which could lead to problems in the future, especially in terms of availability and affordability of insurance. We are pleased to note that regional spatial strategies devised by the regional planning committees will be required to identify at a high level and (where appropriate) map spatially:

- areas that may require protection, restoration, or enhancement of the natural environment (this will uphold te Oranga o te Taiao)
- areas of cultural heritage and areas with resources that are of significance to Māori
- areas subject to constraints (eg, natural hazards and areas impacted by climate change)
- areas appropriate for housing and development
- areas where significant land-use change is required (eg, to meet growth needs or comply with environmental limits), and
- indicative locations for future infrastructure corridors and strategic sites.

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 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.⁴ 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 will require support and guidance. These committees will also need to have the right information, tools, decision and assessment processes and incentives.

² 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.

³ 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.

⁴ See, for example, environmental outcomes in clause 5 and topics that the national planning framework must include (see Part 3).

We note that the reports to the Select Committee from Ministry officials advise that the National Planning Framework will include an overarching layer that provides direction on resolving conflicts. As well, new national direction will be developed for: identifying and mapping management units for limit setting, infrastructure, climate change and natural hazards, cultural heritage, outstanding natural features and landscapes, the relationship of iwi and hapū, and the exercise of their kawa, tikanga and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga.

Consideration needs to be given to having clear roles and responsibilities across, and interface between this Bill, the Climate Change Adaptation Act (**CAA**) and the Spatial Planning Act (**SPA**), so that they fit together and form one coherent package. Our long-term infrastructure planning 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.

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.

Fines and penalties

ICNZ raises no objection to the introduction of a prohibition on the use of insurance for fines, infringement fees and pecuniary penalties. However, we believe that insurance should be available for businesses to assist in carrying out remediation where necessary. The consequences for bad actions should not be sidestepped through insurance, but companies should be able to use insurance cover to assist with cleaning up and putting things right.

Allowing insurance for remediation may assuage concerns that some councils may have about the loss of revenue from fines (generally used to support their consenting processes and regimes). We note that remediation insurance will likely only be provided where the loss was caused accidentally or negligently (rather than intentional damage).

We also note that the Randerson report did consider insurance for remediation would be appropriate.

Prohibition of insurance

99. On balance, we consider a reformed RMA should prohibit insurance against prosecution fines and infringement fees, in the same way as section 29 of the Health and Safety at Work Act 2015. Some commentators support this approach⁴²².

100. We think **insurance should continue to be available to cover legal defence costs and environmental remediation or restoration costs** that might arise from offences. In the latter case, this would minimise the risk of public agencies having to cover the costs of dealing with environmental harm that might arise from serious non-compliance. *[emphasis added]*

*(Chapter 13, page 413)*⁵

⁵ The footnote reference in the report is: For example, Devine R, de Groot S, Woodward C. 2018. *Findings from the Courts: Environmental indemnity insurance*. Planning Quarterly 211: 32–36.

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 greig@icnz.org.nz.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Greig Epps', is enclosed in a light gray rectangular box.

Greig Epps
Regulatory Affairs Manager