

# Joint submission of Taituarā — Local Government Professionals Aotearoa and LGNZ to the Draft NPS on Natural Hazard Decision Making:

November 2023



## What is Taituarā?

Taituarā – Local Government Professionals Aotearoa is an incorporated society of nearly 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

*Professional local government management, leading staff and enabling communities to shape their future.*

We help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities and supporting communities from planning and infrastructure to civil defence and emergency management. We are therefore extremely interested in the effectiveness and implications of the Draft NPS Natural Hazard Decisions for the local government sector.

## Ko Tātou LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. We support and advocate for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

We too are extremely interested in the effectiveness and implications of the Draft NPS Natural Hazard Decisions for the local government sector.

## Executive Summary

Taituarā and LGNZ support the intention of a NPS for Natural Hazard Decision Making but recommend the proposed NPS as drafted is withdrawn to

- allow for comprehensive Natural Hazard planning framework to be developed that enables decisions to prevent development in areas of high or intolerable risk, accompanied by the development of comprehensive national direction which gives effect to the framework
- obtain the data needed to implement the comprehensive national direction.

Our comments and some specific recommendations, if MfE chooses to pursue natural hazards direction in stages, are included below.

We also support the submission of the New Zealand Planning Institute (NZPI).

## Definition of High Hazard and Assessment of Tolerability

Taituarā and LGNZ strongly support a standardised national framework for natural hazards – and climate change – decision making. Within this framework we would expect to see standardised terminology, mapping and risk assessment methodologies, what risks should be assessed and to what extent – all wellbeing outcomes, definition of risk thresholds, and the establishment of clear processes for determining risk tolerance, underpinned by better information and evidence. We'd also expect to see the issues of funding, capability and capacity addressed.

As the background material states there is currently no agreed approach on how to obtain robust data, and a lack of direction in terms of how to assess and evaluate likelihood or consequence. Unfortunately, our assessment of the Draft NPS is that it doesn't go far enough to assist councils in their decision making as it doesn't provide the detailed direction, national consistency, robustness and certainty the process requires. The definition of risk level should be supported by a standardised national framework.

While we appreciate that development the Natural Hazard Planning Framework would take longer to develop, we think it is preferable to spend the time now to get it right and provide robust national direction that is genuinely directive, rather than to progress with the Draft NPS in its current form.

### **CIRCULAR DEFINITION**

The draft NPS interprets "high natural hazard risk" as "a risk from natural hazards that is intolerable" but policies 1 and 2 ask for an assessment of risk followed by an

assessment of tolerability. We think the consideration of tolerability is a separate exercise. Policies 1 and 2 contradict the interpretation by inferring that an intolerable natural hazard risk can be tolerated.

### **MITIGATION TO INCREASE TOLERABILITY POLICIES 5 AND 6**

Policies 5 and 6 provide for mitigation to be applied to increase hazard tolerability. We think this will result in effects assessments that promote complex engineered solutions over nature based solutions with budget driven applications to change consent conditions almost certain to follow planning approvals.

Policy 6 requires decision makers to adopt the most effective natural hazard solutions and seeks that nature based solutions are preferred where possible over hard engineered solutions, and comprehensive solutions are preferred over site based solutions.

We don't think the Resource Management Act 1991 (RMA) effects based regime provides for the assessment of cumulative effects in relation to site specific proposals except to the extent those effects accumulate within the boundaries of the site on which the development is proposed to take place. For that reason we think site specific solutions will prevail over comprehensive solutions with potential for wider and unintended adverse effects.

### **RECOMMENDATIONS**

1. Withdraw the proposed NPS Natural Hazard Decision Making and develop a comprehensive natural hazards planning framework underpinned by the necessary data and information
2. Rewrite the definition of 'high natural hazard risk' and Policies 1 and 2 so they are not circular and contradictory
3. Specify assessment criteria for considering nature based and hard engineered solutions
4. Prefer enduring natural hazard solutions over timebound solutions based on the "life of any proposed new development"
5. Remove references to 'if' or 'where' 'practicable' where other qualifiers are determinative – ie policy 3.3 (1) best information available

### **Objective**

We support the natural hazard decision making objective (included below as drafted) but think the drafting would be clearer if the objective was split into two sentences.

*“The risks from natural hazards to people, communities, the environment, property, and infrastructure, and on the ability of communities to quickly recover after natural hazard events, are minimised.”*

The objective would also benefit from recrafting to refer to ‘probability’ rather than ‘risk’ given that risk is unknown (and cannot be known) while probability relates to the likelihood of a known event occurring.

#### **RECOMMENDATIONS**

6. Rewrite the objective as follows:
  - a. ‘Minimise the probability of impacts from natural hazards affecting people, communities, the environment, property, and infrastructure; and
  - b. Increase the probability that communities will recover quickly after natural hazard events.’
7. Make any necessary changes to wording in direction and definitions

### **Precautionary Approach**

We support the emphasis on a precautionary approach to natural hazard management but are concerned that in a planning system geared toward certainty, the exceptions and decision-making policies limit the practical application of the approach.

While we support the ‘best information’ approach in Part 3.3, we note that it is highly desirable to have better information at the outset.

#### **RECOMMENDATIONS**

8. Add a process for applying a ‘precautionary approach’ and reference the evidence base/case law on the application of that process in relation to natural hazard management
9. Explicitly link the precautionary approach required by Policy 3 to the ‘Best Information’ policy 3.3 (3) (b) so that (b) if the information is uncertain, a local authority must apply a precautionary approach to best give effect to this National Policy Statement
10. Greater Crown investment in natural hazard and risk information
11. Require cost benefit analysis (including consideration of future generations) where exceptions for development in natural hazard areas are sought

## Risk Assessment Methodologies and Terms

We are concerned that the risk assessment methods and terms for mandatory risk assessment at regional and local level are inconsistent and do not provide a clear decision-making framework for planners making recommendations to decision makers.

### **PERMITTED ACTIVITIES**

We don't think the draft NPS goes far enough to prevent or restrict development in hazard risk areas where development is already identified as a permitted activity or where consent has already been granted.

### **PROBABILITY / RISK THAT MEANS DEVELOPMENT MUST BE AVOIDED**

We anticipate that there will be occasions where no new development will be justified and existing development should be relocated. There is general agreement between councils, insurers and planning practitioners that avoiding development in risky places in the first instance is the best way to ensure good outcomes for all involved including future generations. Policy 5 could be seen to undermine this approach by taking an 'avoid unless' approach to the high hazard risk areas.

In keeping with the PARA framework, the NPS should provide clear direction about when new development must be avoided. This will also have the added benefit of removing the need for planned relocation.

We note that the Spatial Planning Act offered a potential pathway for an initial risk screening for avoiding development in high-risk areas. If spatial planning survives – and we hope it does in one form or another – it offers another tool in the Framework for us to use.

We are aware that the level of detail for natural hazard information varies at different stages in the planning process, becoming more specific as planning proposals become more specific. The detail available to inform spatial plans will be more general than structure plans and plan changes which will be more general than for designations and subdivision consent applications. We think this variation should be recognised in a 'process standard' for risk assessments so that councils and requiring authorities apply the same process at the various stages of their natural hazard assessments.<sup>1</sup> It could be included or referenced in the NPS.

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<sup>1</sup> The NZ Flood Risk Standard is an example of the type of process standard we envisage.

## **APPLICATION TO INTENSIFICATION PLANNING INSTRUMENTS POLICY 1.5 (1)**

We are aware the saving provision for intensification planning instruments / plan changes was made at the request of the local government sector to acknowledge how advanced they were with that process. We think the provision will result in increased density of sensitive development in some hazard areas with impacts for individuals, local and central government including insurance impacts, and costs to future generations. It is difficult to see how this provision would achieve the single objective of the direction:

*“The risks from natural hazards to people, communities, the environment, property, and infrastructure, and on the ability of communities to quickly recover after natural hazard events, are minimised.”*

We don't have a solution to offer right now, but we did think about the potential to use the s55 process to deem already permitted (including consented) activities in unmapped areas or areas that have not been assessed for hazard risk, as controlled activities for natural hazard purposes. We recognise the administrative burden on councils, the implications for existing use rights and the legal conundrum this approach would likely create and therefore don't recommend it, but we couldn't think of workable alternatives in time for this submission. Some points for MfE to explore are set out in the recommendations below.

### **RECOMMENDATIONS**

12. Explore the value of the following points as part of a solution –
  - a. All existing permitted activities in areas that are yet to be mapped or assessed for natural hazard risk are deemed controlled activities for natural hazard reasons
  - b. An activity can only be considered a permitted activity if it is carried out in an area or zone for which robust natural hazard assessment and mapping has already been undertaken and the risk is determined to be 'tolerable'
  - c. Where an activity is a 'deemed controlled activity' for natural hazard reasons, an assessment of natural hazard effects must be required
  - d. Existing consents for sensitive development that have not been given effect to must be reviewed for hazard risk
  - e. A policy must be developed to deal with permitted and consented developments in hazard risk areas
  - f. Planning decisions should prohibit development in areas of extreme and increasing risk (or similar term)
  - g. Establish a 'process' standard for natural hazard risk assessment

## Greater Emphasis on National Direction RMA s55

We think the draft NPS places too much emphasis on local government decision making processes as the means for managing natural hazards. The requirement for every council to carry out plan changes is less efficient and much more costly than using RMA s55(2) to directly incorporate changes without triggering the need to go through a Schedule 1 process. It would also ensure that plan changes took effect much sooner than waiting for the next practical opportunity to initiate – and complete – a plan change.

To take advantage of the s55 process however, the NPS would need to be more comprehensive than it is currently. However, the extra effort would be worth it to increase certainty for communities and councils – and minimise the costs and impacts of appeals and litigation.

Stronger central government direction would also provide local government with stronger justification to leverage central government funding.

### RECOMMENDATIONS

13. Provide stronger national direction with clear data and evidence base
14. Rely on the RMA s 55(2) direct incorporation provisions rather than local government plan change provisions

## Tangata Whenua Involvement

We support the requirement to discuss natural hazard risk with tangata whenua in accordance with RMA requirements but think the opportunity to draw from local knowledge and mātauranga Māori as a scientific source of information should be clearly stated.

The document would benefit from acknowledging tangata whenua have long standing intergenerational associations with their rohe and are well placed to provide anecdotal evidence based on their observations and experience, and bring the benefits of mātauranga Māori as science to the decision making process. Engagement with Treaty Partners and local communities should be specific about what 'early' engagement is.



### **RECOMMENDATIONS**

15. Make it clear that mātauranga Māori is science based
16. Give greater weight to local observational and anecdotal knowledge
17. Direct an engagement / partnership process that sends decision makers to Treaty Partners and local communities in the conceptual design phase of a project

## **Funding Local Government Natural Hazard Management**

For local government to adequately plan and budget for natural hazard management, central government must provide funding for local government planning and management processes.

### **RECOMMENDATIONS**

18. Establish a central government funding policy for local government natural hazard planning and management
19. Provide clear direction that enables local government to leverage central government funding.