

Submission by



to the

Ministry for the Environment (MfE)

on the

Proposed National Policy Statement for Natural Hazard Decision-making (NPS – NHD)

November 2023

**SUBMISSION BY BUSINESSNZ¹ TO THE MINISTRY FOR THE ENVIRONMENT
ON THE PROPOSED NATIONAL POLICY STATEMENT FOR NATURAL HAZARD
DECISION-MAKING (NPS-NHD)**

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to make a submission to the Ministry for the Environment (MfE) on the *Proposed National Policy Statement for Natural Hazard Decision-making* ('the NPS-NHD').
- 1.2 BusinessNZ notes the rationale for MfE promoting the proposed NPS-NHD is the growing threat to New Zealand from a range of natural hazards, including earthquakes, flooding and landslips, increasing the risk to human life and property, infrastructure included.
- 1.3 MfE's background consultation paper states that the way local authorities identify natural hazards, assess risk etc and make decisions on new development varies throughout the country. It is noted that the proposed NPS-NHD will apply only to new, rather than existing, infrastructure.
- 1.5 The NPS-NHD refers to risk tolerance but there is no clear definition of what is 'tolerable' risk or 'intolerable' risk, apart from relatively vague references to loss of property and/or potential loss of life. It is fundamental that risk to property and life is relatively consistent across the board to ensure optimal resource allocation while providing for local communities and individuals to make decisions based on their own personal circumstances.
- 1.6 Requiring all physical development to be in the scope of the proposed NPS-NHD would be cumbersome and is unnecessary given that most developers face strong market incentives to ensure any infrastructure they build is fit for the purpose for which it was developed in the first place – taking into account the costs and benefits of same.
- 1.7 A number of major infrastructure providers have provided input into the development of this BusinessNZ submission, with a significant concern surrounding the proposed the inclusion of infrastructure in the NPS-NHD, and the lack of definition around risk.
- 1.8 The requirements of the NPS-NHD will create duplication for many infrastructure projects which already undergo a comprehensive and very specialised risk

¹ Background information on BusinessNZ is included as Appendix 1.

assessment undertaken by a team of experts as part of business case process. Requiring an additional layer risk assessment during the consenting phase will not result in an efficient use of resources. As a result of the above, and the uncertainty surrounding the definition of risk, a number of infrastructure providers supplying critical services for a public benefit consider that they should be excluded from the application of the NPS-NHD if it is to proceed.

- 1.9 As might be expected, members may have issues they wish to raise in respect to particular aspects of the proposed NPS-NHD and so have been encouraged by BusinessNZ to make their own submissions, raising matters specific to their areas of expertise.

2.0 Part 1: Responses to the Questions in the MfE Consultation Paper

Questions:

Q1: Is more action needed to reduce development from occurring in areas facing natural hazard risk?

BusinessNZ response:

- 2.1 It is not possible to answer this question with simply a “yes” or “no”.
- 2.2 As BusinessNZ stated in its Submission to the Environment Committee on the Inquiry into Climate Adaptation², over the medium term, improved public information on risk should be encouraged in order for individuals, businesses, and communities, to make informed decisions about where to live or continue to live and on the development of new infrastructure.
- 2.3 Of particular importance, there needs to be a clear understanding of the risks to property and life that are largely internalised i.e. to those individuals who own a particular property, as opposed to the potential externalities associated with risk that might impact on wider communities.
- 2.4 Notwithstanding the above, virtually every activity has spillover consequences not necessarily justifying government involvement. For government involvement to be justified, the externalities must be shown to be particularly large so government intervention is warranted.

Q2: Are there any other parts of the problem definition that you think should be addressed through the NPS-NHD? Why?

BusinessNZ response:

- 2.5 No specific comments.

² <https://businessnz.org.nz/wp-content/uploads/2023/11/231101-Environment-Committee-Inquiry-into-Climate-Adaptation.pdf>

Q3: Are there other issues that have not been identified that need to be addressed through the NPS-NHD or the comprehensive National Direction for Natural Hazards?

BusinessNZ response:

2.6 No specific comments.

Q4: Do you support the proposed NPS-NHD's requirement that decision-makers take a risk-based approach when making decisions on new development in natural hazard areas? Why or why not?

BusinessNZ response:

2.7 The concept of a risk-based approach is generally sound given the costs and benefits of trying to reduce risk but this will likely differ from community to community, including between the individuals who live in those communities.

2.8 The economic perspective of risk stresses two ideas:

- More resources, including time and money, are needed to reduce risk, and
- People (through their actions) have a desired level of risk well short of zero in view of what the increased cost would require them to give up or for some other specific consideration.

2.9 It is not a case of eliminating risk; to do so would effectively be to close down all productive activity.

Q5: Should all natural hazards be in scope of the proposed NPS-NHD? Why or why not?

BusinessNZ response:

2.10 Conceptually, the idea that all natural hazards should be in scope seems desirable with the clear understanding that it is nigh impossible to determine all natural hazards which might occur. Beyond the 'normal' standard earthquakes, flooding and landslips, if all possible natural hazards were included it would be almost impossible to proceed with any development given risk is part and parcel of just about every human activity.

- 2.11 If the proposed NPS-NHD is to proceed, the focus should be on those areas where there is significant scope for externalities on third parties which the owners or developers of property are not likely to manage effectively.
- 2.12 Provided the costs and benefits of development are relatively internalised (i.e., developers face appropriate price signals in respect to risk), there is little need for the involvement of external decision-makers in the activities an owner/developer might like to undertake.

Q6: If not all natural hazards are in scope, which ones should be included? Why?

BusinessNZ response:

- 2.13 See response to Q5 above. The emphasis should be on any natural hazards that could impose potentially significant costs (externalities) on third parties that are unlikely to be internalised for the owners/developers of property/infrastructure.

Q7: Should all new physical development be in scope of the proposed NPS-NHD? Why or why not?

BusinessNZ response:

- 2.14 See response to Q6 above. No. Only where the externalities are particularly relevant and cannot be managed through normal market mechanisms.
- 2.15 The emphasis should be on the high risk of down-stream damage/costs to third parties.
- 2.16 Requiring all physical development to be in the scope of the proposed NPS-NHD would be cumbersome and is unnecessary given that most developers face strong market incentives to ensure any infrastructure they build is fit for the purpose for which it was developed in the first place – taking into account the costs and benefits of same.
- 2.17 A number of major infrastructure providers have provided input into the development of this BusinessNZ submission, with a significant concern surrounding the proposed the inclusion of infrastructure in the NPS-NHD, and the lack of definition around risk.

- 2.18 A key objective of the NPS-NHD is to help councils identify natural hazards and assess risk and risk tolerance consistent way^[1] but the terminology and risk assessment methodology used is vague and leaves room for inconsistencies in decision making. The NPS-NHD is premature, even as an interim measure, in the broader context of the work required in relation to the development of a 'comprehensive National Direction for Natural Hazards'^[2].
- 2.19 The requirements of the NPS-NHD will create duplication for many infrastructure projects which already undergo a comprehensive and very specialised risk assessment undertaken by a team of experts as part of business case process. Requiring an additional layer risk assessment during the consenting phase will not result in an efficient use of resources. As a result of the above, and the uncertainty surrounding the definition of risk, a number of infrastructure providers supplying critical services for a public benefit consider that they should be excluded from the application of the NPS-NHD if it is to proceed.

Q8: What impact do you think the proposed NPS-NHD would have on housing and urban development? Why?

BusinessNZ response:

- 2.20 The impact of the proposed NPS-NHD will be heavily dependent on how it is implemented.
- 2.21 If a very risk averse approach is taken, then obviously the amount of land available for future development will be reduced, significantly affecting the amount available for housing and ultimately flowing through into increased costs to consumers and households.
- 2.22 On the other hand, if a more realistic approach is taken, and only development on land with extreme risks is affected, then the impact is likely to be minimal. In this case, it is assumed developers will already have market-based pricing incentives not to develop very marginal land (i.e., from signals from insurers through the potential inability to insure or raise capital from normal sources, such as banks).
- 2.23 The proposed NPS-NHD, as it currently stands, tends to favour a precautionary approach which is problematic.

[1] Supplementary Analysis Report, page 2.

[2] Proposed National Policy Statement for Natural Hazard Decision-making Discussion Document, September 2023, page 5.

Q9: Do you agree with the proposed objective of the NPS-NHD? Why or why not?

BusinessNZ response:

- 2.24 It is worth noting the Objective (NPS-NHD – 2.1 Objective) in full which states: *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.*
- 2.25 While this objective might sound superficially appealing, the fact is that nowhere does it refer to the trade-offs involved in *minimising* risk.

Q10: What are the pros and cons of requiring decision-makers to categorise natural hazard risk as high, moderate or low?

BusinessNZ response:

- 2.26 BusinessNZ is concerned that there are inadequate definitions of what is or is not 'tolerable' or 'intolerable' risk.
- 2.27 A Report for MfE by consulting firm Sapere (11 August 2022) made the very useful point that *There is also no specific risk tolerance criteria in New Zealand to determine when a particular annual loss-of-life risk is acceptable or not, making it more difficult to determine the point at which risk reduction, such as managed retreat, is required (p.1).*³
- 2.28 The NPS-NHD talks about risk tolerance but there is no clear definition of what is 'tolerable' risk or 'intolerable' risk, apart from relatively vague references to loss of property and/or potential loss of life. It is fundamental that risk to property or life should be relatively consistent across the board to ensure the optimal allocation of resources while providing for local communities and individuals to make decisions based on their own personal circumstances.

Q11: What are the pros and cons of directing decision-makers to assess the likelihood, consequence and tolerance of a natural hazard event when making planning decisions?

BusinessNZ response:

³ Assessment of Mechanisms of Managed Retreat – A report prepared for MfE by consulting firm, Sapere (11 August 2022)

- 2.29 On the positive side, if done well, such an assessment could provide clear information to individuals, businesses and communities about the potential risks of proceeding with an activity in a given area. But it should be recognised that decision-makers will be aware only of actual known risks – not necessarily of unknown but potential risks.
- 2.30 Clear information should mean private sector businesses are better informed for decision-making purposes - for example, insurers in assessing risks in specific areas. Obviously, better and more reliable information should result in more accurate risk pricing and produce better decisions, enhancing the benefits of development - particularly important given the cost involved in developing new infrastructure.⁴
- 2.31 Many local authorities appear to lack detailed information to assess which areas are "high", "moderate" and "low" risk areas. In the absence of good data, hazard maps are sometimes created that indicate large swathes of land as hazard-prone. Oversimplified or inaccurate maps lead to high compliance costs for land-owners to deal with at a resource consent level. This reduces certainty for investment and slows down development.
- 2.32 Individual site owners may be asked to contribute their own assessments but these are limited to specific sites. An accurate assessment requires reliable data from the relevant geographic area. For example, a robust flood assessment requires detailed data from the whole catchment, not just an individual site.
- 2.33 But on the downside, an assessment could result in decision-makers taking a very precautionary approach to the development of new infrastructure, potentially resulting in loss of land use and associated economic activity.
- 2.34 Given regulators will have an inbuilt tendency to minimise their own risk since costs can be pushed on to third parties - businesses and households - a very cautious approach to new development is likely to be taken, stifling economic growth and making the price of available infrastructure (housing etc) that much more expensive as communities, individuals and businesses compete for less available development land.
- 2.35 Finally, what is suggested fails to take account of the fact that individuals have unique risk tolerance (based on a range of factors), and so would cut across their ability to engage in infrastructure development as they saw fit. It does not

⁴ It should be noted that BusinessNZ recommended in its submission to the Environment Committee Inquiry into Climate Adaptation that an easily accessible, independent risk database tool to enable effective risk assessment, analysis, and planning is set up to allow for individuals to make better informed decisions in respect to risks.

acknowledge that ideally, the costs and benefits of taking (or not taking) action should be internalised to the extent reasonably possible.

Q12: What are the pros and cons of directing decision-makers to adopt a precautionary approach to decision-making on natural hazard risk?

BusinessNZ response:

- 2.36 See response to question 11 above.
- 2.37 In addition, the precautionary approach could have unintended consequences, for example, the price of land/housing could increase as individuals and businesses competed for the limited amount of land available.
- 2.38 It should not be a case of risk elimination; that would effectively close down all productive activity.

Q13: What are the pros and cons of requiring natural hazard risk as a matter of control for any new development classified as a controlled activity in a plan, and as a matter of discretion for any new development classified as a restricted discretionary activity?

BusinessNZ response:

- 2.39 See above responses to Q11 and Q12.
- 2.40 Using natural hazard risk as a control would simply add increased cost and create greater uncertainty for developers with even more cases having to go through the courts.
- 2.41 The clear objective of resource management law should be to uphold property rights allowing individuals and businesses to develop and utilise their land as they see fit (i.e., permitted activity), provided this does not unduly interfere with others' legitimate business activity or personal rights. Property rights should be upheld, not degraded through inappropriate and uncertain control by centralised decision-makers.

Q14: What are the pros and cons of requiring planning decisions to ensure the specific actions to address natural hazard risk outlined in policy 5?

BusinessNZ response:

- 2.42 Where there are significant externality issues associated with a development, it makes some sense that if, potentially, many people could be adversely affected, there would be justification for decision-makers requiring specific action to reduce the risk involved – that is, if the problem could not be satisfactorily dealt with in some other way – e.g., through the courts.

Q15: What is the potential impact of requiring decision-makers to apply this framework in their decision-making? Will it improve decision-making?

BusinessNZ response:

- 2.43 It is hard to say what the potential impact would be given the rather vague indications provided e.g., 'risk is reduced to as low as reasonably practicable'. What this means in practice will likely differ substantially amongst decision-makers, and the wider community. What is acceptable to one person could be totally unacceptable to another given the trade-offs that reducing risk would involve.
- 2.44 This reality is at the heart of BusinessNZ's concern with the NPS-NHD since its interpretation is likely to be largely in the eye of the beholder, varying from decision-maker to decision-maker. It goes back to our earlier discussion of the need for risk to life issues (and associated valuation) to be much better understood and consistent. Otherwise, the NPS-NHD will just be another hurdle for developers to go through, without any sizeable benefit.

Q16: What are the pros and cons of providing direction to decision-makers on the types of mitigation measures that should be adopted to reduce the level of natural hazard risk?

BusinessNZ response:

- 2.46 While there may be justification for decisionmakers requiring actions to reduce risks to third parties, there is no justification for requiring nature-based, over hard-engineering, solutions (Policy 6).
- 2.47 It should be up to the owners of a new development to reduce risks to third parties where the risks are considerable. However, the type of approach should be totally up to the individual owner/developer, as long as the techniques used achieve the desired objective of minimising damage to third parties. Obviously, the option

chosen (for example nature-based or hard-engineering solutions) should be totally at the discretion of the landowner – presumably based first on risk reduction effectiveness and second on the cost of alternative action. There is no role for decision-makers in interfering with landowners'/developers' normal commercial decisions apart from ensuring new development costs are largely internalised, including the longer term risk of potential failure.

Q17: Does policy 7 appropriately recognise and provide for Māori rights, values and interests? Why or why not?

BusinessNZ response:

2.48 No specific comments.

Q18: Can traditional Māori knowledge systems be incorporated into natural hazard risk and tolerance assessments?

BusinessNZ response:

2.49 No specific comments.

Q19: Does the requirement to implement te Tiriti settlement requirements or commitments provide enough certainty that these obligations will be met? Is there a better way to bring settlement commitments into the NPS?

BusinessNZ response:

2.50 Given there is currently a degree of uncertainty associated with te Tiriti settlement requirements and commitments, BusinessNZ considers decision-making on this point should not be rushed. There is the potential here for conflict with the NZ legal system's long-accepted principles of property law which entitle those who own private property to the peaceful ownership and enjoyment of their property.

2.51 It is a fundamental pillar of a market economy that property rights should be relatively clear and unambiguous and able to be upheld in a court of law. Where property rights are removed or reduced by way of regulatory takings, compensation should generally be paid.

- 2.52 Without reasonable security from confiscation by the state or others, the incentive on individuals and businesses to invest and build up productive assets is severely weakened.
- 2.53 It is noted that in a number of MfE papers on hazards and managed retreat, there are references to the importance of being very careful when taking and restricting property use for Māori as some land cases are associated with Treaty settlements and taking the land could be considered the taking of property rights. We very strongly agree with this concern and would like to see government extend this conclusion to all landowners as it applies equally to property rights in general.
- 2.54 All regulatory takings and restrictions on land use should generally be accompanied by compensation within a reasonable threshold framework. Regulators must be incentivised not to be overly cautious by simply minimising their own risk and placing all the costs and risks on to property owners.

Q20: Is the implementation timeframe workable? Why or why not?

BusinessNZ response:

- 2.55 No specific comments.

Q21: What do you consider are the resourcing implications for you to implement the proposed NPS-NHD?

BusinessNZ response:

- 2.56 No specific comments.

Q22: What guidance and technical assistance do you think would help decision-makers to apply the proposed NPS-NHD?

BusinessNZ response:

- 2.57 As stated numerous times in this submission, the proposed NPS-NHD talks in very loose terms about risk in general and about so-called 'tolerable' and 'intolerable' risks which would justify local government taking (or not taking) action, as the case may be.
- 2.58 Again, as noted earlier, there is no clear definition of what is an acceptable loss of property and/or life which would justify taking action to reduce hazard risk.

- 2.59 While issues relating to valuation of life are often difficult and controversial, a clear understanding and consistency of approach are required if resources are to be utilised efficiently, given the trade-offs involved - cost and loss of property use on the one hand and reduced risk of property damage and loss of life on the other.
- 2.60 As stated earlier in this paper, the economic perspective of risk stresses two ideas:
- More resources, including time and money, are needed to reduce risk, and
 - People (through their actions) have a desired level of risk well short of zero, because of what they must give up in terms of increased cost or for some other specific reason.
- 2.61 It is important to understand up-front that there is an optimal amount of resource for use in reducing natural hazard risk, just as there is an optimal amount of resource that should be spent on hazard minimisation, crime prevention, health interventions etc. The crucial and undeniable fact is that resources are limited, and risk cannot be completely eliminated or if at all, not without great cost. While it might be possible to reduce risk, beyond a certain point the marginal cost of doing so becomes progressively higher, while the potential returns reduce. Therefore, it pays for companies and individuals to invest in risk minimisation strategies only up to the point at which the marginal cost equals the marginal benefit.
- 2.62 While some might consider it implicit in the NPS-NHD objective, that *minimising* risk within reasonable bounds is taken as a given, this would be a dangerous assumption for a number of reasons. These include the general perception that regulators will have strong incentives to minimise their own risk when allowing for new development, and perhaps even more importantly, because the NPS-NHD contains an explicit requirement as outlined in **Policy 3** which states:
- Decision-makers must adopt a precautionary approach when determining natural hazard risk if:*
- (a) the natural hazard risk is uncertain, unknown, or little understood, and*
 - (b) the natural hazard risk could be intolerable.*
- 3.59 Given BusinessNZ's concerns earlier in this submission about the lack of any definition of *intolerable* risk, there is scope for decision-makers to take a very risk averse approach to allowing for new developments with associated cost increases and uncertainty.
- 3.60 BusinessNZ recommended in its submission to the Environment Committee Inquiry into Climate Adaptation that an easily accessible, independent risk database tool to enable effective risk assessment, analysis, and planning is set up to allow for individuals to make better informed decisions in respect to risks.

3.61 If the NPS-NHD is to proceed, BusinessNZ would recommend that at the very least, its objective make reference to the economic, social and environment costs (and benefits) of minimising risk, clearly acknowledging there will be trade-offs involved. Moreover, clear definitions of risk need to be developed to ensure sound decision-making.

Appendix One - Background information on BusinessNZ



The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#)
- [BusinessNZ](#) policy and advocacy services
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium-sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).

