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Christchurch City Council submission on the *Proposed National Policy Statement for Natural Hazard Decision-making 2023*

Introduction

1. Christchurch City Council (the Council) thanks the Ministry for the Environment for the opportunity to provide comment on the Proposed National Policy Statement for Natural Hazard Decision-making 2023 (NPS).
2. Planning for hazards is particularly important for our city and region, having regard to Christchurch's experience of the Canterbury earthquake sequence and recovery, fires on the Port Hills, flooding and impacts of storm events, including slips, loss of access and run-off of sediment, logs and slash, particularly on Banks Peninsula.
3. The Council supports the overall direction of the NPS and particularly welcomes the focus on adopting a risk-based and precautionary approach, and avoiding new development in high-risk areas, particularly hazard-sensitive development such as residential activities. We also support the NPS applying to all natural hazards, including fire. We support the requirement that Māori and tangata whenua values, interests, and aspirations be recognised and provided for.
4. The Council very strongly opposes the proposed Policy 2(b) relating to the assessment of risk and the required consideration of the tolerance, willingness and capability of people affected to bear such risks. The Council seeks amendments to the NPS on this matter which are included, along with recommended amendments relating to other matters, in the issues covered in more detail below.
5. We recognise that this NPS is an interim measure intended to limit new development in areas of intolerable risk until central government provides more specific national direction on identifying natural hazards and risks and giving directions on land use planning. We urge that priority be given to development of that more specific direction to clearly identify the most appropriate approach, particularly in high-risk areas and where it should be applied consistently throughout New Zealand. The lack of such direction has created significant difficulties and costs for communities as they have had to each, individually, attempt to determine how they should manage those risks and implement that through their district plans and regional policy statements.

Submissions seeking amendments

Determining natural hazard risk (Answer to Discussion document Question 11)

6. In determining the natural hazard risk, the NPS requires consideration of the likelihood and consequences of a natural hazard event, being the traditional method of assessing risk. However, it also requires consideration of the tolerance of the people subject to the risk, including their willingness and capability¹. The difficulty with this approach is that communities do not share a common view of risk, but rather have a spectrum of risk tolerance. Any such level of risk selected as tolerable is therefore likely to be, at best, a middle ground compromise, resulting in some of the community feeling unsafe and/or not having capability to cope with the risk. There may be cost implications of decisions around tolerance, for example, flooding of a community who have previously accepted a higher tolerance to risk, that displaces people and puts significant strain on their wellbeing in a variety of ways.
7. This additional consideration in the assessment of risk, of including consideration of tolerance, willingness and capability to cope, may well make any community discussion of risk awkward and difficult for those who would feel less safe in a hazard event or are less able to cope with it.
8. The tolerance and capability of the existing community to cope may also change over time, particularly as the age structure of the community changes or as events become more frequent. For example, as people age, their ability to cope with hazard events may reduce due to physical or financial limitations, reducing their tolerance to hazard events.
9. The proposed approach of including tolerance and capability to cope in determining risk also seems likely to create confusion for the general public, particularly in respect of high-risk areas. District plans are required to give effect to the NPS by avoiding, for example, new residential development in high hazard risk areas. However, the risk for residential development only needs to be mitigated in moderate hazard risk areas. So the perception of the general public is likely to be that if the District Plan permits residential development, the level of risk in terms of likelihood and consequence, is likely to be moderate at worst. Under the proposed NPS provisions that may not be the case.
10. If a community's tolerance and capability to cope was considered to be sufficiently high at the time the District Plan was prepared, an area that would otherwise be considered to be a high hazard risk area could be deemed to only be a moderate hazard risk area. As such two areas that otherwise have a similarly high level of risk, in terms of likelihood and consequences, would be managed quite differently. One could provide for new residential development and the other not. How would potential residents know that it was only because an assessment concluded that the existing community's tolerance and capability to cope was high that residential development was being permitted in the area? How would they know what level of tolerance and capability to cope they would need to have to be comfortable with the hazard risk in the area?
11. It also seems incongruous that the community tolerance and capability to cope, as determined through some assessment at a previous point in time, should determine the categorisation of the level of risk for future residents. In effect, it presumes that future residents will have the same tolerance and capability to cope as existing residents. That seems unrealistic and is likely to create future issues, such as demands that the Council, and therefore the wider community, provide protection from the natural hazard risks or assist in the relocation of development through funding or other methods.

¹ Policy 2(b).

12. From a practical perspective, until such time as district plans are amended to give effect to the NPS and identify high, medium and low risk areas, it will be difficult enough to establish what level of risk different areas fall into simply on the basis of likelihood and consequences of natural hazard risks. It will be even more difficult to determine tolerance and capability to cope. The most that may be available on this aspect in applications for resource consents and plan changes may be indications from the proponent, and possibly from those making submissions and/or some potential purchasers of residential units, industrial sites, etc., that they are comfortable with the level of risk. Given the NPS-NHD also requires decision-makers to use the best information available, it is assumed that there would be some need for work to understand tolerance such as surveys of the community.
13. The Council considers that these issues are of particular concern in respect of high-risk areas and that high risk areas should be determined under the NPS, based on likelihood and consequences, and definitely not be influenced by a specific community's tolerance, willingness and capability to cope with hazard events. It is noted that there are existing examples of definitions of high-risk areas, such as that for "High hazard areas" in the Canterbury Regional Policy Statement. In terms of the consideration of tolerance and capability in moderate and low risk areas, the issues described above will still apply. The Council therefore does not consider this as an acceptable basis on which to establish decisions regarding hazard risk and seeks that the consideration of tolerance, willingness and capability be removed from Policy 2. Should they remain in Policy 2, even if just for moderate and low risk areas, the Council seeks urgent and specific guidance on how to assess those matters which specifically addresses the difficulties that are described above.
14. Finally, the list of consequences of a natural hazard event occurring that must be considered when determining the natural hazard risk includes the potential "serious" damage to property and infrastructure². However, it is not clear whether this includes consideration of the Council's ability to provide and maintain services in high-risk areas, including roads. While adaptable housing, for example, can manage some of the consequences, providing/maintaining infrastructure services, including roads, may become impractical or disproportionately expensive should a natural hazard event occur. This was the Council's experience following the Canterbury earthquakes, with some residents remaining in the "red zone". Community tolerance may be predicated on others meeting the costs of maintaining or repairing damaged/ stranded infrastructure.
15. There may also be consequences of a natural hazard for people and community's well-being, who may suffer losses, trauma and displacement as was experienced after the Canterbury earthquakes and should be recognised in Policy 2.
16. The Council seeks additions to Policy 2(a) along the lines of the following;
 "(a) ... potential loss of life, serious injury, **impact on well-being**, adverse effects on the environment, **and** potential serious damage to property and infrastructure, **and impacts on the provision and maintenance of services and access**; and".

Levels of risk for hazard-sensitive and other activities

17. The NPS directs planning decisions based on the level of risk for hazard-sensitive and other activities in Policy 5. It directs that all new developments are enabled in areas with low natural hazard risk, which is defined as being risk which is "generally acceptable". In moderate risk areas, risk is required to be reduced to as low as reasonably practicable. That is irrespective of whether the activity is hazard-sensitive or not. In high hazard areas new development is to be avoided unless the level of risk is at least reduced to a tolerable level, i.e. moderate or low risk. Alternatively, development is permitted in high-risk areas provided the new activity is not a hazard-sensitive activity, has a functional or operational need to be in the high-risk area, there are no practicable alternative locations, and risks are reduced to as low as reasonably practicable.

² Policy 2(a).

18. The Council considers that hazard-sensitive activities should only be permitted in an area of any risk level if the level of risk is low or will be reduced to low. For non-hazard sensitive activities, a requirement to reduce risks to as low as is reasonably practicable is appropriate, subject to the following comments, as are the other criteria for non-hazard sensitive activities located in high-risk areas.
19. The Council notes that the requirements for development to include mitigation measures that reduce the risk to “as low as reasonably practicable” may result in little or no mitigation being provided, even if the risk is bordering on being intolerable. For example, for some resource consent applications, there may be little or no practicable options for reducing the risk, particularly where the proposal seeks to develop the site to a level close to its capacity. In such situations the “as low as reasonably practicable” direction would not allow the hazard risks to be a reason for declining the proposal, or to require a reduction in the number of units/scale of development in order to reduce the risk. The Council seeks that further consideration be given to amending the policy direction to enable proposals to be declined or modified to enable appropriate mitigation to be required.

Objective – risks from natural hazards minimised (Answer to Discussion document Question 9)

20. The Objective in the NPS seeks that the risks from natural hazards are minimised. This does not reflect the direction in Policy 5 that development be avoided in areas of high natural hazard risk, except in certain circumstances. The Council considers that the objective would more fully cover the direction in the NPS if it indicated that risks “are **avoided or** minimised.”

Relationship with the New Zealand Coastal Policy Statement

21. The Council considers that the risk-based approach of the NPS, as recommended to be modified in the Council’s submission, should be incorporated into the New Zealand Coastal Policy Statement. The New Zealand Coastal Policy Statement currently contains a strong policy direction to avoid increasing the risks from coastal hazards.³ The risk-based approach proposed in the NPS would allow some increase in risk, e.g. where new development or redevelopment would still keep the level of risk at a low level. There does not appear to be any obvious reason why the same risk-based approach should not apply to coastal hazards.

Best information and decisions not delayed

22. The Council supports the use of the best information available at the time and that decisions should not be delayed due to uncertainty⁴. However, it is concerned that the requirement for decision-makers to take “all practicable steps” to reduce uncertainty⁵ could be interpreted to place an onus on the Council to undertake considerable modelling work and be very costly. This could include modelling of an extensive range of scenarios and assumptions, when a more limited range of modelling, e.g. including sensitivity testing, could provide a reasonable degree of certainty. The Council seeks that “all” be removed from Sub-clause 3.3(2)(b). Also, in respect of resource consent applications and private plan change requests, the onus should be on the applicants to provide a reasonable level of certainty.

³ In particular, Policy 25 a. & b.

⁴ Clause 3.3.

⁵ Sub-clause 3.3(2)(b).

Direction on mitigation measures (Answer to Discussion document Question 16)

23. The Council generally supports the mitigation directions in Policy 6. This includes the preference for nature-based and area-wide solutions for mitigating hazards where possible, noting that such options may often not be possible for resource consents and plan changes involving single or small numbers of sites.
24. However, the direction to use the most effective mitigation measures to reduce the risk “over the life of any proposed new development” needs clarification as to what that “life” is for the various forms of development covered by the NPS. Under the Building Act dwellings usually have a minimum life of 50 years, but may well last and have significant value for twice that time. Subdivisions and the structures in them often “live” for considerably longer. A clear timeframe over which mitigation measures should reduce natural hazard risks is necessary. This is even more so with many natural hazards increasing in intensity and frequency. The Council suggests that a more appropriate approach would be that Policy 6 specify that the mitigation measures should be based on the hazard risks over at least 100 years. This is the approach included in the New Zealand Coastal Policy Statement.

Natural hazard risk a matter for consideration in resource consent applications (Answer to Discussion document Question 12)

25. Policy 4 requires that natural hazard risk must be included in the District Plan as a matter of control for consideration in controlled activity applications and a matter of discretion for consideration in restricted discretionary activity applications. It seems unnecessary and inefficient to require consideration of natural hazard risk for resource consent applications in areas that the District Plan does not identify as having high or moderate natural hazard risk (areas of low natural hazard risk being required by the NPS to enable new development). The Council suggests that the policy be amended to apply only to areas of high or moderate natural hazard risk.
26. Alternatively, if this direction is intended to be an interim measure until such time as district plans have given effect to the NPS, the Policy should indicate that.

Application to intensification planning instruments – urban intensification

27. The NPS specifies that in order to minimise disruption and complexity for local authorities implementing the increased urban density requirements of the Act and the National Policy Statement on Urban Development, nothing in the NPS will apply to Councils when preparing intensification planning instruments⁶. The Council supports that in respect of the preparation of intensification planning instruments. However, the Council suggests that it would assist if that provision also stated that decisions on intensification planning instruments should give effect to the NPS to the extent that the notified intensification planning instrument, or submissions on it, give effect to the NPS.

Definitions – new development, new hazard sensitive development, and planning decision

28. The definition of “new development” seems overly complicated and does not appear to clearly cover new buildings on a site that already has buildings or structures on it, but that are not the extension or replacement of existing buildings, e.g. the replacement of an existing house with a number of townhouses. The Council suggests that the definition be simplified to cover all new buildings, structures or infrastructure and any extensions or replacements of existing buildings, structures or infrastructure. But note the following submission point, which seeks further changes to the definition.

⁶ Clause 1.5.

29. The definition of “new development” also does not appear to cover the repurposing of already developed sites, e.g. converting a building currently use for commercial or industrial activities into residential units or for other hazard-sensitive activities, or converting an existing house into 2 or more flats potentially increasing the number of residents. The Council considers that such changes of use need to be captured as “new development”, particularly as the definition of “new hazard-sensitive activities” only applies to “new development”.
30. The definitions of “new development” and “new hazard sensitive development” should clearly apply to subdivisions, as subdivisions create an expectation that the new buildings, structures and activities covered in those definitions will be able to be undertaken on the sites created. This is the approach included in the New Zealand Coastal Policy Statement, where the direction specifically applies to subdivision, as well as use and development.
31. The definition of “new hazard sensitive development” includes, amongst other activities, residential dwellings, including papakāinga and retirement villages. The Council suggests that it should also specifically include boarding houses, so as to avoid any uncertainty as to whether it is included. The Council also suggests that the definition should also include visitor accommodation, considering the concentrated numbers of people who are likely to be sleeping in relatively unfamiliar surroundings.
32. The definition of “planning decision” should be extended to apply to recommendations by councils to requiring authorities on notices of requirements for designations.

Conclusion

33. The proposed NPS has a strong focus on risk-based management of natural hazard risks and in taking a precautionary approach. Avoiding new development in high-risk areas is critically important for the safety of Christchurch communities and minimising damage to property and infrastructure. The proposed NPS is an important step in providing national direction on how communities should manage those risks and we look forward to more specific direction in the future. But reference to “tolerance” as being relevant to categorising a level of risk is poor policy and should be deleted.

Thank you for the opportunity to provide this submission.

For any clarification on points within this submission please contact Peter Eman, Principal Advisor Planning, (Peter.Eman@ccc.govt.nz)

Yours faithfully