



**TE KŌKIRINGA TAUMATA**  
NEW ZEALAND PLANNING INSTITUTE

## **FEEDBACK ON PROPOSED NATIONAL POLICY STATEMENT - NATURAL HAZARDS DECISION MAKING**

**20 NOVEMBER 2023**

Submission of Te Kōkiringa Taumata | New Zealand Planning Institute  
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### **Planning is essential to achieving a better New Zealand**

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Planners have a critical role in shaping New Zealand's future by helping to develop solutions to key issues, such as population growth, infrastructure needs, pressure on natural resources and environments, demographic change, and transport.



## INTRODUCTION

1. Te Kōkiringa Taumata | New Zealand Planning Institute (NZPI) welcomes the opportunity to present this feedback on the proposed National Policy Statement for Natural Hazard Decision-making (NPS-NHD).
2. NZPI members have a wealth of experience in managing natural hazards under the Resource Management Act 1991 (RMA), in the absence of national direction. We understand the policy and practical issues that face practitioners planning to manage risk from natural hazards in a pro-active way. We also have experience planning in the aftermath of natural disasters, when hindsight provides an opportunity to learn how to do things better next time. This submission offers practical feedback, applying an implementation lens, to the proposed NPS-NHD.

## OVERARCHING COMMENT

3. NZPI supports national direction on the management of risk from natural hazards. There are benefits to all of New Zealand from improved risk outcomes, and strong national direction is an essential part of providing for this.
4. NZPI supports the general policy approach underlying the proposed NPS-NHD, which is to focus new development in areas of low risk, require mitigation where risk is moderate, and to avoid new development in areas of high risk. This is a proportionate approach that directs the strongest restrictions to the areas of highest risk, where strong restrictions are expected to be justified. It acknowledges that not all risk needs to be avoided, and that development can take place where there is some risk. NZPI considers this to be a practical policy approach.
5. However, the NPS-NHD has a number of flaws in the way it provides direction and attempts to execute this policy approach, which are likely to cause significant implementation issues. These are discussed in Part 1 of this submission.
6. Because of the issues discussed in Part 1 of this submission, NZPI does not support the two-stage approach to national direction on natural hazards planning, with the proposed NPS-NHD being Stage 1. NZPI's assessment is that the proposed NPS-NHD attempts to provide both a long-term approach to managing natural hazards, as well as short-term direction for resource consent decision-making, and does neither very well.
7. In summary, our overall recommendation is that the proposed NPS-NHD should be withdrawn, work on a comprehensive approach to risk management progressed, and a complete NPS introduced in the near future. We note the joint submission of Taituarā and Local Government New Zealand (LGNZ) contains a similar recommendation. We agree with the statement in that submission that it is preferable to spend time now to get it right and provide robust national direction that is genuinely directive, rather than progress with the draft NPS in its current form. NZPI's recommendations for a more comprehensive NPS are discussed in Part 2 of this submission. We include in Part 2 some suggestions for what an alternative 'quick fix' NPS, focused clearly on case-by-case resource consent decision-making, could include.



## PART 1: PROPOSED NPS-NHD

### Scope and efficacy of the proposed NPS-NHD

8. The scope of the proposed NPS-NHD is so limited that NZPI questions the value of pursuing it. It is also very complicated to understand the scope and application in the drafting of the proposed NPS-NHD, and we recommended this is improved if the NPS is retained.
9. To illustrate: The application statement in clause 1.3 states that the proposed NPS-NHD only applies to planning decisions that result in or enable new development. ‘New development’ is defined in the interpretation section to include development on vacant land, and extensions to existing buildings, so not all new development is included (such as second dwellings). ‘Planning decision’ is also defined and includes a full list of types of decisions. However, Clause 4.1 provides limitations to this, as only decision-making on resource consent applications, designations and private plan changes is initially within scope of the proposed NPS-NHD. Because of the way the RMA works for resource consent applications, application of the proposed NPS-NHD is further limited to discretionary and non-complying activities, unless a controlled or restricted discretionary activity already identifies natural hazards as a matter of discretion or control. In addition, Clause 1.5 provides further limits by stating that the proposed NPS-NHD does not apply to intensification planning instruments.
10. In summary, this means that the scope of the proposed NPS-NHD is limited to decision-making on:
  - activities that require a non-complying or discretionary activity consent under existing plan rules, and some restricted discretionary and controlled activities where natural hazards is a matter of discretion or control, and that are outside of areas subject to intensification planning instruments,
  - notices of requirement, and
  - private plan changes,where the consent, designation or plan change would result in or enable development on vacant land or extensions to existing buildings.
11. The circumstances described in paragraph 10 are very limited. We anticipate only a small portion of new development will to be caught by such a restricted application, limiting the efficacy of the proposed NPS-NHD. We note and support the submission points of the Resource Management Law Association (RMLA) and the joint Taituarā and LGNZ submission that also raise concerns over the exclusion of intensification planning instruments.
12. The discussion document supporting the proposed NPS-NHD identifies that the NPS is intended to address the weight that decision-makers should give to natural hazards. NZPI considers that it does not do this. This is primarily because the efficacy of the proposed NPS-NHD to influence and provide direction to the assessment of resource consent applications is extremely limited. Section 104 of the RMA requires the consent authority to ‘have regard to’ an NPS. This is the same level of consideration required to be given to the effects of the activity, and to other planning documents such as other NPSs, regional policy statements and district plans. The proposed NPS-NHD would have no priority or ability to impose mandatory requirements in a resource consent decision-making context. For example, the requirement in Policy 5 that “planning decisions must ensure” will be ‘had regard to’ alongside all other policy directions, meaning the ‘must’ in Policy 5



is not mandatory. This will result in uncertainty for those applying the NPS in consent situations as they try to reconcile a 'must' direction with a 'have regard to' direction, in a similar manner to the uncertainty currently arising with application of the NPS-Highly Productive Land in consent situations. In addition, the 'gateway' test for non-complying activities under section 104D does not include objectives and policies in NPSs; only those in the relevant plan. The proposed NPS-NHD would therefore provide no additional support to decision-making on non-complying activities.

13. In summary, NZPI recommends the proposed NPS-NHD is withdrawn and a comprehensive NPS is introduced in the near future, given the limited scope and efficacy of the proposed NPS-NHD.

### Purpose of the NPS

14. The proposed NPS-NHD is described in the discussion document as Stage 1 of a work programme to introduce comprehensive national direction on the management of natural hazards. The executive summary of the discussion document states that action is needed now to limit new development in areas where the risk of natural hazards is intolerable. In summary, the proposed NPS-NHD has a very specific purpose.
15. However, the objective of the NPS is broad and appears to be geared more towards the type of objective that might be in the second stage comprehensive national direction. It does not match the very specific purpose of the proposed NPS-NHD. As a result, the policy logic of the NPS does not hold together. This will lead to confusion and uncertainty in implementation.
16. NZPI recommends that if the proposed NPS-NHD is retained, its objective should reflect its specific purpose. For example, the objective could reflect the statement in the executive summary of the discussion document: *Risk from natural hazards and climate change to new development is tolerable or lower.* A specific and targeted objective will provide a clear link to the policies that implement it, providing for strong national direction.

### Focus on activities rather than decision-making

17. NZPI considers that the focus on decision-making is not the right approach for the proposed NPS-NHD. There are two flawed assumptions underlying this approach:
  - that the point of *decision* is the most effective point in the process to give consideration to risk from natural hazards
  - that decision-makers are the most influential actors to ensure natural hazard risk is effectively managed.
18. These are flawed assumptions because the earlier in the planning process that risks from natural hazards are considered, the more efficient and effective management of natural hazards will be. In addition, the applicant for a resource consent, notice of requirement, or plan change is best placed to modify the proposed development to accommodate risk management requirements. Rather than placing requirements on decision-makers, NZPI recommends the proposed NPS-NHD places requirements on *activities*, to ensure all aspects of the planning system are engaged in managing natural hazard risk.



19. 'Decision-maker' is defined in the proposed NPS-NHD as "any person exercising functions or powers under the Act." NZPI considers that this definition is much broader than the normal meaning of 'decision-maker', and that this has the potential to lead to some confusion. Our recommendation above, for the NPS-NHD to place requirements on activities, will remove this issue with 'decision-maker'. However, if the recommendation is not adopted, we note that in the drafting of the policies, 'decision-maker' is used interchangeably with 'planning decision'. NZPI recommends that if a focus on decision-makers is retained in the NPS-NHD, 'decision-maker' is defined as a person who makes a planning decision (noting that 'planning decision' is also defined). We also recommend that terminology is standardised, so that either 'decision-maker' or 'planning decision' is used, rather than both.

### Area v activity-specific approach

20. NZPI is concerned about the misalignment between the area-based direction for risk management in the proposed NPS-NHD and the intention that the NPS be used for activity-specific resource consent or notice of requirement decision-making. As currently drafted, the direction in the NPS is not well suited for case-by-case decision-making and is unlikely to be effective as a result.
21. The approach in Policies 5, 6 and 7 is based on *areas* of high, moderate or low risk. Application of the policies relies on an understanding of the spatial nature of risk. Without this, it is not possible to know if development should be avoided, enabled, or if risk mitigation is needed. However, there is no requirement in the proposed NPS-NHD for areas of risk to be identified and mapped. This raises practical questions about how decision-making on resource consents and notices of requirements is expected to consider the risk in an area.
22. This approach ignores the fact that in resource consent decision-making, the onus is on the applicant to prove consent can be granted. The applicant collects all the information necessary for the application and submits this to the consent authority for consideration. The consent authority does not provide any of the information to support the application. The consent authority's role is to review, consider and either approve or decline the application. NZPI considers that it is unreasonable to place the burden of determining the level of risk for an area on an applicant for resource consent for an activity within an area, as the proposed NPS-NHD does. This is a task that should sit with local government.
23. This misalignment between area-based direction and case-by-case assessment also makes it very difficult to understand what type of risk is required to be addressed through mitigation or reduction. Risk is considered in two different ways for these two types of situations. For an area-based assessment of risk, the hazards impacting an area are identified and the mix of uses within the area is considered. The impacts of hazard events on those uses are considered, and the area can be assigned a level of risk. Policy decisions can then be made about whether the level of risk can be increased through further development, needs to remain the same, or should be reduced. The various measures to achieve the desired risk outcome, such as changing uses or constructing mitigation measures can then be investigated and decided on. In this context, new development will increase risk, allowing no development will hold risk at the current level, and removing activities from the area will reduce risk.



24. For a case-by-case resource consent risk assessment, the risk posed to the particular activity is assessed. The reference point is different to an area-based assessment. Locating the activity on the site will expose it to the risk level for the area. Activity-specific risk mitigation measures may lower the risk to the activity, but will not lower the risk to the area – the risk in the area increases as soon as a new activity is placed there, because additional people and/or buildings are exposed to the hazard. A case-by-case resource consent approach can never lower risk in an area; the only way to lower risk to an area is to reduce the exposure or vulnerability of the activities already in the area. Policy 5 requires new development to be avoided in areas of high natural hazard risk. The risk outcome this achieves is holding the risk level for the area at its current level.
25. This illustrates an issue with Policy 1 in the proposed NPS-NHD. This requires decision-makers “to determine the level of risk as high, moderate, or low”. It raises the question of whether it is the risk for the area that is to be determined, or the risk to the activity.
26. Policy 5 requires no new development in areas of high risk, “unless the level of risk is reduced to at least tolerable”. This raises the same question, is it the risk to the area or the risk to the activity that needs to be reduced. If it is the risk to the area, this cannot be achieved through a resource consent process, as reducing risk to an area requires changing the exposure or vulnerability of activities already in the area. As currently drafted, therefore, Policy 5 cannot be applied in a resource consent or designation context.
27. To address these issues, either the identification of risk areas needs to be done first through changes to regional and/or district plans, or a clear policy approach needs to be provided for decision-making in the absence of area-based risk assessments, for case-by-case decision-making on activities via resource consents and notices of requirements. NZPI recommends the proposed NPS-NHD is withdrawn, unless case-by-case decision-making direction is included.

### Risk terminology

28. The discussion document identifies that the proposed NPS-NHD is intended to provide a consistent framework to consider and address natural hazard risks regarding new development proposals. However, it is unable to do this when there are no effective definitions or directions on the three levels of risk and how to determine them (low, moderate and high), including how to determine and account for tolerance, and when it is silent on how to manage significant risk.
29. The risk level definitions included in the NPS are ineffectual. We concur with the submission points of Taituarā and LGNZ on this matter. For example, high risk is risk that is intolerable. It is therefore necessary to know what intolerable risk is to know if there is high risk, but the NPS provides no definition of intolerable risk or direction on how to determine it. The definition of moderate risk is particularly problematic: it is risk that is not high and not low. This is not a practical definition for a case-by-case, activity-specific risk assessment, where an activity will have a particular risk associated with it, not a range from which to determine what is high, what is low, and therefore what moderate is. NZPI recommends that proper definitions of high, moderate and low risk are included in the proposed NPS-NHD, or a description of these levels of risk alongside a methodology to determine them on a case-by-case basis. Without this, the proposed NPS will result in no change to the status quo, as Councils will need to continue determining levels of risk in an ad hoc way.



30. It is very difficult to assess risk tolerance on a case-by-case basis, and NZPI is concerned that this is a requirement of the proposed NPS-NHD under Policies 1 and 2. It raises a number of questions in a resource consent context, such as, is there a requirement on applicants for resource consent to run community engagement exercises to determine tolerance to their particular application, is notification of an application an appropriate way to determine tolerance to risk associated with the proposal, does affected party approval mean risk cannot be considered. NZPI recommends that the proposed NPS-NHD clarifies the role of community tolerance, and how this is to be determined, for case-by-case resource consent and notice of requirement assessments.
31. NZPI recommends that 'significant risk' is defined and incorporated into the proposed NPS-NHD. Section 6 of the RMA states that the management of significant risk from natural hazards is a matter of national importance that needs to be recognised and provided for by all persons exercising functions and powers under the RMA. However, the NPS is silent on the matter of significant risk. This is not acceptable for national direction on natural hazard management prepared under the RMA. Questions will be asked about how the three levels of risk in the proposed NPS relate to significant risk, and this is likely to be a question that the courts end up deciding if the NPS does not address it.
32. We note that there is no definition of risk in the proposed NPS. Rather, policy 2 includes things to be considered when determining natural hazard risk. NZPI recommends that a definition of risk is included in the proposed NPS-NHD, to provide clarity. Policy 2 oversimplifies risk by suggesting consideration should be given to the likelihood of a single natural hazard event occurring, which ignores the magnitude - frequency relationship of hazard events and that a type of hazard can have a range of different sized events. In addition, likelihood is not very helpful when considering climate change impacts, which are certain to occur but the exact timing may be uncertain. Considering risk as the overlap between hazard, exposure and vulnerability is more helpful, and we support the recommendation of RMLA that risk should be defined this way for the proposed NPS-NHD. We note that the National Adaptation Plan includes very useful definitions of risk, vulnerability, and exposure, and we recommend these are adopted for the proposed NPS-NHD. These definitions are comprehensive and apply an inclusive and holistic approach to risk management, which NZPI supports.
33. Risk from climate change is not a clear part of the proposed NPS-NHD. NZPI considers that new development should consider the effects of climate change to the same extent as effects from natural hazards, and it should be made clear that sea level rise is an effect to be considered. Climate change is mentioned in the definition of natural hazard, but it would have more prominence if it was referred to in the objectives and policies of the proposed NPS-NHD. NZPI recommends that 'climate change' is added alongside 'natural hazard' in the proposed NPS-NHD, so for example, the objective would read: "The risks from natural hazards and climate change to people, communities, the environment, property, and infrastructure ..."
34. We agree with the submission point of RLMA, that a reference to risk mitigation in Policy 6 may be confusing, because the use of the term 'mitigation' in a climate change context refers to reducing greenhouse gas emissions. NZPI agrees that using an alternative term, such as risk reduction or measures to reduce risk, would avoid confusion.



### Roles and responsibilities

35. NZPI considers that the use of 'decision-maker' is problematic, as has been discussed above. In addition to the comments above, the use of 'decision-maker' overlooks the opportunity for the proposed NPS-NHD to identify particular roles and responsibilities in the system that will lead to effective and efficient management of natural hazard risk.
36. A lack of clear roles and responsibilities between regional councils and territorial authorities for natural hazards management is a key issue that the discussion document does not identify. Under the RMA, regional councils and territorial authorities have overlapping responsibilities for natural hazards (see sections 30 and 31), and this can lead to inaction because there is a lack of a clear mandate to act. Assigning responsibilities for the various aspects of hazard management, such as hazard analysis, risk assessment, policy development, management of land use, and management of physical mitigation works, is a very effective step that the NSP-NHD could take. NZPI recommends that the proposed NPS-NHD should assign roles and responsibilities between regional councils and territorial authorities, to provide a clear mandate to act.

### Precautionary approach

37. NZPI considers that there is internal conflict between Policy 3 of the proposed NPS-NHD that says decision-makers must apply a precautionary approach, and section 3.3 on using best information. There is always the potential for better information, and deferring until there is better information can be viewed as a precautionary approach. However, clause 3.3(3)(a) attempts to override this caution by stating that decision-making must not be delayed because of uncertain information. We also support the issue with the precautionary approach raised in the joint Taituarā and LGNZ submission.
38. Rather than a precautionary approach, NZPI recommends the proposed NPS-NHD requires an adaptive approach be taken. This would mean that decision-making can proceed based on uncertain information, but must do so in a way that does not foreclose future options or lock in particular courses of action that cannot be undone. The precautionary approach is not well understood or well applied. Requiring an adaptive approach is more practical and allows more flexibility and certainty to be provided. It would need a good explanation or definition in the proposed NPS-NHD to ensure its meaning was clear.

### Detailed drafting and policy issues

39. NZPI has identified a number of detailed drafting and policy issues with the proposed NPS-NHD. We identify these using comment boxes in the version of the NPS attached at Appendix 1 to this submission. In addition, Appendix 1 uses comment boxes to highlight the other submission points made in this submission.



## PART 2: RECOMMENDATIONS FOR A MORE COMPREHENSIVE NPS

### What is the NPS-NHD trying to achieve

40. The policy approach underlying the NPS-NHD needs a clear objective. This is particularly so when the policy approach involves the need to ‘avoid’ development in particular situations or locations. ‘Avoid’ has been shown to be difficult to apply unless it is supported by strong direction.

#### ***‘Minimise’ risk***

41. The objective of the proposed NPS-NHD is that *“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 overriding direction in the objective is to minimise risk. This is an objective to take a particular type of action, rather than an objective that sets an outcome for risk. ‘Minimise’ is a direction that requires risk to be reduced or made smaller, no matter how big the risk was in the first place, and the extent to which risk needs to be minimised is left unclear. It assumes that there is a risk that needs to be reduced, and that minimising or reducing will always be the necessary response. This is not what the policy direction in Policy 5 requires – it requires avoidance in cases of high risk, minimising in areas of moderate risk, and enabling development in areas of low risk. ‘Minimise’ is not an appropriate overarching direction in the objective and NZPI recommends its use is reconsidered.

42. In particular, NZPI considers that ‘minimise’ is not a strong enough direction to support a policy approach that requires avoidance (as required in Policy 5). Avoidance means to not create risk in the first place, whereas risk has to already exist to be minimised. Avoidance is therefore a different approach to minimising – rather than making risk smaller, it doesn’t create risk in the first place.

#### ***An outcome for risk***

43. What the policy approach in Policy 5 appears to be trying to achieve is for new development to be subject to the lowest level of risk possible, and not more than tolerable risk at the most. NZPI recommends that the objective of the NPS-NHD is framed as an outcome or end-state for risk, rather than as an action. This type of objective would provide much stronger support for the policy approach set out in Policy 5, which uses more than one type of action to manage risk. Having a clear understanding of the outcome to be achieved will make implementation in a consent assessment context much more effective.

44. Examples of how an objective could be framed as a risk outcome are provided below:

*Communities are safe from the risks of natural hazards.*

*The risks from natural hazards and climate change to the wellbeing of people and the environment are no greater than moderate in level.*

*Most people live in areas where risk is low. There are no hazard-sensitive activities in areas of high risk. Activities only take place in areas of moderate and high risk when the benefits substantially outweigh the risks.*



45. We note that it is not consistent with good policy development to retrofit an objective to suit a particular policy approach. Rather, the outcome we are seeking to achieve should be articulated in the objective, and the policy approach developed to ensure that outcome is achieved in an efficient and effective manner. NZPI recommends that reconsideration of the NPS-NHD starts with what the risk outcomes for New Zealand communities and environments should be.

***Separate the purposes***

46. NZPI recommends that the two different purposes in the objective are separated out into two separate objectives. As currently drafted, the objective is long and difficult to understand as a result. One part is addressing risk to people, communities, the environment, property, and infrastructure. The other part is addressing risk to the ability of a community to quickly recover after a natural hazard event, or risk to resilience. The phrase ‘risk to resilience’ is an odd construction, which results from combining the two purposes. Improved or increased resilience would be a more natural construction, and easier to use when an objective related to resilience is decoupled from an objective related to risk minimisation.

***Risk to wellbeing***

47. NZPI recommends an objective for risk management should focus on risk to wellbeing, of both people and the environment. Wellbeing is a holistic term that allows consideration of all the matters currently listed in the objective as well as other important matters such as cultural values. A focus on risk to wellbeing is clearly appropriate when wellbeing is the focus of the purpose of the RMA and the Local Government Act. NZPI recommends the definition of wellbeing in the National Adaptation Plan is used for the NPS-NHD, as it takes a holistic and inclusive approach to defining wellbeing.
48. A focus on wellbeing would have the benefit of drafting efficiencies, as there would be no need to list out “people, communities, the environment, property, and infrastructure” in the objective. Rather, these could be part of a definition of wellbeing, as is the case with the definition of wellbeing used in the National Adaptation Plan.

**Appropriate legal weight for national direction**

49. Following on from our comment above about the limited efficacy of the proposed NPS-NHD on resource consent decision-making, NZPI recommends national direction on natural hazards is made stronger. There are two key ways to achieve this:
- Through use of section 55 of the RMA, whereby an NPS directs amendments to plans that are made without using the Schedule 1 process.
  - Through the use of National Environmental Standards (NES), which have the force of regulation and can impose rules that apply immediately.
50. Requiring plans to incorporate objectives and policies for the management of natural hazard risks directly into district plans is an effective way to ensure clear and consistent direction is provided for the assessment of resource consents. It removes the uncertainty around how to apply an NPS to a consent assessment, such as is being experienced at the moment in implementation of the NPS-Highly Productive Land. It gives weight to the objectives and policies in a section 104D assessment. And, notably, it saves time because the provisions have effect in plans immediately,



and saves expense for councils, by removing the need for a Schedule 1 process. We note that the combined submission of Taituarā and LGNZ supports this approach (recommendation 14).

51. The use of NES is an effective way to standardise rules for natural hazard management and ensure the policy approach has an immediate effect. For example, a prohibited activity rule could be set for hazard-sensitive activities in high risk areas. Once mapping has been undertaken to identify high risk areas, this would be an extremely effective way to achieve an outcome of no hazard-sensitive activities in high risk areas. NZPI supports the suggestion in the RMLA submission that Policy 4 of the proposed NPS-NHD could be better included in an NES (natural hazard risk as a matter of control and discretion). We agree that this would be a much more effective way to achieve the requirements of Policy 4.
52. An NES could also be used to standardise the technical elements of risk management such as:
  - data collection, storage and management for natural hazard risk assessments
  - methodologies for risk assessments, including metrics
  - risk mapping requirements

### Risk tolerance

53. In the proposed NPS-NHD, risk tolerance is used as a means of determining if risk is low, moderate or high (see Policy 2 and definitions of low, moderate and high risk). NZPI recommends that risk tolerance is an input to determining how to respond to risk, and not an input to determining or defining risk. Determining the level of risk is a technical exercise. Determining what to do about risk involves value judgements and should be an inclusive exercise that involves the community and other stakeholders. Requiring tolerance to risk to be part of defining the level of risk is circular and will result in confusion.
54. Once risk levels have been determined for an area, understanding tolerance to the risk is a helpful way to understand what needs to be done about the risk, if anything. In resource management planning, we need to understand what land use controls are appropriate to respond to the level of risk. Land use controls manage risk by controlling the vulnerability and exposure of people and buildings and setting requirements for physical methods to manage hazards. Generally, stronger measures would be expected where tolerance for risk is low, and more relaxed measures would be expected where tolerance for risk is high. In this way, understanding tolerance to risk helps us understand if we need to respond, and how strong that response needs to be.
55. Rather than trying to define tolerance, NZPI recommends that an NPS should set out a process for deciding if action is needed to respond to risk, and what type of land use response might be necessary. We note that this aligns with the two-stage approach suggested in the RMLA submission. An NPS should demonstrate the link between level of risk and action. For example, an NPS could include a list of factors to consider and the weight to be given to each of them. The community's tolerance for risk could be one of these factors, along with the effectiveness of mitigation measures, the ability to pay for any particular response, the benefits of using the area, etc.



56. NZPI recommends that tolerance for risk is always informed by direct consultation with the community. But community tolerance should not be determinative of a particular type of action. Rather, it should be one of the factors in the consideration of how to respond to risk. Guidance should support national direction that requires community engagement on risk tolerance, to support local government processes.

### Alternative Stage 1 ‘quick fix’ national direction

57. NZPI has given some consideration to alternative options for ‘quick fix’ national direction that can be effective at directing case-by-case decision-making on resource consents and notices of requirement. We suggest two alternatives.
58. NZPI recommends an approach similar to that included in the Proposed Otago Regional Policy Statement and Bay of Plenty Regional Policy Statement is adopted. These RPS use risk matrix tables to identify three levels of risk and the associated policy responses, have risk assessment methodologies, and can be applied to resource consent and notice of requirement assessments. A risk matrix in an NPS could be set as a default matrix, to be used until the relevant council was able to undertake a community tolerance exercise to calibrate the matrix. This approach would provide certainty in the meantime, and allow for local variation once a local process was followed.
59. Another exercise that could be undertaken at the national level is an audit of all existing natural hazard and risk mapping held by Councils (regional and territorial authorities) and the Crown (such as flood vulnerability assessments). This exercise could identify the highest risk areas currently known about and an NES could be used to impose prohibited activity rules for new hazard-sensitive activities in these areas. This would be a very effective way to limit development in the most risky areas, would represent the application of the precautionary approach and acting on best available information, and could be achieved relatively quickly. As a slight variation, a methodology could be developed nationally for each council to do this review exercise, with the NES applying once it was complete in each area.
60. We also note recommendation 12 of the joint submission of Taituarā and LGNZ, under the heading ‘risk assessment methodologies and terms’, for consideration to be given to alternative ways to take action to limit development in high risk areas. These represent potentially practical solutions that should be given consideration when the NPS is reviewed.

### CLOSING

61. NZPI appreciates the opportunity to provide this feedback on the proposed NPS-NHD. We would be very happy to discuss the content of this submission and provide further input to the process.
62. Contact details: Emily Grace, Principal Policy Advisor, [emily.grace@planning.org.nz](mailto:emily.grace@planning.org.nz)

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**APPENDIX 1: COMMENTS ON DRAFTING OF PROPOSED NPS-NHD**

CONSULTATION DRAFT – NOT GOVERNMENT POLICY

# Proposed National Policy Statement for Natural Hazard Decision-making 2023



Ministry for the  
**Environment**  
Manatū Mō Te Taiao



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

CONSULTATION DRAFT – NOT GOVERNMENT POLICY

**Authority**

This National Policy Statement was approved by the Governor-General under section 52(2) of the Resource Management Act 1991 on [to come], and is published by the Minister for the Environment under section 54 of that Act.

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# Part 1: Preliminary provisions

## 1.1 Title

- (1) This is the National Policy Statement for Natural Hazard Decision-making 2023.

## 1.2 Commencement

- (1) This National Policy Statement comes into force on [to come].

## 1.3 Application

- (1) This National Policy Statement applies only to planning decisions that result in or enable new development.

## 1.4 Interpretation

- (1) In this National Policy Statement:

**Act** means the Resource Management Act 1991

**commencement date** means the date on which this National Policy Statement comes into force, as identified in clause 1.2

**decision-maker** means any person exercising functions or powers under the Act

**high natural hazard risk** means a risk from natural hazards that is intolerable

**low natural hazard risk** means a risk from natural hazards that is generally acceptable

**moderate natural hazard risk** means a risk from natural hazards that is more than a low risk, but is not intolerable

**natural hazard** has the meaning in the Act and includes, without limitation, natural hazards arising from the effects of climate change

**new development** means development:

- (a) of new buildings, structures, or infrastructure on land that currently does not have buildings, structures, or infrastructure located on it; or
- (a) that is the extension or replacement of existing buildings, structures, or infrastructure.

**new hazard-sensitive development** means a new development relating to any of the following:

- (a) residential dwellings, including papakāinga and retirement villages:
- (b) marae:
- (c) educational facilities:
- (d) emergency services:
- (e) hospitals and other health care facilities:
- (f) community facilities.

**Commented [EG1]:** A definition of risk should be included, in line with the definition in the National Adaptation Plan (see para 32 of submission)

**Commented [EG2]:** Change definition to 'any person who makes a planning decision' (see para 19 of submission).

**Commented [EG3]:** These definitions are circular and ineffectual (see paras 28-30 of submission). Significant risk needs to be reflected in these definitions (see para 31 of submission).

**Commented [EG4]:** 'Arising from' suggests the effects would need to be clearly attributable to climate change, which could raise implementation issues. Alternative wording: "... And includes, without limitation, sea level rise and the influence of climate change on natural hazards".

**Commented [EG5]:** How is land defined in this context? It is intended that a second dwelling at the rear of a site should be classified as new development? There is an argument both ways, based on this definition - the area (land) at the rear of the site could be described as currently having no building on it, so a second dwelling is new development. Conversely, the site (land) does have a dwelling on it, so a second dwelling would not be new development. The ambiguity needs to be removed from this definition.

**Commented [EG6]:** 'Replacement' is problematic, because of existing use rights, which allow rebuilding like-for-like. Unless there is a specific direction added to the NPS for regional rules to be used to require consent for the replacement of existing buildings, 'replacement' that is of the same character, intensity and scale should be excluded, or 'replacement' deleted.

**Commented [EG7]:** Consideration should be given to adding visitor accommodation to this list, as visitors are more vulnerable to hazard events than permanent residents. In addition, it would be helpful for the activities on the list to have their own definitions.

**planning decision** means a decision on any of the following:

- (a) a resource consent:
- (b) a regional policy statement or proposed regional policy statement:
- (c) a regional plan or proposed regional plan:
- (d) a district plan or proposed district plan:
- (e) a **designation**:
- (f) a change to a plan requested under Part 2 of Schedule 1 of the Act.

**Commented [EG8]:** This should be Notice of Requirement.

**specified Māori land** means land that is any of the following:

- (a) Māori customary land and Māori freehold land (as defined in Te Ture Whenua Māori Act 1993):
- (b) land set apart as a Māori reservation under Part 17 of Te Ture Whenua Māori Act 1993 or its predecessor, the Māori Affairs Act 1953:
- (c) land held by or on behalf of an iwi or a hapū if the land was transferred from the Crown, a Crown body, or a local authority with the intention of returning the land to the holders of mana whenua over the land:
- (d) land vested in the Māori Trustee that is constituted as a Māori reserve by or under the Māori Reserved Land Act 1955, and remains subject to that Act:
- (e) land that forms part of a natural feature that has been declared under an Act to be a legal entity or person (including Te Urewera land within the meaning of section 7 of the Te Urewera Act 2014):
- (f) the maunga listed in section 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:
- (g) Treaty settlement land, being land held by a post-settlement governance entity (as defined in the Urban Development Act 2020) where the land was transferred or vested and held (including land held in the name of a person such as a tipuna of the claimant group, rather than the entity itself):
  - (i) as part of redress for the settlement of Treaty of Waitangi claims; or
  - (ii) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed.

## 1.5 Application to intensification planning instruments

- (1) In order to minimise disruption and complexity for local authorities, nothing in this National Policy Statement applies to a specified territorial authority (as defined in section 2 of the Act) when it is preparing an **intensification planning instrument** under section 80F of the Act.

**Commented [EG9]:** Exclusion of intensification planning instruments limits the efficacy of the proposed NPS-NHD (see paras 9-11 of the submission)

## 1.6 Relationship with New Zealand Coastal Policy Statement 2010

- (1) The provisions of the New Zealand Coastal Policy Statement prevail over the provisions of this National Policy Statement if there is a conflict between them.

## Part 2: Objective and Policies

### 2.1 Objective

**Objective:** 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.

### 2.2 Policies

**Policy 1:** When making planning decisions, decision-makers are to determine the level of natural hazard risk as high, moderate, or low.

**Policy 2:** When determining natural hazard risk, decision-makers are to consider:

- (a) first, the likelihood of a natural hazard event occurring (either individually or in combination) and the consequences of the natural hazard event occurring, including potential loss of life, serious injury, adverse effects on the environment, and potential serious damage to property and infrastructure; and
- (b) second, tolerance to a natural hazard event, including the willingness and capability of those who are subject to the risk (such as a community, Māori, or the Crown) to bear the risk of that natural hazard (including its cost) and any indirect risks associated with it.

**Policy 3:** 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.

**Policy 4:** Natural hazard risk must be a:

- (a) matter of control for any new development that is a controlled activity; and
- (b) matter of discretion for any new development that is a restricted discretionary activity.

**Policy 5:** Planning decisions must ensure that:

- (a) in areas of high natural hazard risk, new development is avoided unless the level of risk is reduced to at least a tolerable level or:
  - (i) the new development is not a new hazard-sensitive development; and
  - (ii) there is a functional or operational need for the new development to be located in the area of high natural hazard risk, and
  - (iii) there are no practicable alternative locations for the new development; and
  - (iv) risk is reduced to as low as reasonably practicable; and
- (b) in areas of moderate natural hazard risk, mitigation measures are taken to reduce natural hazard risk to new development as low as reasonably practicable; and
- (c) in areas of low natural hazard risk, new development is enabled.

**Commented [EG10]:** This objective is broad and doesn't reflect the specific purpose of the NPS as described in the discussion document (see paras 14-16 of submission)

**Commented [EG11]:** "and climate change" should be added (see para 33 of submission)

**Commented [EG12]:** A focus on activities in the policies rather than decision-makers would be a more effective way to achieve the objective (see paras 17+18 of submission). If a focus on decision-makers is retained, the policies should refer to either 'decision-maker' or 'planning decision', rather than both (see para 19 of submission).

**Commented [EG13]:** Which level of risk: to the activity proposed, or to the area? (see paras 20-27 of submission)

**Commented [EG14]:** There is inconsistency because this is tolerance to an event, whereas the rest of (b) refers to risk. The requirement to consider people subject to a risk as part of determining the risk is problematic because it is circular.

**Commented [EG15]:** What weighting is to be given to all the different tolerances? What is the expectation for how the tolerances of these different groups are to be determined? It would be helpful if the NPS addressed these issues.

**Commented [EG16]:** What are examples of indirect risks associate with risk? Why is 'indirect' risk something separate to 'risk'? It would be helpful if the NPS explained these matters.

**Commented [EG17]:** This should be replaced with a requirement to take an adaptive approach (see paras 37+38 of submission)

**Commented [EG18]:** The utility of this policy is unclear, when there is no direction to incorporate it directly into district plans without using Schedule 1, and no requirement for plans to be changed.

This is a blanket measure - what is the justification for these matters of control and discretion being included for activities that are not within risk areas or subject to risk?

A controlled activity cannot be declined - to have natural hazard risk as a matter of control, there has to first be an assessment that the risk can be addressed through conditions of consent, and that there will never be a need to decline consent based on natural hazards. This cannot not be implied for all controlled activities.

**Commented [EG19]:** This 'must' direction will need to be balanced against the requirement in section 104 to 'have regard to' NPSs (see para 12 of submission)

**Commented [EG20]:** An area approach is not practical for resource consent and notice of requirement decision-making (see paras 20-27 of submission).

**Commented [EG21]:** The 'unless' weakens the strength of this approach.

**Commented [EG22]:** How realistic or practical is it that risk might be reduced from high to moderate on a site-by-site basis? Note use of 'tolerable' here and 'moderate' in (b) - the risk language needs to be standardised in Policy 5 (either low, moderate, high, or acceptable, tolerable and intolerable).

**Commented [EG23]:** Double negatives are challenging to understand and should not be used. This should be a standalone limb: "in areas of high natural hazard risk, new hazard-sensitive development is avoided"

**Commented [EG24]:** There is a 'to' missing between 'development' and 'as'.

**Commented [EG25]:** Consideration should be given to an additional requirement that low risk be maintained, so that we do not create new areas of tolerable risk.

**Policy 6:** The most effective natural hazard mitigation measures are adopted to reduce natural hazard risk over the life of any proposed new development, provided the natural hazard mitigation measures do not exacerbate natural hazard risks in other areas, and where possible:

- (a) nature-based solutions are preferred over hard-engineering solutions; and
- (b) comprehensive area-wide measures are preferred over site-specific solutions.

**Policy 7:** Māori and, in particular, tangata whenua values, interests, and aspirations are recognised and provided for, including through early engagement, when making decisions on new development on specified Māori land where there is a high or moderate natural hazard risk.

**Commented [EG26]:** 'Reduction' may be a more appropriate term to use, given the use of mitigation in a climate change context means reducing carbon emissions (see para 34 of submission)

**Commented [EG27]:** This is not a practical consideration for case-by-case decision-making. It is not realistic for an individual consent applicant to put in place comprehensive area-wide measures.

**Commented [EG28]:** Should this mean 'Māori values, interests, and aspirations' because if so, the gramma of this drafting needs to be fixed. The commas might work better like this: 'Māori, and in particular tangata whenua, values, interests, and aspirations ...' The 'in particular' also implies that tangata whenua values should have more weight than other Māori values - was that the intention? If not, 'including' might work better than 'in particular'.

## Part 3: Implementation

### 3.1 Outline of Part

- (1) This Part sets out a non-exhaustive list of things that local authorities must do to give effect to the objective and policies of this National Policy Statement, but nothing in this Part limits the general obligation under the Act to give effect to that objective and those policies.

### 3.2 Tangata whenua involvement

- (1) Natural hazard risk is a matter that must be discussed with tangata whenua in accordance with existing requirements under the RMA.

**Commented [EG29]:** If this is just a reminder of existing requirements and does not add any new requirements, it should be in guidance, not in an NPS.

### 3.3 Best information

- (1) In giving effect to this National Policy Statement, decision-makers must use the best information available at the time, which means, if practicable, using complete and scientifically robust data.
- (2) In the absence of complete and scientifically robust data, the best information may include information obtained from modelling, as well as partial data, local knowledge, and information obtained from other sources, but in this case decision-makers must:
  - (a) prefer sources of information that provide the greatest level of certainty; and
  - (b) take all practicable steps to reduce uncertainty (such as through monitoring or the validation of models used).
- (3) A local authority:
  - (a) must not delay making decisions solely because of uncertainty about the quality or quantity of the information available; and
  - (b) if the information is uncertain, must interpret it in the way that will best give effect to this National Policy Statement.

**Commented [EG30]:** This phrase is likely to be tested in the courts if it is not further defined in the NPS.

**Commented [EG31]:** What does this mean? Does it add any direction above the RMA requirements, which requires plans to give effect to the NPS and consents to have regard to it?

## Part 4: Timing

### 4.1 Timing

- (1) From the date on which this National Policy Statement comes into force, decision-makers must have regard to it when making decisions on:
  - (a) resource consent applications;
  - (b) designations; and
  - (c) a change to a plan requested under Part 2 of Schedule 1 of the Act.
- (2) As soon as reasonably practicable, every local authority must give effect to this National Policy Statement by updating their policy statements and plans.

**Commented [EG32]:** It is not at all clear what this actually requires. There is no direction in the NPS that is specific towards regional policy statements, regional plans, or district plans, as there is in other NPSs. It causes confusion and should be deleted, unless specific direction on how plans should be changed is included in the NPS.

### 4.2 Existing policy statements and plans

- (1) To the extent that policy statements and plans already (at the commencement date) give effect to this National Policy Statement, local authorities are not obliged to make changes to wording or terminology merely for consistency with it.
- (2) In case of dispute, the onus is on the local authority to show that, despite the different wording or terminology used, their policy statement or plan does implement this National Policy Statement.
- (3) However, if a local authority chooses to amend an operative policy statement or plan by merely changing wording or terminology for consistency with this National Policy Statement, the amendment is to be treated as the correction of a minor error (and therefore, under clause 20A of Schedule 1 of the Act, the amendment can be made without using a process in that Schedule).