

29 November 2023

Ministry for the Environment
PO BOX 10362
Wellington 6143

Via email: naturalhazardRMA@mfe.govt.nz

SUBMISSION ON THE PROPOSED NATIONAL POLICY STATEMENT FOR NATURAL HAZARD DECISION MAKING

Introduction

1. The Dunedin City Council (DCC) welcomes the opportunity to submit on the proposed National Policy Statement for Natural Hazards Decision-making 2023 (NPS) developed by the Ministry for the Environment (MfE) and appreciates the opportunity to provide feedback.
2. The DCC agrees with the broad focus of the NPS and welcomes stronger national direction to minimise the negative impacts of natural hazards on our communities and the natural and built environment. In particular, the DCC supports the risk-based and precautionary approach of the NPS, including its strong direction to avoid new sensitive activities in areas of high natural hazard risk.
3. The DCC notes that the NPS is intended to be a first step as part of developing comprehensive National Direction for Natural Hazards and notes the linkages between the NPS and the Inquiry into Climate Adaptation, which the DCC also submitted on (1 November 2023). This submission seeks to inform the development of comprehensive national direction as well as the proposed NPS-NHD.
4. This submission outlines the context for the management of natural hazards in Dunedin and provides comments in response to the questions asked in the discussion document accompanying the NPS, as well as recommendations regarding specific aspects of the proposals.

Dunedin context

5. Many areas of Dunedin are vulnerable to natural hazards due to a combination of Dunedin's topography and weather; principally landslides, flooding from rivers and alluvial fans, and coastal inundation from storm surge in low lying areas. Rising groundwater in reclaimed and other low lying land is another source of flooding. Local fault lines also present the risk of damage from earthquakes and liquefaction. Climate change impacts (including sea level rise) will exacerbate the risks posed by natural hazards, with the likelihood of more intense and frequent weather events increasing land instability as well as the severity and duration of flooding.

6. The DCC is responsible for managing land use and subdivision to avoid or mitigate the risks from natural hazards. The Second Generation Dunedin City District Plan (2GP) manages flood, land instability and coastal hazard and alluvial fan risk through policies and rules attached to different overlay zones and mapped areas. The DCC also manages natural hazard risk through Building Act processes such as requiring minimum floor levels and earthquake strengthening.
7. The key 2GP objective for natural hazards is that land use and development is located and designed in such a way that ensures that the risk from natural hazards, and from the potential effects of climate change on natural hazards, is no more than low, in the short to long term. The 2GP risk-based hazard management approach strongly discourages development in high risk areas while providing for development that appropriately mitigates hazard risk in areas at moderate or low risk.

Focus of NPS (questions 1-3)

- *Is more action needed to reduce development from occurring in areas facing natural hazard risk?*
 - *Are there any other parts of the problem definition that you think should be addressed through the NPS-NHD?*
 - *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?*
8. The DCC agrees that more action is needed to reduce development in areas facing high natural hazard risk, including areas that may not be at high risk now but will become more at risk over time due to climate change. The DCC supports the development of a comprehensive and adaptive framework to assist local authorities in making planning decisions.
 9. The DCC agrees that the focus of the NPS-NHD should be on providing a consistent framework for councils for considering and addressing natural hazard risks as well as the relative weight that should be given to natural hazards in plans/plan changes, designations and resource consent decisions. As noted in the discussion document there is also a proposed National Direction for Natural Hazards and that other aspects of the problem definition will require a longer term work programme. The DCC is supportive of this wider work programme.
 10. The DCC considers that as well as new development, more guidance is needed on replacement or relocation of existing activities, such as housing, in areas already facing high or moderate risk from natural hazards as well as what types of mitigation should be permitted to reduce risk for existing development. The DCC suggests that the proposed comprehensive National Direction could address this, linking into climate change adaptation initiatives.
 11. In relation to climate change, the Discussion Document (p.18) states: "The proposed NPS-NHD adopts the RMA definition of natural hazards, which would mean that all natural hazards are within scope. Considering the effects of climate change on natural hazards is also part of determining the extent of the natural hazard and the risks associated with an event." The DCC considers that, while climate change may be an implicit consideration, the NPS-NHD should refer more explicitly to climate change as it is crucial in understanding future risk.

Scope of NPS (questions 5-7)

- *Should all natural hazards be in scope of the proposed NPS-NHD?*
 - *Should all new physical development be in scope of the proposed NPS-NHD?*
12. The DCC considers that all natural hazards should be within the scope of the NPS, but decisions should generally relate to those most likely to occur and where the consequences can be anticipated and planned for. Retaining scope for all natural hazards will mean that there will be flexibility to manage additional hazards under the framework if new information is received that makes planning for them possible and necessary.
13. Some hazards are more difficult to predict, may affect entire territorial areas, and therefore may be more difficult to plan for. For instance, for earthquakes, risk is generally managed through the design of buildings and structures under the Building Act. However, where fault lines can be identified and liquefaction risks are high, avoidance may be an option for some areas, so the DCC considers that it is appropriate that this should be facilitated by the NPS-NHD.
14. The DCC agrees that all new physical development should be within the scope of the proposed NPS-NHD, including development that increases the risk of natural hazards. For instance, in areas which are at high risk from flooding, new buildings, structures or roads may exacerbate the risk for existing activities.

Housing and urban development (Q8)

- *What impact do you think the proposed NPS-NHD would have on housing and urban development?*
15. The DCC considers that the NPS-NHD should have the effect of preventing hazards-sensitive development establishing in areas of high natural hazard risk except where the risk can be lowered to a tolerable or low level. The 2GP currently manages such development as non-complying, or in some of the highest flood risk areas, as prohibited activities. The DCC notes that it will be important to define in the NPS what a 'tolerable' risk is (including to whom, and how different interests are balanced) and to provide guidance on how cumulative risks should be considered in making decisions about whether to establish hazards-sensitive activities in particular areas.

Risk based approach

Purpose and objective (questions 4 and 9)

- *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?*
- *Do you agree with the proposed objective of the NPS-NHD?*

16. The DCC supports the NPS-NHD directing decision makers to take a risk-based approach. The 2GP already takes this approach in managing natural hazards and this is also promoted in the Otago Regional Policy Statement.
17. In the DCC's view, the proposed 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"* would be better to simply focus on ensuring that risk is managed and clarifying the role of planning processes in reducing risk, not on the ability of communities to 'quickly recover'. The focus of the NPS is on (as identified on page 6 of the discussion document) directing decision-makers to "take a risk-based approach to natural hazards when making planning decisions relating to new development". However, it is also noted that the proposed NPS-NHD is intended as an interim measure while other comprehensive national direction for natural hazards is developed. 'Recovery' or transformation may be better addressed as part of this broader process or the wider resource management reforms, including the proposed climate change adaptation legislation.
18. Further, the DCC submits that the use of 'minimised' should be reconsidered. Under a standard interpretation, minimise means as low as possible. Policy 5 states that planning decisions must ensure that in areas of high natural hazard risk, new development is reduced to *at least a tolerable level* (or...*reduced to as low as reasonably practicable*) if it is not a hazards sensitive development. Therefore, as currently drafted there seems to be a misalignment between objective and policy as 'minimise' and 'tolerable' are two different measures.

Determining natural hazard risk (Q10-11)

- *What are the pros and cons of requiring decision-makers to categorise natural hazard risk as high, moderate or low?*
 - *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?*
19. The DCC welcomes the NPS providing direction around determining natural hazard risk so that it is applied in a nationally consistent way in making planning decisions. The intent of policies 1 and 2 to categorise natural hazard risk as high, medium or low (Policy 1) after an assessment of risk (as set out in Policy 2) is supported.
 20. Policy 2(a) requires the likelihood of a natural hazard event occurring, and the consequences of that event, to be considered when determining risk. This approach is used for determining natural hazard risk in Dunedin, with the 2GP combining likelihood (very likely to extremely unlikely) and consequence (minor, moderate, major) to produce a risk assessment of low, medium or high. Likelihood is expressed as an Annual Exceedance Probability (AEP), with the consequences of a natural hazard event occurring being considered in the context of health and safety, costs of damage, and social and economic impacts on the wider community¹. The 2GP uses this assessment to identify areas that are subject to low, moderate or high potential risk (decision made at the district plan

¹ 2GP Section 11.1.2 Guidance on risk

level), while the resource consent process is used to determine the actual risk at a particular location including how the risk may be lowered by any proposed mitigation.

21. Policy 2b of the draft NPS proposes also assessing the tolerance, or willingness, of groups that are subject to a risk, to bear the risk of that natural hazard (including its cost and any indirect risks) as part of the risk assessment. The NPS does not define tolerance directly, although the DCC notes the recent work by the Government towards developing a risk tolerance methodology to fill a 'critical gap' in New Zealand's risk management approaches².
22. The DCC submits that guidance is needed around tolerance to ensure greater understanding and consistency for it to be used in determining natural hazard risk. While it is noted that the discussion document refers to the Policy 2 criteria as being principle-based rather than overly prescriptive and therefore providing local authorities with discretion to "apply them in a way that reflects regional and local circumstances...", the DCC considers that guidance on methodology for assessing risk including tolerance needs to be provided. Without this, it may be difficult to assess risk, particularly at the level of resource consent decision-making. For instance, development on individual sites could be assessed as 'tolerable' in isolation where they may not be at a community-wide level or when taking a longer term view. The DCC would also be concerned with allowing 'tolerance' to form part of a risk assessment in areas that are of high risk (likelihood x consequences) as it may be possible for the risk to be downgraded to 'moderate' because of the tolerance assessment.
23. It is suggested that, given the complexity that including tolerance in risk assessment will introduce, it may be better to rely on Policy 2(a) (likelihood and consequences) to determine risk for the purposes of the proposed NPS-NHD, and to develop robust risk tolerance methodology and guidance as part of the proposed comprehensive National Direction for Natural Hazards.

Precautionary approach (Q12)

- *What are the pros and cons of directing decision-makers to adopt a precautionary approach to decision-making on natural hazard risk?*
24. The DCC supports the intent of Policy 3 and agrees that a precautionary approach should be taken where the natural hazard risk is uncertain, unknown or little understood and could be intolerable.
 25. However, the DCC submits that greater clarity is needed around the use of the precautionary principle given that there are different ways of interpreting this concept. Policy 3 directs that a precautionary approach is taken 'when determining natural hazard risk' but it is unclear whether this encompasses decision making on proposed activities and the *management* of natural hazard risk or how it would be applied at different decision making levels (i.e., plan or resource consent). For instance, the precautionary approach may be used when making decisions on new development, by requiring that activities in areas where there is uncertainty about the risk to take preventative action.

² New Zealand Government and Toka Tū Ake EQC, 2023. Risk Tolerance Methodology.

26. If the decision being made is at the level of a plan change, a precautionary approach to decision making in the coastal environment, where existing natural hazards (erosion, inundation) will be exacerbated by the effects of climate change, could mean ensuring that adequate setbacks and ecological corridors are in place to enable adaptation to future hazard risk and increase overall system resilience. For decisions being made at the level of resource consents, buildings may be required to be relocatable and other conditions may be placed on activities to facilitate adaptive responses, including monitoring requirements.
27. Further guidance would be beneficial in order to help decision makers to implement a precautionary approach in a fair, consistent, and transparent way.

Natural hazard risk as a matter of control/discretion (Question 13)

- *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?*
28. The DCC supports proposed Policy 4 to include natural hazard risk as a matter of discretion for new development classified as controlled or restricted discretionary activities to ensure decision makers consider natural hazard risk where a plan does not currently specify it.
 29. The DCC notes that for this policy to be effective, it needs to be supported by the suite of other policies in the NPS-NHD to assist decision-makers on the appropriate weight to give to hazard risk in assessing the merits of development proposals.

Direction on planning decisions (Q14-15)

- *What are the pros and cons of requiring planning decisions to ensure the specific actions to address natural hazard risk outlined in policy 5?*
 - *What is the potential impact of requiring decision makers to apply this framework in their decision-making will it improve decision making?*
30. The DCC supports the intent of Policy 5 in providing a framework for making planning decisions. However, DCC notes with respect to the drafting used, that the level of risk for new development in areas of high risk needs to be 'reduced to at least a tolerable level' whereas for areas of moderate risk, risks need to be reduced to as 'low as reasonably practicable'. This use of language could imply that it is acceptable for a lower bar to be reached in order for development to occur in high risk areas than in moderate risk areas. The DCC suggests that there should be a consistent term used to describe the 'goal state' of lowering risk to an acceptable level for development to occur to avoid this outcome.
 31. DCC is also concerned that, with regard to Policy 5(c), that in areas of 'low' natural hazard risk currently, it may not be appropriate to 'enable' new development as hazard risks are likely to change in future.

32. Requiring decision-makers to apply a clear and consistent framework in their decision making will help ensure that appropriate weight is given to natural hazard risk. It should improve decision making by ensuring that natural hazard risk is included as a matter of control or discretion for any new development and by providing more consistency between different local authorities.

Reducing natural hazard risk through mitigation (Q 16)

- *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?*
33. The DCC considers that it is useful to provide direction on mitigation measures as in some situations it may be possible to lower the risk to tolerable or acceptable through effective mitigation. The intent of Policy 6 is supported because it emphasizes the need to take a nature-based and comprehensive approach to reducing risk. This is consistent with policy direction on 'managed relocation' and climate change adaptation.
34. However, it is suggested that using alternative wording in the policy may be clearer in achieving comprehensive long term solutions. The use of 'preferred' is not strongly directive and may create some uncertainty for decision makers. A more directive term such as 'prioritised' could instead be used so that there is stronger impetus for decision makers to choose nature-based solutions where possible.
35. The DCC would also like to see guidance provided in order to assist decision-makers evaluate the appropriate hazard mitigation over 'the life of any proposed new development', with different forms of development potentially having different lifespans (i.e., infrastructure versus dwellings or single site versus large subdivision) and therefore different planning timelines may be appropriate. It will also be important to properly consider the impact of both cumulative effects and climate change exacerbating natural hazards over time, when determining whether mitigation measures are appropriate.

Recognising and providing for tangata whenua values, interests and te Tiriti principles (Q 17-19)

- *Does Policy 7 appropriately recognise and provide for Māori rights, values and interests?*
 - *Can traditional Māori knowledge systems be incorporated into natural hazard risk and tolerance assessments?*
 - *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?*
36. The DCC supports the intent of Policy 7 and the incorporation of Māori knowledge systems such as Mātauraka Māori, pūrākau, waiata and toi Māori, that contain evidence of historical knowledge of land formations and their changes over time, into natural hazard risk and tolerance assessments. This approach would align with the proposed te Tiriti-based adaptation system proposed in Community-

led retreat and adaptation funding: Issues and options paper (MfE, 2023), which the DCC has also recently submitted on.

37. Greater clarity with respect to the use of te reo terms would also be useful - for instance, the DCC distinguishes mana whenua from takata whenua. With regard to meeting commitments around te Tiriti settlement requirements, DCC notes that this would require consultation with mana whenua.

Implementation

Timeframes and resourcing (Q20-21)

- *Is the implementation timeframe workable?*
 - *What do you consider are the resourcing implications for you to implement the proposed NPS-NHD?*
 - *What guidance and technical assistance do you think would help decision-makers to apply the proposed NPS-NHD?*
38. Under section 4.1 Timing, from the date on which the NPS comes into force, decision makers must have regard to it when making decisions on resource consent applications, designations and plan changes, and update plans to give effect to the NPS as soon as reasonably practicable.
39. The implementation timeframe is workable in that it does not require an immediate change to planning documents. However, the DCC notes that the Discussion Document states that “until a local authority makes a plan change, decisions will rely on existing plans including their rules to trigger the need for a consent. Where the consent required is a RD or controlled activity...and there is no natural hazard matter of discretion or matter of control, the NPS will *not* be something to consider in the decision-making process for that consent” [emphasis added]. For this reason, there may be more of an impetus to undertake changes to plans sooner rather than later to manage hazard risk in some areas.
40. Implementation will likely require more staff resourcing (including technical experts) in assessing risk for making plan provisions and in individual applications/decisions.

Guidance and technical assistance (Q22)

41. Firstly, as highlighted above, the DCC suggests that it would be very useful if more definitions are provided for key terms including ‘tolerance’ and that more guidance be provided on an appropriate methodology for assessing risk, including risk tolerance, that is applied consistently across different jurisdictions.
42. Secondly, the DCC notes that the definition of ‘new development’ includes the ‘replacement’ of existing buildings. As replacement would normally be provided for by existing use rights under the RMA, it is suggested that additional clarity is needed over whether this may be intended as a replacement of existing use rights in areas of high risk. It is noted however, that an accompanying

summary document states that the NPS would only apply to existing resource consents and not affect existing use rights.³

43. Some refinement of the other definitions in the draft NPS may also be needed to clarify meaning including inclusions or exclusions, such as what counts as 'hazard-sensitive development'.

Conclusion

44. The DCC looks forward to working with central and local government further on the NPS-NHD and the wider national direction for natural hazard decision-making, and would welcome the opportunity to provide further feedback.

Yours sincerely,



Jules Radich
MAYOR OF DUNEDIN

³ Proposed National Policy Statement for Natural Hazard Decision-making General summary (MfE, 2023)