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Tēnā koutou katoa

Christchurch City Council submission on the Natural Hazards Insurance Bill

Christchurch City Council (the Council) welcomes the opportunity to provide feedback on the Natural Hazards Insurance Bill (the Bill). As stated in the attached submission, we invite the Select Committee to hold hearings in Christchurch out of respect for our experience. Regardless, I wish to be heard in person.

Christchurch residents have had a vast range of often difficult experiences in their dealings with the Earthquake Commission (EQC) over multiple years of recovery from the Canterbury Earthquakes sequence. Our communities have had the trial-by-fire of a complex, overwhelmed and inadequate system of settling insurance claims after a major disaster. We have had to live through this – the good and the bad. It is imperative that these lessons are not in vain, and that our experience is shared experience for New Zealand to learn from and to produce a fit-for-purpose and robust piece of legislation.

While it may not be acknowledged, the ‘good’ was that Christchurch had an unprecedented level of insurance cover. The ‘bad’ was how our residents felt having disputes dragging out for years, feeling unheard and deflated. EQC was felt by many to be part of the problem rather than part of the solution.

Although the Bill is of a technical nature, we feel it is important that we offer some of our experience to guide in shaping what will be an important strand of the lifeline that will enable people to recover from what is a shocking and disempowering experience in the future.

In 2010, EQC employed only 22 staff. Following the earthquakes of 4 September 2010 and 22 February 2011, this increased to more than 1000. A scale-up of this extent cannot come without consequences, and these were unfortunately felt by our residents. Hindsight shows that EQC should not have been used as a frontline assessor in an event of this scale. This has been picked up by EQC, with claimants now lodging their claims with their insurer, and the insurers undertaking the frontline assessments.

We are also very conscious of the complexity of legislation on the management of natural hazards and that much of this legislation is simultaneously under review. For example, review work is underway on the Civil Defence and Emergency Management Act and associated plans, changes are proposed to Land Information Memoranda regarding natural hazards, the resource management framework is being extensively reformed, and a National Adaptation Plan is out for consultation.

We have been imploring central government to ensure full coordination and close collaboration across all of the central government agencies undertaking legislative reform to ensure natural hazard risk, response and recovery are managed in a holistic manner, and that local knowledge is an integral part of the process.

We have previously made submissions relating to EQC, to share our experiences following the Canterbury Earthquakes of 2010 and 2011.

Attached to this letter is our Council's submission, which is intended to remind you that although we support the intent of the Bill, we need Parliament to be fully alert to our experience and lessons learned, in order to secure a more resilient future for our nation.

Thank you for the opportunity to provide this submission. For clarification on points raised within this submission, please contact David Griffiths, Head of Strategic Policy and Resilience at David.Griffiths@ccc.govt.nz.

Yours faithfully



Lianne Dalziel
Mayor of Christchurch

Christchurch City Council submission on the Natural Hazards Insurance Bill

Introduction

1. The Christchurch City Council (the Council) wishes to acknowledge that New Zealand is very fortunate to have a national disaster insurance scheme and is one of only a handful of countries globally to have such a scheme. The existence of the Earthquake Commission (EQC), along with Christchurch's high levels of insurance, made a huge difference to our city's recovery. Although we were highly insured, the select committee may wish to consider whether there is a better way to ensure that *every* homeowner is insured (for example, payment through rates).
2. The Christchurch and Canterbury experience post-earthquakes gave rise to the need for changes to this legislation. After years of experience through Christchurch's earthquake recovery, EQC has learned some valuable lessons and begun to address some of the most problematic issues. This Bill goes a long way to solidifying some of these lessons learned. We also acknowledge that there are many more issues to address, and we hope that our submission can assist with this process, by providing further detail on some of the problematic issues identified in the Bill and identifying gaps in legislation.
3. We acknowledge that EQC has changed practices and this Bill is permissive of these necessary changes, but we still have some key points that we feel must be addressed:
 - a. Communication is king after a disaster occurs to ensure that communities are able to effectively respond and recover – this means a people-centric response must be embedded in legislation.
 - b. All the processes associated with assessment and claims should be explicit in legislation.
 - c. In large scale events, there should be prior planning for up-scaling capacity for assessments and claims handling - with private insurers taking the front-line role
 - d. There are some issues relating to multiple owner buildings and retaining walls in the Bill, as well as other gaps from the Earthquake Commission Act that still need to be addressed.
 - e. We continue to support and encourage efforts to increase transparency, information flow and awareness, and have provided suggestions for how to best enable these efforts.
 - f. We are concerned that each piece of natural hazard and risk legislation is being reviewed in isolation from others.
4. These key points stem from our extensive experience in Christchurch over the past 11 years. We identified that a people-centric response is critical, meaning that each party involved should fully understand this legislation, leaving no gap between the Natural Hazards Commission's (NHC) intentions and residents' expectations.
5. Legislation must be explicit in what is covered by NHC and what is covered by insurers. Councils should be consulted as a matter of course to ensure that a connection can be made with local communities, and that there is clarity of responsibility *before* any natural disaster occurs. Only then can there be a truly people-centric system.
6. Experience also tells us that there are issues that the legislation should anticipate, and this Bill must ensure that these gaps are filled. An example is the repair of private lateral water and wastewater pipes, which in Christchurch were largely cash-settled with residents, leaving pressure on our network

which we should have been able to address at the time. Making provision for NHC to cash-settle with the water services provider, for example, could be an effective and fit-for-purpose response in a large scale event of the type that occurred in Christchurch. The key is the water services provider needs to know if the work has been completed. We have provided more examples of these gaps in our submission.

7. We have concerns that the process/procedure for reviewing decisions is yet to be developed, and we consider that our city would be best placed to provide considered feedback (and ensure there are no gaps) on this Bill if we had this information. From Christchurch's experience, getting the process for resolving disputes right is highly important. Given the low levels of confidence left in our communities in the aftermath of the Canterbury Earthquake Sequence, a concerted effort must be made to ensure processes and procedures, particularly around front line roles and claims handling, are robust (including rights of appeal). This must involve community consultation throughout the development of these processes.
8. We wholeheartedly support the facilitation of research and education, as well as the sharing of information and expertise, as is now specified in section 126(e). However, most critical is that these are applied across all the various reforms being undertaken by central government. All legislation reform needs to be undertaken in a holistic fashion, with close regard to the interplay of different legislation, in order to highlight gaps, overlaps and possible points of confusion. A 'roadmap' should be produced so that the public can clearly see what the expectations are of each agency and also to ensure there are no legislative 'gaps'.

Communication is king, and a people-centric response is critical

9. We consider there are five fundamental principles needed to underpin how people are treated in order for a system to respond to a natural disaster in an efficient, effective and empathetic manner:
 - equitable access to information and processes;
 - easy navigation and participation in the system;
 - integrated, streamlined system;
 - empathetic leadership; and
 - engaging and respectful culture.
10. Overarching these principles is the importance of all systems and processes being inquiring rather than adversarial in approach – whether this relates to damage claims management or submission and hearings processes. The same can be said about the outset of the process – that is, the initial assessment itself can be highly stressful, especially as it occurs in the wake of a shocking event.
11. While impacts on the land and built structures were significant, the secondary stressors of dealing with insurance, housing repairs and rebuilds were ultimately more damaging for the people and communities across Christchurch. The literature of disaster recovery is clear that secondary stressors can persist for extended periods and can impact people's longer-term mental health and wellbeing¹.
12. We consider that for major decisions, such as our citizens' experience with "red zoning", robust public consultation is essential to ensuring that such actions are done "with us and not to us". This has significant implications for ongoing acceptance of the decision, and with it the future wellbeing of residents and their communities. Consultation with local government bodies on major matters that

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3492002/>

affect their community will reap unforeseen insights and benefits. The idea that a dispute resolution process could be developed without reference to the potential claimants is unacceptable and will likely prove as ineffective as the legislation that this is intended to replace. We are concerned that the Bill does not specify how residents will be engaged, contacted and front-of-mind throughout a response and recovery to a natural disaster.

13. Clear communication is crucial, alongside this Bill, to ensure that home owners have full understanding of their insurance cover and the residual risk they are carrying themselves. They may believe themselves to be adequately covered, unaware that they are self-insuring a proportion of their property/land value. The NHC should provide education on risk literacy, enabling people to make informed decisions, and to fully understand the significance of changes being made by private insurance companies to policies in areas at high risk to natural hazards. We also consider it would be useful for a specific list of what the NHC will and will not cover, to ensure clarity for residents. An uninsured (or underinsured) population presents a huge risk in future events to communities, to the banking sector, and to New Zealand as a whole.
14. While we acknowledge that this Bill goes some way to addressing these concerns, we consider it needs to be further embedded in primary legislation. We are unable to provide considered feedback on how well the Bill addresses all the gaps without the accompanying secondary legislation that would set out how the new NHC would focus on a people-centred recovery.

All the processes associated with assessment and claims should be explicit in legislation

15. We acknowledge that the Bill reflects a valuable lesson that the government learned during the Christchurch recovery – that there is a tension between making rapid progress and quality assurance. We are also pleased that the Bill provides for a dispute resolution process, given our many years advocating for such legislation, following the earthquakes. However, the legislation should be explicit about the roles and responsibilities of each party involved in response and recovery to a large scale event. This would ensure clear accountability and rights, and provide clear lines of communication for residents.
16. Sections 83-93 of the Bill seek to address codes of an insured person’s rights, complaint management procedures, disputes resolution schemes and appeals. We believe that these are poorly-developed sections that would benefit hugely from consultation in developing a fit- for- purpose and robust process. We trust that we will be given an opportunity to provide input on these when the time comes. In particular:
 - a. **Code of Insured Person’s Rights** (sections 84-86) - The Minister is given responsibility for developing a Code of Insured Person’s Rights (section 84-86), and this Code will be used to uphold many other sections of this legislation. It is important we have the ability to comment on this Code, and we recommend that the Minister provides an exposure draft to consult on, particularly prioritising Christchurch, and other regions with relevant experience.
 - b. **Complaint management procedure** (sections 87-88) – More detail should be provided in these sections, as this is incredibly important to our residents. In particular, the procedure for independent persons to review decisions made by the Commission should be created alongside the community, and should embed our lived experiences.
 - c. **Assessment of Applications** (section 90) – The Commission should consider whether to include statutory timeframes to ensure timely responses to applications, which was a problem following the Canterbury earthquakes.

- d. **Participation in dispute resolution scheme and rules for scheme** (section 97-99) – While we agree with the premise, we cannot provide useful feedback until we are provided with details of this scheme, and any subsequent rules for the scheme. We recommend a second round of consultation is undertaken when these have been drafted.
 - e. **Appeals** (section 103) – Having the right of appeal is profoundly important. However, this is normally the domain of a small few who can afford it. We suggest there could be provision for the Commission to meet the cost of appeal in those situations which are seen as test cases or where the case is potentially precedent-setting. Providing some form of advocacy service will ensure that this is a basic right, regardless of affordability.
 - f. **Declining claims** (sections 64 – 74) – The NHC should ensure there is education and clear messaging around the instances where claims may be declined. Some matters that could void a claim may not be widely known, such as failure to protect property - there is an obligation to mitigate the risk of natural hazard damage (section 70), and natural hazard notification on land title (section 74).
17. Getting these processes right this time is critical. As we have stated above, this is why we must have the opportunity to provide feedback on all relevant secondary legislation, and other operational guidelines relevant to recovery and response.
18. We support steps to simplify processes for claimants, and assume that section 36 of the Bill has increased the cap to reduce the likelihood of people having to deal with more than one organisation. However, we also consider that \$500,000 is more appropriate than \$300,000, and that the cap review period should be set at three years rather than five (section 36).

In large scale events, there should be prior planning for up-scaling capacity for assessments and claims handling - with private insurers taking the front-line role

19. While we acknowledge the role of NHC is critical to facilitating rapid recovery from large scale events (the select committee should consider what the definition of a large-scale event is), we question if this Bill should go further to enabling NHC to refer claims handling to another party. Section 127 allows for claim handling to be referred to another party and we would recommend that this clause is strengthened to ensure that this is the default approach in large scale events. It is vital that people know what will happen after an event – including who will manage their claim.
20. Our residents experienced the complexity of simultaneously dealing with EQC and private insurance companies, especially for properties close to the cap, where initial decisions were often reversed. We understand that in the Hurunui- Kaikōura Earthquake recovery, EQC allowed private insurers to take more of a front-seat role, simplifying the process. This was shown to be a more efficient process, and we strongly support this approach, as long as sufficient planning is undertaken in advance. Regardless of approach, the Bill should be explicit as to how the NHC should work with private insurers.
21. We understand that some of these issues have been partly addressed with a new agreement between major insurers and EQC that means the insurer is responsible for assessing, managing, and settling claims under the current legislation. EQC will then refund to the insurer either the whole amount (under cap) or the EQC cap amount.
22. We are also aware that the cost to EQC of protracted disputes often far outweighed the cost of the final settlement. The emotional cost to the individual claimant and their community of prolonged stresses could also be extreme. We recommend that the NHC gives some consideration to rationalising the cost invested in a prolonged process versus final pay-out.

23. We believe that the Commission should have oversight of claims to make sure the process is done properly, rather than having the role of active assessment and claims management. This would mean taking more of an advocacy role as well as a regulatory role. It would give the Commission opportunity to provide a mechanism for checking quality assurance of the claims process from assessment to repair, and offer support to and ensure equity of claimants.

The Bill does not adequately address issues with multiple owner buildings and retaining walls

24. Among the most complex and difficult situations to resolve post-earthquakes were those arising from multiple owner dwellings with shared walls insured by multiple private insurance companies with differing levels of cover, and/or some owners not insured at all. Situations of shared retaining walls were similarly complex, including cases where a retaining wall on one property provides protection on a neighbouring property.
25. Sections 6-20 of the Bill have substantially improved the current legislation, as they define complex ownership arrangements of shared properties and mixed use properties. However, we see no attempt in the Bill to unpick the complexities of managing claims across multiple insurers and possibly uninsured parties, nor development of robust processes to cover such situations.
26. We are aware of situations where apartments were let out as short-term accommodation, which changed their status to commercial. It could then be very difficult for EQC assessors to determine the proportion of commercial: residential floor area in multi-storey apartment blocks with multiple apartments on each floor. Sometimes whether the whole building was classed as residential or mixed, and therefore wholly covered or not, could come down to a difference of a square metre-or-two. This small difference in floor area could make a multi-million dollar difference to the settlement and affected all owners in the block.
27. Furthermore, we fear that some of the definitions provided could themselves cause issues. We understand why the Bill defines an “eligible building” as a building that is covered by a single fire insurance contract. However, we consider this definition has the potential to cause issues where there are joint ownership arrangements (cross-lease, unit title) and one or more units are not covered by insurance. This could cause issues when repairs are effected².
28. The Bill should also be explicit about whether outside decks are part of the floor area of the dwelling – noting that neither the current legislation nor the Bill has mention of this. This is important for mixed use buildings as the external deck could, in some instances, be the difference between a dwelling being more or less than 50% of the building, and, therefore change the definition of the building. This, in turn, greatly affects the amount of cover for which the owners are eligible. A “to avoid doubt” clause should be added to section 8 (2) to clarify whether outside decks are included in the floor area of the dwelling.

² Consider the example provided in section 7 of four connected town houses, where one town house is uninsured and is therefore not an eligible building, while the other three are. If the four townhouses/flats are connected by common walls and the town houses need re-levelling, the repair work could potentially cause further damage to the uninsured flat. How is that going to be resolved? Likewise what is the position if land subsides from a neighbouring property and causes damage to an uninsured house? Who covers the cost of repairs – the Commission or the insurer of the property where there has been subsidence?

Our lived experience has highlighted some key gaps in the Earthquake Commission Act – these should be considered in the Bill

29. *There is a gap between the Building Act s124 (red sticker) notice and Earthquake Commission Act imminent risk interpretation on an undamaged house due to geotechnical threat* - The Bill's provision for cover where natural hazard risk is "imminent" is inadequate for addressing a legislative gap that was apparent in the Christchurch and Kaikōura earthquakes. The regulatory authorities used emergency powers to prevent people using houses that were at risk from other land, but there was no private insurance cover and EQC would dispute whether the risk was "imminent". This caused hardship and injustice. The Bill should specify that a risk is also "imminent" in circumstances where regulatory authorities have used emergency powers to exclude people from accessing property that is at risk of natural hazards.
30. *Private infrastructure with respect to individual properties* –While Section 12 includes the cover of infrastructure, we think more robust processes should be put in place to make sure that appropriate checks are undertaken on infrastructure that may be more difficult to check (such as pipes) and people are aware of the potential for this type of damage. As we mentioned above, our experience regarding broken private lateral water and wastewater pipes should inform new procedures, as serious problems for water services providers infrastructure systems' capacity and levels of service can ensue where cash settlements do not lead to homeowners fixing their laterals – there needs to be accountability to ensure that the work is completed.
31. *Global solutions to land damage* – We recommend that where a global solution is required to remediate land damage, the EQC settlement should be initially directed to the territorial local authority to ensure the work is undertaken in a timely manner, and to a standard that doesn't negatively impact the surrounding area. This Bill is an opportunity to facilitate this approach and would be in keeping with the NHC's responsibility to build community resilience (and therefore align to sections 3, 125, and 126).

We support and encourage efforts to increase transparency, information flow and awareness

32. The function/responsibility of the Commission to facilitate research and education, and to contribute to the sharing of information, knowledge, and expertise is strongly supported by our Council (section 126e). We encourage the Commission to particularly support research projects that are co-designed with end users such as local government organisations, as this results in useful, usable outputs in building resilience, and buy-in from end users to put findings to good use. We believe that the Commission could also extend their role in building resilience by providing incentives to home owners for work such as removing chimneys and bracing walls.
33. We recommend that, in the public interest, all relevant data and information gathered and held by the NHC, including information gathered in geotechnical investigations, be made accessible to councils (naturally, with safeguards to protect personal and commercial details). Such a change will assist councils in long-term planning and hazard management roles. Clarity would also be required on whether councils would be required to include such information on a LIM, given they don't have the ability to independently verify the information.
34. In regards to sections 47 – 49, we support freer public access to information where claims have been paid, and notes on land titles where work has subsequently not been completed (on the proviso that proper systems are put in place to verify this information). Additional information and safeguards for this would also assist councils to keep track of the quality of housing stock, and provide for increased accountability. We would like to understand:

- a. How the NHC will monitor whether work is completed after a pay-out so that people can be secure in the knowledge that no note on the land title means no such risk of declined future claims exists.
- b. Whether this information could be included on a LIM. If not, we see the current review by the Department of Internal Affairs of the LIM system regarding natural hazards as another opportunity for ensuring alignment across the legislation pertaining to natural hazards management.
- c. How the Bill adequately safeguards against cases of properties having a note put on their title due to a previous owner not completing claimed repairs, which effectively devalues the property through no fault of the current owner (current legislation precluded due diligence in this matter as claims made by new owners to fix buildings were paid out, even where past owners already received a pay-out for the same work). Thought could be given to the NHC recouping the payment made to previous owners via Inland Revenue, acknowledging this would be quite complex and would likely require consequential review of other legislation.

35. In other matters of transparency/availability of information, if property owners have undertaken site-specific geotechnical tests on their land, that information should be available for upload to the New Zealand Geotechnical Database and Council systems. This is especially useful where the new information may override past area-wide liquefaction vulnerability categories.

We are concerned that each piece of natural hazard and risk legislation is being reviewed in isolation from others

36. Natural hazard risk is managed across a variety of legislative instruments³. Even something as simple as the definition of what is a natural hazard is inconsistent across these different acts. This is an opportunity to provide a more comprehensive list of natural hazards with clearer and more widely accepted terminology. For example:
- a. We support the change in this Bill to the use of ‘natural hazard’.
 - b. Consideration could be given to the inclusion of debris flow in the Bill. A debris flow, such as that experienced by residents of Matatā, has some characteristics of a flood and some of a landslide – but it is unclear whether the intention is to include debris flow in the flood or in the landslide category. While a debris flow should be covered by private insurance (as it is deemed to be a “flood”), the increase in cap means private insurance is less likely to be involved and therefore the dwelling is effectively uninsured. This is potentially a serious gap in the legislation. We note, if the dwelling were to be covered in the case of flood and storm, this would be moot.
 - c. The definition of landslide excludes movement of the ground due to below-ground subsidence. We assume that this is probably to exclude chronic rather than catastrophic events in a fashion similar to the exclusion of erosion. However, if a dwelling were to be built above a tomo or tunnel, and if there were to be catastrophic failure of the tomo or tunnel leading to damage of the dwelling and residential land, we believe that this should constitute a natural hazards event (even if the cavity were formed by erosion). We believe the definition of natural hazard or landslip should explicitly cover such events. We note that snow avalanche is not defined as a natural hazard, and consideration should be given to its inclusion.

³ including the Civil Defence Emergency Management Act 2002, Resource Management Act 1991, Building Act 2004, Earthquake Commission Act 1993, Local Government Act 2002, Local Government Official Information and Meetings Act 1987, Soil Conservation and Rivers Control Act 1941, and Insurance Contract Law, as well as many lesser Acts

- d. The definition of 'flood' could also clarify whether it includes sudden appearance at surface of shallow groundwater. This is likely to become an increasing issue in some parts of New Zealand.
37. We are aware that the draft National Adaptation Plan includes consideration of the future of flood insurance. The inconsistency between rules for flood and storms vs other natural hazards regarding cover of the dwelling complicates claims and causes confusion. This exclusion of dwellings misses an opportunity for disaster insurance to be used as a tool for global solutions to flooding, including adaptation planning.
38. Many of the pieces of legislation mentioned above are under review, or part of wider reform work (including resource management reform, National Adaption Plan creation, Civil Defence Emergency Management Act review, Future for Local Government review, Three Waters reform, LIM review on natural hazards). In addition, the already complex field of natural hazard management is becoming increasingly complex due to the effects of climate change. We strongly encourage working closely with other central government agencies that are undertaking legislative reform to ensure natural hazard risk is managed in a holistic manner, and that the opportunity is taken to ensure climate adaptation is embedded in legislation.
39. The NHC must prioritise its remit (section 3) to contribute to improving community resilience to natural hazards. It is critical that this legislation is drafted alongside the Climate Change Adaptation Act and the National Adaptation Plan – particularly relating to managed retreat legislation, and consideration will need to be given to rebuilding (or not) in areas that are going to become more and more at-risk as the climate continues to change.
40. In this multifaceted area of natural hazards legislation, it would be profoundly helpful for the Government to provide a summary clarifying how all relevant legislation works together to manage natural hazards and risks. Ultimately this would give some assurance that natural hazard risks are being effectively and appropriately managed, and will continue to be so once the legislative review, reform and update are managed.