

Natural Hazards: current legal challenges and the direction of reform

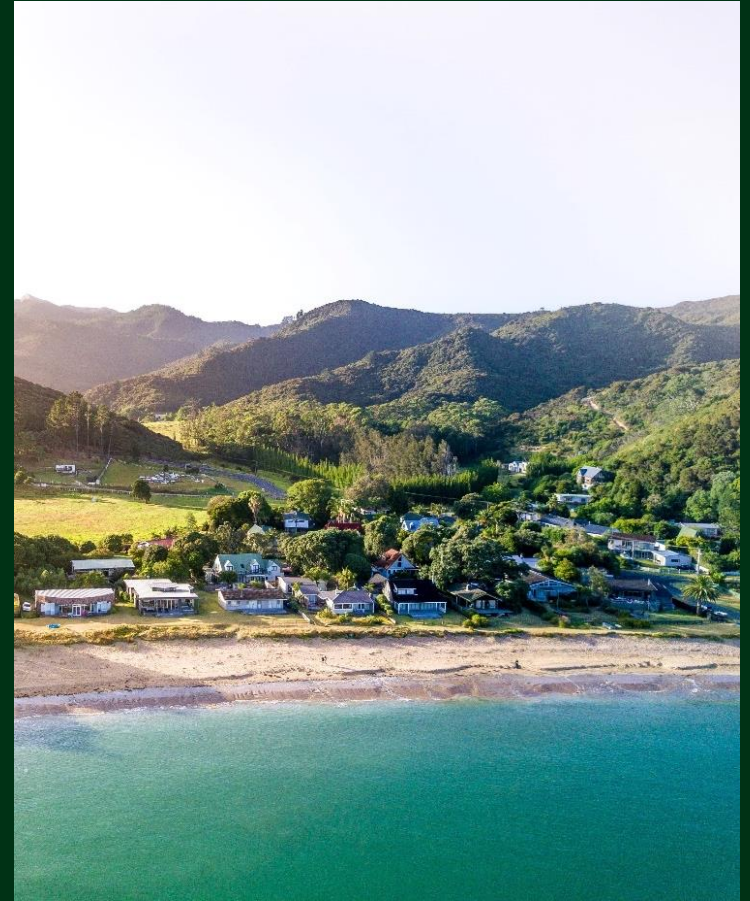
New Zealand Insurance Law Association
Conference – 5 September 2024

Regeneration | Whakahounga



What we will cover

- 1 Context for the session
- 2 Risk management – scene setting
- 3 The challenges posed by subjective concepts
- 4 A new framework required
- 5 Key issues to resolve
- 6 Questions



Context

Global Context



Dynamic physical
Largely coastal

Māori (and other
groups)
disproportionately
affected



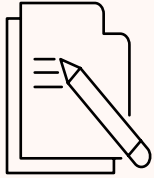
Asset damage
Infrastructure at
risk
Insurance risk



Current legal
instruments

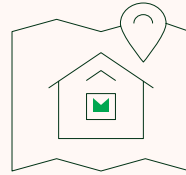


Risk management – the regulator toolbox



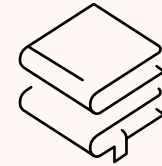
RMA

Focus on land use management
Lacks an *avoidance* direction
Historical issues due to subjective concepts



Building Act

Levers where natural hazards cannot be addressed
Immediate risks more relevant
Not geared towards longer term adaptation



Information

LIM information, inconsistent
No requirement to regularly update, or complete studies
LGOIMA Amendment Bill – may see improved information

Risk – informed by subjective concepts



Significance

Term yet to be clearly defined.

What amounts to "a 'significant' risk is critical in terms of the regulatory (RMA) response.

Tolerance

No authoritative guidance issued.

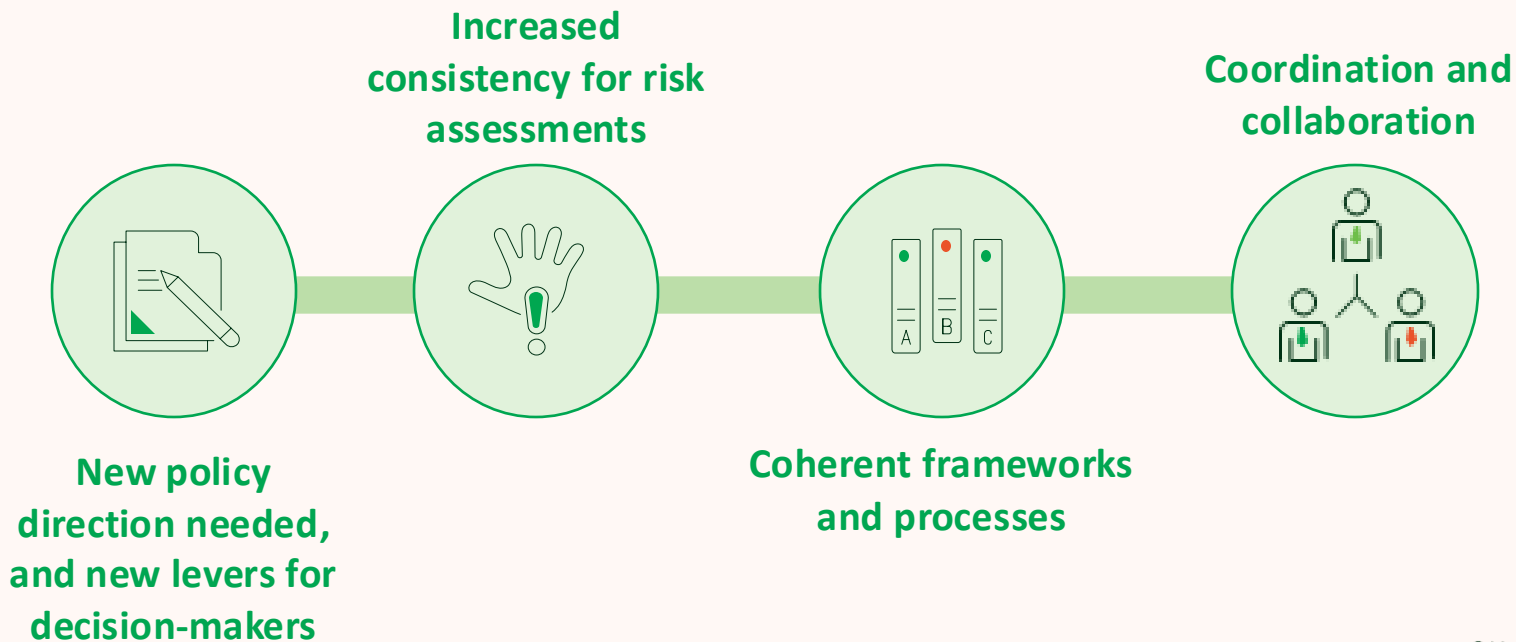
Nature, level and *significance* of risk informs the level of individual or community tolerance

Risk “tolerance” in action

1. *Waihi Beach Protection Society Incorporated v Western Bay of Plenty District Council*
2. *Waterfront Watch Inc v Wellington Regional Council*
3. *Mahanga E Tu Incorporated v Hawkes Bay Regional Council*
4. *Otago Regional Council v Dunedin City Council*
– “The house that tenacity built”



The need for reform – and a new framework for longer-term adaptation



Roles and responsibilities

Climate Change Commission

- Clarification of roles, responsibilities and process will be important
- Existing frameworks inadequate, lack flexibility
- Emergency Management System needs to be fit for purpose

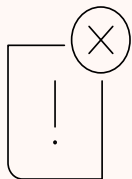
Options

- National consistency, but local decision-making?
- New institutions?
- Where should the risk threshold be set?
- Does the RMA system need to be designed in parallel?
- National direction, and central support for local government?
- How will other stakeholders participate?

Best outcome...

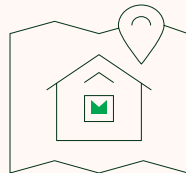
- Agreed basis for assessing risk, and guidance on the regulatory response
- Access to better information
- Clarity of roles
- Regional planning, that supports long-term adaptation & retreat
- Reduced reliance on bespoke legislation

Costs & how to fund long-term adaptation / retreat?



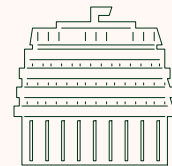
Key challenges

- No national model = no clarity
- Reliance on Crown / Local Government contributions – shifts burden to rate / taxpayers
- Case-by-case approaches
- Impractical to achieve at-scale relocation



Objectives

- A model that incentivises adaptation, or provides for retreat
- Enduring, strategic decision-making
- No complete shifting of burden to rate/taxpayers?

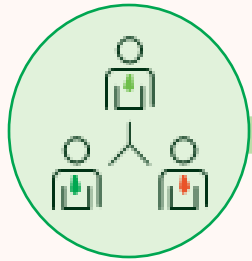


Local govt / Crown

- Perceived as underwriting of risk
- Generally decided on case-by-case = unsustainable
- Not supported by current local govt funding model
- A new fund needed?

Other complexities

New powers:
coercive, relocation



Māori Land



Withdrawal of
services

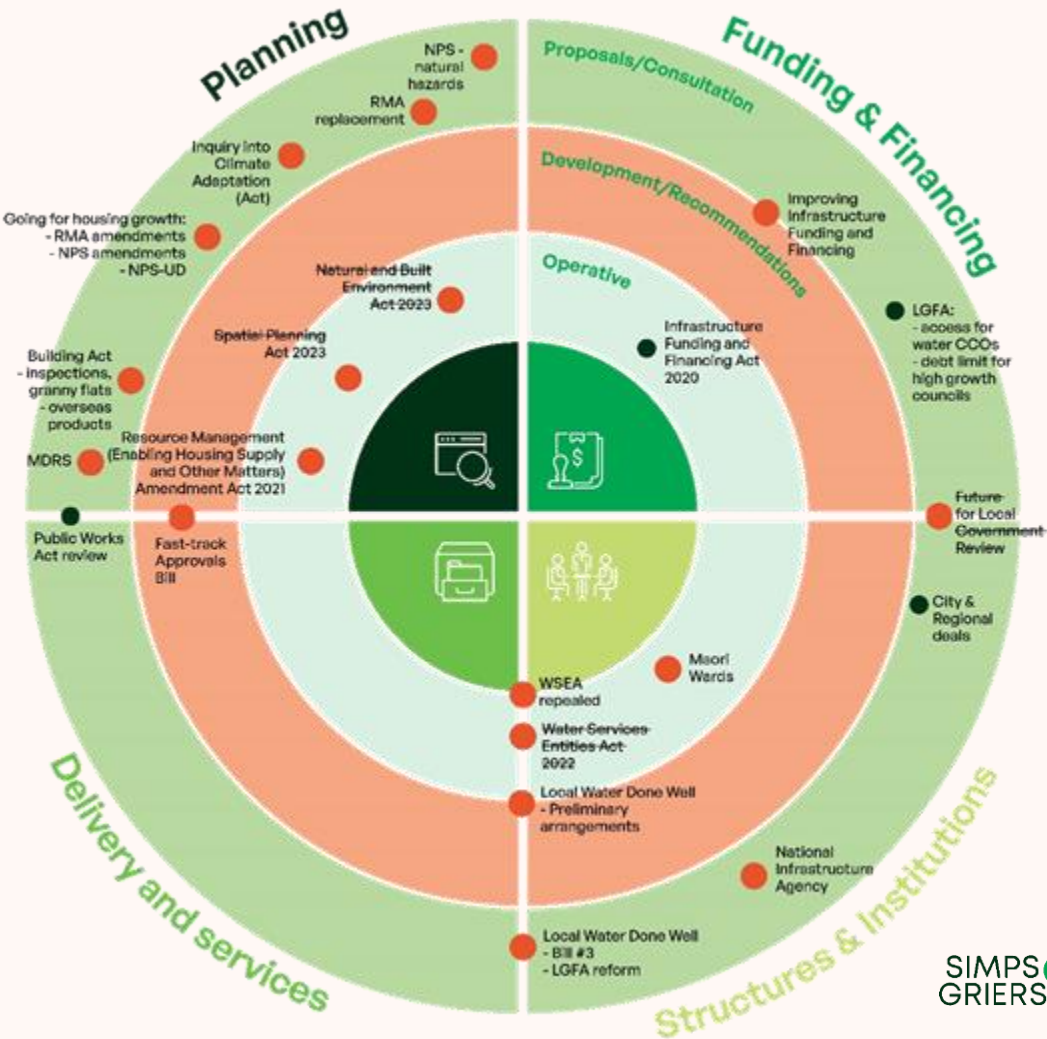
Overlap with other
systems



Protection for
decision-makers

What's next? Timing?

Reform radar: post-election





Mike Wakefield | Partner

+64 4 924 3598 M +64 22 355 1231

mike.wakefield@simpsongrierson.com

