

Committee Members

Chair: Peter Haddock
Cr Andy Campbell
Cr Brett Cummings

Cr Frank Dooley
Cr Peter Ewen
Cr Mark McIntyre

Iwi Representatives

Francois Tumahai (Ngāti Waewae)
Jackie Douglas (Makaawhio)



PUBLIC COPY

Meeting of the Resource Management Committee
(Te Huinga Tu)

Tuesday, 14 March 2023

10.30 am

West Coast Regional Council Chambers, 388 Main South Road, Greymouth
and

Live Streamed via Council's Facebook Page:

<https://www.facebook.com/WestCoastRegionalCouncil>

RESOURCE MANAGEMENT COMMITTEE

Resource Management Committee Meeting

(Te Huinga Tu)

A G E N D A

(Rarangi Take)

1. **Welcome** *(Haere mai)*
2. **Apologies** *(Ngā Pa Pouri)*
3. **Declarations of Interest**
4. **Public Forum, Petitions and Deputations** *(He Huinga tuku korero)*
5. **Confirmation of Minutes**
 - 5.1 14 February 2023**Matters Arising**
6. **Chairs Report** *(verbal update)*
7. **Planning and Resource Science Group**
 - 7.1 Resource Science Report
 - 7.2 Planning Report
 - 7.2.1 Final Joint Submission NBE SP Bills
8. **Consents and Compliance Group**
 - 8.1 Consents Report
 - 8.2 Compliance Report
 - 8.3 Deeds of Transfer
 - 8.3.1 Deeds of Transfer Function under RMA
 - 8.3.2 Signed Deed of Transfer BCA Functions 280521
9. **General Business**

Move to Public Excluded
10. **Public-Excluded Items**
 - 10.1 Confirmation of Confidential Minutes 14 February 2023**Matters Arising**

H Mabin
Chief Executive

Purpose of Local Government

The reports contained in this agenda address the requirements of the Local Government Act 2002 in relation to decision making. Unless otherwise stated, the recommended option promotes the social, economic, environmental and cultural well-being of communities in the present and for the future.

Health and Safety Emergency Procedure

In the event of an emergency, please exit through the emergency door in the Council Chambers.

If you require assistance to exit, please see a staff member. Once you reach the bottom of the stairs make your way to the assembly point at the grassed area at the front of the building. Staff will guide you to an alternative route if necessary.

THE WEST COAST REGIONAL COUNCIL
MINUTES OF THE RESOURCE MANAGEMENT MEETING HELD ON 14 FEBRUARY 2023 AT THE
OFFICES OF THE WEST COAST REGIONAL COUNCIL 388 MAIN SOUTH ROAD, GREYMOUTH
COMMENCING AT 10.30AM

PRESENT:

P. Haddock (Chair), P. Ewen, B. Cummings, A. Campbell, M. McIntyre, F. Dooley, F. Tumahai (Te Rūnanga o Ngāti Waewae), Jackie Douglas (Te Rūnanga o Makaawhio).

IN ATTENDANCE:

H. Mabin (Chief Executive), N. Costley (Strategy and Communications Manager), F. Thomson (Planning & Science Manager), R. Clark (Acting Consents & Compliance Manager), B. McMahon (Greymouth Star), J. Horrocks (Science Team Leader).

1. WELCOME

Chair Haddock opened the meeting and asked F. Tumahai to say a karakia.

2. APOLOGIES

The Chair called for apologies. Cr A. Birchfield was an apology for the meeting.

Moved (P Haddock/M.McIntyre) *that the apology from A. Birchfield is accepted.*

Carried

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. PUBLIC FORUM, PETITIONS AND DEPUTATIONS

There were no public forum, petitions or deputations.

5. CHAIRMANS REPORT

Chair Haddock presented his report. Key points noted included the following:

Council staff have been busy with the planning team lodging several submissions; the Consents and Compliance team processing 10 non-notified resource consent applications, and three applications to change consent conditions; and the Compliance Group recording a total of 17 complaints and incidents.

Chair Haddock thanked staff for the excellent State of the Environment Summary and noted that no rainfall alarm thresholds were breached in December or January. Installation of 15 water level and flow radars have been completed.

Chair Haddock noted Jackie Douglas' confirmation as Council's Te Rūnanga O Makaawhio representative until at least November this year.

Moved (P. Ewen/B. Cummings) *that the Chair's report be accepted.*

Carried

6. CONFIRMATION OF MINUTES

There were no changes to the minutes of 8 November 2022.

Moved: (M. McIntyre/F. Dooley) *that the minutes of Resource Management Committee meeting dated 8th November, 2022 be confirmed as correct.*

Carried

Matters Arising

Cr Dooley congratulated Mayor Lash and S. Bastion from Westland District Council for recognition of the perception of bias resulting in removal of their candidate from the TTPP.

The Chair asked the meeting if there were any changes to the minutes of 13 December 2022. There were none.

Moved: (P. Haddock/B. Cummings) *that the minutes of Resource Management Committee meeting dated 13th December, 2022 be confirmed as correct.*

Carried

Matters Arising

Cr Dooley requested an action list is to be made up from each meeting and brought to the next meeting with action points and follow ups noted.

7. CONFIRMATION OF TE RŪNANGA o MAKAAWHIO REPRESENTATIVE

Chair Haddock confirmed Jackie Douglas as the Te Rūnanga o Makaawhio representative until at least November 2023 and thanked her for her attendance.

8.1 RESOURCE SCIENCE REPORT

Cr Ewen referred to Page 3 of the report about minimum flows and noted that records have been kept since 1885. Cr Dooley commented on the low river levels and the gravel exposed, suggesting that Council should extracting gravel and stockpiling for the infrastructure projects. Chair Haddock noted that the barrier was how it would be funded.

F. Thomson noted that the low flows in the rivers along with algae growth was resulting in some perceptions that they are dirty. This is just a natural process. There was informal discussion with Cr Ewen interested in the meterage/flows in the rivers at the moment.

Moved (F. Dooley/M.McIntyre) *that the report be received.*

Carried

8.2 PLANNING REPORT

Cr Dooley stated that he attended the LG Reform workshop on 24th January along with J. Douglas. He thanked J. Douglas for her input into that session. He felt the Bill was a major concern and their authority as Clrs would be taken away by the Regional Planning Committee. Cr Dooley felt the submission was really good and addressed their concerns. Ms Douglas echoed his concerns.

F. Thomson stated that the biggest concern was the detachment of the decision making from the Local Government environment and creating a new body to make those decisions. There are concerns about a lack of expertise and a willingness to resource it. Ms Thompson noted the concerns of J. Douglas had Arrangement, a live document, and the be requirements from the Bill that would result in changes to that.

Chair Haddock said the same concerns are being raised at the Regional SI Chairs and CEO's meeting.

Cr Dooley referred to Page 56 of the report, the Climate Change Adaptation Bill, and that this should be addressed first, in order of importance to the region. Ms Thomson noted it was difficult to look at implementation when the framework was not there.

When asked by Chair Haddock, J. Douglas she agreed with Cr Dooley and Ms Thomson and could not see how another layer of bureaucracy would help. It may not affect the iwi seats around the table but would certainly adversely affect the Mana Whakahono ā Rohe Arrangement.

Moved (Haddock/McIntyre) that:

1. *The report be received; and*
2. *Council agree with the updated staff advice about which national documents to submit on.*

Carried

9. UPDATE ON REGIONAL TRANSPORT MATTERS

Cr Dooley stated he was not prepared to accept the recommendation of receiving the report due to the timeframes outlined. He noted that the flood events in 2021 and those since has caused a lot of damage to the roading network. His concern was that if the report was accepted then the issues would not be addressed. Council needed to re-prioritise and look at the condition of the State Highways and do something about it. Chair Haddock said the Regional Transport Plan Committee had a meeting next month where these issues would be raised with NZTA.

N. Costley explained that the Plan is set up for a 3-year budgetary period, looking forward to 6 years and has a wider focus of 10 years. Cr Dooley's comments would be incorporated in the plan review which has commenced and is to be in place by 1 July 2024. These issues occurred after the current plan had been developed.

Cr Ewen noted the recommendation was just to receive the report, but Cr Dooley stated he was still concerned and was not prepared to wait until 2024. N. Costley noted Cr Dooley's concerns but said reviewing of the Plan was underway now, and nothing could be changed or sped up before 2024. The National Land Transport Fund was already under significant pressure and would be further impacted with the situation happening up north.

Cr Cummings queried who decides on the priorities for the West Coast. Chair Haddock stated he had been on the Regional Transport Committee for 15 years and each region's committee's recommend to Waka Kotahi what the priorities are. In the past it had been route security. The same issues are brought up time and again. Cr Ewen echoed Cr Haddock's comments and felt that with the Government's push toward electric vehicles then there would be less funding. Cr Cummings asked if there had been cost analysis done for Road User Charges on the West Coast. N. Costley said that Waka Kotahi would likely have this information.

Cr Dooley said he was not against receiving the report but asked the members of the RTC to bring back the recommendations about the re-prioritising at the RTC meeting.

Moved (Ewen/Haddock) *that the report is received and the attachment noted.*

Carried

10. CONSENTS MONTHLY REPORT

Cr Cummings questioned the whereabouts of Deadmans Creek noted in the report. Cr McIntyre clarified that this was in Westport.

Chair Haddock said that himself, H. Mabin and R. Clarke attended a compliance visit to Awatuna where Council had received a number of complaints regarding mining in the area and the discolouration of Waimea Creek. They had taken the complaint to Minerals West Coast to organise a meeting with the miners working in that area to try leverage off the learning from other miners working well in the area.

Cr Cummings asked if they could look at the original consents to see if there were any violations. R. Clarke outlined what they could or could not do under the current RMA.

Moved (Campbell/Cummings) *That the report be received.*

Carried

Compliance and Enforcement Monthly Report

Moved (Campbell/McIntyre) *That the report be received.*

Carried

Cr Dooley referred to page 71 and asked F. Tumahai what was happening regarding the incidents in Little Wanganui and Serpentine. F. Tumahai explained that he had met with Mr Jensen who had drafted a public apology as well as working on how the fossil would be returned to the community. The other rock had been returned to Serpentine.

F. Tumahai noted that there seemed to be more complaints noted in the report. R Clark said that the team was getting better at recording complaints but this report recorded both December and January complaints.

11. GENERAL BUSINESS

There being no further business, the public meeting concluded at 11.15am.

WEST COAST REGIONAL COUNCIL

To: Chair, Resource Management Committee

I move that the public be excluded from the following parts of the proceedings of this meeting, namely – items 11.1 (inclusive) due to privacy, commercial sensitivity and security reasons and that:

- 1. Heather Mabin be permitted to remain at this meeting after the public have been excluded due to their knowledge of the subjects. This knowledge will be of assistance in relation to the matters to be discussed; and*
- 2. That the minutes clerk also be permitted to remain.*

Item No	General Subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 7 of LGOIMA for the passing of this resolution
11.1	Confidential Minutes RMC Meeting – 8 November 2022	These items contain information relating to commercial, privacy and security matters	To protect commercial and private information and to prevent disclosure of information for improper gain or advantage (s7(2)(a), s7(2)(b), and s7(2)(j)).
11.2	Compliance Matters	These items contain information relating to privacy and security matters	To protect private information and to prevent disclosure of information for improper gain or advantage (s7(2)(a) and 7(2)(j)).
11.3	RSHL Director Nominations	These items contain information relating to privacy matters	To protect private information (s7(2)(a))

Report to: Resource Management Committee	Meeting Date: 14 March 2023
Title of Item: Resource Science Report	
Report by: Fiona Thomson, Planning and Science Manager, Jonny Horrox, Environmental Science Team Leader and Izelder Mulder, Hydrology Data Analyst	
Reviewed by: Fiona Thomson, Planning and Science Manager	
Public excluded? No	

Report Purpose

To update the Committee on Resource Science developments over the last month.

Report Summary

This report summarises activities being undertaken within the Resource Science team over the period of the last month and highlights any milestones or interest points within the monitoring programmes for the Committee's information.

Draft Recommendations

It is recommended that Council resolve to:

Accept the report for information purposes.

Issues and Discussion

Hydrology

The hydrology team has been busily completing alpine rainfall monitoring site inspections to empty rain gauges and ensure that equipment is in good repair.



Figure 1: Alpine site visit at Cropp River @ Base OTA

Heavy rainfall events on the 2nd and 5th February caused the Hokitika and Waiho rivers to trigger their first stage alarm levels.

The flood log response table is available on the website at <https://www.wcrc.govt.nz/services/flood-monitoring>.

The flood warning team responded to 5 first stage alarms in February. High flow levels for Westland rivers on the coast did not reach levels of concern as they were below or near their 1-year return intervals.

Flows recorded at key Grey and Buller rivers were below or near their median annual flow.

January 2023

Site	Alarm threshold (mm)	Warning issued	Peak level (mm)	Time of peak
Alarm thresholds not breached.				

February 2023

Site	Alarm threshold (mm)	Warning issued	Peak level (mm)	Time of peak
Hokitika Rv at Gorge	3750	02/02/2023 10:40	3819	02/02/2023 10:45
Waiho Rv at SH6	8000	02/02/2023 10:55	8486	02/02/2023 22:45
Hokitika Rv at Gorge	3750	02/02/2023 23:20	4350	03/02/2023 07:15
Waiho Rv at SH6	8000	05/02/2023 10:20	8290	05/02/2023 15:00
Hokitika Rv at Gorge	3750	05/02/2023 14:01	4260	05/02/2023 17:05

Figure 2: Table of flood response

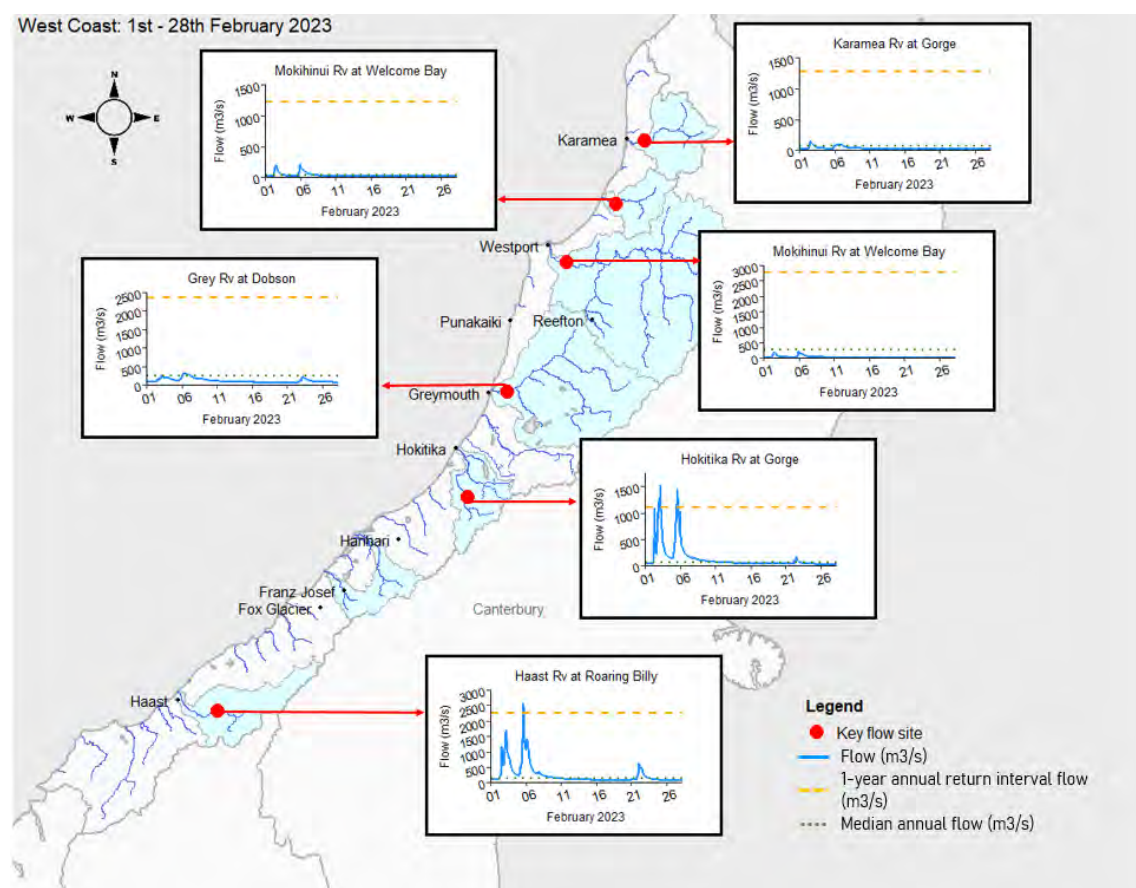


Figure 3: Flow map of key rivers on the coast.

Environmental Science

Groundwater

Summer sampling has been completed, with the autumn GNS groundwater quality programs underway. The ESR groundwater pesticide survey is nearly complete with three final sites to be added from Inchbonnie, Waitaha, and Hari Hari.

Surface water

Things are moving in autumn mode with contact recreation sampling continuing until the end of this month (March). Eighteen rivers and counting have undergone intensive monitoring for 7+ days to better understand their diurnal (24 hr) patterns. We have the option of continuing this into April.

Contact recreation

Previous Council reporting covered up until early January. From late January to mid-February several exceedances were recorded. A number occurred on the 30 January, where a period of intense rainfall fell within 48 hours of sampling. Waterbodies were noticeably discoloured on this day. Punakaiki River also exceeded on 6 February, also following a period of moderate rainfall.

Only one other exceedance occurred in February. This was at Seven Mile Creek at Rapahoe. There was no significant rainfall during and leading up to this sampling event. Refer to the WCRC website for details on contact recreation monitoring results.

Algal blooms

There have been no more public enquiries around potentially toxic algae. As the days get shorter and colder, combined with some forecast rain events, the risks of algal blooms will increasingly diminish.

Air quality

Things are warming up regarding our preparation for winter monitoring. Long term monitoring will continue in Reefton. We will repeat a spatial survey of airborne particulates in Westport to validate results from last winter. Council has procured another particulate monitoring machine (like that used in Reefton) We aim to install this in Westport, along with additional instruments, to assist with Westport's preliminary monitoring this winter.

Considerations

Implications/Risks

There are no implications or potential risks within this report.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in this policy.

Tangata whenua views

Poutini Ngāi Tahu are involved in freshwater management policies.

Views of affected parties

No parties will be affected by the subject matter of this report.

Financial implications

There are no financial implications arising from this report.

Legal implications

The monitoring program and outcomes of that monitoring meet WCRC legal obligations under the Resource Management Act 1991, National Planning Standard for Freshwater Management .

Report to: Resource Management Committee	Meeting Date: 14 March 2023
Title of Item: Planning Report	
Report by: Lillie Sadler, Planning Team Leader	
Reviewed by: Fiona Thomson, Planning and Science Manager	
Public excluded? No	

Report Purpose

To update the Committee on Planning developments over the last month and seek their agreement on the updated staff advice in Appendix 1.

Draft Recommendations

It is recommended that Committee resolve to:

1. *Receive the report.*
2. *Agree with the updated staff advice in Appendix 1 about which national documents to submit on.*

Issues and Discussion

Planning Department

Anticipated documents to be notified for submissions

The Table in Appendix 1 is updated based on recent updates from the Ministry for the Environment, the local government sector or the regional sector. Updated information is shown with underline.

Submissions lodged

Natural and Built Environments Bill & Spatial Planning Bill

A submission was lodged on 17 February 2023 on the Natural and Built Environments Bill and the Spatial Planning Bill. A copy of the final submission is attached to this report as Appendix 2. A summary of the main points in the submission was included in the 14 February 2023 RMC Planning report.

Resource management reform transition and implementation

At the 14 February Committee meeting it was reported, “....that the Government advised that they will use a staged, tranche system for councils to transition to implementing the new Resource Management framework at different times.....It appears that councils can advise MFE of their preferred tranche, and MFE will group councils into each tranche with staggered commencement dates per tranche, for development of their RSSs and NBEA plans. MFE also advised that the list of tranches will be released in January 2023....”.

Staff have not been advised of the list yet.

Freshwater implementation

In addition to Council's regular surface and ground water quality monitoring, the following is an update of what freshwater implementation work has been undertaken in the last 12-14 months, and the relevant requirement from the National Policy Statement for Freshwater Management (NPSFM):

Freshwater workstream	NPSFM requirement
The South Westland Freshwater Management Unit Group presented their recommendations to Council's Resource Management Committee in	3.2(1) and (2), 3.3 (1) and (3), 3.7(1), 3.8 (1): Every regional council must identify FMUs for its region,

March 2022. This completes all four FMU community Group processes, and their Recommendations will feed into the freshwater plan change to the Land and Water Plan.	develop long-term visions for freshwater, and engage with communities and tangata whenua throughout the National Objectives Framework (NOF) process to identify values and visions.
A public survey inviting nominations for Outstanding Water Body status was held in December 2021. A draft report is being prepared on assessing nominations of water bodies for outstanding status.	Policy 8, 3.8(3)(d): Regional councils must identify outstanding water bodies if they are present within each FMU., and protect their significant values
The review of the current Schedule 7A: Habitats of Threatened Species in the Land and Water Plan was completed in December 2021, and will be incorporated into the freshwater plan change.	Policy 9, 3.8(3)(c), Appendix 1A Compulsory Values No 3: Habitats of indigenous freshwater species are protected in an FMU where there is critical habitat and conditions necessary to support a population of a threatened species.
Water quality staff and two other water quality experts are identifying baseline states for rivers and lakes, which will go into the freshwater plan change.	Policy 5, 3.7-3.13, 3.16: Councils are required to identify FMUs, values for each FMU, environmental outcomes for each value, attributes, baseline states (of water quality), attribute states, environmental flows and levels, and limits as rules.
The current Schedule 11: Inanga (Whitebait Spawning sites) in the Land and Water Plan was reviewed in 2022, and will be incorporated into the freshwater plan change.	Policy 9, 3.8(3)(c), Appendix 1A Compulsory Values No 3: Habitats of indigenous freshwater species are protected in an FMU where there is critical habitat and conditions necessary to support a population of a threatened species.
Assessment of a random sample of fish passage barriers in streams and rivers commenced in 2021, and will be completed this year.	Policy 9, 3.26(7), Appendix 4: Habitats of indigenous freshwater species are protected, and instream structures are identified, recorded, and the risks of a structure being an undesirable barrier to fish passage are evaluated.
Science and GIS capacity to do wetland assessments in the field, and map and develop an inventory of natural wetlands, is being developed.	Policy 6, 3.8(3)(e), 3.21-3.23: Identify, map and keep an inventory of natural inland wetlands larger than 500m ² , or smaller where there are known threatened indigenous species present.
Commenced drafting of freshwater changes to the Regional Policy Statement (RPS) and Land and Water Plan	Several provisions in the NPSFM require changes to the RPS and Land and Water Plan.
Staff are liaising with the West Coast Farm Focus Trust who will deliver advice and education to farmers on developing freshwater farm plans.	

Te Tai o Poutini Plan

The contracted planners are currently focussing on summarising submissions to the Proposed TTPP. Over 50 large submissions, relating to many parts of the Plan are still to be processed. Each one takes many hours, and it is likely the summary will not be available for approval until the 18 April TTPP Committee meeting.

Minor amendments have been undertaken, reducing the size of the Sites and Areas of Significance to Māori SASM 68, Paroa Lagoon, and SASM 79, Cashmere Bay, which were approved at the 15 December 2022 TTPP meeting. Updated pdf and e-maps are available on the TTPP website, and letters have been sent to landowners where the changes have occurred.

The District Council Chief Executives, Kaiwhakahaere Tumahai and the TTPP Committee Chair undertook interviews with two applicants for the role as hearings panel Chair for the Proposed Plan. A recommendation for panel Chair and nominations for hearings panelists were presented to the TTPP Committee on 28 February for its decision.

TTPP has had a Senior Planner vacancy since early November 2022. Three applications have been received to date. An applicant was due to be interviewed in February but withdrew his application following Cyclone Gabrielle as he was involved in the clean-up.

Considerations

Implications/Risks

There are no implications or risks arising from this report.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in the significance policy.

Tangata whenua views

Poutini Ngāi Tahu were consulted on the draft submission on the Natural and Built Environments Bill and the Spatial Planning Bill. Te Runanga o Makaawhio provided input into the draft submission, Te Runanga o Ngati Waewae made no comments.

Views of affected parties

No parties will be affected by the subject matter of this report.

Financial implications

There are no current financial implications arising from this report.

Legal implications

There are no legal implications arising from this report.



Attachments

Appendix 1: Anticipated documents to be notified for submissions in 2023

Appendix 2: Submission on the Natural and Built Environments Bill and Spatial Planning Bill

Appendix 1: Anticipated documents to be notified for submissions in 2022/23

Document	Main points	Closing date, or approximate period, for submissions	Recommendation to submit or not
Climate Change Adaptation Bill	<p>This is the third new piece of legislation as part of the Resource Management Reform suite. It will focus on the necessary steps to address effects of climate change and natural hazards.</p> <p>Will deal with complex legal and technical issues (e.g. liability and compensation) around managed retreat.</p>	Consultation in <u>mid</u> 2023	To be advised in due course.
National Planning Framework	The NPF is part of the Natural and Built Environments Bill, and will comprise existing National Policy Statements, National Environmental Standards and resource management Regulations. These national direction instruments may stay the same, or may be changed. The NPF will have environmental limits, or directions to have environmental limits in plans.	Consultation in <u>first</u> quarter of 2023	<u>Recommend to make a submission, this will affect the West Coast Region.</u>



388 Main South Rd,
Paroa, Greymouth 7805
P.O. Box 66,
Greymouth 7840
The West Coast,
New Zealand
Telephone (03) 768 0466
Toll free 0508 800 118
Email: info@wcrc.govt.nz
www.wcrc.govt.nz



6-8 Brougham Street,
Westport 7825
P.O. Box 21,
Westport 7866
New Zealand
Telephone: (03) 788 9111
Toll free: 0800 807 239
Email: info@bdc.govt.nz
www.bullerdc.govt.nz



105 Tainui Street,
Greymouth 7805
P.O. Box 382,
Greymouth 7840
New Zealand
Telephone (03) 769 8600
Email: info@greydc.govt.nz
www.greydc.govt.nz

17 February 2022

Environment Committee
Parliament Buildings
Wellington

Email submission to: environment@parliament.govt.nz

Dear Sir/Madam

Submission on Natural and Built Environment Bill and Spatial Planning Bill

Thank you for the opportunity to make a submission on the Natural and Built Environment (NBE) Bill and Spatial Planning (SP) Bill.

Joint Submission

Please find a joint submission from the West Coast Regional Council (WCRC), Buller District Council (BDC), and Grey District Council (GDC) on both the NBE and SP Bills attached. The submission is supported by Westland District Council (WDC) and Development West Coast (DWC) and focuses on the implications of the NBE and SP Bill for the West Coast region.

Request to Present Oral Submission

The West Coast Regional Council wish to be heard at an oral hearing before the Environment Committee; and to be able to make oral submissions as the process continues. The Buller District Council has registered an interest in making an oral submission.

Mana Whakahono ā Rohe - Iwi Participation Arrangement

In developing this submission, WCRC engaged with its partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (of Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini.

West Coast Regional Council Engagement on Resource Management Reform

The West Coast Regional Council has been actively engaged throughout the Resource Management (RM) reform process. It submitted its position on the exposure draft of the NBE Bill and Parliamentary Paper to Parliament's Environment Committee in August 2021; and it submitted to the Ministry for the Environment (MfE) on MfE's resource management reform discussion document, "Our future resource management system – materials for discussion" in March 2022.

Submission Overview

The West Coast Councils are pleased that some of the suggestions made in their earlier submissions have been picked up and reflected in the NBE and SP Bills, but many concerns previously (and repeatedly) raised by the West Coast Regional Council, particularly concerning the opportunity for genuine engagement and consultation; consistency with the Local Government Act (LGA) and the Local Government (Rating) Act (LGRA); making funding reforms and ratepayers part of the conversation; resolving funding issues for local government; reducing burdens on local and regional ratepayers throughout the West Coast to fund resource reforms and making the resource management system more stream-lined and cost-effective for them; and making sufficient provision for a local voice, have not been addressed. The Councils are disappointed that these concerns remain to be addressed, and that they are having to be raised again.

Due to the high workload of the small West Coast Council teams [the 'Councils'], and tight timeframes, the Councils have not been able to respond to all aspects concerning the two Bills.

The Councils do, however, have additional questions and concerns about parts of the proposed new resource management system. These questions and concerns relate, amongst other, to the undermining of Local Government's mandate; and the rapid turnaround reform of New Zealand's entire resource management system, unprecedented in 30 years, without a full consideration of the costs and benefits to local communities; whether there are any net benefits to ratepayers, and in particular to ratepayers on the West Coast; and whether during a cost of living crisis homeowners are able to pay significantly more district and regional council rates, or cover the cost of debt servicing for local authorities to administer and implement the reforms.

To comply with the Local Government Act (LGA), regional and district councils have the duty to "promote the accountability of local authorities to their communities" and "to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach." The NBE and SP Bills undermine this duty. The West Coast Councils, for example, have concerns about the costs of the transition, which are expected to be exorbitant, being transferred to local government; the deficiency in providing for regional and local differences; and the erosion of local democratic input.

The West Coast Councils also have further concerns about whether the reforms will result in a 'net benefit' for local ratepayers; and they want to see Central Government substantiate with evidence that the resource management reforms will result in a 'net benefit' for the West Coast. In this regard, and of particular concern, is that MfE's Cost Benefit Analysis (CBA) is partial, incomplete, and that there is no scenario analysis. In some parts MfE's CBA attempts to 'monetise' the environment as a benefit, but 'monetisation' of the environment is unrealistic and cannot be recuperated through rates from West Coast ratepayers. Furthermore, many significant costs have not been included or accounted for in MfE's CBA. For example, many costs of the transition, which are expected to be exorbitant and are intended to be paid for by local government, are not provided for in MfE's Cost Benefit Analysis (CBA).

In brief, this submission outlines many local government concerns, critically around the purpose of local government and finding the right balance between environmental, social, economic and cultural well-being; the regional and local voice; and funding.

The West Coast Councils also suggest that one single act (a combined NBE and SP Bill), and one integrated resource management system, which optimises reforms and retains local authorities' roles under the LGA and LGRA as decision makers and plan makers, would best contribute to achieving the Resource Management reform objectives of stream-lined processes, cost effectiveness, and efficiency.

Our contact details for service are:

Lillie Sadler
Planning Team Leader
West Coast Regional Council
PO Box 66
Greymouth 7840

Phone: 021 190 6676
Email: ls@wcrc.govt.nz

The West Coast Councils value this additional opportunity to have input into the reform of New Zealand's entire resource management system, and would be grateful if you would acknowledge receipt, and engage with us, on our written submission.

Yours faithfully



Heather Mabin

Chief Executive Officer
West Coast Regional
Council



Rachel Townrow

Acting Chief Executive
Officer
Buller District Council



Paul Morris

Chief Executive
Grey District Council

**West Coast Regional Council, Buller District Council, and Grey District Council:
Joint Submission on the Natural & Built Environment and Spatial Planning Bills**

**Key List of
Abbreviations**

ADR	Alternative Dispute Resolution (for example, mediation and conciliation)
BDC	Buller District Council
CBA	Cost Benefit Analysis
CME	Compliance, Monitoring, and Enforcement
DC	District Council
DoC	Department of Conservation
DSM	Dispute Settlement Mechanism (how the DSU functions)
DSU	Dispute Settlement Understanding (dispute settlement agreement)
DWC	Development West Coast
EMF	Effects Management Framework
EMH	Effects Management Hierarchy
EPA	Environmental Protection Authority
GDC	Grey District Council
GDP	Gross Domestic Product
HVBA	Highly Vulnerable Biodiversity Areas
IHP	Independent Hearing Panel
LGA	Local Government Act
LGRA	Local Government (Rating) Act
LINZ	Land Information New Zealand
MfE	Ministry for the Environment
NBE	Natural and Built Environment
NBEA	Natural and Built Environment Act (proposed)
NES	National Environmental Standard
NPF	National Planning Framework
NPS	National Policy Statement
NPSIB	National Policy Statement Indigenous Biodiversity
NPV	Net Present Value (difference between the present value of cash inflows and the present value of cash outflows over a period of time)
NZCPS	New Zealand Coastal Policy Statement
PCE	Parliamentary Commissioner for the Environment
PCL	Public Conservation Land
PNT	Poutini Ngāi Tahu
PV	Present Value (current value of a future sum of money or stream of cash flows given a specified rate of return)
RM	Resource Management
RMA	Resource Management Act
RMG	Resource Management Group
RMC	West Coast Regional Council's Resource Management Committee
RPC	Regional Planning Committee
RPS	Regional Policy Statement
RSS	Regional Spatial Strategy (Defined as strategic direction, vision, and objectives for the region)
SAR	Supplementary Analysis Report (includes MfE's partial estimates of the Costs and Benefits of the new resource management system)
SCO	Statements of Community Outcomes to be prepared by a territorial or unitary authority at the authority's discretion

SNA	Significant Natural Area
SP	Spatial Planning (The former 'Strategic' Planning Bill has been redefined as the 'Spatial' Planning Bill)
SPA	Spatial Planning Act (proposed)
SREO	Statements of Regional Environmental Outcomes to be prepared by a regional council or unitary authority at the discretion of the regional council or unitary authority
TA	Territorial Authority
TTPP	Te Tai o Poutini Plan
WCRC	West Coast Regional Council
WDC	Westland District Council

Summary List of Feedback and Recommendations

Recommendation 1:

- a) That Parliament slows down the reform process; and directs an independent and impartial inquiry in conjunction with the West Coast Councils and other local authorities to carry out a thorough assessment of the costs, benefits, 'economic value add', and implications of reform scenarios, including a 'status quo' scenario, for local and regional councils, as well as their respective ratepayers at a local authority level, and makes these findings public before proceeding further;
- b) That in addition to the written and oral submissions process, Parliament, and Central Government, engage in meaningful consultation with local government, the West Coast Councils, and local communities through a process of transparent dialogue and conversation, which heeds 'the West Coast Councils' input, advice, and opinion; and is funded by the Crown;
- c) That a clear process is worked through in consultation, conversation, and dialogue with local authorities, including the West Coast Councils, to develop a single integrated resource management system governed by one Act;
- d) If the reforms proposed under the Natural and Built Environment (NBE) Bill and Spatial Planning (SP) Bill proceed, that a new Order in Council provide for central government to fund the West Coast Councils to undertake the required resource management reforms by covering all costs incurred, and to be incurred, by the West Coast Councils, including costs for implementing and administering the Natural and Built Environment Act (NBEA) and Spatial Planning Act (SPA), and that these costs include, but are not limited to, capital and operational expenses, transitional costs, consultation and hearings for the Te Tai o Poutini Plan (TTPP) and NBE Plan, and ensuring that the local West Coast Councils retain a place in decision making and plan making and not be relegated simply to delivery, implementation, and collecting rates.

Recommendation 2:

That a full analysis, including a Cost Benefit Analysis (CBA) and 'ratepayer value-add analysis', of implementing the new Resource Management (RM) Bills nationally, regionally, and at a district-wide level, be done by an independent auditing body, or by Treasury acting independently and impartially, in collaboration with local authorities, including the West Coast Councils.

Recommendation 3:

That the NBE and SP Bills be modified to be consistent with the Local Government Act (LGA) and the Local Government (Rating) Act.

Recommendation 4:

That the role of the Regional Policy Statement (RPS) is retained and provision for its retention is made clear in the NBE Bill.

Recommendation 5:

- a) That provision to support system outcomes is made 'in principle' only;
- b) That system outcomes are not put into a hierarchy;
- c) That "regional economic wellbeing", "climate change mitigation" and "climate change adaptation" are added to the systems outcomes provided for in the Bill (reference clause 5 of the NBE Bill), and ensure that the outcomes are consistent with the LGA, responses to natural hazards, and climate change legislation.

Recommendation 6:

That provisions for public access to information, public participation in decision making, and access to justice are improved. (Recommendations with respect to these improvements are embedded throughout this submission).

Recommendation 7:

That the Purpose of the NBE Bill be redrafted for clarity, and to minimise uncertainty and legal risk. (Suggested drafting is provided for below in submission point 12).

Recommendation 8:

That the 'Purpose Clause' of the Natural and Built Environment Act (reference clause 3 of the NBE Bill) should make provisions for both the Natural and Built Environments; and social, cultural, and economic well-being and rights as consistent with the Local Government Act.

Recommendation 9:

That meaning and clarity should be given to the newly introduced term, "Te Oranga o te Taiao", in the Purpose clause of the Bill.

Recommendation 10:

That the Environment Committee should satisfy itself about what the intrinsic relationship between "Te Oranga o te Taiao" and all New Zealanders, present and future generations, may imply for the use, protection, and development of the environment and its restoration and enhancement, including enhancing aesthetics within the built environment space. For example, tourists visiting the West Coast should also have a responsibility to uphold "Te Oranga o te Taiao" by their careful use, enjoyment, and protection of the environment.

Recommendation 11:

Because they all link together, that the obligations for "Te Oranga o te Taiao" and "Te Mana o te Wai" be considered holistically, and not as a hierarchy.

Recommendation 12:

That the Environment Committee redraft the Purpose Clause of the Natural and Built Environment Bill based on the guidelines suggested, and sample drafting provided, in this submission; and that the Environment Committee realign the NBE Bill, and provisions within the NBE, to the purpose of local government as provided for in local government legislation, including the Local Government Act (LGA) and Local Government (Rating) Act (LGRA).

Recommendation 13:

- a) That there is a thorough review of the Interpretation clause (reference clause 7 of the NBE Bill); that the Interpretation clause be kept as self-contained as possible with fewer cross-references; and that 'plain English' is used throughout;
- b) That common terms are defined commonly in both Bills to avoid them being contested in court;
- c) That a comprehensive interpretation section is included and applied consistently within the NBE and SP Bills and across a single Act that integrates both the NBE and SP Bills;
- d) That the review of the NBE Bill's Interpretation clause should include, amongst other, either a definition in the NBE Bill, or guidance on, the definition of 'trivial effect'; and definitions in the NBE Bill for the 'natural environment' and the 'built environment' that are applied consistently throughout the NBE Bill (and SP Bill);
- e) That the intent expressed in the Explanatory Note to both the NBE and SP Bills is consistent with provisions in the substantive body of the respective Bills.

Recommendation 14:

That the wording of the Tiriti o Waitangi clause (reference clause 4 of the NBE Bill) is extended to reflect Cabinet's agreed objective, as expressed in the Explanatory Note to the NBE Bill, and thereby provide that "All persons exercising powers and performing functions and duties under this Act must give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of Te Ao Māori, including Mātauranga Māori".

Recommendation 15:

- a) That the "Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol, Whakahono ā Rohe Resource Management Act Iwi Participation Agreement; A Protocol and Arrangement between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council of October 2020" is retained in the new law;
- b) That 'Mana Whakahono ā Rohe' is defined in the NBE Bill as per the Resource Management Act (RMA) definition, that is, Mana Whakahono ā Rohe means an iwi participation arrangement entered into under this subpart...;
- c) That other relevant Mana Whakahono ā Rohe definitions from the RMA are retained. For example, define 'iwi participation legislation' in the NBEA in the same way as it is defined in the RMA;
- d) That Central Government contributes to the funding and resourcing of Mana Whakahono ā Rohe to enable planning committees to comply with their obligations and to ensure iwi and hapū aspirations and expectations are met. Funding support from Central Government would also support the Crown's commitment to its Treaty partnership.

Recommendation 16:

That a primary production, and rural, sector-specific cost benefit analysis of transition to the new system at the regional and local district levels be carried out.

Feedback 1:

- a) The Councils oppose the Regional Planning Committees (RPCs) having policy formulation, plan-making, and decision-making roles for developing regional strategies, long-term plans, regional resource use plans, and the one region-wide NBE Plan as proposed in the NBE and SP Bills, because the delegation of these decision making powers creates a disconnect with councils powers to set rates based on transparent consultation, informed decision-making and ratepayers ability to pay;
- b) If the provisions for RPCs are retained in the NBE Act, the Councils support RPCs having a minimum of 6 members (with a minimum of 2 iwi members).

Recommendation 17:

As to the responsibilities and operations of the RPC, if the provisions for the establishment of RPCs are retained in the NBE Act, that:

- a) Plan making is not delegated to the RPC;
- b) All RPC members should be remunerated by central government;
- c) The Spatial Planning Act (SPA) provides for the RPC to design its own Regional Spatial Strategy (RSS) development process and to make provision for a local engagement process;
- d) The voting process within the RPC be based on unanimity;
- e) Resources and reasonable timeframes are allocated to ensure informed decision making and plan making based on the evidence. For example, in the case of the West Coast, resources and adequate timeframes are required to make planning provisions for natural hazards.

Recommendation 18:

If the provisions for Regional Planning Committees (RPCs) are retained in the NBE Act, that provision is made for the following, either in the NBE Act or in an Order in Council:

- a) That the intent of the Explanatory Note be carried forward into the body of the Act, or Order in Council, insofar that “RPCs will be established as committees of all councils in the region”; and that a minimum of two members per council be appointed. One of these members from each council should be an elected member;
- b) That representation on the RPC is reflective of iwi as the Treaty Partner within their respective takiwā, with there being a minimum of two iwi members on the RPC. Subject to agreed guidelines, mana whenua will appoint mana whenua representatives;
- c) That the appointment of the RPC Chair is subject to a transparent process, and a unanimous vote with 100% of all councils and iwi in the region voting in the affirmative;
- d) That there is no Central Government or Department of Conservation (DoC) representative on the RPC under the NBEA or SPA, which means no DoC representative on the RPC for Regional Spatial Strategies (RSSs);
- e) That the RPC is supported by an expert advisory panel funded by Central Government to provide advice to the Committee on respective matters as and when needed. A DoC representative may be included on the expert advisory panel if the matter relates to the Coastal Marine Area.

Recommendation 19:

- a) That Parliament provides clarity on the role of the Ministry for the Environment in relation to the new Bills;
- b) That Parliament also provides clarity on the rationale for central government setting up yet another new regulator (‘NBE regulators’); and
- c) That Parliament also clarifies responsibilities, operational, financial, process, and funding considerations and provisions for NBE Regulator’s new and intended roles.

Recommendation 20:

That the RPC does not have legislated authority to mount a legal challenge against local authorities; fine local authorities; or commence legal proceedings against local authorities if they do not abide by national directives, RSSs, or NBE Plans.

Recommendation 21:

That Councils be protected from legal proceedings insofar that no action should lie against any member of the Councils, or their Governance Committees, for anything they say, do, or omit to say or do while acting in good faith in the performance of their duties.

Recommendation 22:

- a) That the terms used in the Effects Management Framework (EMF), and in the Effects Management Hierarchy (EMH), are consistent throughout the Bill (this does not mean that the EMF and the ‘Effects Management Hierarchy’ are the same);
- b) That offsetting and compensation are provided for in the Natural and Built Environments Act (NBEA), as part of the Effects Management Hierarchy and the Effects Management Framework.

Recommendation 23:

That Central Government provides clarification on what will be in the National Planning Framework (NPF) as soon as possible.

Recommendation 24:

That limits and targets, including limits and targets for housing affordability and supply of affordable housing, be provided for the built environment.

Feedback 2:

The Councils support the use of qualitative and quantitative methods to set environmental limits and the use of mātauranga Māori to set limits. Regional limits must be set in partnership with iwi.

Recommendation 25:

- a) That regional differences are provided for when setting environmental limits to protect the natural environment and provide for current and future generation's wellbeing. These limits must be set in partnership with iwi;
- b) That the prescribed environmental limits, and environmental outcomes, must include mahinga kai;
- c) That indigenous biodiversity limits set at the national level are flexible enough to allow for regionally appropriate limits;
- d) That MfE provides more and sufficient information to the Councils so that the Councils may consider and comment on how the proposed exemption from an environmental limit mechanism will function and be implemented;
- e) That the Councils proposed changes to the exemption clauses are extended to give effect to special and differential treatment for the West Coast.

Recommendation 26:

- a) That the National Planning Framework (NPF) includes a process to allow local priorities to be set and local decision-making to resolve environmental conflicts;
- b) That there are provisions in the NBEA for good local governance and representation in plan-making and decision-making processes.

Recommendation 27:

That a collaborative co-design process is made available for the Councils to participate in the development of the National Planning Framework.

Recommendation 28:

That Central Government clarifies the relationship between 'Engagement Agreements' and 'Mana Whakahono ā Rohe Participation Arrangements' in the NBE Bill. Central government must clearly communicate its intentions re the terms arrangement versus agreement to avoid any confusion or ambiguity. (If provisions are already incorporated in Mana Whakahono ā Rohe Participation Arrangements, then the Parties should not have to develop a secondary arrangement unless they want to do so).

Recommendation 29:

That a process link is made between regional strategies, councils' long term plan process and consenting, compliance, monitoring and enforcement and provided for in the Bills; and central government must clearly communicate its intentions re the terms arrangement versus agreement to avoid any confusion or ambiguity.

Recommendation 30:

- a) That guidelines and conditions for making determinations on consent applications under the amended activity categories be developed;
- b) That the two-year timeframe for developing NBE plans is extended to allow sufficient time to change activity categories, so they are consistent with the NBEA categories.

Recommendation 31:

That the Permitted Activity Notice provisions are removed from the NBE Bill.

Recommendation 32:

That the new Controlled Activity category is defined clearly in the NBE Bill; and that Council work on the new Controlled Activity category must be funded by Central Government and not incur extra costs for the Councils.

Recommendation 33:

That the new provision in the NBE Bill enabling Councils to assess a consent applicant's prior record of managing their resource use activity is retained.

Recommendation 34:

That Clauses giving the National Planning Framework the power to direct how consent applications for resource use will be allocated are removed from the NBE Bill and the Acts (reference, for example, clauses 87 and 88 of the NBE Bill).

Feedback 3:

Both the NBE and SP Bills are process-heavy with the potential for reduced system efficiency.

Recommendation 35:

That the requirement for NBE plans to set notification statuses at the time of plan development is removed.

Recommendation 36:

That provision is made for an exemption from the 10-year consent duration for critical council infrastructure or functions, such as, flood engineering and biosecurity.

Recommendation 37:

That provisions are made for compensation to support landowners transition to more sustainable land use.

Feedback 4:

Subject to guidance being provided as to how the terms "deemed", "temporary" and "marginal" are to be defined; and that cost recovery and funding is provided by Central Government; and that local governments have the capacity to deliver and avoid being subject to more frequent legal challenges, the Councils support provisions under clause 157 in the NBE Bill, which is entitled 'Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions' (reference clause 157 of the NBE Bill).

Recommendation 38:

That in order to retain and strengthen the link between plan making and implementation, Councils must retain a key role in decision making and plan making.

Recommendation 39:

- a) That the NBE Bill is amended so that a fair and reasonable 'grace period' for all current permits and consents issued under the RMA is determined in consultation with councils; and
- b) That all permits and consents issued under the RMA remain current until a fair and reasonable transition date is set.

Recommendation 40:

- a) That provisions relating to Areas of Highly Vulnerable Biodiversity be removed from the NBE Bill until the Department of Conservation (DoC) undertakes consultation with private landowners about rare or critically threatened or endangered species on their private land; these consultations must include consideration of options for DoC to purchase the land at market value, provide compensation for loss of economic value of the land at market rates, or move the habitat to another site on public land (reference clauses 562-567 of the NBE Bill).
- b) That Schedule 3 'Principles for biodiversity offsetting' and Schedule 4 'Principles for biodiversity redress' be removed from the NBE Bill until the matters in clause a) of this Recommendation are resolved, and the provisions of the National Policy Statement Indigenous Biodiversity (NPSIB) are known and consulted on.

Recommendation 41:

- a) That further work is done on the function and structure of the Regional Planning Committee (RPC) (this is essential);
- b) That the NBE Bill provides directly for local and regional council representation on the RPC and that the RPC adopts a voting structure, which ensures each Council's independent voice is heard and taken into account;
- c) That decision making and plan making powers, including powers to make the NBE Plan, remain with the Councils;
- d) That practice and process between governance and operations, and between the RPC and Councils, are improved; and with respect to resolving conflicts of interest that a Code of Ethics and Professional Guidelines are put in place.

Feedback 5:

The West Coast Councils request it be recorded that they do not support placing the RPC's mandate under the Local Government Act (LGA) rather than under the Natural and Built Environment Act (NBEA).

Recommendation 42:

The West Coast Councils request it be recorded that, in their view, provision should be made for Consenting, Compliance, Monitoring and Enforcement (CME) to remain a council responsibility.

Recommendation 43:

That provisions be made for improved policy effectiveness by councils by linking monitoring provisions to science and local values.

Recommendation 44:

That the requirement for a Compliance, Monitoring and Enforcement (CME) strategy be removed on the basis that MfE's Annual National Monitoring System reporting on CME can address the 'perceived bias' problem.

Recommendation 45:

That setting of fixed fees or charges, and a schedule for cost recovery, needs further analysis, dialogue, and consultation with the West Coast Councils before the NBE and SP Bills are further developed.

Recommendation 46:

Emergency works and power to take preventive or remedial action should remain with councils and not go through the RPC. For example, in an emergency situation like a cyclone or flood councils have to respond as a matter of urgency. Furthermore, such plans for 'Emergency works and powers to take preventive or remedial action' should be easily and readily accessible, and extractable, from the proposed one NBE Plan.

Recommendation 47:

That enforcement provisions do not start immediately after the NBE Bill is given Royal Assent. Rather than spring new and unknown enforcement measures on people, it is recommended to start with an educative approach, and once the new laws are embedded in take enforcement steps if needed.

Recommendation 48:

That the current practice for cost recovery, under Section 342 of the RMA (Fines to be paid to the local authority instituting prosecution), is added to the new NBE Act.

Recommendation 49:

That provision is made for abatement and infringement notices under the RMA to continue until new regulations are in place.

Feedback 6:

The Councils are in agreement with Te Uru Kahika's draft submission point, which provides that it is critical that any regulations required to regulate enforcement are amended at the same time as the principal legislation as this will ensure that enforcement tools can be used subject to the 'grace' period sought in our Recommendation 47 above.

Recommendation 50:

That the penalty for obstruction of an enforcement officer should be increased to align with the maximum penalty under the Hazardous Substances and New Organisms Act 1996 (HSNO legislation), which is \$5,000 (reference section 114(3) of the Hazardous Substances and New Organisms Act 1996).

Recommendation 51:

- a) That an equivalent to the RMA's 'Water Shortage Direction' (reference Section 329 of the RMA) is retained in the NBE Bill; and that a breach of a Water Shortage Direction remains an offence under the new legislation.
- b) That all provisions relating to water shortage management are collated together in the NBE Bill.

Recommendation 52:

That public consultation on a draft NBE Plan is made optional.

Recommendation 53:

That provisions for enduring submissions are removed from the NBE Bill.

Recommendation 54:

- a) That there is a coherent approach, process, and consistency throughout the National Planning Framework (NPF) and NBEA in terms of plan monitoring and maintenance, plan changes, and plan review;
- b) That there be no provision in the NBE or SP Bills for central government to require councils to undertake plan changes. However, if such a provision is carried over into the NBE or SP Bill, then criteria or reasons for when a plan change may be required by central government must be added to the respective Bill; and the respective council must agree that a plan change is necessary and affordable to ratepayers.

Recommendation 55:

That Central Government develop a 'single integrated' 'resource management system' and integrates the NBE and SP Bills into one Act for the Natural and Built Environment.

Recommendation 56:

- a) That transitional provisions are made clear and that there is coherency in transiting from existing processes and timeframes to future implementation processes and timeframes;
- b) That the timeframe for transiting from the RMA to the NBEA is a minimum of 10 years;
- c) To enable councils to prepare annual and long-term budgets, Central Government must give councils plenty of prior notice as to which reform tranche they will be in under the NBE Bill and when it will commence.

Recommendation 57:

That Central Government reconsiders the role of 'Major Regional Policy Issues'; and having Major Regional Policy Issues' disconnected from Regional Strategies (RSS) and Regional NBEA plans.

Recommendation 58:

That the system of selecting Hearing Commissioners for Independent Hearing Panels (IHPs) under the RMA be carried forward to the new resource management system and maintained; and that councils have input into selecting the Panel Chair and Hearing Commissioners.

Recommendation 59:

In the appointment of Hearing Commissioners to the Independent Hearing Panel, that the NBE Act provide for a fair and independent panel recruitment process; and that this process be agreed by councils; and governed by procedural and practice guidelines.

Recommendation 60:

That the mandatory training programme, and continuing professional development, for Hearing Commissioners under the RMA be carried forward to the new resource management system and maintained.

Recommendation 61:

In terms of appeals, including appeals on the NBEA Plan and Plan Changes, the Councils support making provision for an appeals process in the NBEA; and that where the Regional Planning Committee (RPC) accepts a recommendation from an Independent Hearing Panel (IHP) that appeals be limited to appeals on points of law in the High Court; and that where the Regional Planning Committee (RPC) rejects a recommendation from an Independent Hearing Panel (IHP) that merit-based appeals can be made to the Environment Court.

Recommendation 62:

That provision be made in the NBEA for a Dispute Settlement Understanding (DSU), i.e., a common dispute settlement agreement, which upholds the rule of law, sets out a transparent and clear process for settling disputes, incorporates a transparent hearing process, including a hearing process with respect to resource consents and making decisions on plan-making, and provides for the right to a fair and timely hearing on the NBEA and SPA.

Recommendation 63:

That the DSU makes provision to retain relevant caselaw, including caselaw developed under the RMA.

Recommendation 64:

That the DSU makes provisions for:

- a) Consultation as a priority first step in the dispute settlement process;
- b) Alternative Dispute Resolution (ADR), including but not limited to 'Good Offices', voluntary mediation, and voluntary conciliation;
- c) Arbitration;
- d) Due process through the courts; and
- e) An appeals process.

Recommendation 65:

That the DSU should be provided for in the substantive part of the NBE Act (and supported by a separate schedule, which is not confounded by substantive and procedural provisions for regulatory environmental standards).

Recommendation 66:

That procedures and practice guidelines governing rules and guidelines for dispute settlement, including consultations, are established.

Recommendation 67:

That implementation of the Dispute Settlement Understanding (DSU) and use of Dispute Settlement Mechanisms (DSM) be funded by the Crown.

Recommendation 68:

- a) Add to Clause 16 (1) (a) of the SP Bill that the vision, strategic objectives, and strategic direction reflects local community aspirations;
- b) Place Clause 16 (1) (c) of the SP Bill before Clause 16 (1) (b) insofar that strategic direction should come before setting priority actions (the current Bill puts 'actions' before the 'strategy', which is incoherent);
- c) Under 'contents of RSSs', Clause 17, of the SP Bill, add vision, strategic objectives and strategic direction that reflects local community aspirations at the top of the list.
- d) Distinguish between Clause 17 'key matters' and Clause 18 'other matters of sufficient significance' [underlining for emphasis] of the SP Bill so that the difference between 'key matters' and 'other matters' is understood.

Recommendation 69:

That the requirements for implementation plans be removed from the Spatial Planning Bill (reference Clauses 52-56 of the SP Bill).

Recommendation 70:

That Central Government representatives provide advice in an advisory capacity but not be members of the RPC.

Recommendation 71:

That both the NBE and SP Bills are amended to maintain the King Salmon case law principle whereby higher order strategic objectives, policies, and strategic direction frame subordinate RSS actions and NBE plan rules.

Recommendation 72:

- a) Amend Clause 32 of the Spatial Planning Bill to give local and regional councils a fundamental role in the preparation of Regional Spatial Strategies.
- b) Amend Schedule 4, Clause 1 (f), of the SP Bill to include regional and district councils as 'interested parties' in the preparation of a Regional Strategy (RSS).

Recommendation 73:

That provision be made within the regional strategic planning process (the RSS process) for regional councils to set priorities within the context of their respective regions; and provide for councils to make their own plan-making decisions about adapting to the regional and local context, rather than empowering the RPC to make independent decisions about the natural and built environment.

Recommendation 74:

To enable councils to prepare annual and long-term budgets, Central Government must give councils plenty of prior notice as to which reform tranche they will be in under the SP Bill and when it will commence.

Executive Summary

The Councils are concerned that the proposed Resource Management (RM) reforms to be governed by the Natural and Built Environment Act (NBEA) and the Spatial Planning Act (SPA) will not achieve the intended reform objectives of stream-lined processes (defined as 'a single integrated system to govern resource management'), cost effectiveness (good value for the amount of money paid for doing the right things) and efficiency (doing things right).

Some parts of the Natural and Built Environment Bill (NBE Bill) are similar to provisions in the Resource Management Act (RMA) and would be considered consistent with the Local Government Act (LGA). Other parts of the NBE Bill and the Spatial Planning Bill (SP Bill) are inconsistent with local government duties to "promote the accountability of local authorities to their communities"; "to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach"; and to set 'rates'.

The NBE and SP Bills place a significant burden on regional and district councils, for example, by:

- Increasing their costs and resourcing obligations;
- Taking away Council's strategic and operational plan making and decision-making powers but requiring Councils to fund others, including the Regional Planning Committee (RPC), to do strategic and operational plan making and decision-making for them while making the RPC a de facto regulator of transport infrastructure, community infrastructure, and the council's assets;
- Taking away Council's plan making powers but requiring Councils to 'administer and implement' plans while, by proxy, still holding Councils liable for decision making and plan making;
- Reducing 'subsidiarity'¹ and accountability of local authorities to their communities by removing them from local engagement and decision making; and
- Opening the possibility for 'independent' RPCs to commence legal proceedings against local authorities, which have staffed the RPCs.

As a result of these proposed reforms, responsibilities for local governance and the ability to uphold obligations for local accountability are eroded.

Conversely, and from the West Coast Councils' perspective, RM reforms should be consistent with the Local Government Act (LGA) and with the Local Government (Rating) Act. Council's submission makes recommendations in this regard. For example, in terms of proposed governance changes for the Councils, increasing Council responsibility for establishing and operating the proposed Regional Planning Committee (RPC) should be more fully explored.

According to the Explanatory Notes to the NBE and SP Bills, the Bills are intended to 'work in tandem'; but there is no clear indication as to how they will 'work in tandem' within the substantive parts of the Bills. The purpose of the SP Bill is "to provide for regional spatial strategies (RSS) that assist in achieving the purpose of the NBE." [Regional Spatial

¹ Subsidiarity means that decision making is made as close to local communities as possible. In this sense, central government has a subsidiary function, performing only those tasks that cannot be performed at a regional or more local level. Central government intervention is thereby ruled out when regional and district councils can deal with a matter more effectively through regional policy and rules; and local government also retains a degree of independence in relation to central government while sharing certain powers.

Strategies, RSSs, are defined as strategic direction, visions, and objectives for the region and are not to be confused with 'spatial planning']. In Council's view, this directive is well-intentioned but without a coherent governance framework, resource management reforms will be fragmented, confusing, complex, and costly, and the intended 'single integrated system' will not emerge of its own accord. The unintended result of the proposed reforms will be to 'silo' and fragment resource management laws, policies, and rules as shown in Figure 1 below.

The Councils are not convinced that governing resource management by two separate pieces of legislation is the best answer to deliver a 'single integrated system to govern resource management', and suggest that the NBE and SP Bills be combined as a single Bill, which maintains a coherent strategic and long-term planning process. Council's submission makes recommendations in this regard, and includes a diagram of how this 'system' would work in Figure 2.

The NBE Bill provides that a National Planning Framework (NPF) is to be developed and made as regulations; provides for combined regional and district plans for the natural and built environment (called 'NBE Plans'); integrates a broad number of national policy statements, for example with respect to heritage, freshwater, coastal matters and biodiversity; provides for varying effects management hierarchies to manage negative externalities and makes provision to promote outcomes presumably as a means to advance positive externalities; and provides for a variety of miscellaneous provisions and schedules; for example, it makes provision for some quality and control measures in a Schedule to the NBE Bill rather than in National Environmental Standards.

The SP Bill provides for developing Regional Spatial Strategies (RSS), which are defined within the context of setting a 30-year Long Term Plan (strategic direction, vision, and objectives) for the respective region. However, there is no clear link to local government responsibility or to the Parliamentary Commissioner for the Environment (PCE), who could provide guidance beyond the 3-year electoral term as to the effectiveness of environmental planning and management. In setting up such a fragmented framework under the NBE and SP Bills, the planning hierarchy built up over 30 years of practice under the Resource Management Act (RMA), and consistent with the Supreme Court Decision held in *King Salmon*,² is lost. The magnitude of this loss has not been calculated.

At the operational level, and concerning duties and obligations, the Councils agree with managing both positive and negative environmental externalities and support in principle the introduction of 'outcomes', provided they are appropriate and sustainable for the West Coast Region. As to managing adverse effects, the Councils suggest that the 'effects management framework' and its accompanying hierarchy be consistent. This does not mean they should be the same.

The NBE Bill also provides for resource consenting, Compliance, Monitoring and Enforcement (CME). The Councils support some provisions for consenting and CME but have a broad number of concerns, including concerns about resourcing and incremental cost issues, and have suggested changes.

² *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 (EnvC) at [55], and *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38, [2014] 1 NZLR 593.

In addition, rather than providing for spurious parts to be embedded throughout different parts of the Bills, the NBEA should provide for a cohesive Dispute Settlement Understanding (DSU). DSU provisions should be incorporated all together in a self-contained part of the Bill; give priority to engagement and consultation; and provide for Alternative Dispute Resolution (ADR) like mediation, within reasonable timeframes.

As to achieving the reform objectives of stream-lined processes ('a single integrated system to govern resource management'), cost effectiveness (good value for money paid for doing the right things) and efficiency (doing things right), there needs to be a thorough review (perhaps done by Treasury but certainly done by an independent and impartial body in collaboration with local authorities, including the West Coast Councils). The review should use traditional tools, such as, a cost benefit analysis, financial analysis and an economic and ratepayer value-added analysis. Without thorough analysis, taking away local government responsibility and outsourcing it to others, but still holding local authorities accountable for administration and implementation, is no sure way to stream-line processes or improve efficiency and effectiveness in resource management or in local plan making and delivery. Furthermore, there must be authentic accountability to the local voice, and in the Councils view, local authorities are best enabled to facilitate these engagements.

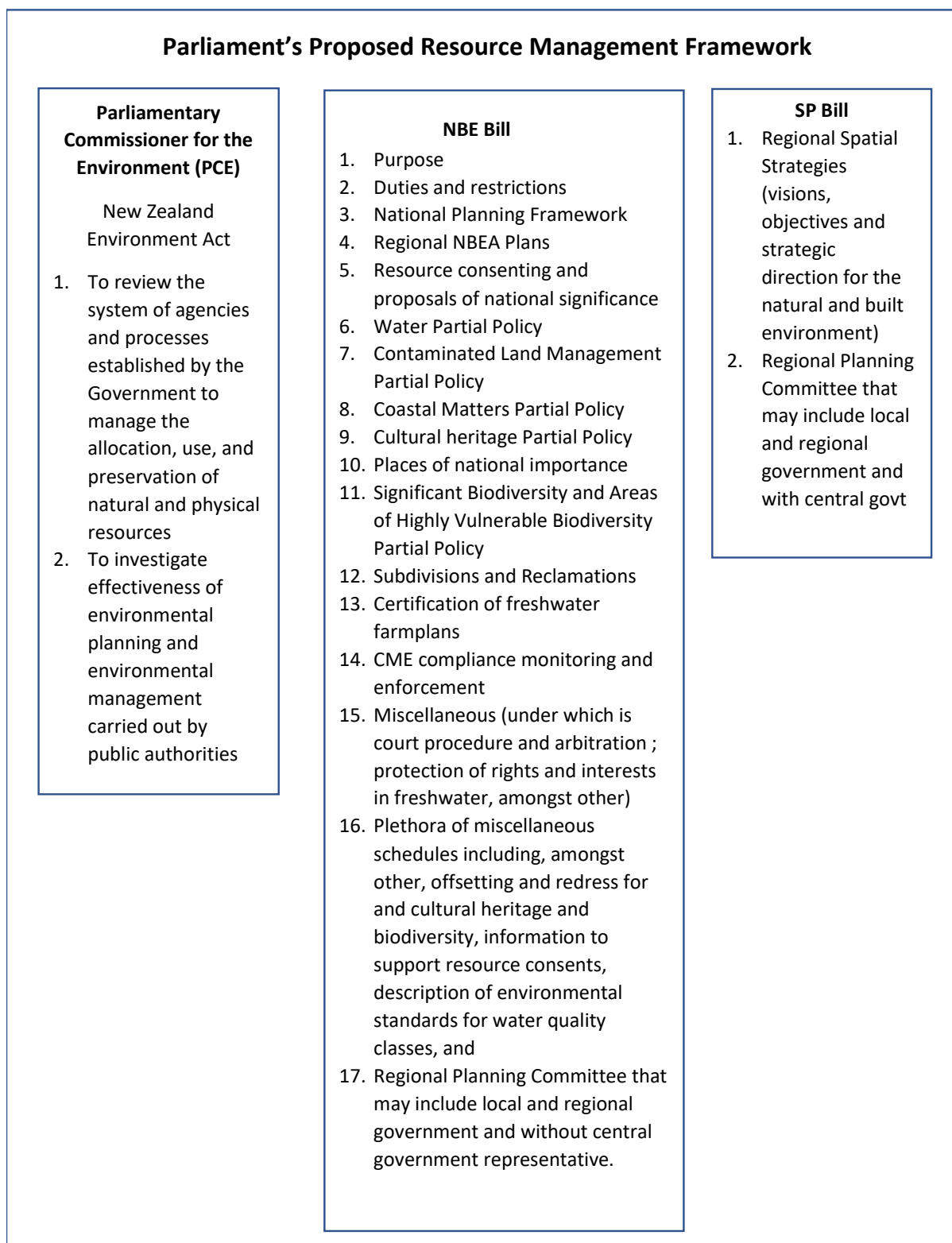


Figure 1. Parliament's Proposed RM Framework with the NBE and SP Bills operating in silos, inconsistent with local government accountabilities, incorporating bits and pieces of national policy and environmental standards, and with no link to the Parliamentary Commission for the Environment (PCE), who could provide independent planning guidance beyond the electoral term.

West Coast Council's Suggested Resource Management System

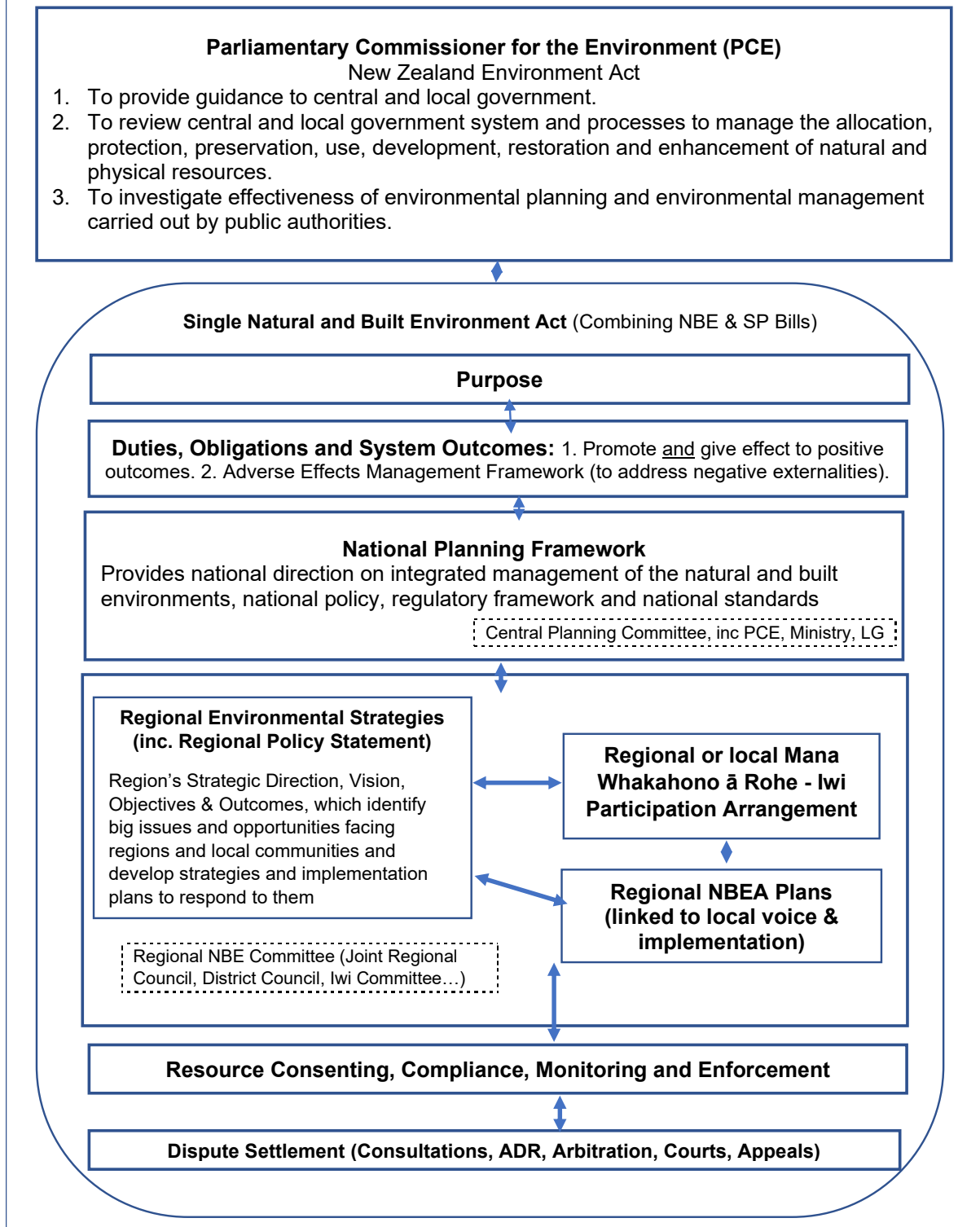


Figure 2. West Coast Council's Suggested Resource Management Reform System Showing a Sample of a 'Single Integrated System', operating under a 'Single Natural and Built Environment Act', which incorporates local government as a decision maker; links strategic, operational and functional parts; and provides an extended role for the PCE.

Introduction to the Submission

The policy intent of the proposed resource management reforms is to address alleged deficiencies in the Resource Management Act (RMA). Claims have been made that the RMA is not adequately protecting our natural environment or enabling development where needed; that processes take too long and cost too much; and that current local government processes do not address current challenges facing our environment and communities, such as, the impacts of flooding or climate change.

Despite removing councils' decision and plan-making responsibility, the Natural and Built Environment (NBE) and Spatial Planning (SP) Bill require local and regional councils to fund, deliver, and administer new regional strategies (referred to as Regional Spatial Strategies, RSSs) and new NBE plans. The current provisions in the NBE and SP Bills provide little clarity about local governments' relationships with the proposed Regional Planning Committees (RPC), their secretariats or council's ability to influence RPC budgets or their outsourcing and procurement processes. If Parliament wants to remove local government from the plan-making process by developing more layers of policy setting and decision-making, then it should make provision for central government to fund the plan development, rather than allow funding to fall on the excluded local and regional councils' and their respective local communities.

Creating one large plan, and presumably reducing the number of existing plans into chapters within that plan, will not necessarily protect our natural and built environments any better. Nor will it necessarily drive the reform objectives of stream-lined processes, cost effectiveness, or efficiency. The NBE and SP Bills add significant complexities, unnecessary length to the statutory framework, and expensive governance, plan making and implementation processes,³ which do not consider the view of local communities and ratepayers or make budgetary provisions for them. The focus of reform should not be on the number of plans, but on simplicity, efficiency, and effectiveness, including cost effectiveness that considers taxpayers and local ratepayers 'willingness to pay', while providing strong opportunities for local engagement. We are yet to see evidence of how the proposed Resource Management (RM) reforms will stream-line the current processing system or make resource management in the natural and built environment more efficient or more cost effective. It is hard to see the benefits when we are unable to see the evidence supporting stream-lined processes, cost effectiveness, and efficiency.

Consistent with the mandate of local government, any reform of the Resource Management system should provide strong opportunities for promoting local community engagement; accountability of local authorities to their communities; and provision for local authorities to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities taking a sustainable development approach consistent with the Local

³ According to MfE's partial analysis of the impacts, Central government and local government costs would increase when compared to the current [resource management] system, by 112 per cent and 11 per cent respectively. Ref: page 7 Supplementary Analysis Report: The New Resource Management System; date finalized 21 September 2022; date issued 22 November 2022; corporate author: Ministry for the Environment; <https://www.treasury.govt.nz/publications/risa/supplementary-analysis-report-new-resource-management-system>; <https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mfe-nrms-sep22.pdf>; last viewed 16 February 2023. Note Cabinet's impact analysis requirements reflect an expectation that agencies provide robust analysis and advice to Ministers before decisions are taken on regulatory change. This analysis usually takes the form of a Regulatory Impact Statement (RIS). Where there is no RIS provided at the time Cabinet makes substantive policy decisions involving regulatory proposals, the responsible Minister must provide Cabinet with a Supplementary Analysis Report (SAR).

Government Act (LGA) and Sustainable Development Goals. There are also genuine concerns about how local authority funding of new mechanisms, such as the Regional Planning Committee (RPC), secretariat, and 'outsourcers' for plan development fit with current funding processes consistent with the Local Government Act and Council's Long Term Plan. This is a critical issue.

In addition, the Councils are concerned that under the proposed legislative requirements, local and regional councils will be funding the strengthened role of iwi and hapū in the system. Central government is the direct Treaty Partner. Central government must therefore ensure that iwi, hapū and all others that are part of local communities are properly resourced to participate in the new system, rather than passing that cost to local communities and local government. Central government must contribute.

The Explanatory Notes embedded within the NBE Bill, and the SP Bill, intend to explain certain provisions within the Bills and should be consistent with the Bill's substantive provisions. Many are not. Examples of the Bills' Explanatory Notes, which are inconsistent with the Bill's substantive provisions, are referred to in this submission.

In developing this submission, the Councils consulted with their iwi partners Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (of Poutini Ngāi Tahu or PNT). Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (of Poutini Ngāi Tahu or PNT) are mana whenua on the West Coast/Te Tai o Poutini.

By an 'Order in Council' on 17 June 2019⁴ the West Coast Regional Council was given the role of preparing, notifying, adopting, periodically amending and reviewing a combined District Plan, named the Te Tai o Poutini Plan or TTPP, for the West Coast. The Order in Council involves delegating certain Council obligations to a joint committee (the 'Tai Poutini Plan Committee'). Given experience with independent joint committees and their processes, the Councils do not support giving up governance, decision-making and plan making responsibilities to the Regional Planning Committee as proposed under the NBE and SP Bills.

Due to the high workload of the small West Coast Council teams, and tight timeframes, the Councils have not been able to respond to all aspects concerning the NBE and SP Bills. There may be parts of the two Bills that may affect the West Coast Councils but are not raised in this submission.

⁴ The Local Government Reorganisation Scheme (West Coast Region) Order 2019; <https://gazette.govt.nz/notice/id/2019-go2872>; last viewed 16 February 2023. [This Order in Council is a form of secondary legislation signed by the Governor General on 17 June 2019 acting by and with the advice of the Executive Council and at the request of the Local Government Commission].

About the Submitters

The West Coast Regional Council (WCRC) is the local authority for a region covering a vast area with a sparse population. The distance from Kahurangi Point in the north to Awarua Point in the south is the approximate distance from Auckland to Wellington.



The West Coast region stretches the equivalent distance of that between Auckland and Wellington

Figure 3. Map of New Zealand to highlight the 600km length of the West Coast Region compared to the distance between Auckland and Wellington.

The West Coast Regional Council works closely with the regions' three territorial authorities (the Buller, Grey, and Westland District Councils). The main towns are Westport, Greymouth, Reefton, and Hokitika. The region's relatively low population of approximately 32,600 is spread across small towns, settlements and rural communities.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (of Poutini Ngāi Tahu – PNT) are mana whenua of Te Tai o Poutini (the West Coast). The 'Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol, Whakahono ā Rohe Resource Management Act Iwi Participation Agreement; A Protocol and Arrangement between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council of October 2020' captures the intent of WCRC and its partners to progress our relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

The West Coast is predominantly rural.

The Conservation Estate comprises 84.17% of the West Coast land area, with an additional 1.55% administered by Land Information New Zealand (LINZ). This leaves 14.28% of land available for private ownership. The land in the Conservation estate and Crown ownership is not rateable by local authorities.

As to the structure of the West Coast Region's Economy, and according to Infometrics 'Filled jobs by 54 industry categories list' as at 2022, the percentage contribution of various sectors to the regional economy was:

- Health Care and Social Assistance - 11.1%;
- Accommodation and Food Services - 9%;
- Dairy Cattle Farming - 6.1%;
- Education and Training - 6.1%; and
- Construction Services - 4.4%.⁵

Infometrics 'Contribution to employment by broad sector, 2022' data shows the following sectors contribution to the West Coast Region's economy:

- 'Other services' accounted for 40%;
- 'High value services' 23.2%;
- 'Goods-producing industries' 22.1%; and
- 'Primary industries' made a 14.8% contribution.

⁵ Structure of West Coast Region's Economy; Source Infometrics at <https://ecoprofile.infometrics.co.nz/West%20Coast%20Region/Employment/Structure>, last viewed 16 February 2023.

Table of Submission Points

Submission Points on the NBE Bill	31
Initial Matters of Concern to the West Coast (Part 1, NBE Bill)	31
1. The new resource management reforms do not evidence achieving the reform objectives of stream-lined processes, cost effectiveness and efficiency; and will entail significant additional costs to local ratepayers (the threshold of which is unknown as cost and value add analysis has not been completed): the reform process should be slowed down to assess the implications and get this once in 30-year reform process right.	31
2. Work on assessing the net benefit of the reforms to local ratepayers has not been done; and Cost Benefit Analysis is at the partial work in progress stage: analysis needs to be completed before the reforms proceed any further	36
3. The NBE Bill is out of sync with the Local Government Act (LGA), for example, social and economic well-being are being sacrificed in favour of protecting the natural environment.....	38
4. The new reforms are complex, time consuming, expensive and escalate funding and resourcing stresses for local government and local communities.....	39
5. There are oversights in the Planning Hierarchy; example, in relation to the role of the RPS.....	40
6. There are Governance and Planning oversights in putting System Outcomes into a Hierarchy	40
7. Important provisions like access to information, public participation in decision making, and access to justice in environmental matters are omitted or eroded; and local authorities need resources	42
8. The Bill requires a clear and coherent 'Purpose Clause'	43
9. Better enable development in the Bills' Purpose	45
10. Undermining of a 'kaupapa' approach undermines Te Oranga o te Taiao	45
11. The obligations for Te Oranga o te Taiao and Te Mana o te Wai all link together and should therefore be considered holistically, and not as a hierarchy	46
12. That the 'Purpose Clause' be redrafted for clarity and legal consistency	47
13. Interpretation and drafting consistency needs significant work	49
14. Strengthening of Te Tiriti o Waitangi provision supported	50
15. For the West Coast Mana Whakahono ā Rohe Iwi Participation Agreement to remain intact	51

16.	Rural activities are treated inequitably	52
17.	Governance and accountability by local authorities is eroded while local authorities are burdened with funding new governance structures (including RPCs)	53
18.	Council strongly suggests an alternative structure for the proposed RPC.....	56
19.	Clarity required on the future role for the Ministry for the Environment and NBE Regulators.....	57
20.	Provision for RPC to be able to legally challenge local authorities; fine local authorities; or commence or be a party to legal proceedings against local authorities, is not supported.....	58
Duties and Restrictions (Part 2, NBE Bill)		59
21.	Clarification is needed between the Effects Management Framework (managing negative externalities), and the Effects Management Hierarchy	59
National Planning Framework (NPF) (Part 3, NBE Bill).....		61
22.	National Planning Framework – clarification required	61
23.	Ensure that iwi values and aspirations are recognised and mana whenua are engaged in developing the NPF	61
24.	Limits and targets should be provided for the built environment, including housing affordability limits and supply of affordable housing	61
25.	Regionally appropriate limits needed.....	62
26.	Provision required for local decision making.....	63
27.	Councils seek to be engaged in a co-design process for developing the National Planning Framework.....	64
NBE Plans (Part 4, NBE Bill).....		64
28.	Relationship between ‘Engagement Agreements’ and ‘Mana Whakahono ā Rohe Participation Arrangements’ to be clarified.....	64
Resource Consenting and Proposals of National Significance (Part 5, NBE Bill)		65
29.	A link is required between regional strategies, Councils’ long term plan process, and consenting, compliance, monitoring and enforcement.	65
30.	Revised activity categories should be subject to guidelines	66
31.	Processing Permitted Activity Notices would require additional resources and new processes, which would come at an extra cost, but implications unknown until implemented – remove from Bill	66
32.	Processing redefined Controlled Activities will incur extra costs - a clear definition required and for the Councils not to incur extra costs	67

33.	The ability to assess an applicant's prior record is a positive step	67
34.	Consenting allocations should be determined at a local level	67
35.	System Inefficiencies to be addressed (comment from RMG reform subgroup supported and examples as to how to improve efficiencies embedded throughout submission)	68
36.	Increased Consenting (including document processing of 'notices'), Notifications, and Authorisations increases processing times and costs and reduces system efficiency – these provisions are not supported	68
37.	Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions – marginal or temporary non-compliance needs defining	69
38.	Key links in planning and implementation cycle weakened	70
39.	Maintain the integrity of current permits and consents issued under the RMA or consider a fair and reasonable 'grace' period	70
Matters Relevant to NBE Plans – Designations, Heritage, Biodiversity (Part 8, NBE Bill)		71
40.	Councils are extremely concerned about the implications of regulating Areas of Highly Vulnerable Biodiversity, and offsetting and redress principles, on the West Coast ..	71
Exercise of Functions, Powers, and Duties Under the Act (Part 10, NBE Bill)		72
41.	Function and structure of Regional Planning Committees (RPCs) requires further work	72
42.	Placing the RPC's mandate under the LGA rather than under the NBEA is not supported	74
Compliance and Enforcement (Part 11, NBE Bill).....		75
43.	Councils' responsibilities for consenting, compliance, monitoring and enforcement should remain – Councils do not support creating a new regulator	75
44.	Improve policy effectiveness by linking monitoring provisions to science and local values.....	76
45.	Developing a new Compliance, Monitoring and Enforcement (CME) strategy (and strategy planning process) is not supported	76
46.	The Bill's Cost Recovery Provisions may open Councils to liability – they need to be carefully considered.....	77
47.	Emergency works and power to take preventive or remedial action should remain with councils	78
48.	New enforcement provisions should not start immediately after Royal Assent – start with an educative approach	78

49.	Offences: Fines to be paid to local authority instituting proceedings – Cost recovery makes sense	79
50.	Abatement & Infringement Notices should be provided for in RM Reform regulation	79
51.	Keep regulation and principal legislation in sync.....	80
52.	Higher penalties will be a stronger deterrent for non-compliance.....	80
53.	Water shortage direction required.....	80
	Public Consultation and Enduring Submissions.....	81
54.	Make Public Consultation on draft NBE plans optional	81
55.	Enduring submissions not supported.....	81
	Monitoring, Maintenance of Plans and Future Plan Changes.....	82
56.	Monitoring, maintenance & review, and Plan Changes – consistency required.....	82
	Implementation Transitions	83
57.	The Councils remain unconvinced that the NBE and SP Bills should remain as two separate bills operating out of sync; the Councils recommend a single NBEA.....	83
58.	Transitional Provisions: coherent transition from existing processes, and timeframes for implementation required; and factored into funding provisions	83
59.	‘Major Regional Policy Issues’ – clarity required	85
	Schedule 7 Independent Hearings Panels Processes and Dispute Resolution	85
60.	Concerns re ‘bias’ in the selection of the Independent Hearing Panel (IHP)	85
61.	Note re Appeals on the NBEA Plan and Plan Changes	88
62.	Dispute Settlement Understanding (DSU) and Dispute Settlement Mechanism (DSM) needed with a priority given to consultation	89
	Submission Points on the SP Bill	91
	Regional Spatial Strategies	91
63.	Content of Regional Spatial Strategies need provisions for local communities	91
64.	Role of implementation plans is confusing: remove requirements from SP Bill	91
65.	Regional Planning Committee for RSS – no central government members	92
66.	Objectives, policies and strategic direction in RSS should frame plan rules.....	93
67.	The RSS process excludes local and regional councils: change required.....	93
68.	On adapting to regional and local context – provisions required	94

69.	Transition arrangements under the SP Bill to be developed together with, and approved by, local authorities	94
-----	---	----

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
Initial Matters of Concern to the West Coast (Part 1, NBE Bill)		
<p>1. The new resource management reforms do not evidence achieving the reform objectives of stream-lined processes, cost effectiveness and efficiency; and will entail significant additional costs to local ratepayers (the threshold of which is unknown as cost and value add analysis has not been completed): the reform process should be slowed down to assess the implications and get this once in 30-year reform process right.</p>	<p>According to a consistent pattern of impact analysis reports released by central government, the impacts of resource management (RM) reform on the West Coast Councils are certain to be high but the threshold is unknown as many of the suggested benefits are questionable and costs for local authorities are yet to be added up. Whether local ratepayers and local communities are willing ('or able') to pay for the incremental cost of these reforms has not been assessed.</p> <p>The Ministry for the Environment's Supplementary Analysis Report (SAR) of September 2022, issued on 22 November 2022, which is after the NBE and SP Bills were introduced to Parliament on 15 November 2022, includes a partial Cost Benefit Analysis (CBA), which estimates that central government and local government costs will increase when compared to the current system, by 112 per cent and 11 per cent respectively.⁶ But these cost assessments are incomplete and do not include the high cost of transition or resourcing implications for the local authorities. Expected costs for the Councils will therefore be much higher than the quoted 11 per cent.</p> <p>In addition to the already identified 11 per cent estimated cost increase for local government, the SAR also states that one off establishment costs of \$864m are expected to be incurred mainly by central and local government over 10 years. These extra costs along with the additional structural and institutional costs, and incremental operational expenses, which are yet to be considered, do not give the Councils confidence that the reform objective of 'cost-effectiveness' will be achieved. Additional costs not considered in the SAR released in November 2022, but not all expected costs, are identified throughout this submission.</p> <p>In the absence of Cost Benefit Analysis (CBA), and value add analysis, being completed at the national level, it could be envisaged under one West Coast Council scenario that costs for local and regional</p>	

⁶ Supplementary Analysis Report: The New Resource Management System; date finalized 21 September 2022; date issued 22 November 2022; corporate author: Ministry for the Environment; <https://www.treasury.govt.nz/publications/risa/supplementary-analysis-report-new-resource-management-system>; <https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mfe-nrms-sep22.pdf>; last viewed 16 February 2023.

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>councils could be as high, if not higher, than 50 per cent. The threshold is simply not known.</p> <p>If cost recovery is spread out evenly across all ratepayers, many of whom may not receive an individual net benefit, it is questioned whether ratepayers and local communities are in a position to pay for the proposed reforms especially during a cost-of-living crisis.</p> <p>Further concerns could be voiced because the proposed reforms do not evidence stream-lined processes (defined as ‘a single integrated system to govern resource management’), cost effectiveness (good value for the amount of money paid for doing the right things) or efficiency gains (for doing things right). The Bills, for instance, do not consider process, process re-design, or process reform, so there is no way of knowing how processes are being ‘stream-lined’. Assumptions therefore must be made about how the new resource management system may or may not work, and every submitter has different assumptions. ‘Cost-effectiveness’ and ‘consumer surplus’ (whether there is a net gain to the West Coast ratepayer) also remains to be analysed or evidenced.</p> <p>Councils are concerned that a major overhaul of the country’s entire resource management system, unprecedented in thirty years, is being made in the absence of completing a cost-benefit and value-add analysis. (There is, for example, no ratepayer benefit or ‘willingness to pay’ analysis; or if there is one it hasn’t been shared with them).</p> <p>At the time of the Natural and Built Environment Bill (NBE Bill) and the Spatial Planning Bill (SP Bill) being introduced to Parliament on 15 November 2022, central government had not completed its analytical work and the Ministry for the Environment (MfE) was only able to release a partial and incomplete Cost Benefit Analysis (CBA) later on 22 November 2022. This CBA evidenced no net gain to ratepayers. (Indeed, there was no mention as to how much local authority rates will have to increase by to cover the proposed resource management reforms).</p> <p>Still, and even by virtue of central government analysis done to date, local and regional rates will have to skyrocket to cover the cost of these reforms and yet the proposed Regional Planning Committee (RPC) has no direct authority to set a rate. The Councils are therefore exposed to significant risk.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>At a Ministry for the Environment (MfE) workshop on 22 November 2022, MfE advised the West Coast Regional Council that there will be central government funding for Māori participation on the proposed Regional Planning Committees (RPC). However, excepting central government funding its proposed central government representative on the RPC for developing the Regional Spatial Strategy, and funding Māori representation on RPCs, there will be no other funding made available to the West Coast Councils to fund the Regional Planning Committees or the resource management reform process. The costs for funding a 'Host Authority' will be significant and include, amongst other, staffing a secretariat and administering finance.</p> <p>Ratepayers on the West Coast are already paying heavily for the cost of change imposed through the Order in Council for a Te Tai o Poutini Plan (TTPP) to be finalised prior to the new Resource Management framework coming into effect.⁷ It is expected that a budget will be presented to WCRC Councillors and the WCRC will have to fund the 10-year TTPP period by increasing debt, increasing rates, or finding an alternative funding mechanism. The West Coast Councils are very concerned about the spiralling future costs of completing the TTPP. The WCRC has no control over these matters (it has had to delegate its obligations to a joint committee with an independent chair); and its input into the TTPP reform process, for example with respect to natural hazards, has not been put into effect.</p> <p>From experience with independent joint committees and their processes, reconciling and combining the TTPP and WCRC plans will be long, challenging, and costly. The idea of creating a more efficient system is welcomed; but the Bills in their current form do not evidence how they will achieve this objective or the other two reform objectives of stream-lined processes and cost-effectiveness.</p> <p>The NBE and SP Bills provide no opportunity for co-design by the Councils and Central Government. The Council's submission is likely to be one of hundreds that need to be read, reviewed, and considered by a small team, for a full report to be prepared for the Environment Committee; and for the Environment Committee's report to be back to Parliament on both the NBE and SP Bills</p>	

⁷ The Local Government Reorganisation Scheme (West Coast Region) Order 2019; <https://gazette.govt.nz/notice/id/2019-go2872>; last viewed 16 February 2023.

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>by the 22 May 2023 so that the Environment Committee can make decisions on unprecedented reform of the country's entire resource management system in the last 30 years.</p> <p>The majority of the risk with implementing and administering the NBE and SP Bills, however, will sit with local government, including the West Coast Councils. Local government, including the West Coast Councils, run the risk of having to put people's personal lives and assets at risk by funding a reform process over which they have no control and no governance oversight.</p> <p>The Councils understand that the Ministry for the Environment (MfE) has used the TTPP process to observe how a joint regional committee for a combined district plan could work. In practice, the TTPP Committee has implications for rate setting but the Committee is not legally a rate-setter. The Local Government (Rating) Act gives councils the role of setting rates subject to certain conditions.</p> <p>Notwithstanding, West Coast ratepayers will have to bear rate increases to pay for this new TTPP process and implementation of the TTPP. On top of this, the NBE Plan and Spatial Planning processes will introduce new planning processes. The new plans will require implementation, and costs will increase for consents, compliance, monitoring and enforcement (CME), amongst other. West Coast ratepayers will have to bear these incremental costs as well as the incremental costs of the TTPP. For example, the NBE Plan will go beyond integration of district plans to include integration of regional and district plans along with new strategies, visions, objectives, policies and rules and a new National Planning Framework. In other words, resource management reform, RM reform, is not about simply 'rejigging' the TTPP structure and process. An Order in Council, over which the Councils had no control, directed the TTPP Parties, including the Councils, to create the TTPP. The current central government thereby changed the landscape, and local ratepayers will be called on for millions of dollars' worth of funding to fund the TTPP. Central Government should therefore fund the West Coast's transition under the NBE and SP Bills.</p> <p>Understanding the future of the TTPP Committee also remains a very important matter.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Examples of additional costs to West Coast ratepayers arising from implementing the provisions of the NBE Bill that the Councils have identified so far, and which have not been included in MfE's supplementary Cost Benefit Analysis (released November 2022), include funding the Regional Planning Committee (RPC) and its processes; processing dispute settlement; contracting consultants and panel members including an Environment Court Judge as a hearing panel Chair; and additional resource consenting, monitoring and reporting costs. As another example, there will be additional 3-yearly reporting of NBEA plan implementation to the RPC. Additional implementation costs for small councils, including the West Coast Councils, above their current RMA implementation costs, must be funded by central government.</p> <p>Recommendation 1:</p> <ul style="list-style-type: none"> a) That Parliament slows down the reform process and directs an independent and impartial inquiry, in conjunction with the West Coast Councils and other local authorities, to carry out a thorough assessment of the costs, benefits, 'economic value add', and implications of reform scenarios, including a 'status quo' scenario, for local and regional councils, as well as their respective ratepayers at a local authority level, and makes these findings public before proceeding further; b) That in addition to the submissions process, Parliament, and Central Government, engage in meaningful consultation with local government, the West Coast Councils, and local communities through a process of transparent dialogue and conversation, which heeds 'the West Coast Councils' input, advice, and opinion; and is funded by the Crown; c) That a clear process is worked through in consultation, conversation, and dialogue with local authorities, including the West Coast Councils, to develop a single integrated resource management system governed by one Act; d) If the reforms proposed under the Natural and Built Environment (NBE) Bill and Spatial Planning (SP) Bill proceed, that a new Order in Council provide for central government to fund the West Coast Councils to undertake the required resource management reforms by covering all costs incurred, and to be incurred, by the West Coast Councils in implementing and administering the Natural and Built Environment Act (NBEA) and Spatial Planning Act (SPA), and that these costs include, but are not limited to, capital and operational expenses, transitional costs, consultation and hearings for the Te Tai o Poutini Plan (TTPP) and 	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	NBE Plan, incremental resource consenting costs, and ensuring that the local West Coast Councils retain a place in decision making and plan making and not be relegated simply to delivery, implementation, and collecting rates.	
2. Work on assessing the net benefit of the reforms to local ratepayers has not been done; and Cost Benefit Analysis is at the partial work in progress stage: analysis needs to be completed before the reforms proceed any further	<p>According to the ‘Supplementary Analysis Report (SAR): The New Resource Management System’, issued 22 November 2022, MfE “anticipates that impacts for the primary sector and rural economies are likely to be wide ranging”, which means that impacts for the West Coast are likely to be wide ranging; but “the SAR does not include sector specific evaluation of the cost and benefits of transition to the new system, nor sector specific analysis of the costs of doing business under the new system”.⁸</p> <p>In brief, this means that the costs for the West Coast Councils to develop, implement, administer, and monitor the new system including providing new “environmental” and “economic” instruments, and administering national direction under the National Planning Framework (NPF), are yet to be assessed. Ratepayer cost analysis, ratepayer net benefit analysis, ratepayer value add analysis, and qualitative and quantitative evidence of improving effective implementation across the West Coast region, are also not included in MfE’s Cost-Benefit Analysis (CBA) and are yet to be assessed.</p> <p>MfE recognises, however, that “local government is [already] financially stretched”.⁹ Local government is financially stretched: Many councils face difficulties in raising the revenue required to fund the delivery of priorities, such as infrastructure, adapting to flooding and natural hazards, and undertaking the increased responsibilities given to them by central government. The proposed RM reforms could make financial pressures worse for some councils, particularly Councils in rural areas, those with disproportionately lower value-add services than the rest of New Zealand; and those with disproportionately higher rural sectors and primary industries than the rest of New Zealand; i.e., the West</p>	

⁸ Supplementary Analysis Report: The New Resource Management System; date finalized 21 September 2022; date issued 22 November 2022; corporate author: Ministry for the Environment; <https://www.treasury.govt.nz/publications/risa/supplementary-analysis-report-new-resource-management-system>; <https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mfe-nrms-sep22.pdf>; last viewed 16 February 2023.

⁹ Supplementary Analysis Report: The New Resource Management System; date finalized 21 September 2022; date issued 22 November 2022; corporate author: Ministry for the Environment; <https://www.treasury.govt.nz/publications/risa/supplementary-analysis-report-new-resource-management-system>; <https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mfe-nrms-sep22.pdf>; last viewed 16 February 2023.

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Coast, by increasing existing debt levels with a flow through to increased rates and increased social and economic burdens on local communities.</p> <p>The proposed reforms will ‘financially stretch’ the West Coast Councils, ratepayers, and local communities even further. In reference to the SAR (and MfE’s Cost Benefit Analysis), increasing the reduction in net new consents but ‘relabelling’ some consents as ‘notices’ and increasing consenting processing costs, including for instance processing Permitted Activity Notices, will not necessarily lead to a “net efficiency gain” for the West Coast or a positive Present Value (PV) for the West Coast.</p> <p>The SAR refers to “a corresponding PV [present value] increase of \$3.35 billion attributed to ongoing [consent] process cost savings for regulated parties” being a key benefit; but there is no substantiated evidence as to where and how these cost savings will be made.</p> <p>Amongst MfE’s other major alleged benefits resulting from its partial Cost Benefit Analysis (CBA), but unsubstantiated for the West Coast or any other region, is that the “SPA/RSS” (Spatial Planning Act and Regional Spatial Strategies) will result in a “welfare gain [beneficial impact of central government policy]: Increasing the total benefits derived from the contribution of the SPA and RSS [regional strategies, visions, and objectives for a regional long term plan] to enhanced infrastructure and planning outcomes from PV \$257 million to PV \$642 million”.</p> <p>Another anomaly concerns the proposed “housing supply benefits”. According to MfE, the NBEA and SPA will “increase housing supply benefits over the next 30 years from PV \$2.2 billion to PV\$7.5 billion (due to more competitive land markets, improved housing supply elasticity, improved transparency in consenting processes, and improved clarity and consistency in national direction)”. However, these benefits are not directly provided for by either the NBE or SP Bill and are yet to be drafted into the Bills. Creating one big resource management plan is no guarantee that land markets will be more competitive or that housing supply will keep pace with demand. It is also questioned whether such benefits, if they do occur, will flow proportionately through to the West Coast.</p> <p>Sensitivities to the discount rate for Net Present Value (NPV) calculations, inflation, the cost of living crisis, natural hazards (such as, cyclones, coastal erosion, and</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>flooding) and another pandemic, which have not been considered, all need careful consideration and must reflect implications for local councils and their respective ratepayers.</p> <p>In addition, costs would be even higher for the West Coast Councils if MfE's CBA analysis considered the Council's additional responsibilities and costs for administering and implementing the Bills into perpetuity rather than for simply the first 10 years.</p> <p>Recommendation 2: That a full analysis, including Cost Benefit Analysis (CBA) and 'ratepayer value-add analysis', of implementing the new Resource Management (RM) Bills nationally, regionally, and at a district-wide level, be done by an independent auditing body, or by Treasury acting independently and impartially, in collaboration with local authorities, including the West Coast Councils.</p>	
<p>3. The NBE Bill is out of sync with the Local Government Act (LGA), for example, social and economic well-being are being sacrificed in favour of protecting the natural environment</p>	<p>The Councils consider that the proposed resource management framework is out of sync with the Local Government Act (LGA); and that under this new framework social and economic well-being are being sacrificed in favour of protecting the natural environment. These exclusions are shown by the environment limits proposed in the NBE Bill, and those that will be provided for in the pending National Planning Framework, which are limited to the natural environment and human health. An emphasis on the natural environment may be appropriate for regions with a high level of development, and a higher loss of the natural environment, than that on the West Coast. For example, many other regions have suffered a high loss of indigenous biodiversity, loss of high freshwater quality, and have significant issues with freshwater quantity. However, in comparison, the West Coast is the converse as it has a relatively high level of remaining indigenous biodiversity and habitats, and plentiful freshwater resources.</p> <p>The lack of reference to social and economic well-being, and social and economic rights, in the Purpose of the Bill is out of sync with the Local Government Act (LGA) insofar that councils must also implement the LGA, which requires councils to "promote the accountability of local authorities to their communities" and "to play a broad role in promoting the social, economic, environmental, and cultural well-being of their communities, taking a sustainable development approach".</p>	<p>3 38-43</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 3: That the NBE and SP Bills be modified to be consistent with the Local Government Act (LGA) and the Local Government (Rating) Act.</p>	
<p>4. The new reforms are complex, time consuming, expensive and escalate funding and resourcing stresses for local government and local communities</p>	<p>The proposed Resource Management Bills appear longer and more complicated than the RMA. The NBE Bill is some 807 pages, and the Spatial Planning Bill is 46 pages. And the Climate Change Adaptation Bill, which is also considered to form part of the RM reforms, is to be added on top.</p> <p>Hon. David Parker said at the first reading of the NBE Bill on 22 November 2022 that “We need a faster, cheaper, and better resource management system. It is undisputed that the RMA is not working as was intended. It takes far too long, costs far too much, and it's no exaggeration to say it's broken.... With fewer plans and faster processes, local communities will continue to have a strong voice, including through statements of community outcomes,” which the RPC must have regard to but may not necessarily take into account.</p> <p>However, based on the evidence, the new NBE process seems far more complicated, time consuming and expensive than plan making under the RMA. Large unwieldy plans, presumably with revised land, water, air quality, coastal, natural hazards plans, and so on, as ‘chapters’ therein, are likely to slow down processes, exacerbate existing funding and resource constraints for regional councils that have to implement them, and make it difficult for local communities to have a say. But rather than argue about the size of the plan right now, the question the West Coast Councils is asking is whether the reform objectives of stream-lined processes, cost-effectiveness and efficiency will be met; and where is the evidence that a net benefit will flow through to local ratepayers on the West Coast.</p> <p>As another example of incremental costs, the newly proposed “Enduring submissions” will also occupy staff time and require further staff, or consultants, to process them.</p> <p>Other examples of extra costs for the regional council, and potentially district councils, are referred to throughout this submission, and include:</p> <ul style="list-style-type: none"> • increasing consents and consenting processes, e.g., by changing controlled activity status to include discretion to decline, and removing restricted discretionary activity status; 	<p>35 427</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<ul style="list-style-type: none"> • increasing processing costs for ‘notices’, e.g., by requiring the processing of Permitted Activity Notices for permitted activities; • increasing costs for taking on ‘Host council’ responsibilities – if agreement can’t be reached between local authorities on who the “host” council should be, this role defaults to the regional council; and • increasing costs to the Environmental Protection Authority (EPA). Provisions within the Bill enable the EPA to recover costs from local authorities when it is unable to recover them from a polluter of contaminated land. <p>Refer to the Recommendations above, which also apply to this submission point.</p>	
<p>5. There are oversights in the Planning Hierarchy; example, in relation to the role of the RPS</p>	<p>Regional Policy Statements (RPSs) are the principal strategic local authority planning document that have enabled regional councils to ensure that <u>sustainable</u> development and management, consistent with the Local Government Act (LGA) and Resource Management Act (RMA), occurs in a strategic and co-ordinated manner. It is important that the role of the RPS remains, otherwise a loss of planning hierarchy between overlapping strategies, policies and objectives and the National Planning Framework is highly likely to lead to poorer regional environmental outcomes and poorer local outcomes. In practice, the process of plan making, and decision making, should be an iterative process involving Local Government.</p> <p>Recommendation 4: That the role of the Regional Policy Statement (RPS) is retained and provision for its retention is made clear in the NBE Bill.</p>	<p>Explanatory Note</p> <p>Clauses 107 645</p> <p>Sch 7, Part 1, 14 ‘identification of major regional policy issues’</p>
<p>6. There are Governance and Planning oversights in putting System Outcomes into a Hierarchy</p>	<p>The system outcomes in clause 5 of the Bill focus on the “protection or, if degraded, restoration” of the natural environment, and some social outcomes. The Councils are not opposed to these outcomes in principle, but regional economic outcomes for rural community wellbeing are not clearly provided for in clause 5 of the Bill. They may be inferred in clause 5(c)(i) in terms of the use and development of land for business use and primary production, for “well functioning urban and rural areas”. Clause 5(c)(iv) provides an outcome for: “....an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities;....”. The latter clause limits economic opportunities to urban areas, and alternative rural land uses such as mineral mining will be</p>	<p>5</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>further limited by the identification of, and restrictions in, the use of Highly Productive Land classes 1-3, as referred to in clause 5(d).</p> <p>Having the economic opportunity for diversity of land use in rural areas is an important issue for the West Coast, and it should be better recognised in the systems outcomes.</p> <p>In addition to climate change mitigation (reducing the harm of Green House Gas emissions, e.g., putting in a protective 'sea-wall'), climate change adaptation and adaptive pathways, e.g., moving away from a hazard like flooding or coastal erosion, is not identified as a 'system outcome'. There is a risk that communities will not prioritise adaptation, such as responses to natural hazards, and this will have potential impacts for social, cultural, and economic well-being, as well as risk management, e.g., managing risks associated with stranded assets.</p> <p>Furthermore, in Council's view, system outcomes are <i>sui generis</i>, which means they depend on the situation at hand, and priorities are likely to differ from region to region. For example, an outcome to support a small and vulnerable rural school open to coastal erosion fundamentally differs to an outcome that measures increased urban housing supply. As another example, Auckland needs to reduce its transport emissions but may simply not do so due to other 'system outcomes' being given priority, such as, providing for a flow of traffic to work. This clash of 'system outcomes' may be referred to as a 'conflict of norms' or a 'conflict of laws' and resolution will be necessary. Resolution of a decision-making process may need to take place on a case by case basis. For example, Government may need to balance its national framework for energy security and food security rather than rely on imports or inflation (escalating food costs). The Councils do not, therefore, agree with establishing a hierarchy of system outcomes in the NBEA.</p> <p>Furthermore, a "one-size fits all" approach is likely to be more detrimental to our region than most others given its uniqueness. For example, the outcome of enhanced public access to the coastal marine area, lakes and rivers may mean putting in new transportation infrastructure and the very manufacture of materials for roads has an impact on emissions, i.e., one outcome of the Bill is achieved but another is not. As another example, ensuring energy security for local communities may be a local priority over a central government priority</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>to facilitate pleasure for the occasional wealthy holidaymaker being able to kayak our rivers.</p> <p>As illustrated, stipulating a “one size fits all” hierarchy of system outcomes and norms is not the solution. Other case by case solutions will therefore need to be found to make decisions, such as, around the provision of infrastructure versus the reduction of emissions, which both support community well-being. Responses to urban flooding, for example, will increase infrastructure and emission costs; but in urban areas putting in new infrastructure is likely to take the priority over climate change, managed retreat, and leaving the environment in its natural state.</p> <p>Furthermore, the Councils have concerns about the lack of economic wellbeing outcomes relevant to the West Coast.</p> <p>The Councils therefore only support the proposed system outcomes in principle. If system outcomes are to remain in the NBE Bill, then any analysis of them should involve an iterative process taking into account social, cultural and economic outcomes, and well-being, consistent with the LGA and based on the NBEA’s fundamental purpose as revised in this submission. For this to be achieved, the NBE Bill requires a clear and coherent purpose consistent with the Local Government Act (LGA).</p> <p>Recommendation 5:</p> <ul style="list-style-type: none"> a) Make provision to support system outcomes in principle only; b) Do not put system outcomes into a hierarchy; c) Add “regional economic wellbeing”, “climate change mitigation” and “climate change adaptation” to the systems outcomes (reference clause 5 NBE Bill), to ensure that the outcomes are consistent with the LGA, responses to natural hazards, and climate change legislation. 	
7. Important provisions like access to information, public participation in decision making, and access to justice in	<p>The NBE Bill lacks appropriate provisions for public access to information, local authority and public participation in decision making, and access to justice. The Councils believe that provisions for procedural equity (public access to information, public participation in decision making, and access to justice) are essential to the reform process.</p> <p>Many of the frustrations that have plagued the RMA are procedural and linked to insufficient resourcing of local government. These concerns are not addressed by the</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
<p>environmental matters are omitted or eroded; and local authorities need resources</p>	<p>NBE or SP Bills. The fact that the reform process does not address these issues means that they are likely to arise again under the new legislation. If Central Government wants to make these wide reaching and costly reforms to local authorities, then it must match its directions with resources.</p> <p>Further, in terms of substantive equity, which should be reflected in the Purpose of the NBE Bill, councils with low rating bases should not face the same burden in terms of cost recovery as bigger councils.</p> <p>Inequities are further compounded in regions where internet coverage is limited. Moving to e-Plans and internet-based communication that are not available to remote rural communities as a whole are also another form of inequity.</p> <p>Disconnecting communities through the use of IT is exclusive, as opposed to inclusive, and does not align with the mandate of the Local Government Act.</p> <p>The erosion of transparent public plan making processes, alternative dispute resolution and the right to a fair public hearing, erodes the rule of law.</p> <p>Neither the NBE nor SP Bill provide an adequate Dispute Settlement Understanding (DSU) or Dispute Settlement Mechanism (DSM). Suggestions are made in this regard below. Councils support, for instance, timely consultations and ADR (Alternative Dispute Resolution), a fair and transparent appointment process to the Independent Hearing Panel, and an affordable and timely appeals process.</p> <p>Recommendation 6: Improve provisions for public access to information, public participation in decision making and access to justice. (Recommendations with respect to these improvements are embedded throughout this submission).</p>	
<p>8. The Bill requires a clear and coherent 'Purpose Clause'</p>	<p>The NBE Bill's definition of the word 'environment' is all-encompassing of the natural, built, social, economic, and cultural environments; and then the Bill proceeds to provide for the natural environment while undermining social, economic and cultural well-being and rights. This approach is not supported; and to rectify it, the Bill requires, amongst other, a clear and coherent purpose.</p> <p>To appreciate Councils' requested changes, the table below first compares the 'purposes' of the RMA and NBE Bill:</p>	<p>3</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>RMA Purpose & Principles</p> <p>5(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.</p> <p>(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—</p> <p>(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and</p> <p>(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</p> <p>(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.</p>	<p>NBE Bill Purpose</p> <p>3 Purpose of this Act</p> <p>The purpose of this Act is to—</p> <p>(a) enable the use, development, and protection of the environment in a way that—</p> <p>(i) supports the well-being of present generations without compromising the well-being of future generations; and</p> <p>(ii) promotes outcomes for the benefit of the environment; and</p> <p>(iii) complies with environmental limits and their associated targets; and</p> <p>(iv) manages adverse effects; and</p> <p>(b) recognise and uphold te Oranga o te Taiao.</p>
	<p>The Councils agree with the Resource Management Group (RMG) Reform Group draft submission point, that the NBE Bill needs a clear and coherent purpose. Particular care and attention must be taken in drafting the Bill's Purpose because powers and functions that exist under the Act must be exercised in accordance with the Act's statutory purpose.</p> <p>Besides other matters highlighted below, Cabinet's agreed objectives to enhance and restore the natural environment are not fully reflected in the Bill's purpose.</p> <p>Council also suggests that "te Oranga o te Taiao" be elevated in the Bill's purpose.</p> <p>Recommendation 7:</p> <p>That the 'Purpose' clause of the NBE Bill be redrafted for clarity, and to minimise uncertainty and legal risk. (Suggested drafting is provided for below in submission point 12).</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
9. Better enable development in the Bills' Purpose	<p>Unlike the RMA, the current Purpose of the NBE Bill is limited to a merged blending to “enable the use, development and protection of the environment” in the absence of economic and social objectives.</p> <p>While the NBE Bill intends to govern the natural and ‘built’ environment, development objectives for the built environment are unclear and provision for affordable housing is not provided for in the Bill or the Bill’s Purpose. If it is not provided for, it is unlikely to be achieved as a result of the reform process; and MfE’s Cost Benefit Analysis will have to be modified accordingly.</p> <p>The Councils support Cabinet’s agreed objective as reported on by MfE, to “Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure”; and suggest that this objective be reflected in the Bill’s purpose.¹⁰ They also suggest that the word ‘economic’ be added.</p> <p>Recommendation 8: That the ‘Purpose Clause’ of the Natural and Built Environment Act (reference clause 3 of the NBE Bill) should make provisions for both the Natural and Built Environments; and social, cultural, and economic well-being and rights as consistent with the Local Government Act.</p>	3
10. Undermining of a ‘kaupapa’ approach undermines Te Oranga o te Taiao	<p>The Purpose section of the Act will be used to interpret the Act. It is therefore important that the scope and purpose should be clearly understood in relationship to core first principles, such as kaitiakitanga (as defined under the RMA to include stewardship).</p> <p>To mitigate the possibility of costly litigation, and arguments about the meaning of to ‘recognise and uphold’ Te Oranga o te Taiao, Te Oranga o te Taiao should be defined and elevated in priority in the Purpose of the Act, thus forming the ‘first principle’ or ‘kaupapa’ of the new Act. As currently drafted, and contrary to King Salmon, Te Oranga o te Taiao is of lesser value than ‘limits’.</p>	4 3 7

¹⁰ Supplementary Analysis Report: The New Resource Management System; date finalized 21 September 2022; date issued 22 November 2022; corporate author: Ministry for the Environment; <https://www.treasury.govt.nz/publications/risa/supplementary-analysis-report-new-resource-management-system>; <https://www.treasury.govt.nz/sites/default/files/2022-11/ria-mfe-nrms-sep22.pdf>; last viewed 16 February 2023.

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 9: Meaning and clarity should be given to the newly introduced term, “Te Oranga o te Taiao”, in the Purpose clause of the Bill.</p> <p>Recommendation 10: The Select Committee should satisfy itself about what the intrinsic relationship between “Te Oranga o te Taiao” and all New Zealanders, present and future generations, may imply for the use, protection and development of the environment and its restoration and enhancement, including aesthetics within the built environment space. For example, tourists visiting the West Coast should also have a responsibility to uphold ‘Te Oranga o te Taiao’ by their careful use, enjoyment, and protection of the environment.</p>	
<p>11. The obligations for Te Oranga o te Taiao and Te Mana o te Wai all link together and should therefore be considered holistically, and not as a hierarchy</p>	<p>The question also arises as to how will ‘Te Oranga o te Taiao’ fit with ‘Te Mana o te Wai’ and whether there should be a hierarchy of obligations in Te Oranga o te Taiao similar to the hierarchy of obligations in Te Mana o te Wai, under the National Policy Statement (NPS) for Freshwater of September 2020. Answering this question is particularly important when considering the Council’s Long Term Plan; Regional Spatial Strategies (RSS); and developing long-term visions, strategic objectives, policies and methods, which may prioritise:</p> <ul style="list-style-type: none"> (a) first, the health and well-being of Mother Earth, Papatūānuku, and the natural environment; (b) second, the health and well-being needs of people (such as drinking water); and (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. <p>Rather than prioritise fundamental rights, it is suggested that all of these obligations are important; and that they should all be considered holistically and collectively as a whole because they all link together.</p> <p>There should therefore be no hierarchy of obligations in Te Oranga o te Taiao when developing long-term visions, strategic objectives, policies and methods; and there should be no prioritisation of the health and well-being of Mother Earth, Papatūānuku, and the natural environment over the health and well-being needs of people; and the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.</p> <p>Instead, the proposed approach should be circular and iterative. This sort of system of linking norms together</p>	<p>4</p> <p>3</p> <p>7</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>and considering them holistically is referred to as a 'heterachy of obligations' as opposed to a 'hierarchy'. In other words, one part cannot exist without the other; and a form of planning strategies, policy, and rules need to be governed by other policy or rules, or to interface with them in certain ways, depending on the circumstances. Hence, no one norm dominates. The relationship between interdependent environmental, social, economic, and cultural rights and their inter-relationships are critical to enhance environmental, social, economic, and cultural well-being; and are characterised by multiple intricate links that create circular iterative paths rather than hierarchical ones.</p> <p>Recommendation 11: Because they all link together, that the obligations for "Te Oranga o te Taiao" and "Te Mana o te Wai" be considered holistically, and not as a hierarchy.</p>	
12. That the 'Purpose Clause' be redrafted for clarity and legal consistency	<p>Regarding the recommended special and differential treatment clause 3(4) below, it is proposed to be added to the Purpose section of the Act because special and differential treatment is a fundamental tenet of natural resource, development and climate change law agreed by New Zealand to be introduced into its national laws. When embedded in secondary parts of legislation or regulations, it has a lesser standing.</p> <p>Recommendation 12: That the Select Committee redraft the Purpose of the Natural and Built Environment Bill based on the guidelines above and below; and realign the NBE, and provisions within the NBE, to the purpose of local government under local government legislation, including the LGA and LGRA (strikethrough reflects text to be deleted, text to be added is shown with underline).</p> <p>NBE Bill current Purpose: 3 Purpose of this Act The purpose of this Act is to— (a) enable the use, development, and protection of the environment in a way that— (i) supports the well-being of present generations without compromising the well-being of future generations; and (ii) promotes outcomes for the benefit of the environment; and (iii) complies with environmental limits and their associated targets; and (iv) manages adverse effects; and (b) recognise and uphold te Oranga o te Taiao.</p> <p>Sample Proposed Purpose clause redrafted for dialogue, conversation, and consultation:</p>	3 7

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>3 Purposes of this Act</p> <p>(1) The purposes of this Act are to—</p> <ul style="list-style-type: none"> a) <u>recognise and uphold the fundamental principle of te Oranga o te Taiao in a way that provides for the well-being of present and future generations of humankind, including their economic and social well-being, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities;</u> b) <u>subject to recognising and upholding te Oranga o te Taiao, to enable people and communities, to protect, preserve, use, develop, and where possible, to restore and enhance the ecological integrity of the natural environment;</u> c) <u>subject to recognising and upholding te Oranga o te Taiao, to enable people and communities, to protect, preserve, use, develop, restore and enhance the built environment that they create; and better enable development within environmental biophysical limits demonstrating a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure;</u> d) <u>better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change; and</u> e) <u>improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input.</u> <p><u>(2) To achieve these purposes in a coherent manner, the Act—</u></p> <ul style="list-style-type: none"> a) <u>promotes and provides for outcomes for the benefit of the natural environment;</u> b) <u>promotes and provides for outcomes for the benefit of the built environment;</u> c) <u>requires that any adverse effects on the natural or built environment or biota resulting from using the environment must be avoided, minimised, remedied, offset, or redressed; and</u> d) <u>provides for environmental limits and their associated targets.</u> <p><u>(3) In this Act, Te Oranga o te Taiao means—</u></p> <ul style="list-style-type: none"> a) <u>the interconnectedness between all parts of the natural and built environment;</u> b) <u>the intrinsically good relationship between all people and the natural and built environment;</u> c) <u>the health, well-being and betterment of the natural environment;</u> 	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>d) <u>the health, well-being and enhanced aesthetics of the built environment;</u></p> <p>e) <u>the intrinsically good relationship between the health and well-being of the natural and built environments and their capacity to sustain life.</u></p> <p><u>(4) In their actions to achieve the purpose of this Act, the specific needs and special circumstances of regions that would have to bear a disproportionate or abnormal burden under this Act, should be given full consideration.</u></p>	
<p>13. Interpretation and drafting consistency needs significant work</p>	<p>Many of the definitions under the 'Interpretation' clause (clause 7 in the Bill) are untidy and loose. There is a concern that omissions and poor drafting will lead to the need for legal advice and challenges in Court. By using loose terms, and at times conflicting terms, which may lead to interpretation by mediators or by the Courts complicates process and adds cost. The Councils simply do not have the resources or funding to deal with interpretation challenges.</p> <p>Cross-referencing is excessive, resulting in having to search other documents to find the applicable meaning. At other times, cross references are made on cross references. This type of approach to drafting can be confusing, time-consuming, and increase processing costs if one of these cross references becomes redundant.</p> <p>There are several inconsistencies between the interpretation clause and the body of the Bill and these inconsistencies need correction. There are many interpretative errors throughout the Bills; but only a few examples are given below to illustrate where change is required.</p> <p>Several definitions are unclear. For example, when referring to an 'adverse effect', that 'does not include a trivial effect', it is unclear what 'trivial' means. Whereas 'adverse effects on the environment' may mean 'changes in the natural or built environment resulting from use, development or protection of the natural or built environment, which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and well-being'. The latter definition is clearer and contained but it still needs work.</p> <p>The term 'built environment' is used throughout the Bill but not defined: it should be defined.</p>	<p>7</p> <p>Entire NBE & SP Bills</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>'Environment' and 'natural environment' are used interchangeably to refer to the 'natural environment' in some parts of the Bill. This is confusing when 'Environment' is defined to include 'social, economic and cultural environments'. Whereas, it would seem that the 'natural environment' excludes social, economic and cultural environments'. Consistent with the Local Government Act, 'Natural environment' and 'built environment' should both be defined and remain distinct from, but related to, social, economic, and cultural well-being.</p> <p>As well as keeping things clear and easy to understand, another reason for keeping social, economic, cultural, and environmental rights identifiable is so we can make <i>lex specialis</i>, i.e., 'special laws', or provisions and relevant laws, policies, objectives, and rules, related directly to social, economic, cultural, and environmental well-being.</p> <p>Definitions are required for the 'natural environment' and the 'built environment', which are consistent with their application within the Bill. Consistency is beneficial and will help to achieve the intended objectives and provisions provided for in the Explanatory Note to the Bill.</p> <p>Recommendation 13:</p> <ul style="list-style-type: none"> a) Concerning the Interpretation clause (clause 7 of the NBE Bill), a thorough review is needed, keeping the Interpretation clause as self-contained as possible with fewer cross-references, and using 'plain English'. b) Define common terms commonly to avoid them being contested in court. c) Include a comprehensive interpretation section and apply it consistently across a single Act that integrates both the NBE and SP Bills. d) The review of the Interpretation clause should include, amongst other, either a definition in the Bill or guidance on, the definition of 'trivial effect'; and definitions in the Bill for the 'natural environment' and the 'built environment' that are consistent with their application within the Bill. e) Ensure that the intent expressed in the Explanatory Note to both the NBE and SP Bills is consistent with the substantive body of the respective Bills. 	
14. Strengthening of Te Tiriti o Waitangi	The Councils support ' <i>giving effect</i> ' to the principles of the Treaty of Waitangi rather than only 'taking them into account'.	4

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
provision supported	<p>The Explanatory Note reads, “[to] give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori”, and reflects Cabinet’s agreed objectives. In contrast, the relevant provision in clause 4 of the NBE Bill provision reads, “All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi.”</p> <p>Council’s iwi partners, Poutini Ngāi Tahu (PNT), want to reflect the objective from the Explanatory Note in the Purpose of the NBE Act, by extending giving effect to the principles of the Treaty of Waitangi to also include ‘greater recognition of te ao Māori, including mātauranga Māori’.</p> <p>Recommendation 14: That the wording of the Tiriti o Waitangi clause (reference clause 4 of the NBE Bill) is extended to reflect Cabinet’s agreed objective, and the objective stated in the Explanatory Note to the NBE Bill, and thereby provide that “All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi and provide greater recognition of Te Ao Māori, including Mātauranga Māori”.</p>	
15. For the West Coast Mana Whakahono ā Rohe Iwi Participation Agreement to remain intact	<p>Rather than rendering their Whakahono ā Rohe Iwi Participation Agreement void, the West Coast Councils and iwi partners support retaining their Whakahono ā Rohe Iwi Participation Agreement under the new Act(s).</p> <p>The Councils and iwi partners also support structuring a separate subpart for Mana Whakahono ā Rohe iwi participation agreements within the NBE Act. This subpart should be consistent with the RMA’s provisions for Whakahono ā Rohe because the West Coast’s Mana Whakahono ā Rohe is consistent with them.</p> <p>A lot of time, resources, and effort went into preparing the Mana Whakahono ā Rohe Partnership Protocol for the West Coast and the West Coast Regional Council, Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, and Te Rūnanga o Ngāi Tahu would like their existing Mana Whakahono ā Rohe agreement of October 2020 to remain intact. The Regional Council Councillors and iwi partners are reluctant to make changes after only three years. The Mana Whakahono ā Rohe is a form of contract we would like to continue to recognise and uphold.</p>	Part 10, subpart 6

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 15:</p> <ul style="list-style-type: none"> a) That the “Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol, Whakahono ā Rohe Resource Management Act Iwi Participation Agreement; A Protocol and Arrangement between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council of October 2020” is retained in the new law; b) That ‘Mana Whakahono ā Rohe’ is defined in the NBE Bill as per the Resource Management Act (RMA) definition, that is, Mana Whakahono ā Rohe means an iwi participation arrangement entered into under this subpart...; c) That other relevant Mana Whakahono ā Rohe definitions from the RMA are retained. For example, define ‘iwi participation legislation’ in the NBEA in the same way as it is defined in the RMA; d) That Central Government contributes to the funding and resourcing of Mana Whakahono ā Rohe to enable planning committees to comply with their obligations and to ensure iwi and hapū aspirations and expectations are met. Funding support from Central Government would also support the Crown’s commitment to its Treaty partnership. 	
<p>16. Rural activities are treated inequitably</p>	<p>The Resource Management Group (RMG) Reform Group has suggested that examples of inequitable treatment of rural and urban activities proliferate the Bill. In general, they say rural activities are required to internalise effects while urban activities are subject to broad exemptions.</p> <p>This issue is also raised in MfE’s SAR, which considers that the impacts for the primary sector and rural economies are likely to be wide ranging due to the objectives of the reform process being to improve environmental outcomes. (The associated costs and benefits are yet to be assessed).</p> <p>Some of these aforementioned concerns are already obvious in the freshwater and indigenous biodiversity protection policies and regulations under the Bill. And while some provisions may be further developed under the National Planning Framework, serious concerns remain with respect to the Bill.</p> <p>Councils, for example, are extremely concerned about the implications for the West Coast of new policy provisions in the NBE Bill related to Highly Vulnerable Biodiversity Areas (HVBA). The Councils are not aware of previous consultation on these provisions in earlier consultation documents on the Bill, and have not had the opportunity to provide earlier feedback on them.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>The Councils are also very concerned about the reform process exacerbating inequities and imposing disproportionate burdens on the West Coast. Disproportionate burdens are especially concerning given that the West Coast is mainly a rural region. A substantial proportion of West Coast rural landowners, for example, will bear the costs of implementing reformed policies and regulations, and administering the NBE and SP Bills; but due to their larger rating base, these reforms will not affect people living in larger urban environments to the same extent.</p> <p>As another example of inequity, those living in urban areas which were once significant wetlands but are now lost or degraded are not required to contribute (financially) to wetland restoration or reinstatement, either in a communal space in the city, in their back yards, or on the West Coast. However, those living in rural areas with a wetland remaining on their land must bear the lost opportunity cost of retaining their wetland (unless the Government provides economic incentives for maintaining wetlands, for example, as carbon sinks).</p> <p>Recommendation 16: A primary production, and rural, sector-specific cost benefit analysis of transition to the new system at the regional and local district levels is required.</p>	
<p>17. Governance and accountability by local authorities is eroded while local authorities are burdened with funding new governance structures (including RPCs)</p>	<p>Under the proposed legislation, responsibilities for preparing plans will transfer from councils to a Regional Planning Committee (RPC). RPCs will be responsible for preparing a Regional Spatial Strategy (RSS) [regional strategic direction] and the Natural and Built Environment (NBE) plan.</p> <p>The West Coast Councils will no longer prepare plans for the natural and built environment; but they will be responsible for implementing and administering NBE plans.</p> <p>With responsibility shifting to the RPCs for decision making and planning purposes, it is highly likely that there will be a loss of regional and local accountability and local community voice, insofar that councils and local communities will have a reduced influence over critical decision-making about their unique place.</p>	<p>Explanatory Note</p> <p>3</p> <p>107</p> <p>643(1)(b)</p> <p>647</p> <p>Schedule 8</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>In addition, developing an all powerful and influential RPC that may become the de facto regulator of the natural and built environment, regional transport infrastructure, community infrastructure, and the council's assets, may mean that the RPC itself decides on the allocation of Council's funds without giving effect to the interests of local communities or ratepayers; or going through a more meaningful investment and 'sustainable development' process through the LGA process. As a result, there would be broad inconsistencies with the Sustainable Development Goals, the LGA, and local authority mandates.</p> <p>Regional councils have a proxy ability to contribute to decision making, and the plan making process, through the development of Statements of Regional Environmental Outcomes (SREOs) [and the District Councils may contribute Statements of Community Outcomes (SCOs)]. The RPC must have 'particular regard to' these SREOs and SCOs in developing the content of NBE Plans, but from a West Coast Council perspective 'particular regard to' this input is insufficient for it to manage risk exposure, minimise variance, or offset financial and investment losses.</p> <p>The Councils support the SREOs being optional under clause 643(1)(b) of the NBE Bill.</p> <p>The Councils suggest there should be an elevated role for local authorities in the planning process, which includes policy formulation and decision-making, particularly in the development of RSSs and NBE Plans. Maintaining their responsibility for policy formulation; "ensuring that rates are set in accordance with decisions that are made in a transparent and consultative manner"; and "providing for processes and information to enable ratepayers to identify and understand their liability for rates", is also consistent with the purpose of the Local Government Act (LGA) and the Local Government (Rating) Act (LGRA). Councils must have an adequate input to this reform process if they are to implement and administer it.</p> <p>Despite RSSs and NBE plans being developed at 'arm's length' from the Councils, possibly by teams of expensive consultants and contractors, the Councils will still have to continue to follow through the plan development process; implement and administer the plans; commit to new provisions for consenting and compliance, monitoring and enforcement; and find incremental funds to implement core parts of the new system.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Regional and district councils bring different skillsets and expertise, and a strategic local view must be accounted for in the representation model for Regional Planning Committees (RPCs).</p> <p>The Councils support RPCs having a minimum of 6 members (with a minimum of 2 iwi members).</p> <p>The Councils suggest that the RPC be supported by an expert advisory panel that can provide advice to the Committee on respective matters as and when needed. The advisory panel should include a Department of Conservation (DoC) representative if the matter relates to the coastal marine area.</p> <p>The SP Bill does not clearly outline the composition of an RPC for developing a RSS. This should be made clear in the Bill, and the Council's suggest a single composition arrangement for this.</p> <p>There is also no provision for the RPC to design its own RSS development and engagement process.</p> <p>RPCs are not rate-setting authorities under the Local Government (Rating) Act (LGRA), and by virtue of the LGRA, RPCs have no authority over local authorities with regards to setting rates to cover the costs of the RM reform process or the RPC process. The LGRA is specific as to who can set a rate. Notwithstanding, both the NBE and SP Bills are doing precisely this: they are indirectly setting a rate because they are increasing costs for local authorities.</p> <p>By virtue of the NBE and SP Bills, a RPC may direct where the local authority has responsibilities and by proxy set the rate. This will establish a dangerous precedent by increasing risk exposure for local authorities, local ratepayers, and West Coast communities, especially if councils are not adequately represented or heard on the RPC; or not represented at all.</p> <p>Feedback 1:</p> <p>a) The Councils oppose the Regional Planning Committees (RPCs) having policy formulation, plan-making, and decision-making roles for developing regional strategies, long-term plans, regional resource use plans, and the one region-wide NBE Plan as proposed in the NBE and SP Bills, because the delegation of these decision making powers creates a disconnect with councils powers to set</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>rates based on transparent consultation, informed decision-making and ratepayers ability to pay;</p> <p>b) If the provisions for RPCs are retained in the NBE Act, the Councils support RPCs having a minimum of 6 members (with a minimum of 2 iwi members).</p> <p>Recommendations are given throughout the submission with respect to the structure of the RPCs.</p> <p>Recommendation 17: As to the responsibilities and operations of the RPC, if the provisions for the establishment of RPCs are retained in the NBE Act, that:</p> <p>a) Plan making is not delegated to the RPC;</p> <p>b) All RPC members should be remunerated by central government;</p> <p>c) The Spatial Planning Act (SPA) provides for the RPC to design its own Regional Spatial Strategy (RSS) development process and to make provision for a local engagement process;</p> <p>d) The voting process within the RPC be based on unanimity; and</p> <p>e) Resources and reasonable timeframes are allocated to ensure informed decision making and plan making based on the evidence. For example, in the case of the West Coast, resources and adequate timeframes are required to make planning provisions for natural hazards.</p>	
<p>18. Council strongly suggests an alternative structure for the proposed RPC</p>	<p>The West Coast Councils strongly suggest an alternative structure for the proposed RPC.</p> <p>Regarding representation on RPC's: Any committee making decisions or setting directions that impact District Councils, and their districts, needs representation from all Councils. With the West Coast being a large land area there are different things that work and don't work for each of Grey, Westland and Buller communities and district representation is key.</p> <p>The Councils oppose central government membership on the RPC for the development of a RSS for the West Coast. If the central government representative is from a central government department which regularly submits on the WCRC's Regional Policy Statement (RPS) and regional plans, for example, the Department of Conservation (DoC), there will be a clear breach of professional conduct. Due to the obvious conflict of interests, it is inappropriate and unjust for DoC to be both a submitter and creator of the RPS or NBE Plan by virtue of being a member of the RPC.</p>	<p>Explanatory Note</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 18: If the provisions for Regional Planning Committees (RPCs) are retained in the NBE Act, that provision is made for the following, either in the NBE Act or in an Order in Council:</p> <ul style="list-style-type: none"> a) That the intent of the Explanatory Note be carried forward into the body of the bill insofar that “RPCs will be established as committees of all councils in the region”; and that a minimum of two members per council be appointed. One of these members from each council should be an elected member; b) That representation is reflective of iwi as the Treaty Partner within their respective takiwā, with there being a minimum of two iwi members on the RPC. Subject to agreed guidelines, mana whenua will appoint mana whenua representatives; c) That the appointment of the RPC Chair is subject to a transparent process, and a unanimous vote with 100% of all councils and iwi in the region voting in the affirmative; d) That there is no Central Government or Department of Conservation (DoC) representative on the RPC under the NBEA or SPA, which means no DoC representative on the RPC for Regional Spatial Strategies (RSSs); e) That the RPC is supported by an expert advisory panel funded by Central Government to provide advice to the Committee on respective matters as and when needed. A DoC representative may be included on the expert advisory panel if the matter relates to the Coastal Marine Area. 	
<p>19. Clarity required on the future role for the Ministry for the Environment and NBE Regulators</p>	<p>While the Ministry for the Environment (MfE) was responsible for “administering” the RMA, no such provision is provided for in the NBE and SP Bills. The Bill provides that Councils will become an ‘administrator’ and ‘implementer’.</p> <p>The Explanatory Note to the NBE Bill refers to the Ministry as an ‘auditor’ of NBE Plans, and under ‘functions, duties and powers of Ministry’, the Ministry is to prepare and issue guidance to assist NBE regulators. Clarity is required as to who will administer the Act(s).</p> <p>Various parts of the Bills give the yet-to-be-designated Minister specific responsibilities, for example, to direct the content of the National Planning Framework, and to consider requests for exemptions from meeting environmental limits. These responsibilities, and the processes involved, need to be clearly articulated and well understood.</p>	<p>694</p> <p>723</p> <p>741-744</p> <p>786</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Clarity is also required on the establishment of the new 'NBE Regulators'. There is a need to understand their function, responsibilities, and processes involved, at the enactment of the Bills and into the future, and who is going to fund them.</p> <p>Recommendation 19:</p> <ul style="list-style-type: none"> a) That Parliament provides clarity on the role of the Ministry for the Environment in relation to the new Bills; b) That Parliament also provides clarity on the rationale for central government setting up yet another new regulator ('NBE regulators'); and c) That Parliament also clarifies responsibilities, operational, financial, process, and funding considerations and provisions for NBE Regulator's new and intended roles. 	
<p>20. Provision for RPC to be able to legally challenge local authorities; fine local authorities; or commence or be a party to legal proceedings against local authorities, is not supported</p>	<p>Whether the RPC will have legislated authority to fine or sue council's is an important question. The Bill, for instance, extends powers to the RPC to 'act independently' of councils; and gives the RPC 'separate legal standing'. Clause 100 (3) provides that "A regional planning committee must, in performing or exercising its functions, duties, and powers under this Act and under the Spatial Planning Act 2022, <u>act independently</u> of the host local authority and other local authorities in its region, in accordance with the local authority within which the planning committee operates (host local authority)" [underlining for emphasis]. Clause 100 (4) provides that "A regional planning committee has <u>separate legal standing</u> from its constituent authorities and organisations for the purpose of commencing, or being a party to, or being heard in legal proceedings" [underlining for emphasis].</p> <p>In essence, by creating the RPC as a separate legal entity and delegating powers of decision making and plan making from councils to the RPC; and creating new powers of implementation and administration for councils, opens the door to whether an RPC will be able to fine local authorities; or commence or be a party to legal proceedings against councils.</p> <p>The Councils strongly oppose being open to legal challenges and legal proceedings for decisions over which they have little to no control. Such practice is not 'good practice'. Nor is it consistent with using consultations or alternative dispute resolution processes, such as, mediation, to try and resolve differences and conflicts.</p>	<p>100 (3) NBE Bill</p> <p>100 (4) NBE Bill</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Specific problems may arise, for example, where national direction is very impracticable to implement in a district or region. The probability of this problem arising is high, especially when a 'one size fits all' approach is taken in the national direction with little to no consideration of local or regional variations. Rather than mounting a legal challenge, there are other tools available if a local authority contravenes a national direction for no good reason.</p> <p>In the absence of due regulatory process, another messy business could arise if one NBE Regulator (the RPC for instance) were to take action against another NBE Regulator (such as, the Councils) on regulatory process matters.</p> <p>Rather than stream-lining processes, these examples further illustrate how, in their current form, the proposed reforms add complicated and costly processes to resource management. In their current form, the Bill's relevant provisions covering these matters are likely to increase cost-ineffectiveness and inefficiencies. What is done in haste is sometimes done carelessly. The reform process should therefore slow down and take a methodical approach to introducing and managing change.</p> <p>Recommendation 20: The RPC should not have legislated authority to mount a legal challenge against local authorities; fine local authorities; or commence legal proceedings against local authorities if they do not abide by national directives, the RSS or NBE Plans.</p> <p>Recommendation 21: That councils be protected from legal proceedings insofar that no action should lie against any member of the Council, or its Governance Committees, for anything they say, do, or omit to say or do while acting in good faith in the performance of their duties.</p>	
Duties and Restrictions (Part 2, NBE Bill)		
21. Clarification is needed between the Effects Management Framework (managing negative externalities), and the	<p>Managing adverse effects will remain an important feature of the new resource management system, but it is unclear how managing adverse effects will sit with the system outcomes. It is also unclear what happens when adverse effects are contrary to outcomes or stated limits.</p> <p>Managing negative externalities through an Effects Management Framework (EMF) was one key contributor to sustainable management under the RMA's Part 2 Principles and Purpose. But we should not assume that</p>	<p>5</p> <p>14</p> <p>61</p> <p>62</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
Effects Management Hierarchy	<p>requiring the promotion of a broad range of unprioritised, iterative ‘plan outcomes’ to ‘system outcomes’ is necessarily going to achieve these ‘system outcomes’ in and of themselves (an example of the implications is below). Instead, Parliament needs to reach broad agreement on the core principles, purpose, elements and framework of environmental protection and enhancement that must be put in place and limit the scope for Ministers to change them every three years; and underpinning provisions need to be consistent with the purpose and principles.</p> <p>The Effects Management Framework (EMF) provided for in clause 62 of the NBE Bill applies to adverse effects on significant biodiversity areas and specified cultural heritage. And provisions covering the National Planning Framework (NPF) direct that the EMF may apply to other areas. The Effects Management Framework also refers to managing adverse effects through duties (and it includes a different effects management hierarchy in relation to different duties). In some places, the Bill refers to “Avoid, minimise, remedy, offset, compensate”; in other places it refers to “avoid, remedy, mitigate, offset, redress”; and in others still it provides for “avoid, remedy, mitigate”. Not only will the RPC be completely confused in making plans designed to achieve ‘system outcomes’ but so will any Independent Hearing Panel. Council suggests that references to the EMF should be clear and consistent throughout the Act. This does not mean that the effects management hierarchy should be made the same as the EMF, which is very restrictive.</p> <p>The Bill's provisions are hard to follow due to different hierarchies and conflicting duties; and these ‘conflict of norms’ will have a flow on effect to ‘system outcomes’. This is also concerning when administering and implementing the Bills, for example, when trying to apply the EMF or the effects management hierarchy to assessing effects of activities affecting highly vulnerable biodiversity areas. In brief, inconsistencies in the Effects Management Hierarchy would be a recipe for disaster. There should be transparent and consistent hierarchy for management of adverse effects.</p> <p>Recommendation 22:</p> <p>a) The terms used in the Effects Management Framework (EMF), and in the Effects Management Hierarchy (EMH), should be consistent throughout the Bill (this does not mean that the EMF and the ‘effects management hierarchy’ are the same);</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	b) Ensure that offsetting and compensation are provided for in the Natural and Built Environments Act (NBEA), as part of the Effects Management Hierarchy and the Effects Management Framework.	
National Planning Framework (NPF) (Part 3, NBE Bill)		
22. National Planning Framework – clarification required	<p>The National Planning Framework (NPF) should provide clear direction to regional councils and territorial authorities (TAs) as to what their roles will be.</p> <p>The Councils cannot provide informed feedback on the National Planning Framework (NPF) until more information about its content is made available. It is not known how much the existing National Policy Statements (NPSs) and National Environmental Standards (NESs) will change to fit into the NPF. Since the NPF is not yet released, this makes it difficult to provide useful comments on the “environmental limits” provisions in the NBE Bill. The Government should provide more information at this stage, so councils can provide meaningful feedback on the environmental limits.</p> <p>Recommendation 23: That Central Government provides clarification on what will be in the NPF as soon as possible.</p>	
23. Ensure that iwi values and aspirations are recognised and mana whenua are engaged in developing the NPF	There will be a need to ensure that iwi values and aspirations are recognised and mana whenua are engaged in developing the NPF.	
24. Limits and targets should be provided for the built environment, including housing affordability limits and supply of affordable housing	<p>One of the core objectives of the NBE Bill as stipulated in the Explanatory Note, and therefore presumably intended to be provided for in the substantive part of the Bill, is to “better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure”. However, as drafted in its substantive provisions, the Bill does not require built environment limits, and it has no adequate limits to provide for the matters mentioned above.</p> <p>It is also not clear what happens if targets change, and who bears the additional cost of more stringent core objectives, limits, and targets.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 24: That limits and targets, including limits and targets for housing affordability and supply of affordable housing, be provided for the built environment.</p>	
25. Regionally appropriate limits needed	<p>The Councils are concerned that the environmental limits in the National Planning Framework (NPF) will be appropriate in some regions but could have perverse outcomes in other regions. For example, the four West Coast Councils submitted on the National Policy Statement for Indigenous Biodiversity (NPSIB) Exposure Draft in July 2022 raising concerns about Part 3.16 of that draft, which refers to Maintaining indigenous biodiversity outside Significant Natural Areas (SNAs).</p> <p>By reference to that submission, Part 3.16 of the NPSIB Exposure Draft <i>“has wide application and requires that indigenous biodiversity (other than Significant Natural Areas, SNAs) must be maintained by the Councils. This will be a considerable undertaking on the West Coast and the very good condition overall of the indigenous biological diversity on the West Coast does not warrant this lower level of management to non-SNA, given the extent [of area] that is already protected in public conservation land (PCL), QEII covenant, and other protection mechanisms. These provisions are onerous for the West Coast as they will have the effect of treating non-SNA areas as if they are SNAs. Any adverse effects on an area of indigenous biodiversity not classified as an SNA will have to be managed applying the effects management hierarchy, and then it is caught by the ‘no net loss’ provision.</i></p> <p><i>Of note, the application of the effects management hierarchy applies regardless of the scale or significance of the adverse effects, which may be irreversible. There is no requirement for regions with minimal indigenous biodiversity to increase their indigenous vegetation cover and indigenous biodiversity habitat and ecosystems to approximately 90+% of their region, which is what Part 3.16, in tandem with other provisions, by implication, requires of the West Coast.”</i></p> <p>The Councils reiterate their concern that ‘one size does not fit all’. The environmental limits in the NPF must be flexible to provide for regional differences.</p> <p>A degree of flexibility could be achieved by amending clause 44 (exemptions from environmental limits may be directed) and clause 45 (essential features of exemption) of the NBE Bill. Under these provisions, the responsible Minister may direct an RPC’s request for an exemption from an environmental limit to ecological integrity; and</p>	44-45

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>the responsible Minister must progress the direction as a change to the NPF. The Councils suggest that flexibility may be achieved were the responsible Minister to provide exemptions from meeting an environmental limit in the NPF that is not relevant to, or achievable on, the West Coast. This exception, and funding it through central government, would be consistent with Council's proposed changes to the NBEA's Purpose Clause and the insertion of a special and differential treatment clause.</p> <p>The Councils support in principle the option to obtain an exemption, subject to having more information on how this will be implemented, and the cost to the Councils.</p> <p>The Councils are aware that mahinga kai is fundamental to the identity and wellbeing of Ngāi Tahu whānui. The NPF limits need to be flexible enough to provide for mahinga kai in a way that is appropriate to the regions which are within the Ngāi Tahu takiwā.</p> <p>Feedback 2: The Councils support the use of qualitative and quantitative methods to set environmental limits and the use of mātauranga Māori to set limits. Regional limits must be set in partnership with iwi.</p> <p>Recommendation 25:</p> <ul style="list-style-type: none"> a) That regional differences are provided for when setting environmental limits to protect the natural environment and provide for current and future generation's wellbeing. These limits must be set in partnership with iwi; b) That the prescribed environmental limits, and environmental outcomes, must include mahinga kai; c) That indigenous biodiversity limits set at the national level will be flexible enough to allow for regionally appropriate limits; d) That MfE provides more and sufficient information to the Councils so that the Councils may consider and comment on how the proposed exemption from an environmental limit mechanism will function and be implemented; e) That the Councils proposed changes to the exemption clauses (reference, for example, clauses 44 and 45) are extended to give effect to special and differential treatment for the West Coast. 	
26. Provision required for local decision making	The Councils have concerns around what types and scale of environmental conflicts will be determined at the national level vis-à-vis the regional and local levels. The Councils seek to retain the ability to use local decision-making, including local decision-making about	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>community health and wellbeing, to resolve environmental conflicts. Councils could then lodge their respective resolutions to resolve environmental conflicts with the RPC.</p> <p>If National Policy Statements (NPSs) and National Environmental Standards (NESs) are within the proposed National Planning Framework (NPF), then some conflicts may be resolved at the national level already. There will, however, remain a need for local engagement, and to recognise and uphold the principle of subsidiarity, which means that decision making is made as close to local communities as possible. In this sense, central government has a subsidiary function, performing only those tasks which cannot be performed at a regional or more local level. Central government intervention is thereby ruled out when regional and district councils can deal with a matter more effectively through regional policy and rules. In turn, local government retains a degree of independence in relation to central government while sharing certain powers.</p> <p>Recommendation 26:</p> <ul style="list-style-type: none"> a) That the NPF includes a process to allow local priorities to be set and local decision-making to resolve environmental conflicts. b) Ensure there are provisions in the NBEA for good local governance and representation in plan-making and decision-making processes. 	
<p>27. Councils seek to be engaged in a co-design process for developing the National Planning Framework</p>	<p>The Councils are concerned that there are limited opportunities for local authorities to be involved in the development of the National Planning Framework (NPF). The process for developing the NPF is not a collaborative or co-design process with local authorities. Collaboration and co-design would be the Councils preference, given the broad ambit of the NPF, and the significant implications that national direction has at the regional and local level.</p> <p>Recommendation 27:</p> <p>A collaborative, co-design process is made available for councils to participate in the development of the National Planning Framework.</p>	
NBE Plans (Part 4, NBE Bill)		
<p>28. Relationship between 'Engagement Agreements' and 'Mana Whakahono ā</p>	<p>According to the NBE Bill, a Regional Planning Committee (RPC) must initiate engagement agreements for developing its first NBEA plan. Clause 11 of Schedule 7 provides for the RPC to invite iwi authorities, hapū representatives and other mana whenua groups to enter into one or more engagement agreements. It is not clear, however, if an engagement agreement is required</p>	<p>Schedule 7, subpart 2</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
<p>Rohe Participation Arrangements 'to be clarified</p>	<p>where mana whenua representatives are already on the RPC, and if engagement agreements should only be with iwi and customary marine title owners. It is also unclear where the Mana Whakahono ā Rohe Participation Arrangement between the West Coast Regional Council and Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, and Te Rūnanga o Ngāi Tahu sits in relation to the engagement agreement provisions.</p> <p>The WCRC's iwi partners, Poutini Ngāi Tahu (PNT), would not want two agreements if equivalent provisions are already in their Mana Whakahono ā Rohe Participation Arrangement; but they would like to have the flexibility to choose whether to enter into an engagement agreement as well as their Mana Whakahono ā Rohe Participation Arrangement. This decision will depend on what exactly an 'engagement agreement' is; and what the new processes will entail in terms of resources and funding. Before making any decision about this, PNT have requested to see what an engagement agreement would cover outside of a Mana Whakahono ā Rohe Participation Arrangement. If provisions are already incorporated in Te Tai Poutini/West Coast Mana Whakahono ā Rohe Participation Agreement, and PNT do not want an additional engagement agreement, then the parties should not have to develop a secondary arrangement. PNT were working on the Mana Whakahono ā Rohe arrangement from 2017 and, like WCRC, are very proud of what they have achieved with the Mana Whakahono ā Rohe Participation Arrangement.</p> <p>Recommendation 28: That Central Government clarifies the relationship between 'Engagement Agreements' and 'Mana Whakahono ā Rohe Participation Arrangements' in the NBE Bill. Central government must clearly communicate its intentions re the terms arrangement versus agreement to avoid any confusion or ambiguity. (If provisions are already incorporated in Mana Whakahono ā Rohe Participation Arrangements, then the Parties should not have to develop a secondary arrangement unless they want to do so).</p>	
Resource Consenting and Proposals of National Significance (Part 5, NBE Bill)		
<p>29. A link is required between regional strategies, Councils' long</p>	<p>Strategic direction for the region, vision, objectives provided for in the SP Bill, and policies provided for by virtue of both the NBE and SP Bills are disconnected from consenting. Furthermore, there are aspects of consenting, compliance, monitoring and enforcement, which are driven through councils' Long Term Plan</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
term plan process, and consenting, compliance, monitoring and enforcement.	<p>process, and which require a link between the NBEA and the Local Government Act (LGA).</p> <p>Recommendation 29: That a process link is made between regional strategies, councils' long term plan process and consenting, compliance, monitoring and enforcement and provided for in the Bills; and central government must clearly communicate its intentions re the terms arrangement versus agreement to avoid any confusion or ambiguity.</p>	
30. Revised activity categories should be subject to guidelines	<p>The Councils neither support or oppose categorising activities as permitted, controlled, discretionary and prohibited activities, and no longer having restricted discretionary or non-complying activities. However, guidelines and conditions for determination of applications should remain.</p> <p>Considerable work will be required of councils to decide whether a current restricted discretionary activity rule in their district or regional plan should become a controlled or discretionary activity, and then to change the plan rules accordingly. The Councils question whether the time needed to change rule categories for the NBE plan have been taken into account when setting the two-year timeframe to develop NBE plans.</p> <p>Recommendation 30:</p> <ul style="list-style-type: none"> a) Guidelines and conditions for making determinations on consent applications under the amended activity categories should be developed. b) Extend the two-year timeframe for developing NBE plans to allow sufficient time to change activity categories, so they are consistent with the NBEA categories. 	153 154
31. Processing Permitted Activity Notices would require additional resources and new processes, which would come at an extra cost, but implications unknown until implemented	<p>The Councils oppose the provision requiring councils to issue Permitted Activity Notices for permitted activities. We agree with Te Uru Kahika's draft submission point: "Permitted Activity Notices add a new bureaucratic process for councils and is not likely to create efficiencies."</p> <p>Processing Permitted Activity Notices would add a new administrative layer for councils and require extra resources and funding; but councils will not really know the implications until they are implemented. The West Coast Councils have such a small staffing level they would need to find more staff.</p>	302 303

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
– remove from Bill	Recommendation 31: Remove the Permitted Activity Notice provisions from the NBE Bill.	
32. Processing redefined Controlled Activities will incur extra costs - a clear definition required and for the Councils not to incur extra costs	The Councils note that Controlled Activities are defined differently under the RMA and NBE; and they are concerned with this difference given the extra resourcing and processing costs to be incurred by local government under the proposed RM reforms. Recommendation 32: That the new Controlled Activity category is defined clearly in the NBE Bill, and that Council work on the new Controlled Activity category must be funded by Central Government and not incur extra costs for the Councils.	
33. The ability to assess an applicant's prior record is a positive step	The Councils support the new provision that enables councils to assess a consent applicant's prior record of managing their resource use activity. Being able to assess an applicant's prior consent record is a positive step forward because this enables the broader context to be taken into account. For example, a cumulative number of abatement notices may demonstrate a pattern of poor operation. Conversely, a history of good practice with compliance, and with complying with their consent conditions, means less likelihood of needing compliance monitoring. These understandings will enable compliance staff to prioritise monitoring of poor practice with potentially larger adverse effects. Recommendation 33: Retain the new provision in the NBE Bill that enables councils to assess a consent applicant's prior record of managing their resource use activity.	
34. Consenting allocations should be determined at a local level	The West Coast Councils agree that there are delays in the current consenting process, especially concerning affected parties, and that inconsistencies across councils need to be addressed. For the most part, the RMA does not contain specific provisions to guide decision-making about resource consent allocation. Case law has developed to fill the void and developed the 'first-in, first-out' or 'first-in, first-served' principle. In other words, the first application for a resource consent received by councils must be heard and decided on first. The 'first-in, first-out' system has its advantages and disadvantages and should be considered as part of the reform process. For example, consent officers should be able to determine which consent applications should be addressed at a particular time subject to council agreed outcomes and local circumstances. Making things even across the board	87 88

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>does not work as the regions are different and have different priorities for resource use activities.</p> <p>The NBE Bill proposes to have requirements in the National Planning Framework that will direct how consent applications for resource use will be allocated. However, consent officers should be able to determine which consent applications should be addressed at a particular time, subject to Council agreed outcomes and local circumstances.</p> <p>Recommendation 34: That Clauses 87 and 88 of the NBE Bill, giving the National Planning Framework the power to direct how consent applications for resource use will be allocated, are removed from the Bill and the Act.</p>	
<p>35. System Inefficiencies to be addressed (comment from RMG reform subgroup supported and examples as to how to improve efficiencies embedded throughout submission)</p>	<p>According to the Resource Management Group's Reform Subgroup, both Bills are process-heavy with the potential for reduced system efficiency. The Councils agree with this view; and have provided examples throughout this submission.</p> <p>Some proposals to standardise parts of the system could in fact reduce system efficiency. For example, requirements to publicly notify all discretionary activities, Permitted Activity Notices and Compliance, Monitoring and Enforcement strategies.</p> <p>Feedback 3: Both Bills are process-heavy with the potential for reduced system efficiency.</p>	
<p>36. Increased Consenting (including document processing of 'notices'), Notifications, and Authorisations increases processing times and costs and reduces system efficiency – these provisions are not supported</p>	<p>Clause 200 of the NBE Bill provides that the National Planning Framework or plans must set the notification status for a resource consent at the time the plan is developed. However, councils need to be able to make notification decisions on a case-by-case basis. If choice is not provided in the Bill for the West Coast Councils concerning the notification process, then the Councils may be faced with a lot more notifications and potentially more hearings. The West Coast Councils have limited need for notifications, but they do occur, for example, new green field mines and big hydro schemes would need to be notified; but if everything needs to be notified then the Councils do not have the capacity or resources to manage more hearings, especially where the Regional Council has to take the lead.</p> <p>Requiring plans to set notification statuses at the time of plan development risks a less effective and efficient system.</p>	<p>200</p> <p>275, 276</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Plans cannot anticipate all possible consent proposal scenarios, and applications for the same activity can have markedly different effects in terms of type, scale, and significance.</p> <p>A potential outcome of setting plan notifications at the same time as developing the plan is that plans will have a high proportion of discretionary activities, with public notification as the default status. This approach as provided for by the new resource management reforms will increase processing times and costs and reduce system efficiency.</p> <p>Recommendation 35: Remove the requirement for NBE plans to set notification statuses at the time of plan development.</p> <p><u>Consent Durations</u> Consent durations for critical council infrastructure or functions, for example, flood engineering and biosecurity, should be exempt from the 10-year consent durations.</p> <p>Recommendation 36: Provide an exemption from the 10-year consent duration for critical council infrastructure or functions, such as, flood engineering and biosecurity.</p> <p><u>Consent Reviews</u> The ability to review the duration of a consent is useful and will provide regional councils with another tool to respond to the adverse impacts of lawful activities. However, a far broader range of tools, for example, compensation, is needed to support landowners transition to more sustainable land uses.</p> <p>Recommendation 37: Make provisions for compensation to support landowners transition to more sustainable land use.</p>	
37. Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions – marginal or temporary	The NBE Bill provides for councils to determine “temporary” and “marginal” non-compliance. These provisions will cost more money; and temporary and marginal non-compliance would need to be defined well in order for councils to give effect to clause 157 (reference ‘Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions’), and avoid being subject to more frequent legal challenges.	157

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
non-compliance needs defining	<p>Feedback 4:</p> <p>Subject to guidance being provided on how the terms “deemed”, “temporary” and “marginal” are to be defined; and that cost recovery and funding is provided by Central Government; and that local governments have the capacity to deliver and avoid being subject to more frequent legal challenges, the Councils support provisions under clause 157 in the NBE Bill, which is entitled ‘Consent authority may permit activity by waiving compliance with certain requirements, conditions, or permissions’ (reference clause 157 of the NBE Bill).</p>	
38. Key links in planning and implementation cycle weakened	<p>The Councils agree with Te Uru Kahika’s draft submission point: “The disconnect between NBE plans being developed by RPCs and implementation being done by councils, is likely to mean that the feedback loop from compliance / consenting staff back to RPC will suffer under the proposed system. This creates a risk that the RPC process will be slow to address urgent emerging issues (which can currently be addressed via notified consenting processes) which in turn might increase RPC reliance on discretionary activities.” The end result is further delay and increased costs and inefficiencies.</p> <p>Recommendation 38: In order to retain and strengthen the link between plan making and implementation, Councils must retain a key role in decision making and plan making.</p>	
39. Maintain the integrity of current permits and consents issued under the RMA or consider a fair and reasonable ‘grace’ period	<p>The Councils are concerned that there does not appear to be a fair and reasonable ‘grace’ period for all current permits and consents issued under the RMA to expire after the NBE Act comes into force. The WCRC does not issue mandatory common expiry dates for water permits, discharge permits or land use consents and does not support these permits and consents expiring three years after the NBEA 2022 comes into force. If this provision is retained in the NBE Act, it will be a real issue. It is noted that provision is made in Schedule 15 of the NBE to amend Schedule 12 of the RMA by inserting Part 6 provisions relating to the NBEA 2022.</p> <p>The Councils do not support these provisions because they have significant resourcing issues for regional and unitary consent authorities, they do not stream-line processes, and are not cost effective or efficient. A more resource efficient method would be for NBE plans to specify a fair and reasonable transitional approach.</p>	Schedule 15

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 39:</p> <p>a) That the NBE Bill is amended so that a fair and reasonable 'grace period' for all current permits and consents issued under the RMA is determined in consultation with councils; and</p> <p>b) That all permits and consents issued under the RMA remain current until a fair and reasonable transition date is set.</p>	
Matters Relevant to NBE Plans – Designations, Heritage, Biodiversity (Part 8, NBE Bill)		
<p>40. Councils are extremely concerned about the implications of regulating Areas of Highly Vulnerable Biodiversity, and offsetting and redress principles, on the West Coast</p>	<p>The Councils are extremely concerned about the implications of this new part of the NBE Bill on Areas of highly vulnerable biodiversity, as it applies to the West Coast. The Councils are not aware of previous consultation on these provisions in earlier consultation documents on the Bill; and have not had the opportunity to provide earlier feedback on it.</p> <p>Clauses 562-567 outline criteria for identifying highly vulnerable biodiversity areas (HVBAs), limits to activities within HVBAs, limits to exemptions, and the Minister of Conservation's power to declare critical habitat.</p> <p>It is unclear how these limits sit with the identification of terrestrial Significant Natural Areas (SNAs) and restrictions on activities within or affecting an SNA, in the upcoming National Policy Statement for Indigenous Biodiversity (NPSIB).</p> <p>It is also unclear how Schedule 3 Principles for biodiversity offsetting, and Schedule 4 Principles for biodiversity redress, sit in relation to the offsetting and compensation provisions of the NPSIB.</p> <p>Clause 567 is particularly concerning as it appears to give the Minister of Conservation almost unlimited powers to declare an area to be a critical habitat, regardless of whether it is on private or public land. There is no requirement in the Bill for the Minister to consult with the landowner about options, such as, DoC purchasing the land at market value, providing compensation for loss of economic value of the land at market rates, or discussing moving the habitat to another site on public land.</p> <p>The Bill's provisions could potentially have perverse economic and social outcomes for the West Coast if rare or critically threatened or endangered species are located on private land.</p>	<p>Part 8 Matters relevant to natural and built environment plans</p> <p>562-567</p> <p>Schedule 3 Principles for biodiversity offsetting</p> <p>Schedule 4 Principles for biodiversity redress</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Given the higher proportion of indigenous vegetation cover on private land on the West Coast compared to other regions, there is a reasonable risk of rare or critically threatened or endangered species' habitat occurring on private land. The Bill's provisions could also be inconsistent with Council's recommended system outcome for improved rural economic well-being.</p> <p>It is also extremely unjust for individual landowners to bear the cost of protecting and maintaining rare or critically threatened or endangered species on their land, when this is a matter of national importance, and all New Zealanders should bear the cost.</p> <p>Recommendation 40:</p> <p>a) That provisions relating to Areas of Highly Vulnerable Biodiversity be removed from the NBE Bill until DoC undertakes consultation with private landowners about rare or critically threatened or endangered species on their private land; these consultations must include consideration of options for DoC to purchase the land at market value, provide compensation for loss of economic value of the land at market rates, or move the habitat to another site on public land (reference clauses 562-567 of the NBE Bill).</p> <p>b) That Schedule 3 'Principles for biodiversity offsetting' and Schedule 4 'Principles for biodiversity redress' be removed from the NBE Bill until the matters in clause a) of this Recommendation are resolved, and the provisions of the National Policy Statement Indigenous Biodiversity (NPSIB) are known and consulted on.</p>	
Exercise of Functions, Powers, and Duties Under the Act (Part 10, NBE Bill)		
41. Function and structure of Regional Planning Committees (RPCs) requires further work	<p>The Councils agree with the Te Uru Kahika (Regional and Unitary Councils Aotearoa) regional sector draft submission point, that RPCs are very weakly accountable for the policy decisions they make under the proposed NBE Bill. Except via the optional SCO and SREO processes, and providing the RPC gives effect to SCOs and SREOs, which it is not obliged to do so, Councils, which are electorally accountable, may have little influence but will still be accountable for decisions made by the RPC and others.¹¹ Weak accountability of RPCs also breaks administrative, operational, and functional accountability. With respect to functional accountability and agency problems, for example, a</p>	

¹¹ Statements of Regional Environment Outcomes are to be prepared by Regional Councils (SREOs), and Statements of Community Outcomes prepared by territorial authorities (SCOs).

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>number of council staff will be employed by councils but will be working for, supporting, and reporting to an independent legal entity (the RPC), which may be making decisions, strategies, long-term plans, and rules, contrary to decisions made by their local or regional council employer.</p> <p>It is also unclear, following release of the RPC decisions on an NBEA plan (if it does make and release such decisions), as to who will act for the employer or agent; and as to who will fund legal proceedings, for example, if any appeals are lodged.</p> <p>The Councils are also concerned about councils having limited input to the RPC process but being accountable for nearly everything the RPC does. In their current form the NBE and SP Bills expose local authorities, including the West Coast Councils, to significant risk. (The Councils will be responsible for delivery and implementation of decisions that they may not necessarily make or agree with).</p> <p>Furthermore, the Councils do not support the option put forward in the Te Uru Kahika's draft submission, to make the secretariat of an RPC a central government agency. If the Secretariat includes providing planning advice and decision-making advice to the RPC, such advice from a central government secretariat is not likely to reflect the unique regional context of the West Coast. Furthermore, there would be a conflict of interests and a breach of professional conduct and ethics.</p> <p>Another way that the proposed structure of the RPCs is likely to undermine local government accountability is that local authorities may not be represented on the RPC or if they are represented, such as through a part-time contractor, that contractor may not have the requisite background in environmental law and policy, plan making, decision making or local issues. And even if they do have this background, they may not be able to influence the process if they are not fully engaged with the Councils and have no decision-making or voting powers.</p> <p>The transfer of a number of council's roles, beyond decision making processes and plan making processes, from councils to the RPC represents an additional major change to resource management. Certain powers will be transferred (or delegated) to the RPC, but the timeframes stipulated by RPCs for councils to undertake administration and implementation of NBEA plans, for example, may simply be unreasonable. Council</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>(ratepayers) will have to fund these incremental changes and as indicated by MfE's Impact Assessments, additional funding requirements are already significant and will be even higher when these extra costs are added.</p> <p>West Coast mana whenua Poutini Ngāi Tahu (PNT) have conveyed that taking responsibility away from the WCRC is not going to be a good thing for the Regional Council or its Resource Management Committee (RMC). PNT does not want plan making and decision making handed over to the RPC. According to PNT, the extra costs are disproportionate and a lot of functions, including planning, will have to be replicated. The Councils concur.</p> <p>The Councils are not convinced that a permanent move to this NBE-SP Bill model will be acceptable for a business-as-usual environment, where the public has expectations of electoral recourse for policy they deem unacceptable.</p> <p>Recommendation 41:</p> <ul style="list-style-type: none"> a) The function and structure of the RPC requires further work; b) The Bill should provide directly for local and regional council representation on the RPC and a voting structure that ensures each council's independent voice is heard and taken into account; c) That decision making and plan making powers, including powers to make the NBE Plan, remain with the Councils; d) That practice and process between governance and operations, and between the RPC and Councils, are improved; and, with respect to resolving conflicts of interest, that a Code of Ethics and Professional Guidelines are put in place. 	
42. Placing the RPC's mandate under the LGA rather than under the NBEA is not supported	<p>The Councils understand that the Taituarā submission seeks that RPCs be established under the Local Government Act (LGA). The West Coast Councils do not agree with this proposal. Simply placing the RPC's mandate under the LGA rather than under the NBEA will not resolve governance, structural, or operational issues either as all the decision-making powers would still remain with the RPC. Putting the RPC under the LGA could make matters worse. The LGA sets out reasons for Council's existence and setting the RPC under the LGA would give the RPC more power and diminish the local voice even further. Giving the RPC more power by putting it under the LGA would undermine local councils' responsibilities even further; and this is not supported.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Feedback 5: The West Coast Councils request it be recorded that they do not support placing the RPC's mandate under the LGA rather than under the NBEA.</p>	
Compliance and Enforcement (Part 11, NBE Bill)		
<p>43. Councils' responsibilities for consenting, compliance, monitoring and enforcement should remain – Councils do not support creating a new regulator</p>	<p>The NBE Bill introduces a new role for a 'NBE regulator' in terms of compliance and enforcement. A 'NBE Regulator' is a new term and remains undefined under the interpretation clause 7, other than by a reference to clause 694 (Part 11 Compliance and Enforcement), which then proceeds to define a 'NBE regulator' to mean, amongst other, "a local authority, a regional planning committee, and the EPA (Environmental Protection Authority), when acting under the NBEA".</p> <p>Clauses 723-730 are dedicated to explaining "enforceable undertakings". Clause 723, for example, proceeds to provide that a NBE regulator may accept enforcement undertakings. An undertaking generally refers to a commitment made by a professional, for example, by a lawyer, to do something: there are serious repercussions if undertakings are not followed through. Duties may also be held by duty holders, such as by the councils or by this new NBE regulator.</p> <p>Amongst other, an undertaking may include requirements as to compensation or penalties; or otherwise to take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from an actual or possible contravention or involvement in a contravention (clause 724).</p> <p>With the creation of a new regulator, the NBE regulator, there is a potential for compliance and enforcement undertakings to be moved outside of council responsibility to regional hubs (through the RPC) or to the EPA, further weakening local authority accountability and feedback to local communities. [There seems to be no direct reference to the "NBE Regulator" in the SP Bill; but the creation of this new institution, the NBE Regulator, will have implications for regional strategies, the Council's long term plan, and funding].</p> <p>Recommendation 42: The West Coast Councils request it be recorded that, in their view, provision should be made for Consenting, Compliance, Monitoring and Enforcement (CME) to remain a council responsibility.</p>	<p>7</p> <p>694</p> <p>723</p> <p>724</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
44. Improve policy effectiveness by linking monitoring provisions to science and local values	<p>The absence of provisions for policy effectiveness through monitoring linked to science and local values breaks the linkage between consent monitoring and state of the environment monitoring; and it weakens the role of science and community engagement in the policy cycle. Regional council input to these processes is critical. Council activity at the regional level is not merely an exercise in measuring an activity or allocation against an environmental plan; or Statements of Regional Environmental Outcomes (SREOs), it also requires a strong science component and the reflection of local values.</p> <p>Recommendation 43: That provisions be made for improved policy effectiveness by councils by linking monitoring provisions to science and local values.</p>	<p>Explanatory Note</p> <p>Part 11, subpart 6</p> <p>783</p>
45. Developing a new Compliance, Monitoring and Enforcement (CME) strategy (and strategy planning process) is not supported	<p>The Councils agree with the Resource Managers Group reform subgroup's comments insofar that in comparison to the RMA, increases in penalties for like offences committed under the NBE Act are positive and should help disincentivise poor practice.</p> <p>Requirements for local authorities to produce a Compliance Monitoring and Enforcement (CME) strategy in order to address 'perceived bias' may help address perceived biases in the system, but without results-based management, process, key performance indicators, and statutory weight, a strategy document may do little to drive improved environmental performance.</p> <p>MfE's Annual National Monitoring System (NMS) information requirements for Compliance Monitoring and Enforcement show that the West Coast Regional Council performs well. This form of annual reporting should be sufficient to address perceived biases, rather than requiring a new CME strategy.</p> <p>Some matters to be addressed in a CME strategy will be challenging to implement in practice, and will require extra resource, for example, provisions that require local authorities to set out how they will respond to incidents or "address incidents of non-compliance" require additional expert resourcing.</p> <p>Effective CME does not adopt a 'one size fits all' approach, it requires responses that are tailored to the circumstances of offending.</p>	649

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 44: Remove the requirement for a CME strategy on the basis that MfE's Annual National Monitoring System reporting on CME can address the 'perceived bias' problem.</p>	
<p>46. The Bill's Cost Recovery Provisions may open Councils to liability – they need to be carefully considered</p>	<p>Clause 781 provides for a cost recovery scheme for any reasonable costs incurred by a 'NBE Regulator' taking any action in connection with monitoring or enforcing a person's compliance under the NBEA. Interestingly, the provision does not provide solely for cost recovery by 'local authorities'. 'NBE regulator' is a new term and remains undefined under the interpretation clause 7 other than by a reference to clause 694, which then proceeds to define a 'NBE regulator' to mean, amongst other, 'a local authority, a regional planning committee, and the EPA, when acting under the NBEA'. With the Regional Planning Committee being responsible for decision making and plan making, there is no certainty as to whether there will be a full cost recovery scheme for all functions that a local authority undertakes by virtue of clause 781.</p> <p>Local authorities will be responsible for implementing and administering the NBEA and the setting of administrative charges is provided for in clause 821 with obligations on both local authorities and the RPC to fix fees or charges (administrative charges) payable in respect of certain functions performed under the Act. For example, a 'local authority must fix fees or charges for receiving, processing and granting consents; carrying out any inspection, monitoring, supervision or administration; and for issuing permitted activity notices'. And by virtue of clause 821(1)(i) 'A local authority must fix fees or charges (administrative charges) payable in respect of 'any other function that the local authority is required to perform'. Clause 821 therefore provides for a cost recovery scheme for virtually all functions that a local authority is required to undertake; but in doing so, the local authority will have to be particularly vigilant in ensuring consistency with the NBEA, the SPA, the National Planning Framework (NPF) and the NBE Plan.</p> <p>Moreover, without further resourcing, it is unlikely that the West Coast Councils can perform all new compliance, monitoring and enforcement functions under the Act. They don't currently, for instance, have the resource to monitor all permitted activities; and it would be unjust to charge those who happen to be in the monitoring sample and not others.</p>	<p>Part 11</p> <p>Part 12</p> <p>694</p> <p>781</p> <p>821</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 45: Setting of fixed fees or charges and a schedule for cost recovery needs further analysis, dialogue, and consultation with the West Coast Councils before the NBE and SP Bills are further developed.</p>	
<p>47. Emergency works and power to take preventive or remedial action should remain with councils</p>	<p>The RMA's section 330 provisions for Emergency works and power to take preventive or remedial action allow things to happen quickly when they need to. For example, when Westport flooded in July 2021, the West Coast Councils simply had to get flood protection works done. Immediate measures were required. Emergency works and power to take preventive or remedial action should remain with councils and not go through a Regional Planning Committee, which would be less than ideal particularly in an emergency situation like a cyclone or flood where councils have to respond as a matter of urgency.</p> <p>Recommendation 46: Emergency works and power to take preventive or remedial action should remain with councils and not go through the RPC. For example, in an emergency situation like a cyclone or flood councils have to respond as a matter of urgency. Furthermore, such plans for 'Emergency works and powers to take preventive or remedial action' should be easily and readily accessible, and extractable, from the proposed one NBE Plan.</p>	<p>Part 11</p> <p>751</p> <p>753</p> <p>Compare: section 330 RMA</p>
<p>48. New enforcement provisions should not start immediately after Royal Assent – start with an educative approach</p>	<p>The Councils do not agree with the Te Uru Kahika draft submission point suggesting that the commencement timeframe for the new Compliance, Monitoring and Enforcement provisions in the NBE Bill start immediately after Royal Assent. Te Uru Kahika's view is that if the new enforcement provisions are not 'live' on the same day, we would be in a perilous position of trying to apply enforcement provisions under one Act to achieve the purpose of a different Act. This, in their view, will not work. Whereas, it is a tenet of procedural equity, due process and a fair justice system that reasonable notice is given. Transitions should be provided for.</p> <p>Recommendation 47: Enforcement provisions should not start immediately after the NBE Bill is given Royal Assent. Rather than spring new and unknown enforcement measures on people, start with an educative approach, and once the new laws are embedded in, then take enforcement steps if needed.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
49. Offences: Fines to be paid to local authority instituting proceedings – Cost recovery makes sense	<p>As to the scope of fines to be paid to the local authority instituting prosecution, cost recovery makes sense, but full costs may never be fully covered.</p> <p>The Councils agree with the Te Uru Kahika draft submission point regarding the ability for fines to be paid to the authority instituting the prosecution.</p> <p>The RMA's Section 342 (1) approach, which provides some degree of cost recovery, has been widely adopted in instituting proceedings under the RMA, with the judiciary recognising that the cost of investigation and prosecution has been borne by the respective agency (and in the case of local government, by their ratepayers). The Councils submit that the RMA's s342 practice should continue to be enabled through the new NBE Act.</p> <p>Recommendation 48: That the current practice for cost recovery, under Section 342 of the RMA (Fines to be paid to the local authority instituting prosecution), is added to the new NBE Act.</p>	
50. Abatement & Infringement Notices should be provided for in RM Reform regulation	<p>The Councils agree with Te Uru Kahika's draft submission point that regulations are needed to enable Abatement & Infringement Notices to be issued. Abatement and Infringement Notices are an essential regulatory tool for dealing with non-compliance under the RMA. They will be no less important under the new Act: it is essential that the regional sector is able to continue to use these notices from the date of assent, subject to an educative approach being taken first as per our submission point above (reference submission point number 48), and that a fair and reasonable transition period is given to the new system. In its current form, the NBE Bill does not include the necessary regulations to enable abatement or infringement notices to be issued.</p> <p>Whether Abatement and Infringement Notices are provided for in the Act or accompanying regulations is not a big issue for the Councils as long as they are provided.</p> <p>Recommendation 49: Make provision for abatement and infringement notices under the RMA to continue until new regulations are in place.</p>	710 771 775

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
51. Keep regulation and principal legislation in sync	<p>Feedback 6:</p> <p>The Councils agree with Te Uru Kahika's draft submission point concerning keeping regulation and principal legislation in sync. It is critical that any required regulations regulating enforcement are amended at the same time as the principal legislation, as this will ensure that enforcement tools can be used, subject to the 'grace' period sought in our submission point above (reference submission point number 48).</p>	
52. Higher penalties will be a stronger deterrent for non-compliance	<p>The Councils agree with the Resource Managers Group reform subgroup's comments, insofar that in comparison to the RMA, increases in penalties for like offences committed under the NBE Act are positive and should help disincentivise poor practice.</p> <p>Fines for penalties have been significantly increased, to set a stronger deterrent towards offending. Increased penalties will help to cover the cost of investigations, helicopters etc.</p> <p>Penalties for obstruction of an enforcement officer should also be increased. The proposed penalty (clause 765(4)) has been carried over from the RMA (s339(3)), and the Councils consider that a maximum of \$1,500 is too low to provide any meaningful deterrence.</p> <p>Recommendation 50:</p> <p>That the penalty for obstruction of an enforcement officer should be increased to align with the maximum penalty under the Hazardous Substances and New Organisms Act 1996 (HSNO legislation), which is \$5,000 (section 114(3) of that legislation).</p>	
53. Water shortage direction required	<p>The Bill appears to have omitted provisions relating to the management of water shortages and issuing water shortage directions as provided for under section 329 of the RMA. The only reference in the Bill to a water shortage direction appears to be under powers of entry, which provides for checking compliance with a Water Shortage Direction (clause 790). However, there seems to be no clauses providing for the issuing of water shortage directions, and the breach of a water shortage direction has been removed from the list of offences under the NBE. It is not clear whether this is an intentional omission or an oversight. Regardless, the ability to issue water shortage directions is an important tool for managing water abstraction and protecting instream values during periods of drought.</p>	790

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 51:</p> <p>a) That an equivalent to s329 of the RMA is retained in the NBE Bill, and a breach of a water shortage direction remains an offence under the new legislation.</p> <p>b) All provisions relating to water shortage management should be together in the Bill.</p>	
Public Consultation and Enduring Submissions		
54. Make Public Consultation on draft NBE plans optional	<p>Recommendation 52:</p> <p>That public consultation on a draft NBE Plan is made optional.</p>	Schedule 7 clause 22
55. Enduring submissions not supported	<p>An Explanatory Note to the NBE Bill reads, “A new process allows “enduring submissions” to be lodged before notification of plans and throughout the plan hearings process. This will reduce complexity and repetition for participants.”</p> <p>The Councils do not support the new provisions for “enduring submissions” and believe that engagement with councils should be classified differently. The call for submissions should have a defined opening and closing date and follow notification of the NBE plan.</p> <p>Where a submitter seeks something that is not feasible or appropriate, it appears that someone making an enduring submission can also make a submission and a further submission, so the enduring submission option may not necessarily reduce repetition for participants. Instead, it will simply complicate process, and increase costs and inefficiencies.</p> <p>Councils should still be able to receive regular enquiries, and do stakeholder engagement, throughout the plan development phase, but these services need not equate to a formal submission. Until a draft or proposed plan is available, there may be no text to comment on. The Councils agree that it is important to have stakeholders engaged, but ‘enduring submissions’ would increase complexity and confuse participants.</p> <p>Furthermore, extra pressures would be put on councils to provide more staff to process ‘enduring submissions’ and this would come at an extra cost to local ratepayers, if not funded by central government.</p> <p>Recommendation 53:</p> <p>Remove the provisions for enduring submissions from the NBE Bill.</p>	Schedule 7: Preparation, change and review of natural and built environment plans, clauses 20-21

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
Monitoring, Maintenance of Plans and Future Plan Changes		
56. Monitoring, maintenance & review, and Plan Changes – consistency required	<p>The NBE Bill provides for a variety of new reporting, reviewing and plan change mechanisms. For example, each local authority must report to its relevant RPC every three years in accordance with clause 51 of Schedule 7; and each RPC must undertake a review of its NBEA plan for the region at least every 9 years consistent with clause 54 of Schedule 7. The NBE Bill also provides for three main types of plan change processes by initiating a request to the RPC. These plan change processes entail a ‘standard’ process, a ‘proportionate’ process, or an ‘urgent’ process under clauses 6-7 of Schedule 7. Independent plan changes may also be requested by any person other than a local authority under clause 69 of Schedule 7.</p> <p>Interactions between the NPF and the NBE Plan need to be worked through in terms of reporting, undertaking the 9-yearly review, and making plan changes.</p> <p>In terms of plan changes, the respective local or regional Council should agree that a plan change is necessary.</p> <p>Further, the process for managing a plan change should differ from the application for a consent (Schedule 7, 72(1)(b)). There needs to be consistency throughout the planning process as to how plan changes are managed, and provision should be made for this in the Act.</p> <p>The Councils oppose central government requiring plan changes; and this is another reason why a central government representative should not be on the RPC. It is unclear what situations would justify central government issuing such a direction.</p> <p>Recommendation 54:</p> <p>a) Ensure a coherent approach, process, and consistency throughout the NPF and NBEA in terms of plan monitoring and maintenance, plan changes, and plan review.</p> <p>b) That there be no provision in the NBE or SP Bill for central government to require councils to undertake plan changes. If such a provision is carried over into the NBE or SP Bill, then criteria or reasons for when a plan change may be required by central government must be added to the respective Bill, and the respective council must agree that a plan change is necessary and affordable to ratepayers.</p>	<p>Schedule 7, clauses 6-7</p> <p>Schedule 7, clause 51</p> <p>Schedule 7, clause 54</p> <p>Schedule 7, clause 69</p> <p>Schedule 7, clause 72(1)(b)</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
Implementation Transitions		
57. The Councils remain unconvinced that the NBE and SP Bills should remain as two separate bills operating out of sync; the Councils recommend a single NBEA	<p>The Explanatory Notes to the NBE and SP Bills explain that the NBE Bill intends to work in tandem with the SP Bill as a 'single integrated system'; but the body of the NBE and SP Bills are conflicting and make no provision for developing or implementing a 'single integrated system' in a coherent manner. There is no precise iterative relationship between the national and regional planning frameworks within the substantive part of these two Bills, and little indication as to how they will work in tandem. Many organisations have therefore made wild assumptions about how to interpret the Bills as a 'system' by applying their own steer on how the reforms should unfold. Setting strategic direction, visions, and strategic objectives is done in isolation of the planning process and will lead to fragmented planning outcomes.</p> <p>The Councils remain unconvinced that the NBE and SP Bills should be two separate Bills with the NBE Bill governing national and regional planning and major regional policy issues and the SP Bill governing regional strategies. If the two Bills are to operate as a 'single integrated system' then they should be formed as a 'single integrated system' from the start. Drafted as they are, as two separate Bills with conflicting norms and agendas, is prone to a 'conflict of laws'. There is a further danger that by separating strategies and policies from promoting positive outcomes, or managing adverse effects, there will never be a link between RSSs and outcomes to manage positive and negative externalities.</p> <p>Recommendation 55: That Central Government develop a 'single integrated' 'resource management system' and integrates the NBE and SP Bills into one Act for the Natural and Built Environment.</p>	
58. Transitional Provisions: coherent transition from existing processes, and timeframes for implementation required; and factored into funding provisions	<p>Transitional arrangements for existing plans are not clear in the Bill.</p> <p>The Ministry for the Environment is proposing a system of tranches for councils to commence staggered development of their RSS and NBE plan. However, these provisions are not provided for directly in either the NBE or the SP Bill.</p> <p>In effect, an Order in Council may be issued, as it was for the West Coast TTPP, at any time.</p> <p>The SP Bill provides that each RPC must publicly notify a draft of its first Regional Spatial Strategy (RSS) by either the seventh anniversary of the date of Royal</p>	<p>Schedule 7, clause 2</p> <p>Schedule 1, Part 1, clause (1)(1)</p> <p>SP Bill; Schedule 1, Part 1, clause (1), (1)</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>assent to the SPA (estimated as end 2030 given current announcements); or the Governor General on recommendation from the Minister may set the date for a RPC to publicly notify a draft of its first RSS by an Order in Council (Spatial Planning Bill, Schedule 1, Part 1, clause (1)(1)).</p> <p>The proposed ‘tranching’ approach to transition, however, will not allow for sufficient time between tranches to share and take on board learnings from the new planning processes.</p> <p>The Councils request that the Government provides clear timeframes as soon as possible about which tranche councils will be in.</p> <p>The Councils will not know if this timeframe can be met for developing and adopting a RSS for the West Coast until we know which tranche we will be in, and when we can commence the RSS development process. Without sufficient prior notice, it will be difficult for the Councils to budget adequately for the RSS process.</p> <p>New reforms, and new changes, may lead to councils being sued, and ratepayers will bear this cost. Central government should support the regional councils in transition and in implementation.</p> <p>The Ministry for the Environment is anticipating that there will be a transition period of around 10 years after the NBEA and SPA are enacted until all new RSSs and NBE plans are in force.¹² However, the transition period could be shorter for councils in the first tranche. The West Coast Councils would find it difficult to meet timeframes for developing the RSS and NBE plan if the transition period is less than 10 years. Given the stages that the West Coast proposed TTPP and regional plans are at in the RMA planning cycle, the Councils would really need to go in the last tranche to get the most out of our current RMA plans.</p> <p>Recommendation 56:</p> <ul style="list-style-type: none"> a) Clearer transitional provisions, and coherent transition from existing processes and timeframes for implementation, are required; b) Ensure that the timeframe for transiting from the RMA to the NBEA is a minimum of 10 years; 	

¹² Ministry for the Environment. 2022. Our Future Resource Management System: Overview – Te Pūnaha Whakahaere Rauemi o Anamata: Tirowhānui. Wellington: Ministry for the Environment, at Pg 20.

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	c) To enable councils to prepare annual and long-term budgets, Central Government must give councils plenty of prior notice as to which tranche they are in and when it will commence.	
59. 'Major Regional Policy Issues' – clarity required	<p>The purpose of 'Major Regional Policy Issues' as provided for in Schedule 7 of the NBE Bill is not clear. Guidance will need to be issued as to where they sit in the new planning framework and in relation to regional strategies and long-term plans (RSSs).</p> <p>As major regional policy issues are provided for in Schedule 7 for the development, change and review of NBEA plans, it is assumed that they will be added to the NBE plans. But it is unclear whether they are intended to have priority or greater weight over other policies in the NBEA plan, or over the vision and objectives to be incorporated into RSSs, which are covered under a separate piece of legislation. It is also unclear whether it means that the NBEA plan will also need to provide for major regional objectives in order to form a cascade between higher order norms and lower order norms that are typically used in resource management planning.</p> <p>In addition, there seems to be a disconnect between having a regional vision and objectives in an RSS governed by the SPA, and the major regional policy issues in an NBE plan governed by the NBEA.</p> <p>If the intent is that the major regional policy issues will come from the council's existing Regional Policy Statement (RPS), or are the equivalent to RPS policies, then this should be clarified. The Government should reconsider how having major regional policy issues in NBEA plans will work in practice.</p> <p>Recommendation 57: That Central Government reconsiders the role of 'major regional policy issues' and having them disconnected from regional strategies (RSS) and regional NBEA plans.</p>	Schedule 7
Schedule 7 Independent Hearings Panels Processes and Dispute Resolution		
60. Concerns re 'bias' in the selection of the Independent Hearing Panel (IHP)	The NBE Bill makes new provisions for an Independent Hearing Panel (IHP) to be established for each region, and for the IHP's principal function being to hear submissions on a proposed plan. The IHP will comprise a chairperson appointed by the Chief Environment Court Judge; and 3 to 6 other members appointed by the Chief Environment Court Judge from a regional pool of IHP candidates; and up to two additional other members from the regional candidate pool to be approved by the Minister for the Environment and appointed by the Chief Environment Court Judge.	Schedule 7, (Preparation, change, and review of NBE Plans) Part 3 for IHP process

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>The Councils suggest that all IHP members serve as 'Hearing Commissioners' and that a transparent appointment process, and the right structure for an IHP, agreed with local authorities, is necessary for making practical but legally robust recommendations on the evidence.</p> <p>The Councils are concerned, however, about the Bill introducing bias into the dispute settlement process by virtue of its IHP appointment process. Bias is likely to distort dispute resolution, which would have a devastating impact on society and local communities and a negative influence on due process, and the credibility and integrity of resource management and environmental law and policy. The right of all parties to a fair hearing is a cardinal underpinning of the rule of law and yet the Bill undermines this very provision.</p> <p>For example, and in particular, 'confirmation' and 'cognitive' bias are likely to occur when a judge appoints one of his or her own profession or legal fraternity, or someone because he or she is known by him or her, to a hearings panel without due process. Indeed, by investing these significant powers in a single member of the judiciary, and in the absence of transparent procedural guidelines, the Bill introduces unacceptable bias in the appointment process; and a blurring of the executive (decision makers) and the judiciary (those who decide on the decision makers). There is only a need for a 'potential' tendency, or 'perceived' tendency, in these 'confirmation appointments' of Commissioners being appointed from legal practice rather than from the planning community or local community in order for there to be a breach of professional conduct and standards.</p> <p>Due to their knowledge and practical experience, the Councils believe it is beneficial for people with planning experience to still serve as Hearing Commissioners and that they should not be unduly biased against, whether that bias be actual or perceived, in the appointment process. Irrespective as to whether a submitter resides on the West Coast or elsewhere, they should be entitled to a fair and independent hearing.</p> <p>Fairness, of course, is a relative and protean concept. Its meaning may turn on the context and purpose. This said, a necessary element of fairness in the context of independent hearings is the requirement that decision makers are independent and impartial. That judges should stand just, fair and detached in appointing candidates who may be presented before them as Hearing Commissioners is as old as the rule of law.</p>	Schedule 7, Part 3, subpart 6, Appeals

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>It is currently common practice for councils to collectively appoint an independent hearing commissioner as chair of a hearing panel, and other independent hearing commissioners with expertise in certain fields relevant to the planning document and issues raised in submissions. This practice should be provided for in the Bill.</p> <p>In addition, the provision for the Chief Environment Court Judge to appoint another Environment Judge (or person who meets requisite conditions) as Chairperson of the IHP may also substantially increase the costs for councils. Even retired Environment Court Judges, for example, charge considerably more per hour than a planning consultant or a lawyer. One Judge approached by the WCRC to be a hearing panel Chair had an hourly rate of \$400, which was outside the budget for our small council.</p> <p>The Councils are also concerned that there will be no candidates in the regional pool with local knowledge of the West Coast context. With a smaller population, there will be fewer suitable candidates from the West Coast. This could also apply to mana whenua-nominated candidates as the Councils understand that there is a shortage of experienced mana whenua on the West Coast who could fill this role.</p> <p>It is unlikely that an approved Hearing Commissioner who lives in the Bay of Plenty, for example, will have sufficient knowledge of the West Coast context to fulfil the role; and a one-day site visit prior to the hearing commencing is not sufficient time to get a full grasp of the policy and planning issues throughout the region, which covers a vast distance equidistant to that from Auckland to Wellington.</p> <p>Other concerns about the IHP selection process are that there is no accountability back to the policy process or back to democratically elected Councils. It is important that councils have input into the selection of the IHP Chair, and other Panel members.</p> <p>The Councils question how a Court Judge selecting a hearing panel fits with local democracy and accountability to the local community under the Local Government Act. The local voice must be represented.</p> <p>The Councils acknowledge the benefit of environmental law and policy skills in settling matters in dispute under legislation; but they are not the only skills required.</p>	

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>The Councils are also concerned about capacity issues amongst the pool of certified Hearing Commissioners.</p> <p>In addition, hearings on NBE plans could take weeks, or even months. Given the structure of the NBE and SP Bill, hearing periods will be lengthened as submitters will rely on the hearing stage to pursue their interests, in place of engagement and consultation. As a result, justice delayed will be justice denied and the system will be neither cost-effective nor efficient.</p> <p>Recommendation 58: That the system of selecting Hearing Commissioners for Independent Hearing Panels (IHPs) under the RMA be carried forward to the new resource management system; and that councils have input into selecting the Panel Chair and Hearing Commissioners.</p> <p>Recommendation 59: In the appointment of Hearing Commissioners to the Independent Hearing Panel, that the NBE Act provide for a fair and independent panel recruitment process to be governed by procedural and practice guidelines.</p> <p>Recommendation 60: That the mandatory training programme, and continuing professional development, for Hearing Commissioners under the RMA be carried forward to the new resource management system and maintained.</p>	
61. Note re Appeals on the NBEA Plan and Plan Changes	<p>The Councils recognise that an appeals process is a defining feature of an independent and impartial judiciary.</p> <p>Recommendation 61: In terms of appeals, including appeals on the NBEA Plan and Plan Changes, the Councils support making provision for an appeals process in the NBEA; and that where the Regional Planning Committee (RPC) accepts a recommendation from an Independent Hearing Panel (IHP) with respect to a plan that appeals be limited to appeals on points of law in the High Court; and that where the Regional Planning Committee (RPC) rejects a recommendation from an Independent Hearing Panel (IHP) with respect to a plan that merit-based appeals can be made to the Environment Court.</p>	Explanatory Note

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
<p>62. Dispute Settlement Understanding (DSU) and Dispute Settlement Mechanism (DSM) needed with a priority given to consultation</p>	<p>The Councils believe that a Dispute Settlement Understanding (DSU) is a central pillar to the resource management system. Without a means of settling disputes, the rules-based regulatory system would be less effective, and it is important that the system is secure and predictable. A DSU is not only needed with respect to 'preparation, change and review of NBE Plans'; but with respect to the resource management system as a whole.</p> <p>Further, the priority of the Dispute Settlement Mechanism (DSM) should be to settle disputes through engagement and consultation, followed by Alternative Dispute Resolution, such as mediation. An appeals process is also an essential tenet of the rule of law.</p> <p>Dispute settlement processes should always be conducted in a timely manner with timeframes provided for in the DSU's procedures and guidelines. For example, as a general rule, appeal proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Court circulates its report.</p> <p>Recommendation 62: That provision be made in the NBEA for a Dispute Settlement Understanding (DSU), i.e., a common dispute settlement agreement, which upholds the rule of law, sets out a transparent and clear process for settling disputes, incorporates a transparent hearing process, including a hearing process with respect to resource consents and making decisions on plan-making, and provides for the right to a fair and timely hearing on the NBEA and SPA.</p> <p>Recommendation 63: That the DSU makes provision to retain relevant caselaw, including caselaw developed under the RMA.</p> <p>Recommendation 64: That the DSU makes provisions for:</p> <ol style="list-style-type: none"> Consultation as a priority first step in the dispute settlement process; Alternative Dispute Resolution (ADR), including but not limited to 'Good Offices', voluntary mediation, and voluntary conciliation; Arbitration; Due process through the courts; and An appeals process. 	<p>Schedule 7: Preparation, change and review of natural and built environment plans, Part 3, Clause 108</p>

Submission Points on the NBE Bill	Issues and Council Recommendations	NBE Bill: Clause for reference
	<p>Recommendation 65: That the DSU should be provided for in the substantive part of the NBE Act (and supported by a separate schedule, which is not confounded by substantive and procedural provisions for regulatory environmental standards).</p> <p>Recommendation 66: Procedures and practice guidelines governing rules and guidelines for dispute settlement, including consultations, should be established.</p> <p>Recommendation 67: That implementation of the Dispute Settlement Understanding and Dispute Settlement Mechanism be funded by the Crown.</p>	

This ends our submission on the Natural and Built Environments Bill, which should be read in tandem with our submission on the Spatial Planning Bill.

Submission Points on the SP Bill	Issues and Council Recommendation	SP Bill: Clause for reference
Regional Spatial Strategies		
63. Content of Regional Spatial Strategies need provisions for local communities	<p>Regional Spatial Strategies (RSSs), which will comprise regional strategic direction, visions and strategic objectives, need to reflect local community aspirations as part of developing region-wide vision statements, but local community aspirations are not listed in the Bill as a matter that must be in the content of a RSS. Visions are referred to but not defined. If provision for local communities is not required in the content of an RSS, the RSS is highly likely to be beset by legal challenges, which will be a further sign of public opposition to them, and is likely to result in delay, added cost, uncertainty and the failure to provide a clear basis for planning and investment decisions.</p> <p>Recommendation 68:</p> <ul style="list-style-type: none"> a) Add to Clause 16 (1) (a) of the SP Bill and SP Act, that the vision, strategic objectives and strategic direction reflects local community aspirations. b) Place Clause 16 (1) (c) of the SP Bill before Clause 16 (1) (b) insofar that strategic direction should come before priority actions (the current Bill puts 'actions' before the 'strategy', which is incoherent). c) Under 'contents of RSSs', Clause 17, add vision, strategic objectives and strategic direction that reflects local community aspirations at the top of the list. d) Distinguish between Clause 17 '<u>key</u> matters' and Clause 18 '<u>other</u> matters of sufficient significance' [underlining for emphasis] insofar as discerning a difference between 'key matters' and 'other matters of sufficient significance'. 	SP Bill, Clauses 16-18
64. Role of implementation plans is confusing: remove requirements from SP Bill	<p>The Councils are concerned about the requirements for Regional Planning Committees (RPCs) to have an implementation plan outlining how each priority action in the RSS will be implemented, key steps to be taken, by whom, when, and progress monitored and reported on. This seems akin to a council's operational work programme, which is a voluntary internal document developed for managing workstreams and resources, based on the council's annual budget and targets.</p> <p>Work programmes can vary during a year or over several years, depending on a number of factors including unforeseen delays, changes in national direction, staff changes, environmental and economic changes, or natural hazard incidents. Such changes will make it difficult and impractical to formalise work programmes into implementation plans for the RPC,</p>	SP Bill, Clauses 52-56

Submission Points on the SP Bill	Issues and Council Recommendation	SP Bill: Clause for reference
	<p>given the likelihood of changes being needed more often than the three-year review. Changes to work programmes, and implementation plans, are highly likely during the period of transitioning from the RMA to the new NBEA and SPA.</p> <p>The purpose and benefits of requiring implementation plans are unclear and questionable. Councils must do quarterly and annual reporting on progress with achieving their Annual Plan (and Long-Term Plan) targets, as well as other monitoring and reporting requirements for their resource management science, biosecurity, biodiversity, and planning functions. If implementation plans duplicate other monitoring and reporting requirements under the new Bills and the NPF, the requirement for implementation plans will be contrary to the intent of the NBE and SP Bills, which is to simplify and speed up resource management processes.</p> <p>Furthermore, the requirement for an implementation plan is confusing in that the NBE plan is meant to give effect to, and implement, the RSS. It is therefore unclear what the relationship is between the implementation plan and the NBE plan. Implementation of the NBE plan requires monitoring and reporting.</p> <p>Recommendation 69: Remove the requirements for implementation plans in Clauses 52-56 from the Spatial Planning Bill.</p>	
65. Regional Planning Committee for RSS – no central government members	<p>The Explanatory Note to the Spatial Planning Bill refers to members of the Regional Planning Committee (RPC) being responsible for developing a Regional Spatial Strategy (RSS) for a region. The RPC will include a representative from central government when addressing regional strategies but not when addressing plans that unfold from those strategies. Including such a representative would be a conflict of interests if they are from a department or ministry that regularly submits on the Council's proposed plan reviews and changes. Further, even if appointed, how would one central government representative reflect the interest of a multitude of ministries and a whole of government interest. Central government representatives can provide advice in an advisory capacity.</p> <p>Recommendation 70: That Central Government representatives provide advice in an advisory capacity but not be members of the RPC.</p>	SP Bill, Explanatory note

Submission Points on the SP Bill	Issues and Council Recommendation	SP Bill: Clause for reference
66. Objectives, policies and strategic direction in RSS should frame plan rules	<p>The Councils suggest that the King Salmon case law principle should apply to the SP Bill insofar that decision-making should be from the general to the specific. In King Salmon, it was held that subordinate plans (regional and district plans) must implement the objectives and policies of the NZCPS (NZ Coastal Policy Statement). Similarly, a Regional Policy Statement (RPS) should give effect to obligatory provisions within a National Policy Statement (NPS) unless the NPS does not 'cover the field' or the issues being addressed are uncertain or conflicting. Likewise, it would be helpful if objectives and policies were to frame the actions underpinning a Regional Spatial Strategy, and the NBE rules.</p> <p>Recommendation 71: Amend both the NBE and SP Bills to maintain the King Salmon case law principle whereby higher order strategic objectives, policies and strategic direction frame subordinate RSS actions and NBE plan rules.</p>	SP Bill, Clauses 16-18
67. The RSS process excludes local and regional councils: change required	<p>Schedule 4 (Preparation of regional spatial strategies: key process steps) provides for the Regional Planning Committee (RPC) to prepare a draft RSS. The RPC 'must provide an opportunity for interested parties and the public to participate in determining the matters to be included in the draft strategy and their relative importance'; but local authorities are not considered 'interested parties'. Schedule 4, clause 1, (f), refers to interested parties including 'local authorities whose region or district is adjacent to the region'. Council suggests this be amended to 'local authorities whose region or district is within or adjacent to the region'.</p> <p>Clause 32 refers to a RSS 'process [that] must be designed to encourage participation'. However, clause 32 makes no provision for local and regional councils to participate in the RPC's process for preparing its RSS, although local authorities will be responsible for implementing and administering the RSS.</p> <p>Recommendation 72:</p> <ul style="list-style-type: none"> a) Amend Clause 32 of the Spatial Planning Bill to give local and regional councils a fundamental role in the preparation of regional spatial strategies. b) Amend Schedule 4, Clause 1 (f) to include regional and district councils as 'interested parties' in the preparation of a RSS. 	<p>SP Bill, Clause 32</p> <p>Schedule 4 Preparation of regional spatial strategies: key process steps</p> <p>Schedule 4, clause 1, (f),</p>

Submission Points on the SP Bill	Issues and Council Recommendation	SP Bill: Clause for reference
68. On adapting to regional and local context – provisions required	<p>Recommendation 73: That provision be made within the regional strategic planning process (the RSS process) for regional councils to set priorities within the context of their respective regions; and provide for councils to make their own plan-making decisions about adapting to the regional and local context, rather than empowering the RPC to make independent decisions about the natural and built environment.</p>	
69. Transition arrangements under the SP Bill to be developed together with, and approved by, local authorities	<p>As mentioned above with respect to the NBE Bill, transitional arrangements for existing plans are not clear in either the NBE or SP Bill. For example, the Ministry for the Environment is proposing a system of tranches for councils to commence development of their Regional Spatial Strategy and NBEA plans. However, this ‘tranche’ system is not provided for in either the NBE or SP Bills.</p> <p>Central government should support the regional councils in transition and in implementation.</p> <p>The Ministry for the Environment is anticipating that there will be a transition period of around 10 years after the NBEA and SPA are enacted until all new regional spatial strategies and natural and built environment plans are in force. There is also a staged approach anticipated, where three regions will begin the development of regional spatial strategies first.</p> <p>The timeframes in the Spatial Planning Bill, Schedule 1, Part 1, clause (1)(1), require that a RPC must publicly notify the draft of its first RSS within 7 years of the SP Bill securing Royal Assent; or by an Order in Council made by the Governor-General on recommendation of the Minister. The Councils will not know if this timeframe can be met for developing and adopting a RSS for the West Coast until we know which tranche we will be in, and when we can commence the RSS development process. This approach could make it difficult for the Councils to budget adequately for the RSS process without sufficient prior notice.</p> <p>Recommendation 74: To enable councils to prepare annual and long-term budgets, that Central Government gives councils plenty of prior notice as to which tranche they are in and when it will commence.</p>	Schedule 1, Part 1, clause (1)(1)

This ends our submission on the Spatial Planning Bill, which should be read in tandem with our submission on the Natural and Built Environment Bill.

Report to: RMC Committee	Meeting Date: 14 March 2023
Title of Item: Consents Monthly Report	
Report by: Leah Templeman, Consents & Compliance Business Support Officer	
Reviewed by: Rachel Clark, Acting Consents & Compliance Manager	
Public excluded? No	

Purpose

For the Resource Management Committee to be kept informed of activities in the Consents department, and to provide an update on current matters.

Summary

This is the Consents report for February 2023 activities.

RECOMMENDATION

It is recommended that the Committee resolve to:

Receive the March 2023 report of the Consents Group.

Site Visits

13/02/2023	RC-2023-0018 Beverley Loader Kumara Junction	Site visit for onsite wastewater disposal.
29/02/2023	RC-2023-0009 Troy Cashin Contracting Limited Taramakau River	Site visit with Troy Cashin regarding gravel extraction application. Observed availability of gravel and suitability of location.

Non-notified Resource Consents Granted

Five non-notified resource consent applications were granted between 01 February 2023 to 28 February 2023

RC-2023-0006 Camelback Farm Limited Kowhitirangi	To discharge dairy effluent to land where it may enter surface water and to groundwater near DS206 Kowhitirangi.
RC-2022-0141 New Creek Mining Ltd New Creek Mine	To undertake earthworks to excavate rock, including on slopes in excess of 25 degrees, New Creek Mine.
RC-2023-0017 M.T.TUMS Limited 18 Lewis Street	To discharge treated onsite sewage wastewater from a Tavern (currently known as the "Pub N Grub") located at Mokihinui.
RC-2023-0018 Beverley Loader Greymouth-Kumara Tramway	To discharge treated onsite sewage wastewater from a community hall ("Melody Hall") located at the Greymouth Kumara Tramway To store whole, used tyres within the demolition cell, Taylorville Resource Park.

RCT-2022-0145
Taylorville Resource Park Ltd
Taylorville

To store whole, used tyres within the demolition cell, Taylorville Resource Park.

Changes to Consent Conditions

One application to change consent conditions were granted in the period 01 February 2023 to 28 February 2023

RC-2017-0003-V3 Variation to allow mining in an additional area.
Elect Mining Ltd
Waimea

Consents processed and granted on behalf of Westland District Council

One variation granted for the period 01 February 2023 to 28 February 2023

RC-2017-0003-V3 Variation to allow mining in an additional area.
Elect Mining
Waimea

Consent applications lodged still yet to be finalised on behalf of Westland District Council

Two applications lodged for the period 01 February 2023 to 28 February 2023

RC-2023-0015 Gold mining activities
Selwyn Earthworks JV Limited
Arnold Valley

RC03175-V10 Variation to Change vegetation survey from annually to biennial.
BT Mining Limited
Cypress Mine

Implications/Risks

There are no implications/risks associated with this report.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in this policy.

Tangata whenua views

In line with the implementation of Paetae Kotahitanga ki Te Tai Poutini Partnership Protocol in the Mana whakahono ā Rohe Resource Management Act Iwi Participation Arrangement, Poutini Ngāi Tahu are provided with the weekly consent applications received report.

This provides opportunity to alert Council of any resource consent applications received in the weekly table that are of particular interest to them.

An application for dry bed gravel extraction received for the Taramakau River, which is a Statutory Acknowledgement Area, has been forwarded to both Poutini Ngāi Tahu and Ngāti Waewae for comment in accordance with the Mana Whakahono a Rohe Agreement.

Financial implications

There are no financial implications associated with this report.

Legal implications

All consents are prepared in accordance with the Resource Management Act and appropriate staff reports compiled to show the reasoning towards granting the consent.

Legal implications for all consents are a risk of judicial review by any party. A judicial review would involve the court reviewing a decision made by the Council and determining if correct process was followed or not. Should a

review find that the correct process was not followed then the Court would recommend the process be revisited and reassessed. The main implications would be additional cost to the Council and reputational damage.

No judicial reviews have been instigated to date.

Report to: RMC Committee	Meeting Date: 14 March 2023
Title of Item: Compliance and Enforcement Monthly Report	
Report by: Chris Barnes, Compliance Team Leader	
Reviewed by: Rachel Clark Acting, Consents and Compliance Manager	
Public excluded: No	

Purpose

For the Resource Management Committee to be kept informed of activities in the Compliance and Enforcement department, and to provide an update on current matters.

Summary

This is the Compliance and Enforcement report for the December and January 2023 activities.

Recommendations

It is recommended that the Council resolve to:

1. *Receive the March 2023 report of the Compliance Group.*
2. *That the \$20,000 surety bond for RC-2015-0109 Dempster Limited is released.*

Site Visits

A total of 79 site visits were undertaken during the reporting period, which consisted of:

Activity	Number of Visits
Resource consent monitoring	6
Mining compliance & bond release	14
Complaints	9
Dairy farm	50

This report covers the period of 25 January 2023 to 28 February 2023.

- A total of 20 complaints and incidents were recorded.

Non-Compliances

There were 6 non-compliances that occurred during the reporting period.

Activity	Description	Location	Action/Outcome	INC/Comp
Septic Tank Systems	Complaint about a septic tank system's soak pit being within 100m of a groundwater bore used for potable water supply.	Kakapotahi	A compliance officer visited the site and found that the soak pit was within 100m of the bore. The owner of the septic system was contacted and advised of the options by a consents officer. A non-compliance has been identified but no decision of enforcement action has been recommended at the time of preparing this report.	Complaint

Activity	Description	Location	Action/Outcome	INC/Comp
Gold Mining	An application for milling 2 hectares of indigenous trees was passed onto the compliance team by MPI to check against the gold mining activity. It was found that the mining operation does not hold a consent to remove the trees.	Awatuna	The gold miner has stated that the landowner removed the trees, and that they would not have started mining the area if the trees were still there. The landowner has stated they removed the trees so the gold miner could mine the area, if they weren't going to mine the area, they would have left the trees there. A non-compliance has been identified and the investigation is still ongoing.	Complaint
Land Drainage	Secondary investigation into drains being blocked and diverted and blocked again in the Alma Road area where land was subdivided over 10 years ago.	Westport	Enquiries are ongoing to establish where the original drains were, several diversions and blockages have been made over the last several years leaving at least one paddock inundated with water during significant rain events. Several non-compliance issues have been identified.	Complaint
Gravel Extraction	Complaint received about a beach gravel extraction operation operating in the surf zone.	Greymouth	A compliance officer contacted the operator and instructed them to cease taking gravels from the surf zone, then the officer carried out a site visit of the area. No further action.	Complaint
Mineral Extraction	During a routine site visit of a mining operation, it was found that the settling pond system was not in line with the certified management plan, and that this system was not functioning as intended.	Tauranga Bay	The mine operators have been asked to provide a plan to show how they will get the settling pond system back into line with the certified management plan or resubmit a new management plan for certification. A follow up visit is to take place.	Complaint

Activity	Description	Location	Action/Outcome	INC/Comp
Land Clearance	A complaint was received about a landowner clearing trees and digging drains in a schedule 2 wetland.	Houhou	A compliance officer carried out a site visit, they found that pre-existing drains had been maintained and that about 5 kahikatea trees had been felled. At the time of preparing this report the investigation was in its early stage, but it was established that the removal of the trees was a breach of environmental standards.	Complaint

Other Complaints/Incidents

Note: These are the complaints/incidents assessed during the reporting period whereby the activity was found to be compliant, or non-compliance is not yet established at the time of reporting.

Activity	Description	Location	Action/Outcome	INC/Comp
Gold Mining	Complaint received that a gold mining exploration operation was carrying out activities within a wetland.	Arnold Valley	A compliance officer and a resource science technician carried out a visit and survey of the property and found that the plant species did not meet the criteria for a wetland. No further action.	Complaint
Gold Mining	Complaint received by the council regarding excessive noise coming from a gold mining operation.	Stafford	A compliance officer carried out two separate visits and found at the time the noise from the mine was minimal, the mine manager was spoken to and reminded of consent conditions and asked if he could remind staff to be conscious when loading rocks onto the dump trucks. Proactive monitoring of this location is ongoing.	Complaint
Earthworks	The council was contacted regarding Clear Creek being discoloured. The complainant said that this had been occurring at different times over the last few days and only lasting for a few hours.	Kotuku	A compliance officer visited the area and found that a local contractor had been clearing a recent slip in the Creek. No further action.	Complaint
Gravel Extraction	Complaint relating to an accusation that the gravel consent holder is over-extracting and has depleted the gravel resources available.	New River	A compliance officer carried out a site visit with the contractor and found all consent conditions were being met and no depletion of the source sited.	Complaint

Activity	Description	Location	Action/Outcome	INC/Comp
River Protection	Complaint from another agency about stop bank work carried out on the Waitaha River.	Waitaha	At the time of the report this issue was still to be visited.	Complaint
Earthworks	Council contacted about the Kapitea River being discoloured.	Chesterfield	A compliance officer carried out a visit of the area and found the river to be clear, the officer did note that it had been raining after a continuous dry spell.	Complaint
Log Recovery	Complainant contacted the council about trees being removed from the Mahatahi River. The complainant was concerned that the operator may have been undercutting the river bank to ensure more trees would fall into the river. The complainant was also concerned about the debris floating down the river at the time the logs have been extracted.	Bruce Bay	A compliance officer reviewed a video and photos supplied by the complainant, the officer then met with the operator onsite to inspect the operation. No sign of undercutting had been identified; all the logs extracted had been GPS'd. All activities were deemed to be within the consent conditions.	Complaint
Gravel Extraction	The council was notified of dust being created during gravel extraction from the Hokitika River.	Hokitika	The operation being carried out is a consented activity, all the contractors were contacted and reminded of their consent conditions relating to dust, and that there is a sprinkler system set up to minimise the dust.	Complaint
River Protection Works	A complainant contacted the council to report unconsented river protection works on the Waitaha River.	Waitaha	A compliance officer contacted the alleged offenders and confirmed the activity was being carried out under a current resource consent.	Complaint
Farming	Complaint received relating to a fence being built within a wetland.	Barrytown	A compliance officer and a resource science technician carried out a visit of the alleged works. They found that a farmer was replacing an old fence line, no issues were found.	Complaint

Activity	Description	Location	Action/Outcome	INC/Comp
Earthworks	Complaint from another agency regarding works carried out on a small creek diversion before the consent application has been granted.	Dobson	A visit to the site was carried out by a compliance officer. The officer found that a new channel had been created, but this had not been open to take water from the existing creek. The earthworks complied with the permitted activity rule. No further action required.	Complaint
Gold Mining	Complaint received by the council regarding excessive noise coming from a gold mining operation.	Stafford	A compliance officer visited the property and did not find an issue at the time of the visit. The mine manager was contacted as well by the compliance officer.	Complaint
Dairy Farming	Complaint about glyphosate being sprayed onto a paddock had drifted onto a property where fruit and vegetables were being grown.	Te Kinga	A compliance officer reviewed the video footage provided by the complainant; the footage did show the spray unit near the property but with a buffer. No spray could be seen past this. The officer contacted the landowner and they assured the officer they were within the rules. A follow up visit showed a clean green buffer between the properties. No further action.	Complaint
Gold Mining	Complaint received alleging a gold mining operation has been dumping steel and grease tubes into the mine pit.	Stafford	A compliance officer visited the site, no pit toilets were found onsite, and an inspection of the pit showed no rubbish. The manager showed where their rubbish was stored before disposing of. No further action required.	Complaint
Farming	After hours complaint relating to a paddock burnoff. Overnight the wind changed, and smoke drifted onto neighbouring properties. One landowner was concerned that the burnoff had been reignited and will cause the same issue if the wind changed again.	Cape Foulwind	The on-duty officer tracked the landowners details down and contacted him by phone. The landowner said he would keep an eye on the wind, if it started to change direction he would smother the fire. No further action.	Complaint

Update on Previously Reported Ongoing Complaints/Incidents

Activity	Description	Location	Action/Outcome	INC/Comp
Gold Mining	Complaint about a gold mining operation operating outside of consented hours.	Hokitika	Formal Warning Notice issue to the consent holder	Complaint

Formal Enforcement Action

No formal enforcement action was taken over this period.

Mining Work Programmes and Bonds

The Council received three mining work programmes during the reporting period. The programmes have been approved.

Date	Mining Authorisation	Holder	Location	Approved
02/02/2023	RC-2022-0107	Tuckers Flat Limited	Tuckers Flat	Y
02/02/2023	RC-2018-0092	Elect Mining Limited	Chesterfield	Y
02/02/2023	RC-2017-0003	Elect Mining Limited	Awatuna	Y
02/02/2023	CML37159	Birchfield Coal Mines Limited	Strongman	Y
08/02/2023	RC12222	Graeme Hobbs	Nelson Creek	Y

The following bond was received:

Date	Mining Authorisation	Holder	Location	Amount
28/02/2023	RC13042	Federation Mining	Snowy River	\$170,205.00 which now brings total to \$540,205.00

The following bond is recommended for release:

Mining Authorisation	Holder	Location	Amount	Reason For Release
RC-2015-0109	Dempster Limited	Callaghans	\$20,000 Surety bond	Final restoration has been carried out and approved by the landowner and assessed by a compliance officer as meeting the consent requirements.

Considerations

Implications/Risks

There are no implications/risks associated with this report.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in this policy.

Financial implications

There are no financial implications associated with this report.

Legal implications

There are no legal implications associated with this report.

Report to: Council/Committee	Meeting Date: 14 March 2023
Title of Item: Deeds of Transfer for Large Dams and Westland District Council Mining Consents	
Report by: Rachel Clark, Acting Consents & Compliance Manager	
Reviewed by: Heather Mabin, Chief Executive	
Public excluded? No	

Report Purpose

To inform the Council of the existing transfer deeds for large dams and to undertake processing and compliance functions for Westland District Council in regards to mining applications and consents.

Report Summary

Under two separate Deed documents, Council has responsibilities for mining consents transferred to it from Westland District Council and transferred its responsibilities for large dams to Environment Canterbury.

This paper seeks to inform Council about these Deeds and table a potential change to one Deed for council's consideration.

Draft Recommendations

It is recommended that Council resolve to:

- Receive this report and note the Attachments; and
- Instruct Staff to consult with Westland District Council with the aim of relinquishing the requirement to monitor noise for mining consents.

Issues and Discussion

Background

WDC Transfer

The deed to transfer functions from the Westland District Council (WDC) to the West Coast Regional Council (WCRC) to undertake consents and compliance functions on behalf of WDC for mining purposes was signed on 13th of June 2017. The reason this delegation came about was because applicants for mining consents were getting frustrated that they would get a consent from the WCRC to undertake mining in a timely and efficient manner however consents from WDC were taking a long time and applicants were getting bogged down with extensive further information requests and long lists of affected parties requested by WDC. There was also a lack of staff available at WDC to undertake these functions.

Feedback was sought from the general public, the staff involved at both Councils and the Councillors at the time the proposal was being considered. All parties agreed the transfer of functions was a good idea and the deed signed. A copy of the signed deed is attached to this report.

Since 2017 the Consents team has processed an average of 25 consent applications and variations per year since the transfer commenced. A similar number of mines are also required to be inspected twice each year. The compliance inspection would include both WCRC and WDC components. There have been no non-compliances with WDC consent conditions identified to date from scheduled Compliance inspections. Any complaints received in regard to WDC consents also need to be dealt with by WCRC. The number varies per year but are related to noise and operating hours mostly with one related to native tree clearance. Some of these complaints have been justified and resulted in one formal warning for operating outside consented hours. The native tree removal is still being investigated.

Large Dams Transfer

The WCRC has responsibilities under the Building Act 2004 in regard to consenting and management of the building consent process for large dams. Dams are the responsibility of regional councils, and dams that meet the definition of a 'large dam' require Building Consent. This

requires regional councils to obtain and maintain accreditation and registration as a Building Consent Authority (BCA). The definition of dam and large dam is contained in Section 7 of the Act.

As WCRC does not have the capability or expertise relating to Building Act functions, the Building Act dam management functions were formally transferred to Otago Regional Council (ORC) in 2007. The agreement between WCRC and ORC originally expired on 30 June 2018 but was extended to June 2021. ORC indicated that they did not wish to retain their accreditation after this date. This function was then transferred to Environment Canterbury (ECan) on 28 May 2021.

The original formal transfer of functions to ORC in 2007 followed a special consultative procedure and statement of proposal at that time and was followed by a second process in 2021 for the transfer to ECan. Included in the considerations was a legal analysis addressing the issues and options for transfers, which resulted in recommending the transfer of the BCA functions. Note that Environment Southland also transferred their BCA functions to ORC and then to ECan.

Although there are a number of existing and historic dams on the West Coast, there is limited demand for services requiring BCA accreditation. Over the duration of the transfers, The Authority has performed less than one process per year on average, under the transfer of function (largely modifications to or associated with existing structures).

Current situation

The WDC Mining deed does not have an expiry date and in order to relinquish it, WCRC would need to first consult with WDC and then if it decides to go ahead with relinquishing the Deed, WCRC must give WDC one month's written notice of its decision. The WDC may change or revoke the transfer by giving 6 months written notice to WCRC. There are no costs associated with administering the deed. Any costs associated with processing consents or undertaking scheduled site visits are on a user pays basis the same as for WCRC applications and compliance visits. In regard to complaints, costs can be recovered if a complaint is found to be valid. There are however staff time costs if the complaint is not found to be valid. These costs are not currently recouped from WDC.

An issue has been raised in that WCRC currently has no equipment or training in place to undertake noise assessments. To date noise assessments have been undertaken by the Compliance Officer responding to a complaint. They have used their own hearing to determine if the noise at that time is potentially excessive. There is currently no scientific basis for making the assessment of noise.

Obtaining and maintaining BCA accreditation and having the capability and expertise in house to perform these functions, is costly. Therefore the transfer of Building Act functions to another region with accreditation is the most cost effective option for WCRC. This situation remains the case and the functions remain with ECan. The deed is in place until 31 May 2031. A disestablishment fee will be payable by WCRC if it revokes this agreement or when it ends on the 31 May 2031. Annual fees are also payable under this agreement.

Management recommends the following courses of action:

- That the deed to transfer functions from Westland District Council to the West Coast Regional Council remains in force, however that consultation with Westland District Council is undertaken with the view to relinquish the requirement for the West Coast Regional Council to undertake noise monitoring assessments and respond to noise complaints related to mining in the Westland District. This is recommended as the WCRC currently has no scientific ability to either monitor or make assessments about levels of noise associated with mining. Council is rarely required to perform this function and the function would better sit with the Westland District Council that is better suited and required more often to make noise assessments.
- That the deed of transfer for large dams is maintained with Environment Canterbury in order to meet our functions under the Building Act 2004 associated with large dams. While there is

an annual fee associated with maintaining this deed, the costs associated with disestablishment of the deed and obtaining our own in-house expertise would far outweigh the costs of maintain this deed.

Options Analysis

The WCRC can continue to operate in accordance with the deed and purchase noise monitoring equipment and train staff to operate and assess the results. The cost for this option could potentially be on-charged to WDC as a cost for administering the requirements of the deed. Noise monitoring is not an easy thing to understand and undertake and it is not something the Compliance staff would use very often for any other situation. The only other area where WCRC is responsible for noise is in the Coastal Marine Area. I do not recall any noise complaints received for this area.

WCRC can consult with WDC and potentially give notice to WDC that they will return the noise monitoring component to WDC. WDC has other requirement to regularly monitor noise in other capacities such as residential noise complaints. There would be no cost to WCRC to undertake this option and seems like the best way forward.

WCRC can consult with WDC and potentially give notice to relinquish this deed in its entirety. There are no other concerns identified with processing or monitoring the mining under this deed and WDC do not currently have the capacity to take back this function. This would not be the most practicable option.

Given the requirements of the Building Act 2004, WCRC has two options for action to ensure the statutory requirements of the Act continue to be met. In brief, these options are:

1. WCRC performs the function of a BCA in relation to dams. This would require recruitment of staff, developing staff capability, development of internal systems, and becoming and remaining accredited. This option would require time to implement and would be costly to implement and maintain. It would also require the payment of a disestablishment fee to ECan.
2. Continue with the arrangement with ECan. This option involves a clear understanding of ongoing costs and responsibilities as well as meeting the requirements of the Act.

Costs and Benefits

In regard to the WDC mining deed, there are no costs associated with any of the options to WCRC. The benefits of option 2 would be that purchase and training costs would not have to be recouped from WDC and training and equipment would not need to be regularly maintained for limited purpose.

In regard to the dams deed, there is an annual cost to WCRC that is determined by ECan and is at least \$13,000. A disestablishment fee is also payable which will be the fair and reasonable and actual cost to ECan of the disestablishment plus GST. While these costs are significant, it would be a far greater cost to recruit and employ someone with the expertise to make these assessments and maintain their accreditation for something that we do very little of.

Considerations

Implications/Risks

For the WDC mining deed, the risk is that we do not currently have the ability to make a scientific noise assessment and should the miner choose to challenge why Compliance are requiring them to undertake a noise assessment, Compliance has no scientific information to base the assessment on only personal hearing which will vary from person to person. Should a challenge occur Compliance has no legal basis to make any decisions.

For the dams deed, if the deed is not continued, there will be significant costs involved in disestablishing the deed and obtaining in-house expertise to be able to meet our requirements under the Building Act.

There is a risk that we could not find suitable expertise and therefore the Council's obligations under the Building Act are not being met.

Significance and Engagement Policy Assessment

There are no issues within this report which trigger matters in this policy.

Tangata whenua views

Consultation was undertaken when both of these deeds were established but no further consultation has been undertaken to date.

Views of affected parties

Consultation would need to be undertaken with both WDC and ECan prior to any changes being made to these deeds.

Financial implications

Currently the WDC mining deed does not have any costs associated with it for administering the deed. There could be costs associated with staff time and noise monitoring undertake in response to a complaint if it is unsubstantiated. These costs could be up to \$5,000 if a report is involved.

For the Dams deed, there is a current annual fee that is payable for the administration of the deed to ensure ECan staff are able to meet the obligations of the Building Act on our behalf.

There should be no substantial change to the costs associated with these deeds in the future.

Legal implications

The legal risks for the WDC deed are that WCRC is challenged on decisions made in regard to noise assessments and whether a reasonable decision was made in regard to the levels of noise. The Compliance department currently has no scientific method to make a noise assessment.

For the dams deed, the risk is that the Council is not able to meet its obligations under the Building Act if the deed was disestablished.

Attachments

Attachment 1: Deed to Transfer Functions Under Section 33 of the Resource Management Act 1991, dated 13 June 2017

Attachment 2: Deed of Transfer of Building Act Functions, dated 28 May 2021

**DEED TO TRANSFER FUNCTIONS UNDER SECTION 33 OF THE RESOURCE
MANAGEMENT ACT 1991**

THIS DEED is made on the 13th day of June 2017

BETWEEN **THE WESTLAND DISTRICT COUNCIL**, a body corporate under the Local Government Act 2002 ("the District Council")

AND **THE WEST COAST REGIONAL COUNCIL**, a body corporate under the Local Government Act 2002 ("the WCRC")

WHEREAS:

- A. Under section 31(1) of the Resource Management Act 1991 ("the Act"), the District Council has the function of controlling any actual or potential effects of the use, development, or protection of land, including the effects of mining-related activities, within the Westland District.
- B. In accordance with the Act, the District Council has prepared the Westland District Plan, which includes objectives, policies, and rules for mining-related activities.
- C. Under section 30(1) of the Act the WCRC has the functions of controlling the use of land for the purpose of soil conservation, and managing effects of water use and discharges, including the effects of mining-related activities, within the West Coast Region.
- D. The District Council has agreed to transfer to the WCRC and the WCRC has agreed to accept transfer of its functions for mining-related activities in the Westland District.
- E. Both the WCRC and the District Council agree that the transfer is desirable on all of the following grounds required by section 33 of the Act:
 - (a) The authority to which the transfer is made represents the appropriate community of interest relating to performance of the function transferred; and
 - (b) Efficiency; and
 - (c) Technical or special capability or expertise.

- F. The proposed transfer was approved by the District Council and the WCRC, after the District Council undertook the special consultative procedure specified in the Local Government Act 2002.
- G. Before using the special consultative procedure, the District Council gave notice to the Minister for the Environment of its proposal to transfer its functions, powers and duties outlined in this Deed.

NOW THIS DEED RECORDS:

1. INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

“exploration”, “mining” and “prospecting” have the same meanings as in the Westland District Plan;

“Government Agency” means any national, regional or local governmental or semi-governmental agency, administrative body, judicial body, tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;

“Law” means any legally binding law, legislation, statute, Act, rule, order or regulation which is enacted, issued or promulgated by the Parliament of New Zealand, the Governor General by Order-in-Council or a Government Agency;

“Mining-related activities” includes:

- a) exploration;
- b) mining;
- c) prospecting;
- d) operations which are ancillary to the exploration, mining, or prospecting for any mineral;
- e) the following activities when carried out on the same site as an exploration, mining or prospecting activity and where such activities are ancillary to the exploration, mining or prospecting activity:
 - i. the extraction, transport, treatment, processing and separation of any mineral or chemical substance from the mineral;

- ii. the construction, maintenance, and operation of any works and other land improvements (but excluding any buildings and structures as defined in the Westland District Plan), and of any related machinery and equipment connected with the operation;
 - iii. the clearance of vegetation by any means;
 - iv. the removal of over-burden by mechanical or other means, and the stacking, deposit, storage, and treatment of any substance considered to contain any minerals;
 - v. the deposit or discharge of any mineral, material, debris, tailings, refuse, or wastewater produced from or consequent on the operations; and
 - vi. the doing of all lawful acts incidental or conducive to the operations; and
- f) includes any access or track formation for the purposes of exploration, mining or prospecting that does not occur on unformed legal road.

1.2 In this Deed, unless the context otherwise requires:

- a) references to clauses are to clauses in this Deed;
- b) headings appear as a matter of convenience and do not affect the construction of this Deed;
- c) including and similar words do not imply any limitation;
- d) a reference to a person includes a local authority, company, limited partnership, and also any body of persons, whether incorporated or unincorporated, and includes their representatives, executors and assigns;
- e) the singular includes the plural and vice versa, and words importing one gender include the other genders; and
- f) a reference to:
 - i. any Law is a reference to that Law as amended from time to time, or to any Law that has been substituted for that Law; and
 - ii. any document is a reference to that document as amended from time to time, or to any document that has been substituted for that document.

2. COMMENCEMENT DATE

2.1 The transfer effected by this Deed commences on 1st July 2017.

3. TRANSFER

3.1 The District Council transfers under Section 33 of the Act to the WCRC the functions in Clause 4.

3.2 The WCRC accepts the transfer effected by this Deed.

3.3 This transfer is on the terms and conditions set out in this Deed, and the parties are at all times subject to the provisions of the Act and any other Law.

4. FUNCTIONS TRANSFERRED

4.1 The functions transferred under this Deed are the functions, powers and duties of the District Council in relation to mining-related activities under Section 36, Part 6, Part 6AA and Part 12 of the Act.

4.2 The WCRC will do in performing the functions, powers and duties transferred and otherwise performing its obligations under this Deed it will:

- a) devote such time, resources (including engaging specialist staff where necessary), care, diligence, attention and skill as is reasonably necessary for the proper and efficient provision of the Functions;
- b) exercise the degree of skill, care, prudence, foresight and diligence which would reasonably and ordinarily be expected from a skilled and competent professional engaged in the same type of undertaking under the same circumstances; and
- c) comply with all applicable Laws and the terms and conditions set out in this Deed.

5. COSTS

5.1 The WCRC may charge and recover fees for mining-related activities in accordance with Section 36 of the Act.

5.2 WCRC is not liable for any act or omission of WDC before 1 July 2017 in carrying out the functions transferred under clause 3 of this agreement/deed and therefore WDC must:

- i) Fully indemnify WCRC against all liabilities for any act or omission in WDC carrying out the functions transferred under clause 3 of this agreement; and
- ii) Fully compensate WCRC for costs and other losses incurred by WCRC in dealing with all such liabilities

6. LIAISON

6.1 The WCRC may consult with the District Council where it considers that in performing the functions, powers and duties transferred, it would be assisted by the technical capability of the District Council.

6.2 Where any mining-related activity is immediately adjacent to, or will affect legal road, WCRC will seek comment from the District Assets staff of WDC. This consultation will occur over and above any assessment of affected parties to the consent application. This provision may be met through the agreement of standardised requirements, or consultation on a consent basis with an agreed response timeframe.

6.3 To the extent permissible by Law, the District Council shall provide to the WCRC as soon as practicable any information, advice or comment on any mining-related matter reasonably requested by the WCRC to assist the WCRC to carry out the functions, powers and duties transferred.

6.4 The parties will cooperate in good faith:

- a) to expedite the transfer to the WCRC of any such matters being handled by the District Council as at the commencement date in Clause 2, which relate to functions, powers or duties transferred to the WCRC pursuant to this Deed; and
- b) in the event that this Deed terminates in accordance with clause 11, to expedite the transfer to the District Council of any such matters which relate to functions, powers or duties transferred to the WCRC pursuant to this Deed.

7. REPORTING

7.1 The WCRC shall report to the District Council information about any of the functions transferred as agreed with the District Council.

8. RELINQUISHMENT

8.1 If the WCRC considers relinquishing the functions, powers and duties transferred, it shall first consult with the District Council as soon as practicably possible.

8.2 If, following such consultation, the WCRC decides to relinquish all or any of the functions, powers or duties transferred it shall give one months' written notice of its decision to the District Council.

9. CHANGE OF TRANSFER

9.1 Pursuant to Section 33(8) of the Act, the District Council may change the transfer effected by this Deed by giving 6 months written notice to the WCRC.

10. REVOCATION OF TRANSFER

10.1 Pursuant to Section 33(8) of the Act, the District Council may revoke the transfer effected by this Deed by giving 6 months written notice to the WCRC.

11. DURATION

11.1 This Deed and the transfer made under it shall remain in full force and effect until revoked by the District Council or relinquished by the WCRC under Clauses 8 or 10 of this Deed.

12. DEALING WITH DISPUTES

12.1 If any difference or dispute arises as to the interpretation of this Deed or as to any matter arising out of or in connection with this Deed, including any question regarding its existence, validity or termination ("Dispute") (other than a Dispute precluded by clause 13), then either party shall by notice in writing served on the other party inform the other party of the details of the Dispute.

- 12.2 Both parties undertake to use their best endeavours to resolve any Dispute by amicable and bona fide negotiation and discussion or by utilising appropriate alternative dispute resolution techniques.
- 12.3 Where a Dispute remains unresolved for more than four weeks, either party will be entitled to refer the Dispute to mediation by notice in writing to the other party.
- 12.4 The parties will agree on a suitable person to act as mediator. If the parties fail to reach agreement within five business days of the matter being referred to mediation in accordance with clause 12.3, either party may request the President for the time being of the New Zealand Law Society, or the nominee of such President, to appoint a mediator.
- 12.5 The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand, Inc. The mediation shall be terminated by:
- a) the signing of a settlement agreement by the parties;
 - b) notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified;
 - c) notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
 - d) the expiry of 40 days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- 12.6 If the mediation is terminated as provided in clauses 12.5(b), (c) or (d) the Dispute shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within 21 days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc. Any such arbitration shall take place in Hokitika or Greymouth.

13. ALTERNATIVE DISPUTE RESOLUTION BY EXPERT

- 13.1 As an alternative to the dispute resolution procedures in clause 12 the parties may by written agreement elect to engage an Expert in accordance with the following provisions to resolve any Dispute. This procedure, if

adopted, is in substitution of the procedure set out in clause 12 and once an election under this clause has been made the parties may not commence the procedures provided for under clause 12 in relation to the Dispute the subject of the election. The parties shall agree on the manner in which the Expert will conduct the Dispute.

13.2 If the parties elect by written agreement to engage an Expert to determine a Dispute, then the following provisions apply:

- a) the Expert is to be appointed by agreement between the parties. Failing agreement within 5 business days after the agreement to use an Expert, either party may request the President for the time being of the New Zealand Law Society, or the nominee of such President, to appoint an Expert;
- b) upon the Expert being appointed, each party will provide the Expert with a written description of the subject matter and details of the Dispute;
- c) the Expert:
 - i. shall act as an expert and not an arbitrator;
 - ii. may inspect any records kept by a party in relation to the matter being considered by the Expert at any reasonable time;
 - iii. is to consider and take into account material, representations and other relevant matters submitted to him or her by a party in accordance with clause 12.2(b); and
 - iv. shall give the parties, within 30 days after his or her appointment, or such other period as the parties may agree, written notice of his or her decision and that decision shall be final and binding on the parties;
- d) if, at any time, it becomes apparent that the Expert will not perform his or her duties under this clause 12 (whether by relinquishing his or her appointment, by failing to provide written notice of his or her decision in accordance with subclause (c)(iv), or by death), a new person may be appointed as Expert in his or her place and the provision of this clause 12.2 shall operate in relation to that appointment;
- e) the parties and the Expert shall keep confidential and shall not disclose to any one not involved in the determination any information contained in the

decision unless such disclosure is made in any subsequent proceedings to enforce the Expert's decision; and

- f) the parties' own costs and the costs and expenses of the Expert shall be borne and shared by both parties in the manner determined by the Expert and in the absence of any such determination, each party shall bear its own costs and an equal share of the costs and expenses of the Expert.

14. MISCELLANEOUS

- 14.1 Notices under this Deed must be in writing and sent to the following contact addresses (or alternative addresses notified in writing by the relevant party):

Westland District Council:

The Chief Executive
Westland District Council
Private Bag 704
Hokitika 7842
Fax: 03 756 9046
Email: ce@westlanddc.govt.nz

West Coast Regional Council:

The Chief Executive
West Coast Regional Council
PO Box 66, Greymouth
Fax: 03 768 7133
Email: ci@werc.govt.nz

14.2 Notices:

- a) delivered or sent by facsimile shall be deemed given when correctly sent provided that notices given after 5.00pm on a business day or at any time on a non-business day shall be deemed given on the next business day;
- b) sent by mail shall be deemed given on the date which is three (3) business days following posting; or
- c) sent by email, shall be deemed to have been received at the time of transmission provided that:
 - i. a delivery receipt has been received by the sender; and

- ii. any email sent after 5.00pm on a business day or at any time on a non-business day shall be deemed delivered on the next business day.

14.3 This Deed is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.

14.4 No delay, neglect or forbearance by any party in enforcing against the other party any right or remedy under this Deed shall be deemed to be a waiver of or in any way prejudice the right or remedy nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

14.5 No amendment to this Deed will be effective unless it is in writing and signed by both parties.

14.6 Except as expressly provided in this Deed:

- a) nothing in this Deed is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
- b) neither party has authority to bind the other party.

14.7 Any term of this Deed which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Deed is not affected.

14.8 Except as expressly provided in this Deed, the rights of a party under this Deed are in addition to and do not exclude or limit any other rights or remedies provided by Law.

14.9 Each party will do all things reasonably required by the other party to effectively carry out and give effect to the terms and intentions of this Deed. This clause is a continuing obligation separate from each party's other obligations under this Deed and survives termination of this Deed.

14.10 Except as expressly provided in this Deed, each party must pay its own costs and expenses of negotiating, preparing and executing this Deed.

14.11 This Deed is governed by the laws of New Zealand. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand.

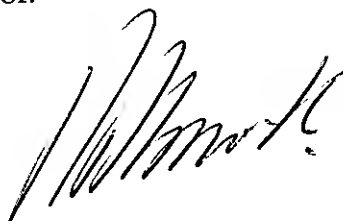
14.12 This Deed may be executed on the basis of an exchange of scanned copies of this Deed and execution of this Deed by such means is to be a valid and sufficient execution.

14.13 If this Deed consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

This Deed was executed on the date appearing at its head.

THE COMMON SEAL of
THE WESTLAND DISTRICT COUNCIL
Was affixed
In the presence of:

Bruce Smith
Mayor



)
)
)
)



Robin Reeves
Chief Executive



THE COMMON SEAL of
THE WEST COAST REGIONAL COUNCIL
Was affixed
In the presence of:

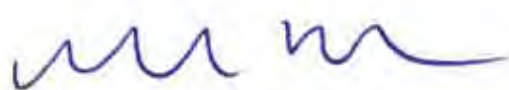
Andrew Robb
Chairman



)
)
)
)



Michael Meehan
Chief Executive Officer



Dated

28 May

2021

DEED OF TRANSFER OF BUILDING ACT FUNCTIONS

WEST COAST REGIONAL COUNCIL

CANTERBURY REGIONAL COUNCIL

SLR

CONTENTS

PARTIES	1
BACKGROUND	1
1. DEFINITIONS	1
2. TRANSFER	2
3. COMMENCEMENT OF TRANSFER	2
4. SERVICE RESPONSIBILITIES	2
5. ACCREDITATION AND REGISTRATION	2
6. FEES AND CHARGES	3
7. SERVICE ESTABLISHMENT FEE	3
8. ANNUAL FEE	3
9. SERVICE DISESTABLISHMENT FEE	4
10. INDEMNITY	4
11. INSURANCE	4
12. DURATION	4
13. REPORTING	5
14. INTELLECTUAL PROPERTY	5
15. COSTS	5
16. DISPUTES	5
17. INVALIDITY	5
18. ENTIRE AGREEMENT	5
19. AMENDMENTS	6
EXECUTION	6
SCHEDULE 1	7

ERROR! BOOKMARK NOT DEFINED.

DEED OF TRANSFER OF BUILDING ACT FUNCTIONS

DATED

28 May

2021

PARTIES

- A. **WEST COAST REGIONAL COUNCIL** (a regional council under the Local Government Act 2002) ("WCRC")
- B. **CANTERBURY REGIONAL COUNCIL** (a regional council under the Local Government Act 2002) ("ECAN")

BACKGROUND

1. WCRC is the regional council for the West Coast region and is a regional authority under the Building Act.
2. ECAN is the regional council for the Canterbury region and is a regional authority under the Building Act.
3. The Building Act confers on regional authorities functions, duties and powers in relation to dams.
4. Section 244 of the Building Act enables a regional authority to transfer one or more of its functions, duties or powers under that Act to another regional authority.
5. WCRC wishes to transfer to ECAN certain functions, duties and powers of a regional authority under the Building Act in respect of dams in the West Coast region (being the "Scheduled Functions", as defined).
6. Before entering into this Deed, WCRC has used the special consultative procedure in section 83 of the Local Government Act 2002 and served notice on the Minister for Building and Construction of the proposal to transfer the Scheduled Functions.
7. WCRC has agreed to transfer to ECAN and ECAN has agreed to accept the transfer of the Scheduled Functions of WCRC as a regional authority under the Building Act.
8. WCRC and ECAN have agreed that the transfer of the Scheduled Functions is desirable on the grounds of efficiency, technical and special capability, and expertise.
9. WCRC and ECAN have agreed that the transfer should be on the terms and conditions set out in this Deed.

TERMS OF THIS DEED

1. DEFINITIONS

1.1 In this Deed:

"**Building Act**" means the Building Act 2004, including any amendments or any enactment made in substitution for the Building Act 2004; and

SR

"Cancellation Date" means the date the transfer comes to an end pursuant to clause 12.2, 12.3 or 12.4; and

"Commencement Date" means the date set out in clause 3.1; and

"End Date" means the date set out in clause 12.1; and

"Scheduled Functions" means the functions, duties and powers of a regional authority under the Building Act shown with the status "Transferred" in Part A of Schedule 1.

2. TRANSFER

2.1 WCRC transfers to ECAN the Scheduled Functions.

2.2 ECAN accepts the transfer made by clause 2.1.

2.3 WCRC retains all functions, duties and powers of a regional authority under the Building Act in relation to dams that are marked with the status "Not Transferred" in Part A of Schedule 1 (or are otherwise not explicitly shown with the status "transferred" in that Part). ECAN may at its discretion provide assistance to WCRC in relation to WCRC's exercise of those functions, duties and powers which are not transferred to ECAN under this Deed. That assistance shall in each particular instance be undertaken pursuant to a separate contract for services only. The scope and terms of any assistance shall be strictly on the basis that the exercise of those functions, duties and powers shall remain with WCRC (and accordingly shall not, for the avoidance of doubt, be deemed to have transferred to ECAN), and that ECAN shall not under any circumstances be liable to WCRC in any way in respect of such assistance, except to the extent liability is caused by or contributed to by the negligence of ECAN.

2.4 The transfer made by clause 2.1 is on the terms and conditions set out this Deed and is subject to the provisions of the Building Act.

3. COMMENCEMENT OF TRANSFER

3.1 The transfer of Scheduled Functions effected by this Deed commences on 1 June 2021, subject to the transitional provisions set out in Part C of Schedule 1.

4. SERVICE RESPONSIBILITIES

4.1 Each party must diligently fully and promptly carry out its respective service responsibilities as set out in Part B of Schedule 1, and must otherwise do all things reasonably necessary for the proper and complete performance of the arrangements recorded in this Deed.

5. ACCREDITATION AND REGISTRATION

5.1 ECAN must for the purposes of performing the Scheduled Functions use reasonable endeavours to maintain at all times its:

- (a) accreditation under sub-part 4 of Part 3 of the Building Act; and
- (b) registration as a building consent authority under Part 3 of the Building Act.

- 5.2 The transfer of functions, duties and powers which require accreditation under sub-part 4 of Part 3 of the Building Act made by this Deed will become void if ECAN fails to retain its accreditation under sub-part 4 of Part 2 of the Building Act.
- 5.3 The transfer of functions, duties and powers which require registration under Part 3 of the Building Act made by this Deed becomes void if ECAN fails to retain its registration as a building consent authority under Part 3 of the Building Act.
- 5.4 If under clauses 5.2 or 5.3 part of the transfer of the Scheduled Functions becomes void;
- (a) the transfer of all other Scheduled Functions will not be affected but remain in full force and effect; and
 - (b) ECAN shall repay to WCRC part of the Annual Fee paid in advance. Such payment to be calculated on a pro-rata basis.
- 5.5 Subject to clause 5.4(b), ECAN will not be liable in any way whatsoever to WCRC if it fails to retain accreditation or registration

6. FEES AND CHARGES

- 6.1 ECAN may impose fees and charges and collect them under section 243 of the Building Act for carrying out the Scheduled Functions.
- 6.2 WCRC shall exercise its responsibilities under this Deed at its own cost. For the avoidance of doubt, ECAN shall not be liable for any costs incurred by WCRC in WCRC exercising its responsibilities under this Deed.

7. SERVICE ESTABLISHMENT FEE

- 7.1 WCRC shall pay a service establishment fee to ECAN.
- 7.2 The service establishment fee shall be paid before the commencement date.
- 7.3 The service establishment fee shall be \$8,333.33 plus GST.

8. ANNUAL FEE

- 8.1 WCRC shall pay an annual fee to ECAN.
- 8.2 The annual fee shall be paid yearly in advance i.e. before 1 June in each year.
- 8.3 The annual fee for each year to 31 May 2031 shall be \$13,000 plus GST.
- 8.4 For the three years subsequent to the year ending 31 May 2022, and for every three years thereafter, the annual fee will be adjusted by ECAN having regard to the actual and anticipated costs of system and procedure development, documentation and maintenance, the building consent authority accreditation and registration fees, insurance premiums and any costs arising from changes to legislation relating to the Scheduled Functions or ECAN's service responsibilities set out in Part B of Schedule 1.
- 8.5 ECAN shall advise WCRC of the adjusted annual fee by 1 January in respect of each three year period commencing the following 1 July. ECAN shall provide evidence in support of such

adjustment, but shall not, for the avoidance of doubt, be required to obtain WCRC's consent or approval to the adjusted annual fee.

9. SERVICE DISESTABLISHMENT FEE

9.1 WCRC shall pay a service disestablishment fee to ECAN if the transfer effected by this Deed:

- (a) is revoked by WCRC under clause 12.2; or
- (b) otherwise comes to an end on 31 May 2031,

whichever is the sooner.

9.2 The service disestablishment fee due in clause 9.1(a) shall be paid by the 20th of the month following the date of written notice served by WCRC.

9.3 The service disestablishment fee shall be the amount specified in the written notice under clause 9.2, being the fair, reasonable and actual costs to ECAN of disestablishment plus GST.

10. INDEMNITY

10.1 WCRC fully indemnifies ECAN for all liability including all damages, losses, costs and expenses of any kind in relation to any actions, claims, proceedings and demands of any kind made by any third party in respect of ECAN's performance and/or non-performance of the Scheduled Functions or any of ECAN's service responsibilities set out in Part B of Schedule 1, except to the extent liability is caused by or contributed to by the negligence of ECAN.

10.2 WCRC must not:

- (a) bring or make any actions, claims, proceedings and demands of any kind against ECAN in respect of the Scheduled Functions or any of ECAN's service responsibilities set out in Part B of Schedule 1; or
- (b) join ECAN as a party to any actions, claims or proceedings of any kind brought against WCRC in respect of the Scheduled Functions or any of ECAN's service responsibilities set out in Part B of Schedule 1.

11. INSURANCE

11.1 WCRC must at its own cost take out and keep current at all material times appropriate insurance cover of a kind and level acceptable in all respects to ECAN from time to time (but being to a value of not less than [NZ\$100 million]) in the names of both WCRC and ECAN for claims by third persons against ECAN in carrying out the Scheduled Functions and ECAN's service responsibilities set out in Part B of Schedule 1. WCRC shall produce to ECAN on demand from time to time a copy of the policy and/or evidence that the same is current and the dates the same is paid up to. WCRC shall do nothing to render such insurance void or voidable.

12. DURATION

12.1 The transfer effected by this Deed ends on 31 May 2031.

SSR

- 12.2 WCRC may at any time change or revoke the transfer effected by this Deed by twelve (12) months' written notice to ECAN.
- 12.3 If WCRC gives written notice to change the transfer effected by this Deed, ECAN may cancel the transfer by six (6) months' written notice to WCRC.
- 12.4 ECAN may at any other time cancel the transfer effected by this Deed by twelve (12) months' written notice to the WCRC.
- 12.5 The effect of this clause 12 is subject to the transitional provisions set out in Part C of Schedule 1.

13. REPORTING

- 13.1 ECAN must report to WCRC at twelve (12) monthly intervals on the exercise of the Scheduled Functions.
- 13.2 WCRC may at any other time request from ECAN other information it may reasonably require concerning the exercise of the Scheduled Functions.

14. INTELLECTUAL PROPERTY

- 14.1 Ownership of intellectual property rights relating to any systems and processes developed by ECAN and/or its consultants for the purpose of undertaking the functions, duties and powers relating to this Deed shall remain solely with ECAN (and/or its consultants as applicable) and shall not be passed to or shared with any other party unless expressly approved by ECAN in writing.

15. COSTS

- 15.1 ECAN, WCRC, and all other Regional Councils who enter into a deed substantially similar to this Deed within six months of the date of this Deed, shall each pay an equal share of ECAN's costs of and incidental to the preparation and negotiation of this Deed. Each party shall otherwise pay their own costs in relation to this Deed and any variation or renewal.

16. DISPUTES

- 16.1 If any dispute arises between WCRC and ECAN, the Chief Executives of WCRC and ECAN must meet and try to resolve the dispute.
- 16.2 Failing resolution, the dispute shall be submitted to a single arbitrator for determination under the Arbitration Act 1996.
- 16.3 The arbitrator shall be appointed jointly by WCRC and ECAN. If no appointment is made within fourteen (14) days of the Chief Executives failing to resolve the dispute, then either party may request the President of the New Zealand Law Society to appoint the arbitrator.
- 16.4 The arbitrator's decision shall be final and binding on the parties.

17. INVALIDITY

- 17.1 If any part of this Deed is held by any Court to be contrary to the Building Act or any other law then that part, and that part only, shall be severed with the balance of the Deed remaining in full force and effect.

18. ENTIRE AGREEMENT

- 18.1 This Deed embodies the entire understanding and the whole agreement between the parties.

SR

19.1 This Deed including any attached Schedules may be amended from time to time by agreement in writing signed for and on behalf of both parties.

**THE COMMON SEAL of
WEST COAST REGIONAL COUNCIL**
was hereto affixed by in the
presence of:



2 Bin

[Signature]

Councillor

THE COMMON SEAL of
CANTERBURY REGIONAL COUNCIL
was hereto affixed by in the
presence of:

presence of:

Sp. Rucke

Stefanie Rixecker - Chief Executive

~~Gouneiller~~

SCHEDULE 1

Functions transferred and service responsibilities in the exercise of those functions

This schedule details:

- Part A - The Building Act functions transferred to ECAN from WCRC.
- Part B - Each parties' service responsibilities. These are the obligations each party has to the other, over and above the transfer of Building Act functions that enable efficient and effective exercise of the transferred functions.
- Part C - Transitional provisions. These detail when ECAN will take over responsibility for, and when WCRC will resume responsibility for, each of the Building Act functions transferred.

For the avoidance of doubt:

- For each section of the Building Act described in Part A as being transferred, the transfer shall be of all functions, duties and powers of WCRC under that section (including all subsections thereof) except where and to the extent such transfer is expressly limited.
- Only functions, duties and powers actually held by WCRC and capable of transfer are so transferred.
- In the event of any inconsistency between Part A and Part B, Part A prevails.

PART A – FUNCTIONS TRANSFERRED

Description of function (and any limitation on transfer)	Status	Section of the Building Act
Issue of building consent		
Check content of application and vet plans	Transferred	45
Deal with minor variation to building consents	Transferred	45A
Provide copy of application to FENZ, if required	Transferred	46
Determine application without FENZ memorandum	Transferred	47
Process application for building consent	Transferred	48
Calculate amount of levy payable, advise applicant and received payment	Transferred	53, 54
Grant or refuse building consent, notify applicant and requirement payment of levy/fees	Transferred	49, 50
Assess compliance of alterations to existing buildings and allowing alterations without compliance	Transferred	112
Determine conditions for alterations to buildings with specified intended life	Transferred	113

SSR

Description of function (and any limitation on transfer)	Status	Section of the Building Act
Receive, consider and grant/refuse request for extension of specified intended life	Transferred	116
Issue building consent	Transferred	51
Receive, consider and grant/refuse request for extension of building consent lapse period	Transferred	52
Payment of levy to MBIE, with retention of 3%	Transferred	59, 60
Recovery of unpaid levy from applicant	Transferred	62
Provision of information about estimated value of building work to MBIE, on demand	Transferred	63
Keep records of building consents granted within region	Transferred	64
Grant of waiver/modification of building code		
Receive, consider and grant conditions in relation to a request for waiver or modification	Transferred	67
Applications relating to energy works	Transferred	70
Notify DHB of any waiver or modification granted	Transferred	68
Building on land subject to natural hazards		
Refusing to grant building consents relating to natural hazards	Transferred	71
Granting building consents relating to natural hazards	Transferred	72, 73
Determining that entry is no longer required and notifying accordingly	Transferred	74
Buildings on 2 or more allotments		
Issuing, signing and lodging a certificate imposing condition on transfer of specified allotments, and noting such condition on the consent	Transferred	75,77
Inspection of building work		
Plan and carry out system of inspections so that all reasonable steps are taken to ensure that building work is carried out in accordance with a building consent	Transferred	90, 222
Grant of Schedule 1 exemption		

Description of function (and any limitation on transfer)	Status	Section of the Building Act
Receive, consider, grant or refuse request for Schedule 1 exemption relating to any dam which is a 'large dam'	Transferred	12(2)(c), 41, Schedule 1 Clause 22
Receive, consider, grant or refuse request for Schedule 1 exemption relating to any building work, except a dam which is not a 'large dam'	Not Transferred	12(2)(c), 41, Schedule 1
Issue of NTF (expressly limited to building work subject to a building consent granted by ECAN or an application for a Code Compliance Certificate lodged with ECAN or in relation to any dam warrant of fitness or any compliance schedule)		
Consider whether a NTF may be issued, issue notice, and notify other responsible authority it appropriate	Transferred	164, 165
Special provisions for NTF from a building consent authority	Transferred	166
Inspect building work carried out in accordance with NTF, confirm/refuse NTF has been completed, issue further NTF is required	Transferred	167
Issue of CCC		
Require further information in respect of CCC application, and consider granting CCC on expiry of 2 years after date of granting building consent	Transferred	93
Consider whether building work complies with building consent, check development contributions have been addressed, issue or refuse CCC in prescribed form and receive fees	Transferred	94, 95, 91
Give applicant written notice of reason for refusal	Transferred	95A
Receive, consider and grant/refuse request for certificate of public use	Transferred	363A
Issue or amendment of compliance schedule		
Issue compliance schedule with CCC or CoA if building has any specified systems and calculate, charge and receive fee	Transferred	102
Receive and consider application/recommendation for amendment to compliance schedule, agree to	Transferred	106,109

Description of function (and any limitation on transfer)	Status	Section of the Building Act
amend/not amend compliance schedule, advise applicant		
Notify territorial authority of issue of compliance schedule and provide copy	Transferred	104
Amend the compliance schedule on its own initiative, advise the owner of such, consider submissions if any, give written notice to the owner	Transferred	107
Administration of building warrants of fitness		
Receive annual building warrants of fitness from building owner	Transferred	108
Inspect building for which compliance schedule has been issued	Transferred	111
Miscellaneous		
Keep required information in respect of functions, powers and duties transferred in this Schedule	Transferred	216
Give required access to the information held	Transferred	217
Provide required information to the chief executive	Transferred	218
Issue of Certification of Acceptance		
Receive, process and grant or refuse applications for CoA	Not Transferred	96, 97, 98, 99, 99A
PIM functions		
Receive, process and issue PIM applications	Not Transferred	31, 33, 34, 35, 36, 37, 38, 39
Miscellaneous functions		
Dam Register	Not Transferred	151, 152
Dangerous Dams policy, earthquake-prone and flood-prone dams policy, enforcement and follow-up	Not Transferred	154, 156, 157, 158, 159, 160, 161, 162
Classification of Dams, Dam Safety Assurance Programme, Dam Compliance Certificate	Not Transferred	134, 134A, 134C, 135, 135A, 136, 138, 142, 143, 145, 146, 148, 150

PART B – SERVICE RESPONSIBILITIES

Core processing of building consents, Code Compliance Certificates, exemptions, waivers, etc.

ECAN service responsibilities:	<ul style="list-style-type: none"> • Provide information about building consent process (as applicable to dams) to potential applicants. • Maintain all master records of its Building Act activities. • Keep WCRC informed at the critical milestones as defined in ECAN processes (e.g. requesting additional information etc.). • Liaison where requested by WCRC in terms of condition setting linked to matters under control of WCRC e.g. development contributions, resource consent conditions.
WCRC service responsibilities:	<ul style="list-style-type: none"> • Redirect any customer enquiries about existing building consents and Certificates (granted by ECAN) to ECAN. • Notify ECAN in a timely manner of any new information relevant to the processing of its BCA functions (e.g. such as may arise during the processing of a resource consent or PIM or monitoring activity or updating of WCRC's Register of Dams). • Maintain copies of all relevant information to a Building Consent in a systematic manner. • Process WCRC's PIM and forward a copy to ECAN. • Pass on the TA's PIM to ECAN. • Update WCRC's Register of Dams based on the processing milestones. • Carry out its own assessment against WCRC's policies on dangerous dams, earthquake-prone dams and flood-prone dams and advise all relevant parties of the outcome.

Customer enquiries, public information, complaints

ECAN service responsibilities:	<ul style="list-style-type: none"> • Maintaining good communication channels with WCRC. For example, ECAN will notify WCRC about customer enquiries that will probably lead to building consent applications. • Receive and manage inquiries and complaints about building control functions in respect of functions, powers and duties transferred.
WCRC service responsibilities:	<ul style="list-style-type: none"> • Maintaining good communication channels with ECAN. For example, WCRC will notify ECAN about customer enquiries that will possibly lead to applications or requests under the Building Act. • Lodging an application within their own customer systems. • Forwarding all applications to ECAN within 24 hours of receipt.

	<ul style="list-style-type: none"> • Updating Register of Dams where applicable. • Notifying applicants and enquirers about PIM and RMA requirements. • Directing enquiries about building consent requirements and how to apply for a building consent to ECAN. • Investigating complaints and reports of unlawful building work in relation to dams and their appurtenant structures, and reporting the outcome to complainants and enquirers and ECAN. • Responding to enquiries regarding the building consent status and compliance of dams and their appurtenant structures.
--	---

Inspection, monitoring and enforcement

ECAN service responsibilities:	<ul style="list-style-type: none"> • Notifying WCRC and relevant Territorial Authority 2 working days prior to the issue of a Notice to Fix to any dam within the Region of the WCRC. • Liaising with WCRC on matters where joint co-ordination may be appropriate on inspections, non-conforming building work, illegal building work, etc. • Liaising with WCRC in regard to illegal building work as to determination of who will exercise enforcement powers. • Maintaining all appropriate records relating to ECAN's Building Act responsibilities.
WCRC service responsibilities:	<ul style="list-style-type: none"> • Providing warrants (if and where required) to ECAN and its agents to enable ECAN to carry out inspection, Notice to Fix and enforcement functions. • Carry out inspections on behalf of the BCA (where determined by ECAN as part of the inspection programme as being practical and feasible) • Accompanying ECAN on inspections where this is agreed as appropriate. • Notifying ECAN of unlawful building work known to WCRC.

Non BCA Functions Transferred

ECAN Service Responsibilities:	<ul style="list-style-type: none"> • Maintain appropriate records relating to ECAN's Building Act responsibilities. • Annual report to WCRC about the performance of ECAN's BCA functions.
WCRC service responsibilities:	<ul style="list-style-type: none"> • Liaison on any Notice to Fix or enforcement action resulting from the above functions.

	<ul style="list-style-type: none"> Assist ECAN as required in the preparation of ECANs annual report to MBIE. Ensure ECAN has an up to date and complete and accurate copy of WCRC's Register of Dams. Advise ECAN upon each change made to WCRCs Register of Dams.
--	--

Functions Not Transferred

ECAN Service responsibilities:	<ul style="list-style-type: none"> Taking into account PIM information provided by WCRC in the processing of Building Consents.
WCRC service responsibilities:	<ul style="list-style-type: none"> Timely and accurate preparation of PIM and forwarding this to ECAN to enable timely processing of building consent application. Advice on the above functions to ECAN where they impact on current building consent applications.

PART C – TRANSITIONAL PROVISIONS

For the avoidance of doubt, the following provisions shall be interpreted on the basis that in no event is the same function intended to be held by more than one regional authority at the same time in respect of the same matter.

Description of function	Transitional provisions
Issue of building consents (including related grant of waiver/modification of building code, building on land subject to natural hazards, buildings on 2 or more allotments) and grant of Schedule 1 exemptions	Commencement: WCRC has responsibility for any building consent and exemption application accepted by WCRC before the Commencement Date.
	End/Cancellation: ECAN has responsibility for any building consent and exemption applications accepted by ECAN before the Cancellation Date or End Date.
Issue of CCCs, CPUs and compliance schedules	Commencement: WCRC has responsibility for any CCC, CPU and compliance schedule application accepted by WCRC prior to the Commencement Date.
	End/Cancellation: ECAN's responsibility for the issue of CCCs and compliance schedules accepted by ECAN before the Cancellation Date or End Date, irrespective of when the application was received or whether the relevant building consent was issued by ECAN.
	Commencement: WCRC has responsibility for inspection of building work required for processing an application for the issue

Description of function	Transitional provisions
Inspection of building work and issue of NTF	of any CCC, CPU or compliance schedule for which responsibility is retained by WCRC.
	End/Cancellation: ECAN's responsibility for the inspection of building work and the issue of NTFs ends on the End Date or Cancellation Date (as applicable), irrespective of whether the applicable building consent was issued by ECAN.
Amendment of compliance schedule and administration of building warrants of fitness	Commencement: WCRC has responsibility for any application for amendment to a compliance schedule or annual building warrant of fitness accepted by WCRC prior to the Commencement Date set out in clause Error! Reference source not found..
	End/Cancellation: ECAN's responsibility for any application for amendment to a compliance schedule or annual building warrant of fitness ends on the Cancellation Date or the End Date, irrespective of when the application was received or whether the relevant building consent was issued by ECAN
Keeping and giving access to information	Commencement: WCRC must keep and give access to information on all matters within its responsibility prior to the Commencement Date.
	End/Cancellation: ECAN must keep and give access to information on all matters within its responsibility prior to the End Date.

SSR

WEST COAST REGIONAL COUNCIL

To: Chair, Resource Management Committee

I move that the public be excluded from the following parts of the proceedings of this meeting, namely – items 10.1. (inclusive) due to privacy, commercial sensitivity and security reasons and that

- 1. Heather Mabin be permitted to remain at this meeting after the public have been excluded due to her knowledge of the subjects. This knowledge will be of assistance in relation to the matters to be discussed; and*
- 2. That the minutes clerk also be permitted to remain.*

Item No	General Subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 7 of LGOIMA for the passing of this resolution
10.1	Confidential Minutes RMC Meeting – 14 February 2023	These items contain information relating to commercial, privacy and security matters	To protect commercial and private information and to prevent disclosure of information for improper gain or advantage (s7(2)(a), s7(2)(b), and s7(2)(j)).

3.