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Resource Markets Policy  
Ministry of Business, Innovation and Employment  
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### **Review of the Crown Minerals Act 1991**

Thank you for the opportunity to provide feedback on the Review of the Crown Minerals Act 1991. I would like to thank you for extending the closing date so our feedback could be further informed prior to finalising this submission.

How we manage our resources, minerals included, influences our economic, social and cultural wellbeing throughout New Zealand. This Council supports, in principle, legislation to ensure that the West Coast can thrive while managing and protecting those resources that contribute to this.

We appreciate that there will be many submissions made on the proposals put forward, and as such, have focussed on those issues of most importance to the West Coast and particularly our Council. Except where we have noted otherwise, we generally support the submissions made by:

- Minerals West Coast
- Bathurst Resources Limited
- Te Rūnanga o Ngāi Tahu

### **Key points**

In considering our submission, our key points are as follows:

- There is a need for the holistic consideration of all government policy (current, under consultation and to be released in the coming months) to avoid perverse outcomes.
- Ensuring that there is an ability to apply regional variances to policy implementation where appropriate.
- Support of the current role and purpose statement of the CMA.
- There is no support for proposals that will lead to the duplication of processes already in place. This duplication will lead to greater inefficiencies and cost on local ratepayers, taxpayers, industry and iwi.
- Seek that enforcement actions and infringement fines be refined to meet the principles of fairness and reasonableness, and are not disproportionate to the non-compliance undertaken.

We are concerned that the goals of Government will be unattainable if the proposed changes to legislation across the board are made. The outcome identified in the discussion document seeks *an effective and efficient regulatory regime that balances environmental and community interests with the need to secure our supply of critical minerals, both now and for the foreseeable future*. How New Zealand positions itself for the future in

regards to providing access to cater to the demand for clean-tech minerals to support new technologies will be an important issue to address.

Please contact me if you have any questions regarding the content of our submission or require additional information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Meehan', with a long horizontal stroke at the end.

Michael Meehan  
**Chief Executive**

## West Coast Regional Council

### Submission on the Review of the Crown Minerals Act

#### Structure of this submission

This submission has seven parts:

- The West Coast Context
- General comments on legislation and policy development
- Chapter 1 – Role and purpose statement
- Chapter 4 – Public participation
- Chapter 5 – Maori engagement
- Chapter 6 – Compliance and enforcement
- Other matters

The first two sections are general comments on the region and the national direction overall. The numbered sections of our submission respond to the questions, and Councils concerns over the topics discussed, in the Discussion Document “Review of the Crown Minerals Act 1991” that are the most relevant for our region.

#### The West Coast context

The West Coast relies on the natural resources of the region for its economic, social and cultural wellbeing. The region has undergone a significant economic structural change due to a period of low commodity prices and an upturn in international visitors. Gross Domestic Product (GDP) has been heavily concentrated in just a few sectors. This reliance on a few sector makes the region vulnerable to economic shocks, natural events and the vagaries of international markets.

The West Coast makes up less than 1 percent of the four key national indicators of GDP, population, employment and business units. The impact of lower international coal, gold and dairy prices over several years from 2012 resulted in lower rates of GDP and employment growth, with flow on effects on our population.

Total GDP for the West Coast in 2017 was \$1,555m (-4% v. 2016) with a population of 32,500 and full time employees of 15,944 (-3.3% v.2016). Four key sectors accounting for 40% of regional GDP drive the economy – mining being one of these<sup>1</sup>.

Today, mining continues to play a key role in the economic makeup of the region. There has been a rebound in commodity pricing to show some improvement at the start of 2018. There are still companies looking for investment, development and exploration opportunities as well as investigating some of the ‘non-traditional’ minerals such as garnets and ironsands. The New Zealand Institute for Minerals to Materials Research<sup>2</sup> was launched in July 2018 with a focus on moving the minerals industry from commodities to high value materials and products. Based on the West Coast, one of the three initial research areas for NZIMMR has been focused on rare earth elements. World governments, including New Zealand, have recognized the critical importance of such minerals to achieving a carbon free future. These minerals will unlock our future and being able to access them is fundamental to Government in realising their own policy aspirations.

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<sup>1</sup> Tai Poutini Economic Development Strategy <https://www.dwc.org.nz/Resources-Information/2018-08-29-1.html>

<sup>2</sup> <https://www.mbie.govt.nz/science-and-technology/science-and-innovation/funding-information-and-opportunities/investment-funds/regional-research-institutes/minerals-materials-research/>

Reducing options for accessing rare earth minerals in New Zealand will place increased pressure on obtaining these from other countries whose environmental and employee safety standards lag far behind our own: a NIMBY-ism (not in my back yard) approach which we do not support.

The West Coast has significant advantage in the minerals sector given the volume of materials present and its local infrastructure and capability. The region has strong local mining businesses well supported by machinery and equipment manufacturing, engineering, survey and construction industries. An experienced workforce, which generally receives greater than average incomes, further complements this sector. Many of these supporting businesses have now also turned to exporting their products and services outside of the region.

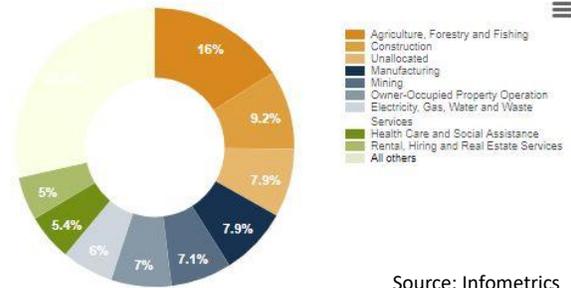
In 2018, the West Coast was identified as one of the Governments six surge areas and was prioritized for investment through the Provincial Growth Fund programme. To date, there have been no ‘game changer’ development proposals which would make a significant impact to the economic wellbeing of the region. Instead, the majority of funding has been earmarked for tourism projects – another sector which is heavily reliant on outside influences and which is not contributing in any manner to diversifying the regional economy.

Due to the challenges facing the economic future of the region, ensuring the continued operation of key sectors is vital in order to maintain and grow the wellbeing of our communities. This includes the extraction of minerals.

The West Coast’s land cover is characterised by a predominance of forest cover (about two thirds of land area), of which most is indigenous forest. This is primarily an outcome of the nature of the land ownership of the region which is split 16% in private ownership and 84% under the administration of the Department of Conservation. The dichotomy in landownership presents additional resourcing challenges for the Regional Council in not being able to rate this land, as well as limiting the productive capacity of the region. While there are some activities undertaken on land administered by the Department (grazing, mining, tourism) there is limited other opportunities for productive land development.

The West Coast Regional Council is the smallest regional Council in New Zealand and manages the fifth largest area in the country. However, we are still required to deliver the same services and functions as the other regions. In analyzing the proposals of the CMA review, it is evident that if enacted as proposed, it will result in duplicating effort between central and local government. Duplicating effort provides no benefit, and additional costs on both rate and tax payers.

### Proportion of GDP by ANZSIC 1-digit industries, 2018



### Biggest contributors to economic growth, 2008-2018

Agriculture, Forestry and Fishing	\$32m
Construction	\$29m
Retail Trade	\$16m
Rental, Hiring and Real Estate Services	\$14m
Transport, Postal and Warehousing	\$13m
All other industries	(\$86)m
<b>Total increase in GDP</b>	<b>\$18m</b>

Ensuring that activities, some of which may impact the environment, can be enabled whilst providing for positive environmental outcomes is at the forefront of all of the work undertaken by the Council.

The context of the region, and the challenges and pressures facing the Regional Council, have shaped the comments provided in regards to the review of the CMA. What we have found repeatedly, is that the West Coast differs to other parts of New Zealand. Central government, while having the best of intentions, does not take into account that there are these regional variations across the country. 'Cookie cutter' policy may achieve little in one region where there are limited or no pressures on that particular resource resulting in significant time and resource being required to address it. We recognise that it is challenging to apply workable policy across large areas but know that it can be achieved.

## General comments on policy development

Central Government is in the midst of the biggest legislative reform we have seen for some time. We are concerned that the review of the CMA will not be well connected to the others being considered, or how these will impact the country, and regions, overall.

There has been a trend of poorly constructed, or non-existent, regulatory impact statements which have failed to capture the true impact proposed regulation will have on communities, businesses and local government. The drive towards decentralisation and a push for central government policy to be delivered by local government through 'unfunded mandates' is, in the case of the West Coast, impossible to deliver without significant rate increases. While the CMA process does not require the same sort of assessment process, we request that the economic effects of these proposals are critically assessed as well as taking into account the true impact the proposals will have, particularly as the effects of such legislative change will impact regions differently. The discussion document talks about a 'just transition'. How this will be enacted for regions such as the West Coast has yet to be communicated.

Government will be well aware that rural regions are already concerned about the potential impact of the various policy documents (National Policy Statements and National Environmental Standards) and changes to legislation (Resource Management Act, Zero Carbon Bill, Crown Minerals Act) the Government is currently, and proposing to consult on. Having relevant and robust economic assessments to quantify the social and economic cost would go some way towards alleviating this concern. In addition to this, being clear on what the proposal will achieve is paramount. Will the cost to achieve what is sought by Government justify the outcomes? This is particularly the case whereby extra monitoring or changes to public participation processes will result in a duplication across regulatory or consenting bodies providing little, if any, benefit.

We draw attention to the Rural Proofing Guide for policy development and service delivery planning<sup>3</sup> and question how this has been given effect to throughout the development of the review of the CMA. Is the effort required by central and local government, iwi and other stakeholders, going to achieve the gains sought?

Other policy changes we are also concerned about include the Essential Freshwater proposals, National Policy Statement on Biodiversity, Historic Landfill work, Department of Conservation Stewardship Land discussion and 'No new mines on conservation land' amongst other things. Our District Councils are also concerned over the three waters discussion and work associated with this. Depending on the outcomes of these review

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<sup>3</sup> Ministry for Primary Industries 2018 - <https://www.mpi.govt.nz/about-us/our-work/rural-proofing/>

processes, it is likely that there will be significant impact on the economic, social and cultural wellbeing of this region.

For the West Coast, we are seeing first-hand the disconnect between what our region needs in regards to economic development and the wellbeing of our communities, and how this is being stymied by bureaucratic red tape and poorly thought out policy at a central government level to address issues in other regions. The ability for local government and their communities to make decisions in their best interests are non-existent under this government. This needs to change.

## Chapter 1 - Role and purpose statement

The discussion document explores the four wellbeing measures of Social Capital, Human Capital, Natural Capital and Financial Capital and assesses the CMA against each. The CMA rightly focusses on financial and physical capital as this is generally its purpose i.e. *“promote prospecting for, exploration for, and mining of Crown owned minerals for the benefit of New Zealand”*. As pointed out in the discussion document, the CMA also addresses Social, Human and Natural Capital as follows:

### Natural Capital

- The CMA allows for land to be added to Schedule 4 (land to which access restrictions apply).
- The upfront assessment of environmental considerations attempts to support, but not replicate, processes under other legislation. This process is still aimed at ensuring only a “fit and proper person” is able to obtain a permit under the CMA.

### Social Capital

- Ensuring that “this Act shall have regard to the principles of the Treaty of Waitangi”.

### Human Capital

- The upfront assessment of health and safety considerations attempts to support, but not replicate, processes under other legislation. This process is still aimed at ensuring only a “fit and proper person” is able to obtain a permit under the CMA.
- Considers an applicant’s proposed work programme.
- Considers the likelihood that the applicant is going to comply with and give proper effect to the work programme (taking into account the applicant’s technical and financial capability, and failure to comply with other permits).
- For Tier 1 exploration and mining permits, undertakes a preliminary, high-level assessment of a proposed permit operator’s capability and systems that are likely to be required to meet applicable health, safety and environmental legislation.

With the CMA clearly focussing on Financial Capital (its purpose for being), but also outlining clear pathways to follow to promote Social, Human and Natural Capital, this suggests that the CMA is already very well aligned with the Governments priorities. We believe that any further alignment would undermine the purpose of the CMA and introduce inefficiencies in the form of duplication of process and increases in cost. For example, new community engagement processes and monitoring and enforcement programs would duplicate regional council Resource Management Act functions in the well beings of Natural and Social Capital.

We believe that adding inefficiencies, though cost and duplication of process, is contrary to the vision set out in the Minerals Strategy - *“a world-leading environmentally and socially responsible minerals and petroleum*

*sector that delivers affordable and secure resources, for the benefit of current and future New Zealanders” - and seek that the current regulatory system for extraction of minerals is not altered in such a way to perpetuate these issues.*

The discussion document also explores the use of the word ‘*promote*’ in the purpose of the act. ‘*Promote*’ is a word used in various legislation, for example the Resource Management Act 1991 - “*The purpose of this Act is to promote the sustainable management of natural and physical resources.*”

Given that the collective regulatory system for minerals already ensures a “responsible” minerals and petroleum sector, and alignment across the four wellbeing’s and new priorities, Council **does not support** any amendment to the role and purpose of the CMA and seek that these remain unchanged.

## Chapter 4 – Public participation

The regulatory system that governs mining is complex due to the various pieces of legislation required to be met. The CMA is just one part of this wider regulatory system.

Chapter 4 sets out the current framework and public participation through the relevant effects based framework. For the West Coast this is through the Resource Management Act 1991. Regional and district councils must give effect to the Resource Management Act for activities, including for minerals extraction, through the provisions in their plans and through the resource consent process.

Question 9 of the discussion document asks whether there should be more public participation in the decision making process for the granting of CMA permits. We believe that the current public involvement processes under the Resource Management Act are robust and ensure that all parties have the opportunity to submit and be heard in a public forum on either plan changes or certain resource consents. Applications for activities to be undertaken on land administered by the Department of Conservation also require an access arrangement or concession. This can also include a public participation component.

We do not believe that there is a demonstrable need for greater public involvement in permitting decisions under the CMA **and seek that there should not be** further public participation in this process for the following reasons:

- Iwi participation is already provided for in the CMA permit process. Going above and beyond what is already established and in practice, duplicates existing Resource Management Act requirements, decreases efficiency and increases costs both financially and in time.
- Point 128 in the discussion document infers that public participation could be considered as the Resource Management Act is currently under review. This is not a valid reason unless there was a clear proposal on the table to take public participation processes out of the Resource Management Act. We do not believe that this will take place.
- Resource Management Act processes already balance economic considerations alongside environmental effects. There is no reason to duplicate that through another piece of legislation as it would provide no environmental or social benefit.

### One Window initiative

The One Window initiative proposed in the Tai Poutini West Coast Economic Development Action Plan<sup>4</sup> was for a single window regulatory processing initiative to be established. This would effectively streamline the

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<sup>4</sup> <https://www.dwc.org.nz/Resources-Information/wcedap.html>

regulatory process, removing duplication of application forms and paperwork, without compromising the integrity of the permitting, consenting or regulatory outcomes sought.

The West Coast Regional Council funded a report into how this could be established. Unfortunately this initiative was never progressed due to the involved agencies unable to take any meaningful action. We have seen attempts at better engagement in the region from New Zealand Petroleum and Minerals which has improved communication, however this has not changed the regulatory system for the better, and small matters, such as joint application forms, have been difficult to advance.

There is an opportunity to explore this initiative, or something similar, further, particularly for Tier 2 permits. Tier 2 permits have significant duplication throughout their process, and an opportunity to strengthen and simplify the system at this level, without diluting the regulations could be easily progressed. **Council supports this approach** which could be advanced through this legislative review.

## Chapter 5 – Maori engagement

The discussion document outlines the robust process in place for iwi engagement (page 15). Iwi and hapū already have provisions in place which enables them to protect land from minerals development on a permit-by-permit basis. Currently the Ministry for Business, Innovation and Employment facilitates the process of connecting Iwi with permit applicants. From our view, and that of Poutini Ngāi Tahu, this operates well.

The main issue is, as highlighted in the discussion document and confirmed by Poutini Ngāi Tahu, is a lack of capacity and capability on the hapū side. If Government is serious about pursuing this duplication of process, then the Crown should help resource their capacity and capability.

The One Window initiative outlined above, sought ways in which to reduce the capacity pressures on Iwi by streamlining the process and removing the duplication of application forms and paperwork. This promotion of efficiency was supported by our local Iwi but was stymied by the Government Departments unable to effect real change and move towards this streamlined process.

The discussion document sets out two options for moving forward. Option 1 – status quo, and Option 2 - exclude defined areas from permitting. Option 2 is duplication of the Statutory Acknowledgement Areas (Ngāi Tahu Claims Settlement Act 1998) process, which the Regional Council already recognises and has processes in place for protecting these values.

As such, **Council supports continuation of the status quo**, unless Government is able to move its Departments into effecting real change towards streamlining paperwork and processes.

## Chapter 6 – Compliance and enforcement

There are currently limited regulatory powers available to employ under the CMA resulting in no intermediary enforcement action between a non-enforceable letter and court action or revoking a permit.

**Council supports in part the introduction of some intermediary level enforcement actions** as proposed in the Discussion Document. However, we question whether the proposed fee levels are fair, reasonable and proportionate – one of the principles by which MBIE's regulatory actions are guided. For example, \$2,000 per

day to a maximum of \$20,000 for the late filing of a return appears disproportionate to the non-compliance of a late paperwork issue.

Therefore, Council seeks that the enforcement actions, and infringement fines, be further refined in order to be fair and in proportion to the non-compliance undertaken.

## Other matters

Government has ruled out any change to the Crown's ownership of minerals through this review. Council **supports** this stance.

Council supports the classification of all prospecting permits as Tier 2.

This ends our submission.