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2 February 2023

Committee Secretariat
Governance and Administration Committee
Parliament Buildings
Wellington 6140

ga@parliament.govt.nz

Dear Sir/Madam

Submission on Local Government Official Information and Meetings Amendment Bill

Thank you for the opportunity to provide comment on the Local Government Official Information and Meetings Amendment Bill.

The West Coast Regional Council's (WCRC or the Council) submission is attached.

The Council consulted with their iwi partners, Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, in the development of this submission. No issues were raised.

We welcome the opportunity to respond to this consultation.

Due to resourcing constraints and workload, this submission is brief.

The Council supports in principle sharing natural hazard information with the three West Coast District Councils. It is important to take a collaborative approach to managing natural hazard risk where it may affect people and property. However, the Council has concerns about the interpretation and implementation of some of the new terms in the Amendment Bill, and the risk of the Council being liable for not providing information, or providing insufficient information about actual and potential natural hazards on properties.

Our contact details for service are:

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We would be grateful for acknowledgement of receipt of our submission.

Yours faithfully

A handwritten signature in black ink, appearing to read 'H Mabin', followed by a long horizontal line extending to the right.

Heather Mabin
Chief Executive Officer

West Coast Regional Council Submission on Local Government Official Information and Meetings Amendment Bill

List of Feedback and Recommendations

Recommendation 1

That the Government puts the Amendment Bill on hold, and provides guidance to regional councils and territorial authorities on how to implement the drafted new clauses, to reduce the risk of councils being exposed to legal challenge.

Recommendation 2

That the Government puts the new Bill on hold and undertakes consultation with regional councils on the legal ramifications of implementing the proposed provisions.

Introduction

The West Coast Regional Council (the WCRC or the Council) appreciates the opportunity to submit on the Local Government Official Information and Meetings Amendment Bill.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu or PNT), who are mana whenua on the West Coast/Tai Poutini, were asked if they wanted to have input into this submission.

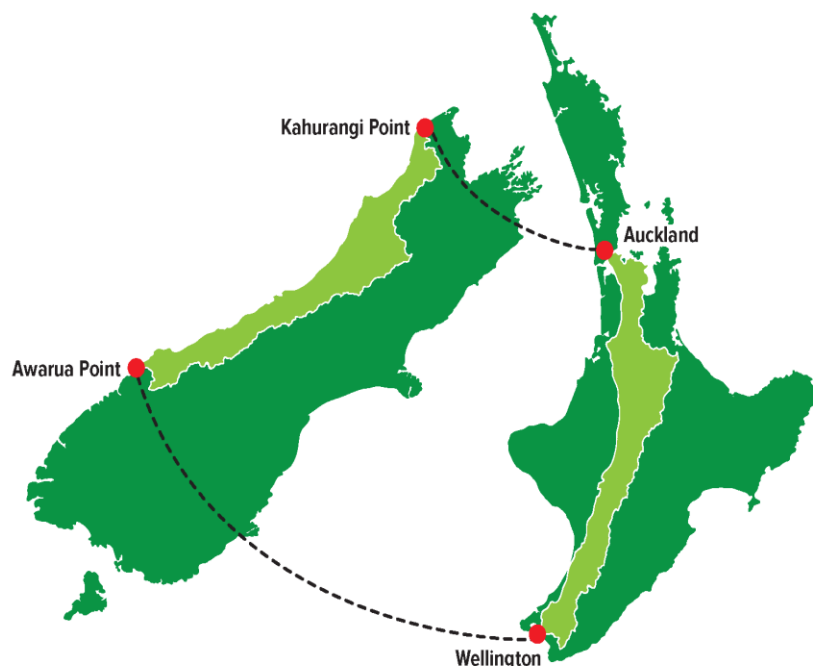
Due to resourcing constraints and workload, this submission is brief. It provides a short overview of the West Coast Region, followed by our submission points.

In summary, the Council supports in principle sharing natural hazard information with the three West Coast District Councils. It is important to take a collaborative approach to managing natural hazard risk where it may affect people and property. However, the Council has concerns about the interpretation and implementation of some of the new terms in the Amendment Bill, and the risk of the Council being liable for not providing information, or providing insufficient information about actual and potential natural hazards on properties.

About the submitter

The West Coast Regional Council (WCRC or the Council) is the local authority, and the three District Councils are the territorial authorities for a region covering a vast area with a sparse population. Extending from Kahurangi Point in the north to Awarua Point in the south, this is the approximate distance from Wellington to Auckland.

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



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

The West Coast is predominantly rural.

Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (Poutini Ngāi Tahu – PNT) are mana whenua of Te Tai o Poutini (the West Coast). The WCRC's Mana Whakahono ā Rohe (Resource Management Act – Iwi Participation Arrangement) captures the intent of the WCRC and Poutini Ngāi Tahu to progress our relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

The WCRC and the three territorial authorities (the Buller, Grey and Westland District Councils) work closely together. The region's relatively small population of approximately 32,600 is spread across the main towns of Westport, Greymouth, Reefton and Hokitika, and smaller settlements and rural communities. It is important that national legislation is relevant to our unique region, and provides for the social, economic, and cultural well-being of all West Coast communities and the natural environment.

The Conservation Estate comprises 84.17% of the West Coast land area, with an additional 1.55% administered by Land Information New Zealand (LINZ). The four West Coast Councils do not receive any rates from public conservation land.

Submission points

Concerns with terminology and implementation costs

The WCRC neither supports nor opposes the proposed changes to the Local Government Official Information Management Act (LGOIMA), to require more robust information sharing between regional councils and territorial authorities (district councils) with regard to natural hazards.

The new parts of the Amendment Bill that are of concern to the Council are summarised below:

Section 44C(1) Regional councils must provide territorial authorities with natural hazard information....:

“(a) to the extent that it is known [underline added] to the council, about natural hazards and impacts of climate change that exacerbate natural hazards:....

(ii)....information about each potential [underline added] hazard or impact, to the extent that the council is satisfied that there is a reasonable possibility [underline added] that the hazard or impact may affect land in the region (whether now or in the future); and

(iii) information about the cumulative or combined effects [underline added] of those hazards or impacts on land in the region; and

(b) any further information required by the regulations (if any) to make the information provided....more understandable.

(2) The information must be summarised and presented in the form required....”.

The Council agrees in principle with the importance of sharing natural hazard information with the three West Coast District Councils. However, the terms underlined above are very broad, open to interpretation, and it could be difficult for the Council to meet these requirements.

Identifying potential hazards, and cumulative or combined effects, will be complicated and sensitive for the West Coast. As an example, for a number of years now, the West Coast Councils have been advised it is likely that the Alpine Fault will rupture in the next 30-50 years, at a magnitude of 8 or more on the Richter scale. This is referred to as the AF8 event. In terms of potential hazards or impacts, the Council and earthquake experts do not know which rivers will be blocked by landslides after the AF8 earthquake, and will then have a wave surge down the river valley flooding rural towns and farms. This scenario could potentially affect most of the lowland West Coast, but the level of uncertainty around specifically which properties will be affected is high.

Another example of how challenging it is for West Coast Councils to have clear hazard and risk information for an area, let alone an individual property, is with possible multi-hazard interactions between rainfall, rivers, and the coast. Some work has already been done to determine how climate change impacts, such as sea level rise and higher intensity rainfall, could impact parts of the region in the future. However, the cascading impact of coastal and river flooding including possible damage to flood protection schemes has a wide range of potential unfolding scenarios. Coastal erosion can change due to many external factors difficult to predict, and it is very difficult to determine areas of the coast at risk of flooding due to damage to coastal defences over time, and when this may occur.

The risk of legal challenge to the WCRC could well be high as we do not have a lot of technical information. The costs of expert investigation into identifying where it will be 'reasonably possible' that land will be affected by the AF8 event will be astronomical for a small council. And the Council may struggle to provide the resourcing needed to translate technical reports into lay person's language to make them more understandable. Some members of the public might expect more from the WCRC than what can be provided.

Further legal costs may accrue to the WCRC by needing legal advice on how to manage the risks of providing information.

It seems that the Government is considering regulations to implement the requirements in the Amendment Bill. Without having seen any drafted regulations, non-statutory guidance as a first step may be better.

Recommendation 1

That the Government puts the Amendment Bill on hold, and provides guidance to regional councils and territorial authorities on how to implement the drafted new clauses, to reduce the risk of councils being exposed to legal challenge.

Liability risk for West Coast Councils

New section 44D provides that territorial authorities (TAs) and regional councils are not liable in civil or criminal proceedings for making information available in good faith, by TA's in Land Information Memoranda (LIMs), or by regional councils giving natural hazard information to TAs.

However, the Explanatory Notes that support the Bill say that the limitation of local authority liability still preserves the ability for land owners to bring legal action against local authorities where natural hazard information is known (by the regional council) but has not been provided. Affected parties may still bring complaints to the Ombudsman and apply for judicial review.

The WCRC is very concerned about this.

Recommendation 2

That the Government puts the new Bill on hold and undertakes consultation with smaller regional councils on the legal ramifications of implementing the proposed provisions.

This ends our submission.