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WESTLAND DISTRICT COUNCIL

MĀWHERA GREY DISTRICT COUNCIL

4 August 2021

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Phone:04 817 9520
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Dear Sir/Madam

Submission on the Exposure Draft: Natural and Built Environments Bill and Parliamentary Paper

Thank you for the opportunity to make a submission to the "Inquiry on the Natural and Built Environments Bill: Parliamentary Paper", which incorporates an Exposure Draft of the Natural and Built Environments Bill and supporting explanatory material. The West Coast Regional Council (WCRC or Council) values this additional opportunity to have input into development of the Bill.

Please find the West Coast Regional Council's submission attached. Please note that the Grey District Council supports this submission.

The Council supports some aspects of the Exposure Draft, for instance, the provisions relating to giving effect to the principles of the Treaty of Waitangi and combining district plans. These are already being implemented in the West Coast region via the Mana Whakahono ā Rohe Participation Arrangement between Council and iwi (Poutini Ngāi Tahu), and the current preparation of Te Tai o Poutini Plan (One District Plan - TTPP) for the three District Councils.

We also have several concerns and questions about the Exposure Draft and its rationale in the Parliamentary Paper, including costs to ratepayers, rate of change, providing for regional differences, erosion of local democratic input, and the structure of the planning committee.

We would further like to advise that the Te Tai o Poutini Plan Governance Committee (committee structure and membership) is working well, and we recommend that this planning committee model be adopted in the new Bill.

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

Yours faithfully

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Tanya Gibson
Mayor, Grey District Council

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Executive Summary

1. As the primary replacement for the RMA, ratepayers are likely to pay heavily for the cost of change.

Recommendation 1

The WCRC seeks that the Government:

a) slows down the reform process;
b) engages in meaningful consultation with local government and communities, funded by the Crown;
c) incorporates as much of the effective RMA provisions as possible into the new Bill; and
d) retains relevant caselaw.

2. In providing for environmental protection and the social, economic and cultural well-being of local communities, regional differences must also be provided for.

Recommendation 2

a) Provide for regional differences when setting environmental limits to protect the natural environment, and provide for current and future generation's wellbeing.
b) The Council supports 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.
c) We are aware that mahinga kai is fundamental to the identity and wellbeing of Ngāi Tahu whānui. We seek that the environmental limits prescribed and environmental outcomes must include mahinga kai.

3. Lack of definition and clarity of terminology.

Recommendation 3

a) Define common terms commonly, to avoid them being contested in court. Include a comprehensive interpretation section and apply it consistently.
b) Ensure that offsetting and compensation are provided for in the Natural and Built Environments Act (NBA), as part of the effects management hierarchy.

4. In our view, the Exposure Draft erodes the Principles of Good Local Governance.

Recommendation 4

Ensure there are provisions in the NBA for good local governance and representation in plan-making and decision-making processes, including that the selection of an independent chair for the planning committee must be done by the councils and local iwi.

5. Giving effect to Te Tiriti o Waitangi (the Treaty of Waitangi).

Recommendation 5

a) We support the requirement to give effect to Te Tiriti (as opposed to take it into account). The Council agrees and supports Te Tiriti clause as provided for under the Exposure Draft as a positive step towards Te Tiriti o Waitangi partnership and co-operation. However, it must be stressed that compliance with Te Tiriti cannot be achieved through one clause alone. Tiriti partnership needs to be integrated throughout the Bill.
b) We seek that the Mana Whakahono ā Rohe provisions in the RMA are retained in the new law.

6. Te Reo terms can have different meanings amongst iwi and hapū.

Recommendation 6

We support the general intention of Te Oranga o te Taiao, however recommend that the NBA should qualify that this general definition is subject to the right of iwi, papatipu rūnanga and hapū to interpret the meaning of Te Oranga o te Taiao in their rohe.

7. Oppose proposed membership and structure of the Planning Committee.

Recommendation 7

a) We strongly suggest an alternative structure for the proposed Planning Committee that has:
   i. An expert advisory panel who can provide advice to the Committee on respective matters as and when needed, including a Department of Conservation (DoC) representative if the matter relates to the coastal marine area;
   ii. No DoC representative on the Planning Committee;
   iii. Two people per council; and
   iv. Representation is reflective of iwi as the Treaty Partner within their respective takiwā.
b) Additionally, all Committee members should be remunerated, preferably by central government.

8. Oppose central government requiring plan changes.

Recommendation 8

If this provision is carried over into the Bill, it must have some criteria or reasons for when a plan change may be required by central government, including that the respective council agrees that a plan change is necessary.

9. Important provisions like access to information, public participation in decision making, and access to justice in environmental matters are omitted or eroded.

Recommendation 9

Incorporate provisions for access to information, public participation in decision making, and access to justice in environmental matters in the Bill.

10. The erosion of transparent public plan making processes, alternative dispute resolution and the right to a fair public hearing, erodes the rule of law.

Recommendation 10

Uphold the rule of law, incorporate a transparent planning process, the right to a fair hearing, and use of Alternative Dispute Resolution in the NBA.

11. Include an appeal process on points of law only.

Recommendation 11

Provide for an appeals process on points of law only.

12. Increased centralised decision-making waters down the role of local Councillors and local governance.

Recommendation 12

Avoid erosion of local democracy, and ensure the NBA provides for local decision-making by implementing our submission Recommendations 4, 5, 6, and 7.

13. Compliance, monitoring and enforcement (CME) are not included, but play a crucial part in resource management at the local level.

Recommendation 13

a) Retain CME functions as core responsibilities of local authorities.
b) Strengthen boundaries between governance and operations, including, for example, codes of ethics and guidelines regarding responding to conflicts of interest from elected officials.

14. Transitions are not included in the Exposure Draft to comment on; but they must be provided in the finalised Bill.

Recommendation 14

Ensure that the timeframe for transiting from the RMA to the NBA is a minimum of 10 years, and provision is made for small interim plan changes to be undertaken.

Introduction

The Inquiry on the Natural and Built Environments Bill: Parliamentary Paper, with no date but modified on 2 July 2021 and re-released on 5 July 2021, states *"The purpose of the inquiry is to provide feedback on the extent to which the provisions in the exposure draft of the Natural and Built Environments Bill will support the resource management reform objectives, paying particular attention to improving system efficiency and effectiveness, and reducing complexity, while retaining appropriate local democratic input."*

The resource management reform objectives are:

"a) protect and where necessary restore the natural environment, including its capacity to provide for the well-being of present and future generations;
b) 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;
c) give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori;
d) better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change; and
e) improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input."

The Council supports some aspects of the Exposure Draft, for instance, giving effect to the principles of the Treaty of Waitangi, and combining district plans. These are already being implemented in the West Coast region via the Mana Whakahono ā Rohe Participation Arrangement between Council and iwi, and the Te Tai o Poutini Plan (One District Plan) for the three District Councils.

While supportive of Clause 6 which requires giving effect to the principles of Te Tiriti o Waitangi, the Council has concerns that some of the other provisions in the Exposure Draft of the Natural and Built Environments Bill (Exposure Draft), may not support the resource management reform objectives.

While the RMA may not have lived up to expectations, we have a number of concerns and questions about implementing the Exposure Draft and Bill, including how much of the current RMA that is working well will be included as is in the new Bill. The Exposure Draft and its gaps leave considerable uncertainty. Resource management law and associated processes may not be perfect, but they do provide a solid base on which to build and go forward.

Our chief concerns with the Exposure Draft and Parliamentary Paper are elaborated on below and supported by a series of suggestions and recommendations. They are not listed in any order of priority.

About the Submitter

The West Coast region covers a vast area: it extends from Kahurangi Point in the north and as far south as Awarua Point, a distance of 600 kilometres. It is a region of great beauty and vast natural resources. It also has a low population and is predominantly rural. Approximately 84% of land area is in the Conservation Estate and 1% is under Land information New Zealand (LINZ) administration.

The Regional Council works closely with the regions' three territorial authorities (these being Buller, Grey and Westland District Councils). All four councils and iwi are working in partnership on developing one district plan for the three Districts, the Te Tai o Poutini Plan (TTPPP).

Outside of the main towns of Westport, Greymouth and Hokitika, the region's population is spread across smaller settlements and rural communities. It is important that reform decisions consider their respective social, economic, and cultural rights.

Poutini Ngāi Tahu are the tangata whenua of Te Tai o Poutini (the West Coast). We have a Mana Whakahono ā Rohe (Resource Management Act - Iwi Participation Arrangement) which captures the intent of the Council and Poutini Ngāi Tahu to continue to progress our strong relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown. We seek that the West Coast's Mana Whakahono ā Rohe Agreement is included and given weight in the new NBA.

Key Issues Raised by this Submission

1. As the primary replacement for the RMA, ratepayers are likely to pay heavily for the cost of change.

"30 As the primary replacement for the RMA, the NBA will address the most significant weaknesses in the current RM system." (Parliamentary Paper – NBA Exposure Draft pg.15)

A founding tenet of natural resource management is that all communities are responsible for addressing environmental damage but not all are equally responsible. These changes imposed by central government will have ratepayers paying for the cost of change, especially if it is large or complex, and the implementation thereof, but the authorisation has come down from Central Government without the consent of ratepayers, and without an opportunity for engaging in a genuine and meaningful way.

Building on a wealth of local government expertise harnessed in environmental and natural resources policy over thirty years is a logical approach. Ratepayers have already paid for testing the RMA over the last 30 years. If the RMA is virtually completely replaced, the knowledge and experience (and investment) gained from this testing will be lost. In our view, successes in natural resource management need to be strengthened and areas for improvement improved.

We continue to value the fundamental principle of sustainable management as enabling people and communities to provide for their social, economic, and cultural well-being and for their health and safety. Sustainable management should be promoted and improved, not removed. There is no evidence that the proposed reform will improve the economic, environmental, social or cultural wellbeing, or health and safety, of those on the West Coast. By not providing for these fundamental rights, the reform is likely to have a detrimental impact on these rights.

Further, we are concerned that the speed at which such a significant change to resource management law is being undertaken means there is a reduced opportunity for the public to be involved in the change process. Slowing down the reform process, engaging in meaningful dialogue with local government, funded by the Crown, and undertaking a more thorough review of the RMA and caselaw, are crucial.

We believe several of the proposed reforms are inconsistent with the Bill of Rights Act 1990, and the Treaty of Waitangi, and thereby oblige the Attorney-General to report this inconsistency to the House. Even a perception of inconsistency requires a separate procedure to be established so that the rights of local communities are effectively heard. The proposed reform potentially undermines social, economic and cultural rights, and therefore requires proper disclosure to the House.

Recommendation 1

The WCRC seeks that the Government:

e) slows down the reform process;
f) engages in meaningful consultation with local government and communities, funded by the Crown;
g) incorporates as much of the effective RMA provisions as possible into the new Bill; and
h) retains relevant caselaw.

2. In providing for environmental protection and the social, economic and cultural well-being of local communities, regional differences must also be provided for.

One of the fundamental rights for New Zealanders embodied in the Local Government Act 2002 is the need for Council's to consider the current and future well-being of all communities. Balancing this, we also agree with protecting and, where necessary, restoring the natural environment, including its capacity to provide for the well-being of present and future generations. For example, the West Coast Regional Policy Statement (RPS) Chapter on Indigenous Biodiversity and Ecosystems has a policy framework with bottom lines for managing development impacts on indigenous biodiversity. These targets include not making any species extinct, and not having an outcome of moving an endangered species to a greater threat classification.

The West Coast RPS provisions are appropriate for the West Coast context of relatively high levels of indigenous biodiversity, but may not be appropriate in other regions. For example, a new subdivision may be needed to meet the housing needs of local communities whose homes are destroyed by flooding but this development may displace one weka. Weka are quite common on the West Coast and not a rare species. In light of the RPS, the application could therefore be approved. If not, human rights would be undermined, and adverse economic and social impacts would be unreasonably stringent on the West Coast. Conversely, for a city subdivision on the rural fringes, displacing a single weka may have a potentially larger impact as weka are rarer in more densely built-up environments. Displacing one weka on the West Coast will not have a severe ecological impact on the West Coast but it could have different impacts up in Hamilton. Environmental limits need to recognise regional variations.

We agree in principle with better enabling development within environmental biophysical limits. However, it is unclear how the Exposure Draft will provide practical limits for every aspect of the natural environment. For example, freshwater and indigenous biodiversity issues differ between regions, and 'one-size' of regulation does not fit all regions. How will limits deal with changes over time, and local nuances? Care needs to be taken with drafting such limits, to ensure that they are relevant, appropriate for each region, and recognise that there are differences between some regions.

We have consulted with our iwi partners on the Exposure Draft, and Poutini Ngāi Tahu seek that mātauranga Māori be used to set environmental limits. Regional limits must be set in partnership with iwi. The Council supports these.

We are aware that mahinga kai is fundamental to the identity and wellbeing of Ngāi Tahu whānui. Poutini Ngāi Tahu seek that the prescribed environmental limits and environmental outcomes must include mahinga kai. The Council also supports this.

Limiting the types of plan rules for resource use, for example, to permitted and prohibited, will not be helpful for providing for regional differences. The Parliamentary Paper states that: *"More comprehensive plans will also help address conflicts between different outcomes; for example, classifying more activities as either 'permitted', or 'prohibited' in NBA"* [Proposed Natural and Built Environments Act] *plans or national direction"* [para 122]. Only having permitted and prohibited rules is too narrow, and it seems to contradict the effects management hierarchy. We do not support removing controlled, restricted discretionary and discretionary activity rule statuses, and question why the Government is considering this.

As provisions for environmental protection are given greater weight than economic, social and cultural well-being in the Exposure Draft, will this have the effect of more consents being declined, or more activities being prohibited, in order to achieve a more protected environmental status? The Parliamentary Paper does not address the impact that 'closing up of natural resources' will have on the West Coast's economic, social and cultural well-being. The Government will need to have a robust economic, social and cultural impact assessment done on how a more protective environmental framework will affect the economic, social and cultural wellbeing of people and communities.

Recommendation 2

a) Provide for regional differences when setting environmental limits to protect the natural environment, and provide for current and future generation's wellbeing.
b) The Council supports 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.
c) We are aware that mahinga kai is fundamental to the identity and wellbeing of Ngāi Tahu whānui. We seek that the environmental limits prescribed and environmental outcomes must include mahinga kai.

3. Lack of definition and clarity of terminology.

The Exposure Draft both fails to define and inform the terminology embodied in the Draft and omits terms already used in the RMA and referred to in legal precedence. What do terms like 'protect', 'restore', and 'improve' mean when large areas of the natural environment on the West Coast, for example, are already 'pristine'? Why is water in a pipe not water? (Note that the Government redefines the meaning of 'water' in the Exposure Draft). What is 'ecological integrity'? And why is 'offset' and 'compensation' redefined as to 'avoid, remedy and mitigate'? One important feature of good drafting is to make the law as understandable and accessible as is practicable.

New terms in the Bill will need testing, likely through the Courts. This will be especially so if there is no clarity in the Bill. This means that councils will have to pay for it in the Court if the terms are not clear in the law.

The Exposure Draft retains the effects management hierarchy but redefines "mitigation" to include offsetting and compensation. Caselaw indicates there is a difference between "mitigation" and offsetting and compensation. Changing the definition of "mitigation" overrides caselaw which has been developed over the last 30 years. Additionally, considerable work has been done to improve guidance on how to use offsetting and compensation tools. It would be a waste of good technical knowledge and experience to change them in the new framework.

Recommendation 3

a) Define common terms commonly, to avoid them being contested in court. Include a comprehensive interpretation section and apply it consistently.
b) Ensure that offsetting and compensation are provided for in the NBA, as part of the effects management hierarchy.

4. In our view, the Exposure Draft erodes the Principles of Good Local Governance.

In its current form, the Parliamentary Paper erodes fundamental principles of Good Governance. For instance, the Proposed Planning Committee is undemocratic, breaches professional ethics, and manifests a conflict of interests.

The Government explains:

- *"A planning committee is responsible for preparing the NBA plan in each region, following a specified process, which is not included in the exposure draft" [para 183 of the Parliamentary Paper]. "In contrast to the RMA, decisions relating to plan-making and development, including the approval or rejection of submissions, will be made by the planning committee for the region rather than solely by local authorities"* [para 180 of the Parliamentary Paper]. In other words, the Planning Committee will make the law.

- "*The key functions for a planning committee are to make and maintain a plan, approve or reject submissions from an IHP [Independent Hearings Panel] and set environmental limits, where authorised by the NPF"* [para 207 of the Parliamentary Paper]. The Planning Committee will interpret the law, decide on the law and not be accountable to the law.

This entire structure erodes the founding tenets of the 'separation of powers' whereby those who make the law do not rule on it. At present, local authority staff draft plans, the Chair of hearings is [preferably] judicially independent and Elected Local Councillors serve as an executive scrutinising process, setting policies, making regulatory decisions, reviewing council performance through the annual reporting process, and ensuring prudent stewardship and the efficient and effective use of their resources, in the interests of the district or region the council represents.

The proposed structure of the Planning Committee could further diminish the influence of democratically accountable bodies and could potentially result in counterproductive outcomes for individual communities, tangata whenua and Te Whenua.

In terms of governance, instead of holding elected members accountable for developing planning frameworks and resultant plans, a planning committee will make juridical decisions on the legal and policy framework, plans and their implementation for all people and communities in respective regions. In addition to governance, this governance committee will also busy itself amongst other things by setting scientific limits for the region. With all due respect, we question whether district council representatives on the planning committee will have the knowledge and expertise to decide on regional natural resource management issues, and vice versa.

It is unclear in the Exposure Draft who appoints the Committee chair, and how the committee is set up. Appointment of the chair must have democratic local authority and local iwi involvement, it should not be imposed at the national level.

If there is to be a planning committee in the final NBA, given the anticipated transitional time constraints with developing or amending plans, the planning committee arrangement needs to be a lot more pragmatic and flexible. The NBA also needs to provide for full reviews and plan changes to be done in stages.

Recommendation 4
Ensure there are provisions in the NBA for good local governance and representation in plan-making and decision-making processes, including that the selection of an independent chair for the planning committee must be done by the councils and local iwi.

5. Giving effect to Te Tiriti o Waitangi (the Treaty of Waitangi).

"39 The NBA intends to improve recognition of te ao Māori and Te Tiriti o Waitangi...."
(Parliamentary Paper – NBA Exposure Draft, pg.16).

We acknowledge legal principles as legal norms and agree with 'giving effect' to the principles of Te Tiriti o Waitangi (the Treaty of Waitangi). "*Give effect to the principles*" in clause 6 of the Exposure Draft is stronger wording than "*Have regard to*" in clause 8 of the RMA. We agree with this.

However, we disagree with the demotion of the Treaty of Waitangi and the exclusion of it from the fundamental purpose (clause 5) and principles (clause 18) of the Exposure Draft. We consider that compliance with Te Tiriti cannot be achieved through one clause alone. Tiriti partnership needs to be integrated throughout the Bill.

The Exposure Draft appears to erode the West Coast's local democracy as established by our Mana Whakahono ā Rohe Participation Arrangement. The Exposure Draft erodes the decisions of democratically elected Regional Councillors and our Poutini Ngāi Tahu partners. The WCRC's Resource Management Committee has a representative from each of the two West Coast Rūnanga (Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio), with decision-making roles. In the absence of due process, the Exposure Draft takes responsibility away from our Councillors and Poutini Ngāi Tahu and gives it to others. In our view, this approach is inconsistent with the Treaty of Waitangi and therefore erodes fundamental principles of the Treaty.

The Mana Whakahono ā Rohe Participation Arrangement has been in place since October 2020. We seek that the West Coast's Mana Whakahono ā Rohe Agreement is retained in the new law.

Kōrero is important in tikanga. On a separate but important point, we also feel that requiring written submissions only and not facilitating an opportunity for dialogue and oral submissions erodes the principles of the Treaty. We do not agree with the view put forward in the Parliamentary Paper, that efficiency in NBA plan development and content, for example, requires *"written submissions rather than oral*". (Parliamentary Paper, Appendix 2, pg 81).

Recommendation 5
a) We support the requirement to give effect to Te Tiriti (as opposed to take it into account). The Council agrees and supports Te Tiriti clause as provided for under the Exposure Draft as a positive step towards Te Tiriti o Waitangi partnership and co-operation. However, it must be stressed that compliance with Te Tiriti cannot be achieved through one clause alone. Tiriti partnership needs to be integrated throughout the Bill.
b) We seek that the Mana Whakahono ā Rohe provisions in the RMA are retained in the new law.

6. Te Reo terms can have different meanings amongst iwi and hapū.

"39 The NBA intends to improve recognition of te ao Māori and Te Tiriti o Waitangi...."
(Parliamentary Paper – NBA Exposure Draft, pg.16).

Council's iwi partner, Poutini Ngāi Tahu, supports the general intention of Te Oranga o te Taiao, however recommend that the NBA should qualify that this general definition is subject to the right of iwi, papatipu rūnanga and hapū to interpret the meaning of Te Oranga o te Taiao in their rohe.

Recommendation 6
We support the general intention of Te Oranga o te Taiao, however recommend that the NBA should qualify that this general definition is subject to the right of iwi, papatipu rūnanga and hapū to interpret the meaning of Te Oranga o te Taiao in their rohe.

7. Oppose proposed membership and structure of the Planning Committee.

The Exposure Draft proposes that a Department of Conservation (DoC0 representative is on the Planning Committee. If there is to be a Planning Committee in the final NBA, having a DoC representative on the proposed Planning Committee is not supported by the Council.

Inclusion of Doc on the Planning Committee may create a conflict of interest as DoC representatives are regular submitters and appellants on Council plans, so they cannot be on the Planning Committee. If they are to be on the Planning Committee, then they cannot submit, and the Conservation Act will be undermined.

DoC operates under an entirely different mandate - the Conservation Act. We questions how DoC will be able to understand the issues for councils and ratepayers under resource management legislation that is supposed to provide, amongst other, for sustainable use and protection.

It is also unclear whether the DoC representative would be acting on behalf of national conservation interests, or local interests. The promotion of national conservation interests may not necessarily reflect local conservation matters.

Council questions why it is proposed to have a DoC representative on the planning committee. The problem is that they would reflect national interests and their input needs to be from the local level.

We suggest that instead of having a DoC representative on the Planning Committee, that a DoC representative be on an expert advisory panel, with other experts who can provide advice to the Committee on respective matters as and when needed. We consider that it is not appropriate to have DoC at the decision-making level on regional and district resource management matters (with the potential exception of their role in the coastal marine area under the New Zealand Coastal Policy Statement). Their role in an advisory capacity would be much more appropriate.

In terms of local authority representation, we disagree with having one person nominated by each local authority within the region. We consider that one person per council is not enough. The Te Tai o Poutini Plan (One District Plan) Governance Committee has two members per council, one mana whenua representative for each of the two Poutini Ngāi Tahu Rūnanga, and an independent chair. Council recommends that having two members per council is beneficial if one of them is overloaded

with other work, and where one representative might understand an issue better than the other representative. The Governance Committee's mandate also importantly provides for one proxy to stand in for a Committee member if the original member cannot attend a meeting. This helps to spread the workload.

Developing a combined District Plan is a big piece of work and it places heavy demands on the Governance Committee. Our experience is that having two representatives per Council in this structure is working well.

Recommendation 7

a) We strongly suggest an alternative structure for the proposed Planning Committee that has:
    i. An expert advisory panel who can provide advice to the Committee on respective matters as and when needed, including a Department of Conservation (DoC) representative if the matter relates to the coastal marine area;
    ii. No DoC representative on the Planning Committee;
    iii. Two people per council; and
    iv. Representation is reflective of iwi as the Treaty Partner within their respective takiwā.
b) Additionally, all Committee members should be remunerated, preferably by central government.

8. Oppose central government requiring plan changes.

Clause 15(2)(a) of the Exposure Draft provides that central government can require local councils to undertake a plan change, but there is no detail or qualifiers around the circumstances of when this would be required, or the scale or scope of such plan changes. The proposed approach is an 'open book', and there is the potential for central government to require substantial changes or multiple small changes, with no requirement to consider the economic impact on ratepayer communities of having to fund such changes. If this provision is carried over into the Bill, it must have some criteria for when a plan change may be required by central government. Some central government funding will need to be provided for small councils with limited resources if this is to proceed.

Recommendation 8

If this provision is carried over into the Bill, it must have some criteria or reasons for when a plan change may be required by central government, including that the respective council agrees that a plan change is necessary.

9. Important provisions like access to information, public participation in decision making, and access to justice in environmental matters are omitted or eroded.

Implementation provisions that contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being are beneficial.

Everyone should have the right to receive environmental information that is held by public authorities; the right to participate in environmental decision-making; and the right to review procedures and challenge public decisions that have been made without respecting the two aforementioned rights.

Recommendation 9
Incorporate provisions for access to information, public participation in decision making, and access to justice in environmental matters in the Bill.

10. The erosion of transparent public plan making processes, alternative dispute resolution and the right to a fair public hearing, erodes the rule of law.

It is unclear what else will be in the full Natural and Built Environments Bill. A planning process should be in the new Bill, either the freshwater process, the RMA Schedule 1 process or both planning processes.

By virtue of the New Zealand Bill of Rights Act 1990, "*Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law*". And "*Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination*". The Exposure Draft erodes these fundamental constitutional rights and thereby erodes the rule of law.

The right to a fair hearing is a founding tenet of civilised society. Weakening the right to a fair hearing (whether in court, or through mediation, conciliation or arbitration) weakens the rule of law. As it is, the RMA provides innovative provisions for flexible court procedure (s269 RMA). Alternative Dispute Resolution (ADR) has become more robust, and there are opportunities to conference expert witnesses. Many cases before the Environment Court are on appeal from local hearings, which in our view remains a 'just' avenue, subject to limits.

As to potential improvements, if the legal framework gave effect to "procedural law" such as access to information, public participation and access to justice, as in many other jurisdictions, then it is suggested that appeals on "substantive" planning matters will be vastly reduced. Alternative forums, such as, mediation, conciliation and arbitration, should also continue to be encouraged.

Recommendation 10
Uphold the rule of law, incorporate a transparent planning process, the right to a fair hearing, and use of Alternative Dispute Resolution in the NBA.

11. Include an appeal process on points of law only.

We recognise that in situations concerning plan reviews, where submitters disagree with a councils' decisions, appeals should be able to be brought before the Environment Court. For instance, individuals should have a right to appeal decisions that affect their own private land, such as where Significant Natural Areas are imposed, or to lodge an appeal on a plan provision required by national direction.

However, we agree with the Exposure Draft in providing for appeals on points of law only. The right to appeal decisions is often expensive and lengthy. This was our experience with appeals on adding significant wetlands to our proposed Regional Plan in 2010, for example, which took around two years to resolve in the Environment Court at a high cost to Council. It does not make sense financially to have endless appeals. The public have plenty of opportunities to have their say in the plan development process, informally and formally at the early investigation, drafting, submission, pre-

hearing and hearing stages. Providing for appeals on points of law only should reduce costs to councils as it will help to retain decision-making on plans at the local level, rather than being decided on by the court.

Recommendation 11
Provide for an appeals process on points of law only.

12. Increased centralised decision-making waters down the role of local Councillors and local governance.

To achieve the reform objective of improving local democracy, we believe that decisions at the local level should be made as close as possible to communities affected by them. By eroding mana whakahaere (making local decisions locally), costs, inefficiencies and complexity will increase.

We refute the view that *"[Local] Councils make most decisions based on national direction and Environment Court appeals"*, and therefore RMA reform must centre on increased central government controls. This is in our view an assumption, not a fact. We suggest these views may have manifested due to the overly academic and political thrust of the reform process without due regard to local variations and practical implementation of the RMA outside of court procedure. Local government is capable and we can do it well. This is reflected in the West Coast Region in our Mana Whakahono ā Rohe Participation Arrangement, Regional Policy Statement and Regional Plans. One of our strengths on the West Coast is that we work well together, an example of this is the Mana Whakahono ā Rohe Participation Arrangement.

We acknowledge the RMA needs improvement. But we also believe that the RMA has many strengths and a sound 30-year record of keeping abreast of environmental policy development.

What will further centralising resource management regulation mean for the Local Government Act (LGA)? Is this contrary to the Constitution? Supreme Court decisions on the purpose and principles of the RMA would suggest that the Parliamentary Paper and Exposure Draft require complete and proper scrutiny by the full House.

Moreover, the purpose of local government is *"to enable democratic local decision-making and action by, and on behalf of, communities; and to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future"*. (Local Government Act 2002, section 10 (1)). If these responsibilities are eroded from Regional Councils as proposed, what is left? How will local communities with varying needs within regions be supported by local government?

We believe that empowering local communities and ensuring decision making happens at the most appropriate level so all those affected can contribute, is imperative. The principle of mana whakahaere, or 'local engagement' places a constitutional responsibility on higher levels of government not only to enable the autonomy of local authorities, but to provide these lower levels with necessary support.

The Parliamentary Paper on the Exposure Draft claims in Appendix 2 that "Increased central direction and tools" will increase efficiency and reduce complexity in the resource management system. We disagree with this, and with eroding local government decision-making.

Recommendation 12
Avoid continuous erosion of local democracy, and ensure the NBA provides for local decision-making by implementing our submission Recommendations 5, 6, and 7.

13. Compliance, monitoring and enforcement (CME) are not included, but play a crucial part in resource management at the local level.

The Randerson Report, and discussions that have followed, infer that CME should be removed from local councils and established as a separate entity managed by central government, to address either real or perceived interference from local governance in the compliance monitoring and enforcement field. The logistics and expense involved in this approach is huge. Who would this cost fall upon? And, as with much of the proposals, where is the substantiated evidence that change will be affected?

Decisions on enforcement are made using Council's enforcement policy and the Governor General's guidelines on prosecutions. In response to the Randerson Panel's concern, a positive way forward is to strengthen boundaries between governance and operations, including, for example, codes of ethics and guidelines regarding responding to conflicts of interest from elected officials.

Subsequent to the Randerson Report, discussions have been held with local authorities around creating separate regional CME hubs. A separate regional hub would require setting up a new facility, IT support, financial accounting systems, HR, payroll, and health and safety, to name a few. To find a building in Greymouth to accommodate a Regional Compliance hub would not be feasible, a new facility would have to be constructed. And, yet again, who would pay?

Removing CME from Councils that are already set up and provide a competent consenting and compliance group is counterproductive and expensive, imposing another disproportionate burden on an already distressed rating base.

The West Coast region, although sparsely populated, extends from Kahurangi Point in the north and as far south as Awarua Point, a distance of 600 kilometres (a comparative distance Auckland to Wellington is 640 kilometres). Management of CME functions by central government is likely to not understand and be able to provide constructive and pragmatic solutions to address different environmental impacts in different communities over such a large area. We are concerned that some consent holders may be required to go down an enforcement path that was not the intent in granting the consent. The intent could be lost with centralised implementation.

A regional hub dedicated solely to CME will also create a disconnect between Compliance and Consenting which is not ideal, as working in conjunction with consents staff assists in establishing consent conditions that are practicable and enforceable. Currently there are three District Councils in the Region, Buller in the North, Grey District (Central), and Westland in the South. These offices each provide the public with the ability to call in and discuss their issues. Consent holders and Council staff often develop a good working relationship; if these services were separated and CME management centralised with central government, it makes it harder for a consent holder to understand the systems and develop relationships with compliance staff.

The educational aspect of compliance monitoring could also be lost. A regional hub for CME not only impinges on this right of access to information, participation and justice from the public, it removes it from many.

Recommendation 13

a) Retain CME functions as core responsibilities of local authorities.
b) Strengthen boundaries between governance and operations, including, for example, codes of ethics and guidelines regarding responding to conflicts of interest from elected officials.

14. Transitions are not included in the Exposure Draft to comment on; but they must be provided in the finalised Bill.

The transition from over 100 planning documents to 14 natural and built environments plans (perhaps with many more unwieldy chapters) is not an insignificant undertaking. The transition needs to be carefully considered and properly resourced. There is already a national skill shortage of planners, and councils will be stretched. WCRC needs reasonable transitional provisions in the Bill to be able to get maximum benefit from current and upcoming plan reviews and changes prepared under the RMA. We also have plans at varying stages of development, such as the Te Tai o Poutini Plan and the Coastal Plan. Flexibility is needed in the transitional provisions to enable small interim changes to be made to current plans until full plan reviews can be undertaken.

As Taituarā - Local Government Professionals Aotearoa - has stated, "The success of the new resource management system will depend in large part on how well the transition to and implementation of the new system is planned for, managed and resourced. Central government needs to dedicate considerably more focus and resource to transition and implementation arrangements."

Recommendation 14

Ensure that the timeframe for transiting from the RMA to the NBA is a minimum of 10 years, and provision is made for small interim plan changes to be undertaken.

This ends our submission.