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26 June 2024

Consultation: RMA Amendment Bill No 1
Environment Select Committee

By email: pp@parliament.govt.nz

Dear Sir/Madam

Submission on RMA Amendment Bill No 1

Thank you for the opportunity to submit on the Government's Resource Management (Freshwater and Other Matters) Bill. The West Coast Regional Council's (WCRC or the Council) submission is attached.

The Council invited engagement 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.

Due to our high workload, Council could not make a comprehensive submission on the Bill. This submission therefore covers selected points for the WCRC.

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

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Yours faithfully



Darryl Lew
Chief Executive

West Coast Regional Council Submission on the Resource Management (Freshwater and Other Matters) Amendment Bill No 1

Introduction

The West Coast Regional Council (WCRC or the Council) appreciates the opportunity to submit on the Government's Resource Management (Freshwater and Other Matters) Bill (the RMAAB or the Bill).

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 October 2020*' (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), 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.

Our mana whenua partners were invited to have input into this submission. Due to the tight timeframes around this submission, Council and Poutini Ngāi Tahu have not had time to discuss fully these matters, and intend to do so in the near future.

WCRC supports, or supports in principle, the proposed changes to the:

- Coal mining provisions, subject to alternative wording;
- Delaying the SNA identification timeframe, but do not support the unclear fall-back clause that provides for SNA identification;
- Stock Exclusion Regulations low slope map; and
- Intensive Winter Grazing Regulations.

However, Council is concerned about proposed changes to remove or amend various requirements in the government's process for developing national direction.

The Council considered an initial position statement by the regional sector body – Te Uru Kahika (TUK). WCRC agrees with most of their views, however we have a different view on the proposed changes to the coal mining clauses in the NESF.

Submission

NPSFM Te Mana o te Wai Hierarchy

The proposed Bill exempts consent applications (from when the Bill has effect) from having to demonstrate that their proposed activities follow the Te Mana o te Wai hierarchy of obligations in the National Policy Statement for Freshwater Management (NPSFM), and councils no longer need to have regard to the hierarchy in their decision-making. This change only applies to the consenting process, councils must still give effect to Te Mana o te Wai in regional policy statements and plans.

Council does not have a view either in support of, or opposition to, the proposed change to Te Mana o Te Wai. We have sought feedback from our mana whenua, PNT on the proposed change, and note that for planning purposes, the Te Mana o te Wai hierarchy is the only objective in the NPS.

Changes to national direction re coal mining

Support for removing prohibitive references to coal mining

With one exception, Council supports the proposed changes to remove the prohibitive clauses for new, and extensions to existing, coal mining in or near a natural wetland in the NESF, NPSFM and the NPSIB. Council's submission of 22 October 2021 on the proposed changes to the wetlands regulations gave several reasons for supporting a discretionary consent pathway for mining, including coal mining. The main reasons are:

- Consenting pathways are a crucial tool to achieve biodiversity (including wetland) gains, as councils can require active and extensive ecological management and restoration of indigenous habitats where they are adversely affected by development, for example, the Holcim Quarry Rehabilitation at Cape Foulwind¹; the Rio Tinto bauxite mining restoration at Barrytown (<https://www.sciencedirect.com/science/article/abs/pii/S0341816215300783>); and, rehabilitation work on the Denniston Plateau undertaken for a number of years.
- Consent pathways for specified activities can contribute to maintaining West Coast communities' social and economic wellbeing, via income, employment, people being able to use their land, and retaining land values, while also protecting significant wetland values. "

There are no implications for the Council of the proposed removal of these provisions from the relevant national direction as the Council has not yet added the provisions to the West Coast regional plans.

Exception to support for removing prohibitive coal mining references

There is one exception to Council's support for providing a consent pathway for coal mining:

"...if a natural wetland is identified as being of the 10% of remaining indigenous representative natural wetlands, then prohibition on activities within those features is entirely appropriate. If, however, the process identifies a wide range of wetlands which include exotic- dominated, induced, features and production landscape-regenerated, induced wetlands which do not have the functions and values we seek to protect, then the prohibited status is overbearing and causes loss of opportunity through offset."

Additional changes sought to the NESF

1. Council seeks that the Bill includes an additional change to the NESF Regulations 52 and 53, which currently have non-complying and prohibited status for partial or complete drainage respectively within, or within 100 metres of, a wetland. These Regulations should reflect a difference between drainage that is temporary or permanent rather than complete or partial. Complete or partial drainage may be difficult to determine on the West Coast where rainfall can refill a wetland. This change will assist with assessing effects of coal mining and other development activities in or near a wetland in the effects management hierarchy.

¹ Phibbs, H. L., Assessing the Success of Restoration Plantings at Cape Foulwind, New Zealand. (M.Sc Forestry Science thesis, University of Canterbury, 2003)

Prohibiting permanent drainage is appropriate, but a permitted or consenting pathway should be provided in the NESF for temporary drainage which does not impact the wetlands' integrity and survival.

2. Council further seeks that the definition of "natural inland wetland" in the NPSFM be amended so it does not capture West Coast induced wetlands, and 'paddock' wetlands. The current "natural inland wetland" definition in the NPS could catch these types of wetlands, and make it unnecessarily difficult for mineral extraction, including coal mining if the proposed changes in the Bill go through, to gain consent via the pathways in the NESF. Induced wetlands and paddock wetlands are common on the West Coast, but are not the types of wetlands that need protecting.
3. There is also an issue of applying the NES-F Regulation 45D(6)(b) threshold test of "functional need" on the West Coast, in relation to processing resource consent applications for mineral extraction which may affect a natural inland wetland. As there are a potentially large number of wetlands on the West Coast that could meet the definition of "natural inland wetlands", it is likely that many of the mining proposals will trigger the NPSFM wetland definition and the NES-F s45D(6)(b) "functional need" test.

Alternative planning/legal arguments have been put forward on a recent consent application as to whether there is a pathway to approve the consent under the "functional need" test. There is a risk that the matter is going to be determined at hearings in the absence of definitive national direction, and the issue is too important not to have this direction.

The Council seeks the removal of the functional need test, so an effects-based assessment of effects on wetlands can be undertaken that enables any adverse effects to be avoided, remedied or mitigated as part of the consent process.

These issues with wetland identification need to be resolved as soon as possible.

Changes to NPSIB re SNA identification

A new section 78 is proposed to be added to the RMA which suspends the NPSIB 2023 requirements for territorial authorities to identify and notify new Significant Natural Areas (SNAs), using the NPSIB 2023 assessment criteria and principles for three years, from when the Bill takes effect.

Council supports the proposed extension of time as it will not directly affect West Coast Councils in the short term. None of the West Coast District Councils are currently in the process of identifying SNAs.

The Council is not opposed to protecting, maintaining or restoring indigenous biodiversity in principle. The West Coast/Te Tai o Poutini differs from most of New Zealand as it is fortunate to have an abundance of diverse and intact ecosystems and vegetation types. There are some terrestrial ecosystems and vegetation types that are under-represented and WCRC acknowledge these are worthy of protection.

Council fully supports the reason for the extension of time, for the Government to undertake a review of the operation of SNA identification. There are aspects of SNA identification and SNA-related

provisions in the NPSIB 2023 which the Council has opposed or raised concerns about in our submissions on earlier drafts of the NPS². Some examples of what needs reviewing, in our view, are:

- There will be social and economic costs borne by landowners from the loss of income from not being able to utilise these areas of their land, which have not been wholly considered or addressed by the previous Government.
- The inclusion of wetlands in NPSIB SNA identification is confusing and an unnecessary duplication of wetland protection in the NPSFM and NESF.
- The requirement for confirmed and potential SNAs to be reviewed in a district as part of the 10-year district plan review, is onerous and unreasonably expensive.

The Council strongly seeks the opportunity to participate in the review of the operation of SNAs.

Council also supports extending the date for publicly notifying any changes to regional policy statements, or plans to give effect to the NPS SNA provisions, to 31 December 2030;

While Council agrees with clarifying that the suspension for identifying SNAs does not apply to existing SNAs, the wording of this clause, and the additional new clause³ are confusing. The intent of SNAs is to give effect to the RMA section 6(c) matters of national importance, to “provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”, so it seems that these clauses are actually providing for SNA identification to be undertaken. The intent is unclear and these clauses should be reconsidered.

Changes to Stock Exclusion Regulations – low slope map

Council welcomes the proposed removal of the low-slope map and the related Regulations.

Council first submitted on the low-slope map in September 2021, raising concerns that the map does not address the issue on the West Coast of low slope but low intensity grazing land (large ‘run of river’ blocks) being captured by the Stock Exclusion Regulations.

The Council then submitted on the Government’s proposal to further amend the low-slope map in 2023. The following text is from the Council’s 2023 submission and gives reasons for supporting removal of the low slope map provisions:

“Regional Council supports using farm plans to implement an exception for low intensity grazing and access to rivers, as farm plans are about managing environmental risks, and will be a better tool than the low slope map. Farm plans will be a key tool in compliance work, and good farm plans will negate a lot of problems with implementing the Stock Exclusion Regulations.

All the farmers spoken to also support using farm plans to manage low intensity grazing and access to waterways. There will be more flexibility with using farm plans compared to the wording in the Regulations for managing stock around waterways.

² WCRC made joint submissions with the three West Coast District Councils on the 2019 Draft NPSIB in March 2020, and the Exposure Draft in July 2022.

³ The changes don't affect or prevent new SNA ID or notification in RPSs and plans during the 3-year suspension if required by a court order or other outcome as a result of existing procedures or processes, which are preserved by sections 32-33.

For the large 'run of the river' farm blocks in South Westland, removing the low-slope map provisions also removes a duplication of limits on stocking rates, which are already set in leases or licenses for grazing 'run of the river' blocks on DOC land."

Please note the Council supports a risk-based approach to farm plans, meaning the Council believes that only farms which are in risky catchments should need a farm plan.

Changes to Intensive Winter Grazing Regulations

Council supports the proposed removal of the Intensive Winter Grazing (IWG) Regulations from the National Environmental Standards for Freshwater (NES-F).

Council submitted on the government's discussion document for IWG in 2021. The following text is from the Council's submission and gives reasons for supporting removal of the IWG provisions:

"...there are impracticalities in implementing the current regulations and they will result in a large number of resource consents which was not the intention of the regulations. For the West Coast, these impracticalities are particularly around current pugging and resowing date requirements. Further, the current regulations will not always provide for the best outcomes relating to the effects of IWG activities on freshwater. In some places the activity would be better managed through a Freshwater farm plan (FWFP) to allow farm and catchment specific actions and outcomes".

Changes to process for developing national direction

The Council has concerns about some of the proposed changes to remove or amend various requirements to simplify the government's process for developing national direction. We can understand the Government's frustration with current evaluation and public consultation requirements, however omitting the process of iwi consultation may be questionable under s8 of the RMA. Council agrees with the views of other regional councils and the Te Uru Kahika submission, on the specific following matters:

Side-lining of s32 evaluation requirements for national direction

The WCRC does not support the proposal to sidestep the current RMA s32 evaluation requirements, which apply to both developing or amending national direction, and regional and district plans. The proposed new evaluation criteria for developing NPSs and NESs is simplified, but not consistent with the current s32 evaluation criteria which councils will still need to use. This could result in inconsistency between evaluations of national, and regional and district direction. It is unclear why national direction proposals should be subject to lesser evaluative rigour than regional policy/rules.

The proposal for Ministers' increased flexibility to amend national direction

Council agrees that the Minister should be able to correct errors, but we do not support the Minister being able to make other substantive amendments to national direction without having sufficient evaluation of the implications of the changes. More robust justification is needed for bypassing the usual processes.

Removing the Board of Inquiry (BOI) pathway for national direction

Council considers that the BOI process should be retained. We understand that it has been useful in examining complex and contentious national policy direction such as the New Zealand Coastal Policy Statement. Relevant sections related to this pathway, such as Sections 47 to 51, 52 should not be repealed or amended.

Te Uru Kahika submission

Council agrees with the following views in the Te Uru Kahika initial position statement about the proposed changes to simplify developing national direction:

“The Bill would go beyond the simplification in the new-repealed NBEA. The Bill also does not fully utilise the existing mechanism provided by section 46A, which establishes a single process for preparing national directions.

The continued use of existing S46A and 32 of RMA when making new (or replacing) national direction is supported, and should be retained.

We oppose further streamlining of processes for making new, or full replacement of existing NPSs, NESs or national planning standards.”

This ends our submission.

