CANTERBURY
Mayoral Forum

A strong regional economy with resilient, connected communities and a better quality of life, for all.

4 August 2021

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Environment Committee
Parliament Buildings
WELLINGTON

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Submission on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

1. The Canterbury Mayoral Forum (CMF) thanks the Environment Committee for the opportunity to submit on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper.

2. In this submission the CMF provides comments on the key issue for Canterbury in the Parliamentary Paper, and in particular the exposure draft of the Natural and Built Environments Bill (the Bill).

3. The CMF wishes to appear in support of this submission, either in Christchurch or Wellington, in person or via audio or videoconference link. The CMF will be represented by its Chair, Mayor Sam Broughton (Selwyn District Council), supported by Hamish Riach, Chair, Canterbury Chief Executives Forum (Chief Executive Ashburton District Council). Other Canterbury Mayors may also elect to attend the select committee hearing in support of this submission.

Background and context

4. The CMF comprises the Mayors of the ten territorial local authorities in Canterbury and the Chair of the Canterbury Regional Council (Environment Canterbury), supported by our Chief Executives. The purpose of the Forum is to promote collaboration across the region and increase the effectiveness of local government in meeting the needs of Canterbury's communities.

5. All Canterbury councils actively participate in the Forum: the Kaikōura, Hurunui, Waimakariri, Selwyn, Ashburton, Timaru, Mackenzie, Waimate and Waitaki District Councils, the Christchurch City Council and the Canterbury Regional Council (Environment Canterbury).

6. The following submission has been developed with input from across Canterbury councils. Our submission focuses on matters of general agreement between the members of the CMF. We note that Environment Canterbury, Christchurch City Council, Waimate, Waitaki, Ashburton, Mackenzie, and Hurunui District Councils are also making individual submissions.

Submission

Introduction

7. The CMF is generally in agreement that the Resource Management Act 1991 (RMA) has underperformed in the management of key environmental issues and that there is scope for improving the land use planning system.

8. As noted in other Canterbury council submissions the CMF considers reform of the resource management system to be a once in a generation opportunity to shape the future of our natural and built environments. However, short consultation timeframes, uncertainties as to the intent of clauses in the Bill, and insufficient information regarding roles and functions in the new system has meant the CMF is unable to fully assess costs, benefits, impacts and implications.

9. The exposure draft includes the purpose of the Act and related provisions, the National Planning Framework (NPF) and Natural and Built Environment Plans (NBA Plans). The opportunity to submit on these key aspects is appreciated, however it is difficult to comment on specific components of the draft without the wider context of the full provisions and related Acts. Other key aspects of the NBA include the built environment and urban provisions, and the integration with the Strategic Planning Act.

10. The CMF considers this information vital to understanding how the system, as a whole, is intended to operate. We continue to encourage close consultation with councils throughout the development of any legislation and ask for appropriate lead-in time to ensure any changes can be delivered effectively and efficiently.

11. Put simply, a bill of this significance and consequence is too important to rush.

Key themes of this submission

12. There are several key themes in this submission on the content of the exposure draft:

    a. role of local democracy

    b. recognising te Tiriti o Waitangi

    c. focus on the natural environment

    d. lack of clear priorities

    e. transitional arrangements

    f. ambiguity

    g. resourcing.

Role of local democracy

13. We are concerned that the Bill limits the involvement of local elected members in decision-making and that the structure of proposed planning committees will reduce the relevance of local and territorial authorities in place making decisions for their respective communities. It is also unclear what role public participation will have in the new system particularly in terms of the opportunities

available for local input into plan-making processes. Communities are highly localised and the regionalisation of planning issues and processes has the potential to undermine the abilities of communities to influence and make decisions about the places that they live.

14. The Bill establishes regional planning committees and their functions under the NBA (s 23). Local authority representatives are to be "nominated" rather than "appointed" so we seek clarity about the appointment process for these representatives. The implication that a local authority may not secure representation on its own regional planning committee is concerning. At one representative per local authority, the representation on this committee will be disproportionate as both small districts and cities will nominate one member. For example, in Canterbury, the Kaikōura District has a population of 3,912 whereas Christchurch City has a population of 369,006[1].

15. We suggest that work be undertaken to resolve integration issues for those territorial authorities whose boundaries extend into more than one region; for example, the Waitaki District Council, whose boundaries lie within both the Canterbury Regional Council and Otago Regional Council jurisdictions.

16. Planning committees' functions include promulgating and making decisions on plans. This is currently a council function under the RMA. This shift will result in a loss of local democracy as key policy and planning decisions for districts will no longer be made by elected councillors from that local authority. More guidance is needed in relation to the composition and operation of committees, funding and decision-making mechanisms and conflict resolution processes.

17. The Bill establishes that submissions must be considered by an independent hearings panel. Currently councils have discretion to retain or delegate this function. The Bill is not clear whose role it is to select and appoint the independent panel. Given independent panels are more expensive for the local authority than appointing elected councillors, the Bill should be clear which organisation is intended to fund/resource the panel. Democratic representation could be retained by requiring some level of council representation on independent panels.

18. Further to the above comments, an independent hearing panel should not be an adversarial or overly legalistic platform, but rather an inquisitorial one. For lay submitters without representation or counsel, an adversarial panel is likely to be a further barrier to engagement. Ideally it should avoid the 'trappings' or perception of being a judicial process, whilst retaining appropriate formality. If the intention is to reduce the scope of appeals to the Environment Court thereby expanding the importance of a hearing panel, then the hearing panel should not become a de-facto court process.

19. The Bill sets up the expectation that there will be a NPF which is prepared and maintained by the Minister. This builds on the increased amount of national direction issued in recent years. The Bill implies that there will be limited ability for local departure from the NPF, again resulting in removed opportunities for local decision making. The Bill should include a clear framework to transparently assess and decide what is best set at local level or nationally.

20. The Bill does not provide any information in Schedules 1 or 2 (currently placeholders) about the role of the community in the preparation of NBA plans or development of the NPF. We reiterate our concern that there will be a loss of local democracy if community consultation, and by extension the role of local government as elected representatives of our communities, is not properly provided for. We stress that Schedules 1 and 2 should in principle require:

    - local opportunity for people to participate in the process

[1] 2018 census data, Statistics New Zealand.

- duty to engage with each local authority in the region prior to any formal notification
- full consultation with the affected community/communities
- more engagement at the start of plan making processes
- easier opportunities for non-professionals to be involved in hearings
- provision for the opportunity for local authorities to consult on draft provisions, regulations and Regional Spatial Plans prior to any formal public notification process.

21. Given the different combined district plans that have been produced or are under development in New Zealand, a review of lessons learnt to date could helpfully inform the development of the NBA.

Recognising te Tiriti o Waitangi

22. We strongly support the strengthened role of mana whenua and the requirement in section 6 of the Bill that all persons exercising powers, functions and duties being performed under the Act must give effect to the principles of te Tiriti o Waitangi. For clarity and ease of reference, the principles of the Te Tiriti o Waitangi should be included in s6 of the Bill, as recommended in our previous submission on the 'Transforming the Resource Management System: Issues and Options Paper' dated 3 February 2020.

23. We are concerned that lack of resourcing for mana whenua is already a barrier to their effective engagement in the RMA. Consideration should be given to how government can support mana whenua and provide greater resourcing under the new system so they can effectively engage and participate in processes conducted under the NBA.

24. In the context of resource consenting processes, it is unclear how te Tiriti o Waitangi would be given "effect to". The shift from the current requirement in the RMA to "take into account" the principles of te Tiriti o Waitangi will necessitate a change in approach. Clarity is therefore sought as to how the greater role that is envisaged for Māori in the new system will be financed and resourced including from a local government perspective.

Focus on the natural environment

25. We support the attention given to the natural environment in the Bill and are in general agreement that the introduction of environmental limits will likely result in improved outcomes for the natural environment. Continuing to manage the natural environment and built environment under the same legislation will enable integrated solutions and the Bill acknowledges that these parts of the environment are interrelated.

26. The term *te oranga o te taiao* provided in s5 differs in focus from the concept of *te mana o te taiao* (previously used by the independent Resource Management Review Panel chaired by retired Court of Appeal Judge Hon Tony Randerson, QC, in 2020). This indicates a shift to focusing on the natural environment rather than a wider definition of environment that includes people and communities. In order to reduce future litigation risks, the term *te oranga o te taiao* should be defined in the Bill or supplemented with more context that sheds light on how it will work in practice.

27. We are concerned with the lack of focus on other components of the defined "environment" including the built environment, people and communities, and social, cultural, and economic conditions. For example, environmental limits are only mandatory for components of the natural environment (s 7(4)). We reiterate that it is difficult to comment on select components of the Bill without the context and detail of the wider provisions and framework.

28. It is currently unclear whether environmental limits will be set nationally or regionally. Due to the significant local variation that exists within regions it will be important to ensure that environmental limits are effective and workable. As this legislation continues to be developed, the following options could be considered in regard to setting environmental limits:

    - provide more information as to how environment limits are likely to be set and implemented, for example, how they would apply to an already degraded environment, or where natural levels exceed environmental limits
    - provide for incentives that promote performance better than what is captured by the environmental limits
    - make provisions for the setting of environmental limits that are relevant to urban environments, for example, noise
    - within the NBA, provide for the ability to tailor environmental limits to local conditions, for example, geographical and localised impacts relating to special ecosystems

    provide for community input into the setting of environmental limits at the local level

    - clarify the powers of the Minister for the Environment to amend environmental limits.

29. The meaning of 'precautionary approach' (s 3) should include protection of human life. There is also a concern that this approach as currently framed could lead to a significant amount of case law due to ambiguity and lack of clarity.

30. The environmental outcome relating to natural hazards and climate change (s8(p)) should explicitly refer to the resilience of communities and the built environment. We consider this outcome to be extraordinarily aspirational and seek more information about the extent to which plans should promote the resilience of the natural environment. The most cost-efficient way to promote resilience to natural hazards is through risk mitigation.

Lack of clear priorities

31. We support the shift to outcomes as a more positive framing of the planning system (for example, by promoting restoration and enhancement and well-designed communities). We support each outcome (s8) in principle, but are concerned that conflicts between different outcomes, and between outcomes and limits, are inevitable. The Bill does not provide any prioritisation or pathway for resolving conflicts, it merely directs that the national planning framework and NBA plans must each include provisions to "*help* [to] resolve conflicts" (s13(3) and s22(1)(g) respectively, emphasis added). A system that enables a consistent prioritisation of environmental outcomes is preferred.

32. National direction should be well integrated and national direction documents should not result in conflict between themselves or with other national instruments. Directly addressing conflict resolution at the highest level (the Bill) would ensure the outcomes can be effectively promoted.

This could significantly reduce litigation which can be both prolonged and expensive. Consideration should be given to determine how any conflicts could be resolved and how this would work in practice, in addition to setting measurable outcomes for NBA plans to support the assessment of resource management system performance.

Transitional arrangements

33. The Bill is silent on transitional arrangements. These are of particular interest as the NBA and RMA have explicitly different purposes. Many existing plan review and plan change processes are under way throughout Canterbury, and we look forward to engagement on how to effectively manage the eventual transition to the new system. Improved clarity on the role and responsibilities (upfront and ongoing) of the planning committee would also assist.

34. We understand that NBA plans are intended to be consistent with and give effect to regional spatial strategies (developed under the Strategic Planning Act). This in turn, raises questions around how to address timing and sequencing issues. Development of spatial strategies in advance of NBA plans would be the most efficient way to ensure strategic integration across the region. Consideration should also be given to incorporating the many spatial planning frameworks that councils are currently progressing into future regional spatial strategies.

Ambiguity

35. Some drafting in the Bill is ambiguous or contradictory. If the language is not refined before the Bill is finalised this will lead to prolonged litigation to determine the meaning/intent.

36. Several definitions in s3 of the Bill are unclear or incorporate other defined terms. For example, the “well-being” definition is an open statement and self-referencing.

37. The following terms should be defined in the Bill:

    - avoid and remedy – acknowledging that ‘mitigate’ has been defined
    - marine environment – and if/how it differs from the coastal environment
    - natural character
    - promote
    - Te Oranga o te Taiao
    - well-functioning (urban areas)
    - cultural landscapes
    - mana whenua
    - customary rights.

38. We request clarity for how the purpose of the Bill (s5(1)) will be achieved and where clauses (a) and (b) conflict, how they should be prioritised or reconciled.

Resourcing

39. If planning committees throughout New Zealand are expected to deliver NBA plans on the same timeframe, there is likely to be a shortage of resource and funding throughout the planning industry. There are likely to be capacity implications for other sectors that are expected to engage in the planning process including public health experts and mana whenua (as noted above).

40. The changes to the resource management system included in the Bill are estimated to increase costs for local government by 11% per annum[2]. Central government should provide funding or alternative assistance to help Councils meet these increased costs.

List of ideas requested by the Select Committee

41. The following system efficiencies should be prioritised during the development of the NBA:

- councils should retain existing resource consenting and monitoring and compliance functions, particularly through the transition. The ability of councils to remain consent authorities will enable the continuance of outcomes to be pursued through submissions, hearing and appeals that are in the interests of the respective council's communities. Furthermore, it is logical for the status quo to continue as building consents are also dealt with at the local level and cross-checking occurs between building and resource consenting processes
- national direction is needed with regards to specifying resource consent types that will be subject to notification/non-notification clauses in the NBA, NPF and NBE plans
- clarity is needed regarding the circumstances within which existing use rights can be extinguished under the NBA
- the NBA should either direct or provide the use of templates and model processes to improve consistency and efficiency of process
- clear and consistent prioritisation criteria for consent decision-making needs (there is currently no replacement section 104 of the RMA in the exposure draft).

42. In terms of making the system more affordable for the end-user, we seek that changes to the system will not add more costs to the consenting "process" for the end-user.

Conclusion

43. As the largest region by land area in New Zealand, Canterbury councils have a significant role in the implementation of the resource management system. We want to continue engaging with the Natural and Built Environments Act and related legislation as it is developed and would like to be included in future stakeholder engagement meetings.

44. On behalf of the CMF, thank you again for the opportunity to submit on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper.

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Mayor, Selwyn District
Chair, Canterbury Mayoral Forum

[2] Interim regulatory impact statement: Reforming the resource management system (15 June 2011)