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Christchurch City Council submission on the Exposure Draft of the Natural and Built Environment Bill

1. Introduction

1.1 Christchurch City Council (the Council) thanks the Environment Committee for the opportunity to provide comment on the exposure draft of the Natural and Built Environments Bill (Bill).

1.2 We value the opportunity to comment on an exposure draft. This provides an important opportunity for substantive feedback to be considered prior to government introducing the Bill to the House. However, true engagement by submitters on the draft, and by the Select Committee with the submissions, requires time. We are concerned that the government's timetable has given inadequate time for this generationally important engagement. The time for submissions is too short for comprehensive Council assessment of the exposure draft and the time for the Select Committee reporting to the House on the submissions and recommended changes to the draft Bill is too short for full engagement with the submissions.

1.3 The Council wishes to be heard in support of this submission. Christchurch is in the unique position of having experienced in the post-earthquake environment many of the tools proposed in, or being considered for, the exposure draft to meet the government's reform objectives. Similar objectives were at play in the earthquake recovery and regeneration policy framework. We in Christchurch have seen the good and bad outcomes of these policy directions. We invite the Select Committee to visit Christchurch to learn more about these experiences. These include:

- Central government planning direction in regulations;
- Regulatory changes to resource consent and plan change processes
- Deemed permitted activity status for some categories of activity helps economic recovery – e.g. the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011.
- We've had good experience with a new submission process for specific resource consents – e.g. the Canterbury Earthquake (Resource Management Act - Burwood Resource Recovery Park) Order 2011.
- We can see the merits of existing use rights or existing resource consents being extinguished in some circumstances e.g. derelict sites in the CBD, building in hazard areas.

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- Removing the right to appeal on the merits against Independent Hearings Panel (IHP) decisions is good for providing a resolved Plan quicker.
- We've had experience of delays on matters that are a local priority, but not necessarily national ones.
- IHP processes aren't always user friendly and people struggled to engage in it. People found the Christchurch IHP process for the Replacement District Plan cost-prohibitive and intimidating.
- Fast, adversarial plan change processes don't necessarily deliver high quality Plans. IHP processes can deliver more complex plans despite an objective being simpler ones.
- Reduced opportunity for public engagement on a development increases likelihood/amount of opposition
- Power for central government to directly insert provisions in Plans has been used here, with mixed outcomes.

1.4 This submission will be drawing on those experiences to comment on the exposure draft and process efficiencies.

1.5 Council staff would value the opportunity to work with Ministry staff on any matters arising from this submission and from any other submissions. That would be productive and proactive assistance by the Council.

General Comments

1.6 The Council supports the government's five objectives for reform of environmental and planning legislation and supports the intent of the exposure draft.

1.7 Our environment and our communities suffered from decades of uncertainty about the meaning, implementation and application of the RMA while planners, lawyers and the courts struggled to interpret its provisions. The sustainable management purpose of the Act was sound, but imprecise drafting and poor systems to resolve interpretive ambiguity undermined the purpose.

1.8 Central government must avoid that risk of poor implementation here. This will require better drafting at the start, and a new process for quick identification and resolution of interpretation problems. That process could be a central government funded declaratory judgment service to take test cases and resolve ambiguities, or a new body set up to resolve interpretation disputes, similar to the MBIE Panel that issues determinations on Building Code interpretations.

1.9 We consider that the changes proposed in this submission will better achieve key benefits stressed in the Interim Regulatory Impact Statement (RIS) than does the exposure draft:

- Decreased compliance costs (p4);
- Added benefits for the quality of the natural and built environments (p.4);
- increase the control for Iwi/Māori over resource use decision-making and deliver better outcomes for Māori (pp.4 & 18);
- Improved implementation as a result of improved national direction (p.23);
- Reasonable opportunities for public participation, including by communities currently under-represented in the system (p.27);

- Increased consistency and certainty (p.27).

1.10 We are concerned about the additional costs councils will face implementing the NBA, estimated in the RIS to be an increase of 11% (p.37). Central government should provide additional funding to cover those increased costs.

1.11 Key points in this submission are:

1.11.1 Te Tiriti: We support the requirement to "give effect to" Te Tiriti but the Act should require the national planning framework (NPF) to provide direction and guidance on how to give effect to Te Tiriti.

1.11.2 Planning Committee: There is insufficient clarity about the Planning Committee functions.

1.11.3 Council roles: The Act should have improved affirmation of the local councils' policy/plan making role and responsibilities.

1.11.4 Public participation: The Bill should have improved provision for, and clarity of, public participation.

1.11.5 Built Environments: The Bill ought to recognise the objective of providing quality built environments for current and future generations. While "Status quo bias" identified in the RIS[1] is a risk, so is urban development that has no regard to the liveability of the urban environment for our communities.

1.11.6 Natural hazards and climate change: The exposure draft does not adequately provide for management of natural hazards and climate change. The purpose of the NBE Act, the environmental limits, and the prioritisation between outcomes will all be crucial components to implementing adaptive planning for climate change and so must be better addressed in this Bill.

1.11.7 Heritage: We support the use of the term "cultural heritage" rather than "historic heritage", but propose improvements to the definition and improvements to the cl.8(h) outcome for cultural heritage.

1.11.8 Incompatible activities: the Bill needs improved recognition of the potential for conflicts between activities.

1.11.9 Outcomes and environmental limits: We support an outcomes focus, environmental bottom lines and national direction but the exposure draft fails to provide the intended clarity as it does not indicate prioritisation between limits, between outcomes, or between limits and outcomes.

1.11.10 Transition and Implementation: Efficient transition and implementation requires improved clarity on the Planning Committee role and procedures.

1.11.11 Other efficiencies: we include brief comments on other possible efficiencies.

[1] Interim Regulatory Impact Statement: Reforming the resource management system, at p22

2. We support the requirement to "give effect to" Te Tiriti

The changes needed to the Bill

2.1 Require the NPF to set out provision of central government funding to support iwi/hapu participation.

2.2 Require the NPF to provide direction on how to give effect to Te Tiriti o Waitangi.

2.3 Provide timeframes for consenting processes that are sufficient to facilitate mana whenua input.

Explanation

2.4 We acknowledge and support the intent of the reforms and the need to 'give effect' to Te Tiriti o Waitangi. Council understands Māori will be a substantial partner in all stages of the legislative changes through clear input and representation at co-governance, co-design and implementation.

2.5 Through Partnership with Ngāi Tahu (via the Te Hononga Committee) Council recognises Ngāi Tahu holds rangatiratanga as guaranteed under Te Tiriti and as expressed in the Ngāi Tahu Settlements Act 1998 throughout its takiwā.

2.6 Council acknowledges the 'drafted' interpretation of Te Oranga o te Taiao, its inherent relationship to/for Māori, as well as the need to bring about effective reform led not only by technical skill, but also through the application of mātauranga Māori.

2.7 Sufficient funding of Iwi and Ngā Rūnanga is an imperative component to the success of giving effect to Te Tiriti. The Crown should clearly articulate in the NPF where funding responsibilities begin and cease from a Crown perspective and as to what becomes a local authority funding initiative.

2.8 Central government direction in the NPF on how to give effect to Te Tiriti is critical to clearly set expectations and obligations and avoid uncertainty and inconsistent achievement of this requirement.

2.9 Providing sufficient time for mana whenua input to consenting processes will better achieve the intended increase in control for Iwi/Māori over resource use decision-making and deliver better outcomes for Māori (RIS pp.4 & 18).

3. Planning Committee role

The changes needed to the Bill

3.1 Enable Planning Committees to set up sub-committees to prepare area-specific draft plan sections, with appointees to the sub-committees from the subject areas (i.e. 3

elected members from the Christchurch City Council to prepare a Christchurch City section).

3.2 Require Planning Committees to consult with the local councils on the draft NBA plans and the regional spatial strategy prior to public notification of the proposed documents.

3.3 Enable councils to submit in the IHP process and appeal against a Planning Committee decision on the IHP recommendation.

3.4 Require Planning Committee membership to be elected members.

3.5 Specify that the Planning Committees formed under the NBA have the function of preparing regional spatial strategies and regional spatial plans.

3.6 Prescribe in the Act where the Planning Committee Secretariat will "sit" in the Region. This will generally be the largest metropolitan council for the region.

Explanation

3.7 Planning Committee decision making and NBA plans must take account of the significant local variation within regions. Achieving that objective will require proportionate roles in the planning committees in relation to sections of the NBA plans that address issues in their districts. Decision making on parts of proposed plans that effect sub-regional areas ought to be determined by the sub-regional group.

3.8 For the Greater Christchurch area including the parts of Selwyn and the Waimakariri District, a unitary plan would be a better option than a regional NBA plan covering all districts in the region. This is particularly so given the significant urban growth challenges Greater Christchurch is facing. As an alternative, Planning Committees should be able to set up sub-committees to prepare area-specific draft plan sections, with appointees to the sub-committee from the specified areas.

3.9 There should still be district decision-making for district-specific matters and provision for districts to set limits and other provisions relating to the built environment for their districts.

3.10 Local councils have an important role on the proposed Planning Committees to represent their community and influence outcomes. Representation on them should be elected members rather than staff and consultants.

3.11 Local democracy and policy outcomes will be disadvantaged if councils are not free to seek to influence, outside of planning committees, the policy determinations of regional or sub-regional committees on matters that affect that Council's communities or environment. Council representatives on the Planning Committee may not agree on all issues in a region and councils should have the ability to continue to pursue outcomes through submissions, hearings and appeals that are in the interests of their communities.

4 Improved affirmation is needed of local councils' policy/plan role

The changes needed to the Bill

4.1 Require the Minister to engage with local government and provide opportunity to submit/be heard on draft NPF matters.

4.2 Specify territorial authority functions that include:

- Being the consent authority for all consents under the NBA, including discharge/water/coastal resource consents, and decide on NBA Plan changes that are of solely local significance; and
- Compliance monitoring and enforcement (instead of regional hubs). The crucial relationship between compliance and consenting organisations will be lost if enforcement is in regional hubs.

4.3 Specify regional council functions that include:

- technical expertise and environmental knowledge-base to support territorial authority decisions; and
- Monitor the state of the environment.

Explanation

4.4 The exposure draft does not improve system efficiency and effectiveness and reduce complexity while retaining appropriate democratic input. It limits the involvement of local elected members in decision making and therefore fails against the objective of retaining local democratic input. The Act should not leave councils without significant policy making roles but with prime responsibility for managing the conflicts that arise from policy and planning decisions. That is, however, the way that the exposure draft looks.

4.5 The Bill should specify that councils remain consent authorities – and collect financial contributions and/or development contributions to fund infrastructure and services that support growth.

4.6 It is inefficient for there to be both a territorial authority and a regional council administering resource consents for a single activity. Subdivisions, for example, often require both subdivision consent and land use consent from the territorial authority and discharge consents from the regional council. Territorial authority management of both of those consenting processes would improve environmental results and efficiencies.

5. Securing public participation

The changes needed to the Bill

5.1 Require the Independent Hearing Panel process to be open and encourage public participation. Include specific operational requirements for the Independent Hearing Panel. Require the Independent Hearing Panel to adopt inquisitorial rather than adversarial processes.

5.2 Specify the circumstances in which NPF direction can be inserted directly into the NBA plans without public participation.

5.3 Specify minimum process requirements to enable public comment on the regulations making up the NPF.

5.4 Improve precision in the implementation principles (section 18(c)) about how the community can participate in planning decision making.

5.5 Specify that central government will fund community planning centres (similar to Community Law) and "friends of the submitter" for assisting people with environmental planning disputes.

Explanation

5.6 Independent Hearing Panel processes are not always user friendly. People struggled to engage with the Independent Hearing Panel process for the Christchurch Replacement District Plan. People found that process cost-prohibitive and intimidating. Only the well-resourced were heard. Communities with few resources are disadvantaged. Our experience is that submissions by residents groups on development appear to get more traction if from affluent areas, due to the social and capital resource imbalances in our communities. The "scaling up" of planning processes to a regional level will make current barriers to engagement by some sectors of the community worse, unless there is active planning to reverse that trend.

5.7 Plan change processes and Independent Hearing Panel practices should not be a strenuously legal and/or adversarial process. Community knowledge needs to be recognised and respected. Inquisitorial rather than adversarial processes should be required by the Act. This will assist in providing reasonable opportunities for public participation, including by communities currently under-represented in the system, an intended outcome in the RIS (p.27).

6. Recognition needed of built environment liveability values

The changes needed to the Bill

6.1 Amend the purpose of the Act to provide that the "built environments" objective of the Act includes providing quality urban areas that support the wellbeing of people and communities.

6.2 Amend environmental outcome 8(k) to include promoting liveable towns and cities, including good urban form.

6.3 Include management of built environmental risks to health (e.g. noise, access to sunlight) as a purpose of the environmental limits.

6.4 Provide for NBA plans to include local provisions to achieve liveable urban areas.

6.5 Require direction on quality urban form in the NPF.

6.6 Add a definition of "well-functioning" (the term used for urban areas in outcome 8(k)).

6.7 Add the following to urban areas outcome 8(k):

(iii) contributing to the development of adaptable and economically resilient communities

Explanation

6.8 The exposure draft does not provide a planning regime that will deliver built environments that provide quality, liveable towns and cities for current and future generations. The 'built environments' objective of the Act should be excellent urban areas that support the wellbeing of people and communities. Quality of urban environments should be an express outcome sought in the legislation. Liveability standards – including aspects of urban form and design – are a desired outcome and should be promoted.

6.9 The Act ought to recognise good urban form in order to achieve its "human health" objective. "Health" includes all aspects of well-being: including built environment attributes that contribute to human health. Improved recognition of the benefits of quality urban form and design enhances wellbeing, such as appropriate noise levels and access to sunlight.

6.10 Provision for quality urban form is not creating the problem of "status quo bias". The situation is more nuanced than is captured by the objective stated in the Parliamentary Paper to "curtail subjective amenity values"[2] . The issue of concern to the Council and most community concern is not seeking to retain the status quo against intensification, it is the impact on liveability of ***over***-intensification.

6.11 Liveability is not solely about the broad pattern of urban growth in terms of where and how much we build. Liveability is also about:

- what we build,
- how we build it,
- how areas of the built environment work,
- integration of parts of the urban form,
- how we create open spaces that contribute to good urban form, human health and a healthy, resilient environment, and
- how development on one site impacts on adjoining sites.

These finer levels of urban form are critical in achieving well-functioning, safe, healthy and liveable places, including at the individual site, neighbourhood, suburb, city and regional level.

6.12 Good urban form (including CPTED principles[3]), managing activities to minimise conflicts between adjoining and adjacent activities, and ensuring residential properties have access to light, open space etc are all important. Effects on an individual's perception

[2] Natural and Built Environments Bill: Interim parliamentary paper on the exposure draft, Paragraph 38 p10.

[3] Crime Prevention through Environmental Design (CPTED) is a set of principles for how quality urban design can create safer public places that reduce crime and the fear of crime (The Ministry of Justice publishes *CPTED guidelines for New Zealand*). This can include site layout and placement of windows to create opportunities for informal surveillance.

experiences of sight, sound, smell – e.g. quarries near residential areas – have an important role in the liveability of urban areas. There are fine-grained details that are not subjective! Human health implications included.

6.13 We are a little puzzled that the cl.8(m)(ii) outcome for rural areas – that development is pursued that contributes to the development of adaptable and economically resilient communities – does not also apply within urban areas. We suggest adding it to outcome 8(k) for urban areas.

7. Natural hazards and climate change

The changed needed to the Bill

7.1 Include "enabling people to provide for their health and safety" in the purpose of the Act.

7.2 Add "natural hazards and climate change" to the cl.7 list of topics for mandatory environmental limits.

7.3 Require the Minister to set environmental limits for risks to people and to the built environment, in addition to those for the natural environment, by adding "human health and safety" to cl.7(1) (b) and "risks to the built environment" as a new cl.7(1)(c).

7.4 Require in cl.7(4) environmental limits for natural hazard and climate change risks.

7.5 Prioritise the outcome of managing hazards and climate change over other outcomes in some circumstances; however, that should be coupled with clarification of whether the outcome ought in cl.8(p) is limited to "significant risks".

7.6 Improve clarity in outcome 8(p) that reference to the "risks of climate change" include both the risk of climate change occurring and the risk of the effects of climate change.

7.7 Reconsider whether outcome 8(p) for natural hazards and climate change is limited to "*significant*" risks.

7.8 Include "groundwater flooding" in the definition of "natural hazard".

7.9 Require the NPF to direct on how NBA plans are to reduce greenhouse gas emissions; and add reduction in embodied and whole of life carbon to greenhouse gas emission outcome 8(j).

Explanation

7.10 The Exposure Draft places insufficient emphasis on better preparing and adapting to climate change and natural hazard risks. It is a backward step from the RMA. It should not be just left to the CAA. The purpose of the NBA, the environmental limits, and the prioritisation between outcomes will all be crucial components to implementing adaptive planning for climate change and so must be better addressed in this Act.

7.11 Including health and safety as a purpose of the Act is important for the management of natural hazards and climate change in later sections of the Act, and for a range of other issues such as traffic safety provisions that will be included in NBA plans.

7.11 The natural hazard and climate change outcome in clause 8(p)(i) only applies where there are "significant risks". That is different from the New Zealand Coastal Policy Statement, which directs that new development, redevelopment, and change of land use should avoid increasing *any* risk of harm or adverse effects. We recommend reconsideration of whether it is only "significant" risks that are to be avoided.

7.12 We are unclear about how the outcome 8(j) of reduction or removal of greenhouse gases is to be achieved by NBA plans, unless the intent is that the NPF regulations can direct action outside of NBA plans and can direct action by councils under the Local Government Act or by individuals (further discussed below at 10.20-10.21).

7.13 There is ambiguity to whether the "risks of climate change" referred to in cl.8(p) are (i) the risks of the climate change happening, or (ii) the risks posed by climate change to the natural and built environment and health and safety; or (iii) both of those outcomes. The Council submits that the desired outcome should be both reduction in the risk of climate change occurring and also the risk posed by climate change and that this should be clarified.

8 Heritage

The changes needed to the Bill

8.1 Definition of "cultural heritage":

- include "spiritual" and "social" qualities in (a);
- include "cultural landscapes" in (b); and
- delete "historic" in (b)(i).

8.2 Add a definition of "cultural landscapes":

> "Cultural landscapes" means an area possessing cultural heritage value arising from the relationships between people and the environment. Cultural landscapes may have been designed, such as gardens, or may have evolved from human settlement and land use over time, resulting in a diversity of distinctive landscapes in different areas. Associative cultural landscapes such as sacred mountains may lack tangible cultural elements but may have strong intangible cultural or spiritual associations."

8.3 Amend outcome 8(h) for cultural heritage:

> (h) cultural heritage, including cultural **~~landscapes~~** **values**, **~~is~~** **are actively** identified, protected, **retained and restored.** **~~and sustained through active management that is proportionate to its cultural values:~~**

Explanation

8.4 We support the use of the term 'cultural heritage' rather than 'historic heritage' as this use of 'historic' limits the range of heritage and its values.

8.5 The definition of "cultural heritage" in the exposure draft is cut and pasted from the RMA definition of "historic heritage" and does not reflect the change from 'historic' to 'cultural' heritage:

- It does not reflect the broader range and scope that 'cultural heritage' encompasses. Clause (a) needs to be broadened to include 'spiritual' and 'social' qualities.
- "Cultural landscapes" are explicitly referenced in outcome 8(h) as being part of cultural heritage. "Cultural landscapes" should be included within the definition of "cultural heritage", and also be a separately defined term.
- Item (b)(i) needs to have the term 'historic' removed as not all places of cultural heritage value are historic.

8.6 The definition of "cultural landscapes" we propose is used in the Christchurch City Council's Heritage Strategy (p.23)[4].

8.7 We have significant concerns with the proposed draft outcome 8(h) "*Cultural heritage, including cultural landscapes, is identified, protected and sustained through active management that is proportionate to its cultural values*". It reduces and dilutes heritage protection, undermines the recognition and protection of the places and items that hold meaning and identity to the communities of Christchurch, which provide connections to the place and to each other, and which reflects our diversity.

8.8 The term 'sustained' should be replaced by 'retained and restored'. This is similar to the use of 'preserved' in outcome 8(e) regarding the natural character of the coast, lakes, rivers and wetlands. "Retained and restored" more clearly indicates a desire to protect heritage.

8.9 The term '… *proportionate to its cultural values*… ' dilutes and reduces any meaningful and robust heritage protection of the broad range and scope of our cultural heritage:

- Whether proposed active management is "proportionate to cultural values" will cause costly legal dispute.
- Those items easily and confidently argued as having high significance would be protected – largely the colonial architecture that has traditionally been viewed as 'heritage' and which has iconic international or national recognition. This does not reflect the term 'cultural heritage' as opposed to 'historic heritage'.
- The term "proportionate to its cultural values" fails to recognise the multiple, distinctive and diverse elements which our communities consider to be their heritage and taonga. Ascribing 'proportional' cultural values runs a real risk of failing to reflect the diversity of the communities. This is potentially very discriminatory and does not reflect the diversity of our community at a time when inclusivity is paramount in New Zealand. Items of high local significance, or of significance for social and cultural grounds to a small group or culture, are unlikely to be protected.

[4] https://ccc.govt.nz/culture-and-community/heritage/heritage-strategy

9 Incompatible activities

The changed needed to the Bill

9.1 Add a new environmental outcome to cl.8:

- "conflicts between incompatible activities are minimised, and avoided in the case of existing nationally or regionally significant infrastructure or where there may be significant adverse effects on the natural environment or the health and safety of people and communities."

9.2 Add to rural outcome 8(m) requirements for:

- separation of incompatible activities.
- avoiding uncontrolled urban development, especially where there are limited transport connections and transport mode options.

Explanation

9.3 Management of incompatible activities is an important issue that should be included in environmental outcomes. This is particularly so where it may result in adverse effects on the natural environment, the health and safety of people and communities and regionally or nationally significant infrastructure.

9.4 Plans need to be able to provide for potential conflicts between activities in rural zones and residential activities (e.g. quarries). We experience this in the Christchurch District particularly acutely regarding rural activity and residential activity in rural and urban areas. This is the source of inefficiency in the Canterbury region, and throughout NZ, that could be dramatically reduced by legislative and regulatory clarity regarding the relationship between incompatible activities.

9.5 Regional spatial strategies need to guide residential growth outside existing urban boundaries.

9.6 We support the provision in strategic plans for the continued expansion of small rural towns only if spatial planning outcomes are met, including that it continues to result in a well-functioning urban environment for Greater Christchurch, does not contribute to climate change and does not unnecessarily use highly productive land.

10 Outcomes and environmental limits

The changes needed to the Bill

10.1 Require the NPF to include specific direction on how compliance with qualitative limits is to be measured.

10.2 Provide a stronger requirement in cl.13(3) that the Act resolves conflicts between outcomes – "help resolve conflicts" isn't good enough – and include better direction in the Act about how conflicts between outcomes are to be resolved.

10.3 Reconsider whether the term "promote" in cl.5(2)(b) and cl.8 is adequate for the desired outcomes.

10.4 In urban area outcome 8(k):

- Amend (k)(ii) to require **sustainable** transport links;
- Require alignment of urban development with infrastructure planning and provision;
- Require promotion of a resilient urban form.

10.5 Include some environmental limits in the Act rather than being left to the NPF eg that the protection of critically threatened species must occur wherever such species occur. That would exclude any activities that pose a threat to such species.

10.6 Provide for environmental limits to not be met in specific cases (e.g. allowing stormwater basins in wetland areas to enable housing that is needed); and provide for environmental compensation and offsets to be used where the effects of an activity would breach environmental limits.

10.7 Specify that the NPF can require steps to achieve improvements, not just impose limits – limits have already been crossed in some places, e.g. Lake Wairewa, and now restoration should be the "limit".

10.8 Include a requirement to set environmental standards in the NPF, e.g. minimum densities of housing in new greenfield urban areas.

10.9 As further environmental degradation could result if environmental limits are set lower than the existing state of some natural resources, amend cl.12 by adding the following subclauses;

(3) Where environmental limits are prescribed they must also specify whether and what degradation is permitted if the existing state is higher than the environmental limit.

(4) Where qualitative limits are prescribed they must include specific measures that will determine compliance.

10.10 Amend environmental outcome 8(e)(ii) to "their natural character is preserved **or enhanced**", reflecting the inclusion of enhancement in the other natural environment outcomes.

10.11 Amend environmental outcome 8(l)(ii) to "contribute to the affordability of housing**, including through inclusionary zoning**; and".

Explanation

10.12 We support an outcome focus, environmental bottom lines and clear national direction to resolve conflicts. But the exposure draft fails to provide the intended clarity. The exposure draft does not resolve any potential conflicts, nor does it *require* that the NPF will resolve potential conflicts

- within the listed environmental outcomes, and
- within the environmental limits, and
- between environmental limits and outcomes if the limits restrict the promotion of some other outcomes.

10.13 Those conflicts would lead to uncertainty, complexity, litigation, cost and delay. The RIS (in Table 26, p.80) does not recognise in its assessment that the preferred Option 3B: National Planning Framework, as contained in the exposure draft, only provides for the resolution of conflicts between a limited number of matters. This is likely to increase compliance costs and reduce consistency and certainty, relative to Option 3A: Panel's Approach, which "*would … resolve any conflicts between those matters*."

10.14 The relationship between environmental limits in cl.7 and outcomes in cl.8 is unclear. The statement in cl.7 of the purpose of environmental limits should clearly indicate that environmental limits are for the purpose of achieving the environmental outcomes.

10.15 The potential for national direction to increase the efficiency and effectiveness will be achieved only if the national direction is clear, specific and directive rather than enabling.

10.16 We have cautious support for the ability of the Minister to set qualitative limits but these will be hard to monitor and assess compliance unless there is direction on that in the Act and in the NPF.

10.17 A good example of regulatory direction on priorities between outcomes is in the Proposed NPS for Highly Productive Land which proposes that highly productive land is only to be used for urban development if there is a shortage of development capacity and it is the most appropriate option. The Act should include such direction wherever possible, rather than leaving it to the uncertainty of the NPF process to determine.

10.18 "Promote" means "*To further the growth, development, progress, or establishment of (a thing); to advance or actively support (a process, cause, result, etc.); to encourage*" (Oxford English Dictionary). The term "promote" therefore may not require that the cl.8 outcomes be either advanced or achieved. A stronger word may be "ensure or "achieve". However, a range of outcomes are listed, some of which may conflict with others in some circumstances. So it may not be possible to always ensure that the outcomes listed are fully achieved, e.g. full protection.

10.19 Promoting use of sustainable transport links will assist achieving the outcome of reducing congestion and greenhouse gas emissions.

10.20 The NPF should strive for improvement in some degraded resources in order to achieve the cl.8 outcomes. NPF direction for improvement seems to be possible under proposed clause 13. There should be express provision in the Act for the NPF to require steps to achieve improvements, not just impose limits. Limits have already been crossed in some places.

10.21 It should be clearer in the Bill whether the NPF can direct actions outside of councils' functions under the environmental legislation. As an example, Lake Wairewa is a badly degraded taonga. RMA plan provisions managing surrounding land use and discharges cannot alone improve the state of that treasure. The Council is working outside of the RMA in a co-governance arrangement with the Regional Council, Department of Conservtion, Ngāi Tahu and Rūnanga to strive for improvements in the degraded state of the lake. The Council highly values that partnership and the gains that it is making. We submit that the NPF should be able to promote and even direct positive action to

improve degraded resources, and set aspirational targets for both short term and intergenerational improvements.

10.22 The NBA should specifically refer to inclusionary zoning as a method of achieving affordability (cl.8(l)). This requires a share of dwellings in new developments to be affordable to people on low to medium incomes.

11. Ensuring practical transition and implementation

Transitional and implementation provisions needed in the Bill

11.1 More clear and precise implementation principles – the placeholder ones in cl.18 are very broad.

11.2 Specify the order of developing planning instruments:

- streamlined processes to complete plan changes already underway (e.g. reduced appeals), so there is a smooth transition.
- that the NPF is developed before the regional spatial strategies and NBA plans;
- that the current National Policy Statements and National Environmental Standards developed under the RMA are carried over into the new regime until reviewed as part of the NPF;
- recognise existing spatial plans – eg the Greater Christchurch Partnership plans.
- regional spatial strategies completed before the first generation NBA plans;
- existing plans should transition into being the NBA Plan, and progressively reviewed thereafter, as required.

11.3 The government must commit adequate resourcing to support transition.

12. Ecological matters

The changes needed to the Bill

12.1 Definitions:

- "ecological integrity": add "restore" to the definition, as the purpose of the Act might be best met by protecting the potential of areas to improve biodiversity.
- "river": exclude water in piped drinking water and stormwater.
- "natural environment": delete the words "the resource of", as those words conflict with the purpose of the Act.

12.2 Amend the purpose of the Act to recognise the intrinsic relationship between all people and the natural environment by making the following change to cl.5(3)(d):

> *"the essential relationship between the health of the natural environment, its capacity to sustain all life* ***and the wellbeing of people and communities****".*

12.3 Specify that "ecological integrity" includes the full extent (area) of a habitat or ecosystem. Otherwise there are likely to be quality vs quantity arguments regarding improving the 'quality' of what remains after loss e.g. pest control following removal of part of a forest. Net loss should never be an outcome.

12.4 Include a provision similar to the s.17 RMA duty on every person to avoid, remedy or mitigate adverse effects.

12.5 Reconsider whether it is intended that people are within the definition of "natural environment".

12.6 Add the word "indigenous" to the following provisions:

> 7 Environmental limits
> (1) The purpose of environmental limits is to protect either or both of the following:
> (a) the ***indigenous*** ecological integrity of the natural environment:
> (b) human health.
> ….
> (4) Environmental limits must be prescribed for the following matters:
> (a) air:
> (b) ***indigenous*** biodiversity, habitats, and ecosystems:
> (c) coastal waters:
> (d) estuaries:
> (e) freshwater:
> (f) soil.
>
> 8 Environmental outcomes
> To assist in achieving the purpose of the Act, the national planning framework and all plans must promote the following environmental outcomes:
> ….
> (b) ***indigenous*** ecological integrity is protected, restored, or improved:

Explanation

12.7 The definition of "natural environment" describes the natural elements as "resources". This implies they are a resource to be used. This is contrary to the principle of enabling Te Oranga o te Taiao to be upheld.

12.8 The proposed definition of "*natural environment*" includes people, as it includes organisms. That means that there will be confusion and uncertainty where provisions separately address the "natural environment" and "people", for example in the purpose of the Act, environmental limits, and the application of the precautionary approach. The definition of "natural environment" should clearly state whether people are included in that definition. If people are included in that definition, the NBA provisions will need to be amended if some references to the natural environment are intended to *exclude* people.

12.9 The Act ought to contain greater recognition of the need to retain, protect and enhance indigenous biodiversity and ecosystems of indigenous value. This is a fundamental gap in the exposure draft. The gap appears in several places:

(1) the definition of "natural environment" includes all natural things regardless of whether they are indigenous or exotic. This means that care is needed where

provisions refer to the "natural environment", as to whether it is all aspects of that natural environmental that should be referred to.

(2) the use of the term "natural environment" in the Act ought to focus more on indigenous aspects of the natural environment. "Protecting and enhancing the natural environment" does not adequately differentiate between, for example, protecting indigenous biodiversity or protecting possums, wilding pines and willows.

(3) It is unclear whether the outcome of protecting and restoring the mana and mauri of the natural environment (cl.8(g)) promotes protecting plantation forests as equally as protecting kauri forest.

(4) The definition of "ecological integrity" relies on the defined term "ecosystem". The definition of "ecosystem" does not differentiate between indigenous and exotic ecosystems. The definition of how one assesses the degree of "ecological integrity" requires assessment of four criteria. There is no prioritisation between those four criteria. Only one of them refers to "indigenous" values.

(5) The result is that the environmental limits required by cl.7 are not required to be focused on indigenous ecological values, and that the outcome in cl.8(b) of protected, restored and improved ecological integrity could include ecosystems of little indigenous value.

(6) Clauses 7 and 8 do not differentiate between urban and rural environments for limits and outcomes seeking ecological integrity. As a result, there could be increased conflict regarding the impact of urban growth and development on exotic ecosystems. That conflict should be avoided.

13. Amend the definition of the "Precautionary approach"

13.1 Include "*protection from natural hazard and climate change risks for people and the built environment*" in the definition of "*precautionary approach*": this is consistent with our submission that natural hazards and climate change be included in environmental limits.

13.2 Our experience in Christchurch is that the precautionary approach under the RMA has failed our communities. Scientific uncertainty regarding effects on groundwater did not stop consenting for massive nitrate loads used for dairying north of the Waimakariri River. That nitrate contamination is now in groundwater making its way into the pristine Christchurch groundwater drinking water supply. The precautionary approach needs to be strongly secured in the Act and required of all decision makers.

14 Proposed track changes to address the above submissions

14.1 Attached to this submission is a proposed track change version of the exposure draft that addresses each of the above submission points, where possible in the time available.

14.2 Some of the changes proposed above could not be drafted with the information currently available and time available for this submission. They require more work between central and local government. Council staff will be available at any time to work with Ministry staff on possible provisions to address those submission points. These are:

1) Planning Committee functions;

2) Planning Committee and sub-committee processes and operational procedures;
3) Central government engagement with councils and communities on draft NPF changes;
4) Planning Committee engagement with councils and communities;
5) Council functions;
6) Roles of councils as submitters and/or appellants regarding NBA plans
7) IHP processes;
8) Specifying the circumstances in which NPF direction can be inserted in the NBA plans without further process;
9) Improvement to the placeholder implementation principles;
10) Government funding for Community Advice Centres to assist people with planning disputes;
11) Whether outcome 8(p) for natural hazards and climate change should be limited to the "significant" risks of those hazards'
12) Whether "promote" is an appropriate imperative for the outcomes in clause 8;
13) Greater direction about the relationship and conflicts between environmental limits (clause 7), between environmental outcomes (clause 8) and between limits and outcomes;
14) Recognition that environmental limits should be flexible enough to provide different levels of environmental protection for different circumstances and locations, especially in built areas;
15) Provision for developments to not meet environmental limits in limited circumstances;
16) Potential for environmental compensation and offsets to be used where the effects of an activity would breach environmental limits;
17) Confirmation in clause 13 as to whether provisions in the NPF directing outcomes can direct improvements in natural values - provision for the NPF to require steps to achieve improvements, not just impose limits;
18) Transitional provisions;
19) Implementation principles;
20) Clarification of whether "people" are included in the definition of "natural environment";
21) Including a "duty of care" section similar to s.17 of the RMA.

15 System improvements and efficiencies

15.1 Christchurch's experience is that an Independent Hearing Panel process, coupled with a central government direction that the District Plan be simpler and require fewer resource consents, does not necessarily deliver a simpler Plan. We found that it delivered a more complex Plan. We support further system improvements and efficiencies.

National direction

15.2 Clear national direction in the NPF, including on urban form outcomes.

15.3 A national body that provides determinations of interpretation issues about the NBA and NPF e.g. akin to the MBIE Determinations on Building Code/Building Act matters.

Consenting and appeals

15.4 Territorial authority management of all consenting processes would improve environmental results and efficiencies.

15.5 A simpler process for consenting small-scale variations to existing resource consents.

15.6 Retain only three activity statuses for resource consent applications: permitted, consent needed, and prohibited activity.

15.7 If non-complying activities are retained, specifically exclude consideration of aspects of the proposal that are complying.

15.8 Incentivise resource consent applicants for complex activities to request notification of applications. This would speed up notification processes and improve public participation.

15.9 We support the NPF providing direction on permitted activity status for some activities. We have experienced that in an Order in Council for earthquake recovery deeming activities displaced by the earthquakes and construction depots to be permitted activities if particular requirements were met. This is a useful tool for improving simplicity, consistency and efficiency.

15.10 Provide for existing use rights to be extinguished in some circumstances, e.g. where natural hazard risks exist; and for consented activity that has been discontinued for X years to be automatically extinguished (e.g. derelict sites in Christchurch post-earthquake).

15.11 The Act, the NPF and NBA plans specify resource consent types that:

- do not need to be notified or have a hearing or for which there is no right of appeal on merits;
- only need to be notified to specified persons or groups of persons; or
- people may only provide written comments on, with no right to be heard or appeals on merit.

15.12 Require the NPF to set precise directions about what activities are to be notified or non-notified, rather than leaving this to NBA plans or consenting discretion.

15.13 Provide for a simpler "notification" process for some types of resource consent applications: a right for specified people to make written comments in a shorter timeframe, no right to be heard, and no appeal right. We have seen that used in an Order in Council for the Burwood Resource Recovery Park to accept earthquake waste in 2011. It had significant benefits in enabling people to participate while also ensuring a prompt resolution of the resource consent process.

15.14 Provide for increased use of certification of technical/expert matters by professionals engaged by the applicant instead of case by case assessment by consent authorities. We have seen this in Christchurch with urban design certification by the applicant's experts for some applications.

15.15 The new version of s.104 of the RMA (relevant considerations for decisions on resource consent applications) needs to be specific about the prioritisation of the various factors, rather than leaving this to years of litigation to resolve.

15.16 Have a category of resource consent applications that do not have hearings or appeals, regardless of opposition.

15.17 Require proponents to obtain a certificate of compliance before engaging in some complex permitted activities. This will mitigate costs, enforcement issues and inefficiencies arising from uncertainty regarding whether some activities are permitted.

15.18 Removal of appeal rights for some types of consents.

15.19 Stronger requirements for the Environment Court to provide mediation and other alternative dispute resolution that excludes lawyers – for example, more use of judicial settlement conferences.

15.20 A quicker process for resolution of appeals – both through alternative dispute resolution and if proceeding to a hearing.

15.21 If there is reduction in the right to appeal on the merits, then there needs to be a required framework for improved testing of the evidence at the Council hearing – but this should be a stronger inquisitorial approach, rather than a stronger adversarial approach.

Enforcement efficiency

15.22 Provision for abatement notices to be issued if there have been several excessive noise directions within x days.

15.23 Provision for formal warnings for minor matters as a tool that will make enforcement more efficient and proportionate and reduce costs.

Other efficiencies

15.24 Tools for councils to require amalgamation of titles to enable private development of greenfield land. This is currently reliant on the market and landowners.

15.25 Improved incentives that facilitate transition of existing houses into 2 dwellings by layout changes. In 2050, 70% of the housing stock will be housing that exists today. This means that housing supply will be greatly enhanced if there are incentives and simple processes that aid the conversion of existing housing stock. Current barriers to that conversion are in Building Act and development contribution requirements.

15.26 The NPF should either direct or encourage the use of templates and model processes.

15.27 Nationwide IT systems, e.g. for viewing NBE plans. This will improve consistency, accessibility and efficiency.

15.28 Standard national templates for common consent applications.

15.29 If the Act and the NPF require more use of permitted activity status for complex activities or activities that require extensive monitoring, require people to seek a certificate of compliance for that activity. This will ensure that activities don't commence and later

find they are not permitted and will provide the consent authority an opportunity to be aware the activity is occurring and monitor the activity if required.

Conclusion

Thank you for the opportunity to provide this submission. We value the opportunity to comment on the exposure draft. The Council supports the endeavour to have an outcome focus, active planning, strong and clear national direction and environmental bottom lines. The Council is concerned that the exposure draft does not achieve the clarity sought and that it does not adequately address the importance of local democracy and local decision making of local matters.

For any clarification on points within this submission please contact Brent Pizzey at 03 9415550 or brent.pizzey@ccc.govt.nz.

Yours sincerely

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