

28 February 2022

Ministry for the Environment
PO Box 10362
Wellington 6143

Tēnā koutou,

Canterbury Regional Council submission on *Our future resource management system / Te pūnaha whakahaere rauemi o anamata*.

The Canterbury Regional Council (Environment Canterbury) welcomes the opportunity to provide feedback on the consultation document - *Our future resource management system / Te pūnaha whakahaere rauemi o anamata*.

Reform of the resource management system is highly significant for all New Zealanders. Decisions on the design of the system will shape how cities and towns are designed and planned for, how we protect and preserve our precious taonga for future generations, how natural resources are allocated and managed, and how communities engage with local government on decisions affecting places they live, work and recreate in.

Environment Canterbury has been an active participant in all previous consultations relating to reform of the system. Feedback was provided on early Issues and Options papers and the Council made a comprehensive submission on the exposure draft of the Natural and Built Environments Bill.

We look forward to continued engagement with the Government on these proposals as they progress through the parliamentary process.

Yours sincerely



Jenny Hughey
Chair, Environment Canterbury

Our future resource management system / Te pūnaha whakahaere rauemi o anamata

Introduction

1. Canterbury Regional Council ('Environment Canterbury', 'the Council') welcomes the opportunity to provide feedback on *Our future resource management system / Te pūnaha whakahaere rauemi o anamata*.
2. In its submission on the [Inquiry into the Natural and Built Environments Bill](#), the Council raised issue with the pace of the reform process, incomplete coverage of the Bill and a lack of clarity regarding the intersection of the Bill with other legislation (i.e. the Strategic Planning Act (SPA), the Climate Adaptation Act (CCA)) and other reform programmes (i.e. Local Government and Three Waters Reform).
3. Consequently, while the opportunity to provide feedback on the Bill was welcome, in practice the exercise was challenging – analogous to building a jigsaw without all the pieces or reference to the cover art.
4. It is therefore pleasing to see the Ministry for the Environment (MfE) has initiated a further round of targeted engagement to inform the development of the Bills, prior to their introduction to Parliament in 2022.

Our Feedback

5. Environment Canterbury's feedback is provided in the context of its current functions, roles and responsibilities under the Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA) and potential future functions, roles and responsibilities under a reformed system.
6. Our feedback draws on our experience working under special legislation¹ to expedite plan-making processes and our aspirations for governance arrangements as detailed in the Canterbury Regional Council (Ngāi Tahu Representation) Bill. There are commonalities between these frameworks and proposals described in the consultation document. We would welcome a further opportunity to share our experiences and discuss how the proposals could be shaped to deliver better outcomes for Aotearoa / New Zealand.

Structure of our submission

7. Environment Canterbury lodged a comprehensive submission on the [Inquiry into the Natural and Built Environments Bill](#) and has referenced parts of that submission in this feedback.
8. The Council has structured its feedback in general alignment with the order of the questions in the consultation document. However, where questions overlap or cover

¹ the Environment Canterbury Temporary Commissioners and Improved Water Management Act and the Canterbury Earthquake Recovery Act.

similar subject matter questions have been collated and a single response provided. Questions from the consultation document are shown in bold, followed by the Council's feedback.

National Planning Framework

What role does the National Planning Framework (NPF) need to play to resolve conflicts that currently play out through consenting?

9. Environment Canterbury's position is that the system should be designed in a way that minimises the need to resolve conflicts at the consent decision stage.
10. Our preference is for a system with a clear hierarchy of planning documents, with conflicts identified and resolved (where practicable) through clear, directive policies. In practice we see this delivered through a system where:
 - conflicts between Environmental Outcomes are identified and resolved within the Natural and Built Environments Act, and explicit statements included on the relative importance and weight to be afforded to each outcome.
 - remaining or residual conflicts are resolved through the National Policy Framework (NPF), with directive policies included to inform the development of Natural and Built Environment Plans (NBA Plans).
 - policy decisions are not relitigated later in the process (e.g. at the consent decision stage) except where there is clear evidence that the Act's outcomes will not be achieved through implementation of NPF or NBA plan mechanisms.
11. Despite the above, the Council accepts there will be circumstances where it is appropriate for a consent authority to 'refer back up' to the principal Act or higher-order planning instruments. These include situations where:
 - an NBA plan has not yet been developed.
 - the NPF has been amended but the NBA plan does not give effect to the change.
 - the NBA plan does not identify and resolve a conflict, or there is ambiguity as to how the conflict should be resolved.
 - new case law has been developed that has implications for consent decisions.
 - new science is available (including overseas science assessed by an independent review panel as relevant to New Zealand).
 - issues have become more urgent over time (e.g. impacts or effects of climate change).
 - new information (e.g. state of the environment monitoring) indicates environmental tipping points are at or close to being reached or that Environmental Outcomes will not be achieved.
12. Furthermore, the Council accepts it will not be possible to predict all future issues the planning framework will need to respond to and that there will be instances where plan responses are insufficient or inadequate. Accordingly, the consent decision-making framework should provide consent authorities with tools to make the best decision based on all available information and evidence. Such tools could include the use of

independent panels to caucus disputes or scope to take into account a broader range of matters. We comment more broadly on these tools later in the submission.

13. Finally, there are other matters that need to be addressed in the design of the consenting framework to enable a smooth transition from one system to the next. These include procedures and processes to be adhered to when deciding applications lodged under the RMA but decided under the NBA; and the weight decision-makers should afford to other Acts and instruments (i.e. the SPA, CCA, Climate Change Response Act (CCRA) and instruments prepared those Acts) when making decisions.

How would we promote efficiency in the Board of Inquiry process while still ensuring its transparency and robustness?

14. Environment Canterbury considers the Board of Inquiry (BOI) process to be reasonably efficient but considers there are opportunities to improve the accessibility and transparency of the process. Our suggestions for how to improve accessibility include:
 - promoting processes, systems and services to support laypersons prepare submissions and present at hearings (e.g. allowing oral submissions and providing 'friend of the submitter' services).
 - use of 'people's panels' to share perspectives and test policy proposals.
 - promoting the use of virtual participation methods (e.g. Zoom, Microsoft Teams or other audio-visual platforms).
 - live-streaming and / or recording hearing sessions and making videos or a transcription of the recording available as soon as practicable at the end of each hearing day.
15. Overall these changes would enhance opportunities for public participation while reducing undesirable consequences of attending hearings in person (e.g. cost, time, carbon emissions associated with travel, disease exposure etc).
16. In addition, the transparency of the BOI process could be improved by legislating for the release of all Ministerial advice to the BOI, and recommendations from the BOI to the Minister, prior to the Minister making his or her decision.

How often should the NPF be reviewed, bearing in mind the relationships between the NPF, regional spatial strategies and Natural and Built Environments Act plans?

17. Environment Canterbury considers the frequency and timing of NPF reviews should be guided by principles and criteria rather than arbitrary timeframes. Criteria to guide the timing of reviews should include:
 - legislative changes (e.g. new Acts or changes to existing Acts).
 - new Government strategies, policies and frameworks (e.g. new or changed Government Policy Statements).
 - new or emerging issues.
 - changes in the significance or urgency of existing issues.
 - new or changed policy tools (e.g. new funding mechanisms).

- significant shifts in public opinion (as evidenced through petitions etc).
 - state of the environment monitoring and trend analyses.
 - new information and evidence.
 - indicators of system efficiency.
18. Furthermore, procedures for making changes to the NPF should be proportionate to the significance and urgency of the issue or the nature of the change. Streamlined processes should be used where issues are less urgent or less significant and where changes are less substantive. In contrast, broader, participatory processes should be used where issues are significant or urgent, or where proposed changes are substantive. This would lead to a more agile, responsive system and incorporate a degree of “future-proofing” of the system, enabling it to respond to new and urgent challenges (e.g. adaptation to climate change or new or disruptive technologies).

Regional Spatial Strategies

To what degree should regional spatial strategies (RSSs) and implementation agreements drive resource management change and commit partners to deliver investment?

19. Environment Canterbury considers regional spatial strategies (RSS) and implementation agreements (IA) are critical to transformative change and the achievement of outcomes.
20. Regional spatial strategies must provide communities with confidence on the vision and outcomes and the principal pathways to get there. Proposals critical to the success of the RSS and which are to be delivered by central and local government (e.g. critical infrastructure, financial investments and regional-scale non-statutory initiatives) should be described in the document. Decisions on how much detail to include for each proposal should take into account:
- the purpose and role of the RSS.
 - procedures and processes for making changes to the RSS.
 - timeframes and triggers for a review of the RSS.
 - uncertainties (environmental, economic, social, political) and the potential for these to change or increase over time.
21. Given how critical the provision of infrastructure and funds will be for achieving the vision of an RSS, binding commitments should form part of the document. These should be high-level but of sufficient detail to provide communities and individuals confidence to make future business decisions and investments. In addition to binding commitments, other matters to incorporate into an RSS include:
- outcomes to be achieved and timeframes for achievement.
 - funding mechanisms.
 - key proposals and contributors.
 - binding commitments for significant proposals.
 - key dependencies.

- contingencies and actions to be taken in response where there is a failure in part of the system.
22. Implementation agreements should be used to set out more detailed aspects of delivery and implementation. These include actions and timeframes, funding arrangements (including sequencing and staging of funding) and monitoring and oversight functions relating to implementation of the agreement.
 23. Finally given potential future uncertainties, processes for making changes to an RSS or IA must be proportionate and cost-effective. This is critical given potential flow-on impacts for downstream components of the system, including the preparation of NBA plans.

How can appropriate local issues be included in RSSs?

24. Environment Canterbury administers the largest region in the country by area and has significant experience in the design of plans that provide for regional and local responses to environmental issues.
25. The architecture of the Canterbury Land and Water Regional Plan could be used as a model for RSS design. Issues that require integrated, regional-scale responses (e.g. landscape, braid-plain and coastline management) could be addressed through a regional framework, while localised issues (e.g. urban settlement, protection of specific features and places) addressed through local or sub-regional responses. This would strike the right balance between ensuring a holistic and integrated framework for issues that transcend catchment boundaries while providing the necessary nuance to respond to localised issues.

With regional and unitary council boundaries proposed for RSSs, how should cross-boundary issues be addressed?

26. Environment Canterbury considers the SPA should include an explicit clause to require joint committees to address cross-boundary issues when preparing regional spatial strategies.
27. Responding to some cross-boundary issues (e.g. braided river management, protection of coastlines and alpine environments, transport planning) will require co-operation, aligned responses between different joint committees and agencies and joint funding. Given the potential complexity of the issues at hand, there may be value in establishing sub-committees to ensure cross-boundary issues are considered and addressed in a co-ordinated manner.
28. Furthermore, the system should anticipate issues that cross takiwā and rohe boundaries and include processes and frameworks to enable dialogue and co-ordination between different iwi and hapū. Where issues relate to or affect different rohe, mana whenua must be empowered to make decisions on how to best address and resolve those issues.

NBA Plans

Do you agree with the Randerson Panel's recommendation to have one combined Natural and Built Environments Act (NBA) plan per region?

29. In its earlier submission Environment Canterbury identified a number of practical challenges with the proposal to prepare a single combined NBA plan for the region.
30. Canterbury is unique in terms of the diversity and composition of its natural environments and the distribution of its population. The region stretches from Kaikōura in the north to the Waitaki River in the south, and spans the area between the Southern Alps in the west and the Pacific Ocean in the east. It is home to world-renowned braided alpine river systems, rich freshwater resources and iconic landscapes. Approximately 80% of the region's ~650,000 residents live within the Greater Christchurch Area, with the remaining 20% distributed across smaller towns and settlements. In addition, the region contains the largest number of local authorities (eleven) and ten papatipu rūnanga.
31. Accommodating all of the issues and the range of views and perspectives into a single NBA plan for the region will be a significant challenge. The momentous nature of that task cannot be underestimated and the practicality of such an undertaking should be reassessed before NBA plan-making proposals are cemented into legislation.
32. Furthermore, decisions regarding NBA plan boundaries will have implications for the ability of the system to achieve reform objectives and the NBA's Purpose. If Te Mana o te Taiao is to be upheld, and Environmental Outcomes achieved, then plan boundaries should be delineated on the basis of underlying biophysical characteristics rather than human-derived constructs (i.e. local authority boundaries).

Would there be merit in enabling sub-regional NBA plans that would be incorporated into an NBA plan?

33. Environment Canterbury supports the proposal to include sub-regional sections as a component of NBA plans.
34. The Council has implemented this framework in the design of the Canterbury Land and Water Regional Plan. The Plan contains a region-wide section with objectives, policies and rules to enable holistic, integrated responses to regional issues, and ten sub-region sections with catchment-specific policies and rules to enable tailored responses to local issues. An added benefit of this approach is that sub-regional planning processes generally attract higher levels of community participation. This is because the issues discussed are more relevant to the communities involved and solutions more tangible and practical given local input.
35. However, while the proposal for sub-regional plans is supported in principle, the Council also cautions that significant funding, resource and expertise will be needed to implement this approach. Through recent freshwater planning processes the Council has spent in excess of \$60 million on the development of regional and sub-regional plan provisions. This figure is expected to be much higher in a new resource management system given the novelty of the new framework, the breadth of issues to be addressed and the potential

for expanded roles and functions. In addition, mana whenua and communities will also require significant funding and support to enable their participation in the system.

What should the role of local authorities and their communities be to support local place-making and understanding of local issues in NBA plans?

36. Environment Canterbury considers that defining what 'place-making' encompasses (and conversely what it does not) is critical if local authorities are to understand their role in these conversations.
37. Factors that shape the identity of a place include the interaction between built and natural components (e.g. urban form, landscapes and biodiversity), shared and individual histories and community services, values and livelihoods. These elements are not easily disentangled from one another nor easily distinguished from broader regional scale issues. As a consequence, ring-fencing place-making conversations may be difficult in practice unless a broad definition applies.
38. Furthermore, Environment Canterbury contends that the design of the new system must recognise the critical role elected members and local authority staff play in facilitating and brokering discussions with communities.
39. Elected members fulfil an important advocacy role for communities, highlighting issues of significance and acting as conduits for the flow of information on central and local government policies. Similarly, local authority staff hold a wealth of institutional knowledge on the social, cultural, economic and environmental contexts of different catchments and the benefits, risks and deficiencies of different policy approaches. Furthermore, it is local authority staff who have the practical skills, expertise and experience needed to support plan-making processes at the regional or local scale. Consequently, preserving these roles in the design of the new system will be important for instilling community confidence in plan-making processes.

Will the proposed plan-making process be more efficient and effectively deliver planning outcomes?

40. Environment Canterbury agrees some components of the proposed framework will improve the overall efficiency of the system.
41. The proposal to restrict appeals on local authority plan decisions will likely expedite plan development, leading to plans being made operative sooner. This was the Council's experience working under the "ECan Act", with the Council preparing and notifying a Canterbury Regional Policy Statement, Hurunui Waiau River Regional Plan, Canterbury Regional Air Plan, Canterbury Land and Water Regional Plan and nine freshwater plan changes² during the time the Act was in force (2010 to 2016). Faster plan-making processes have resulted in flow-on benefits for other parts of the regulatory system with less complex policy frameworks for consent applications and simpler permitted activity rules.

² PC 1 – 7 to the Canterbury Land and Water Regional Plan, PC3 to the Waitaki Catchment Water Allocation Regional Plan, PC2 to the Waimakariri River Regional Plan.

42. Similar efficiencies could be expected for NBA plan-making processes if adequate resources, funds and expertise are provided to support the system. A lack of experienced staff to support implementation of the current system has been further exacerbated by staff moving to government ministries to support the development and roll-out of new national direction and reform programmes.
43. In addition reflecting on a decade of planning processes, it is Environment Canterbury's opinion that a more stable planning system is needed. The Council has spent significant time, money and resource changing plan frameworks in response to ad-hoc and piecemeal changes to national direction. For benefits and system efficiencies to be realised, local authorities who have been proactive in plan development must be recognised, and transition processes and frameworks developed that reduce the amount of 're-work' required for new NBA plans.

RSS and NBA joint committees

How could a joint committee model balance effective representation with efficiency of processes and decision-making? How could a joint committee provide for local democratic input?

44. Environment Canterbury's earlier submission included suggestions for how to achieve a balance between effective representation and efficiency of process. These included allowing for more than one joint committee to be established in a region, and / or allowing for the establishment of sub-committees to enable representation of different interests and perspectives.
45. In general, the Council's preference is for a framework that embraces flexibility and avoids temptations for over-prescription. Guiding principles of transparency, democracy, representation and rangatiratanga should underpin representation and appointment processes, with procedures and guidelines to help resolve disputes and conflicts of interest.
46. In addition, the Council supports the proposal to allow the composition and structure of joint committees to be determined on a region-by region basis. Enabling a degree of customisation is appropriate, given differences in the area, population size and distribution and number of local and iwi authorities in each region.
47. Furthermore the Council supports the proposal to not require common membership across joint committees for RSS and NBA plans. This is appropriate given differences in the purpose and content of each document and the need for different skills and expertise.

How could a joint committee ensure adequate representation of all local authority views and interests if not all local authorities are directly represented?

48. Environment Canterbury considers there are a range of mechanisms that could be used to ensure adequate representation where there is no direct representative on the committee. These include:
- providing opportunities for community members to present and speak to joint committees.

- allowing joint committee members to represent on behalf of others (e.g. local authorities representing on behalf of other local authorities or mana whenua representing on behalf of community groups).
- allowing the establishment of sub-committees to enable representation at different layers of the system.

How should joint committees be established? What should be the selection and appointments processes for joint committee members?

49. Environment Canterbury's earlier submission identified matters to be taken into account in the design of membership and appointment processes. These included consideration of proportional vs direct representation and competencies and expertise required for the preparation of each planning instrument.
50. In addition, and as outlined in feedback above, principles of democracy, representation, active partnership and rangatiratanga should guide selection and appointment processes. Iwi and hapū should be provided autonomy to make decisions on mana whenua appointments to joint committees, and decisions on the appointment of the committee Chair should be made jointly by mana whenua and local authorities. It is through these types of systems and processes that true manifestation of the principles of active partnership as envisioned by Te Tiriti will be achieved.

Consenting

Will the proposed future system be more certain and efficient for plan users and those requiring consents?

51. Environment Canterbury considers the extent to which the system is more certain, effective and efficient for resource users will depend on:
 - how successfully the NBA, NPF and NBA plans address and resolve conflicts between outcomes. Conflicts not resolved at the policy development stage will manifest themselves at the consent decision stage, leading to a less efficient and less certain system.
 - how effectively the system engages communities and mana whenua in plan-making processes. Environment Canterbury has observed higher rates of community participation in recent plan-making processes, due in part to restricted appeal rights on plan decisions. However, some parties still only engage at the consent application stage, as it is at this point that the implications of policy decisions become direct and obvious. For the new system to be more certain and efficient, participation opportunities must be clearly sign-posted and incentivised, and the implications of not participating made abundantly clear.
 - the content of the NPF. If the NPF does not contain clear policies and methods to respond to the most urgent environmental problems (e.g. climate change, natural hazards) resource users will have less confidence to make business investments and business decisions.

- the level of guidance and support provided to joint committees when making decisions on activity classifications³ for rules in NBA plans. If guidance is not provided, joint committees may make inappropriate decisions resulting in rules that are either too permissive or too restrictive, or rules that inappropriately enable or constrain public participation. Either outcome would result in a less efficient, less effective and less certain system for communities and resource users.
- the extent of funding, resource and support provided to consent applicants to support the preparation of consent applications, and to communities, iwi and hapū to support participation. Barriers on both sides of the system need to be addressed for the system to be more effective and efficient. For consent applicants this includes the high cost of applying for resource consent and for iwi and hapū this includes constraints on application processing times which limit opportunities for meaningful discussion.
- the consent decision-making framework. With the shift to more directive planning documents there is the risk that Natural and Built Environment Plans and may not 'get it right', with the consequence of poor outcomes for the environment or resource users. Principles of stewardship and sustainability should be incorporated into the consent decision-making framework, and safeguards put in place to enable decision-makers to make the right decision based on the best available information. This includes situations where plan mechanisms are inadequate or scenarios where strict adherence to plan policies would result in perverse outcomes for consent applicants.

Activity Classifications

52. The Council supports a reduced number of activity classifications but considers elements of the framework need to be clarified or reconsidered. For example, the grounds for declining consent for a controlled activity should be clear to provide certainty to both consent applicants and consent authorities. Where effects are disputed or unknown, consideration should be given to enabling the application of the precautionary principle.
53. The Council also considers there is the potential for significant confusion if the phrase "controlled activity" is used to describe an activity for which consent may be refused. An alternative phrase (e.g. "restricted discretionary") that more closely aligns with the activity as described in the RMA would reduce confusion and support a smoother transition to the new system.
54. The proposal to classify activities as 'permitted' where written approval has been obtained or where a "suitable management plan" exists also raises a number of challenges and questions. Questions that need to be considered in the design of the framework include:
 - who will be responsible for assessing the validity of written approvals and the adequacy of management plans?
 - will this be the resource user, a third party, the local authority or mana whenua?

³ i.e. permitted, controlled, discretionary, prohibited classifications

- can permitted activities be “refused” on the basis of invalidity, incompleteness or inadequacy?
 - what recourse is available to resource users to challenge a decision?
 - how will disputes be resolved?
 - how will local authorities and mana whenua be funded and resourced to carry out reviews of management plans?
 - what happens to ‘written approvals’ and ‘management plans’ after they are obtained or produced?
 - do they need to be provided to local authorities? If so for what purpose?
 - what systems, infrastructure and / or funding will be provided to local authorities to support the management and storage of this information?
55. From the Council’s perspective, these aspects of the system must be clarified before the system can be effectively implemented.

Compliance, monitoring and enforcement

Do you agree with the proposed changes to compliance, monitoring and enforcement provisions and tools?

56. Environment Canterbury supports the proposal to defer decisions regarding institutional arrangements for compliance, monitoring and enforcement (CME) functions. Form should follow function in the design of a new system with decisions on functions, roles and responsibilities made before consideration of structural arrangements.
57. The Council also supports an expanded range of mechanisms to support the delivery of CME functions as this will enable authorities to tailor responses to the circumstances of the offending. The Council considers this entirely appropriate given differences in the type of offending (e.g. deliberate vs accidental), scale and significance of effects, track record (e.g. repeated vs on-off offence) and culpability of the offender (e.g. reckless vs negligent).
58. However, Environment Canterbury cautions against relying solely on punitive measures to achieve the objectives of system reform. The design of the CME system must take into account the full range of factors that influence behaviour and behaviour change. Incentives and mechanisms that promote best practice, recognise good stewardship of natural resources, and encourage performance above the “compliance minimum” should feature alongside penalties and punitive measures. This would ensure a true end-to-end system that allows different levers (e.g. incentives, education, restorative justice, enforcement action) to be applied at different times and in different circumstances.
59. In addition, the limitations of the CME system should be recognised in the design of the future system. CME is an effective framework for addressing environmental harm that occurs as the result of individual non-compliance with rules, regulations or permits, and where the responsible party can be identified and cause and effect attributed to specific action or inaction.

60. However, CME is not effective for addressing situations where the causes of environmental harm are multi-faceted and where resource users are compliant with rules, regulations and permits. The limitations of the CME system were made obvious during the Council's investigation into causes of freshwater degradation in the Ōtuwharekai lake system. Resource users and landowners were found to be compliant with Council rules and resource consents, yet clear evidence of environmental and cultural harm was observed. This example demonstrates the need for better linkages between different parts of the regulatory system (i.e. planning, consents, review) and more agile and responsive mechanisms to enable action to be taken where harm is detected.

How practical will the proposals be to implement?

61. Environment Canterbury requires specific details on each CME proposal, the procedural processes to be followed, and institutional arrangements that will apply before it is able to comment on the practicality of the proposals. However, high-level comments on aspects of the system that may require further attention or refinement for the system to be able to be implemented are included below.
62. The Council anticipates some proposals in the consultation document will require changes to legislation, processes and systems that sit outside the resource management system. For example, the proposal to prohibit insurance for prosecution or payment of infringement fines may require changes to legislation governing public liability insurance. Similarly, proposals to enable agencies to undertake joined-up CME action may require systems and processes that support better sharing of information.
63. In addition, the Council considers there are particular barriers to prosecution that need to be addressed in the design of the new system. These include the cost, time, resource and expertise required to support prosecution cases and less obvious disincentives to prosecution action such as the potential for costs to be awarded against local authorities.
64. Furthermore, while many of the CME proposals appear useful, their benefits won't be realised if the CME system isn't adequately funded. The CME funding model must shift from one that is funded through cost-recovery to one that recognises the full breadth of activities carried out by local authorities under the "CME" banner. This includes extension and education programmes, monitoring of permitted and prohibited activities and pollution and incident response work.
65. Finally, while on paper the proposal to allow local authorities to recover costs for monitoring permitted activities appears useful, in reality this is unlikely to translate to increased monitoring of permitted activities. A critical factor influencing the extent of CME work carried out by Environment Canterbury is the availability of experienced CME staff. Even if staff could be recruited the Council would likely direct staff towards monitoring higher-risk activities (i.e. those that require a resource consent or which are prohibited in rules and regulations).

Monitoring and system oversight

Will these proposals lead to more effective monitoring and oversight of the system?

66. Environment Canterbury agrees there is a need for more effective monitoring and oversight of the system. However, further details on the proposed tools, systems and frameworks to support implementation is required before the Council can state whether the changes will contribute to a more effective system. Areas where further clarification is needed include:
- connection points and feedback loops between the NBA, Environmental Reporting Act 2015, SPA and regional spatial strategies.
 - design specifications for ecological, temporal and spatial frameworks.
 - systems and programmes to enhance mana whenua involvement in the system.
 - systems and frameworks to support the collection of information and data to support evidence-based decision-making and policy evaluation (including tracking environmental outcomes relative to policy intent).
67. In addition, systems and tools to enable better sharing of information between agencies and across multiple levels of government will be required if the system is to be successful. Statistics NZ and the Parliamentary Commissioner for the Environment should be involved in the design of the new system given their explicit roles and functions⁴ for monitoring and system oversight. Monitoring frameworks will need to accommodate (or normalise) regional differences so that pooled data can be presented in an ecologically meaningful way and / or combined where appropriate for national reporting.
68. Furthermore, the Council strongly supports the involvement of mana whenua in environmental monitoring programmes and system monitoring and oversight. New processes, frameworks should be explored that implement the principles of partnership through shared responsibilities and functions.
69. Finally, if the system is to deliver transformative change, monitoring and system oversight must switch from one that is focused on systems, processes and widget counting (e.g. number of consent applications processed within statutory timeframes) to one focused on outcomes. The Council's observation is that the current system is narrowly focused on process and metrics at the expense of achieving outcomes. For example, requirements to process consent applications within specified timeframes (or face penalties where these are not met) constrain opportunities for meaningful dialogue with mana whenua.

Will the system be able to adequately respond and adapt to changing circumstances?

70. Environment Canterbury considers a much more agile and responsive system is required if the purpose of the Natural and Built Environments Act is to be achieved and Te Oranga o te Taiao upheld.

⁴ Statistics NZ - Environmental Reporting Act 2015 (environmental indicators and statistics); PCE independent commentary and oversight on New Zealand's environment, and national environmental reporting system

71. System design must recognise and account for inherent uncertainties and equip decision-makers with the tools necessary to act in response. Examples of uncertainties that need to be accounted for in the design of the new framework include natural hazard events (e.g. floods, fires etc), new and disruptive technologies and unanticipated effects (i.e. those not anticipated at the time the regulation was developed or which are of a scale or significance greater than predicted). Frameworks and processes must enable rapid action to be taken where there is clear evidence environmental outcomes are not being met, and enable preventative action prior to tipping points being reached.
72. Achieving this in practice requires responsive mechanisms throughout all parts of the system (i.e. plan-making, consenting, compliance, monitoring and enforcement). Examples of limitations that reduce the overall effectiveness of the current system include:
- plan-making processes that are costly, time-consuming and litigious.
 - consenting frameworks that restrict decision-makers from taking into account new information and evidence (i.e. through controls or restrictions on discretion).
 - consent review processes that are narrowly focused on the adverse effects of the consented activity (rather than impacts of the activity as a whole) and which do not allow for a holistic review of the overall appropriateness of an activity or land use.
73. If the system is to be truly effective a much more integrated system is needed – one that is less piecemeal and constrained and which encourages information sharing between agencies and joined-up responses between central government, local government and mana whenua.

Role of local government in the future system

What does an effective relationship between local authorities and joint committees look like?

74. Environment Canterbury considers an effective relationship to be one where:
- the principles of genuine partnership as envisioned under Te Tiriti o Waitangi are reflected in all decisions, processes and systems.
 - ideas and information are freely exchanged.
 - there is a high degree of trust and transparency.
 - each participant and group understands their role in the system, as distinct from the role of other participants and groups.
 - there is a shared understanding of the outcomes to be achieved and outputs to be delivered.
 - the strengths of each participant are understood and utilised.
 - systems and processes are established to strengthen and enhance relationships.

What other roles might be required to make the future resource management system effective and efficient?

75. Potential other roles that may be required to support the new system include:

- new roles to support greater government and inter-agency co-operation and improve dialogue (e.g. the establishment of a regional presence).
- secretariat services to support joint committees.
- facilitation roles to support community engagement.
- roles to support mana whenua engagement.

76. Additional roles that could be investigated include dispute resolution services to adjudicate over minor procedural issues (e.g. cost objections or decisions to “reject” a permitted activity) thereby freeing up the Courts to consider more substantive issues.

What might be required to ensure the roles and responsibilities of local authorities can be effectively and efficiently delivered?

77. As outlined in the Council’s previous submission, training and guidance on new legislative processes and frameworks, new funding mechanisms and digital tools, platforms and systems will be required to support planning, consenting and compliance functions.

National Māori entity

What functions should a national Māori entity have?

78. Environment Canterbury considers iwi and hapū are best placed to advise whether there is a need for a new national Māori entity and the roles and functions of that entity if established.
79. The Council supports Te Rūnanga o Ngāi Tahu’s position⁵ that the design of the new system must recognise the role of iwi rangatiratanga within their takiwā and the associated rights and responsibilities as guaranteed under Te Tiriti o Waitangi. National Māori entities must not become substitute bodies for direct engagement with iwi and hapū, nor usurp the role of mana whenua as decision-makers within their rohe.
80. The Council therefore encourages the Crown to continue meaningful discussion with individual iwi and hapū on the need, or otherwise, for a national Māori entity. If established, the purpose, roles and functions of a national Māori entity (e.g. advisory) as distinct from those of mana whenua (e.g. decision-making) will need to be clearly defined within the new system. There may be value in reviewing principles, processes and approaches used to guide the design of the Māori Health Authority / Te Mana Hauora Māori to see whether these are beneficial to incorporate into the design of the new system.

What should the membership and appointments process be for the entity?

81. Environment Canterbury reiterates the need for further discussion between the Crown and iwi and hapū on the need, or otherwise, for a national Māori entity.

⁵ As set out in their submission on the Inquiry on the Natural and Built Environments Bill and Exposure Draft: Parliamentary Paper

82. If a National Māori entity is established, decisions regarding membership and appointment processes must involve iwi and hapū. Membership to the committee will need to ensure effective representation for mana whenua, and accordingly the balance of representation on the entity must take into account the breadth of the Ngāi Tahu takiwā - being the largest of any tribal authority.

Should parties in a region be able to determine their committee composition?

83. Environment Canterbury supports the proposal to allow the composition and structure of joint committees to be determined on a region-by-region basis. This reflects the principle of subsidiarity and recognises local authorities, communities and iwi and hapū are best placed to make decisions about the communities they represent.

How do we best provide for existing arrangements (e.g., Treaty settlement or other resource management arrangements)

84. Environment Canterbury agrees the design of the new system must protect and uphold existing Treaty settlements and recommends a general clause is included in the SPA and NBA that requires all persons exercising powers, functions and duties to uphold existing treaty settlements.
85. In addition, direct engagement between the Crown and individual iwi should be carried out to identify the specifics of each settlement and how best to recognise and accommodate each of these in the new system.

Enhanced Mana Whakahono ā Rohe arrangements, integrated with transfers of powers and joint management agreements

How could an enhanced Mana Whakahono ā Rohe process be enabled that is integrated with transfers of powers and joint management agreements?

86. Environment Canterbury considers one of the challenges with responding to this question is the inherent assumption that Mana Whakahono ā Rohe are an effective framework for partnering and delivering on iwi aspirations.
87. In reality, Mana Whakahono ā Rohe are constructs of the current resource management system – a system that has failed to appropriately recognise or reflect the principles of Te Tiriti o Waitangi. Accordingly, attempts to modify Mana Whakahono ā Rohe to make them fit for purpose are likely to fall short of the type of transformative change needed to give effect to Te Tiriti.
88. Instead, the Council considers the exercise of designing a fit-for-purpose system should implement a first-principles approach – one which first asks “what does true partnership with iwi look like?” and “how would this be delivered, funded and resourced in a new system?”

What should be covered in the scope of an enhanced Mana Whakahono ā Rohe and what should be mandatory matters?

89. Environment Canterbury reiterates that a wholesale review of the appropriateness and effectiveness of the Mana Whakahono ā Rohe framework is needed before matters concerning content and scope are considered. Design of the framework must embrace the principles of Te Tiriti and provide decision-making roles for mana whenua.

What are the barriers that need to be removed, or incentives added, to better enable transfers of powers and joint management agreements?

90. Key barriers that need to be addressed include funding, capability and capacity constraints. Funding and resources need to be provided at the coal-face of delivery (i.e. directly to iwi, hapū, local government and tangata whenua advisory services) rather than through disconnected, centralised agencies. One of the benefits of providing direct funding and resources to iwi and hapū is that it enables existing systems and relationships to be leveraged, thus contributing to the overall efficiency and effectiveness of the system.

Funding in the future system

How should funding be distributed across taxpayers, ratepayers and individuals?

91. A more equitable funding model is required to support implementation of the new system. Funding pressures on local government have increased significantly over the past decade as a result of new national direction, expanded functions, roles and responsibilities, and more frequent and extreme weather events. Despite these changes, funding mechanisms for local government have remained static leading to systemic underfunding of the system. In many ways the current situation is analogous to feeding an increasing number of mouths with the same sized cake – each slice becomes smaller with some people receiving only crumbs.
92. New functions, roles and responsibilities must be accompanied by proportionate increases in funding. Funding models must also enable the timely provision of additional funding where new situations arise (e.g. natural hazard events) or when further pressure is applied to the system (e.g. shortened timeframes to prepare and implement new planning documents). New funding streams (e.g. taxes and levies) and mechanisms to enable the redistribution of central government taxes (e.g. GST on collected rates) should be explored as part of the future system.
93. In addition, how funds are distributed across users in the system should be guided by the 'benefit principle'⁶ unless this would result in costs that are disproportionately high (relative to benefits gained) or would result in costs falling on a small number of users or funders. Decisions on funding models and charging regimes must take into account the wider regional benefits that occur as result of investment decisions. For example, regional, social and economic benefits arising from interventions to improve resilience and support adaptation to climate change.

⁶ i.e. those who benefit from, or cause a need for, a service should pay for it

How should Māori participation be supported at different levels of the system?

94. Environment Canterbury considers iwi and hapū are best placed to advise how their individual needs can be best accommodated for in the design of the new system.
95. As a general comment, the system must shift from one that provides for Māori participation through passive consultation and engagement frameworks to one that embraces the principle of active partnership through decision-making roles and opportunities for mana whenua. Achieving this will require direct funding to iwi and hapū to build capacity and greater autonomy for mana whenua to decide how and when to participate in the system.
96. Local authorities will also need to be appropriately funded and resourced to support Māori participation in the system. Capacity and capability will need to be built across all layers of local government, including within governance, planning, consents, compliance and extension services (e.g. iwi liaison and tangata whenua advisory services).