

Thames–Coromandel District Council and Hauraki District Council Mangrove Management Bill

Local Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Thames–Coromandel District Council and Hauraki District Council Mangrove Management Bill and recommends that it be passed with the amendments shown.

Introduction

This is a local bill sponsored by the Thames–Coromandel District Council and the Hauraki District Council. It seeks to empower the two councils to prepare a mangrove management plan or plans for the coastal area of their districts.

This bill was put forward by the councils as both were concerned that managing the expansion of mangroves under the Resource Management Act 1991 (RMA) was expensive and time consuming. This bill would help by providing for the management of mangroves through a plan developed under the Local Government Act 2002.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Changing the title of the bill

The submissions we received about the bill indicated that mangrove expansion and management has mostly become a problem in Whangamatā harbour. We therefore consider that the bill should only apply to Whangamatā harbour, which falls under the jurisdiction of the Thames–Coromandel District Council.

We recommend narrowing the bill so that it only applies to the Thames–Coromandel District. This would necessitate removing reference to the Hauraki District Council in the title clause 1.

Definitions in the bill

Definitions for the bill are set out in clause 3. We recommend the following amendments to the definitions in the bill.

Restricting the bill to Whangamatā Harbour

We recommend restricting the definition of “council” to mean only the Thames–Coromandel District Council. We also recommend inserting a definition for “Whangamatā harbour” as defined in the mangrove management plan.

Definition of “mangrove management activity”

We consider that the definition of “mangrove management activity” in the bill as introduced is weighted toward mangrove removal. We recommend including protection and maintenance of mangrove vegetation in the definition to make it more balanced.

The definition of “mangrove management activity” also includes reference to whole tree removal and maintenance dredging. Submitters commented that dredging could cause many other problems and result in the removal of other species. We recommend removing reference to both whole tree removal and maintenance dredging. Further, we recommend specifying that any mechanised removal of mangroves would only be allowed with mechanised hand-held tools.

Aligning definitions with the Resource Management Act

We recommend including definitions for “amenity”, “effect”, “Iwi Authority”, and “New Zealand Coastal Policy Statement”, and specifying that the definition for these terms should be the same as under the specified sections of the RMA.

Significant changes recommended

We recommend significant changes to the bill to restrict its application, align it with RMA processes, and respond to the extensive concerns expressed by submitters. Our recommended changes entail deleting clauses 4 to 8 from the bill as introduced, and inserting new clauses 4 to 10, and a Schedule with 9 clauses.

New purpose clause

We consider that the content of clause 4 in the bill as introduced would be more appropriate as the purpose of a mangrove management plan, rather than as the purpose of the legislation as a whole.

We recommend inserting a new clause 4 as the purpose clause, stating that the purpose of the bill is to enable the development of a mangrove management plan.

Application of other enactments

In the bill as introduced, clause 8(2) provides that the council would not be required to comply with any other legislation in carrying out a mangrove management activity. We consider that this provision is far too broad and should be removed. In fact, there are important laws and regulations that should apply to mangrove management, for example health and safety legislation and Treaty legislation.

The main objective of the bill is to enable a mangrove management plan to be put in place without following the regional coastal plan-making process required under the RMA. We recommend inserting new clause 5 to specify that, unless expressly stated, the RMA would not apply.

Purpose of a mangrove management plan

We recommend inserting new clause 6, setting out what the purpose of a mangrove management plan would be. It is similar to clause 4 in the bill as introduced, but we consider that our proposed new clause 6 is more balanced because of the changes we have recommended to the definition of mangrove management activity.

Process for preparing a plan

Clause 6 in the bill as introduced sets out the process for preparing and adopting a mangrove management plan. In our amended version, new clause 7 and a Schedule would set out this process. New clause 7 would still require the establishment of a committee to prepare a draft plan. However, we consider that the committee must include specific representatives.

Our proposed new clauses 7(2)(a) and 7(2)(b) would require the committee to include at least one representative each from the Thames–Coromandel District Council and the Waikato Regional Council. While the Thames–Coromandel District Council would ultimately be the council that adopts the plan, we consider it important for the Waikato Regional Council to also be represented on the committee. The regional council has a key role in coastal management. Including it on the committee would help to provide consistency between the mangrove management plan and the regional coastal plan.

New clause 7(2)(c) would require that the committee include at least one member with scientific or ecological expertise. We consider the inclusion of this expertise important, as there are a number of ecological issues associated with mangrove removal.

Clause 6(2) in the bill as introduced would require that at least one iwi representative be included on the committee. We consider that this representation should be decided through agreement between iwi and the council. Our proposed new clause 7(2)(d) would require that the relevant iwi authorities and the Thames–Coromandel District Council agree on what would be sufficient iwi representation.

New clause 7(3) would require a representative from the Department of Conservation to be invited onto the committee. We consider that this would help provide better alignment with the RMA.

New clause 7(4) provides that provisions relating to the preparation, approval, adoption, and review of a plan would be set out in the Schedule. We consider that a schedule is the more appropriate place for these types of provisions.

Clarifying the relationship of the bill with the RMA and the Local Government Act

Some sections of the RMA and Local Government Act are relevant to the bill. We consider that applying them would provide greater clarity on how the bill operates and make it more robust.

Our proposed new clause 8 is about the effect of the plan and its relationship with the regional policy statement and regional plan. New clause 8(3) sets out that section 17 of the RMA (duty to avoid, remedy, or mitigate adverse effects) would apply to people exercising functions under this legislation.

Our proposed new clause 8(6) specifies that a mangrove management plan must be prepared in accordance with the Local Government Act and would have the effect of other plans prepared under that Act.

New clause 9 proposes provisions relating to monitoring, enforcement, and compliance. Subclause 1(a) would give the council the power to enforce a plan as if it were a district plan. Our proposed new clauses 9(2)(a) and 9(2)(b) specify that section 38 and Part 12 of the RMA would apply in relation to clause 9(1)(a).

Sunset clause

We consider that this bill should only be a temporary measure for managing mangroves, and that in the long term the regional coastal plan should be responsible for managing mangroves. Therefore, we recommend inserting new clause 10. This would mean that the legislation would be repealed after 5 years. If a plan was in place at that time, it would be revoked and the regional coastal plan would then apply to mangrove management activities.

New Schedule

We recommend inserting a Schedule to the bill with provisions relating to the preparation, approval, adoption, and review of a mangrove management plan.

Content of a plan

Clauses 1 to 3 in the new Schedule specify the content of the mangrove management plan.

The provisions in clause 1 are similar to those in clause 5(4) of the bill as introduced. However, we recommend inserting clause 1(f) which would require the plan to give effect to the New Zealand Coastal Policy Statement. We consider that this would provide better alignment with the RMA, and ensure consistency with the policy objectives that apply to coastal management in other areas.

Protecting customary rights

We consider that the plan must not have an adverse effect on protected customary rights. Our proposed clause 2(1) in the Schedule stipulates that a plan must not include rules that have an adverse effect on customary rights protected under the Marine and Coastal Area (Takutai Moana) Act 2011. This clause is essentially the same as section 85A of the RMA. We also recommend including clauses 2(2), 2(3), and 2(4). These set out that, if a protected customary rights group considers that a rule in the plan does not comply with section 85A of the RMA, it could apply to the Environment Court and ask for a change to the rule.

Disposal of mangroves

We consider it important for this legislation to ensure that mangrove disposal is done in an environmentally acceptable manner. Our proposed clause 3(b) would require that mangroves be disposed of outside the coastal marine area.

Committee's functions

Clauses 4 and 5 in the Schedule set out what the committee's functions would be.

Clause 4(2)(a) would require the committee, in preparing the draft mangrove management plan, to complete an assessment of environmental effects in accordance with specific sections in the RMA. Clause 4(2)(b) would require the committee to consider where mangroves contribute to coastal ecosystems or protect the coast from erosion. We consider that these provisions would ensure that the committee considers environmental effects as part of its preparation of a plan, and particularly any environmental benefits that mangroves may be providing.

Participation of iwi or Māori organisations

We consider that, where other legislation would provide for the participation of iwi or Māori organisations in decision-making about an RMA plan relating to the Whangamatā harbour, those participation provisions should apply here. We therefore recommend including clause 5 in the Schedule to provide for this.

Requirement for Minister of Local Government's approval of plan

The draft mangrove management plan is prepared under the Local Government Act. We recommend including clause 7 in the Schedule to require the Minister of Local Government, in consultation with the Minister of Conservation, to approve the draft plan before it can be adopted by the council. We consider that this ministerial oversight would provide an additional check on the council's powers. The required consultation with the Minister of Conservation would also provide more alignment with the regional coastal plan change process under the RMA.

Appendix

Committee process

The Thames–Coromandel District Council and Hauraki District Council Mangrove Management Bill was referred to the Local Government and Environment Committee of the previous Parliament on 9 August 2017 and was reinstated with this committee in the current Parliament. The closing date for submissions was 23 February 2018. We received and considered 163 submissions from interested groups and individuals. We heard oral evidence from 41 submitters at hearings in Thames and Wellington.

We received advice from the Department of Internal Affairs and the Ministry for the Environment.

Committee membership

Brett Hudson (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Jamie Strange

Dr Jian Yang

Hon Scott Simpson participated in some of this item of business.

**Thames–Coromandel District Council and Hauraki
District Council Mangrove Management Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Scott Simpson

Thames–Coromandel District Council and Hauraki District Council Mangrove Management Bill

Local Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Thames–Coromandel District Council ~~and Hauraki District Council~~ Mangrove Management Act **2017**.

2 Commencement

5

This Act comes into force on the day after the date on which it receives the Royal Assent.

3 Interpretation

In this Act, unless the context otherwise requires,—

amenity values has the meaning given in section 2(1) of the Resource Management Act 1991 10

~~**coastal area**, in relation to a council, means the coastal marine area within the district of the council, other than land in private ownership~~

coastal marine area has the meaning given in section 2(1) of the Resource Management Act 1991 15

~~**council** means—~~

~~(a) the Thames–Coromandel District Council; and~~

~~(b) the Hauraki District Council~~

council means the Thames–Coromandel District Council

effect has the meaning given in section 3 of the Resource Management Act 1991 20

iwi authority has the meaning given in section 2(1) of the Resource Management Act 1991

mangrove management activity—

(a) means ~~all or any of the following activities:~~ the removal, prevention, monitoring, detection, control, destruction, ~~or disposal,~~ protection, and maintenance of mangrove vegetation; and 25

(b) includes—

(i) ~~the hand removal of mangrove vegetation;~~ and

(ii) ~~the mechanised removal of mangrove vegetation using hand tools;~~ but 30

(iii) ~~whole tree removal;~~

(iv) ~~maintenance dredging~~

(c) does not include the mechanised removal of mangrove vegetation by any means other than the use of hand tools 35

mangrove management plan means the adopted mangrove management plan that has become operative under ~~section 7(1) clause 8 of the Schedule~~

mangrove vegetation means any seed, seedling, plant, or remains of any mangrove plant that exists or existed in the ~~coastal area~~ Whangamatā harbour

New Zealand Coastal Policy Statement has the meaning given in section 2(1) of the Resource Management Act 1991 5

Whangamatā harbour means the area identified as such in the mangrove management plan.

4 **Purposes of Act**

The purposes of this Act are— 10

(a) ~~to facilitate the removal of mangrove vegetation in the coastal area of each council to achieve and maintain appropriate levels of that vegetation; and~~

(b) ~~to restore, protect, and enhance any amenity values or ecosystems of the coastal area from which mangrove vegetation is removed~~ 15

5 **Purpose and content of mangrove management plan**

(1) ~~A council may adopt a mangrove management plan for the coastal area of its district.~~

(2) ~~The purpose of the mangrove management plan is to enable the council to achieve and maintain appropriate levels of mangrove vegetation in its coastal area in accordance with the purposes of this Act.~~ 20

(3) ~~The mangrove management plan must achieve the purposes of this Act.~~

(4) ~~The mangrove management plan must—~~

(a) ~~identify the areas within the coastal area, by reference to maps, in which mangrove management activities are to be undertaken; and~~ 25

(b) ~~state the objectives of the plan, including a description of the appropriate levels of mangrove vegetation in the identified areas; and~~

(c) ~~describe the methods to be used in achieving the objectives of the plan; and~~

(d) ~~state the rules and restrictions that apply to the undertaking of mangrove management activities; and~~ 30

(e) ~~identify any amenity values or ecosystems of the identified areas for the purposes of **section 4(b)**; and~~

(f) ~~describe the mechanisms the council intends to use to assess the effectiveness of the mangrove management activities in achieving the objectives of the plan.~~ 35

(5) ~~The mangrove management plan may include any other matter that the council considers desirable or necessary to give effect to the purposes of this Act.~~

- 6 Process for preparation and adoption of mangrove management plan**
- (1) ~~If a council wishes to prepare and adopt a mangrove management plan for its coastal area, it must establish a committee to prepare a first draft of the plan and to adopt and implement the plan in accordance with this Act.~~
- (2) ~~The committee must include at least 1 iwi representative.~~ 5
- (3) ~~The council must use the special consultative procedure set out in section 83 of the Local Government Act 2002 in adopting the mangrove management plan, as if references in that section to a statement of proposal were references to the draft mangrove management plan.~~
- (4) ~~The council must commence the special consultative procedure within 6 months after completing its draft mangrove management plan.~~ 10
- (5) ~~Within 3 months after completing the special consultative procedure, the council must prepare its final mangrove management plan and make it publicly available in the same manner as the draft mangrove management plan was made publicly available as part of the special consultative procedure.~~ 15
- (6) ~~In preparing the final mangrove management plan, the council must have regard to the views expressed during the special consultative procedure, to the extent that those views are relevant to the purposes of this Act.~~
- 7 Implementation, review, and integration of mangrove management plans**
- (1) ~~A mangrove management plan becomes operative when it is made publicly available.~~ 20
- (2) ~~A council may review its mangrove management plan at any time by following the process set out in **section 6**.~~
- (3) ~~The councils may prepare, adopt, and review mangrove management plans collaboratively.~~ 25
- (4) ~~The councils may, without limitation,—~~
- (a) ~~prepare a single integrated mangrove management plan that covers both of their coastal areas; and~~
- (b) ~~establish a joint committee under clauses 30 and 30A of Schedule 7 of the Local Government Act 2002 to prepare the integrated management plan; and~~ 30
- (c) ~~adopt a joint special consultative procedure covering both districts.~~
- 8 Powers and duties of councils**
- (1) ~~A council has the power to carry out, and to contract for the carrying out of, mangrove management activities in accordance with its mangrove management plan.~~ 35
- (2) ~~In exercising the powers conferred by **subsection (1)**, a council is not required to comply with any other enactment that would otherwise regulate or apply to its mangrove management activities unless that other enactment~~

~~expressly overrides the council’s powers under this Act that relate to its mangrove management activities.~~

- ~~(3) A council must comply with the rules and reporting requirements in its mangrove management plan.~~

4 Purpose of Act 5

The purpose of this Act is to enable the development of a mangrove management plan that will provide for mangrove management activity to be undertaken in the Whangamatā harbour.

5 Application of Resource Management Act 1991 10

The Resource Management Act 1991 does not apply to any activity undertaken under this Act, unless this Act expressly provides otherwise.

6 Purpose of mangrove management plan 15

The purpose of the mangrove management plan is to enable mangrove management activity in the Whangamatā harbour in order to restore, protect, and enhance amenity values and ecosystems that may be affected by mangrove management undertaken under this Act.

7 Process for preparation, approval, adoption, and review of mangrove management plan 20

- (1) If the council wishes to prepare and adopt a mangrove management plan for the Whangamatā harbour, it must establish a committee to prepare a first draft of the plan for the council’s consideration.

- (2) The committee must include—
- (a) at least 1 representative from the Thames–Coromandel District Council; and
 - (b) at least 1 representative from the Waikato Regional Council; and 25
 - (c) at least 1 member with scientific or ecological expertise; and
 - (d) sufficient iwi representation as agreed between the relevant iwi authorities and the Thames–Coromandel District Council.

- (3) The council must invite the Department of Conservation to have a representative on the committee and, if the invitation is accepted, the committee must include 1 representative from the Department of Conservation. 30

- (4) The provisions of the **Schedule** apply in relation to the preparation, approval, adoption, and review of the mangrove management plan.

8 Effect of plan and its relationship to regional policy statement and plan 35

- (1) A person who undertakes mangrove management activity under the mangrove management plan must comply with the plan.

- (2) The council must comply with the reporting requirements in the mangrove management plan.
- (3) Section 17 of the Resource Management Act 1991 (duty to avoid, remedy, or mitigate adverse effects) applies to persons performing functions or carrying out activities under this Act. 5
- (4) The Waikato Regional Council does not have responsibility for mangrove management activities undertaken in accordance with the mangrove management plan.
- (5) The provisions of the operative regional policy statement and regional plan that relate to mangrove management activities do not apply to mangrove management activities undertaken in accordance with the mangrove management plan. 10
- (6) The mangrove management plan—
- (a) must be prepared in accordance with the Local Government Act 2002, with any necessary modifications; and
- (b) has effect as a plan prepared by the council under that Act. 15
- 9 Monitoring, enforcement, and compliance**
- (1) The council—
- (a) has the power to enforce the mangrove management plan and activities undertaken in accordance with the plan as if the plan were a district plan;
- (b) must regularly monitor mangrove management activities being undertaken under the mangrove management plan; 20
- (c) must prepare 6-monthly reports about its activities and monitoring referred to in **paragraphs (a) and (b)** and make the reports publicly available;
- (d) must publish on its Internet site information about the costs of mangrove management activities undertaken by or on behalf of the council. 25
- (2) The following provisions of the Resource Management Act 1991 apply with the necessary modifications for the purpose of **subsection (1)(a)**:
- (a) section 38 (authorisation and responsibilities of enforcement officers);
- (b) Part 12 (declarations, enforcement, and ancillary powers). 30
- 10 Repeal of this Act and revocation of plan**
- (1) This Act is repealed on the close of the period of 5 years beginning with the date of the commencement of this Act.
- (2) The mangrove management plan is revoked on the close of the period of 5 years beginning with the date of the commencement of this Act. 35

Schedule
Provisions relating to preparation, approval, adoption, and review of
mangrove management plan

s 7(4)

Content of plan 5

1 Matters required to be included in plan

The mangrove management plan must—

- (a) identify and map, to the standard required for a plan that complies with the Cadastral Survey Act 2002, the areas within the Whangamatā harbour where mangrove management activities are to be undertaken; and 10
- (b) state the objectives of the plan, including a description of the levels of mangrove vegetation in the identified areas; and
- (c) describe the methods to be used in achieving the objectives of the plan; and
- (d) identify any amenity values or ecosystems that may be affected by mangrove management activities; and 15
- (e) describe the mechanisms the council intends to use to monitor and assess the effectiveness of the mangrove management activities in achieving the objectives of the plan; and
- (f) give effect to the New Zealand Coastal Policy Statement. 20

2 Protection of interests of customary rights holders

- (1) The mangrove management plan must not include a rule that describes an activity as a permitted activity if that activity will, or is likely to, have an adverse effect that is more than minor on a protected customary right that may be exercised under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011. 25
- (2) If a protected customary rights group considers that a rule in the mangrove management plan or the proposed mangrove management plan does not comply with section 85A of the Resource Management Act 1991, the holder of the protected customary rights order may apply to the Environment Court in accordance with section 293A(3) of that Act for a change to a rule in the mangrove management plan or proposed mangrove management plan. 30
- (3) The Environment Court, in determining whether a rule in a plan or proposed plan complies with section 85A of that Act, must consider—
 - (a) the effects of the proposed activity on the exercise of a protected customary right; and 35
 - (b) the area that the proposed activity would have in common with the protected customary right; and

- (c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and
- (d) the degree to which the exercise of a protected customary right must be carried out to the exclusion of other activities; and
- (e) whether the protected customary right can be exercised only in a particular area. 5
- (4) The Environment Court, in making its determination, has all the powers in Part 11 of the Resource Management Act 1991 that are necessary to make a decision, including (but not limited to) the powers in section 293A.
- (5) In this clause, **protected customary right**, **protected customary rights group**, and **protected customary rights order** have the meanings given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011. 10

3 Other matters permitted or required to be included in plan

The mangrove management plan—

- (a) may permit mangrove management activities to be undertaken and specify any conditions or restrictions that apply to those activities; and 15
- (b) must require the disposal of mangroves (and any part of a mangrove removed as part of a mangrove management activity) outside the coastal marine area; and
- (c) may include any other matter that the council considers necessary or desirable to give effect to the purpose of the mangrove management plan. 20

Committee's functions

4 Committee to prepare mangrove management plan

- (1) The committee may prepare a draft mangrove management plan for the Whangamatā harbour. 25
- (2) In preparing a draft mangrove management plan, the committee must—
- (a) complete an assessment of environmental effects in accordance with clauses 6(1) and 7(1) of Schedule 4 of the Resource Management Act 1991; and 30
- (b) consider where mangroves contribute to coastal ecosystems or protect the coast from erosion.
- (3) The committee must comply with the requirements of clauses 3, 3B, 3C, and 4A of Schedule 1 of the Resource Management Act 1991 as if every reference in those provisions— 35
- (a) to a proposed plan were a reference to the draft mangrove management plan:

- (b) to a customary marine title group in the area were a reference to a customary marine title group or an applicant group, as defined in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011.
- (4) The committee must consider any comments received and may amend the draft mangrove management plan as it thinks fit. 5
- (5) The committee must provide the draft mangrove management plan to the council.
- 5 Participation by iwi or Māori organisations**
- (1) This clause applies if any other legislation (including the Resource Management Act 1991 and legislation that provides for the settlement of a historical claim under the Treaty of Waitangi Act 1975) provides for participation in decision-making by iwi or Māori organisations in the preparation of any plan under the Resource Management Act 1991 that relates to the Whangamatā harbour. 10
- (2) If this clause applies, the provisions in the other legislation apply to the preparation of the mangrove management plan as if references in that legislation to a plan under the Resource Management Act 1991 were references to the mangrove management plan. 15
- Notification of draft plan*
- 6 Notification of draft plan** 20
- (1) If, after preparing a draft mangrove management plan, the council wishes to proceed towards deciding whether to adopt the plan, the council must notify the plan and undertake the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) The council must have regard to the views raised by submissions and may amend the draft mangrove management plan as it thinks fit. 25
- Minister’s approval required*
- 7 Plan must be approved by Minister**
- (1) If, after notifying a draft mangrove management plan, the council wishes to proceed towards deciding whether to adopt the plan, the council must submit the plan to the Minister of Local Government. 30
- (2) The Minister of Local Government, after consulting the Minister of Conservation, may—
- (a) approve the draft mangrove management plan; or
- (b) recommend amendments to the plan; or 35
- (c) decline to approve the plan.

- (3) The Minister of Local Government must notify the council, in writing, of the Minister’s decision.
- (4) If the Minister of Local Government recommends amendments to the plan, the council may make the amendments and resubmit the plan to the Minister (but need not repeat any of the steps required by **clauses 4 to 6** unless directed to do so by the Minister of Local Government). 5

Adoption of plan

8 Council may adopt plan

- (1) Once the plan is approved by the Minister of Local Government, the council must decide whether to adopt the mangrove management plan. 10
- (2) If the council adopts the plan, it must publicly notify the plan and the date on which the plan becomes operative (which may be any date after the date of notification).

Review or withdrawal of plan

9 Council may review or withdraw plan 15

- (1) The council may review and amend the mangrove management plan at any time by following the process set out in **clauses 4 to 8**.
- (2) However, the council may, without using that process, amend the mangrove management plan if the amendment is of minor effect or corrects a minor error.
- (3) The council may withdraw the mangrove management plan at any time if it thinks fit. 20

Legislative history

6 July 2017	Introduction (Bill 278–1)
9 August 2017	First reading and referral to Local Government and Environment Committee
8 November 2017	Reinstated before Governance and Administration Committee