Agenda – RM Reform Ministerial Oversight Group Meeting #16

Date: Tuesday 29 March 2022, 4.00 – 5.00 pm

Location: Zoom

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

Attendees: Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti

Hon Dr Megan Woods, Minister of Housing

Hon Nanaia Mahuta, Minister of Local Government

Hon Poto Williams, Minister for Building and Construction

Hon Damien O'Connor, Minister of Agriculture

Hon Willie Jackson, Minister for Māori Development

Hon Michael Wood, Minister of Transport

Hon Kiritapu Allan, Minister of Conservation, Associate Minister for the Environment and Associate Minister of Culture and Heritage

Hon Phil Twyford, Associate Minister for the Environment

Hon James Shaw, Minister of Climate Change

Time	Agenda item	Lead speaker	Relevant paper
4.00 – 4.10	**1. Role of central government in the new system**	Minister for the Environment	Paper 1: *Role of central government in the new system*
4.10 – 4.20	**2. Resource Allocation and User Charges**	Minister for the Environment	Paper 2: *Resource allocation and user charges*
4.20 – 4.40	**3. Environmental Limits and Targets**	Minister for the Environment	Paper 3: *Environmental Limits and Targets*
4.40-5.00	**4. Transition pathways**	Minister for the Environment	Paper 4: *Transition pathways*
N/A	**5. Update on targeted engagement**	For noting only	Paper 5: *Update on targeted engagement on RM Reform*

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MOG 16# Paper 1: Role of central government in the new system

Key messages and recommendations

Key messages

- Central government has multiple roles in the current system, as a system user, providing system oversight, and setting national direction.
- The Resource Management Review Panel (the Panel) found that central government has not been as active in the system as it should have been, and recommended stronger involvement in several areas.
- Central government needs to play a stronger role in the new system to achieve the resource management reform objectives. By making strategic decisions earlier on in the process, central government will enable more efficient participation by other parties later in the process.
- The key to achieving this will be strengthening central government's system oversight role, delivering the National Planning Framework (NPF), and participating in Regional Spatial Strategies (RSSs). The NPF will be central government's key regulatory mechanism to influence system outcomes. Participation in RSSs will contribute to the development of regional priorities in line with the NPF.
- Central government will have choices about which system levers to use, to what extent, and when, in order to achieve the reform objectives. For example, it could choose to set direction through firmer regulatory tools or softer influencing tools. The system needs to be dynamic enough to give the government-of-the-day flexibility over these choices.
- This paper gives the Ministerial Oversight Group (MOG) sight of central government's proposed roles and functions across the new system, and seeks decisions that:
    - the Minister for the Environment will have responsibility for the NPF (with a possible role for the Minister of Conservation, subject to decisions delegated to the Minister for the Environment and the Minister of Conservation)
    - central government will be a member of the committees responsible for developing and approving RSSs
    - the central government members of RSS committees will be decision makers with voting powers
    - the central government members of RSS committees will, in principle, be ministerial appointees (subject to MOG #17 decisions on committee governance arrangements), and
    - one of central government's functions in the new system will be to provide strategic direction into the system.
- Appendix 1 provides a full list of central government's proposed functions in the new system and their key implications.
- Decisions on this paper will inform future advice, in particular MOG #17 papers on institutional arrangements and committee governance arrangements.

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Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

National Planning Framework (NPF)

1. **note** that MOG #3 agreed the NPF will be secondary legislation made by the Governor-General in Council
2. **agree** that, subject to decisions on the role of the Minister of Conservation in relation to the coastal marine area, the Minister for the Environment will have responsibility for developing the NPF and recommending it to Cabinet and (subject to Cabinet's agreement) the Governor-General
3. **note** that MOG #8 delegated to the Minister for the Environment and Minister of Conservation, in consultation with other ministers as appropriate, decisions about the Minister of Conservation's existing role, which includes the role of the Minister of Conservation in relation to the NPF
4. **note** that the intention is that other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF, although this would not be specified in legislation

Participation in Regional Spatial Strategy (RSS) committees

5. **note** that officials will provide detailed advice to MOG #17 on RSS committee governance arrangements
6. **agree** that central government will have a member on RSS committees
7. **agree** that the central government RSS committee members will be decision makers with voting powers
8. **agree** in principle that the central government RSS committee members will be ministerial appointees, subject to MOG #17 decisions on committee governance arrangements

Providing strategic direction into the system

9. **agree** that one of central government's functions in the new system should be to provide strategic direction into the system
10. **authorise** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation and Minister of Transport to make further decisions relating to the purpose, scope, and form of central government strategic direction in the RM system
11. **authorise** the Minister for the Environment, in consultation with other Ministers as appropriate, to make minor or technical decisions relating to any legislative drafting for central government strategic direction in the RM system, if required

Upholding Treaty settlements

12. **note** there is a separate delegated decision paper delegated from MOG #15 on policy decisions relating to upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

13. **note** that the central government is responsible for:

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a. overseeing or ensuring that settlement commitment responsibilities, and rights recognised in Takutai Moana as described in recommendation 12, are upheld as they apply to RSS Committees

b. ensuring each central government agency relationship, settlement and legislative commitments are given effect to during RSS development and delivery; and

c. there may be further decisions sought on these matters as part of delegated decisions agreed at MOG #15 on upholding the responsibilities and rights identified at (a)

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Paper 1: Role of central government in the new system

Purpose

1. This paper provides the Ministerial Oversight Group (MOG) with sight of central government's proposed roles and functions across the new resource management (RM) system. It seeks MOG's decisions on central government's role in three key areas:
   - ministerial responsibility for the National Planning Framework (NPF)
   - participation in Regional Spatial Strategy (RSS) committees, and
   - providing strategic direction into the system.
2. The paper discusses "central government" in a broad context, encompassing ministers and all state sector organisations in the executive branch including departments, Crown entities, and state-owned enterprises.
3. The MOG's decisions on this paper will inform the MOG #17 papers on institutional arrangements and committee governance arrangements.

Context

Status quo under the current system

4. Central government has multiple roles in the current system, as a system user, providing oversight and regulatory stewardship, and in setting national direction.
5. Central government decision making is shaped by government and hapū/iwi/Māori in the system.

Panel's recommendations

6. The Resource Management Review Panel, (the 'Panel') found that central government has not been as active in the system as it should have been. It noted central government had provided weak oversight and guidance, failed to implement national direction, and been insufficiently engaged and coordinated in spatial planning. The Panel recommended that central government strengthen its involvement in several areas, including by:
   a. strengthening its system oversight and monitoring role
   b. providing comprehensive and coordinated national direction, and
   c. participating in regional spatial planning.

Central government's role in the new system

7. Officials agree with the Panel's view that central government needs to have a stronger role in the new system. Under the principle of 'subsidiarity', local government and hapū/iwi/Māori should be the main decision makers in the system. However, there are some potentially influential roles that central government is best placed to carry out.
8. Stronger involvement by central government will help achieve the reform objective of giving effect to the principles of te Tiriti and providing greater recognition of te ao Māori. Central government needs to administer the reforms in a way that meets this objective. It also needs to exercise its functions under the Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA) in a way that gives effect to the Treaty clauses

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in these Acts, and that upholds the purpose of the Acts (including te Oranga o te Taiao) and Treaty settlements.

9. Stronger involvement by central government will also help achieve the reform objective of improving system efficiency and effectiveness and reducing complexity. One of the big shifts the reform is seeking to achieve is for central government to be more involved in making strategic decisions earlier on in the process to enable more efficient participation by other parties later in the process.

10. The NPF will be central government's key regulatory mechanism to influence outcomes across the new system. Participation in RSS committees will contribute to the development of regionally specific priorities in line with the NPF.

11. Within this context, central government will have choices about which system levers to use, to what extent, and when, in order to achieve the reform objectives. For example, it could choose to set direction through firmer regulatory tools or softer influencing tools. The system needs to be dynamic enough to give the government-of-the-day flexibility over these choices.

12. It may be challenging for central government to come to consensus in the new system. Different portfolios and agencies have different priorities and degrees of independence. Stronger involvement by central government in the system will require greater coordination and collaboration to resolve these views.

Central government's functions and key implications

13. The table in Appendix 1 draws together central government's proposed functions across the new system and highlights the key implications of these functions.[1]

14. The table shows the decisions that officials are seeking in this paper on central government's role in the three key areas noted above. It also notes where MOG has already taken decisions on the role of central government, for example:

    a. at MOG #10, the MOG agreed that central government should have a stronger regulatory stewardship role in the new system.

    b. at MOG #11 and #12, the MOG agreed that ministers will have powers to direct central government agencies to provide technical input into RSS committees.

    c. at MOG #13, the MOG agreed that the Minister for the Environment (and Minister of Conservation in some instances) will have the ability to call in matters of 'national significance'.

15. The table also signals upcoming decisions related to the role of central government, such as:

    a. institutional arrangements at MOG #17

    b. RSS and NBA committee governance arrangements at MOG #17, and

    c. details on system oversight and monitoring, to be included in a delegated decisions paper in April 2022.

16. The following sections provide advice on the three key areas officials are seeking decisions on in this paper.

[1] Central government could have other functions not featured in the table related to allocation mechanisms and managed retreat. Decisions will be taken on the former at MOG #16, while core aspects of a high-level framework for managed retreat will be consulted on alongside the draft National Adaptation Plan in April/May 2022.

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Ministerial responsibility for the NPF

17. The NPF will be central government's key regulatory mechanism to influence outcomes and provide direction in the new system. Its purpose is to provide integrated direction on matters of national significance or matters for which national or sub-national consistency is desirable.

18. The NPF's content will need to promote all of the outcomes in the NBA. It will therefore touch on a range of central government portfolio interests – including where there are real or perceived conflicts between interests, such as between the development and protection of the environment.

19. The NPF will need to provide direction, including on limits and outcomes, within a cohesive and integrated framework. This includes providing strategic content and direction to support local authorities in resolving conflicts between outcomes.

20. The intention is to undertake a staged approach towards the development of a "complete" NPF. MOG will receive advice at MOG #17 on the approach to prioritising content for the first version of the NPF.

21. At MOG #3, the MOG agreed that the NPF will be secondary legislation made by the Governor-General in Council. The NPF policy and draft secondary legislation will be agreed by Cabinet before the legislation is recommended to the Governor-General.

22. It is necessary to identify ministerial responsibility for leading the development of NPF policy and making recommendations on it to Cabinet and the Governor-General. The responsible minister(s) will need to ensure the strategic and topic-based content of the NPF is integrated and cohesive, and provide for clear accountability for the overall framework.

23. Subject to future decisions about the process for developing the NPF, the responsible minister(s) will also likely have a role in:

    a. ensuring the NPF complies with legislative requirements, including the purpose of the NBA

    b. ensuring evaluation requirements are met

    c. resolving conflict between policy objectives that is most appropriately resolved at a national level, and

    d. monitoring and reviewing the NPF.

24. Ministerial responsibility for the NPF could rest:

    a. <u>option 1a</u>: with the Minister for the Environment, as the minister responsible for the NBA (with a possible role for the Minister of Conservation in relation to the coastal marine area),[2] or

    b. <u>option 1b</u>: jointly between the Minister for the Environment and other relevant portfolio ministers

25. The Panel recommended that the Minister for the Environment be solely responsible for national direction (with the Minister of Conservation being the minister responsible for the New Zealand Coastal Policy Statement). They considered that sharing responsibility across ministers would risk undermining the integrity and cohesion of national direction.

[2] A joint MfE-DOC briefing on the role of the Minister of Conservation in the new system was submitted in December to the Minister for the Environment and Minister of Conservation, who have delegated decision-making powers on this matter. Decisions are pending (BRF-961).

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26. Officials agree with the Panel and recommend the Minister for the Environment have responsibility for the NPF (with a possible role for the Minister of Conservation). This will enhance the cohesiveness of the NPF, promote system efficiency, and make the legislation simpler.

27. Although it would not be specified in legislation, the intention is that other relevant portfolio ministers would be involved in the development and implementation of elements of the NPF, as they are now. For example, in the current system, the National Policy Statement on Urban Development 2020 was developed jointly by the Minister of Housing and the Minister for the Environment. In the new system, the Minister of Housing could continue to be involved in the development of urban development policy under the NPF, but the Minister for the Environment would have responsibility for ensuring it fitted within an integrated NPF. As noted above, the NPF would be agreed by Cabinet (and go through the associated consultation processes) before the Minster for the Environment recommended the legislation to the Governor-General.

Participation in RSS committees

28. RSSs will be strategic and high-level documents that include a vision, objectives, and priority actions for a region. They will provide a mechanism for identifying areas within a region that are suitable for development, that need to be protected, that require infrastructure, or that are vulnerable to natural hazards and the effects of climate change.

29. MOG #7 agreed that the purpose of RSSs is to promote overall system integration and the wellbeing of present and future generations. MOG #14 agreed that two of the critical shifts that the SPA needs to achieve are that RSSs will enable and drive change and adaption in a region, and that the SPA and its supporting mechanisms will both coordinate and commit public and private investment to support the region's aspirations.

30. MOG #8 agreed implicitly that RSSs will be decided by committees comprising of members from central government, local government, and hapū/iwi/Māori. Officials will provide detailed advice to MOG #17 on the governance arrangements for these RSS committees, including on committee composition and decision making. This paper seeks confirmation that central government will be a member of the committees, and agreement to the role and identity of its members.

Central government membership of RSS committees

31. The Panel recommended central government should be a member of RSS committees due to national interests being at stake in the committees' decisions, and because central government resources will be needed to address the challenges confronted in RSSs.

32. Officials agree with the Panel and recommend central government should be a member of the committees. This will help ensure mandatory national direction and other national priorities are reflected in the committees' decision making.

Role of central government members of RSS committees

33. The central government committee members could have the role of:

    a. <u>option 2a</u>: decision makers with voting powers, or

    b. <u>option 2b</u>: non-decision makers without voting powers

34. The Panel did not discuss this distinction but did recommend that the committees be responsible for decision making.

35. **Officials recommend that central government committee members should be decision makers with voting powers**. This would:

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a. demonstrate greater involvement by central government in strategic planning decisions – which is one of the critical shifts the reforms are trying to achieve

b. be a clear shift from central government's current role in regional spatial planning, and signal greater commitment by central government to the RSS process

c. give RSSs greater standing within central government, making it more likely RSSs will achieve the intended system shifts and reform objectives

d. add weight to the partnership aspect of RSS committees across the committees' constituent parties, and

e. give the central government committee members more influence, both on the committees and across wider central government. A higher level of influence is appropriate given the interaction between committee decisions and central government funding and investment processes (see section below).

36. The inclusion of central government at the decision-making table for RSSs will be a change from the status quo across the country. There is a risk that participation in committee decision making could be seen as committing central government to funding the actions identified in committee-approved RSSs. However, the system has been designed so that it does not commit or guarantee central government funding, and that funding decisions will be made in line with standard Budget processes.

37. Another potential concern with central government's participation in decision making is that it may not be desirable to create the possibility of central government committee members having the casting vote on regional planning issues. However, the central government members would not necessarily always use their votes. The Panel recommended the committees should work towards consensus decisions, reflecting the importance of bringing parties together and obtaining buy-in on regional spatial planning matters.[3] Committee members might choose to abstain on some decisions, including to allow an issue to progress without them actively voting in favour of it.

38. Central government would still be able to influence committee decisions even if its members did not have voting powers – eg, through setting direction in the NPF and providing advice to the committees. However, officials do not consider that this would create the regional level partnership to deliver on the intent of the SPA, and it would not support improved alignment and integration across the levels of the system.

39. Further detail on the pros and cons of options 2a and 2b can be found in Appendix 3.

Identity of central government members of RSS committees

40. Officials will provide advice at MOG #17 on the process for appointing the local government and hapū/iwi/Māori members of RSS committees. It is envisaged that the legislation would not prescribe an appointments process, or any skill/competency requirements for appointees. This reflects that the committees are representative bodies, and their constituent parties should be able to appoint whomever they see fit. That said, it is anticipated that councils and hapū/iwi/Māori will appoint those considered to have sufficient mana and authority to take decisions on their behalf.

41. The central government members of the RSS committees will also need sufficient mana and decision-making authority. They could be:

[3] Officials will provide further advice on consensus decision making in the MOG #17 paper on committee governance arrangements.

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a. option 3a: ministers

b. option 3b: officials, or

c. option 3c: ministerial appointees (eg, former ministers, former officials, or other third parties)

42. Cabinet has agreed that, in general, ministers should not appoint officials to statutory bodies.[4] Therefore, if the central government committee members were to be officials, they would need to be appointed by other officials either in an *ex officio* capacity – ie, by virtue of being appointed to another position in the public service, or by a designation made by a statutory office holder from within the public service (eg, a specific CE able to designate officials to act as representatives on the committees). If the central government committee members were instead *former* officials (or former ministers or other third parties), they could be appointed by ministers.

43. The Panel recommended the central government members should be senior officials from relevant agencies.

44. However, the Panel also recommended that committees should have autonomous decision-making powers – meaning that members would not need to ratify decisions with their appointing bodies (to be discussed at MOG #17). Given this, and given the political nature of the decisions that committee members will be making (eg, where to expand or contract development), it is considered the central government members should have a degree of political accountability, and therefore should not be officials. Given the time commitments required of committee members, it will be impractical for them to be ministers.

45. Therefore, **officials recommend in principle that the central government committee members should be ministerial appointees**. They would be appointed through the Cabinet Appointments and Honours Committee process, which would enable accountability through to ministers. Although (subject to MOG #17 decisions) they would have autonomous decision-making powers, they could be provided with negotiation briefs by ministers to take to committee meetings, setting out central government's priorities. There could also be a requirement for the committees to give ministers (and those appointing the local government and hapū/iwi/Māori committee members) an opportunity to view and comment on the final version of RSSs before they are approved by joint committees (time-bound review step). Further advice on this will be provided at MOG #17

46. This is an in-principle recommendation pending decisions at MOG #17 on committee members having autonomous decision-making powers. If MOG decides that RSS committees should not be autonomous, it could be more appropriate for the central government committee members to be officials.

47. MOG #17 will also provide advice on how many members central government should have on each committee, in the context of advice on wider committee composition. Officials envisage that one member would be sufficient to represent central government on each committee, and that this would help manage the size of the committees.

48. The table in Appendix 1 provides further details of central government's proposed functions in relation to RSS committees, and the implications of these functions. Central government will have several roles in relation to the committees – including:

[4] CO (02) 5: Appointment of Public Servants to Statutory Boards

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a. the role of the central government committee members in participating in committee meetings and deciding on RSSs

b. the role of central government agencies in supporting the central government committee members – for example, coordinating across agencies to form a coherent central government view of the strategic priorities for each region, and agreeing this view with ministers before providing it to the central government committee members, and

c. the role of central government agencies in supporting the committees in general – for example, providing technical, advocacy, and implementation-related inputs to support the work of committees and their secretariats in developing RSSs.

49. Non-legislative decisions will be needed on how these roles will operate in practice. Further advice will be provided in the MOG #17 papers on institutional arrangements and committee governance arrangements.

Interaction between RSSs and central government funding and investment processes

50. Through its membership of RSS committees, central government could be seen to be endorsing the vision, objectives, and priorities of each region as expressed in RSSs. However, this will not translate into an automatic central government funding commitment for all of the priorities in the RSSs. The aspirations of all of the regions are likely to exceed central government's resources. Central government will therefore still need to go through a prioritisation process for funding requests arising from RSSs – making trade-offs across regions, in line with the overall national interest, and relative to other national priorities – through the annual Budget cycle.

51. Having said that, the system will be designed so that the priorities identified in RSSs will serve as a strong input into central government funding and investment decisions that affect the regions (for example, feeding into business cases for Budget funding, support to access contestable funds, and direction through Cabinet circulars and letters of expectation). It is unlikely that central government would proceed with significant investments in a region that were inconsistent with the relevant RSS.

52. RSSs will also have legal weight over other funding tools in the system – the regional land transport plans and councils' long-term plans. At MOG #7 it was agreed that these plans must take active steps towards implementing RSSs, so funding for regional transport projects and council infrastructure and development funding (to the extent available) should also be channelled towards those priorities identified in RSSs. Local government will also need to go through a prioritisation process within the region and territorial authorities through the annual Budget cycle.

53. This approach will fulfil a key objective of the SPA (and RSSs): to co-ordinate and integrate decision making and funding across different systems, tools, and actors to achieve an agreed vision for a region – while acknowledging that it is not possible to fully bind future governments (both central and local) to the priorities in RSSs.

Providing strategic direction into the system

54. Central government will need to provide sufficient strategic direction into the RM system to guide policy and investment choices.

55. Central government currently produces a number of sector- and topic-specific national strategies across a range of different documents (eg, in Government Policy Statements). These strategies are not well joined-up, and do not specifically communicate what the RM system should do to meet them, particularly at a regional level. There are also some

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areas critical to regional spatial planning where central government strategies are missing (eg, electricity transmission, ports).

56. There is a need for an explicit function in the new system to address these gaps. This function could perform a number of tasks, including:

- identifying and communicating how the system can contribute to achieving strategic priorities set out across the range of different national strategies (for example, as articulated in Government Policy Statements on Transport and on Housing and Urban Development, and in the Emissions Reduction Plan)
- developing national spatial direction where it is currently absent (for example, identifying nationally significant ports, or where there is extra capacity in the national electricity transmission network), and
- translating national strategic priorities into regionally specific contexts, for example, identifying what national strategic priorities central government might want to focus on for particular regions as part of RSS process (for example, a strategic priority for Auckland might be housing but for the West Coast it might be climate resilience).

57. These options are not mutually exclusive. Some elements of strategic direction could be better provided for through the NPF, but there could be advantages to supplementing this with non-regulatory tools.

58. Officials recommend that the MOG agree that one of central government's functions in the new system should be to provide strategic direction into the system. Officials will provide further advice on this in a future delegated decisions paper and recommend MOG authorise the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation and Minister of Transport to make further decisions relating to central government strategic direction in the RM system as related to spatial planning.

Upholding Treaty settlements

59. Central government's role to plan for, implement, and monitor settlement commitments will continue in the future system. Central government will be responsible for upholding settlement commitment responsibilities and rights recognised in Takutai Moana, and implementing respective central government agency relationship, settlement and legislative commitments. Some of these are likely to have implications for RSS development and delivery.

60. [redacted]

Treaty impact analysis

61. The decisions sought in this paper are strongly linked to decisions that have been taken or are being sought in other parts of the system, especially the development of the NPF, the role and functions of the national entity, and committee governance arrangements. However, overall, the proposals in this paper are not inconsistent with giving effect to the principles of te Tiriti and will create the opportunity for central government, local

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government, and iwi/hapū/Māori to build stronger relationships through the joint committee design.

62. A full summary of the analysis of the Treaty impacts of the recommendations in this paper is contained in Appendix 2.

Engagement

Agency

63. Agencies were consulted on early versions of this paper and on Appendix 1, and were broadly supportive. Some agencies asked to be formally involved in the development of NPF content. Officials are considering at an agency level what working arrangements can be put in place to ensure appropriate agency involvement.

Local government

64. [redacted]

Iwi/Māori groups

65. The Māori collectives were consulted on early versions of this paper and on Appendix 1. Officials have not received written feedback and what is set out below is officials' interpretation of the conversations.

66. The [redacted] key feedback was:

    a. The central government members of RSS committees need to have a deep understanding of te Oranga o te Taiao and te Tiriti. Officials agree. The paper notes this in the section in Appendix 1 on participation in RSSs.

    b. Central government needs to provide a coherent voice in RSS committees that resolves conflicts between different agency objectives. Officials agree, as noted above.

67. [redacted] key feedback was:

    a. It would be helpful for RSS committees to hear the independent views of central government agencies rather than a consensus view that risks being watered down. Officials agree that agencies should provide individual views on some matters, for example, those that are technical, advocacy, and implementation-related. However, officials consider that agencies will need to coordinate to form a coherent central government view on strategic priorities, as noted above. This would not necessarily preclude individual agency views being provided alongside an all-of-government view.

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b. The Minister for Māori Crown Relations: Te Arawhiti should be involved in developing the NPF to ensure it properly recognises the Crown's Treaty obligations. Officials note that the recommendation on ministerial responsibility for the NPF would enable relevant portfolio ministers to be involved in the development and implementation of elements of the NPF.

c. The national entity should be a member of RSS committees on the grounds that, if central government membership can help ensure RSSs reflect national interests, then national entity membership can help ensure RSSs reflect national Māori interests. This will be considered through the MOG #17 papers relating to the role of Māori in the system – which is looking at the role and function of the national entity – and the committee governance arrangements paper – which is seeking detailed decisions on joint committees.

Engagement process

68. In November 2021, the Ministry for the Environment released an engagement document entitled *Our future resource management system – materials for discussion*. The document included a section on the role of central government in the new system. Several local authorities and Māori groups commented on this section. The key themes arising from these comments were that central government:

    a. has a role in supporting local government fund the new system

    b. has role in ensuring iwi/Māori are sufficiently resourced to participate in the new system, and

    c. needs to bring the right central government agency voices to the table.

69. The first point was discussed at MOG #15. The second point will be discussed at MOG #17. The third point will be considered in future advice relating to institutional arrangements, how central government will carry out its roles in relation to RSS committees and the provision of strategic direction into the system.

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Appendix 1: Central government (CG)'s roles and functions in the new system[5]

	Part of the system	Reason for CG involvement	Necessary CG functions	Key implications for CG	Notes/recommendations
1	**Treaty Partnerships**	The Crown is the Treaty Partner. To administer the reforms in a way that meets the Cabinet agreed objectives, including the objective to "give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori".[6] To exercise functions under the NBA and SPA in a way that gives effect to the Treaty clauses in the Acts (give effect to the principles of the te Tiriti). To uphold CG's obligations under te Tiriti.	Giving effect to the principles of te Tiriti. Actively monitoring CG performance under the Acts in giving effect to the principles. Ensuring hapū/iwi/Māori are enabled to participate effectively in the system. Upholding Treaty settlements by planning for, implementing, and monitoring settlement commitments. Overseeing or ensuring that settlement commitment responsibilities, and rights recognised in Takutai Moana of that RSS Committee are upheld. Implementing the respective CG agency relationship, settlement and legislative commitments during RSS development and delivery. Upholding te Oranga o te Taiao.	CG will need to build its institutional capability and capacity in te ao Māori to perform these functions. CG will need to ensure effective hapū/iwi/Māori participation in the new system both locally and nationally, including for the new national entity. CG will need to provide support to local government (LG) in order for them to meet the Crown's Treaty obligations. Any institutions required to support system function should be designed with these functions front of mind.	At MOG #4 it was agreed that the future Resource Management (RM) system would uphold the integrity of relevant Treaty settlements, both already negotiated and currently being negotiated. The Select Committee process on the Natural and Built Environments Act (NBA) Exposure draft confirmed that the purpose of the NBA Act would be to uphold te Oranga o Te Taiao. At MOG #11/12 it was agreed that a national entity would be established to enable Māori participation at the national level and that that this entity would have a role in monitoring Tiriti performance across the RM system. At MOG #15 officials were directed to report back to MOG on the expected cost for LG of Māori participation in plan making and on the options for CG funding to support LG and iwi/Māori to participate in the new system. At MOG #15, it was agreed in principle that timebound funding would be provided by CG to support LG and Māori to build capability and capacity to participate effectively in the new system. Further decisions on the role of Māori in the system are expected at MOG #17.
2	**System oversight and monitoring**	To ensure the system remains effective and efficient, achieves its intended objectives, and supports CG's broader objectives.	Providing leadership for the planning system to promote desired outcomes under the NBA and Strategic Planning Act (SPA). Administering the NBA and SPA. Monitoring, assessing, and reporting on system implementation and performance. Responding to poor system performance, including by ministerial intervention and identifying opportunities for improvement. Engaging with partners and stakeholders, and supporting relationship building and the sharing of information, capability, and resources between CG, LG, and hapū/iwi/Māori (including the new national entity, which will have system oversight and monitoring functions).	An agency or agencies will need administer the NBA and SPA. This will likely follow from who the responsible minister is for the legislation. The agencies responsible will need to ensure relevant portfolios are involved in the policy development and drafting process when amending legislation. CG will need to build up its institutional and specialist expertise and knowledge, gather more data and improve access to data on system performance, strengthen its regulatory stewardship role, decide on the scope of its monitoring activities, improve engagement with partners and stakeholders, potentially use additional powers of ministerial assistance and intervention, and potentially be required to respond to independent advice or recommendations. This will need to be done in a way which minimises additional cost and effort for users of the system. CG will have a new system oversight role in overseeing the SPA. This role will require CG to have a greater understanding of what is happening in the regions, and to monitor performance over a long timeframe and across a broad range of areas (eg, transport, housing, conservation, climate change). The role may require new institutional arrangements with a spatial focus, to reflect the range of agency interests and involvement in RSSs, implementation plans, and agreements. CG will need to support LG during the transition to the new RM system. This will need to include both the data requirements themselves, and the systems for monitoring and reporting them. CG will need to collect and share data and information at a system level. CG will need to ensure that environmental monitoring addresses risks and issues of interest/concern to hapū/iwi/Māori.	There are options around whether some system oversight functions (eg, performance monitoring and reporting) should be carried out by the CG agencies responsible for the NBA and SPA, or by independent entities (eg, Parliamentary Commissioner for the Environment (PCE), the new national entity). There are options around whether some CG system oversight functions should be carried out by departments or Crown entities (eg, the Environmental Protection Authority (EPA)). This will be explored in the MOG #17 paper on institutional arrangements. Ministers agreed at MOG #10 to some of the high-level system oversight functions CG will have in the new system, including stronger regulatory stewardship, regular reporting on system performance, and mechanisms to monitor how the system gives effect to the principles of te Tiriti. Remaining decisions on the details of system oversight have been delegated to Minister Parker in consultation with other Ministers. Advice will be provided in a delegated decisions paper in April. CG will have a new system oversight role in overseeing the SPA and this may require new institutional arrangements. Ministers will receive advice on institutional arrangements at MOG #17.

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[5] Central government could have other functions not featured in the table related to allocation mechanisms and managed retreated processes, including decision-making and implementation. Decisions on the former will be taken at MOG #16. On the latter, in early April Cabinet will be asked to approve material for consultation, which will seek feedback on the core parts of a managed retreat system (for consultation alongside the draft National Adaptation Plan). Cabinet is anticipated to make final decisions in late 2022 and early 2023. As such, these possible functions are not yet reflected in the table.

[6] CAB-20-MIN-0522 refers.

	Part of the system	Reason for CG involvement	Necessary CG functions	Key implications for CG	Notes/recommendations
3	**Strategic direction into the system**	To guide policy and investment decisions by signalling CG's goals and direction of travel to meet these goals.	Identifying and communicating how the system can contribute to achieving national strategic priorities set out across a range of different documents (eg, as articulated in Government Policy Statements (GPSs) on Transport and Housing and Urban Development, and the Emissions Reduction Plan (ERP)). Developing national spatial direction where it is currently absent (eg, ports, electricity transmission network). Translating national strategic priorities into regionally specific contexts, eg, identifying what strategic priorities CG might want to focus on for particular regions as part of RSS processes.	Current CG strategies exist on separate topics, with some gaps and inconsistencies, and do not specifically communicate what the RM system should do, particularly at a regional level. There is a need for an explicit mechanism/s or function (not necessarily legislated for) that can provide for the functions identified. Without such a mechanism/function CG members of RSS committees may need to interpret and resolve strategic priorities or competing strategies through the negotiated RSS committee process. CG will need to build up its forecasting capability for upcoming needs and future demands, both nationally and regionally.	**Agree** that one of CG's functions in the new system should be to provide direction into the system.
4	**National Planning Framework (NPF)**	The NPF is central governments' key regulatory mechanism to influence system outcomes and provide direction (on the integrated management of matters of national significance and matters for which national consistency is desirable) to deliver the objectives of the reform. Alongside the legislation, the NPF provides the non-negotiable direction into the system. Through this CG can: - help ensure the RM system proactively supports key CG priorities that require change to address particular challenges or opportunities (for example, reducing greenhouse gas emissions) - increase efficiency of the system by directing consistency for matters where regional differences are unnecessary, and - help resolve conflicts between environmental matters at a national level in order to shift debate higher up the system. The first and second NPFs will play a key role in helping to achieve CG's objectives for reform, and the intended shifts in the system.	Responsibility for the NPF as an integrated framework, including through setting strategic/overarching content, and resolving perceived or real conflict between policy objectives. Developing specific NPF policy/content within the integrated framework, to promote all NBA outcomes (eg, reflecting the dual purpose of the NBA for development within limits). Supporting the implementation of the NPF into RSSs and NBA plans. Monitoring/reviewing the implementation and effectiveness of the NPF.	The scope and depth of content in the NPF (eg, how comprehensive it is) creates a role for CG that is relative to other parts of the system (in particular the strategic direction, RSSs, and NBA plans). For example, a less comprehensive NPF means that CG is likely to have a greater reliance on strategic documents to influence the system, need to play a more comprehensive role in RSS development, and a greater role submitting on NBA plans to ensure CG priorities can be realised and met. Integrated content will require a change in ways of working from the current system including by: - Both collaborative development of topics (across ministers/agencies) AND clear accountability for developing an integrated framework that reflects an all-of-government view and resolves conflicts, and - Having a means of surfacing tensions between use/development and environmental protection in advice on the content of the NPF. These will require changes to current processes or governance arrangements that better support working across ministers and agencies in a more streamlined and integrated way. CG will have a need for greater data collection, provision etc to inform the development of the NPF. CG may need to build up its resources up very quickly to deliver on expectations about the timeframes and content of the NPF, including new limits and associated policy. CG should be more joined up with RM-adjacent regimes and policies which will have a bearing on the process to develop NPF content.	**Note** that MOG #3 agreed the NPF will be secondary legislation made by the Governor-General in Council **Agree** that, subject to decisions on the role of the Minister of Conservation in relation to the coastal marine area, the Minister for the Environment will have responsibility for developing the NPF and recommending it to Cabinet and (subject to Cabinet's agreement) the Governor-General **Note** that MOG #8 delegated to the Minister for the Environment and Minister of Conservation, in consultation with other Ministers as appropriate, decisions about the Minister of Conservation's existing role, which includes the role of the Minister of Conservation in relation to the NPF **Note** that the intention is that other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF, although this would not be specified in legislation Officials anticipate that further work will be undertaken on developing the detailed working arrangements between agencies and MfE for developing the NPF's content.
5	**Protection mechanisms** (Optional levers)	To provide for protection mechanisms to achieve outcomes in exceptional circumstances, eg, with respect to heritage and water bodies. (See also designations in the 'Service Delivery' row)	Exercise heritage protection order powers where necessary. Issue water conservation orders (WCO) where necessary. (Note these instruments are available to LG and some other organisations in addition to CG).	CG will need to provide resources for protection orders to be applied.	MOG #13 agreed that there is a need for a (heritage) protection order process in the NBA, and that this process will be based on heritage orders in the RMA. MOG #13 agreed that protection of water bodies will be managed through the NPF but that new WCOs will be able to be sought in exceptional circumstances.

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	Part of the system	Reason for CG involvement	Necessary CG functions	Key implications for CG	Notes/recommendations
					MOG #13 noted that officials will undertake further work in these areas.
6	**Regional Spatial Strategies (RSSs)** (As well as associated implementation plans)	To ensure CG priorities and the NPF are reflected in regional-level decision-making. To provide capability and information to support regional-level decision-making. To inform CG investment and funding prioritisation at a national level based on feedback between regions and CG.	*CG committee members:* Developing, consulting on, approving, monitoring, and reviewing RSSs and implementation plans jointly with other committee members. Ensuring RSSs and implementation plans align with legislation (such as by upholding the purpose of the NBA and SPA, including te Oranga o te Taiao), national regulation, strategies, plans (for example, NPF, GPSs, ERP), and funding and investment processes. Providing a link between regional aspirations and CG strategic and budgetary prioritisation and decision making (around CG Budget funding, transport funding, and the provision of public services such as schools, and prisons).	Through its membership of RSS committees, CG could be seen to be endorsing the priorities of each region as expressed in their RSSs. However, this will not translate into an automatic CG funding commitments for all of the RSS priorities. Nevertheless, the RSS priorities will serve as a strong input into CG funding and investment decisions that affect the regions. RSSs will also have legal weight over other funding tools in the system – the regional land transport plans and Councils' long-term plans. CG will need to appoint members to the committees. The CG members will need suitable skills and experience (including Treaty expertise, regional understanding, negotiating skills, and the ability to be across key CG priorities). CG will need to provide the CG members with clear direction on CG's priorities. The CG members could be provided with negotiation mandates, agreed in advance with ministers. The more direction the NPF provides, the more the CG members can focus on CG's key priorities beyond those directed in the NPF. The CG committee members could be ministers, ministerial appointees, or officials. They will (depending on MOG #17 decisions on committee governance arrangements) have autonomy to make political decisions. It may therefore be more appropriate for the CG members to have a degree of political accountability, and therefore not to be officials. Given the time commitments required of committee members, it will be impractical for them to be ministers.	Ministers agreed at MOG #7 that the purpose of RSSs is to promote overall system integration and the wellbeing of present and future generations; at MOG #8 that officials should develop options in which RSSs are decided by committees with members from CG, LG and iwi/ hapū/Māori; and at MOG #14 that two of the critical shifts that the SPA needs to achieve are that RSSs will enable and drive change and adaption in a region, and that the SPA and its supporting mechanisms will both coordinate and commit public and private investment to support the region's aspirations. **note** that officials will provide detailed advice to MOG #17 on RSS committee governance arrangements **agree** that central govt will be a member of RSS committees **agree** that the central govt RSS committee members will be decision makers with voting powers **agree** in principle that the central govt RSS committee members will be ministerial appointees, subject to MOG #17 decisions on committee governance arrangements
			CG agencies: Supporting CG committee members – for example, coordinating across agencies to form a coherent CG view of the strategic priorities for each region, and agreeing this with ministers before providing it to the CG committee members. Providing other inputs into the committees and their secretariats to support the development of RSSs, including: - explanations of national strategies, plans, and priorities (for example, NPF, GPSs, ERP) - technical, advocacy, and implementation-related inputs – both from individual agencies and joint agencies where there is a need to provide options for addressing any conflicting views.	CG agencies will need to provide significant support to the committee members to help them understand a wide range of CG issues, interests, and priorities. CG agencies will need to develop a coherent cross-agency view of CG's strategic priorities for each region. CG will need to coordinate inputs into its committee members, the wider committees, and the secretariats. This will require new or different ways of working or institutional arrangements within CG (the details of this will be considered through institutional arrangements work). It is envisaged that agencies coordinating to provide coherent all-of-government views on strategic issues where agencies have conflicting interests, but also providing individual agency views where necessary. This will enable RSS committees to decide for themselves how to resolve conflicting interests. There may be a need for CG to provide further support for the operation of secretariats – for example, this could involve seconding CG staff.	The development of coherent cross-agency views of CG's strategic priorities for each region would help CG translate national strategic priorities into regionally specific contexts. This is one option for delivering the recommended 'strategic direction into the system' function noted above.
			CG agencies: Coordinating, sequencing, and prioritising requests for funding for projects in implementation plans.	CG's budgetary processes will need to have a longer-term focus, be more partnership-based, and have greater recognition of the integrated nature of related projects. This will require new resource and/or institutional arrangements.	Remaining decisions on the details of implementation plans and agreements have been delegated to Minister Parker in consultation with other ministers, and further advice will be provided.
7	**RSS implementation agreements**	To give effect to actions and projects identified in RSS implementation plans where CG is a delivery partner.	Negotiating and agreeing implementation agreements with a variety of other delivery partners (like LG, hapū/iwi/Māori, NGOs).	Negotiating and agreeing implementation agreements will take time and effort. CG agencies will need to consider how they will partner and collaborate with each other and other delivery partners (eg, LG, the private sector) in delivering implementation agreement commitments. In doing so, CG agencies and their partners will need to make trade-offs between these commitments and their other statutory obligations, responsibilities, and priorities (eg, in GPSs and National Land Transport Programme (NLTP)).	Ministers agreed at MOG #14 that implementation agreements will be optional agreements between delivery partners to give effect to specific actions or projects that have been identified in an implementation plan.
8	**NBA plans and consenting processes**	To ensure NBA plans implement the NPF. To enable CG agencies to contribute their specialist expertise to relevant plan	Ensuring consistency of NBA plans with the NPF. Engaging with NBA plan committees on plan development.	Need for a mechanism that NBA plans give effect to the NPF. Role for MfE (and possibly DOC) in ensuring NBA plans give effect to the NPF.	MOG #11/12 agreed that a process would be set up to ensure the NBA plans give effect to the NPF. It has been agreed (BRF-946) that the process for ensuring the NBA plans give effect to the NPF would be that NBA plan

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	Part of the system	Reason for CG involvement	Necessary CG functions	Key implications for CG	Notes/recommendations
		development processes and consents (eg, DOC, Kāinga Ora) To enable CG agencies to advocate for their issues of interest and for these interests to be reflected in the NBA plan development process and consents (eg, DOC, Te Waihanga).	Making submissions on NBA plans and consents, eg, Kāinga Ora, Maritime NZ. Calling in matters of national significance. Providing guidance and platforms to support data collection. Collecting and sharing useable and high-quality data and information (including environmental monitoring) in order to inform NBA plan decision making.		committees would be required to submit a report to MfE on how the NBA plan gives effect to the NPF and environment limits. The Minister for the Environment and Minister of Conservation have delegated decision-making power on the role of the Minister of Conservation in the new system (BRF-961, decisions pending). MOG #11/12 agreed that during plan development there would be a statutory requirement to consult with CG agencies (along with local authorities and infrastructure groups). MOG #13 agreed the NBA notification provisions would enable parties to be identified for consultation in a consenting process, this could include CG agencies. MOG #13 agreed the Minister for the Environment (and Minister of Conservation in some circumstances) will have the ability to call in matters of national significance.
9	**Service delivery** (CG as users of the system)	To deliver CG services and assets, including infrastructure.	Multiple – this could include delivering schools, housing, hospitals, support for vulnerable populations (aged care, mental health, disability), roads, prisons etc. Notice of Requirements for designations (every minister has this). Submitting on consents if identified as a party to be consulted with; submitting on notified consents.	Delivery of CG services beyond the RM system (eg, schools, hospitals) relies on an efficient and effective operation of the RM system. CG's institutional arrangements need to separate CG's functions as an administrator of the system from its functions as a user of the system. CG could better align its investment decision-making with its inputs into the RM system, so that government decisions better align with considerations in the planning process, eg, environmental impact information.	MOG #15 agreed that designation powers are available as of right for Ministers of the Crown and local authorities and that this should be extended to Waka Kotahi and Kāinga Ora, and council-controlled organisations.
10	**Compliance, Monitoring and Enforcement (CME)** By RMA consenting authorities and other regulators	To support LG and other NBA regulators in carrying out their CME functions to ensure the system achieves its objectives.	Monitoring and reporting on regulators including LG on performance of their CME functions. Developing and providing CME guidance for and direction to LG and other NBA regulators. Responding to poor/inconsistent CME performance by LG and other NBA regulators. Supplementary investigative assistance and/or intervention for CME cases (via the EPA).	CG will need to develop and administer a more robust framework for reporting on performance of CME functions under the NBA. CG will need to support CME services delivered by LG and other NBA regulators during the transition to the new RM system and beyond. This will include establishing practice standards, communicating performance expectations, and establishing training for practitioners. CG will need to continue to deliver CME services via the EPA that support/supplement the CME role of LG and other regulators.	The EPA has the ability, at their discretion, to initiate CME inspections and investigations, assist with active inspections and investigations, or intervene in an investigation and become the lead CME agency for the case. MOG #10 agreed officials will continue to develop policy options to drive an uplift in CME practice at all councils in the short term, including addressing issues of political influence/bias, and resolve issues of institutional arrangements raised by the Panel in the longer term
11	**Transition and implementation**	To provide direction and resourcing to support the successful transition to and implementation of the new system.	Ensure key system partners and implementers have sufficient capacity and capability to effectively transition to, and implement, the new system. Likewise, ensure the culture of the new system is such that it drives towards the objectives of reform being achieved (non-legislative measures to support transition and implementation). MfE will develop transitional and implementation provisions in the legislation with input from other CG agencies (provisions that apply for the interim during the transition from the RMA to having the new system fully implemented; and timetabling provisions that direct the rollout of new system products). Maintain a strong role in transition and implementation over a decade and multiple election cycles. Co-ordinate the Model Project to test and implement the new system in the first region(s). Mixture of non-legislative and legislative.	CG will need to support and drive the transition and implementation process through sufficient capacity, capability, funding, and culture change. CG will also need to coordinate its own efforts (capacity, capability, and culture). CG will need resources to coordinate the Model Project, support the model region(s) to demonstrate implementation of the new system, and apply learnings for regions that follow. The level and timing of CG support needed will depend on decisions taken on the start date, duration, and sequencing of the transition period; as well as on decisions to be taken on the roles, responsibilities, functions, and funding of key system partners and implementers. Capacity and capability building, and culture change will be needed for all partners in the system (including CG, LG, and hapū/iwi/Māori). It may be desirable for CG to establish a focused team/unit/authority to lead and coordinate CG's involvement in the transition and implementation process. CG will need to consider other reforms that are under way (e.g. health and disability sector reform) and how implementation may occur in relation to these (e.g. which entity will input health advice into the RM system).	MOG was advised at MOG #15 that the three investments that will underpin an effective, efficient resource management system are: - a well-integrated digital infrastructure - support for the development of model plans, and - support to develop capability and capacity, particularly among iwi/Māori, to operate the system as intended The non-legislative elements of this part of the system will be subject to decisions around ongoing transition and implementation support (given they are implementation related matters rather than system/policy design). Decisions on the legislative components of this part of the system will be sought at MOG #16 via the transition pathways work (including high-level decisions about the model region(s)).
12	**Digital Transformation**	A nationally cohesive and fit-for-purpose digital infrastructure is	Effective national environmental and systems performance monitoring.	Investment and resourcing in infrastructure and capability will be required if CG is to take on a stronger leadership role in developing digital infrastructure.	Work is presently underway by officials on options for establishing well-integrated digital infrastructure at a central, regional, and local level, and on future funding requirements.

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	Part of the system	Reason for CG involvement	Necessary CG functions	Key implications for CG	Notes/recommendations
		foundational for an efficient and effective RM system	Realising CG outcomes associated with a more efficient system that reduces inequalities and facilitates participation.	Further work is required on the most appropriate options and timeframes for CG involvement.	

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Appendix 2 – Treaty impact analysis summary

Paper 1 – Role of central government in the new system

Status quo
The Resource Management Review Panel (the Panel) recognised in their report that the current resource management system under the Resource Management Act 1991 (RMA) does not adequately protect the natural environment or enable housing, infrastructure, and development where needed. The Panel also considered that the Treaty of Waitangi (te Tiriti) clause requiring decision makers to only 'take into account' the principles of te Tiriti had an adverse effect on Māori participation within the system.
Summary of analysis
Gives effect to the principles of te Tiriti o Waitangi • Policy proposals in this paper are strongly linked to decisions that have been taken or are being sought in other parts of the system (eg, the process to develop the National Planning Framework (NPF), the role and function of the national entity, and committee governance arrangements). • In order for the proposals to give effect to the principles of te Tiriti, there needs to be effective opportunities for iwi/hapū/Māori to be involved in the development of the NPF (including early in the process) and through central government providing strategic direction in the system. *Māori Crown relations risks and opportunities* • Due to the narrow nature of the proposals, there is not considered to be an adverse impact on Māori Crown relations. The proposals will create an opportunity for local government, central government, and iwi/hapū/Māori to build stronger relationships in the joint committee of the regional spatial strategies (RSSs) through the sharing of ideas and knowledge. *Costs and benefits for Māori* • The proposal for central government, iwi/hapū/Māori, and local government to be part of the joint committees for RSSs creates an opportunity for stronger relationships between the parties. This will help the parties move towards mutually beneficial relationships to achieve the purpose of the Acts, and will be supported by other avenues for input and advice into the system. • It does need to be recognised that there will be some costs to Māori associated with having a greater role in the system. This will be assessed through other papers addressing this matter and is not directly relevant here. •

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Waitangi Tribunal Recommendations

- The Panel considered Waitangi Tribunal Recommendations in its recommendations. A key area where the paper deviates from the Panel is recommending that central government RSS committee members are ministerial appointees rather than officials, however officials don't consider that this has any different impacts on Waitangi Tribunal Recommendations.

[redacted]

- [redacted]

Limitations of this assessment

- The proposals in this paper are strongly linked to policy that is being sought through other papers in the reform (for example, the process to develop the NPF and broader governance arrangements for RSS committees). This makes it difficult to assess the Treaty impacts in isolation, and some of the risks identified in this analysis could be mitigated through these other policy decisions.

Overall assessment

- The decisions sought in this paper are strongly linked to decisions that have been taken or are being sought in other parts of the system.
- The reformed system will provide for Māori participation through the process to develop the NPF and RSSs (decisions covered elsewhere), as well as iwi/hapū/Māori representation on the joint committees making decisions on plans and strategies (MOG #17 paper on committee governance).

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- It will be important that the process to develop the NPF provides for appropriate avenues and input from iwi/hapū/Māori, as well as quality advice to ministers when making recommendations to the Governor-General (and Cabinet). The national entity may have a role to play here, subject to further decisions at MOG #17.
- Overall, the proposals in this paper are not inconsistent with giving effect to the principles of te Tiriti.

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Appendix 3 – Summary impact analysis

Paper 1 – Role of central government in the new system

Problem or opportunity - status quo		
Central government should have a stronger role in the new Resource Management (RM) system. • Central government needs to play a stronger, more strategic role to achieve the reform objectives, by delivering an integrated national planning framework, participating in regional spatial planning, and providing strategic input into the system. • Greater central government involvement in strategic decisions earlier on in the process will enable more efficient participation by other parties later in the process. • Within this context, there are options for ministerial responsibility for the National Planning Framework (NPF) and the role and identity of central government members on regional spatial strategies (RSS) committees. • These options have been consulted on with central government agencies, local government, and the Māori collectives. The feedback has shaped the analysis and conclusions.		
Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Ministerial responsibility for the NPF should rest:		
Option 1a: with the Minister for the Environment (with a possible role for the Minister of Conservation)	• Enhances cohesiveness of the NPF • Promotes system efficiency • Makes the legislation simpler • Other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF	• The Minister for the Environment could be perceived as providing a greater focus on the natural environment
Option 1b: jointly between the Minister for the Environment and other relevant portfolio ministers	• Other portfolio ministers will have access to broader subject matter advice on the range of NBA outcomes	• Joint responsibility may need to be shared across a large number of ministers • Could create complexity/uncertainty in legislation or process in determining which ministers are relevant • Risks undermining the integrity and cohesion of national direction
Central government members on RSS committees should have the role of:		
Option 2a: decision makers with voting powers	• Demonstrates greater involvement by central government in strategic planning decisions – which is	• Could be seen as committing central government to funding priority actions identified in RSSs

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	one of the critical shifts the reforms are trying to achieve • Clear shift from central government's current role in regional spatial planning, and signals greater commitment by central government to the RSS process • Gives central government committee members greater influence, reflecting interaction between committee decisions and central government funding and investment processes • Gives RSSs greater standing and buy-in from central government, making it more likely RSSs will achieve system shifts and reform objectives • Adds weight to the partnership aspect of RSS committees	• Votes by central government members would seldom be decisive given balance of committee membership • May not be desirable for votes by central government members to be decisive given committees are making regional decisions • Hampers central government members from being officials, who can bring strong technical expertise
<u>Option 2b</u>: non-decision makers without voting powers	• Would better enable central government members to be officials, who can bring strong technical expertise • Does not prevent central government from influencing committee decisions, eg, through the NPF, advice/input to RSS committees	• Lack of central government member inclusion in RSS decisions could make central government appear less engaged with RSS process • Lack of central government member decisions on RSSs could reduce the long-term standing of RSSs • Reduces partnership aspect of RSSs
Central government members on RSS committees should be:		
<u>Option 3a</u>: ministers	• Provides political accountability • Provides greatest decision-making authority	• Impractical given time commitments required of committee members and time availability of ministers
<u>Option 3b</u>: officials	• Provides technical expertise • Closer to wider central government processes than ministerial appointees	• Would not provide political accountability for decisions that will be political in nature
<u>Option 3c</u>: ministerial appointees (eg, former ministers or officials or	• Provides technical expertise • Provides political accountability (though less than ministers)	• Less close to wider central government processes than ministers and officials

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other third parties)		

Conclusion

The preferred options are:

- **Option 1a**: ensuring NPF content is integrated is critical to central government providing coherent strategic direction. The intention is that other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF, although this would not be specified in legislation.
- **Option 2:** giving RSSs greater standing and buy-in from central government will improve their potential to deliver long-term change. Risks can be mitigated by officials providing strong technical support to central government decision-making members of committees.
- **Option 3c**: this option provides the best balance to ensure central government's members have political accountability, technical expertise, and time capacity. If MOG #17 decides that committee members should not have autonomous decision-making powers, it may be more appropriate for central government's committee members to be officials instead.

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Agenda item 1:

Role of central government in the new system

Summary slides

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Agenda item 1: Role of central government in the new system

Background information

This paper provides MOG with sight of central govt's proposed roles and functions across the new RM system

- Central government has multiple roles in the current system, including providing system oversight, setting national direction, and as a system user.
- The Panel found that central government has not been as active in the current system as it should have been, and recommended stronger involvement in several areas.
- MOG has already taken some decisions related to this, for example, that central government should have a stronger regulatory stewardship role.
- Appendix 1 of the paper shows central government's proposed functions across the new system and notes key implications.

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Agenda item 1: Role of central government in the new system

Decisions sought

The paper also seeks MOG's decisions on central government's role in three key areas:

- **Ministerial responsibility for the NPF**
- **Participation in RSS committees**
- **Providing strategic direction into the system**

These decisions will inform future advice, in particular MOG #17 papers on:

- institutional arrangements
- regional governance and decision-making

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Agenda item 1: Role of central government in the new system

Reform objectives

Central govt needs to play a stronger role in the new system to achieve the reform objectives

- One of the big shifts the reform is seeking to achieve is for central govt to be more involved in making strategic decisions earlier on in the process, enabling more efficient participation by others later on.
- The key to achieving this shift will be central government's roles in delivering the NPF and participating in RSS committees.
- Central government will have choices about which system levers to use, to what extent, and when, in order to achieve the reform objectives. For example, it could set direction through firmer regulatory tools or softer influencing tools.

Reform objectives agreed by Cabinet

1	2	3	4	5
Protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations).	Better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.	Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.	Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.	Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

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Agenda item 1: Role of central government in the new system

Ministerial responsibility for the NPF

- It is necessary to identify ministerial responsibility for developing the NPF and recommending it to Cabinet and the Governor-General.
- The NPF's content will touch on a range of central govt portfolio interests, including where there are real or perceived conflicts between interests.
- The responsible minister(s) will need to ensure the NPF is integrated and cohesive across its content, and provide for clear accountability for the overall framework.
- Ministerial responsibility could rest [option 1a] with the Minister for the Environment (with a possible role for the Minister of Conservation), or [1b] jointly with other relevant portfolio ministers.
- Officials recommend option 1a, to enhance the NPF's cohesiveness and promote system efficiency.

Recommendations:

- **note** that MOG #3 agreed the NPF will be secondary legislation made by the Governor-General in Council
- **agree** that, subject to decisions on the role of the Minister of Conservation in relation to the coastal marine area, the Minister for the Environment will have responsibility for developing the NPF and recommending it to Cabinet and (subject to Cabinet's agreement) the Governor-General
- **note** that MOG #8 delegated to the Minister for the Environment and Minister of Conservation, in consultation with other ministers as appropriate, decisions about the Minister of Conservation's existing role, which includes the role of the Minister of Conservation in relation to the NPF
- **note** that the intention is that other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF, although this would not be specified in legislation

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Agenda item 1: Role of central government in the new system

Participation in RSS committees

- The Panel recommended central government be on RSS committees, and MOG #8 agreed this implicitly. The paper seeks confirmation of this. Membership will help central govt ensure RSSs reflect national interests.
- The central government members of the RSS committees could be [option 2a] decision makers with voting powers or [2b] non-decision makers without voting powers. Officials recommend option 2a, to demonstrate greater central government involvement in strategic planning decisions, and add weight to the partnership aspect of RSS committees.
- The central government RSS committee members could be [option 3a] ministers, [3b] officials, or [3c] ministerial appointees. Officials recommend option 3c, to provide political accountability for the committees' autonomous decisions (to be discussed at MOG #17) while acknowledging that ministers are unlikely to have time to be members.

Recommendations:

- **note** that officials will provide detailed advice to MOG #17 on RSS committee governance arrangements
- **agree** that central govt will have a member of RSS committees
- **agree** that the central govt RSS committee members will be decision makers with voting powers
- **agree in principle** that the central govt RSS committee members will be ministerial appointees, subject to MOG #17 decisions on committee governance arrangements

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Agenda item 1: Role of central government in the new system

Providing strategic direction into the system

- Central government will need to provide sufficient strategic direction into the system to guide policy and investment choices.
- This direction could take a number of forms, including:
  - Communicating how the system can achieve strategic priorities set out across the range of central government's national strategies (for example, Government Policy Statements, Emissions Reductions Plans)
  - Developing national spatial direction where it is absent (eg, ports, electricity transmission)
  - Translating national strategic priorities into regionally specific contexts (such as climate resilience in the West Coast).
- Some of this direction could be provided through the NPF, but there could be advantages to supplementing this with non-regulatory tools.

Recommendations:

- **agree** that one of central government's functions in the new system should be to provide strategic direction into the system
- **authorise** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation and Minister of Transport to make further decisions relating to the purpose, scope, and form of central government strategic direction in the RM system
- **authorise** the Minister for the Environment, in consultation with other Ministers as appropriate, to make minor or technical decisions relating to any legislative drafting for central government strategic direction in the RM system, if required

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Agenda item 1: Role of central government in the new system

Summary of recommendations

Ministerial responsibility for the NPF

- **note** that MOG #3 agreed the NPF will be secondary legislation made by the Governor-General in Council
- **agree** that, subject to decisions on the role of the Minister of Conservation in relation to the coastal marine area, the Minister for the Environment will have responsibility for developing the NPF and recommending it to Cabinet and (subject to Cabinet's agreement) the Governor-General
- **note** that MOG #8 delegated to the Minister for the Environment and Minister of Conservation, in consultation with other ministers as appropriate, decisions about the Minister of Conservation's existing role, which includes the role of the Minister of Conservation in relation to the NPF
- **note** that the intention is that other relevant portfolio ministers would still be involved in the development and implementation of elements of the NPF, although this would not be specified in legislation

Participation in RSS committees

- **note** that officials will provide detailed advice to MOG #17 on RSS committee governance arrangements
- **agree** that central government will have a member of RSS committees
- **agree** that the central government RSS committee members will be decision makers with voting powers
- **agree** in principle that the central govt RSS committee members will be ministerial appointees, subject to MOG #17 decisions on committee governance arrangements

Providing strategic direction into the system

- **agree** that one of central government's functions in the new system should be to provide strategic direction into the system
- **authorise** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation and Minister of Transport to make further decisions relating to the purpose, scope, and form of central government strategic direction in the RM system
- **authorise** the Minister for the Environment, in consultation with other Ministers as appropriate, to make minor or technical decisions relating to any legislative drafting for central government strategic direction in the RM system, if required

Upholding Treaty settlements

- **note** there is a separate delegated decision paper delegated from MOG #15 on policy decisions relating to upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- **note** that the central government is responsible for:
  - overseeing or ensuring that settlement commitment responsibilities, and rights recognised in Takutai Moana as described in recommendation 12, are upheld as they apply to RSS Committees
  - ensuring each central government agency relationship, settlement and legislative commitments are given effect to during RSS development and delivery; and
  - there may be further decisions sought on these matters as part of delegated decisions agreed at MOG #15 on upholding the responsibilities and rights identified at (a).

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MOG #16 Paper 2: Resource allocation and user charges

Key messages and recommendations

Key messages

1. The Resource Management Act 1991 (RMA) currently enables a wide range of allocation approaches for a number of resources, but in practice the approach of first in first served has been widely adopted.
2. The Resource Management Review Panel (the Panel) considered that the:
   a. approach of first in first served is not sustainable, efficient, or equitable when resources are scarce
   b. RMA does not sufficiently recognise and redistribute the benefits accruing from the private use of public resources.
3. The Panel recommended that the Natural and Built Environments Act (NBA) should retain the current allocative functions for resources in the RMA, but also provide an enhanced enabling framework for resource allocation and user charges.
4. The RMA already enables the development of allocation plans and the use of alternative allocation approaches. However, practical barriers including widespread entrenchment of first in first served, long consent durations, and a lack of national direction have made it difficult for councils to introduce alternative approaches.
5. Consistent with the Panel's recommendations, the proposals in this paper are aimed at removing barriers to implementation by:
   a. introducing allocation principles (sustainability, equity, and efficiency) to ensure a more balanced approach is taken to allocation approaches, rather than continue the current widespread approach of automatically adopting first in first served and prioritising existing users when issuing new consents
   b. requiring (as opposed to enabling) joint committees to include resource allocation approaches in plans, having regard to the allocation principles and giving effect to any direction in the National Planning Framework (NPF)
   c. shortening the duration of new consents issued during the NBA transition period (with exceptions), to create a greater opportunity for NBA plans to effect change once operative and preserve future optionality for Māori rights and interests in freshwater
   d. exploring changes to consent reviews, including broadening the grounds for review to include cumulative effects, providing a greater ability for councils to meet limits.
6. The proposals in this paper also enable:
   a. a continuation of allocation approaches and resource user charges (eg, sand, geothermal, and coastal occupation) where already enabled by the RMA
   b. resource user charges for other resources allocated under the NBA for which a limit or a target is in place, except freshwater takes and diversions
   c. allocation approaches to include market mechanisms which can generate revenue for local or central government, except for freshwater takes and diversions
   d. a continuation of transfers of water consents being allowed. However, Parliament would need to authorise any change to the position that consents to

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take or divert freshwater must be held by the user[1] of the water and cannot generate revenue for local or central government.

7. The proposals in this paper aim to balance providing opportunities for new users (including Māori) to come into the system and the interests of existing users in the system, by enabling the reallocation of scarce resources over time.

8. In making an exception for freshwater takes and diversions from market mechanisms, and requiring that consents be held by the user of the water, the proposals in this paper are consistent with not wanting to create a tradeable right in water, with the risk of promoting its monetisation and commodification.

9. Discussions with the Māori groups have been held. A key focus of discussions has been how to preserve future optionality. In addition, discussions are underway with the Māori groups on a medium-term work programme to address Māori rights and interest in freshwater, including through preparation of a relationship Accord

Recommendations

It is recommended that the Ministerial Oversight Group (MOG):

General

1. **note** that the RMA currently enables a wide range of allocation approaches for a number of resources, and that:
   a. in practice, the approach of first in first served has been widely adopted
   b. in a small number of cases an alternative allocation approach has been adopted, such as nitrogen trading in the Lake Taupo catchment
2. **note** the RMA also enables coastal occupation charges and user charges for sand, shingle, shell, or other natural material from the coastal area; and geothermal energy
3. **note** that the Panel considered that the:
   a. approach of first in first served is not sustainable, efficient, or equitable when resources are scarce
   b. RMA does not sufficiently recognise and redistribute the benefits accruing from the private use of public resources
4. **note** that the proposals in the accompanying paper aim to balance providing opportunities for new users (including Māori) to come into the system and the interests of existing users in the system, by enabling the reallocation of scarce resources over time
5. **agree** that the proposals in the accompanying paper cover all resources allocated under the RMA, but not the development capacity of land or natural resources covered by dedicated legislation, such as the Crown Minerals Act 1991 and Climate Change Response Act 2002
6. **note** that the scope of resources covered by the proposals in the accompanying paper includes (but is not limited to): taking or diverting of, and discharging to, freshwater; occupation of coastal marine space; energy and heat from geothermal; air pollution;

[1] "User" includes circumstances such as where an irrigation company holds water consents and supplies water to customers or shareholders.

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assimilative capacity of the environment more generally; navigation rights on the surface of rivers, lakes, and in the sea; biodiversity; and river and coastal marine area materials (such as gravel and sand) and space

7. **agree** that for freshwater takes and diversions, Parliament would need to authorise any change to the position that consents to take or divert freshwater must be held by the user[2] of the water, and cannot generate revenue for local or central government

8. **note** further for freshwater takes and diversions, that the Minister for the Environment considers the NBA should not enable use of resource user charges or market mechanisms that generate revenue for local or central government (such as auctions, tenders or user charges beyond cost recovery), and that this is reflected in the proposals in the accompanying paper

9. **note** that:

   a. while some of the changes included in the accompanying paper will impact on existing users, these impacts are not proposed to affect day-to-day resource use until after NBA plans become operational

   b. impacts on existing users' is expected to be a minimum of ten years away

   c. the vast majority of water take consents, particularly in Otago and Canterbury, will expire over the next 20 years (see Appendix One), with most of these, representing a considerable volume of water, expiring in the next 10 years

   d. these proposals will not curtail existing consents granted under the RMA

General delegations

10. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) to jointly make technical changes to the proposals in the accompanying paper and further policy decisions in line with the intent of the policies

11. **note** that on 13 December 2021, MOG agreed to delegate decisions on consent reviews (not relating to allocation) to the Minister for the Environment, in consultation with the Minister of Local Government and Minister of Conservation

12. **agree** to extend the scope of the delegation referred to in Recommendation 11 to include allocation and in particular:

    a. broadening the grounds for consent reviews of all resources to include cumulative effects

    b. the circumstances (if any) in which consent reviews should be mandatory

13. **note** that a small number of delegations are set out under the proposals to which they relate below

Māori rights and interests

14. **note** that discussions are underway with the iwi/Māori groups on a medium-term work programme to address Māori rights and interest in freshwater, including through preparation of a relationship Accord

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[2] "User" includes circumstances such as where an irrigation company holds water consents and supplies water to customers or shareholders.

15. **note** that Ministers have made a commitment to Māori that resource management (RM) reform will not preclude options for addressing Māori rights and interests in freshwater in the future

16. **note** that preliminary discussions with the Māori groups have been held and a key focus of upcoming discussions will be on how proposals for reform preserve options for addressing Māori rights and interests in freshwater in the future

17. **note** that the proposal to reduce the length of consents in the period between enactment of the NBA and NBA plans becoming operative, will also have a key role in supporting the forward work programme on addressing Māori rights and interest in freshwater

18. **note** the following proposals relating to Māori freshwater rights and interests have been put forward and are currently being evaluated by officials:

    a. [redacted] has requested a preservation clause be included in the NBA to mitigate the risk of Māori freshwater rights and interests being precluded [redacted]

    b. the Minister for Māori Crown Relations has requested the exploration of a statutory timeframe in the NBA for addressing Māori freshwater rights and interests

19. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the MOG Māori Interests subgroup and the Ministers of Energy and Resources, Agriculture, and Conservation, to make decisions in relation to the proposals at Recommendation 18 above

20. **note** that Cabinet has noted that engagement with Māori will be important to help ensure RM reform avoids unintended consequences for, and upholds the integrity of, natural resource arrangements agreed by Māori and the Crown in current Treaty settlement negotiations; as well as for:

    a. rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

    b. natural resource arrangements agreed by Māori and local government under existing provisions of the RMA (CAB-20-MIN-0522 refers)

21. **note** that:

    a. aquaculture is an RM reform topic delegated to the Minister for the Environment in consultation with other Ministers [MOG #15 Minutes – 13 December 2021 refers]

    b. a dedicated paper on aquaculture will consider how aquaculture will be managed in the reformed RM system and how to ensure the effective operation of the Māori Commercial Aquaculture Settlement Act 2004, to the degree that it relies on the new RM system legislation, is upheld

Proposals

22. **note** that the Panel recommended that the NBA should retain the current allocative functions for resources in the RMA, and also provide an enhanced enabling framework for resource allocation and user charges comprising new allocation principles, continued national direction, greater use of plans, new consenting provisions, and a broader ability to impose user charges (see paragraph 2 of the accompanying paper for more detail of the Panel's recommendations)

23. **note** that allocation approaches and user charges will need to give effect to the higher order provisions in the NBA, including the purpose, outcomes, and Te Tiriti o Waitangi (Te Tiriti) clause

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24. **note** that Appendix Two provides additional detail about the proposals in the accompanying paper, including alternative options considered but not progressed

Allocation principles

25. **agree** to include allocation principles of sustainability, efficiency, and equity in the NBA and that:

    a. the NPF provide direction on the meaning and application of these principles

    b. Ministers, when developing allocation approaches in the NPF, must have regard to these principles

    c. joint committees must have regard to these principles when developing allocation approaches in plans (subject to direction in the NPF)

National direction on allocation approaches

26. **agree** to enable the NPF to guide or direct the use of resource allocation approaches in NBA plans

Allocation approaches in plans

27. **note** that under the RMA, regional councils can prepare a regional plan to allocate resources, but it is not mandatory to do so unless directed through subordinate legislation

28. **agree** that the NBA require joint committees to set out an approach, or approaches, for allocating resources in NBA plans (in line with any direction issued in the NPF)

29. **note** that where a resource is not under pressure, simple allocation approaches (such as first in first served or stating that the extraction or discharge of a resource is a permitted activity) may be appropriate

30. **note** that Recommendations 4242 42and 48 prevent the generation of revenue from allocating freshwater takes and diversions

Consenting - consideration of existing investment

31. **agree** that the priority given to existing consent holders (section 124B of the RMA) and the requirement to have regard to the value of existing investment at reconsenting (section 104(2A) of the RMA) are:

    a. retained for the period before NBA plans become operative

    b. removed from the point at which NBA plans become operative, as existing investment will be included in the application of the allocation principles as set out in the NPF

32. **note** that the priority given to existing consent holders will be determined through allocation approaches set by joint committees (implementing any national direction), rather than being prescribed through the NBA

Consent durations

33. **note** there is a maximum consent duration of 35 years under sections 123(c) and (d) and 123A of the RMA, which cover consent durations for water permits, discharge permits, coastal permits, and some land use consents issued by regional council

34. **agree** to make the following changes to consent durations (currently set out under sections 123A(c) and (d) and 123A of the RMA):

    a. the NBA will enable a maximum consent duration of less than 35 years to be set through the NPF (or plans) for a particular resource or in specified circumstances

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b. criteria can be set through the NPF (or plans), which if satisfied, will allow a consent to be issued for longer than this set period (but no more than 35 years)

35. **agree** that all resource consents granted after the NBA is enacted and until plans become operative:

    a. will expire no later than three years after the relevant NBA plan becomes operative (though consents may be granted for a shorter period)

    b. can be issued for up to 35 years for uses or users that meet specific criteria for an exemption (such as renewable electricity generation, drinking water supplies, and Crown and local government infrastructure)

36. **note** that the NBA will continue to take the same approach as the RMA to duration for consents relating to coastal reclamations, subdivisions, and land use, which can be issued for unlimited durations under section 123(a) and (b) of the RMA

37. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister of Finance, to jointly make further policy decisions on the criteria for exemptions referred to in Recommendation 35b

38. **agree** that councils be empowered to use tranches of common expiry dates for consents during both the transitional period and in the longer-term

39. **agree** to continue the current approach, under section 124 of the RMA, that enables consent holders to continue exercising their rights beyond the expiry of their consent, while they apply for a new consent

Bespoke consenting provisions

40. **agree** that, where appropriate, bespoke consenting provisions can be set through the NPF (or other subordinate legislation) or plans to support the implementation of alternative allocation approaches

41. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) to jointly make further policy decisions on the consenting provisions for which bespoke approaches can be set

Resource user charges and market-based mechanisms for allocating resources

42. **agree** that the NBA enable resource user charges to be imposed as a condition of a consent to use a resource where a:

    a. resource charge or rent/royalty is already possible under the RMA (removal of sand, shingle, shell or other natural material from the coastal area, geothermal energy, and coastal occupation)

    b. limit or target is set for a resource allocated under the NBA (except for freshwater takes and diversions)

43. **agree** that the purpose of resource user charges is to:

    a. help ensure that private users who use a free public resource for profit, share some of those benefits with the public

    b. reflect, in part or in full, the cost of environmental externalities (including pollution from diffuse sources) and the cumulative impacts of resource use

    c. provide a means to help fund the system

44. **agree** to:

    a. replace existing coastal occupation and royalties and rents provisions with this broad user charge framework for consistency across resources

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b. provide for continued payment of coastal occupation charges and royalties and rents under existing provisions, until replaced by a resource user charge

45. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister of Finance, to jointly make decisions on provisions which set out the details of:

    a. the manner in which the charge will be determined

    b. whether charges will be set by Ministers through national direction (or other subordinate legislation) or joint committees through plans (subject to NPF direction)

    c. the circumstances in which the charge will be imposed

    d. the way the money received can be used

    e. the entities responsible for administering the charge and to whom the charge is paid

    f. the circumstances in which the relevant decision maker should consider waiving the charge (in whole or in part)

    g. timeframes in which a charge must be paid

    h. penalties for non-payment

    i. monitoring, compliance, and enforcement obligations for the entity administering the charge and the person/s subject to the charge

    j. when charges can be introduced, including treatment of existing consent holders

    k. available dispute settlement mechanisms

46. **note** that resource user charges for coastal occupation must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011, in line with section 64(4A) of the RMA

47. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) to make further policy decisions on any statutory exemptions

48. **agree** that:

    a. the NBA will provide for the collection and spending of revenue for market-based mechanisms that involve payment to the council, such as auctions or tenders

    b. market-based mechanisms that generate revenue for local or central government cannot be used for the allocation of freshwater takes or diversions

49. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister of Finance, to jointly make decisions on provisions relating to the collection and expenditure of this revenue

Period between enactment of NBA and NBA plans becoming operative

50. **note** that decisions on the rules framework that will be in place in the period between the enactment of the NBA, and NBA plans becoming operative, are the subject of a separate paper to be considered by MOG on 29 March 2022

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Drafting instructions

51. **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations for the NBA agreed to in this minute, and to those decisions delegated to that Minister and Associate Minister for the Environment (Hon Kiri Allan), in consultation with other Ministers as specified.

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MOG #16 Paper 2: Resource allocation and user charges

Purpose

1. Officials seek agreement from the Ministerial Oversight Group (MOG) to the approach outlined in this paper for including resource allocation and user charging in the Natural and Built Environments Act (NBA).[3]

Panel's recommendations

2. The Panel made six recommendations relevant to this paper as follows:

1	The NBA should retain the current allocative functions for resources in the RMA
2	Allocation principles of sustainability, efficiency, and equity should be included in the new Act to provide greater clarity on the outcomes sought and a consistent framework for the development of more detailed measures.
3	The allocation principles should not be included in the purpose and principles of the NBA but should be in a part of the Act focused on allocation.
4	A combination of regulatory and market-based mechanisms is needed to allocate resources. These should be enabled under the NBA and developed in the context of specific resources through strategic planning, national direction, and combined plans.
5	To enable sustainable, efficient, and equitable allocation of resources, the NBA should adopt a more balanced approach to the prioritisation of existing users in resource consent processes. This includes: (i) encouraging shorter permit durations, with flexibility to provide longer-term permits for major infrastructure (ii) providing stronger powers to review and change consent conditions (iii) providing for a wider range of matters to be considered in consent renewal processes (iv) providing powers to direct common expiry of permit terms.
6	To encourage greater use of economic instruments: (i) future legislation should ensure there is a broad mandate for the use of tradeable rights and permits, incentives and environmental taxes and charges (ii) central government should provide institutional support for the development and use of economic instruments by local authorities through a combination of national direction, guidance, and support for capability.

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[3] The following related matters are covered by other workstreams, rather than in this paper: urban development; funding; governance; role of iwi/Māori in the system; compliance and enforcement; monitoring and system oversight; Māori rights and interests in freshwater.

Previous Ministerial Oversight Group decisions

MOG #2	**agree** that Cabinet's resource management reform objective three to "give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori" should result in the following outcomes: • process and substance of the National Planning Framework and plan-making decisions give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori • [see para 9 below] • Māori customary rights, cultural values and Treaty settlements are protected, and equitable access to resources for Māori is ensured • improved central and local government capability to effectively work with Māori.
MOG #10	**agree** that there would be four broad categories of activities: • activities that are permitted • activities that are prohibited • activities that will need some level of merits-based assessment (albeit are considered appropriate and likely to meet outcomes (note: these are akin to controlled and restricted discretionary activities in the RMA) • activities that may or may not meet outcomes and require a higher level of assessment (note: these are akin to discretionary and non-complying activities in the RMA) **agree** that the NBA will provide processes for the review of consents, which will include the circumstances, purpose, scope, powers, matters to be considered, outcomes, appeal processes, implementation (including potential for a transition period), and cost recovery mechanisms for reviews. **agree** that the NBA will provide a mechanism for people to proactively change an existing use if that would reduce adverse effects of the use on the environment, and/or contribute towards positive environmental outcomes. **agree** that in principle, existing provisions enabling cost recovery by regulators for CME activity continue to be provided for and strengthened where necessary to minimize costs to the wider public **agree** that cost recovery for permitted activity CME activities and investigations of non-compliance will be provided for in the NBA
MOG #14	**note** that Regional Spatial Strategies will include, where appropriate, major natural resource areas that may be suitable for development, use, or extraction (eg, mineral and energy generation). **agree** that NBA plans will specify when disputes about consent decisions (broadly) must be referred to a regional level alternative dispute resolution (regional ADR) process. **agree** that the regional ADR will be available for minor consent disputes. **agree** that where NBA plans do not require the regional ADR process, parties will be able to appeal consent decisions to the Environment Court.
MOG #15	**agree** that the funding approach under the reformed resource management system aims to address potential barriers to the use of funding tools allowed for under the RMA, improve consistency of practices, and support the use of economic instruments. [redacted]

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Scope

3. The proposals in this paper cover:

   a. all resources covered by the RMA[4] but not the development capacity of land[5] or natural resources covered by dedicated legislation (such as resources allocated under the Crown Minerals Act 1991 and greenhouse gases under the Climate Change Response Act 2002)

   b. permitted and consented resource use in relation to allocation (permitted resource use is authorised by plans and does not require a consent).

4. Other than the exclusion of the development capacity of land, the scope set out above is consistent with the current approach to allocation under section 30 of the RMA (functions of regional councils under the RMA).

5. Appendix Two provides detailed options analysis for the proposals in this paper.

Relationship with limits and targets

6. A paper proposing changes to limits and targets will be considered at MOG #16 on 29 March alongside this paper. The exposure draft of the NBA provided for limits to protect the ecological integrity of the natural environment and human health and setting targets through regulations.[6] Limits and targets are inherently linked to the allocation of resources, with targets or limits signalling the absolute maximum amount of the resource that can be allocated. Limits and targets are outside the scope of this paper.

7. The NBA will provide that all persons using, protecting, or enhancing the environment must comply with environmental targets and limits. As such, joint committees will need to design allocation approaches that give effect to any limits and targets that are in place.

Status quo under the current system

8. A number of natural resources are allocated under the RMA. Councils currently allocate these resources through establishing permitted uses in plans or consents for uses that are not permitted. The RMA enables a variety of allocation approaches.

9. In practice, however, resources under the RMA are generally allocated through a 'first in first served' approach as follows:

   a. resource consent applications are processed and determined in the order they are received by consenting authorities

   b. consents that are issued under section 123(c) and (d) and 123A can be issued for terms of up to 35 years (noting that the average duration of consents might be less

[4] Resources include: taking, diverting and discharging to freshwater; occupation of coastal marine space; energy and heat from geothermal; air pollution; assimilative capacity of the environment more generally; navigation rights on the surface of rivers, lakes and in the sea; biodiversity; and river and coastal marine area materials (eg, gravel and sand).

[5] The urban development capacity of land would not be allocated under the framework proposed in this paper, but other components of the NBA would still apply.

[6] The environmental limits and targets paper proposes some changes, including to the purpose of limits.

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– for example, the average duration of water take permits is approximately 19 years)

c. there are limited grounds for reviewing existing resource consents

d. priority is given to existing consent holders at reconsenting, making it difficult for new users to obtain an allocation if a resource is fully allocated[7]

e. council plans have also typically grand-parented existing land use rights (along with associated activities and resource use, such as nitrogen or sediment discharges).

Challenges under the current system

10. The Panel considered that the first in first served approach "works well when there is no scarcity".

11. However, resources are becoming increasingly scarce and over-allocation of some resources is damaging the environment. While the current approach provides existing and potential investors with certainty through continued access to resources, the Panel found that it is not sustainable, efficient, or equitable when resources are scarce as it has:

    a. prioritised those with existing allocations, preventing new users from entering the system[8]

    b. provided little incentive to maximise value from a resource and surrender unused resources

    c. in the case of freshwater allocation, disadvantaged the owners of less developed land (who are disproportionately Māori).

12. The first in first served approach was developed through judicial interpretation by the courts and then reinforced following the introduction of sections 124A – 124C, and section 104(2A).[9] These sections were not intended to entrench first in first served. Rather, they were intended to take account of investment levels for existing users, while enabling councils to develop alternative allocation approaches (departing from a first in first served approach).

13. However, alternative allocation approaches have not generally been developed, other than in a small number of cases such as the Lake Taupo nitrogen discharge trading scheme. Rather, we have seen a continued bias towards the status quo (eg, widespread entrenchment of first in first served allocation approaches, existing long-term consent durations, and lack of common expiry dates). These factors, along with a lack of national direction, mean that, despite the legislative changes, it is challenging to depart from first in first served.

14. In addition, the Panel considered that:

    a. the RMA does not sufficiently recognise and redistribute the benefits accruing from the private use of public resources

[7] Since 2008, section 124A of the RMA has explicitly allowed plans to remove existing users' priority under section 124B (the 2005 Amendment Act). However, this provision has not been widely used.

[8] Existing users are prioritised in the reconsenting process due to the application and interpretation of sections 124A – 124C of the RMA. For aquaculture, this is due to section s165ZH.

[9] For marine farms, section 165ZH tends to apply instead of section 124. The current Part 7A provisions enables a council to establish an alternative allocation regime to disapply section 165ZH priority once the regime is operative.

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b. charging tools are generally underused, particularly due to their controversial nature and a lack of direction from central government

c. there is a missed opportunity to charge for resource use to support the funding and improvement of the RM system.

Māori rights and interests

15. The Crown has a lasting commitment to address Māori rights and interests in freshwater and geothermal resources reflected in statements made in 2012 by Deputy Prime Minister Hon Bill English (see Appendix Three for more information).

16. Māori rights and interests in freshwater were outside the scope of the Panel's report. The Panel nonetheless stated that it considered Māori rights and interests to be an important element of the RM reforms.

17. In stage two of the National Freshwater and Geothermal Resources Inquiry, the Waitangi Tribunal found that the RMA and its allocation regime were not consistent with the principles of Te Tiriti.

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24. Existing inshore aquaculture is managed under the RMA and will be managed under the new RM system. The RMA also provides a key settlement asset (an RMA authorisation for iwi to apply for space in the coastal marine area) delivered via the Māori Commercial Aquaculture Claims Settlement Act 2004. RM reform presents an opportunity to improve

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the management of aquaculture within the territorial sea including to improve delivery of the settlement.

25. A paper on aquaculture has been delegated to the Minister for the Environment in consultation with other Ministers [MOG #15 Minutes – 13 December 2021 refers]. The paper on aquaculture will consider how aquaculture will be managed in the new RM system and will ensure the effective operation of the Māori Commercial Aquaculture Settlement Act 2004, to the degree that it relies on the new RM system legislation, is upheld. This may include consideration of temporary stay on applications. The use of RMA authorisations as an aquaculture Treaty settlement asset also needs to continue.

Objectives

26. The proposals in this MOG paper will support the RM reform objectives, when combined with:

    a. Ministerial commitments to preserve options to address Māori rights and interests in freshwater

    b. direction in the National Policy Statement for Freshwater Management 2020 (NPS-FM) ie, freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.

27. RM reform objectives are:

    a. protecting and where necessary restoring the natural environment (including its capacity to provide for the wellbeing of present and future generations)

    b. better enabling development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure

    c. giving effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori

    d. better preparing for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change

    e. improving system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

Proposals

28. The Panel recommended that the NBA should retain the current allocative functions for resources in the RMA, and also provide an enhanced enabling framework for resource allocation and user charges.

29. Consistent with Panel recommendations, the proposals in this paper are aimed at removing barriers to implementation by:

    a. introducing allocation principles (sustainability, equity, and efficiency) to ensure a more balanced approach is taken to allocation approaches, rather than continue the current widespread approach of automatically adopting first in first served and prioritising existing users when reconsenting

    b. requiring (as opposed to enabling) joint committees to include resource allocation approaches in plans, having regard to the allocation principles and giving effect to any direction in the National Planning Framework (NPF)

    c. shortening the duration of new consents issued during the NBA transition period (with exceptions), to create a greater opportunity for NBA plans to effect change

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once operative and preserve future optionality for Māori rights and interests in freshwater

d. exploring changes to consent reviews, including broadening the grounds for review to include cumulative effects, providing a greater ability for councils to meet limits.

30. The enhanced enabling framework retains many of the existing provisions (which are still fit-for-purpose), removes barriers to using existing provisions, and includes some new proposals.

31. A separate paper on the role of central government in the new RM system is being considered by MOG on 29 March 2022. This paper will consider which Minister/s will be responsible for the NPF, including for allocation provisions.

32. The proposals in this paper also enable:

a. the continuation of allocation approaches and resource user charges (eg, sand, geothermal, and coastal occupation) where already enabled by the RMA

b. resource user charges for other resources allocated under the NBA for which a limit or a target is in place, except freshwater takes and diversions

c. allocation approaches to include market-based mechanisms which can generate revenue for local or central government, except for freshwater takes and diversions

d. a continuation of transfers of water consents being allowed (but see paragraph 83 for requiring consents to take or divert freshwater to be held by the user of the water).

33. Allocation approaches and user charges will need to give effect to the higher order provisions in the NBA, including the purpose, outcomes, and Te Tiriti clause.

Introduce allocation principles of sustainability, equity, and efficiency to guide the development of resource allocation approaches

34. In line with the Panel's report, officials recommend that resource allocation principles of sustainability, equity and efficiency are included in the NBA to guide the development of resource allocation approaches. These principles would not apply to any other aspect of the new RM system.

35. Officials recommend:[10]

a. the NPF provide direction on the meaning and application of these allocation principles (Appendix Four provides examples of the types of considerations these principles might cover)

b. Ministers must have regard to these allocation principles when developing the allocation provisions in the NPF

[10] Officials considered an alternative option of whether decision makers should have to "give effect to" the principles when developing allocation approaches. Equity and efficiency are principles that can be hard to reconcile when there are competing interests – for example, the tension between providing opportunities for existing users and providing certainty to existing users. As such, giving effect to the equity and efficiency principles is unl kely to be possible in every circumstance, given the inherent trade-offs. This would also set a very high and potentially unachievable standard for issuing direction through the NPF and setting alternative approaches through NBA plans.

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c. joint committees must have regard to these principles when developing allocation approaches in plans.

36. The principles will not apply to individual consenting decisions but will provide the basis for developing the allocation approaches guiding the issue of consents.

37. Officials consider that, given the significant impact these principles could have on allocation approaches, there is a need for substantial engagement and consultation with iwi/ Māori and stakeholders on the approach to defining these principles. Specifying the principles through the NBA but defining the principles through the NPF will enable a collaborative process to take place. Officials would work with agencies, partners, and stakeholders to develop advice on how the principles should be defined in secondary legislation.

Enable central government to provide direction on allocation approaches through the NPF

38. While the RMA currently enables a wide range of allocation approaches, there has been little uptake of alternative approaches. The principles, new requirement for joint committees to set approaches (outlined below) and changes to consenting provisions (also outlined below), will support greater uptake of alternative allocation approaches

39. However, in some cases national direction may be needed to achieve the desired outcomes.

40. Officials recommend that the NBA allow Ministers to guide or direct, through the NPF, the use of allocation approaches by joint committees in plans.

41. For avoidance of doubt, this would include (but not be limited to):

    a. providing direction that a particular allocation approach must or must not be used for a particular resource or in certain circumstances – for example, possible approaches could include administrative merit, auctions, trading regimes, and simple allocation

    b. defining an allocation approach

    c. providing direction on objectives, policies, processes, methods, parameters, monitoring and reporting requirements, and any other relevant matters, for joint committees to adopt or consider.

42. When developing allocation approaches to include in the NPF, Ministers would need to have regard to the allocation principles.

Require joint committees to outline in plans how resources will be allocated

43. While regional councils can currently prepare a regional plan to allocate resources, this is optional unless directed by subordinate legislation to do so (such as the NPS-FM). It is common practice for councils to prepare and maintain regional plans, which have included allocation rules.

44. Officials recommend that joint committees be required to develop allocation approaches and set these approaches out in NBA plans. In doing so, joint committees would need to implement any direction provided in the NPF and have regard to the allocation principles where no direction was provided.

45. Consistent with the current approach under the RMA, the allocation approaches available would not be defined in the NBA, but could include simple allocation, auctions, administrative merit, and transfer and trading. However, as set out below under the resource user charge proposal, market-based mechanisms that generate revenue for

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local or central government will not be enabled for the allocation of freshwater takes or diversions.

46. Allocation approaches could cover multiple resources or could be tailored to a specific resource. In some areas, for some resources, the approach to allocation may be very similar to the current approach[11], especially if there is no scarcity.

47. It is likely that joint committees would set:

    a. a standard approach for all resources allocated under NBA plans except those covered by bespoke allocation approaches

    b. bespoke allocation approaches for particular resources.

48. The NPF might direct a certain allocation approach for particular resources. In the absence of direction, joint committees would decide which (if any) resources would have bespoke allocation approaches, having regard to the allocation principles.

49. The date for introducing NBA plans is still to be determined. Timing of plans may be staggered by region and for some could take up to ten years.

50. It should be noted that the NBA is sufficiently broad in scope to cover emerging resources that may not yet be inexistence, consistent with the current approach under the RMA. Allocation approaches will only be required for resources that councils allocate (and not for resources that they are not allocating).

Remove key barriers in the consenting process to adopting alternative allocation approaches

51. The following changes are required to the current consenting provisions to remove barriers to implementing alternative allocation approaches:

    a. changes to existing investment provisions

    b. shorter consent durations, with exceptions (different transitional and permanent approaches are required).

Changes to existing investment provisions

52. The NPF can direct that consideration of existing investment be included within the allocation principles. This would mean that decision makers will have regard to existing investment during the design of allocation approaches, among other considerations (including priority, if needed). This will enable councils to appropriately incorporate the consideration of existing investment into NBA plans.[12]

53. Officials recommend that the priority given and the requirement to have regard to the value of existing investment at the issuing of a new consent, be retained for the period between enactment of the NBA and NBA plans becoming operative. These provisions would then be removed from the statute after this point in time.

54. This means that, until NBA plans become operative, there will be no changes to considerations made when a new consent is issued.

[11] Allocating on a first in first served basis (each application determined on its own merits in the order it is received). However, this paper proposes changes to reconsenting and consent duration provisions that would also apply to a first in first served approach.

[12] Note that applying the principles may lead to greater application of the intention of section 124A(3) of the RMA – ie, to disapply priority for existing consent holders.

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Transitional approach to consent duration

55. Resource consents can be issued for durations of up to 35 years in accordance with sections 123(c) and (d) and 123A of the RMA.[13]

56. NBA plans will include new allocation approaches. If significant amounts of resources are already allocated for an extended period beyond the date at which an NBA plan becomes operative, this will impact councils' ability to implement the allocation approaches in NBA plans. For example, the average duration of water take permits is approximately 19 years.[14]

57. Officials therefore recommend that all resource consents granted after the NBA is enacted and until plans become operative:

    a. will expire no later than three years after the relevant NBA plan becomes operative (though consents may be granted for a shorter period)

    b. can be issued for up to 35 years for uses or users that meet specific criteria for an exemption (such as renewable electricity generation, drinking water supplies, and Crown and local government infrastructure).

58. This means that in the period between enactment and NBA plans becoming operative, it would still be possible to issue longer-term consents that meet set criteria. Officials will continue working with agencies to determine the appropriate uses or criteria for exemptions and whether these are set out in NBA or the NPF.

59. Officials recommend that the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister of Finance, be authorised to make joint decisions on exemptions.

60. For avoidance of doubt, consents issued prior to enactment of the NBA will not be affected by this provision.

61. To help implement this proposal, officials recommend that councils be empowered to use tranches of common expiry dates for consents during both the transitional period and in the longer term. This will also help councils avoid consents across all types of resources expiring on the same day, creating a significant administrative burden.

62. It should be noted that consents issued prior to the enactment of the NBA may have durations of up to 35 years. If so, they will extend beyond the introduction of the NBA plans and potentially impact the implementation of the new allocation approaches.

63. Section 124 of the RMA enables consent holders to continue exercising their rights beyond the expiry of their consent, while they apply for new consents. Officials recommend that section 124 is retained in both the transitional period and in the longer term to ensure continuity of access to resources in the interim period before a consenting decision is made. Holders of expiring consents that apply for a new consent under an NBA plan will therefore also be able to continue operating under the existing consent until a new consent is determined by the consent authority, as is currently the case under the RMA.

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[13] For avoidance of doubt, no changes are proposed to consent durations relating to reclamations, subdivisions and land use which, subject to 123(c) of the RMA, can be issued for unlimited durations under sections 123(a) and (b)

[14] Appendix One provides information about existing consent durations for freshwater.

Longer term approach to consent duration

64. In the longer term, officials propose the following changes be made to consent durations under sections 123A(c) and (d) and 123A of the RMA:[15]

    a. the NBA will enable a maximum consent duration of less than 35 years to be set through the NPF (or plans) for a particular resource or in specified circumstances

    b. criteria can be set through the NPF (or plans), which if satisfied, will allow a consent to be issued for longer than this set period (but no more than 35 years).

65. This means that central government will be able to set a maximum consent duration of less than 35 years through the NPF (or other subordinate legislation) or enable the duration to be set by joint committees in NBA plans. Central government will also be able to enable longer term consents in certain circumstances (though not for longer than 35 years).

66. This approach will provide the flexibility to local government to align consent duration with the allocation approach chosen, subject to central government direction.

Changes to the consenting process to implement alternative allocation approaches

67. In addition, officials recommend that:

    a. bespoke consenting provisions can be set through the NPF (or other subordinate legislation) or plans to support the implementation of alternative allocation approaches.

    b. the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) be authorised to jointly make further policy decisions on the consenting provisions for which bespoke approaches can be set.

Changes to review provisions

68. On 13 December 2021, MOG agreed to delegate decisions on consent reviews (not relating to allocation/rights and interests) to the Minister for the Environment, in consultation with the Minister for Local Government and Minister of Conservation. Work is progressing on identifying the changes to review provisions that are needed across RM reform, ensuring that an integrated approach is taken across all areas. As such, no proposals relating to consent reviews are included in this paper

69. Officials recommend extending the scope of this delegation to include allocation and in particular:

    a. broadening the grounds for consent reviews of all resources to include cumulative effects

    b. the circumstances (if any) in which consent reviews should be mandatory

    c. consultation with the Minister of Agriculture.

RMA authorisations

70. Authorisations are a tool that when granted provide an exclusive right to apply for a consent. Authorisations are a key tool in the Māori commercial aquaculture Treaty settlement process (providing an asset allowing iwi to exclusively apply for a consent) and also are used as part of a tendering process. The person who wins the tender receives an authorisation to undertake the tendered activity. RMA authorisations will continue in the new system.

[15] As for the transitional approach to consent duration, this proposal will not affect consent duration set under current section 123(a) and (b) of the RMA.

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Provide an ability to impose a resource user charge and allocate using market-based mechanisms for all resources except freshwater takes and diversions

71. The RMA enables coastal occupation charges and the charging of royalties and rents for sand, shell and other natural materials, and geothermal water. These are essentially resource user charges.

72. Officials consider that there is no reason why these resources should be singled out for charges.

73. Officials recommend that the NBA enable resource user charges to be imposed as a condition of a consent where a:

    a. resource charge or rent/royalty is already possible under the RMA (removal of sand, shingle, shell or other natural material from the coastal area, geothermal energy, and coastal occupation)

    b. limit or target is set for a resource allocated under the NBA (except for freshwater takes and diversions).

74. Resource user charges can:

    a. help to ensure that private users who use a public resource for profit, share some of those benefits with the public

    b. reflect, in part or in full, the cost of environmental externalities (including pollution from diffuse sources) and the cumulative impacts of resource use

    c. provide a means to fund the system, including capability and capacity of Māori and local government.

75. If MOG agrees to the proposal to introduce the ability to apply charges to resources for the reasons set out in paragraph 74, then officials will develop proposals for further detail of how the charge would work. The proposals will set out policy on:

    a. the manner in which the charge will be determined

    b. whether charges will be set by Ministers through national direction (or other subordinate legislation) or joint committees through plans (subject to NPF direction)

    c. the circumstances in which the charge will be imposed

    d. the way the money received can be used

    e. the entities responsible for administering the charge and to whom the charge is paid

    f. the circumstances in which the relevant decision maker should consider waiving the charge (in whole or in part).

    g. timeframes in which a charge must be paid

    h. penalties for non-payment

    i. monitoring, compliance and enforcement obligations for the entity administering the charge and the person/s subject to the charge

    j. when charges can be introduced, including treatment of existing consent holders

    k. available dispute settlement mechanisms.

76. [redacted]

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77. Given the wide range of resources that will be covered by the resource charge, officials recommend providing as much flexibility as possible to enable Ministers to develop resource use charges for specific resources. We also recommend providing joint committees with the ability to set charges within bounds set out in the NPF. This is consistent with the Panel's recommendation that "future legislation should ensure there is a broad mandate for the use of… environmental taxes and charges."

78. The existing coastal occupation charge and royalties and rents provisions would be replaced by this broad user charge for consistency across all resources. There would need to be a transitional provision to provide for continued payment of these coastal occupation charges and royalties and rents, until replaced by a resource user charge.

79. For the avoidance of doubt, financial contributions and administrative charges would be retained as separate charging tools in the new system.

80. Under section 64(4A) of the RMA, coastal occupation charges must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana Act) 2011. Additionally, under s84(2)b of the Takutai Moana Act, customary marine title groups have an existing right to receive royalties for sand and shingle. Officials recommend these rights are retained in the proposed resource user charge system.

81. Other exemptions may also be needed. Officials recommend that the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) have delegated authority to make further policy decisions on any additional statutory exemptions.

82. Market-based allocation approaches such as auctions or tenders will be enabled under the proposals in this paper. Market-based allocation approaches will entail the raising of funds, which will mean setting out provisions similar to those outlined at paragraph 75 for funds raised from these approaches.

83. Freshwater takes and diversions will be specifically excluded in the NBA from resource user charges and market-based approaches that generate revenue for local or central government. The Minister for the Environment considers that Parliament would need to authorise any change to this position, or to the position that consents to take or divert freshwater must be held by the user.[16]

Period between enactment of NBA and NBA plans becoming operative

84. Decisions on the rules framework that will be in place in the period between the enactment of the NBA and NBA plans becoming operative are the subject of a separate paper to be considered by MOG on 29 March 2022. A consistent approach will need to be taken across RM reform.

85. However, allocation under the NBA will not be possible until NBA plans are operative, so it is likely that the current allocation approach under the RMA will need to continue until plans are operative.

86. Note, however, that this paper includes a proposal to require shorter-term consents to be issued during this period (with exceptions).

[16] "User" includes circumstances such as where an irrigation company holds water consents and supplies water to customers or shareholders.

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Implementation and impacts

87. This section outlines how the proposals in this paper will take effect as an integrated package.

88. It should be noted that:

    a. while some of the changes included in this paper will impact on existing users', these impacts are not proposed to affect day-to-day resource use until after NBA plans become operational (and councils would have up to three years after that to bring in changes)

    b. impacts on existing users are expected to be a minimum of ten years away

    c. the vast majority of water permits (ie water take consents), particularly in Otago and Canterbury, will expire over the next 20 years (see Appendix One). Most of these, representing a considerable volume of water, expire in the next 10 years

    d. these proposals will not curtail existing consents granted under the RMA.

Period after enactment and prior to NBA plans becoming operational

89. The period after enactment and prior to NBA plans becoming operational will have limited immediate impact on new and existing users. The only proposal to apply in this interim period is the proposal to shorten the term of consents (with exemptions), which will have an impact on those users seeking to apply for a new consent (eg, renewal).

90. During this period, policy for the NPF and regulations will need to be prepared so that NBA plans can effectively implement the policy set out in this paper, including:

    a. providing direction on the meaning and application of the principles

    b. providing direction on alternative allocation approaches for specific resources (having regard to the principles)

    c. providing direction on changes to the consenting process

    d. directing the use of resource user charges where desired.

91. Alongside the four workstreams listed above, a process to address Māori rights and interests in freshwater is critical for success of the allocation framework (see paragraphs 103 100 to 105105 for more information).

92. The timeline for developing the first NPF is being considered in both the transitions paper (MOG #16) and NPF paper (MOG #17). It will be important to ensure that direction on allocation approaches is in place in time for joint committees to implement this direction as they prepare the first generation of NBA plans.

Period once NBA plans become operative

93. The first NBA plans will impact on new and existing users as they set out new allocation approaches and potentially new resource user charges. They may also include new consenting approaches. These provisions would take effect as soon as the plans became operative.

94. No provisions would have retrospective effect, though it may be possible for resource user charges to apply to all consent holders from the date the regulation/plan comes into force, including those who already hold consents.

Government support for implementation

95. For these changes to be effective, the Panel raised the importance of central government providing institutional support for the development and use of economic

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instruments and alternative allocation approaches. The Panel recommended a combination of national direction, guidance, and support for capability.

96. Officials consider there will be a need for ongoing funding and resourcing to provide this support. Some of the Panel's suggestions for central government support include:

    a. guidance on when to use different approaches

    b. guidance on how to design and implement charges and allocation approaches

    c. evaluation of different approaches

    d. investments in data and modelling including data pooling

    e. development of a centralised marketplace

    f. an independent market regulator.

Treaty impact analysis

General

97. Key elements of the proposals in this paper are 'enabling', meaning that specific allocation approaches would be directed or provided for through subordinate legislation (such as the NPF or NBA plans). In developing these instruments, those exercising these functions will be required in doing so to give effect to the principles of Te Tiriti, consistent with Te Tiriti clause in the NBA.

98. The proposed enabling framework for designing allocation approaches may allow local priorities and conditions to be better reflected and will reduce the current bias towards the status quo. The quality and clarity of national direction in the NPF will be important to avoid this flexibility perpetuating or creating inconsistencies with Te Tiriti principles, especially where resources are over-allocated. In the absence of clear national direction, challenging decisions will need to be made about access to resources for iwi, hapū and Māori, alongside existing users seeking recognition of existing investment, as well as other new users.

99. Developing national and regional instruments with iwi, hapū and Māori will be needed to help give effect to the principles of Te Tiriti. Proposals on the role of Māori in the system will be considered at MOG #17 and are intended to strengthen the role of Māori in governance and decision-making across all environmental domains, including freshwater.

100. [redacted]

101. [redacted]

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102. [redacted]

103. [redacted]

104. [redacted]

105. [redacted]

106. [redacted]

107. [redacted]

108. [redacted]

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Engagement

109. Targeted engagement was undertaken with central government agencies and the Local Government Steering Group. The key themes of their feedback are summarised below and Appendix Five provides a more detailed summary. Officials will continue working with agencies and local government on the matters raised in their feedback.

Agency - general

110. Feedback was received on the statements of principle, alternative allocation approaches, consent reviews, consent duration, and resource user charges.

111. Key themes of the feedback included:

    a. general support for the proposals

    b. the need for further direction on the statements of principles

    c. the need for direction in the NPF on allocation approaches

    d. the need for consent reviews to ensure alternative allocation approaches are implemented

    e. concern with the short term consent proposal and retention of 35 year maximum

    f. the need for appropriate exemptions or criteria to be specified for longer term consents issued between NBA enactment and NBA Plans becoming operative

    g. that the proposals are likely to be highly significant for the primary sector and highly controversial

    h. that the setting of allocation regimes across all resources in first generation NBA plans is likely to be challenging and risks litigation.

Agency comment - The Treasury

112. The Treasury's understanding is that the NBA provisions would a) expressly prohibit the use of market mechanisms (see paragraph 83) for freshwater takes or diversions which generate revenue for government and b) specifically require that consents must be held by the user.

113. In the Treasury's view, this would limit consideration of viable allocation mechanisms that would encourage the best economic use of freshwater in an increasingly variable environment.

114. Furthermore, it is the Treasury's view that this approach to allocation mechanisms in the NBA could be seen as constraining options for addressing Māori rights and interests in freshwater, or require a legislative override that could be perceived as removing "protections" in the event of a settlement that had these features.

115. The Treasury supports the intent to replace the first in first served allocation model. However, the Treasury does not support the incorporation of the limitations on freshwater allocation mechanisms in the NBA.

Agency comment - Ministry for Primary Industries

116. The Ministry for Primary Industries (MPI) highlights that while 75 percent of New Zealand's consented water by volume goes to the primary sector and over 900,000 hectares of irrigated land, the impact of changes to the national regime for allocation will be significant for the primary sector and the rural communities they support.

117. While MPI supports allocative regimes as part of addressing the inefficient, inequitable and unsustainable use of some resources, these are complex issues that need the right enabling framework in legislation. Requiring that joint committees must set out approaches for allocating resources, without addressing the underlying barriers which have prevented regional councils from making progress in this area, is unlikely to meet with success.

118. MPI recommend a softening of the 'must set out approaches to allocation' recommendation to reflect the practical difficulty of resolving these issues, and a commitment to further work to address the underlying causes. MPI have concerns regarding the effect on business certainty that may result from the shorter consent

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duration during the transition period (see paragraph 57), while acknowledging the exemptions.

Agency comment

119. [redacted]

120. [redacted]

121. [redacted]

122. [redacted]

123. [redacted]

124. [redacted]

Iwi/Māori groups comment

125. Officials have had a series of discussions on the high-level proposals with [redacted] The views of the iwi/Māori groups were conveyed directly to the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan) at meetings on 7 March 2022. [redacted]

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126. [redacted]

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Appendix One: Freshwater consenting information

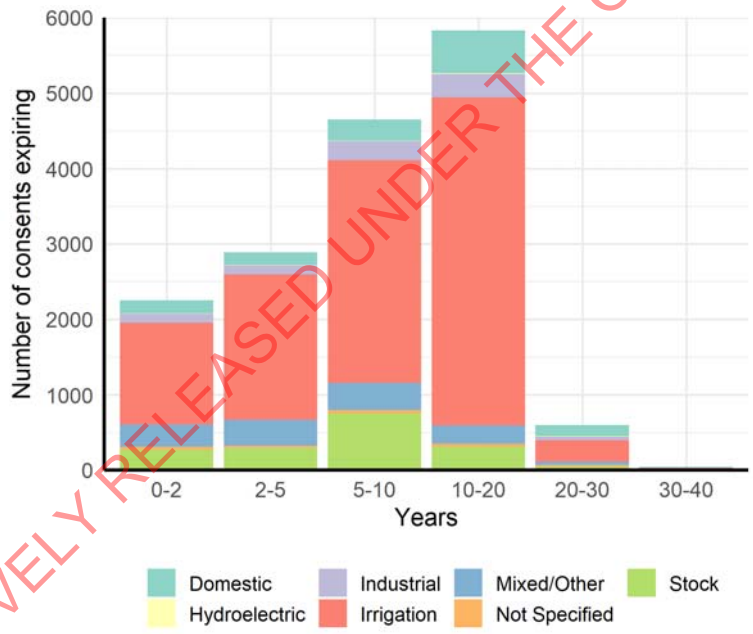
1. Councils have taken different approaches to consent duration. [redacted]

2. The 2019 Ministry for the Environment publication *National water allocation statistics for environmental reporting; 2018*[18] provides a rich data set covering consented consumptive water takes. It includes information on consent length, region, and use. It shows a significant regional variance in the average length of a consent – a range of five to 35 years. Nationally, the average is 19 years.

3. The figure below uses data from 2018 which has been adjusted to reflect 2021. It shows when consents for different uses are going to expire. In each block of time, the relative distribution of each consent type is similar. A significant portion of consents are for irrigation. Most consents will expire in five to 20 years' time, though a significant number will expire within five years.

4. Otago and Canterbury are two regions with high volumes of water expiring, and/or many consents expiring, in the next 20 years.

Number of water take consents expiring – all of New Zealand, by use



[17] [redacted]

[18] National Institute of Water & Atmospheric Research (NIWA), National water allocation statistics for environmental reporting; 2018. Accessible at https://environment.govt.nz/assets/Publications/Files/national-water-allocation-statistics.pdf .

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Appendix Two: Options analysis

Part One: Purpose

1. This appendix provides additional detail about the proposals in this paper, including alternative options considered but not progressed. Detailed impact analysis is being prepared separately for inclusion in the Supplementary Analysis Report to the Regulatory Impact Statement. This appendix considers the Panel's recommendation to provide an enhanced enabling framework in the NBA and alternatives to this approach (Part Two). This appendix then considers the components of the enhanced enabling framework and alternatives to these proposals (Part Three). The components are:

    a. Proposal A: Introduce allocation principles of sustainability, equity, and efficiency to guide the development of resource allocation approaches

    b. Proposal B: Enable government to provide direction on allocation approaches through the NPF (having regard to the principles)

    c. Proposal C: Require joint committees to outline in plans how resources will be allocated (in accordance with any direction and having regard to the principles where no direction is provided)

    d. Proposal D: Remove key barriers in the consenting process to adopting alternative allocation approaches

    e. Proposal E: Provide an ability to impose a resource user charge on all resources except freshwater takes and diversions.

2. A preferred approach has been indicated for each proposal. However, proposals are interdependent. The preferred approach has been selected because, overall, it provides the greatest opportunity for achieving the resource management reform objectives in the context of resource allocation reform. The objectives are:

    a. protecting and where necessary restoring the natural environment (including its capacity to provide for the wellbeing of present and future generations)

    b. better enabling development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure

    c. giving effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori

    d. better preparing for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change

    e. improving system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

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Part Two: Enhanced enabling framework and alternative approaches

Status quo and problem		
The RMA enables a variety of allocation approaches. In practice, however, resources under the RMA are generally allocated through a first in first served approach. Although enabled, alternative allocation approaches have not been developed (except in a small number of cases), and we have seen a continued bias towards the status quo (eg, widespread existing entrenchment of first in first served allocation approaches, existing long-term consent durations, and lack of common expiry dates). These factors, along with a lack of national direction, mean that it is challenging to depart from first in first served.		
Options	**Advantages**	**Disadvantages**
Option One: Prescriptive approach - The NBA would prescribe the approach to allocating resources. Joint committees would have no discretion to develop their own allocation approaches.	• Nationally consistent approach • Reduces burden on councils to develop allocation approaches • Provides increased clarity and certainty for administrators and resource users • Enables central government to direct RM nationwide, should significant changes be required due to climate change	• No flexibility for regional variation • Should the approach to allocation stipulated in legislation require adjustments, legislative amendment would be required • Unlikely to be efficient and effective across all regions - would necessitate a one-size-fits-all approach to resource allocation and lock in a particular approach without room for change
Option Two (preferred option): Enabling approach, with direction - Adopt the Panel's recommendations to provide a) an enhanced enabling framework in NBA and b) for the use of specific allocation approaches and charges through the NPF and local plans. This option involves retaining many of the existing provisions (which are still fit-for-purpose), removing barriers to using existing provisions, and adopting some new proposals.	• Significant scope for local priorities and conditions to be reflected in NBA plans • Opportunity to increase system effectiveness and efficiency and provide national direction when needed • Balances the need for locally driven priority setting and problem solving with the need to be able to provide national direction • Allows for future adjustments to respond to a changing environment and opportunities subsequently identified to enhance the system	• Potential for greater degree of uncertainty than Option One • Potential for litigating allocation approaches outlined in the NPF and NBA plans • Risk that a framework that is only enabling would not result in the degree of change sought - this can be managed through direction provided through the NPF, but it will be important to have direction in place before joint committees are established and begin to develop allocation approaches in NBA plans
Conclusion		

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Option Two is the preferred option.

Note that the Minister for the Environment considers that the NBA should not enable greater use of market-mechanisms for freshwater takes and diversions and this appendix does not explore this further.

Part Three: Components of the enhanced enabling framework

Proposal A: Introduce allocation principles of sustainability, equity, and efficiency to guide the development of resource allocation approaches

Status quo and problem		
The RMA does not contain specific principles to guide decision-making about resource allocation among competing private interests. The Panel considered this was because resources were relatively abundant when the RMA was developed, and it was anticipated that a) plans would constrain use of resources and ensure the public accrued some of the benefits and b) once limits were introduced, allocation would be determined by market forces. The Panel found that the purpose and principles of the RMA also provided guidance for decision making but, as a response to the lack of substantive guidance in the RMA, a 'principle' of first in first served was developed by the courts. When resources become scarce, this principle results in unsustainable, inequitable, and inefficient outcomes. The Panel therefore recommended including allocation principles of sustainability, equity, and efficiency in the NBA.		
Options	Advantages	Disadvantages
Option One: Rely on purpose, outcomes, and Te Tiriti clause to guide development of allocation approaches – No additional considerations to guide the development of allocation approaches, other than Part Two of the NBA (purpose, outcomes and Te Tiriti clause).	• Concept of sustainability expressed by the Panel is captured in Part Two of the NBA • Reduces complexity of policy development	• Concepts of equity and efficiency and their application to allocation as expressed by the Panel are not fully captured in Part Two of the NBA • Relying on Part Two without the guidance of additional allocation principles, might make it difficult to achieve the outcomes sought by the Panel
Option Two (preferred option): Include principles of equity, efficiency, and sustainability in the NBA and define principles in the NPF – Principles would	• Central government would be able to work with iwi/Māori, local government, and stakeholders to define principles in the NPF	• Having the principles in primary legislation but defining in secondary, may limit how the principles can be defined • In addition, definitions will need to give effect to Part Two provisions.

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not be defined in the NBA – definitions would be provided in the NPF.		• While the terms sustainability, equity, and efficiency are broadly understood, their precise meaning is complex and open to interpretation and partners and stakeholders may not agree • Potentially increased risk of litigation
Option Three: Statements of principle included in the NBA based on the concepts of equity, efficiency, and sustainability – A series of statements of principle would be included in the NBA with further direction possible through the NPF – see Appendix Two for a list of draft statements.	• Statements of principle are a common tool used in legislation to set out policy aims and support and enable decision-making in line with the policy of the legislation (ie, they can be used in a similar way to a purpose clause) • Statements of principle may reduce ambiguity by articulating the key components of sustainability, equity, and efficiency, and avoiding using broader terminology that is more likely to result in interpretative difficulties and litigation	• Including specific statements of principle for sustainability could potentially duplicate the Part Two provisions relating to sustainability • Partners and stakeholders may disagree with the content of the statements of principle, particularly with respect to equity and how it is applied to existing and new users

Conclusion

Option Two is the preferred option.

Additional comments

Officials also considered whether the decision makers should have to "give effect to" the principles, or if it would be sufficient for decision makers to "have regard to" the principles when developing allocation approaches. Decision makers will need to give effect to Part Two, including the sustainability goal. However, equity and efficiency are principles that can be hard to reconcile when there are competing interests – for example, the tension between providing opportunities for new users and providing certainty to existing users. As such, giving effect to the equity and efficiency principles is unlikely to be possible in every circumstance, given the inherent trade-offs. This would also set a very high and potentially unachievable standard for issuing direction through the NPF and setting alternative approaches through NBA plans. The requirement to have regard to the statements of principle does not necessarily mean every statement of principle will be reflected in the allocation approach set out in a plan. However, there would need to be a very good reason to disregard a statement of principle when developing that approach.

Officials considered whether the principles should have wider application than applying to just the development of allocation approaches in the NPF and NBA plans – in particular, whether the principles could also apply to consenting decisions. The principles will guide the development of allocation approaches in the NPF and plans, which will in turn guide consenting decisions. Applying the principles to consenting decisions as well, would make it

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difficult to develop alternative allocation approaches, as this would be an allocation approach in itself. It would also increase the likelihood of litigation. Ultimately such an approach would introduce further cost, delay, and unnecessary complexity into the allocation system.

Proposal B: Enable government to provide direction on allocation approaches through the NPF (having regard to the principles)

Status quo and problem		
A number of barriers have made it difficult to shift away from the approach of first in first served, even when it is not equitable, sustainable, or efficient, as identified under Part Two above. Lack of guidance, or direction, to councils under the RMA, has been cited as one barrier to implementing alternative approaches. The Panel considered a combination of regulatory and market-based mechanisms may be needed to allocate resources. The Panel recommended these should be enabled under the NBA and developed in the context of specific resources through strategic planning, national direction, and combined plans.		
Options	Advantages	Disadvantages
Option One: Government must provide direction on allocation approaches through subordinate legislation – Government would have to set out allocation approaches for all resources across the country. This might include a single approach for multiple resources as well as bespoke approaches for specific resources.	• Government can provide direction on allocation issues of national importance, including on allocation approaches for resources where demand exceeds supply, and first in first served is not fair, efficient, or sustainable • Government can ensure allocation approaches give effect to Te Tiriti and international obligations • Opportunity for scales of economy and other efficiencies, including for information systems	• No place for local decision-making • Approaches cannot be tailored to different local circumstances which may have unintended consequences and detract from RM reform outcomes • Challenging for government to be responsive to changing environmental circumstances across the country which may necessitate development of new bespoke allocation approaches in certain places • Government would need to develop a significant amount of policy for the NPF before allocation could commence under the NBA
Option Two: Government cannot provide direction on allocation approaches through subordinate legislation – Government would only be	• Enables a greater degree of decision making at the local level	• Government cannot provide direction on allocation issues of national importance • Government cannot direct consistent approaches where desirable • Government cannot provide direction to give effect to Te Tiriti clause and international obligations

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able to influence the implementation of the NBA through non-binding guidance.		• Inefficiencies are possible, with local decision makers across the country making decisions that could be more efficiently made at the national level, for example, around information system requirements • Inefficient outcomes possible similar to those arising under the current RMA system, where there is little national direction on allocation approaches
Option Three (preferred option): Government may provide direction on allocation approaches through subordinate legislation – Where needed, government can provide direction on allocation approaches and/or aspects of allocation. For example, the NPF might include a requirement to use a particular allocation approach for allocating a particular resource.	• National consistency can be required where needed • Opportunity to increase system effectiveness and efficiency (for example, information systems) • Allows for joint committees to make decisions at the local level, where national direction is not considered necessary • Gives effect to the Panel's desired approach	• Direction is enable but not required, and RM reform objectives are less likely to be achieved if direction is not subsequently forthcoming – however, requiring joint committees to set allocation approaches having regard to the allocation principles will help to mitigate this risk
Conclusion		
Option Three is the preferred option.		

Proposal C: Require joint committees to outline in plans how resources will be allocated

Status quo and problem
Currently, most councils use a first in first served approach to allocation. This approach is unsustainable, inequitable, and inefficient when resources are scarce. Most resources are becoming increasingly scarce, and the Panel indicated that when resources become scarce, greater consideration is needed regarding how those resources are allocated. This includes a more strategic approach and better balancing of competing interests. Despite amendments introduced in 2005 to support change, under the RMA there has been little uptake of allocation approaches that address the limitations of first in first served. The Panel recommended developing regulatory and market-based mechanisms in the context of specific resources through strategic planning, national direction, and combined plans.

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Options	Advantages	Disadvantages
Option One: Do not require joint committees to outline in plans how resources will be allocated - Joint committees would not need to outline in plans the approach to resource allocation for any resources, although they could choose to do so.	• Gives discretion to joint committees to determine whether or not to outline allocation approaches in plans	• Default allocation approach in legislation would be needed if joint committees were not required to outline their allocation approach in plans • Risk of no departure from first in first served, even when resources are scarce and there is no opportunity for new users to enter the system • Potential inefficiency in the allocation approaches chosen • Lack of opportunity for community input into allocation approaches if they are not included in plans • Reduces the impact of the allocation principles, as joint committees will only need to have regard to them when including allocation approaches in plans
Option Two (preferred option): Require joint committees to outline in plans how resources will be allocated - This would sit alongside the proposal for joint committees to develop allocation approaches having regard to the allocation principles. The policy intent is to ensure that joint committees make deliberate planning decisions about allocation approaches informed by the allocation principles.	• Encourages the adoption of new allocation approaches where needed to balance the needs of new and existing users and allow for more development within limits • Facilitates a move away from first in first served allocation when resource scarcity makes it unsuitable • Provides for local decision making	• Could add complexity to local decision making – however, relatively few of the many resources to be managed under the NBA are anticipated to require intensive management – as such joint committees might ultimately set a standard approach for all resources except those for which a bespoke approach is needed
Conclusion		
Option Two is the preferred option.		

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Proposal D: Remove key barriers in the consenting process to adopting alternative allocation approaches

1. Existing consenting provisions have contributed to reinforcing first in first served by providing priority to existing users at renewal, requiring decision makers to have regard to existing investment held by consent holders, locking up resources through long consent durations, and providing limited grounds for reviewing existing consents.

2. These provisions combined as a whole, make it difficult for councils to develop and implement through regional plans other approaches to first in first served.

3. The options in this section cover:

   a. consenting – consideration of existing investment and priority

   b. consent duration.

4. The options in this paper and appendices do not cover consent reviews. On 13 December 2021, MOG agreed to delegate decisions on consent reviews (not relating to allocation/rights and interests) to the Minister for the Environment, in consultation with the Minister for Local Government and Minister of Conservation. Work is progressing on identifying the changes to review provisions that are needed across RM reform, ensuring that an integrated approach is taken across all areas. This paper seeks to extend the scope of this delegation to include allocation and to specifically explore broadening the grounds for review to include cumulative effects.

Consenting – consideration of existing investment and priority

Status quo and problem
While there is no explicit guarantee that a resource consent will be granted when an application is made to renew a consent on the same or similar terms, the Panel found that this is generally common practice. The practice of renewing consents is based on Sections 124 – 124C, and 104(2A) of the RMA, which were introduced by a 2005 amendment. Sections 124A – 124C require consent authorities to determine an application for renewal ahead of any other application that has been lodged with a consent authority for the same resource, meaning existing consent holders are afforded priority. Section 104(2A) then further directs consent authorities to have explicit regard to existing levels of investment held by consent holders when determining an application for renewal. A 2015 Survey of Rural Decision Makers undertaken by Landcare Research found that most consent holders expected their water consents to be renewed: 94% expected their consent to be renewed, or thought there was a slight chance of non-renewal; just over 3% thought it somewhat likely; and the remaining less than 3% thought it was highly likely or certain their consent would not be renewed. Sections 124A – 124C were not intended to reinforce first in first served. Rather, they were intended to provide investment certainty for existing users, while also enabling councils to depart from a first in first served approach through plans. However, departure from a first in first served approach has not occurred. This is due to a number of factors including existing long-term consent durations, lack of common expiry dates, lack of national direction, and the prior

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entrenchment of the first in first served approach. These factors mean that, despite the intention of the 2005 amendment, it has been challenging for councils to depart from a first in first served approach to allocating resources.

The Panel recommended providing for a wider range of matters to be considered in a consent renewal process.

Options	Advantages	Disadvantages
Option One: No change to renewal provisions – This would continue the status quo.	• Requires explicit regard to be had to levels of investment held by previous consent holders when determining an application for a resource consent • Provides certainty for existing users who reapply for a similar permit on expiry of their existing permit • Existing consent holders are given a statutory entitlement to priority on renewal of their consents	• Makes it challenging for joint committees to depart from a first in first served approach in NBA plans and provide opportunities for new users and owners of less developed land (who are disproportionately Māori) • Contributes to the entrenchment of first in first served for resource allocation • Disadvantages potential new users who have applied to access resources, given the statutory priority given to existing users
Option Two (preferred option): Consider existing investment during the development of NBA plans - Consideration of existing investment, and priority of access (if any), would occur during the development of NBA plans, when joint committees have regard to the allocation principles (provided this was required through the definitions developed for allocation principles)	• Removes the presumption of renewal for existing consent holders • All users (existing and new) have the same opportunity to access resources • Assists with ensuring that alternative allocation approaches included in NBA plans can be implemented • Decision makers would have regard to existing investment (among other considerations) during the design of allocation approaches	• NBA will not expressly require consideration of existing levels of investment or priority at the consent decision making stage • Greater uncertainty for existing users with regard to consent renewals

Conclusion
Option Two is the preferred option.

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Consent duration

Status quo and problem		
Resource consents can be issued for terms up to 35 years under section 123 and 123A of the RMA, with the average duration of a water permit currently at 19 years. There are no powers under the RMA to subsequently alter the duration of a resource consent, except through cancellation in very limited circumstances. Long consent durations contribute to locking in resource uses for extended periods of time. The Panel considered that long consent durations have led to an inflexible approach to resource allocation, particularly where resources are over-allocated. The Panel considered that shorter consent durations would provide a more responsive allocation regime where re-allocation can occur more frequently. However, the Panel also identified that the use of short permit duration comes with trade-offs in terms of business certainty and investment decisions for resource users. Furthermore, the Panel noted that longer permit durations may be appropriate where large scale infrastructure is required (eg, hydroelectricity generation schemes).		
Options	**Advantages**	**Disadvantages**
Option One: No change to existing consent duration provisions - Section 123 and 123A remain unchanged. Shorter consent durations are possible under the RMA, but have not been widely used, so it is possible decisions makers will not move to shorter consent durations.	• Provides investment certainty for consent holders when applying for resource consent • Provides the ability to seek consent durations of up to 35 years for those who consider they need such certainty	• Likely that resources will continue to be allocated to users for long durations - locking in of uses through long consent durations will make it difficult to implement new allocation approaches
Option Two: Short duration consents with no exceptions - The maximum resource consent duration would be set through the NBA for a period less than 35 years, with no exemptions	• Ensures that resource consents can be renewed more frequently, and the system is more responsive to change • Coupled with the proposed changes to the renewal provisions, may enable new users to access resources more frequently • Will make it easier to implement new allocation approaches	• Limits investment certainty for activities requiring large scale infrastructure • Limits certainty for other resource uses such as municipal water supplies • Greater cost for applicants if they need to re-apply for a consent more regularly

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Option Three (preferred option): Short duration consents with exceptions - The NBA would enable a) a maximum consent duration of less than 35 years to be set through the NPF (or plans) for a particular resource or in specified circumstances and b) the setting of criteria that, if satisfied, will allow a consent to be issued for longer than this set period (provided no consent is issued for longer than 35 years). In the transitional period after the NBA is enacted, but before plans become operative, consents will expire within three years after the NBA plan becomes operative (unless the consent is granted for a shorter period). Consents for longer periods (but no more than 35 years) may be issued for specified uses and/or uses that meet specific criteria. From the date at which the NBA is enacted, it will also be possible to use common expiry dates.	• Provides certainty around consent durations, while still providing an avenue for longer consent durations where criteria are met • Likely to result in shorter consent durations being imposed, making it easier to implement new allocation approaches • Will contribute to the system being responsive to change with consents expiring more frequently • Interim consent durations will assist in preventing a "gold rush" of consent with long durations being sought following the enactment of the NBA, but before NBA plans become operative • 35-year maximum duration retained for to provide investment certainty to applicants who met certain criteria	• Additional costs for consent applicants to demonstrate how they satisfy the criteria for exemptions when seeking longer consent durations • Additional costs for consent holders in reapplying for consents more frequently
Conclusion		
Option Three is the preferred option.		

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Proposal E: Provide an ability to impose a resource user charge on all resources except freshwater takes and diversions

Status quo and problem
The existing RMA resource use charging provisions apply to a limited range of resources. These charging provisions have not been consistently implemented, potentially due to the controversial nature of pricing instruments, pressure arising from vested interests, and local government capacity and capability constraints. As a result, the public absorbs both the opportunity cost and environmental externalities from the private use of public resources that do not incur a fee for use. The Panel observed that charging for water is particularly controversial and speculated this could be due to the "long-standing practice of making public goods available for private use without charge and the capitalisation of this free use in land values" (361). The Panel noted that it saw "little difference between using or occupying a private resource for profit and using a public resource for profit (360). The former is subject to rent, while the latter is generally not." The Panel noted that (para 49 on page 332): *In the years since the RMA was enacted, some notable progress has been made by central government in the development of economic instruments for environmental management, including allocation issues. Two important examples are climate emissions pricing under the Climate Change Response Act 2002 and the introduction of the waste disposal levy under the Waste Minimisation Act 2008. In both cases, separate legislation was thought necessary notwithstanding the intention of the RMA to provide an enabling framework.* To encourage greater use of economic instruments, the Panel recommended that a) future legislation should ensure there is a broad mandate for the use of tradeable rights and permits, incentives and environmental taxes and charges and b) central government should provide institutional support for the development and use of economic instruments by local authorities through a combination of national direction, guidance, and support for capability. The Panel specifically suggested expanding the range of resources on which a charge can be placed for the private use of public resources, "in principle we consider a fair charge should be placed on the private use of common resources…" (360).

Options	Advantages	Disadvantages
Option One: No changes to the present ability to charge for resource use under the RMA - The NBA would continue to permit: administrative charges reflecting the cost of the service; royalties for sand, shingle, shell, or other natural material; royalties for geothermal (this provision has never been used); coastal occupation charges; and financial contributions. Section 24(h) of the RMA would also be carried over (the Minister for the Environment can consider and investigate the use of economic	• No further costs placed on users at present	• Section 24(h) is not sufficient to establish wider resource user charges in the future, without further legislative authority • Ultimately, the Panel found that the status quo is unsatisfactory – there is a failure to acknowledge and account for the value that private users obtain from the use of public resources and that

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instruments (including charges, levies, other fiscal measures, and incentives) to achieve the purpose of the Act).		one person's resource use excludes that of others
Option Two (preferred approach): NBA enables the NPF to impose a resource user charge in certain circumstances – In addition to where a resource charge or rent is possible under the RMA (removal of sand, shingle, shell or other natural material from the coastal area, geothermal energy and coastal occupation) the NBA would also enable user charges to be placed on the use of any resource allocated under the NBA (except for freshwater takes and diversions) for which a limit or target has been set.	• Helps to ensure that private users who use a free public resource for profit, share some of those benefits with the public • Can recognise the cost of environmental externalities • Provides a means to fund the system • Could result in efficiency and sustainability improvements	• Charges may increase costs for users
Option Three: NBA enables joint committees to impose a resource user charge in certain circumstances - In addition to resource charging provisions under the RMA, the NBA would enable joint committees to impose a resource user charge on the use of any resource allocated under the NBA (except for freshwater takes and diversions) for which a limit or target has been set, without direction under the NPF.	• Supports communities to tailor the approach to resource user charging to suit local circumstances	• Could lead to inconsistencies in charging for the same type of resource between regions, which could be considered unfair • May not always be appropriate for joint committees to make the decision as to whether a resource user charge is imposed or not (as royalties and rents for sand, shell, shingle, and other natural materials are currently set by and paid to central government) • Does not address the Panel's concerns over under-use of existing charging provisions

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Conclusion
Option Two is the preferred option. Additional comments For all options, financial contributions and administrative charges would be retained as separate charging tools in the new system. Section 64A(4A) of the RMA provides that coastal occupation charges must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana Act) 2011. This exemption should be retained, and other exemptions may also be needed. Further work is needed to determine what these might be.

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Appendix Three: Treaty Impact Analysis

Paper X – Resource allocation and user charges

[redacted]

- [redacted]
- [redacted]
- [redacted]

Summary of analysis

Gives effect to the principles of Te Tiriti

- In this section the specific recommendations in the paper are considered. A more detailed Treaty analysis sits behind this assessment, which has been informed by the principles of Te Tiriti applied by the Waitangi Tribunal in Wai 2358. The analysis against Te Tiriti principles has informed the conclusions in this assessment.

General

- The objectives of the RM reform include giving effect to the principles of Te Tiriti and providing greater recognition of te ao Māori, including mātauranga Māori.

Recommendation on the allocation principles, and allocation approaches (Recommendations 25, 26, and 28)

- Key elements of the proposals in this paper are 'enabling', meaning that specific allocation approaches would be directed or provided for through subordinate legislation (such as the NPF or NBA plans). In developing these instruments, those exercising these functions will be required, in doing so, to give effect to the principles of Te Tiriti, consistent with Te Tiriti clause in the NBA.
- The enabling framework incorporates:
  - principles of sustainability, equity, and efficiency to be set out in the NBA, with direction provided in the National Planning Framework (NPF)
  - the enabling of national direction on allocation approaches

[redacted]

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- requiring the inclusion of allocation approaches in plans.

- The proposed enabling framework for designing allocation approaches may allow local priorities and conditions to be better reflected and will reduce the current bias towards the status quo.

- However, the extent to which Te Tiriti principles are given effect to through the implementation of the allocation framework will be strongly influenced by the quality and clarity of direction in subordinate legislation, and will be dependent on other parts of the system. There remains a risk if there is no clear direction in the NPF that local decision-makers may apply Te Tiriti principles inconsistently when applying the allocation principles. In this circumstance, there would be a risk that equitable outcomes for Māori may not be achieved due to the potential tensions in applying the three allocation principles. This is because challenging decisions would need to be made about access to resources for iwi, hapū, and Māori, alongside existing users seeking recognition of existing investment, as well as other new users.

- In addition, developing national and regional instruments with iwi, hapū, and Māori will be needed to help give effect to the principles of Te Tiriti. Stronger roles for iwi, hapū, and Māori in governance and decision-making may increase the likelihood of achieving equitable access to resources for Māori.

- One of the desired outcomes of the allocation reforms is to remove first in first served. The first in first served approach (which has become the default method for allocation for resources managed under the RMA) is widely recognised as disproportionately disadvantaging Māori. The recommendation for allocation approaches to be set out in plans (in line with any direction issued in the NPF) is likely to result in a move away from a first in first served approach for the allocation of resources where the resource is scarce or approaching scarcity. These changes are intended to strike a better balance between the interests of existing and future users, including Māori.

- Implementation of new allocation approaches will take time, as NBA plans will take up to ten years to be introduced. It is likely that the current allocation approach of first in first served under RMA plans will continue until that time, which may continue to disproportionally affect Māori.

Recommendation on consenting (Recommendations 31, 34, 35, 37, 38, 39, 40, and 41)

- The recommendations that consents granted after the NBA is enacted, but before plans become operative, means that these consents will expire no later than three years after the NBA plans become operative (unless a consent is granted for a shorter period). These proposals are intended to reduce – but may not fully mitigate – the risk of iwi, hapū and Māori continuing to be locked out of access to resources that are approaching full allocation.

- The retention of the priority given to existing consent holders and the requirement to have regard to the value of existing investment at renewal in the period before NBA plans become operative, may also perpetuate the status quo and disproportionally affect Māori who do not have existing access to a resource.

- Additionally, iwi, hapū and Māori who have a consent for a resource that expires after the NBA is enacted, and prior to NBA plans being in place, may have their consents reissued, but for a shorter period of time. This may affect certainty for the resource consent holders (although this applies to all consent holders in this situation).

- The recommendation to enable the NPF to set maximum consent duration of less than 35 years and to set criteria through the NPF on consent duration may mitigate some risks of longer consent durations of consents being issued where this may be inconsistent with the principles of Te Tiriti. As discussed earlier, implementation of this will be dependent on clear direction in the NPF.

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- Decisions on the criteria for determining where longer consents may be allowed during the interim before plans are in place are to be delegated and will require further analysis, including in relation to potential Treaty impacts. The example list of potential uses provided in Recommendation 35 is not exhaustive, and consideration may be given to whether exemptions are needed for iwi, hapū and Māori (eg, as resource uses relate to Treaty settlements).

Recommendation on resource user charges and market-based mechanisms for allocating resources (recommendations 42, 43, 44, 45, 47, 48, and 49)

- Resource user charges may be prescribed for users holding a consent where a charge or rent is possible under the RMA currently, and where a limit or target is set for a resource allocated under the NBA (except for freshwater takes and diversions). Relevant Takutai Moana Act and any settlement legislation provisions intersecting with this charge will need to be protected where a charge is set or carried over.
- The Tribunal in Wai 153 in discussing geothermal resources found that it would be contrary to the principles of the Treaty for the Crown to impose a system of royalties … without first determining and giving appropriate effect to the interest of the claimants". The Tribunal also stated that "the wider public interest [in the resource] must be constrained so as to ensure that the claimants' [specific] interest in their respective taonga is preserved in accordance with their wishes".[23] Similar to the proposals above, those that look to put a charge in place will have to give effect to Te Tiriti principles, so in putting a charge the decision-making process will be important.
- The proposals may lead to more efficient use for all resources, which could support better environmental outcomes that are a core concern for Māori as kaitiaki, and/or, free up resources to enable more equitable access for iwi, hapū and Māori. There is a risk that the exclusion of freshwater takes and diversions from these proposals means these opportunities are not available for this resource.
- In setting these charges, it will be important that any provisions related to charges in Treaty settlements and other legislation are protected or upheld and that sufficient engagement with the relevant iwi and hapū is conducted. This includes:
    - The existing right of customary marine title group holders to receive royalties for sand and shingle imposed by regulations made under the RMA (section 84(2)b or the Takutai Moana Act)
    - Under the Takutai Moana Act, a CMT group is not liable to pay royalties for sand and shingle taken from in this area imposed by regulations under the RMA
    - Under section 64(4A) of the RMA, coastal occupation charges must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Takutai Moana Act.
- Further work will be needed to determine the matters identified in recommendation 45 (the details of the resource user charge) and the potential exemptions needed (recommendation 47). In doing so, there will need to be consideration of matters such as mana whenua rights and rangatiratanga (eg, the appropriateness of imposing a charge to access a natural taonga, who is going to set the charge, and who will receive the money), and the potential for disproportional impact on the Māori economy, acknowledging the specific relationship Māori have with the natural environment.
- The proposals to exclude freshwater takes and diversions from a resource user charge and that revenue cannot be generated by councils for freshwater takes and diversions may present missed opportunities for freshwater. This is discussed later in the context of Māori rights and interests in freshwater.

[23] Waitangi Tribunal, Preliminary Report on the Te Arawa Representative Geothermal Resource Claims, 1993 (Wai 153) at 34.

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Overall assessment

- Due to the range of dependencies on other evolving factors such as the wider RM reform, the timing and outcome of addressing Māori freshwater rights and interests, and implementation processes, it is challenging to state without any reservation whether the proposals in relation to allocation and user charges overall and in conjunction with the wider RM reform proposals together give effect to the principles of the Treaty. However, it is important that:
  - no fundamental options for addressing Māori rights and interests in freshwater are precluded in this paper that cannot otherwise be delivered in a different way or through legislative change in the future
  - the proposed legislative framework will require all persons making decisions and exercising powers in respect of allocation to give effect to the principles of Te Tiriti (the highest form of statutory protection available)
  - there are future decision points which anticipate Māori rights and interests in freshwater are resolved or at least options are not precluded in a way that is inconsistent with the principles of the Treaty.

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Appendix Four: Example draft Statements of Principle

Concept	Statements of principle
Sustainability	• Ensuring that allocation occurs and remains within any limits or targets • Preserving, protecting, and enhancing the environment when using resources • Preserving access of future generations to resources by retaining the ability to meet future needs • Ensuring the system is responsive to change and can adapt to climate change
Efficiency	• Maximising long-term environmental, social, cultural, and economic benefits and minimising costs • Incentivising industry good practice • Enabling administrative efficiency • Incentivises adoption of good practice and stimulates innovation
Equity	• Provides for the health needs of people • Providing a fair return for the private use of public resources • Ensuring that the resource allocation process is transparent • Providing access to new users • Recognising existing investment and the value of investment certainty

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Appendix Five: Summary of Agency and Local Government Feedback

Agency

General:

a. The proposals will be highly significant for primary sector stakeholders and rural communities and are likely to be highly controversial.

b. Concerns were raised that the proposals to require agencies to set allocation regimes across a large number of complex and highly technical resource and environmental limit areas in the first regional plan making process will be significantly challenging and is likely to lead to risk of plans being subject to litigation. This is likely to be a significant concern for joint committee members and the groupings they represent.

Allocation Principles:

a. Agencies expressed general support for the statements of principle.

b. Agencies consider that the statements of principle should be in primary legislation rather than defined through the NPF.

c. Some agencies consider that including the statements of principle in primary legislation could have unintended consequences to the NBA decision making framework.

Alternative Allocation Approaches:

a. Agencies are generally supportive of alternative allocation approaches being set in NBA plans.

b. Agencies consider that it should be mandatory that those approaches are directed through the NPF.

c. Agencies are concerned that in the absence of such direction, there is a risk that first in, first served, will remain the default approach.

d. Agencies support allocating resources within limits

Consent Reviews:

a. Agencies consider that new allocation regimes set in NBA plans will not be effective unless consents are reviewed

b. Agencies consider that more options should be available to review consents.

Consent Duration

a. Agencies are generally supportive of shorter-term consents, subject to exemptions and/or criteria being included to enable longer term consents to be granted, particularly for infrastructure proposals

b. Agencies wish to be involved in the development of criteria for longer term consents in the transition period

c. Agencies have interpreted the interim consent proposal as being 3 years. Rather, the policy intent is 3 years plus the time period between NBA enactment and NBA plans becoming operative

d. Some agencies are concerned with the interim duration of consents, which may range from 7-10 years, and consider this may have investment implications for existing and new users

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e. Some agencies are concerned with the 35-year maximum being retained with little justification

f. Some agencies support the retention of the 35-year term maximum

g. Agencies support the retention of unlimited durations for land use and subdivision consents, and coastal reclamations.

Resource User Charges

a. agencies are supportive of direction on resource user charges coming through the NPF and NBA plans.

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Appendix Six: Letter from [redacted] regarding Allocation proposals

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Agenda item 2:

Resource allocation and user charges

Summary slides

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Agenda item 2: Resource allocation and user charges

Background information

Allocation is about deciding who gets to use a resource

The RMA currently enables a wide range of allocation approaches for a number of resources, but there are barriers to implementing alternative approaches

In practice the approach of first in first served has been widely adopted, with some exceptions

- The Panel recommended that the NBA should retain the current allocative functions for resources in the RMA, but also provide an enhanced enabling framework for allocation and user charges.
- The proposals in this paper aim to balance providing opportunities for new users (including Māori) to come into the system and the interests of existing users in the system, by enabling the reallocation of scarce resources over time.
- A draft of this paper was considered by the MOG Māori Interests Subgroup on 7 March 2022.

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Problem definition

Limitations of current system become apparent when resources are scarce

The current system does not sufficiently recognise and redistribute the benefits accruing from the private use of public resources

- The current system is not sustainable, efficient, or equitable when resources are scarce as it has:
  - prioritised those with existing allocations, preventing new users from entering the system
  - provided little incentive to maximise value from a resource and surrender unused resources
  - in the case of freshwater, disadvantaged the owners of less developed land (who are disproportionately Māori).
- It is challenging to depart from first in first served in the current system, and charging tools are underused.

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Agenda item 2: Resource allocation and user charges

Proposals

An enhanced enabling framework to incentivise the use of more sustainable, efficient, and equitable allocation approaches

Preserve options for addressing Māori rights and interests in freshwater in the future

- Consistent with Panel recommendations, proposals aim to remove barriers to implementation of the enabling framework by:
  - introducing allocation principles (sustainability, equity, efficiency)
  - requiring joint committees to include resource allocation approaches in plans
  - shortening the duration of new consents issued during the NBA transition period (with exceptions) and making changes to users' rights on expiry of their consent
  - exploring changes to consent reviews.
- The proposals also enable:
  - the continuation of existing allocation approaches and resource user charges (eg, sand, geothermal, and coastal occupation)
  - resource user charges for other resources allocated under the NBA for which a limit or a target is in place, except freshwater takes and diversions
  - allocation approaches to include market-based mechanisms which can generate revenue for local or central government, except for freshwater takes and diversions.

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Agenda item 2: Resource allocation and user charges

Reform objectives and outcomes

Reform objectives agreed by Cabinet

1	2	3	4	5
Protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations).	Better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.	Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.	Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.	Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

The proposals support all reform objectives when combined with:

- Ministerial commitments to preserve options to address Māori rights and interests in freshwater
- direction in the National Policy Statement for Freshwater Management (freshwater is allocated and used efficiently, existing over-allocation is phased out, and future over-allocation is avoided).

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Discussion points

Preserving options for Māori rights and interests

- Are Ministers comfortable that at this stage the proposals do not preclude future decisions on Māori rights and interests in freshwater?
    - Note outstanding work on proposals for a preservation clause and statutory timeframe.

Transition

- Is the proposal to reduce the length of consents during the resource management reform transition (with criteria for exemptions) enough to mitigate the risk of resources getting 'locked in' for the long term?
    - Note that the ability to implement alternative allocation approaches depends on consent expiry for resources such as freshwater (both existing and those issued from now up until NBA plans become operative).

Balance between NBA and NPF

- Do Ministers agree that an enabling framework places additional importance on getting NPF direction on allocation to guide the first generation of NBA plans (eg, on consent duration, reconsenting and allocation approaches)?
    - Note that an enabling framework balances the need for national direction in certain circumstances and the desire for decisions to be made locally.

Market-based mechanisms

- Invite discussion on the proposals to exclude freshwater takes and diversions from resource user charges or market-based approaches that entail the generation of revenue for local or central government.

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MOG #16 Paper 3: Environmental Limits and Targets

Key messages and recommendations

Key messages

Limits and targets in the reformed system

- The current resource management system has imposed significant costs on both the natural environment and those interacting with it by often leaving it to individual consenting decisions to resolve what kinds of environmental impacts are acceptable. Consequences of that approach are:
  - less certainty at the outset about what kind of development will ultimately be permitted to take place, imposing costs on developers and other consent applicants, and
  - an unacceptable level of environmental degradation.
- Over recent years we have adopted various measures within the current system to address these impacts, largely in a domain-by-domain way. We now have limits or similar tools relating to air quality, water quality, soil, and some aspects of biodiversity, which will be brought over to the new system. Most notably, the National Policy Statement on Freshwater Management 2020 (NPS-FM) sets out "national bottom lines" for freshwater and requires local communities to set "target attribute states" at or above the state of the existing environment (or above the "national bottom line" if the current state was unacceptably degraded).
- The reformed resource management system carries through the basic approach of the NPS-FM and applies it across the system, via the introduction of a mandatory limits and targets framework. This paper proposes the following approach:
  - Limits will prevent further environmental degradation, relative to now, and would be set nationally in the National Planning Framework (NPF) or locally in Natural and Built Environment Plans (NBA Plans), with the NPF directing how to set local limits.
  - Targets will drive environmental improvement and will be set nationally in the NPF and locally in NBA Plans, after taking into account other objectives (for example economic development, costs of transition, intergenerational equity and risk of harm to ecosystems or human health). Targets must be set at a level that is at least equal to limits/current state.
  - Where the current state is unacceptable, the NPF will set out a target that regions must manage to (that is, a local target equal to the limit/current state will not be acceptable) – essentially the "national bottom lines" approach of the NPS-FM. This approach avoids limits locking in serious degradation.
- Limits and targets work together. Limits set the starting point – reflecting that we need to start where we are – and targets drive ongoing improvement. Most places will be managing to targets, because targets will generally reflect a higher level of environmental aspiration than limits.

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Changes from the Exposure Draft

- The approach proposed in this paper involves some changes relative to the proposals set out in the Exposure Draft for the Natural and Built Environments Bill, addressing the risks that the limits regime as set out in the Exposure Draft might be both under- and over-protective of the natural environment, in different circumstances.
- The primary changes are:
  - Limits to protect ecological integrity will be set at the current state of ecological integrity, as opposed to the Exposure Draft, which did not specify what level of ecological integrity was required (the wording of limits to protect human health is not proposed to change).
  - Targets for human health and ecological integrity of the natural environment will be mandatory. Targets may also be set for other parts of the natural and built environments. This approach contrasts with the Exposure Draft, which does not make targets mandatory and responds to feedback that limits alone will not be sufficient to drive improved environmental outcomes and uphold Te Oranga o te Taiao.
  - Provision for greater flexibility in meeting limits and targets (more detail below).

Flexibility in the system to support development within limits

- A core priority in designing the limits and targets regime is ensuring that the overall reform objective of development within limits is met, that is, that the limits and targets framework does not prevent New Zealand from carrying out the development it needs. Several proposed elements of the regime address this priority:
  - There will be an ability give infrastructure and other development preferential treatment via planning instruments at different levels (eg by specifying that their needs must be met before other activities can be allowed)
  - environmental limits and targets to be set within "management units" (eg, catchments in respect of freshwater)
  - offsetting in relation to effects of individual development proposals.
- Where planning instruments set out the way a type of development will be managed within limits and targets, or impacts can be accommodated within a management unit, individual developments should not face higher costs than they would have in the absence of limits and targets – that is, there will be no need for offsetting in respect of an individual consent. Where unanticipated development would breach a limit or target then that development may have to meet the costs of creating new headroom (noting that under the current system consents are already required to avoid, remedy, or mitigate their negative effects).
- How limits and targets will play out in different circumstances, and what costs (including opportunity costs) they will impose in terms of development is still uncertain, particularly in relation to limits and targets that do not exist in the current system. [redacted]
- [redacted]

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Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Issues arising from the status quo in the 2021 exposure draft

1. **Note** that two of the concerns about limits raised in submissions to the 2021 Exposure Draft proposals were that:
   a. limits could unnecessarily restrict development, because there was no certainty about the level that limits would be set at (the Infrastructure Reference Group echoed this concern)
   b. the natural environment could be degraded down to a limit, and degraded environments should be required to be improved.
2. **Note** that the point at which an environmental limit should be prescribed to protect the ecological integrity of the natural environment cannot in all cases be easily narrowed to an environmental tipping point as envisaged by the Resource Management (RM) Reform Panel (the Panel).

A revised basis for defining limits, and introducing targets

3. **Note** that making the current state of ecological integrity within a management unit the foundation for limits would provide an objective basis that increases certainty to communities, including developers, about how stringent limits can be.
4. **Note** that the approach to maintain or improve the current state of ecological integrity is consistent with existing national direction for the coastal environment and freshwater, and proposed for indigenous biodiversity.
5. **Agree** that the level of environmental limits to protect ecological integrity will be defined as the current state of ecological integrity.

   Yes/No
6. **Note** that environmental limits to protect human health will continue to be set to achieve health outcomes (eg, risk of infection or acute or chronic effects) informed by relevant health guidelines, rather than being based on the current state of the environment
7. **Agree** that environmental limits to protect human health will not be prescribed according to the current state of the environment.

   Yes/No
8. **Note** that targets for ecological integrity and human health will be required to avoid locking in existing unacceptable degradation of the natural environment, and ensure that those environments are improved and restored.
9. **Agree** that where a part of the natural environment is already unacceptably degraded, the NPF will set out a minimum level or target which regions must manage to (that is, a target equal to the limit/current state will not be acceptable).

   Yes/No
10. **Agree** that the NBA plans must include targets set at least at the level of the limit, or the NPF directed minimum level or target (whichever is higher quality), for each aspect of the natural environment for which limit attributes are prescribed.

    Yes/No

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11. **Note** that more detailed advice and recommendations will be provided on the criteria that will apply to decisions on minimum levels of targets that regions must manage to in situations where a part of the natural environment is degraded.

12. **Note** that requiring limits and targets to be set at a management unit scale can ensure that what is required to protect and restore the natural environment is identified, and made to happen, and give developers investment certainty, by clearly defining the envelope within which development can occur.

13. **Agree** that management units will be set at an appropriate spatial scale to ensure no net loss of current ecological integrity, protect human health, and achieve targets.

Yes/No

Confirming direction for future advice, including around flexibility to support development within limits

14. **Note** that a targeted exceptions regime was assessed as a way of better enabling essential infrastructure within limits, but this is not preferred.

15. **Note** that officials will provide further advice on the detail of how the environmental limits and targets regime will be designed to ensure its meets both environmental protection and development objectives, and finalise advice on whether a targeted exceptions regime is required, at MOG #17.

16. **Note** that this may include advice on further changes needed to better align environmental limits and targets with Te Oranga o te Taiao

17. [redacted]

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MOG #16 Paper 3: Environmental Limits and Targets

Purpose

1. This paper provides advice on a refined framework for setting limits and targets under the Natural and Built Environments Bill. Environmental limits and targets will be a core plank of maintaining and improving the natural environment under the reformed resource management system, particularly in relation to the objectives of protecting and restoring the natural environment and enabling development within environmental limits.
2. We are seeking agreement to the overall concept for limits and targets at MOG #16, with detailed decisions on the legislative provisions being sought at MOG #17.

Context

Status quo under the current system – uncertainty for developers and continuing environmental degradation

3. The Resource Management Act 1991 (RMA) does not set out mandatory limits or require them to be set, but the purpose of that Act does state that the life-supporting capacity of air, water, soil, and ecosystems must be safeguarded. This provides an unspecific objective for the minimum acceptable state of any limits set by local or central government in plans and national direction.
4. Central government began exercising its power to set national standards and bottom lines in national regulation in the 2000s once public awareness of degraded air quality, contaminated land, and then degraded water quality grew. However, environmental monitoring shows that New Zealand's natural environment is continuing to degrade, and is facing ongoing pressure, for example from some intensive farming practices, urban growth, and in places this will be exacerbated with climate change.
5. A problem with the RMA has been that many resource use activities are evaluated case by case with few clear limits or targets set in plans or national direction. Though the RMA required people to avoid, remedy or mitigate the effects of their activities, the combined effect of the mitigation was an incremental degradation of the natural environment. Cumulative effects on the natural and built environment have not been dealt with proactively and developers can face high costs designing their developments to meet unclear standards.

Status Quo – uncertainty for developers, continued environmental degradation

In the absence of limits in the form of minimum flows and maximum rates of take from rivers, lakes and groundwater being prescribed in regional plans, an applicant applying for a resource consent to take water would need to argue that their take, in combination with existing takes in the catchment, is acceptable. This requires some sort of assessment of environmental effects, where the applicant argues for what an acceptable state is by establishing the sensitivity and value of the receiving environment and alignment of their activity with planning policy, assesses the baseline state of the environment, accounts for the effect of all the other water takes and then argues whether there is sufficient room for their take. This exercise is repeated by all other applicants in the catchment, redoing the work (and not necessarily sharing it). Setting limits and accounting for cumulative effects for all freshwater bodies, as is now required by the NPSFM 2020, is more efficient when done upfront by local and central government, and made available to all.

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6. The RM Reform objective to "better enable development within environmental biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure" is intended to address these problems. The framework for environmental limits and targets in the NBA will require Ministers to ensure that the 'envelope' within which development can occur is determined up front, and then cascaded through the National Planning Framework (NPF), regional spatial strategies (RSS) and NBA plans.

Panel's recommendations

7. The Panel observed that a lack of clear environmental protections set by local and central government under the RMA made management of cumulative environmental effects particularly challenging. It said that a future management framework must ensure that biophysical environmental limits 'have teeth' and are set in a way that ensures sustainability and resilience, while also delivering environmental improvement and restoration when needed. The Panel recommended that:[1]

   a. mandatory environmental limits should be specified for certain biophysical aspects of the environment including freshwater, coastal water, air, soil and habitats for indigenous species

   b. Ministers and local authorities should be required to set targets to achieve continuing progress towards achieving the outcomes.

8. The Panel conceptualised limits as setting the lower boundaries of a 'safe operating space' in the natural environment, above biophysical tipping points.[2] To avoid a 'race to the bottom' local authorities could set more stringent limits than those directed by the Minister. In addition, targets would be used to orient the management approach towards continuous environmental improvement.

9. The 2021 Exposure Draft of the NBA enabled the Minister to set targets in the NPF, but this was not mandatory. The Environment Committee report recommended defining targets as providing timebound direction towards achieving outcomes.

Previous Ministerial Oversight Group decisions

10. At MOG #2 the MOG made these decisions on limits:

   a. the purpose of natural environment limits is to 'protect the life-supporting capacity of the natural environment and human health'[3]

   b. natural environmental limits should be set in a way that is flexible enough to accommodate different levels of environmental quality in different circumstances and locations, if provided for in the NPF[4]

   c. to adopt 'only the more general requirement for a "precautionary approach" when setting limits, rather than also including a "margin of safety" requirement'[5]

   d. noted that targets to support natural environment limits would be discretionary.

11. Between MOG #5 and MOG #6 the MOG agreed to replace the references to 'life supporting capacity' with a reference to 'ecological integrity'[6] and this was the direction included in the 2021 exposure draft.

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[1] Report of the Resource Management Review Panel, 2020. Recommendations 7 and 8, page 468.

[2] Report of the Resource Management Review Panel, 2020. See figure 1.1, page 67

[3] Rec 21 and 13(a)

[4] Rec 22

[5] Rec 23; Rec 3.16 and 3.17

[6] MOG 16 Minute, Decisions taken between MOG 5 and MOG6, Rec 20

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12. At MOG #6 the MOG agreed that: [7]

> Officials will provide advice on how the natural environmental limits will be defined, and how they will be used to assess infrastructure projects, including how this will then flow through to the effects management framework (avoid, remedy, mitigate) so that there is not any unintended, unrealistic or impractical curbing of infrastructure provision.

The purpose and scope of limits in the 2021 exposure draft

13. The 2021 Exposure Draft of the Natural and Built Environments Bill provided that the purpose of limits is to protect either or both of:
    a. the ecological integrity of the natural environment
    b. human health.
14. Two of the concerns about limits raised in submissions to the 2021 exposure draft proposals were that:[8]
    a. limits could unnecessarily restrict development, because there was no certainty about the level that limits would be set at (the Infrastructure Reference Group echoed this concern)
    b. the natural environment could be degraded down to a limit, and degraded environments should be required to be improved.
15. Submitters generally supported the purpose of limits being to protect human health and the ecological integrity of the natural environment. However, some submitters were concerned that the drafting did not explain which level of ecological integrity limits should secure. While the Panel envisaged that limits would be set above an environmental tipping point, not all ecosystems have such tipping points or points that can be accurately established. The uncertainty around where limits would be set meant that limits might be either very weak or very strong in practice, depending on the preferences of future Governments.
16. Further, the drafting did not prevent limits being set at a lower level of ecological integrity than the current state. This would be inconsistent with key aspects of the direction in the New Zealand Coastal Policy Statement 2010, the National Policy Statement on Freshwater Management 2020 and the proposed approach in the National Policy Statement for Indigenous Biodiversity.
17. The Environment Committee observed that the legislation needed more clarity about the parameters or constraints imposed by environmental limits for them to be effective. It also said that the Bill should specifically link the setting of targets as measurable directions to support the achievement of the environmental outcomes.

Proposal

18. This paper recommends changes to the approach of the Exposure Draft to address the risks of limits being over- and under-protective, in different circumstances.
19. The revised approach is that the current state of ecological integrity of the natural environment is used as the foundation for prescribing environmental limits, with targets having the role of driving improved environmental outcomes. Targets will also be set to ensure that ecological integrity is restored where it is already degraded. Targets will be

[7] Rec 28(ii)

[8] Departmental Report on the Natural and Built Environments Bill exposure draft 2021. https://www.parliament.nz/resource/en-NZ/53SCEN_ADV_111944_EN7947/04507cf313c5dd512769fbce7387db0e4d5974d2

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used to guide the priority given to further improvement to the natural environment more broadly, whether there is unacceptable degradation or not.[9]

20. This approach has limits and targets working together to, in the words of the first reform objective, "protect and restore" the natural environment. Limits set the starting point – reflecting that we need to start where we are – and targets drive improvement.

21. Ecological integrity is defined in the 2021 Exposure Draft as the ability of an ecosystem to support and maintain—

    a. its composition: the natural diversity of indigenous species, habitats, and communities that make up the ecosystem; and

    b. its structure: the biotic and abiotic physical features of an ecosystem; and

    c. its functions: the ecological and physical functions and processes of an ecosystem; and

    d. its resilience to the adverse impacts of natural or human disturbances

22. The approach proposed in this paper is a refinement to what was proposed in the Exposure Draft. The key difference is a more explicit separation of the concepts of "limits" and the concept of "targets", with limits' primary role being to set our starting point and targets driving improvement. The core elements of the proposed policy now involve:

    a. management units for each of the mandatory matters will be set, within which restoration or 'no net-loss' of current ecological integrity is achieved by specifying[10] environmental attributes and associated limits and targets

    b. mandatory targets will be set to help improve the environment, including where it is unacceptably degraded in its current state

    c. off-setting (and potentially environmental compensation) within a management unit can be considered to deal with unavoidable residual environmental effects of development (individually, and collectively across multiple development and restoration projects) to achieve no net loss

    d. limits to protect human health would still be prescribed according to relevant health guidelines, rather than no net loss, and targets would be required where the natural environment is degraded.

23. More specifically, the revised approach would require some changes to the direction that was proposed in the 2021 Exposure Draft as follows:

    a. The NBA would require that the overall current ecological integrity of the natural environment within a management unit is maintained/there is no net loss, and environmental limits cannot be prescribed below this state. (See paragraphs 43 to 48 for more detail on management units).

    b. The NBA would enable the Minister to prescribe targets in the national planning framework, or prescribe how plans would set targets, to require restoration and improvement of the natural environment above the current state. Such targets can address concerns that limits set at current state may lock in existing severe degradation (for example, where current state is worse than a national bottom line in the NPSFM 2020, or a standard in existing national direction).

    c. The NBA would direct the Minister to prescribe limits to protect human health in the national planning framework, or prescribe how plans would set limits, regardless of current state (as proposed in the 2021 Exposure Draft).

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24. The table below sets out the core differences between limits and targets as proposed by the RM Review Panel report, the Exposure Draft, and this paper:

Table 1: comparison of limits/targets proposals

	Limits & Targets proposals		
	RM Review Panel	*NBA exposure draft*	*Current recommendations*
Purpose of limits	Set the lower boundaries of a 'safe operating space' recognising that there could be several safe operating spaces, from pristine to degraded, above the bottom line.	To protect either or both of the following: (a) the ecological integrity of the natural environment: (b) human health	a) To prevent a net loss in the level of ecological integrity of specified aspects of the environment (compared to the state existing when the NBA is enacted) and / or b) protect human health.
Level limits are set at	Set above the conditions in which significant and irreversible damage may occur to the natural environment. Local authorities may set more stringent limits.	a) Minimum acceptable state of the natural environment, or a specified part of that environment, that will protect ecological integrity; b) the maximum amount of harm or stress that may be permitted on the natural environment or on a specified part of that environment.	Environmental limits to protect ecological integrity will be set at the current state.
How limits are set	Case by case basis - process of determining bottom lines and then appropriate level above that.	Case by case basis - Min acceptable state and maximum amount of harm determined for each limit.	Environmental limits are set at current state of ecological integrity within management units. Limits to protect human health based on risk.
Purpose of targets	Targets are binding and help focus effort on achieving outcomes and continuous environmental improvement.	Optional, at the discretion of the Minister, to set targets. No specific details provided.	Targets are mandatory for each of the domains that require limits and are set restore and improve the natural environment to levels above limits, particularly where the current state of the natural environment is degraded

25. In many respects, the approach proposed in this paper is a continuation of the direction the existing system is moving in. Most directly, this approach would align with the approach taken in the NPS-FM, where the ecosystem health of the water bodies must be maintained or improved, and would provide a reasonable level of certainty to developers and communities about how strict limits will be.

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26. Beyond freshwater, a number of other environmental domains are the subject of limits and targets in the current system, although there are some notable gaps, in particular around soil quality and biodiversity:

Table 2: Limits and targets in the current RM system versus the new one

Matters NBA will require limits for	Environmental Limits and Planning Controls in Current National Direction					
	Environmental limits		Planning controls on activities		Requirement for local limit	
	Natural Environment	Human health	Natural Environment	Human health	Natural Environment	Human health
Freshwater						
Coastal waters						
Estuaries						
Air						
Soil						
Indigenous biodiversity						

27. Limits and targets will be set or directed alongside the policies in the NPF that will implement them, including the design of the management units within which they will apply. RSS and NBA plans will then have to be designed to ensure that they are met. This contrasts with the RMA system, where the setting of limits was discretionary, incremental environmental degradation was caused by a succession of activities having minor effects, and thresholds of unacceptable effects were sometimes only determined through consenting and did not necessarily inform long-term strategic decisions such as the location of infrastructure.

Targets – the core means of driving ongoing improvements in the natural environment

28. Aspects of New Zealand's environment are already degraded to an unacceptable state (such as air quality in downtown Auckland and sedimentation of estuaries). As captured in the first objective of reform, the new system needs to do more than protect the environment; it must also restore it. On its own, the proposed approach to limits in this paper would halt degradation, but not deliver restoration and improvement of the natural environment. Limits stop things from getting worse, and targets drive improvement.

Examples for targets relating to built environments

One crucial difference between limits and targets is that targets need not be solely about the natural environment. Targets would provide an opportunity for government and communities to work towards achieving outcomes under the NBA, both for the natural and built environments within a specified timeframe. Examples of targets could be to achieve at least 10 percent indigenous vegetation cover within urban areas (as proposed in the proposed NPS-IB), or achieve a certain amount of extension of dedicated cycle lanes within urban areas.

A target to improve urban air quality degraded by motor vehicles would also contribute to achieving climate change outcomes if it was supported by methods in the NPF and plans to encourage cycleways and use of public transport.

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29. The strengthening of the role of targets is likely to address some of the concerns raised by submitters as part of the Exposure Draft process, particularly around the regime not delivering adequate environmental protection. The overwhelming concern raised about the design of limits in the 2021 Exposure Draft was the risk of a race to the bottom. Eighteen iwi groups made the point that this would not be consistent with Kaupapa Māori approaches or with the concept of Te Oranga o te Taiao, which is concerned with enhancing values, rather than managing to bottom lines.

30. While both protection and restoration/improvement need to be mandatory, they can be dealt with through different tools. This is mainly because there is no general consensus about the pace and degree of restoration and improvement that should be required. As such, the primary legislation should not 'lock in' a generic level of ambition for restoration and improvement. Instead, it needs to empower New Zealanders to revisit the pace and extent of restoration that is required from time to time, factoring in economic circumstances and other considerations.

31. To better deliver restoration and improvement of the natural environment at a rate that is achievable for communities, the NBA should require Joint Committees to set targets for each of the domains that require limits. Councils can work with communities to set and implement targets from a kaupapa Māori approach that is specific to each area.

32. Further, the targets for the natural environment must restore and improve the natural environment to levels above limits where the current state of the natural environment is unacceptably degraded. This approach will require a change to the previous MOG decision that determined the setting of all targets would be at the discretion of Ministers.[11].

33. Like limits, targets will be given effect to through RSS and combined plan provisions. There will be choices to be made about which activities are encouraged, and which are not allowed. As such, the design of management units and application of the effects management hierarchy will be relevant.

34. Most places will be managing to targets, because targets will generally reflect a higher level of environmental aspiration than limits.

When Joint Committees must prescribe targets in plans

An example from the current resource management system of when a target would be set centrally, is where a lake is not meeting the total nitrogen national bottom line in the NPSFM 2020. The target must require the current state of the lake to improve so that the national bottom line in the NPSFM 2020 is achieved. This would be a nationally directed minimum target. The plans must include methods to ensure the improvement is achieved within a specified timeframe, which is decided by the community.

35. As a separate issue, the new framework could also prevent 'backsliding' (where a future target sets a lower bar than the one it replaced). For example, the NBA could specify that targets could only be weakened where particular requirements were met (in a similar way that the Climate Change Response Act limits the ability to weaken emissions budgets). Officials will provide advice on the options for constraining or preventing backsliding for MOG #17 or in advice to inform delegated decision making.

36. Both the Minister (for the NPF) and joint committees (for combined plans) should have a discretion to make targets for any of the outcomes (for both the natural and built environments), provided that they would not prevent a limit, or a target related to a limit, from being met.

[11] See rec 28, MOG 3 Minute, and clause 11(3) of the 2021 exposure draft.

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37. The framework for limits and targets will accommodate temporary effects on ecological integrity and will generally not impact construction phase works unless these are significant in terms of their duration and effects. Emergency works will generally be carried out in response to natural hazard events and may require remediation if that is possible. Advice on this issue will be provided for MOG #17.

Flexibility in the system to support development within limits

38. A core priority in designing the limits and targets regime is ensuring that the overall reform objective of development within limits is met, that is, that the limits and targets framework does not prevent New Zealand from carrying out the development it needs. Several proposed elements of the regime address this priority, discussed in more detail below:

    a. provision for priority infrastructure and other development via planning instruments at different levels

    b. environmental limits and targets to be set within "management units" (eg, catchments in respect of freshwater).

    c. offsetting in relation to individual instances of proposed development

Provision for priority infrastructure and other development via planning instruments at different levels

39. One of the significant shifts the new resource management system is intended to bring about is a more strategic approach to planning how to meet a region's goals, across environmental management, development, infrastructure, and other goals a region might have. How to manage within limits and targets is part of that overall planning process. More specifically, Regional Spatial Strategies will identify areas where development can take place without breaching targets (or limits in some cases), and conversely will identify places – for example an area of significant biodiversity – where it can't.

40. Regional Spatial Strategies will also proactively plan for restoration and enhancement which can provide headroom, for example by securing and advancing habitat corridors. Regional Spatial Strategies will feed through into NBA Plans, which will set out more detailed rules for how targets will be met in a region. Consequently, before arriving at the point of seeking a consent, applicants will have much more certainty about what kinds of activities will be possible in different places within a region.

41. As well as environmental limits and targets, planning instruments will incorporate provisions intended to support development. A number of current system elements that support development are intended to be carried over to the reformed system, in particular the substance of the National Policy Statement on Urban Development and the fast-track consenting regime.

42. Early, more strategic planning for necessary development will generally make managing to limits and targets more straightforward. Because regions will know what the effects of existing and planned activities will be, they will be able to prioritise them in the rules to meet limits and targets (eg, by stating that other activities can only be consented if there is enough resource left for them after the needs of the prioritised activities have been met, or by identifying what restoration will be needed).

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What this approach looks like in practice will depend on various factors, in particular the sensitivity and resilience of the ecosystem to a type of development, the type and mix of development already occurring, whether the "current state" is a degraded one versus one with high ecological integrity, and also which environmental attributes are most relevant.

Working within no net loss of ecological integrity

There will be situations where the natural environment can absorb increased pressure without a change in its level of ecological integrity, for example some coastal or open ocean areas. There would be no net loss in that scenario if the ecological composition, structure, functions and resilience of the management unit are at least maintained. There might also be no net loss when development results in restoration or improvement of some aspects of ecological integrity. For example, a brownfield housing development in a former light industrial area might improve ecological integrity by increasing tree cover, and reducing impervious surfaces. This could also provide room for further development in the same management unit.

Where the natural environment cannot absorb the increased pressure, the developer will need to fully manage those effects within the management unit. For example, a greenfield development may need to avoid particular areas if their proposal would cause a loss in natural diversity of indigenous species, habitats, and communities that make up the ecosystem. Once appropriate locations are identified that don't cause such loss, they would follow the effects management hierarchy to remedy or mitigate effects. If these are not possible, they would need to offset or provide environmental compensation for those effects within the management unit so that the aspects of ecological integrity affected are at least maintained.

This approach will help direct greenfield developments to areas where the ecosystems are less sensitive to development. Such areas may be identified in RSSs, along with areas that are otherwise constrained, such as where the land is highly productive or subject to natural hazards.

Environmental limits and targets to be set within "management units" (eg, catchments in respect of freshwater).

43. Limits for each matter (air, coastal waters, freshwater, estuaries, indigenous biodiversity, and soil) will apply within a particular area or 'management unit'. These could look much like the freshwater management units used to implement the NPS for Freshwater Management, or the 'airsheds' regional councils use to manage air quality. (Note that the boundaries of the management units in a region may vary according to the domains of air, coastal waters, freshwater etc).

44. Within each management unit, some activities could generate a net loss provided that others generate a net gain that makes up for it. This approach allows for additional flexibility for development within limits and targets even when the particular development sought, and its environmental impacts, has not been addressed in a Regional Spatial Strategy.

45. Allocation systems can enable decision-makers to prioritise the activities that matter most, including new or expanded activities (note that decisions on the resource allocation framework will be made at MOG #16).

46. Given the potential trade-offs that may be contemplated within a management unit in terms of allocation and offsetting decisions, there is a risk the prescribing of the units may become as contentious as the limits that apply within them. For example, applying mātauranga Māori or protecting special ecosystems may require smaller units than is desired by major infrastructure providers. For this reason, the NBA will need to provide the overarching direction for how the Minister and joint committees choose the size and location of management areas.

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47. The NBA can require that the spatial scale of the management unit is sufficient to ensure that limits meet their primary purpose, and that the delineation of the units is informed by science and mātauranga Māori. That is, limits and targets must be able to protect human health and the ecological integrity of the natural environment within that management unit, consistent with the concept of Te Oranga o te Taiao. Once that is done, the system should aim to provide as much flexibility as possible. Detailed direction about the design of management units could be provided in either the NBA itself or in the NPF (giving effect to the NBA requirements), and could include specifying that joint committees are required to (for example):

    a. establish the largest possible management area that will allow loss or gain to be evaluated, for example by representative monitoring

    b. be satisfied that the size and location of a management area will meet a specific 'test' (eg, can enable the timely provision of appropriate infrastructure).

Setting management units

The NBA will set out the minimum requirements for management units, and further direction will then be provided in the National Planning Framework. Freshwater management units (FMUs) are already being set by Regional Councils for the implementation of the NPS-FM 2020. Councils have taken various approaches to setting FMUs but most have used major river or harbour catchment boundaries. These are large enough to allow for some headroom for new activities, but are likely small enough to take into account the specific ecological context (and value) of a water body (or group of waterbodies).

Management units for air, coastal waters, estuaries, soil and indigenous biodiversity, and their constituent parts, may overlap with these FMUs, may be nested within them, or may take in more than one FMU.

The mosaic of activities in the catchment will be managed through RSS and NBA Plans so that there is no loss in ecological integrity as evaluated by representative monitoring sites.

48. There are differing agency views as to whether all domains set out by the Panel are appropriate to have limits set for them. This largely relates to the difficulties in setting limits for biodiversity, which is affected by multiple pressures and where RMA remedies to date have focussed on habitat protection. Biodiversity is a cross-cutting matter for all domains. The Select Committee recommended that the Bill state that the Minister may set environmental limits that integrate the mandatory matters for which environmental limits must be prescribed (recommendation 13). Thus, limits may be prescribed for freshwater biodiversity, and for estuarine biodiversity.

Offsetting in relation to individual instances of proposed development

49. Where planning instruments set out the way a type of development will be managed within limits and targets, or impacts can be accommodated within a management unit, individual developments should not face higher costs than they would have in the absence of limits and targets. Where unanticipated development would breach a limit or target then that development may have to meet the costs of creating new headroom (noting that under the current system consents are already required to avoid, remedy, or mitigate their negative effects). Offsetting would not be required for every consent, only those that are unplanned and whose environmental impacts cannot otherwise be managed.

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50. An example is a situation where a housing development requires the clearance of a small area of mixed native/non-native scrub. In this context it may be possible to replant a new area (within the same management unit) with indigenous vegetation to account for the loss of habitats and species that make up the ecosystem at the construction site. But because new plantings are not a "like-for-like" replacement of the original habitat, additional actions may be required to ensure no net loss of ecological integrity is achieved. These actions could include improving the ecological function of the new plants by establishing connection to ecological corridors to better enable recruitment of species from more established areas, and pest control to improve resilience of the new area of vegetation. There will be situations where offsetting isn't appropriate because the remediation provided by the offsetting cannot be realised within a generation (25 years is generally used to guard against the risk of works being deferred and never actually realising the remediation as intended).

51. Both the NPS-FM and the proposed National Policy Statement on Indigenous Biodiversity have direction for implementing an effects management hierarchy, including offsetting and environmental compensation, to achieve no net loss of freshwater ecosystems and biodiversity respectively.

52. Agencies have differing views on whether effects should be managed according to a hierarchy of avoid, remedy, or mitigate, followed by offsetting and environmental compensation, or whether the choice of how to achieve no net loss should sit with the developers. Officials will be providing advice on when and how offsetting should apply for MOG #17.

Inherent flexibility suggests no strong case for an exceptions framework

53. Including a targeted exceptions regime was assessed as a way of better enabling public infrastructure under the new system (see option 2 in Appendix 1). The exceptions frameworks in the NPS-FM (to accommodate five large hydro schemes and two vegetable growing areas) do not allow for any degradation below current state. In both cases, the NPS-FM sets out very limited circumstances where a current degraded state may remain below a national bottom line and not be required to improve. It does not allow existing or new activities to cause a degradation of the current state within a management unit.

54. The limits and targets regime's inherent flexibility suggests that there is not a strong case for including an exceptions framework at the outset. Furthermore, an exceptions framework would largely defeat the purpose of having limits and targets at all. Each request for an exception would require an ad hoc decision to be made about the extent to which the limit or target should be breached. Effectively, the decision maker would have to determine just how much environmental degradation should be allowed, and what the "real" limit should be.

55. However, how limits and targets will play out in different circumstances, and what opportunity costs they will impose in terms of development (and who will bear those costs) is still uncertain. One necessary impact of the limits and targets regime will be that costs that were previously borne by the environment will be borne by people who want to use it, in different ways. Exactly what that will look like, particularly in relation to limits and targets that do not exist in the current system (eg, around soil quality and biodiversity), is not certain.

56. While an exceptions regime could provide a means for managing those costs if they are unexpectedly or unacceptably high, our preference is for the limits and targets regime not to have any exceptions. We note that Ministers will have various tools to manage unexpectedly high impacts on development within the system, in particular the Minister could:

    a. consider whether the current target is correctly configured, and if not revise it

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b. consider whether the management unit could be adjusted without undermining the purpose of the relevant limit

c. if (a) and (b) do not resolve the problem, consider using special legislation to provide for the activity. This could take the form of legislation for 'one off' projects (such as the legislation used for Rugby World Cup activities). This approach would provide transparency and enable a rigorous debate about whether the breach is warranted.

57. [redacted]

Summary

58. Taken together, limits and targets set a framework within which development is enabled while at the same time delivering improvements in environmental quality over time, starting from where we are now.

59. Whether specific developments will be able to take place under the new system will depend on their own individual circumstances, and while the intention is to allow for the infrastructure development New Zealand needs, the overall opportunity costs are to some extent unknowable today, particularly in relation to limits and targets for environmental domains that do not exist in the current system (eg, soil quality and biodiversity).

60. This paper seeks Ministers' agreement to the overall approach to limits and targets. More detailed advice will be provided (either for MOG #17 or as a delegated decision), including on:

a. how limits and targets will uphold Te Oranga o te Taiao

b. the criteria and considerations that should apply to decisions on:

i. management units

ii. offsetting and environmental compensation

c. the criteria that should apply to decisions on:

i. mandatory targets

ii. nationally directed minimum targets (bottom lines)

iii. discretionary targets

d. the process for making limits, targets and the NPF and plan content to implement them

e. the requirements and processes for monitoring the effectiveness of limits and targets, and revising them if they are ineffective

Treaty impact analysis

61. A full summary of the analysis of Treaty impacts of the proposals in this paper is attached in Appendix 3.

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Engagement

Agency feedback

62. Agency feedback has focused on whether the proposals in this paper adequately address the risks of the limits and targets regime either under- or over-protecting the environment. Agencies are generally now comfortable that the strengthening of targets, particularly their use in areas where the "current state" is one of unacceptable degradation, addresses the risk that the limits and targets regime will provide insufficient environmental protection.

63. [redacted]

Local government

64. Several local government submitters on the exposure draft, including Auckland Council, Otago Regional Council, Queenstown Lakes District Council, and Whangarei District Council were concerned that the purpose of limits would allow degradation to the limit and that there should be an explicit direction to require improvements generally. Many local government submissions specifically supported mandatory and time-bound targets to complement limits, especially in severely degraded areas.

65. Some councils wanted to be able to prescribe limits locally, in particular for biodiversity, and for matters not included in the exposure draft such as geothermal energy or noise.

66. Some local government submitters including Auckland Council, Bay of Plenty Regional Council, and Kaipara District Council were concerned about the nature of limits and how that would impact development outcomes, in particular the provision of infrastructure.

67. The Local Government Steering Group discussed the option of no net loss of ecological integrity, and did not disagree with the concept. Some members observed that they will need to resolve achieving good urban development while achieving "no net loss" and that central and local government will all need to step up in terms of environmental monitoring.

Iwi/Māori groups

68. Most iwi/Māori submitters on the exposure draft, includin [redacted] agreed with the concept of environmental limits, but expressed concern that the environment would be degraded to the limit. Most iwi/Māori submitters further supported mandatory targets to work towards restoring and then protecting the natural environment. These submitters also tended to oppose setting limits and targets at the national scale and instead wanted these set at regional and local scales using mātauranga Māori.

69. [redacted]

70.

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Paper 3 – Environmental limits and targets, Appendix 1

Opportunity – change the purpose of limits in the 2021 exposure draft		
That the Natural and Built Environments Act (NBA) require that there is no net loss of the ecological integrity of the natural environment within a management unit, and that this becomes the foundation for prescribing limits to protect the ecological integrity of the natural environment (option 5 below). • **This proposal would improve the direction for limits, which would otherwise allow the natural environment to degrade to a suite of limits, and will improve certainty to infrastructure providers** • **The cost impacts will be felt by agencies proposing new developments, including infrastructure owners who wanted greater certainty for consenting pathways, the environmental impacts will be to stop degradation of the environment** • [redacted] • **The status quo of the Resource Management Act 1991 (RMA), which has no requirement to prescribe limits, is not protecting the natural environment from ongoing pressures and providing no certainty to developers.**		
Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Option 1: Retain the direction for limits that protect ecological integrity in clause 7(1) of the 2021 exposure draft,	• Consistent with the Cawthon report (McFarlane et al[12]) which recognised that limits are a values decision. • Opportunity for elected officials to further guide national direction through normative limits.	• The natural environment may be allowed to degrade to a suite of limits • A limit could be prescribed below the current state of the natural environment • The system did not allow local govt to prescribe more stringent limits as recommended by the Resource Management Review Panel (the Panel) • The ambiguity about what is sufficient to protect ecological integrity would mean that conventions and norms would need to be worked out case by

[12] https://environment.govt.nz/publications/environmental-limits-a-proposed-framework-for-aotearoa-new-zealand/

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and targets are discretionary	• The impacts and benefits of a particular level for a limit are evaluated case by case • Limits can be set above current state • The need for indicator monitoring of environmental current state can be integrated with, and further advance, environmental monitoring under the environmental reporting act and compliance monitoring.	case as part of the limit setting process, may cause community disputes, and there could be an increased risk of legal challenge • There will only be a small suite of limits ready when the legislation is made. Preparing defensible limits takes time and even a large suite cannot comprehensively protect the ecological integrity of the natural environment.
Option 2: provide circumstances for the national planning framework to adopt more lenient local limits for infrastructure	• Similar to the approach for large hydro schemes in the NPSFM 2020 • Provides transparent criteria for allowing a more lenient local limit (eg,"options to create headroom within the limit have been exhausted, must uphold all negotiated Treaty settlements, the level of the local limit is reviewed at least every ten years") • It may better enable the expansion and continuation of renewable energy generation, contributing to objective 4 of the reform • It may reduce lobbying for a more lenient national limit	• Does not achieve objective 2 of the reform because there would be places where infrastructure would not be operating within a limit • Listing the circumstances, or specifying infrastructure, in the national planning framework introduces delays. • [redacted] • The infrastructure reference group remained concerned that there would still be uncertainty associated with not knowing how many limits there will be and the spatial scale at which they will operate. • Continued operation in breach of a limit means continued pressure on resources and compromises the ability to apply an equitable and effective allocation regime
Option 3: require plans to follow a hierarchy of use where public good infrastructure has a	• Similar to te Mana o te Wai in the NPSFM 2020, which will be carried over and has widespread acceptance. • Could provide an easier consenting pathway for infrastructure that reduces greenhouse gas	• May need to distinguish between various infrastructure providers, eg, for energy, telecommunications, transport, waste disposal, water supply, hospitals, schools, prisons, parks and public housing

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higher priority than other developments	emissions or provides for climate change adaptation • Can apply to all planning requirements, not only the limit-setting requirements • The need for indicator monitoring of environmental current state can be integrated with, and further advance, environmental monitoring under the environmental reporting act and compliance monitoring.	
Option 4: require applicants to follow an effects management hierarchy and meet targets, regardless of limits	• Incentivises better development for all activities regardless of limits • Offsets and compensation could restore and improve the natural environment and contribute to objective 1 of the reform. • This is necessary for managing resources within limits regardless of the threshold for limits • The need for indicator monitoring of environmental current state can be integrated with, and further advance, environmental monitoring under the environmental reporting act and compliance monitoring.	• Not different from RMA, which places costs on developments • Needs clear national direction for applying offsetting and compensation requirements
Option 5: Adopt "no net loss of the ecological integrity of the natural environment within a management unit" as the foundation for	• "No net loss" provides increased certainty for developers and decision makers around levels of limits • Setting limit levels at no worse than 'current state' is better suited to applying mātauranga Māori because it can be more place-based	• Relies on community acceptance of the spatial scale of the management units. This will need clear policy direction in the NPF. • Relies on equitable and efficient management of effects across a management unit (eg, through allocation policies for existing and new resource uses, and applying the effects management hierarchy). This will need clear policy direction in the NPF.

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prescribing limits to protect the ecological integrity of the natural environment	• "No net loss" provides a backstop while more limits are developed because only a small suite of limits will be ready when the legislation is enacted • The need for indicator monitoring of environmental current state can be integrated with, and further advance, environmental monitoring under the environmental reporting act and compliance monitoring. • "No net loss" with offsetting and environmental compensation could halt and reverse some of the existing environmental degradation • Mandatory targets will drive restoration and enhancement as envisaged by the RM review panel • The threshold for a minimum acceptable state is less complex than determining an acceptable level of "no more than minor" effects case by case • Mandatory targets can be used to retain NPSFM 2020 policy direction to improve freshwater where the current state is worse than a national bottom line • No net loss better aligns with international practice in comparative jurisdictions, such as the UK, which requires net gains across economic, social and environmental domains. • Provides an opportunity to set general national direction for 'no net loss' - eg, where current state	• Relies on clear protocols to assess current state, especially for indigenous biodiversity. This work is already needed to meet proposals under the National Policy Statement on Indigenous Biodiversity. • Limits will largely be based on modelling exercises because there is a lack of comprehensive data for many environmental matters • The increasing speed of climate change will force periodic reviews of limits and associated policies to achieve no net loss of ecological integrity (eg, more planted riparian corridors to mitigate more frequent low river flows)

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	is unknown or poorly defined at the time a consent application is lodged	

Conclusion

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Paper 3 – Environmental limits and targets, Appendix 2
Summary of the costs and benefits of the options considered

1. One of the objectives of the RM system reform is improved system efficiency, which has partly been interpreted as a lessening of costs. Overall, the NBA is expected to achieve this through streamlined planning systems that are directed by the National Planning Framework and other gains in system efficiency such as improved monitoring and oversight.

2. It is difficult to assess the costs and where they will fall from the limits and targets framework proposed. This is because of the significant uncertainties and assumptions around how the future RM system will work, and the difficulty of comparing this to the counterfactual under the current RMA system. For example, costs associated with the limits and targets framework are likely to overlap to some degree with costs that would have been incurred by system actors anyway under the RMA in response to increased community expectations for improvements to the natural environment and the need to mitigate and adapt to the effects of climate change.

3. Limits and targets need to be considered in the context of other design features of the new RM system intended to enhance or protect the natural environment (eg, NBA outcomes for the natural environment, requirements in the NBA purpose to uphold Te Oranga o te Taiao, requirements to avoid, remedy, mitigate adverse effects).

4. It is expected that the limits and targets framework proposed in this paper will contribute to efficiency gains, but in some respects increase, and in other respects decrease costs.

5. Limits and targets are likely to increase costs in regard to;
   a. setting new targets
   b. increased needs for data, evidence, data and information
   c. system monitoring, review, oversight, compliance.

6. A high proportion of these costs will be incurred when limits are set and provision of the science and evidence to support decision making for limits and targets will be borne by Councils and Central Government.

7. A strong and enforceable, monitoring, review, and oversight system is needed to ensure environmental limits and targets are complied with so system outcomes can be achieved. This will require an increased focus on, monitoring, review, and oversight of limits and targets and will incur increased costs, compared to the current system. While a portion of these costs will be borne by the consent applicant via consent conditions, most of the onus to support the system will fall to Councils and Central government.

8. There is a strong environmental and economic case for investments like these. However, this remains a choice.

9. Limits and targets are likely to decrease costs in regard to:
   a. benefits of better defining the development envelope
   b. less consent specific science needed
   c. efficiency gains through improved forecasting and modelling limits and targets.

10. All three of these decrease in costs will mostly be applied at a consent level and rely on better upfront planning by central and local government.

11. Limits and targets will help define the development envelope through the upfront establishment of an environmental baseline and better measurement of cumulative impacts. Increased certainty will make development parameters, and how the effects management hierarchy applies, clearer.

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12. There will be less of a need to produce consent specific science as an increased portion of this will be undertaken during the setting and monitoring of limits. Better information and data will lead to improved forecasting and modelling limits and targets and contribute to resources being used, conserved and allocated in a more efficient way

13. [redacted]

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Paper 3 – Environmental limits and targets, Appendix 3
Treaty impacts analysis

Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori: Reform objectives and outcomes

Policy options	Analysis
No net loss of current ecological integrity within a management unit	Limits will be set to prevent a net loss in the current state of ecological integrity. They will be set using a combination of western science and mātauranga Māori in order to determine the current state, and will be given effect to through policies, rules, standards and other methods. The shift from setting ecological integrity limits based on standards that define a minimum acceptable state, to being set at current state with a 'no net loss' direction, addresses widespread iwi/hapū concerns that limits would result in a 'race to the bottom.' These limits will also support Te Oranga o te Taiao, as any further degradation will be prevented and primacy is given to protecting the health of the natural environment. The use of management unit scales for limits (see below) could mean that valued sites or areas within them may require additional protections (ie, through NPF direction and RSS and NBA plan development). The process for developing limits and targets has not yet been decided. However, at a national level, it will require input from mātauranga Māori experts to assist in defining suitable attributes/indicators to protect ecological integrity from a te ao Māori and mātauranga Māori perspective, determining current state of the attribute/indicator at management unit scales, and provide advice on setting targets. At a local level, iwi/hapū will be actively involved in limit and target setting processes through Mana Whakahono a Rohe and other existing and strengthened engagement agreements, and there will be iwi/hapū representation on NBA Plan Committees to ensure Māori perspectives are considered in limit and target setting. This process would provide opportunity for Māori experts and wider iwi /hapū to effectively participate in both national and local limit and target setting processes. Additional opportunities to influence national strategic direction through the NPF, and local strategic direction through RSSs and NBA plans, needs to also be provided for in order to ensure the implementation of limits and targets through policies, rules, standards, methods etc. adequately reflects te ao and mātauranga Māori. The use of management unit scales for setting limits will enable better application of mātauranga Māori at place and will direct more comprehensive environmental monitoring, including local taonga species and their habitats. The protection that limits will provide will prevent cultural values relating to the natural environment from further decline. Specific recognition of mātauranga Māori in national and local limit-setting processes will provide for better measurement and monitoring of cultural values. Further, the certainty provided by determining that current state is the 'line in the sand' will better enable

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	sustainable use, including by Māori exercising customary rights (eg, mahinga kai), and increase capacity for Māori to be kaitiaki and protect the mauri of the natural environment with better local information. We consider limits are consistent with Treaty settlement arrangements, as they act to protect the current state of the natural environment and do not prevent any functions being exercised by entities and arrangements established by Treaty settlements. However, there could be effects from limits requiring 'no net loss' that may disproportionately impact underdeveloped Māori land (see *Costs and benefits* below). Limits and targets are unlikely to contribute to equitable access to resources for Māori because they will not in themselves provide resource access for Māori. However, the implementation of limits and targets will be supported by an allocation regime that could help address inequities in the 'first in first served' allocation approach of the RMA. The development of limits and targets will require both central and local government to increase capability to effectively integrate mātauranga Māori with western science and utilise this information in planning and other decision-making (eg, consenting). There is currently growing central and local government capability building to apply mātaurnaga Māori to freshwater management, however to date this has been approached in an ad hoc manner with significant regional variability. Each limit (and complimentary target) will require mātauranga Māori and te ao Māori to be considered, and implementation will require capability building, particularly locally, to apply these perspectives into decision-making.
Mandatory targets to improve the natural environment	The requirement to set targets will mean that improvements to the natural environment will be mandated. The extent and rate of change required will generally be determined at a local level, however the proposed approach is that targets will, at a minimum, require restoration and improvements to current state, in particular where that is degraded (eg, worse than a national bottom line or standard). Decisions on additional improvements are expected to involve engagement with local communities and tangata whenua through a process similar to the National Policy Statement for Freshwater Management (NPS-FM). As with limits, targets will be achieved through policies, rules, methods, standards, and other provisions which will enable improvements in the state of the natural environment to be achieved over time. Targets also work towards achieving Te Oranga o te Taiao, as targets will recognise where unacceptable degradation of the natural environment exists and require improvements to at least an acceptable state. Target setting is expected to provide an opportunity for Māori to influence national and local strategic direction, as targets will require a broader application of te ao Māori and mātauranga Māori to enable improvements to the natural environment to be made over time. As

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	noted above, local target setting will be underpinned by engagement with Māori through Mana Whakahono a Rohe and other agreements, and iwi/hapū representation on NBA Plan Committees will provide opportunity to influence how aspirational targets will be. We consider target setting to be consistent with, and in many cases could compliment, Treaty settlement arrangements, as a core feature of these arrangements is often to restore and enhance the state of the natural environment. It is important to note that built environment targets are still proposed to be discretionary. However, where set, they are expected to provide an opportunity for Māori to influence strategic decisions on how to achieve all NBA environmental outcomes from a te ao perspective.

Costs and benefits for Māori

Policy options	Analysis
No net loss of current ecological integrity within a management unit	There may be costs to Māori associated with participation in the limit and target setting process, NPF development and broader NBA planning processes. In order to set limits and targets, te ao Māori and mātauranga Māori expertise will need to be utilized and this engagement could carry costs to participants. We expect there will also be costs to engage in the NPF development and NBA planning processes, where the policies, rules, methods and other provisions to give effect to limits and targets will be developed. There may also be indirect costs for Māori landowners who have underdeveloped land as the policy will require current (and future) uses of the environment within a management unit to avoid a net loss in ecological integrity, for example from more efficient effects management. It is important to note the proposal will still allow some activities to generate a net loss in ecological integrity, provided there are gains in other activities that make up for it. This proposal will rely on clear policy direction through the NPF on effects management, and allocation policies to ensure limits can be achieved while still enabling new development and resource use that contributes to economic, social and cultural outcomes, including for Māori. As the policy will apply across the country in a blanket manner (ie, areas with higher and lower levels of degradation in terms of ecological integrity will be required to prevent a net loss) there may be disproportionate effects for underdeveloped land owned by Māori. Limits will protect the mauri of the natural environment, which ultimately benefits all New Zealanders including Māori. Limits and targets will help to protect and enhance the mauri of the environment, ultimately benefitting all New Zealanders. However, limits and targets will reflect te ao Māori, including mātauranga Māori, and is expected to better enable Māori to express kaitiakitanga. In addition, iwi and hapū having greater involvement in decision-making about regional and local limits and targets is expected to deliver more

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	beneficial outcomes for Māori over the long term, due to the increased recognition of mātauranga Māori and better understanding of local cultural values by decision-makers, for example.
Mandatory targets to improve the natural environment	There are no direct costs to Māori associated with this proposal. There will however be indirect costs for Māori landowners and current/future resource users as improvements to the state of the natural environment will be required to achieve targets. Additionally, as noted above, there will be costs for Māori to engage in the process for setting limits and targets, such as to provide expert mātauranga Māori advice, and input into broader NBA planning processes. Mandatory targets for the natural environment will benefit Māori through enhancing the overall mauri of the environment, improving kaitiaki relationships with ancestral land, and providing more opportunities to exercise customary rights (eg, mahinga kai).

Protecting and transitioning Treaty settlements

Policy options	Analysis
No net loss of current ecological integrity within a management unit **+** **Mandatory targets to improve the natural environment**	Without specific limits and targets having been developed, it is unclear what impacts they may have on Treaty settlement arrangements. All proposed limits and targets will be assessed for any potential impacts on Treaty settlement arrangements. However, we consider at this stage it is unlikely that the actual limits and targets themselves will impact on Treaty settlements as they have different purposes. Limits and targets will introduce 'standards' that will need to be complied with. Treaty settlements are fixed in time, so tend not to explicitly address evolving environmental issues. [redacted]

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	[redacted]

Waitangi Tribunal Recommendations

Policy options	Analysis
No net loss of current ecological integrity within a management unit **+** **Mandatory targets to improve the natural environment**	The Waitangi Tribunal made recommendations that relate to environmental limits and targets in Wai 2358: The Stage 2 Report on the National Fresh Water and Geothermal Claims (2019). The Tribunal recommended that: • The NOF be fully populated as soon as possible so that national water quality standards are comprehensive and effective. This should include attributes and bottom lines for wetlands, aquifers, and estuaries, and more effective controls for nutrients; • More stringent national bottom lines should be set so as to recognise and provide for Māori values (including Te Mana o te Wai – the health of the water body must come first) and the revised overall aim of the NPS-FM; • A national co-governance body should be established with 50/50 Crown–Māori representation, to ensure that Treaty principles and Māori values, rights, and interests are fully incorporated in freshwater policy and management; and • The Crown and the national co-governance body should consider the promulgation of National Environmental Standards, including a standard for ecological and cultural flows (which has been on hold for some years). Some of the recommendations made in Wai 2358 were partially addressed through the National Policy Statement for Freshwater Management 2020. Limits and targets expands on the NPS-FM approach by applying a 'maintain and improve' policy framework across other environmental domains. Limits that require no net loss of ecological integrity will act as more stringent controls that prevent further degradation which in turn negatively impacts cultural values and diminishes the ability for Māori to exercise customary rights. Meanwhile, targets will mandate environmental improvements which will act to shift behaviour and decision-making cycles that have traditionally viewed natural resources as a commodity to be used and degraded, towards recognising natural resources as intrinsically

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	valuable that must actively be restored where degraded and enhanced. The Waitangi Tribunal also made commentary and recommendations relevant to environmental limits and targets in Wai 262: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity. Wai 262 highlights the importance of recognising and protecting kaitiaki relationship with taonga species and mātauranga Māori. A Treaty-compliant resource management system needs to deliver on outcomes including: • partnership models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard; and • effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others Preventing net loss to ecological integrity through limits will provide better protection of taonga species and their habitats, and the use of mātauranga Māori will ensure appropriate measures are used and subsequently integrated into monitoring. Where limits and targets are set locally, it will be important for policy direction that enables iwi/hapū to influence decision-making (eg, how ambitious targets should be) and promote place-based interests to be reflected in planning.

Māori rights and interests in freshwater and other natural taonga

Policy options	Analysis
No net loss of current ecological integrity within a management unit **+** **Mandatory targets to improve the natural environment**	Māori interests in freshwater and other natural taonga could be enhanced by environmental limits and targets that incorporate Māori values, mātauranga Māori and the whakapapa relationship between Māori and natural taonga. This is expected to complement policy direction in the NPS-FM that provides for the protection and improvement of Māori values (eg, mahinga kai) which will be carried over through the NPF. Participation in the development of limits and targets may contribute towards Māori exercising rangatiratanga under the NBA and acting as kaitiaki in environmental management. Successful implementation of limits and targets could improve the mauri of the environment and ultimately help to achieve iwi and hapū objectives for freshwater and other natural resources, particularly by securing a healthier state of the environment for future generations. The purpose of limits and targets is focussed on protecting and enhancing the environment, and they are unlikely to provide opportunities to address broader issues around Māori rights in freshwater and other natural taonga. However, refreshed allocation principles and frameworks may redress existing inequity in the 'first

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	in first served' RMA allocation method that has traditionally disadvantaged Māori landowners.

Māori Crown relations risks and opportunities

Policy options	Analysis
No net loss of current ecological integrity within a management unit + Mandatory targets to improve the natural environment	The issues with the RMA not giving an effective role for Māori and limited participation in the system have been discussed by the Waitangi Tribunal and the Resource Management Review Panel. The development and implementation of limits and targets has been highlighted in MOG papers as an opportunity to address some of these concerns. Limit and target setting is expected to provide an opportunity for Māori to integrate mātauranga Māori and te ao Māori perspectives. Where limits and targets are proposed to be made at the national level, this will provide particular opportunities for MfE and Ministers to engage with Māori, integrate Māori knowledge into decision making, and build lasting relationships that will also increase MfE's capability to integrate mātauranga Māori and te ao Māori into its other functions (eg, environmental reporting). As mentioned, there will need to be ample consideration given to when limits and targets should be set locally, and for policy direction that enables a process for iwi/hapū to be involved, contribute mātauranga and te ao perspectives, and have influence over decision-making.

Overall assessment

Policy options	Analysis Based on your analysis so far, what is your overall assessment of how well the option will contribute to a more Treaty consistent RM system?	Rank Rank the options – 1 being the option most likely to contribute to a more Treaty consistent RM system
No net loss of current ecological integrity within a management unit	Changing the purpose of limits for ecological integrity to result in no net loss will provide better protection for the natural environment than the status quo and address iwi/hapū concerns around a 'race to the bottom.' They will incorporate mātauranga Māori and are expected to provide better recognition and protection of taonga species and the overall mauri of the natural environment.	2

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Mandatory targets to improve the natural environment	Natural environment targets will require improvements to be made to the natural environment where it is degraded, with scope for higher aspirations to be made. Improvements made through targets will increase opportunities for customary activities, better connect kaitiaki with ancestral land and restore and enhance the mauri of the natural environment.	1

Engagement

Policy options	Analysis
No net loss of current ecological integrity within a management unit + **Mandatory targets to improve the natural environment**	

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Agenda item X:

Environmental Limits and Targets

Summary slides

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Agenda item X: Environmental Limits and Targets

Background information

The current system imposes costs on the environment and on those interacting with it

There is less certainty at the outset at what kind of development will be permitted

Cumulative effects on the natural environment have not been dealt with effectively

- Developers can face high costs designing their developments to meet unclear standards
- Assessing activities case by case with few clear limits has contributed to incremental degradation of the natural environment
- The Panel recommended that environmental limits should set clear biophysical boundaries above which there is a safe operating space
- The Panel also recommended that targets should direct continuing progress towards achieving environmental outcomes

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Problem definition

Limits as set out in the exposure draft:

Could unnecessarily restrict development

Could enable degradation down to a limit

Did not promote improvement of the environment

- Changes to the approach are proposed to address the risks of limits being over- and under-protective, in different circumstances:
  - the current state of ecological integrity of the natural environment is used to prescribe environmental limits
  - targets have the role of driving improved environmental outcomes
  - set to ensure that ecological integrity is restored where it is already degraded
  - guide the priority given to further improvement, whether there is unacceptable degradation or not.

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Flexibility to support development

The limits and targets framework should not prevent New Zealand from carrying out the development it needs.

- Provision for priority development from a more strategic approach to planning via RSSs and NBA plans
- Environmental limits and targets are set within "management units" - some activities could generate a net loss provided that others generate a net gain that makes up for it
- Offsetting where appropriate in relation to individual instances of proposed development
- This flexibility suggests any exceptions would largely defeat the purpose of having limits and targets at all

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Agenda item X: Environmental Limits and Targets

Reform objectives and outcomes

Reform objectives agreed by Cabinet

1	2	3	4	5
Protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations).	Better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.	Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.	Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.	Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

- The proposal to require that there is no net loss of ecological integrity of the natural environment, and that this is the foundation for prescribing limits, will contribute objectives 2 and 5.
- The proposal to require targets to improve degraded environments will contribute objective 1.
- Requiring no net loss of ecological integrity within management units (at appropriate spatial scales) draws a line to halt environmental degradation and allows new developments provided that effects are managed within that unit, including through continued use of the mitigation hierarchy and also through offsetting, as appropriate.
- The National Planning Framework (NPF) will address the complexities of designing the management units, and the mitigation and offsetting required for development.

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Agenda item X: Environmental Limits and Targets

Discussion points

- Limits and targets are part of the wider shift towards creating a more strategic and proactive resource management system. They will define the space within which development can occur, and drive improvements in the kind of developments that are undertaken
- The proposed approach to address this ambiguity is to secure the current state of ecological integrity of the natural environment as the minimum acceptable state for an environmental limit. Environmental indicators will need to be developed to measure current state for certain biophysical aspects of the environment, including for the matters of freshwater, coastal water, air, soil and habitats for indigenous species.
- In practice, this embeds the approach in the National Policy Statement for Freshwater Management and aligns with New Zealand Coastal Policy Statement, and the proposed NPS for indigenous biodiversity. Some existing limits and targets will be transitioned, such as those found in the NPS-FM.
- Better development within limits will be enabled by better strategic planning.
    - RSS's will identify areas where development can take place without breaching targets (or limits in some cases), and conversely will identify places where it can't. They will also proactively plan for restoration and enhancement which can provide headroom for development, for example by securing and advancing habitat corridors.
    - NBA Plans will set out more detailed rules for how targets will be met in a region.
    - Consequently, before arriving at the point of seeking a consent, applicants will have much more certainty about what kinds of activities will be possible in different places within a region. Developers will still assess how adverse ecological effects outside of these parameters can be addressed. Where there is existing pressure on resources, principles for allocation will be relevant.
- A key point to be resolved at MOG #17 is whether the limits and targets regime requires exceptions. Our preference is no, but agencies will continue to work on developing the detailed policy of how limits and targets will be applied within management units to either avoid the need for any exceptions regime, in the first instance, or ensure that it is as narrow as possible if it is ultimately required.

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MOG #16 Paper 4: Transition Pathways

Key messages and recommendations

Key messages

- This paper seeks Ministerial Oversight Group (MOG) agreement to key components of the transition from the Resource Management Act 1991 (RMA) to the Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA).
- MOG is recommended to agree to a set of principles that will guide the development and decision-making on detailed legislative transition related provisions. Decisions will be taken by delegated ministers.
- MOG is also recommended to agree to key components of the timetabling architecture, including:
  - a sequential approach to implementation (National Planning Framework (NPF) (first version), then first-generation regional spatial strategies (RSSs), then first-generation NBA Plans))
  - a tranched approach (different groups of regions implementing at different times)
  - the first (model) tranche containing three regions
  - setting mandatory deadlines for first-generation RSSs and NBA Plans.
- The Minister for the Environment is recommended to be empowered to make secondary legislation (relating to timetabling) under both the SPA and NBA.
- There are significant interdependencies between the transition timetable to be set in secondary legislation under the SPA and NBA and decisions yet to be taken at MOGs #16 and #17. This includes critical decisions on the scope (and consequently timing) of the first version of the NPF.

Recommendations

In relation to the development of transitional provisions in the SPA and NBA the Ministerial Oversight Group is recommended to:

1. **agree** that the following principles will be used to guide development and decision making on legislative transitional provisions for the SPA and NBA:
   a. transitional provisions shall provide certainty, clarity and clear instruction for system implementers and users
   b. where practicable, the transition should enable the outcomes of the new system to be realised rapidly
   c. Treaty Settlements shall be upheld through transition and into the implementation of the new system, and other local and regional relationship/partnership arrangements established outside of Treaty Settlements should be maintained
   d. existing RMA instruments and authorisations should be carried over to the new Resource Management (RM) system until lapsed, expired, surrendered, cancelled or replaced by new RM system products and authorisations

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e. RMA actions that are in progress at the time of enactment of the SPA and NBA (such as lodged consent applications, notified plans and plan changes, water conservation order applications, heritage order applications, notice of requirement applications, compliance procedures and Court proceedings) will continue under the provisions of the RMA, unless an alternative approach has been provided for in respect of specific actions/processes

f. until such time as NBA Plans have legal weight, procedures and decision-making on actions that commence after enactment of the SPA and NBA (such as lodged consent applications, notified plans and plan changes, water conservation order applications, heritage order applications, notice of requirement applications, compliance procedures and court proceedings) will proceed under the provisions of the RMA (unless an alternative approach has been provided for in respect of specific actions/processes), but, where practicable, will have regard to the purpose, outcomes and treaty clause of the NBA; as well as any limits, targets, national direction and regional spatial direction developed under the SPA and NBA as applicable

g. any RMA obligations that are not essential to maintain operational integrity of the RM system, and/or do not contribute towards effective and efficient transition to and implementation of the new RM system, should not be carried over, particularly if removing limited value RMA obligations provides additional capacity to focus on new RM system implementation

2. **authorise** the Minister for the Environment to take further detailed decisions relating to transitional provisions for the NBA, except where additional ministers have been included to take decisions on transition related provisions at MOG #15[1] (ie, relating to NBA Plan making and consenting matters)

3. **authorise** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation, Minister of Transport and Associate Minister for Arts, Culture and Heritage to take further detailed decisions relating to transitional provisions for the SPA.

In relation to implementation architecture related provisions in the SPA and NBA, the Ministerial Oversight Group is recommended to:

4. **note** that there is a hierarchy of instruments in the new RM system with the NPF providing overall direction to RSSs that provide guidance to the NBA Plans

5. **note** that the content and structure (and consequently timing) of the first version of the NPF will be reported in a forthcoming MOG #17 paper

6. **agree** that a sequential rollout approach will be taken to implement the new RM system

7. **agree** that a tranched approach to implementation be adopted, with different groups of regions developing their first-generation RSSs and NBA Plans at different times

8. **agree** that mandatory deadlines will be set for when each region must notify for public submission their first-generation RSS and NBA Plan

9. **agree** to including a provision in the SPA which empowers the Minister for the Environment to create secondary legislation relating to first-generation RSS implementation timetabling

[1] Recommendation (51) agreed. Paper 2, MOG #15 on 13 December 2021.

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10. **agree** to including a provision in the NBA which empowers the Minister for the Environment to create secondary legislation relating to first-generation NBA Plan implementation timetabling

11. **note** that officials will provide the Minister for the Environment with further advice on the overall transition timing and options and implications for first-generation RSS and NBA Plan timetabling, prior to them preparing the secondary legislation referred to in (9) and (10)

12. **note** that the secondary legislation referred to in recommendations (9) and (10) may include provisions relating to:

    a. the number of tranches (groups) of regions

    b. how many and which regions are in each tranche

    c. mandatory deadlines for first-generation RSSs and NBA Plans

13. **note** that the use of the first tranche as "model regions" combined with an expansion of the pool of potential chairs for Independent Hearing Panels (IHPs) has the potential to accelerate the transition to the new RM system

14. **agree** that the first tranche of first-generation RSSs and NBA Plans will constitute more than one model region

15. **note** that in relation to the model regions:

    a. region selection will occur prior to enactment of the SPA and NBA and, therefore, prior to any secondary legislation being developed

    b. work with the model regions on early RSS development (including early joint committee establishment processes) will commence prior to enactment of the SPA and NBA

16. **note** that the availability of suitable chairs for the IHP's is an important determinant of the number of regions in each tranche, how many tranches are required and therefore the length of time for the transition to the new RM system

17. [redacted]

18. **note** that the requirements for a successful IHP chair includes a high standing in the RM community, the confidence of all parties and an ability to work though issues and develop well considered decisions

19. **note** that the Minister for the Environment and Attorney General is considering the options of expanding the pool of potential IHP chairs and anticipate reporting back with recommendations to MOG at MOG #17

20. **note** that the Minister for the Environment has already agreed that all IHP members, including the Chair, must be appointed by the Chief Environment Court Judge (CEJ).[2] The CEJ must use *"a process that ensures the IHP is independent and has the skills, knowledge and experience required to fulfil its statutory functions"*

21. **note** that there are significant interdependencies with decisions to be taken at MOGs #16 and #17 as well as further work relating to upholding Treaty Settlements in the new RM system

[2] Recommendation (18) agreed. Briefing BRF-946 dated 9 December 2021.

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22. **note** that upholding arrangements within Treaty settlements, takutai moana, and between local government and Māori under the RMA in the new legislation is a key consideration for future decisions on the:

    a. timing and selection of regions and tranches (including model region(s)) in transitioning to the new system

    b. decisions regarding timing for how to effectively provide for those amended arrangements in the new system, and the transition from existing arrangements under the RMA

23. **note** that ensuring key system partners and implementers have the capacity, capability, resourcing and funding to effectively and efficiently implement the new RM system will be a critical factor in achieving the objectives of reform.

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MOG #16 Paper 4: Transition Pathways

Purpose

1. This paper seeks Ministerial Oversight Group (MOG) agreement to key components of the transition from the Resource Management Act (RMA) to the Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA).

2. In relation to transition related provisions, this paper recommends that the MOG:

   a. agree to a set of principles that will guide development and decision-making of detailed legislative transitional provisions to enable the transition from the RMA to the SPA and NBA. These are provisions that will apply for mainly an interim period of time during the transition

   b. authorise the Minister for the Environment to take further decisions on detailed legislative transitional provisions for the NBA, except where delegations for decisions on detailed legislative transitional provisions for specified NBA topic areas are already in place (then the existing delegations apply)

   c. authorise the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation, Minister of Transport and Associate Minister for Arts, Culture and Heritage to take further decisions on detailed legislative transitional provisions for the SPA.

3. Separate papers to MOG #16 will seek decisions specifically relating to transitional arrangements for limits and targets.

4. Decisions on upholding Treaty Settlements in the new RM system are not sought via this paper, nor are they sought to be delegated as described in paragraphs (2)(b) or (2)(c).

5. In relation to implementation related provisions, this paper recommends MOG:

   a. agree to the timetabling architecture to implement the new RM system, including:

      i. a sequential approach to implementation with the NPF leading, followed by first-generation RSSs and then NBA Plans

      ii. a tranched approach to the implementation of first-generation regional spatial strategies (RSS)s and NBA Plans, with different groups of regions implementing at different times

      iii. utilising the first tranche of first-generation RSSs and NBA Plans as models to test the new RM system and to establish best practice processes for future RSS and NBA Plan development

      iv. mandatory deadlines to be set in secondary legislation for notification of first-generation RSSs and NBA Plans

   b. agree to empowering provisions being in the SPA and NBA to enable the development of secondary legislation to timetable first-generation RSSs and NBA Plans. The Minister for the Environment would be empowered to make secondary timetabling legislation under both Acts.

6. There are significant interdependencies between the transition timetable and decisions yet to be taken at MOGs #16 and #17. This includes decisions on the role of Central

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Government and Māori in the new system, funding, institutional arrangements, the NPF, allocation, governance and limits and targets.

7. Decisions on the scope (and consequently timing) of the first version of the NPF will be made at MOG #17. This will greatly influence overall timetabling of the first-generation RSSs and NBA Plans given a sequential system rollout.

Outcomes of this paper

8. Assuming MOG agrees to the recommendations of this paper, the outcomes and next steps are as follows:

   a. briefing(s) seeking decisions on detailed transitional provisions will be provided to the applicable Minister(s) (as referred to in recommendations (2) and (3)). Development and decision-making on these transitional provisions will be guided by the principles agreed to in recommendation (1) above. These transitional provisions will guide the RM system during its transition from the RMA to the SPA and NBA and will mainly apply for a limited period of time

   b. after MOG #17, officials will provide the Minister for the Environment with further advice regarding the overall transition timing, options and implications for first-generation RSS and NBA Plan timetabling. This advice will inform the development of timetabling provisions in secondary legislation for RSSs and NBA Plans (as per recommendations (9) and (10)). It will build upon the implementation architecture noted and agreed to by MOG in recommendations (4)-(8) inclusive.

Status quo under the current RM system and problem definition

9. The RMA combined over 60 statutes and regulations in 1991. Transitional arrangements were set out in Part 15 of the RMA.

Transition related provisions

10. Planning instruments, rules and authorisations that were in force immediately prior to enactment of the RMA were generally carried over as deemed instruments, rules and authorisations under the RMA. Actions that were in process prior to enactment of the RMA generally continued under the provisions of the repealed Act. Most deemed instruments, rules and authorisations have now been replaced by RMA instruments, rules and authorisations.

11. The majority of transitional provisions were mechanical in nature. They served only as statutory provisions to 'keep the system running' during the interim period while the new products of the RMA were developed.

Implementation related provisions

12. Only three implementation deadlines were stipulated in the RMA in 1991. They were:

    a. a New Zealand Coastal Policy Statement to be notified within one year

    b. regional councils were required to notify a regional policy statement within two years

    c. regional councils were required to notify a regional coastal plan within (approximately) three years.

13. The transition to having all regional policy statements and regional and district plans operative was intended to take five to 10 years.[3] However, development of local planning

[3] Resource Management Review Panel, Report June 2020, p 456.

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documents was slow. After seven years, only 10 per cent of district plans, 16 per cent of regional plans (including coastal) and 35 per cent of regional policy statements were operative.[4]

14. Most key pieces of national direction have only been produced by central government in the last 10 to 15 years (such as 15 to 20 years after enactment of the RMA). A timely implementation was assumed but did not eventuate as there was little obligation, incentive or support for it.

15. Ongoing implementation challenges occurred once RMA system products were in place. These were caused by factors such as, a lack of national direction and guidance, a lack of resourcing for key system implementers, poor system oversight and plan effectiveness monitoring, and a lack of central government support. Poor implementation has contributed to the current poor urban and environmental outcomes that are being realised under the RMA.

16. Recent amendments to the RMA have tended to include mandatory implementation deadlines.[5] These obligations have provided certainty for system implementers, users and stewards as well as motivation to ensure sufficient implementation support, budget and resourcing is in place.

Panel's recommendations

17. The Panel identified four key transition and implementation components:[6]

    a. the timing and sequencing of national direction, RSSs and NBA Plans

    b. the impact on existing processes, consents and activities under the RMA

    c. the financial and resourcing implications to develop and implement the reformed system

    d. supporting the change in culture.

18. The key points the Panel noted were:

    a. they expect an overall transition period to fully implement the new resource management system of 10 years

    b. there is a need to balance stability and a smooth transition with implementation of the reforms as soon as practicable

    c. sequencing will be necessary as it will not be possible to develop all RSSs and NBA Plans simultaneously (due to capacity constraints)

    d. it is not practicable with current resources to wait until all mandatory national direction is completed before starting regional spatial planning. Mandatory national direction in priority areas should be in place within 3 years of enactment of the SPA and NBA

    e. one region should be selected to develop the first RSS, followed by development of their NBA Plan, to provide a model for other regions

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[4] Ibid.

[5] For example, the requirement for regional councils to notify a freshwater planning instrument to give effect to the National Policy Statement for Freshwater Management by 31 December 2024.

[6] Resource Management Review Panel, Report June 2020, p 456-7.

f. the new system will need to provide for the continuation of existing consents and designations, at least initially, however, new national direction may require reconsideration of some existing activities, consents and designations

g. there is a risk that 'rolling over' existing national direction and plans could slow down the change in culture required to successfully implement the reformed system.

19. The Panel anticipated that the greatest draw on resourcing for system implementers and partners would occur during the initial decade after the proposed legislation is enacted (likely during transition).

Previous Ministerial Oversight Group decisions

20. MOG has agreed (at MOG #15[7]) that Transition Pathways is one of the critical components[8] that must be landed to successfully deliver the Strategic Planning and Natural and Built Environments Bills. MOG acknowledged that further advice on this topic would be provided via this MOG #16 paper.

Previous MOG decisions relevant to transition related provisions

21. MOG agreed at MOG #15[9] to delegate further detailed decisions on 'commencement, savings and transitional provisions for plans and consents' to the Minister for the Environment, in consultation with the Ministers of/for Conservation, Local Government and Transport.

Previous MOG decisions relating to implementation related provisions

22. MOG has made several decisions at MOGs #3, #6 and #7 about the relationship between the NPF, RSSs and NBA Plans.

    a. MOG #3: that one of the roles of the NPF is to "take a strategic approach to identify central government priorities across the NBA to direct and influence RSSs, and NBA Plans"[10].

    b. MOG #7: that RSSs

        i. "must 'implement' (for example, 'give effect to', or similar legal weighting) any provisions of the NPF that the NPF explicitly states are to be implemented through a spatial strategy"[11],

        ii. "must be 'consistent with' (or similar legal weighting) any other provisions of the NPF (especially those that are to be implemented through NBA plans)"[12].

        iii. "must have sufficient legal weight on NBA plans to ensure that any key strategic decisions made through the strategy are not revisited or relitigated when preparing NBA plans"[13].

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[7] Minute 50(g) from MOG #15 on 13 December 2021.

[8] The critical components to land are role of central government in the new system; transition pathways; resource allocation and user charges; environmental limits and targets (MOG #16); NBA decision-making framework; NPF; institutional arrangements; role of Māori in the system and regional governance and decision-making (MOG #17).

[9] Recommendation (51) agreed. Paper 2, MOG #15 on 13 December 2021.

[10] Minute 3.4(a) from MOG #3 on 8 March 2021.

[11] Minute 32 from MOG #7 on 31 May 2021.

[12] Minutes 33 from MOG #7 on 31 May 2021.

[13] Minute 34 from MOG #7 on 31 May 2021.

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c. MOG #6: that "the role of NBA Plans is to regulate the natural and built environment at a regional and district level by (b) implementing the NPF, contributing to the implementation of RSSs and reflecting the needs of communities".[14]

23. Given the above, MOG subsequently noted at MOG #11/#12 that "officials recommend that the rollout of the RM System is appropriately sequenced – that is the NPF is in force before the formal public consultation on any RSS, and similarly the RSSs are in force before the NBA Plans are formally publicly consulted on. Officials will provide further advice on this issue"[15].

24. This paper on Transition Pathways builds on that additional advice signaled at MOG #11/#12.

Critical context

Critical context for transition related provisions

25. Whilst the drafting of many detailed transitional provisions is largely mechanical in nature, it is critical that unintended consequences are avoided.

Critical context for implementation related provisions – key assumptions

26. There will be a hierarchy of documents from the NPF to RSSs to NBA Plans. This approach aligns with the decisions made by MOG to date. Applying the sequential approach does not preclude some overlapping instrument development to improve efficiency and timing.

27. There will be model region(s) which will constitute the first region(s) within which the first RSS(s) and then probably the first NBA Plan(s) are developed.

28. With the right support, RM system partners and implementers will have sufficient financing, resourcing, capacity and capability to effectively and efficiently deliver new RM system products.

Critical context for implementation related provisions – key considerations

29. Key considerations include:

    a. resourcing (financial, tools, sufficient people with the right skills)

    b. capacity and capability (of system partners (including Treaty Partners), implementers and other key stakeholders)

    c. the balance between driving rapid transformational change (including a change in the culture of the RM system) and the resourcing and capacity to effectively and efficiently deliver new system products

    d. bottlenecks and barriers to delivery, and how these may be able to be overcome

    e. giving effect to the principles of Te Tiriti (key requirement of the new RM system)

    f. the role that digital technology could play in transforming the new system.

Critical context for implementation related provisions – key constraints

30. Many timeframe and design constraints are currently unknown and subject to further decisions to be taken at MOGs #16 and #17 (or future delegated decisions). Therefore, it is not yet possible to take detailed timetabling decisions. Key areas of potential timeline and delivery constraint are summarised in Appendix 1.

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[14] Minute 11(b) from MOG #6 on 3 May 2021.

[15] Minute 4 (Paper 5) from MOG #11/#12 on 4 October 2021.

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31. At this time, the best estimate is that it would take approximately a minimum of two and a half years from the time of Joint Committee establishment for an RSS to come into force (excluding judicial review). Meanwhile, it is estimated that it would take approximately a minimum of three and a half years from the time of Joint Committee establishment for an NBA Plan to become operative (excluding appeals). It is anticipated that there would be some overlap in RSS and NBA Plan development processes.

Critical context for implementation related provisions – key unknowns and interdependencies

32. Other (potential) reforms will impact on the capacity and capability of central and local government and iwi/hapū/Māori to effectively develop and deliver the new RM system (in particular, the Three Waters reform and the Future for Local Government Review). The level and extent of impacts resulting from these (potential) reforms is unknown at this time.

33. External events and unpredictable shocks remain a constant unknown. This includes the COVID-19 pandemic as well as natural disasters, both of which could compromise the ability to effectively transition to the new RM system.

Upholding Treaty Settlements and other natural resource arrangements under the RMA

34. Mechanisms will need to ensure the integrity of existing natural resource arrangements under the RMA and in Treaty Settlements are upheld. This may require amendments to the way the arrangements are framed in settlement legislation and/or in the new legislation.

35. Many of these arrangements relate to Post Settlement Governance Entity participation in plan making (which will require transitional provisions) and are subject to ongoing discussions.

36. Consideration will also need to be given to how other natural resource arrangements under the RMA are maintained in the new RM system and continue to be recognised (for example, Mana Whakahono a Rohe). The National Māori Entity will also need to be established.[16]

37. If these matters are not resolved before enactment of the SPA and NBA they may have impacts on the timing of RSS and NBA Plan development.

Core policy position

38. Transition will be the most complex period after enactment as there will be overlapping products, processes, institutional arrangements, tools and culture (from both the RMA and the new system). Providing as much clarity and certainty as possible to RM system implementers and users will be critical in ensuring the integrity of the system is maintained. At the same time, transition to the new system should occur in a timely manner to ensure new RM system outcomes are realised as soon as possible.

39. Implementation timetabling of first-generation RSSs and NBA Plans should seek to find the optimal balance between a timely transition and the capacity of key system implementers to effectively and efficiently deliver quality products. The key components of implementation timetabling architecture need to account for the complexity of the transition and operate within the assumptions, constraints, considerations and interdependencies described above.

[16] MOG agreed to a National Māori Entity which will enable Māori participation at the national level (recommendation (5), agreed, MOG #11 / #12 on 4 October 2021).

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Transition related provisions

Options relating to the development of transition related provisions

40. Transition-related provisions relate to those provisions that will guide and manage the RM system during the transition from the RMA to the SPA and NBA.

41. These provisions will be large in number and generally technical and complex. It is neither practicable nor necessary for MOG to take these detailed decisions. As such, officials consider it is appropriate for further detailed decisions to be taken by a sub-group of ministers who have delegated authority authorised by MOG as follows:

    a. for the NBA, it is recommended that the Minister for the Environment be authorised to make decisions on detailed transitional provisions, except where additional ministers have been included to take decisions on planning and consent related transitional provisions (as described in paragraph (21))

    b. for the SPA, the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation, Minister of Transport and Associate Minister for Arts, Culture and Heritage are recommended to be authorised to make decisions on detailed transitional provisions for the SPA.

42. It is critical that the collective suite of transitional provisions that direct the complex dual RM systems are coherent and co-ordinated. To achieve this, guidance is required for the development and decision-making on transitional provisions. Guidance options include:

    a. MOG agrees to a set of principles to be used to guide the development of detailed transitional provisions across the RM reform work programme, or

    b. MOG agrees to adopt the objectives that are used to guide the new RM system transition and implementation work programme (as noted at MOG #11/#12).[17]

Transition related provisions – proposal and analysis

43. A targeted and specific set of principles will provide more directive and specific direction than the broader transition and implementation work programme objectives. Specific principles will ensure clarity and consistency in the suite of transitional provisions and collectively aim to give effect to the objectives of the RM reform.

44. Officials recommend that the MOG adopt the following principles to guide development and decision-making on detailed transitional provisions:

    a. transitional provisions shall provide certainty, clarity and clear instruction for system implementers and users

    b. where practicable the transition should enable the outcomes of the new system to be realised rapidly

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[17] MOG noted at MOG #12 that the following objectives will be used to guide and support the new resource management system transition and implementation:

a. have the necessary measures in place to ensure transformational change in the resource management system
b. provide as much certainty as possible through transition for system users and implementers
c. enable iwi/hapū/Māori to effectively participate as a partner in the new system; and enable te ao Māori and mātauranga Māori to guide transition and implementation of the new system
d. maintain and strengthen system integrity and stewardship
e. transition and implement the system in an efficient and effective way, focussed on reducing complexity and partnering for success.

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c. Treaty Settlements shall be upheld through transition and into the implementation of the new system, and other local and regional relationship/partnership arrangements established outside of Treaty Settlements should be maintained

d. existing RMA instruments and authorisations should be carried over to the new RM system until lapsed, expired, surrendered, cancelled or replaced by new RM system products and authorisations

e. RMA actions that are in progress at the time of enactment of the SPA and NBA (such as lodged consent applications, notified plans and plan changes, water conservation order applications, heritage order applications, notice of requirement applications, compliance procedures and Court proceedings) will continue under the provisions of the RMA, unless an alternative approach has been provided for in respect of specific actions/processes

f. until such time as NBA Plans have legal weight, procedures and decision-making on actions that commence after enactment of the SPA and NBA (such as lodged consent applications, notified plans and plan changes, water conservation order applications, heritage order applications, notice of requirement applications, compliance procedures and court proceedings) will proceed under the provisions of the RMA (unless an alternative approach has been provided for in respect of specific actions/processes), but, where practicable, will have regard to the purpose, outcomes and treaty clause of the NBA, as well as any limits, targets, national direction and regional spatial direction developed under the SPA and NBA as applicable

g. any RMA obligations that are not essential to maintain operational integrity of the RM system, and/or do not contribute towards effective and efficient transition to, and implementation of, the new RM system should not be carried over, particularly if removing limited value RMA obligations provides additional capacity to focus on new RM system implementation.

Key risks and mitigation - transition related provisions

45. With regard to recommended principle (44)(f), officials gave consideration to a principle directing the retention of RMA processes and decision-making provisions until NBA Plans had legal weight without any consideration of the SPA and NBA. This would minimise complexity as there would be a clear point in time in which core elements of the RM system, such as plan changes and consent processing, would shift from being processed and decided under the RMA to the NBA. This would also ensure that decisions taken under the new RM system would be able to be taken with a full suite of new system instruments in place, with strategic and spatial direction flowing down through the system. This approach would also ensure that national direction prepared under the RMA could not be overridden through recourse to the purpose of the NBA or NBA treaty clause, in the time period between the NBA coming into force and the first NBA Plans having legal weight.

46. However, a strong directive principle as described in (45) is not recommended because it would effectively embed the purpose and Treaty clause of the RMA into the new RM system for several years (seven to eight years in some regions, based on officials' initial modelling). Decisions on consents and plan changes etc would not apply the new Part 2 or the outcomes of the new RM system for several years, nor other direction expressed through the NPF and RSSs. This would significantly delay the opportunity for genuine transformational change. Furthermore, negative aspects of RMA culture, norms and behaviours would likely become embedded in the new RM system over this period.

47. Therefore, principle (44)(f) is recommended to the MOG. This principle promotes applying NBA provisions to decision-making on new post-enactment processes, where

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practicable. Decision-making would apply the new Part 2 and the outcomes of the new system from enactment, alongside the direction of carried over RMA instruments, or at least require consideration of key components of the new RM system in decision-making (for example, outcomes, national direction and/or limits and targets). The principle provides flexibility in considering when it is practicable and desirable to apply such an approach.

48. It is acknowledged that there will be tension between the new Part 2 and the outcomes and direction of RMA instruments. The reforms have been designed to adopt the *King Salmon* approach, to minimise the extent to which decision-makers would need to make a decision by directly applying the purpose and supporting provisions (including environmental outcomes) in the NBA. In the period before the first NBA Plans have legal weight, decisions will need to be made with reference to existing RMA plans, policy statements, and potentially existing RMA national direction.[18] These RMA documents will not necessarily reflect the purpose, outcomes and Treaty clause of the NBA. If decision-makers are required to apply the purpose, outcomes and Treaty clause of the NBA when making decisions under RMA plans, this will effectively allow decision-makers to make an 'overall broad judgement' under the purpose of the NBA and allow decision-makers to depart from otherwise settled RMA policy direction. This would result in a complex dual system during the interim transition period, with a heightened appeal risk. The MOG will need to be cognisant of these requirements and ensure the complexities of transition can be successfully navigated.

49. The recommended principle in (44)(f) is more complex than the alternative described in (45). However, the costs of delaying system implementation on the ground for several years outweigh the benefit of simplicity provided by just rolling over RMA process and decision-making for many years past enactment until all new RM system products have legal weight. Officials consider it is critical that the transition is used as the time to move towards the new RM system outcomes rapidly and thus achieve the objectives of reform in a timely manner, rather than delay until all new RM system products have legal weight.

50. It is noted that a principle to give effect to the principles of Te Tiriti would directly conflict with many of the other key recommended transition principles. Transition principles relating to the carryover of elements of the RMA will mean the initial adoption of instruments and authorisations (and potentially processes) developed under a framework where the principles of Te Tiriti had to be taken into account (not given effect to as required under the new RM system). It would not be practical to potentially redraft and reconsider many/most RMA instruments, authorisations and processes to give effect to the principles of Te Tiriti.

51. As detailed above, principle (44)(f) promotes the taking of decisions after enactment of the SPA and NBA to apply Part 2 of the NBA, where practicable (which requires the principles of Te Tiriti be given effect to). Further detailed work is required to consider the relationship between the new Part 2 and carried over RMA instruments. A rapid transition will result in a rapid shift towards giving effect to the principles of Te Tiriti in the RM system during the transition.

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[18] The extent to which existing RMA national direction is relevant in this period will depend on whether the NPF is developed solely to guide the development of RSSs and NBA plans in the new system, or is also intended to influence decisions made under RMA plans and policy statements before NBA plans are in force.

Implementation related provisions

Options for implementation related provisions

52. Implementation related provisions relate to the timetabling architecture and details of the rollout of new RM system products (NPF, RSSs and NBA Plans).

53. Given many critical system design decisions are yet to be taken at MOGs #16 and #17, it is not currently possible to provide definitive timeframe options to implement the new RM system in its entirety.

54. However, some fundamental decisions around the timetabling architecture can be made now. These decisions will set the framework and the parameters within which further detailed timetabling decisions can be made.

55. Two options have been developed for the timetabling architecture to rollout first-generation RSSs and NBA Plans. The options are summarised in Table 1 below:

	Option 1	**Option 2**
Description	No prescription in the legislation regarding when and where first-generation RSSs and NBA Plans may be developed over time. No mandatory notification deadlines for first-generation RSSs and NBA Plans. New product development to occur in an ad hoc manner.	First-generation RSSs and NBA Plans are developed in distinct tranches of regions over time (stipulated in secondary legislation). Staggered, mandatory notification deadlines for first-generation RSSs and NBA Plans for each tranche.
Assumptions	Hierarchy of documents with a sequential rollout. There is a model region/tranche.	
Risks	Lack of certainty for system implementers and partners (including for budgeting, resource and capacity planning etc). Lack of certainty for central government and the wider public as to when first-generation RSSs and NBA Plans will be developed. Higher risk of slow rollout (than option 2), thus a delay in the time it takes to implement the new system. May undermine or delay new system outcomes and/or embed the RMA in the new system. Higher risk (than option 2) of capacity constraints/bottlenecks in parts of the system with multiple regions working concurrently without any overarching timeline.	May not allow desired amount of time for local processes, unique relationships and/or tikanga to be observed in some regions. May delay implementation in some regions when they are ready to implement sooner. May force implementation in some regions sooner than when the capacity and capability to do so is available, thus increasing the possibility of poor outcomes.
Benefits	Allows time for local processes, unique relationships and/or tikanga to be observed. Potentially allows more time (than option 2) to build capacity, capability	Certainty and clarity for system implementers, users, central government and the wider public (provides a clear implementation pathway, and resourcing, capacity

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	and resources which may produce better quality outputs.	and funding can be planned accordingly). Likely to result in faster implementation, thus achieving new system benefits sooner.

Table 1: Implementation scenario options

56. MOG #17 decisions on the scope (and consequently timing) of the first version of the NPF will be critical to both options, given a sequential rollout.

57. If option 1 is selected, no further decisions would be required to be taken. Each region would be free to choose when to develop their first-generation RSS and NBA Plan.

58. If option 2 is selected, MOG will need to decide whether to:

    a. prescribe timetabling in primary legislation: the MOG will need to delegate further detailed decisions to a subgroup of ministers

    b. prescribe timetabling in secondary legislation: the MOG will need to agree to providing an empowering provision in the SPA and NBA for minister(s) to develop secondary legislation relating to implementation timetabling.

Proposal and analysis for implementation timetabling architecture

59. Officials recommend that the MOG agree to the timetabling architecture presented as option 2 in Table 1 above. This option provides RM system partners, implementers and users with clarity and certainty around implementation expectations. It will also provide for a balance between managing the anticipated capacity in the RM system to deliver quality first-generation RSSs and NBA Plans and the desire to implement the new RM system rapidly.

60. Mandatory deadlines will also help maintain momentum and ensure timely system roll out does in fact occur.

61. Option 2 still provides regions with the ability to commence RSS and NBA Plan development processes as early as they consider necessary in order to follow due process and tikanga, whilst still meeting mandatory deadlines. This balance of flexibility and certainty will best enable the development of quality products in a timely manner.

62. Option 1, with no mandatory deadlines or implementation architecture, does not provide any certainty, incentives or management of capacity within the system. It also risks prolonging the time to realise the benefits of the new RM system (as experienced with the RMA as described above). A protracted rollout also increases the risk that the negative aspects the current system transfer in the new system. Officials consider that these risks outweigh the main benefit of option 1.

63. Assuming that the MOG agrees to option 2, officials recommend that MOG agrees to detailed timetabling being expressed in secondary legislation developed under the SPA and NBA. Secondary legislation is easier to develop, is more flexible and is easier to amend if unforeseen circumstances arise (compared to primary legislation).

64. Embedding detailed timetabling in secondary legislation will provide sufficient time for a comprehensive picture of the new system to become available. This will ensure a robust understanding of the capacity required (and available) to deliver new system products. Furthermore, there will be a clear understanding of the critical scope and timing decisions for the first version of the NPF.

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65. Secondary legislation can be prepared prior to enactment of the SPA and NBA, enabling it to be formally promulgated soon after enactment. This will ensure implementation certainty is provided for in a timely manner.

66. As the responsible minister for both the SPA and NBA, officials recommend that the Minister for the Environment is empowered to make secondary legislation relating to timetabling under both Acts.

67. For clarity, the minister empowered to make secondary legislation would not necessarily be bound to the parameters that the MOG has agreed to in option 2 (ie, that there is a hierarchy of instruments requiring a sequential rollout, and that there should be tranches of regions implementing the new system in stages, with each tranche having mandatory deadlines).

68. However, the MOG's agreement to these design parameters will instead form the policy position that will shape other non-legislative decisions, including decisions relating to:

    a. the timing and extent of resourcing and funding for key system partners and implementers

    b. the readiness of central government agencies to actively participate in RSS development in different regions at different times

    c. the development of training, guidance and implementation support materials (including digital tools)

    d. the scope and detail of the model project

    e. measures taken to effect culture change in the new RM system

    f. communications and engagement on the reformed system.

Key risks and mitigation – implementation timetabling architecture

69. The main risks of option 2 are summarised in Table 1 above. Further detail on other risks is provided here.

70. Imposing mandatory deadlines does not necessarily guarantee that all regions will develop their instruments in a staggered manner (specifically in their tranche). Different regions will have different regional and local complexities, pressures, issues, relationships and motivations. Some regions may seek to develop new instruments sooner. This could result in a high number of regions developing RSSs and/or NBA Plans concurrently, thus potentially causing unforeseen capacity constraints within parts of the new RM system.

71. This risk could be mitigated by the adoption of mandatory notification windows rather than deadlines, thus providing greater control on system implementation rollout. But this comes with its own risk that some regions could be inhibited from proceeding with new system products due to their window.

72. The preferred approach between mandatory deadlines for notification and mandatory notification windows will be considered as secondary legislation relating to timetabling is developed.

Accelerating implementation

Options for accelerating implementation

73. Accelerating implementation will enable a more rapid transition to the new RM system. Acceleration can provide opportunities to realise new system benefits quicker and reduce the complex and potentially costly dual system transition period.

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74. Officials have identified three main options to accelerate implementation:

a. adopt a model tranche of multiple regions (approximately three regions as opposed to just one model region)

b. increase the potential pool of candidates that could be IHP chairs (expand from Environment Court Judges to also include Māori Land Court Judges; increase the Environment Court Judge cap[19], and/or include an appointed pool of highly experienced Environment Commissioners and Accredited Hearing Commissioners)

c. a non-linear rollout of new system products (thus conflicting with a key assumption that the hierarchy of instruments necessitates a sequential rollout from the NPF to RSSs to NBA Plans). This could include the concurrent development of RSSs and NBA Plans, and/or NBA Plans and RSSs being developed before the NPF is in place.

75. Scenario modelling indicates that the two approaches in (74)(a) and (b) combined could reduce the overall transition time by approximately two years. Officials have not modelled the approach in (c) as it is difficult to ascertain document development timelines in the absence of higher order direction being provided through a hierarchy of instruments.

Proposal for accelerating implementation

76. Officials recommend adopting a model tranche (rather than a single model region). This option presents a low risk to transition and implementation and would not undermine RM system integrity. Additional benefits include:

a. a shorter transition period

b. less impact of the current RMA and a greater focus on the reform objectives

c. reduced costs of operating dual systems.

d. a greater scope for learning from a more diverse set of model regions

e. providing a broader base of settings to test, demonstrate and inform components of the new system

f. upskilling system users more quickly

g. providing opportunities for the model tranche to concurrently share learnings

h. providing a wider testing ground for digital platforms and to extract learnings to inform policy refinement and development of guidance.

77. MOG has previously agreed at MOG #14[20] that each IHP chair must be an Environment Court Judge. Given the limited number of Environment Court judges[21] and the likely high workload for the Environment Court during transition (chairing IHPs, chairing the Board of Inquiry for the NPF and likely continuing with work in consenting and planning etc during the transition), it is considered that MOG's previous decision regarding IHP chairs could create a potential bottleneck in the system. This would potentially inhibit timely delivery of the new system.

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[19] Section 250 of the RMA limits the number of Environment Court Judges to 10 (full-time equivalent). There is no limit on the number of alternate judges, but a number of additional restrictions are imposed on these judges (for example, maximum age and maximum duration of appointment).

[20] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed.

[21] Section 250 of the RMA currently limits the number of Environment Court judges to 10 full-time equivalents. The number of alternate Environment Court judges is not limited, but additional restrictions are imposed including maximum age and maximum duration of appointment.

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78. Consultation with the Environment Court judiciary indicates that the pool of Environment Court judges could be augmented by including Māori Land Court judges and experienced lawyers to chair IHPs. Officials also consider that other measures such as increasing the cap of Environment Court Judges above 10, greater use of alternate judges and potentially appointing highly experienced lawyers, Environment Court Commissioners and/or Accredited Hearings Commissioners as IHP chairs could all be ways in which this potential system bottleneck could be reduce.

79. The requirements for a successful IHP chair include a high standing in the RM community, the confidence of all parties and an ability to work though issues and develop well considered decisions. Ensuring a thorough and correct procedural process is also critical to a successful hearing, and thus providing robust recommendations from the IHP to joint committees. An unskilled IHP Chair could potentially produce poor quality NBA Plans and/or an increased risk of litigation.

80. To mitigate this risk, then Minister for the Environment has already agreed that all IHP members, including the Chair, must be appointed by the Chief Environment Court Judge (CEJ).[22] The CEJ must use *"a process that ensures the IHP is independent and has the skills, knowledge and experience required to fulfil its statutory functions"*. As such, officials consider that there will be sufficient rigour in the appointment process to ensure that the selected IHP Chair, whether it be an Environment Court Judge or not, will be appropriately appointed by the CEJ.

81. Further work is required to understand the full options and implications of expanding the potential pool of IHP chairs. As such, no decision on this potential measure to accelerate transition is recommended via this MOG #16 paper. Instead, the Minister for the Environment and Attorney General are considering the options and anticipate reporting back with recommendations to MOG at MOG #17.

82. Lastly, officials do not recommend adopting a non-linear approach as this would undermine system integrity. A lack of national direction and strategic spatial planning filtering down through the system risks inconsistency and a general lack of coherence through the new RM system products. Furthermore, this could result in new instruments needing to be amended shortly after coming into force to ensure system coherence and consistency. The risks of poor outcomes far outweigh the benefits of a faster transition.

Key risks and mitigation – accelerating implementation

83. A single model region would provide for deeper central government involvement and may result in a faster and a higher quality product (than if resources are spread across three model regions). However, officials consider that the benefits of multiple regions outweigh the benefits of a single model region. Furthermore, appropriate project design and support based on regional need would help manage any implementation risks.

Transition and implementation work programme

84. Comprehensive support will be required to ensure key RM system partners, implementers and stakeholders have the capacity, capability, culture and resources (including time and tools) to effectively and efficiently deliver the new RM system. Likewise, adequate funding mechanisms must be in place. These are critical for a successful reform.

85. Officials anticipate there will be a significant capacity demand on RM system implementers leading up to, and throughout, the five to 10-year period of RSS and NBA Plan development processes. There may also be an increase in capacity demand prior

[22] Recommendation (18) agreed. Briefing BRF-946 dated 9 December 2021.

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to RSS and NBA Plan development processes as system implementers prepare for change.

86. Officials are currently developing a Capability, Capacity, Culture and Training workstream (within the broader Transition and Implementation work programme, as you were advised at MOG #11/12[23]). Through this workstream the capacity and capability requirements of the new RM system will be assessed in greater detail, as will measures to build and strengthen relationships and partnerships. Consideration will be given to how gaps can be addressed in a timely manner to ensure the new RM system is effectively and efficiently implemented.

87. Increased participation by Māori and a greater emphasis on mātauranga Māori and te ao Māori in the new RM system is expected to result in a significant increase in demand for additional and more diverse expertise. Transition to and development of the future RM system will also increase demand for other areas of expertise.

88. As also advised at MOG #11/#12[24], officials are also considering options for the digital transformation of the RM system. Digital technology can radically transform the RM system, improve efficiencies and ultimately contribute to achieving the outcomes of the reformed system.

89. With regards to the Model Project, consideration will need to be given as to how and when work with the model regions can start. A timely region selection will enable a rapid start to RSS and NBA Plan development after enactment.

90. Funding, especially funding of local government to undertake the development of RSSs and NBA plans, is a significant issue. The additional requirements upon local government during the transition, when both the RMA and the new RM system will have resource needs, will place funding pressure on local government. This will require alignment with the Long-Term Plan (LTP) processes of local government. Central government will need to consider what support could be provided to local government to ensure they have the capacity, capability and resource to effectively deliver quality new RM system products. Likewise, sufficient funding for iwi/hapū/Māori and central government agencies is also critical for a successful reform.

Treaty impact analysis

91. This paper relates to the transition from one RM system to another, and the implementation timing of this transition. It does not re-assess Te Tiriti principles compliance of individual policy decisions that have informed new RM system design.

92. The necessary carryover of RMA instruments, authorisations and processes for an interim period until replaced or cancelled means the carryover of system components developed where the principles of Te Tiriti only had to be taken into account (rather than given effect to as required under the new RM system).

93. Implementation decisions relate primarily to the timetabling of new RM system products. Further detailed decisions will be taken as secondary legislation is developed. It is considered that these decisions will be able to give effect to the principles of Te Tiriti. This is because a full system design picture will be available, and these timetabling design decisions will be taken under the new RM system (where the principles of Te Tiriti must be given effect to).

94. A full summary of the Treaty impact analysis is available in Appendix 2.

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[23] Paragraph (9), paper 5. MOG #11/#12, 04 October 2021

[24] Ibid.

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Engagement

95. Engagement occurred with:
    a. fourteen central government agencies[25]
    b. the local government RM reform steering group [redacted]
    c. [redacted]
    d. the New Zealand Planning Institute (NZPI).

96. Common threads from all engagement included general support for the following recommendations in this paper:
    a. a set of principles used to guide the development of detailed transitional provisions
    b. a sequential rollout of new RM system products (the NPF then RSSs and then NBA Plans)
    c. a model tranche of three regions (as opposed to a single model region)
    d. mandatory deadlines outlining clear timing delivery expectations (as this supports budget processes and capacity planning)
    e. expanding the potential pool of IHP chairs (noting further advice will be provided on this option to accelerate the transition at MOG #17).

97. Transition should be as short as possible. This will provide for:
    a. a rapid implementation of new system products
    b. a quicker shift in achieving the new system outcomes, including driving towards new system outcomes during the transition
    c. a more rapid change in RM system culture
    d. a reduced transition period where there is the complexity and cost in operating a dual system.

98. Comprehensive support will be required to ensure key RM system partners, implementers and stakeholders have the capacity, capability, culture and resources (including time and tools) to effectively and efficiently deliver the new RM system. Likewise, adequate funding mechanisms must be in place. This is critical for a successful reform.

99. The timing of RM reform in relation to wider government reforms is a concern (especially Three Waters, and potential outcomes from the Future for Local Government Review). Multiple concurrent reforms running alongside a complex dual planning system during the transition period will require substantial resources, particularly from local government and iwi/hapū/Māori.

100. MfE needs to provide a clear picture of what the new system as a whole will look like. This should be done prior to detailed transition and implementation timetabling decisions being taken.

[25] [redacted]

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Agency-specific views in addition to the general views from all groups

101. Transitional provisions should be designed to allow for new system benefits rapidly. This includes better provision for key outcomes such as urban development and infrastructure development during the transition (and ahead of the NPF, RSSs and NBA Plans being in force).

Local government-specific views in addition to the general views from all groups

102. Timetabling needs to consider adequate lead-in times and funding integration with LTPs.

[redacted] specific views in addition to the general views from all groups

103. Transitional provisions should be designed to allow for new system benefits rapidly. This includes rapidly moving to a new system of strong Māori partnership, participation and giving effect to the principles of Te Tiriti. This cannot wait for RSSs and NBA Plans to be in force and some interim interventions could be required during the transition period (through transitional provisions).

104. Effort should also be put into ensuring local government and central government agencies have the capability and capacity to work effectively with iwi/hapū/Māori, understand and apply mātauranga Māori, te ao Māori and understand how to genuinely partner and give effect to the principles of Te Tiriti.

105. Timetabling provisions should not be overly prescriptive. Some reservations were raised around mandatory deadlines. It is important to provide for appropriate local and regional processes and tikanga, and mandatory deadlines may serve to undermine this.

NZPI-specific views in addition to the general views from all groups

106. No additional points from those outlined above.

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Appendix 1 – Potential areas of timeframe constraint

Area of constraint	Comment
RSS and NBA Plan Joint Committees (secretariat; and Joint Committee composition and appointment)	Further advice on governance will be provided at MOG #17. Need to consider local/regional dynamics, existing arrangements.
Evidence gathering and drafting stages for RSSs and NBA Plans	Engagement to date indicates that this will require a minimum of two years. Some consider that much more than two years will be required in complex regions.
Submissions timeframe for RSSs and NBA Plans after notification	Work on this is under active consideration. This could take three months or more for RSSs and six months or more for NBA Plans.
Independent Hearing Panel (IHP) process for NBA Plans	This could take approximately nine to 12 months but will vary region by region. Testing against Auckland Unitary Plan experience.
IHP Chairs	MOG has made a decision at MOG #14[26] that IHPs for NBA Plans must be chaired by an Environment Court Judge. Potential to create bottleneck in system – limited number of Environment Court Judges for workload (IHPs; RMA appeals; NPF Board of Inquiry). Further advice to be provided at MOG #17.
Decisions version of RSSs and NBA Plans	Work on this is under active consideration. Could be tied to notification date, but variable IHP process makes this more difficult for NBA Plans.
Appeals	No appeals on RSSs, rather only an option for judicial review. Uncertain how many or how long these could last. Judicial review could be appealed. NBA Plans may be appealed in limited cases. Engagement indicates that NBA Plan appeals could typically be completed with two years.
Capacity and resourcing – Central Government Agencies	Agencies advised that they could potentially support a maximum of four RSSs being developed at any given time. This is dependent on further decisions to be taken at MOGs #16 and #17, as well as other matters such as capacity and capability within the agencies and the funding and resourcing available to them.

[26] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed.

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Capacity and resourcing – Local Government	Most councils are only located within one region.[27] As such there are few regionally specific administrative constraints of note to identify. Will need sufficient capacity, capability and resourcing to implement. Many RMA processes will continue concurrently during transition.
Capacity and resourcing – iwi/hapū/Māori	In some instances, iwi/hapū's rohe extend beyond one region. Will need sufficient capacity, capability and resourcing to effectively participate in RSS and NBA Plan development and implementation.

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[27] However, Rotorua, Waitaki, Waitomo, Stratford, Rangitikei and Tararua District Councils are in two regions (with significant cross-regional spread in Waitaki and Rotorua). Taupo District Council is in four regions.

Appendix 2 – Treaty Impact Analysis

Status quo
A summary of the transition and implementation provisions of the Resource Management Act 1991 (RMA) is provided in paragraphs nine to 16.
Summary of analysis
The development of transition related provisions involves those provisions that are largely mechanical in nature and serve to guide the transition from the RMA to the new Resource Management (RM) system. New system design policy decisions are not sought. The necessary carryover of RMA instruments, authorisations and processes for an interim period of time until replaced or cancelled means the carryover of system components developed where the principles of Te Tiriti only had to be taken into account (rather than given effect to as required under the new RM system). It would not be practical to potentially redraft and reconsider many/most RMA instruments, authorisations and processes to give effect to the principles of Te Tiriti. The new RM system will be required to give effect to the principles of Te Tiriti. Decisions taken on processes that commenced after enactment of the Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) would apply Part 2 of the NBA, where practicable to do so (as guided by the recommended transition principles in recommendation (1)). This includes a requirement to give effect to the principles of Te Tiriti. It is therefore considered that this shift towards giving effect to the principles of Te Tiriti in the RM system could occur rapidly during the transition. However, it is noted that decisions on processes that commenced prior to enactment would likely only apply Part 2 of the RMA, so as to ensure there was not a substantial shift in process and maintain natural justice for existing processes. Non-legislative measures which drive a change in culture and a shift in focus to outcomes under the new RM system can be taken. These measures are being explored through the Capacity, Capability, Culture and Training work. Such measures will help drive a shift to give effect to the principles of Te Tiriti rapidly through the new RM system. Implementation decisions relate primarily to the timetabling of new RM system products. Further detailed decisions will be taken as secondary legislation is developed. It is considered that these decisions will be able to give effect to the principles of Te Tiriti. This is because a full system design picture will be available, and these timetabling design decisions will be taken under the new RM system (where the principles of Te Tiriti must be given effect to). A faster transition will enable to new Part 2 to be applied across the whole system faster, and officials have recommended options to accelerate transition (a model tranche of multiple (approximately three) regions and expanding the potential pool of IHP chairs, noting IHP chairs will be further discussed at MOG #17). It will be critical to understand the capacity and support required for iwi/hapū/Māori to meaningfully participate in the delivery of RSSs and NBA Plans. This will need to be considered as decisions are taken to prescribe implementation timetabling in secondary legislation. Limitations of this assessment: This assessment relates primarily to transition from one RM system to another, and the implementation timing of this transition. This assessment does not re-assess the treaty principles compliance of individual policy decisions that have informed new RM system design.

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Overall assessment

Background

This analysis has been prepared to support the 'Transition Pathways' paper prepared for MOG #16. The paper is concerned with obtaining agreement to a set of principles to guide more detailed work and decision making on transitional provisions for a range of distinct (but often interconnected) workstreams, along with decisions on the timetabling architecture to implement the new RM system.

Principal issues relevant to Treaty impacts from this paper relate to:

a. the inability of some transitional provisions to give effect to the principles of Te Tiriti

b. measures to uphold Treaty Settlements in the new RM system are excluded from this paper and are progressing separately

c. the capacity of iwi/hapū/Māori to fully participate in the development of first-generation regional spatial strategies (RSS)s, NBA Plans and new governance arrangements under the new RM system.

Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori: Reform objectives and outcomes

Policy options	Analysis
Adoption of transition principles	The agreed RM reform objective of giving effect to the principles of Te Tiriti and providing greater recognition of te ao Māori, including matauranga Māori remain relevant drivers of the individual contributing workstreams that will be guided by these transition principles. This matter is further discussed in the summary section above.
Implementation timing of new RM system	Iwi/hapū/Māori involvement will be central in the development of new RM system documents. Decisions around the shape and rollout of the new system will have potential implications on the capacity of Māori to participate in the new system roll-out, particularly so for iwi/hapū that span across multiple regions. Detailed timetabling provisions is expected to be stipulated in secondary legislation, which can be developed once a full system picture is clear (including the capacity requirements of Tiriti partners and RM system implementers). It is noted that decisions around the role of Māori in the new RM system are still to be made at MOG #17. This paper promotes the adoption of mandatory deadlines in the secondary legislation for a range of reasons (including certainty, timely transition, budgeting and system capacity management). It is considered that appropriately set deadlines will enable genuine local and regional tikanga to ensure due process is followed by iwi/hapū/Māori at place. Additional investment in capacity and capability development for iwi/hapū/Māori will also be required to achieve effective participation and delivery of the RM system. The need for support of system implementers and partners is signaled in this paper.

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Costs and benefits for Māori

Policy options	Analysis
Adoption of transition principles	The primary 'cost' is assessed above in regard to some transitional provisions not being able to give effect to the principles of Te Tiriti. The benefit of the transition principles is that they seek to provide balance, clarity and stability. This will enable effort and focus to be directed towards rapidly implementing the new RM system where the principles of Te Tiriti are to be given effect to.
Implementation timing of new RM system	Māori participation in the development of new planning documents will impose costs (and increasing iwi/hapū/Māori participation will in turn have benefits to Māori). Agreement to a quicker roll-out timeframe will potentially have the effect of condensing the costs of participation across the system. This has implications for capacity, resourcing and capability development. This will be particularly so for all Māori groups that may wish to participate or need to participate across multiple regions. This can be addressed in future funding decisions yet to be taken (to inform detailed timetabling to be stipulated in secondary legislation). Additional capacity support for system partners and implementers will be required to support effective implementation.

Protecting and upholding Treaty settlements

Work on upholding Treaty Settlements in the new RM system is being progressed separately. These will form a critical component of system design and as such it is critical that decisions are taken in a timely manner.

Waitangi Tribunal Recommendations

Policy options	Analysis
Adoption of transition principles and implementation timing of new RM system	The WAI 262 report found that the status quo RM system largely reserved decision-making powers for the Crown. The new RM system needs to shift to greater participation by Māori across the planning and consenting regimes. It is acknowledged that, by necessity, some RMA decisions (plans, consents etc.) will be transitioned to the new RM system for an interim period of time until lapsed, surrendered, expired, cancelled or replaced by new system products. The proposals in this paper do not make decisions around Māori participation, rather decisions relate to the transition and timetabling to roll-out of the new RM system. A faster transition will realise greater Māori participation and partnership more rapidly.

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Māori rights and interests in freshwater and other natural taonga

Policy options	Analysis
Adoption of transition principles and implementation timing of new RM system	Nothing in this paper appears to preclude any options to address Māori freshwater rights and interests, primarily because it relates to transition and implementation processes rather than policy decisions. [redacted]

Māori Crown relations risks and opportunities

Policy options	Analysis
Adoption of transition principles	Adoption of the transition principles proposed will guide the drafting of detailed transitional provisions. A decision to accept the general carryover of RMA instruments, authorisations and processes is considered necessary. But this does mean that the parts of the system will only take into account the principles of Te Tiriti, not give effect to them (for an interim period of time). Implementers should focus on rapidly moving towards implementing the new RM system so this risk to robust Māori-Crown relations is minimised. This includes the application of new Part 2 of the NBA as applicable.
Implementation timing of new RM system	It is considered that establishing implementation timetabling through secondary legislation will best ensure Māori capacity to deliver a known system design is best understood.

Overall assessment

An overall assessment for this Treaty Impact Analysis is provided in the Summary section at the start.

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MOG #16 Paper 4: Transition Pathways – Impact analysis summary table

Problem or opportunity - status quo
The transition to the new RM System will be critical to its success in achieving transformation and delivering on the five objectives of the reform. The timing and sequencing of the major legislative components will set the rate of change of the RM system and a decision is required about the overall transition pathway timing, including: • Implementation architecture within which broader timing and sequencing decisions will be taken • The principal impacts are on system implementers, local and central government and iwi/hapū/Māori who will need to have the required resources to effectively implement the new RM system • Consultation and testing of options has been carried out with key stakeholders across the RM system and the implications for delivery have been recognised in the preferred option • The transition timing and sequencing proposed addresses one of the major criticisms of the current system that there was a very slow delivery of the RMA and the environmental outcomes were not realised.

Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Transition related provisions	Recommendation to adopt principles to guide the development and decision-making for detailed transitional provisions. The principles will ensure a coherent, clear and coordinated set of transitional provisions are developed. These provisions will collectively seek to help achieve the objectives of reform.	Summarised in paragraphs (43) – (51).
Implementation related provisions	Implementation architecture: - Sequential rollout of new system products: Ensures strategic spatial direction flows down through the system, with consistency from higher order documents to lower order documents	Slower system rollout than if a non-linear approach was adopted. But non-linear approach would miss the benefits of a sequential rollout.

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	- Mandatory deadlines: provides certainty, a timely transition, capacity management of system implementers and better budgeting guidance	Mandatory deadlines would not allow for full flexibility for local and regional processes and tikanga. However, appropriately set deadlines should be able to adequately provide for this.
	- Detailed timetabling prescribed in secondary legislation: Enables a full system overview to be available (including capacity requirements of implementers) before timetabling is prescribed.	Delay in visibility of timetabling with the wait until secondary legislation. Could overcome with effective communications and engagement with system implementers, users and the wider public.
	Implementation components:	
	- Expanded scope of Independent Hearing Panel (IHP) chairs: removes a potential bottle neck in the system (to be reported on at MOG #17). Quality control for chairs with Chief Environment Court Judge appointing IHP chairs (as already decided)	Risk of poor-quality chairs (poor procedure, poor NBA Plans). But quality control with Chief Environment Court Judge still required to appoint chairs.
	Model tranche of multiple (approximately 3) regions (instead of one model region): Increased learnings from wider range of regions; faster implementation of overall system across New Zealand.	Could be more costly than supporting the model project in just one region. Can be overcome with targeted Model Project support.

Conclusion

The preferred options and the reasons for these have been summarised in this table; and further explained in the main body of the paper.

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Agenda item 4:

Transition Pathways

Summary slides

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Agenda item 4: Transition Pathways

Background information

Pathway for development of transitional provisions in legislation

- The transition into the new RM system will be the most complex time in the life of the new planning system
- It is important to develop robust transition provisions to provide clarity for system users
- The Panel noted the transition is a time of complexity and high resource demand for implementers

Pathway for developing implementation architecture and timetabling

- The implementation of the new system will need to balance the timely delivery of the NPF, RSSs and NBA Plans against the capacity of system users, Treaty partners and implementers to effectively deliver them
- The Panel noted importance of sequencing implementation of first-generation RSSs and NBA Plans in groups of regions (capacity constraints); and expected an overall 10-year transition period

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Agenda item 4: Transition Pathways

Options

Pathway for development of transitional provisions in legislation

- High number of detailed transitional provisions to be developed – officials recommend that the MOG Ministers delegate these decisions
- Development and decision-making on detailed transitional provisions will require further guidance. Could use either:
  - broad Transition and Implementation objectives
  - specifically crafted principles for transition

Pathway for developing implementation architecture and timetabling

- No prescribed direction for implementation; or
- Prescribe implementation architecture, including:
  - sequential rollout (NPF to RSSs to NBA Plans)
  - tranched rollout (groups of regions implement at a time)
  - mandatory deadlines

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Agenda item 4: Transition Pathways

Recommendations

Officials recommend that the MOG:

Pathway for development of transitional provisions in legislation

- agree to a set of specifically crafted principles that guide development of and decision-making on detailed transitional provisions.
- provide clarity, coherence and simplify transition

Pathway for developing implementation architecture and timetabling

- agree to the key components of timetabling architecture:
  - a sequential rollout of the system
  - tranches of regions with mandatory deadlines
- provides flow of strategic direction down through the system
- provides certainty and motivation for resourcing, budgeting and capacity management for implementers
- agree to prescribe timetabling in secondary legislation
- agree to the following measures to accelerate transition:
  - Model tranche (3 regions) - MOG recommended to agree via this MOG #16 paper
  - Expand potential pool of Independent Hearing Panel chairs – MOG to note that further advice on this will be provided at MOG #17

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Agenda item 4: Transition Pathways

Reform objectives and outcomes

Reform objectives agreed by Cabinet

1	2	3	4	5
Protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations).	Better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.	Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.	Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.	Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

- Well-crafted transitional provisions will reduce complexity and improve system efficiency and effectiveness
- Prescription of robust timetabling provisions will balance a timely implementation of the new RM system with the capacity of system implementers to deliver quality products
    - This will ensure the objectives and outcomes of reform are able to be achieved in a timely manner

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Agenda item 4: Transition Pathways

Discussion points

- Do you have any concerns with the recommended principles (that will be used to guide development and decision-making of detailed transitional provisions)?

- Are Ministers comfortable with the increased uncertainty and litigation risk for implementers and participants in the RM system during transition, as the new RM system purpose, outcomes and Treaty clause are to be applied in decision-making, alongside transitioned RMA instruments?

- Do you agree to the key components of timetabling architecture?

- Any views on the measures to speed up transition?

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[IN-CONFIDENCE]

Ministerial Oversight Group #16 Overview

1. Role of Central Government in the New System

Key decisions sought:

- One of central government's functions in the new system will be to provide strategic direction into the system.
- The Minister for the Environment will have responsibility for the NPF (with a possible role for the Minister of Conservation, subject to decisions delegated to the Minister for the Environment and the Minister of Conservation).
- Central government will be a member of the committees responsible for developing and approving RSSs.
- The central government member of RSS committees will be a decision-maker with voting powers.
- The central government member of RSS committees will, in-principle, be ministerial appointees.

(subject to MOG #17 decisions on committee governance arrangements)

These decisions will influence:

- Future advice, in particular MOG #17 papers on institutional arrangements and committee governance arrangements.

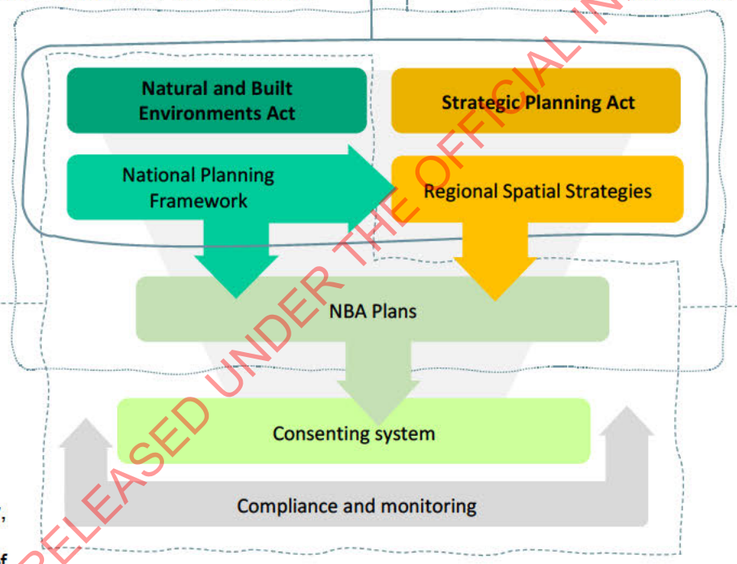
4. Transition Pathways

Key decisions sought:

- Principles will be used to guide development and decision-making on legislative transitional provisions for the SPA and NBA, including that transitional provisions shall provide certainty, clarity and clear instruction for system implementers and users.
- Key components of the timetabling architecture, including:
  - a sequential approach to implementation (National Planning Framework (NPF) (first version), then first-generation regional spatial strategies (RSS)s, then first-generation NBA Plans)
  - a tranched approach (different groups of regions implementing at different times)
  - the first (model) tranche containing three regions
  - setting mandatory deadlines for first-generation RSSs and NBA Plans.

These decisions will influence:

- The transition timetable to be set in secondary legislation under the SPA and NBA and decisions yet to be taken at MOG #17, including on the scope (and consequently timing) of the first version of the NPF.



2. Resource Allocation and User Charges

Key decisions sought:

The proposals set out in this paper aim to balance providing opportunities for new users, including Māori, to come into the system, and the interests of existing users, by enabling the reallocation of scarce resources over time.
decisions include:

- to include allocation principles of sustainability, efficiency, and equity in the NBA
- to enable the NPF to enable, guide or direct the use of resource allocation approaches in NBA plans
- that the NBA empowers resource user charges to be prescribed for users using any resource where a limit or target is set under the NBA (except freshwater takes and diversions), a purpose for resource user charges and that the NBA will enable them to be introduced through the NPF and NBA plans
- that the priority be given to existing consent holders and the requirement to have regard to the value of existing investment at renewal, are retained for the period before NBA plans become operative, and other consenting matters such as duration.

These decisions relate to:

- Discussions underway with the iwi/Māori groups on a medium-term work programme to address Māori rights and interest in freshwater, including through preparation of a relationship Accord between [redacted] the Crown.

These decisions will influence:

- Future advice in particular decisions at MOG #17 on the NPF and decisions delegated to the Minister for the Environment in relation to NBA plans and consenting.

3. Environmental Limits and Targets

Key decisions sought:

- That environmental limits to protect ecological integrity will be defined according to the current state of ecological integrity.
- That management units will be set at an appropriate spatial scale to ensure no net loss of current ecological integrity within the units.
- That targets are mandatory to protect and restore the natural environment.
- That environmental limits to protect human health will not be prescribed according to the current state of the natural environment.

These decisions relate to:

- This paper seeks agreement to high-level directives for environmental limits and targets that will be further developed for the MOG #17 NBA decisions-making framework and NPF papers.

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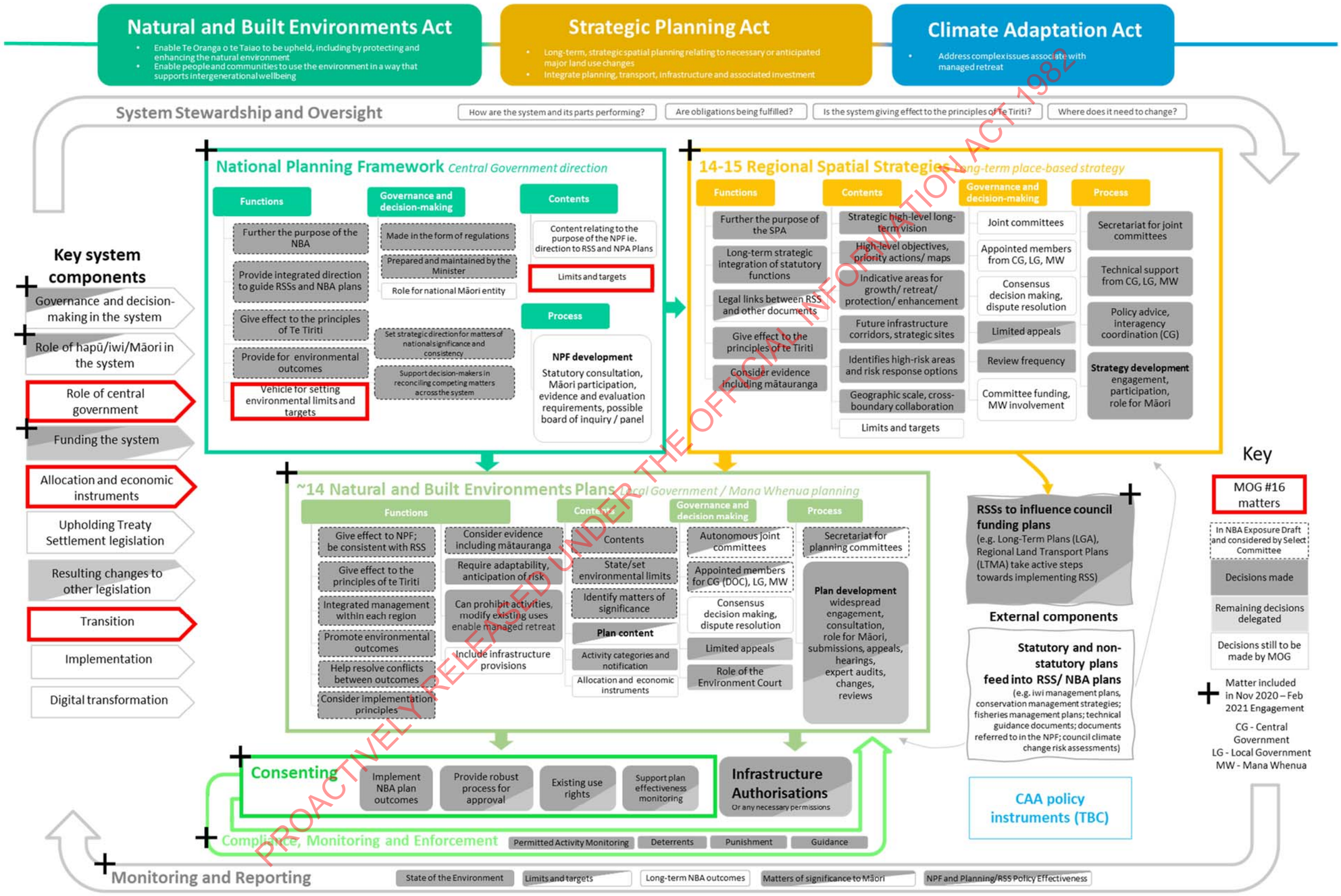
[IN-CONFIDENCE]

Resource Management Reform System Map (Updated March 17, 2021)



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Update on targeted engagement on RM Reform – our future resource management system

Purpose

1. This paper provides an overview of submissions received in the latest round of targeted engagement on Resource Management (RM) Reform. It summarises key themes and concerns raised by submitters and provides an overview of what was heard at targeted engagement fora and hui undertaken from November 2021 through to early March 2022.

Context

2. Cabinet agreed to repeal the Resource Management Act 1991 (RMA) and reform the resource management system at the December 2020 Cabinet meeting. (CAB-20-MIN-0522 refers). Since then, MfE has undertaken targeted engagement with Treaty partners, iwi and hapū, central and local government and other sector stakeholders as part of the policy development process.

3. In that meeting Cabinet agreed the main platform for engagement would be a dual select committee process with the National and Built Environments Bill (NBA) exposure draft submitted to a Select Committee Inquiry in July 2021. This would be followed by a select committee process for the NBA and Spatial Planning Act (SPA) bills following introduction into Parliament in third quarter of 2022.

4. Feedback received through the Exposure Draft and other channels provided a strong mandate to broaden the previous targeted approach to engagement. For example, the Select Committee Inquiry received over 35% of its submissions from sector stakeholders, indicating a high level of interest in the reforms. A number of these sector submissions also called for more fulsome engagement.

5. There was strong expectation from local government and sector stakeholders for more concrete details on reform proposals, and for engagement on these proposals before they are finalised.

6. Cabinet agreed in November 2021 (CAB-21-MIN-0469 refers) to a programme of targeted engagement on the architecture and decision-making roles proposed for the new resource management system.

7. In November 2021, the Ministry released an engagement document titled Te Pūnaha whakahaere rauemi o anamata: Kaupapa kōrero" - "Our future resource management system: Materials for discussion." The purpose of this document was to support targeted engagement with hapū/iwi and Māori groups, local government, and sector stakeholders. This document was published on the Ministry for the Environment website.

8. Over the period of 1 November 2021 to 3 March 2022, Ministry officials undertook 61 separate engagements with partners and key stakeholders. At these hui and fora officials facilitated discussion around the engagement material and sought feedback by 28 February 2022 (with limited extensions granted). In response to the engagement material, 151 written submissions were received.

9. At the same time, 11 online information sessions were held for the wider local government and sector communities, reaching approximately 1,800 people. This is part of the campaign to bring stakeholders and the public along on the Resource Management (RM) Reform journey.

10. A summary of the targeted engagement programme breakdown is as follows:

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Local Government	3 - Local government RM Reform Steering Group meetings 15 – Mayoral Forums 5 – Local Government New Zealand (LGNZ) Sector Forums 7 - Local Government meetings (Resource Managers Group (RMG), Consenting Managers Group (CMG), Planning committees)
Hapū/Iwi/Māori	Ongoing meetings with Freshwater Iwi Leaders Group (FILG)/ Te Tai Kaha (TTK) Māori Collective 22 - Hui for hapū/iwi/Māori
Sector	4 - RM Reform Group (Employers & Manufacturers Association (EMA), Infrastructure NZ, Business NZ, Property Council) forums 2 - Environmental non-governmental organisation (ENGO) Leaders Group forums/meetings 2 - Food and Fibre Forum Leaders Forums 1 - New Zealand Planning Institute (NZPI) Advisory Group meeting (ongoing)
Information Sessions (webinars)	3 - Local Government 2 – RM Reform Sector 1 – Primary sector 1 - Environment Groups 2 – New Zealand Planning Institute (NZPI) 1 – Resource Management Law Association (RMLA) 1 - Engineering NZ

11. The key themes from those engagements and written submissions are provided in Appendix 1 (pages 3 -11). Note that this is a summary of the information heard only and does not indicate a policy position. A breakdown of engagement activities and submissions received is provided in Appendix 2 (pages 12 - 21).
12. Feedback from engagement will be used to inform ongoing policy development and detailed decisions as part of the RM reform programme.

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Appendix 1: Key themes from targeted engagement

Key themes from submissions and engagement with local government

Local voice and localism

1. Local government stakeholders emphasised the need to ensure local issues and public participation remain in the new system and are balanced with a more centralised regional approach to plans.
2. Submissions proposed local voice could be maintained or enhanced through local representation on joint committees, and guidance and mechanisms to promote and encourage public participation.

Relationship with other Acts and government work

3. Local authorities noted the need to ensure the RM reform is aligned and coordinated with the Three Waters Reform Programme and the Future for Local Government Review. They also noted that there is a sense of pressure arising from concurrent reforms.

Transition to the new system

4. Local authorities are seeking guidance around transitioning existing plans into the new system. There is concern of potential sunk costs and duplication of resources incurring if plan reviews and changes need to be repeated when developing RSSs and NBA plans.
5. Training, guidelines, and clear expectations would support local authorities through the transition and implementation stages of the reform. It is envisaged that additional roles will be required to facilitate the transition phase, as well as upskilling and training across government.
6. Staff shortage is a critical issue. Local authorities are experiencing existing capacity, capability and resourcing issues and there are concerns that they will not have the capacity to deliver and support the transition to the new system efficiently and effectively.
7. Clarity is sought on the future role of the Environment Court and existing case law in the new system, and how this will be transitioned.

Digital and technological transformation

8. Local authorities see that digital technologies and tools could provide multiple efficiencies in the new system. Examples include a standardised and centralised consenting and monitoring database to avoid having councils invest separately. Digital tools could support systematic, coordinated, and consistent real-time monitoring, assist laypeople with understanding processes, and contribute to efficiency gains for reporting.

Resolving conflicts

9. Local authorities see that the NBA and NPF should provide clear direction on how conflicts will be managed.
10. It will be essential to provide clear prioritisation between the built and natural environment and provide clarification on any intended hierarchy of components.
11. Local authorities also asked that there is a process for conflict resolution.

National Planning Framework

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12. Local authorities see opportunity for the NPF to provide guidance on matters such as giving effect to Te Tiriti, prioritisation of outcomes, environmental protection and climate change, as well as providing robust guidelines around development practices.
13. There is general support for limits and the application of an evidence-based and precautionary approach when setting environmental limits.

Regional Spatial Strategies

14. Local authorities are supportive of RSSs and a coordinated approach to regional planning, as long as RSSs and RSS processes can account and plan for localised issues.
15. There were a number of recommendations for a New Zealand Spatial Plan or Spatial Strategy to guide the development of RSSs.

Joint committees and representation

16. Local authorities are asking for clarity around process and a strong lead from central government to ensure an effective and efficient working model for joint committees. Clarity is sought for areas such as roles and responsibilities and high-level direction on how these committees should be funded.
17. Joint committees should comprise of a cross-section of representation and expertise to reflect diversity of regions. A small number of local authorities suggested a split between elected and appointed members, 50:50 iwi and council membership, and co-chair responsibilities with mana whenua. Of the local authorities that commented on joint committees, most raised broad concerns with them.

Consenting, compliance, monitoring, enforcement (CME) and oversight

18. Local authorities see that effective monitoring will be essential for understanding how well RSSs and NBA plans are achieving their purpose, as well as for informing limit setting and ensuring adequate inbuilt feedback loops for decision-making and accountability.
19. Local authorities are supportive of consenting and CME proposals. They have questions about how enforcement will work for permitted activities and enabling third party certification with the increased number of permitted activities.
20. Increased monitoring for consenting (permitted activities), CME and system oversight will result in increased costs and require more resourcing.

Role of local government

21. Local authorities see that they must play an essential role at all levels of the new system as they are the holders of local knowledge and those responsible for implementing the system.

Role of hapū, iwi and Māori

22. Local authorities are strongly supportive of an increased role for hapū, iwi and Māori in the system and for the Act to give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori.
23. They recommended that hapū, iwi and Māori are provided with funding and resourcing to enable them to fully participate in the system.
24. In giving effect to the principles of Te Tiriti and providing for greater recognition of te ao Māori, mātauranga Māori should be recognised as technical evidence.

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Engagement

25. Local authorities are seeking ongoing engagement throughout the reform process and involvement in drafting of provisions.

Key themes from submissions and engagement with iwi, hapū and Māori

Overwhelming demands of engagement

1. The magnitude and pace of the various reforms, and the information which Māori are expected to digest, along with the stresses of COVID-19 and timing of engagement both at the end and start of the year, has been overwhelming for participants.
2. Attendees have indicated that further hui are required with smaller groupings once the new information has been processed.
3. Despite these challenges, there has been strong interest in this kaupapa as reflected by the number of written submissions received.

Funding

4. In order for iwi, hapū and Māori to take advantage of the tools to support Māori participation in the new system, significant investment in building their capability and capacity is crucial.
5. Funding is an essential component required in the transition and implementation period as hapū, iwi and Māori navigate being active participants and partnering with councils in the future system. This includes support to position themselves effectively to influence Regional Spatial Strategies (RSS) and Natural and Built Environments Act (NBA) Plans, and to support the implementation of Iwi Management Plans where these are created.
6. Mana whenua and mana whakahaere groups need to be adequately resourced for their specialist knowledge and mātauranga Māori in the same way that non-Māori specialists and consultants would.

Māori rights and interests in freshwater

7. Submissions expressed that Māori rights and interests, particularly in freshwater, need to be addressed as part of the reforms. In their view, not addressing Māori rights and interests is a breach of the Treaty.
8. The NBA bill does not address title ownership of the water itself. Attendees have spoken at length about the disappointment of promises made in the establishment of the Resource Management Act 1991 (RMA) regarding how freshwater rights and interests would be resolved, and that the RMA is now being repealed without that resolution.

Efficiencies

9. The new system needs to be more efficient and less complex than the current process, and implementation is key in ensuring this.
10. At this stage it is difficult to determine if the system will be more certain and efficient for plan users. If sub-regional plans are introduced, this will create an additional layer of process to go through – which could defeat the fundamental principles of why the reform has been undertaken.

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Definitions

11. Te Oranga o te Taiao and the principles of Te Tiriti need to be clearly defined at the forefront of the legislation. Some submitters are of the view that this should be led by iwi and kaitiaki to ensure Te Tiriti is defined in the view of tangata whenua.

12. There are mixed views on the use of mana whenua, tangata whenua and mana whakahaere. Some are strongly opposed to the introduction of the term mana whakahaere to broaden Māori participation and view it as a misappropriation of tikanga, and suggest that the current RMA definitions should be applied. Others support the inclusion of the term mana whakahaere as an inclusive concept, which explicitly includes marae, hapū, iwi, ahi kā, and urban Māori.

13. Submitters defined mana whakahaere as iwi, hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource.

Joint committees

14. Attendees have maintained throughout hui that joint committees need to reflect Treaty partnership as 50/50 representation.

15. Composition of joint committees should be developed region by region, with representation that includes hapū, iwi and Māori. Of those who commented on joint committees, a desire for 50/50 representation was reiterated in the hui.

16. Upholding and protecting Treaty settlement arrangements, as they are inalienable, is a legal requirement.

Role of whanau, hapū, iwi and Māori in the new system

17. Submitters raised concerns that the voices of smaller whānau, komiti, hapū and Māori groups might be lost, particularly those not represented by Post Settlement Governance Entity (PSGE)s.

Regional Spatial Strategies and NBA plans

Giving effect to Iwi and Hapū Management Plans

18. There is a desire to see RSSs being influenced by or giving effect to Iwi/hapū Management Plans (IMPs). There is a need for guidance outside of legislation around how to develop IMPs that effectively influence RSSs and NBA Plans.

19. IMPs must be understood by the system actors and the system must be understood by those drafting the IMPs; it will take time for the necessary capability to be built.

20. Better protection for IMPs with regards to monitoring how councils will implement and reflect IMPs in other plans, and how local government will support the relationship with iwi and hapū, is fundamental. This will demonstrate a commitment to 'giving effect to' Te Tiriti.

21. A holistic approach should be taken by hapū and iwi in planning and growth strategies within a Secretariat role to influence regional plans. The intergenerational aspirations of hapū, iwi and Māori should be reflected in planning documents.

Mana Whakahono ā Rohe (MWaR)

22. There has been support for retaining the obligation for Councils having to respond to mana whenua initiating a MWaR.

23. Feedback was that funding and capacity have also been barriers to success, and there needs to be a requirement for Councils to invest and build capacity for iwi/hapū.

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Rohe boundaries and overlapping interests

24. There is concern over the use of existing regional boundaries. Some submitters advocate for the use of rohe boundaries instead, alongside subcommittees designed to deal with cross boundary issues.

25. Participants felt strongly that the conversation about the boundaries for plans in the region should be taken up with Rangatira in each rohe.

Plan development process

26. Feedback strongly supported the need for Māori participation in the secretariat, and for those participants to be resourced appropriately and appointed regionally.

27. Many voiced the need for Māori to 'hold the pen' and engage with their communities on all parts of the plan, not just the Māori aspects.

28. Feedback was that funding and capacity for iwi and hapū needs to be provided directly from government in order to participate on the secretariat.

National entity

29. There were mixed opinions among hapū, iwi and Māori on the proposal for a National Entity.

30. A self-identification process should be employed for composition and take into consideration the urban make-up of rohe like Tāmaki Makaurau.

31. Decision-making powers should ultimately remain with the mana of the whenua at place, whether that be whānau, landowners, hapū and/or iwi – a centralised approach/framework is not preferred and may usurp the mana whenua.

32. Participants see benefit of having a dispute resolution body at a national level for consistency.

33. Models such as Te Awa Tupua have national oversight, and provide for governance, strategic and mana whakahaere input.

34. The National Entity should allow for the significant interest hapū, iwi and Māori communities have within the allocation tools and functions.

35. There is support among some submitters for the establishment of a Te Mana o te Taiao Commission within a Te Tiriti framework in place of the proposed National Entity. These submissions propose that the Te Mana o te Taiao Commission would be an independent national entity with 50% Māori membership, that works in partnership with the Crown. It is proposed that the Commission should have a wide range of roles and functions, including monitoring Te Tiriti performance, providing oversight on how Māori gain representation onto regional joint committees, and appointing Māori members to any board of inquiry process. The Commission would also be responsible for setting national environmental standards and limits in the National Planning Framework (NPF).

Relationship with local government

36. Many attendees stated that there needs to be an attitude shift within Councils in order for effective partnerships with Māori and Mana Whakahono ā Rohe agreements to be successful. At present they require willingness by local government, and there is a lack of incentive to work collaboratively with iwi, hapū and Māori.

37. A key concern from Māori landowners is the tendency for Councils to engage with iwi and hapū authorities as a more efficient practice in their view, therefore excluding representation from the ahi kā/mana whenua groups.

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38. Feedback was that funding for Māori involvement in consenting processes should come from local government in a user pays system.

Recognition of ahi kā, mana whenua and Māori landowner groups

39. The role of Māori landowners and ahi kā in the new system is an aspect that attendees wish to understand further.

40. Feedback on this topic included the need for whakapapa to determine ahi kā first and foremost.

Key themes from submissions and engagement with sector stakeholders

Definitions

41. Sector stakeholders voiced broad support for Te Oranga o te Taiao, although there is concern about this being undefined, and open to interpretation and therefore litigation.

42. Infrastructure providers specifically request consultation over definitions that relate to them, such as infrastructure and ancillary structures.

National direction and local voice

43. National direction has an important role in ensuring consistent implementation of the RM system across jurisdictions. It will be important that direction also provides flexibility for regional variations in community expectations, environment, and development needs. Careful balance needs to be struck between the NPF providing direction on nationally important issues, and resource consents providing flexibility to adapt conditions of consents to local conditions and specific circumstances.

Timing

44. There is a need for integration of strategic and national direction in a timely manner. The timing of the development, transition, and implementation of the different pieces of legislation will influence the success of the reform programme.

Digital and technological transformation

45. It was noted that the reform has not provided specific proposals for the use of technology to support the new system. Sector stakeholders are of the view that technology could innovate and disrupt current practices and lead to greater efficiencies, increased value and speed.

46. Centralising data from the diverse and disconnected processes under the current RM system should be a priority in the new system. By collecting and connecting this data, the information could be made available to operate the system adequately and make informed decisions on any amendments or adjustments to the system for better results.

Participation and representation

47. There are opportunities for a broader range of stakeholders to be involved in the resource management system at an earlier stage.

48. Infrastructure providers should be involved in the development of the system through the development of more collaborative processes. This is particularly pertinent in the case of nationally significant infrastructure.

49. Infrastructure and private sector representation on the joint committees could provide insights into market realities, efficiency of processes and decision-making, and to provide knowledge on the practical implementation of policy proposals.

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Freshwater allocation

50. It is noted that the proposals do not include options for freshwater allocation mechanisms and approaches, leaving it for future planning decisions to provide solutions. Sector stakeholders are of the view that the omission of freshwater allocation policies raise concerns over decision-making certainty for investors, and a continuation of uncertainty for businesses.

Weighting between natural and built environments and provision of infrastructure

51. The removal of the references to the built environment from the original draft of the legislation is a concern to some sector stakeholders. While the reform may deliver improved outcomes for the natural environment and tangata whenua, there is concern that it could continue to deliver poor outcomes for infrastructure.

National Planning Framework

52. Strong support for integrated direction at a national level through the NPF. National direction through the NPF could increase clarity and certainty, and reduce compliance activity and the number of hearings required.

53. Sector stakeholders are of the view that resolving conflicts at a high level will lead to greater efficiencies for regional and district planning and consenting matters. To be successful at this, the NPF will need to clearly identify where conflict exists between outcomes and limits. Specifically, where the conflict is involving lifeline utilities, or critical infrastructure pertinent for the health and wellbeing of communities, then that outcome should prevail over an environmental limit.

54. There is the view that the issues with current consenting and approval processes is due to the implementation of these policies. Resolving conflicts at a cross-partisan national level may help to remedy these concerns and enable a more consistent approach to implementation.

Regional spatial strategies

55. Sector stakeholders support the development of RSSs and see that they will enable strategic and coordinated infrastructure and development.

56. While strategic planning is essential for linear infrastructure projects, there also needs to be an operative function and not simply another layer of planning. It will also need to be responsive to changes in both a real-world and policy sense.

57. Assurances are needed to ensure that RSS processes aren't driven by particular sectors or sector interests, while also providing for a robust public process and the inclusion of local voice.

58. Infrastructure providers should be involved in development of RSSs.

NBA Plans

59. There is sector support for a single NBA plan per region as this would ensure efficiencies and save costs.

60. Infrastructure sector experience is that there can be widely varying and inconsistent planning constraints on networks as a whole and/or on a particular part of a network as it passes through different zones, overlays, or jurisdictional boundaries. Fewer plans and integrated decision-making are preferred to counter this issue.

61. If sub-regional plans are to be used, there will need to be a clearly defined criteria to enable these plans to avoid the current problem of multiple plans within a region. Sub-regional

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plans should only be used for issues that are distinct to the locality or require a different management response from the rest of the country.

Monitoring and system oversight

62. Support for greater system oversight through monitoring data and stronger requirements for responsible bodies to investigate, evaluate and respond to signs of degradation.

63. There is often a very poor basis of evidence to review the effectiveness of plan provisions.

Funding

64. In cases where national and strategic values are prioritised and to the extent that central government is to play a greater role in the new system, tax-payer contribution to the costs is warranted.

Key themes from submissions and engagement with ENGOs

Prioritising the environment

65. There is a need to clearly define provisions for staying within biophysical limits, to enable the recovery of native ecosystems and biodiversity.

Compensation and offsetting

66. Environmental compensation should not be available as a means of meeting limits or complying with rules, whether in the NPF or NBA plans. Biodiversity offsetting should also not be available for meeting limits, given the uncertainties associated with that approach to dealing with adverse effects.

Clarity in the NPF and NBA

67. Clear drafting will be required regarding the role of the NPF in achieving the purpose of the Act, including the relationship between the NPF and NBA plans.

68. Clarity will also assist with resolving conflicts at a high level (ie, prior to consenting).

69. There is concern from ENGOs that there are too many factors or elements that the NPF might or must include. Careful consideration needs to go into determining if this will increase efficiency and reduce conflict.

Regional Spatial Strategies

70. Submitters question whether the RSS planning process will be able to incorporate the detailed level of information required to ensure important biodiversity areas are protected.

71. As well as the setting of long-term objectives, which could help with certainty and efficiency, RSSs must include protection of biophysical systems and native biodiversity.

72. Need to have feedback mechanisms built into RSSs to be sufficiently agile and responsive. There is a risk that strategies could become too rigid to provide adaptability to changing knowledge and conditions.

Public participation / expert involvement

73. ENGOs consider that it is essential for public participation to be a cornerstone of the RSS and NBA plan processes. There also needs to be expertise amongst the appointees to joint committees.

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Monitoring

74. Expert advice will be needed to ensure that monitoring is carefully designed and conducted in order to ensure that concentrated effects are measured, and effects are accurately known.

75. There will need to be a clear link between monitoring limits and outcomes and a requirement in the NPF or NBA plan limits, to effectively respond to monitoring when necessary.

76. Responsibility, funding, and capacity will be required of local government to fulfil monitoring functions. Local government should be provided with resources and funds to enable adequate monitoring and proper processes.

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Appendix 2: Engagement activities and submissions received

Engagement with local government

1. The following engagement fora were completed during November 2021 to February 2022.
2. MfE ran three local government information sessions primarily for officials and those managing planning, consenting and Consenting, compliance, monitoring, enforcement (CME) functions in councils. Over 1000 people attended.
3. Officials attended the Policy Special Interest Group (regional and unitary councils), Resource Managers Group (RMG), Consenting Managers Group (CMG), Canterbury Planning Managers meeting, Wellington Planning Managers meeting, Waikato Combined Planning Forum and Taranaki Planning Managers forum.
4. Officials attended 15 Mayoral Forums which covered all parts of the country. In some fora iwi/hapū attended where they had formal partnerships with councils.
5. Minister Parker attended the Local Government New Zealand (LGNZ) Regional Sector meeting on 26 November and the Rural and Provincial Sector meeting on 25 November. He also attended a special meeting to launch the engagement.
6. Officials attended the LGNZ Metro Sector meeting on 5 November and the National Council meeting on 3 December.
7. Ongoing engagement with the Local Government Resource Management Steering Group continued with the group meeting 4 times between November 2021 and February 2022.

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Mayoral Forum	Number of non MfE attendees	Groups represented
Northland	33	Northland Regional Council, Far North District Council (DC), Whangārei DC, Kaipara DC
Auckland	30	Auckland Council and local boards
Waikato	15	Waikato Tainui, Ruakawa Settlement Trust, Hauraki Collective, Waikato Regional Council, Waikato DC, Hamilton DC, Matamata – Piako DC, Waitomo DC, Hauraki DC, Taupō DC, Thames Coromandel DC, Otorohanga DC
Bay of Plenty	21	Whakatōhea Māori Trust Board, Ngāti Rongomai Iwi Trust, Te Rūnanga o Ngāti Awa, Te Rūnanga o Ngāti Rangi, Bay of Plenty Regional Council, Opotiki DC, Taupō DC, Thames Coromandel DC, Otorohanga DC
Gisborne	15	Ngāti Porou, Ngā Ariki Kaipūtahi, Gisborne DC
Hawkes Bay	25	Tātau Tātau o Te Wairoa Trust, Ngāti Pāhauwera Development Trust, Heretaunga Settlement Trust, Rakaipaaka, , Te Taiwhenua o Tamatea, Ngāti Kahungunu, Hawke's Bay Regional Planning Committee, Napier DC, Wairoa DC, Hasting DC, Central Hawkes Bay DC.
Manawatū – Whanganui	14	Horizons Regional Council, Palmerston North DC, Manawatū DC, Rangitikei DC, Horowhenua DC, Tararua DC, Ruapehu DC
Taranaki	4	New Plymouth DC, Stratford DC, South Taranaki DC
Te Tau Ihu	10	Ngāti Koata, Marlborough DC, Nelson DC, Tasman DC
West Coast	9	West Coast Regional Council, Buller DC, Grey DC, Westland DC
Canterbury	11	Environment Canterbury, Christchurch DC, Selwyn DC, Kaikōura DC, Waimakariri DC, Waimate DC, Timaru DC, Ashburton DC, Waitaki DC, MacKenzie DC, Hurunui DC, Ngāi Tahu as observers
Otago	24	Otago Regional Council, Dunedin DC, Queenstown Lakes DC, Clutha DC, Waitaki DC, Central Otago DC, DIA
Southland	11	Environment Southland, Invercargill DC, Gore DC, Southland DC, The Property Group.
Wellington	15	Upper Hutt CC, Greater Wellington RC, Carterton DC, South Wairarapa DC, Porirua CC, Kapiti DC, Wellington CC, Masterton DC

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Regional engagement hui with iwi, hapū and Māori groups

8. A total of 22 engagement hui have taken place. The following hui were completed during November 2021 through to March 2022.
9. Of the 22 regional hui, 4 of those were held with technicians and regional sector specialists: Papa Pounamu sessions 1, 2 and 3 and the hui with Ngā Kairapu.
10. Outside of regional engagement, officials continue to engage with members of Māori representative groups, [redacted] in a series of technical wānanga to inform draft policy on the reform of the resource management system.
11. Officials continue to engage with Post Settlement Governance Entity (PSGE)s to transition Treaty Settlements into the new system.

Region	No. of attendees	Groups Represented
Tāmaki Makaurau Mana Whenua Kaitiaki Forum	12	Te Ākitai Waihoua,Ngātiwai, Ngāti Maru,Ngāti Whanaunga, Ngāti Te Ata, Te Patukirikiri, Te Ahiwaru Waiohua
Taranaki	3	Te Korowai o Ngāruahine Trust, Te Ātiawa o Te Waka-a-Māui
Maniapoto	5	Maniapoto Trust Board
Te Tau Ihu	11	Te Rūnanga o Ngāti Toa Rangatira, Te Rūnanga o Ngāti Kuia, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Ngāti Rārua, Ngāti Tama ki Te Waipounamu Trust, Tasman District Council, Marlborough District Council
Tairāwhiti	7	Whāngārā Farms, Ngāti Poro, Te Whānau-ā-Ruataupare, Te Whānau-ā-Apanui, Waikaremoana Māori Trust Board
Manawatū	3	Uenuku Charitable Trust, Uri o Ngaa Rauru
Tāmaki Makaurau	25	Ngā Kaitiaki o Ngā Wai Māori, Papa Pounamu Māori Planning Network, Ngāti Rehua-Ngātiwai Ki Aotea, Waikato-Tainui, Ngāti Tamaoho, Ngāti Whātua, Auckland Council, Whangārei District Council, Northland District Council, Far North District Council, Aotearoa Pacific Practitioners Special Interest Group, Iron Sand Consulting Limited, Landcult Ltd, Wikaira Consulting, Matakohe Architecture and Urbanism, Lifescapes, Kāinga Ora
Te Whanganui-ā-Tara	7	Iwi Leaders Group, Kāhui Wai Māori, Te Rūnanga o Toa Rangatira, Rangitāne Tū Mai Rā Trust
Te Matau ā Maui	4	Te Taiwhenua o Te Whanganui-a-Orotū, Iwi Chairs Forum,

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Region	No. of attendees	Groups Represented
Te Papa Ahurewa, Te Arawa Lakes Trust (continued)	12	Tūhourangi Tribal Authority, Te Papa Ahurewa, Ngāti Rangitihi
Taheke 8C - The Proprietors of Taheke 8C and Adjoining Blocks (Inc)	3	Taheke 8C, Ngāti Pikiao
Ngāti Whanaunga	2	Ngāti Whanaunga
Waikato-Tainui	32	Waikato-Tainui, Marokopa Pā, Ngāti Tara Tokanui Trust, Ngāti Tamaoho, Maniapoto Māori Trust Board, Ngā Muka, Development Trust, Mangaiti Trust, Patutuna Trust, Te Taniwha o Waikato, Te Whakakitenga o Waikato, Hokioi builders, Whetū Consultancy Group, Buddle Findlay, Waikato Endowed Colleges, Bell Gully, Te Huia Consultants Ltd, Kāhui Legal, Hauāuru ki Uta Regional Management Committee
Papa Pounamu session 1	50	Bay of Plenty Regional Council, Auckland Council, Clutha District Council, Tasman District Council, Palmerston North District Council ,New Plymouth District Council, Te Mana o Ngāti Rangitihi Trust, Taranaki Iwi Trust, Rongowhakaata Iwi Trust, Te Whānau ā Apanui, Ngāti Tahu, Ngāti Whaoa, Te Runanga o Ngāti Rārua, Tātau Tātau o Te Wairoa, Ngāi Te Rangi, Ngāti Toa, Ngāti Raukawa, Ngāti Hine, Ngāti Porou, Te Whānau ā Apanui, Te Wairoa, PSGE, Kete Planning Consultancy, Conroy Donald Consultants, Whetu Consultancy Group, Manaaki Whenua - Landcare Research, Lincoln University, Independent Māori Statutory Board, Whakatane / Kaikoura Associations, Papa Pounamu
Papa Pounamu session 2	55	Bay of Plenty Regional Council, Hutt City Council, New Plymouth District Council, Tasman District Council, Auckland Council, Te Mana o Ngāti Rangitihi, Te Arawhiti, Ngā Rauru, Ngāti Porou, Te Whānau ā Apanui, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Rongowhakaata Iwi Trust, Ngāti Ranginui, Ngāi Te Rangi, Te Rūnanga o Ngāti Rārua, Te Arawa, Tainui, Te Whānau ā Apanui, Ngāti Porou, Maniapoto Māori Trust Board, Ngāitai Iwi Authority, Ngāti Rangitihi, Te Runanga o Ngā Wairiki Ngāti Apa, Te Parawhau Resource Management Group, World Wildlife Fund NZ, Lincoln University, Victoria University of Wellington, Kāhu Environmental, Kauati Ltd, Papa

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Region	No. of attendees	Groups Represented
		Pounamu, Ministry of Housing and Urban Development, Department of Internal Affairs
Papa Pounamu session 3	35	Palmerston North District Council, Bay of Plenty Regional Council, Auckland Council, Ngāi Tahu, Te Uri o Hau, Rongowhakaata Iwi Trust, Ngāti Whātua, Ngāti Ranginui, Ngāi Te Rangi, Papa Pounamu, Kauati Ltd, Tangata Whenua Consultancy, Tauranga Moana Biosecurity Forum, Kete Planning Consultancy, Smart Growth
Ngāi Tahu	19	Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ngāi Tahu, Te Runanga o Kaikoura, Ngāti Waewae, Kāti Huirapa Rūnaka ki Puketeraki, Wairewa Runanga, Megen McKay Consulting Limited, Te Ao Marama Inc, Te Rūnanga o Ōtākou/Aukaha (1997) Ltd, Te Rūnanga o Waihao, Te Puna o Mata-au, Ōnuku Rūnanga, Te Ao Marama Inc, Hokonui Rūnanga - Kaupapa Taiao
Te Taitokerau	29	Ngā Kaitiaki o Ngā Wai Māori, Ngāti Awa, Ngāpuhi, Te Oti George and Haara Kingi Whānau Trust, Te Pouwhenua o Tiakiriri Trust, Te Rae Ahuwhenua Trust,Ngāti Rangi, Patuharakeke Te Iwi Trust, Te Rae Ahu Whenua Trust, Waipapa, Opahi,Whangaroa Papa Hapū, Ngā Tīrairaka o Ngāti Hine, Ngāti Kopaki, Te Puna Tōpū o Hokianga Trust, Landform Consulting Limited, Te Puni Kōkiri, Kahukuraariki Trust, Matauri X Incorporation, Ruapekapeka Māori incorporation, Oromahoe 18R2B2B2 Trust, Waitangi water catchment group – Northland Regional Council, Tapaetahi Incorporation, ART Consultancy, Landform Consulting Ltd, Te Uri o Hau Incorporation
Raukawa	13	Raukawa Charitable Trust, Ngāti Huia, Raukawa, Waikarakia 6B2B Trustees, Ngāti Huri nō Raukawa, Ministry of Primary Industries
NZMC hui 1	28	Ngāraratunua Kamo Māori Committee, Puhipuhi Waotu Māori Committee, Te Paatu ki Kauhanga Trust Board, Tiaki Taiao o Muriwhenua and Te Paatu ki Kauhanga Trust, Whatitiri Māori Reserves Trust & Whatitiri, Resource Management Unit for hapū Te Uriroroi, Te Parawhau, Te Mahurehure ki Whatitiri & Maungarongo Marae, Maungataniwha ki Rangaunu Trust Kaitaia, Māori Disability, Te Orewai Ngāti Hine, Ngā Kaitiaki o Ngā Wai Māori, collective of 7 hapū from the Wairoa catchment, Pakanae Combined Māori Committee from Omapere/Opononi, Akerama Marae, Ngāti Hau

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Region	No. of attendees	Groups Represented
NZMC hui 2	36	New Zealand Māori Council, Tāmaki ki te Tonga, Mangatangi Māori Kōmiti, Tāmaki Makaurau DMC, Hauraki DMC
Ngā Kairapu	16	Bay of Plenty Regional Council, Greater Wellington Regional Council, Environment Canterbury, Otago Regional Council, Taranaki Regional, Waikato Regional Council, Gisborne District Council

Engagement with sector stakeholders (including environmental non-government organisations)

12. The following engagement fora were completed during November and December 2021.
13. MfE ran three information sessions for groups, with one covering the wider sector. Officials also presented at information sessions hosted by the New Zealand Planning Institute and the Resource Management Law Association (RMLA) for their members. Over 1100 people attended.
14. Officials attended the sector CE's forum and the Resource Reform Group and agreed to follow up in February with more targeted engagement for the primary sector and ENGOs.

Meeting	Number of non MfE attendees	Groups represented
Sector Information Sessions (2)	524	Infrastructure, and engineering companies, primary sector, ENGO (environmental non-government organisations). Some local government participation.
RMLA (Resource Management Law Association) Information Session	250	RMLA members
NZPI (New Zealand Planning Institute) Information Session	364	NZPI members
Sector CE's Forum	21	Infrastructure NZ, Business NZ, The Property Council NZ, EMA, Resource Management Law Association, NZ Planning Institute, NZ Infrastructure Commission, Environmental Defence Society, Forest and Bird, Fish and Game, Transpower, Federated Farmers, HortNZ, Straterra, Engineering NZ, Network Utilities Forum, Electricity Sector Environment Group, NZ Rock Lobster Council, NZ Airport Association, Food and Fibre Leaders Forum and Water NZ Engineering Leadership Forum

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Resource Reform Group (Property Council, EMA, Infrastructure NZ)	6	Infrastructure NZ, Property Council NZ and Employers and Manufacturers Association

Submissions received

15. Below is a breakdown of submissions received by submitter type:

Submitter Type	Number received
Local government	36
Hapū, iwi, Māori	93
Infrastructure	6
Primary sector	4
Industry professional organisation	7
ENGO	3
Business	2
Total	**151**

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MINUTE

RM Reform Ministerial Oversight Group Meeting #15

Date	Monday 13 December 2021, 5:00 to 6:00pm
Location	Zoom
Chair	Hon Grant Robertson, Minister of Finance
Deputy Chair	Hon David Parker, Minister for the Environment
Attendees	Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti Hon Dr Megan Woods, Minister of Housing Hon Andrew Little, Minister of Treaty of Waitangi Negotiations Hon Nanaia Mahuta, Minister of Local Government Hon Poto Williams, Minister of Building and Construction Hon Damien O'Connor, Minister of Agriculture Hon Willie Jackson, Minister for Māori Development Hon Michael Wood, Minister of Transport Hon Kiritapu Allan, Minister of Conservation, Associate Minister for Arts, Culture and Heritage, and Associate Minister for the Environment Hon James Shaw, Minister of Climate Change
Apologies	Hon Phil Twyford, Associate Minister for the Environment

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Paper 1: Funding the operation of the resource management system

The Ministerial Oversight Group (MOG):

Context and opportunity

1. **noted** that functions, duties and powers under the Resource Management Act (RMA) 1991 are funded through two main sources:
   a. through user pays charges and rates at a local/regional level, and
   b. taxes where central government functions are performed
2. **agreed** that the funding approach under the reformed resource management system aims to:
   a. build on recommendations from the Resource Management Review Panel's (the Panel) report "New Directions for Resource Management in New Zealand", support the reform objectives agreed at MOG #2, and further previous decisions made by MOG
   b. ensure sufficient resourcing of functions and roles set out in the new system for these to be effective, [including funding for Māori participation][1]
   c. support costs attributable to certain activities being recovered from the users/polluters giving rise to the costs
   d. address potential barriers to the use of funding tools allowed for under

[1] This and subsequent text in square brackets are matters to be reported back to the MOG or relevant Ministers by officials, for decisions.

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the RMA, improve consistency of practices, and support the use of economic instruments

e. improve alignment with, and consistency of, provisions with those under the Local Government Act 2002 (LGA)

f. support improved transparency and systems performance monitoring

3. **noted** that ensuring collaboration between central and local government and Māori will be fundamental to the success of the reforms, and work is underway to consider how best to reflect this in the Natural and Built Environments Act (NBA)

Funding functions, duties, and powers in the new system

4. **agreed** to the following funding principles**:**

   a. **Principle 1** – users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers

   b. **Principle 2** – where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs

   c. **Principle 3** – where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do so

   d. **Principle 4** – at all levels within the system, costs and charges should be proportionate with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity

5. **agreed** that the NBA require that local government must give effect to funding principle 1 while funding principles 2 to 4 will remain non-statutory

6. **agreed** that, to mitigate the risk that funding principle 1 results in unsustainable outcomes, the NBA enables decision makers to charge less than full cost if:

   a. it is administratively inefficient to allocate and recover costs from users

   b. charging full cost may lead to an activity being undertaken at a scale (including not being undertaken) that would undermine achievement of NBA Plan outcomes, and/or

   c. charging may provide an incentive for non-compliance (eg, charging to register a permitted activity or to undertake compliance monitoring of permitted activities)

7. **noted** that Principle 4 is consistent with the procedural principles under section 18A of the RMA

8. **noted** that section 36 of the RMA limits the application of administrative charges in a way that is inconsistent with the approach taken in the LGA

9. **agreed** that the NBA charging provisions take a similar approach to that of section 150 of the LGA — "to prescribe fees or charges payable for a certificate, authority, approval, permit, or consent form, or inspection by, the local authority" having applied the charging principles

10. **noted** that section 36AAA of the RMA requires a mix of subjective and objective tests that often lead to ratepayers picking up costs that would most equitably be funded by users

11. **noted** the RMA is presently not explicit as to the tools local authorities may use when recovering costs, which is inconsistent with good legislative practice

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12. **agreed** that, in addition to tools used by local government under other legislation, the NBA provide tools to support local government to charge for resource management functions, duties, and powers, including:
    a. hourly rates
    b. fixed charges
    c. formulae

The role of economic instruments

13. **noted** that work is underway on the development of economic instruments, which may generate revenue that could be used to support the delivery of administrative functions
14. **noted** there is a risk that if not properly managed the cumulative impact of charging for administrative services, market allocation mechanisms, economic instruments, and the management of contamination liability could impose a significant cost on users
15. **agreed** that further work is undertaken to understand the possible cumulative impact on users of funding, market allocation measures, economic instruments, and liability settings

Funding Māori participation in the new system

16. **noted** that multiple Waitangi Tribunal findings include that the Crown needs to ensure the RM system enables sufficient funding for iwi/Māori to participate effectively
17. [**noted** that some parts of local government are presently funding Māori participation at a local and regional level, and while this is imperfect, it has improved in recent years]
18. **noted** that nothing in this paper is intended to change or undermine funding arrangements that exist in Treaty Settlements to support Māori participation, or preclude further decisions on Māori rights and interests in natural resources.
19. **noted** the Panel's recommendation that "provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest"
20. **agreed** that where an applicant requires iwi/Māori expertise (eg, to prepare a cultural impact assessment), this should be funded by the applicant in the same way as any other technical advice
21. **agreed** that [further work is required to determine] whether, and how, iwi/Māori could recover reasonable costs for providing advice when iwi/Māori make a submission (eg, on a notified consent or plan) providing expert advice that ought to have been commissioned prior to notification
22. **agreed** that where roles are set out under the NBA for Māori participation, funding be provided as set out below:
    a. at a national level that all reasonable costs for participation in national-level functions (eg, setting national limits and targets) will be funded by the Crown
    b. in Joint Committees and in the relevant secretariat, this will be jointly funded by the relevant regional and/or local authorities
    c. for other regional/local functions (eg, compliance and system performance monitoring), participation will be funded by the relevant regional or local authorities that carry out the function
    d. at the regional/local level, councils and hapū/iwi/Māori can agree to funding

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arrangements as needed

23. **directed** officials to report back to MOG on:
    a. the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the future system
    b. options for central government funding to support local government and iwi/Māori to participate in the new system
24. **noted** that the issues referred to in paragraphs 23 and 24 should be worked through with the Resource Management
25. **directed** officials to obtain legal advice on whether central government has an obligation to both:
    a. provide mechanisms for funding of Māori participation in plan-making
    b. ensure the adequacy of that funding
26. **noted** that there will be a suite of regulatory and non-regulatory measures to ensure adequate funding for Māori participation at a national and regional/local levels including:
    a. the regulatory requirement to 'give effect to the principles of Te Tiriti'
    b. the proposed regulatory requirement set out in paragraph 20
    c. data on funding for Māori participation gathered as a consequence of proposals set out in paragraphs 36 to 40 relating to transparency, accountability, and performance monitoring recommendations
    d. the proposed National Māori Entity utilising reported financial data to monitor the statutory obligations set out in (a) and (b) above
27. **noted** that funding principles may help reduce barriers to transferring functions to hapū/iwi/Māori (as enabled under section 33 of the RMA), on the basis that costs covered by the user is equally efficient whether a council or hapū/iwi perform the function
28. **[agreed** in-principle that timebound funding be provided by central government to support local government and Māori to build capability and capacity to participate effectively in the new system]
29. **noted** that funding to support local government and Māori to prepare for participation in the new system is being sought through ongoing Budget 2022 processes

Supporting public participation

30. **noted** that environmental NGOs and community groups have historically funded their own participation in planning and hearing processes
31. **noted** that many environmental NGOs and community groups do not have the resources to enable them to engage substantively in the environmental management system
32. **noted** that the Environmental Legal Aid Fund (the Fund) was established in recognition of this and allocates a pool of around $600,000 per annum providing up to $50,000 to pay for legal and expert testimony associated with appeals
33. **noted** that in 2020/21 the Fund was over-subscribed by $765,130
34. **noted** the need to balance the need for community involvement in planning processes with a desire to improve efficiency and lower costs associated with the system

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Supporting transparency, accountability, and performance monitoring in the new system

35. **noted** that presently there is inconsistency in how costs and revenues associated with resource management functions are reported, making it difficult to determine the economic, social, or environmental impact of funding practices

36. **noted** an in-principle proposal that mandatory, nationally consistent reporting standards be developed and reflected through existing mechanisms in the LGA, regulation making powers in the NBA, or the NPF in consultation with the Minister for Local Government

37. **directed** officials to report back to the MOG or relevant Ministers on the workability of the in-principle proposal in paragraph 37

38. **noted** that this is another example of the need to establish an effective digital platform that supports functions under the NBA and SPA

39. **noted** that improved financial reporting and systems performance monitoring will support greater efficiencies throughout the system

Transition and implementation

40. **noted** the three investments that will underpin an effective, efficient resource management system are**:**

    a. well-integrated digital infrastructure

    b. support for the development of model plans

    c. support to develop capability and capacity, including among iwi/Māori, to operate the system as intended

41. **noted** that further advice will be provided in support of upcoming budget bids and business case development consistent with these core investments

42. **noted** that investment in these areas does not necessarily imply long term responsibilities for funding these areas and further work is required on the timeframes for any central government funding (if agreed)

Providing a framework to manage contamination liability

43. **noted** that the costs associated with managing contamination often fall to local or central government, which is inconsistent with the proposed funding principles

44. **agreed** that the Environmental Protection Authority be explored as central government's agency for performing functions and duties and discharging powers related to the remediation of significant contamination identified in the escalation framework

45. **agreed** that the NBA contain a clear hierarchy that clarifies responsibility and liability for contamination, for example between present and previous polluters and/or landowners, and central and local government

46. **agreed** that the NBA provide for the tools necessary to support effective management of contamination liability, such as bonds and/or minimum insurance (noting the desirability for harmonisation with recent oil and gas legislation)

47. **agreed** to further work to develop the contamination liability management framework, including considering the role of iwi/Māori in managing contamination issues

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Delegations

48. **authorised** the Minister for the Environment, in consultation with other Ministers where identified, to make further decisions relating to:

    a. reporting standards, the regulatory mechanisms used to establish these, and the level of specificity that they contain, in consultation with the Minister for Local Government

    b. provision of liability instruments in the NBA and consideration of the institutional operating model and escalation framework

    c. other funding tools, such as those that exist under the RMA, in consultation with other relevant Ministers.

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Paper 2: Critical issues and delegated decisions

The Ministerial Oversight Group (MOG):

49. **agreed** to focus the MOG forward agenda only on critical issues and the interactions between them as indicated in Table 1 (now updated)

50. **agreed** that the critical issues for MOG decision-making will be:
    a. governance, including joint committees
    b. the role, funding and participation of iwi/Māori in the system
    c. allocation and economic instruments
    d. the National Planning Framework: national direction and conflict resolution role envisaged by Resource Management Review Panel
    e. Te Oranga o te Taiao - balancing environmental limits, development (housing, infrastructure), natural hazards, and climate change responses
    f. the role of central government
    g. transition and implementation of the new system

51. **agreed** that second order policy decisions will be made by the Minister for the Environment, in consultation with other relevant portfolio Ministers, as appropriate, as indicated in Table 2 (now updated)

52. **agreed** that the policy decisions:
    a. relating to Māori rights and interests will be made jointly to the Minister for the Environment and Associate Minister for the Environment (Hon Kiritapu Allan), in consultation with other relevant Ministers through the Māori interests subgroup
    b. relating to upholding Treaty settlement arrangements agreed by Māori and the Crown and in current Treaty settlement negotiations will be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Treaty of Waitangi Negotiations
    c. relating to upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and legislative interfaces and consequential amendments will be made by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), and the Minister responsible for Takutai Moana legislation (noting the Minister responsible for the Takutai Moana legislation is not a usual member of the MOG), and the Minister of Transport and Minister for Oceans and Fisheries are to be consulted
    d. relating to upholding natural resource arrangements agreed by Māori and local government under existing provisions of the Resource Management Act 1991 (RMA) to be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan) and the Minister of Local Government

53. **directed** officials to instruct Parliamentary Counsel to draft, with any necessary modernisation, the provisions described in Appendix 2 for the Natural and Built Environments Bill or Strategic Planning Bill, subject to any specific policy decisions made by MOG or Ministers under delegation relating to these provisions

54. **authorised** the Deputy Chair (Minister for the Environment) to make decisions on minor policy changes regarding the transfer of provisions from the Resource Management Act to the Natural and Built Environments Bill or Strategic Planning Bill, to improve implementation and achieve the reform objectives

55. **directed** officials to report back to MOG Ministers on progress with transferring RMA provisions not subject to policy change

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56. **agreed** that the arrangements set out in this paper will replace previous delegations that the MOG has made to subgroups or other Ministers for the policy areas described in this paper (but does not replace decisions previously delegated to Ministers in other policy areas)
57. **noted** that officials will share draft papers across core agencies, and will add Ministers to consultation where significant portfolio interests are identified by agencies
58. **agreed** to use a ministerial consultation process akin to the fast-track consenting process (where the Minister for the Environment seeks comments from specified Ministers) on those decisions that are delegated (Table 2)
59. **agreed** to an additional MOG meeting to be held in early February, that will provide MOG Ministers with an update on progress so far (MOG #15b)
60. **noted** that no further subgroup meetings will be scheduled, with the exception of the Māori interests subgroup
61. **noted** that subject to MOG agreement to the approach outlined in Table 2, and after the approach has been tested, officials will review the approach to ensure it is enabling efficient decision making, achieving the objectives of the reform programme and working in a practical sense for both agencies and Ministers
62. **noted** that the Minister for the Environment and Minister for Rural Communities will meet in February 2022 to discuss how to reflect the perspective of rural communities in RM reform
63.
64. **noted** the indicative legislative timelines, as set out in Appendix 2, supporting item 3
65. **noted** that the legislative timelines will be revisited following the conclusion of engagement.

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Table 1: Proposed Forward Agenda

Agenda item	Description
MOG #15b – 10 March 2022	
Check in on progress to date	Summary of decisions to date (including on infrastructure development), the system emerging from these decisions, remaining key decisions and timelines for achieving them, and a verbal update on engagement so far
MOG #16 – 29 March 2022	
Role of central government in the NBA and SPA	Decisions on functions and role of Central government in SPA and NBA, including as part of joint committees.
Transition and implementation	Options for transition pathways
Allocation and economic instruments	Deciding what tools to use to manage scarce public resources to achieve limits, targets, and objectives; and deciding who gets to use these resources and how any revenue generated from the use of tools will be administered
MOG #17 – 12 April 2022	
NBA decision-making framework, including environmental limits	Progressing the Select Committee recommendations and seeking final decisions on the core components of the NBA decision-making framework and their flow through the planning hierarchy. Includes: • Te Oranga o te Taiao, • Te Tiriti clause • Purpose • Outcomes • Environmental limits • Implementation principles • Key definitions (eg, the environment)
National Planning Framework, including environmental limits	Scope to be confirmed, noting that previous MOG papers provided decisions on the NPF and identified that further decisions would be delegated. There is anticipated value in a short paper that responds to any outstanding matters and integration issues across the system.

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The role of Central government	Decisions on institutional arrangements for the future system, including the role of the SPA Board
Role of iwi/Māori in the system	Includes final decisions on: • National Māori entity • Role in joint committees • Role in plan preparation • Other roles in consenting and CME • Integrated Partnerships Process • 'Who' participates • How Māori land should be treated in the new system
Governance, including joint committees	Decisions on governance arrangements for SPA and NBA, including legal status, membership, decision-making, dispute resolution for joint committees and secretariat.
Stocktake of MOG decisions on system design and how they achieve the reform objectives	This paper provides an opportunity to check in on progress made in MOG #16 and #17 to land the critical decisions.

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Table 2: Issues delegated to the Minister for the Environment in consultation with other Ministers

Topics	Indication of Ministers who will be consulted
Legislative interfaces and consequential amendments to other legislation (other than integration of the LGA and LTMA with the SPA)	The Minister(s) responsible for administering the relevant legislation and portfolios affected by changes

Topics	Indication of Ministers who will be consulted
Integration of the Local Government Act 2002 and Land Transport Management Act 2003 with the Strategic Planning Act	Minister of/for: Finance, Housing, Local Government, Transport, Conservation, Associate Environment (Allan)
Climate change (Climate Change Response Act, NBA, SPA)	Minister of/for: Finance, Housing, Local Government, Transport, Conservation, Infrastructure, Rural Communities, Agriculture, Climate Change, Māori Development
Monitoring and system oversight, including ministerial intervention powers (SPA and NBA)	Minister of/for: Finance, Housing, Māori Crown Relations: Te Arawhiti, Local Government, Conservation, Transport, Māori Development, Associate Environment (Shaw)
Coastal/Marine policy, including aquaculture (Officials expect this work will affect both the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019)	Minister of/for: Māori Crown Relations: Te Arawhiti, Oceans and Fisheries, Conservation, Transport, Associate Environment (Allan), Minister responsible for Takutai Moana legislation
Evaluation (evaluation/cost benefit analysis requirements for Regional Spatial Strategies)	Minister of/for: Finance, Housing, Local Government, Conservation, Associate Environment (Allan) *(in relation to Māori rights and interests)*, Associate Arts, Culture and Heritage (Allan), Transport.

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RSS Implementation Plans and Implementation Agreements – funding and financing arrangements	Minister of/for Finance, Housing, Local Government, Conservation, Associate Environment (Allan) (in relation to Māori rights and interests), Transport, Associate Arts, Culture and Heritage (Allan)
NBA Plan mechanisms and functions	Minister of/for Local Government, Conservation, Associate Environment (Allan)

Topics	Indication of Ministers who will be consulted
NBA consenting and permitting regime, which includes but is not limited to activity categories, notification, permitted notices/certificates (existing uses and compliance), rights to object (not to the Courts), alternative consenting, and other features that will assist the workability of the regime and aligning with the outcome framework *(note this was delegated to Transactional Efficiencies (TE) and Māori Interests (MI) subgroups in MOG #10)*	Minister of/for: Local Government, Conservation, Associate Environment (Allan), Agriculture, Biosecurity and Rural Communities, Transport
NBA Emergency Powers	Minister of/for: Civil Defence, Conservation, Agriculture, Biosecurity and Rural Communities, Transport
Consent reviews (not relating to allocation/rights and interests) *(note this was delegated to TE and MI subgroups in MOG #10)*	Minister of/for: Local Government, Conservation
Commencement, savings and transitional provisions for plans and consents	Minister of/for Conservation, Local Government, Transport
Detailed decisions on appeal, Courts and alternative dispute resolution *(delegated to the Minister for the Environment and Minister of Justice at MOG #14)*	Minister of/for Justice, Transport, Minister for Māori Development *(in relation to proposals to improve capacity/capability of the judiciary in te ao Māori/tikanga Māori/ mātauranga Māori matters)*

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Urban Trees/ vegetation policy *(delegated to the Minister the Environment at MOG #13)*	Minister of/for: Housing, Conservation, Associate Environment (Allan), Associate Environment (Twyford), Associate Environment (Biodiversity - Shaw)
Water conservation orders	Minister of/for: Conservation, Associate Environment (Allan)
Heritage Protection orders *(delegated to Minister for the Environment and others at MOG #13)*	Minister of/for: Housing, Local Government, Conservation, Associate Environment (Allan), Associate Arts, Culture and Heritage (Allan), Māori Development
Designations – additional detail, including appeals on designations *(will be delegated as a result of separate MOG #15 paper)*	Minister of/for Local Government, Infrastructure, Transport, Conservation
Definitions and Miscellaneous provisions *(where they are not already covered by the topics above or previous MOG decisions)*	In consultation with other Ministers as appropriate

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Paper 3: Enabling infrastructure in the new system through designations

The Ministerial Oversight Group (MOG):

Overall approach and carry over of RMA provisions

66. **noted** that decisions that affect infrastructure in the new system are being made across the whole work programme, and that the designations regime will need to be consistent with the wider system design
67. **agree**d that the existing designation framework in the RMA be carried over and aligned with the new system, with the modifications discussed in this paper, and subject to further work on identified issues
68. **noted** that further work is required to ensure the designation framework upholds existing Treaty Settlements, and will give effect to the principles of Te Tiriti o Waitangi
69. **agreed** that the policy intent of those aspects of the RMA designations framework listed in Appendix 3, Supporting item 1 can be carried over into the NBA and updated in accordance with modern drafting techniques
70. a**uthorised** the Minister for the Environment to make decisions on minor policy changes to the designations policy framework to improve implementation and achieve the reform objectives

Advice is on designations rather than infrastructure across the system

71. **noted** that enabling infrastructure will be achieved through the design of the full system. This paper focuses on aspects of the designation process, which contributes to MOG's request for "advice on how infrastructure services and associated designations will be enabled within the new system".

Modifications to the designation process

Access to designations

72. **agreed** that designation powers are available as of right for Ministers of the Crown and local authorities, and that this should be extended to Waka Kotahi and Kāinga Ora, and council-controlled organisations
73. **agreed** in principle that designation powers should be made available to other public and private infrastructure providers, subject to the approval of the Minister responsible for the NBA, with eligibility based on criteria linked to 'public good' outcomes
74. **agreed** that a process is provided that enables the responsible Minister to add approved infrastructure providers to a schedule in the NBA or National Planning Framework; and that
    a. Ministers, Waka Kotahi, Kāinga Ora and local authorities and council-controlled organisations will be automatically included in the schedule
    b. other public and private providers or private projects are able to be added or removed from the schedule.
75. **noted** that further work is needed as to when Kāinga Ora needs designation making powers
76. **noted** that once established, the water service entities will also be granted designation powers as of right
77. **noted** that criteria will be developed to support evaluation of public and private provider applications against 'public good' outcomes, including consideration of adaptation and natural hazard purposes, and advice will be provided to Ministers at a later date

Design of designations - two stage process and notification processes (activity classes)

78. **agreed** that a two-stage process is available for new designations consisting of:
    a. an initial notice of requirement to identify and protect a spatial footprint

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b. followed by more detailed Construction and Implementation Plans (CIP) as required

c. flexibility for a one-stage process at the discretion of the infrastructure provider

79. **agreed** that officials undertake further work to explore the options for notification of the CIP but that not all activities/works within designations will require notification of the CIP

80. **agree** that:

a. officials undertake further work to consider three notification pathways for designations that link the nature and scale of the effects to the extent of any engagement/review process undertaken at Stage 2 (CIP)

b. this further work will provide a role for Māori consistent with the principles of te Tiriti

c. officials will develop detailed policy advice and provide this to Ministers under delegated authority

d. officials develop advice that maintains desirable consistency between this approach to activities in designations and activities in other NBA Plan content

e. this advice will be considered along with other delegated decisions required for the designations provisions, in line with the decisions in Paper 2: Critical Issues and Delegated Decisions

81. **noted** that if providing for the inclusion of notification classes as part of a notice of requirement proves unworkable, officials consider a process similar to the status quo should be provided, including enabling a waiver process for CIPs

82. **noted** that the intention is for existing designations to retain non-notification requirements for CIPs equivalent to the current requirements for outline plans, namely notification solely to the relevant local authorities, with the requiring authority retaining power to decide whether or not to make the requested changes, subject to appeal

83. [redacted]

Notices of Requirement

84. **agreed** that officials undertake further work on the matters that should be considered when issuing a notice of requirement for a designation

Other minor amendments

85. **agreed** that officials undertake further work on a process in the NBA to allow designations to be easily altered to respond to changes which make the provisions of the District Plan more lenient, affecting the underlying or surrounding zone (similar to the process involved in keeping NBA Plan provisions aligned with national direction)

86. **agreed** that where changes are needed to infrastructure to accommodate the development of another type of infrastructure, and where there are no contrary reasons, that the provider of the second infrastructure can designate also for the purpose of relocating the first infrastructure

87. **agreed** that where it is logical to allow for one infrastructure provider to accommodate within its designation the spatial needs of another, and the two parties are willing to collaborate and agree funding, the NBA designation provisions should provide for that outcome

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Safeguards that should apply for landowners

88. **agreed** that a default lapse period for designations is necessary and that the minimum default lapse period be 10 years
89. **agreed** that decisions in relation to Māori land, and how it will be treated across the resource management system, will be subject to a separate paper and recommendations that TPK will be consulted on, which will be part of papers going to MOG #17.
90. **noted** that further decisions will be sought regarding designations and how they are to relate to Māori land
91. **noted** accordingly that the decision in paragraph 89 is subject to further work to ensure the principles of Te Tiriti are given effect to, and further advice will be provided regarding this

Scope of designations

92. **noted** that improving the cost and time needed to plan and provide infrastructure are key measures for success of the RM reform and should be considered in ongoing monitoring, testing and reporting of the RM reform policy development and implementation process over the next decade
93. **noted** that addressing the costs and delays experienced by infrastructure providers in the current system is an important challenge for the new system which will need to be addressed across the design of the whole

Coastal marine area

94. **noted** that the better planning and protection of infrastructure in the coastal marine area form part of the Cabinet objectives for the RM reform
95.
96. **noted** that this work could be addressed after passage of the NBA and SPA once there is clarity about how infrastructure is enabled through the NPF, RSSs and other core components of the new system
97. **agreed** not to extend the designations process to decision-making in the CMA as part of the RM reform
98. **agree** to further investigate the extension of the designations process to decision-making in the CMA if the issues that this extension is intended to address remain after RM reform is implemented

Regional consents

99. **noted** that extending designations to decision-making on regional consents, departing from the RM Panel's recommendation, would raise complex and sensitive issues including for freshwater, and have significant implications for, Treaty Settlements, freshwater and decisions in other areas, including three waters where councils retain consenting authority
100. **noted** that regional consent matters are of consequential interest for transport and that further work is needed on whether to enable designations in coastal marine areas and regional consents
101. **noted** that consideration of any changes in the way regional consent matters are handled should be deferred until there is more clarity about how the new RM and three waters systems are working and the need for further changes
102. **agreed** not to extend the designation process to regional consents as part of the RM reform
103. **agreed** to further investigate the extension of the designations process to regional consents if the issues that this extension is intended to address remain after RM reform is implemented.

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