Agenda – RM Reform Ministerial Oversight Group Meeting #17

Date: Tuesday 12 April 2022, 5pm-6pm

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
5.00pm-5.20pm	1. Regional governance and decision-making	Minister for the Environment	Regional governance and decision-making for plans in the reformed resource management system
5.20pm - 5.40pm	2. Role of Māori in the system	Minister for the Environment	Role, funding and participation of Māori in the RM system
5.40pm - 6pm	3. NBA decision-making framework, including Environmental Limits	Minister for the Environment	NBA decision-making framework, including environmental limits and targets

MOG #17 overview

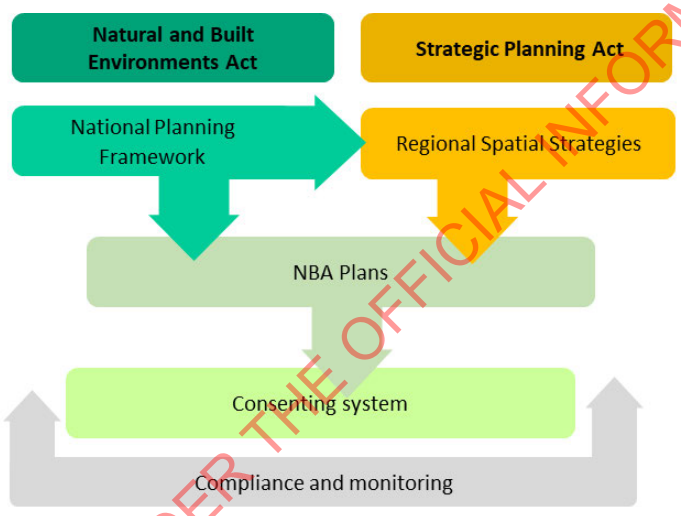
Purpose

1. This paper introduces the decisions sought at the seventeenth meeting of the Ministerial Oversight Group (MOG) on regional governance and decision-making, the role of Māori in the system and the decision-making framework for the Natural and Built Environments Act (NBA), including environmental limits and targets.

Key messages

2. At MOG #15b officials provided an overview of decisions made to date, illustrated how the system would work using the diagram in Figure 1, and outlined the anchor point decisions remaining for the MOG.

Figure 1 Diagram of new RM system.



3. MOG #17 seeks agreement on the remaining policy proposals related to the anchor points. Figure 2 below shows how the three MOG #17 papers relate to those anchor points.

Figure 2 Anchor points agreed at MOG #15b

Effective Māori participation across the system, including:	**The planning system will be:**	**System efficiency:**	**Moving from reactive effects-based to strategic outcome-based planning built around:**
• membership of Māori on regional joint committees • incorporation of mātauranga Māori in environmental limits • ensuring the system: - upholds Treaty settlements and RMA arrangements - preserves options for rights and interests in allocation in freshwater	• centrally supported and directed through the National Planning Framework • regionally determined by autonomous joint committees at the regional level • locally informed by community voice	• earlier more strategic planning, and greater use of standards, reduces uncertainty, volume of consenting, and costs on end users • performance metrics are developed and tracked, with effective accountability	• environmental limits set wherever necessary, built into the system and achieved • development within those limits made more certain and decisions made more efficiently • maintaining progress on existing policies (eg, freshwater, housing, aquaculture, climate)
Paper 1: Regional governance and decision-making			
Paper 2: Role of Māori in the system			
Paper 3: NBA decision-making framework			

4. MOG #16 progressed landing these anchor points. In particular:

   a. **Planning system**: central government was confirmed as a participant in making Regional Spatial Strategies (RSSs) under the Strategic Planning Act (SPA)

   b. **Effective Māori participation across the system**: the approach to preserving options for addressing Māori rights and interests in freshwater allocation was agreed

   c. **Moving from reactive effects-based to strategic outcome-based planning**: the overall framework for environmental limits and targets was agreed

   d. **System efficiency**: the principles for transitional provisions were agreed including that they shall provide certainty, clarity and clear instruction for system implementers and users, and that where practicable the transition should enable the outcomes of the new system to be realised rapidly.

5. The objectives set by Cabinet[1] for resource management (RM) reform aim to improve outcomes for the natural environment; urban development and infrastructure; the recognition of Māori and giving effect to the principals of Te Tiriti o Waitangi (Te Tiriti); climate change and natural hazards; and improving system efficiencies. MOG #17 seeks decisions on foundational aspects of the new RM system that will support achieving these objectives and the remaining components of the anchor points.

6. Paragraphs 13 to 33 below set out the detailed decisions sought by each paper at MOG #17, but at a high level, and in reference to the anchor points above:

   a. **Planning system and effective Māori participation across the system:** we need to decide how Māori will participate at different points in the system. This includes how Māori will be part of the significant strategic decisions within the system both nationally and regionally, as well as supporting Māori to participate in planning processes such as consenting, compliance and monitoring.

   b. **Moving from reactive effects-based to strategic outcome-based planning:** we need to provide more clarity to decision-makers, to support them in the shift to an outcomes-based system. This clarity is provided through refining the purpose of the NBA, including Te Oranga o te Taiao, providing guidance on the application of Te Tiriti clause, clarifying the role of limits and targets, refining the outcomes and providing tools to support resolving conflicts between them – including principles to guide decision-making.

   c. **System efficiency:** we need to clarify that decision-making in the new RM system should enable decision-making processes at each level of the system be more efficient, by removing ambiguity that currently exists in the system.

MOG #17 Decisions

7. MOG #17 seeks decisions on:

   a. regional governance and decision-making for plans in the new resource management system, including the composition of SPA and NBA committees

   b. the role of Māori in the system including the membership, appointment, funding, roles for Māori participation at a national level (through the National Planning Framework (NPF))

   c. the NBA decision-making framework, including environmental limits and targets.

8. Recommendations relating to the role of Māori and the composition of SPA and NBA committees should be considered in the context of the range of mechanisms that will be in the new legislation such as:

    a. a Treaty clause which requires those exercising powers or performing functions and duties under the SPA and/or NBA to give effect to the principles of te Tiriti o Waitangi

    b. the inclusion of te Oranga o te Taiao in the purpose of the Acts to better recognise te ao Māori

    c. inclusion of mātauranga Māori at all levels of the new RM system

    d. a commitment to uphold the integrity of relevant Treaty settlements and agreements under the Resource Management Act 1991 (RMA) between councils and Māori.

9. Through the RMA, its predecessor statutes and the new SPA and NBA, central government (through Parliament) delegates to local authorities the power to make planning laws – subject to the direction of the law and the NPF.

10. In doing so central government is delegating Te Tiriti o Waitangi (Te Tiriti) Article 1 rights. Planning has significant impacts on the allocation of scarce resources (eg the use of forests, fisheries, water, flora, fauna and taonga) and clearly engages Te Tiriti Article 2 interests for Māori. It also engages Article 3 issues for Māori and non-Māori, with rights of all being represented via democratically elected councils and, for the SPA committees, central government.

11. The reform of the RM system is a good opportunity (as identified in the Resource Management Review Panel's (the Panel) report) to provide for a RM system that gives effect to the principles of the Te Tiriti.

12. In considering how to do that, we have been mindful of the need to consider kāwanatanga rights and responsibilities, as well as rangatiratanga rights and responsibilities; together with the rights of all New Zealanders.

Paper 1: Regional governance and decision-making for plans

13. Regional collaboration as the basis for making decisions on plans and strategies will be a key new feature of the new RM system. The proposed joint committee model brings together local government, iwi/hapū/Māori, and central government (for regional spatial strategies) as joint decision-makers.

14. This paper seeks decisions on the proposed joint committee memberships for the RSS and NBA committees established as statutory bodies under the SPA and NBA with autonomous decision-making powers.

15. This paper also recommends that the 'Strategic Planning Act' should instead be named the 'Spatial Planning Act' to better reflect the purpose of the legislation.

16. The Panel recommended that NBA plans should be prepared by regional committees, with members of local government, mana whenua, and for RSS committees also the addition of central government representation. The Panel recommended that the joint committee model would enable a greater strategic role for Māori in the new system.

17. It is recommended that the membership of SPA and NBA committees is determined by regionally led process, as each regions have different circumstances.

18. As decision-making for RSS and NBA plans will move away from local authorities, it is recommended that roles and accountability must be clear in the legislation. It is

proposed that the legislation will provide pathways for local authorities and Māori to work collaboratively at a local level, however its success will rely on good will.

19. It is recommended that the committees will also be serviced by a secretariat who will be responsible for supporting the SPA and NBA committee and bringing staff from local authorities, Māori and central government (for SPA only) to draft the SPA strategies and NBA plans.

20. This paper also reports back to the MOG on four possible boundary configurations for Regional Spatial Strategies and Natural and Built Environment Act Plans in the 'Top of the South' (Nelson/Tasman/Marlborough, ie, 'Te Tau Ihu'):
    a. NBA Plans and RSS be prepared along current local authority boundaries (as per the rest of the country) (exposure draft approach)
    b. One NBA Plan and one RSS be prepared in the Top of the South/ Te Tau Ihu (Panel recommendation)
    c. Nelson/Tasman prepare one NBA Plan and one RSS and Marlborough prepares one NBA Plan and one RSS (simplified panel approach)
    d. Ngāi Tahu Takiwā northern boundary forms the planning boundaries at the Top of the South/Te Tau Ihu (takiwa approach).

Paper 2: Role of Māori in the system

21. This paper seeks decisions on Māori participation at the national, regional, and local levels of the new RM system, with a focus on what roles for Māori should be provided, who should participate and collaborate, and funding for Māori participation.

22. The Panel made several recommendations to strengthen the Te Tiriti o Waitangi clause, such as enhancing existing mechanisms, creating new mechanisms, and enhancing financial support for Māori participation.

23. At the national level, it is recommended that a national Māori entity is established to fulfil a range of functions, including to:
    e. monitor Te Tiriti performance
    f. have input in to the NPF
    g. make nominations for appointments to the NPF Board of Inquiry.

24. There are also proposed to be opportunities for Māori to participate in the development of the NPF through engagement with iwi/hapū/Māori and the input of mātauranga Māori experts to inform national scale limits and targets.

25. At a regional level, it is recommended that Māori will have roles and functions in SPA and NBA committees to oversee the preparation of, and approve, RSSs and NBA plans. This paper recommends the process for appointing Māori members to the SPA and NBA committees.

26. At a local level, it is proposed that Māori will continue to play a role making cultural impact assessments, participation as affected parties and in resource consenting where agreed in an NBA plan. Māori will also have specified roles through Treaty settlements and processes such as enhanced Mana Whakahono ā Rohe and Joint Management Agreements.

27. The paper also seeks decisions in relation to funding Māori participation in the new system.

Legally privileged

28. [redacted]

Paper 3: NBA decision-making framework, including Environmental Limits and targets

29. The purpose of this paper is to seek further decisions on the core decision-making framework of the NBA, ie the purpose and supporting provisions (Part 2) of the NBA.

30. The analysis responds to the recommendations made by the Environment Committee following the Inquiry on the exposure draft of the Natural and Built Environments Bill.

31. Many of the decisions being sought through this paper are refining the MOG's previous decisions related to Part 2 matters, rather than making fundamental policy shifts. However given the influence Part 2 has on the new system it is appropriate to bring these matters to MOG to ensure the overall policy intent of Part 2 is retained.

32. Key recommendations include:

    a. refinements to clarify the meaning of Te Oranga o te Taiao within the purpose of the NBA

    b. that the purpose of the NBA should make it clear that adverse effects must be managed in accordance with an 'effects management hierarchy'

    c. agreeing further details and considerations about how limits, targets, and exemptions will be prescribed in the NBA and NPF, building on the existing concept of management units

    d. that the NBA should provide a measure of protection for the places that are currently protected by section 6(a)(b)(c)(e) and (f) of the Resource Management Act 1991 (such as outstanding natural landscapes)

    e. retaining a revised set of principles in the NBA to support decision-makers in making all decisions on the NPF and combined plans, including resolving conflicts between outcomes, while incorporating the substance of other principles in the specific procedural provisions they are relevant to.

33. As requested at MOG #16 this paper is accompanied by a fictional greenfield development scenario to indicate how this form of development may occur under the new RM system.

MOG #17 Recommendations

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

1. **agree** to change the name of the proposed 'Strategic Planning Act' to the 'Spatial Planning Act' to better reflect the purpose of the new legislation
2. **agree** to establish joint committees (committees) under the Spatial Planning Act (SPA) for preparation of regional spatial strategies (RSSs) comprising local government, Māori, and central government members
3. **agree** to establish joint committees (committees) under the Natural and Built Environments Act (NBA) for preparation of the NBA plan comprising local government and Māori members
4. **agree** that the SPA committee and the NBA committee will be two separate committees with different functions, but that this does not preclude overlapping membership across the two committees
5. **note** that the primary function of the SPA committee will be to oversee the development of and approve an RSS for the region, and that previous MOG decisions have agreed detailed functions for the SPA committee
6. **note** that the primary function of the NBA committee will be to prepare and approve an NBA Plan for the region, and that previous MOG decisions have agreed detailed functions for the NBA committee
7. **agree** that the SPA and NBA committees will be standing committees and have on-going roles in the system including monitoring functions for plans
8. **agree** that the committee members will have a general duty to work collectively to achieve the purpose of the relevant Act across the region
9. **agree** that each committee will be established as a new statutory body under the SPA or NBA and are not subordinate decision-making structures to local authorities
10. **agree** that in practice SPA and NBA committees will operate as committees of all the local authorities in the region, hosted by one council, and that the host council will have no greater or lesser powers in relation to the committee than any other local authority in the region
11. **agree** that as part of composition discussions (as set out below), local authorities and iwi and hapū representative organisations will consider which local authority is best placed to be the host council, and that if unanimous agreement from the local authorities cannot be reached this role will default to the regional council
12. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to clarify the functions and powers of the SPA and NBA committees and local authorities, and operationalise the host council role, including the relationship with the director of the secretariat (as set out below)
13. **agree** that the SPA committee prepare an RSS covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them

14. **agree** the NBA committee prepare an NBA plan covering all local authorities in the region, with local authorities retaining responsibility for implementing and administering them

15. **agree** that the existence of the SPA and NBA committees does not affect the member councils' statutory obligations

16. **agree** that the SPA and NBA committees are to have legal autonomy to initiate and defend legal actions in relation to the performance of their functions and duties

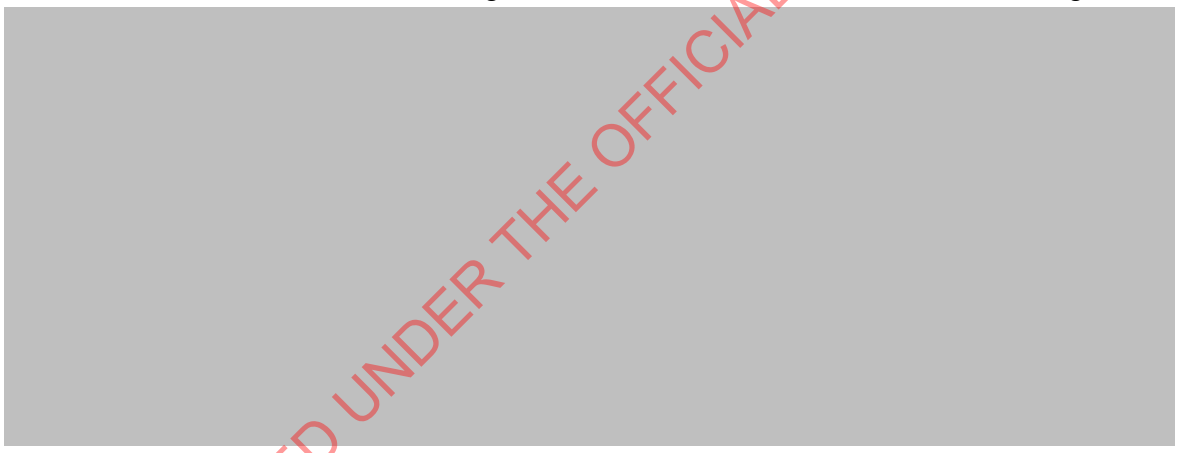
17. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to ensure the policy intent is also delivered in the context of unitary authorities (including Auckland Council)

PART B: COMPOSITION AND APPOINTMENTS

18. **agree** that the composition and size of the SPA and NBA committees should support effective decision-making and efficient functioning, with a minimum of 6 members prescribed in the legislation

19. **agree** that all local authorities in a region will be entitled to appoint a member on the SPA and NBA committees, but can choose not to be directly represented

20. **note** that the regions vary in numbers of local authorities, ranging from 4 local authorities in the West Coast and Southland regions to 12 local authorities in the Waikato region

21. 

22.

23. **agree** that when determining composition of SPA and NBA committees, the following issues should be considered:

    a. ensuring that urban, rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes

    b. ensuring that the iwi, hapū, and Māori in the region are appropriately reflected in membership of the committee

24. **note** the above parameters could be supported by non-statutory guidance that could support establishment and appointment to committees

25. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the composition of committees in recommendation 21 and on the parameters in recommendation 23

26. **agree** that SPA committees will have one central government representative appointed by the Minister/s responsible for administering the SPA

27. **note** that decisions on composition arrangements in regions are subject to on-going discussions with Post-Settlement Governance Entities (PSGEs) in relation to existing

Treaty settlement commitments, and with the relevant entities in relation to existing natural resource arrangements under the Resource Management Act 1991 (RMA)

28. **note** that MOG #7 and #8 agreed that the future system will need to provide mechanisms to uphold the intent and integrity of arrangements established via Treaty settlements and natural resource arrangements under the RMA, and that decisions on these arrangements are delegated to a sub-set of Ministers

29. [redacted]

30. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations[1] in the region seek to agree on a composition arrangement for the SPA joint committee, including:

    a. the host council

    b. the number of members of the SPA joint committee

    c. the appointing bodies who can appoint the members

    d. any other arrangements as agreed by all parties

31. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:

    a. the host council

    b. the number of members of the NBA joint committee

    c. the appointing bodies who can appoint the members

    d. any other arrangements as agreed by all parties

32. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans

33. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees

34. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:

    a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress, and

    b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement

35. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC

[1] *Paper 1: Role, funding and participation of Māori in the RM system* explains what this term means and how Māori will be participate in composition and appointment processes.

36. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met

37. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:

    a. the host council

    b. the number of members of the joint committee

    c. the appointing bodies who can appoint the members

38. **agree** that the LGC will then publish its determination or decision on the committee composition

39. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions

40. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 35 above

41. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council

42. **agree** that the appointing bodies will be required to have an appointment process, but the legislation will not specify what this appointment process will be for local government and Māori seats

43. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments

44. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees

45. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making

46. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)

47. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments

48. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

PART C: DECISION-MAKING ON PLANS

49. **agree** that SPA and NBA committees will be autonomous decision-making bodies and that the members will not be required to ratify decisions with their appointing bodies before agreeing to RSSs and NBA plans

50. **note** that the Local Government Steering Group (LGSG) has recommended Statement of Community Outcomes be developed by each council to articulate the place-based aspirations of their communities,

51. **note** that officials are supportive of the intent for Statement of Community Outcomes, but do not support a prescriptive legislative requirement, and are seeking to provide joint committees with flexibility for the types of place-based documents they wish to consider

52. **agree** that SPA committees must before finalisation of the RSS provide all appointing bodies a time period to provide feedback on the RSS, and the committee must give weight to the feedback when finalising the RSS and provide a response to the relevant appointing body

53. **agree** that SPA and NBA committees cannot delegate final decisions on plans to other bodies or entities (including subcommittees), unless necessary to uphold Treaty settlements or other existing arrangements under the RMA

54. **note** that the *Role, funding and participation of Māori in the RM system* paper seeks delegated decisions for transfers of powers (per RMA s33), which may provide for additional exceptions to recommendation 53

55. **agree** that SPA and NBA committees can establish geographic, issues-based, or cross-regional subcommittees in an advisory capacity to support decision-making at their discretion and may appoint any person(s) to these subcommittees

56. **note** that at MOG #11/12 Ministers agreed that SPA committees could use a 'collaborative planning process' to address cross-boundary issues through establishing cross-regional spatial planning committees involving more than one region to develop a cross-boundary spatial plan and that this plan would be automatically assumed into the region's RSS

57. **agree** to amend the recommendation on cross-regional planning committees agreed at MOG #11/12 for SPA committees, to clarify that the intention is that they are used where alternative coordination mechanisms are not suitable, and to provide for supportive conditions/criteria

58. **authorise** the Minister for the Environment to take further decisions on the cross-regional planning committees, including what conditions should be met for their use

59. **agree** that SPA and NBA committees may determine their own chairing arrangements, and will be empowered to appoint a single chair, chair/s, or a non-voting independent chair

60. **note** that the committee chair/s will play an essential role in making committees work well and enabling collaborative decision making

61. **note** that the availability of suitable chairs for the Independent Hearing Panels (IHPs) is an important determinant of the number of regions in each tranche in the development of NBA Plans, how many tranches are required and therefore the length of time for the transition to the new RM system

62. **note** that the requirements for a successful IHP chair includes chairing skills, attracting respect, having the confidence of the parties, an ability to work though the issues, and developing well-considered recommendations

63. **note** that MOG agreed at MOG #14[2] that an IHP chair must be an Environment Judge and that all IHP members, including the chair, must be appointed by the Chief Environment Court Judge (CEJ).[3] The CEJ must use "a process that ensures the IHP is

[2] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed.

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

independent and has the skills, knowledge and experience required to fulfil its statutory functions"; and MOG also authorised[4] the Minister for the Environment to make further policy decisions relating to the process for determining who is appointed to IHPs, including the chair

64. **note** that an alternate Environment Judge will be able to be appointed as an IHP chair

65. **note** that a retired Environment Judge under the age of 75 can be appointed as an alternate Environment Judge provided certain criteria relating to necessity and term are met; and that current and acting District Court Judges and current and acting Māori Land Court Judges can be appointed as alternate Environment Judges

66. **agree** that temporary Environment Judges be able to be appointed as alternate judges for the purpose of chairing IHPs, and that these appointments would be exempt from the eligibility criteria for alternate Environment Judges (as per RMA s249(2)), as well as the eligibility criteria for judges stipulated in s15 of the District Court Act

67. **agree** that SPA and NBA committees must make every effort to achieve consensus in decision-making for decisions on plans

68. **agree** that where the chair/s determines that consensus cannot be achieved, the committee would use a voting rule set at a majority of the committee members, meaning 50% plus one

69. **agree** that the chair/s of the SPA and NBA committees may initiate mediation at any time, and the chair/s is responsible for appointing the mediator

70. **agree** that for decisions on strategies and plans, SPA and NBA committees can produce minority reports to reflect where there are substantial dissenting views

71. **agree** that where the chair/s of the SPA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first) the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may either:

    a. undertake a review and make a direction to the committee; or

    b. appoint an independent person to undertake a review and make a direction to the committee

72. **agree** that where the chair/s of the NBA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first), the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may appoint an independent person to undertake a review and make a direction to the committee

73. **agree** that a direction made by the Minister or independent person appointed by the Minister under recommendations 71 and 72 will be made available to the committee, and for public transparency the committee would be required to publish it

74. **agree** that Ministerial intervention powers will be provided where a member or committee is unable to effectively fulfil their responsibilities under the SPA or NBA, and delegated decisions will be sought on this detail (as authorised by MOG #15)

PART D: RESOURCING THE COMMITTEES

[4] MOG #14, 17 November 2021. Paper 3, recommendation (42) agreed.

75. **agree** that SPA and NBA committees must appoint a director of the secretariat who will be directly accountable to the committee

76. **agree** that the host council will provide support to the secretariat (such as working space, and equipment) and that further decisions are required to clarify this relationship (noting the delegation at recommendation 12 above)

77. **agree** that the legislation will not preclude the same person being appointed as the director of the secretariats to the SPA and NBA committees, nor resourcing being shared between secretariats

78. **agree** that the responsibilities and duties of the director of the secretariat will be:

    a. to provide technical advice and administrative support to the SPA and NBA committees

    b. for the purposes of strategy and plan making, establish and facilitate collaborative working arrangements (including feedback loops) with and between local authorities and Māori in the region, and for the SPA a tripartite working arrangement with central government agencies

    c. to ensure that advice provided includes mātauranga Māori and te ao Māori perspectives; and

    d. to provide administrative support to the IHP[5] in a way that maintains its independence

79. **agree** that the director of the secretariat will have an obligation to consult the SPA or NBA committee on a resourcing plan for the secretariat and to consider the expertise and skills available across the groups represented on the SPA or NBA committee

80. **agree** that the director of the secretariat will have powers to employ and contract staff as necessary, but that it is expected that most staff working on the plans will be and remain employees of their local authority (or iwi and hapū representative organisation)

81. **note** that the *Paper 2: Role, funding, and participation of Māori in the RM system* paper seeks a delegation for the Minister for the Environment and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat

82. **note** that it was agreed at MOG #12 that that the SPA include a power to allow the Minister for the Environment and other responsible Ministers to direct government and statutory agencies to provide technical support to the Regional Spatial Strategy Committees where it is practical and reasonable to do so and that this could include seconding staff to the secretariat

83. **agree** that the SPA and the NBA include a duty on all local authorities and iwi and hapū representative organisations to work collaboratively with the director of the secretariat and to provide technical support and information to the committee where it is practical and reasonable to do so

84. **agree** that SPA and NBA committees will be funded jointly by local authorities, and that the local authorities must not direct the SPA or NBA committees in the use of funds or amend the agreed budget without the consent of the committees

[5] MOG #11/12 agreed to an NBA plan making process that results in a robust plan through the use of an Independent Hearings Panel (Paper 4, item 1(h)). During the hearings phase of combined plan development, the IHP will require administrative support from the secretariat such as website administration, IT assistance, communicating with parties, and other technical support to ensure an efficient and accessible hearing.

85. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions on the process for agreeing and amending a joint budget

86. **agree** that the SPA and NBA committees will have a duty to manage costs within the agreed budget

87. **agree** that the central government will fund the costs of the central government representative on the SPA committee

88. **note** that there is a separate programme of work looking at how to uphold Treaty settlements in the new system, in particular how to give effect to the participatory obligations, [redacted]

PART E: CROSS-CUTTING ISSUES AND OTHER MATTERS

Top of the South/Te Tau Ihi

89. **note** local government boundaries and iwi boundaries intersect across New Zealand

90. **note** that RM reform is not local government reform and adjustment of Council boundaries is therefore not appropriate for RM reform

91. **note** that there are three unitary councils at the top of the South Island (Top of the South)/ 'Te Tau Ihu', ie Nelson City Council (Nelson), Tasman District Council (Tasman), and Marlborough District Council (Marlborough)

92. **agree** the configuration of planning boundaries at the Top of the South/Te Tau Ihu will be

    EITHER

    a. NBA Plans and RSS be prepared along current unitary council boundaries (ie consistent with the rest of the country for unitary and regional councils)

    OR

    b. one NBA Plan and one RSS be prepared in the Top of the South/ Te Tau Ihu (Resource Management Review Panel recommendation)

    OR

    c. Nelson/Tasman prepare one NBA Plan and one RSS, and Marlborough prepares one NBA Plan and one RSS (modified Panel approach)

    OR

    d. Ngāi Tahu Takiwā northern boundary forms the planning boundaries at the Top of the South/Te Tau Ihu (takiwa approach) and the remaining northern boundaries be determined from either option (a), (b) or (c) above.

93. **note** that option d above is particularly likely to have impacts for Treaty settlement arrangements with iwi in Te Tau Ihu, whose rohe or takiwā does not align with current regional boundaries and who have existing relationships with the local authorities in the region provided for in their Deeds of Settlement that would be affected if boundaries are changed

94. **note** that at MOG #15 decisions on upholding Treaty settlement arrangements were delegated jointly to the Minister for the Environment, the Associate Minister for the Environment (Hon Kiri Allan), the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Treaty of Waitangi Negotiations

Interaction with Local Government Act 2002 (LGA)

95. **authorise** the Minister for the Environment, the Minister for Local Government, and the Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on

additional provisions required and any other matters relating to interactions with or consequential amendments to the LGA or where the decision relates to the role of the LGC or local authorities.

Paper 2: Role of Māori in the system

The Ministerial Oversight Group (MOG) is recommended to:

Context, analytical approach, who participates, Treaty impact analysis (see Annex A for supporting analysis)

Context and prior decisions

1. **note** that the Resource Management Review Panel (the Panel) identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and made a number of recommendations relating to more effective and strategic roles for Māori in the new system, and better consistency with the principles of Te Tiriti o Waitangi (Te Tiriti)
2. **note** that the proposals set out in the suite of accompanying papers (Annex 0 to E) broadly align with the Panel's recommendations (with one exception as set out in recommendation 6 below)
3. **note** that previous MOG decisions influence the framing for the recommendations in this paper, with significant ones relating to the role of the National Māori Entity, approach to "who" participates at different levels, and how Māori will be supported to participate in the system

Who from te ao Māori participates across the system

4. **note** that, in general, proposals aim to provide for iwi/hapū/Māori to self-identify who will represent them in resource management (RM) processes However, the proposals also recognise that in some cases more specificity is required to ensure that:
    a. there is clarity about which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
    b. the Crown sets up processes that avoid or resolve conflict
    c. the system is able to function effectively and efficiently and in accordance with its policy intent
    d. Treaty settlements and other existing natural resource arrangements under the RMA are upheld
5. **note** that the proposals for 'who' from te ao Māori participates across the system provide for
    a. roles for iwi and hapū, including in relation to composition and appointment processes for NBA and SPA committees
    b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space and resource 'at place'[6]

[6] Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

c. roles for expert Māori practitioners

d. a role for national Māori organisations as part of the National Māori Entity nominations process

e. participation opportunities for Māori as individuals through public participation processes

Terms and definitions

6. **note** that the Panel recommended the existing RMA terms 'iwi authority' and 'tangata whenua' be replaced by 'mana whenua' with a proposed definition of "an iwi, hapū or whānau that exercises customary authority in an identified area", but our view – discussed at the Māori Interests subgroup on 24 November 2021 – is that there is no clear case for a single overarching term, and different terms should be used in different contexts

7. **note** that consistent terms and definitions will be developed to support specific proposals on "who participates from te ao Māori" at each layer and function in the new RM system, including for:

   a. iwi and hapū representative organisations; and

   b. Māori entities representing rights and interests in relation to a particular area, water source, space and resource 'at place' (similar to the approach taken under the Urban Development Act 2020)

8. **authorise** the Minister for the Environment, Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan) to make any further policy decisions required to draft definitions and agree the implementation approach in relation to who participates from te ao Māori at each layer and function in the new RM system

Treaty impact analysis, including impacts on addressing Māori rights and interests in freshwater

9. **note** that officials consider that the overall package of partnership and Māori participation mechanisms set out in this paper will contribute to a system that gives effect to the principles of Te Tiriti and provides for greater recognition of te ao Māori, including mātauranga Māori

10. **agree** that a further Treaty assessment be carried out that considers the total proposed package for the NBA and SPA and the provision for Māori and Treaty considerations within the package

11. **note** that regarding impacts on addressing Māori rights and interests in freshwater (FR&I):

    a. The Crown has acknowledged[7] that:

       i. "Māori have rights and interests in water and geothermal resources"

       ii. "the recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to

[7] Affidavit of Simon William English in opposition to application for judicial review, 7 November 2012 (filed in Pouakani Claims Trust v Attorney-General, CIV-2012-485-2185), paras 28, 29, 38. While the original affidavit used the phrase 'engagement and agreement', the Crown clarified in a follow-up affidavit that the word 'agreement' was included in error.

care, protection, use, access and allocation, and/or charges or rentals for use"

iii. there should be "no disposition or creation of property rights or interests without prior engagement with iwi"

b. the proposals in this paper go some way to addressing Māori participation in the management of resources, including in respect of freshwater

c. [redacted]

d. [redacted]

e. [redacted]

12. **agree** to further work to determine how the tangata whenua participation provisions in the National Policy Statement for Freshwater Management 2020 (NPS-FM) interact with the enhanced Māori participation proposals discussed in this paper

13. **authorise** the Minister for the Environment, Minister for Māori Crown Relations: Te Arawhiti and Associate Minister for the Environment (Hon Kiri Allan) to make detailed decisions on how the tangata whenua participation provisions in the NPS-FM interact with the enhanced Māori participation proposals discussed in this paper

National Māori Entity (see Annex B for supporting analysis)

14. **agree** to the following decisions made in-principle by the MOG at meeting #11/12 regarding the National Māori Entity are confirmed, namely that it:

    a. be established to enable Māori participation at the national level

    b. have functions in monitoring Te Tiriti performance and inputting to the National Planning Framework (NPF)

    c. be set up independently to the government of the day, proposed to be achieved by establishing it as an Independent Statutory Authority, with any necessary links to the Crown Entities Act 2004

15. **note** that in order to enable the National Māori Entity to act as independently as possible, recommendations on functions, powers and appointments have been developed in a way which balances the need for clarity, durability and assurance with as little prescription as possible

16. **agree** that a key purpose of the National Māori Entity is to support positive progress and continuous improvement throughout the new RM system (ie, the future SPA/NBA) and note this has been reflected in all recommendations and proposals for the Entity's role

Monitoring of Te Tiriti performance

17. **agree** that as part of monitoring and assessing whether the RM system is giving effect to the principles of Te Tiriti, the National Māori Entity:

    a. will regularly monitor those who have RM functions or responsibilities and produce reports on the results

b. can investigate or carry out ad-hoc monitoring of Te Tiriti performance (outside of the regular monitoring cycle) if they deem it necessary when requested by persons participating in the RM system

c. produce cyclical summary reports which consider ways to address RM TeTiriti issues of national importance and/or issues common to multiple regions which are identified through monitoring

18. **note** that officials are preparing advice on how frequently (e.g. cyclically every six years) the National Māori Entity should prepare summary reports and how this cyclical reporting cycle can align with other system monitoring reports, with decisions proposed to be made via delegated decisions on this matter

19. **agree** that, in relation to the National Māori Entity reports referred to in recommendations 17 and 18:

a. reports will be provided to any of the monitored groups, with the groups being required to respond

b. summary reports will be tabled to Parliament as well as delivered to the Minister for the Environment

c. reports and associated responses will be made publicly available

20. **agree** that the National Māori Entity will have confidentiality and information management processes established which ensure it maintains confidentiality where needed

21. **note** that any monitoring completed by the National Māori Entity will not replace the need for central government to continue monitoring its own performance in giving effect to the principles of Te Tiriti or responsibilities in upholding Treaty settlements, Takutai Moana Rights and other existing agreements

22. **note** that further advice on the process for completing Te Tiriti monitoring (including monitoring frameworks and timeframes) and how this links with monitoring and oversight in the wider RM system will be provided through the System Monitoring and Oversight delegated decisions paper

Maintenance of nationwide records of iwi and hapū representative groups

23. **note** that there is currently uncertainty for councils and consent applicants about which Māori to consult, with the list of relevant iwi and hapū held by Te Puni Kokiri not being exhaustive

24. **agree** that there is a need for an up-to-date nationwide record identifying iwi and hapū representative groups (as recommended by the Panel)

25. **note** that Te Puni Kokiri, Te Arawhiti, the Department of Internal Affairs, or the National Māori Entity could undertake the role referred to in recommendation 23

26. **note** that officials do not consider the National Māori Entity to be the appropriate group for doing this, and recommend the issue of a nationwide record be considered further

27. **authorise** the Minister for the Environment, Minister for Māori Crown Relations: Te Arawhiti, Minister of Local Government, Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the issue

Input to the National Planning Framework

28. **note** that any input or advice from the National Māori Entity in NPF development will not replace the need for engagement with iwi/hapū/Māori, or others

29. **agree** that the National Māori Entity will provide direct input to the development of the NPF via engagement with the policy lead agency for the relevant aspect of the NPF

30. **agree** that the National Māori Entity will have input covering all changes to the NPF

31. **agree** that the process for developing the NPF will include:

    a. engaging with iwi/hapū/Māori at-place (led by officials)

    b. mātauranga Māori experts (either contracted as a professional service or employed by the Ministry for the Environment) inputting into the setting of national scale limits and targets directly with the Ministry

32. **note** that an interim National Māori Entity may be required to enable early input into the first iteration of the NPF

Nominations to the National Planning Framework Board of Inquiry

33. **agree** that the National Māori Entity will have the:

    a. opportunity to nominate members to the responsible Minister (who are not members of the National Māori Entity itself) to be considered for appointment to the NPF Board of Inquiry

    b. right to be heard at the Board of Inquiry hearing (without the requirement to make a formal written submission), in alignment with the intent outlined in section 50(3) of the RMA which applies to the Minister for the Environment

Advice to persons participating in the RM system

34. **agree** that the National Māori Entity could provide advice (either proactively or on request) to all persons participating in the RM system, with the Entity able to respond to requests at its discretion (so that time and resources are not unduly taken away from its core functions)

35. **agree** the National Māori Entity can recover reasonable costs from persons at its discretion when responding to requests for advice, but cannot recover costs for advice it provides proactively

Role in appointments of members to Independent Hearings Panels

36. **note** that the MOG has previously agreed to the use of Independent Hearings Panels (IHP) as part of the NBA plan development process, and delegated Ministers (per earlier MOG #14 agreement) have agreed that the Chief Environment Court Judge (CECJ) will appoint IHP members [BRF-946 refers], and that further advice will be provided to delegated Ministers

37. **note** that nominations of members to IHPs should be determined by those representing the regions, as opposed to a national level organisation

38. **agree** that the National Māori Entity will be consulted by the CECJ when the Judge is making appointments to IHPs, with the CECJ and National Māori Entity enabled to establish their processes for doing this

National Māori Entity's role in dispute resolutions for SPA and NBA committees

39. **note** that the National Māori Entity will not have a determinative role in any SPA and NBA committee dispute resolutions for composition arrangements or iwi/hapū/Māori appointment due to the importance that:

    a. the National Māori Entity not usurp the mana of iwi/hapū/Māori at-place or interfere with regional decision-making

b. the voice of iwi/hapū/Māori is represented and considered in any SPA and NBA committee composition and appointments dispute resolution processes

Powers

40. **agree** that the National Māori Entity will have powers required to support its core functions and enable follow-up if needed, including the ability to:

    a. compel the provision of information when monitored groups refuse to provide it

    b. share relevant information with other agencies

    c. require response to its recommendations on the monitoring of Te Tiriti performance

    d. enable a requirement to respond (at its discretion and by mutual agreement) for requested advice and recommendations it provides

    e. recommend Ministerial intervention when Te Tiriti performance monitoring identifies significant issues

41. **note** that further detail on how the Minister responds to the National Māori Entity's recommendations for intervention will be provided through the System Monitoring and Oversight delegated decisions paper

42. **authorise** the Minister for the Environment and the Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the powers of the National Māori Entity, including:

    a. details of the cost recovery regime

    b. the level of accountability or weight that persons should give to advice or reports from the National Māori Entity

    c. who should respond to advice produced by the National Māori Entity

Institution Type

43. **agree** that the National Māori Entity will be established as an Independent Statutory Authority, with any necessary links to the Crown Entities Act 2004, as it provides the appropriate level of independence balanced with the need for sustainable resourcing and accountability

44. **authorise** the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti and the Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister for the Public Service, to make detailed decisions on which aspects of the Crown Entities Act 2004 will apply to the National Māori Entity, and on any other related matters

Composition and appointments process for National Māori Entity membership

45. **agree** that the National Māori Entity will be known by that name until a formal name is established

46. **note** that a range of appointments processes were considered, with an appointments process that supports a self-identified and bottom-up approach preferred

47. **agree** that members to the National Māori Entity will be appointed by an electoral college/nominating panel process, with nominations for this being provided by iwi/hapū/Māori clusters

48. **agree** that final membership will be formalised by the Minister for the Environment

49. **agree** that regions will be used as the basis for iwi/hapū/Māori clusters, with an additional cluster for national representative Māori organisations

50. **authorise** the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development and the Associate Minister for the Environment (Hon Kiri Allan), to make detailed decisions on further options for how the regional cluster appointments process may work including:

    a. the way clusters are structured and organised, including whether this detail should be in secondary legislation or a Schedule to the NBA

    b. the high-level process (including which Ministers approve final membership and what happens if the final approver does not agree with the membership put forward)

    c. timeframes for implementation

    d. dispute resolution processes

Other matters

51. **authorise** the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti and the Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister for the Public Service, to make further decisions on whether an interim National Māori Entity will be established, including (if relevant) the details of this establishment and the interim Entity's functions

52. **note** that future advice on membership, implementation and budget (as referenced in Annex E) are closely linked to the MOG decisions on functions, powers, form and appointments processes

53. **authorise** the Minister for the Environment and the Associate Minister for the Environment (Hon Kiri Allan) to make detailed decisions on National Māori Entity membership (including numbers, criteria, fees, appointment terms, change management and removal processes), implementation (including transition arrangements and timeframes), and budget (including further information on budget estimates as referenced in Annex E)

Regional Governance (see Annex C for supporting analysis)

Who participates in SPA and NBA committee composition and appointments processes

54. **note** that Paper 1: Regional Governance and decision-making in the new resource management system seeks agreement to a range of matters related to SPA and NBA committees, including composition and appointment processes

55. **note** that [redacted] and the [redacted] have differing views on 'who' from te ao Māori should be leading the composition and appointment process for Māori members on the SPA and NBA committees

56. **agree** the following approach to composition and appointment for Māori members on SPA and NBA Committees:

    a. iwi and hapū representative organisations are identified as the entities to be engaged with in discussions on composition of SPA and NBA committees

b. iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities[8] representing rights and interests 'at-place'[9] in agreeing composition and identifying appointing bodies

c. there will be requirements to maintain a record of engagement on composition and appointment discussions and to make this record publicly available

d. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations, can also be appointing bodies

e. appointing bodies must be enduring and capable of developing and executing their own appointment and removal processes

57. **note** that this approach does not preclude the creation, outside of statute, of a regional forum or other mechanisms to support appointee accountability, help reach agreed positions, and resolve disagreements

58. **note** that once appointments are made, the Māori members on SPA and NBA committees (like local authority members) will be paid for their services by the committees

59. **authorise**:

a. the Minister for the Environment and the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) to make any other decisions needed on the ongoing role and functions of appointing bodies, details of dispute resolution (including facilitation) and circuit-breaker processes for Māori appointments; and

b. the Minister of Finance (Hon Grant Robertson), in conjunction with the Ministers listed in 53 a, to make decisions where these policy decisions have financial implications

Secretariat

60. **note** that Paper 1: Regional Governance seeks agreement to the functions and responsibilities of the Secretariat Director and the Secretariat

61. **authorise** the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat, including any additional legislative and non-legislative measures that may be required to support the role for Māori in the secretariat

Upholding Treaty settlements, Takutai Moana rights and other existing arrangements

62. [redacted]

[8] See recommendation 7.

[9] Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

b. the future system will need to provide mechanisms to uphold the intent and integrity of those arrangements established via Treaty settlements and/or under the RMA (including co-governance, joint management, and arrangements for the development of regional planning documents)

c. decisions on composition arrangements in regions are also subject to on-going discussions with affected parties in relation to upholding existing commitments and may require further policy decisions to provide for additional direct representation of those parties on SPA and/or NBA joint committees or sub-committees

d. these matters will require further delegated decisions (refer to MOG #15 delegated decision making for Treaty settlements; RMA arrangements; Takutai Moana rights and Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019)

Treaty Partnership Entities

63. **agree** to rescind the decision at MOG #11/12 that "Treaty Partnership Entities will be enabled to support SPA and NBA committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements"

64. **note** that no further action be taken at this time in relation to providing for Treaty Partnership Entities[10] as a mechanism to provide for iwi/hapū/Māori at a local level to have input into plan development

65. **note** that, to support upholding existing Treaty settlement arrangements and natural resource arrangements under the RMA, where the existing arrangement relates to a specific entity and a local authority working together to produce a plan or strategy that is akin to a plan or strategy prepared by NBA/SPA committee (or part thereof), that arrangement may be transferred from the local authority to the NBA/SPA committee

Local decision-making and existing mechanisms to support the incorporation of the views of Māori at place (see Annex D for supporting analysis)

Māori participation in plan-making and resource consenting – Engagement Agreements

66. **agree** that the SPA and NBA legislation provide for "Engagement Agreements", which:

a. can be formed between iwi and hapū representative organisations, Coastal Marine Title (CMT) holders (as well as other Māori entities where relevant), and SPA and/or NBA committees (or a combination thereof)

b. will include agreement between the relevant groups on:

i. how engagement will be undertaken

ii. funding for the iwi, hapū or Māori entity to undertake engagement

[10] Note 'Treaty partnership entities' refers to a proposal put to Ministers at MOG #11/12 for arrangements that would "be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements" by enabling a new, or continuing an existing, contributing or sub-committee structure that relates to RSS or NBA plan making and linking to this to the SPA and/or NBA committee instead of to local authorities (where a number of existing arrangements link to).

67. **agree** that SPA and NBA committees will be required to initiate Engagement Agreements with iwi and hapū representative organisations and CMT holders in the area covered by the regional spatial strategy (RSS) or NBA plan

68. **agree** that iwi and hapū representative organisations and CMT holders will not be required to respond to an invitation

69. **note** that the timeframes for developing Engagement Agreements will be agreed through a delegated decision paper

70. **agree** that there will be an obligation on SPA and NBA committees to consider:

    a. how they will ensure, within their regions, the views of broader Māori entities representing rights and interests 'at place' are included in the RSS and NBA plan development processes

    b. whether further Engagement Agreements are desirable with any Māori representative entities or groups of entities to achieve this

71. **agree** that the SPA or NBA committee must negotiate the content of an Engagement Agreement in good faith and in a way that will meet the objective of ensuring iwi and hapū, and where relevant other Māori entities, can meaningfully participate in RSS and NBA plan development

72. **agree** there will be no formal dispute resolution process specified if agreement cannot be reached on the content of an Engagement Agreement. If parties cannot agree then the process will default to the general NBA or SPA consultation and engagement provisions

73. **agree** that participants with an Engagement Agreement will be resourced by the NBA or SPA committee to undertake the engagement specified in that agreement

74. **agree** that Engagement Agreements are for the purpose of engagement during the consultation phase of plan development and cannot contain provisions and associated funding for participation during the hearing or appeals stage of plan

75. **note** that the relevant part of a Mana Whakahono ā Rohe arrangement could function as an Engagement Agreement

76. **note** the NBA will not include any specific requirement for consultation with any specified parties on a resource consent. Where consultation requirements for consents are appropriate, these can be included in an NBA plan

Mana Whakahono ā Rohe (MWaR), *Transfers of Powers, and Joint Management A*greements (JMAs), *iwi/hapū management plans and engagement agreements*

77. **note** that proposed mechanisms for the future system (building on the current system) include:

    a. Mana Whakahono ā Rohe, to provide for relationship arrangements between iwi/hapū and SPA and NBA committees/local authorities

    b. Transfers of Power, to enable the empowerment of iwi, hapū and potentially Māori landowners to undertake functions and powers

    c. Joint Management Agreements, to enable partnerships between iwi/hapū and local authorities/joint committees for localised matters

    d. iwi/hapū management plans, to promote and document iwi/hapū aspirations for RM (and other) matters within their rohe

    e. engagement agreements (see recommendations 66 to 76), to clarify engagement expectations and processes, including funding, during NBA plan development

78. **note** that various mechanisms for enabling and facilitating Māori participation 'at place' each have distinct purposes to provide for differing avenues for Māori participation, whilst enabling integration of mechanisms through the MWaR process

79. **agree** to confirm the following decisions made in-principle by the MOG at MOG #11/12 regarding MWaRs, Transfers of Power, and JMAs:

    a. the SPA and NBA provide for an enhanced MWaR process that is integrated with the provisions for Transfers of Powers (current RMA s33) and JMAs (current RMA s36B)

    b. power sharing arrangements (transfers of power and JMAs) are better enabled through a Integrated Partnerships Process, with barriers removed

80. **agree** not to adopt the Panel recommendation to use the term "Integrated Partnership Process" and continue to use the term "Mana Whakahono ā Rohe", to avoid confusion that another tool is being developed in addition to MWaR

81. **agree** that a MWaR can apply to arrangements under both the SPA and NBA

82. **note** that currently under the RMA, initiation of MWaR is restricted to local authorities, or one or more iwi authorities representing tangata whenua, with groups representing hapū able to be party to a MWaR arrangement but not able to initiate discussions

83. **agree** that, consistent with other proposals for who participates from te ao Māori in the new system, both iwi and hapū representative bodies can initiate negotiation towards a MWaR arrangement and that where a where a SPA or NBA committee or local authority receive an initiation from iwi or hapū representative body in their area of interest they must enter into discussions toward an agreement

84. **agree** that opportunities to transfer powers and develop joint management agreements are mandatory matters for consideration under a MWaR

85. **agree** that when transfers of power and JMAs are brought into the new system they will:

    a. not carry forward RMA sections 33(4)(c) and section 36B(1)(b) (which have in practice frustrated the use of these tools)

    b. include a requirement on local authorities to consider the use of these tools

86. **note** as per decisions in MOG #15, delegated decisions[11] are being sought that iwi/hapū management plans must be actively considered in the development of NBA plans

87. **agree** that the SPA provides the same legal weighting for iwi/hapū management plans as the NBA

88. **authorise** the Minister for the Environment, the Minister for Local Government (Hon Nanaia Mahuta), the Minister for Māori Crown Relations: Te Arawhiti and the Associate Minister for the Environment (Hon Kiri Allan) to make further policy decisions on the design of MWaR, JMA and transfer of power tools

Treatment of Māori land in the new system

89. **note** that policy work on Māori land in the new system is considering:

    a. how non-commercial housing and/or papakāinga can be facilitated on Māori land

[11] BRF1356 Delegated Decisions on plan content relationship with other documents and financial contributions.

b. whether the current RMA Māori land provisions should be carried over or amended, or other additional provisions are required in the new system

c. whether any further policy responses are required to address intersects with Māori land from wider system changes, including the following priority areas:

i. how the approach to designations relates to Māori land

ii. if/how to delegate RM functions to Māori landowners.

iii. how heritage protection orders and remedies relating to planning provisions (under the no compensation provision) relate to Māori land

90. **authorise** to the Minister for the Environment, the Minister for Māori Development and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on policy responses for Māori land under Te Ture Whenua Māori Act 1993, and other land types in which Māori have an interest, in consultation with relevant Ministers

Funding Māori participation (see Annex E for supporting analysis)
Further advice sought at MOG #15

91. **note** that at MOG #15 officials were directed to:

a. [rec 23] report back to MOG on:

i. the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the new system

ii. options for central government funding to support local government and iwi/Māori to participate in the new system

b. [redacted]

Costs and benefits of Māori Participation in context of system costs and Crown obligations

92. **note** that:

a. it is difficult to estimate the cost of local government funding for Māori participation in the current system

b. [redacted]

Mechanisms to support appropriate funding at the regional and local level

93. **note** that MOG #15 agreed:

    a. [rec 22] that where roles are set out under the NBA for Māori participation, funding be provided as set out below:

        i. 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

        ii. in Joint Committees and in the associated secretariat, this will be jointly funded by the relevant regional and/or local authorities

        iii. for other regional/local functions (eg, compliance and system performance monitoring), participation will be funded by the regional or local authorities that carry out the function

        iv. at the regional/local level, councils and iwi/hapū/Māori can agree to funding.

    b. [rec 28] 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

94. **note** that existing funding to support Māori capacity and capability in RM functions is spread across different funding sources and not proportionate to need

95. **agree** that the following mechanisms be used to support appropriate funding for Māori participation at the regional and local level:

    a. the joint committee setting a budget which will include budget related to Māori participation

    b. MWaR and Engagement Agreements, or other similar arrangements

    c. council internal policies for how Māori participation will be supported

    d. monitoring, information provision, and reporting of funding of Māori participation in RM system

    e. cost recovery from consent applicants where consultation is required by a plan

    f. cost recovery from requiring authorities as part of the designation process

A. Committee budget setting

96. **note** that all members of SPA and NBA committees will be paid for their services, which includes maintaining their connections and accountability back to the people they represent

97. **agree** that the SPA and NBA contain a requirement that as part of joint committee budget setting, the committee will agree a budget for Māori participation

B. Local agreements on priorities and costs/ Mana Whakahono ā Rohe agreements

98. **agree** that the SPA and NBA contain a requirement that local authorities and iwi/hapū/Māori jointly determine:

    a. the SPA and NBA functions or duties of priority for Māori participation

    b. the costs associated with providing for participation in the agreed areas

99. **note** that Mana Whakahono ā Rohe arrangements can provide for funding to support partnership alongside or in lieu of agreements to fund participation in specific functions

C. Council policies for how funding for Māori participation will be funded

100. **agree** that:

   a. local authorities be required to establish policies for how each funds Māori participation, then

   b. once Māori determine their priorities for engagement and communicate these to local authorities, local authorities and Māori will then engage over how participation will occur and what the costs will be

D. Monitoring, information provision and reporting

101. **agree** that as part of system effectiveness monitoring, local authorities and central government will:

   a. collect information on the costs associated with Māori participation, the drivers of these costs and the funding provided to meet these costs.

   b. monitor and analyse how funding issues are being addressed in regions where Māori participation is not adequate due to a low rating base, disproportionately large costs, or other reasons.

E. Cost recovery from consent applicants where consultation is required by a plan

102. **agree** that while there is no general statutory obligation to consult on resource consents, where there is a requirement by a plan or by legislation to offer to engage or consult on consenting matters with iwi/Māori, there is a duty for consent applicants to pay reasonable user-costs where applicable.

F. Options for Crown support

103. [redacted]

104. [redacted]

105. **note** that [redacted] should be reviewed 5 years after the commencement of the SPA/NBA.

The Ministerial Oversight Group (MOG) is recommended to:

Embedding the King Salmon approach to the planning hierarchy

1. **note** that Cabinet agreed for the NBA to echo the hierarchy described in *Environmental Defence Society Inc v the New Zealand King Salmon Company Ltd* [2014] NZSC 38 whereby Part 2 is implemented through national direction, and plans give effect to national direction [Cab-20-MIN-0522 para 65 refers]
2. **note** that the drafting of the NBA will therefore need to ensure that decision makers cannot apply the purpose and related provisions (Part 2) in ways that are inconsistent with higher order documents that implement Part 2. (For example, NBA joint committees making decisions on NBA plan content cannot use an overall broad judgement under Part 2 to undermine NPF content that implements Part 2)
3. **authorise** the Minister for the Environment in consultation with the Associate Minister for the Environment (Hon Kiri Allan) to make detailed decisions on the design of the provisions to achieve this result

Purpose, including current progress on Te Oranga o te Taiao

4. **note** that the MOG agreed to include Te Oranga o te Taiao in the purpose of the exposure draft of the Natural and Built Environment Act (NBA)
5. **note** that the Environment Select Committee (the Committee) endorsed the inclusion of Te Oranga o te Taiao in the purpose of the NBA and recommended further work be carried out with national iwi/Māori groups to:
    a. improve its effectiveness by defining it clearly and describing how different aspects of the legislation will support upholding it
    b. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment
    c. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause

Clarifying Te Oranga o te Taiao

6. **note** that officials have worked across government, with the Local Government Steering Group, and with iwi technicians on Te Oranga o te Taiao, including the links between Te Oranga o te Taiao and the Te Mana o te Wai hierarchy as recommended by the Committee and the MOG
7. **note** that officials' work with iwi technicians has, consistent with the policy intent decided by the MOG on 2 June 2021, clarified that:
    a. conceptually, Te Oranga o te Taiao is consistent with a number of similar concepts present in the Resource Management Review Panel's (the Panel) report which build on some of the concepts in the existing RMA
    b. operationally, Te Oranga o te Taiao can work at a systems, planning, and local level by:

i. forming part of the purpose to provide an interpretive touchstone and consistent conceptual link across the NBA and the Strategic Planning Act (SPA)

ii. cascading through statutory planning documents from the strategic to regional and local levels (from the NPF) to Regional Spatial Strategies (RSS) to NBA plans)

iii. being applied flexibly to local circumstances (there is no 'one size' solution on how to uphold Te Oranga o te Taiao across different locations with different environmental challenges)

Te Oranga o te Taiao at a systems level (NBA, SPA, Climate Adaptation Act (CAA))

8. **note** that MOG has previously agreed in principle to incorporate Te Oranga o te Taiao into the purpose of the SPA

9. **agree** that Te Oranga o te Taiao is included in the purpose section of the NBA

10. **agree** that more directive language should be used in the purpose in relation to the natural environment, including in relation to Te Oranga o te Taiao, in accordance with the intent that:

    a. strict primacy is only given to the natural environment up to the point of limits and associated targets; then

    b. above/within limits and targets, use (including non-use) of the environment can occur to provide for the well-being (cultural, ecological, economic and social) of present and future generations

11. **authorise** the Minister of Finance, Minister of Housing, Minister for the Environment, Minister of Local Government, Minister of Transport, and Minister of Conservation and the Associate Minister for the Environment (Hon Kiri Allan), to make decisions in relation to the purpose and Te Oranga o te Taiao in the SPA in accordance with the policy intent in this paper

12. **note** decisions will need to be made in relation to Te Oranga o te Taiao and the Climate Adaptation Bill

Te Oranga o te Taiao in statutory planning documents (NPF, RSS, NBA plans)

13. **note** that as per the purpose of the NPF and NBA plans, which include reference to furthering the purpose of the NBA, Te Oranga o te Taiao will cascade through planning documents as appropriate to the purpose and functions of each document

14. **note** that any statutory direction in the SPA on Te Oranga o te Taiao in RSS will be dealt with as part of the delegated authority in recommendation 11 above

Te Oranga o te Taiao in the NBA

15. **note** that officials do not recommend that the purpose of the NBA should incorporate a hierarchy such as in Te Mana o te Wai (as queried by the Committee)

16. **agree** that the NBA clarify, what was always intended, that alongside the relationships that iwi and Māori have with te taiao, all New Zealanders have relationships with, and responsibilities to look after, the natural environment (as was always intended for the NBA and as recommended by the Committee)

17. [redacted]

18. **note** that this will include, but not be limited to, elaborating further on the purpose clause of the NBA

19. **agree** that the 'built' environment will be referenced in the purpose of the NBA in a manner that:

    a. accords with the priority given to limits and targets for ecological integrity and human health

    b. avoids, minimises or remedies adverse effects

    c. subject to (a) and (b), enables outcomes to be met by allowing for development that is done in an environmentally responsible way

    d. explicitly does not create a 'back door' for the types of aesthetic amenity considerations that have allowed narrow private interests to block housing developments

20. **note** that further work, including in relation to definitions, will be undertaken on reflecting how the 'built' environment includes modified parts of the rural environment

21. **note** that the list of outcomes is designed to elaborate on the purpose of the NBA and will help ensure that the purpose is interpreted in a way which recognises the importance, and the needs, of the 'built' and rural environments

22. **note** that officials will progress drafting based on the decisions in this paper

23. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Ministers of/for Finance, Māori Crown Relations: Te Arawhiti, Housing, Local Government, Agriculture, Māori Development, Transport and Conservation, to make decisions in relation to further legislative and non-legislative guidance and direction for the NBA purpose and Te Oranga o te Taiao consistent with the policy intent in this paper

Managing adverse effects

24. **note** that the exposure draft mirrored the language used in section 5 of the Resource Management Act (RMA), which defines 'sustainable management' to include, "avoiding, remedying, or mitigating any adverse effects of activities on the environment"

25. **agree** that the purpose of the NBA should refer to an expanded effects management hierarchy where adverse effects must be avoided, minimised, remedied, offset or compensated to better align with best practice and case law

26. **agree** that in most cases, adverse effects should be managed in that order, meaning that:

    a. adverse effects must be avoided where practicable

    b. any adverse effects that cannot be avoided must be minimised where practicable

    c. after avoidance and minimisation, any remaining adverse effects must be remedied where practicable

    d. after avoidance, minimisation and remediation, any remaining adverse effects must be offset

    e. after avoidance, minimisation, remediation and offsetting, any remaining adverse effects must be compensated for

27. **agree** that adverse effects will be defined to exclude trivial effects

28. **note** that there will be cases where a more or less stringent approach to managing adverse effects is appropriate

29. **agree** that the NBA will enable the Minister for the Environment (the Minister) (through the NPF) and NBA (through plans) to specify a more stringent approach to managing particular adverse effects, including requiring them to simply be avoided (instead of managed using the effects management hierarchy)

30. **agree** that the NBA will also allow the NPF or NBA plans (whichever applies) to specify a less stringent approach to managing particular adverse effects, except for the adverse effects on biodiversity or cultural values described in recommendation 31

31. **agree** that, subject to recommendation 29, the NBA will require that the following adverse effects must be managed in accordance with the effects management hierarchy described in recommendation 26, and also meet the additional requirements described in recommendation 32 or 33 (whichever applies), and that if that is not done then those adverse effects must be avoided:

    a. adverse effects on biodiversity including:

        i. indigenous biodiversity

        ii. non-indigenous biodiversity when it supports indigenous biodiversity

    b. adverse effects on cultural values including:

        i. the relationship of iwi, hapū, and their tikanga and traditions, with ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga (noting the need to address the overlap with the places described in paragraph 31(b)(ii) below)

        ii. places that are either currently listed or are eligible to be listed under the Heritage New Zealand Pouhere Taonga Act 2014

32. **agree** that additional requirements for appropriately offsetting and compensating for the adverse effects on biodiversity described in recommendation 31 be set out in a schedule to the NBA based on Schedule 3 and Schedule 4 to the proposed National Policy Statement (NPS) for Indigenous Biodiversity

33. **agree** that additional requirements for appropriately offsetting and compensating for the adverse effects on cultural values described in recommendation 31 be set out in a schedule to the NBA

34. **authorise** the Minister for the Environment in consultation with the Minister of Housing, Minister for Māori Development, Minister of Conservation, Associate Minister for the Environment (Hon Kiri Allan) and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan) to make detailed decisions on the additional requirements for managing adverse effects on cultural values, including on which cultural values are covered by the requirements set out in recommendation 31 and which principles apply

35. **note** that at MOG #10 the MOG agreed that the NBA will contain a duty on all persons to avoid, remedy or mitigate adverse effects on the environment, which will be effective in the NBA via a clear, workable and proportionate enforcement pathway. This duty is based on the approach in section 17, Part 3, and Part 12 RMA

36. **agree** that the duty referred to in recommendation 35 should now require adverse effects to be avoided, minimised, remedied, offset or compensated for to align with the NBA purpose

Te Tiriti o Waitangi

37. **note** that the MOG has previously agreed to Treaty clauses for the NBA and SPA that require persons exercising powers and performing functions and duties to give effect to the principles of Te Tiriti o Waitangi

38. **agree** that no further changes are required to expand the Treaty clauses by providing further legislative direction on how the principles of Te Tiriti are to be given effect

39. [redacted]

40. **agree** that further direction on giving effect to the principles of Te Tiriti can be provided via the NPF but that this should not be a mandatory matter that the NPF must include

41. **note** that non-legislative guidance will be provided to assist decision makers to meet their Treaty responsibilities

Environmental limits and targets

42. **note** that MOG #16 agreed that:

    a. the level of environmental limits to protect ecological integrity will be defined as the current state of ecological integrity

    b. environmental limits to protect human health will not be prescribed according to the current state of the environment

    c. 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)

    d. 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

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

    f. subject to 'e' above, the units should be set to provide as much flexibility as possible and maximise opportunities for appropriate offsetting

43. **agree** that an exemptions framework for limits relating to ecological integrity be included in the NBA, allowing the Minister to grant exemptions when requested by a SPA joint committee or NBA joint committee, in line with the following policy intent:

    a. the request for an exemption must be made by the relevant joint committee during the process of preparing or revising the region's NBA plan or RSS, that is, the framework will not apply in situations where an unplanned consent would result in the breach of a limit if it proceeded

    b. the exemption must be designed to generate the smallest reasonably possible net loss in ecological integrity, compatible with providing for the activity

    c. an exemption will only be available after the SPA joint committee or NBA joint committee has already considered options to stay within limits, such as prospective offsetting within the management unit, considering whether the adverse effects of existing activities can be further minimised, and applying the effects management hierarchy

    d. an exemption cannot be granted where the current state of ecological integrity is unacceptably degraded or where an exemption would lead to an irretrievable loss of ecological integrity

    e. the activity must have public benefits that justify the loss of ecological integrity

f. the exemption must be subject to a time limit

g. any conditions imposed by the Minister when issuing the exemption (including time limits) must be published in the relevant RSS or NBA plan and complied with by the relevant joint committee

44. **agree** that before granting an exemption the Minister must follow a robust consultation process

45. **note** that the exemptions regime is intentionally tightly framed in order to preserve the system's incentives for regions to manage within environmental limits and is designed to minimise the risk of undermining the limits regime

46. **note** that management units are intended to enable development within limits, with no net loss of ecological integrity and protection of human health

47. **note** that to implement a system of environmental limits and associated targets, the NBA and NPF will need to ensure that managements units are set at an appropriate scale and location

48. **agree** that management units will be a geographic area for planning and managing activities to meet an environmental limit(s) or an associated target(s)

49. **agree** that the time period for limits and targets to be met will also be relevant, and can be specified in the NPF

50. **agree** that the NBA will require that the spatial scale of the management unit is sufficient to ensure that limits and associated targets meet their primary purpose (protecting or restoring human health and the ecological integrity of the natural environment), and that the delineation of the units is informed by science and mātauranga Māori

51. **agree** that the NBA will require the NPF to specify requirements for NBA joint committees when setting management units

52. **agree** that the NBA require the following matters to be considered when the Minister or NBA joint committees are determining the spatial area and delineation of management units:

a. the ability to group areas of similar pressures and biophysical characteristics for more effective and efficient management within the unit

b. the extent that the state of the natural environment, the pressures on that state, and any losses or gains (for example from restoration, offsetting and compensation) can be measured, monitored and accounted for

c. the ability to manage the biophysical state of the matters for which limits and associated targets are prescribed, including the effectiveness of offsetting and compensation to address residual effects

53. **note** that there is existing national direction on management units in the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (ie, airsheds), and in the National Policy Statement for Freshwater Management 2020 (ie, freshwater management units)

54. **note** that the principles to guide decision making under the NBA, set out in recommendation 93, are also matters that will be considered in the setting of management units

55. **agree** that the Minister or an NBA joint committee, should be able to review whether a management unit in an NBA plan is correctly configured, and if not, to revise it

56. **agree** that the Minister may also direct a process in the NPF for the NBA joint committee to revise a management unit

57. **note** that while limits will help prevent further environmental degradation, the system needs targets to drive improvement and restoration, particularly where the natural environment is unacceptably degraded

58. **agree** that decisions about the level of targets and the pace at which they are achieved will take into account broader considerations such as economic development, transition costs, intergenerational equity, and the requirement to give effect to the principles of Te Tiriti, as well as the risk of harm to ecosystems or human health

59. **agree** that the NPF may require NBA plans to set sub-targets to map out the path to the target associated with a limit

60. **agree** that the NBA will include a requirement for the Minister to consider the following when determining whether the current state of an aspect (or aspects) of the natural environment is unacceptably degraded and therefore whether to prescribe a minimum level target for improvement of the natural environment:

    a. the ability of future generations to use the natural environment to provide for their needs and well-being

    b. the risk posed to human health or the health of future generations

    c. whether indigenous species are at increased risk of extinction or local displacement

    d. the risk of significant or irreversible harm to ecological integrity, including its ability to maintain composition, structure, functions and resilience.

    e. New Zealand's international obligations relating to the natural environment

61. **agree** that the Minister should be able to review a minimum level target in the NPF and revise it

62. **agree** that a minimum level target revised in the NPF will also require review of the relevant target in the NBA plan, and revision if it is found to be set lower (worse quality) than the revised minimum level target

63. **agree** that NBA plans may also include discretionary targets related to NBA outcomes

64. **agree** that discretionary targets related to outcomes cannot undermine or conflict with a limit or a target associated with a limit

65. **agree** that a target:

    a. in the NPF will be a measurable and time-bound direction designed to help achieve an outcome

    b. in a NBA plan will be a measurable and time-bound direction to help achieve an NBA outcome in the NPF and/or the NBA plan

66. **agree** that the NBA includes definitions for targets, sub-targets and minimum level targets

Environmental outcomes in the NBA

67. **agree** to adopt the Committee's recommended outcomes list as the policy intent, with some minor changes reflecting further engagement as well as addressing any gaps created or issues identified

68. **note** that RSSs will provide further detail on some outcomes including where and how they are achieved

69. **note** that some outcomes include more directive language than others (such as "protection"), and that this could imply an internal hierarchy between the listed matters

70. **agree** that the NBA will expressly state that there is no hierarchy between the listed matters

71. **agree** that the NBA will set out the outcomes in line with the policy intent of:

    a. the protection or, if degraded, restoration of:

        i. the ecological integrity, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity

        ii. outstanding natural features and outstanding natural landscapes

        iii. the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins

        iv. the relationship of iwi, hapū and, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga

        v. conservation of cultural heritage

    b. in relation to climate change and natural hazards:

        i. reduced greenhouse gas emissions

        ii. increased removal of greenhouse gases from the atmosphere

        iii. reduced risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change

    c. well-functioning urban and rural areas, including by:

        i. enabling use and development for housing, business use, and primary production to meet the diverse and changing needs of people and communities

        ii. the ongoing and timely provision of infrastructure services

        iii. an urban form and rural areas that promote economic, social, cultural, health, safety, and environmental benefits

        iv. the prioritisation of highly productive land for land-based primary production

        v. enhanced public access to and along the coastal marine area, lakes, and rivers

72. [redacted]

73. **note** that the NPF and NBA plans will be able to include additional outcomes to the matters that must be provided for as required by the NBA

74. **note** that any such additional outcomes could be highly directive and given more weight than the outcomes required to be included by the NBA

75. **note** that powers to include additional outcomes in the NPF and NBA plans would be subject to relevant NBA requirements including:

a. the purpose of the NBA

b. the requirement to give effect to the principles of Te Tiriti

c. the provisions that set out the purpose and contents of the NPF and of NBA plans

d. in the case of NBA plans, the requirement to give effect to the NPF

e. the requirement that the NPF will not be inconsistent with emissions reductions plans and national adaptation plans

f. the directive requirement to set outcomes to "provide for" the listed matters in the NBA (meaning that NBA joint committees could not include additional outcomes that had the effect of undermining the requirement to set outcomes that "provide for" the listed matters)

76. **note** that the protection of protected customary rights is a matter of national importance under section 6(g) of the RMA and was included as an outcome in the exposure draft

77. **note** that it is inappropriate to include protected customary rights in the matters for outcomes in the NBA because they cannot be 'traded off' or 'co-optimised' against the other matters for outcomes

78. **agree** that the protection of protected customary rights will be recognised and upheld by the new system in full accordance with the Marine and Coastal Area (Takutai Moana) Act 2011, and the necessary provisions will be decided under the delegation approved at MOG #15 for upholding takutai moana rights

79. **authorise** the Minister for the Environment, in consultation with other Ministers as appropriate, to make delegated decisions on definitions to support the outcomes in the NBA

80. [redacted]

Minimising and resolving conflicts between outcomes

81. **note** that Cabinet previously noted [CAB-20-MIN-0522 para 66 refers] that any conflict or doubt about the application of outcomes must be reconciled and clarified as necessary in a way that gives effect to the purpose of the Act:

a. in the first instance by the Minister through the NPF or by regulation

b. subject to any direction in the NPF or regulations, by the provisions of the NBA plans

82. **note** that the intention is for all outcomes to be achieved nationally and regionally but not at every site

83. **agree** that the NBA should include provisions to make it clear that:

a. NPF and NBA plan provisions that achieve synergies between outcomes should generally be preferred over those that achieve one at the expense of another, to avoid conflicts in the first place; however

b. avoiding conflicts should not be prioritised over the goal of maximising the delivery of outcomes at the national or regional level

84. **note** that the NPF and NBA plan provisions to resolve conflicts between outcomes will also need to comply with the provisions in Part 2 that require decision makers to give effect to the principles of te Tiriti and meet limits and targets

85. **note** that section 6 of the RMA gives priority to a range of places and values by requiring decision makers to recognise and provide for them as matters of national importance, but provides little guidance on how to manage development pressures

86. **note** that most of the matters identified by section 6 are proposed to be included as outcomes (see recommendation 70)

87. **agree** that the NBA helps to better manage development pressures on some of the most important places and values set out in section 6 (a) – (f) by providing that any activity creating an adverse effect that is more than minor can only be considered for approval if all of the following are met:

    a. the activity has a functional or operational need for its location

    b. there is no practicable alternative location (or words to similar effect), or the only practicable alternative location or locations would have equal or greater adverse effects on comparable values

    c. the activity will deliver public benefits that outweigh the adverse effects

88. **agree** that the places and values that are protected by those provisions will be:

    a. areas of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and their margins that have outstanding natural character

    b. outstanding natural landscapes

    c. areas of significant indigenous vegetation and significant habitats of indigenous fauna

    d. areas providing public access to and along the coastal marine area, lakes and rivers

    e. the relationship of iwi, hapū, and their tikanga and traditions, with ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga (noting the need to address the overlap with the places described in paragraph 86 (f) below)

    f. places that are either currently listed or are eligible to be listed under the Heritage New Zealand Pouhere Taonga Act 2014

89. **note** that the criteria described in recommendation 86 would not prevent the Minister (through the NPF) or NBA joint committees (through NBA plans) from applying additional and stronger protections

90. **note** that some definable places contain locally endemic indigenous flora and fauna, highly threatened species, or associations of species that need to persevere for the goals of the Aotearoa New Zealand Biodiversity Strategy to be achieved ("highly vulnerable biodiversity places")

91. **agree** that the highly vulnerable biodiversity places are nationally important, and that they should be provided with an even stronger level of protection from the adverse effects of activities than what is described in recommendation 86, to prevent irreplaceable and irreversible biodiversity loss, and localised extinctions

92. **agree** that the NBA itself will expressly provide a mechanism for the highly vulnerable biodiversity places to be identified against a set criteria and afforded protection from the adverse effects of activities upon them that otherwise may be authorised under the NBA

93. **authorise** the Minister for the Environment in consultation with the Minister for Māori Development, Minister of Conservation, Associate Minister for the Environment (Hon Kiri Allan), Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan) and Associate Minister for the Environment (Hon James Shaw) to make detailed decisions on:

a. the descriptions of the places to be protected using the mechanism described in paragraph 91 and the criteria that will be used to identify them

b. the descriptions and criteria for the highly vulnerable biodiversity places

c. the design of the mechanism to protect the highly vulnerable biodiversity places

Implementation principles

94. **agree** that the NBA should include a high-level statement of principles in Part 2 of the NBA, requiring the Minister (in making decisions on the NPF) and NBA joint committees (in making decisions on NBA plans) to consider:

    a. principles supporting Te Oranga o te Taiao

    b. integrated management of the environment

    c. the precautionary principle

    d. the management of cumulative adverse effects of the use and development of the environment

    e. the equitable distribution of the costs of regulation within and across the regions and communities of New Zealand, across generations, and between existing and future users

    f. ensuring proportionality in decision making, namely that NPF and NBA plan content should:

        i. achieve their objectives in the least cost way

        ii. allow people to adopt innovative approaches to meeting their obligations

        iii. avoid duplicative requirements

95. **note** that in relation to the application of the precautionary approach[12] the MOG earlier agreed "that the NBA will require that a precautionary approach is adopted with a similar framing to Principle 15 of the Rio Declaration on Environment and Development 1992 (the Rio Declaration)"

96. **note** that officials no longer view the framing in Principle 15 of the Rio Declaration as appropriate because the reference to 'irreversible' harm is too high a threshold

97. **agree** to vary this recommendation to instead use similar framing to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 that provides when 'information available is uncertain or inadequate, the Minister must favour caution and environmental protection', while making it clear that the level of protection provided in any given case must be proportionate to the risks and effects involved

98. **note** that there is ongoing work with iwi/Māori groups to ensure the principles align with Te Oranga o te Taiao, and which specific principles are necessary to support Te Oranga o te Taiao

99. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with other relevant Ministers as appropriate, to make further detailed policy decisions on aligning the proposed principles to Te Oranga o te Taiao, and the specific principles necessary to support Te Oranga o te Taiao

[12] See 2021-B-07659 RM Reform 21 *Further decisions on the purpose and supporting provisions of the NBA* 19 April 2021, circulated between MOG #5 and #6.

100. [redacted]

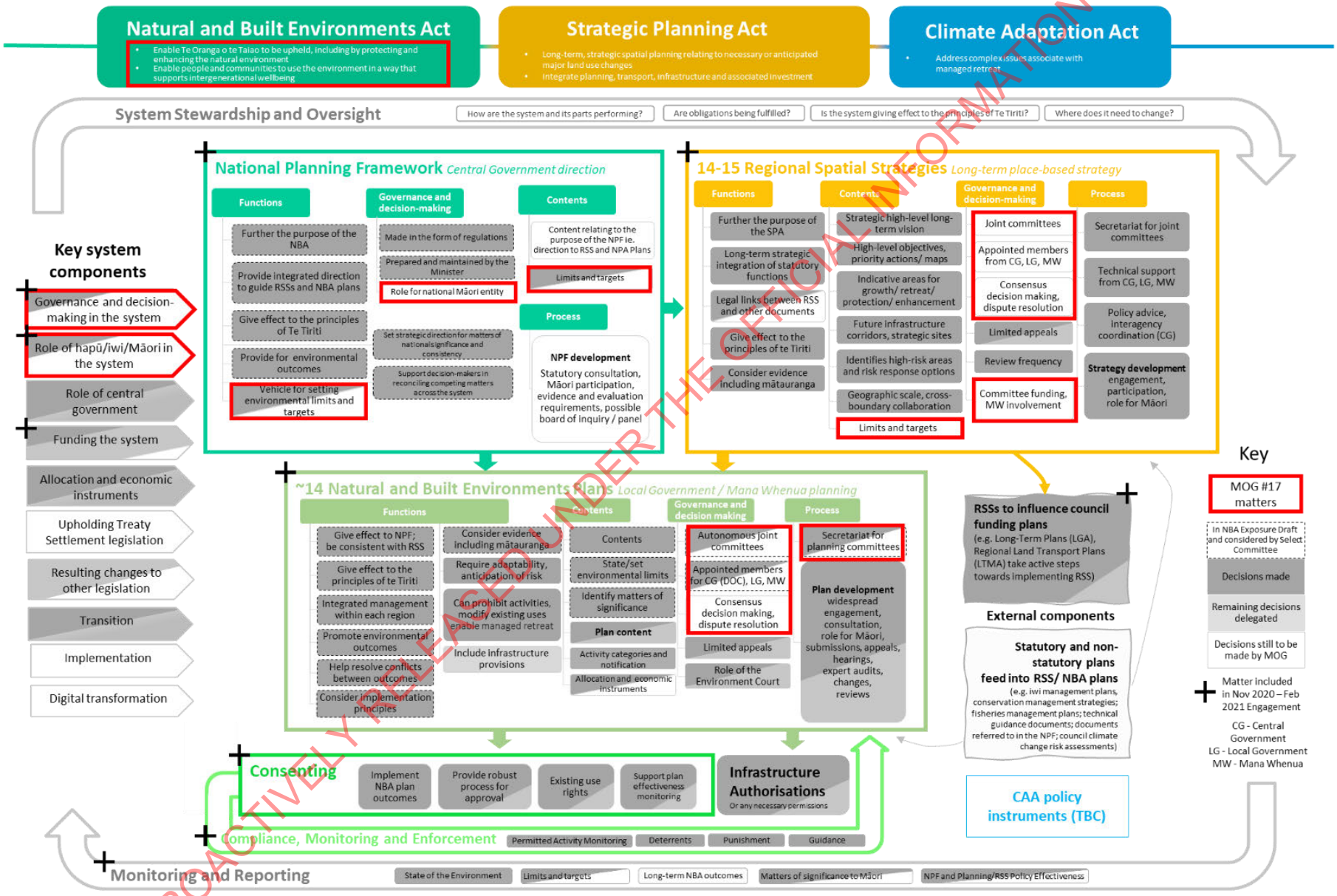
101. **note** that detailed decisions on any principles included in the NBA may also require consequential drafting changes to other parts of the Natural and Built Environments Bill, for example decision-making criteria for the preparation of the NPF or NBA plans

102. **agree** that the following principle from the exposure draft should not be included in the NBA as an overarching implementation principle because it would be preferable to embed it into relevant processes and decision-making criteria:

    a. ensure appropriate public participation in processes undertaken under the Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue

103. [redacted]

Resource Management Reform System Map (Updated March 17, 2021)



Agenda item 1:

Regional governance and decision-making for plans in the reformed resource management system

Summary slides

Background information

The introduction of regional spatial plans under the SPA and the regionalisation of planning under the NBA requires new regional governance and decision-making arrangements.

- The Resource Management Review Panel (the Panel) proposed regional plan-making for the reformed resource management (RM) system, recommending a joint committee model bringing together local government, Māori, and central government (for Regional Spatial Strategies (RSSs)) as joint decision-makers on plans.
- At MOG #8 Ministers agreed that officials would use the joint committee model as the framework for option development.
- Regionalising plan-making is an essential part of the reforms. As noted at MOG #11/12 it is critical that the arrangements are viewed as legitimate to support successful implementation of the reforms. On a population basis, the new combined units for regional plan-making will still be relatively small compared to many overseas jurisdictions.

Balancing various objectives

The paper recommends a package of proposals for the establishment and operation of joint committees under the SPA and NBA.

The package is designed to take account of a number of different objectives and should be considered as a whole

- The overarching objective of these proposals is to ensure the governance arrangements support effective decision-making.
- The joint committees and their decisions must be seen as legitimate to support efficiency throughout the entire system.
- Legitimacy is enhanced by:
  - Flexibility to accommodate New Zealand's diverse regions
  - Effective local democratic input and accountability
  - Effective role for Māori in decision-making
  - Workable arrangements that support effective decision-making and system efficiency

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Accommodating regional diversity

<u>Key choice:</u> How prescriptive should the legislation be and what should be left to the regions to determine for themselves?

- Enabling regions to determine arrangements that best reflect their circumstances will enhance legitimacy of the joint committees.
- However, pushing all the toughest calls to the regions risks protracted debates, which could undermine legitimacy, risk relationships with Treaty partners, and prolong transition and implementation. Treaty settlement obligations also need to be addressed.
- It is recommended that the legislation provides parameters on matters such as composition of joint committees but remains flexible enough to allow for the different circumstances across New Zealand's regions.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Ensuring local democratic input & accountability

<u>Key choice</u>: What should the legislation prescribe for representation of local authorities on the joint committees?

- Local authorities will be principally accountable for funding the development of the plans, and for implementing them. The joint committees will be exercising delegated public power to write law through planning rules in NBA plans. It is appropriate that lines of electoral accountability are maintained.
- To support local democratic input, it is recommended that the design of the joint committees allow for direct representation for all local authorities in a region. Local authorities can agree to have a shared appointee but don't have to.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Ensuring an effective role for Māori

Key choice: What should the legislation prescribe to provide for joint committee composition, particularly for Māori members on the committees?

Māori participation is core to the joint committee proposals and the design of the committees is important for delivering the reform objective of giving effect to the principles of te Tiriti o Waitangi.

- An effective role for Māori in decision-making is important to giving effect to the principles of the Treaty and therefore:
  - The statutory parameters for determining composition should provide a minimum level of Māori membership (but not maximum) on the joint committees.
  - The decision-making process of the joint committees should support consensus and partnership.
  - The joint committees should not be able to delegate decisions on plans, with some exceptions including to uphold treaty settlements.
  - The joint committees should have autonomy in decision-making.

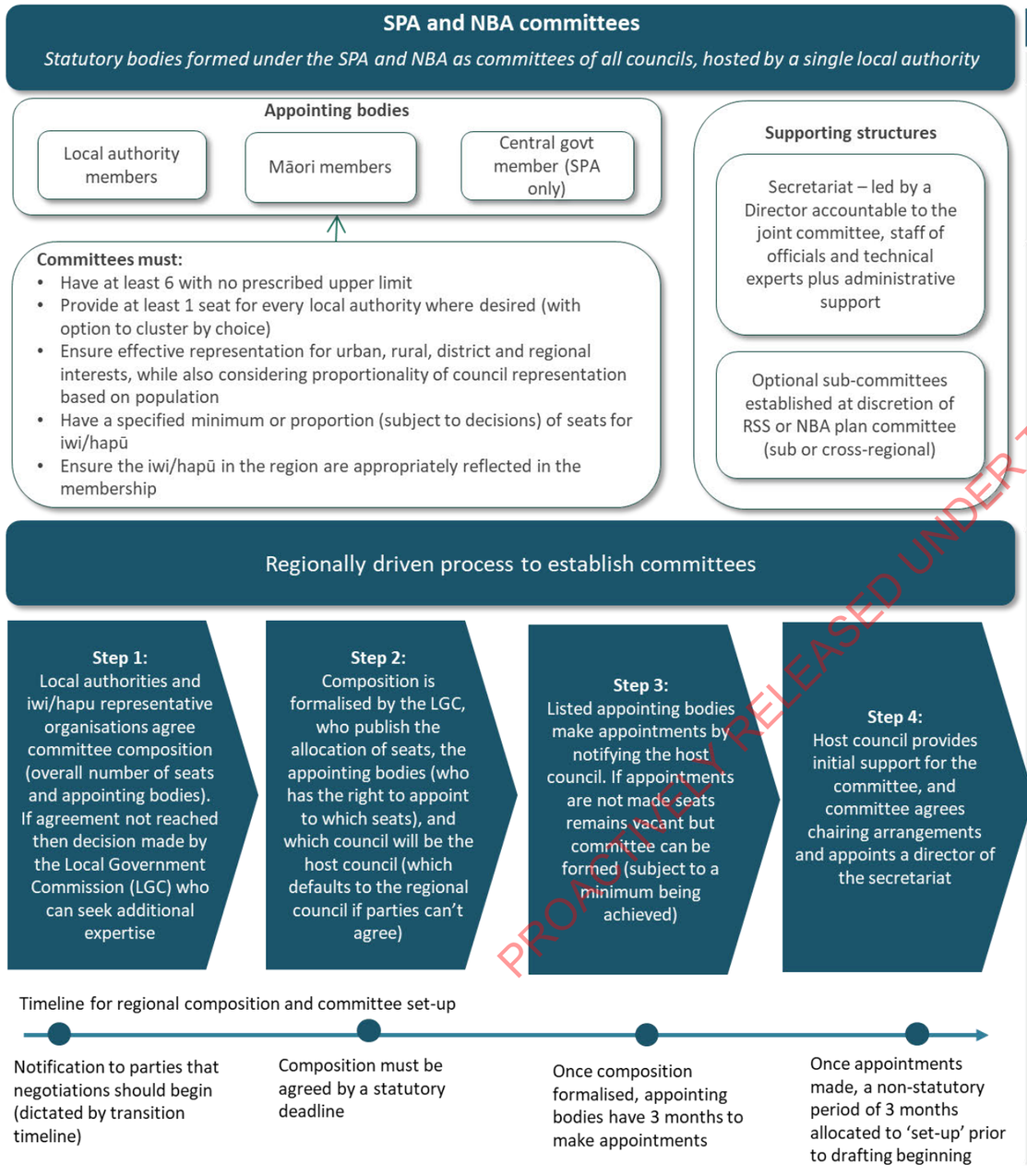
Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Workability and system efficiency

Key judgement: Devolving decisions to the regions about composition and size of committees (supported by parameters), will support legitimacy of the committees and their decisions, which is important for the efficiency of the overall system.

- The arrangements must be workable and support effective and efficient decision-making, but efficiency must avoid shifting the time and cost elsewhere.
- There is a risk of delay through allowing regions to determine their own joint committee composition. However, officials judge that this will support decisions with high legitimacy which is important for overall system efficiency.
- To manage this risk, the proposals include statutory timeframes and dispute resolution pathways.

Summary of proposals



Summary of recommendations (MOG#17)

	SPA committees	NBA committees
Function and form	Committee with local government, Māori and central government representatives – to prepare and approve a Regional Spatial Strategy (RSS)	Committee with local government and Māori representatives – to prepare and approve a NBA plan
Composition and appointments	Local authorities and iwi and hapū representative organisations to agree composition of their SPA committee by a statutory deadline. Composition formalised by the Local Government Commission before appointments made (including central government appointment)	Local authorities and iwi and hapū representative organisations to agree composition of their NBA committee by a statutory deadline. Composition formalised by the Local Government Commission before appointments made.
Decision-making	Committee makes final (autonomous) decisions on strategies and can establish sub-committees to provide advice. Committee must strive for consensus, with voting backstop. If disputes, committee to use mediation before referral to the responsible Minister to make the decision or appoint independent commissioner.	Committee makes final (autonomous) decisions on plans and can establish sub-committees to provide advice. Committee must strive for consensus, with voting backstop. If disputes, committee to use mediation before referral to the responsible Minister to appoint independent commissioner (Minister cannot make the decision themselves).
Resourcing the committee	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.

Challenges and risks

This package of recommendations will support good governance and effective decision-making. However, the proposals are not without risk.

- These arrangements will require strong relationships between local authorities and Māori. The legislation will include provisions to support this and provide pathways for dispute resolution, but success will rely on implementation and goodwill.
- In shifting final decision-making on plans to joint committees, it is important that roles and accountabilities of local authorities are clear.
- The Local Government Steering Group has proposed Statements of Community Outcomes from each council could guide joint committees to meet local needs. Joint committees will need to consider many different factors in making their decisions, and their Chairs will have an important role to play in making the committees work well and reach decisions.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

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.

- Effective governance and decision-making is important for delivering all reform objectives.
- The proposed arrangements give effect to the principles of Te Tiriti by establishing an effective role in decision-making for Māori and local authorities, in both strategic and regulatory matters across the regions.
- The arrangements seek to improve system efficiency and effectiveness by ensuring that plans have a high degree of legitimacy, ensuring that local democratic input remains central to the process.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Discussion points

- How prescriptive should the legislation be? What should be left to the regions to determine for themselves?
- What should the legislation prescribe to provide for committee composition, particularly for Māori membership on the committees?
- What should the legislation prescribe for local authorities' membership on the committees?
- Is there agreement that devolving decisions to the regions about composition and size of committees (supported by parameters), will support legitimacy of the committees and their decisions, which is important for the efficiency of the overall system?
- It is proposed that committees will be required to make every effort to reach consensus – but what is an appropriate backstop voting rule for when consensus fails?
- Do the proposed secretariat arrangements strike the right balance between providing flexibility for the regions, and ensuring that the right expertise is available to the committees to support strategy and plan making?

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

Key messages

- Regional collaboration as the basis for making decisions on plans will be a key new feature of the reformed Resource Management (RM) system. This paper seeks decisions on the proposed joint committee (the committees) model that brings together local government, iwi, hapū and Māori, and central government (for regional spatial plans) as joint decision-makers under the Strategic Planning Act (SPA) (proposed in this paper to be renamed the Spatial Planning Act) and the Natural and Built Environments Act (NBA).
- In the current system decisions on Resource Management Act 1991 (RMA) plans are made by councils, with no requirements for collaboration across the region for district plans, and varying degrees of decision-making by iwi/Māori, limited mainly to regional planning.
- The design of SPA and NBA committees must take account of various factors to ensure that the committees and their decisions have legitimacy. This includes providing for effective local democratic input, accountability, and an effective role for Māori in decision-making, supporting the efficient functioning of committees, and upholding the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori.
- The paper proposes that committees will be established as statutory bodies under the SPA and NBA with autonomous decision-making powers. The function of the committees will be to prepare the plans covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them.
- The composition of the committees will be agreed following a regionally-led process, allowing the committee composition to reflect a region's specific circumstances. This process will be supported by parameters in the legislation that set guidelines and requirements for committee membership that aim to be both flexible and prescriptive.
- All local authorities in the region will have direct representation where that is their preference and Māori will have a minimum number of seats or proportion of members (subject to decisions), with the region able to agree additional members above the minimum. Committees will not have an upper size limit. Some bespoke arrangements may be required through the legislation to uphold existing Treaty settlement arrangements.
- The joint committees will be required to aim for consensus decision-making, with the legislation providing backstop majority voting roles where consensus cannot be reached.
- A SPA or NBA committee will appoint a director of their secretariat who will be responsible for providing support and bringing together staff to draft these plans, including from local authorities, iwi and hapū, Māori and central government.

Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

1. **agree** to change the name of the proposed 'Strategic Planning Act' to the 'Spatial Planning Act' to better reflect the purpose of the new legislation
2. **agree** to establish joint committees (committees) under the Spatial Planning Act (SPA) for preparation of regional spatial strategies (RSSs) comprising local government, Māori, and central government members
3. **agree** to establish joint committees (committees) under the Natural and Built Environments Act (NBA) for preparation of the NBA plan comprising local government and Māori members
4. **agree** that the SPA committee and the NBA committee will be two separate committees with different functions, but that this does not preclude overlapping membership across the two committees
5. **note** that the primary function of the SPA committee will be to oversee the development of and approve an RSS for the region, and that previous MOG decisions have agreed detailed functions for the SPA committee
6. **note** that the primary function of the NBA committee will be to prepare and approve an NBA Plan for the region, and that previous MOG decisions have agreed detailed functions for the NBA committee
7. **agree** that the SPA and NBA committees will be standing committees and have on-going roles in the system including monitoring functions for plans
8. **agree** that the committee members will have a general duty to work collectively to achieve the purpose of the relevant Act across the region
9. **agree** that each committee will be established as a new statutory body under the SPA or NBA and are not subordinate decision-making structures to local authorities
10. **agree** that in practice SPA and NBA committees will operate as committees of all the local authorities in the region, hosted by one council, and that the host council will have no greater or lesser powers in relation to the committee than any other local authority in the region
11. **agree** that as part of composition discussions (as set out below), local authorities and iwi and hapū representative organisations will consider which local authority is best placed to be the host council, and that if unanimous agreement from the local authorities cannot be reached this role will default to the regional council
12. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to clarify the functions and powers of the SPA and NBA committees and local authorities, and operationalise the host council role, including the relationship with the director of the secretariat (as set out below)
13. **agree** that the SPA committee prepare an RSS covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them

14. **agree** the NBA committee prepare an NBA plan covering all local authorities in the region, with local authorities retaining responsibility for implementing and administering them

15. **agree** that the existence of the SPA and NBA committees does not affect the member councils' statutory obligations

16. **agree** that the SPA and NBA committees are to have legal autonomy to initiate and defend legal actions in relation to the performance of their functions and duties

17. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to ensure the policy intent is also delivered in the context of unitary authorities (including Auckland Council)

PART B: COMPOSITION AND APPOINTMENTS

18. **agree** that the composition and size of the SPA and NBA committees should support effective decision-making and efficient functioning, with a minimum of 6 members prescribed in the legislation

19. **agree** that all local authorities in a region will be entitled to appoint a member on the SPA and NBA committees, but can choose not to be directly represented

20. **note** that the regions vary in numbers of local authorities, ranging from 4 local authorities in the West Coast and Southland regions to 12 local authorities in the Waikato region

21. **agree** that

    EITHER

    a. the SPA and NBA committees must have a minimum of 2 seats appointed by Māori;

    OR

    b. the SPA and NBA committees must have a minimum proportion of seats appointed by Māori

22. **note** that if Ministers' preference is for option b under recommendation 21 above, then further decisions will be required to confirm the proportion to be specified in the legislation

23. **agree** that when determining composition of SPA and NBA committees, the following issues should be considered:

    a. ensuring that urban, rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes

    b. ensuring that the iwi, hapū, and Māori in the region are appropriately reflected in membership of the committee

24. **note** the above parameters could be supported by non-statutory guidance that could support establishment and appointment to committees

25. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the composition of committees in recommendation 21 and on the parameters in recommendation 23

26. **agree** that SPA committees will have one central government representative appointed by the Minister/s responsible for administering the SPA

27. **note** that decisions on composition arrangements in regions are subject to on-going discussions with Post-Settlement Governance Entities (PSGEs) in relation to existing Treaty settlement commitments, and with the relevant entities in relation to existing natural resource arrangements under the Resource Management Act 1991 (RMA)

28. **note** that MOG #7 and #8 agreed that the future system will need to provide mechanisms to uphold the intent and integrity of arrangements established via Treaty settlements and natural resource arrangements under the RMA, and that decisions on these arrangements are delegated to a sub-set of Ministers

29. [redacted]

30. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations[1] in the region seek to agree on a composition arrangement for the SPA joint committee, including:

    a. the host council

    b. the number of members of the SPA joint committee

    c. the appointing bodies who can appoint the members

    d. any other arrangements as agreed by all parties

31. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:

    a. the host council

    b. the number of members of the NBA joint committee

    c. the appointing bodies who can appoint the members

    d. any other arrangements as agreed by all parties

32. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans

33. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees

34. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:

    a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress, and

[1] *Paper 1: Role, funding and participation of Māori in the RM system* explains what this term means and how Māori will be participate in composition and appointment processes.

b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement

35. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC

36. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met

37. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:

    a. the host council

    b. the number of members of the joint committee

    c. the appointing bodies who can appoint the members

38. **agree** that the LGC will then publish its determination or decision on the committee composition

39. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions

40. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 35 above

41. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council

42. **agree** that the appointing bodies will be required to have an appointment process, but the legislation will not specify what this appointment process will be for local government and Māori seats

43. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments

44. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees

45. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making

46. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)

47. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments

48. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

PART C: DECISION-MAKING ON PLANS

49. **agree** that SPA and NBA committees will be autonomous decision-making bodies and that the members will not be required to ratify decisions with their appointing bodies before agreeing to RSSs and NBA plans

50. **note** that the Local Government Steering Group (LGSG) has recommended Statement of Community Outcomes be developed by each council to articulate the place-based aspirations of their communities,

51. **note** that officials are supportive of the intent for Statement of Community Outcomes, but do not support a prescriptive legislative requirement, and are seeking to provide joint committees with flexibility for the types of place-based documents they wish to consider

52. **agree** that SPA committees must before finalisation of the RSS provide all appointing bodies a time period to provide feedback on the RSS, and the committee must give weight to the feedback when finalising the RSS and provide a response to the relevant appointing body

53. **agree** that SPA and NBA committees cannot delegate final decisions on plans to other bodies or entities (including subcommittees), unless necessary to uphold Treaty settlements or other existing arrangements under the RMA

54. **note** that the *Role, funding and participation of Māori in the RM system* paper seeks delegated decisions for transfers of powers (per RMA s33), which may provide for additional exceptions to recommendation 53

55. **agree** that SPA and NBA committees can establish geographic, issues-based, or cross-regional subcommittees in an advisory capacity to support decision-making at their discretion and may appoint any person(s) to these subcommittees

56. **note** that at MOG #11/12 Ministers agreed that SPA committees could use a 'collaborative planning process' to address cross-boundary issues through establishing cross-regional spatial planning committees involving more than one region to develop a cross-boundary spatial plan and that this plan would be automatically assumed into the region's RSS

57. **agree** to amend the recommendation on cross-regional planning committees agreed at MOG #11/12 for SPA committees, to clarify that the intention is that they are used where alternative coordination mechanisms are not suitable, and to provide for supportive conditions/criteria

58. **authorise** the Minister for the Environment to take further decisions on the cross-regional planning committees, including what conditions should be met for their use

59. **agree** that SPA and NBA committees may determine their own chairing arrangements, and will be empowered to appoint a single chair, chair/s, or a non-voting independent chair

60. **note** that the committee chair/s will play an essential role in making committees work well and enabling collaborative decision making

61. **note** that the availability of suitable chairs for the Independent Hearing Panels (IHPs) is an important determinant of the number of regions in each tranche in the development of NBA Plans, how many tranches are required and therefore the length of time for the transition to the new RM system

62. **note** that the requirements for a successful IHP chair includes chairing skills, attracting respect, having the confidence of the parties, an ability to work though the issues, and developing well-considered recommendations

63. **note** that MOG agreed at MOG #14[2] that an IHP chair must be an Environment Judge and that all IHP members, including the chair, must be appointed by the Chief Environment Court Judge (CEJ).[3] 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"; and MOG also authorised[4] the Minister for the Environment to make further policy decisions relating to the process for determining who is appointed to IHPs, including the chair

64. **note** that an alternate Environment Judge will be able to be appointed as an IHP chair

65. **note** that a retired Environment Judge under the age of 75 can be appointed as an alternate Environment Judge provided certain criteria relating to necessity and term are met; and that current and acting District Court Judges and current and acting Māori Land Court Judges can be appointed as alternate Environment Judges

66. **agree** that temporary Environment Judges be able to be appointed as alternate judges for the purpose of chairing IHPs, and that these appointments would be exempt from the eligibility criteria for alternate Environment Judges (as per RMA s249(2)), as well as the eligibility criteria for judges stipulated in s15 of the District Court Act

67. **agree** that SPA and NBA committees must make every effort to achieve consensus in decision-making for decisions on plans

68. **agree** that where the chair/s determines that consensus cannot be achieved, the committee would use a voting rule set at a majority of the committee members, meaning 50% plus one

69. **agree** that the chair/s of the SPA and NBA committees may initiate mediation at any time, and the chair/s is responsible for appointing the mediator

70. **agree** that for decisions on strategies and plans, SPA and NBA committees can produce minority reports to reflect where there are substantial dissenting views

71. **agree** that where the chair/s of the SPA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first) the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may either:

    a. undertake a review and make a direction to the committee; or

    b. appoint an independent person to undertake a review and make a direction to the committee

72. **agree** that where the chair/s of the NBA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first), the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may appoint an independent person to undertake a review and make a direction to the committee

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[2] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed

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

[4] MOG #14, 17 November 2021. Paper 3, recommendation (42) agreed.

73. **agree** that a direction made by the Minister or independent person appointed by the Minister under recommendations 71 and 72 will be made available to the committee, and for public transparency the committee would be required to publish it

74. **agree** that Ministerial intervention powers will be provided where a member or committee is unable to effectively fulfil their responsibilities under the SPA or NBA, and delegated decisions will be sought on this detail (as authorised by MOG #15)

PART D: RESOURCING THE COMMITTEES

75. **agree** that SPA and NBA committees must appoint a director of the secretariat who will be directly accountable to the committee

76. **agree** that the host council will provide support to the secretariat (such as working space, and equipment) and that further decisions are required to clarify this relationship (noting the delegation at recommendation 12 above)

77. **agree** that the legislation will not preclude the same person being appointed as the director of the secretariats to the SPA and NBA committees, nor resourcing being shared between secretariats

78. **agree** that the responsibilities and duties of the director of the secretariat will be:

    a. to provide technical advice and administrative support to the SPA and NBA committees

    b. for the purposes of strategy and plan making, establish and facilitate collaborative working arrangements (including feedback loops) with and between local authorities and Māori in the region, and for the SPA a tripartite working arrangement with central government agencies

    c. to ensure that advice provided includes mātauranga Māori and te ao Māori perspectives; and

    d. to provide administrative support to the IHP[5] in a way that maintains its independence

79. **agree** that the director of the secretariat will have an obligation to consult the SPA or NBA committee on a resourcing plan for the secretariat and to consider the expertise and skills available across the groups represented on the SPA or NBA committee

80. **agree** that the director of the secretariat will have powers to employ and contract staff as necessary, but that it is expected that most staff working on the plans will be and remain employees of their local authority (or iwi and hapū representative organisation)

81. **note** that the *Paper 2: Role, funding, and participation of Māori in the RM system* paper seeks a delegation for the Minister for the Environment and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat

82. **note** that it was agreed at MOG #12 that that the SPA include a power to allow the Minister for the Environment and other responsible Ministers to direct government and statutory agencies to provide technical support to the Regional Spatial Strategy

[5] MOG #11/12 agreed to an NBA plan making process that results in a robust plan through the use of an Independent Hearings Panel (Paper 4, item 1(h)). During the hearings phase of combined plan development, the IHP will require administrative support from the secretariat such as website administration, IT assistance, communicating with parties, and other technical support to ensure an efficient and accessible hearing.

Committees where it is practical and reasonable to do so and that this could include seconding staff to the secretariat

83. **agree** that the SPA and the NBA include a duty on all local authorities and iwi and hapū representative organisations to work collaboratively with the director of the secretariat and to provide technical support and information to the committee where it is practical and reasonable to do so

84. **agree** that SPA and NBA committees will be funded jointly by local authorities, and that the local authorities must not direct the SPA or NBA committees in the use of funds or amend the agreed budget without the consent of the committees

85. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions on the process for agreeing and amending a joint budget

86. **agree** that the SPA and NBA committees will have a duty to manage costs within the agreed budget

87. **agree** that the central government will fund the costs of the central government representative on the SPA committee

88. **note** that there is a separate programme of work looking at how to uphold Treaty settlements in the new system, in particular how to give effect to the participatory obligations, which will include an analysis of any financial implications

PART E: CROSS-CUTTING ISSUES AND OTHER MATTERS

Top of the South/Te Tau Ihi

89. **note** local government boundaries and iwi boundaries intersect across New Zealand

90. **note** that RM reform is not local government reform and adjustment of Council boundaries is therefore not appropriate for RM reform

91. **note** that there are three unitary councils at the top of the South Island (Top of the South)/ 'Te Tau Ihu', ie Nelson City Council (Nelson), Tasman District Council (Tasman), and Marlborough District Council (Marlborough)

92. **agree** the configuration of planning boundaries at the Top of the South/Te Tau Ihu will be

    EITHER

    a. NBA Plans and RSS be prepared along current unitary council boundaries (ie consistent with the rest of the country for unitary and regional councils)

    OR

    b. one NBA Plan and one RSS be prepared in the Top of the South/ Te Tau Ihu (Resource Management Review Panel recommendation)

    OR

    c. Nelson/Tasman prepare one NBA Plan and one RSS, and Marlborough prepares one NBA Plan and one RSS (modified Panel approach)

    OR

    d. Ngāi Tahu Takiwā northern boundary forms the planning boundaries at the Top of the South/Te Tau Ihu (takiwa approach) and the remaining northern boundaries be determined from either option (a), (b) or (c) above.

93. [redacted]

94. [redacted]

Interaction with Local Government Act 2002 (LGA)

95. **authorise** the Minister for the Environment, the Minister for Local Government, and the Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on additional provisions required and any other matters [redacted] decision relates to the role of the LGC or local authorities.

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

Purpose

1. This paper seeks agreement to the key features of regional governance and decision-making by joint committees (committees) for the:
   a. regional spatial strategies (RSS) under the Strategic Planning Act (SPA) (proposed to be renamed the Spatial Planning Act), and
   b. plans under the Natural and Built Environments Act (NBA).
2. The paper provides advice on implementing the recommendations of the Resource Management Review Panel (the Panel) for regional decision making, focussing on the matters to be provided for in legislation. Further policy development will be required to support transition and implementation.
3. The paper is split into the following parts:
   a. Part A: Functions and form
   b. Part B: Composition and appointments
   c. Part C: Decision-making
   d. Part D: Resourcing the committees
   e. Part E: Cross-cutting issues and other matters
4. This paper is closely linked with *Paper 2: Role, funding, and participation of Māori in the RM system* which seeks decisions on who should participate in the process to agree composition and appointment to SPA and NBA committees.
5. It is proposed that iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities representing rights and interests 'at-place' in agreeing composition and identifying appointing bodies.
6. It is recommended that the name of the proposed 'Strategic Planning Act' should be changed to the 'Spatial Planning Act' to better reflect the purpose of the legislation.
7. This paper seeks agreement to delegate further decisions on SPA and NBA committee arrangements to the Minister for the Environment and:
   a. the Minister for Local Government, where the decision relates to the Local Government Act 2002 (LGA), the role of the Local Government Commission (LGC) LGC or local authorities, and
   b. the Associated Minister for the Environment (Hon Kiri Allan), in some instances.

Status quo

8. In the current resource management system (RM system) all decisions on RMA plans are taken by councils, sometimes on advice of advisory bodies and hearings panels. There are currently no requirements for collaboration within regions for district plans, but regions can develop combined plans. For example, following recommendations from the LGC, a combined plan is currently being prepared for the West Coast.

9. In some instances, Treaty settlements have resulted in structures which provide iwi/Māori some decision-making powers over the plan-making process, such as through establishing governance bodies, or appointments to council planning committees. These arrangements mainly have influence over regional plans, with some arrangements also providing for district plans.

Panel's recommendations

10. The Panel recommended that RSSs under the SPA and plans under the NBA should be prepared by regional committees, comprising representatives from local government, mana whenua; and for the SPA committee, central government. The Panel considered that a joint committee model would create greater requirements of partnership and enable a more effective strategic role for Māori in the system. The Panel did not go into detail of how committees would be established or work in practice.

11. The features of SPA and NBA committees set out in this paper broadly align with and elaborate on the Panel's recommendations. Where the recommendations depart from the Panel's proposals, this is described.

Previous Ministerial Oversight Group decisions

12. MOG #8 noted that the governance arrangements across the resource management system should be consistent with the purposes and supporting provisions of the NBA and SPA and the following principles:

a. Ensure that roles and responsibilities are clearly identified and that when and how decisions are made are clearly defined.

b. Ensure that decision-making is informed by robust information and evidence, including mātauranga Māori, with proportionate opportunities for public participation.

c. Provide for effective representation of differing interests whilst recognising that this does not mean direct representation for every constituent body.

d. Give effect to the principles of te Tiriti o Waitangi and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori. In regard to Treaty settlements:

   i. Uphold all undertakings in negotiated Treaty settlements.

   ii. Uphold all agreements in current Treaty negotiations being undertaken.

   iii. Ensure that any future Treaty settlement negotiations will be undertaken on the same equitable basis as all Treaty settlements undertaken prior to the development of the NBA and SPA.

e. Ensure appropriate accountability and transparency for decision-making, with conflicts of interest properly identified and managed.

f. Be efficient, cost-effective, and workable, and encourage the wise stewardship of resources.

g. Ensure integrated decision-making wherever possible within regions, whilst allowing for variation to reflect the different circumstances of communities.

h. Able to be adapted over time to fit with the changing needs of communities and the environment.

13. MOG #8 also agreed that the broad framework officials would use for option development is:

    a. regional decision making is the preferred option for planning and planning documents, and

    b. RSSs are to be decided by a custom-made group representing central government, local government and iwi/hapū/Māori.

14. At MOG #11/12 Ministers agreed that that joint committee composition be worked through region-by-region.

15. Ministers also agreed at MOG #11/12 that the SPA would provide a process for collaboration on cross-boundary issues by way of cross-regional committees (which is discussed further in paragraph 148-151 of this paper).

16. Further discussion at MOG #11/12 noted:

    a. the importance of strategies and plans being viewed as legitimate to support successful implementation,

    b. ensuring that the legislation would be sufficiently flexible to accommodate the diversity of New Zealand's regions, and

    c. the role of the secretariat in providing both administrate support and technical input into the strategies and plans.

17. Ministers agreed at MOG #16 that the central government will have a member on the SPA committees, as decision-makers with voting powers. Ministers also agreed in-principle, subject to the recommendations in this paper, that the central government member would be a Ministerial appointee.

Balancing various objectives

18. The package of recommendations for the establishment and operation of SPA and NBA committees presented in this paper has been designed to take account of several different objectives and align with the principles for governance agreed at MOG #8. The package should be considered as a whole as changing one element has flow on implications for other elements – in particular, composition and decision-making are closely linked.

19. The overarching objective of these proposals is to ensure the governance arrangements support effective decision making. As discussed at MOG #11/12, it is critical that the arrangements are viewed as legitimate to support successful implementation of the reforms and efficiency throughout the entire system.

20. For the SPA and NBA committees, legitimacy means that the outcomes of decisions are accepted, even if the decision is one people disagree with. It means the committees have a mandate to make these decisions and there is respect for the process and decisions that are made.

Legitimacy is enhanced by flexibility.

21. A key design choice for SPA and NBA committees is how prescriptive or flexible the legislation should be particularly in relation to composition. A flexible approach enables those in regions to determine arrangements that best reflect circumstances (such as number of local authorities, hapū and iwi interests, and existing Treaty settlement arrangements) and is likely to enhance the legitimacy of the committees.

22. However, in the absence of clear statutory guidance on composition matters, the regions may face protracted debate and potentially legal challenges which risk undermining legitimacy, damaging relationships with Treaty partners, and prolonging transition and implementation of the reforms. There would be a higher reliance on dispute resolution processes, which would impact on who an ultimate decision-maker is.

23. The recommendations in this paper aim to reach a balance between flexibility and prescription, to provide legislative parameters that support timely implementation and allow for regional variation.

Legitimacy is enhanced by local democratic input and accountability.

24. Local authorities will be principally accountable for funding the development of the plans[6], and for implementing them. In strategy and plan-making, the SPA and NBA committees will be exercising delegated public decision-making powers and it is appropriate that lines of electoral accountability are maintained. To ensure direct representation, all committees will be required to provide for at least one seat for all local authorities where desired.

Legitimacy is enhanced by effective Māori membership.

25. The design of SPA and NBA committees is important for delivering the reform objective to give effect to the principles of te Tiriti o Waitangi. The recommendations seek to provide for decision-making between the members appointed by local authorities and those appointed by Māori.

26. It is recommended that this be provided for through legislative protections for Māori membership on committees, and decision-making rules that support consensus. The autonomy of the committee to take decisions and inability to delegate strategy and plan making powers is also important to upholding joint decision-making in the committee arrangements[7].

Legitimacy is enhanced by workable arrangements that support effective decision making and system efficiency.

27. Officials have also considered how to balance legitimacy and efficiency. The arrangements must be workable and support effective decision making. However, efficiency must be considered across the whole system. Focusing on the efficient operation of the committees runs the risk of shifting time and cost elsewhere in the system. For example, plans that are not perceived to be legitimate could result in more time spent at appeals stage. Also, smaller, less representative committees could require additional structures and processes for enabling local democratic input and meeting te Tiriti obligations.

28. It is recommended that the legislation should allow for broad representation of local authorities and iwi, hapū and Māori on the committees, that the regions should be empowered to determine committee composition for their region, and that the committees should strive for consensus in decision-making. These features risk slowing down decision-making but will result in decisions with high legitimacy.

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[6] Noting that for regional spatial strategies the central government will fund the central government member on the SPA committee and may provide staff to assist the secretariat prepare the strategy.

[7] Exceptions to autonomy include previous MOG agreement to cross-regional spatial planning committees, and where delegated decision-making is required to uphold treaty settlements or other arrangements

This package of recommendations strikes a good balance between the reform objectives, but is not without risk.

29. As with any collaborative arrangement, these proposals will rely on good relationships between the parties. There are already areas of the country with positive working relationships between local authorities and iwi, hapū and Māori and there many examples of local authorities working effectively together across the region. The legislation will include provisions to support good working relationships, such as clear protocols for resolving disputes, but success will rely on effective implementation and goodwill.

30. Regionalising governance whilst maintaining the existing local authority structures risks leaving the role and accountabilities of local authorities unclear. The LGSG noted that, "in the absence of reorganisation of the functions of the existing units of local government it will be essential to ensure that there is clarity of responsibility and accountability for the delivery of investment in the RSSs and for the policies and rules set out in NBA plans"[8]. Officials agree and the recommendations in this paper seek address to this.

31. It is also important to note when considering these proposals that the context is rapidly evolving. Recent legislation has made it easier for local authorities to establish Māori wards and further legislation will be introduced this year to better enable Māori wards generally, specifically in Auckland. At the 2022 local elections 35 local authorities will have Māori wards. The Future for Local Government Review is ongoing and due to deliver a final report in April 2023. These arrangements for the RM system need be flexible enough to evolve in the future in response, such as ensuring committee arrangements can be changed without legislative change.

Summary of recommendations

32. The table overleaf provides a summary of the recommended approach to governance and decision-making in the new system. Differences between the committees are underlined.

33. Official note that regional arrangements are subject to going discussions with the relevant entities in relation to existing natural resource arrangements under the RMA and Treaty Settlements, outlined further in paragraphs 80-89.

[8] Local Government Steering Group Report, *Enabling local voice and accountability in the future resource management system,* page 19.

	SPA committees	NBA committees
A: Function and form (pages 28-31)	A committee established under the SPA comprising representatives from local government, Māori, and central government will be established to prepare and approve a regional spatial strategy (RSS) for their region.	A committee established under the NBA comprising representatives from local government and Māori, will be established to prepare and approve an NBA plan for their region.
B: Composition and appointments (pages 31-41)	Local authorities and iwi and hapū representative organisations to agree composition of their SPA committee by a statutory deadline. The committee must: • have a minimum of 6 members • enable all local authorities to be directly represented on the committees where that is their preference • [in guidance] consider where additional local government representation is needed to provide for different interests • have (subject to Ministers' decisions) **either** a minimum of 2 members or a minimum proportion appointed by iwi/Māori • ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee Composition formalised by the LGC. Appointments by appointing bodies must be made within 3 months. An central government representative also appointed.	Local authorities and iwi and hapū representative organisations to agree the composition of their NBA committee by a statutory deadline. The committee must: • have a minimum of 6 members • enable all local authorities to be directly represented on the committees where that is their preference • [in guidance] consider where additional local government representation is needed to provide for different interests • have (subject to Ministers' decisions) **either** a minimum of 2 members or a minimum proportion appointed by iwi/Māori • ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee Composition formalised by the LGC. Appointments by appointing bodies must be made within 3 months.
C: Decision-making (pages 40-49)	Committee makes final decisions on RSS but can establish subcommittees to provide advice. Committees must strive for consensus, with back stop. Committee to use mediation before disputes are referred to the responsible Minister to make the decision or appoint independent commissioner to do so.	Committee makes final decisions on NBA plans but can establish subcommittees to provide advice. Committees must strive for consensus, with back stop. Committee to use mediation before disputes are referred to responsible Minister to appoint independent commissioner to do so (Minister can't make decision).
D: Resourcing the committee (pages 49-52)	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director to ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director to ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.

PART A: FUNCTIONS AND FORM

Structure of the regional committees

34. The Panel recommended that plans should be prepared at a regional level by 'joint committees' comprising representatives from local government, mana whenua and central government for RSSs, and local government and mana whenua for NBA plans.[9]

35. These committees would be a new governance arrangement in the resource management system, replacing and regionalising the plan-making functions of local authorities. For RSSs they provide joint decision-making functions for a new strategic layer in the system between central government, local government, and iwi, hapū, and Māori. For NBA plans, the committees replace existing RMA plan decision-making functions of councils and provide for joint decision-making between local government and iwi, hapū and Māori. Councils will retain regulatory responsibilities under NBA plans.

36. Officials recommend that the committees are established as two separate committees under the NBA and the SPA, reflecting the different purposes and roles of the committee. This also has the benefit of allowing the committees to vary in both size and composition, if considered appropriate by iwi and hapū representative organisations and local authorities in a region, and allows appointing bodies to consider the mix of skills and knowledge best suited to each committee.[10]

37. However, as raised by the Local Government Steering Group (LGSG), there may be advantages to shared membership across the committees "to support integration of the RSS and NBA plans, to better reflect the current capacity of the resource management system and to help drive and embed the cultural change that will be needed across the new system".[11] Establishing two committees also has some inefficiencies in that it could result in regions running two composition and appointment processes.

38. Officials recommend that the legislation should not require the committees to have shared membership, but that it should remain flexible and not preclude shared membership. Allowing regions to determine the arrangements that best suit their circumstances will enhance the legitimacy of the committees and the decision-making process.

Functions of the SPA and NBA committees

39. The SPA and NBA committees will be governing bodies, tasked with preparing plans covering every local authority. The functions of the committees are summarised below. Further detail is provided in the previous or forthcoming papers referenced. The committees would have enduring functions, with the level of support for the work of the committees fluctuating as necessary over time.

40. The primary function of the SPA committee will be to oversee the development of and approve an RSS for their region in accordance with the SPA. The committee will also have an enduring role to monitor and support the implementation of the RSS and identify

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9 Ministers should note that decisions are yet to be taken the role of the Minister for Conservation in NBA committees [BRF-961 refers].

10 The composition of committees is discussed further in Part B of this paper (from page 31).

11 Local Government Steering Group Report, *Enabling local voice and accountability in the future resource management system,* page 16.

circumstances which require early amendment to or replacement of an RSS. This includes:

a. determining and undertaking a public engagement process for the RSS (as agreed at MOG #11/12)

b. preparing and agreeing the RSS

c. determining and undertaking a process to review the RSS when a significant change occurs and review the whole RSS every 9 years (as agreed at MOG #11/12).

41. In addition, as agreed in principle at MOG #14 and subject to further decisions[12], SPA committees may have a role in developing implementation agreements and approving these in consultation with other delivery partners. Further decisions are also required on the role of the SPA committee in monitoring the effectiveness of the RSS once approved.[13]

42. The primary function of the NBA committee will be to prepare and approve an NBA plan for their region in accordance with the NBA. In summary, this includes:

a. preparing an NBA plan and notifying it for submissions (as agreed at MOG #11/12)

b. accepting or rejecting recommendations from the Independent Hearings Panel (as agreed at MOG #11/12)

c. making the plan operative

d. preparing an integrated regional monitoring and reporting strategy (as agreed at the Environmental Sub-Group, 28 October 2021).

e. preparing a programme of work to review the NBA plan (as agreed at MOG #11/12, with further detail agreed under delegation, BRF-946 RM Reform).

f. receiving three-yearly reports from local authorities in the monitoring/implementation of NBA plans (as agreed at MOG #11/12).

43. The role of the NBA committee will also be on-going as a standing committee. This is due to a range of functions already agreed, such as reviewing the NBA and undertaking monitoring responsibilities. Separate advice will seek decisions on the role of the NBA committees in plan changes.

44. Establishing both the SPA and NBA committee as bodies with on-going roles will ensure iwi, hapū and Māori have an enduring place in governance activities outlined above. Officials recommend that the legislation should provide both committees with the powers necessary to carry out their functions.

Duties of the SPA and NBA committees

45. The SPA and NBA respectively will outline how the committees will carry out their functions. Some aspects of this have been previously agreed; specifically, the Treaty

[12] These decisions have been delegated to the Minister of Finance, Minister of Housing, Minister for the Environment, Minister of Local Government, Minister of Transport, Minister of Conservation, Associate Minister for the Environment (Hon Kiri Allan), and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan).

[13] Decisions on monitoring and oversight of the SPA have been delegated to the Minister of Housing, the Minister for the Environment, the Minister for Local Government, the Minister of Conservation, and the Associate Minister for the Environment (Hon Shaw).

clause in both Acts will require both committees to give effect to the principles of te Tiriti o Waitangi when performing their functions and duties. It is proposed through *Paper 2: Role, funding and participation of Māori in the RM system* that the National Entity be responsible for monitoring committees' performance against these duties. The Acts will also require plans to align with the principles and purpose of the Acts, including for example, upholding te Oranga o te Taiao.

46. The requirements for public participation have also been agreed for the RSS and NBA plan preparation processes (at MOG #11/12), and the committees will be responsible for ensuring that these processes are followed.

47. In addition, it is recommended that the committee members should have a general duty to work collectively to achieve the purposes of the Act across the region when taking decisions.

48. Alongside this, committee members will have individual duties to uphold in respect of their roles they may hold as elected local representatives, members of iwi and hapū and other Māori entities, or Ministerial appointees (for SPA committees). For example, elected councillors on the committees will also have a duty under the Local Government Act 2002 (the LGA) to exercise their powers and perform their duties in the best interests of the region or district they were elected to represent. Officials consider that it is reasonable to expect all members will be used to situations where they have to balance different interests or hold multiple roles. The implications for accountability are discussed further in paragraphs 203-209.

Legal status and host council arrangements

49. The Panel did not discuss options on the legal status of joint committees, beyond describing the recommended approach for a fully autonomous joint committee as distinct from an 'LGA type joint committee'. These are subordinate decision-making structures to local authorities where members remain beholden to their constituent councils.[14] Officials agree that the SPA and NBA committees should not be established under the LGA as subordinate decision-making structures to local authorities.[15]

50. It is important that the committees are a partnership of all local authorities in the region with Māori and central government – not subordinate to a single or multiple councils. To support this, it is recommended that each committee would be established as a new statutory body under the SPA or NBA. In practice, the committees would operate as a committee of all local authorities in the region, hosted by a single council. The committees would produce the plans on behalf of all the local authorities in the region, , but the local authorities will retain responsibility for implementing and administering them.

51. The host council would provide the administrative systems necessary to enable a committee to function – for example, equipment, ICT and human resources support, office space and meeting rooms, financial transactions, and reporting. Hosting a joint committee would neither constrain the committee in its actions, nor constrain the host council in its participation in committee processes. The host council would have no greater and no lesser powers in relation to a committee than any other local authority in

[14] The autonomy of committees is discussed further in paragraphs 133-140.

[15] Local Government Act 2002 (Sch 7, pt 1, cl 30-30A).

the region. The host council would have the same appeal rights as all other local authorities for NBA plans.

52. It is recommended that local authorities in the region, in consultation with iwi, hapū and Māori, should determine themselves which local authority is best placed to be the host council and that this be considered alongside the composition process and be formalised by the LGC. Host council responsibility would default to the regional council in the event unanimous agreement on the host council from local authorities cannot be reached.

53. While the Panel considered the need for autonomy of committees to achieve efficient plan and strategy making outcomes, officials consider the legislation will need to extend legal autonomy to other matters. These include initiation of and defence of legal actions involving the committee's performance of its functions and duties; employment of staff; and management of its approved budget.[16] Legislation will also need to be clear that the existence of the committee does not affect the member councils' statutory obligations. Further decisions are required on mechanisms for transparency, in particular to provide for the application of the Local Government Official Information and Meeting Act 1987, and other accountability mechanisms for the committees.

54. The Panel's recommendations focused predominately on regions with multiple local authorities, with limited views on how to provide for unitary authorities in the future system. Delegated decisions will be required on the legal structure of committees in unitary authorities.

PART B: COMPOSITION AND APPOINTMENTS

Composition of committees

55. There are numerous decision-making and advisory committees in the existing resource management system (either established under the Local Government Act 2002 or various Treaty Settlement Acts) that provide shared responsibilities between local authorities and iwi and hapū. A wide range of existing composition arrangements and decision-making frameworks have informed our analysis.

56. There are substantial differences between existing committee arrangements[17] and what the Panel has proposed for committees under the RSS and NBA. Specifically:

    a. SPA and NBA committees will be fully autonomous, with consensus decision-making rules designed to balance the decision-making power of all members. Nearly all of the existing committee arrangements are sub-ordinate decision-making structures that default, at least in part, to decisions by local authorities.

    b. SPA and NBA committees provide a model that applies to all regions and all resource management matters. Most existing arrangements have been created at

[16] Refer to paragraphs 182-202 for further detail on the secretariat and budget and funding arrangements for the committees.

[17] The Hawke's Bay Regional Planning Committee is one example of an existing arrangement, established through a Treaty Settlement. This provides for iwi appointments, is not fully autonomous and only relates to planning functions of the regional council. The Te Tai Poutini Committee, responsible for the West Coast combined plan is the closest example of the form and function of the SPA and NBA plan committees. It is established through an Order in Council, has iwi representatives appointed, is fully autonomous, and addresses both regional council and territorial authority planning functions.

the discretion of a region or sub-region, and very few cover all resource management matters in a region (eg, many focus on regional council responsibilities and not those of territorial authorities).

57. The Panel did not specify how committee composition would be agreed or how committees would be formed. The Panel recognised that due to the variety in numbers of local authorities and mana whenua groups that groups may need to cluster to appoint to committees. The Panel also noted that committee size would need to be managed to ensure it does not impede the ability of committees to undertake their tasks.

58. The composition of the committees is critical for legitimacy and there are a number of considerations that must be finely balanced, including:

    a. providing for local democratic representation and effective Māori membership, while maintaining a manageable committee size.

    b. empowering regions to determine their own composition arrangements, while providing parameters to support efficient processes to reach agreement and provide protected minimums.

59. A range of options for composition were considered, from a highly prescriptive approach that set proportion of seats for each type of representative on the committees, through to a fully flexible model with no fixed proportions. A summary of the analysis and the costs/benefits of these options are contained in Appendix 2. It should be noted that bespoke arrangements may be necessary for unitary authorities and to uphold Treaty settlements.

60. On balance, officials recommend that the following composition parameters should apply to both SPA and NBA committees:

    a. that the composition and size of the committee supports effective decision-making and efficient functioning, with a minimum of six members prescribed in the legislation

    b. for local government members:

        i. a requirement that all local authorities should be directly represented on the committees where that is their preference[18]

        ii. guidance on when to consider additional representatives, to ensure that urban and rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes

    c. for Māori members:

        i. (subject to Ministers' decisions) either a minimum of two or a minimum proportion of seats

        ii. the composition should ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee.

61. No weighting is proposed for these parameters. Officials will consider what additional non-statutory guidance is required to support decision-making.

[18] For example, a council that sits across multiple regions may prefer to have direct membership on one or some of the relevant joint committees, and cluster with other councils on others. This is the case for the district councils of Rangitikei, Rotorua, Stratford, Tararua, Taupō, Waitaki, and Waitomo.

Size of committees

62. It is recommended that SPA and NBA committees be required to have a minimum of six members but that no maximum should be set in legislation. This ensures regional flexibility to determine the size and shape of their committees.

63. A committee size of six is the smallest size that would allow these regions to have both direct representation of all four of local authorities and meet the minimum requirements for Māori membership (assuming 2, noting this is subject to decisions).

64. Research on optimal committee sizes found there is no one number or exact range to enable a diverse range of perspectives while still being a manageable committee to operate.

65. All RSS committees will have one central government representative. With appropriate cross-agency support (via an interdepartmental executive board, being considered in MOG#17 Institutional arrangements for central government), we consider that one member is sufficient to represent all of central government in each region and helps manage committee size. This would not preclude central government agencies from providing input directly to the committees, for example on technical matters.

66. Unitary authorities provide a challenge to the joint committee model with only one council present to agree composition. To ensure that the geographic representation and local input provided for in multi-council regions is upheld in unitary authority areas, it is recommended that unitary authorities should not be prevented from having all councillors on the committee. This could result in a large committee in Auckland, with 21 members on Auckland Council (and the possibility of this increasing in the future), however we think the flexibility is appropriate to ensure adequate representation for a significant proportion of New Zealand's population[19].

67. Officials propose to seek separate decisions on how unitary authorities are provided for under the legislation, in particular Auckland including the role of the Independent Māori Statutory Board in committee arrangements.

All local authorities are provided direct representation where that's their preference

68. It is proposed that all local authorities be provided at least one seat to require local democratic input into the system and democratic accountability of the committees through direct representation. This is crucial given the implementation responsibilities of local authorities and to uphold the electoral accountability of the committees.

Committees must have a minimum of two or a minimum proportion of members appointed by iwi and hapū representative organisations

69. The legislation will provide regional flexibility to determine the exact composition of SPA and NBA committees but include protections for minimum membership for Māori. Officials provide two options (number or portion) below.

70. A statutory minimum ensures that no single member is expected to speak on behalf of all Māori interests in a region, or would feel isolated on the committee. In regions with a smaller committee size, two members may be appropriate, but in regions with larger

[19] We note that Auckland is unique in that its local board structure is not currently utilised by other Unitary Authorities. These will have an important role in influencing the committees, which may mean Auckland chooses not to have all councillors represented.

committees, a greater number of seats may be appropriate, and could be agreed through the composition process.

71. This paper seeks agreement from Ministers to one of two options:

    a. a minimum of two seats appointed by Māori

    b. a minimum proportion of seats appointed by Māori.

72. On large committees where more than two Māori members may be appropriate, a required minimum proportion could cut through debate on what the number of Māori members should be. It is assumed the proportion would be set high enough to provide confidence that Māori members would be able to effectively participate in decision-making irrespective of committee size.

73. However, a minimum proportion may be seen as undemocratic and disproportionate to the voter base in local democracies. A discussion about proportion would also likely lead to a focus on whether this should be linked to Māori population by region, rather than the preferred approach of letting regions work through composition in their own circumstances.

74. There is a risk that setting a minimum number of Māori seats effectively becomes the starting position where regional debate will begin from. A statutory minimum could put Māori in the position of having to argue for and justify why a greater number of seats is needed for Māori, especially in regions with many local authorities. This could lead to uncertainty, conflict (both with local authorities and between iwi and hapū), a need for dispute resolution, potential litigation, and drawing out of the appointment process.

75. While the ambition for committees to strive for consensus outlined later in this paper aims to ensure Māori can participate fully in decision-making, it may not fully mitigate these risks in practice.

Positions provided on composition

76. The Strategic Planning Reform Board has discussed the governance proposals and provided the following comment:

> *"There is agreement on many aspects of the governance proposals, including that joint committees should be autonomous decision-making bodies and decision making should be by consensus.*
>
> *With respect to the composition of joint committees, there is agreement that composition should be determined regionally with some guidance in legislation. Officials agree there should be a prescribed minimum membership of iwi/hapū/Māori members. Specifying this number as a proportion rather than a number would likely better support effective Māori participation in decision-making and giving effect to the principles of te Tiriti. Most agencies also agree that all local authorities in the region (regional councils and territorial authorities) should be directly represented where that was their preference. However, it will also be important that committees are of a manageable size to ensure committees can make decisions efficiently.*
>
> *The choices on composition are at the intersect of Cabinet goals to retain local democratic input and giving effect to the principles of te Tiriti."*

77. The LGSG is supportive of flexibility for regions to determine composition (including size and membership), noting that provisions will be required to ensure an adequate role for

Māori. The LGSG also supports all local authorities having the option to be directly represented on committees, while recognising that some may wish to group together.

78. [redacted] and other Māori groups, including those who submitted on the NBA exposure draft, have called for 50/50 iwi/hapū and government appointments as a default to provide for partnership under te Tiriti.

79. Officials are not recommending a default of 50/50 as it would not provide flexibility to agree composition arrangements that work best for each region; or take account of a range of other supporting mechanisms that would uphold the principles of Te Tiriti. The role on SPA and NBA committees is only one element in the system that provides for partnership. Assessments of Treaty consistency require consideration of the reform proposals as a whole.

Upholding existing Treaty settlement arrangements

80. A number of arrangements established via settlements provide for the preparation of specific statutory planning documents, or a role for Post-Settlement Governance Entities (PSGEs) in the preparation of local authority planning documents. There will need to be provision in the new system to uphold the intent and integrity of these obligations.

81. One aspect of the design of some settlements was to provide for joint representation of PSGEs and elected local authority members in a statutory entity or body, with a focus and certain decision making powers in respect of a particular area or natural resource (an example is the Rangitaiki River Forum in respect of the Rangitaiki River catchment).

82. Treaty settlement legislation also provides for these entities or bodies to prepare a statutory document (eg, the Rangitaiki River document) which has statutory effect on RMA policy statements and plans. The statutory effect of these types of statutory documents will need to be upheld in the new RM system.

83. The presence of the local authority members in these entities or bodies was an important part of the design process, in part because those elected members were also part of the local authority which was the decision-maker on the relevant planning document(s).

84. There is a change of decision-maker on planning documents in the new system to SPA and NBA committees. To ensure that the Crown upholds the statutory intention of these settlement arrangements, officials are exploring a number of policy solutions (mechanisms) with agencies and in discussion with PSGEs.

85. In particular, there are regions where settlements have established arrangements (or appointments to committees) for the development of planning documents under the RMA. Where existing Treaty settlement mechanisms enable or provide for joint development of regional and district planning documents, specific arrangements will have to be provided for in that particular place.

86. Upholding settlement commitments in the new decision-making framework presents some challenges, as the process for developing planning documents under the NBA and SPA is proposed to be very different to under the RMA. In particular, the new decision-making framework has roles for joint committees, secretariats and IHPs. Decision-making on plans is centralised to joint committees with responsibility for the region as a whole.

87. As part of upholding settlements, consideration has to be given to whether upholding the nature and scope of the settlement governance arrangements (mostly focussed on specific catchments within a region) can be achieved solely by agreed refinements to

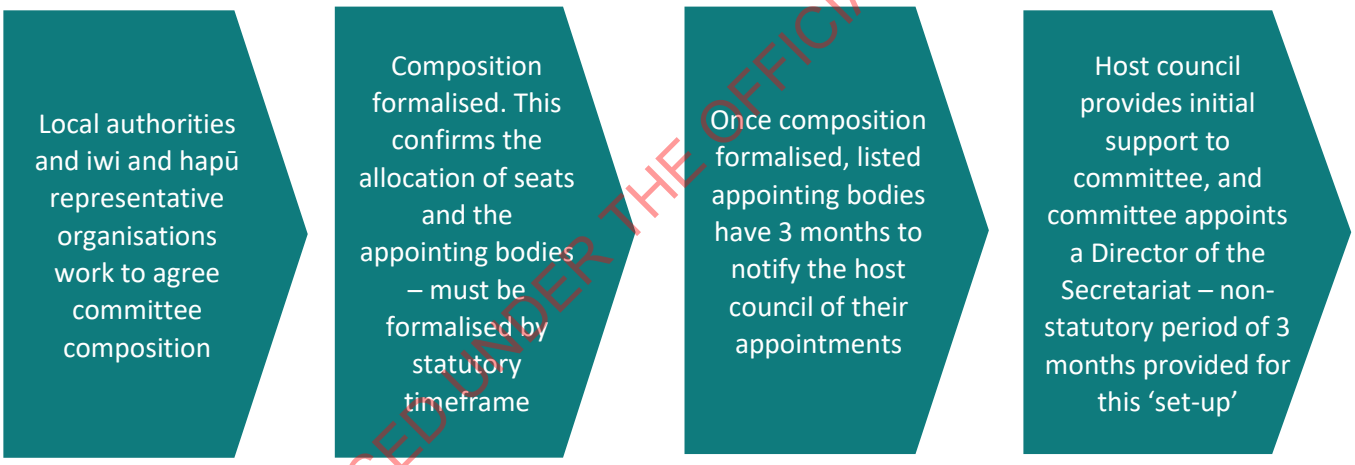
those arrangements or whether the new decision-making framework will require bespoke features in a limited number of regions.

88. This includes settlements, such as the Waikato Tainui Waikato River Settlement, which provides a number of connections to RMA statutory processes that must be upheld. Within each region there is generally more than one Treaty settlement, and so the intersection between these settlements also needs to be considered.

89. There is a separate process underway looking at options on how to uphold Treaty settlements in the future system; and decisions on this have been delegated to a sub-set of Ministers. There will need to be an analysis of any financial implications associated with upholding Treaty settlements in the new system. This process will likely result in amendments to Treaty settlement legislation.

Committee formation process

Diagram 1: SPA and NBA committee formation process



90. The legislation needs to set out a clear process for regionally-driven committee composition decisions (the number of seats and who can appoint to which seats). This process will need to be supported by non-legislative guidance and facilitation (where requested) to support decision-making.

91. As proposed in *Paper 2: Role, funding and participation of Māori in the RM system*, it is recommended that iwi and hapū representative organisations lead Māori involvement in the composition discussions with all local authorities in a region. Officials do not recommend prescribing how composition discussions are undertaken, to enable parties to run a process that supports a legitimate local decision being made.

92. Further decisions are required on what the legislation will prescribe including when and how the process to agree composition will commence, and who will be responsible for ensuring all local authorities and iwi and hapū organisations in the region are informed.

93. As noted earlier (paragraph 52 refers), the process to agree composition will also need to consider which local authority would be the host council, and local authorities would be expected to consider iwi and hapū views in this discussion. Where there was not unanimous agreement from local authorities on the host council, it would default to the regional council.

Statutory timeframes

94. It is proposed to set a statutory timeframe for when a committee's composition must be agreed and published by. Officials recommend that the RSS/NBA Plan must be notified no later than 2 years after the SPA/NBA committee is appointed, chair/s selected, and director of secretariat appointed. Setting a notification date is one option to inform the statutory deadline for composition decisions, eg they would need to be published two and a half years before the statutory notification of the draft RSS and NBA plan.

95. Officials expect there would be efficiencies for regions conducting one composition process for both committees, such as if a region was to agree their NBA committee composition at the same time as their RSS committee. The legislation should enable this by not preventing committee composition and appointments being made ahead of the statutory deadlines. Officials note that a different approach for committee composition will likely be needed for the 'model regions' where composition decisions will be required shortly after enactment.

Supporting regional composition decisions: role of the Local Government Commission (LGC)

96. Officials propose that to support the regionally-led process to agree composition there needs to be:

    a. a body or person to act as an independent facilitator supporting the composition formation process,

    b. a body or person to determine and publish composition when agreed by the region, and

    c. a body or person to act as an ultimate decision-maker to make a composition decision for a region if the proposal does not meet the legislative parameters or if discussions break down and regional agreement cannot be achieved.

97. Officials (including the Department of Internal Affairs) consider that the LGC is well positioned to take on these functions in the future system.

98. The LGC is a statutory entity established under the Local Government Act 2002. It has three members appointed by the Minister of Local Government and at least one member must have knowledge of tikanga Māori and be appointed on consultation with the Minister for Māori Development (refer section 33, Local Government Act 2002).

99. The LGC currently provides arbitration and decision-making functions for local authority representation reviews, local government reorganisation, and other appeals and disputes including disputes around Māori wards. These processes involve the LGC working closely in regions on local government matters, and require the members appointed to the LGC to have the necessary skills to help facilitate a regionally-led process. In addition, as they are a step removed from government, this will support the legitimacy of the process.[20]

Facilitation of composition discussions

100. It is proposed the facilitation functions provided by the LGC will include confirming the deadline for decisions to be made (see paragraph 94-95 for statutory timeframes),

[20] Although it is generally an independent body, the Minister of Local Government can direct its priorities with regards to activities under schedule 3 of the Local Government Act 2002. Additionally, Commissioners can be removed for any reason the Minister thinks fit.

monitoring progress, and facilitating discussions where appropriate, to ensure regions are on track to come to an agreement.

101. Further advice will be provided for any requirements for formal notification for the regional process to begin, and how to ensure all iwi and hapū representative organisations[21] can participate in discussions where desired.

102. While the LGC will provide some support, further non-statutory measures will be needed to enable all parties to successfully engage in composition discussions. The level of prescription in legislation on composition will directly impact the extent and difficulty of the regional process. It is expected that the first round of composition and appointment processes will be the most difficult and contentious, and therefore it is expected that local authorities and iwi and hapū representative organisations will require implementation support for this process.

103. It is also proposed that all parties will be able to seek mediation support for disputes during composition discussions. *Paper 2: Role, funding and participation of Māori in the RM system* and subsequent delegated decisions will seek agreement to appropriate dispute resolution processes to support decisions on Māori membership.

Determining and publishing regional composition proposals

104. It is intended that the legislative parameters, the facilitation provided by the LGC and implementation support will enable local authorities and iwi/hapū to agree composition arrangements for SPA and NBA committees.

105. Once agreement is reached, officials propose that the LGC ensures legislative parameters are met through a determination, and then formalises the composition arrangements to ensure it is recorded and publicly available.

106. Specifically, the LGC will be required to publish for each SPA and NBA committee:

    a. the host council

    b. the number of members Māori and local authorities can appoint

    c. the appointing bodies who can appoint those members

    d. other arrangements as agreed by all parties.

107. If the LGC is not satisfied that the legislative parameters are met, then it can initiate the process outlined below for composition disputes.

Process for composition decisions when regional agreement not reached

108. If the iwi and hapū representative organisations and local authorities in a region cannot agree to a committee composition arrangement, an ultimate decision-maker is required to ensure the committee can be established and not hold up the RSS/NBA drafting processes.

109. There needs to be a single decision point on composition of committees, as the number of seats for one group will likely require consideration of seats for the other as well as the make-up of the committee as whole. In addition there may also be disputes relating

21 *Paper 1: Roles, funding and participation of Māori in the new RM system* seeks decision on Māori participation in the composition and appointments process.

to appointing bodies (which groups can appoint to which seats). If required an ultimate decision on these matters may also need to be provided.

110. While the LGC is well positioned to make composition decisions for local authorities, it may need to engage additional expertise to make decisions as they relate to iwi, hapū and Māori in a particular region alone.

111. The LGC will be enabled to seek advice to inform any composition decisions. In addition, under the LGA (schedule 4) the LGC can request from the Minister for Local Government that a temporary member be appointed at any time. It is proposed that these powers be enabled for the LGC when undertaking functions under the SPA and NBA.

112. There is a risk that the LGC will not be viewed as a legitimate decision-maker for composition as it relates to iwi, hapū, and Māori, and that leaving it to the LGC to seek additional expertise may not provide the needed assurance. It is expected that the LGC will be provided guidance on when to seek advice or a temporary appointment.

113. It is also the intent is that this is a decision of last resort, when other levers such as facilitation or mediation are unsuccessful in helping the region come to their own decision.

114. Additional decisions will be required on whether the Minster for Local Government should consult with additional Ministers when making any temporary appointments at the request of the LGC. In addition, further decisions are needed on a trigger point for when the LGC needs to take a composition decision, the timeframe for this decision and how this decision will be taken including what information is used.

115. Officials note that for the LGC (or anybody) to be able to make a decision on behalf of a region the legislation needs to give them clear parameters to work within. If Ministers preferred a less prescriptive approach to what's proposed for composition, its likely Ministerial decision-making powers would be required.

116. Appendix 3 summarises the end-to-end process for committees.

Process to make committee appointments

117. Officials propose that appointing bodies would have three months from the date composition is formalised (published) to make their appointments. Officials recommend that appointing bodies are required to have an appointment process and appointments should be made by notification to the host council.

118. While this timeframe appears short, it is expected that during the composition discussions all parties will agree their relevant appointment processes (eg, nomination processes) to ensure the deadline can be achieved.

119. It is proposed that the legislation will not prescribe how local government and Māori appointments are made, who the appointments are or any skills, competency, or accreditation requirements in the legislation for these appointments. This upholds the policy intent that committees are representative bodies making political decisions, and appointing bodies should be able to appoint whomever they see fit. It is expected that appointing bodies will consider the mix of skills and knowledge best suited to each committee when making appointments.

120. While the Panel did not specify how appointments should be made, it did propose that local authorities should be represented by officials on SPA committees. As above, officials propose that the legislation does not prescribe this. Instead, local authorities could appoint an elected council member, or a trusted expert which could be appropriate

such as where multiple councils may cluster to make an appointment. The LGSG has expressed a strong preference for elected councillors to sit on SPA and NBA committees, noting that "political membership on the [committee] is recommended as the most appropriate way to address the issue of local ownership, legitimacy and accountability for planning decisions and implementation."[22]

121. As agreed in the paper on *Role of central government in the new system* at MOG #16, central government will appoint one member to the SPA committee. It was agreed in-principle that that the central government SPA committee members will be ministerial appointees, subject to the SPA committee being established as an autonomous decision-making body, which this paper seeks agreement to.

122. Therefore, officials recommend that the central government member of the SPA committees should be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments.

123. Officials note there is a separate work programme considering the accreditation system in the future for environmental commissioners, which is currently the Making Good Decisions Programme under the RMA. While there will not be accreditation requirements for committee members[23], consideration is being given to the decision-making training needs in the future system[24].

124. Officials also propose that appointing bodies can remove and replace their representative at any time. This provides a key element of accountability for appointments back to their appointing bodies.

Process for when appointments cannot be made within timeframes

125. If local authorities do not make their appointments within the three-month timeframe, the committee will still be established with the relevant seat(s) remaining vacant until appointments can be made (subject to a quorum being established). Local authorities have a range of dispute process that can be utilised to enable a decision to be made.

126. Separate decisions will be sought on additional dispute processes for Māori appointments.

Set-up process

127. From when appointments are made, the committee will need to:

    a. agree chairing arrangements (see paragraphs 152-155)

    b. agree a terms of reference and any committee procedures (over and above those in the statue)

    c. appoint the director of the secretariat (refer to paragraphs 186-193 below), who will then need to establish the supporting working arrangements.

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[22] Local Government Steering Group, *Enabling local voice and accountability in the future RM system,* page 16.

[23] Members of Independent Hearings Panels will be required to be accredited, as is currently the requirement under the RMA.

[24] The specifics of this will be considered following a review of the Making Good Decisions programme, and the future training needs across the system.

128. Officials anticipate this will take up to 3 months, and initial administrative support to the committee will be provided by the host council.

Review of composition

129. Officials propose the legislation be flexible to allow composition to change over time. Delegated decisions will be sought on the triggers for composition reviews. Provisions will also enable appointing bodies to change over time as needed.

Comparison to arrangements proposed for Three Waters reforms

130. Both the future RM system and Three Waters reform intend to enhance Māori participation in governance and decision-making. In the RM reform proposals, Māori members on SPA/NBA committees will have a role in making decisions with legal weight on councils and resource users. In the Three Waters reforms, mana whenua will hold half of the positions on a 'Regional Representative Group' to each of the four new Water Service Entities (WSEs). These Regional Representative Groups set the strategic and performance expectations of the water service entities and appoints members to an independent selection panel who then appoints the entity board.

131. The multi-layered approach to the appointments of water entity board members, and the independence of those governors from local government and mana whenua groups, has been designed to ensure financial and operational autonomy for water entities. This is not a necessary consideration for RSS and NBA plan committees.

132. The WSEs and the SPA and NBA committees will need to work together to ensure alignment and integration of planning and investment for three waters infrastructure services. It will therefore be important that WSEs and other infrastructure providers are involved in the development of RSS and NBA plans.

PART C: DECISION-MAKING

Autonomous decision-making

133. Officials agree with the Panel's recommendation that committees need to have autonomy in deciding the content of plans and giving these documents legal effect. The Panel considered that if the individual local authorities (and by inference Māori appointing bodies) were required to ratify the decisions of the SPA and NBA committees, approval processes could become delayed or impossible. Instead, it was expected that individual members of the committees would consult informally with the bodies they represented, but the committee would take the final decision.

134. Note that the LGSG have proposed that Statement of Community Outcomes (SCO) and Statements of Regional Environmental Outcomes (SREO) are mandated in the NBA to be developed by each local authority (time bound to 9 – 12 months), for RSS and NBA Plans to 'give effect' or 'have regard' to. Officials agree it will be important for committees to consider views of communities, and the SCO/SREO's are one way this could happen. At this stage officials do not recommend requiring local authorities to develop the SCO/SREO's or setting a legislative mandate for their inclusion in plans. It is noted that committees will need to consider inputs from a number of sources including existing

planning documents and iwi management plans. Officials will provide further advice to the Minister for the Environment on the proposals of the LGSG.

135. Officials recommend that to uphold this autonomy and to ensure that the joint decision-making between local authorities and Māori is preserved, the SPA and NBA committees should not be able to delegate their plan and strategy making powers, including to a sub-set of their members. The committees will be able to seek advice from a range of parties, including sub-committees (refer to paragraphs 143-147 and existing governance bodies, but the ultimate decision and accountability for that decision remains with the committee.

136. Some exceptions to this rule may be required, such as to provide for transfers of powers (s33) in the new system. *Paper 2: Role, funding and participation of Māori in the RM system* seeks delegated decisions on this matter.

137. Autonomous decision-making presents a challenge for ensuring plans reflect the views of the constituent bodies. As noted above (refer to paragraph 124), it is recommended that appointing bodies should be able to remove and replace their appointed members at any time. This line of accountability back to appointing bodies is important for the legitimacy of the plans.

138. Autonomous decision-making means RSSs will also not be ratified by Ministers. Although central government will not have an automatic commitment to fund priorities identified in RSSs, the priorities 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). RSSs will also have legal weight over regional land transport plans.

139. Officials recommend a 'time bound review step' be added to the RSS process, which will to some extent moderate the autonomy of the SPA committee. This step was not recommended by the Panel, but it is considered important for ensuring buy-in from appointing bodies, particularly those who will be accountable for implementing the strategy.

140. Autonomous decision-making does not mean that the committees will not be constrained in decisions making by their obligations under the SPA and NBA, including the Tiriti clause and those constrains arising from Treaty settlement arrangements, Takutai Moana rights, and existing voluntary RM arrangements.

Time bound review step for RSSs

141. Officials propose that a time bound review step is included in the process for preparing an RSS before finalisation. Appointing bodies to SPA committees would have two months to review and comment on the final version of the strategy before its published. Committees would be required to give weighting to this feedback when finalising the RSS and provide a response back to the relevant appointing body outlying how they have addressed the feedback.

142. Officials note the LGSG recommended a similar timebound review step in their report, but recommended it be for both committees. It is instead recommended that this step not be required for the NBA plan process. As agreed at MOG #14, the SPA will not allow for appeals on an RSS. While NBA committees would be able to run a similar process, officials are not proposing any legislative requirements for this as appointing bodies will have the ability to appeal certain decisions which is not available for RSSs.

Subcommittees

143. Subcommittees are a common feature of governance arrangements, and it is proposed that SPA and NBA committees once established will have full autonomy to establish subcommittees for any matters. Local authorities have raised the importance of subcommittees as an avenue where more localised planning could occur.

144. The form and function of subcommittees would not be prescribed in the legislation. They would be advisory in nature as the joint committee cannot delegate its decision-making (refer paragraph 135 above).

145. There would be no prescription of who could be a member of a subcommittee – meaning that the SPA or NBA committee could appoint members to subcommittees that were not members of the SPA or NBA committee, enabling them to bring in specific expertise.

146. Subcommittees could be established for any cross-regional or sub-regional matter, for example to provide advice on local issues in larger regions (eg, the central plateau in the Manawatū-Whanganui region) or for any other matters, such as interests to rural communities.

147. Subcommittees could also be established to provide for collaborative planning processes with Māori for specific NBA plan or RSS content such as the inclusion of cultural landscapes or content on specific waterways or other taonga.

Cross-regional spatial planning committees

148. MOG #12 agreed that SPA committees could use a 'collaborative planning process' to address cross-boundary issues through establishing cross-regional spatial planning committees involving more than one region to develop a cross-boundary spatial plan. It was also agreed that the responsible Minister could direct that this process be undertaken for a specific matter, after consulting with relevant Ministers.

149. As the cross-boundary spatial plan is automatically assumed into the relevant regions RSS, the cross-regional committee therefore has autonomy to make decisions in scope. This would be the only type of committee whose decision-making powers were not subordinate to the SPA committee (subject to any exceptions needed to uphold Treaty settlements or other existing arrangements).

150. It is not envisaged that this process would be used frequently, and will only be adopted where there would be benefits from producing a sub-strategy. There are a range of other ways in which cross-regional matters can be effectively managed, with the results of those processes flowing into the relevant RSS processes. Those include:

    a. other available processes such as GPS for transport and regional transport strategies

    b. development of non-statutory strategies such as landscape-scale biodiversity programmes

    c. agency strategies, for example, strategies for education infrastructure investment

    d. multiple RSS committees (and individual councils) can informally collaborate, for example, by sharing secretariat work and having collaboration meetings.

151. Officials propose it is clarified that the use of cross-regional planning committees and development of cross-boundary strategies is used only where other measures were un-successful. In addition, its proposed to provide supportive conditions or criteria that must be met for RSS committees or the Minister to direct the use of a cross-regional planning

committee. These will help to uphold the autonomy and decision-making of RSS committees, with the sub-strategy process only used in specific situations.

Chair/s of the committees

152. The Panel proposed SPA committees should be independently chaired. The Panel did not make a recommendation for chairing arrangements for NBA committees.

153. The chair/s will have a leadership role that is critical to making committees work well and enabling collaborative decision making. In addition to usual chair functions, the Chair of SPA and NBA committees will decide when the committee has or has not achieved consensus and when mediation is required, or a decision needs to be escalated (explored below). It is therefore expected that the chair would be experienced, skilled and have a good reputation.

154. While officials recognise benefits of an independent chair, each committee will have different dynamics and where possible the legislation should enable a regionally flexible approach. In particular, officials believe that where desired committees should be able to appoint co-chairs (Māori and local authority members), especially if this will support an effective role for Māori in decision-making when considering the composition of the committee. Therefore, we propose committees can appoint a single member chair, chair/s, or an independent chair.

155. Where independent chairs are chosen, they will be non-voting members of the committees and would not impact considerations of committee size.

Independent Hearings Panel (IHP) Chairs

156. Officials have been exploring ways in which to accelerate implementation of the RM reform. The availability of suitable chairs for IHPs will be an important determinant of the number of regions in each tranche in the development of NBA Plans, how many tranches are required and therefore the length of time for the transition to the new RM system. As advised at MOG #16[25], one of the ways to accelerate implementation is to alleviate a potential bottleneck in the system, being the eligibility requirements for IHP chairs.

157. MOG has previously agreed at MOG #14[26] that each IHP chair must be an Environment Judge (which includes alternate Environment Judges[27]). Given the limited number of Environment Judges[28] and the likely high workload for the Environment Court during transition (eg, chairing IHPs, chairing the Board of Inquiry for the National Planning Framework (NPF) and likely continuing with work in consenting and planning etc during the transition), it is considered that there could potentially be capacity constraints for Environment Judges.

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[25] Paper (4), Transition Pathways (MOG #16 on 29 March 2022).

[26] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed.

[27] Alternate Environment judges include Māori Land Court judges, District Court judges and retired Environment Judges (provided certain age and term criteria for retired Environment judges is met). Alternate judges must be appointed by the Governor-General.

[28] 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 on some alternate judges including maximum age and maximum duration of appointment. Further advice on the Environment Judge cap in the legislation will be provided in a delegated decisions briefing.

158. We also recommend expanding the pool of potential IHP chairs to include suitably qualified and experienced people to be appointed as temporary Environment Judges for the sole purpose of chairing an IHP (ie, these temporary Environment Judges would not be authorised to undertake any other role or function of an Environment Judge). These appointments would be exempt from the eligibility criteria for Environment Judges needing to be eligible to be a District Court Judge (as per RMA s249), as well as the eligibility criteria for judges stipulated in s15 of the District Court Act.

159. The requirements for a successful IHP chair includes chairing skills, attracting respect and the confidence of the parties, and an ability to work though issues and develop well considered recommendations. Ensuring a thorough and correct procedural process is critical to a successful hearing and the provision of robust recommendations from the IHP to joint committees.

160. To ensure success, 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).[29] 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 high degree of rigour in the appointment process.

161. The recommended expansion of the potential pool of IHP chairs presents a low risk to transition and implementation given the rigour in the IHP chair appointment process. The RM system integrity would be maintained with skilled people in the required roles. Added benefits of expanding the potential pool of IHP chairs includes:

    a. a shorter complex 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. reduced risk of potential future bottlenecks in the ongoing implementation of the RM system, when IHPs are required in an ongoing manner for new NBA Plans and some NBA Plan changes[30].

Consensus decision-making and dispute resolution

162. Consensus decision-making is a key feature of the new system, reflecting the move to outcomes-based planning, and a shift in culture towards a more collaborative approach. The decision-making and dispute resolution protocols for decisions on plans are important enhancing the legitimacy of the decisions. Consensus decision making ensures minority viewpoints have influence over strategy and plan making. It is particularly important for ensuring that there is broad agreement between the local authorities in the region who will have an ongoing obligation to implement and enforce the decisions taken by the committees.

163. There are key interlinkages between this element of committee design and the composition of committees (described in paragraph 55-75) and these recommendations

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

[30] It is noted that further advice on the exact process for NBA Plan changes is still subject to a final delegated decision.

should be considered as a package. Importantly, the recommendations below only apply to decisions taken in relation to strategy and plan making functions of the committees.[31]

164. Officials recommend that the decision-making provisions for strategy and plans making in the legislation should:

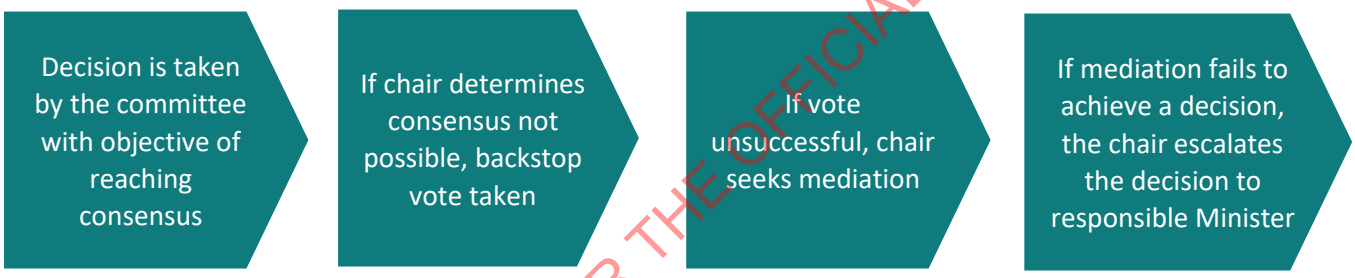
a. encourage the committee to aim for consensus, with appropriate pathways for reaching agreement and resolving disputes

b. ensure all viewpoints have influence over strategy and plan-making

c. ensure there is a high degree of support from local authorities

d. provide limited intervention powers for Ministers when decisions cannot be reached.

Diagram 2: SPA and NBA committee decision-making steps



Consensus decision-making

165. Officials agree with the Panels proposal that committees should work towards consensus decision-making for plans as it will strengthen the legitimacy of the decisions and the resulting documents. Consensus is not the same as unanimity (active agreement from all members). Consensus decision-making would not require active votes in favour of a proposition, but rather the absence of disagreement – a single member could block consensus where they have strong dissenting views.[32] It is a high threshold which needs supporting mechanisms to work effectively.

166. Officials propose that it should be up to the chair/s to determine if consensus has or can be achieved. It is recommended that the legislation should make clear which types of decisions should require committees to strive for consensus. There may be some process decisions that would be more efficiently managed with a simple majority with no requirement to aim for consensus for example, however with key decisions – such as approval of the final strategy or plan, agreeing the use of the committee's budget, and appointment of the director of the secretariat – consensus is an appropriately high bar for agreement.

'Back stop' voting rules where consensus fails

[31] Further decisions are required on the decision-making and dispute resolution protocols on process and other matters.

[32] This approach to defining consensus is consistent with definitions in Te Urewera Act 2014 or the Standards and Accreditation Act 2015.

167. If consensus is not possible then to allow the work of the committee to proceed, it is proposed that the legislation provide 'backstop' voting rule of 50% of members plus one. It is important that these provisions are unambiguous to support efficient functioning of the committees. Therefore, officials propose this voting rule is set in the legislation and not left to committees.

168. Consideration was given to requiring a 75% supermajority for decision-making where consensus could not be reached. This would have the benefit of being a high bar, more consistent with the requirement to strive for consensus, and ensure decisions taken have a high degree of support from the members to reduce the risk of minority voices being overruled. However, it may be more difficult to reach agreement using the backstop voting rules, and push committees towards requiring dispute resolution more frequently. A high bar for support also risks imbedding a status quo bias in decision making.

169. A supermajority of 75% would have different implications based on the size of each committee. For example:

    a. With a small committee with 2 Māori members and 4 local authority members, 75% would mean in practice that all but one committee member would need to agree to a motion for it proceed – therefore, overall requiring near unanimity.

    b. In a larger committee with 5 Māori members and 15 local authority members, this could result in a scenario where all Māori members disagreed with the decision but it could proceed.

    c. In RSS committees, in all scenarios of committee size, this would mean that the central government member could disagree with the decision, but that decision could still be taken.

170. The minimum number of seats for Māori is directly related to the risk of Māori voices being overruled where backstop voting rules were used. For example with a 75% supermajority rule and a minimum proportion for Māori seats greater than 25%, a motion would not require unanimous support from the Māori members but would require support from some of them. However, it would not mitigate the risk that a single local authority could be overruled, or a central government representative on the RSS committee.

171. A 50% plus one voting rule provides different benefits, including preventing status quo bias where the minority could hold back the majority. In addition, it would likely support faster decision-making and result in less disputes being escalated. This option would risk risks minority voices (both Māori and local authority members) being overruled and the decisions having less legitimacy. The 'plus one member' is recommended to ensure that a decision can be taken (ie, is not deadlocked).

172. It is not recommended that the chair have a casting vote, given the flexibility the legislation will afford regions in relation to chairing arrangements – including the use of a non-voting independent chair or co-chairs.

173. Officials recommend that committees should be enabled to produce minority reports to capture substantial dissenting views. Further advice will be provided on when and how these reports can be used in relation to the broader process for developing RSS and NBA plans, being considered through papers under delegations previously agreed.

Dispute resolution

174. Officials agree with the Panel's recommendation that if a committee cannot agree, then in the first instance mediation should be used to resolve the dispute. It's proposed that it is left up to the committee to appoint a qualified mediator and fund associated costs.

175. Where mediation fails the Panel proposed that decisions for both the NBA and SPA should be escalated to the Minister responsible for administering the Act. Officials agree that for decisions where disputes can be resolved through other measures that they should be referred to the Minister. Officials recommend modifying this to the following:

    a. under the SPA, disputes will be escalated to the responsible Minister who could choose to either take the decision themselves or appoint an independent person to undertake a review and prepare a report setting out their direction. This report would be made available to the committee and for public transparency the committee would be required to publish it. The committee would be required to accept the direction of the independent person.

    b. under the NBA, disputes would be escalated to the responsible Minister who could appoint an independent person to undertake a review as described above for the SPA. The Minister would not be empowered to take the decision themselves.

176. The rationale for differentiating Ministerial powers in this way is that decisions on strategic direction are political, and may be of national importance. It is therefore appropriate that in some instances a Minister should be making this decision. As an instrument for driving change and integrating decision-making across the regions as well as within them, there may be instances where it is appropriate for these decisions to be taken at a national level.

177. For the NBA, while regulatory decisions are also political in nature, there is a greater case for relying on accountability at local level to ensure subsidiarity in decision-making. The Minister has other powers to influence the NBA plan, specifically through the National Planning Framework, central government participation in the RSS, and general regulation-making powers.

178. Providing a Minister with this dispute resolution power under the SPA risks undermining the joint decision-making that the composition of the SPA committee is designed to achieve. Officials acknowledge this risk but consider that it is important that this option is retained to maintain accountability. The power would only be exercised by the Minister where a decision has been referred to dispute resolution by the chair of the committee after efforts to reach consensus or the backstop vote have failed, and mediation has been unsuccessful.

179. Officials will provide further advice on statutory time constraints on decision making by the Minister or the appointed independent person.

Dysfunctional committees

180. There needs to be a mechanism for situations where individual committee members or entire committees are not able to function effectively to produce NBA plans and RSSs. It is proposed that there are ministerial powers to act in these situations, similar to existing intervention powers in the RMA.

181. Delegated decisions will be sought on the full range of ministerial powers in the system, including for dysfunctional committees.

PART D: RESOURCING THE COMMITTEES

Establishing a secretariat

182. The Panel proposed that both the SPA and NBA committees would be supported by a secretariat. In the current system councils' employees and contractors provide the technical and administrative support needed to develop RMA plans – in the future system, local government, iwi, hapū and Māori, and central government agencies will work collaboratively to produce RSS's and plans. This will require new ways of working and a shift in culture.

183. The provision of a secretariat assists with inter-council collaboration at a regional scale, and collaboration with iwi, hapū and Māori and with central government for RSSs. The secretariat would be responsible for RSS and NBA plan drafting and ensuring the joint committee had administrative support. The functions of the secretariat would be to provide project management, administrative, drafting, policy analysis, coordination, public engagement, and technical expert advice (including mātauranga Māori input) to the committees. The secretariat would play a key role in establishing feedback loops between local authorities, iwi, hapū and Māori and the joint committees particularly in monitoring and reporting.

184. It is recommended that the secretariat is established in the legislation but done so in a flexible way that can accommodate regional diversity and different preferences for working arrangements, while also setting key expectations and accountability mechanisms to ensure the policy intent is delivered. For example, arrangements will necessarily differ in regions with multiple local authorities compared to those with a unitary authority[33], as will those in regions with many iwi and hapū (including those with their own dedicated environmental and planning capacity). Some regions may prefer to pool existing resource into the secretariat, other regions may prefer to operate a more devolved model and use of resource in local authorities across the region. A flexible and enabling approach will also help future-proof the legislation.

185. LGSG support regions having flexibility to determine working arrangements for the secretariat, however, note that the single local authority acting as 'host' for the committee may not work in practice, cutting across existing accountabilities for local authority chief executives with respect to their elected members. Officials agree that it is important that accountabilities, roles, and responsibilities are clear.

Director of the Secretariat as a new statutory role

186. Officials recommend establishing the secretariat in the legislation by way of a new statutory position – the director of the secretariat (the director). Each committee would be required to appoint a director, who would be directly accountable to the committee (not the host council, or the host council's chief executive). This appointment would need to be one of the first orders of business for the newly formed committee (refer to the 'set-up' process paragraphs 127-128) and would be subject to the consensus decision-making described in paragraphs 162-173 above.

[33] Unitary authorities will naturally be better placed to undertake most required functions within existing structures; however, we consider that it is important that the following provisions relating to the Director of the Secretariat apply in regions with unitary authorities to ensure effective collaboration with iwi, hapū and Māori and central government partners.

187. Establishing this position as a new statutory role will ensure that there is a single point of accountability for delivering a draft plan or strategy for the committee's consideration, and it allows specific responsibilities to be described in statute to support effective working between local authorities and with iwi, hapū and Māori in the region.

188. The responsibilities and duties of the director will be:

    a. to provide technical advice and administrative support to the SPA and NBA committees

    b. for the purposes of strategy and plan making, establish and facilitate collaborative working arrangements (including feedback loops) with and between local authorities and iwi, hapū and Māori in the region, and for the SPA a tripartite working arrangement with central government agencies

    c. to ensure that advice provided includes mātauranga Māori and te ao Māori perspectives.

    d. to provide administrative support to the Independent Hearings Panel (IHP)[34] in a way that maintains its independence; and

189. The director would be accountable directly to the SPA or NBA committee that appointed them. It is envisaged that the relationship between the secretariat and the host council would be like that of a departmental agency within a government department.

190. It is proposed the director of the secretariat has an obligation to consult the SPA or NBA committee on a resourcing plan for the secretariat and to consider the expertise and skills available across the groups represented on the SPA or NBA committee. This obligation is designed to ensure all members of the committee (particularly the Māori members and the members from smaller local authorities) have an opportunity to influence the proposed working arrangements and staffing of the secretariat.

191. The director would be empowered to employ and contract staff as necessary and would have an important role in coordinating staff from across the region. Councils and Māori members could recommend or nominate staff to work with or as part of the secretariat.

192. While the director position would need to be provided for under both the SPA and NBA, the legislation would not preclude the committees from appointing a single person to undertake the role for both SPA and NBA committees. Similarly, it is expected that the staff would be shared across both secretariats, and that regions will be expected to consider the most efficient maker to form and operate the secretariat. The activities under SPA and NBA are unlikely to occur concurrently, lessening the strain on capacity of local authorities and Māori expertise in a region.

193. For these arrangements to work effectively, there should be a obligation on all parties to work together. At MOG #11/12, Ministers agreed that the SPA would include a duty on the bodies represented on the SPA committee to provide technical support and information to the committee where it is practical and reasonable to do so. Officials recommend that this duty be included in the NBA also, and that both acts include a duty on the appointing bodies to work collaboratively with the secretariat.

[34] MOG #11/12 agreed to an NBA plan making process that results in a robust plan through the use of an Independent Hearings Panel (Paper 4, item 1(h)). During the hearings phase of combined plan development, the IHP will require administrative support from the secretariat such as website administration, IT assistance, communicating with parties, and other technical support to ensure an efficient and accessible hearing.

Role of Māori in the secretariat

194. The approach set out above does not provide specific direct appointments to the secretariat by Māori members on SPA and NBA committees or Māori appointing bodies, which is something that some Treaty partners indicated as their preference during our engagement with them.

195. Options for direct appointments, for Māori and local authorities, have not been pursued as it would imply the secretariat was a separate legal entity with statutory appointment processes (which is not the intent). It is important that the director has clear responsibility for resourcing the secretariat, delivering the draft RSS's and plans and can also exercise responsibilities as an employer. However, specific arrangements may need to be provided for as part of the secretariat resourcing or drafting processes where it is necessary to uphold a Treaty settlement in a region

196. [redacted]

197. However, there is more work to do to ensure the proposals adequately provide for Māori expertise on the secretariat and whether additional tools may be required to achieve the desired outcomes. *Paper 2: Role, funding, and participation of Māori in the RM system* seeks delegation for further detailed decisions on secretariat.

Budget and funding arrangements

198. [redacted]

199. [redacted]

35 [redacted]

200.

201.

202.

PART E: CROSS CUTTING ISSUES AND OTHER MATTERS

Accountability

203.

204. Collectively, the committees will be primarily accountable to the responsibilities set out in the NBA and SPA legislation. Under the NBA, the IHP appeals process provides accountability mechanisms to ensure the committee fulfils these responsibilities. For the RSS process, without an appeal process judicial review may be relied upon as a direct accountability mechanism. The legislation will also provide avenues for public accountability for the activities of the committees such as requirements for public engagement, financial and non-financial reporting requirements including system performance reporting to Parliament, official information obligations, codes of conduct, conflicts of interest and so forth. Further detailed decisions are required on these matters.

205. The Panel noted the importance of electoral accountability for decisions on strategic direction, however under their recommended model for regional governance the committees will not be directly electorally accountable. The members of the committees will be accountable to the body that appointed them – these bodies will be able to remove and replace them at any time. For local government and central government representatives this provides an important through line to democratic accountability, and for Māori members this provides an important accountability mechanism back to their communities.

206. Treaty partners have consistently raised the importance of effective accountability of their appointees back to their communities. We do not propose the NBA or SPA contain

specific accountability requirements beyond the ability to appoint or remove at any time for any reason. However, we expect that the appointing bodies and their communities will develop new or utilise existing accountability mechanisms to maintain \\information flows and allow communities a voice in decision-making process. Resourcing will be critical for these accountability mechanisms to be effective.

207. Elected councillors on committees, in addition to their duties under the NBA and SPA to work for the long-term benefit of the people of the region, will also have a duty under the Local Government Act 2002 to act in the best interests of the region or district they represent and be directly electorally accountable to their constituents in that region or district.

208. While this presents challenges it will be manageable. We should expect that most representatives will be used to situations where they have to balance different interests or wear different 'hats'. The intent of the timebound review step is to support this and where issues arise the disputes resolution processes set out in legislation will provide a path forward.

209. LGSG have given some consideration to accountability in the future system in their report. Separate advice on this will be provided.

Location of the Top of the South Planning Boundaries

210. At MOG #11/12 Ministers agreed "that officials will report back on the appropriate geographical boundaries for Regional Spatial Strategy and Natural and Built Environment Act Plans in the 'Top of the South' (Nelson/Tasman/Marlborough, ie, 'Te Tau Ihu') to a future MOG for decision as further work and engagement is ongoing."

211. Local government boundaries intersect with hard iwi boundaries established through Treaty Settlements and with less defined takiwā and rohe boundaries throughout New Zealand. Realignment of Council boundaries is not being considered as part of the RM reform work as it is a local government matter outside the scope of these reforms.

212. Officials have identified four possible boundary configurations as a result of high-level feedback from representatives of Te Tau Ihu iwi and hapū, Te Rūnunga o Ngāi Tahu and regional and local councils.

    1. NBA Plans and RSS be prepared along current local authority boundaries (as per the rest of the country) (exposure draft approach)
    2. One NBA Plan and one RSS be prepared in the Top of the South/ Te Tau Ihu (Panel recommendation)
    3. Nelson/Tasman prepare one NBA Plan and one RSS and Marlborough prepares one NBA Plan and one RSS (simplified panel approach)
    4. Ngāi Tahu Takiwā northern boundary forms the planning boundaries at the Top of the South/Te Tau Ihu (takiwa approach)

Options Analysis

	Description	Benefits	Issues
1	<u>Exposure draft approach</u> Plans and RSS be prepared along current local authority boundaries: Each of the three unitary authorities would produce a separate set of plans resulting in three RSS and three NBA Plans for the Top of the South/Te Tau Ihu with potential for Te Tau Ihu iwi membership on all joint committees and Ngāi Tahu membership on the Tasman and Marlborough joint committees.	• was the version on which some of Te Tau Ihu iwi, Ngāi Tahu and Councils submitted • aligns with Cabinet's decision on one NBA plan per region and closest to the status quo • provides certainty for existing plan users and arrangements • does not impact on Marlborough's Environmental Plan which is in final stages • observes existing councils' boundaries so likely to have the least impact on any outcomes of the Future of Local Government review.	• Treaty partners may consider this the least efficient approach as they would have more plan processes to input to than for other approaches outlined here • does not recognise Tasman/Nelson shared regional issues • least efficient overall requiring six committees, six processes and three NBA plans and RSS to prepare, monitor and review.
2	<u>Panel's recommended approach</u> One NBA Plan and one RSS is prepared in the Top of the South/ Te Tau Ihu: - would see Tasman, Nelson and Marlborough unitary authorities plan together developing one NBA plan and one RSS with associated Joint Committees for the Top of the South/Te Tau Ihu. The efficiencies and cost saving for this approach has been questioned by the Te Tau Ihu mayors.	• administrative efficiency due to the least plans and processes compared to other approaches • potentially more efficient for Te Tau Ihu iwi as only one RSS, one NBA plan and one associated joint committee for most of the iwi to participate in • the option provides for a single approach to coastal planning for Te Tau Ihu • builds off the work of Te Tau Ihu Intergeneration Strategy 2020 led by Wakatū Incorporation of the Tūpono Being Good Ancestors – Te Tau Ihu Intergenerational Strategy and provides a more joined up planning environment for the River and Freshwater Advisory Committee established by the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014	• Officials have not engaged with Te Tau Ihu iwi on this approach • requires unitary authorities to combine their regional policies and planning and development of joint funding arrangements, which could be more complex than for other areas • may pre-empt outcomes of the Future of Local Government review • combines Nelson and Tasman with Marlborough where there are limited geographical and infrastructural linkages due to separation by the Richmond Ranges • Ngāi Tahu have raised issues regarding their Takiwā area

3	<u>Simplified Panel approach</u> Nelson and Tasman prepare one NBA Plan and one RSS and Marlborough prepares one NBA Plan and one RSS. This approach would see Nelson and Tasman prepare one NBA Plan and RSS together and Marlborough prepare their own NBA plan and RSS in the transitional period of the new system, with the ability for the three councils to prepare NBA Plans/RSS together in the future.	• recognises the relationship between Nelson and Tasman who already have a joint committee process for the purposes of providing recommendations on shared services including regional landfills, sewage, recreational facilities as well as shared regional assets including the port and airport (although they prepare separate unitary plans) • provides certainty and limits transition and implementation expenditure for Marlborough as they are in the final stages of their Marlborough Environmental Plan • more efficient to administer than the current system as there are fewer plans and processes required	• Officials have not engaged with Te Tau Ihu iwi on this approach • requires unitary authorities to combine regional policies and planning and develop joint funding arrangements, which could be more complex than for other areas and may pre-empt Future of Local Government review • freshwater catchment for Buller and Clarence River continues to be a cross-boundary issue • Ngāi Tahu have raised issues regarding their Takiwā area
4	<u>Takiwā approach</u> Boundaries are established in accordance with Ngāi Tahu Takiwā boundary. This approach would see one NBA Plan and one RSS for Te Tau Ihu above the Ngāi Tahu Takiwā boundary with the NBA plan and RSS content for areas in the Ngāi Tahu Takiwā sitting with the adjacent region for planning purposes (ie, Tasman with West Coast, Marlborough with Canterbury).	• Ngāi Tahu has proposed this approach throughout the Resource Management (RM) reform programme in letters, in their select committee submission on the exposure draft and at weekly engagements with RM reform officials.	• If this approach were agreed it would affect the planning boundaries south of the Ngāi Tahu Takiwā. The planning boundaries of Tasman, Nelson and Marlborough that are to the north of the takiwā could be arranged in accordance with options 1,2 or 3. • Use of the Ngāi Tahu Takiwā boundary is also likely to generate issues for Te Tau Ihu iwi particularly if it is seen to limit any interests they have which extend beyond the Ngāi Tahu boundary. Tasman and Marlborough Councils would either have members on the West Coast/Canterbury joint committees or have undetermined roles at the outset. • Officials have not engaged with Te Tau Ihu iwi or Councils on this approach

213. Depending on Governance decisions, all of the approaches set out here are likely to have implications for membership on decisions making committees

Risks and Mitigations

214. [redacted]

215. [redacted]

216. [redacted]

217. [redacted]

Local voice and community participation

218. The proposal for regionalised spatial strategies and plan-making will be a change from the status quo, where individual local authorities are responsible for plan-making and are well-connected to their communities.

219. The intention is that the future system will deliver on a regional approach for strategies and plans, with flexibility underneath for sub-regional processes and local communities to input. Enabling all local authorities to be represented on joint committees is important in providing this direct connection to communities.

220. The LGSG support the role of the committees in giving effect to local voice in regional plan-making, however they expect the local input is legislated for, recommending "that the policy intent for the inclusion of local voice in regional plan-making be set out in the Act". As outlined earlier their report proposes Statements of Community Outcomes and further advice will be provided on their recommendations.

Treaty impact analysis

221. [redacted]

222. Specifically, the following policy recommendations work as a package to give effect to the principles of te Tiriti:

    a. autonomous decision-making by committees (with some exceptions to uphold Treaty settlements and other arrangements), ensuring decisions do not default to local authorities

    b. provisions for a minimum number or proportion of Māori members on committees, and a framework to enable regions to agree membership above the minimums, supported by parameters that must be met

    c. the ability for the LGC to seek additional expertise (including through requesting temporary appointments are made) for the purpose of making composition decisions where a region cannot agree

    d. committees striving for consensus decision-making

    e. provision for co-chair arrangements on committees if desired by regions

    f. requirements on the director of the secretariat to ensure the secretariat's advice includes mātauranga Māori and te ao Māori perspectives

    g. ability for committees to establish sub-committees for topics which could include cultural landscapes or content on specific waterways or other taonga.

223. This package is supported by provisions outside the scope of governance, including the Treaty clause requirements in the legislation for all decision-makers to "give effect to the principles of te Tiriti" and to uphold te Oranga o te Taiao. The *role, funding and participation of Māori in the RM system* MOG #17 paper provides a broader assessment of how Māori participation in the system is provided for.

224. While governance provides a significant opportunity to give effect to the principles of te tiriti, this paper has identified there are risks associated with providing a minimum of two Māori members (if decided on), particularly if this were to be seen as all that might be required. In addition there is a risk that the LGC making the final decision on composition if a region is unable to agree may not be viewed as legitimate by iwi/hapū/Māori. This is mitigated by recognising the LGC have the ability to request additional expertise including temporary appointments to support reaching a determination.

225. In addition, with the majority voting rule there is a risk that minority voices could be outvoted, and subject to composition arrangements this could have a greater impact on Māori members than local authorities. This is balanced by ensuring the focus is on committees coming to consensus decisions, supported by graduated dispute resolution steps.

226. We understand that the [redacted] and other Māori groups are seeking co-management or 50/50 involvement in SPA and NBA committees. Support for this can be found in Tribunal statements that co-management is the Treaty standard for freshwater taonga and the general thrust of Tribunal findings and recommendations from Wai 2358 on how to increase participation or autonomy for Māori.

227. In considering governance options the Crown must act reasonably and in good faith to seek to provide for Māori interests, while also providing for any other interests that its kāwanatanga responsibilities necessitate be addressed. Treaty consistency must also be assessed with consideration of the system as a whole of which governance is one component. The reform of the resource management system does not aim to

fundamentally alter the long standing roles/spheres of authority of local and central government. This means the governance options must be calibrated to work within the current framework of local democracy and legitimate public expectations of democratic accountability in local and regional management of the environment.

228. While providing for greater Māori participation is an objective of the reform, governance structures also need to enable participation by, and representation of, other New Zealanders and particular interest groups in relation to specific resources. There are also practical and efficiency benefits in aligning NBA and SPA committees with regional boundaries and allowing local authorities direct representation on the committees which are reasonable considerations for the Crown to take into account when deciding between options in good faith.

229. 

230. The Crown also has a responsibility to ensure reasonable participation, taking into account the objectives and purposes of the committee (and other relevant considerations this might require). It also needs to ensure that the processes for selecting members do not create fresh grievances.

231. In addition to composition, feedback from Māori groups has recognised the importance of the secretariat in enabling Māori planners and technicians to work alongside local authority planners in the development and drafting of RSS's and plans. Although costs of committee membership and roles and responsibilities in the secretariat will be fully funded by the committee, there are wider resourcing implications for Māori from these proposals elaborated on in the role, funding and participation of Māori in the RM system MOG #17 paper.

232. A full summary of the analysis of the Treaty impacts of the recommendations of this paper are contained in Appendix 1. This analysis is subject to further legal advice, including on the potential impacts of SPA and NBA committees on Treaty settlements.

Engagement

Agency

233. As noted in the comments from the Strategic Planning Reform Board (paragraph 76 above), there is agreement across agencies on most aspects of the governance proposals, while some differing views as to how to express the minimum for Māori appointments to committees in the legislation.

234. Other feedback on composition has included support for regionally-led decisions, but concerns that the limited parameters may lead to difficult regional debate. Many agencies have also expressed support for direct representation of local authorities on committees.

235. There is support for accountability requirements for all members of the committee, and general support for consensus decision-making. Many agencies note the link between the appropriate back-stop voting provisions and the composition of committees, with many wanting decision-making parameters to support a proportion of Māori membership.

236. Other feedback provided included testing the right intervention points for Ministers where committees have disputes, and desire for clarity on the responsibilities for the director of the secretariat.

Local government

237. Local government submitters to the NBA exposure draft were concerned about the role of local democracy and place-making at the regional and local level. Specifically, there were concerns over fair and adequate representation on planning committees and the potential loss of local input into NBA plans through a shift to regional planning committees. They also supported mana whenua membership on planning committees but had concerns about how this would be resourced and achieved in practice.

238. The Local Government Steering Group (LGSG) is made up of elected members and council senior leaders and provides advice to the Secretary for the Environment, the RM Reform CE Board and Ministers. LGSG have produced a paper setting out a proposal '*Enabling local voice and accountability in the future resource management system'*. Officials have provided a draft summary of the reports findings below, noting further and more detailed advice will be provided to the Minister for the Environment.

239. The paper proposes two key additions to the new system:

    a. a National Spatial Strategy to sit alongside the NPF to require central government to provide a coherent view on the outcomes it seeks for a region into the joint committees.

    b. Statements of Community Outcomes (SCO) setting out a district or city's long-term vision and place-based aspirations, alongside Statements of Regional Environmental Outcomes (SREO) from regional or unitary councils that set out content relating to regional and coastal management plans. These would be given effect to by the joint committees.

240. Officials agree with the LGSG that it will be important for central government to provide co-ordinated input into the joint committees on the strategic issues. It was agreed at MOG #16 that one of central government's functions in the new system would be to provide strategic direction and further decisions will be sought through previously agreed delegations. Officials will continue to work with LGSG on this.

241. Officials also agree that it will be important that the system enables local voice and place-based inputs to inform plan development and joint committees. Detailed decisions (already delegated) will recommend that local place-based plans that have been through a thorough consultation process with communities must be considered in the development of NBA plans. Officials do not recommend requiring the SCO or SREO as mandatory but note that these could be a good way for regions to provide consistent input into joint committees.

242. The LGSG also made a number of recommendations specifically relating to the governance proposals, including a recommendation there should be one joint committee for both RSS and NBA plans, that elected members should sit on the joint committees to represent local authorities, and a time-bound feedback loop with local authorities prior to notification of plans. Officials note that under the proposals in this paper regions would be able to have shared membership across both SPA and NBA committees if that was their preference, and local authorities would be able to appoint elected members to committees. This paper has already given some consideration to the time-bound feedback loop. The LGSG have raised some concerns with the secretariat proposals, and the importance of getting this right. Officials will continue to work with LGSG on the secretariat proposals as these are developed for delegated decisions.

Iwi/Māori groups

243. Iwi/Māori submitters to the NBA exposure draft stated the composition of planning committees should be designed to reflect Treaty of Waitangi settlement arrangements; iwi and hapū rohe; iwi, hapū, and whānau structures; and the Treaty of Waitangi partnership. Iwi/Māori also sought clarification on impacts of existing Treaty settlement arrangements.

244. Officials have consulted with [redacted] on some of the proposals in this paper. Officials have summarised our interpretation of their positions below.

245. [redacted] positions:

- SPA/NBA committees should be 50/50 to provide for partnership
- Appointments to committees should be representative and skills based
- Supportive of consensus decision-making and co-chairing or independent chairing arrangements for committees
- Emphasised the critical role for iwi/Māori in strategy and plan development through the secretariat, specifically through role for iwi planners and through specific supports for the Māori committee members.

246. [redacted] positions include:

- SPA/NBA committees should be 50/50 to provide for partnership, and Māori appointments should be made through mana whakahaere councils
- Appointments to committees should be representative and skills based
- Supportive of consensus decision-making and co-chairing arrangements for committees
- Emphasised the critical role for iwi/Māori in strategy and plan development through the secretariat, specifically through role for Māori planners and through specific supports for the Māori committee members.
- Not supportive of Minister being final decision maker on disputes on RSS's and plans.

247. A more detailed summary of the submissions received through the recent targeted engagement period are summarised in appendix 4.

Appendix 1: Treaty Analysis

Status Quo	It is recognised that the RMA has failed to deliver on the opportunities for Māori in the system. Specifically, the Panel report identified the following issues that relate to governance: • Māori involvement in the resource management system has tended to be at the later stages of resource management processes, and there is an opportunity in a new system to provide for a strategic role for Māori • limited use of the mechanisms for mana whenua involvement in the RMA • Capacity and capability issues for both government (central, regional and local) and Māori to engage on resource management issues, and lack of funding and support to address these issues.

Summary analysis

The proposals for SPA and NBA committees recognise the important relationship between Māori, the environment and the customary rights and cultural values within regions. The overall policy intent is to provide iwi, hapū and Māori with a decision-making role alongside local government on resource management matters in the new system.

The new RMA system, and the decision-makers exercising functions, needs to give effect to the principles of te Tiriti which is a much higher weighting than the current system. Iwi, hapū and Māori appointments to committees support the objective for Māori as Treaty partners to be involved in all parts of the system including decision-making and upholds principles of good governance, active participation and rangatiratanga. Appointments to the new joint committee decision-making bodies provide an enhanced role for Māori to influence decisions across all resource management matters. Currently the role for Māori in plan-making decisions is limited, with many decisions defaulting to local authorities alone.

In addition, the governance responsibilities for RSSs (and the implementation agreements) provide Māori a new role in long-term spatial planning which does not exist in the current system. Māori are also provided, through SPA and NBA committees, clear roles and responsibilities for monitoring functions across the new system (out of scope for this paper).

The SPA and NBA plan committees are one of many avenues for Māori participation in the system. Decision-making on RSS's and plans will provide for Māori participation up front in the system.

Gives effect to the principles of Te Tiriti o Waitangi

SPA and NBA committees will be required give effect to the principles of Te Tiriti and to take into account Te Oranga o te Taiao in their decision-making. In addition to this significant statutory obligation on committees, the following proposals seek to give effect to the principles:

Autonomy of committees

Committees are autonomous, with no requirement for RSS's or plans to be ratified by local authorities. Apart from some exceptions (such as to uphold Treaty settlements or other arrangements) committees will not be able to delegate decisions on RSS and NBA plans – ensuring decision-making cannot default to councils alone.

Composition and appointments

- Māori appointments on joint committees will ensure Māori are able to influence decisions on RSS's and plans. This includes process decisions which ensure Māori are involved effectively in all aspects of the development of SPA and NBA plans and their monitoring. Specific provisions include:
    - providing flexibility for joint committee's to be established on a region-by-region approach to allow for regional and local variation across the country, balanced with providing a framework for discussions and agreement to occur within
    - overall composition parameters, including setting a clear minimum within the legislation to provide some prescription to the process for establishing and forming committees and to give assurance that there will be Māori membership on committees – with the ability to agree a number above this to ensure appropriate membership is achieved for various committee sizes
    - ensuring the LGC can seek additional Māori expertise (including through requesting a temporary member be added to the LGC) when making composition decisions where a region cannot come to agreement
    - providing self-identification for iwi hapū and Māori to dictate their own appointment processes to committees.

Decision-making parameters

- Decision-making powers are balanced through consensus decision-making, with backstop voting rules.

Supporting mechanism

- Co-chairing arrangements are enabled where desired by the regions
- It is intended that the secretariat be provide for collaboration between local authorities and Māori (and central government for RSS). Māori involvement through the secretariat is ensured through a requirement on the director of the secretariat to include mātauranga Māori and te ao Māori perspectives through the drafting of RSS's and plans. Further detailed decisions will be sought in relation to the secretariat.
- Ability for committees to establish sub-committees for topics which could include cultural landscapes or content on specific waterways or other taonga.

Outside of the scope of governance, Māori participation in the system is provided for in a number of ways, including:

- a role for the National Entity in monitoring the performance of committees to give effect to the principles of te Tiriti
- Māori engagement requirements through plan development processes, specifically engagement plans identifying how joint committees will engage 'at place' with iwi, hapū and Māori
- roles and responsibilities of joint committees in monitoring RSS's and plans
- enhanced Mana Whakahono ā Rohe
- Role for local voice in the system, and weighting provided for iwi management plans requiring decision-makers to give active consideration to them in strategy and plan making.

Comment on composition:

The establishment of a regional layer of decision-making, contains inherent tensions with providing for the exercise of rangatiratanga, including rights and interests at place. There will also be challenges, such as the number of seats allocated through composition discussions which will not always neatly fit with the number of Māori entities (including iwi and hapū representative organisations) in the region. Furthermore, regional boundaries rarely match iwi and hapū rohe which adds further complexity to the way the new system will require Māori to work.

We note that Māori groups including [redacted] have strongly stated their position that 50/50 membership of committees is required to reflect true partnership under te Tiriti. It is not proposed for 50/50 membership as a default to be prescribed in the legislation. Treaty analysis does not dictate particular outcomes and the courts have confirmed that the Crown can choose from a range of Treaty consistent options. The policy position is that a minimum for the number or proportion of Māori members is provided but that the focus is on supporting regions to make their own composition

determinations. To uphold the intent of a regionally-led process we must provide flexibility, and Māori appointments must be balanced with local authority representation.

Wai 262 considers a sliding scale for how Māori should be involved in the management of natural resources. Not requiring 50/50 on committees is based on the view that not all natural resources in a region or territory are of particular significance to Māori (or are considered taonga by Māori). While Wai 2358 found that the standard for the management of individual or specific freshwater resources that are taonga is co-governance, regional governance covers a much broader span of natural resources and does not need to achieve a 50/50 standard as the start point of governance. However, by setting a framework in the NBA and SPA that allows for 50/50 to be agreed ensures where this is desirable by all parties it can happen.

The treaty partnership principle requires a context-specific balance to be struck between the Crown's exercise of kāwanatanga (right to govern) and the exercise of rangatiratanga (reasonable degree of control and authority) by Māori. This means the Crown must balance other objectives as part of its exercise of kāwanatanga in deciding the legislative framework for the composition of committees. The system shift towards regional governance may be seen as moving some decision-making away from local communities. While there are benefits of regional RM governance, including strengthening the Treaty relationship, this move might potentially weaken regional accountability to democratically appointed local authorities. Other considerations include the interests of other New Zealanders or particular interest groups and practical workability and the need for expertise for certain decisions.

Officials have assessed that there would likely be few instances at the joint committee level that would meet the Waitangi Tribunal's test for Māori control over decisions about a specific taonga (at least in relation to determining the composition of the committee). Officials also consider that control or partnership approaches balanced toward the kaitiaki rather than the general public interest could still be provided for where appropriate should SPA and NBA committees choose to establish and defer to the advice of hapū/iwi/Māori led sub-committees or seek advice directly by hapū/iwi/Māori groups.

There are other areas in the system where control could also be provided for to some degree, most likely via transfers of power, for example through consenting related powers such as the existing veto rights over certain consents provided to CMT holders under MACA and recognised in the RMA) or environmental monitoring in a specific location. Officials consider it appropriate that such matters be explored region by region and in relationships between iwi/hapū/Māori and regional decision-makers, rather than dictated through the legislation. Control is also provided for over the development of te ao Māori content such as iwi and hapū management plans.

Risks identified:

This paper acknowledges there is a risk with setting a low minimum for Māori membership. For example in a region with a large number of local authorities, there could be a committee of 15 with only 2 Māori members (depending on options selected by Ministers). This is not the policy intent and is unlikely to

be acceptable to iwi, hapū and Māori. Officials intend that the parameters in the legislation will prevent this from occurring, as firstly the regions and secondly the LGC will need to balance iwi, hapū and Māori interests with effective local democratic input.

We note that the parameters may not necessarily result in an increase of Māori membership depending on how they are interpreted and applied by the courts when challenged fully address the issue and acknowledge there is a risk that setting a low minimum in legislation effectively becomes the default position where discussions begin from. This could adversely impact on the relationship between iwi and hapū representative organisations and local government, and result to more composition decisions being required to be taken by the LGC. The Canterbury Regional Council (Ngāi Tahu Representative) Local Bill currently at select committee proposes to provide for Te Rūnanga o Ngāi Tahu (TRoNT) to appoint 2 members to the Council of 14 existing councillors after the 2022 local election. This bill follows from the Environment Canterbury (Transitional Governance Arrangements) Act 2016 where 2 council members were appointed by Ministers on the recommendation of TRoNT. This example indicates that 2 in some regions may be an appropriate number.

It's noted that depending on what composition is agreed that the simple majority voting rules will mean that Māori could be outvoted on committees. This risk is mitigated through efforts to support committees to work to consensus decision-making.

An additional risk is that if a region does not make a decision, the LGC will be the final decision-maker. While they can seek additional expertise, including requesting an additional temporary appointment is made, this body is unlikely to be viewed as legitimate by all iwi/hapū/Māori in a region. This further supports the emphasis to be on the Crown support regions to come to their own agreement on composition.

Protecting and transitioning Treaty settlements

Advice on composition arrangements in regions is subject to on-going discussions with PSGEs which may require that bespoke arrangements are developed, including in relation to the nature and proportion of Māori membership on committees.

Waitangi Tribunal Recommendations

There are a number of Waitangi tribunal recommendations utilised in this analysis:

- Wai 262 recommendations have been considered in developing our policy position for composition of committees. It provides that a Treaty-compliant environmental management regime is one that is capable of delivering the following outcomes, by means of a process that balances the kaitiaki interest alongside other legitimate interests:
  - control by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority
  - 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.
- Wai 2358 – poses that co-governance is the default for specific freshwater taonga and expressed concern at how the RMA balances out Māori and Treaty interests, noting the Treaty guarantees tino rangatiratanga.
- Wai 2575 notes that principle of partnership requires the Crown and Māori to work in partnership in governance

- Wai 894 found that “for the Crown to have protected the tino rangatiratanga or mana motuhaka of the peoples of Te Urewera, it had to provide for them to participate fully in the governance and management of the park’ (2362)
- Wai 272 noted there is no standard template for how environmental decision-making privileges one set of interests over other, but found “the kaitiaki interest is important, and protections for it must be more than token, but it is not a trump card”. It notes that interests must be assessed on a case-by-case basis.
- Wai 1130 “the only way that the Crown can guarantee Treaty-compliant outcomes is by ensuring that all key decision-making processes involve Māori participation of a kind that is appropriate to the decisions being made”.

Māori rights and interests in freshwater and other natural taonga

We note that a key challenge of the current system is a lack of multilevel governance and appropriate feedback loops for a more responsive system for freshwater matters. While out of scope of this paper, committees will have responsibilities in relation to reporting and monitoring for specific matters.

[redacted]

Māori Crown relationship risks and opportunities

While this is a significant opportunity to give effect to the principles of te Tiriti, there remains risks for the relationship between the Crown and Treaty Partners, specifically:

- there have been consistent calls from [redacted] that to provide for partnership composition of committees should be 50/50 membership by default.

- in attempting to finely balance providing for protections for membership and allowing regional flexibility, there will remain a burden on Māori to debate the number of seats. This may be particularly difficult if the minimum and starting point is low (subject to decisions). Support must be provided in good faith for regionally-led composition processes.
- there is a risk that the voting rule for committees could mean Māori voices are outvoted. This is balanced by ensuring the focus is on committees coming to consensus decisions.
- Although costs of membership and roles and responsibilities in the secretariat will be fully funded by the committee, there are wider resourcing implications for Māori from these proposals.
- Policy work has been undertaken concurrently with discussions with PSGEs.

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Limitations of this assessment

- Tight timeframes have limited the extent of the treaty analysis
- Completing this analysis while discussions with PSGEs are underway
- Dependencies on the Role, funding and participation of Māori in the RM system MOG #17 paper decisions and Treaty settlement analysis.

Appendix 2: Committee composition options analysis

Size limits		
Options assessment	**Advantages/benefits**	**Disadvantages/Costs/Risks**
Option 1: total size limit/range set for committees ***Sub-options*** **1a:** A small committee capped at 10 with no minimum **1b:** A committee range of 6 – 20, with some exceptions	• Would provide some certainty, and simplify composition decisions made regionally • Would reduce the risk of having large committees which may make consensus decision-making more difficult or result in inefficiencies – including increased costs for decisions through reliance for dispute resolution mechanisms • Option 1b provides ability for exceptions where a size cap could be problematic (such regions with more than 9 local authorities).	• Limits the choices that can be made at a regional level • Could unnecessarily reduce the legitimacy of plans and strategies for little gain in efficiency • The number of people on a committee is not the only factor in supporting good or efficient decision-making.
Option 2: A minimum but no maximum limit/range set for committees, but size considerations provided	• Allows regions to determine membership needed, and may increase buy-in and save time in other parts of the strategy and plan making process, reducing impact of any perceived efficiencies from large committees • Better provides for self-identification for iwi, hapū and Māori as more flexibility is likely to result in greater membership.	• May create uncertainty (as there are no clear parameters for how to reach an agreed number of seats), and would rely more heavily on the regional discussion process • Cost of running committees is likely to increase the larger the committees are.

Composition		
Options assessment	**Advantages/benefits**	**Disadvantages/Costs/Risks**
Option 1: A set proportion for local	*Option 1 provides more certainty*	*Option 1 reduces regional flexibility and the ability to change committee composition over time*

government and Māori membership **Sub-options** **1a: 50/50:** 50% of membership being local government and 50% being Māori appointees **1b: 60/40:** 60% of membership being local government and 40% being Māori appointees **1c: 80/20:** 80% of membership being local government and 20% being Māori appointees	*1a (50/50)*: • Provides a strong voice for Māori in plan and strategy making and is consistent with the strongly held views of the collectives and other Māori groups • Supports joint decision-making • Provides certainty for how composition will be agreed, and avoids potentially prolonged debates for regions • More easily demonstrates how the Crown is giving effect to the partnership principle of the treaty. *1b (60/40):* • Also provides certainty for how composition will be agreed, and avoids potentially prolonged debates for membership • More strongly supports local democratic inputs (compared to 50/50), while balancing Māori voice. *1c (80/20):* • Also provides certainty for how composition will be agreed, and avoids potentially prolonged debate for membership • Even if committee size is capped, will ensure in most regions that all local	*1a (50/50):* • May be seen by some as an excessive dilution of local democratic processes, with half of the members being unelected. This will be of greater concern if there is a small committee size cap which would result in less local authorities being able to be directly represented • May be challenged by ratepayers if the majority of the members committing costs are not elected local government officials. • May lead to additional capability and capacity constraints for iwi/Māori (noting further support and funding could help mitigate this) *1b (60/40):* • Prevents any region from agreeing to 50/50 now or in the future and may be resisted by iwi, hapū and Māori • May undermine local democratic input (noting greater concern if committee size limits) • May lead to practical difficulties where the logical solution in a region is slightly different • May be viewed as an arbitrary proportion and would provide less membership than some existing arrangements such as the Hawkes Bay Planning Committee. *1c (80/20)* • Prevents any region from agreeing to 50/50 now or in the future and may be resisted by iwi, hapū and Māori as will be viewed as defaulting to minimal Māori membership and not supporting a partnership approach – does not allow for negotiating above this minimum where a region would support it • Depending on regions size and membership caps, could in some regions lead to 1 or 2 Māori members who are expected to represent all Māori views

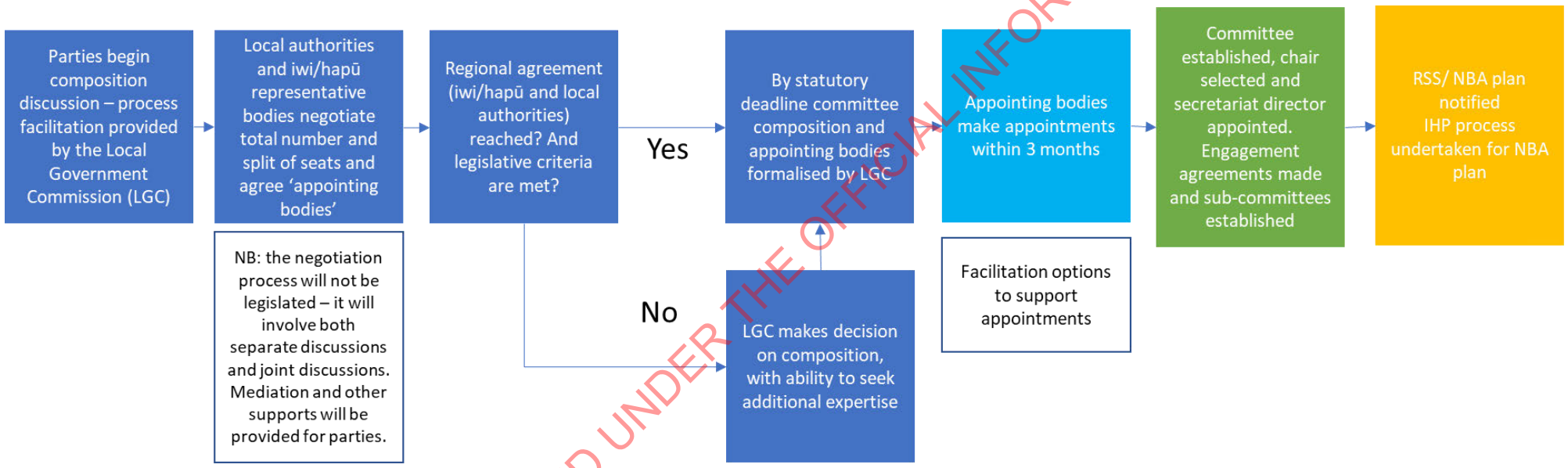
	authorities get at least 1 direct representative, further upholding local democracy.	• May be viewed as an arbitrary proportion and would provide less membership than some existing arrangements such as the Hawkes Bay planning committee.
[redacted]		

Option 4: only criteria specified to inform regional composition discussions No proportions, minimums or maximums would be set in the legislation. A set of criteria would be provided to inform composition decisions.	*Option 4 provides the most flexibility* • Enables a fully regionalised process to determine the approach that is best suited to each region • Enables 50/50 if desired, but does not require it so avoids some of the disadvantages of a prescribed 50/50 model • Provides composition criteria for key policy objectives of local government and Māori representation.	*Option 4 risks prolonged discussion processes and very large committees* • More resource intensive job to run the discussion process. This may have implications for who can do this role (ie, the LGC), consultation requirements and resourcing implications • Risks undermining local democracy through no guaranteed proportion for local government • Will be concern from iwi, hapū and Māori that their membership is left to a secondary legislation process and is unlikely to help give effect to the principles of te Tiriti. • Risk of increasing tensions between local authorities and iwi and representative organisations which is counter-productive to the aims of working in partnership.
Criteria		
The criteria used to inform our options analysis were: • **Flexibility:** enabling regions to determine their own composition to reflect regional diversity and future proofing approaches to enable change over time. • **Legitimacy:** joint committees are viewed as legitimate by communities. This means: ○ preference for all local authorities in a region being represented on the committee, while enabling councils to cluster or appoint representatives if desired; and		

- Māori membership at a level to ensure Māori interests and values are better reflected in plans and strategies with appropriate supporting decision-making parameters.

- **Effective decision-making:** the process does not result in delayed establishment processes and supports efficient and effective decision-making.

Appendix 3: Committee formation and decision-making process flow chart



Appendix 4: Summary of feedback on submissions

As part of the recent targeted engagement, several submissions were received on regional governance and decision-making in the reformed resource management system for the regional spatial strategies under the SPA and plans under the NBA. Key points raised in the targeted submissions are summarised below:

Functions and form

- Strong support that the RM reform programme presents an opportunity for the Government and Māori to co-design resource management programmes and policy, and to make decisions together. Submissions noted that representation and composition of subsequent local governance entities should be a matter of consultation between mana whenua and local authorities.
- Some submissions raised the importance of having private sector involvement on committees, submitting that it is critical to the success of the future resource management system especially in developing NBA plans and RSSs and supporting implementation.
- Several submissions raised concern regarding the need for integration between the reforms of three waters, local government, and the RM system, submitting that they need to be designed in tandem and in an integrated way to ensure a coherent and workable system.

Composition and appointments

- Several submissions supported joint committees consisting of equal number of iwi and local authority membership but noted that there should be some flexibility for each region to determine the makeup of its committee(s).
- Submissions noted that the size of committees need to be carefully considered and reflective of the region and its local authorities and iwi.
- Some submitters suggested that representation on planning committees could be improved by providing for alternative methods to determine representation of local authorities on the planning committee, particularly for regional council representation and Tier 1 local authorities which face challenges in providing for housing and urban development.
- Support across the submissions for elected members on committees and the need for representation from all local government. Submissions also recognised that there will be challenges for each region in establishing a joint committee including local government election cycles, ensuring appropriate representation, having consistent levels of experience and expertise to operate at the level required, as well as the degree of technical support across regions with many different resource management pressures.

Decision-making

- A preference for majority decision-making (as opposed to consensus) for joint committees.
- Several submissions supported subcommittees and the development of sub-regional plans, particularly to reflect the different issues of interest across a region especially the bigger regions. Some submissions though also raised a need for clear timeframes in order for regional NBA plans to meet their deadlines and ensure that they did not create complexity when developing a regional plan, as it would result in increased risk of conflicts developing at the later stage. Submissions

also noted that the weight of sub-regional NBA plans would have to be carefully considered and should not proceed the importance of NBA plans nor the RSS.

- Other submissions supported combined NBA plans at a regional level to better integrate resource management at a regional scale, noting that providing explicitly for sub-regional plans, led by sub-committees had limited merit and could risk the integrity and coherence of planning, adding unnecessary complexity, time, and frustration.

Resourcing the committees

- It was recognised in several submissions that local authorities have a key role to play in advocating for the needs and aspirations of their communities at the regional table, working with their communities to engage them in the regional plan making process and to identify needs for localised planning content. But submissions also noted that there is a significant amount of technical and relationship work that goes on behind the scenes to operate effectively across regions.
- Submissions identified the shift from managing adverse effects to complying with environmental limits, noting that promoting outcomes for the benefit of the environment will require a change in culture, and that resourcing of capability building within local government will be needed.
- Several submissions raised that local authorities and iwi/hapū/Māori will require significant support from central government, including funding, training and guidelines, for both transition to and implementation of the new system. Iwi in particular have limited capacity at present to engage in resource management processes in the way the new system will require.
- Submissions generally agreed that capacity and resourcing for iwi/Māori is essential to engage in the reform process and to participate effectively in the new system. With several noting the funding should come from local and central government, rather than from iwi and hapū.
- Some submissions noted that having a well-resourced secretariat while also ensuring local authorities retain some internal capacity and capability was essential**.** Submissions however also noted the potential for a fundamental change in functions if the secretariat was carved out, combining existing local government administrative planning functions and becoming a new independent regional organisation which employs staff directly.

Cross-cutting issues and other matters

- Several submissions raised local community input into plan development as crucial in maintaining local democratic processes. While the mechanism to achieve this was varied, it was agreed that councils are key in placemaking.
- Some submissions raised concern that condensing multiple plans into one unitary plan under the joint committee structures would result in the loss of local democratic input, fair representation of local authorities and iwi authorities.
- Other submissions raised that planning at a regional scale will not detract from the ability to address local issues. Submissions noted that they can be more detailed where needed, for example in some local areas where pressures and conflicts are most acute. In effect, more detailed local spatial strategies could be incorporated in the framework of a regional spatial strategy.

- Several submissions raised the importance of iwi/hapū voice as being strong sitting alongside the council planners when writing the plan. Some submissions also noted that the joint committee wouldn't write the plan they sign it off, so the iwi/hapū input into the plan development is more critical than governance.