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Agenda item 2:

Role, funding and participation of Māori in the RM system

Summary slides

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Agenda item 2: Role, funding and participation of Māori in the RM system

Background information

The RM Review Panel (The Panel) identified that the RMA has failed to deliver on the opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.

- The Panel recommendations included strengthening the Te Tiriti o Waitangi clause, enhancing existing mechanisms, creating new mechanisms, and enhancing financial support.
- The MOG has already agreed to several high-level matters relating to Māori participation in the new system.
- This paper seeks agreement to more detailed 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 partner and participate
    - how Māori participation should be funded.

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Options

This paper sets out options for 'who' from te ao Māori can participate and partner at each layer of the system

This paper also considers the appropriate functions for the new mechanisms being introduced the system

There are options for how the roles for Māori are funded

- **Functions:** How do we enable the various functions to have appropriate influence, while not compromising the mana of iwi, hapū and Māori.
- **'Who' in the system:** High-prescription vs low-prescription and how does the approach vary throughout the different layers of the system
- **Funding:** local government, central government or user-pays funding for Māori participation and how do these options relate to the principles agreed at MOG #15 and the [redacted]

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Reform objectives and outcomes

Reform objectives agreed by Cabinet

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

- The paper is primarily focussed on giving effect to the principles of Te Tiriti o Waitangi (objective 3) and improving system efficiency and effectiveness (objective 5).
- Both reform objectives have been used to frame the assessment criteria used to develop the preferred options.
- The proposals in this paper provide tools to help decision-makers to understand the actions required to give effect to the principles of Te Tiriti o Waitangi.
- While some of the mechanisms do increase short-term complexity, the status quo is not a viable option because it does not readily give effect to the principles of Te Tiriti.
- On balance, officials consider that the proposals in this paper will provide efficiency and effectiveness by increasing certainty, whilst enabling sufficient flexibility to recognise regional variation, for decision-makers and system users.

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Discussion points

- At the national level the key decision for the role of Māori is how to ensure Māori have genuine opportunities to participate in and influence the direction and strategic decisions that will be made by central government
- At the regional level there are two key decisions for the role of Māori:
    - how Māori members will be appointed to SPA and NBA committees
    - how central government can meet its Te Tiriti o Waitangi obligations to ensure that necessary funding is in place.
- At the local level the key decision for the role of Māori is how to ensure that the tools to enable and facilitate Māori participation 'at place' are necessary, integrated and fit for their various purposes.

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Paper 2: Role, funding and participation of Māori in the RM system

Key messages

Narrative

1. The purpose of this paper is to provide the Ministerial Oversight Group (MOG) with information and recommendations on the roles, funding and participation of Māori in the resource management (RM) system.
2. Through the Resource Management Act 1991 (RMA), its predecessor statutes, and the new Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA), central government (through Parliament) delegates to local authorities the power to make planning laws – subject to the direction of the law and the National Planning Framework (NPF).
3. 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.
4. The reform of the RM system is a good opportunity (as identified in the RM Review Panel's (the Panel) report) to provide for a RM system that gives effect to the principles of the Te Tiriti.
5. 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.
6. The package as a whole, including the prominence of giving effect to the principles of Te Tiriti in the Treaty clause as well as providing enhanced roles of Māori in the reformed system, will be significant in this regard. In taking this approach we have considered recent analysis from Dame Anne Salmond regarding Te Tiriti.[1]
7. The proposed SPA and NBA joint committee model brings together all councils in a region (as well as central government for regional spatial strategies) and iwi/hapū/Māori members, as decision-makers.
8. It is important that joint committees reflect democratic principles and reflect Te Tiriti. The design of the committees needs to support effective decision-making; provide for

[1] See Dame Anne Salmond, *Te Tiriti and democracy*, 13 September 2021 https://www.newsroom.co.nz/ideasroom/anne-salmond-te-tiriti-and-democracy . As Dame Anne Salmond has described, the articles of Te Tiriti o Waitangi (Te Tiriti) say that:

a. in Article 1, "the rangatira of the various hapū give to the Queen absolutely and forever the Kawanatanga katoa o o ratou Wenua (all the Governorship of their lands), defining the scope of kāwanatanga as stretching across their territories"
b. in Article 2, "the Queen accepts and agrees to te tino rangatiratanga (full chiefly authority) of nga Rangatira, nga Hapu, nga tangata katoa o Nu Tirani (the chiefs, the kin groups, and all the inhabitants of New Zealand) over their lands, dwelling places and all of their taonga"
c. in Article 3, "[i]n exchange for their agreement to her Kawanatanga (Governorship), the Queen promises to care for nga tangata maori o Nu Tirani (the ordinary inhabitants of New Zealand), and to give to them nga tikanga katoa rite tahi ki ana mea, ki nga tangata o Ingarani (all the t kanga [just and proper ways of living] absolutely equal to those of her subjects, the inhabitants of England)".

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effective local democratic input and accountability and an effective role for Māori in decision-making; support the efficient functioning of committees; and uphold the integrity of relevant Treaty settlements, and agreements under the Resource Management Act 1991 (RMA) between councils and Māori.

9. [redacted]

10. [redacted]

11. [redacted]

12. Engagement is underway with Post Settlement Governance Entities (PSGEs) to consider how Treaty settlements can be upheld in the new system.

13. The recommendations in this paper propose Māori involvement at the national, regional and local levels as set out below.

Who participates and Treaty impact analysis (Annex A – pages 6 to 40)

14. The proposals set out in this paper broadly align with the Panel's recommendations, with the notable exception being the Panel's recommendation to replace 'iwi authority' and 'tangata whenua' with a new definition for 'mana whenua'. However, there is no clear case for a single overarching term, and different terms should be used in different contexts.

15. The system will provide significantly enhanced direct rights of participation for hapū and participation opportunities for Māori groups with rights and interests 'at place', alongside other New Zealanders, which is a significant improvement on the status quo.

16. The overall package of Māori participation mechanisms 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. Māori will have the following roles/functions across all levels of the new system:

National level (Annex B – pages 41 to 59)

17. The National Planning Framework (NPF) will involve input from the National Māori Entity (in policy development and the NPF Board of Inquiry process), mātauranga Māori experts (setting of national scale limits and targets), iwi/hapū/Māori, alongside other New Zealanders.

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18. The National Māori Entity (established as an Independent Statutory Authority, with members appointed through a nominating panel process using clusters of iwi/hapū/Māori) will have the following key functions:
    a. input into the NPF and supporting processes
    b. undertake monitoring of resource management (RM) system Te Tiriti performance
    c. ability to provide advice (proactively or on request) at its discretion.
19. The National Māori Entity will be funded by central government to deliver its functions, and to support positive progress and continuous system improvement. It will have powers to require and share relevant information (for monitoring), require responses to its monitoring recommendations and for any advice requested from it, and the ability to recommend Ministerial intervention if monitoring identifies significant issues.

Regional level (Annex C – pages 60 to 73)

20. Māori will have roles and functions in regional spatial strategies (RSS) and NBA plan processes, including:
    a. membership of Strategic Planning Act (SPA) and NBA committees and funding and support to carry out those functions
    b. secretariats, funded by local government, which would be required to include (amongst others) mātauranga, te ao Māori, and Māori engagement expertise
    c. mātauranga Māori experts inputting into the setting of regional scale limits and targets
    d. early and full participation by Māori entities (inclusively defined) in engagement processes funded in part by local government.

Local level (Annex D – pages 74 to 92)

21. Māori will have the following roles/functions in consenting/local decision making:
    a. technical advice (eg, cultural impact assessments)
    b. participation as affected parties in appeals or alternative dispute resolution
    c. roles/functions (including some roles that are specific to particular localities), funded through multiple streams including grants and central/local government contributions, established through:
        i. Treaty settlements, Takutai Moana rights and existing natural resource arrangements under the RMA, which would continue to involve the same participants, and funding arrangements, as established via those agreements
        ii. Mana Whakahono ā Rohe processes for iwi and hapū – similar to those made under the RMA

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iii. Transfers of Power[2] for iwi and hapū (with decisions on whether Māori landowners, as defined in the Te Ture Whenua Māori Act 1993, should also be enabled to have powers transfer, to be sought through delegated decisions)

iv. Joint Management Agreements[3] for iwi and hapū

d. iwi/hapū management plans providing for the articulation of iwi/hapū aspirations and requiring these plans be had "particular regard to" in RSS and plan making.

22. Work is underway to assess any specific provisions that should be made for Te Ture Whenua Māori land, with authorisation for delegated decisions sought in this paper.

Funding Māori participation (Annex E – pages 93 to 123)

23. Current funding arrangements to support Māori participation have been varied but generally insufficient, which has hindered the ability for iwi/Māori to properly execute their kaitiaki responsibilities and engage meaningfully in the current system.

24. The greater role proposed for iwi/Māori across all levels of the system is expected to support reform objectives. This greater role will require a sustainable level of funding to ensure Māori have an effective role consistent with the principles of Te Tiriti.

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[2] A tool to enable the empowerment of iwi, hapū and potentially Māori landowners to undertake functions and powers. A current example which would be applicable in the future system is the transfer of some state of the environment monitoring functions from Waikato Regional Council to Ngāti Tūwharetoa.

[3] To enable iwi/hapū and local authorities/joint committees to jointly undertake functions and powers. A current example which would be applicable in the future system is the JMA between Ngāti Porou and Gisborne District Council for the Waiapu catchment.

Recommendations

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'[4]
   c. roles for expert Māori practitioners
   d. a role for national Māori organisations as part of the National Māori Entity nominations process

[4] 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.

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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[5] 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 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"

[5] 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.

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

c.

d.

e.

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

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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

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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

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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

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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] 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[6] representing rights and interests 'at-place'[7] in agreeing composition and identifying appointing bodies

[6] See recommendation 7.

[7] 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.

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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. **note** that the Crown has committed to upholding Treaty settlements, Takutai Moana rights, rights under Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019 and other existing natural resource arrangements under the RMA, and that:

a. some existing arrangements through Treaty settlements or the RMA enable or provide for joint development between iwi/hapū, PSGEs and local authorities of aspects of regional and district planning documents, or decision-making on the same

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)

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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[8] 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

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

[8] 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).

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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

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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[9] 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

    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:

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

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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

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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

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consenting matters with iwi/Māori, there is a duty for consent applicants to pay reasonable user-costs where applicable.

F. [redacted]

103. [redacted]

104.

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

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Annex 0: Purpose, structure and summary

Purpose and structure of this paper

1. The purpose of this paper and annexes is to provide the Ministerial Oversight Group (MOG) with information and recommendations on the roles, funding and participation of Māori in the resource management (RM) system.

2. This paper contains a summary of the most crucial information Ministers need to make decisions, as well as the full detailed recommendations necessary to proceed to drafting instructions or enable delegated decisions where required.

3. To support these recommendations, a suite of annexes with supporting analysis is attached to this paper. These annexes cover:

   a. **Annex A** – *Context*: problem definition, Resource Management Review Panel (the Panel) recommendations, relevant MOG decisions, a system view of 'who' partners and participates from te ao Māori, Treaty impact analysis and impacts on addressing Māori freshwater rights and interests

   b. **Annex B** – *Roles for Māori at the national level*: National Māori Entity and National Planning Framework

   c. **Annex C** – *Roles for Māori at the regional level*: 'who' participates from te ao Māori in Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committee matters (governance, secretariat) and Treaty partnership entities

   d. **Annex D** – *Roles for Māori at the local level*: plan development, consenting and existing mechanisms to enable and facilitate Māori participation at-place

   e. **Annex E** – *Funding and support for roles for Māori in the RM system*.

Paper summary

4. The Panel identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.

5. A key challenge is to ensure the new RM system as a whole delivers on the five Cabinet agreed reform objectives. In doing so it will be essential to uphold existing Treaty settlement arrangements, Takutai Moana rights and existing natural resource arrangements under the RMA.

6. MOG has already made a number of decisions related to the roles, funding and participation of Māori in the RM system. This paper and the suite of annexes, set out the next level of decisions required and include proposals about how the legislation and funding will work together to deliver the objectives of the reforms, including giving effect to the principles of Te Tiriti o Waitangi (Te Tiriti) and a more efficient and effective system.

7. This paper's recommendations relate to Māori participation at the national, regional, and local levels of the new RM system, with a focus on:

   a. **what** roles should be provided for Māori at different levels in the new system

   b. **who** should participate from te ao Māori in the various roles/functions of the system

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c. **how** Māori participation in the new system should be funded.

Māori participation in the future RM system

8. Māori will have participatory and, in some cases, decision-making roles at all levels and key components of the future RM system.

9. There will be differences in who participates in various roles and functions, as well as differences in levels of prescription required in legislation to balance the ability for iwi/hapū/Māori to self-identify who they wish to participate, with the need for certainty, clarity and efficiency for all parties.

10. It is expected that representative organisations, eg, iwi authorities and groups representing hapū under the RMA or Māori entities described under the Urban Development Act 2020 (UDA), will engage in key processes on behalf of their members. Where decision-makers are required to proactively contact iwi, hapū or other Māori groups, it is expected they will contact representative organisations.

11. Funding for the new system is to be based on the principles agreed at MOG #15:

    a. users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers

    b. where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs

    c. where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do

    d. at all levels within the system, costs and charges should be proportionate with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity.

12. Decisions at MOG #15 indicated that generally there is a greater case for Crown funding for Māori roles at the national level, and for Crown contributions to establishment and transition costs, rather than roles at the regional/local level or ongoing costs.

13. [redacted]

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National level

14. The key decision about the role of Māori at the national level is how to ensure Māori have genuine opportunities to participate in and influence the strategic decisions that will be made by central government.

15. In particular, it will be important to ensure that appropriate engagement with iwi, hapū and Māori occurs in the development of the National Planning Framework (NPF).

16. The roles for Māori in the NPF, will involve:

    a. input from the National Māori Entity (including having the ability to present to the NPF Board of Inquiry)

    b. broad engagement with iwi/hapū/Māori during policy development

    c. mātauranga Māori experts - either contracted as a professional service or employed by the relevant lead agency inputting into the setting of national scale limits and targets

    d. the National Māori Entity making nominations for appointments to the NPF Board of Inquiry.

17. A key role of the National Māori Entity is to support positive and continuous improvement throughout SPA and NBA system. To do this it will have the following key functions:

    a. input into the NPF and supporting processes (as set out above)

    b. undertake regular monitoring of Te Tiriti performance of the RM system

    c. the ability to provide advice (either proactively or on request) to all persons participating in the RM system, and recover reasonable costs from at its discretion when responding to requests for advice).

18. To enable the National Māori Entity to deliver its functions, it will have powers 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.

19. The National Māori Entity will have the following establishment processes:

    a. the National Māori Entity will be established as an Independent Statutory Authority, with any necessary links to the Crown Entities Act 2004.

    b. the members of the National Māori Entity will be appointed via an electoral college/nominating panel process, which will:

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i. use regions as the basis for clusters along with a cluster for national representative Māori organisations

ii. entail some prescription in the legislation, including timeframes and 'circuit breakers' and criteria the electoral college/nominating panel must have regard to when appointing members of the National Māori Entity

iii. within the above parameters, broadly enable the clusters to self-identify the membership of the electoral college/nominating panel and for the electoral college/nominating panel to self-identify the membership of the National Māori Entity.

20. Feedback from agencies and iwi, hapū and Māori engagement is that it is important the National Māori Entity is not in actuality, or perceived to be, a 'one stop shop' for Māori engagement at the national level or usurp the mana of iwi/hapū/Māori through its role.

Regional level

21. At the regional level, Māori will have roles and functions in regional spatial strategies (RSS) and NBA plan processes, including:

a. membership of SPA and NBA committees, and support to carry out those functions funded by local government, (NB: may include defined role for some Post Settlement Governance Entities (PSGEs) to uphold specific Treaty settlement arrangements) which would entail:

i. iwi and hapū led regional discussions on SPA and NBA committee composition, including agreement on who makes appointments, which would be formalised via an Order in Council

ii. appointing bodies would undertake an appointments process for the Māori members on SPA and NBA committee SPA and NBA committees.

b. secretariats, funded by local government, which would be required to include (amongst other expertise) mātauranga, te ao Māori and Māori engagement expertise

c. mātauranga Māori experts (either contracted as a professional service or employed by the secretariat) inputting into the setting of regional scale limits and targets

d. early and full participation by Māori entities (inclusively defined) in engagement processes funded in part by local government, through Engagement Agreements either directly with the SPA and NBA committee or facilitated through iwi and hapū representative organisations

22. As noted earlier, upholding existing arrangements established through Treaty settlements, Takutai Moana rights and other existing natural resource arrangements under the RMA will be an essential component.

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Local level

23. At the local level, Māori will have the following roles and functions:

    a. Involvement in pre-application/pre-notification engagement where this is required by Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, or otherwise enabled through a plan or voluntarily via council or applicant best practice (noting the NBA Bill will not include any specific requirement for consultation with any specified parties on a resource consent)

    b. providing technical advice (eg, cultural impact assessments) from experts and/or local knowledge holders, with costs covered by users (though local government may choose to subsidise some costs)

    c. participation as affected parties in appeals or alternative dispute resolution, funded by a mix of local government and user pays, with consent conditions able to identify additional roles and requirements.

24. This paper also proposes that some elements of the current system that provide for the roles that Māori have "at place"[1] be brought through to the new system. In particular:

    a. roles and functions, funded through multiple streams including grants and central and local government contributions, established through:

        i. Treaty settlements, Takutai Moana rights and existing natural resource arrangements under the RMA. These would continue to involve the same 'who' participates and funding arrangements as established via those agreements

        ii. Mana Whakahono ā Rohe processes for iwi and hapū

        iii. Transfers of Power for iwi and hapū

        iv. Joint Management Agreements for iwi and hapū.

    b. iwi/hapū management plans providing for the articulation of iwi/hapū aspirations and requiring decision-makers to have "particular regard" to these plans in RSS and NBA plan making[2].

25. Work is also underway to assess any specific provisions that should be made for Māori land. This includes whether Māori landowners, as defined in the Te Ture Whenua Māori Act 1993, should also be enabled to have powers of transfer. This paper seeks authorisation to delegate decisions on matters pertaining to Māori land.

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[1] 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.

[2] Note decisions on this matter are being sought through BRF1356 Delegated Decisions on plan content relationship with other documents and financial contributions.

Annex A: Context, analytical approach, who participates, Treaty impact analysis

Purpose

1. This Annex sets out core considerations and context that apply across all the decisions sought in this paper and across the more detailed analysis contained in Annexes B-E. This Annex does not itself seek decisions but asks Ministers to note a number of core contextual points that apply across all the decisions in the wider paper.

2. This Annex is set out in four parts:

   a. Part 1: overarching context about roles for Māori in the new Resource Management (RM) system across the suite of papers on the roles for Māori including:

      i. The Resource Management Review Panel (the Panel) recommendations and Ministerial Oversight Group (MOG) decisions to date – this provides context for the entire suite of papers on the roles for Māori

      ii. an overview of the analytical approach applied to options development and assessment across this suite of papers on the role of Māori in the system

   b. Part 2: an assessment of the overall approach to who from te ao Māori participates across the new RM system

   c. Part 3: proposals for the use of terms and definitions related to who from te ao Māori participates across the new RM system

   d. Part 4: Treaty impact assessment for the package of proposals presented in this suite of papers on the role of Māori in the system (including impacts on freshwater rights and interests).

3. This annex should be read in conjunction with Paper 2: Regional governance and decision making in the new resource management system (Paper 2: Regional Governance) which seeks decisions on the design of regional governance arrangements. Paper 2: Regional Governance proposes that composition of Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committees is determined by local government and hapū/iwi/Māori in each region. This suite of papers seeks decisions on who participates from hapū/iwi/Māori in the composition discussions.

PART 1: OVERARCHING CONTEXT ABOUT ROLES FOR MĀORI IN THE SYSTEM

Context

Panel recommendations

4. The Panel identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.

5. The Panel made 11 key recommendations on Te Tiriti o Waitangi (Te Tiriti) me te ao Māori. These ranged from strengthening the Te Tiriti clause, enhancing existing mechanisms, creating new mechanisms, and enhancing financial support. The full set of recommendations is included for context in Appendix 1.

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6. Overall, the proposals set out in this suite of papers broadly align with the Panel's recommendations, with the notable exception being the Panel's recommendation to replace 'iwi authority' and 'tangata whenua' with a new definition for 'mana whenua'.

7. The Panel's recommendations were mostly made at a conceptual level, leaving space for further consideration of implementation. The proposals in this suite of papers set out how the relevant recommendations are intended to be implemented.

An overview of relevant MOG decisions to date

8. MOG has made a series of decisions on which of the core components will be incorporated into the new RM system. Relevant decisions for the matters covered in this paper are:

Who from te ao Māori participates in the new RM system

MOG #11/12

a. noted that further advice would be provided on the matter of who participates in the new RM system including:

   i. identifying and recording who makes Māori appointments to joint committees (see para 17 on SPA and NBA committees)

   ii. whether legislation should set appointments processes or whether to enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process)

MOG Māori interests sub-group (24 November)

b. noted a proposed direction of travel for further advice on who from te ao Māori participates across the system including:

   i. support for self-identification-enabling tikanga processes to determine representation with 'circuit breakers' and timeframes prescribed in the legislation

   ii. implementation support is required for successful self-identification processes

   iii. no clear case for a single overarching defined term for who participates (alternatives should be explored)

   iv. the level of prescription in legislation will differ for different parts of the RM system (but inclusive approach to participation in plan development and consenting enabled).

National Māori Entity

MOG #11/12

a. agreed in-principle to establish a National Māori Entity to enable Māori participation at the national level

b. agreed that the Entity would have functions in:

   i. system oversight/monitoring (with a specified role in monitoring Tiriti performance across the RM system)

   ii. input to the National Planning Framework (NPF) development

   iii. appointments of any Māori representatives to the NPF Board of Inquiry

c. agreed that the Entity should be set up independently of the government of the day.

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Treaty Partnership Entities

MOG #11/12

a. agreed that "Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements".

Plan development process

MOG #11/12

a. noted that further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including roles and participation for iwi/Māori in the plan making secretariat and process for their involvement

b. agreed the proposed plan-making framework including the need for an efficient and certain approach to mana whenua involvement through engagement agreements in the NBA

MOG #13

a. agreed that one of the purposes of Māori participation in plan development is to ensure Māori can influence plan content including (but not limited to) how activities are categorised, notification status, where they may be identified as an affected party and the information required for a consent.

Mana Whakahono a Rohe, joint management agreements and Transfers of Power

MOG #11/12

a. agreed that the legislation provides for an enhanced Mana Whakahono a Rohe (MWAR) process that is integrated with transfers of powers and Joint Management Agreements (JMAs) (an Integrated Partnerships Process)

b. agreed to recommend to the MOG that power sharing arrangements (transfers of power and JMAs) are better enabled through the Integrated Partnerships Process, with barriers removed.

Funding

MOG #2

a. agreed that Cabinet's resource management reform objective to "give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori" should result in the following outcomes:

   i. Māori have the opportunity and are sufficiently resourced to participate as Treaty partners across the resource management system, including in national and regional strategic decisions

MOG #15

a. directed officials to report back to MOG on the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the future system, and options for central government funding to support local government and iwi/Māori to participate in the new RM system, as well as ways iwi/Māori groups could potentially recover their costs in some circumstances

b. directed officials to [redacted]

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An overview of the analytical approach applied to options development and assessment

Problem/opportunity development

9. Specific issues identified by the Panel include:
   a. Māori interest being 'balanced out' in the purpose and principles of the RMA (previous papers on Te Tiriti clause and Te Oranga o te Taiao)
   b. limited uptake of mechanisms for mana whenua involvement (Annex D)
   c. a lack of strategic roles for mana whenua (Annex B and C)
   d. local authorities and applicants for resource consents can find it difficult to know which mana whenua groups to engage with (Annex A)
   e. limited oversight and monitoring of Tiriti performance (Annex B)
   f. lack of funding and support to build te ao Māori capacity and capability (Annex E).
10. More specific examples of each of these issues are identified in relation to each policy topic set out in the relevant annexes.
11. Many of the root causes of the issues are broader than just the RM system, and beyond the scope of what RM system reform can deliver on its own. For example, the Panel noted that "a major barrier to better aligning the resource management system with te ao Māori is the difficulty of embedding Māori concepts, such as tikanga, mātauranga and te reo, into a primarily 'Western' framework"[1].
12. Each role, function or specific issue within the system may also have more specific problem/opportunity definitions. These are included in the relevant Annex.

Objectives

13. The key RM reform objectives and sub-objectives that relate to all proposals in this paper are:
    a. give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori (RM Reform Objective 3). To achieve this objective the future system needs to:
       i. consistently give effect to the principles of Te Tiriti and fully recognise and provide for te ao Māori across all layers of the system
       ii. provide for more effective strategic roles for Māori at every level of the system, consistent with the different rights and interests that Māori have at national, regional and local levels
       iii. uphold Treaty settlements, Takutai Moana rights and other existing natural resource arrangements under the RMA
       iv. improve the capability and capacity of system actors (including cultural capability)
    b. improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input (RM Reform Objective 5). To achieve this objective the future system needs to:
       i. ensure adequate resourcing is provided for Māori roles and responsibilities
       ii. build in accountability into the system – including system monitoring

[1] Pg. 92, Resource Management Review Panel. 2020. *New Directions for Resource Management in New Zealand: Report of the Resource management Review Panel*.

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iii. provide for the long-term effectiveness and efficiency of systems and processes by actively supporting implementation.

14. In addition to these objectives that are broadly applicable to all proposals, each key topic may also include specific objectives which are set out in the relevant annex.

Policy assessment criteria

15. There are some criteria that are used for options assessment for all proposals in this suite of papers. These criteria test, as compared to the status quo, to what extent options contribute to a system that:

    a. gives effect to the principles of Te Tiriti

    b. is effective (ie, achieves the objectives) and implementable

    c. is efficient over the long-term (in terms of both time and cost efficiency)

    d. provides certainty to all parties involved

    e. promotes equity (for Māori when compared with non-Māori and between hapū/iwi/Māori groups as appropriate).

16. Some key topics also include additional criteria specific to those topics, which are set out in the relevant annex.

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PART 2: ASSESSMENT OF 'WHO' PARTICIPATES FROM TE AO MĀORI ACROSS THE NEW RM SYSTEM

17. There are three key parts to Part 2: Assessment of 'Who' Participates from te ao Māori:
    a. taking a system view of who partners and participates from te ao Māori across the new RM system
    b. implications for the use of terms and definitions in the legislation
    c. implementation support.
18. This part applies to all proposals related to 'who' partners and participates from te ao Māori across the system.

Taking a system view of 'who' partners and participates from te ao Māori

Status quo under the current system

Participation and engagement requirements in the RMA

19. Under the RMA, most active engagement requirements and participation opportunities for tangata whenua[2] apply to iwi authorities[3]. For example:
    a. requirements to notify iwi authorities of proposed new national direction and provide adequate time for iwi authorities to make submissions[4]
    b. the ability of local authorities to transfer powers to iwi authorities[5]
    c. the ability of iwi authorities to initiate Mana Whakahono ā Rohe (MWaR) agreements [6].
    d. The consultation requirements set out for iwi authorities in the Schedule 1 plan making process.
20. Some provision is made for hapū participation in the RM system, such as the ability to enter MWaR agreements and requirements to consult with tangata whenua (which includes hapū) on appointments to Independent Hearing Panels. However, such participation is generally limited. For example, hapū based MWaR must be initiated by councils and requirements to consult with tangata whenua are "through iwi authorities"[7].
21. The RMA also links to other pieces of legislation that relate to rights and interests, for example:
    a. the rights of customary marine title and protected customary rights groups under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA)
    b. the rights of owners of Māori Land under te Ture Whenua Māori Act 1993 (TTWM)
    c. the rights of post-settlement governance entities (PSGEs) under Treaty settlement legislation.

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[2] tangata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area; mana whenua means customary authority exercised by an iwi or hapū in an identified area (Section 2 of the RMA).

[3] iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so (Section 2 of the RMA).

[4] S46A(4)(b)

[5] S33(2)(b)

[6] S58O

[7] S58P and S96(2)

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22. The RMA does not explicitly provide for the specific rights and interests of non-whakapapa-based Māori groupings such as urban Māori and national Māori entities.

Key issues in the current system

23. Key issues identified in the current system[8] which specifically relate to 'who' partners and participates include:

    a. Some hapū and other Māori groups who have rights and interests in relation to a particular area, water source, space, and resource 'at place' (eg, marae and Māori landowners) continue to be excluded or have participation inappropriately limited.

    b. Some groups who do not have mana whenua according to tikanga have claimed status as tangata whenua exercising mana whenua, causing uncertainty, and creating significant costs for iwi, hapū and councils[9].

    c. Government departments struggle to strike an effective balance between providing for effective engagement on national level issues while respecting the mana of iwi and hapū in their rohe.

    d. Local authorities also struggle to strike an effective balance between providing for effective engagement on regional level issues while respecting the mana of iwi and hapū in their rohe.

    e. Central and local government funding arrangements to support Māori participation are varied, but generally insufficient, which affects the ability of all hapū/iwi/Māori groups to participate, especially those without the ability to self-fund participation.

24. Identified causes are interconnected and include that:

    a. Current RMA provisions allow central government, local authorities, and consent applicants to restrict engagement to iwi authorities even where other groups, such as hapū, should be involved

    b. Central government guidance to local authorities is limited. Formal guidance about where direct engagement with hapū may be appropriate has only been provided in relation to MWaR[10]

    c. The RMA terms and definitions for iwi authority, tangata whenua and groups that represent hapū do not provide sufficient clarity for decision makers

    d. There are no clear/consistent mechanisms for effective national level input that respect the mana of iwi and hapū at place

    e. The system does not support effective dispute resolution mechanisms prior to the courts where iwi/hapū/Māori groups disagree in relation to their rights and interests

    f. The RMA does not include statutory obligations to fund Māori participation, nor the means to recover relevant costs from system users (see funding paper at Annex E).

25. While this part of the paper does not specifically cover dispute resolution processes (see Annex C) nor funding related matters (see Annex E), it is acknowledged that both funding and dispute resolution are critical to the success of proposals regarding who from te ao Māori participates.

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[9] Including by iwi/hapū/Māori through engagement, the Panel, the Waitangi Tribunal, other courts, and government departments

[9] see High Court decision — POUTAMA KAITIAKI CHARITABLE TRUST AND D & T PASCOE v TARANAKI REGIONAL COUNCIL [2020] NZHC 3159 [1 December 2020]

[10] *Mana Whakahono a Rohe Guidance* (2018). mana-whakahono-guide_0.pdf (environment.govt.nz).

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Who partners and participates – what is the opportunity for the new RM system?

26. The reform process provides three key opportunities in relation to who participates from te ao Māori, to:
    a. expand clear participation and collaboration opportunities beyond just iwi authorities
    b. support iwi/hapū/Māori to self-identify who represents them, and who should be enabled to participate at all levels of the system
    c. provide greater clarification where required about the participatory rights of specific groups in each part of the system and/or the process to decide which groups participate and/or partner in each part of the system.

Objectives

27. In addition to the reform objectives and sub-objectives that apply to all proposals in this suite of papers, the collective who proposals specifically aim to:
    a. give effect to the principles of Te Tiriti and ensure system users understand their obligations under the new legislation
    b. ensure the new RM system is implemented as intended and enhance uptake of Māori participation mechanisms
    c. support system efficiency and effectiveness by:
        i. supporting self-identification processes prior to the commencement of regional planning processes
        ii. removing some of the ambiguity in the system
    d. ensure existing issues are not entrenched through application of the current approach, to new mechanisms.

Taking a system approach to who participates

Self-identification as a guiding principle

28. As far as possible, proposals aim to provide for iwi/hapū/Māori to self-identify who represents them, and who should be enabled to participate at all levels of the system in accordance with the exercise of rangatiratanga. This is aligned with advice provided to the MOG Māori interests sub-group in November 2021.

29. It has become apparent that it is not appropriate to have an approach to self-identification where the legislation provides little or no guidance about which groups should participate and collaborate in each part of the system, and in what capacity. This is because it would lead to significant difficulties in implementing the system and the Crown must consider its Te Tiriti obligations, including kāwanatanga responsibilities. Respect for rangatiratanga does not mean that it is necessarily appropriate for the Crown to play a passive role in determining representation. A level of specificity in key parts of the system is required to ensure that:
    a. the system recognises and provides for rights and interests derived under all three articles of Te Tiriti and that whakapapa-based relationships with te Taiao are recognised and provided for in alignment with Te Oranga o te Taiao
    b. the Crown meets its responsibility to consider 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
    c. the Crown sets up processes that avoids or resolves conflict

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d. the system is able to function effectively and efficiently and in accordance with its policy intent

e. Treaty settlement and other existing natural resource arrangements under the RMA are upheld.

30. Such specificity limits the application of the self-identification principle to a degree. However, self-identification is still intended to be enabled within groupings, for example iwi and hapū should be able to choose which of their representative organisations represents them in any process. Furthermore, care has been taken to ensure that where specific groups (most often iwi and hapū representative organisations) are responsible for leading certain processes that this has been balanced by setting an expectation of wider engagement and not prescribing precise outcomes.

System overview

31. The table below provides a system view of the proposed approach to who will participate in each function/role in the system. Note that the detail of each role or function is included in Annexes B-D. As discussed, a level of specificity regarding which Māori groups participate, and in what capacity, in relation to each role/function is proposed. The table provides high-level commentary on why a particular approach has been chosen. The rationale for the key choices about 'who from te ao Māori' that have been made across the system is covered in more detail following the table.

32. All options were assessed against the consistent criteria set out in Part 1 of this Annex.

33. Preferred options for each part of the system were selected based on both the outcome of the assessment for that part of the system and how the option contributed to the system as a whole. Discussion on specific options for each role/function in the system and detailed options assessment tables are included in the relevant annexes.

Role / function and approach to prescription and specificity	**Who**	**Process and further engagement requirements**	**Why this approach**
National Māori Entity Annex B	Regional clusters of Māori groups/entities and a national entities cluster appoint members via a nominating panel process. Details of who specifically will be included in clusters will be agreed through delegated decisions	Clusters determine their own detailed appointments process	Accountability to iwi, hapū and other Māori groupings with rights and interests in each region
Composition of RSS and NBA plan committees and identification of appointing bodies Annex C	Iwi and hapū representative organisations will lead composition discussions for iwi/hapū/Māori Iwi and hapū representative organisations are responsible for identifying appointing bodies	Iwi and hapū representative organisations required to demonstrate wider engagement with iwi and hapū members, and relevant Māori entities representing rights and interests 'at place'	Provides certainty and transparency about who will lead the process Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for input by others

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		Specific solutions may be required to uphold Treaty settlements	Supports efficient and effective process
Appointments to RSS and NBA plan committees Annex C	Any Māori entity or collective of Māori entities may be an appointing body Appointing bodies make appointments	To determine appointing bodies, iwi and hapū representative organisations are required to demonstrate wider consultation with iwi and hapū members, and relevant Māori entities representing rights and interests 'at place' Specific solutions may be required to uphold Treaty settlements including direct representation of PSGEs (see para x Annex c)	Provides certainty and transparency about who will lead the process to identify appointing bodies Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for input by others Supports efficient and effective process Does not pre-determine the outcome
SPA and NBA sub-committees	Sub-committees may be established to provide for collaborative planning processes with Māori for specific NBA plan or RSS content. There is proposed to be no limitation on who the SPA and NBA committees can appoint to sub-committees. However, final decision-making sits with the relevant SPA/NBA committee	Processes may be required to appoint Māori members to sub-committees. It is not intended that such processes would be prescribed as is at discretion of SPA/NBA committees Specific solutions may be required to uphold Treaty settlements	Provides flexibility for the establishment of sub-committees as required in each region Provides scope for some plan content development to be led by iwi/hapū/Māori 'at place'

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Secretariat for SPA and NBA committees Annex C	Persons with relevant expertise in planning, tikanga and matauranga Māori	Secretariat director required to acquire tikanga and matauranga Māori expertise Director will consult with SPA/NBA committee on a resourcing plan to consider the expertise and skills available across the groups represented on the SPA or NBA committee Specific solutions may be required to uphold Treaty settlements	Ensures necessary technical expertise. Annex C recommends that that further policy work be undertaken to ensure that there is an appropriate role for Māori on the secretariates
Engagement agreements with SPA and NBA committees for RSS development and NBA plan process (pre-notification) Annex D	SPA and NBA committees must enter engagement agreements with iwi and hapū, through representative organisations if desired by those iwi and hapū Other Māori entities with rights and interests 'at place' may be invited to enter engagement agreements after consideration by SPA or NBA committee	SPA and NBA committees must consider how to ensure 'at place' Māori views included in RSS and NBA plan development process and what further Engagement Agreements are needed to achieve this	Recognises rights of iwi and hapū as kaitiaki Ensures the views of kaitiaki and relevant Māori entities 'at place' are included Ensures number of engagement agreements is manageable and responds to the regional context
General participation in RSS[11] development and NBA planning processes Annex D	Pre-notification - all-inclusive. Iwi and hapū through representative organisations and Customary Marine Title (CMT) and PCT groups automatically registered to engage	Pre-notification: groups without engagement agreements must register to engage Groups who are party to engagement agreements may also register to engage individually	Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for all iwi/hapū/Māori to engage in plan development process

[11] The processes to develop RSSs and NBA plans do differ, due to their differing legal status. Decisions on RSS development process were made at MOG #11/12; and key decisions on NBA plan development process have been made through MOG #11/12 and delegated paper BRF 946. Despite different processes, it is important to keep the opportunities for iwi/hapū/Māori participation consistent between the two processes to ensure the RSSs and NBA plans integrate well together.

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	Post-notification - all-inclusive through public participation process		
Mechanisms identified from this point down are tools that exist under the RMA			
Role / function and approach to prescription and specificity	**Who**	**Process and further engagement requirements**	**Why this approach**
Mana Whakahono a rohe (MWaR) Annex D	Iwi and hapū through representative organisations	Both iwi and hapū may initiate Mana Whakahono a Rohe Positive obligation on decision-makers to initiate Iwi and hapū may enter collective agreements with one or more decision-maker	Recognises rights of iwi and hapū as kaitiaki Supports quality and effectiveness of agreements
Joint management agreements and Transfers of Power Annex D	Iwi and hapū through representative organisations	JMAs and transfers of power must be discussed as part of Mana Whakahono a Rohe negotiations	Recognises rights of iwi and hapū as kaitiaki Reflects the scope of possible JMAs and transfers
Iwi/hapū management plans Annex D	Iwi and hapū through representative organisations	Iwi and hapū have full control over development of content Plans may be lodged with decision makers by representative organisations	Recognises rights of iwi and hapū as kaitiaki Supports quality of agreements
Consenting, CME and environmental monitoring and reporting Annex D	Iwi, hapū and other Māori groups with rights and interests 'at place' (eg, Marae)	Specific 'who' and their roles and responsibilities agreed through planning process, MWaR, JMAs and transfers of power.	Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for all iwi/hapū/Māori to engage as appropriate

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Description of system approach

34. The collective "who" proposals across the system provide for:

    a. specific participation and partnership roles for iwi and hapū, for example iwi and hapū representative organisations have been identified as the starting point for SPA and NBA committee composition discussions, and may also initiate engagement agreements and MWaR

    b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space, and resource 'at place', for example: requirements on iwi and hapū representative organisations to actively engage with their members and other Māori groups during discussions on composition and appointing bodies for SPA and NBA committees; and the ability to request an engagement agreement for an NBA plan process. These groups may include marae-based groups, Māori landowners, whānau, mātāwaka groups or other communities of interest

    c. roles for expert Māori practitioners, for example as employees or contributors to SPA and NBA committee secretariats, or as facilitators in dispute resolution processes

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

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

35. It is expected that representative organisations, for example iwi authorities and groups representing hapū under the RMA or Māori entities described under the Urban Development Act 2020 (UDA) will engage in key processes on behalf of their members. Where decision-makers are required to proactively contact iwi, hapū or other Māori groups, it is expected they will contact representative organisations.

36. The relevant rights of PSGEs provided for through settlements, CMT and PCR groups under MACA will continue to be upheld in the new RM system. Existing natural resource arrangements under the RMA will also be upheld. Solutions outside the generic policies are likely to be required to uphold Treaty settlements and existing natural resources arrangements under the RMA. These are discussed in more detail in Annex C and Paper 2: Regional governance.

Rationale for key choices

37. The proposed package of 'who participates from te ao Māori' provides an appropriate overall balance between the assessment criteria including enabling the exercise of self-identification by iwi/hapū/Māori groups in choosing who will represent them in RM processes and providing sufficient certainty and efficiency for the new RM system.

38. If MOG makes alternative decisions on who participates from te ao Māori to those recommended in any part of the system, there may be impacts on the ability of the overall package to deliver on the reform outcomes.

39. A critical point is that the system will provide significantly enhanced direct rights of participation for hapū. While it can be expected that many hapū will continue to choose to be represented through their iwi organisations, particularly on region wide or national level matters, the system will now provide clear pathways for participation where hapū (rather than local government or other decision makers) deem it to be appropriate. There is broad consensus among iwi/hapū/Māori groups, which has also been expressed by the Tribunal, that this is the key gap in the RM system participation and partnership approach.

40. Proposals for participation opportunities for Māori groups with rights and interests at place are also a significant improvement on the status quo. There are several reasons

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however, why those opportunities are proposed to be different from roles provided for iwi and hapū, including that:

a. most strategic resource management engagements are undertaken by iwi and hapū on behalf of their members. The increased emphasis on hapū participation and partnership bridges the key gap in Māori participation in the system

b. the relationship between iwi an hapū and te taiao is specifically provided for through Te Oranga o Te Taiao

c. the interests of Māori 'at place' are likely to be more geographically confined than the interests of iwi and hapū as collectives and many of the structures are set at a regional level

d. the number of groups that would be entitled to participate in representative and engagement processes 'by right' may have significant impacts on the efficiency and effectiveness of the system[12]

e. the Crown has made clear commitments to iwi and hapū clusters through Treaty settlements which must be upheld.

Risks and other considerations

41. Hapū rather than iwi is the terminology used Te Tiriti. As the Waitangi Tribunal has noted, "It was the whānau and hapū that were the effective and autonomous units of Māori social and political organisation. These provided a person's primary source of security and identity, because members lived and acted together as a community. Rangatira signed the Treaty on behalf of hapū, not 'iwi'"[13]. Therefore, it could be argued that primary participation rights should sit primarily with hapū.

42. Nonetheless, Crown practice through both Treaty settlements and other policy, including the RMA, has compelled iwi representative organisations to hold primary relationships with the Crown and its agents. Any decision to limit iwi participation in key roles would undermine the Crown's ability to uphold existing natural resource arrangements including Treaty settlements. The overall approach aims to provide for hapū and iwi to determine for themselves how they wish to organise, partner, and participate in the resource management system into the future.

43. Provision for the exercise of rangatiratanga by other whakapapa-based or mātāwaka groups is more limited than provision for iwi and hapū. These groups may continue to view their participation as inappropriately limited.

44. Relationships and the legitimacy of decision-making may also be undermined where members of specific iwi, hapū or other Māori entities must represent diverging interests of other iwi, hapū or Māori entities, especially in decision-making processes.

45. Each of the risks described above carry both litigation and relationship risk. Besides the specific accountability and engagement mechanisms which will be provided for in the legislation, proactive Crown transition and implementation support during key processes can also help to mitigate these risks.

46. Mana whenua status may continue to be contested in RM processes or through the courts. This risk is not confined to the RM system but may hinder the progress of RM processes such as the identification of appointing bodies for SPA and NBA committees. In response to this risk, officials propose to explore the development of dispute resolution procedures and circuit breakers to support the resolution of disputes on Māori representation.

[12] For example, the relatively 'small' Gisborne region has four main iwi groupings, over 70 hapū and marae and 1404 formal management structures over Māori land.

[13] pg.17, Waitangi Tribunal, 1998. *Te Whanau o Waipareira Report* (Wai 414).

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47. Hapū and other groups of Māori with rights and interests at place who do not have representative organisations may be excluded from participation in some processes. This is particularly the case for Māori land blocks without administrative structures. A proposed mitigation is that further policy work on the proposed Māori entity definition considers a range of options to establish the authority of a group or person to speak on behalf of certain interests, for example processes under Te Ture Whenua Māori Act 1993 (TTWM) to call for a meeting of owners where there is no representative body or establishing Crown facilitated forums for groups with similar interests.

48. Finally, the expansion of participatory rights for hapū and other Māori groups in the system will significantly increase the engagement burden on decision makers. This means short-term efficiency for some processes may be impacted, for example, where high numbers of engagement agreements delay plan drafting. This risk may be mitigated in part through transitional and ongoing resourcing (see Annex E on funding) and through proactive Crown implementation support mentioned previously. However, requiring decision-makers to give effect to the principles of Te Tiriti o Waitangi means that removal of these specific participatory requirements would not eliminate the need for these Māori groups to participate. Removal of the specific requirements would simply increase uncertainty on what giving effect to the principles of Te Tiriti means.

49. Officials note that many of these or similar risks would still be present if different choices about which iwi/hapū/Māori groups partner and participate in different parts of the system were taken.

Implications and proposals for terms and definitions

Status quo

50. Section 2 of the RMA provides definitions for iwi authority, mana whenua and tangata whenua. It also includes other terms in reference to iwi/hapū/Māori groups which are undefined or have a definition which only applies to certain sections of the Act (while the term is used more widely)[14].

51. The RMA also includes two terms that are defined under Section 9(1) of the MACA. These are:

    a. customary marine title group

    b. protected customary rights group.

Panel recommendation and MOG consideration

52. As noted, the Panel recommended that the existing terms 'iwi authority' and 'tangata whenua' be replaced with 'mana whenua' with the intent of setting expectations for more inclusive Māori participation, and in particular, enhanced hapū participation 'at place'.

53. Ministers noted at the MOG Māori interests sub-group (24 November 2021) that there was no clear case for a single overarching term and that alternatives should be explored.

Options – terms and definitions

54. Options considered for an overall approach to terms and definitions include:

    a. Option one: Including a single overarching term such as 'mana whenua', or an alternative, and using that term where iwi authority or tangata whenua might otherwise be used (Panel's proposal)

[14] Terms include iwi, hapū, group that represents hapū, Māori, owners of Māori land, Māori claimants.

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b. Option two: Including an overarching Māori participation principle or set of principles to set expectations for Māori participation across the system, in accordance with the Tiriti clause and Te Oranga o te Taiao

c. Option three: Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.

55. There is no clear case for a single overarching term. While the Panel's intent to provide for more inclusive participation should be carried through, the use of an overarching term to describe the primary group of Māori participants in the RM system is not the most effective way to achieve this, nor would it support greater legislative clarity. As discussed, the combination of Māori participation proposals themselves does provide for enhanced participation beyond 'iwi authorities', and significantly so for hapū.

56. There is also no clear case for an overarching Māori participation principle or principles. The combination of Te Oranga o te Taiao, Te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system will set sufficiently clear expectations. At worst, further principles may create unnecessary complexity.

57. The use of a single overarching term or a set of overarching participation principles is not well aligned with the proposed overall approach to who participates, which establishes two primary engagement pathways.

58. More detailed options analysis is set out at Appendix 2.

Proposals

59. Developing terms and definitions to support specific proposals at each layer of the system and the overall approach is recommended. This does not mean each role or function within the system will define Māori groups in different ways, but rather that appropriate and specific terms will be utilised for each layer of the system. It is intended that definitions will be consistent across the system.

Specific terms and definitions requirements

60. The use of specific terms and definitions are not considered policy choices in themselves, but are legislative design tools, intended to support policy intent being given effect to in relation to 'who' choices throughout the system. However, due to the inherent risks of describing and defining te ao Māori concepts within a largely Crown controlled legislative framework, it is appropriate that terms and definitions in this context receive specific MOG consideration.

61. A consistent term or terms to describe iwi and hapū representative organisations will be required for several parts of the system, including:

a. SPA and NBA committee composition discussions and appointment processes

b. engagement agreements for NBA plans

c. MWaR, JMAs and Transfers of Power and iwi/hapū management plans.

62. The best way to precisely describe and define these representative organisations will be developed and tested through the drafting process. For example, the existing term 'iwi authority' could be retained with the same or amended definition or replaced by a new term. Note that any changes to the definition of iwi authority may impact on other legislation. The existing undefined term 'group that represents hapū' could also be retained or replaced. A definition may be developed to provide further clarity.

63. The terms 'iwi' and 'hapū' will continue to be used undefined throughout the legislation where appropriate, for example, when establishing accountability and engagement expectations between representative organisations and the groups they represent, or when referring to relationships between iwi and hapū and te taiao.

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64. Where participation is intended to include all relevant Māori groups with rights and interests, it is recommended that a 'Māori entity' definition akin to that used in the Urban Development Act 2002[15] is utilised. The groups currently included under the definition of Māori entity includes the groups that MOG #12 agreed would need to be included in the engagement process for the development of RSSs.

65. Detailed work is needed to determine the best way to broadly describe "Māori with rights and interests in relation to related to a particular area, water source, space and resource at place" in the legislation. The particular phrasing used in this paper is based on material provided to officials and Ministers by [redacted] in setting out their proposals for applying mana whakahaere as a principle across the system. The policy intent in this context is to describe a wide range of Māori interests, such as those that arise from rights under all three articles of Te Tiriti. Such a broad description would be utilised when establishing accountability and engagement expectations between representative organisations and the groups they represent or when referring to relationships between Māori 'at place' and te taiao. For clarity, it is not intended that the specific term 'at place' be used in the legislation.

66. Existing references to specific groups with rights defined through other legislation, such as TTWM and MACA will be retained.

67. Officials will work closely with [redacted] on the further development of terms and definitions.

68. It is recommended that any further policy decisions required to draft definitions be delegated to the Minister for the Environment, the Minister for Māori Crown Relations, the Minister for Māori Development and the Associate Minister for the Environment (Hon Kiri Allan).

Implementation support

Status quo

69. Under the RMA local authorities are required to keep and maintain records of contact details of iwi and hapū, planning documents, areas of interest and Mana Whakahono a Rohe agreements (S35A(1)).

70. The Crown is required to provide each local authority with information on who the iwi authorities and groups that represent hapū are in their regions (S35A(2).

71. The Crown currently fulfils this role through Te Kāhui Māngai, a website which is administered by Te Puni Kōkiri. The general approach is that where iwi and hapū representative organisations have a formal mandate or identify themselves as a

[15] **Māori entity** means any of the following persons or entities: (see footer of next page)
(a) a post-settlement governance entity:
(b) an iwi authority:
(c) a hapū:
(d) an urban Māori authority:
(e) a Māori Trust Board:
(f) a Māori association:
(g) the Māori Trustee:
(h) a board, committee, authority, or other body, incorporated or unincorporated, recognised in, or established under, iwi participation legislation:
(i) a body corporate, the trustees of a trust, or any other entity or persons who have an ownership interest in Māori land:
(j) a body corporate or the trustees of a trust appointed to administer a Māori reservation:
(k) a customary marine title group or protected customary rights group:
(l) the entity that is authorised to act for a natural resource with legal personhood.

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representative organisation for the purposes of the RMA, they are included on Te Kāhui Māngai.

Panel proposal

72. The Panel noted that "local authorities and applicants for resource consents can sometimes find it difficult to know which mana whenua groups to engage with on resource management issues" and recommended that relevant Crown responsibilities under the RMA be undertaken by the National Māori Entity in the new RM system.

Initial proposals for further exploration

73. Despite changes to Māori participation and collaboration mechanisms in the new RM system, including clarification of where hapū and other Māori entities must be engaged with, local government, SPA and NBA committees, the Local Government Commission and other people or groups with engagement responsibilities may continue to have difficulty identifying which specific organisations to engage with.

74. While it is expected that all decision-makers and other groups with engagement responsibilities will take a proactive approach to improving relationships with iwi/hapū/Māori and improving engagement practice as per their responsibilities to give effect to the principles of Te Tiriti, support is proposed to mitigate the risk.

75. It is intended that requirements on local authorities to maintain records will be continued. The specific requirements will be considered alongside further work on terms and definitions, regional governance and MWaR, JMAs and transfers of power which will be the subject of delegated decisions.

76. Firstly, it is intended that the Crown retain its responsibilities to provide information to regional and local decision-makers on representative organisations. It is not recommended however that these responsibilities be undertaken by the National Māori Entity.

77. Instead, officials recommend that providing additional support to a government agency to maintain an audited website with nationwide records of iwi and hapū representative organisations (however defined) which incorporates determinations made by the Māori Land Court when or if required, is explored. The analysis in relation to this recommendation is set out in Annex B. Officials have not yet completed analysis on which government agency is most appropriate to fulfil this function.

78. As discussed, clear terms and definitions to describe iwi and hapū representative organisations and other Māori entities are intended to be included in the legislation. Other proposals for further exploration also include:

    a. providing formal guidance on engagement to decision-makers and others with engagement responsibilities

    b. making available practical Crown support, such as facilitation, to assist with appointment and composition processes for first generation RSSs and NBA plans.

Treaty impact analysis

79. A full Treaty impact analysis, including specific analysis of the collective 'who' proposals is included in the next section of this Annex.

80. The Treaty impact analysis does not include an assessment of who should hold responsibility for the nationwide records of iwi and hapū representative organisations, as this was originally proposed to be considered through delegated decisions.

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Engagement

Local government

81. Local government have reiterated that mechanisms will be needed to provide clarity for local government and Māori on who participates in each role.

Iwi/Māori groups

82. Note the following are officials' summaries of [redacted] views.

83. [redacted] consider that the concept of 'mana whakahaere' should guide who participates across the whole system. According to [redacted] mana whakahaere groups include "iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource". [redacted] have proposed Mana Whakahaere Councils as a mechanism that could contribute to giving effect to the concept of mana whakahaere regionally and locally. These Councils would have roles in composition of and appointments to SPA and NBA committees and may also have roles in other parts of the system.

84. [redacted] do not support the Panel's proposal for a 'mana whenua' definition, preferring instead that 'mana whakahaere' guides who participates as they consider this is "a more expansive term in depicting a wider relationship with natural features / resources / environments".

85. [redacted] have said they see the Treaty partnership as being (at least primarily) between the Crown and iwi/hapū. This would be expressed with iwi and hapū having roles in governance and decision-making. They agree that other Māori groups, in particular Māori landowners, should have enhanced roles (compared to the status quo) in other parts of the system.

86. [redacted] consider that the terms 'iwi' and hapū should be retained and used throughout the legislation and subordinate instruments.

87. [redacted] have also advised that providing for self-determined tikanga processes for iwi/Māori appointments and identifying who participates can be the most efficient approach as it would help avoid litigation with the Crown or between iwi/ hapū/Māori groups (with attendant costs and delays). An effective self-identification approach will require support and resourcing].

88. Feedback received through the Select Committee process and regional/PSGE engagement, particularly in relation to governance and decision-making, has been spread relatively evenly between an iwi/hapū focus (consistent with the [redacted] position) and a more inclusive approach (consistent with the [redacted] position). While there are distinct views on who should participate, MfE has identified some common ground coming through all feedback to date:

    a. the importance of self-identification for Māori in terms of participation at different levels of the system

    b. a greater role for hapū in the system – rather than just iwi authorities as is the approach for most the RMA (which is consistent with the Panel's view)

    c. a range of Māori groups including urban Māori and Māori Land trusts/ahi kā should have a role (but different views on how their roles and influence should play out at different levels of the system)

    d. whakapapa relationship to Te Taiao is significant and confers distinct rights (although there are different views on the extent of the distinct rights and who have these)

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e. the importance of not losing what is working now in terms of representation and identifying who participates in different levels and processes (eg, Treaty settlements, takutai moana rights holders, non-statutory RM arrangements).

f. the importance of funding. Significant investment is required to build capability and capacity for Māori participation in the system, particularly in the transition and implementation phase. Funding includes resourcing iwi/hapū/Māori with specialist knowledge and mātauranga Māori

g. disappointment that Māori rights and interests in Freshwater is not being resolved

h. greater guidance for developing Iwi/hapū Management Plans (IMPs) that effectively influence the RSS's and NBA plans and provide better protection regarding monitoring how councils will give effect to the plans and their relationship with iwi/hapū

i. retention of the obligation for councils to respond to mana whenua initiating Mana Whakahono ā Rohe

j. use of subcommittees to deal with boundary issues caused by regional boundaries not aligning to rohe boundaries, with the process being led by Rangatira in each rohe being preferred

k. concern at the lack of willingness in some Councils to work collaboratively with iwi/hapū/Māori.

Treaty impact analysis

89. The following analysis is intended to cover the entirety of proposals set out in this paper (including the suite of Annexes). This analysis excludes all delegated decisions, including the consideration of who should hold responsibility for the nationwide records of iwi and hapū representative which, at the time of finalising this paper, is proposed to be a delegated decision. Specific Treaty impact issues are highlighted where required in each Annex. Analysis for giving effect to the principles of Te Tiriti throughout the components of the RM system is contained in the MOG #17 paper *NBA Decision-making Framework.* While this analysis refers to proposals in other MOG #17 papers and proposals agreed through previous MOGs, the analysis does not specifically cover the Treaty impacts of those proposals.

90. The overall Treaty consistency of the system depends on the package of tools/mechanisms/provisions that provide for partnership with and participation by Māori in system oversight, national level policy development, plan governance, plan development, plan approval, consenting, compliance monitoring and enforcement and environmental monitoring and reporting. This paper deals with a sub-set of these tools/mechanisms/provisions. The reform process must also balance the need to provide for local representation through democratic processes, and other considerations, against a greater, more direct role for iwi/hapū/Māori. It is important that, at the appropriate time (such as when detailed delegated decisions are being resolved), a further treaty assessment is carried out that considers the total proposed package for the NBA and SPA and the provision for Māori and treaty considerations within the package.

91. Because of the focus of the proposals in this paper, the analysis generally covers the matters expected to be considered in a Treaty impacts assessment. This assessment provides more detail on key issues and summary assessment.

92. Information on engagement is included in each specific section, rather than in this analysis. This assessment is limited in that not all preferred proposals have undergone thorough engagement with [redacted] n the regions.

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

93. All proposals covered in this analysis intend to deliver on this objective and its underlying outcomes, alongside all reform objectives. In most cases all objectives can be effectively delivered without significant trade-offs.

94. Subject to a further Treaty assessment of the overall package, officials consider that the proposals covered in MOG 17 will assist to contribute to a system that gives effect to the principles of Te Tiriti o Waitangi and provides for greater recognition of te ao Māori, including mātauranga Māori

Overall approach to 'who' participates

95. The preferred who options in all parts of the system collectively provide for a medium – high level of consistency with the reform objectives noted above. Key points of the overall assessment against these objectives are set out below.

96. Across the preferred proposals there is generally strong provision for the exercise of rangatiratanga derived through whakapapa relationships with te Taiao at iwi and hapū level. The primacy given to whakapapa-based relationships is consistent with the current drafting of Te Oranga o te Taiao (TOOTT), included in the exposure draft of the NBA and is, in the opinion of officials, broadly consistent with tikanga as it relates to resource management.

97. The system does not provide for the specific rights of whakapapa-based groups at the sub iwi/hapū level to the same degree as for iwi and hapū. For example, it is iwi and hapū who are proposed to lead regional governance processes, enter into MWaR, JMAs and Transfers of Power, and have the ability to initiate engagement agreements with SPA and NBA committees. While this is considered necessary to ensure the effective functioning of the system, risks include:

    a. potential legal challenge from groups who consider that the proposals do not provide for their rights and interests

    b. potential impacts on Māori-Crown and Māori-local government relationships

    c. potential impacts on relationships between Māori groups, particularly between iwi and hapū and other Māori entities

    d. non-iwi and hapū groups will continue to be excluded from some RM processes.

98. It is worth noting that there would also be many of these same risks (particularly a, b, and c) if different options for 'who' participates were chosen.

99. These risks are largely mitigated by positive engagement obligations on both iwi and hapū as leads and decision-makers in relation to relevant rights and interests' holders 'at place', who may include marae, Māori landowners and other whakapapa-based communities of interest.

100. There are roles for all rights and interests' holders in the system but not the same nor equal roles. Distribution of roles generally reflects Crown's existing approach to recognition of tikanga and rights and interests with an increased emphasis on the ability of hapū to exercise rangatiratanga and kaitiakitanga through the RM system.

101. This analysis acknowledges that, despite the word 'iwi' not appearing in the articles of Te Tiriti, Crown actions, largely through Treaty settlements, have promoted an iwi-based organisation of te ao Māori in its primary interactions with the Crown and its agents in the RM system which may not be fully consistent with tikanga. The proposals do aim to enhance the ability of hapū to exercise rangatiratanga and kaitiakitanga, as they were at the time Te Tiriti was signed (and in some cases remain) the primary political grouping

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in Māori society. Hence the word 'hapū' was used as well as 'the rangatira of hapū' in the articles of Te Tiriti.

102. However, the proposals do not propose to 'reduce' the role of iwi representative organisations. The risks to settlement durability, existing natural resource arrangements under the RMA and potentially to Māori-Crown relations more generally are too high for the Crown to significantly shift from the position it has established in relation to the role of iwi authorities.

103. There is less provision for the exercise of rangatiratanga and kaitiakitanga derived through more contemporary organisation of Māori communities/interests (eg, where Māori have organised in urban settings[16]). This too is consistent with the current drafting of TOOTT, and broadly consistent with the Crown's understanding of tikanga related to resource management. The proposals do however make provision for the exercise of such rights and interests through the positive obligations on iwi and hapū and decision-makers and enable iwi and hapū to involve other Māori entities (such as urban Māori authorities) in certain processes.

104. Officials consider that the active protection of recognised interests is well enabled. This includes that 'who' options do not undermine the ability of Treaty settlements to be effectively transitioned and upheld in the new RM system, nor do they impact on the rights of customary marine title and protected customary rights holders. Further information is provided in the section on protecting and transitioning Treaty settlements.

Who in relation to governance – composition and appointments

105. The matters set out above are directly relevant to the proposals for 'who' participates in SPA and NBA committee composition and governance.

106. In addition, the establishment of a regional layer of decision-making, where the many must be represented by the few, 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 RM system will require Māori to work. Finally, there is a need for the overall package to account for wider local representation through democratic processes in councils, and other considerations

107. Delegated decisions are being sought on a range of matters related to composition and appointments processes, including terms and definitions for who leads and participates in composition discussions, details of facilitation and support to ensure local composition discussions have the highest chance of success, dispute resolution and circuit-breaker processes for Māori appointments and implementation support. Delegated decision papers will include Treaty impact analysis of proposals.

108. Part of the reason for seeking delegated decisions is to enable extra time to engage with [redacted] on this important matter.

109. Recommending this option strengthens the case for proactive Crown transition and implementation support prior to formal composition processes being initiated to reduce the risk that circuit breakers will be required later in the process.

110. This proposal does not directly impact the ability for alternative circuit breakers to be used in the case of disputes among iwi/hapū/Māori groups.

111. Paper 2: Regional Governance includes a proposal that the arbiter for disputes about local government and iwi/hapū/Māori composition on SPA and NBA. The delegated

[16] See Waitangi Tribunal, 1998. *Te Whānau o Waipareira report*. Wai 414 for findings on this matter.

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decisions sought through this paper will provide an appropriate mechanism to resolve disputes about Māori representation structures and membership, not disputes about composition of SPA and NBA committees. As part of this work officials will also consider when Māori representation dispute resolution procedures can be initiated. This because, in some circumstances, it may be helpful for these procedures to be able to be initiated before decisions on composition and appointing bodies are made.

National Māori Entity

112. The establishment of a National Māori Entity is expected to create opportunities:

    a. for Māori to participate independently from the Government of the day at a national level

    b. to better deliver for, incorporate and recognise Māori interests and views at a national level, whilst not replacing any obligations to engage with iwi/hapū/Māori at place

    c. to enhance awareness, capability, and performance of those working across the system (through regular monitoring of Te Tiriti performance and providing advice)

    d. to support and influence the development of policies, regulations, processes, and methods which better give effect to the principles of Te Tiriti and incorporate te ao Māori.

113. If these opportunities are realised, it is expected that the National Māori Entity will generally better enable the RM system to give effect to Tiriti principles and provide for greater recognition of te ao Māori at the national level.

114. The key risk to Tiriti consistency is if the National Māori Entity unintentionally usurps the mana of iwi and hapū at place. To mitigate this risk, it is intended that:

    a. accountabilities be established between the members of the National Māori Entity and iwi/hapū/Māori in the regions

    b. the role of the National Māori Entity in regionally specific matters is minimised, direct engagement with iwi/hapū/Māori on the National Panning Framework is provided for (and isn't supplanted by any input from the National Māori Entity)

    c. local monitoring and reporting activities inform national level monitoring and oversight.

115. The proposed functions of the National Māori Entity (see Annex B) are intended to contribute to delivering the reform objectives in the following ways:

    a. improving central and local government capability to effectively work with Māori through the establishment of monitoring frameworks, the provision of education and training, a focus on continuous improvement and the regular provision of advice

    b. ensuring that resourcing for Māori participation in the system is actively and regularly considered, and as a result, better understood and provided for

    c. generally improving the Tiriti performance of the whole system through a continued focus on:

        i. input that covers all changes to the NPF which will support the NPF to: give effect to Tiriti principles; reflect te ao Māori including mātauranga Māori; and to uphold customary rights, Treaty settlements and other arrangements

        ii. ensuring consideration of how Māori will be involved in the implementation of the NPF and thus supporting equitable access to resources for Māori in these roles.

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116. Officials consider that it is not appropriate for the National Māori Entity to be responsible for maintaining a nationwide record of iwi and hapū representative bodies because it could result in the National Māori Entity being overloaded and seen as a one-stop shop for advice on engagement, when the role is intended to be more than that. It also could result in the National Māori Entity directly undermining the mana of iwi and hapū by serving as a "gate-keeper" to who has authority to engage.

117. The proposal to establish the National Māori Entity with an appropriate degree of independence, both in its legal form and in its membership drawn from Māori, is intended to support the exercise of rangatiratanga by Māori in appointing members and in the Entity undertaking its functions.

118. Independence from the Crown is also intended to improve the legitimacy of the Entity within te ao Māori and ensure that the primary accountability pathway for members is back to iwi/hapū/Māori in the regions (for regional clusters) and to the relevant Māori entities (for any national Māori group cluster). In this way, independence from the Crown should support the Entity to carry out its functions in a manner that respects the mana of iwi and hapū at place.

Role of Māori in the secretariats for SPA and NBA committees

119. The full policy proposals and accompanying Treaty impacts analysis for the secretariats is included in the MOG #17 regional governance paper [Paper Y: Regional Governance].

120. It is intended that while there will be requirements on the director of the Secretariat to ensure that the Secretariat has access to mātauranga Māori, te ao Māori, and Māori engagement expertise, that there be flexibility in how this is achieved.

121. The potential benefits to this approach in a Tiriti context are that:

    a. it allows for relevant expertise to be provided to the committee

    b. it allows for some practitioners to provide expertise to multiple committees (especially while further capability and capacity is built into the system)

    c. it allows for bespoke regional approaches.

122. The key risks to this approach are that:

    a. it does not guarantee a role for Māori on the secretariat, or that this expertise be drawn from the iwi and hapū from the region

    b. mātauranga Māori, te ao Māori, and Māori engagement expertise becomes a secondary priority to traditional planning expertise and committees do not receive quality advice

    c. te ao Māori and mātauranga Māori content is not well provided for or integrated in plans

    d. planning processes remain 'captured' by local government.

123. These risks are intended to be mitigated through:

    a. the Secretariat director, as a person undertaking functions in the system, will have to give effect to the principles of Te Tiriti in carrying out their role and functions (as imposed on all those carrying out functions, powers and duties under the SPA and NBA)

    b. the accountability of the secretariat director to the SPA and NBA committee which will include Māori representation

    c. the director will consult with the SPA/NBA committee on a resourcing plan for the secretariat to consider the expertise and skills available across the groups represented on the SPA or NBA committee

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d. the director will employ/contract/second/coordinate secretariat staff (including secondments from Māori entities)

e. there will be a duty for the director to ensure advice is informed by mātauranga Māori, te ao Māori, and Māori engagement expertise.

f. engagement requirements on the SPA and NBA committees during the planning process

g. Delegated decisions on further details on the secretariat, including legislative and non-legislative measures to support the role of Māori in the secretariat.

*Māori participat*ion in plan-making and consenting

124. The recommended option gives effect to the principles of Te Tiriti by:

a. providing for early and ongoing engagement with Māori in plan development, including providing funding to ensure engagement can be undertake in a meaningful way

b. providing opportunities for Māori to be better and more comprehensively involved in resource management planning than under the RMA.

125. The earlier commentary on the approach to who participates from te ao Māori in the new RM system also applies to participation in plan-making. The recommended option for 'by rights' engagement plans with iwi and hapū representative organisations and positive obligations on SPA and NBA committees to consider the need for additional agreements to provide for the rights and interests of other Māori groups at place is a key mechanism for providing for more inclusive participation in the system by all holders of rights and interests including Māori landowners, marae and mātāwaka. 'Mātāwaka' is used when referring to whānau, hapū and iwi Māori living in an area where they are not mana whenua.

126. The ability of all groups to 'register' to engage in the pre-notification stage of the plan process, further provides for more inclusive participation.

Funding

127. In general, ensuring sustainable funding for Māori participation in the RM system will significantly improve the potential of the whole system to give effect to the principles of Te Tiriti and recognise te ao Māori.

128. The proposal that the Crown will fund Māori participation in central government level activities on an ongoing basis is consistent with the Crown's responsibilities as a Treaty partner. Practically, such funding should enable more effective participation by Māori at the national level. It is expected that over time, the positive Treaty impact of funded participation will grow in effectiveness as improved resourcing across the system supports capability and capacity growth among iwi/hapū/Māori.

129. [redacted]

Transfers of Powers, joint management agreements and enhanced Mana Whakahono a Rohe

130. These existing mechanisms are critical to providing for iwi and hapū participation and partnership at the local level. For the whole system to be Tiriti consistent and provide for te ao Māori, opportunities for local level input are required, especially because of the increased number of functions the future system will have at the regional level (such as

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planning). This paper proposes to explicitly provide for hapū to be able to initiate these arrangements, which is consistent with Waitangi Tribunal recommendations on the RMA.

131. Importantly, these mechanisms also provide for enhanced iwi and hapū participation above what the general provisions of the legislation provide for, which is again critical for supporting best practice in the system and improving how the system can provide local flexibility in giving effect to the principles of Te Tiriti.

132. Detailed decisions on these mechanisms will be delegated, and more detailed Treaty impacts analysis will be provided at that point.

Upholding settlements

133. The current analysis shows that the proposals covered in this paper will not undermine the integrity of Treaty settlements. However, further detailed consideration is required on several matters including:

    a. ensuring the National Māori Entity does not undermine the integrity of any Treaty settlement mechanisms at the national level such as obligations in relation to the NPF

    b. ensuring solutions are provided to enable necessary arrangements and/or relationships between settlement co-governance, co-management and advisory entities and SPA and NBA committees that uphold the integrity of settlements and are supported by PSGEs

    c. ensuring the outcomes of consenting related settlement mechanisms are upheld, even as the system shifts away from a consenting focus

    d. ensuring that new bodies established under the new legislation do not dilute the influence of settlement mechanisms.

134. In addition to protecting the integrity of settlements, it is important that settlement mechanisms, which were agreed in a particular policy context, do not unduly restrict improvements in the overall Treaty consistency of the system. That is, preserving relativity of settlements to the status quo at the expense of an improved status quo.

135. The continued provision for iwi and hapū to lead key processes within the system and to have 'by rights' participation at key points in the system supports Treaty settlements to be upheld.

136. The decision that key interactions with decision-makers at a governance level will be led through iwi and hapū representative organisations (including PSGEs) is more likely to ensure that their role in the system will be upheld because their existing role in the system can be linked to that definition. An alternative, and more open approach, such as use of Māori entities to lead discussions at this governance level, could increase the risk that the intent of those settlement is undermined.

Waitangi Tribunal recommendations

137. Overall, the proposals outlined in this paper make progress towards addressing many of the Tribunal's recommendations in relation to the RM system. The Panel considered the recommendations of the Tribunal in developing its recommendations which many of the proposals in this paper align with.

138. The collective proposals move the system further toward partnership as outlined in the Wai 262 'sliding scale' and referenced in Wai 2358 as the standard for freshwater management. While the proposals may not prescribe a mandated co-governance approach across the country for SPA and NBA committees, it does provide opportunities for this at the regional level and significantly enhances Māori participation.

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139. The overall approach to 'who' across the system provides for significantly enhanced participation of hapū and of kaitiaki 'at place', which responds to Waitangi Tribunal findings and recommendations in Wai 262 and Wai 2358 regarding the exercise of kaitiakitanga by hapū.

140. The continued provision for iwi leadership where appropriate is also consistent with agreements by the Crown, [redacted] and claimants in Wai 2358 that in some circumstances it makes sense for iwi to lead processes for practical reasons.

141. This paper makes proposals which provide a response to the Tribunal's criticisms of Crown funding and abdication of responsibility for this to local authorities. These proposals include provision in the SPA and NBA to require:

    a. the use of a variety of mechanisms to support appropriate funding for Māori participation at the local level: and

    b. central government to collect information on the costs associated with Māori participation, the drivers of these costs and the funding provided to meet these costs; and monitor funding issues in regions where Māori participation is not occurring due to low rating base, disproportionately large costs, or other reasons. [Annex E refers]

142. These, and other provisions, work together to recognise that Crown's Te Tiriti duties remain and must be fulfilled, and the Crown must make statutory delegates accountable for fulfilling them too.

143. However, some key risks remain. The system as a whole may fall short of the Tribunal's expectations in relation to the scale of partnership it set out in the likes of Wai 2358 in relation to freshwater. Decisions on the key proposals in relation to regional governance [Paper 2: Regional Governance refers] will play a key part in whether the system meets these expectations. Specific Treaty impacts analysis is provided in that paper.

144. Given the importance of the subject matter, it is likely that in the future the Tribunal will inquire into the new RM system. The Tribunal may well consider that elements of the new RM system should sit higher in the scale it has discussed in the likes of Wai 2358, including potentially control.

145. Officials consider there would likely be few instances that would meet the test for control in planning, due to significant public interest in all aspects of resource management and the interconnectedness of all parts of te taiao. For example, a particular water source in which Māori have the priority interest will be impacted by upstream activities and will have impacts downstream. Officials also consider that control or partnership approaches balanced toward the kaitiaki, rather than public interest, could still be provided for where appropriate (if SPA and NBA committees choose to accept the advice of iwi/hapū/Māori led sub-committees or advice provided directly by iwi/hapū/Māori groups).

146. 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.

147. Provision for the exercise of rangatiratanga by non-whakapapa-based groups is more limited than provision for iwi and hapū. These groups may continue to view their participation as inappropriately limited. Although in a different context, the Tribunal found in Te Whanau o Waipareira Report (Wai 414) that "non-tribal Māori groups may be entitled to special consideration in terms of the Treaty; that is to say it should not be assumed that they should be treated simply as another interest group under the Treaty's

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equal citizenship provisions"[17]. Officials consider that proposals such as engagement requirements on iwi and hapū representative organisations and SPA and NBA committees with Māori groups with rights and interests at place; and the proposed national entities cluster for the National Māori Entity, provide a level of participation for those groups over and above the equal citizenship provisions of Te Tiriti.

Impacts on addressing Māori freshwater rights and interests

Introduction

148. This section assesses the extent to which the advice contained in this paper:
    a. may contribute to addressing Māori freshwater rights and interests (FR&I); and / or
    b. may preclude options to address FR&I.[18]

149. This assessment should be read in conjunction with the FR&I assessment of the MOG #17 paper on regional governance [Paper 2: Regional Governance refers]. Parts of that assessment are referenced below.

150. This assessment is indicative only, [redacted]

151. It is important to note that the Crown has acknowledged[19] that:
    a. "Māori have rights and interests in water and geothermal resources"
    b. "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 care, protection, use, access and allocation, and/or charges or rentals for use"
    c. "no disposition or creation of property rights or interests without prior engagement with iwi".

152. [redacted]

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[17] Waitangi Tribunal (1998). *Te Whānau o Waipareira Report. P.* xxiv

[18] The government has provided several assurances that the RM reforms will not preclude any potential options to address FR&I:
- The accompanying paper to the NBA exposure draft stated that the draft 'does not preclude any options for addressing freshwater rights and interests and their consideration as part of the ongoing discussions with iwi, hapū, and Māori.' (Para 25)
- The 'Our future resource management system' discussion document reiterated that this assurance 'will continue to be the case in the current engagement process.' (p. 16)
- Ministers Parker and Allan have also reassured [redacted] that the RM reforms '[are] not intended to preclude any options that might be agreed as part of the freshwater rights and interests work programme' (21-M-00718).

[19] 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.

[20] [redacted]

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153.

154.

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[redacted]

Assessment

155. [redacted]

156. [redacted]

157. [redacted]

158. [redacted]

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[24]

[25]

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165. [redacted]

166. [redacted]

Māori land

167. [redacted]

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Appendix 1: Panel recommendations

Panel Recommendation	Summary of approach
The concept of 'Te Mana o te Taiao', should be introduced into the purpose of the Natural and Built Environments Act to recognise our shared environmental ethic.	Not addressed in this paper
Specific outcomes should be provided for 'tikanga Māori', including for the relationships of mana whenua with cultural landscapes.	Not addressed in this paper
The current Treaty clause should be changed so that decision-makers under the Act are required to 'give effect to' the principles of Te Tiriti o Waitangi.	Not addressed in this paper
A more effective strategic role for Māori in the system should be provided for, including representation of mana whenua on regional spatial planning and joint planning committees.	Not addressed in this paper
A National Māori Advisory Board should be established to monitor the performance of central and local government in giving effect to Te Tiriti and other functions identified in the report.	Addressed in this paper Proposals generally aligned with the recommendation
The current Mana Whakahono ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues.	Addressed in this paper Proposals generally aligned with the recommendation
The current legislative barriers to using the transfer of power provisions and joint management agreements should be removed and there should be a positive obligation on local authorities to investigate opportunities for their use.	Addressed in this paper Proposals generally aligned with the recommendation
The current definitions of the terms 'iwi authority' and 'tangata whenua' should be replaced with a new definition for 'mana whenua'.	Addressed in this paper Proposals **not** aligned with the recommendation
Provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest.	Addressed in this paper Proposals generally aligned with the recommendation
A national policy statement should be required on how the principles of Te Tiriti will be given effect through functions and powers exercised under the Act.	Not addressed in this paper
The funding and support options recommended in this chapter should be implemented.	Addressed in this paper Proposals generally aligned with the recommendation

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Options analysis – approach to terms and definitions

Mechanism:	Terms and definitions – overall approach
Functions:	Describe iwi/hapū/Māori participants (and their participatory rights) across the system
Expected impact of Māori Participation	a. support Māori participation provisions to be interpreted in accordance with the policy intent b. clear expectations for central government, local government, and others c. clarity and certainty for iwi/hapū/Māori.

OPTIONS – *see the working document for more explanation of how to frame up the options*	**ASSESSMENT CRITERIA**						
	Give effect to the principles of Te Tiriti o Waitangi[i]	**Uphold existing arrangements**[iiiii]	**Efficient**[iv]	**Effective**[v]	**Certainty**[vi]	**Equity**	**Summary Comment**
Option 1 Including a single overarching term such as 'mana whenua', or an alternative, and using that term where iwi authority or tangata whenua might otherwise be used (Panel's proposal)	May not be sufficient to protect specific rights and interests (but would depend on the specific definition and where that definition is used) – panel definition may provide for enhanced participation by hapū and other groups. Terms and definitions alone cannot give effect to the principles of te Tiriti **3/5**	Existing Takutai Moana rights; Treaty settlement arrangements and natural resource arrangements under the RMA will require separate decisions to ensure they are upheld, and this will be addressed through separate policy proposals in discussion with those parties. **N/A**	Does not improve efficiency as does not significantly improve clarity for decision-makers, nor does is the approach likely to reduce conflict regarding the exercise of mana whenua within the RM system **1/5**	An overarching (and inclusive) term is not the most effective way to provide for that Panel's intent of more inclusive participation. Nor will it provide clearer expectations for decision-makers except that participation should not be limited to iwi authorities **1/5**	Unlikely to provide more clarity than the status quo **1/5**	May promote equity in that groups whose participation is currently limited may be enhanced – however this largely depends on how the term is employed **3/5**	Little benefit beyond the status quo. Terms and definitions should not be considered policy choices in their own stead, but rather support the system to give effect to the policy intent of participation proposals. Not well aligned with proposed overall approach which establishes two primary engagement pathways.
Option 2 Including an overarching Māori participation principle or set of principles to set expectations for Māori participation across the system, in accordance with the Tiriti clause and Te Oranga o te Taiao	Principles (although dependent on what those principles are) could support the system to better give effect to the principles of te Tiriti **4/5** (note this is a 'best-case scenario score)	If a principle regarding settlement commitments was included, this could contribute to settlements being effectively upheld but it is considered it would not be sufficient on its own. **4/5** (note this is a best-case scenario score)	May hinder efficiency through extra layer of consideration for decision-makers - not specific to a particular role or function. However, may promote efficiency if principles improve decision-maker's understanding of responsibilities. Unlikely to provide more benefit than what will be achieved through the combination of TOOTT the Tiriti clause and specific provisions or guidance **3/5**	The combination of Te Oranga o te Taiao, te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system, will set sufficiently clear expectations. Principles are unlikely to add much to what is already provided. At worst, further principles may create unnecessary complexity. **2/5**	Principles may improve certainty for those with participation rights or engagement responsibilities (dependent on what those principles are), however combination of TOOTT, te Tiriti clause and specific Māori participation provisions should provide certainty without the need for principles **2/5**	If a principle specifically related to equity was included this could promote equity **4/5** (note this is a best-case scenario score)	No clear case for an overarching Māori participation principle or principles. The combination of Te Oranga o te Taiao, te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system, will set sufficiently clear expectations. At best, principles could support outcomes to be met, at worst, further principles may create unnecessary complexity.
Option 3 Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.	Use of specific terms more likely to support the recognition of specific rights and interests Again, the terms are only as useful as the provisions in which they will be applied **3/5 – 5/5** (depending on provisions)	Existing Takutai Moana rights; Treaty settlement arrangements and natural resource arrangements under the RMA will require separate decisions to ensure they are upheld, and this will be addressed through separate policy proposals in discussion with those parties. **N/A**	Use of most useful term for a situation likely to be an efficient approach Use of consistent terms where possible will also contribute to efficiency **4/5**	Terms designed in response to specific proposals likely to be effective in supporting accurate interpretation of those provisions, setting clear expectations, and providing clarity and certainty **5/5**	Specific terms likely to provide for highest degree of certainty among these options. Degree of certainty will also depend on how specific a term or definition is (which will be dictated by the policy intent) **4/5**	May promote equity through specifying rights and interest holders in the legislation where they have rights. Again, will be dictated by the policy intent. **3/5**	Best meets the criteria. Best fits with good legislative drafting principles - the use of specific terms and definitions are not considered policy choices in themselves, but rather legislative design tools, intended to support policy intent being given effect to in relation to 'who' choices throughout the system.
Recommendation: Option 3 Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.							

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Mechanism:	Terms and definitions – overall approach						
	Functions:	Describe iwi/hapū/Māori participants (and their participatory rights) across the system					
	Expected impact of Māori Participation	a. support Māori participation provisions to be interpreted in accordance with the policy intent b. clear expectations for central government, local government, and others c. clarity and certainty for iwi/hapū/Māori.					
OPTIONS – *see the working document for more explanation of how to frame up the options*	**ASSESSMENT CRITERIA**						
	Give effect to the principles of Te Tiriti o Waitangi[i]	**Uphold existing arrangements**[iiiii]	**Efficient**[iv]	**Effective**[v]	**Certainty**[vi]	**Equity**	**Summary Comment**
Caveats/Dependencies to call out: - the ability of all options to meet the criteria is largely directed by the underlying policy proposals to which they would be applied - None of the options will uphold settlement commitments in themselves, because they are generic policy solutions and do not specifically provide for PSGEs or Treaty settlement commitments							

[i] Does the option give effect to the principles of Te Tiriti o Waitangi, including:
- active protection, participation, and partnership
- protecting the rights and interests of iwi, hapū and Māori at each level of the system
- enabling iwi, hapū and Māori to exercise rangatiratanga and kaitiakitanga

[iii] Does the option uphold Treaty settlements, Takutai Moana rights and interests and other existing natural resource arrangements under the RMA

[iv] Is the option efficient (objective 5), including:
- balancing immediate timeliness with long-term, durable outcomes
- time and cost
- durability

[v] Is the option effective (objectives 3 and 5), including:
- can it be implemented
- will it help to address the problem and achieve objectives
- is accountability clear
- does it contribute to improved central and local government capability to effectively work with Māori
- does it support constructive relationships, in accordance with tikanga, within te ao Māori

[vi] Does the option provide certainty (including 'who' participates, and clear processes to resolve potential conflicts) (objectives 3 and 5) for:
- iwi, hapū and Māori
- decision-makers
- system users

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Annex B: National level (National Māori Entity & National Planning Framework development)

Purpose

1. This paper provides further advice (from in-principle agreements made at Ministerial Oversight Group (MOG) #11/12) about the National Māori Entity including its:
   a. functions
   b. powers
   c. form and composition
   d. appointments process.
2. It also provides further advice on the role of iwi/hapū/Māori in the development of the National Planning Framework (NPF).

Context

Status quo under the current system

3. The Resource Management Act 1991 (RMA) includes some brief provisions regarding the consideration of the principles of the Te Tiriti o Waitangi (Te Tiriti) and Māori interests regarding national direction. While the RMA expresses a need to 'take into account the principles of the Treaty of Waitangi', at times there is a lack of transparency and little oversight about whether this is being done. There is also no consistent and proactive monitoring of Te Tiriti performance in the Resource Management (RM) system.
4. There is no direct 'national' voice for Māori in the system, with participation at early stages of policy or plan development either non-existent or lacking. Direct engagement at-place or through the mechanisms outlined in section 46A (when setting national direction) often occurs when direction and early thinking has already been completed and does not provide for te ao Māori across all levels, and stages, of the system.

Resource Management Review Panel (The Panel)'s recommendations

5. In addition to the Panel's recommendations described in Annex A, the Panel recommended the establishment of a National Māori Advisory Board to monitor the performance of central and local government in giving effect to Te Tiriti and other functions including:
   a. participating in the development of Te Tiriti national direction
   b. advising central and local government on Te Tiriti matters
   c. maintaining records of mana whenua groups in the areas of local authorities.
6. The Panel did not provide guidance on the Board's form and composition or how appointments to membership should be made.

Assumptions

7. In addition to the previous in-principle MOG decisions (MOG #11/12), the following specific assumptions are made in approaching the National Māori Entity work:
   a. it will be more than an advisory body; it will have powers which enable it to undertake its functions and follow-up if groups do not accord to things within its remit

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b. it is not a 'one stop shop' for matters relating to Te Tiriti, Te Ao Māori or mātauranga Māori in the RM system, nor will seeking its advice replace any requirement for central or local government to engage at-place

c. it will maintain a national-level focus throughout its functions to ensure it does not unintentionally usurp the mana of iwi/hapū at-place.

Policy assessment criteria

8. In addition to the criteria outlined in Annex A, criteria specific to the options being considered for the National Māori Entity include:

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

   b. maintains clear independence from the government of the day.

Options considered

9. The following options were considered for inclusion. A summary of the analysis of these options are contained in Appendix 1.

Functions	
Option one: System Monitoring and Oversight	
1.1	monitoring of Te Tiriti performance of those who have RM functions or responsibilities [recommended by the Panel] through regular monitoring and cyclical national level summary reports which consider ways to address RM Tiriti issues of national importance and/or issues common to multiple regions
1.2	ad-hoc monitoring of Te Tiriti performance (outside of the scheduled cycle) when requested by persons participating in the RM system
1.3	maintenance of a nationwide record identifying mana whenua groups and assisting local authorities to identify who to engage with [recommended by the Panel].
Option two: Input to the NPF	
2.1	role of the National Māori Entity – either actively participating in or providing advice to NPF development
2.2	process for National Māori Entity input – either directly or by appointing members to provide technical input
2.3	scope of National Māori Entity input – either the full or specific sections of the NPF.
Option three: Input to the NPF Board of Inquiry	
3.1	decision-making power on appointment of Māori members
3.2	the opportunity to nominate members to be considered for appointment and can present at Board of Inquiry hearings (without the need for prior submission)
3.3	no role.
Option four: Advice to persons participating in the RM system	
4.1	providing education and training to central and local government about aspects of Te Tiriti and te ao Māori which relate to the RM system
4.2	providing advice to all persons participating in the RM system on policies, regulations, processes and methods that will best give effect to the principles of Te Tiriti [recommended by the Panel].

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Option five: Role in appointments to Independent Hearings Panels (IHP)	
5.1	the Chief Environment Court Judge (CECJ) consulting with the National Māori Entity when the Judge is making appointments to IHPs
5.2	having the opportunity to nominate people to the national pool for appointments
5.3	no role.
Option six: Role in dispute resolutions for SPA and NBA committee composition	
6.1	making determinations alongside the Local Government Commission (LGC) on composition arrangements if agreement cannot be reached (note that this is being considered further in MOG #17 Regional Governance paper)
6.2	providing advice to LGC when they are making determinations on composition
6.3	may act as a facilitator when requested by iwi/hapū/Māori at-place
6.4	no role.
Option seven: Role in dispute resolutions for appointments of iwi/hapū/Māori to SPA and NBA committees	
7.1	acting as a decision-maker in dispute resolutions
7.2	may act as a facilitator when requested by iwi/hapū/Māori at-place
7.3	no role.
Powers	
Option one: Powers limited to those which support delivery of its core functions	
1.1	to obtain information – to require the supply of information when groups refuse to provide it [relevant to the context of Te Tiriti monitoring and agreed monitoring frameworks]
1.2	ability to share relevant information with other agencies – such as Te Arawhiti, the Department of Internal Affairs (Local Government Branch) and Te Puni Kōkiri.
Option two: Powers to support core functions [included above] with an additional level of follow-up if groups do not accord to things within the Entity's remit	
2.1	can require response on monitoring/advice and recommendations [aligned with Panel recommendation]
2.2	can recommend Ministerial intervention when Te Tiriti performance monitoring identify significant issues
Form and Establishment	
Institution Type	
1	independent Crown Entity
2	independent Statutory Entity (with alignment to elements in the Crown Entities Act)
3	Statutory Board supported by a government department.
Composition	
1	partnership entity with both Māori and Crown nominated members
2	mostly Māori nominated entity with a couple of Crown members (like Te Mātāwai or the Waikato River Authority)
3	solely Māori nominated members.
Appointments process for National Māori Entity membership	
1	a traditional Cabinet Appointments and Honours Committee (APH)

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2	nominations from national organisations (such as, but not limited to, the New Zealand Māori Council, [redacted], Iwi Chairs Forum and Federation of Māori Authorities) who can appoint one or more members
3	a electoral college/nominating panel type process – enabling greater Māori self-identification of the process [similar to Te Ohu Kaimoana and Te Mātāwai]
4	a tikanga/kaupapa Māori approach – enabling full Māori self-determinations of the process.

Proposals

10. The establishment of a National Māori Entity is an opportunity to better deliver for, incorporate and recognise Māori interests and views at a national level – by providing certainty to iwi/hapū/Māori and all persons participating in the RM system.

11. Officials propose that the in-principle decisions made about the establishment of a National Māori Entity at MOG #11/12[1] are confirmed along with further decisions on functions, powers, form, composition and appointments processes which are considered to best enable the Entity to deliver on the wider Reform Objectives.

12. Proposals balance the need for clarity, durability and assurance with as little prescription as possible to enable the National Māori Entity to act independently (per MOG #11/12 agreement) and effectively. This will enable it to develop its own practices or areas of focus based on what it sees as the most effective way to support actors in the system to better give effect to the principles of Te Tiriti and provide greater recognition for te ao Māori, including mātauranga Māori.

13. In alignment with the Panel's advice, it is important that the National Māori Entity supports positive progress and continuous improvement throughout the Natural and Built Environments Act (NBA)/ Strategic Planning Act (SPA) system, as opposed to being adversarial. This has been reflected in all recommendations and proposals for the National Māori Entity's role.

The National Māori Entity could have a primary role in monitoring and assessing whether the RM system gives effect to the principles of Te Tiriti o Waitangi

14. To support positive progress and continuous improvement across the SPA/NBA system, officials propose that the National Māori Entity has a primary role in monitoring and assessing whether the RM system is giving effect to the principles of Te Tiriti by:

    a. regularly monitoring those who have RM functions or responsibilities

    b. completing ad hoc monitoring of Te Tiriti performance (outside of the typical cycle) if the Entity deems it necessary when requested by persons participating in the RM system

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

15. Officials note that those with RM functions or responsibilities, in the first instance, will primarily be central government[2] and local government and SPA and NBA committees (within each region). In time, the regional level could also include any groups who have been delegated decision-making powers, such as iwi/hapū.

[1] At MOG #11/12, the MOG agreed in-principle to establish a National Māori Entity, which will be set up independent from the Government of the day and have functions in system monitoring and oversight (including a specified role in monitoring Te Tiriti performance) and inputting to the NPF.

[2] In alignment with the definition of Public Service in section 10 of the Public Service Act 2020.

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16. Regular and/or ad-hoc monitoring may include things like whether:
    a. the right steps are being taken by decision-makers to best give effect to the principles of Te Tiriti within the system,
    b. system actors give effect to the principles of Te Tiriti and uphold Te Oranga o te Taiao across policies and plans,
    c. decision-making processes are enabling iwi/hapū/Māori at-place to be heard or involved in strategic level discussions (particularly for deliberations about freshwater rights and interests and setting limits and targets),
    d. agreed Mana Whakahono ā Rohe arrangements are being upheld and giving effect to Te Tiriti.
17. It is critical to note that any monitoring or assessment role that the National Māori Entity delivers in the RM system will not replace current requirements on central government to monitor its own performance in giving effect to the principles of Te Tiriti and upholding Treaty Settlements, Takutai Moana rights, and other existing agreements.
18. As monitoring and oversight will develop and change over time, only high-level requirements are proposed to be included in the NBA. It is proposed that the National Māori Entity:
    a. undertakes a regular cycle of monitoring where the Tiriti performance of those who have RM functions or responsibilities in each region and nationally (eg, central government agencies) are monitored at least once
    b. has a mechanism to review and either proceed with or decline ad-hoc monitoring requests to balance the risk of it becoming overloaded or being required to consider requests it does not regard as appropriate (similar to provisions currently held by the Waitangi Tribunal)
    c. reports on regular monitoring and will provide reports to the groups being monitored (and the Ministry for the Environment) and tables cyclical summary reports to Parliament
    d. makes monitoring (and responses) publicly available to ensure greater transparency and accountability in the process
    e. will establish its own confidentiality and information management processes to ensure it maintains confidentiality where needed and protects sensitive information, including mātauranga Māori
    f. hold initial training and/or wānanga as part of the monitoring process to ensure that all groups understand expectations and are supported to make positive progress before any monitoring begins. This could be done with Te Arawhiti and/or Te Puni Kōkiri for central government and in partnership with iwi/hapū/Māori at-place for local government.
19. There is a risk that that by monitoring Te Tiriti performance, the Entity could be perceived as prescribing how the principles of Te Tiriti are given effect to and applied at-place, thereby usurping the mana of iwi/hapū/Māori. To mitigate this, officials consider it critical to take an approach which ensures inclusivity from the outset, for example by encouraging iwi/hapū/Māori to lead (with the Entity) any training and/or wānanga before monitoring cycles (as referenced in paragraph 34f) and developing regional monitoring frameworks which are agreed at-place and reflect the values and mātauranga of iwi/hapū/Māori in that rohe.
20. Further advice will be provided on the details of the monitoring process, including how monitoring frameworks could be used to guide monitoring, the possible frequency of monitoring and high-level processes for how the Entity may complete the monitoring itself through the System Oversight and Monitoring delegated decisions paper. This will also

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include connections between the National Māori Entity and wider RM system monitoring and oversight.

Other system monitoring and oversight options were considered but are not recommended

21. The Panel proposed that the National Māori Entity could maintain records of mana whenua groups in the areas of local authorities and have a duty to assist local authorities and mana whenua to identify who to engage with on RM matters. This function is not recommended for the National Māori Entity due to it:

    a. being needed much more broadly across the whole scope of central and local government work (beyond the RM system and National Māori Entity)

    b. not aligning with other proposed National Māori Entity functions (risking it being perceived as a 'one stop shop' for advice on engagements)

    c. presenting a critical risk that the National Māori Entity could be viewed as making determinations about mandate / who to engage with at-place in this role (thereby usurping the mana of iwi/hapū/Māori at-place)

    d. being significantly resource intensive.

22. However, it will be important for this function to be performed in the new system. Alternative options could be to have a government agency or court (with a wide-reaching scope and view) resourced to manage and maintain existing directories of iwi, hapū and Māori organisations, such as Te Kāhui Māngai (currently hosted by Te Puni Kōkiri).

23. These alternatives will be explored further as part of a delegated decisions 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.

The National Māori Entity could have direct and wide-ranging input to the development of the National Planning Framework, with further opportunities for iwi/hapū/Māori participation in the process.

24. In seeking to better give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori at a national level, the National Māori Entity would provide beneficial early input to the NPF from a Māori perspective. It is proposed that the National Māori Entity:

    a. provides direct input to early policy development via engagement with the policy lead agency for the NPF

    b. has input covering all changes to the NPF

    c. has scope across the full NPF to ensure that it gives effect to the principles of Te Tiriti.

25. On balance with the other possible options, this is considered the best way to ensure wide-reaching Māori perspectives can be included in early NPF development while also ensuring the National Māori Entity retains its national level focus, system oversight and independence. Officials note that a likely role of the National Māori Entity in this space will be to ensure that there is enough flexibility in the NPF for localised knowledge to inform at-place implementation and/or action, as embodied by mātauranga Māori. Officials from the National Māori Entity and Ministry for the Environment will establish the details of how they will work together.

26. A key element of the NPF is a strengthened environmental limits and targets framework which will describe minimum levels of environmental health, help to manage cumulative effects of use and development, and provide a pathway for environmental improvement and restoration. If limits and targets are to be set at a national level (as they have been in the National Policy Statement for Freshwater Management 2020, the policy intent of which is likely to be carried into the first iteration NPF) and the system is to uphold Te Oranga o te Taiao, it is important that there is strong mātauranga Māori expertise inputting to this development. Officials do not consider it appropriate for the National

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Māori Entity to be the sole provider of mātauranga Māori expertise as it is outside the scope of its proposed functions (and likely associated membership skillsets) and risks superseding local/regional mātauranga by participating in this process. However, officials consider it would be beneficial for mātauranga Māori experts to be either contracted as a professional service or employed by the Ministry to provide this input. The details of this will be worked through by officials.

27. Ministers have agreed that the NPF must give effect to the principles of Te Tiriti in both its process and substance (MOG #2). An important part of that is the need for engagement with iwi/hapū/Māori at-place (along with other New Zealanders) and any input or advice from the National Māori Entity in NPF development will not replace the need for this engagement. Officials will ensure a process is established for engaging with iwi/hapū/Māori at-place for each iteration of the NPF. This addresses feedback from engagement with Post Settlement Governance Entities, such as Ngāi Tahu and Waikato Tainui, who questioned the role of the National Māori Entity in this context and how the views of iwi/hapū would be included in this process.

28. Depending on the first iteration NPF processes and timeframes agreed to in the MOG #17 NPF paper, an interim National Māori Entity could possibly be established to enable early input into this national-level policy development. Further advice will be provided following confirmation of this.

The National Māori Entity could have a role in nominating members for appointments to the NPF Board of Inquiry along with being able to present at hearings

29. While the MOG agreed in-principle that the National Māori Entity would have a role in appointing Māori members to the NPF Board of Inquiry, officials propose the Entity could have a broader role to enable it to participate widely, maintain its independence and support its system oversight role. It is proposed that the National Māori Entity:

    a. nominate members for appointment to the Board of Inquiry

    b. has the right to be heard at Board of Inquiry hearings (without the requirement to make prior submissions) – in alignment with the intent in section 50(3) of the RMA which applies to the Minister for the Environment.

30. The ability for the National Māori Entity to nominate members does not supersede the opportunity for other groups to put forward members, nor can nominees also be members of the National Māori Entity.

31. This change is proposed due to the potential conflict of interest if the National Māori Entity can directly appoint Māori members to the NPF Board of Inquiry and also be heard by this group.

The National Māori Entity could provide advice to all persons participating in the RM system on relevant Te Tiriti matters

32. Reflecting on the importance of improving the capacity and capability of system actors as well as the National Māori Entity not being perceived as the only source for advice about matters relating to Te Tiriti o Waitangi, te ao Māori and mātauranga Māori, the need to not usurp the mana of iwi/hapū/Māori at-place and ensure it can act autonomously, it is proposed that the National Māori Entity:

    a. can provide advice to persons participating in the RM system[3] on these matters (either proactively or on request)

    b. has mechanisms to review requests and either proceed with or decline requests for advice (similar to the Waitangi Tribunal)

[3] Persons participating in this context could refer to (but is not limited to) central and local government, SPA and NBA committees and iwi/hapū/Māori.

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c. has the ability to recover costs from those who requested advice at its discretion (to ensure that its time and resources are not unduly taken away from its core functions), but cannot recover costs for advice it provides proactively (with further detail to be provided on the cost recovery regime through delegated decisions).

d. provides education and training only in the context of Te Tiriti performance monitoring (paragraph 30 refers).

33. There is a risk that advice given by the National Māori Entity will be perceived as speaking on behalf of iwi/hapū/Māori at-place. In alignment with the proposals for inputting to NPF development, officials note that any advice provided by the National Māori Entity will not replace the need for direct engagement at-place and this will be clearly outlined in communications to all system actors.

34. The opportunity for the Entity to consider requests and/or require responses to requested advice could provide additional mechanisms to ensure this by enabling the Entity to assess the level of risk of said advice unintentionally usurping the mana of iwi/hapū/Māori at-place (and if it is too great, declining the request) or requiring responses to indicate how further engagement at-place has occurred.

35. This approach aligns with the Panel's recommendations and still ensures that persons participating in the RM system can seek and receive early input, advice and support at a national level. By including this as a set function, the National Māori Entity can continue to act at a national level and may support the removal of barriers or limitations which may reduce the incorporation of Māori perspectives in early policy or plan development processes.

The National Māori Entity could be consulted by the Chief Environment Court Judge when the Judge is making appointments to Independent Hearings Panels

36. There have been several previous agreements by the MOG and delegated Ministers on the IHP process. Key agreements relevant to the proposed National Māori Entity role in this process are that the MOG agreed that IHPs would be used as a mechanism in the NBA plan development process to ensure plans are robust (MOG #11/12) and that the CECJ will appoint IHP members [BRF-946 refers]. Further advice on hearing provisions and IHP appointments will be provided to delegated Ministers, this proposal below broadly align with said advice.

37. To best deliver its oversight and advice role and to ensure that the National Māori Entity is not acting on behalf of or usurping the mana of those regionally (by nominating members for appointment), it is proposed that the CECJ consult with the Entity when they are making appointments to IHPs. Members of the National Māori Entity and the CECJ will establish the details of how they can best engage in this process, although advice may focus on how to ensure that each IHP collectively has the skills, knowledge and experience required under the NBA [as agreed in BRF-946 item 21] while giving effect to the principles of Te Tiriti.

The National Māori Entity could have a non-determinative role in SPA and NBA committee composition and appointments dispute resolution processes

38. Officials propose that the National Māori Entity does not have a determinative role in any dispute resolution processes for SPA and NBA committee composition (determining the numbers of seats held by iwi/hapū/Māori or local government) or appointments. This is critically important to ensure the Entity retains a national-level focus and does not usurp the mana of iwi/hapū/Māori at-place or interfere with regional-level decision-making and/or relationships. It also aligns with feedback from regional engagement with iwi/hapū/Māori which highlighted that any decision-making powers should remain with mana whenua at-place, whether that be whānau, landowners, hapū and/or iwi.

39. Furthermore, if you consider the National Māori Entity's other functions and timeframes for establishing both itself, SPA and NBA committees, the increased resource and

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skillsets required in facilitation roles and the need to ensure the Entity is not overloaded from the outset, there are practical limitations on what additional support the National Māori Entity could realistically provide during the transition phase.

The National Māori Entity could have a range of powers, including those to enable it undertaking its functions and follow-up if groups do not accord to things within its remit.

40. The National Māori Entity needs to have powers which enable it to complete its functions (particularly for monitoring of Te Tiriti performance). While these powers may be resource intensive, without them the Entity may not be able to complete robust and accurate monitoring. Proposed powers include:

    a. requiring the supply of information for monitoring purposes if monitored groups refuse to do so (like the Parliamentary Commissioner for the Environment and Commerce Commission)

    b. the ability to share information with other agencies who may need to be made aware of actors wider Te Tiriti performance such as Te Arawhiti, Te Puni Kōkiri or the Department of Internal Affairs (Local Government branch) (like provisions being incorporated through the Commerce Amendment Bill).

41. Officials propose that the National Māori Entity is also given powers to follow-up if groups do not accord to things within its remit, including:

    a. requiring response to its recommendations on the monitoring of Te Tiriti performance

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

    c. recommending Ministerial intervention when Te Tiriti performance monitoring identifies significant issues.

42. Responses would be expected for any monitoring and recommendations provided, however clear thresholds would need to be established for the power to require responses for requested advice. To ensure a transparent and supportive process, it would be important that this reasoning is shared upfront and that parties mutually agree (noting that if groups do not agree, the Entity could refuse to proceed, per paragraph 31). There are two key areas where this report back mechanism could be particularly important, the first is where action or change is needed to ensure the system gives effect to the principles of Te Tiriti or where the Entity sees significant risk in its advice usurping the mana of iwi/hapū/Māori at-place and wants to ensure additional advice is sought.

43. There is a risk that these mechanisms could be seen as a deterrent from groups seeking input. However, this is intended to influence groups to consider changes and action themselves as opposed to being directive and could better encourage iterative feedback on substantive issues. This will also enable the National Māori Entity to participate in a way which supports positive progress and continuous improvement. Additional powers would need clear thresholds for use, this would be a part of the National Māori Entity's initial role in developing its approach to Tiriti performance monitoring.

44. Officials acknowledge the feedback received to date (from engagement with iwi/Māori regionally, [redacted] that there are enough Māori Advisory Groups and that any National Māori Entity should have a greater level of "teeth" or enforcement powers in fulfilling its role in the wider system.

45. On balance with the National Māori Entity's functions and scope, the proposed powers are considered to be adequate to give the Entity an appropriate amount of "teeth" in completing its role and responsibilities. The intention is for the National Māori Entity to have strong influence in the system, but not go into an enforcement or regulatory space.

46. Some of the proposed powers are utilised by other similar monitoring institutions, such as the Commerce Commission, and the Parliamentary Commissioner for the

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Environment. However, the National Māori Entity powers present an added follow-up opportunity and influence at a higher level by being able to recommend Ministerial intervention. Further detail on how the Minister responds to these recommendations will be provided in the System Oversight and Monitoring delegated decisions paper.

47. In further reflecting on the level of "teeth," there is benefit in additional consideration about the level of accountability or weight that system actors should have or give to reports and advice produced by the National Māori Entity. This will be provided in future advice.

In keeping with the MOG direction that the National Māori Entity should be set up independent from the Government of the day, it could be set up as an Independent Statutory Authority

48. A wide range of options were considered for the National Māori Entity's institution type. Given the previous MOG agreement to establish the National Māori Entity as independent from the Government of the day, officials have focused on options which enable the appropriate level of independence while also ensuring the Entity has strong durability, accountability and provides assurance to those participating in the RM system.

49. Other options, such as government departments/agencies, crown agents and autonomous crown entities, were considered but are not included because they will not provide sufficient independence from the Government of the day. A lack of independence would impact on the National Māori Entity's ability to act freely and critically in delivering its monitoring and advice functions (part of which will including monitoring central government). An Officer of Parliament (like the Parliamentary Commissioner for the Environment) was also considered as that would provide the highest level of independence in supporting the National Māori Entity to deliver its role and functions. This has not been included as officials do not consider the National Māori Entity, with its proposed functions and focus limited to the RM system, meets the scope required to become an Officer of Parliament.

50. While a statutory board supported by a government department may be more cost, time and resource efficient, this is outweighed by the risk that National Māori Entity members and staff (who would be employed by said Government department) would not be able to act truly independently.

51. Both for the above option and the option of an Independent Crown Entity, there is a significant risk (whether real or perceived) that these institution types may negatively impact the ability for the National Māori Entity to be established successfully and able to perform its intended role in the system. They present greater risks that those participating in the RM system (in particular, iwi/hapū/Māori, local and central government) may not fully understand the independence, scope and role of the Entity in working in an oversight role across the system.

52. It is proposed that the National Māori Entity is established as an Independent Statutory Authority (with clear links to the Crown Entities Act to provide strong levels of accountability and assurance, similar to Te Mātāwai). This option provides the highest (and perceived) level of independence from the Government of the day while balanced with the realities that the National Māori Entity will be established within the NBA and be Crown funded. With strong links to the Crown Entities Act there is greater assurance that the National Māori Entity will have built-in good governance mechanisms and retain high levels of accountability.

53. Enabling and ensuring the National Māori Entity can think critically, freely and innovatively across the system in supporting and influencing positive progress in giving effect to the principles of Te Tiriti is a sign of good faith and could further demonstrate the commitment of the Government in achieving this.

54. Officials will provide future advice on detailed aspects of the Crown Entities Act 2004 which could be utilised for the National Māori Entity and any other related matters. This

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will ensure that any changes made to the Crown Entities Act 2004 which are relevant to the proper functioning of the National Māori Entity, will automatically apply.

Solely Māori nominated members could make up the National Māori Entity

55. The National Māori Entity is proposed to be made up of solely Māori nominated members to enable greater levels of self-identification and participation in the Entity. We consider this will be the best way to enable the National Māori Entity to act independently from the Government of the day by being empowered to think and act freely and critically. It may encourage greater participation and support for the Entity's role from Māori at-place and provide greater assurances that the role of the Entity is different to existing structures.

56. This approach is also aligned with feedback received through engagement with iwi/hapū/Māori and other national level Māori groups which indicated strong support for the National Māori Entity to be solely Māori representative. Other options were considered but did not outweigh the benefits presented by having solely Māori nominated membership on the Entity. Officials also note that as the National Māori Entity will have a role in inputting to the NPF, it would be difficult for it to provide clearly independent advice if it also has Crown nominees in its membership.

57. Members of the National Māori Entity will not be direct representatives of iwi/hapū due to being appointed by an electoral college/nominating panel established through clusters. This means that the Entity is not a Treaty partner and does not have a role in speaking for iwi/hapū or the Crown in their Treaty partnership. This consideration has been incorporated throughout all proposed functions and/or approaches.

The National Māori Entity appointments process could be done through an electoral college/nominating panel process to enable greater self-identification by iwi/hapū/Māori at-place

58. There has been consistent feedback received that any membership to the National Māori Entity must ensure there is a clear line of accountability back to the awa, whenua and tangata whenua (which is currently missing in existing national body organisations). It is important that if the National Māori Entity is monitoring Te Tiriti performance, that it is established in a way which also gives effect to the principles of Te Tiriti.

59. An appointments process which enables clusters of iwi/hapū/Māori to put forward members to an electoral college/nominating panel type model is viewed as the best way to ensure a bottom-up approach and establish accountability lines between the national and regional levels. This process will likely best support the National Māori Entity to have higher trust and confidence of iwi/hapū/Māori at-place by enabling them to be involved throughout the process. This may also help to mitigate risks that the National Māori Entity may be perceived as usurping the mana of iwi/hapū/Māori at-place or acting on behalf of the Crown in completing its functions.

60. It is critical that appointments processes ensure clear assurances and accountability to the public and Parliament, given the National Māori Entity is intended to receive Crown funding. Any appointments process will need a level of prescription to ensure that there are clear mechanisms and assurances that members will collectively meet the criteria needed to deliver the National Māori Entity's role – this is likely to be the substantive role of the electoral college/nominating panel.

61. In keeping with current appointments processes used by other Independent Statutory Entities and/or Independent Crown Entities, it is intended that membership to the National Māori Entity will be confirmed by Ministers. While the electoral college/nominating panel will play a more substantive role in the nomination and appointments process, this is a key accountability mechanism which can ensure that membership has the appropriate skillsets and experience needed. This approach has similarities with Te Mātāwai and Te Ohu Kaimoana (who use clusters and an electoral-

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college type model) and the Climate Change Commission (who has a nominating committee).

62. Officials propose that clusters are inclusive and that regions are the basis for the iwi/hapū/Māori clusters, as this best aligns with the natural structure of the RM system and other governance arrangements being established – such as SPA and NBA committees. This further responds to feedback from engagement with iwi/hapū/Māori and which identified the need for feedback loops between the National Māori Entity and those 'at place'. This also aligns with feedback from regional engagement with iwi/hapū/Māori which highlighted the need for self-identification in the process and consideration for the urban make-up of rohe like Tāmaki Makaurau.

63. It is also proposed that there is an additional cluster representing existing national representative Māori organisations to help ensure a broad range of Māori interests and expertise are involved. The expertise and representation that national organisations have is important in ensuring the mechanisms operating at a national level enable greater inclusion and participation of all iwi/hapū/Māori. This approach somewhat aligns with feedback received from which supported appointments being made by existing national Māori organisations.

64. Further advice will be provided on the detailed appointments process, including the way that clusters are structured and organised (including whether this detail should be in secondary legislation or a Schedule to the NBA), the high-level process (including which Ministers approve final membership and what happens if they do not agree with the membership put forward), timeframes for implementation and dispute resolution processes.

Future advice will include detail on the National Māori Entity membership, implementation, and budget

65. Additional advice on Entity membership details (including numbers, criteria, fees, appointment terms, change management and removal processes), implementation (transition arrangements and timeframes), and assessments on budget estimates (referenced in Annex E) are closely related to decisions on the proposals above. Officials will provide this in future advice.

Treaty impact analysis

66. A full summary of the analysis of the Treaty impacts of the recommendations of the MOG #17 Roles for Māori paper as a whole are contained at Annex A. This is because the approach taken in this paper is supported by the approach taken through the other parts of the system.

Engagement

Agency

67. Ministry for the Environment officials have been working closely with officials at Te Kawa Mataaho Public Service Commission. Officials at Te Kawa Mataaho will brief the Minister for the Public Service on the proposals contained within this paper.

Iwi/Māori groups

68. There was consistent feedback from regional engagement with iwi/Māori and that the creation of a National Māori Entity of any form cannot disrupt and/or usurp the role, rights, and interests of iwi/hapū/Māori whānau at-place and should be independent. It was highlighted that decision-making powers should ultimately remain with the mana of the whenua at-place, whether that be whānau, landowners, hapū and/or iwi.

69. There were mixed opinions among iwi/hapū/Māori on whether a National Māori Entity should be established, with some feedback for and some against it. Several groups noted

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that there is no need for another advisory group, and that any new National Māori Entity should have teeth. [redacted] indicated the need for the National Māori Entity to have clear but limited roles that delivers functions which iwi/hapū/Māori cannot practically do at a regional level. [redacted] noted the need for a suite of tools (from information disclosure to enforcement mechanisms) which support the National Māori Entity in delivering its monitoring role.

70. Many ideas around the appointment process of the National Māori Entity were raised, including who would be involved and if iwi/hapū/Māori would be fairly represented. Some feedback noted that for the National Māori Entity to be Treaty compliant and in line with the UNDRIP, that membership needs to be mandated by iwi/hapū/Māori. Other feedback noted that a self-identification process should be employed for composition and take into consideration the urban make-up of rohe like Tāmaki Makaurau. [redacted] noted the value of having a Māori-led appointments process and the need for there to be clear accountability lines to regions. [redacted] indicated support for members to be appointed through existing national body organisations.

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Appendix 1 – Options Analysis: The National Māori Entity

	Criterion 1 [i]	Criterion 2 [ii]	Criterion 3 [iii]	Criterion 4 [iv]	Criterion 5 [v]	Criterion 6 [vi]
FUNCTIONS: Option 1 – System Oversight and Monitoring						
1.1 Monitor Te Tiriti o Waitangi performance of those who have RM functions or responsibilities through regular monitoring and produce cyclical national level summary reports	Could lead to greater awareness of how to better protect the rights and interests of iwi/hapū/Māori and support/influence positive change. Mitigate risk of Entity diminishing iwi/hapū/Māori ability to exercise rangatiratanga in outlining principles of Te Tiriti by jointly developing any monitoring frameworks at-place.	Mitigate risk of being overly prescriptive of Entity practices / processes by only setting high-level requirements (eg, groups to be monitored, overall approach to monitoring and frequency for completion).	Process likely to be time and resource intensive – setting frequency for completion could help resource allocation. Risk outweighed by likely benefits of completing monitoring at-place, including ensuring greater accountability lines/feedback loops with regions.	Mitigate risk that central / local government will not know how to give effect to the principles of Te Tiriti pre-monitoring by ensuring monitoring frameworks are co-developed (with iwi/hapū/Māori and local/central government actors) and education and training is an initial part in the process.	Mitigate risk that Entity may be seen as setting what "giving effect" to the principles of Te Tiriti means at a national-level (which is locally defined) by only setting high-level processes with monitoring frameworks to be developed at-place.	Mitigate potential risk of Entity's ndependence being questioned (due to Crown funding and establishment within NBA) by ensuring institution-type processes and reporting lines are as open and transparent as possible.
1.2 Ad-hoc monitoring of Te Tiriti performance (outside of the scheduled cycle) when requested by persons participating in the RM system			Mitigate risk of being overloaded by allowing Entity to review requests and decline as it sees fit.	Could provide greater assurance to iwi/hapū/Māori that mechanisms are in place to consider and identify significant issues (if they arise).	Mitigate risk of overstepping scope by ad hoc monitoring only happening when requested by regional/local actors.	
1.3 Maintenance of a nationwide record dentifying mana whenua groups and assisting local authorities with dentifying who to engage with	Risk that Entity may inadvertently impact ability for iwi/hapū/Māori to exercise rangatiratanga if default is for central/local government to ask Entity first (as opposed to those at-place).	Would limit Entity's ability to set own practices and processes. Risk Entity will be overloaded and perceived as 'one stop shop' for advice on engagements.	Time and resource intensive over long-term (given constant updates would be needed).	Could increase confusion of role as function does not align with other options being considered. Risk duplicating efforts as Te Puni Kōkiri hosts Te Kāhui Māngai. Risk that resource would be used wider than RM system and misinterpreted.	Significant risk that Entity will be perceived as making determinations on who has a mandate from wi/hapū/Māori by advising on 'who' to engage with (this is a role for the Māori Land Court).	Limit ability of Entity to act ndependently as free/innovative thinking limited by existing Crown/Court processes.
FUNCTIONS: Option 2 – Input to the National Planning Framework (NPF)						
2.1 Role of the National Māori Entity in NPF development						
2.1.1 Actively participate	Could provide greater influence and support for the NPF to give effect to the principles of Te Tiriti and incorporate te ao Māori from early stages.	Enable the Entity and MfE to establish their own practices to collaborate in the policy development process (to mitigate the risk of prescription)	Timing for 1st iteration NPF may not allow for Entity input (could establish an interim entity).	Could enable early and clear inclusion of Māori perspectives in development.	Mitigate risk of Entity being perceived as speaking on behalf of iwi/hapū/Māori by ensuring clear communication and providing mechanisms within process for Entity to escalate issues it identifies. Note that advice from the Entity does not replace any engagement with iwi/hapū/Māori at-place.	Mitigate risk of perception Entity works for central government by ensuring processes allow Entity to act freely, critically, and innovatively and by making advice publicly available (when/if appropriate/possible).
2.1.2 Provide advice	May be more difficult to incorporate advice if given at later stage in process, could be mitigated by Entity and MfE setting checkpoints to test thinking.		As above, regarding 1st iteration NPF input. May be less resource intensive but could reduce value or inclusion of Entity advice.	Could enable early input / inclusion of Māori perspectives in development but may be delayed if advice is not received until later in development.		
2.2 Process for the National Māori Entity to input to NPF development						
2.2.1 Direct input	N/A	Enables greater opportunity for wider membership representation in establishing its own practices and processes in the policy development process to work through with MfE.	Process could be streamlined to reduce resource intensiveness.	Could enhance extent of input, rather than being restricted to a particular area/skillset. Processes and timeframes could outline when direct input would end.	As above, risk and mitigations for engagement with iwi/hapū/Māori at-place.	As above, risk and mitigations for perception of working for central government.
2.2.2 Appoints members to provide technical input		Process to select members and set feedback loops could be Entity led. May be difficult for members giving technical input to establish best way to do so independently if sitting within MfE.	Required skillset may not align with broader criteria needed for Entity membership. Risk of not finding suitable members within timeframes.	Process could outline when direct input would end (broader question is whether technical input is needed in-house long-term).		Risk that technical members working with MfE staff may blur the line of independence and influence members ability to act freely/critically.
2.3 Scope of the National Māori Entity input						
2.3.1 Full NPF	Importance of giving effect to the principles of Te Tiriti o Waitangi and providing greater recognition of te ao Māori reaches across the full RM system and is not limited to specific areas. Would enable Entity to have greater oversight/input across all aspects of NPF.	Scope would have negligible impact on Entity's ability to establish its own practices and processes to give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori in NPF.	Timing for 1st iteration NPF may not allow full consideration – could provide comments/advice on full NPF (and carried aspects) and ensure full input in any future iterations. Could lead to a more durable NPF by having wide-reaching oversight from early stages.	Could provide greater certainty on Entity scope.	As above, risk and mitigations for engagement with iwi/hapū/Māori at-place.	Could increase ability of Entity to think and act freely, critically and innovatively – full scope could enhance ability to understand the wider interconnections.

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	Criterion 1 [i]	Criterion 2 [ii]	Criterion 3 [iii]	Criterion 4 [iv]	Criterion 5 [v]	Criterion 6 [vi]
2.3.2 Specific sections of NPF	Limits oversight of whether principles of Te Tiriti are being given effect across the whole NPF.		May lead to less durable outcomes as less guarantee/oversight from Tiriti perspective.	May add to complexity on what is in/out of Entity scope.		May limit ability to think/act freely and critically if input restricted.
FUNCTIONS: Option 3 – Appointments of Māori members to the NPF Board of Inquiry						
3.1 Make decisions on Māori member appointments	Could allow Entity to advocate for rights & interests of iwi/hapū/Māori at national-level – although limited to one appointee.	Process formally outlined, no ability to set own practices/processes.	Would enable Entity views to be represented in Board of Inquiry membership.	Add to certainty that there are appropriate levels of Māori participation on Board of Inquiry membership leading.	N/A – role is purely at a national-level. Iwi/hapū/Māori at regional / local levels will still be able to make submissions and present at hearings.	Risk that independence in decision-making limited by existing Crown processes.
3.2 Nominate members for appointment and be able to present at Board of Inquiry hearings (without the need for prior submission)	Could allow Entity to advocate for rights & interests of iwi/hapū/Māori further at national-level – with full Entity being able to be present at hearings.	Entity could set own practices/processes for nominations process *and* how/if it presents at Board of Inquiry hearings.	Ability of Entity to present at hearings could increase strength of hearing process (enabling input across all stages of development).	Could increase certainty that views of how NPF gives effect to the principles of Te Tiriti are heard across NPF process.		Entity would be able to act independently/provide free advice to Board of Inquiry (without membership on group).
3.3 No role	Risk in reducing oversight or opportunity to identify potential Te Tiriti issues early.	Could reduce risk of Entity being overloaded while in establishment.	N/A	Risk reducing oversight/assurance that NPF gives effect to principles of Te Tiriti.		N/A
FUNCTIONS: Option 4 – Advice to persons participating in the RM system						
4.1 Provide education and training to central and local government about aspects of Te Tiriti and te ao Māori which relate to the RM system	Could support better progress and general awareness with central government, local government and other actors participating in the RM system.	Risk that Entity will become overloaded from the outset.	Unlikely to deliver durable outcomes as scope of training could be limited. Cost and time intensive.	Risk that Entity could be seen as 'one stop shop'. Te Arawhiti currently provides central government training, risks duplicating efforts and blurring Entity's role.	Risk that the Entity will be perceived as making determinations on what Te Tiriti/te ao Māori means locally by providing training for regional and/or national-level actors.	Independence could be upheld.
4.2 Provide advice to persons participating in the RM system (proactively or on request)		Could develop own practices and processes through the advice it gives.	Mitigate risk of being overloaded by allowing Entity to review requests and decline as it sees fit and include mechanisms to recover costs (so that Entity time and resources are not unduly taken away from its core functions).	Could increase certainty by ensuring there are multiple mechanisms to ensure the system gives effect to the principles of Te Tiriti and greater recognition for Te Ao Māori iteratively.	Mitigate risk of Entity being perceived as speaking on behalf of iwi/hapū/Māori by ensuring clear expectations (including that advice does not replace the need for engagement at-place) and providing mechanisms to escalate any issues and/or require responses.	Mitigate risk of reduced independence by enabling Entity to review requests and decline if appropriate.
FUNCTIONS: Option 5 – Appointments to Independent Hearings Panels (IHP) *Note that the MOG has agreed that IHPs will be used as a mechanism to ensure plans are robust in the NBA plan development process and that delegated Ministers (MOG #14) agreed that the Chief Environment Court Judge will appoint IHP members [BRF-946 refers]. Further advice on hearings provisions and IHP appointments will be provided to delegated Ministers, although the options below align with the matters being considered in that paper.*						
5.1 Consulted by Chief Environment Court Judge when the Judge is making appointments to IHP's	Could enable rights & interests of iwi/hapū/Māori at national-level to be advocated for through strong IHP nominations/membership – although note this may be limited depending on whether consultation must be considered/incorporated. Could enhance ability for iwi/hapū/Māori to exercise rangatiratanga in nominating members for appointment from a regional level.	Entity would be able to establish own practices / processes with Judge but may be limited (to an extent) due to formality of process.	Unlikely to make a significant impact.	Could add to certainty that there are appropriate levels of Māori participation on IHPs leading to greater incorporation of Māori perspectives in hearings process.	Entity would not have a decision-making role so would not risk usurping the mana of iwi/hapū/Māori at-place or interfering with regional-level decision-making.	Risk that independence in decision-making limited by existing Crown processes, however advice can still be free and critical.
5.2 Nominate people to national pool for appointments	Could enable rights & interests of iwi/hapū/Māori at national-level to be advocated for through strong IHP nominations/membership – although note decision-making would not sit with the Entity. Could reduce ability of iwi/hapū/Māori to exercise rangatiratanga by nominating members from a national level (when the mana of iwi/hapū/Māori is at-place).	Entity could set own practices/processes for nominations.		Could support greater certainty that nomination pool has strong Māori membership in appointments process but may also blur/confuse the Entity's national-level oversight focus.	Hearing's process is to consider (in part) decisions directly impacting regions so there is a significant risk of the Entity overstepping its mark if it nominates people to that level.	Could act independently in nominating people to national pool.
5.3 No role	Risk reducing oversight or opportunity to identify potential issues regarding whether appointments to IHPs give effect to the principles of Te Tiriti.	Could reduce risk of Entity being overloaded while in establishment.	N/A	Risk reducing oversight/assurance that IHPs include Māori perspectives.	N/A	N/A

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	Criterion 1 [i]	Criterion 2 [ii]	Criterion 3 [iii]	Criterion 4 [iv]	Criterion 5 [v]	Criterion 6 [vi]
FUNCTIONS: Option 6 – Role in dispute resolutions for SPA and NBA committee composition *Note that the current proposed process is that if groups cannot agree to composition arrangements and specified timeframes pass, the Local Government Commission (LGC) will have a role in making final determinations.*						
6.1 Make determinations alongside the LGC	Could support LGC to ensure it enables appropriate participation and partnership at a national level. However, risks negatively impacting the ability of iwi/hapū/Māori to exercise rangatiratanga at-place (as appropriate levels of partnership and representation are locally determined).	Requiring Entity to have this role does not enable it to guide its own practices or processes. Risks overloading Entity given statutory timeframes.	May have a negative impact on the durability of arrangements or relationships at-place. Risk that it will take significant resource and may result in litigation if determinations are not supported.	Oversight role would be blurred if it made determinations alongside LGC as it could also monitor LGC in making determinations (as a public sector agency with responsibilities in the RM system).	Critical risk that the Entity will be overstepping it's national-level focus and usurp the mana of iwi/hapū/Māori at-place if it participates in regional decision-making and determinations on the level of regional/local representation.	Being involved in the dispute resolution/composition determination process, with specified timeframes which limit the ability to alter processes could significantly limit the Entity's ability to act freely, critically and innovatively.
6.2 Provide advice to LGC		Entity would be more likely to provide robust advice in timeframes required for process itself, given own establishment timeframes. Entity could fully develop its own practices and processes to give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori in the RM system through the advice it gives.	Likely to be minimally resource intensive, advice could be general and high-level with the opportunity to apply across multiple regions if required.	May provide greater clarity for LGC and others involved in the process, on how to give effect to the principles of Te Tiriti in decision-making processes. May provide greater certainty to wi/hapū/Māori that their views are being heard in dispute resolutions processes (note risk that Entity may be seen as making determinations on behalf of wi/hapū/Māori at-place).	Risk that the Entity will be perceived as usurping the mana of iwi/hapū/Māori at-place by advising LGC on levels of appropriate representation at a regional/local level – mitigate by ensuring advice is high-level, does not replace the need for LGC to speak with iwi/hapū/Māori at-place and ensure the Entity has the opportunity to decline giving this advice if it does not consider it appropriate. Could retain national-level focus if advice is *only* provided at a high-level and does not have a determinative role.	Entity could act independently with any advice it gives.
6.3 May act as a facilitator when requested by wi/hapū/Māori at-place	Could best support iwi/hapū/Māori in their ability to exercise rangatiratanga through process.	Significant likelihood and risk that Entity will be overloaded from the outset and unable to meaningfully support in this role while in an establishment phase – noting that setting up the Entity and SPA and NBA committee deliberations will coincide. Entity could fully develop its own practices and processes to best give effect to the principles of Te Tiriti through this role.	Would require considerable time and resource to be able to support appropriately/effectively at-place. Process could add to timeframes for finalising arrangements but could result in better and more durable decisions.	Could increase confusion about role as function does not align with other options being considered – may be more appropriate for another existing agency or court system to lead this. May increase certainty for iwi/hapū/Māori that there are dispute resolution mechanisms in place that provide a te ao Māori perspective – and can be utilised if wanted (however note that this is likely to come through a different avenue).	Risk that Entity could be perceived as overstepping its mark in regional-level decision-making – could mitigate by only participating in a support or advocacy role when formally asked by iwi/hapū/Māori at-place however there may be confusion regarding where this blurs into a decision-making/influencing space.	Entity could act independently in how it completes facilitation, although note that independence could be questioned as process is outlined in legislation.
6.4 No role	Risk that the principles of Te Tiriti may not be given effect to in the decision-making process (if there are not appropriate levels of tikanga/mātauranga Māori knowledge on LGC membership), however additional mechanisms being considered are likely to mitigate this.	Could reduce risk of Entity being overloaded, particularly given impact of statutory deadlines on process.	N/A	May reduce clarity for LGC and/or wi/hapū/Māori in process, however advocacy could come from another group.	Would not usurp the mana of iwi/hapū/Māori at-place or interfere with regional level decision-making.	N/A
FUNCTIONS: Option 7 – Role in dispute resolutions for appointments of iwi/hapū/Māori to SPA and NBA committees						
7.1 Make determinations	Although likely with the intention to improve/increase participation and partnership, significant risk that option would restrict ability of iwi/hapū/Māori to exercise rangatiratanga over appointments process if statutory timeframes pass.	Risks overloading Entity from outset given statutory timeframes would result n all disagreeing groups being considered at the same time.	May negatively impact durability of appointments process if iwi/hapū/Māori do not decide themselves – could lead to further dispute / litigation.	The Entity's oversight role would be blurred if it plays a role in making determinations but also monitors the SPA and NBA committee appointments process in the first round of regional performance monitoring.	Critical risk that the Entity will be usurping the mana of iwi/hapū/Māori at-place if it makes determinations on who should represent them (from a national level).	Making decisions in an established dispute resolution appointments process could significantly limit the Entity's ability to act freely, critically and innovatively.
7.2 May act as a facilitator when requested by wi/hapū/Māori at-place	Could best support iwi/hapū/Māori in ability to exercise rangatiratanga through dispute resolution process.	Significant likelihood and risk that Entity will be overloaded from the outset and unable to meaningfully support in this role while in an establishment phase – noting that setting up the Entity and SPA and NBA committee deliberations will coincide. Entity could fully develop its own practices and processes to best give effect to the principles of Te Tiriti through this role.	Would require considerable time and resource to be able to support appropriately/effectively at-place. Process could add to timeframes for finalising arrangements but may result in better and more durable decisions.	Could increase confusion about role as function does not align with other options being considered – may be more appropriate for another existing agency or court system to lead this. May increase certainty for iwi/hapū/Māori that there are dispute resolution mechanisms in that provide a te ao Māori perspective – and can be utilised if wanted (however note that this is likely to come through a different avenue).	Risk that Entity could be perceived as overstepping its mark in regional-level decision-making – could mitigate by only participating in a support or advocacy role when formally asked by iwi/hapū/Māori at-place, however there may be confusion regarding where this blurs into a decision-making/influencing space.	Entity could act independently in how it completes facilitation, although note that independence could be questioned as process is inherently outlined in legislation.
7.3 No role	Risk that iwi/hapū/Māori will not be able to participate, exercise rangatiratanga and act as a partner if appointments cannot be agreed to in statutory timeframes, however additional	Could reduce risk of Entity being overloaded, particularly given impact of statutory deadlines on process.	N/A	May reduce certainty on how disputes can be settled before final determination, although other mechanisms being considered are likely to mitigate this.	Would not usurp the mana of iwi/hapū/Māori at-place or interfere with regional level decision-making.	N/A

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	mechanisms being considered are likely to mitigate this.					
POWERS: Option 1 - Powers limited to those which support delivery of its core functions						
1.1 Powers to obtain information – to compel the provision of nformation when groups refuse to provide it	Entity having this power could better support it in protecting the rights and interests of iwi/hapū/Māori at the national level.	Entity could fully establish its own practices and processes in how it completes this process.	May be cost and time intensive, however establishing the process as supportive from the outset may reduce the risk of groups refusing to provide information and this is likely to be an uncommon scenario. Benefits of being able to complete monitoring and capture how groups are giving effect to the principles of Te Tiriti would outweigh costs.	Entity would have assurance that it has mechanisms available in the event it is unable to complete monitoring. Iwi/hapū/Māori may have added certainty that central/local government cannot withhold information relevant to dentifying their Tiriti performance.	Mitigate risk that powers could be used outside of the Entity scope (ie, to influence regional decision-making) by having clear processes in place to outline when power can/cannot be used.	Would enhance the ability of the Entity to act independently as can compel information from central and/or local government to complete its monitoring role.
1.2 Ability to share relevant information with other agencies	The Entity having this power could better support it in protecting the rights and interests of iwi/hapū/Māori at the national level by proactively progressing significant issues of concern to other relevant agencies (who can act further). Mitigate potential risk of Entity being perceived as stepping on rangatiratanga of those at-place by ensuring iwi/hapū/Māori support information sharing first.	Entity could fully establish its own practices and processes in how it completes this process.	Likely to be sustainable long-term and minimally resource intensive.	Central government, iwi/hapū/Māori and ocal actors may have added certainty that issues identified through Tiriti performance monitoring are advanced to appropriate groups if further consideration/awareness is warranted.	Mitigate risk that information is shared inappropriately with external actors by ensuring there are clear processes to manage confidentiality and information management processes, particularly with mātauranga Māori.	Would support the Entity to act independently and across all levels if it can share relevant information with other organisations.
POWERS: Option 2 - Powers to support core functions [included above] with an additional level of follow-up if groups do not accord to things within the National Māori Entity's remit						
2.1 Compel response on monitoring/advice and recommendations	Entity having this power could better support it in protecting the rights and interests of iwi/hapū/Māori at the national level.	Entity could fully establish its own practices and processes in how it completes this process.	Likely to be sustainable long-term and minimally resource intensive.	All involved groups would have assurance that full consideration will be given to monitoring/advice.	Unlikely to have any impact.	Would enhance the ability for the Entity to act independently as groups would be required to respond. Mitigate risk of reduced transparency by ensuring material is made publicly available (note that some aspects may not be appropriate to make publicly available and processes will be established to manage this).
2.2 Recommend Ministerial ntervention when Te Tiriti performance monitoring identify significant issues	Entity having this power could better support it in protecting the rights and interests of iwi/hapū/Māori at the national level. The process may be improved by having the ability to escalate significant issues to the kāwanatanga for consideration.	Entity could fully establish its own practices and processes in how it completes this process.	Likely to be sustainable long-term and not significantly resource intensive.	All involved groups (the Entity included) could have assurance they can follow-up/progress issues to higher levels when needed.	Mitigate risk that the Entity may be seen as usurping the mana of iwi/hapū/Māori by making determinations as to whether intervention may be needed by closely involving iwi/hapū/Māori throughout the monitoring process and any follow-ups.	Mitigate risk of reduced transparency by ensuring relevant material/requests are made publicly available.
FORM & ESTABLISHMENT: Institution Type						
Option 1: Independent Crown Entity (ICE)	Could give effect to the principles of Te Tiriti through processes, functions and powers.	Mitigate the risk that Entity may be overloaded long-term due to increased ministerial/government expectations by ensuring Entity scope and role is clear from the outset and has adequate mechanisms to assert independence when / if needed. Entity could fully establish its own practices and processes to give effect to the principles of Te Tiriti and greater recognition of te ao Māori.	Risk that Entity will be increasingly underfunded over time. Technical resource requirements (eg, finance, HR etc.) could be outsourced to another government department (as occurs with the Climate Change Commission and others).	Likely to increase certainty about level of national oversight of Te Tiriti performance and position of the Entity. Internal reporting/accountability lines could be clearer as they would be able to be established independently.	Unlikely to impact but could increase confidence that Entity is not intentionally or unintentionally usurping the mana of iwi/hapū/Māori at-place by not being seen as connected to a government department and/or ministers.	Independence could be supported due to ICEs being generally independent of government policy. Could further mitigate questions regarding level of independence (due to Crown funding) by utilising processes and reporting lines (ie, to parliament and/the public as opposed to government), although may be more difficult given perception of ICE.
Option 2: Independent Statutory Entity (with alignment to elements in the Crown Entities Act)			Risk that Entity will be increasingly underfunded over time. Technical resource requirements could be outsourced to another government department (as above). Mitigate risk that changes to Crown Entities Act may result in Entity provisions becoming out of date by ensuring areas are focused and changes are accounted for in NBA.			Independence could be greater as there is no prescription to align with government policy. As above regarding the risks and mitigation of questions about level of independence. Terminology at-place would likely enhance perception of independence.

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Option 3: Statutory Board supported by a Government Department	Risk that appointment processes prescribed in legislation will not uphold the principles of Te Tiriti by not enabling iwi/hapū/Māori to fully exercise rangatiratanga, participate or act as partners in the process.	Ability of Entity to establish its own practices and processes likely limited by constraints of working within a government department. Risk that Entity could become overloaded if government departments and/or ministers do not uphold ndependence and there are no mechanisms in place to manage or respond to increasing pressure.	May support Entity in having more durable funding long-term, however may reduce the effectiveness of outcomes sought as likely to have less buy-in or support from iwi/hapū/Māori at-place. Significant risk that perception of reduced independence and placement would negatively impact Entity's ability to deliver functions. May provide greater efficiencies in terms of technical resourcing requirements.	Lack of clarity on what government department would be appropriate to hold this function when scope includes both central and local government. Likely reduce certainty for Entity and other system actors to understand its clear position and role in delivering functions/powers. May add to Entity confusion on internal reporting mechanisms – if it does not have an independent Chief Executive to work with.	Unlikely to impact but may add to risk that Entity will have difficulty in ensuring regional feedback loops.	Significant risk that ability to act freely and critically in completing functions and/or powers may be limited if the Entity sits within a government department – particularly as relevant central government will be monitored in the process. Risk that the members and staff accountability/reporting lines will be blurred. - Unclear how reporting could be strongly aligned with parliament/the public if sitting within a government department which would be required to report to government on the Entity itself. - May be real (or perceived) risk that staff working for the Entity (if employed by government) cannot act independently. Risk that Entity will be put in a difficult situation if any powers need to be used against government department it sits within.
FORM & ESTABLISHMENT: Composition						
Option 1: partnership entity with both Māori and Crown nominated members	Membership of the kāwanatanga could promote equal partnership, participation and be a sign of good faith. However it may not be appropriate if this is not expressed across the entire governance system eg, at regional and local levels). Option may also reduce the ability for Māori nominated members to advocate for the protection of rights and interests openly/freely across the system.	Ability of Entity to establish its own practices and processes may be limited by Crown nominated membership/presence.	Process would likely require two appointment processes which may increase timeframes and resource requirements.	Could increase certainty that Crown is committed to and participating in the process. However the Entity is intended to provide a Māori perspective in the strategic levels of the system [per the Panel Review] which could be questioned by having Crown nominated membership.	May reduce membership of iwi/hapū/Māori (from regions) on the Entity by having Crown nominated members taking seats (no more than 50%), could lead to less assurance of the Entity's role/purpose.	Entity may be limited in ability to act freely and critically in completing functions and/or powers as the Crown (although not necessarily the members) will be a part of the monitoring process.
Option 2: mostly Māori nominated entity with a couple of Crown members	Membership of the kāwanatanga could be a sign of positive partnership and good faith. However, it may reduce the ability of Māori nominated members to advocate for the protection of rights openly / freely across the system.				May reduce membership of iwi/hapū/Māori (from regions) on the Entity by having Crown nominated members taking additional seats, could lead to less assurance of the Entity's role/purpose.	
Option 3: solely Māori nominated members	Enables the Entity to exercise strong levels of rangatiratanga and participation, and act freely in advocating for the protection of rights and interests across the system.	Entity would be freely open to establish ts own practices and processes in best giving effect to the principles of Te Tiriti and provide greater recognition of te ao Māori across the system.	A single appointments process could make appointments less time and resource intensive.	Could provide greater certainty that it is Māori, rather than Crown, perspectives being incorporated into early policy or plan development/advice and monitoring processes.	Perception of an entirely Māori represented Entity could enhance and improve lines of communication to ensure iwi/hapū/Māori understand the Entity's role and that it will not usurp the mana of those at-place.	Entity could have strong lines of independence and freedom of thought.
FORM & ESTABLISHMENT: Appointments process for National Māori Entity membership						
Option 1: traditional Cabinet Appointments and Honours Committee (APH)	Process itself wouldn't uphold principles of Te Tiriti – no participation or partnership for those outside of Government in the process. Would not enable Māori to exercise rangatiratanga at any point in the process.	Process may not deliver on Reform Objective 3 as the appointments process tself does not include greater recognition of te ao Māori.	Likely to result in most timely appointments process however, significant risk that it would not result in durable outcomes and may reduce effectiveness of Entity in doing its work/engaging in the regions.	Process would provide highest assurance for central government, but significantly reduce assurance, self-determination and/or self-identification for iwi/hapū/Māori. May increase uncertainty about whether members have appropriate skills/expertise to give effect to principles of Te Tiriti and provide greater recognition of te ao Māori in the RM system.	Significant risk of usurping the mana of iwi/hapū/Māori at-place by not including views from a regional level in the process – limits the ability for the Entity members to have clear feedback loops to regions.	Would risk the Entity not being independent from the outset, as the process is formally outlined by the Crown and decisions would be made solely by Government.

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Option 2: nominations from national organisations who can appoint one or more members	Would not enable iwi/hapū/Māori to exercise rangatiratanga over the process and would only include participation and/or partnership with those appointed by the kāwanatanga.	Connection to national organisations established by the kāwanatanga may not enable the Entity to best establish its own practices and processes to best deliver its objectives across the system.	Risk that outcomes would not be durable and may reduce the ability of the Entity to do its work/engage in the regions from the outset. Further risk that national organisations would not want to make such a determination.	May increase uncertainty about who the members are reporting to (the regions/public or national organisations/kāwanatanga) and their accountability lines. Process could reduce assurance of good governance through process as appointments would not have final checks to ensure membership has appropriate skillsets/membership if full process sits with national organisations.	National organisations are not mandated to make decisions on behalf of iwi/hapū/Māori at-place, option would not enable local or regional levels to be involved in the process. Would risk there not being clear feedback loops to regions unless specific processes are put in place to mitigate this.	National organisations are typically appointed by ministers and/or Government in their own appointments processes so the independence of the Entity could be questioned from the outset.
Option 3: a electoral college/nominating panel process	Would enable iwi/hapū/Māori to exercise rangatiratanga and participate in the appointments of members to the Entity. Would also enable a role (although limited) for the kāwanatanga in the process from a high-level oversight and ensuring good governance perspective.	Electoral college/nominating panel process would be open enough to establish their own practices and processes, although a level of prescription would be needed to support the process being more implementable and established in time to start delivering ts functions across the RM system.	May be resource intensive but likely to lead to more sustainable and durable outcomes as process and decisions can be influenced by those at place from outset.	Greater assurance by having additional checks and balances to ensure membership has appropriate skillsets and experience (through electoral college/nominating panel and final Ministerial approval). Mitigate risk of uncertainty about the process by setting high-level requirements – such as types of clusters, timeframes for implementation and dispute resolution processes etc.	Could enable greater accountability lines and feedback loops with iwi/hapū/Māori so there are open lines of communication to ensure the Entity does not unintentionally usurp the mana of those at-place.	Levels of Government participation in the process could vary – Entity independence could be supported by having any nominations/appointments come from those in the regions as opposed to through a formal Government mechanism. Mitigate risk that ministers will overstep electoral college/nominating panel and risk reducing self-determination and/or self-identification by establishing processes where Ministers can raise issues and/or share feedback on an iterative basis with electoral college/nominating panels pre-appointments.
Option 4: a tikanga/kaupapa Māori approach	Would strongly enable iwi/hapū/Māori ability to exercise rangatiratanga over the full appointments process for members to the Entity, although the kāwanatanga would have no role in the process.	Iwi/hapū/Māori would be freely open to establish their own practices and processes in appointing membership. Without a low level of prescription, there's a risk that the Entity may not be established in time to start delivering its functions.		May be uncertainty and reduced assurances on the process to establish groups (and how any disputes will be resolved) and membership generally – it s critical that membership has the necessary skills and expertise to deliver n the Entity's role.		Government would likely have no role in the process, enabling a strong level of independence from the outset.

[i] Criterion one: gives effect to the principles of Te Tiriti o Waitangi by:
- i. supporting active protection, participation and partnership
- ii. protecting the rights and interests of iwi, hapū and Māori at each level of the system
- iii. enabling iwi, hapū and Māori to exercise rangatiratanga and kaitiakitanga

[ii] Criterion two: is effective (Objectives 3 and 5) by:
- i. being implementable eg, by ensuring the Entity is not overloaded (with functions and/or expectations) from the outset
- ii. enabling the Entity to establish its own practices and processes to best give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori in the RM system
- iii. helping it to address the problem and achieve the objectives

[iii] Criterion three: is efficient (Objective 5) by:
- i. balancing immediate timeliness with long-term, durable outcomes
- ii. being sustainable in terms of cost and time

[iv] Criterion four: provides certainty to all parties involved by:
- i. enabling national-level oversight of Te Tiriti performance in the RM system and resulting clarity about how to give effect to the principles of Te Tiriti
- ii. enhancing early input into national environmental policy from a Māori perspective (in addition to engagement with iwi/hapū/Māori at-place)

[v] Criterion five: does not usurp the mana of iwi/hapū/Māori at-place or interfere with regional-level decision-making by:
- i. maintaining a national-level focus, with advice which does not replace direct engagement between iwi, hapū and Māori and central/local government
- ii. not influencing or making determinations on local or regional-level decisions which it may ultimately be monitoring
- iii. only participating in or supporting local or regional-level decisions or relationships when requested by iwi/hapū/Māori at-place
- iv. not negatively impacting Crown responsibilities provided through Treaty settlements and other agreements

[vi] Criterion six: maintains clear independence from the Government of the day by:
- i. having open and transparent reporting lines (eg, making material publicly available where appropriate)
- ii. being empowered to think and act freely, critically, and innovatively

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Annex C: Roles for Māori at the regional governance level

Purpose

1. This Annex must be read after Paper 1: Regional Governance and decision-making in the new resource management system (Paper 1: Regional Governance) which seeks decisions on the design of Regional Governance arrangements. The recommendations of this paper are contingent on the recommendations of Paper Y: Regional Governance being agreed.

2. This paper provides advice on:

   a. Part 1: Māori roles in regional governance

   b. Part 2: Treaty Partnership Entities and recommends these are not pursued further.

   Both aspects of this paper link to recommendations in Annex A, Annex E and (Paper 1: Regional Governance).

Context

Status quo under the current system

3. Under the Resource Management Act 1991, Māori involvement has tended to be in the later stages of RM processes (consenting), rather than at the strategic end (plan development and approval). Where they have been involved, this has mainly been through Treaty settlement arrangements.

Resource Management Review Panel (the Panel)'s recommendations

4. In addition to the Panel's recommendations described in Annex A, The Panel proposed mana whenua membership on Regional Spatial Strategies (RSSs) and Natural and Built Environment Act (NBA) plan committees.

5. The Panel did not make recommendations on how mana whenua representatives should be appointed to NBA and Strategic Planning Act (SPA) committees. They did however say selection processes should not unduly delay the development of spatial strategies and plans. They suggested fixed timeframes and 'circuit breakers' embedded into the process could be one method for ensuring this does not occur.

6. The Panel did not propose a specific mechanism for Māori participation in the plan-development process, outside of inclusion of mana whenua in NBA and SPA committees. They did highlight a lack of clear 'strategic' level engagement and a need to bring engagement up to the plan-development level.

Previous Ministerial Oversight Group decisions

7. Ministers have noted that further advice will be provided on the matter of who participates in the RM system, including:

   a. identifying and recording who makes Māori appointments to SPA and NBA committees

   b. whether legislation should set appointments processes or enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process).

8. At MOG #12 Ministers agreed that "Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements". At that time only limited

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analysis had been undertaken on the proposal and feedback had not yet been sought from iwi/hapū/Māori.

9. Ministers were also provided brief advice at MOG #12 on the potential for Treaty Partnership Entities (committees) to be used to enable iwi/hapū/Māori who exercise rangatiratanga and kaitiakitanga over resources at the local level to influence the content of plans and regional spatial strategies. No direction was sought from Ministers on that matter at MOG #12.

PART 1: ROLES FOR MĀORI IN GOVERNANCE

10. Under the new RM system, SPA and NBA committees are proposed to be established to oversee the development of and approve the NBA plans and RSSs for the region. These committees will include Māori members to represent the interests of iwi, hapū and Māori.

11. Another MOG #17 paper, Paper 1: Regional Governance, seeks agreement to the key features of regional governance and decision-making by committees for the regional spatial strategies under the SPA, and plans under the NBA. That paper provides advice on:

    a. functions and form

    b. composition and appointments

    c. decision-making

    d. resourcing the committees

    e. cross-cutting issues and other matters.

12. This annex assumes that the recommendations in Paper 1: Regional Governance have been agreed. This annex and provides additional detail who will be proactively contacted at certain points in the process, other opportunities for Māori to be part of the decisions on regional governance arrangements and what is required to make the proposals successful.

13. The establishment of a regional layer of decision-making, where the many must be represented by the few, 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.

Options considered

Who participates in composition processes and how

14. Officials have considered the following options in relation to who represents Māori on SPA and NBA committees and how they will be appointed:

    a. **Option 1 (recommended):** Iwi and hapū representative organisations are identified in legislation as the entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies. Iwi and hapū representative organisations and appointing bodies have a requirement to demonstrate wider engagement with groups at place.

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b. **Option 2:** Requirement to form Mana Whakahaere Councils which will be identified in legislation as entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies (although the intention is for the Mana Whakahaere Councils to also be appointing bodies).

This option is inspired by the proposal from [redacted] Mana whakahaere councils would include "iwi/hapū (inclusive of Post Settlement Governance Entity (PSGEs)), ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource". The mana whakahaere council would run its own processes for composition discussions and appointments. The committee would provide a forum for appointee accountability. It would also have a number of other functions in the system relating to who participates, including in plan development, consenting, and monitoring.

c. **Option 3:** Iwi and hapū representative organisations are identified in legislation as entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies.

d. **Option 4:** Open tikanga-based processes used to determine who engages in discussions on composition and who identifies appointing bodies. Iwi/hapū/Māori will decide who participates in these discussions with minimal statutory prescription.

15. Analysis of these options is provided at Appendix 1 of this Annex.

Proposals

Māori participation in composition and appointment processes to SPA and NBA committees

16. This paper's proposal is based on Option 1, and is described as follows:

a. Iwi and hapū representative organisations are identified in legislation as the entities to be engaged to commence discussions on composition

b. Iwi and hapū representative entities must engage with their members and other Māori entities representing rights and interests at place[1] to agree composition and identify appointing bodies

c. appointing bodies that make appointments of Māori members to SPA and NBA committees must engage with people at place in making appointments

d. officials do not anticipate the need to create a new entity where iwi and hapū act together to make appointments. An existing Māori entity could be recorded as the appointing body, noting that it will work together with other entities using processes agreed outside the NBA/SPA framework to make appointments and removals.

e. while appointing bodies need to be a legal entity of some form, appointing bodies may also be collectives of iwi/hapū representative organisations or other representative organisations without the requirement for them to form a new entity as a vehicle for making appointments.

[1] The term 'at place' is first used and discussed in Annex A:. Māori entities representing rights and interests may include marae-based groups, Māori landowners, whānau, mātāwaka groups or other communities of interest. Decisions on how to define this will be sought through delegate decisions.

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17. In coming to a recommended approach, the Crown has a responsibility to consider which groups should be represented in terms of where the relevant interest lies and needs to:

    a. consider its obligations under Article II of te Tiriti in how rangatiratanga is appropriately provided for and consideration of kaitiaki relationships with taonga, and also that the Crown consider its broader kawanatanga obligations

    b. recognise its duty of active protection where this is needed and considers its obligations under existing Treaty settlements

    c. provide clear processes and certainty for all parties

    d. set up processes that avoids and/or resolves conflict.

18. Officials consider this proposal provides for inclusion and flexibility in how Māori are represented in composition discussions and appointment processes, while also providing transparency around how the formal legislative process will be initiated. It also provides an opportunity for a range of Māori entities to be involved in appointment processes and a clear starting point for composition discussions.

19. It also seeks to recognise the variety of potential appointing bodies by clearly enabling other Māori entities to be the appointing bodies if that is what the relevant iwi, hapū and Māori think is the best way.

20. Officials consider this proposed approach strikes an appropriate balance that provides for iwi and hapū representative organisations (including PSGEs) to lead the conversations about composition and appointment processes, while also clarifying:

    a. iwi and hapū representative organisations are not the default appointing bodies, and

    b. genuine engagement with their members and other Māori entities is expected to occur before a decision on composition and appoints are reached.

    It is also important to consider the other roles for Māori in the system as set out across the suite of annexes attached to this paper, and in particular Annex A.

The decisions in this paper and Paper 1: Governance have implications for some Treaty settlements that are being worked through

21. The new system will change the decision-maker on planning documents from local authorities to NBA and SPA committees. Where existing Treaty settlement mechanisms, or mechanisms for natural resource arrangements under the RMA, enable or provide for joint development of regional and district planning documents, specific arrangements will need to be provided for in that particular place.

22. To ensure this, MFE officials (supported by Te Arawhiti) are exploring a number of policy solutions (mechanisms) in discussion with PSGEs and affected entities. These may include options for direct representation of those parties on NBA or SPA committees or for direct input into the decision-making processes of those committees.

23. These discussions are being undertaken as part of a separate process looking at options on how to uphold Treaty settlements and existing natural resource arrangements under the RMA in the future system; and decisions on this have been delegated to a sub-set of Ministers [refer to MOG 15, Paper 2 (Critical Issues and Delegated Decisions), Rec 52].

24. The policy proposals in this Paper have not assessed or provided solutions for how these obligations will be upheld. This process will take place separately and is likely to result in amendments to Treaty settlements and legislation and may require separate statutory provisions for existing arrangements.

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25. It is possible some further decisions may also be required in respect of the NBA and SPA to ensure these obligations can be provided for. It may also mean that in particular regions there are additional policy proposals in relation to plan making processes and NBA or SPA committees, which will be sought through delegated decisions, and which will complement and add to the policy proposals in this paper.

The approach recommended in this paper is different to the approach proposed by [redacted]

26. Despite the flexibility of the proposed approach, officials recognise that this approach is different to the mana whakahaere proposal presented by [redacted] similar to the approach outlined in Option 3) and is not as open as they would like. Officials consider that the lack of certainty around who will lead the process and the potential for the approach to undermine Treaty settlement arrangements, and other arrangements established under the RMA, are key risks to the mana whakahaere approach.

27. The risk to Treaty settlements and other existing arrangements under the RMA under the mana whakahaere approach is that iwi and hapū representative organisations (including PSGEs) will not be leading the discussions on composition and appointment processes. This means there is a chance that their arrangements will not be appropriately factored in during the early phases of discussions on composition and appointing bodies. Furthermore, in regions where there are multiple PSGEs with arrangements, it should be ensured that all PSGEs are clearly brought into the discussions and their participation is not inappropriately limited by other Māori groups.

28. However, officials agree with [redacted] that it will be important for all Māori in the region to have to opportunity to understand and explore:

    a. the new system

    b. the role for Māori in NBA and SPA committees; and

    c. how the process will work in their region.

29. Therefore, as part of the mitigations, officials propose that the Crown communicate the changes to the system widely to Māori as part of its transition and implementation planning. This approach will be in addition to the legislated requirement for iwi and hapū representative organisations to consult with other Māori entities on the composition and appointment process.

30. Iwi and hapū representative organisations will be required to maintain a record of engagement and make this record publicly available. This will help provide transparency about robust engagement and involvement in appointment processes.

Technical requirements

31. The NBA and SPA will provide for appointed member accountability through appointment and removal by appointing bodies. While not required in the legislation, the proposal does not preclude the creation of regional fora to support appointee accountability, help reach agreed positions, and resolve disagreements.

32. Officials propose that the legislation would not prescribe appointment processes but would include the requirement for appointing bodies to be enduring and capable of developing and executing their own appointment and removal processes in line with their own rules.

Funding and implementation support is a key dependency for this proposal to work

33. Funding and support for iwi and hapū representative organisations will be required for them to effectively lead processes to determine composition and appointing bodies. Funding and support are particularly important for the initial establishment of the SPA

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and NBA committees in each region because it will require new ways of working within te ao Māori and with local authorities. This means that new processes and relationships are being developed and if this phase goes well, it sets the region up positively for the ongoing implementation of the reforms. If the transition and implementation phase is not appropriately supported, it increases the risk that the SPA and NBA committees will not be considered legitimate decision-making bodies.

34. It is vital that central government provides funding to ensure these processes are efficient and provide iwi and hapū access to resourcing that ensures all groups across the motu have the same opportunity to organise and participate to:

    a. agree the composition and appointment processes for Māori members on SPA and NBA committees and

    b. run those appointment processes as agreed.

35. As noted above, officials propose that central government take proactive steps to engage with iwi, hapū and Māori in the regions before composition and appointment discussions begin to ensure iwi, hapū and Māori understand their role in these processes and have sufficient time to decide how they will organise in each region and the processes they will use to determine their representatives. This engagement could take the form of regional hui and would also include explaining the obligation of iwi and hapū organisations to engage with other Māori entities.

36. Once appointments are made, the Māori members on SPA and NBA committees will require ongoing funding and resources to support them in their role on the committee and to ensure that they maintain their accountability back to the people they represent. This is particularly important when many iwi and hapū are being represented by a few Māori members. Without this support and resources these Māori members will not be able to effectively maintain their role on the SPA and NBA committees, undermining the legitimacy of the committee. This funding recognises that the local government and central government (for the SPA only) representatives will have funding and infrastructure to support them to meet their obligations and ensure they are accountable while the Māori members will not.

37. [redacted]

Dispute resolution and circuit-breakers

38. With good implementation and transition support, officials consider that many regions will successfully establish their SPA and NBA committees. However, there may be cases where additional dispute resolution procedures are required.

39. Paper 1: Regional Governance sets out dispute resolution procedures and circuit-breakers to be used if there are disputes in relation to composition of SPA and NBA committees.

40. However, there is a strong case for additional dispute resolution and circuit breaker processes to support iwi, hapū and Māori to determine their regional representation structures that will become appointing bodies to SPA/NBA committees.

41. Work is underway to determine the best approach and design of these dispute resolution and circuit breaker processes. However, initial analysis suggests that use of alternative dispute resolution methods, such as facilitation, are essential components of any circuit breaker process.

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42. Officials continue to explore the legislative requirements of the dispute resolution methods and whether these would be supported by formal circuit-breaker/decision-making mechanisms to resolve disputes.

43. Options for circuit-breakers that are being considered are:

    a. **Option 1:** facilitation only – no additional circuit-breaker outside of the process proposed through Paper 1: Regional Governance

    b. **Option 2:** facilitation, moving to decision by a Panel of experts in matters of Māori representation (eg, current and former Māori Land Court judges or Waitangi Tribunal members or Panel members nominated by the groups party to the dispute)

    c. **Option 3:** facilitation, moving to a decision by a Minister or Ministers (eg, Minister for Crown-Māori relations and the Minister for Māori Development

    d. **Option 4:** facilitation, with the Māori Land Court serving as the arbiter for resolving disputes (noting this would likely require amendment to Te Ture Whenua Māori Act 1993).

44. Officials are also considering whether it is appropriate to use the circuit breakers in other areas where Māori representation disputes may arise, such as in relation to appointments to the National Māori Entity.

45. This paper seeks agreement to delegate decisions on dispute resolution processes (including facilitation) and circuit breakers to the Minister for the Environment, Minister for Māori Development, Associate Minister for the Environment (Hon Kiri Allan), and Minister for Māori Crown Relations.

Secretariat

46. Paper 1: Regional Governance contains the key recommendations and content related to the SPA and NBA secretariats. The SPA and NBA secretariat would be responsible for RSS and NBA plan drafting and ensuring the joint committee has administrative support. In summary, the key proposals are that:

    a. the SPA and NBA committees will appoint a Secretariat director (statutory position)

    b. the director will consult with the SPA/NBA committee on a resourcing plan for the secretariat to consider the expertise and skills available across the groups represented on the SPA or NBA committee

    c. The director will employ/contract/second/coordinate secretariat staff (including secondments from Māori entities)

    d. there will be a duty for the director to ensure advice is informed by mātauranga Māori, te ao Māori, and Māori engagement expertise.

47. The approach set out above does not provide specific direct appointments to the secretariat by Māori members on SPA/NBA committees or Māori appointing bodies, which is something that some Treaty partners indicated as their preference during our engagement with them. This preference for direct appointments is due to the significant role that the drafting processes play in the design and tone of the eventual plan or strategy.

48. 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 strategies and plans and can also exercise responsibilities as an employer. However, specific arrangements may need to

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be provided for as part of the secretariat resourcing or drafting processes where it is necessary to uphold a Treaty settlement in a region.

49. The intention of the proposals agreed through Paper 1: Regional Governance is that there will be te ao Māori expertise on the secretariats through the combination of the provisions describe at paragraph 46 above.

50. There is more work to do to ensure that the proposals in Paper 1: Regional Governance will adequately provide for Māori expertise on the secretariat and whether additional tools may be required to achieve the desired outcomes

51. Agreement is sought to delegate decisions on further details on the secretariat, including legislative and non-legislative measures to support the role for Māori in the secretariat, to the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan)

PART 2: TREATY PARTNERSHIP ENTITIES

52. At MOG #11/12 Ministers agreed that "Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements". At that time only limited analysis had been undertaken on the proposal and feedback had not yet been sought from iwi/hapū/Māori. However, the broad concept was a contributing or sub-committee structure that fed directly into Joint Committees as a means of upholding existing arrangements and Treaty settlements.

53. Ministers were also provided brief advice at MOG #11/12 on the potential for Treaty Partnership Entities to be used to enable iwi/hapū/Māori who exercise rangatiratanga and kaitiakitanga over resources at the local level to influence the content of plans and regional spatial strategies. No direction was sought from Ministers on that matter at MOG #12.

Options considered

54. The following options were considered in the preparation of advice:

    a. Pursue Treaty Partnership Entities as proposed at MOG #11/12

    b. Do not progress the concept of Treaty Partnership Entities for inclusion in the SPA and NBA.

Proposal

55. Officials do not propose to pursue Treaty partnership entities for inclusion in the SPA and NBA Bills.

Treaty Partnership Entities will not provide meaningful help to transition Treaty settlements and other existing arrangements

56. Further analysis has demonstrated Treaty partnership entities are likely to have little utility in upholding Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements. The mechanism is not equivalent to any of those arrangements. It has caused confusion with PSGEs and others who are seeing it as being pitched as the solution to carrying over the participation arrangements. Officials consider, at best, the mechanism might offer a pathway to carry over some aspects of some settlements, but it would also likely require additional legislative provisions to bring legitimacy to this approach.

57. In addition, some iwi have signalled they do not see a Treaty Partnership Entity as forming any part of a package of measures to carry over their Treaty settlement arrangements. Waikato-Tainui, for example, have clearly stated their opposition to the

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establishment of a Treaty Partnership Entity in relation to transitioning the Waikato River arrangements.

58. Officials recommend that Treaty Partnership Entities are no longer pursued as a mechanism to support SPA and NBA committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements.

59. Notwithstanding that recommendation, officials note that upholding some Treaty settlement arrangements and natural resource arrangements under the RMA may require a direct relationship between the relevant entity and the SPA and NBA committees.

Enabling iwi/hapū/Māori at local level to have input into plan preparation

60. Officials have explored the potential to provide for Treaty partnership entities as a mechanism to enable iwi/hapū/Māori input into plan preparation and have concluded they are unnecessary.

61. The MOG have been asked to agree through Paper 1: Regional Governance that the SPA and NBA committees can, at their discretion, appoint sub-committees to assist the committees to develop plan content relating to inter-regional and sub-regional matters. That paper notes that sub-committees could also be established to provide for collaborative planning processes with Māori for specific plan or RSS content such as the inclusion of cultural landscapes or content on specific waterways. There is proposed to be no limitation on who the SPA and NBA committees can appoint to sub-committees.

62. Further, there is the potential through other mechanisms described in this suite of Annexes, including Engagement Agreements and enhanced Mana Whakahono ā Rohe arrangements, for iwi/hapū/Māori at the local level to request direct relationships with relevant SPA and NBA committees.

Treaty impact analysis

63. A full summary of the analysis of the Treaty impacts of the recommendations of the MOG #17 Roles for Māori paper are contained at Annex A. This is because the approach taken in this annex is impacted by the approach taken through the other parts of the system.

64. Many existing natural resource arrangements under the RMA, or through Treaty settlements have links to, or direct roles in plan-making under the RMA. If the policy approaches in relation to the composition of NBA and SPA committees, as proposed in this paper, were adopted without allowing for particular solutions for those arrangements to be determined, there is a risk they would not be upheld. In particular, it could have the unintended effect of undermining those arrangements and the Crown's Treaty commitments and settlement redress agreed with those groups.

65. To address this, as discussed above at paragraphs 21 to 25 , a separate process is underway, working with PSGEs and entities with existing natural resource arrangements under the RMA, for how these arrangements will be upheld in the new system. These matters are subject to separate delegated decisions which may require for specific arrangements in particular places, which are intended to sit alongside, and complement, the policy proposals in this paper.

Engagement

Local government

66. The Local Government Steering Group discussed the detail of the proposals regarding the role of Māori in the new system on 11 March 2022. The Local Government Steering Group (LGSG) has made general comments through their meetings:

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- LGSG supports an enhanced role for Māori in the new RM system.
- The LGSG has concerns about capacity/capability and funding for Māori and also for local government to fulfil the new requirements
- The LGSG is concerned that mechanisms for funding beyond the LGA are needed to ensure funding is ongoing and secure

Iwi/Māori groups

67. Key themes from regional engagement and the Select Committee process include:
    a. continued support for 50/50 representation on SPA and NBA committees
    b. preference for composition to be worked through region-by-region
    c. need to ensure that hapū voices are represented
    d. direct appointments from Māori onto the secretariats supporting the SPA and NBA committees
    e. Māori are adequately resourced to participate in SPA and NBA committees
    f. upholding and protecting Treaty settlement arrangements is a legal requirement.
68. [redacted] proposed mana whakahaere committees should be established to make appointments for SPA and NBA committees.
69. [redacted] have said they see the Treaty partnership as being (at least primarily) between the Crown and iwi/hapū. This would be expressed with iwi and hapū holding governance and decision-making roles.
70. Feedback received through the Select Committee process and regional/PSGE engagement, particularly in relation to governance and decision-making, has been spread relatively evenly between an iwi/hapū focus (consistent with the [redacted] position) and a more inclusive approach (consistent with the [redacted] position).
71. Both groups considered that statutory timeframes and effective circuit breakers would support effective composition and appointment processes.
72. [redacted] have all expressed concern with the proposed Treaty Partnership Entity. Officials have not yet tested the proposal to remove this concept from the new system.

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Appendix 1 – Options Analysis: Appointments to SPA and NBA Committees

Mechanism:	Appointments to SPA and NBA Committees						
	Functions:	• Regional discussions for committee composition and then appointments • Governance roles on SPA and NBA committees					
	Expected impact of Māori Participation	Provides Māori a decision-making role at the strategic level					
	ASSESSMENT CRITERIA						
	Give effect to the principles of Te Tiriti o Waitangi	Uphold existing arrangements	Efficient	Effective	Certainty	Equity	Summary Comment
Option 1 Iwi and hapū representative organisations are identified in legislation as entities be engaged in discussions on composition These entities will be responsible for: • discussions with local government on SPA and NBA committee composition • Identifying appointing bodies, noting that who can be an appointing body is not prescribed Iwi and hapū representative organisations and appointing bodies have obligations to engage with their members and other Māori rights and interests' holders as part of the process.	Allows a range of groups with rights and interests, including hapū and other Māori entities, to partner and participate in appointments process Does not presume that iwi and hapū representative organisations will become the appointing bodies. Risk of conflict arising from other groups may feel excluded from appointments process, or want a greater role than being engaged with or having views considered	Providing a leading role to iwi and hapū representative organisations (including PSGEs) makes it highly likely that arrangements won't be ignored during the composition and appointment discussions. Although further specific consideration and discussions with PSGEs will be needed to determine how individual settlements be upheld. Obligation to engage and work with other Māori groups will likely capture and uphold other existing arrangements.	Strikes reasonable balance between short term efficiency – getting discussions underway – while promoting inclusivity. Risk of delays as iwi and hapū and Māori decide how to organise in the region, and legal challenges from groups. However, the level prescription is set at a level where this risk may be lower than some of the other options (eg, option 2).	Recognizes the mana of hapū and iwi at place. Obligations to work with groups could encourage and enhance relationships between iwi/hapū/Māori groups. SPA/NBA committee members accountable to appointing body. Sufficient funding to enable Māori to participate in these processes is vital to ensuring their effectiveness.	Provides certainty about who from te ao Māori will be contacted by the LGC to initiate the process and their obligations to other groups. It will be clear which groups iwi and hapū have obligations to. Provides certainty for local government to know who to engage with. Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.	Ultimate decision-making power rests with iwi and hapū organisations – other groups involvement is dependent on the level to which obligations are met. Power imbalance present but potentially mitigated by obligations of wider engagement.	Provides initial certainty to get process started, but also allows for inclusion and flexibility in composition and appointments processes. Of these options, this strikes the best balance between achieving initial efficiency, providing safeguards to uphold existing Treaty settlements and other arrangements, while also being inclusive. This has the potential to enable ongoing efficiency through perceived legitimacy in the arrangement.

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Option 2 Requirement to form Mana Whakahaere Councils and those to be identified in legislation as entities be engaged in discussions on composition. Likely to also be appointing bodies.	Enables range of groups with rights and interests to participate in governance decisions. Being too flexible could open the process up to numerous legal challenges that could undermine the principle of partnership. Some have suggested that such an open approach is setting up the system to fail. Provides Māori with options regarding how they will organise.	The wide inclusion of groups should capture all groups with existing arrangements, and the interests of those arrangements. *However,* It carries a risk of undermining existing agreements and Treaty settlement arrangements that iwi and hapū representative organisations (including PSGEs) may have in resource management because their participation will be on an equal basis with other Māori entities. May increase risk for smaller PSGEs that they will not maintain their ability to be engaged in the discussions throughout the process.	Potential for lengthy processes for self-identification, nominations and appointments, and the risk of failing to meet deadlines. ave noted self-determined processes could be less costly due to less litigation. Risk of multiple groups raising legal challenges. If successful, a truly open and self-determined approach is likely to result in durable arrangement via perceived legitimacy in process.	Potentially encourages and promotes relationships between groups in a non-hierarchical manner – although there is a chance that some groups will dominate discussions. Clear accountability of SPA and NBA committee members back to people through mana whakahaere councils. Appears to ignore existing structures and mechanism that could be leveraged.	Provides some clarity and certainty about who from te ao Māori will participate and then lead the process and their obligations to other groups, however it assumes the establishment of a suite of new arrangements before discussions on composition can be initiated, regardless of the structures already in place which could cause confusion. There may be some initial uncertainty as mana whakahaere councils are being formed in regions, but once they are established local authorities and other agencies will know who to engage with. Time will provide certainty for local government to know who to engage with but would be unlikely to replace requirement to consult and engage with individual iwi and hapū etc as well. Officials assume that groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.	Mana whakahaere councils are likely to result in more equitable outcomes as groups must work together. Low level of prescription carries the risk of regional discussion being dominated by certain groups, reducing or preventing equity	Allows for high level of self-determination and tikanga processes. Risk of delays in process of setting up mana whakahaere councils. Appears to undermine or potentially disregard existing arrangements and ways that rangatiratanga is expressed currently. It is likely that more details would be needed about parts of the process to better determine its viability as an option if sought to progress further?

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Option 3 Iwi and hapū representative organisations are identified in legislation as entities are engaged with for discussions on composition. These entities will be responsible for: • discussions with local government on SPA and NBA committee composition • identifying appointing bodies. Appointing bodies process for appointment described in detail. No requirement for wider consultation.	Being too prescriptive risks excluding holders of relevant rights, who aren't iwi or hapū from decision-making in the region. Undermines Rangatiratanga - Doesn't take into account different ways groups in the region can organize themselves.	The inclusion of iwi and hapū representative organisations (including PSGEs) in discussions roles about regional governance arrangements that arrangements won't be ignored during the composition and appointment discussions. Although further specific consideration and discussions with PSGEs will be needed to determine how individual settlements be upheld. Potential exceptions with collectives or urban Māori in Auckland?	Initial process of organising within region likely to be efficient as fewer groups involved, no obligations. High chance of meeting process deadlines. Risk that durability of arrangements could be hampered by litigation, unless other groups are content with roles at other levels of system.	May not support constructive relationships between Māori groups as there is no requirement for iwi authorities to involve other groups – there is risk of relationship breakdown. Will work well in regions that already have well-established relationships between iwi, hapū and other groups Risk that this would be perceived as failing to create a more inclusive system.	Provides certainty about who participates. Provides certainty for Local Government Commission to know who to engage with. Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.	Low equity – the process reinforces rights of existing entities with few opportunities for other groups to participate.	While this option is likely the most efficient in the short-term, the lack of inclusivity would likely create problems that reduce its effectiveness overtime. Also undermines rangatiratanga and essentially results in the Crown articulating how rangatiratanga will be recognised in the new system. The lack of inclusivity in the appointments process can be mitigated by highlighting roles for other groups at other levels of the system.
Option 4 Open tikanga-based processes used to determine who is engaged in discussions on composition and who identifies appointing bodies.	Enables those with rights and interests to participate in governance decisions. Low prescription could open the process up to numerous legal challenges that could undermine the process. Insufficient direction could mean the Crown risks being remiss in its duties to enable participation. Provides Māori with options regarding how they will organise.	The wide inclusion of groups should mean that all groups with existing arrangements should be able to participate. *However,* it carries a risk of undermining existing agreements iwi and hapū may have developed through Treaty settlements in resource management under the RMA because they are not explicitly identified as being central to the processes.	[redacted] have noted self-determined process could be less costly due to less litigation. Potentially resource intensive to assist all interested groups to participate. Risk of introducing conflict eg, multiple small groups with mana whenua claims raising legal challenges.	Potentially encourages and promotes relationships between groups in non-hierarchical manner – although there is a chance that some groups will dominate discussions. There is also a chance that relationships could break down over disagreements over who holds certain roles and functions. SPA/NBA committee members are	Does not provide certainty about who will participate from te ao Māori or lead the process from within te ao Māori. There could be high variation between regions of composition of Māori appointing bodies, resulting in uncertainty for others about who to engage with Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.	Approach seems equitable as iwi/hapū/Māori groups will need to work together and agree collectively to arrangements. However, low level of prescription carries the risk of regional discussion being dominated by certain groups.	This option allows for a high level of flexibility and self-determination for Māori to decide on their own processes to make appointments, however the lack of prescription and certainty carries a high risk of delays.

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				accountable to the appointing body.			

Recommendation:

Officials recommend Option 1, that iwi and hapū representative entities are primary participants in composition discussions and determining appointing bodies, with obligations to seek and include views of other Māori rights and interest holders.

This option provides initial certainty to get process started as it provides clarity about who from te ao Māori is leading the process. It is an inclusive approach and is likely to involve the relevant holders of rights and interests in regions.

Caveats/Dependencies:

Regardless of the option chosen:

- Central government will need to facilitate hui to explain the new system and the key decisions that iwi, hapū and Māori need to make to transition and establish the new system.
- Even if appointing bodies are existing entities, the way that the new system will operate will require new accountability mechanisms that will need to be funded and the Māori SPA and NBA Committee members will need additional administrative and technical support to reasonably carry out their functions with legitimacy.
- Circuit-breakers and dispute resolution processes, which are being worked through separately, will support Māori in reaching decisions in a timely manner.

Caveats and dependencies specific to this option:

- There may be a concern that there is no guarantee all Māori groups will be able to participate in the composition and appointments process, and therefore it is failing to uphold the principles of Te Tiriti. It should be noted that there will be other roles for Māori groups at other levels of the system, and the obligation to include others is designed to mitigate that concern.
- Iwi and hapū representative organisations will need to keep thorough and detailed records of engagement with other groups, and monitoring of them meeting this obligation will be required.
- Appointing bodies must be enduring entities with the capacity to make appointments and removals in a timely manner.
- Appointing bodies will have powers and functions in legislation and informal mechanisms to hold SPA and NBA committee members to account.
- Sufficient resourcing to enable Māori to participate is required for any of these arrangements to be effective.

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Annex D: Local decision-making and existing mechanisms to support the incorporation of the views of Māori at place

Purpose

1. This paper provides advice on:
   a. an "Engagement Agreement" tool to ensure that planning processes give effect to the Principles of Te Tiriti o Waitangi and consenting involvement for iwi, hapū and relevant other Māori entities
   b. Mana Whakahono ā Rohe (MWaR), Joint Management Agreements (JMA) and transfers of power
   c. work being carried out to consider how Māori land may be treated in the new system.

PART 1: ROLES FOR MĀORI IN PLAN DEVELOPMENT AND CONSENTING

Key context

2. The Resource Management Review Panel (The Panel) identified that Māori involvement in the system has tended to be at the 'bottom end' (ie, consenting and consultation on near-final plans), which has been resource intensive for Māori and had flow on effects for end users.
3. The new resource management (RM) system should create broader opportunities for Māori involvement in resource management and will require decision-makers to give effect to the principles of Te Tiriti o Waitangi.
4. Officials recommend that Māori engagement in planning processes be supported by an Engagement Agreement to ensure that Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA) planning committees know how to give effect to the Principles of Te Tiriti through plan development processes, ensuring iwi and hapū representative bodies and Coastal Marine Title (CMT) holders can effectively participate in these planning processes.
5. Engagement Agreements are needed in addition to the opportunity to develop a Mana Whakahono ā Rohe (MWaR) agreement so that iwi and hapū representative bodies, and other relevant Māori entities, can quickly reach an agreement on engagement with planning committees in order to meet planning timeframes. MWaR agreements may take months or years to agree, it is not efficient or effective to only allow bodies to agree how to engage on plan development by requiring a MWaR agreement be developed.

Previous Ministerial Oversight Group decisions

6. At MOG #11 Ministers agreed *that the plan preparation phase provides certainty for mana whenua and customary marine title groups on their involvement in the plan development process, focusing on ongoing engagement, efficient and effective methods for jointly drafting provisions and provides clear dispute resolution mechanisms.*
7. At MOG #13 Ministers agreed *that one of the purposes of the already agreed Māori participation in plan development is to ensure Māori can influence plan content including*

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(but not limited to) how activities are categorised, notification status, where they may be identified an affected party and the information required for a consent.

8. The proposal to introduce an Engagement Agreement tool gives effect to these decisions by ensuring that iwi and hapū representative bodies, and relevant Māori entities can be certain about how they can engage during plan development processes.

Engagement Agreements

Purpose of an Engagement Agreement

9. Engagement Agreements will provide a mechanism for SPA and NBA committees and iwi and hapū representative organisations, CMT holders and other relevant Māori entities to agree how engagement will be undertaken and funded on a specific SPA regional spatial strategy (RSS) or NBA plan.

10. Engagement Agreements are intended to be short and simple to agree. Officials envisage these being similar to an agreement for service and only 1-2 pages long.

11. Engagement Agreements could form part of a MWaR agreement, but the tool is required in addition to MWaR (or other relationship agreements such as Memorandum of Understanding) for the following reasons:

    a. MWaR are focussed on partnership, an Engagement Agreement focusses on participation

    b. MWaR can take significant time to agree, Engagement Agreements are intended to be quick and simple to agree

    c. MWaR are not available to all Māori entities, and an NBA or SPA committee may wish to have an agreement with a wider range of Māori entities. In the case of CMT holders an Engagement Agreement will ensure that NBA and SPA committees meet the requirements of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA Act)

    d. MWaR can cover a wider range of topics, iwi, hapū and other Māori entities may not want to use this process just to agree how to engage on plan-making

    e. a process for engagement needs to be in place before plan development commences. Iwi, hapū and other Māori entities may not want or be able to develop a MWaR or other relationship tool in time to meet planning timeframes.

12. The relationship between Engagement Agreements and other participation and partnership tools in the new system is included as appendix 1.

Parties to an Engagement Agreement

13. Officials recommend that Engagement Agreements are used for the development of RSS and NBA plans to provide a consistent baseline for how iwi/hapū and Māori engage with both SPA and NBA committees.

14. It is also recommended that SPA and NBA joint committees be required to initiate Engagement Agreements with iwi and hapū representative bodies in order to recognise the role iwi and hapū have across the system. CMT holders should also have opportunities to engage in plan-making processes in order to meet obligations provided through the MACA. Engagement Agreements may also be required to give effect to Treaty of Waitangi Settlement Agreements where settlement legislation currently provides for involvement in Resource Management Act 1991 (RMA) plan development processes.

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Content of an Engagement Agreement

15. Engagement Agreements must detail:
    a. how engagement will be undertaken (eg, commitment to undertake a certain number of specific engagement meetings, specific opportunities to comment on proposals)
    b. how the agreed engagement will be funded (eg, funding for iwi//hapū/Māori representatives attending meetings, considering proposals, travel etc).
16. The parties can choose to use any other relationship arrangements or mechanisms in place of an Engagement Agreement if both parties agree (eg, MWaR).
17. Mandatory content for Engagement Agreements has been specifically kept to a minimum to limit the resourcing required to create agreements and acknowledging that other mechanisms are available for more outcomes-based agreements (ie, MWaR, Iwi Management Plans).
18. Both parties must undertake good faith negotiations to agree the content of an Engagement Agreement.
19. To ensure the development of Engagement Agreements do not affect plan development timeframes it is proposed that there is no specific dispute resolution mechanism for this tool. If parties cannot agree then the process will default to the general NBA or SPA consultation and engagement provisions.

Benefit of Engagement Agreements

20. Engagement Agreements will provide clarity for how iwi/hapū/Māori will actively and meaningfully participate in the plan development processes. The benefit of Engagement Agreements will be that both SPA and NBA committees and iwi/hapū/Māori are clear on the role and funding of iwi/hapū/Māori involvement, avoiding issues currently occurring in the RM system as highlighted by the Panel.
21. Up-front engagement will allow iwi/hapū/Māori interests to be better reflected in plans than the status quo and thus reduce the time and costs currently spent by Māori, and wider system users, trying to consider Māori interests at the resource consenting stage. Developing Engagement Agreements should reduce the time and effort needed to discuss and agree engagement processes once a plan is being developed and may reduce the volume of submissions received on the plan by identifying key areas of interest so that they can be addressed earlier in the process.
22. Relationship agreements and a proactive approach to Māori engagement in the planning process also helps to mitigate the risk that the system-shift away from consents (to enabling more permitted activities) may undermine Māori rights and interests at place.

Process to develop Engagement Agreements

23. At the early stages of RSS and NBA-plan development, NBA and SPA committees must actively consider how 'at place' Māori views will be sought and what Engagement Agreements are needed to achieve this, noting iwi and hapū representative bodies and CMT holders must be included.
24. NBA and SPA committees must invite iwi and hapū representative bodies and CMT holders in the area covered by the plan to form Engagement Agreements. Iwi and hapū representative bodies and CMT holders will not be compelled to respond. If they do not

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enter into an Engagement Agreement they can still participate in the plan-making process through via the general SPA and NBA consultation and engagement provisions.

25. The initiation, development and agreement of Engagement Agreements will be timebound and aligned to timeframes for plan development. The specific timeframes for this are to be agreed in the delegated decision paper Plan Content Two.

26. Engagement Agreements are solely for engagement during plan development and cease at the point the plan is notified.

27. The legislation will not limit opportunities for SPA and NBA committees and iwi hapū or relevant Māori entities to use templates for agreement, to create standard agreements which cover multiple planning processes (for example where an iwi, hapū or Māori entity has interests in multiple planning regions) and for groups to form agreements with multiple parties (eg, more than one iwi, hapū or Māori entity).

28. Guidance can be developed to support the implementation of Engagement Agreements. For example, templates could be developed by the Ministry for the Environment and shared with SPA and NBA committees, and advice could be provided to iwi, hapū and Māori entities about the costs and benefits of entities working together to establish an Engagement Agreement including multiple groups.

Funding

29. The number of Engagement Agreements each SPA or NBA committee with enter into will vary for each region but it is estimated to be between 5 and 40. Use of this tool is optional and it is not expected that all groups will respond to an invitation to enter into an agreement.

30. The cost of developing an Engagement Agreement is expected to be low because they cover procedural matters only. Annex E provides more detail on costs and funding of this tool. Funding assumptions for implementing Engagement Agreements has been included in Annex E, Appendix A.

31. The Panel noted the importance of providing funding to enable iwi/hapū/Māori to participate in resource management processes. To support the RM system to effectively support iwi/hapū/Māori involvement SPA and NBA committees will be required to provide funding per the terms of all Engagement Agreements. [redacted]

32. The level of engagement, and thus funding, is to be negotiated between parties to each agreement, however this must be done in good faith and in a way that achieves the purpose of providing a mechanism for meaningful engagement. It is expected the level of engagement and funding will be different for different iwi, hapū and Māori entities.

33. While SPA and NBA committees, and the local authorities that fund them, may face higher up-front plan-development costs, the overall long-term cost should be lower. These lower costs should be felt most acutely by end users (eg, those seeking to undertake activities / those who previously required resource consent under the RMA).

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34. Officials estimate that the costs of ensuring Māori input into RSS and plan-making will be roughly proportional to the overall number of iwi and hapū (particularly in those regions where numbers are high). It is also expected that effective input at the front end of the system will reduce overall system costs by a similarly large amount by reducing the need for engagement at the consenting stage.

Requirement for the NBA/SPA committees to seek wider 'at-place' Māori views

35. Iwi and hapū representative bodies and CMT holders do not represent all Māori views and there are a range of Māori entities that can provide key 'at-place' input to RSS and NBA plans. These may include Māori land owners, Mātāwaka bodies or representative groups such as Auckland's Independent Māori Statutory Board.

36. To ensure these views are sought and provided it is recommended that SPA and NBA committees be obligated, prior to forming Engagement Agreements, to actively consider how they will ensure 'at place' Māori views are included in plan development processes and whether further Engagement Agreements with any Māori representative entities or groups of entities are needed to achieve this.

37. SPA and NBA Committees will then be required to initiate a request for those further agreements deemed necessary.

38. Putting this obligation on the SPA and NBA committees ensures wider 'at place' Māori views are included during plan development while avoiding the risk of SPA and NBA committees being required to enter into an unimageable number of agreements (and provide the associated funding) that could occur by providing for arrangements with all Māori Entities. Officials estimate that this will add, at most, 10 further Engagement Agreements for each plan.

39. Any Māori groups (or individuals) that are not invited to form Engagement Agreements will still be able to participate in plan development processes via the general SPA and NBA consultation and engagement provisions. Mechanisms like enduring submissions will also make general participation more efficient and effective for Māori.

Options considered

40. When considering how to provide a clear role and process to agree funding to enable iwi/hapū/Māori to participate in RSS and NBA plan development processes the options outlined below were considered.

	Option considered	**Recommendation**
Option 1	No specific mechanism for Māori engagement in plan development. Participation occurs through public participation mechanisms. Reliance on iwi/hapū role at the governance table to drive plan-development seeking iwi/hapū/Māori input. Non-legislative mechanisms to promote iwi/hapū/Māori engagement in general plan-development consultation/engagement via capability and capacity building.	This option is not recommended as it does little to address the core problem of lack of strategic role for Māori in plan development.
Option 2:	NBA committees required to form Engagement Agreements with iwi and hapū.	This option is not recommended as it does not recognise the full range of Māori interests at place and therefore may not

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		give effect to the Principles of Te Tiriti o Waitangi.
Option 2A (Recommended)	NBA committees required to form Engagement Agreements with iwi and hapū with a requirement on the NBA committee to ensure 'at place' Māori views are considered in plan-development and whether further Engagement Agreements are needed to achieve this.	This option is recommended by officials as it balances the need to ensure robust engagement with Māori who have interests at place with practicalities around the number of Engagement Agreements an NBA or SPA committee can enter into.
Option 3	NBA committees required to form Engagement Agreements with widely defined Māori Entities.	This option is not recommended because it would increase the number of potential Engagement Agreements beyond the ability of an NBA or SPA committee to agree and service them and would open engagement agreements up to a potentially much larger group of entities and create potential for overlap of interests from wider groups.
Option 3A	NBA committees required to form Engagement Agreements with widely defined Māori Entities (ability for the committee to group and, if necessary, reject requests for agreement).	This option is not recommended because it would require processes to be developed to help SPA and NBA committees decide whether to reject requests which would place a disproportionate burden on the committee.

41. A summary of the analysis of the costs and benefits of these options is contained in appendix 2.

Māori participation in resourcing consenting process

42. Through representation on SPA and NBA committees and tools such as Engagement Agreements, MWaR, JMA and transfers of powers iwi/Māori are intended to have earlier, better ways of influencing resource management decisions within regions, lessening the need to engage in individual resource consenting processes.

43. Māori participation in resource consenting processes will not be specified in the NBA but will be provided for through each relevant NBA plan. Agreement on consenting participation provisions can be achieved through engagement in the development of NBA plans.

44. For clarity officials note that NBA plans can, but are not obligated to, provide for (among other things):

    a. requiring Māori participation at the consenting preapplication stage including, but not limited to:

        i. obtaining affected party consent

        ii. requiring information requirements be meet / requiring a cultural impact assessment be undertaken for any permitted, controlled or discretionary activities

        iii. prescribing mandatory notification of any Māori entity for controlled or discretionary activities.

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45. It is expected certain use of resource or activities that are more complex (eg, discretionary activities) would require pre-application, however the form of these is still to be determined. Irrespective of this any pre-application/consultation requirements if set out in existing Treaty settlement and MACA Act commitments will still need to be upheld.

PART 2: MANA WHAKAHONO Ā ROHE (MWaR), TRANSFERS OF POWER AND JOINT MANAGEMENT AGREEMENTS (JMAs)

Key Context

46. This part of the paper seeks Ministerial agreement to:

    a. confirm decisions made in-principle by the MOG at MOG #11/12 regarding the transfers of power, JMAs, and MWaR

    b. not use the name 'Integrated Partnership Process' and instead retain the name 'Mana Whakahono ā Rohe'

    c. scope of the MWaR, including who can initiate negotiations

    d. how transfers of power and JMAs will be integrated with MWaR

    e. details of which legislative barriers to be removed to transfers of power and JMAs, and a positive obligation to investigate their use

    f. delegations for remaining decisions on transfers of power, JMAs, and MWaR.

47. It is appropriate to finalise the remaining matters through delegated decisions because details of the policy are contingent on other decisions also being made at MOG #17 – particularly roles for Māori in the system and opportunities to participate in planning and consenting processes.

Previous Ministerial Oversight Group decisions

48. As part of MOG #11/12, Ministers made some in-principle decisions:

    - **noted** that the Resource Management Review Panel's recommended Integrated Partnerships Process was their name for an enhanced Mana Whakahono ā Rohe process that integrates with better transfers of power and joint management agreement (JMAs) provisions.
    - **agreed** that the legislation provides for an enhanced Mana Whakahono ā Rohe process that is integrated with transfers of powers and JMAs (an Integrated Partnerships Process).
    - **agreed** to recommend to the MOG that power sharing arrangements (transfers of power and JMAs) are better enabled through the Integrated Partnerships Process, with barriers removed.
    - **noted** that, subject to agreement, further work will be undertaken on the scope of Integrated Partnerships Processes and mandatory requirements for what must be covered.

49. It is recommended that these in-principle decisions are confirmed.

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Proposals

Scope of tools

50. Officials have progressed work on the scope of Mana Whakahono ā Rohe as noted at MOG #11/12. Following engagement and further analysis officials recommend the in-principal decisions made by MOG are confirmed.

51. Feedback received from iwi/hapū/Māori groups and other central government agencies has raised that the name "Integrated Partnership Process" is confusing and that the name Mana Whakahono ā Rohe currently used in the RMA should be retained.

52. It is important that there is alignment, where it makes sense, for 'who' participates in various parts of the system. It is recommended that iwi and hapū representative bodies be able to initiate discussions on MWaR and be party to a transfer of power or JMA. This aligns with the approach to who is leading discussions for governance roles in the SPA and NBA committees. This does not mean that transfers of power will be limited to iwi and hapū representative bodies. Agreement to further policy details on this tool will be agreed through delegated decision.

53. It is recommended that an iwi or hapū representative body be able to initiate discussion towards a MWaR agreement, and where an SPA or NBA committee or local authority receive an initiation iwi or hapū representative body in their area of interest they must enter into discussions. This approach aligns with the Panel's approach about who should be able to initiate or be party to one of these tools.

54. It is also recommended that Ministers confirm that a MWaR agreement can be developed in respect to roles and responsibilities under the NBA or SPA.

55. The Panel were not explicit about the application of the MWaR tool under the SPA. However, existing MWaR agreements can and do relate to the development of regional policy statements and plans. If MWaR does not apply to SPA functions, then a MWaR in the new system would provide less opportunities for involvement in the system than the current MWaR tool. Reducing the scope of a potential MWaR would not be equitable for those who were not able to enter into one under the current system.

Integration of tools

56. The Panel recommended that the opportunities to transfer powers and develop joint management agreements be integrated along with the Mana Whakahono ā Rohe.

57. It is recommended that this be achieved by making these mandatory matters for discussion under MWaR. This would mean that parties in discussion towards a MWaR agreement would have to discuss these opportunities, but not necessarily agree to use them. As the Panel note, parties could agree not to use these tools or agree to revisit the possibility of using them at a later date.

Legislative barriers to transfers of power and JMAs to be removed

58. It is proposed that the tools for enabling transfers of power and JMAs (sections 33 and 36B of the RMA) be brought through into the new system in broadly the same form. However, with the legislative barriers imposed by sections 33(4)(c) and section 36B(1)(b) removed as recommended by the Panel. These sections provide criteria that local authorities must meet before these tools can be used. Removing these sections would, as the Panel noted, mean that the joint agreement of both parties would be the only criteria to be met for these tools to be used.

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59. The Panel also recommended, and officials agree, that local authorities should have a positive obligation to investigate the use of these tools. This would, in combination with the removal of legislative barriers, help increase the uptake of these tools.

Iwi and hapū management plans

60. Iwi and hapū management plans are generally prepared as an expression of rangatiratanga to help iwi and hapū exercise their kaitiaki roles and responsibilities. They often include a written statement identifying important issues regarding the use of natural and physical resources in their area. While the RMA does not define Iwi and hapū management plans, it refers to these plans as 'planning documents recognised by an iwi authority'.

61. It has been recommended to the Minister for the Environment[1] that iwi and hapū management plans be actively considered as part of the NBA plan development process.

62. Given that the content of iwi and hapū management plans cover strategic as well as regulatory matters, it is recommended that this requirement to apply to RSS as well. Hence, this paper seeks agreement that the SPA include the same drafting providing legal weighting for iwi and hapū management plans as in the NBA.

Delegated decisions

63. Key elements of the MWaR proposals require further policy development once the roles for Māori in the system and opportunities to participate in planning and consenting processes have been agreed by Ministers.

64. Therefore, agreement is sought to delegate the remaining decisions on matters relating to MWaR, transfers of power and JMAs. Matters officials will seek agreement on include:

    a. mandatory matters to be discussed as part of a MWaR arrangement

    b. dispute resolution processes for the development of the MWaR

    c. whether any other legislative or non-legislative barriers to the use of transfers of power and JMAs need to be addressed

    d. parties to transfers of power and JMAs

    e. The need for any exemptions to requirements that restrict the ability to transfer or delegate decision-making powers (eg, limitations on the ability of an NBA or SPA committee to delegate decisions on plans).

65. The starting point for these details will be the Panel's proposals but adjustments will likely be needed to make the tools work effectively with other changes from the Panel's proposals that relate to potential matters.

PART 3: MĀORI LAND

Key messages

66. Further work is required to explore how Māori land is addressed in the new RM system to meet the reform objectives (in particular to give effect to the principles of Te Tiriti). At its meeting of 24 November 2021, the MOG Māori interests subgroup agreed "that further work will be undertaken to consider what is meant by Māori land and how it should be

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

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treated across the Resource Management system, with a report back provided as part of MOG #17".[2]

67. Further discussions at the 28 March 2022 MOG Māori interests subgroup meeting highlighted that a key focus of this workstream is exploring how to facilitate non-commercial housing/papakāinga on Māori land.

Proposal

68. Ongoing policy work will assess:

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

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

    c. whether any further policy responses are required in the new system to address the intersects with Māori land (arising from separate workstreams), including:

        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.

69. Officials propose that this work will focus on land held under Te Ture Whenua Māori Act 1993 (TTWMA). However, it may be appropriate in some limited circumstances for this workstream to develop a policy response for other land types in which Māori have an interest.[3] For example, designations also impact these other land types and may require a specific policy response. Officials are assessing this as this work progresses.

70. Officials are working with the [redacted] to ensure key matters identified by the groups are considered as part of policy development and that approaches address other land types in which Māori have an interest as appropriate. Officials have also initiated discussions with Te Tumu Paeroa on this policy area.

Agreement sought to delegated decisions

71. It is proposed that policy decisions for addressing the approach to Māori land, and other land types in which Māori have an interest, in the new system is delegated to the Minister for the Environment Hon David Parker, the Minister for Māori Development Hon Willie Jackson and the Associate Minister for the Environment Hon Kiri Allan, in consultation with other relevant Ministers.

Treaty Impact Analysis

72. A full summary of the Treaty impacts analysis for this paper as a whole is contained in Annex A. This is because the approach taken in this paper is supported by the approach taken throughout the wider system.

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[2] Minutes MOG Māori interests subgroup meeting, Wednesday 24 November 2021.

[3] For example, land transferred via Treaty settlements.

Engagement

Feedback from engagement with iwi/hapū/Māori

73. Officials have presented the concepts of Engagement Agreements and opportunities for participation in consenting processes to [redacted] Conversations about the role for Māori have been focussed on governance rather than participation in plan-making and resource consent processes. Where the idea of Engagement Agreements has been discussed as part of the plan development process, no major concerns have been raised.

74. There was support for retaining the obligation for decision-makers having to respond to mana whenua (including both iwi and hapū) initiating a MWaR.

75. Feedback was received that the name 'Integrated Partnerships Process' was confusing and that the name Mana Whakahono ā Rohe should be retained.

76. Support was also expressed for removing the legislative barriers to transfers of power and joint management agreements, as well as adding a positive obligation to their use.

77. Feedback was that funding and capacity have also been barriers to the successful uptake of these tools and there needs to be a requirement on Councils to invest and build capacity for iwi/hapū.

78. There was also some feedback around iwi and hapū management plans (IMPs), including:

    a. desire to see RSSs (in addition to NBA plans) being influenced by/giving effect to IMPs. There is a need for guidance outside of legislation around how to develop IMPs that effectively influence the RSS's and NBA plans

    b. IMPs must be understood by the system and the system must be understood by those drafting the IMPs, this would take time for capacity to be built

    c. better protection for IMPs with regards to monitoring how councils will give effect both to the plans and the relationship with iwi and hapū is fundamental

    d. a holistic approach should be taken by hapū and iwi in planning and growth strategies within a Secretariat role to influence regional plans. The intergenerational aspirations of hapū, iwi and Māori should be reflected in planning documents.

79. [redacted] have provided feedback that, in addition to exploring policy approaches for Māori land, consideration is required of other land types in which Māori have an interest.

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Appendix 1: Participation and collaboration tools in the new system

Mechanism	Purpose
Iwi/hapū management plans	To promote and document iwi/hapū aspirations for RM (and other) matters within their rohe and provide clear starting point for discussions. Noting that the absence of these plans does not prevent iwi/hapū from entering discussions.
Mana Whakahono ā Rohe (MWaR)	To provide for relationship agreements between iwi/hapū and SPA and NBA committees/local authorities. A MWaR can also be a way of integrating other tools, such as to enable initiation of discussions on transfers of power and joint management agreements; or by delivering aspirations in an iwi/hapū management plan and/or functioning as an engagement agreement.
Transfers of Power	To enable the empowerment of iwi, hapū and potentially Māori landowners or other Māori entities to undertake functions and powers. A current example which would be applicable in the future system is the transfer of some state of the environment monitoring functions from Waikato Regional Council to Ngāti Tūwharetoa.
Joint Management Agreements (JMA)	To enable partnerships between iwi and hapū and local authorities/planning committees for localised matters. A current example which would be applicable in the future system is the JMA between Ngāti Porou and Gisborne District Council for the Waiapu catchment.
Engagement Agreements	To clarify engagement expectations and processes, including funding, during SPA and NBA plan development.

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Appendix 2 – Options for Māori participation in plan development – costs vs benefits

	Māori participation in plan development To provide a mechanism for meaningful Māori participation in the plan-making process Enhanced Māori participation in plan-making			
OPTIONS for Māori participation in plan-development	**Option detail:**	**'Who' participates**	**Advantages/benefits**	**Disadvantages/costs/risks**
Option 1 – Participation is only through public participation mechanisms	• No specific mechanism for Māori engagement in plan-development, focus instead on ensuring iwi/hapū/Māori can engage in public plan making engagement/ consultation • Reliance on wider plan-making changes (eg, enduring submissions) and capability and capacity building to ensure stronger Māori participation	Any iwi / hapū / Māori group can participate in the public process	• Very clear and simple plan development engagement process – no specific requirements for iwi/hapū/Māori engagement • No additional cost to Joint Committee • Avoids the need for definitions or inclusion/exclusions of certain groups and the potential conflict that could cause	• Does little to address the core problem of lack of strategic role for Māori in plan development • Other participation mechanisms like enduring submissions unlikely to be enough to provide strategic role for a wide range of Māori • Does not provide for collaboration in plan development • Iwi/hapū/Māori would need to be assisted through other capability and capacity measures to provide meaningful participation in plan-development
Option 2 - Joint Committees	• Legislation will require Joint Committee to	Iwi/hapū invited to form specific	• Easy to implement / little issue with identifying the 'who' – iwi/hapū usually	• Does not provide a strategic role in plan making for Māori interests beyond iwi/hapū

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required to form Engagement Agreements with iwi and hapū	form Engagement Agreements with all iwi/hapū	engagement agreements All other groups participate through public participation	relatively clear and will have already been engaged at governance level • Provides strategic input into plan-development for iwi/hapū (including those who are not directly represented at the joint committee) • Low/medium cost for Joint Committee • Bringing iwi/ hapū in at the plan-development stage may help clarify iwi/ hapū /Māori interests in the plan and subsequently simplify and reduce the need for iwi/ hapū /Māori input in consenting	• If wider Māori interests are to be included in plan development there would need to be action through other mechanisms (capability and capacity building etc) to ensure they can meaningfully participate in plan development
Option 2A - Joint Committees required to form Engagement Agreements with iwi and hapū – additional requirement to ensure 'at-place' Māori input is included and consider Engagement Agreements with wider Māori entities	• As above with an additional requirement for the Joint Committee to ensure 'at place' Māori views are considered in plan-development and if additional Engagement Agreements are required to achieve this • Joint Committee has discretion on what, if any, additional agreements are entered into	Iwi/hapū invited to form specific engagement agreements Wider entities may be invited to form engagement agreements if Joint Committee consider necessary to ensure 'at place' Māori input	• Easy to implement / little issue with identifying the 'who' – iwi/hapū usually relatively clear and will have already been engaged at governance level • Provides strategic input into plan-development for iwi/hapū (including those who are not directly represented at the joint committee) • Allows for wider Māori entities to provide 'at-place' input • Brining iwi/ hapū and wider views in at the plan-development stage may help clarify iwi/ hapū /Māori interests in the plan and subsequently simplify/reduce the need for clarify iwi/ hapū /Māori input in consenting	• Risk Joint Committees will choose not to engage more widely, so there is no guarantee for a strategic role in plan making for Māori interests beyond iwi/hapū • Gives discretion to Joint Committee on when to bring in other Māori entities, which could cause conflict, minor issue
Option 3 - Joint Committees require to form	• Legislation to define 'Māori entity'	'Māori entities' invited to from specific	• Broader definition provides strategic pathway into plan-development to much wider range of Māori interests	• Potentially big increase in cost to the joint committee - wider definition of Māori entities

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Engagement Agreements with widely defined Māori entities	• Definition is wide and inclusive to bring in a range of 'at-place' Māori input • Would be restricted to entities, not individuals	engagement agreements Any groups falling outside the definition of 'Māori entity' to go through public participation	• Bringing in a wide range of Māori entities at the plan-development stage may help clarify Māori in the plan and subsequently simplify/reduce the need for Māori input in consenting	opens engagement agreements up to a potentially much larger group of entities • Potential for overlap of interests from iwi/ hapū and wider groups thus limited extra benefit from some engagement
Option 3A - Joint Committees required to form Engagement Agreements with widely defined Māori entities (ability for the Joint Committee to group and if necessary reject request for engagement agreement)	• As above but gives the Joint Committee has the ability to group entities to have one engagement agreement • Can decline requests for engagement agreements if necessary (expect from iwi/hapū)	'Māori entities' invited to from specific engagement agreements – may be grouped by the Joint Committee Any groups falling outside the definition of 'Māori entity' go through public participation	• Broader definition provides strategic pathway into plan-development to much wider range of Māori interests • Bringing in a wide range of Māori entities at the plan-development stage may help clarify Māori in the plan and subsequently simplify/reduce the need for Māori input in consenting • Gives the Joint Committee some ability to control costs • Ability for Joint Committee to limit the risk of duplicated engagement	• Potentially big increase in cost to the joint committee - wider definition of Māori entities opens engagement agreements up to a potentially much larger group of entities – mitigated by ability to group/decline
Recommendation: Option 2A				

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Appendix 3 – Options matrix for Māori participation in plan-development – assessment criteria

	Māori participation in plan development						
	Functions:	To provide a mechanism for meaningful Māori participation in the plan-making process					
	Expected impact of Māori Participation	Enhanced Māori participation in plan-making					
OPTIONS for Māori participation in plan-development	**ASSESSMENT CRITERIA**						
	Give effect to the principles of Te Tiriti o Waitangi	**Effective**	**Efficient**	**Equitable**	**Provides certainty to all parties**	**Supports self-identification**	**Score**
Option 1 – Participation is only through public participation mechanisms • No specific mechanism for Māori engagement in plan-development, focus on ensuring iwi/hapū/Māori can engage in public plan making engagement/ consultation • Reliance in wider plan-making changes (eg, enduring submissions, iwi/hapū role in governance) to ensure stronger Māori participation	Participation is still available but not meaningful collaboration **2/5**	Very easy to implement No added complexity to plan-development May not improve Māori input into plan development over status-quo Will not enhance iwi/hapū/Māori strategic role plan development **1/5**	No additional cost on plan-making process Failure to provide specific role for iwi/hapū/Māori may lead to added complexity and cost at the 'bottom-end' of the system similar to RMA **2.5/5**	Legislative equity However, some Māori groups do not have the capability/capacity to participate in plan-development compared to others which results in inequitable outcomes in plan **2.5/5**	Very high certainty around the process – everything is done through one public participation mechanism Risk of leading to uncertainty around required iwi/hapū/Māori input at the later end of the system Joint Committee will not have certainty about the level of iwi/hapū/Māori input into plan-development **2/5**	Yes There are no legislative restrictions of participation so any group can self-identify and participate on equal footing **5/5**	**14/30**

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Option 2 - Joint Committees required to form Engagement Agreements with iwi and hapū • Legislation required Joint Committee to form Engagement Agreements with iwi/hapū	Provides for participation and partnership for iwi and hapū, but not wider Māori groups **3.5/5**	Easy to implement Provides clear strategic role for iwi/hapū in plan-development No role for wider Māori **3.5/5**	Very cost effective – iwi/hapū will be easily identified at the joint committee stage. Number of iwi/hapū in any region not so much to be onerous engagement cost Providing role for iwi and hapū should ensure many Māori issues addressed at strategic level, reducing risk of long-term cost/complexity **4/5**	Helps balance iwi/hapū ability to participate in plan-making Leads to some inequity for Māori interests outside iwi/hapū **3/5**	High certainty around process – iwi/hapū have Engagement Agreements – all others public process Joint Committee will not have 100% certainty it has 'at-place' Māori input into plan-development **4/5**	Legislation will define iwi/hapū so limited scope for self-identification within that Other groups can still self-identify for public participation **3/5**	**21/30**
Option 2A - Joint Committees required to form Engagement Agreements with iwi and hapū (option for wider Māori entities) • As above with an additional requirement for the Joint Committee to consider how it can ensure 'at place' Māori views are included in the plan	Provides for participation and partnership for iwi and hapū with a requirement for the Joint Committee to consider the need for wider 'at-place' Māori views. **4/5**	Relatively easy to implement Provides clear strategic role for iwi/hapū in plan-development Optional role for at-place' Māori – although at discretion of Joint Committee **4/5**	Cost effective – iwi/hapū will be easily identified at the joint committee stage. Number of iwi/hapū in any region not so much to be onerous engagement cost Providing role for iwi and hapū should ensure majority of Māori issues addressed at strategic	Helps balance iwi/hapū ability to participate in plan-making Provides limited support for wider Māori entities to equally participate **3.5/5**	Certainty around process – iwi/hapū have engagement agreements – all others either public process or as invited by Joint Committee **4/5**	Legislation will define iwi/hapū so limited scope for self-identification within that Māori entities will have limited ability to self-identify – discretion of Joint Committee	**22.5/30**

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and if additional engagement agreements are required to achieve this. • Joint Committee has discretion of if what, if any, additional agreements are entered into.			level, reducing risk of long-term cost/complexity Some additional cost to bring in wider views but high level of discretion for Committee to manage costs **3.5/5**			Other groups can still self-identify for public participation **3.5/5**	
Option 3 - Joint Committees require to form Engagement Agreements with defined Māori entities • Legislation to define 'Māori entity' • Definition is wide and inclusive	Provides for participation and partnership for iwi/hapū and a large group of Māori entities **5/5**	Some complexity introduced in identifying 'Māori entities' Provides clear strategic role for iwi/hapū/Māori in plan-development **3.5**	Very expensive for Joint Committee – depending on definition of Māori entity could be over 1000 engagement agreements requiring funding Providing role for Māori entities should ensure majority of Māori issues addressed at strategic level, reducing risk of long-term cost/complexity **1/5**	Gives Māori entities the ability and resources to participate on equal footing to other funded entities **4/5**	Low certainty around process – unknown number of entities going into plan-development High certainty that plan outcomes have captured wide range of Māori views **4/5**	Legislation will define Māori entity, broad definition but still limits self-identification a little Other groups can still self-identify for public participation **4/5**	**21.5/30**
Option 3A - Joint Committees require to form Engagement Agreements with	Provides for participation and partnership for iwi/hapū and a large	Some complexity introduced in identifying 'Māori entities'	Expensive for Joint Committee – but mechanism provided to allow them to	Gives Māori entities the ability and resources to participate on equal	Low certainty around process – unknown number of entities going into plan-	Legislation will define Māori entity, broader definition but still limits self-	**22/30**

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loosely defined Māori entities (ability for the Joint Committee to group and if necessary reject request for engagement agreement) • As above but gives the Joint Committee the ability to group entities to have one engagement agreement • JC Can decline requests for engagement agreements if necessary (expect from iwi/hapū)	group of Māori entities **5/5**	Provides clear strategic role for iwi/hapū/Māori in plan-development **3.5**	group entities to manage cost Providing role for Māori entities should ensure majority of Māori issues addressed at strategic level, reducing risk of long-term cost/complexity **3/5**	footing to other funded entities Minor equities between those groups put into large grouping for engagement agreements and those not **3.5/5**	development – low certainty for Māori entities – could be grouped or have request for agreement declined High certainty that plan outcomes have captured wide range of Māori views **3/5**	identification a little Other groups can still self-identify for public participation **4/5**	
Recommendation: 2A							
Caveats/dependencies to call out: Giving effect to existing Treaty settlements has not be included as an assessment criteria because it is intend for any existing Treaty settlement requirements to be specially provided for above and beyond any Engagement Agreement, effectively all options would equally not impact existing Treaty settlement obligations.							

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Annex E – Funding Māori participation

Purpose

1. This annex reports back on matters identified by MOG at MOG #15, including:
   a. current and potential future costs for Māori participation in the RM system,
   b. options for central government and other funding sources (such as greater cost recovery)
   c. [redacted]

2. [redacted]
3. [redacted]
4. [redacted]
5. [redacted]

Context

Status quo under the current system

6. The Resource Management Act 1991 (RMA) contains several provisions which aim to enable Māori participation in the system, such as consultation on plan changes under Schedule 1 and the ability for Māori to participate as affected parties in consenting. However, these provisions occur at the end of planning processes and Māori participation in them is largely unfunded.

7. At the central government level, funding has typically been project-based, one-off or time-limited. Where it is provided by local government, funding support is primarily for Māori participation in discrete consenting and planning activities. Beyond these, participation has largely occurred on a voluntary (unpaid) basis.

8. Our analysis of National Monitoring System data indicates that local authorities with little or no budget reported for Māori participation tend to be less populated district councils. However, local government budgets for Māori participation vary considerably, independent of rating base and/or population.

9. The Kaitiaki Survey 2019 provides information about how individuals and organisations engage with RMA processes on behalf of iwi and/or hapū. The survey builds on a survey

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undertaken in 2012 and provides a comparative analysis of the trends of Māori participation under the RMA.

10. The survey notes insufficient levels of funding provided to groups has led to majority of groups (53%) recording 80%+ of their work is done on a voluntary basis, with only 19% of groups recording that 80-100% of RMA and other environmental work is paid. There has been no significant change in the proportion of paid versus volunteer work between 2012 and 2019.

11. When asked about funding needs and priorities, the most common response was that capacity building is the most pressing need (46%). Groups report an inability to properly execute their kaitiaki responsibilities, with the nature of work being described as 'reactive', with groups spending most of their RM time responding to resource consents.

Panel's recommendations

12. Resource Management Review Panel (The Panel) made recommendations in Chapter 3 (Te Tiriti o Waitangi me te ao Māori):

    a. Māori have the opportunity to participate across the new system at national & regional level in strategic decision-making, and that Māori are sufficiently resourced for duties or functions that are in the public interest.

    b. Resourcing for Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committees and the need for a secretariat, and that funding to be agreed between the constituent local authorities for mana whenua to participate effectively.

13. The Panel also recommended the following funding and support options:

    a. Utilising further funding mechanisms to assist with the development of iwi management plans and to fund Māori to undertake integrated partnership processes. The funding could come from a contestable fund, central or local government grants and/or enabling local authorities to fix charges payable on consumptive environmental uses.

    b. Directly funding Māori engagement in spatial planning, combined planning and other resource management processes to ensure under-resourcing no longer prevents Māori from participating effectively. Funding could come from central government and local government.

    c. Providing funding for advisors to build local authority capability and capacity to engage with Māori particularly in smaller local authorities.

    d. Developing mechanisms for mana whenua with significant experience and success in the resource management system to share their knowledge with other groups. Some ways to facilitate this are already available but further resources could be provided.

    e. Developing guidance (or enhancing existing guidance) to help organisations meet their legal obligations relating to Māori and identifying areas for Māori engagement in resource management.

    f. Undertaking targeted capacity and capability building for resource management practitioners. This could include: commissioner training and accreditation; iwi practitioner training; te ao Māori knowledge-building for central and local government staff; and assisting kaitiaki to develop technical expertise to participate effectively in resource management processes.

    g. Participation by mana whenua in resource management processes should be supported by central government and local government funding and capability building assistance.

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14. The Panel also discussed who should pay stating that "funding should be provided by central government and/or local authorities on a case-by-case basis depending on the function. For example, involvement in combined planning would be funded by local authorities, involvement in developing national direction would be funded by central government, and involvement in spatial planning would be jointly funded by local authorities and central government".[1]

Previous Ministerial Oversight Group decisions

15. At MOG #2 ministers agreed that Cabinet's resource management reform objective to "give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori" should result in the following outcomes:

    a. Māori have the opportunity and are sufficiently resourced to participate as Treaty partners across the resource management system, including in national and regional strategic decisions

16. At MOG #15 (Paper 1: funding the operation of the resource management system) Ministers directed officials to report back to MOG on the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the future system, and options for central government funding to support local government and iwi/Māori to participate in the new system, as well as ways iwi/Māori groups could potentially recover their costs in some circumstances.

17. Ministers also directed officials t

Problem/opportunity definition

18. Data from the National Monitoring System (NMS), Kaitiaki survey and discussions with local government officials have illustrated that the current levels of funding to support Māori to participate in the RMA has been extremely varied and insufficient. This has led to Māori not being compensated for their time and effort in participating in RMA activities, while also creating a systemic inability for Māori to exert meaningful influence over their taonga and to exercise kaitiakitanga[2].

19. A critical success factor for the new system will be to ensure Māori are adequately equipped to manage this shift, which will require significant investment from both central and local government. This necessitates clarity around who will pay for Māori participation throughout various levels of the system to ensure these roles are appropriately and sustainably funded.

20. Sustainable funding arrangements, including both provisions within the legislation and in the funding approach adopted by central government, have the ability to create long-term benefits for iwi/hapū by providing workforce continuity planning, creating a more capable planning sector for Māori and drawing rangatahi into the profession. An increase in resourcing will ensure Māori are able to participate effectively in the proposed strategic roles that will also be required at a regional level.

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[1] The Resource Management Review Panel report pg 114 (para 150)

2 Extracts from Waitangi Tribunal commentary, findings and recommendations on the Resource Management Act 1991

Role of Māori in the new system

21. Limitations to the current data, and with neither local nor central government historically funding much of the cost incurred in Māori participation, has meant it has been difficult to properly estimate the potential impact associated with shifting cost.

22. Māori participation in the system is expected to change, including but not limited to:

    a. participation at the central government level to develop the National Planning Framework and operate a National Māori Entity, including member compensation, iwi/Māori secretariat staff, and budget to cover the costs of engagement and technical advice and evidence needed from iwi/Māori

    b. participation at the regional/local level to:

        i. develop, implement, and monitor RSSs and NBA plans

        ii. support monitoring of plans, consent compliance, environmental monitoring, etc.

    c. tools that support iwi/ hapū/Māori to define and pursue their objectives in the system and enable parties to uphold Te Oranga o te Taiao and give effect to the principles of Te Tiriti. These include preparing iwi/hapū planning documents, the Mana Whakahono ā Rohe agreements, transfers of power and joint management agreements.

23. Regional participation would include compensation of iwi/Māori Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committee members and support they need to carry out their roles, iwi/Māori secretariat staff, and budget to cover the costs of engagement, technical advice and evidence needed from iwi/Māori. Funding to support Māori involvement in ongoing consenting and monitoring activities, etc

24. Officials have undertaken an assessment to provide indication of potential costs of participation and applied the funding principles agreed at MOG #15 to indicate who might pay for what. These costs are illustrated in Annex A (covering both establishment/transitional and ongoing roles and costs of Māori in the new system).

Assumptions

25. Most of these areas of participation have ongoing costs that will depend on the arrangements entered into between Council and Māori and the areas identified by local Māori as priorities for their participation. Costs will fluctuate as policies, plans, consents, and monitoring approaches are developed, decided upon and implemented. There may also be one-time or periodic establishment costs, such as the cost of a selection process and expectation-setting for SPA and NBA committees by iwi/Māori in a region.

26. Officials have estimated costs of Māori participation in national and joint committee activities relying on the relative uniformity in operating models. The estimated costs of establishing arrangements/relationships between councils and local Māori are included. However, ongoing/operational costs incurred by councils and Māori at the local level will vary with each agreement, but broad ranges have been provided which are based on assumptions about sustainable Māori capacity and the rate of participation for hapū.

27. Where costs are estimated, these are provided as ranges in some instances to reflect that some decisions are yet to be finalised, such as those relating to governance in SPA and NBA committees. These cost estimates carry the highest degree of variability.

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Analysis

Relationship funding and functional funding

28. Often funding for participation is provided on a 'functional' basis, eg participation in consenting or planning. This is one of the reasons funding for participation is often time-limited/project based. Such a funding approach leads to instability in funding arrangements and prevents iwi/hapū from building capability and capacity and stable relationships with local government.

29. Our engagement has highlighted the need for, and value in, relationship funding. This type of funding necessitates a sustained funding commitment to enable iwi/hapū to build stable capacity and capability that underpins the development of enduring relationships. These relationships in turn enable iwi/hapū and local government to work together to identify and engage on shared priorities.

30. It is important to note that it is not a choice between either relationship or functional funding, rather our engagements highlighted that to realise the greatest benefit from functional funding there must first be a solid foundation/relationship in place.

Who should fund what

31. The funding principles agreed at MOG #15 provide a starting point for determining who should pay. Officials have applied these below.

Role of central government

32. Participation at the central government level including both relationship funding to support Māori and central government agencies to build and maintain capability and capacity and enduring relationships. Relationship funding may provide benefits beyond RM reform when considering engagement between iwi/Māori and central government more broadly.

33. Functional participation in the development of the National Planning Framework (NPF) and operation of a National Māori Entity, including member compensation, staff, and budget to cover the costs of engagement and technical advice is expected to be funded by central government.

Role of Local government

34. Participation at the local government level includes relationship funding to support Māori and local authorities to build capability and capacity and create the foundation for enduring relationships.

35. Officials propose that Māori participation at the regional/local level to develop, implement, and monitor RSSs and NBA plans will be funded by local government. This includes compensation of iwi/Māori SPA and NBA committee members, iwi/Māori secretariat staff, and budget to cover the costs of engagement, technical advice and evidence needed from iwi/Māori.

36. Local government would also fund costs associated with the likes of consenting, compliance monitoring, and environmental monitoring (aided by user charges where appropriate as agreed at MOG #15)

37. Further consideration is required to costs associated with iwi/hapū determining Māori participation on joint committees, this is because this participation will need to be determined before the Committee is established and as such it is unclear exactly when the Committee's budget will be set; the budget process of joint committees is still being developed and will be agreed via delegated decisions.

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Recognising challenges faced by local government in providing adequate and sustained funding

38. [redacted]

39. [redacted]

40. [redacted]

41. [redacted]

42. [redacted]

Proposed package to support adequate and sustainable funding of Māori participation

Legislative proposals

43. Officials propose that the legislation:

    a. make clearer the mechanism through which funding contributions for Māori participation will be determined, as well as providing additional tools (such as improved cost recovery).

    b. provide tools so that SPA and NBA committees and iwi/hapū/Māori can agree:

        i. how local government and Māori will establish an enduring relationship

        ii. the activities Māori will participate in

        iii. how that participation will occur

        iv. the costs associated with that participation.

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c. require local authorities to establish associated policies for how they set funding for Māori participation, including:

   i. the roles/functions of Māori being funded

   ii. total costs associated with that participation

   iii. quantum of funding provided by the local authority to support that participation

44. Provide a statutory requirement for local government to provide information on the nature of Māori participation, the associated costs and funding provided. This will enable central government to monitor the nature of Māori participation and adequacy (or not) of the funding contribution by local authorities. The National Māori Entity will also be able monitor these policies in the context of its role in monitoring Tiriti performance.

45. A wider range of legislative options considered is attached in Appendix B, including those that would involve changes to other legislation such as the Local Government Act, which officials consider would potentially unduly constrain local decision-making and would be inconsistent with current local government arrangements.

46. Consideration was also given to enabling the Minister to make regulations should engagement between Māori and councils fail to result in adequate participation and where funding, monitoring and public reporting failed to provide a strong enough incentive for change. However, at this time officials do not consider it appropriate for the Crown to make regulations that prescribe the matters in which Māori would participate as this would undermine the principle of Māori self-determination. Noting this may be something to consider in the future should the 'relational' approach suggested above, not improve Māori participation and funding.

Funding Options considered

47. [redacted]

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48.

49.

50.

51.

52.

Engagement

Local government

53. Conversations with the Local Government Steering Group (LGSG) on 18 February 2022 have highlighted that expectations of local government funding Māori participation without cost sharing between Central Government would have a significant impact on affordability for smaller councils, with for instance a $100,000 cost rise for some ratepayer bases being equivalent to a 1% rates rise. The LGSG's view was that quality of outcomes for Māori participation will require consistency of funding, increasing capability and resilience, which would require greater cost-sharing between the Crown and Local Government.

Iwi/Māori groups

54. The options for funding roles for Māori in the RM system were a topic of discussion at wananga with ILG on 9 March. There was overall agreement on the identified problems faced by Māori when participating in the system, including considerable under-investment and budget planning by both local and central government leading to constrained capacity and resourcing. When testing the initial thinking of options for funding, there was general support of options collectively, with importance placed on transitional arrangements, sustainability of funding to grow capacity, and partnership agreements needing to have secured funding. ILG members emphasised that problems could not be considered in isolation and that each needed to be addressed, requiring actions in each of the areas identified.

55. Options tested with ILG:

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a. Reporting/policies: require reporting or funding policies for Māori participation/capacity building (coupled with monitoring)

b. Legislative Requirement for adequate and sustainable funding - to replace s36A with a clear requirement to consult Māori in the development of a consent application, in particular cultural impact assessment.

c. Require councils to recover costs of Māori participation in consent applications to ensure costs incurred by Māori are covered, and the process of meeting costs for applicants is efficient.

d. Introduction of additional revenue streams – enable the use of revenues generated (eg from a resource user charge) to support funding Māori participation. No decisions have been made on charges and it is presently unclear the extent of revenue such a tool may generate.

e. Central government funding to develop a pipeline of future expertise – this would see a plan developed with Māori and training and education providers to support Māori to take up qualifications to develop the necessary skills and knowledge to participate in the RM system (eg planning, environmental management, etc)

f. Partnership agreements – arrangements would be worked through on a case-by-case basis and consider case for central government support alongside that of local government. Further work required but to enable relationship development, priority setting, potentially support base funding.

56. [redacted] provided a paper on Māori self-determination principles relevant to joint decision-making bodies, raising the importance that resourcing the process for selecting or appointing Māori members must be appropriate, sufficient, and consistent with Te Tiriti. The principle notes the Waitangi Tribunal recommended in 2019 that "the Crown urgently take such action or actions as are necessary to ensure that under-resourcing no longer prevents iwi and hapū from participating effectively in RMA processes, including freshwater management and freshwater decision-making."3

57. Feedback from [redacted] on funding principles proposed at MOG #15 raised that where Māori are users of the system, consideration should be had to how the existing resource management regime has disadvantaged Māori for decades. System charges should be designed to enable Māori to socio-economically catch up with other parties who have been advantaged by the present system (by not paying for resource use rights, having renewals of those rights preferred/advantaged, etc).

58. Additional ideas for resourcing funding included a proposed Central government budget line to bulk-fund Treaty Partnership, so that the parties representing that partnership could focus on an ongoing collaborative relationship where both parties' priorities were addressed rather than a transactional partnership based on one party's priorities alone.

Technical

59. In February 2022, MfE held technical sessions with relevant staff from some regional councils, iwi/Māori representatives, and others about funding for Māori participation in planning, consenting and other functions under the RMA. Contacts included staff and/or appointees from:

a. Northland Regional Council (NRC)

b. Te Taitokerau Māori Advisory Committee (TTMAC)

3 Quoting Waitangi Tribunal The Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Wai 2358, 2019) at 561.

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c. Auckland Council Māori Outcomes department

d. Independent Māori Statutory Board (IMSB)

e. Hawke's Bay Regional Council (including Hawke's Bay Regional Planning Committee)

f. Tasman, Nelson, and Marlborough Councils

g. Te Atiawa ki Te Tau Ihu Trust

h. Otago Regional Council

i. Aukaha

j. In addition to these sessions, officials attended some broad engagement hui that dealt with the topic of funding, including with:

k. Papa Pounamu, a Māori planners subcommittee of the NZPI

l. The Local Government Steering Group

60. Detailed information on these discussions is contained in Appendix C.

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Appendix A – Indicative costings and assumptions according to analysis by the Ministry for the Environment

Existing system

Context for cost estimates

61. The below cost estimates should be considered in the context of the:

    a. estimated annual process costs of the current and proposed new RM system overall ($1.2 billion and $1.1 billion respectively), with the reforms reducing costs by approximately 7%

    b. estimated benefits of improved Māori participation of between $1.8 billion and $7.2 billion in present value terms or between an average annual benefit of $120 million and $474 million, noting a low degree of confidence in accuracy),

    c. problems identified in the paper, and

    d. [redacted]

Table B: Comparison of current system and proposed system process costs

Average annual cost ($millions)	Current system process costs	Proposed system total process costs		Per cent change from current system
Central government	$17	$36		112%
Local government	$401	$444		11%
Users	$799	$650		-19%
Total	$1,218	**$1,133**		**-7%**

Table C: Proposed system establishment costs (overall estimates)

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One off cost	Proposed system establishment costs ($millions, present value)
Central government	$258
Local government	$350
Users	$22
Total	**$630**

62. Existing costs associated with Māori participation in the resource management system are largely borne by local government (estimated at **$23 million to $27 million** per annum)[4] and by Māori ($15.54 million per annum is likely an underestimate). They are indicative and contain assumptions and caveats, including:

    a. Most/all local authorities make some provision for engaging with Māori on resource management matters. Funding is tagged in varying ways in different council planning documents and may be spread across a number of categories. Some local authorities include line items such as delivery of Māori outcomes, iwi liaison, or democracy and planning, whereas others do not. Funding may be included as part of categories relating to planning / environmental services, or consultation and engagement more broadly.

    b. Feedback from local authorities indicated specific figures in long term plans and the National Monitoring System should be viewed as minimums only, since local authorities are likely to engage in various ways (which would be reflected differently in different planning documents). Funding provisions are also likely to vary from year to year, depending on which stage in the planning cycle the council is in.

    c. From a review of a sub-set of long-term plans, provision specifically identified for working with Māori ranged from $150,000 to $7.01 million for 2020/21. In addition, information provided by local authorities on implementation of the Te Mana o te Wai freshwater package includes costs for building tangata whenua capability and capacity of between $60,000 and $4.2 million (additional to existing provisions).

    d. Extrapolating these figures to the national level carries a risk that significant regional differences in the amount of funding provided and the needs in each region is glossed over.

    e. Despite some support from local government, much Māori participation is currently either on a voluntary basis or funded by iwi organisations through their Treaty Settlement funds. Analysis prepared for MfE's regulatory impact statement estimates current system costs to Māori of

[4] Estimated based on information in council long term plans. While some funding for Māori participation is likely broader than resource management functions, it is also likely that some costs are covered under other parts of the budget (eg, environmental or planning costs).

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$15.54 million per annum.[5] The Kaitiaki Survey indicates that the majority of groups surveyed (53 per cent) do 80 per cent or more of their work on a voluntary basis.

Costs for Māori participation in the new system [Budget-Sensitive]

63.

64.

65.

66.

67.

68.

[5] Resource Economics Ltd (2021) Reforms to the Resource Management System: an analysis of potential impacts for Māori, the housing market and the natural environment. Report for the Ministry for the Environment.

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69. [redacted]

70. [redacted]

Region – (councils combined)	Rates rise needed to cover estimated regional local costs
Northland	[redacted]
Auckland	
Waikato	
Bay of Plenty	
Gisborne	
Taranaki	
Manawatu Whanganui	
Hawkes Bay	
Greater Wellington	
Nelson	
Tasman	
Marlborough	
West Coast	
Canterbury	
Otago	
Southland	

[6] https://catalogue.data.govt.nz/dataset/dcb50400-cdc6-4cf2-b145-fe3fccb40a6f/resource/928e69c1-a999-4c53-a7f8-6ee47be72ccb/download/councils-2018_28-ltp-financial-data.xlsx Analysis combined the rates revenue from all local authorities in each region and calculated the percentage increase needed to cover the amounts.

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Estimate of Costs for Māori participation in the new system at the central/regional/local levels and options for central government support			
Type of role	**Transitional/establishment costs**	**Ongoing costs**	**Who would pay under each option**
National level			
National Māori entity Governance members, Secretariat, technical advice and engagement			
Regional level			
Regional Spatial Strategy development (all regions combined)			

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NBA Plans development (all regions combined)	

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Local level	
Mana Whakahono ā Rohe agreements and other relationship agreements with joint committee and local government	

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Iwi and hapū management plans Customary Marine Title Plans	

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Transfers of power and joint management agreements	
Resource management processes such as provision of technical advice, participation in called-in consents, decision-making roles through hearings and	

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Treaty settlement requirements, and participation in potential CME hubs				

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Appendix B – Funding for Māori roles in the RM system Proposed package options to support adequate and sustainable funding of Māori participation

	Legislative approach		Funding approach		
Problem	**Less prescriptive**	**More prescriptive**	**Option 1**	**Option 2**	**Option 3**
Funding has not met Te Tiriti obligations to provide support for Māori participation	No explicit requirement to provide necessary funding would be legislated for. However, functions, duties and powers prescribed for local government will necessarily need to be funded. Therefore, ensuring funding for Māori participation will occur through ensuring the legislation explicitly recognises Māori participation in each aspect of the system.	Require necessary funding – ie, place an explicit requirement for local government to provide adequate and sustainable funding to support Māori participation. What is 'necessary' will depend on the specific arrangements and ways of working agreed between government (central or local) and iwi/Māori reflected in agreements.			

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Māori not able to fully recover costs of participation in resource management processes from applicants	Replace s36A with a clear requirement to offer to consult Māori in the development of a consent application where required by legislation or plan, in particular a cultural impact assessment.	As for less prescriptive approach, plus: Require local authorities to recover costs of Māori participation in consent applications and remit these back to Māori. This would ensure costs incurred by Māori are covered, and potentially could help ensure the process of meeting costs for applicants is efficient (though adds another party and layer and was not supported in discussions with ILG).	
Māori participation is often funded on a 'functional' basis (ie involvement in a particular consent or planning process)	Enable the use of revenue generated from resource user charges to support funding for Māori participation. This is also part of a proposal put forward by It is unclear how much revenue these charges will generate. A range of matters will need to be worked through to ensure revenues are distributed equitably across regions and to ensure that these arrangements do not incentivise excessive user charges.	Introduction of additional revenue streams – as outlined under 'less prescriptive' option. Also, specify in legislation that local authorities must fund Māori participation at the regional/local level and be required to establish associated policies for how they set funding for Māori participation – this will ensure both categories of funding are recognised and provided for. However, for some local authorities, funding Māori participation is likely to remain unaffordable.	

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Capability and capacity need to be built for both Māori and local government to work together in the new RM system	No specific legislative proposals in this area, although in time reform proposals should help to overcome these challenges, with sufficient funding and support (see below).		[redacted]
*Funding is not always available to adequately support the development of Iwi/Hapū Management Plans and Mana Whakahono ā Rohe (*MWāR)	No change beyond those already made in early MOGs for the system in general – at present, local authorities provide support in a variety of ways, but there are inconsistencies between local authorities and many iwi also have to volunteer substantial time to develop and implement IMPs and MWāR.	Require local government to further contribute to the development of plans – This would mean the NBA requires local government to provide some level of funding to support the development of IMPs and to negotiate MWāR.	[redacted]

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Iwi and hapū representative body led appointments processes are likely to be relatively high cost	No specific legislative proposals in this area.		
Existing Treaty arrangements pertaining to natural resources will need to be 'migrated' into new system			

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Appendix C – Case studies on funding Māori participation at the regional/local level

Context

1. Initial research into the current state of funding for Māori participation includes review of the National Monitoring System (NMS) data from 2019/2020 and sets out quantum figures on local government budgets for Māori participation in planning and consenting. It also includes review of an unpublished 2019 survey of kaitiaki across New Zealand undertaken by MfE and Te Puni Kōkiri.
2. These sources provide some basic statistics on local government funding contributions and demonstrate that the majority of iwi/Māori kaitiaki received no funding at all for their participation in RMA activities. But it was difficult to interpret the data beyond that.
3. From this engagement, officials identified themes that provide a better understanding of the variable landscape for funding Māori participation.
4. Officials also developed case studies to illustrate some of the approaches being undertaken at the local level. Specific examples in Northland, Otago and Hawke's Bay are included here.
5. Papa Pounamu included some further funding case studies in their written submission to MfE following the engagement hui.
6. This information is a summary of what officials heard from the sessions.

Summary of lessons drawn from all technical sessions:

7. The NMS data will be hard to interpret true levels of local government spending on Māori participation, due to both the variety of possible budget lines used by each council and the way planning and consenting activity fluctuates from year to year.

a. some councils are reporting the salaries of Māori liaison staff and other internal support rather than money paid to iwi/Māori for participation

b. budgets often sit in specific project lines and are not sufficiently differentiated to isolate and count

c. planning and consenting activities fluctuate, meaning no budget for participation in planning for one year may mean that there were no planning projects for iwi/Māori to participate in

d. some consenting budgets are zero but sometimes iwi/Māori are able to cost-recover their involvement due to information requirements and other planning rules

8. While there is significant pass-through of consents (particularly regional consents), kaitiaki usually have no funding to review all of the consents in the small processing window given. This results in "false negatives" wherein a lack of response becomes a lack of interest in the consent.
9. The NPS-FW has increased some costs for regional councils; part of these costs cover increased participation by iwi/Māori in freshwater planning.
10. Compensated Māori roles on governance, advisory, and technical committees have a number of benefits, namely:

    a. it helps bring iwi/Māori into strategic decisions on a range of matters of importance to them

    b. it helps the council improve their own capability in te ao Māori and responsiveness to Māori

    c. it can contribute to positive, mana-to-mana working relationships between Councillors and iwi/hapū

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11. However, these roles do not on their own translate into greater capacity for iwi/Māori to engage in the planning and operational activities that inform those decisions.
    a. there needs to be dedicated support and resources for that body to carry out their objectives through a dedicated work programme
    b. a forward work programme can be difficult to budget for where the actions don't readily slot into existing council functions and delivery requirements
    c. it needs to sit alongside funded technical advice and engagement in plan development with iwi/hapū/Māori
12. Funding for roles that can be planned for on an annual or multi-year basis helps iwi/Māori with their own staffing/business continuity, and thus improves capacity and helps keep capable people in sustainable employment for their iwi or hapū.
    a. Councils can be constrained by their own policies to use effective methods for funding, such as retainers, capacity contracts, and high-trust agreements
13. It takes time for working relationships and mutual trust to build up, so in the early stages joint council/iwi planning can be very expensive with extensive new processes, independent consultants and re-litigation of contentious issues.
14. Iwi and hapū want to get to a state where they can pick up planning/operational roles that align with their kaitiaki responsibilities and are funded as part of a council's budgeted levels of service.
15. High-trust relationships between iwi/Māori and councils are desirable and will bring long-term efficiencies, but these parties will need help with the costs, especially as relationships are established and as the number of relationships which need to be sustained grow over time.
16. In regions where iwi/Māori are relatively well-resourced, there are benefits for the quality and effectiveness of plans and for the efficiency of planning processes. But it would take more economic analysis to understand how the costs and benefits compare.
17. The technical capability of iwi/Māori needs to be lifted so they have greater ability to influence the complex RM system at the strategic and plan making level. Historical under-investment in iwi/Māori capacity and capability means there will be additional time and resources needed to correct existing deficits in the move to the new system. Councils think that supporting Māori capacity and capability is a core part of the Māori-Crown relationship and therefore needs to be funded by central government.

Case study – Northland Regional Council

Context

18. Northland has a relatively shallow rating base compared to other regions. A 1% rise in regional rates brings in about $375,000 (Northland Regional Council has an operating budget of $67 million / year (56% rates, 15% grants and 29% other revenue)).
19. There are hundreds of hapū and yet-to-settle groups, along with two Treaty settlement arrangements (one settled, one still in negotiation) that require council support
20. In 2014, the council established the Tai Tokerau Māori and Council (TTMAC) working party, a working group with 9 councillors and 21 representatives from the region's iwi and hapū. These members are paid per meeting in accordance with the Council's remuneration policy for advisory groups. There is a Māori Technical Advisory Group that sits as a subcommittee to TTMAC.
    a. they also have iwi and hapū representatives on a number of Council subcommittees and working parties

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b. taken together, the cost for these roles includes $100,000 per year in compensation and travel costs, and a significant but unquantified amount of staff time to support the members

21. NRC has also signed Mana Whakahono ā Rohe agreements with two hapū and have created a template that other hapū can use to access the same terms and conditions. Some of the costs for developing this were covered by involving members of the Māori Technical Advisory Group, but a substantial amount of unpaid hapū labour was involved, as well as pro-bono legal advice from hapū Treaty lawyers. The agreements have a number of items to be progressed but there is not a set budget or a remuneration framework to support progress.

Recent LTP budget

22. As part of consultation on the council's 2021 - 2031 LTP, the TTMAC working group endorsed a package of new investments in Māori outcomes that amounted to around $1.4m per year in new spending over the next three years.

23. The resulting LTP proposal for Māori partnerships was based on this package and other requirements but had to also take into account other budgetary pressures on council. It includes additional one-off funding of $94,000 and annual funding of $430,000. This includes a mix of funding on internal capacity and capability and funds that are intended to support Māori capacity, including:

a. $30,000 a year to fund the 2 recently signed Mana Whakahono ā Rohe Agreements.

b. $102,000 a year and capital spend of $2,200 in 2021/22 for a Kaiawhina Kaupapa Māori (Māori technical advisor).

c. $10,000 a year from 2022/23 to support the development of Iwi and Hapū Environmental Management Plans (IHEMP).

d. $20,000 in 2021/22 and 2022/23 to support the process of introducing Māori seats in the 2022 election.

e. $127,000 in 2021/22, and $138,000 each year following, and capital spend of $2,200 in 2021/22, to further develop and support cultural capacity across council.

f. $50,000 in 2021/22, and $25,000 each year following to carry out a 'health check' of council's Treaty of Waitangi/Te Tiriti o Waitangi obligations, and $100,000 a year from 2022/23 for implementation of any findings.

g. $25,000 a year to increase Te Taitokerau Māori and Council Working Party (TTMAC) members' allowances.

24. Freshwater Planning requirements/Te Mana o te Wai has also driven greater investment in Māori participation in freshwater planning, including involvement of iwi/hapū in monitoring tasks. $250,000 was budgeted for each year starting in 2022/23 for this.

Other applicable LTP investments

25. As part of its response to the severe 2019-20 drought and the lack of water resilience and water poverty exposed, NRC established a new Water Resilience Fund starting 2021/2022. The Water Resilience Fund provides $500,000 per year to support improving water resilience infrastructure (water tanks, associated treatment and plumbing) for vulnerable communities via grants to community linked providers. The most water-short communities are predominantly Māori. This year's funding was allocated to Te Rūnanga o Whaingaroa and Te Kotahitanga E Mahi Kaha Trust.

26. NRC increased its grant funding budgets for various funds to $1.3m / year to support water quality and soil initiatives. There is an increasing focus on supporting Māori initiatives, such as providing a greater level of subsidy for activities on multiple Māori owned land

27. NRC is a partner in the Kaipara Moana Remediation Programme. The MOU for the project was signed on 2020. KMR is a decade long $300 million co-governed project to restore the

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Kaipara Moana (Harbour). NRC contributions include $300k/year and in-kind contributions (such as staff time and accommodation).

28. NRC is about to advertise for a new Māori Relationships Land Management Advisor (from existing budget)

Conclusions

29. As a result of this recent LTP, the region has substantially increased their level of investment in Māori participation and outcomes, but it is still not covering most of the costs incurred by iwi and hapū who participate in the current system.

30. It's worth noting that a large portion of this investment is in Council improving its own cultural and technical capability and capacity to work with Māori, rather than funding Māori to participate in planning and consenting activities.

31. In addition to outstanding iwi/hapū costs in the current system, the costs of the new system could only be partially integrated with the current budget. The additional spending on Te Mana o te Wai shows the increase in costs associated with increased Māori participation and provision of mātauranga in plan development, but is just for freshwater.

32. It shows that a low rating base does not prevent some meaningful level of funding, and that when mana whenua are included in budget conversations they can help find a workable way forward. But it also shows that it is difficult to raise the required funds without causing a substantial increase in rates.

33. There are still outstanding questions about how the Crown will support the durability of Treaty Settlements, and how councils will balance these costs with the costs to support the new system. Te Oneroa a Tohe requires a level of staff support for meetings and strategy development, and the council will become responsible for additional support costs in the future. The Kaipara Moana that is still in negotiation could cost the council about $1.2 million a year, and there could potentially be a further four harbour settlements that will require similar levels of funding in the future. Note also that these costs reflect the Council's costs and while they do include compensation of iwi board members and secretariat staff, they do not include the iwi's own staff costs or any further technical needs from their end.

Case study – Otago Regional Council and Aukaha

34. Aukaha is a Ngāi Tahu Regional Environmental Entity (REE) established in 1997 as Kāi Tahu ki Otago Natural Resource Management Limited to represent the interests of 4 Otakou Rūnaka (kā runaka)

35. Aukaha also consults for kā rūnaka on other topics such as culture, health and economic development, and provide services to rūnaka members such as training and business development

36. Otago Regional Council (ORC) has had a "Memorandum of Understanding and Protocol between ORC, Te Rūnanga o Ngāi Tahu ki Otago for effective consultation and liaison" since 2001.

37. In 2019 Otakou leaders in the kā rūnaka and senior leadership at ORC discussed the issues with relying on project-based funding to support the kā rūnaka and Aukaha's capacity to deliver and also pursue work that was a priority for ngā Runaka.

38. In November 2019, ORC and Aukaha entered into their first partnership agreement.

39. The partnership arrangement offers protocols that recognise Aukaha's role in resource management functions and in the way they relate to kā rūnaka. They also include an annual agreed work programme that reflects the priorities and interests of Ngāi Tahu and commits funding towards it.

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40. The first iteration of the partnership agreement committed ORC to a lump sum covering 2 years of "partnership funding" ($250k) to support Aukaha to deliver planning and consenting activities as well as to support the joint work programme. Ngāi Tahu was also going to put forward funding.

41. The agreement worked well in 2020 and 2021, though Covid made it difficult for Ngāi Tahu to deliver the funding they had anticipated. A new work programme emerged around review of the RPS which wasn't covered by the funding agreement. In line with the 2021-2031 LTP, ORC and Aukaha reviewed the agreement and decided to revise the arrangements.

42. Funding in this current round includes $100k per year in partnership funding over the next 3 years. This funding is ringfenced for the ORC/Rūnaka joint work programme and is in addition to any funding to deliver council planning, consenting, and cultural capacity activities. For planning and consenting, the Council has provided funding equivalent to 3 FTE for Aukaha; 2 to work on ORC planning activities and 1 to cover the non-chargeable aspects of consenting.

43. Other councils have also entered into partnership arrangements with Aukaha, including, Dunedin City Council, Queenstown Lakes District Council, and now Central Otago District Council. ORC has also negotiated a partnership agreement with Te Ao Marama, a Ngāi Tahu REE that represents interests in Otago but is situated mainly in the Southland Region.

44. The certainty of an agreed forward work programme with these Councils has made it easier to progress bulk funding contracts in the respective Long Term Plans. Aukaha is now bulk funded by half of the councils in Otago.

45. This certainty in funding on a 3 yearly basis means that Aukaha can keep technical staff on in sustainable permanent employment, ensuring they have both capacity and capability to progress their work programmes with Council

46. This has the added benefit of helping Aukaha manage the administrative pressures of cost-recoverable consenting functions, and helps them smooth over issues of non-payment by applicants and participation in planning and consenting post-notification (which is still not funded)

47. There is still some funding from kā rūnaka and Ngāi Tahu, but it amounts to around 10% of the budget and is used to help defray unfunded costs.

48. There have been clear benefits to plan quality, for example cultural values mapping in Queenstown has been completed and that plan is now much more effective at implementing the purpose and principles of the RMA. As a result, the consents are coming through in the way that mana whenua expect (and if anything they can see areas where they could streamline rules in the future).

49. There is a "mana to mana" relationship at each level, regular meetings between Kā rūnaka Chairs and Mayors, steering meetings between the planning managers, and regular staff contact.

50. Both parties noted there is benefit to sitting down with each other to conduct work planning and jointly understand what is in the pipeline.

51. Other benefits noted by ORC staff included:

    a. Aukaha is their technical bridge to kā rūnaka – it is easy to work together on a staff level and have confidence that Aukaha staff are connected back to key people at marae

    b. working with Aukaha helps minimise the risks of damage to the partnership through a breach of tikanga

    c. due to the shared understanding of each other's context, the right kōrero gets into the right place at the right time

    d. the fact that both partners have capacity to work together at both a strategic/decision-making and a staff/technical level reduces the amount of time and resources both parties spend after a plan is notified

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e. ORC finds that the focus on te ao Māori and genuine partnership makes the council a more attractive workplace, particularly younger staff. This helps with the council's succession planning

52. The model is not perfect though – these are areas where Aukaha is trying to improve things:

a. it is still hard to pass funding through to mana whenua who are providing mātauranga advice

b. councils who do not have partnership agreements and fund on a project-basis are often a lower priority for Aukaha, as their capacity is tailored to the work, they are bulk-funded to participate in over a three year period

c. succession planning is still tricky, as there is a limited number of people with the mātauranga and technical capability in ka rūnaka to attend to the volume of work, even with payment

d. Aukaha relies on funding from Ngāi Tahu and kā runaka to produce Iwi/hapū management plans. As these can be quite expensive, they have limited capacity to produce all of the planning documents that may be needed

53. Budgeting can still be tricky on the Council side of things as well

a. there is a need to articulate everything in the context of partnership levels of service and to break funding down into project budgets with appropriate delegations

b. the ORC's significance and engagement policy and the Māori participation policy were both done in collaboration with Aukaha

c. any "significant" changes to council budgets or rating approach must go through a special consultative procedure, which involves a fairly robust consultation process. This can put funding for Māori under critical public scrutiny

d. as in many regions there can still be an issue with local politics if direct payments to a Māori provider is too prominent

Case Study – Hawke's Bay Region and the Hawke's Bay Regional Planning Committee

54. Like many councils, Hawke's Bay Regional Council funds Māori participation in resource management on a project basis including funding for consultation on plan changes and regional consents. It is difficult to calculate totals for this as it is embedded in project budgets, and it fluctuates with the volume of planning and consenting work.

55. The Hawke's Bay Regional Council has a range of overlapping governance mechanisms, including

- Hawke's Bay Regional Plan Committee, (HBRPC),
- the Hawke's Bay RC Māori committee,
- seats on council committees, and
- from this year's election forward there will be two Māori ward councillors

56. Governance roles are paid. A 2019 independent review of remuneration for tangata whenua appointees of HBRPC resulted in a remuneration package of an annual stipend for each of those appointees. Currently these are:

a. $13,000 per year for each member

b. $19,000 per year for the Deputy co-chair, and

c. $26,000 for the co-chair

d. $37.50 per hour of travel, after the first hour

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57. HBRPC's tangata whenua representatives are looking at how they can establish a Taiao hub. After having a presentation about Mahanui Kurataiao (the Canterbury Ngāi Tahu REE) they think it could be a useful model for them.

58. Iwi have variable capacity and are at different stages in their settlement journey. Beyond the HBRC the landscape for tangata whenua is complex, with some hapū operating strongly as iwi authorities and customary rights holders seeking recognition under the Takutai Moana Act as well as five Ngāti Kahungungu taiwhenua constituencies established under the Fisheries Settlement legislation.

59. While member and meeting expenses are covered as above, and internal staff provide support, there is no dedicated staff or budget for either the Māori committee or the HBRPC to plan/deliver their own work programme. They oversee components of work within the councils' broader work programme as laid out in the LTP and annual plans. For example, HBRPC oversees preparation of plan changes, but they do not direct a separate mātauranga or science research programme to inform those plan changes.

60. The NPS-FW and Freshwater Planning Process has driven increased participation in plan development. There is an instructive example in Hawke's Bay of the kind of time and expense involved in collaborative planning:

    a. TANK (PC9) was HBRC's lead endeavour into collaborative freshwater plan-making. The TANK Collaborative Group was 25+ members, including various tangata whenua members (not 'reps' per se). The group formed in 2012, worked hard to understand science, catchment system relationships and what solutions would/could work

    b. seven years later, the group's recommendations returned to HBRPC table for consideration with a handful of unresolved matters. HBRPC then took another two years of workshopping and deliberations to settle provisions that would be included in the plan change for public notification

    c. following notification, some tangata whenua submitters strongly opposed PC9's direction of travel for various reasons

    d. the council no longer has that kind of time to spare as statutory deadlines for freshwater plans have been set by NPS-FW 2020 to the end of 2024

61. There is a desire on both sides to move to a more relational, high-trust model of working together, which would help the council to be more efficient by using in-house planners and specialists (instead of calling for independent experts) and help improve iwi capacity through better planning for costs

62. The Council and iwi/Māori have embarked on a pilot project to do freshwater planning for the Mohaka River catchment by following a co-design process in line with the principles of Te Mana o te Wai.

63. There is still a significant need for greater capacity and capability for iwi and hapū, including the technical capability needed to navigate complex RM planning concepts.

64. There is also need for greater technical capability in the council to work with mātauranga Māori alongside scientific knowledge; this is seen as a broader need in central and local government.

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