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Agenda item 3:

Natural and Built Environments Act Decision-making Framework

Summary slides

Agenda item 3: NBA Decision-making Framework

Background and scope

- This paper seeks further decisions on the core decision-making framework of the proposed Natural and Built Environments Act (NBA), comprising the purpose and supporting provisions (Part 2) of the NBA. This paper seeks to clarify:
  - the meaning of Te Oranga o te Taiao
  - that adverse effects must be managed in accordance with an 'effects management hierarchy'
  - how limits, targets, and exemptions will be prescribed in the NBA and National Planning Framework (NPF), building on the existing concept of management units
  - the outcomes in the NBA, how conflicts between outcomes will be resolved and that additional outcomes can be set in the NPF and in NBA plans
  - how implementation principles will be used to support decision makers in making decisions on the NPF and NBA plans.
- Part 2 of the NBA will guide and constrain most decision-making under the NBA. The proposals in this paper seek to ensure that:
  - the reform objectives are articulated clearly, including that there is no room for doubt that development can only occur within environmental limits and associated targets
  - the right balance is struck between providing certainty and enabling agility, especially given the increasing pace of change in the natural environment
  - useful concepts from the Resource Management Act 1991 (RMA) and case law are retained, to minimise inefficiency and cost during the transition to the new system
  - the integrity of Te Oranga o te Taiao is appropriately upheld.
- The analysis responds to the recommendations made by the Environment Select Committee (the Committee) following the Inquiry on the exposure draft of the Natural and Built Environments Bill.
- The provisions in the exposure draft reflected earlier in-principle decisions made at Cabinet [CAB-20-MIN-0522 refers], and decisions made at MOG #2, #6 and #7.
- Further approval is needed from the MOG to make any changes which depart from the original policy intent of these provisions.

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Agenda item 3: NBA Decision-making Framework

Purpose - Te Oranga o te Taiao

Background

- MOG #7 agreed to include Te Oranga o te Taiao in the exposure draft and provided for indicative drafting that included the purpose clause and definition of Te Oranga o te Taiao.
- The Committee supported the inclusion of Te Oranga o te Taiao and recommended further work with national iwi/Māori groups to better define and provide for the intention of the concept in the Bill.

Discussion

- Officials have worked with the national iwi/Māori groups to further develop the concept, clarifying that Te Oranga o te Taiao:
  - is consistent with a number of similar concepts already proposed in the system
  - can work at a system, planning, and local level by forming part of the purpose of the NBA and SPA, cascading through planning documents, and being applied flexibly to local circumstances.
- Whilst te taiao is broad, for the purposes of the regulatory system, iwi technicians consider that Te Oranga o te Taiao can be most clearly expressed as focussing on the natural environment.
- Additionally, the Committee recommended using more directive language for the natural environment and giving greater prominence to the built environment in the purpose.
- Officials consider these aims can be achieved by the policy intent Ministers have previously agreed and the additional Te Oranga o te Taiao narrative and the purpose as articulated in this paper.
- Further work, including in relation to definitions, will be undertaken on reflecting how the built environment relates to the modified parts of the rural environment.

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Agenda item 3: NBA Decision-making Framework

Purpose - Managing Adverse effects

Background

- MOG agreed to retain a reference to the requirement to "avoid, remedy or mitigate" adverse effects in the purpose in a decision made (and circulated to Minister's offices) between MOG #5 and #6.

Options

- Officials consider the two options in relation to managing adverse effects under the NBA are:
  - **Option 1** - retaining the existing wording under the NBA exposure draft
  - **Option 2** – replacing the wording in the NBA exposure draft with a statement that adverse effects must be avoided, minimised, remedied, offset or compensated for in a way which complies with an effects management hierarchy. The hierarchy is designed to avoid the overuse of offsetting or compensation for adverse effects on biodiversity and cultural values.

Discussion

- Officials recommend option 2. The purpose of the NBA should refer to an expanded effects management hierarchy where adverse effects must be avoided, minimised, remedied, offset or compensated to better align with best practice and case law.
- In simple terms, the 'effects management hierarchy' will require that effects are dealt with in the least risky way for the environment.
- The proposed 'effects management hierarchy' will also recognise that offsetting and compensation are not always appropriate as some values are too important and unique to allow substitution for.

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Agenda item 3: NBA Decision-making Framework

Te Tiriti o Waitangi

Background

- MOG #6 agreed to include a 'general effect' Treaty clause for the exposure draft of the NBA that requires those undertaking functions, duties and powers under the Act to 'give effect to the principles of Te Tiriti o Waitangi'.
- The Committee recommended the Bill include further direction on how the principles of Te Tiriti o Waitangi are to be given effect to.

Options

- Officials have considered whether the NBA and SPA should include further legislative direction on how the principles of Te Tiriti o Waitangi are to be given effect to in order to assist those exercising powers and performing functions and duties under the Acts:
    - **Option 1** – status quo/no additional direction, plus the use of interpretative aids
    - **Option 2** – consolidated non-exhaustive lists in a specific section in both the NBA and SPA.

Discussion

- Officials recommend Option 1 as option 2 could create uncertainty for how the 'general effect' policy intent of the Treaty clause is to apply.
- Officials recommend working with the Parliamentary Counsel Office (PCO) on the use of interpretative aids (such as a preamble and the explanatory note to the Bill).
- Non-legislative guidance will be provided as part of the implementation and transition of the new system to assist with providing direction.

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Agenda item 3: NBA Decision-making Framework

Environmental limits and targets

Background

- At MOG #16 Ministers agreed that:
  a. environmental limits to protect ecological integrity will be defined according to the current state of ecological integrity
  b. management units will be set at an appropriate spatial scale to ensure no net loss of current ecological integrity within the units
  c. it will be mandatory to contribute to achieving targets to restore or improve the natural environment
  d. environmental limits to protect human health will not be prescribed according to the current state of the natural environment.
- This paper provides more detailed advice on how limits, targets, and exemptions will be prescribed in the NBA and NPF, building on the existing concept of management units.

Discussion

- Officials recommend a strictly managed exemptions regime for environmental limits.
- Exemptions are proposed to be triggered during NBA plan or Regional Spatial Strategy (RSS) preparation and to only be available after considering other means for regions to manage within limits.
- Exemptions will not be able to, and cannot be sought, where the current state of ecological integrity is unacceptably degraded.
- Officials propose that the NBA include a framework for setting management units in the NPF and NBA plans, including matters for the Minister and NBA committees to consider when setting them.
- Decisions about the level of targets and the pace at which they are achieved will take into account broader considerations such as economic development, costs of transition, intergenerational equity, and Treaty obligations.
- It is already agreed that targets associated with limits must be set at either the current state or a minimum level above that. Officials propose the NBA set out criteria for the Minister to consider when determining whether to set a minimum level target.

Agenda item 3: NBA Decision-making Framework

Environmental outcomes

Background

- MOG #2 agreed to refine the outcomes to better reflect the reform objectives, consolidate their number and group them so that the actions expected of those exercising functions and powers under the Act are clearer.
- In a briefing circulated to Ministers between MOG #5 and #6, it was agreed to consolidate the list of outcomes further.
- MOG #7 agreed in principle that the NBA outcomes should apply to the SPA.
- The Committee recommended a redraft of the outcomes to consolidate them and provide more uniformity.

Options

- Officials consider that there are three options:
  - **Option 1** – retaining the exposure draft's outcomes list
  - **Option 2** – adopting the Committee's recommended list
  - **Option 3** – adopting the Committee's recommended list as the policy intent, with some minor changes reflecting further engagement and addressing gaps or issues.

Discussion

- Option 3 is preferred, officials recommend that:
  - the NBA explicitly state there is no hierarchy between the outcomes
  - the NBA set outcomes in line with the policy intent in Appendix 3 of this paper, which continues to provide for outcomes across the natural and built environments, and social and cultural values. The minor changes proposed in comparison to the Committees outcomes list seek to ensure language is consistent between the limits and outcomes, and covers the intended scope of matters that must be covered in the NPF and NBA plans
  - officials continue to work with PCO on refining the wording of the outcomes to ensure the policy intent is achieved.
- Decision makers are also proposed to be able to include additional outcomes in the NPF and in NBA plans, as the NBA outcomes will not cover all matters these instruments will manage.

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Agenda item 3: NBA Decision-making Framework

Resolving conflicts between outcomes

Background

- MOG #2 noted that the NBA will need to include mechanisms to support decision makers to resolve conflicts through lower order decision-making.
- The Committee also recommended that the Bill provide further direction on how conflicts between outcomes are to be resolved.

Options

- Officials consider that there are three main options for resolving conflicts between outcomes:
  - **Option 1** - retaining the exposure draft provisions
  - **Option 2** - providing for a hierarchy of outcomes, along the lines of the RMA
  - **Option 3** - giving decision makers broad discretion to resolve most conflicts, but include provisions that give priority to some of the places and values in the revised list of outcomes that are also protected by section 6(a) – (f) of the RMA.

Discussion

- Officials support Option 3.
- Many of the places protected by section 6 of the RMA remain important. It would be inappropriate to allow them to be damaged or destroyed unnecessarily.
- Officials propose that the NBA will only enable more than minor adverse effects on these places where:
  - these would be outweighed by the public benefits;
  - there is a functional or operational need for the activity to be located there; and
  - there is no practicable alternative.
- This will not prevent future ministers and local decision makers from imposing stronger protection in some cases.

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Agenda item 3: NBA Decision-making Framework

Implementation principles

Background

- Resource Management Review Panel (the Panel) recommended including implementation principles to set clear guidelines for processes and decision making under the NBA.
- MOG #7 agreed to include implementation principles that specifically support Te Oranga o te Taiao.
- The Committee recommended further work be carried out to determine whether and, if so, how the NBA should include implementation principles, noting that they have the potential to create uncertainty.

Options

- Officials consider that the main options in relation to principles are:
  - **Option 1** – retain the implementation principles provided in the exposure draft, with broad effect
  - **Option 2** – build the substance of the principles into the operative provisions they are relevant to
  - **Option 3** – combination of the above.

Discussion

- Option 3 is preferred because it would provide 'the best of both worlds'. Officials recommend including a statement of principles in the NBA, requiring the Minister and NBA committees (in making decisions on the content of the NPF and NBA plans) to consider:
  - principles supporting Te Oranga o te Taiao
  - integrated management of the environment
  - the precautionary principle
  - the management of cumulative adverse effects of the use and development of the environment
  - the equitable distribution of the costs of regulation within and across the regions and communities of New Zealand, across generations, and between existing and future users
  - proportionality in decision making, the NPF and NBA plan content should:
    - achieve their objectives in the least cost way
    - allow people to adopt innovative approaches to meet their obligations
    - avoid duplicative requirements.
- Officials note that further work is needed on the alignment of the principles with Te Oranga o te Taiao.

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Agenda item 3: NBA Decision-making Framework

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 objectives of this paper seek to support the reform objectives agreed to by Cabinet.

- Including Te Oranga o Te Taiao in the purpose of the NBA is intended to incorporate a te ao Māori concept into the heart of the Act. Better defining and providing for the intention of the concept in the bill will assist with realising the reform objective of better recognising te ao Māori as well as supporting other objectives including better protecting and restoring the natural environment.
- Including an 'effects management hierarchy' will support the reform objective of protecting the natural environment.
- The 'general effect' policy intent of the Te Tiriti o Waitangi clause realises the reform objective of giving effect to the principles of Te Tiriti o Waitangi.
- The proposal to require that there is no net loss of ecological integrity of the natural environment, and that this is the foundation for prescribing limits, will contribute to better enabling development within biophysical limits and improving system efficiency and effectiveness. The proposal to require targets to improve degraded environments will contribute to protecting the natural environment.
- The purpose of outcomes is to provide direction on the priorities to be worked towards when implementing the NBA. This will contribute to realising the reform objective of protecting and restoring the natural environment, as well as supporting other objectives including enabling development within biophysical limits and better preparing for adapting to climate change and risks from natural hazards.
- Principles will help decision makers navigate issues requiring flexibility. They will help to elevate conflicts out of consenting and into plan development, which should give system users greater certainty. This supports the reform objective of improving system efficiency and effectiveness and reducing complexity. Individual principles will also support particular objectives.

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Paper 3: NBA Decision-making Framework

Key messages

- This paper focuses on the purpose and related provisions (Part 2) of the Natural and Built Environments Act (NBA) and responds to recommendations made by the Environment Select Committee (the Committee) in its Inquiry on the exposure draft of the Natural and Built Environments Bill (exposure draft).
- Part 2 is integral to achieving the reform objectives as it influences how decisions will be made in the new system. The infographics provided in Appendix 3 and the future system scenario in Appendix 6 aim to illustrate how Part 2 will play out in practice.
- Many of the decisions in this paper seek to refine previous Ministerial Oversight Group (MOG) decisions but remain broadly in line with existing policy direction.

Purpose, including Te Oranga o te Taiao

- Including 'Te Oranga o Te Taiao' in the purpose of the NBA will place a te ao Māori concept at the heart of the Act. This is crucial for realising the reform objective of better recognising te ao Māori.
- As recommended by the Committee, officials have undertaken engagement with the [redacted] in further developing the concept of Te Oranga o te Taiao.
- Officials recommend that the concept of Te Oranga o te Taiao remains in the purpose as the intergenerational environmental ethic for all New Zealanders.
- It is recommended that Te Oranga o te Taiao continue to focus on the natural environment.
- It will also be important for the purpose to acknowledge the 'built' environment and the modified rural environment.
- A separate provision for the 'built' environment within the NBA purpose is recommended but drafted to accord with the hierarchy given to the natural environment for limits and targets, without creating a 'back door' for amenity considerations and requiring development to be done responsibly.
- Further work, including in relation to definitions, will be undertaken on reflecting how the 'built' environment relates to the modified parts of the rural environment.

Managing adverse effects

- While the NBA will require an increased focus on delivering positive outcomes, it will also need to manage adverse effects.
- Officials recommend that the purpose of the NBA make it clear that adverse effects must be managed in accordance with an 'effects management hierarchy' that includes offsetting and compensation.

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- The effects management hierarchy will require a more cautious approach to adverse effects on biodiversity and on some cultural values,[1] recognising that they often can't be 'traded off'.

Te Tiriti o Waitangi

- The Resource Management Review Panel (the Panel) recommended the Treaty clause in the NBA require decision makers to 'give effect' to the principles of Te Tiriti o Waitangi. This is a significant change from the Resource Management Act (RMA), which requires decision makers to 'take into account' the principles. Officials do not propose any changes to the wording of the Treaty clause in the NBA or the Strategic Planning Act (SPA).
- Officials do not recommend that the NBA and SPA include further legislative direction on how the principles of Te Tiriti o Waitangi are to be given effect to, as this may have the unintended effect of impacting the general effect/non-exhaustive policy intent of the Treaty clauses.
- Legislative aids (such as a preamble and the explanatory note to the bills) could assist with providing direction, as could non-legislative guidance. The Minister for the Environment is also proposed to have discretion to provide further expression to how the principles of Te Tiriti o Waitangi should be given effect to in the National Planning Framework (NPF), but it should not be a mandatory matter that the NPF must include.

Environmental limits and targets

- As noted at MOG #16, limits and targets work together. Limits set the starting point for the natural environment – reflecting that we need to start where we are – and targets drive ongoing improvement, bringing in broader social, economic, and cultural goals.
- MOG #16 agreed to a refined 'no net loss framework' for setting limits and targets in the NBA that responded to recommendations of the Committee. Not all aspects of the environment will be subject to limits, but some will be (eg water and air quality)
- Key to the no net loss framework is the 'management unit', the spatial scale within a region at which limits and associated targets for the natural environment apply. Officials propose a definition and purpose for management units be set out in the NBA, along with the matters to be considered when setting them.
- The time period for limits and targets to be met will also be relevant, and can be specified in the NPF. This is currently the case under the National Policy Statement for Freshwater Management (NPS-FM)
- The purpose of targets will be to drive improvement towards the NBA outcomes. Decisions about the level of targets and the pace at which they are achieved will take into account broader considerations such as economic development, costs of transition, intergenerational equity, and Treaty obligations.
- It is already agreed that targets associated with limits must be set at either the current state or a minimum level above that. Officials propose that criteria for the Minister to consider whether to set a minimum level are set out in the NBA.

[1] Including:

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- This paper recommends a strictly managed exemptions regime for environmental limits. Among other things, exemptions must be triggered during the process of preparing a region's NBA plan or Regional Spatial Strategy (RSS), will only be available after considering other means by which it is intended that regions manage within limits, and cannot be sought where the current state of ecological integrity is unacceptably degraded or where an exemption would lead to an irretrievable loss of ecological integrity.

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- the relationship of iwi, hapū, and their tikanga and traditions, with ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga
- heritage places that are either currently listed or are eligible to be listed under the Heritage New Zealand Pouhere Taonga Act 2014

Environmental outcomes

- Outcomes will help set expectations about what the future system should deliver, focusing attention towards achieving our most important priorities.
- In refining the policy intent of the outcomes list, officials considered what legislative hooks are necessary to ensure that critical content will be covered in the NPF and NBA plans, and what structure is useful to conceptually link outcomes.

Resolving conflicts between environmental outcomes

- No hierarchy is intended between outcomes listed in the NBA. Conflicting outcomes will mostly be resolved through decisions on the NPF, RSS and NBA plans.
- Officials consider that some of our most important places or values (such as outstanding natural landscapes, wāhi tapu and wāhi tupuna) should be protected from unnecessary damage, destruction or compromise. The paper proposes a mechanism to achieve that.

Implementation principles

- Officials recommend including a list of principles in the NBA to drive good decision making, including the precautionary principle, principles to support Te Oranga o te Taiao, and principles to ensure proportionality. These would apply to the Minister in making decisions on the content of the NPF and to NBA committees on the content of NBA plans (including to resolve conflicts).
- These principles are proposed to be set out in line with the policy intent in Appendix 4 and are necessary to help decision makers respond to a changing environment or unanticipated situations. They are intended to be applied proportionally, and in a way that reduces uncertainty or legal risk.

Paper 3: Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Embedding the King Salmon approach to the planning hierarchy

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

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Purpose, including current progress on Te Oranga o te Taiao

4. **note** that the MOG agreed to include Te Oranga o te Taiao in the purpose of the exposure draft of the Natural and Built Environment Act (NBA)

5. **note** that the Environment Select Committee (the Committee) endorsed the inclusion of Te Oranga o te Taiao in the purpose of the NBA and recommended further work be carried out with national iwi/Māori groups to:

   a. improve its effectiveness by defining it clearly and describing how different aspects of the legislation will support upholding it

   b. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment

   c. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause

Clarifying Te Oranga o te Taiao

6. **note** that officials have worked across government, with the Local Government Steering Group, and with iwi technicians on Te Oranga o te Taiao, including the links between Te Oranga o te Taiao and the Te Mana o te Wai hierarchy as recommended by the Committee and the MOG

7. **note** that officials' work with iwi technicians has, consistent with the policy intent decided by the MOG on 2 June 2021, clarified that:

   a. conceptually, Te Oranga o te Taiao is consistent with a number of similar concepts present in the Resource Management Review Panel's (the Panel) report which build on some of the concepts in the existing RMA

   b. operationally, Te Oranga o te Taiao can work at a systems, planning, and local level by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Te Oranga o te Taiao in the NBA

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

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

17. **note** that drafting advice will be sought from the Parliamentary Counsel Office (PCO) as to whether any other legislative guidance and direction is needed to help decision makers under the NBA to uphold Te Oranga o te Taiao

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

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

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

    b. avoids, minimises or remedies adverse effects

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

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

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

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

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

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

Managing adverse effects

24. **note** that the exposure draft mirrored the language used in section 5 of the Resource Management Act (RMA), which defines 'sustainable management' to include, "avoiding, remedying, or mitigating any adverse effects of activities on the environment"
25. **agree** that the purpose of the NBA should refer to an expanded effects management hierarchy where adverse effects must be avoided, minimised, remedied, offset or compensated to better align with best practice and case law
26. **agree** that in most cases, adverse effects should be managed in that order, meaning that:
    a. adverse effects must be avoided where practicable
    b. any adverse effects that cannot be avoided must be minimised where practicable
    c. after avoidance and minimisation, any remaining adverse effects must be remedied where practicable
    d. after avoidance, minimisation and remediation, any remaining adverse effects must be offset
    e. after avoidance, minimisation, remediation and offsetting, any remaining adverse effects must be compensated for
27. **agree** that adverse effects will be defined to exclude trivial effects
28. **note** that there will be cases where a more or less stringent approach to managing adverse effects is appropriate
29. **agree** that the NBA will enable the Minister for the Environment (the Minister) (through the NPF) and NBA (through plans) to specify a more stringent approach to managing particular adverse effects, including requiring them to simply be avoided (instead of managed using the effects management hierarchy)
30. **agree** that the NBA will also allow the NPF or NBA plans (whichever applies) to specify a less stringent approach to managing particular adverse effects, except for the adverse effects on biodiversity or cultural values described in recommendation 31
31. **agree** that, subject to recommendation 29, the NBA will require that the following adverse effects must be managed in accordance with the effects management hierarchy described in recommendation 26, and also meet the additional requirements described in recommendation 32 or 33 (whichever applies), and that if that is not done then those adverse effects must be avoided:
    a. adverse effects on biodiversity including:
        i. indigenous biodiversity
        ii. non-indigenous biodiversity when it supports indigenous biodiversity
    b. adverse effects on cultural values including:

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

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

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

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

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

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

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

Te Tiriti o Waitangi

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

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

39. **note** that officials will work with the Parliamentary Counsel Office (PCO) on whether there are other ways of providing legislative direction (for example by using a preamble or explanatory note) that can assist interpretation without creating uncertainty as to how to apply the Treaty clause

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

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

Environmental limits and targets

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

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

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

c. where a part of the natural environment is already unacceptably degraded, the NPF will set out a minimum level or target which regions must manage to (that is, a target equal to the limit/current state will not be acceptable)

d. the NBA plans must include targets set at least at the level of the limit, or the NPF directed minimum level or target (whichever is higher quality), for each aspect of the natural environment for which limit attributes are prescribed

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

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

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

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

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

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

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

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

f. the exemption must be subject to a time limit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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60. **agree** that the NBA will include a requirement for the Minister to consider the following when determining whether the current state of an aspect (or aspects) of the natural environment is unacceptably degraded and therefore whether to prescribe a minimum level target for improvement of the natural environment:
    a. the ability of future generations to use the natural environment to provide for their needs and well-being
    b. the risk posed to human health or the health of future generations
    c. whether indigenous species are at increased risk of extinction or local displacement
    d. the risk of significant or irreversible harm to ecological integrity, including its ability to maintain composition, structure, functions and resilience.
    e. New Zealand's international obligations relating to the natural environment
61. **agree** that the Minister should be able to review a minimum level target in the NPF and revise it
62. **agree** that a minimum level target revised in the NPF will also require review of the relevant target in the NBA plan, and revision if it is found to be set lower (worse quality) than the revised minimum level target
63. **agree** that NBA plans may also include discretionary targets related to NBA outcomes
64. **agree** that discretionary targets related to outcomes cannot undermine or conflict with a limit or a target associated with a limit
65. **agree** that a target:
    a. in the NPF will be a measurable and time-bound direction designed to help achieve an outcome
    b. in a NBA plan will be a measurable and time-bound direction to help achieve an NBA outcome in the NPF and/or the NBA plan
66. **agree** that the NBA includes definitions for targets, sub-targets and minimum level targets

Environmental outcomes in the NBA

67. **agree** to adopt the Committee's recommended outcomes list as the policy intent, with some minor changes reflecting further engagement as well as addressing any gaps created or issues identified
68. **note** that RSSs will provide further detail on some outcomes including where and how they are achieved
69. **note** that some outcomes include more directive language than others (such as "protection"), and that this could imply an internal hierarchy between the listed matters
70. **agree** that the NBA will expressly state that there is no hierarchy between the listed matters
71. **agree** that the NBA will set out the outcomes in line with the policy intent of:
    a. the protection or, if degraded, restoration of:
        i. the ecological integrity, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity

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ii. outstanding natural features and outstanding natural landscapes

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

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

v. conservation of cultural heritage

b. in relation to climate change and natural hazards:

i. reduced greenhouse gas emissions

ii. increased removal of greenhouse gases from the atmosphere

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

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

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

ii. the ongoing and timely provision of infrastructure services

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

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

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

72. **agree** that officials will continue to work with the PCO on refining the wording of the outcomes to ensure the policy intent is achieved

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

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

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

a. the purpose of the NBA

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

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

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

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

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

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

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

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

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

80. **note** that the Greenfields development scenario in Appendix 6 is an example of work in progress which will be provided to the MOG in early June as a set of scenarios showing how the new RM system will achieve the reform objectives set by Cabinet [CAB-20-MIN-0522 para 12 refers]

Minimising and resolving conflicts between outcomes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. outstanding natural landscapes

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

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

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

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

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

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

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

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

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

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

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

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

Implementation principles

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

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a. principles supporting Te Oranga o te Taiao

b. integrated management of the environment

c. the precautionary principle

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

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

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

   i. achieve their objectives in the least cost way

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

   iii. avoid duplicative requirements

95. **note** that in relation to the application of the precautionary approach[2] the MOG earlier agreed "that the NBA will require that a precautionary approach is adopted with a similar framing to Principle 15 of the Rio Declaration on Environment and Development 1992 (the Rio Declaration)"

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

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

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

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

100. **agree** that officials will work with the PCO on the specific drafting of the proposed principles to reflect the policy intent set out in this paper

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

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

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

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

103. **note** that the NBA will also include procedural principles equivalent to section 18A of the RMA, consistent with the decision at MOG #4 that officials would "work with PCO to draw together and modernise provisions relating to presumptions and existing use in Part 3 of the RMA for the NBA" (recommendation 27).

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Paper 3: NBA Decision-making Framework

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Purpose of this paper

1. This paper seeks further decisions on the core NBA decision-making framework, comprising its purpose and related provisions (Part 2). It seeks to clarify:
   a. the meaning of Te Oranga o te Taiao
   b. that adverse effects must be managed in accordance with an 'effects management hierarchy'
   c. how limits, targets, and exemptions will be prescribed in the NBA and NPF, building on the existing concept of management units
   d. the outcomes in the NBA, how conflicts between outcomes will be resolved and that additional outcomes can be set in the NPF and in NBA plans
   e. how implementation principles will be used to support decision-makers in making decisions on the NPF and NBA plans.
2. The proposals in this paper respond to the Environment Select Committee's (the Committee) recommendations on the exposure draft of the Natural and Built Environments Bill (the exposure draft).[3]
3. The exposure draft reflected Cabinet decisions (CAB-20-MIN-0522 refers) and decisions made at Ministerial Oversight Group (MOG) meetings #2, #6, and #7. Ministers also made further policy decisions that were reflected in officials' recommendations in the Departmental Report to the NBA exposure draft (BRF-527 RM Reform 61 refers). The Committee's recommendations mostly aligned with the Departmental Report.
4. MOG #7 and MOG #14 agreed in-principle that some aspects of Part 2 of the NBA would apply to the SPA, including the environmental outcomes, Te Tiriti clause and Te Oranga o te Taiao.
5. This paper also brings together input from the iwi/Māori groups, local government, agencies and targeted engagement.

Decision making in the new resource management system

6. The new resource management decision-making framework will include:
   a. NPF to direct lower order decision making and deliver consistency and efficiency
   b. RSS to carry out long-term spatial planning
   c. Natural and Built Environments plans (NBA plans) to provide detailed rules to achieve local place making, consistent with NPF and RSS direction.
7. How Part 2 of the NBA is expected to flow down through these instruments is illustrated in the infographics provided in Appendix 3 and the table set out in Appendix 5.
8. The key ways in which Part 2 will influence the content of these instruments are by requiring:
   a. consistency with the purpose, including the concept of Te Oranga o te Taiao
   b. appropriate management of adverse effects
   c. giving effect to the principles of Te Tiriti

[3] The Select Committee Inquiry on the exposure draft of the Natural and Built Environments Bill began on 1 July 2021. The Committee reported back to the House of Representatives on 1 November 2021 and a high-level Government response to the report was tabled in the House on 17 February 2022.

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d. additional outcomes to be set in the NPF and NBA plans which provide for the matters listed in the NBA

e. achievement of limits and targets

f. consideration of specified decision-making principles.

9. To be effective, Part 2 needs to ensure, among other matters, that:

a. the reform objectives as agreed by Cabinet (CAB-20-MIN-0522 para 12 refers) are articulated as clearly as possible. In particular, there must be no doubt that development can only occur within environmental limits and associated targets

b. the right balance is struck between certainty and agility, especially given the increasing pace of change in the natural environment

c. useful RMA concepts and case law are retained, to minimise inefficiency and cost during the transition to the new system

d. the integrity of Te Oranga o te Taiao is appropriately upheld.

10.

11.

12.

13.

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A. NBA Purpose, including Te Oranga o te Taiao and managing adverse effects

14. This section seeks to resolve two key components of the NAB purpose statement:
    a. Te Oranga o te Taiao
    b. managing adverse effects.
15. Purpose sections in legislation can serve different functions. In some cases, a purpose section (or sections) will describe the other provisions in an act, while in others acts it will have more of an influence on how the act is interpreted and implemented.
16. The purpose section of the NBA is intended to help set the direction for decisions that are required to be made when making the NPF and NBA plans. It will also indirectly constrain RSS content designed to give effect to the NPF.
17. The purpose of the NBA will also need to acknowledge the 'built' environment and the rural environment. Officials are seeking a delegation to enable appropriate wording to be included in the purpose once the scope of Te Oranga o te Taiao has been confirmed.
18. The purpose of the NBA must articulate as clearly as possible what decision makers need to achieve. Ambiguity is likely to be litigated, creating a risk that the courts could interpret the purpose in a way which does not meet the policy intent. This occurred with the purpose of the RMA. The intended bottom lines were not applied, because the courts substituted an 'overall broad judgment approach'.[4] This was eventually corrected by the Supreme Court in 2014, but it took decades.
19. The Parliamentary paper on the exposure draft noted[5] that the purpose of the NBA aims to improve on the RMA by:
    a. being much more explicit about having to comply with environmental limits to protect ecological integrity and human health
    b. setting up a framework of outcomes for restoring, enhancing or improving the natural environment, as well as promoting specific development and cultural outcomes that support the well-being of present generations, without compromising the well-being of future generations
    c. upholding Te Oranga o te Taiao and being more explicit about the intrinsic relationship between iwi, hapū, and te Taiao also better reflects te ao Māori within the system.

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[4] See Rt Hon Simon Upton's comments in the 2020 Salmon Lecture, *RMA Reform: Coming Full Circle*:

> "I would like to cite one passage from [an earlier] lecture which summarises the legislative intent [behind the purpose of the RMA]:
>
> '… whatever section 5(2) [of the RMA] has to say about economic or social activities, the matters set out in sub-paragraphs (a) (b) and (c) must be secured. They cannot be traded off. They constitute a non-negotiable bottom line. Unless it is a bottom line, sustainable management ceases to be a fixed point or pre-eminent principle and sinks back into being a mealymouthed manifesto whose meaning is whatever decision-makers on the day want it to be.'
>
> I remain broadly of this view, in particular the non-negotiable imperative of guaranteeing environmental bottom lines, even if it took a further twenty years for the Supreme Court in King Salmon to put to bed the "overall broad judgment" approach".

[5] Environment Committee. Inquiry on the Natural and Built Environments Bill: Parliamentary Paper, page 29.

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Committee recommendations on the NBA purpose, including Te Oranga o te Taiao

20. The Committee's recommendations on the purpose focused on the need for further clarity and coherence of the intent, structure, and concepts in the purpose.

21. Its specific recommendations were:

    a. Recommendation 3: "That the concept of Te Oranga o te Taiao be included in the purpose of the NBA, and that work be carried out with national iwi and Māori groups to further develop the concept to:

        i. improve its effectiveness by defining Te Oranga o te Taiao clearly and describing how different aspects of the legislation will support upholding Te Oranga o te Taiao

        ii. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment

        iii. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause"

    b. Recommendation 4: "That the purpose clause and other provisions be amended to better reflect that:

        i. environmental limits have priority in the system, and are not subject to other goals related to well-being

        ii. there are dual goals, within the parameters of environmental limits, to both protect and restore the natural environment, and to better enable development

        iii. the intention is that protection and restoration of the natural environment be achieved overall through the NPF and NBA plans, rather than as a requirement of every consent"

    c. Recommendation 5: "That the purpose clause give more prominence to the built environment, so that the purpose of the NBA is more clearly linked to the outcomes for housing, infrastructure, and cultural heritage in relation to the built environment"

    d. Recommendation 6: "That the purpose clause be reviewed so that the structure and concepts in the purpose minimize uncertainty and, therefore, legal risk in a way consistent with the objectives of the reform"

    e. Recommendation 7: "That the purpose clause use more directive language to require the protection of the natural environment"

    f. Recommendation 8: "That, in regard to adverse effects on the environment:

        i. the NBA require the NPF to provide high-level and overarching direction on the effects management hierarchy

        ii. offsets and compensation should not be part of the definition of 'mitigate' in clause 3, and the term be redrafted"

    g. Recommendation 9: "That, where appropriate, the bill carry over relevant definitions already defined under the RMA, to ensure existing case law is retained in the new system, unless the policy intent changes in a way that justifies a corresponding change to a definition."

22. Officials broadly agree with the Committee's recommendations.

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Background on Te Oranga o te Taiao

23. The NBA purpose drafted by the Resource Management Review Panel (the Panel) proposed recognising the concept of Te Mana o te Taiao. As outlined in the Parliamentary paper to the exposure draft,[6] the Government has "explored whether 'Te Mana o te Taiao' was the tika (right/correct) concept to use, whether 'recognise the concept' was the right statutory weighting to use, and whether the definition of Te Mana o te Taiao as suggested by the Panel was appropriate".

24. Te Oranga o te Taiao was suggested as an alternative by the [redacted] their view, Te Oranga o te Taiao more appropriately reflected an approach that resonates with te ao Māori ('Māori world') and better encapsulates the intergenerational importance of the health and well-being of the natural environment.

25. Importantly, Te Oranga o te Taiao was not advanced by [redacted] as a 'stand-alone' concept. In addition to the purpose and definition, other outcomes and implementation principles were identified as containing concepts that reinforced the concept and, in conjunction with the purpose section, would help ensure it would be upheld with integrity.

26. There was broad support from submitters for including Te Oranga o te Taiao as part of the Act's purpose. However, many submitters commented that a non-exhaustive definition for Te Oranga o te Taiao would lead to uncertainty and there was a strong view by some submitters that the purpose of the NBA requires as much legal certainty as possible.

27. The Committee recommended (see paragraph 21 above) that the concept of Te Oranga o te Taiao be included in the purpose of the NBA, but that further work was needed to develop the concept. The following sections outline what is needed to support upholding the concept of Te Oranga o te Taiao within the NBA purpose and other aspects of the legislative framework.

Previous MOG decisions on Te Oranga o te Taiao

28. The MOG has made a range of decisions on the purpose of the NBA. MOG #7 agreed, "to include Te Oranga o te Taiao in the purpose of the exposure draft, in accordance with the indicative drafting [as outlined in the MOG #7 paper]" (rec 44).

29. MOG #7 also agreed (rec 55) that the policy intent outlined in a paper dated 2 June 2021 be used to inform the drafting instructions provided to the Parliamentary Counsel Office (PCO). This policy intent included a number of matters, with some key points being:

    a. Te Oranga o te Taiao is intended to be a common environmental ethic for Aotearoa/New Zealand at the heart of the new resource management (RM) system

    b. there should be equal weight between upholding Te Oranga o te Taiao and enabling the use of the environment for intergenerational well-being

    c. primacy to environmental protection is in relation to limits protecting the ecological integrity of the natural environment and human health, and above environmental limits trade-offs can be made between well-beings

[6] Ibid, page 30.

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d. the purpose sets out the 'why' and 'how' of the NBA's overall objective, and is not an 'operative' provision in the sense that it is not a section under which particular decisions on resource use are made

e. the NPF and NBA plans will flesh out the purpose and supporting provisions in detail, although the purpose of the Act will remain relevant especially in an interpretative sense.

30. At MOG #7 it was additionally agreed (recs 53 and54) that officials will continue to work with iwi/Māori groups on Te Oranga o te Taiao and further work will be undertaken on how Te Oranga o te Taiao will be supported and reinforced by other provisions in the Act. As noted above, this recommendation was also echoed by the Committee (rec 3).

31. Through MOG #14 it was agreed in-principle that Te Oranga o te Taiao would be incorporated into the purpose clause of the SPA in a manner consistent with the NBA (rec 7). MOG also noted that the definition of Te Oranga o te Taiao in the NBA is expected to undergo some refinement following the select committee inquiry report-back and engagement process.

Further developing the concept of Te Oranga o te Taiao

32. In line with the Committee's recommendations, further work has been undertaken by officials in collaboration with the technicians of the iwi/Māori groups to develop the concept. An expanded description of the policy intent that supports the concept is outlined below.[7]

How Te Oranga o te Taiao will positively influence RM decisions

33. Te Oranga o te Taiao is intended to provide the environmental ethic for the new RM system, drawn from te ao Māori perspectives. It is intended to be broad enough to guide the actions of both Māori and non-Māori.

[7] The terms 'environment', 'taiao', 'natural environment' and 'built environment' are used deliberately in this narrative and are not interchangeable. For the purposes of this paper, the following definitions of these terms are used:

a. **Environment:** (a) the natural environment: (b) people and communities and the built environment that they create

b. **Taiao:** *[TBD if a definition is or isn't required – but if a definition was to be included it would be wide ranging, comprehensive and inclusive, and apply to the matters noted in the definition of environment above]*

c. **Natural environment:** (a) the resources of land, water, air, soil, minerals, energy, and all forms of plants, animals, and other living organisms (whether native to New Zealand or introduced) and their habitats; and (b) ecosystems and their constituent parts

d. **Built environment:** *[TBD if a definition is or isn't required – but if a definition was to be included it may be similar to the Panel's definition, which was: human-made buildings, structures, places, facilities, infrastructure and their interactions which collectively form part of urban and rural areas in which people live and work*].

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34. In te ao Māori, the taiao has its own mana/authority – *he mana anō tō te taiao*. It exists with or without us. The concepts within Te Oranga o te Taiao are consistent with the recognition of the intrinsic value of the natural environment and that there is an essential relationship between the core ecological integrity of the natural environment and its capacity to sustain all life. This is consistent with the direction of the Panel's report and some of the concepts already embodied within section 5(2)(b) in Part 2 of the RMA.

35. Te Oranga o te Taiao could be literally translated as the health and well-being of the environment. However, it is also a korowai (cloak) that embraces a series of interrelated principles and concepts. Te Oranga o te Taiao provides flexibility that enables it to be applied appropriately to the specific aspects of the environment being considered by decision makers. This obligation also extends to the needs of future generations – *ko te āpōpō tētahi whakaaro mō tēnei wā tonu*. It is anticipated that there will be non-legislative guidance about Te Oranga o te Taiao.

36. Decision makers upholding Te Oranga o Te Taiao will have to give consideration to the wider implications of individual decisions – *he ao kotahi te taiao*. The health and well-being of one part of the environment impacts on all others – *kei taka tētahi, kei taka te katoa*. More sophisticated systems thinking will be critical for achieving outcomes and better managing cumulative effects.

Scope of Te Oranga o te Taiao

37. In te ao Māori, te taiao is not limited to nature and is not compartmentalised. It is treated as an indivisible whole where people are also a part of te taiao, not outside of or superior to it. Existing as part of te taiao imposes positive responsibilities to tiaki (look after) and manaaki (care for) it. However, not all persons involved in RM decisions will share this perspective.

38. Hence, while te taiao is broad, for the purposes of the regulatory system Te Oranga o te Taiao can be most clearly expressed as focusing on the natural environment.

39. Aligning the scope of Te Oranga o te Taiao on the natural environment (in line with the exposure draft) would also have the advantages of better:

    a. enabling different RM approaches for the natural and built environments, whilst concurrently requiring considerations of integrated management, interconnections between the elements of the natural environment, and cumulative effects

    b. avoiding inconsistencies that might undermine the concept (such as the creation of a quarry being unintentionally seen as upholding Te Oranga o te Taiao).

40. This approach may require separate legislative considerations for the built environment. However, use and development will still be required in some circumstances to uphold Te Oranga o te Taiao when considering interactions between and within the natural and built environments.

Using more directive language for the natural environment

41. The Committee noted that the intention of the Act is "to require protection and restoration of the natural environment … [and] more directive language is appropriate"[8].

42. Officials broadly agree with the Committee that more directive language should be used, including in relation to Te Oranga o te Taiao. However, care must be taken to ensure the policy intent is maintained, particularly:

[8] Environment Committee. Inquiry on the Natural and Built Environments Bill: Parliamentary Paper, page 16.

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

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

c. above/within limits and targets there is no strict primacy between environmental protection/restoration and development goals.

Providing for the built environment within the purpose

43. Focusing Te Oranga o te Taiao on the natural environment enables explicit reference to built environment objectives, without undermining the concept.

44. The purpose of the NBA should refer to the built environment, including to support the RM reform objective to "better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure".

45. This could be achieved via a provision that outlines how decisions affecting the built environment will help achieve the purpose of the Act. Such a provision would recognise that enabling well-functioning built environments is part of providing for people and communities' wellbeing now and into the future.

46. This provision would enable development that is done in an environmentally responsible way. It would sit alongside other provisions that ensure decisions about the built environment:

a. deliver the overall purpose

b. accord with the priority given to limits and targets for ecological integrity and human health

c. avoid, minimise or remedy adverse effects.

47. The purpose should not create a 'back door' for the types of aesthetic amenity considerations that have allowed narrow private interests to block housing developments.

48. Specific provision for the built environment would address the concerns of the Committee and some agencies that the purpose needs to give more prominence to the built environment. It would help ensure that the RM system provides for affordable housing, infrastructure and reduction of greenhouse gas emissions, as well as the other NBA outcomes.

Wider legislative connections required to support the concept

49. As described earlier, Te Oranga o te Taiao is a korowai (cloak) that embraces a series of interrelated principles and concepts.

50. In addition to including and defining the concept in the purpose, other connections identified to support Te Oranga o te Taiao include:

a. provision for the relationships that all people have with the natural environment

b. provision for the kaitiaki responsibilities of iwi and hapū

c. provision for the stewardship responsibilities of all persons

d. provision for enhancing both the natural and built environments (through separate references)

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e. intergenerational equity/well-being (present and future generations) and use of the natural and physical resources of the environment must be sustainable

f. development within limits and targets, and application of the precautionary approach,[9] non-regression principle[10] and progression principle[11]

g. positive outcomes for the environment being provided for

h. managing adverse effects on the environment and having particular regard to cumulative effects

i. provision for the intrinsic value of te taiao

j. outcomes being promoted that will be beneficial for all aspects of the environment, and including outcomes for Te Oranga o te Taiao that cover the protection and restoration of:

   i. the mana and mauri of the natural environment and

   ii. the relationships of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tupuna and other taonga

k. integrated management of the environment and ensuring compartmentalisation is offset with considerations of interconnection and impact on the whole

l. recognition and provision for the application, in relation to te taiao, of kawa, tikanga (including kaitiakitanga) and mātauranga Māori

m. promotion of appropriate mechanisms for effective participation by iwi and hapū in processes undertaken

n. recognition and provision for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao.

51. Many of these elements are already present in the purpose and supporting provisions as set out in the exposure draft. However, some redrafting is anticipated to better match the refined policy intent.

52. An illustrative summary of the areas and mechanisms which link to Te Oranga o te Taiao is at Appendix 1.

53. Aspects of the concept that overlap more directly with Te Tiriti clause are considered later in this paper.

[9] The precautionary approach provides that scientific uncertainty should not prevent action to protect the natural environment when there are threats of serious or irreversible harm.

[10] The non-regression principle provides that where environmental protection is implemented, it should not be restrained or diminished.

[11] The progression principle is the corollary of the non-regression principle, requiring laws and policies to be regularly revised and enhanced in order to protect, conserve, restore, and ameliorate the environment, based on the most recent scientific knowledge and policy development.

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How does Te Oranga o te Taiao relate to Te Mana o te Wai

54. Te Mana o te Wai[12] is developing into a shared environmental ethic between Māori and non-Māori for freshwater. The idea of expanding this concept from wai to te taiao has been brought up in multiple settings, including the Select Committee inquiry.

55. Officials understand that there is consistency between Te Oranga o te Taiao and Te Mana o te Wai, and they are self-reinforcing concepts that have similar roots in mātauranga Māori. Te Oranga o te Taiao provides the conceptual korowai that includes Te Mana o te Wai, and Te Mana o te Wai is consistent with the application of Te Oranga o te Taiao in the context of freshwater.

56. Officials consider that this should form part of the narrative for Te Oranga o te Taiao so that all persons are aware of how these concepts interrelate, and also consider that there may be further ways to articulate this interrelationship within the NPF (particularly the strategic chapter).

Background on Managing Adverse Effects

57. While the NBA will require an increased focus on delivering positive outcomes, it also needs to manage adverse effects.

58. Officials consider the purpose should be drafted to avoid any doubt that:

    a. activities can only take place within limits and associated targets

    b. in addition to meeting limits and associated targets, activities must be carried out in a way which appropriately manages adverse effects.

59. In accordance with previous MOG decisions, the costs imposed to manage adverse effects should be proportionate to those effects. However, the purpose is not the appropriate place to include the detailed requirements for delivering proportionality. That content belongs in the provisions of the NBA that will set out the requirements for evaluating NPF and plan content.[13] Part F of this paper also recommends the NBA includes a decision-making principle to help drive proportionality.

60. The purpose of the RMA requires resource users to avoid, remedy or mitigate "any adverse effects of activities on the environment". It does not mention offsetting or compensation or explain when they should be allowed. Officials recommend the NBA plugs this gap by also addressing offsetting and compensation.

[12] Te Mana o te Wai is a concept in the NPS-FM 2020 that refers to the fundamental importance of water. The concept has several elements in the NPS-FM, and one important element is Te Mana o te Wai hierarchy of obligations in section 1.5 (5) that priorities: first, the health and well-being of water bodies and freshwater ecosystems; second, the health needs of people (such as drinking water); and third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

[13] The RMA's evaluation requirements are set out in section 32. Broadly speaking, they are similar to the requirements for Regulatory Impact Analysis and include identifying options and their relative 'efficiency and effectiveness'. Officials are working together on advice to ensure the NBA requirements will drive good policy analysis, with a particular focus on ensuring proportionality.

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61. The key point of difference between the various concepts is that only avoiding, remedying and mitigating actually prevent or reduce adverse effects. Offsetting and compensating do not prevent or reduce adverse effects. Instead, they deliver positive effects, usually at a different site from the activity in issue. They raise difficult issues, in principle and practice, including that:

    a. it is not always appropriate to substitute a gain for a loss. For example, it would not be acceptable to damage an historic pa site 'in exchange' for something else

    b. offsets must achieve a like for like and a "no net loss" outcome. This might be achievable where the thing being damaged can be replaced with a thing that is similar or the same, but not where the thing being damaged is not interchangeable with the proposed offset[14]

    c. offsetting and compensation will only work where the relevant conditions are complied with or enforced. Under the RMA, conditions requiring works to offset or compensate for adverse effects have quite commonly been breached and it is preferable for offsets to be required ahead of the loss of the values which the offset seeks to address

    d. offsetting and compensation to meet limits will require robust accounting systems and environmental monitoring, without which there could be a gulf between what is lost and what is gained in practice.

62. The draft National Policy Statement for Indigenous Biodiversity includes provisions which are designed to ensure adverse effects are managed appropriately in that context, including only using offsetting and compensation where better options are not available. Those provisions represent international best practice and the Government's guidance on biodiversity offsetting and align with the relevant RMA case law. Officials consider the NBA should take the same approach to adverse effects on biodiversity.

63. Officials also consider the NBA should take the same or a similar approach to adverse effects on cultural values. Like biodiversity, cultural values (including historic heritage) can be unique and irreplaceable, making offsetting and compensation less appropriate. Again, international best practice recognises this by requiring a relatively careful approach. New Zealand does not yet have national direction that addresses the issue.

64. These proposals will involve adding new types of content to the NBA. However, officials consider that they will improve certainty and reduce the need for litigation. Where the required policy response to an issue is known it makes sense to include it primary legislation, rather than leaving future Ministers and NBA committees to debate what is required.

Committee recommendations on Managing Adverse Effects

65. The Committee supported the inclusion of content on managing adverse effects in the purpose. However, it made both a recommendation and a 'suggestion' about the drafting of the clause on managing adverse effects, as follows:

    a. that, in regard to adverse effects on the environment: (Recommendation 8)

14 For example, biodiversity offsetting can work well where an activity will damage "young" and easily managed vegetation and new planting can deliver the same or similar functions. It is unlikely to work (or be acceptable) where an activity is damaging a habitat that has developed over a long period of time, where the values cannot be replaced or the adverse effects are uncertain but potentially significant.

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a. the NBA require the NPF to provide high-level and overarching direction on the effects management hierarchy

b. offsets and compensation not be part of the definition of "mitigate" in clause 3, and the term be redrafted

b. a 'suggestion' that the reference to "any" adverse effects be removed as it is 'too stringent'.

66. In addition, the Committee commented that the drafting should align with current thinking on how adverse effects should be managed, particularly in the context of biodiversity.

67. Officials agree with these proposals.

Previous MOG decisions on Managing Adverse Effects

68. The MOG has made several decisions on the requirement to "avoid, remedy or mitigate" adverse effects on the environment. Decisions made (and circulated to Minister's offices) between MOG #5 and #6:

    a. noted that making the effects of activities subject to the "avoid, remedy, mitigate" duty could have a significant impact on infrastructure that can be built or development that can occur (rec 6)

    b. agreed to retain the "avoid, remedy or mitigate" approach to adverse effects on the environment in the NBA (rec 14)

    c. agreed that decision makers under the NBA may set conditions that require offsetting and/or environmental compensation where this is specified in the NPF or a plan or when offered by a consent applicant and the decision maker agrees that the offset and/or compensation is desirable (rec 15)

    d. agreed that in order to ensure the "avoid, remedy or mitigate" approach is proportionate and does not impose unreasonable costs on development, the NBA will specify how it is to be applied in plans, consents and other approvals, and will contain provisions which repeat protections against unreasonable costs in RMA, including those relating to requirements to evaluate the costs and benefits of regulatory measures (rec 16).[15]

69. MOG #10 agreed that the NBA will contain a duty on all persons to avoid, remedy or mitigate adverse effects on the environment, which will be effective in the NBA via a clear, workable and proportionate enforcement pathway. This duty is based on the approach in section 17, Part 3, and Part 12 RMA. They key change is that there will be greater enforcement powers where the duty is not complied with (recs 2.1, 2.2 and 2.3).

70. Officials still support those decisions but consider the legislation needs to impose firm constraints on the use of offsetting and compensation (rather than simply allowing it to be used where 'desirable' as per recommendation 15 at paragraph 68c above).

[15] These will be dealt with in the provisions which replace section 32 of the RMA.

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Options for Managing Adverse Effects

71. Officials considered two options for managing adverse effects under the NBA:

    a. *Option 1:* retain the existing wording under the NBA exposure draft. This provides that "any adverse effects on the environment of its use must be avoided, remedied, or mitigated". "Mitigate", in turn, is defined in this context to include offsetting or providing compensation if this is enabled in the NPF or plan provision, or resource consent condition

    b. *Option 2:* better align with best practice by replacing the wording in the NBA exposure draft with a statement that adverse effects must be avoided, minimised, remedied, offset or compensated for. Additional conditions would also apply for effects on biodiversity and specified cultural values.

72. Officials recommend option 2 because it would align with current best practice and case law and help avoid the overuse of offsetting and compensation to manage adverse effects on biodiversity and cultural values.

73. The effects management hierarchy should generally be followed in order:

    a. adverse effects must be avoided where practicable

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

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

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

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

74. Adverse effects would be defined to exclude trivial effects.

75. The NPF or NBA plan rules would 'translate' the hierarchy into more bespoke rules for particular types of activities, including to make it clear whether offsetting and compensation are available. In some cases the rules may be more or less restrictive than the effects management hierarchy.

76. Less discretion will should be available for adverse effects on biodiversity (including both effects on indigenous biodiversity and effects on non-indigenous biodiversity when it supports indigenous biodiversity and some cultural values. The effects management hierarchy will need to be mandatory. In addition, offsetting and compensation will need to be managed in accordance with a series of principles designed to ensure that they are used appropriately and work as intended. Where the hierarchy and the principles cannot be complied with the adverse effects will need to be avoided altogether.

77. Officials recommend including the principles as a schedule or schedules to the NBA. The principles for biodiversity would be based on Schedule 3 and Schedule 4 to the proposed NPS for Indigenous Biodiversity. The scope of the cultural values that require this approach is still being working through and will be finalised under delegation but is likely to include:

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

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

78. Care is being taken to ensure it would not result in undue constraints on housing and other urban development.

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B. Te Tiriti o Waitangi clause

Context

79. The Panel recommended that the Treaty clause be changed to require decision makers under the NBA to 'give effect to' the principles of Te Tiriti.

80. The Panel noted that "in successive reports the Waitangi Tribunal has found the RM system often falls short of fully adhering to the principles of Te Tiriti",[16] and went on to say "[w]e concur with the large number of reports, expert opinions and submissions on the Tiriti clause that the current section 8 of the RMA is entirely inadequate for the degree of recognition and protection of Māori interests that is required by the Treaty".[17]

81. It considered a change to a 'give effect to' weighting would "modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it".[18]

82. This approach was agreed by the MOG and included in the exposure draft with general effect. The policy intent of a 'general effect' clause is to set an overarching requirement on all persons exercising functions, duties or powers.

83. In practice, this would mean that all persons exercising powers and performing functions and duties under the Act, must do so in a way that gives effect to the principles of Te Tiriti – whilst simultaneously meeting whatever other requirements may be involved in exercising those powers and performing those functions and duties.

84. [redacted]

85. [redacted]

86. [redacted]

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[16] Resource Management Review Panel. 2020. *New Directions for Resource Management in New Zealand: Report of the Resource management Review Panel*, page 88.

[17] Ibid, page 98-99.

[18] Ibid, page 99.

87. [redacted]

Committee recommendations

88. The Committee did not propose any changes to the Treaty clause in the exposure draft. Their specific recommendations were:

    a. Recommendation 10: that the bill include further direction on how the principles of Te Tiriti o Waitangi are to be given effect to, including, but not limited to, local government's role in the Treaty partnership

    b. Recommendation 11: that consideration be given to what role the NPF could have in giving additional expression to the principles of Te Tiriti o Waitangi through both the NPF's processes and substantive content, and, in doing so, provide clarity about how persons operating under it can give effect to the principles.

Previous MOG decisions

89. MOG #6 agreed (recommendation 7 refers) to a Treaty clause for the exposure draft with 'general effect' requiring those undertaking functions, duties and powers under the Act to 'give effect to the principles of Te Tiriti o Waitangi' plus:

    a. participatory rights in preparing NBA and SPA plans and NPF

    b. allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater)

    c. the requirement that iwi management plans are taken into account in preparation of plans.

90. At MOG #14 it was also "agreed that that the intent of te Tiriti clause in the SPA will be to give effect to the principles of the Treaty of Waitangi and the clause will be drafted consistently with the same provision in the NBA" (recommendation 9 refers).

Options

91. In order to maintain the policy intent for the Treaty clause to have 'general effect', any further legislative direction on how the principles of Te Tiriti o Waitangi are to be given effect to must be non-exhaustive.

[redacted]

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92. Officials discussed the options considered by this paper with the Treaty provisions oversight group.

Description of options

93. *Option 1:* no change to the Treaty clause itself, but work with the PCO on other interpretative aids, such as a preamble or explanatory notes (recommended).

94. *Option 2:* consolidated non-exhaustive lists in the NBA and SPA, similar to the approach in section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effect) Act 2012 (EEZ).[20]

95. Under both options, the responsible Minister could use the NPF to provide further direction on giving effect to the principles of Te Tiriti.

96. Non-legislative guidance is also needed for both options to support the implementation and transition to the new system.

Options analysis

97. Strengthening the Treaty clause with general effect will be more than symbolic. Such a clause will most likely require decision makers to appropriately assess the relevant Te Tiriti principles when coming to their decisions, Officials have undertaken an indicative analysis of some of the key components that could contribute to giving effect to the principles of Te Tiriti. This is included as Appendix 2.

98. Such assessments will potentially play out differently for the various functions the new system will perform. While Treaty impact assessments will also need to be made in relation to local circumstances, further non legislative direction is likely to be needed to ensure they are undertaken appropriately rather than leaving it solely up to the discretion of future decision makers.

99. [redacted]

[20] Section 12 'Treaty of Waitangi' of the Exclusive Economic Zone and Continental Shelf (Environmental Effect) Act 2012:

> In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi for the purposes of this Act,—
>
> (a) section 18 (which relates to the function of the Māori Advisory Committee) provides for the Māori Advisory Committee to advise marine consent authorities so that decisions made under this Act may be informed by a Māori perspective; and
>
> (b) section 32 requires the Minister to establish and use a process that gives iwi adequate time and opportunity to comment on the subject matter of proposed regulations; and
>
> (c) sections 33 and 59, respectively, require the Minister and a marine consent authority to take into account the effects of activities on existing interests; and
>
> (d) section 46 requires the Environmental Protection Authority to notify iwi authorities, customary marine title groups, and protected customary rights groups directly of consent applications that may affect them.

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100.

101.

102.

103.

104.

105.

106.

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107. [redacted]

Recommended option

108. On balance, officials recommend Option 1 and consider that no further changes to expand the Treaty clause included in the exposure draft are needed. Officials will work with the PCO to identify whether further legislative direction (for example by using a preamble or explanatory note) can provide for interpretive assistance without creating additional uncertainty as to how the clause is interpreted and applied.

Local government's role in the Treaty partnership between iwi/Māori and the Crown

109. The Committee recommended providing further direction on local government's role in the Treaty partnership.

110. Officials provided information and advice on this topic to the Committee during their deliberations.[23] This included noting the following points:

    a. by definition, local government is distinct from the Crown.[24] The Crown is the Treaty partner in the Treaty relationship

    b. the Crown delegates a number of functions in the RM system to local government that relate to the Treaty partnership, as well as specific Treaty obligations under relevant legislation

    c. the Waitangi Tribunal noted in Wai 167 that "the Crown's duty of active protection of Māori property interests is not avoided by legislative or other delegation. If the Crown chooses to so delegate, it must do so in terms that ensure that its Treaty duty of protection is fulfilled"[25]

    d. the requirement in the exposure draft that all persons exercising powers and performing functions and duties under the Act must give effect to the principles of Te Tiriti o Waitangi, will go a significant way to ensuring local government is required to uphold its delegated Treaty responsibilities

    e. officials generally consider that the current drafting in the Treaty clause will have the consequence of requiring local government to implement the principles of Te Tiriti when undertaking functions that if the Crown were to undertake would entail Treaty obligations.

[23] See *Information Requests from the Environment Committee on 05 October 2021: https://www.parliament.nz/resource/en-NZ/53SCEN_ADV_111944_EN7843/4f3aa41d95416461cde85c962f4743280ffcfcf8*

[24] The definition of the Crown in the Public Finance Act 1989 specifically excludes local government.

[25] Waitangi Tribunal. 1999. The Whanganui River Report (Wai 167). Wellington: Waitangi Tribunal, pages 331-332.

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111. The interim report of the *Future for Local Government Review* also provided a similar perspective that "[u]nder current laws, local government is not regarded as a partner in the Treaty relationship. Yet local authorities are creatures of statute, and, in many respects, they act on behalf of central government".[26]

112. For the reasons above, officials do not recommend further changes to the Treaty clause are needed to clarify local government's role in the Treaty partnership.

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[26] Future for Local Government Review Panel, 2021. *Ārewa ake te Kaupapa – Raising the platform: Interim report of the Future for Local Government Review Panel,* page.37

C. Environmental limits and targets

Context

113. A strengthened environmental limits and targets framework is a critical part of the new RM system. It will describe minimum levels of ecological integrity and human health protection, help to manage cumulative effects of use and development, and provide a pathway for environmental improvement and restoration.

114. MOG #16 agreed a refined framework for setting limits and targets in the NBA. The refined framework responded to recommendations of the Committee, and concerns raised with the approach in the exposure draft.

Committee recommendations

115. The Committee made the following recommendations:

    a. Recommendation 12: That the bill clarify that limits could only be set for the purposes of protecting the ecological integrity of the natural environment, and/or human health

    b. Recommendation 13: That the bill state that the Minister may set environmental limits that integrate the mandatory matters in clause 13 for which environmental limits must be prescribed, which would be consistent with the NPF's aim of promoting integrated direction

    c. Recommendation 14: That the bill require the NPF to set environmental limits for "indigenous biodiversity", rather than "biodiversity, habitats and ecosystems", and that the setting of any limits for non-indigenous biodiversity in the NPF be at the discretion of the Minister

    d. Recommendation 15: That the bill require the Minister to set environmental limits in the NPF on the matters listed in the NBA for which it is mandatory to have limits, and that it remain optional for the NPF to set limits for other matters, or direct that NBE plans set limits for other matters

    e. Recommendation 16: That the bill proceed with two formulations by which environmental limits may be expressed: either the minimum biophysical state, or the maximum amount of harm or stress that may be permitted.

    f. Recommendation 17: That in cases where current environmental conditions are below an agreed future environmental limit, the NPF could specify a transition pathway towards achieving the environmental limit by setting transitional limits. Transitional limits should be required to have a specific end point or end date

    g. Recommendation 18: That the bill include provisions that require persons exercising powers and functions under the NBA to comply with limits, in a manner appropriate to their specific regulatory role.

Previous MOG decisions

116. MOG #16 agreed that:

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

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

c. where a part of the natural environment is already unacceptably degraded, the NPF will set out a minimum level or target which regions must manage to (that is, a target equal to the limit/current state will not be acceptable)

d. the NBA plans must include targets set at least at the level of the limit, or the NPF directed minimum level or target (whichever is higher quality), for each aspect of the natural environment for which limit attributes are prescribed

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

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

How the no-net loss framework will work

Strategic planning will help identify what should go where

117. A more strategic and coordinated planning system will generally make managing to limits and targets easier by better anticipating the effects of existing and planned activities and proactively factoring these effects into plans for meeting limits and targets.

118. The NPF, RSSs and NBA plans will work together to set out the ways a type of development will be managed within limits and targets, or how impacts can be accommodated within a management unit.

119. The NPF will prescribe environmental limits and targets, or direct how they will be prescribed in NBA plans. The NPF will also incorporate provisions intended to support development including those carried over from the existing system, for example the NPS on Urban Development.

120. In line with NPF direction, RSS committees will identify 'indicative' areas for management units and undertake a high-level assessment of the state of the environment within these areas.

121. This assessment (along with consideration of other strategic matters) will enable the RSS committee to credibly identify areas that are likely to be suitable for development, use or change. It should include identifying opportunities to leverage development and change in a way that supports restoration and enhancement. For example: where good planning, urban design and investment can increase headroom for use and development; to meet restoration objectives; or where transport corridors and rivers could provide ecological corridors.

122. RSSs will also provide an opportunity to engage the community and test their ambition and priorities. This will help inform the formal setting of targets under NBA plans.

123. RSSs will inform NBA plans which will set out more detailed policies, rules, methods, standards, and other provisions for how limits and targets will be met in a region. This will include the formal location and delineation of management units. NBA plans will also include spatial content such as more detailed maps showing how all the activities in a particular management unit could be coordinated to meet limits and targets.

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124. Over time, the intention is that the system works together so that ecological integrity is improved overall within management units, thus allowing more 'headroom' to meet outcomes, and ensure that headroom is used efficiently.

Stronger plans will reduce reliance on consenting

125. Stronger plans will provide applicants with more certainty about what kinds of activities will be possible in different places within a region.

126. At the consenting stage, the effects management hierarchy will be used as directed by the NPF or NBA plans. For example, there may be rules in the NBA plan requiring that particular habitats are protected, or that urban parks and planted stream sides that provide ecological corridors may need to be maintained.

127. Residual impacts that are not significant can be offset. However, as outlined in Part A of this paper, not all projects that have environmental impacts will need to include offsets, and not all impacts can be effectively offset. Offsetting of all adverse effects by an individual developer may not always be necessary if (as intended) it has occurred as a result of direction in the RSS (for example through public funding agreed in implementation plans) or NBA plan.

Unplanned development may face further costs

128. Development that has not been anticipated through the planning process may have to meet the costs of creating new headroom.

129. If the management unit is already under pressure and headroom cannot be created, then granting consent may come at the expense of existing users. Alternatively, the developer could work with the NBA committee on a process to change the plan to accommodate the development. For example, revising targets or the size or boundaries of management units (where they have been set in the NBA plan).

130. Ministers will also have various tools to help manage unexpectedly high impacts of development, such as:

    a. revising or directing changes to targets that may be too ambitious, short or long

    b. adjusting the size or boundaries of management units if changes can be made without undermining the purpose of the relevant limit(s)

    c. using special legislation to provide for the activity.

Further decisions needed to implement the limits and targets framework

131. While agreement was sought at MOG #16 to the core components of the refined limits and targets framework, further decisions are also needed on exemptions, management units and targets.

Exemptions from limits

132. Despite the additional flexibility offered by the no net loss framework, there are certain circumstances where exemptions from limits may be required.

133. A strictly managed exemptions regime could help in situations where, as part of the process of developing its RSS or NBA plan, a region identifies that it will not be able to meet its various social, cultural, and economic goals without undermining the current level of ecological integrity. In such cases, the relevant NBA committee or SPA committee may ask the Minister for an exemption to an environmental limit with respect to one or more management units.

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134. Officials recommend an exemptions framework be included in the NBA in line with the following policy intent:

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

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

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

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

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

    f. the exemption must be subject to a time limit

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

135. Officials also recommend that before granting an exemption the Minister must follow a robust consultation process.

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

Management units

The definition and purpose of management units

137. Management units are the key to operationalising the no net loss framework.

138. Officials recommend that management units are provided for in the NBA as a geographic area for planning and managing activities to meet an environmental limit(s) or an associated target(s).

139. Management units will identify the spatial scale at which limits and targets for the natural environment apply. The size and location of management units must be sufficient to ensure that limits can achieve their purpose (protecting human health and the ecological integrity of the natural environment) and will be informed by science and mātauranga Māori.

140. Management units will assist with the effective management of ecological integrity by:

    a. managing the application of offsetting and compensation so that it occurs within like ecosystems, and in sufficient proximity to the impact

    b. allowing the state of the natural environment, and the cumulative effects on that state, to be monitored and accounted for at a relevant scale.

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141. Management units will also enable development within limits by providing flexibility for development, without net-loss of ecological integrity. This will be achieved by:

    a. providing certainty about the spatial scale at which limits and targets for the natural environment apply

    b. allowing some activities within a management unit to generate a loss provided that others generate a net gain that makes up for it.

Setting management units in the NBA

142. The scale and location of management units is directly related to the limits and targets that apply within them. Therefore, the same requirements in the NBA should apply to both: that the Minister must either set a management unit in the NPF, or prescribe a process in the NPF that NBA committees must follow to set a management unit in NBA plans.

143. Several considerations are relevant to the setting of management units, to ensure the purpose of limits and targets are met and to enable flexibility for development. Officials propose that the NBA require the following matters to be considered when the Minister or NBA committees are determining the spatial area and delineation of management units:

    a. The extent to which the unit can support Te Oranga o te Taiao

    b. the ability to group areas of similar pressures and biophysical characteristics for more effective and efficient management within the unit (for example airsheds tend to be bounded by hills or by the coast forming basins which the pollutants sit in. They also tend to have a similar intensity of development or land use patterns)

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

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

    e. the ability to apply mātauranga Māori.

144. The principles to guide decision making under the NBA (discussed at Part F of this paper) are also matters that will be considered in the setting of management units.

Reviewing management units

145. The Minister or, as the case may be, an NBA committee, should be able to review whether a management unit in an NBA plan is correctly configured, and if not, to revise it. The Minister may also direct a process in the NPF for the NBA committee to revise it.

Targets

Purpose of targets

146. The purpose of targets is to drive improvement in the natural and built environments.

147. Unlike environmental limits, whose purpose is specifically to protect human health and the ecological integrity of the natural environment, decisions about the level of targets and the pace at which they are achieved will take into account broader considerations such as economic development, costs of transition, intergenerational equity, and Treaty obligations, as well as the risk of harm to human health or ecosystems.

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148. Targets should be "SMART"[27] so that it is possible to track progress, know when they have been achieved and evaluate how well they have given effect to the outcomes or how they have improved and restored the natural environment.

149. NBA plans will need to set out more detailed policies, rules, methods, standards, and other provisions for how targets (and limits) will be met in a region. Communities will be able to review the ambition or timeframe of a target.

Setting targets associated with environmental limits

150. For each environmental limit provided for in the NPF (where ecological integrity will be set at the current state of biophysical attributes of the natural environment), the Minister must set an associated target or prescribe a process for an NBA committee to set a target. The associated targets must be at a level no worse than the limit.

151. To avoid the risk that targets are set with timeframes that are too far in the future to be effective, officials recommend that NBA plans include sub-targets mapping out the path to the target. Sub-targets will improve transparency of the progress required to achieve targets, and their timeframes should be associated with the NBA plan review cycle.

152. Where the Minister is satisfied that the current state of the environment is unacceptably degraded, the Minister must set a target in the NPF at a minimum level (a "minimum level target"), to avoid locking in existing degradation. The NBA committee must set a target at or above the minimum level target in the NPF.

153. The relationship between current state limits and associated targets is illustrated in Figure 1.

Figure 1: The relationship between environmental limits and associated targets

[27] Specific, Measurable, Achievable, Realistic, Time-bound.

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154. For targets to be effective, the NBA plans will need policies, rules, and other methods to achieve them. These provisions will direct how areas that are below a target will be improved, and how areas that are above a target will be at least maintained.

155. The pace and level of the restoration and improvement that must be achieved to meet the targets will depend on the social, cultural and economic aspirations and priorities of the affected communities.

Proposed criteria for considering whether to set a minimum level target (black line in Figure 1) associated with an environmental limit

156. MOG #16 agreed that where the Minister considers that the current state of an aspect (or aspects) of the natural environment is unacceptably degraded, they must set a minimum level or target to require improvement.

157. Officials recommend the NBA provide that the Minister must consider the following circumstances when determining whether the environment is degraded:

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

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

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

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

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

158. Ministers are considering separate advice at MOG #17 about the transitional arrangements for existing national direction. The intention is that existing national bottom lines and standards will continue to apply, for example, the requirement to improve water bodies that are currently below a national bottom line.

Reviewing a minimum level target associated with a limit

159. The Minister should be able to review whether a minimum level target is correctly configured, and if not, to revise it.

160. A minimum level target revised by the Minister in the NPF will also require revision of the relevant target in the NBA plan if it is set lower than the revised minimum level target.

Setting targets associated with outcomes

161. The Departmental Report on the exposure draft recommended that the Minister have a discretionary power to set targets in the NPF to achieve outcomes. This was supported by the Committee. The Committee also recommended that "target" be defined as a measurable direction to support the achievement of an outcome, including a time by which it must be reached.

162. In addition to the Ministerial power to set targets associated with outcomes, officials recommend that NBA committees should be able to set targets in NBA plans for any of the outcomes in the Act (for both the natural and built environments), provided they would not undermine or conflict with a limit, or a target related to a limit.

163. To support interpretation and implementation, officials also recommend that the NBA includes definitions for targets, sub-targets and minimum level targets.

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D. Environmental outcomes

Context

164. The RMA was intentionally designed to focus primarily on adverse effects. In practice this has not provided enough direction, particularly for urban areas. One commentator described the problem in this way:

> The bottom line is that the RMA requires adverse effects to be avoided, remedied or mitigated irrespective of the benefits of the proposed development. This is understandable in respect of the natural environment, but is totally at odds with the reality of the built environment. … The management of current complex urban growth, intensification and restructuring ... cannot be left simply to the avoidance, remediation and mitigation of adverse effects on the existing environment.[28]

165. Making outcomes mandatory will help address those issues and drive a more strategic and future-focused approach to decision making.

166. The NBA will specify the outcomes that must be addressed in the NPF and NBA plans. They are not intended to be exclusive. Both the NPF and NBA plans will be able to include additional outcomes where decision makers consider these would help achieve the purpose of those instruments.

167. The outcomes will expand upon the NBA purpose by helping to identify 'what' the RM system needs to address. National direction and other planning instruments (including RSSs) will then provide further detail on the 'what', and also clarify 'where' and 'how' each outcome will be achieved on the ground.

168. To ensure issues are adequately addressed, outcomes need to be both broad enough and specific enough. Meeting both of those requirements has been the key challenge in designing these elements of the NBA.

Committee recommendations

169. The Committee recommended:

    a. Recommendation 19: that the environmental outcomes be clearly drafted with consistent verbs wherever possible and appropriate

    b. Recommendation 20: that the NBA include [the Committee's] revised and consolidated list of environmental outcomes

    c. Recommendation 21: that the bill state that the NPF should include mandatory content on all environmental outcomes in the NBA

    d. Recommendation 22: that the bill clarify that the NPF and NBE plans are not limited to addressing the identified outcomes, and can also cover a broader range of matters to help achieve the purpose of the NBA.

[28] Rae, B., 2009. Urban design and reform of the Resource Management Act. https://transurban.co.nz/cms/uploads/images/Urban%20Desgin%20and%20Reforms%20to%20RMA.pdf.

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Previous MOG decisions

170. MOG #2 agreed "to refine proposals relating to natural and built environment outcomes to better reflect objectives of reform, consolidate the number of outcomes and group them so that the actions expected of those exercising functions and powers under the Act is clearer (protect and restore, protect, enable, promote or similar wording)" (rec 28).

171. Decisions made (and circulated to Minister's offices) between MOG #5 and #6 agreed to "consolidate the list of outcomes for the [NBA] as presented in appendix 1 and instruct the Parliamentary Counsel Office to prepare drafting to achieve this policy intent for the NBA exposure draft" (rec 13).

172. MOG #7 agreed:

    a. in principle that the SPA does not require its own outcomes but should instead provide that the NBA outcomes apply, with this decision to be revisited if necessary, following the exposure draft inquiry (rec 12)

    b. that the SPA contain a clause to the effect that, to assist in achieving the purpose of the SPA, those exercising functions and powers under it must:

        i. provide for national outcomes set out in the NBA purpose/outcomes section, as directed by the NPF

        ii. consider how the relevant outcomes and objectives contained within specified national strategic plans and documents (such as Government Policy Statements) can be applied regionally (rec 13).

Options

173. The Committee recommended redrafting the outcomes list to consolidate it and use more uniform verbs for different outcomes.[29] Officials have consulted extensively across agencies on the Committee's redrafted outcomes list and consider it largely maintains the original policy intent.

174. Officials have considered four potential options:

    a. *Option 1:* retain the list of outcomes set out at clause 8 of the exposure draft

    b. *Option 2:* adopt the Committee's recommended list of outcomes

    c. *Option 3:* adopt the Committee's recommended list, with some minor changes reflecting further engagement as well as addressing any gaps created or issues identified, and work with the PCO on the choice of verbs and framing to ensure there is no unintended hierarchy.

175. Option 3 is preferred. The table in Appendix 3 provides the policy intent for the outcomes and the rationale for the proposed changes compared to the redrafting from the Committee. Officials consider that directing the NPF and NBA plans to build upon the outcomes set out in the NBA will make it clearer that those instruments must be more specific than the Act.

[29] The reference to verbs means the type of obligation imposed in respect of each outcome, eg, to 'ensure' or 'promote' or 'provide for' it.

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176. The intention is to ensure that the NPF and NBA plans holistically provide for outcomes, by including policies and methods (including rules) that reinforce them. RSSs will also provide strategic direction on how outcomes can be achieved in regions by identifying where particular outcomes can be prioritised at place.

177. In refining the outcomes, officials prioritised the necessary legislative hooks for critical content to be covered in future versions of the NPF. While the outcomes themselves are succinct, definitions are expected to be used to help clarify their meaning (eg, to fully describe the aspects of indigenous biodiversity which need to be covered). Officials have also considered the best structure for conceptually linking related outcomes.

178. Particular consideration has been given to how some outcomes will help to uphold Te Oranga o te Taiao.

179. Consideration has also been given to Protected Customary Rights (PCR). PCR are currently referenced in section 6 of the RMA and were included as an outcome in the exposure draft. It is now proposed that PCR should not be dealt with through outcomes. This is because these rights can never be 'trumped' by other matters, making it inappropriate to include them in an unprioritsed list alongside other matters.

180. Decisions on how PCR should be recognised in the NBA will be made under the delegation approved at MOG #15 for upholding takutai moana rights.

181. [redacted]

182. To address this risk, officials propose that the NBA should expressly state that the wording used does not create a hierarchy.

183. The policy intent is not to preclude future Ministers (in the NPF) and NBA committees (in NBA plans) from including additional outcomes that do not relate to the matters listed in the NBA. This could potentially include highly directive outcomes. This flexibility is needed because the listed matters do not cover all of the matters that must be dealt with in the NPF and in NBA plans.

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184. This could lead to highly directive new outcomes that potentially conflict with the matters to be specified in the Act. Officials are comfortable that any risks can be managed given new outcomes would also be subject to wider NBA requirements, including:

    a. the purpose of the NBA

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

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

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

    e. the requirement to make the NPF not be inconsistent with emissions reductions plans and national adaptation plans

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

185. As noted in Appendix 3, officials will continue to work with the PCO on the wording of the outcomes to ensure the policy intent is achieved. A series of future system scenarios will be provided to MOG Ministers in early June which will help to contextualise the NBA outcomes framework further.

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E. Achieving outcomes, and minimising and resolving the conflicts between them

Context

186. All outcomes are not intended to be achieved at every site (for example, outcomes for the built environment will not usually be achieved in outstanding natural landscapes). Instead, outcomes will be achieved at national and regional levels.

187. To ensure this happens, the new system must be better at minimising and resolving conflicts between outcomes than the RMA.

188. The general approach to minimising and resolving conflicts between outcomes will be consistent with the wider shift towards developing stronger and more proactive plans. National direction will seek to minimise and resolve conflicts, rather than avoid acknowledging that potential conflicts exist, as often occurred under the RMA.

189. The policy to minimise and resolve conflicts will be increasingly 'granular' as the NBA outcomes are translated into the provisions of the NPF, RSSs and NBA plans and then implemented through consenting decisions. This concept is depicted in Infographic 1 of Appendix 3. The key features of it are:

    a. the NPF will provide national direction on achieving outcomes where national consistency is desirable or where the matters involved are of national importance

    b. RSSs will identify key priorities at a regional scale and indicate where various outcomes will be achieved (usually at a high level, although in some cases precision might be possible)

    c. NBA plans will provide more detailed and comprehensive policies and rules to inform resource consenting.

190. How tools can flow through the national direction and planning instruments to front load decisions is depicted in Infographic 2 and 3 of Appendix 3. How outcomes that are in conflict, or synergise, with one another and how they can be managed is depicted in Infographic 4 of Appendix 3.

191. Decisions on how to minimise and resolve conflicts will need to meet procedural, as well as substantive, requirements. These will include requirements to:

    a. give affected persons input, including through submissions and hearings processes

    b. identify options and evaluate their relative impacts (these will be set out in the provisions to replace section 32 of the RMA).

192. All outcomes will also be subject to broader NBA requirements to:

    a. further the purpose of the NBA including Te Oranga o te Taiao

    b. give effect to the principles of the Treaty / Te Tiriti

    c. meet limits and targets

    d. consider implementation principles (discussed in Part F of this paper).

Previous MOG decisions

193. Previous decisions mainly focused on the processes and planning tools that will be used to resolve conflicts rather than the substantive criteria that should apply.

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194. MOG #2 noted (rec 30) "that it will not be feasible for the National Planning Framework and Natural and Built Environment Plans to foresee and conclusively resolve all tensions, so the Act will also need to ensure that mechanisms exist to enable decision makers to do so during lower order decision making (such as consenting)".

195. MOG #4 agreed (rec 14) that in the process of developing NBA plans "consideration by decision makers needs to be given to the resolution of conflicts and tensions by:

    a. spatially identifying areas or places where development is prioritised or areas and places where protection of the natural and built environment needs to be prioritised

    b. other methods that seek to resolve tensions between the natural and built environment."

196. MOG #7 also agreed in principle (rec 39) "that if there are conflicts between different national-level direction or outcomes shaping a spatial strategy that cannot be resolved through the spatial strategy process, the NPF direction takes priority".

Committee recommendations

197. The Committee recommended:

    a. Recommendation 23: that the bill provide further direction on how conflicts between outcomes are to be resolved, including:

        i. specifying that there is no hierarchy among the outcomes

        ii. specifying that policies that achieve synergies between outcomes are to be preferred over those that achieve one at the expense of another, to avoid conflicts in the first place

        iii. providing procedural and substantive requirements to assist decision makers in resolving conflicts

        iv. through links with the Climate Change Response Act 2002 (CCRA).

198. Officials agree that there should be no hierarchy between outcomes and that there should be procedural and substantive requirements to assist decision makers in resolving conflicts.

199. Officials also agree that links should be created with the CCRA and have previously provided advice on what the links should be.[30]

200. Officials support the Committee's intent with regard to achieving synergies but consider a more nuanced approach is required.

Options analysis

201. Advice on principles is provided in Part F of this paper. Setting that conflict resolution mechanism aside, officials have considered three options for resolving conflicts between outcomes:

[30] The Ministers for the Environment and Climate Change have been given advice on the best way to link the CCRA with the NBA/SPA. Officials have recommended that the NPF should not be inconsistent with Emissions Reductions Plans and National Adaptation Plans. If Ministers agree, that will give the climate outcomes a degree of priority over other outcomes in the new system (subject to the requirements to give effect to the principles of the Treaty / Te Tiriti and to meet limits and targets).

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a. *Option 1:* Status Quo. The NBA will not give priority to any outcome, and conflicts between outcomes will be resolved at the discretion of future decision makers

b. *Option 2:* Provide for a hierarchy of outcomes, along the lines of the RMA

c. *Option 3*: Give future decision makers a broad discretion to resolve most conflicts but include provisions that give priority to some of the places and values in the revised list of outcomes that are also protected by section 6(a) – (f) of the RMA.

202. Officials recommend Option 3. It would be inappropriate to give future decision makers unfettered discretion to allow our most significant places to be damaged or destroyed. However, the approach taken in section 6 of the RMA requested by many submitters on the exposure draft can be improved upon because:

a. it has created uncertainty about what development can still occur

b. there is also uncertainty about what places actually meet the thresholds for protection under section 6, which has contributed to a patchy approach to mapping or listing them in plans.[31]

203. Additional provisions should be included in the primary legislation for a 'subset' of the most important places and values in the revised list of outcomes that are also protected by section 6(a) – (f) of the RMA. These provisions would be designed as tests to help protect those places from unnecessary damage or destruction.

Places and values that should be given priority

204. Officials recommend the following places and values within the revised list of outcomes are given priority:

a. areas of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins that have outstanding natural character (to be identified using criteria which broadly align with the criteria that currently apply under the New Zealand Coastal Policy Statement 2010)

b. outstanding natural landscapes (to be identified using criteria which broadly align with the criteria that have been developed by the Environment Court)

c. the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (to be identified using criteria which broadly align with the criteria that are used to identify high and medium significant natural areas under the proposed NPS for Indigenous Biodiversity)

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

e. the relationship of Māori ancestral lands, water, sites, wāhi tapu and other taonga (noting the need to address the overlap with the places described in paragraph (f) below)

[31] See for example the 2012 report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group (https://environment.govt.nz/assets/Publications/Files/tag-rma-section6-7.pdf) which comments that, "Not all plans identify outstanding natural features or landscapes. Moreover, the Courts have confirmed that the absence of an operative plan reference to an outstanding landscape does not prevent a decision maker from identifying such an area for the purposes of s.6(b), even when the plan process determined that such area did not qualify for outstanding status… The current s.6(b) has generated real uncertainty and cost given the ad hoc approach to the identification of outstanding natural landscapes and outstanding natural features regardless of the position under operative plans…

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f. heritage places that are either currently listed or are eligible to be listed under criteria which broadly align with the criteria for identifying Category 1 and 2 places, wāhi tapu, wāhi tapu areas and wāhi tupuna under the Heritage New Zealand Pouhere Taonga Act 2014.

205. This paper seeks delegations for detailed decisions on the identification criteria.

206. The proposed places and values to be prioritised are more limited than section 6(a)-(f) of the RMA. For example, it would not cover all landscapes that are locally important. However, there will be other tools available to protect those places as appropriate.

207. Ideally, the places and values captured by these provisions would be either mapped or listed (eg, by reference to property boundaries or title information) in the relevant planning instruments. However, this will not always be possible for a range of reasons:

a. the location of certain places, such as wāhi tapu, is sometimes sensitive information

b. what qualifies as a significant natural area or cultural heritage can change (eg, habitats can mature or be restored between plan reviews)

c. there can be practical difficulties in obtaining information (eg, entering private land to determine its ecological values).

208. In these instances the better approach will usually be to describe the places and values that are covered and also set out criteria for identifying them (noting that the NPF could potentially elaborate on those criteria, in a similar way to national direction made under the RMA).

Tests to help protect prioritised places and values from unnecessary damage or destruction

209. The tests draw heavily on best practice under the RMA and on international laws such as the European Union's Habitat Directive.

210. Under the RMA, many of the planning provisions designed to implement section 6 have converged on a very similar approach. After describing the places protected under section 6, they go on to state that what is allowed will depend on the availability of alternatives. This type of approach avoids unnecessary damage while still allowing for key activities that cannot go elsewhere.

211. Officials recommend that the NBA should provide that any activity which would generate a more than minor adverse effect or effects on the specified places or values can only be considered for consent if it meets all of the following:

a. the activity will deliver public benefits that outweigh the adverse effect(s), and

b. the activity has a functional and/or operational need to be located so as to generate the adverse effect(s), and

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

212. These tests will not stop decision makers from imposing additional constraints on activities (eg, by giving activities prohibited activity status, or imposing additional 'tests' or requirements). It would only prevent them from *allowing* activities where the test is not met.

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213. In practice, whether there was a reasonable alternative location would be established through evaluations done at the plan-making stage or through assessments of alternatives done at the consenting stage.

214. These types of assessments are a well-established feature of both the RMA[32] and Public Works Act frameworks[33] (although neither act requires that better alternatives should always be taken). It is also commonly used overseas, often as part of a wider Environmental Impact Assessment.

215. [redacted]

216. [redacted]

217. [redacted]

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[32] Assessments of alternatives are required for notices of requirement under section 171 and some applications for consent under Schedule 4, as well as for some plan-making.

[33] Assessments of alternatives are required under section 24.

F. Implementation principles

Context

218. Implementation principles were included as a placeholder at clause 18 of the exposure draft. This states that "relevant persons" must:

    a. promote the integrated management of the environment

    b. recognise and provide for the application, in relation to te taiao, of kawa, tikanga (including kaitiakitanga), and mātauranga Māori

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

    d. promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act

    e. recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao

    f. have particular regard to any cumulative effects of the use and development of environment

    g. take a precautionary approach.

219. Clause 18 received mixed feedback from submitters. There was concern amongst submitters that the principles could lead to challenges to decisions. The principle of most concern was 18(c) regarding public participation. Another concern was that it is unclear what the principles would require in practice [redacted]

220. Submitters also suggested a range of additional principles, including the need for timely and cost-efficient processes, principles to assist with outcome-planning and the culture change that will be required to achieve it, and the principle of resilience.

221. Officials consider principles should be used sparingly. The relatively vague wording used in most principles means they can be interpreted and applied in unexpected and variable ways when decisions are made. As such, they can generate uncertainty and legal risk. Officials do not consider principles should be used for subject matters that can be dealt with through more prescriptive provisions.

222. However, principles are the right legislative architecture for making some kinds of decisions.[34] In particular, they can help decision makers navigate issues that should not be dealt with by more prescriptive requirements, by providing reminders to consider the right things in the right ways.

223. Internationally, it is widely accepted that environmental law needs to be flexible about what activities will be allowed in the future because:[35]

[34] Professor Ceri Warnock, "Environmental Problems and Constitutional Principles" in Resource Management Theory and Practice (2021).

[35] Ibid.

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a. decisions often call for subjective value judgments about how competing policy goals should be prioritised. In those cases, providing for a robust decision-making process is often as important as the final outcome

b. our understanding of the environment is still a work in progress. In short, 'the factual backdrop is not fixed'. This means that to continue to deliver good outcomes, environmental law needs to continue to evolve alongside the science and other evidence.

224. There are several types of decisions under the NBA that call for flexibility, including decisions on resolving conflicts between outcomes. In those cases, principles could help ensure that decision makers at least turn their minds to the considerations that underpin good environmental regulation.

225. Officials note that there is ongoing work with iwi/Māori groups to further align the principles to concepts that support or provide guidance on Te Oranga o te Taiao. Officials propose to delegate decisions on the specific principles necessary to support Te Oranga o te Taiao, and ensuring alignment with Te Oranga o te Taiao concepts.

Committee recommendations

226. The Committee recommended further work be carried out to determine *whether* and, if so, *how* the NBA should include implementation principles. The Committee noted that environmental principles (and other requirements) could be used to assist decision makers in resolving conflicts between outcomes under the NBA.

Previous MOG decisions

227. The Panel recommended including implementation principles to set clear guidelines for processes and decision making under the NBA. This included the precautionary principle, public participation, and integrated management. All of those principles are widely applied internationally because they capture important facets of good environmental management.

228. The principles were refined through discussion with [redacted] and MOG #7 agreed to include implementation principles that specifically support Te Oranga o te Taiao (rec 48).

229. Officials note that MOG #2 had previously agreed (rec 32) to include proposals relating to good practice implementation principles and Ministerial duties as part of the relevant substantive and procedural decision-making requirements, however the implementation principles were re-introduced and included in the exposure draft following MOG #7.

230. Separately, officials note that the NBA will also include procedural principles equivalent to section 18A of the RMA, consistent with the decision at MOG #4 that officials would "work with PCO to draw together and modernise provisions relating to presumptions and existing use in Part 3 of the RMA for the NBA" (rec 27). Section 18A of the RMA requires all persons exercising powers or performing functions to take all practicable steps to:

a. use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised

b. ensure that policy statements and plans

i. include only those matters relevant to the purpose of this Act, and

ii. are worded in a way that is clear and concise, and

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iii. promote collaboration between or among local authorities on their common RM issues.

Options

231. Officials consider that the main options in relation to principles are:

a. *Option 1*: retain all the implementation principles provided in clause 18 of the exposure draft, with the same or similar policy intent. If the implementation principles are intended to apply to all decision makers, officials consider that they should sit in Part 2

b. *Option 2*: incorporate the substance of the principles in the substantive or procedural decision-making provisions they are relevant to

c. *Option 3*: combination of the above. This option involves identifying which principles should apply in an overarching way, and which should be embedded in the relevant sections of the NBA as specific process requirements or decision-making criteria.

232. Option 3 is preferred because it would provide 'the best of both worlds'. Officials recommend retaining a high-level statement of principles to guide decision making on the NPF and NBA plans. Officials propose the Minister, in preparing the NPF, and planning committees, in preparing NBA plans are required to consider:

a. principles that support Te Oranga o te Taiao[36]

b. a principle that requires the integrated management of the environment

c. the precautionary principle

d. a principle that requires the management of cumulative adverse effects of the use and development of the environment

e. a principle that requires the equitable distribution of the costs of regulations within and across the regions and communities of New Zealand, across generations, and between existing and future users

f. principles to ensure proportionality in decision making, namely that planning controls should:

i. achieve their objectives in the least cost way

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

iii. avoid duplicative requirements.

[36] The following four principles were included in the exposure draft to support Te Oranga o te Taiao, and as agreed by MOG #7:

a. promote the integrated management of the environment
b. recognise and provide for the application, in relation to te taiao, of kawa, tikanga (including kaitiakitanga), and mātauranga Māori
c. promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act
d. recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao.

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233. The analysis in Appendix 4 explains the rationale for including each of the suggested principles, and for not including some of the implementation principles in the exposure draft.

234. The proposed principles would be able to guide the development of the NPF and NBA plans, if relevant to the circumstances. It is also important to note that because combined plans must give effect to the NPF they will not be able to apply the principles in an inconsistent way.

235. Officials note that individual applications for resource consents or notices of requirement for designations (to be included in plans) would not need to be considered against the proposed principles.

236. Officials also recommend that the precautionary approach in the NBA should not have a similar framing to Principle 15 of the Rio Declaration on Environment and Development 1992 (the Rio Declaration), because it should not be limited to irreversible harm. Instead, the framing should be similar to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, that provides when 'information available is uncertain or inadequate, the Minister must favour caution and environmental protection'. In addition, the NBA should make it clear that the level of protection provided in any given case must be proportionate to the risks and effects involved.

237. Appendix 5 contains illustrative examples of how the proposed principles could factor into decision making through the system.

Treaty impact analysis

238. Overall, the policy proposals in Part 2 of the NBA are consistent with Treaty principles (partnership, active protection), particularly in requiring all decision makers to give effect to the principles of Te Tiriti and the purpose of upholding Te Oranga o te Taiao. The policy proposals meet the reform objective of giving effect to the principles of Te Tiriti o Waitangi and providing greater recognition te ao Māori, including mātauranga Māori.

239. A full summary of the analysis of the Treaty impacts of the recommendations of this paper are contained in appendix 7.

Engagement

Agency

240. Agencies were broadly supportive of many proposals in this paper, including the strengthened Te Tiriti o Waitangi clause, the approach to managing adverse effects, conflict resolution and implementation principles. Although this was qualified by a desire to see further detail on how these concepts will work in practice.

241. Due to the timing of consultation, agencies have not been engaged on the final recommendations relating to Te Oranga o te Taiao and environmental limits and targets. Agencies highlighted the importance of further work to determine how the concept of Te Oranga o te Taiao relates to the purpose of the NBA and other matters. This has been reflected in recommendations 11 and 23. The recommendations in this paper on the detailed design of limits and targets further refine decisions made at MOG #16.

242. Some agencies raised concerns that the built environment was not being adequately addressed in the purpose of the NBA. Recommendations 19, 20 and 21 address this point.

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243. Some agencies raised concerns around particular wording in the outcomes list. MfE officials will continue to work with the PCO on refining the wording of the outcomes to ensure the policy intent as articulated in the table in Appendix 3 is met as outlined in recommendations 70 and 71.

244. Some agencies were concerned that a hierarchy between outcomes was inadvertently being created. Recommendations 68 and 69 makes clear that the NBA should be explicit that there is no hierarchy between the matters listed for outcomes.

245. Some agencies were concerned that because there is no hierarchy, some nationally significant places protected by section 6 of the RMA may inadvertently be lost. While MfE officials are not proposing a hierarchy of outcomes, it will be important to protect some section 6 RMA places in the primary legislation (such as outstanding natural landscapes and listed heritage buildings) from unnecessary damage or destruction.

246. The paper proposes a middle ground approach between providing those places with absolute protection and no priority at all, which is reflected in recommendations 84-91, with recommendation 92 seeking delegation to provide more specificity on this matter.

Local government

247. The Local Government Steering Group (LGSG) were consulted on the proposed changes to the purpose and supporting provisions (Part 2) of the NBA. Discussions focused on Te Oranga o te Taiao, Te Tiriti clause, environmental limits and outcomes. The LGSG agreed with the need to provide further guidance on how to 'give effect' to the principles of Te Tiriti and sought examples of how this would be done in practice.

248. The LGSG raised concerns about how the limits framework would work in practice, but were supportive and recognised the importance of the outcomes framework and agreed with the proposals to strengthen conflict resolution provisions.

Iwi/Māori groups

249. Officials held a number of hui with [redacted] to discuss proposals in this paper, focusing on further developing the concept of Te Oranga o te Taiao and Te Tiriti clause.

250. While there was conditional support for some of the proposals, concerns were raised regarding governance, funding and overall ensuring that the proposals meet the reform objective of giving effect to the principles of Te Tiriti o Waitangi and providing greater recognition of te ao Māori, including mātauranga Māori. Concerns were also raised about implementation, and ensuring that the concept of Te Oranga o te Taiao is upheld appropriately by decision makers lower down in the system, particularly environment limits and targets, the NPF, RSSs and NBA plans.

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Appendix 1 – Illustrative summary of the areas and mechanisms which link to Te Oranga o te Taiao[37]

251. The bullets below provide some illustrative examples but should not be interpreted as a full or complete list of areas or mechanisms that are required to uphold Te Oranga o te Taiao. Some of the key areas and mechanisms that could contribute to upholding Te Oranga o te Taiao include:

    a. preamble could provide further context/narrative for how the system is intended to work to uphold Te Oranga o te Taiao

    b. section 17 – a revised general duty on all persons to avoid, remedy, or mitigate adverse effects, with greater avenues of enforcement, could help to reflect there is no unfettered right to development

    c. state of the environment monitoring could include monitoring of whether the health of the natural environment is being upheld

    d. oversight of system could include monitoring whether the system is upholding Te Oranga o te Taiao

    e. limits could help protect the core ecological integrity of the natural environment and that the essential relationship between the health of the natural environment and its capacity to sustain all life is protected

    f. targets could help provide for continuous improvement and upholding the health of the natural environment above limits

    g. NPF could include direction and guidance on providing for outcomes, including those interlinked with Te Oranga o te Taiao

    h. RSSs - the long-term 30+ year strategies could identify areas suitable/not suitable for development that could help uphold the health of the natural environment and provide for intergenerational equity

    i. NBA plans - the development of NBA plans that must advance the purpose of the Act, could include objectives, policies, methods and rules to help uphold Te Oranga o te Taiao

    j. allocation - a sustainable, equitable and efficient allocation approach could help to ensure consent to use resources only occurs within an allocative quantum that first ensures the health of the environment is upheld

    k. compliance, monitoring and enforcement - enabling a better range of compliance tools and higher penalties for deterring activities that would breach plan rules, permitted activity standards or are prohibited activities, could help support upholding the health of the environment

    l. opportunities through Mana Whakahono ā Rohe and joint management agreements could provide for partnerships and the application of kaitiaki responsibilities at place

    m. opportunities through transfers of power could support the principle to recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao

[37] Note that the table is not intended to be an exhaustive list of matters.

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n. arrangements established through Treaty settlements, Takutai Moana rights or other existing tools would be continued to fulfil the obligations to the iwi and hapū who have those arrangements.

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Appendix 2 – Indicative analysis of some of the key components that could contribute to giving effect to the principles of Te Tiriti

252. This appendix briefly provides an indicative analysis of some of the key components that could contribute to giving effect to the principles of Te Tiriti. The analysis highlights of some of the key ways the new RM system is anticipated to meet the proposed Treaty clauses for both the NBA and the SPA that "all persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi".[38]

253. It is acknowledged that there is no final and complete list of the principles of Te Tiriti and that the principles are generally held to be "constantly evolving as the Treaty is applied to particular issues and new situations".[39] That said, there are some principles that are well established and generally held to be relevant in a number of circumstances.

254. Official's approach to this analysis includes considering both principles of Te Tiriti derived from the 'literal terms' as well as those derived from the 'spirit' of Te Tiriti. This follows the approaches set down in Waitangi Tribunal reports,[40] jurisprudence,[41] and Government guidance[42] which highlights that a breach of the articles of Te Tiriti is a breach of the principles of Te Tiriti. Therefore, in order to give effect to the principles one must also in practice give effect to the articles.

Key components

255. The Treaty clauses for the NBA and the SPA are intended to be non-exhaustive. The bullets below provide some key examples but should not be interpreted as a full or complete list of matters that are required to give effect to the principles of Te Tiriti.

256. Some of the key components that could contribute to giving effect to the principles of Te Tiriti include:

    a. The NPF process would include:
        i. broad engagement with hapū/iwi/Māori
        ii. National Māori Entity inputting to the NPF
        iii. Mātauranga Māori input into setting limits & targets

[38] From the exposure draft of the NBA. Note te Tiriti o Waitangi is defined in the interpretation section as "**te Tiriti o Waitangi** has the same meaning as Treaty in section 2 of the Treaty of Waitangi Act 1975".

[39] Te Puni Kōkiri, 2001. *He Tirohanga o Kawa ki Te Tiriti o Waitangi.*

[40] For example, "The principles of the Treaty flow from its words and the evidence of the surrounding sentiments, including the parties' purposes and goals" (Waitangi Tribunal, 1997, *Wai 45 – Muriwhenua Land Report*).

[41] For example, 'a breach of a Treaty provision … must be a breach of the principles of the Treaty' – Justice Somers (Lands case, 1987), and "[The principles of Te Tiriti] reflected the intention of the Treaty as a whole and included, but were not confined to, the express terms of the Treaty" – Lord Woolf (*Broadcasting Assets* case, 1994).

[42] For example, "Treaty principles are therefore informed by various sources, including the literal terms of both texts, the cultural meanings of words, the influences and events which gave rise to the Treaty, as far as these can be determined from historical sources, as well as contemporary explanations and legal interpretations" (Te Puni Kōkiri, 2001. *He Tirohanga o Kawa ki Te Tiriti o Waitangi*), and "Consideration of how the Treaty applies in any situation will require consideration of the applicability of all articles" (CO (19) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance).

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iv. Outcomes and implementation principles for providing for the relationships and responsibilities iwi/hapū have with te taiao, and protection and restoration of the mana and mauri of the natural environment

v. National Māori Entity appoints Māori members of the NPF Board of Inquiry

b. The National Māori Entities other roles in monitoring Te Tiriti performance and providing advice

c. RSS that will include:

i. self-identification of appointors and appointees for iwi/hapū/Māori regional governance members

ii. governance roles on SPA committees

iii. enabling cultural landscapes to be identified and provided for

iv. iwi and hapū management plans provide for the autonomy to articulate iwi and hapū aspirations that must be actively considered

v. early and full participation in engagement processes specifically for Māori entities (include measures to remove inequities), or engagement via public participation processes

d. NBA plans that will include:

i. self-identification of appointors and appointees for iwi/hapū/Māori regional governance members

ii. governance roles on NBA committees

iii. input from mātauranga Māori experts for regional scale limits and targets

iv. rules for protection, restoration and enhancement of taonga

v. iwi and hapū management plans provide for the autonomy to articulate iwi and hapū aspirations that must be actively considered

vi. early and full participation in engagement processes specifically for Māori entities (include measures to remove inequities), or engagement via public participation processes

e. Consenting and allocation regimes that include:

i. rights to use of resources, a fair allocation, and the autonomy to use those resources (within parameters that ensure the health and well-being of te Taiao is upheld)

ii. equitable access to resources

iii. potential for pre-application engagement for consents, if this is included as part of the NBA plan

iv. participation as affected parties in appeals or alternative dispute resolution

f. Tools to enable Māori participation, including opportunities for:

i. Mana Whakahono ā Rohe arrangements

ii. Transfers of Powers

iii. Joint Management Agreements

g. Roles established via Treaty settlements, Takutai Moana rights and through other existing tools will be upheld.

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Appendix 3 – Diagrams on how Outcomes operate in the system and draft outcomes list

Draft outcomes

Overarching notes

257. Officials considered the headings in the Committee's proposed list implied separate categories of outcomes. These have been removed to better reflect the linkages between the outcomes. The 'cultural' and 'natural environment' outcomes have also been combined to acknowledge the strong synergies between these outcomes and better reflect the te ao Māori perspective about the relationship between iwi, hapū, whānau and the natural environment.

258. The wording set out below represents the policy intent but the precise drafting of the outcomes will be a matter for the Parliamentary Counsel Office. Key changes officials propose are made to the Committee's outcomes list have been indicated in red.

Revised outcomes list	
Wording	**Rationale**
(a) the protection or, if degraded, restoration of— (i) the ecological integrity, ~~health,~~ mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity: (ii) outstanding natural features and outstanding natural landscapes: (iii) the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins: ~~(b) in relation to cultural values—~~ ~~(i)~~(iv) the relationship of iwi, hapū and, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga: ~~(ii)~~(v) ~~conservation of~~ cultural heritage:	[Placeholder reflecting ongoing discussions with agencies about natural environment outcomes] Intention is to ensure that critical parts of the environment which needs protection are given appropriate legislative hooks. Ecological integrity was added as officials considered that health was too narrow. This brings it into line with the approach to limits. No substantive changes have been made to the wording of the cultural values themselves. However, officials have replaced "conservation" with "protection and restoration". This is a minor amendment and follows current policy intent.
~~(c)~~(b) in relation to climate change and natural hazards,—	Officials consider that the scope of (b)(i) should be limited to stating 'what' is being achieved, rather than focusing on 'how' it is achieved. Officials have

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(i) reduced greenhouse gas emissions~~, **including by low-emission urban form and increased utilisation of renewable energy**~~**;** (ii) increased removal of greenhouse gases from the atmosphere: (iii) reduced risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change:	proposed that the NPF will be required to not be inconsistent with the current Emission Reduction Plan, which will set out how emissions should be reduced at any given time.
~~(d)~~(c) Well-functioning urban **and** rural areas, including by— (i) enabling ~~enough~~ use and development for housing, business use, and primary production to meet the diverse and changing needs of people and communities: (ii) the ongoing and timely provision of infrastructure services: (iii) an urban form **and rural areas** that promote economic, social, cultural, **health, safety**, and environmental benefits: (iv) the ~~preservation~~ prioritisation ~~of~~ highly productive land for land-based primary production~~food production~~: (v) enhanced public access to and along the coastal marine area, lakes, and rivers.	Officials considered including coastal areas or coastal marine areas in the opening clause of this set of outcomes. However, both urban and rural areas can include the coast and the opening clause is not intended to define where the sub-clause activities are physically located (ie on land or coast). The intention is not to preclude activities or structures like infrastructure and aquaculture from being placed on the coast. Officials will work with the PCO to ensure this intent is provided for and clarified in the drafting if necessary. Officials consider that removing 'enough' is necessary. As noted, 'enough' implies a limiting principle. Historically, future demand has been underestimated and we want competitive margins. Officials consider that it is necessary to include rural areas explicitly in (c)(iii) as it is equally important that economic, social, cultural health, safety and environmental benefits are provided for in rural areas. 'rural form' was not used as this is not a recognised term and may cause confusion. Officials consider that health and safety need to be included because of their importance to human well-being. This reflects the definition of well-being in the exposure draft which specifically mentions health and safety. Officials consider that prioritisation of HPL for primary production is appropriate as the intention is to ensure that HPL is used for primary production over unproductive uses. Note that the intention is not to imply that HPL should be prioritised over other outcomes. Officials consider that inclusion of food production in (d)(iv) is unnecessarily restrictive and prefers to capture all land-based primary production.

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	Officials note the importance of recognising that the natural environment exists in urban areas although did not consider it necessary to adjust the wording of these outcomes in order the ensure this is recognised in national direction and planning instruments, particularly given this is recognised by outcome (a).

259. A range of terms used in the outcomes will need to be defined. Officials are seeking delegations to enable decisions on the definitions. The terms involved are as follows:

Term	Reason for defining
Well-functioning	The way well-functioning is defined will have a significant impact on what the outcomes means. Clarity could be provided through definition of key elements, guidance/criteria in the NPF or a combination of these. Some key aspects of well-functioning environments raised with us by agencies include health, social and infrastructure services.
Housing	Because Māori housing aspirations and papakāinga are not dealt with as a separate outcome, it will be necessary to ensure that the relevant legislative hooks exist to ensure Māori housing aspirations are provided for in eventual NBA plans.
Conservation	The use of this new term in relation to cultural heritage could be a source for litigation if it is not clearly defined.
Risk	The use of the term Risk needs to be consistent with the Civil Defence and Emergency Management Act 2002: "the likelihood and consequences of a hazard"

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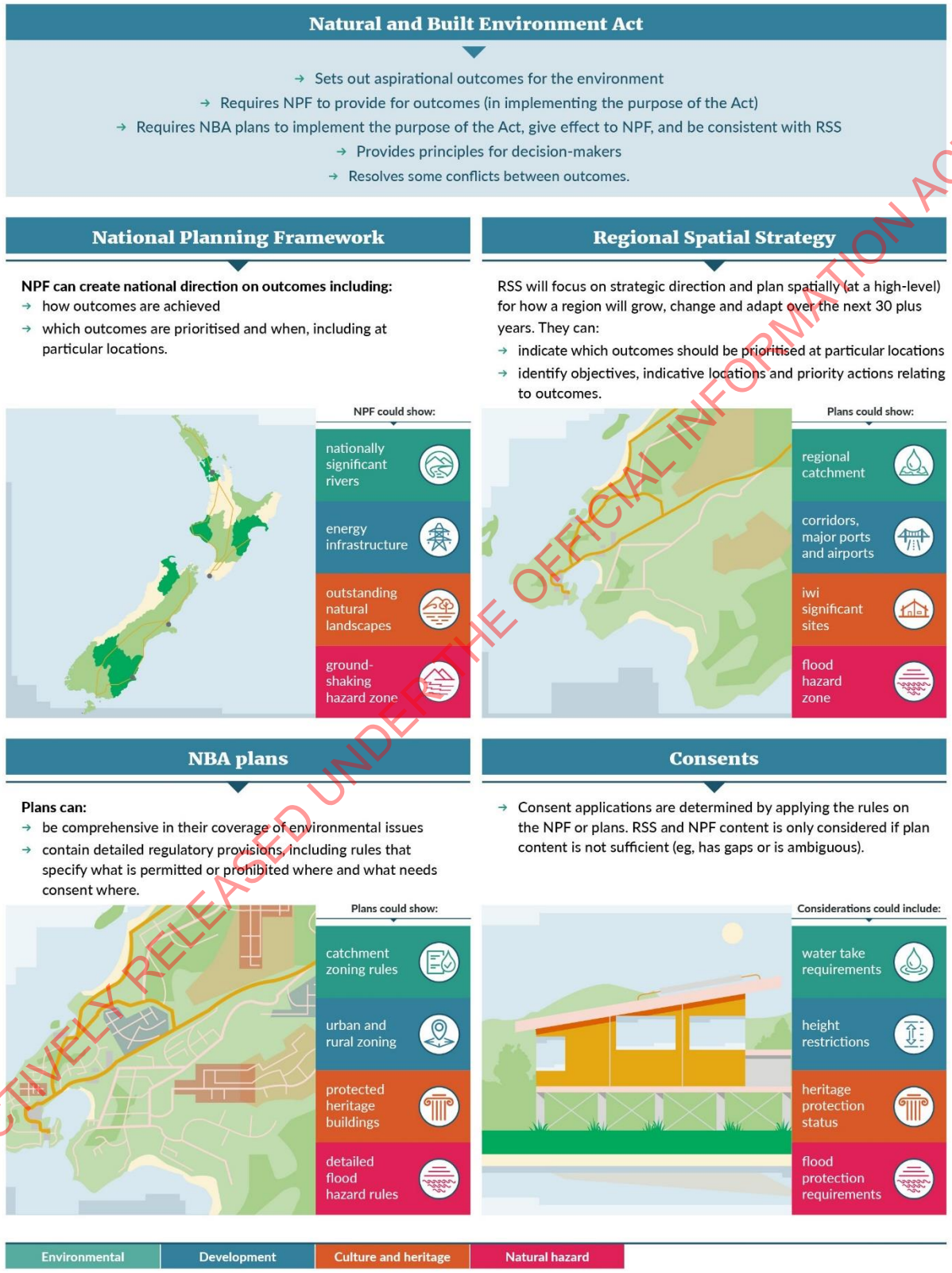
Infographic 1: How outcomes flow from the NBA, through the NPF, RSS and NBA plans to consents



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Infographic 2: How tools in the NBA flow through the NPF, RSS and NBA plans

Tools	NBA	NPF	RSS	NBA Plans
Principles and guidance	Sets out: → purpose and core principles → requirement to give effect to the principles of te Tiriti → other conflict resolution requirements	Must implement the purpose and principles Can set further principles and guidance	Must give effect to/be consistent with the NPF (as directed by the NPF) Can set further principles and guidance	Must give effect to the NPF and not be inconsistent with the RSS Can set further principles and guidance
Limits	Requires limits to be complied with Requires setting of limits	Can set **national** limits Can set substantive and procedural requirements for NBA plans to set limits	Will not set limits	Must set a limit where the NPF has delegated that responsibility Must ensure that limits set out in the NPF are achieved
Targets	Requires targets to be complied with Requires setting of targets	Sets the minimum level for targets in NBA plans	Can inform the setting of targets in NBA plans (eg, by identifying indicative management units)	Must set targets, at least at the level in the NPF or higher Must ensure that targets are achieved
Outcomes	Provides outcomes list Requires outcomes to be provided for Sets out conflict resolution provisions for some conflicts	Must provide national direction on the outcomes and other matters Can resolve, or include provisions on how to resolve conflicts	Can identify areas for prioritisation of outcomes	Can set **regional and local** outcomes Should resolve conflicts in accordance with the NBA and NPF provisions
Policies and rules and other methods	Requires setting of rules and other methods	Can set **national** policies and rules and other methods to meet limits, targets and outcomes (as well as for other purposes)	N/A – RSSs will include vision, objectives, maps and priority areas, not rules	Can set **regional and local** policies and rules and other methods to meet limits, targets and outcomes

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Infographic 3: How decisions are front-loaded to inform consents

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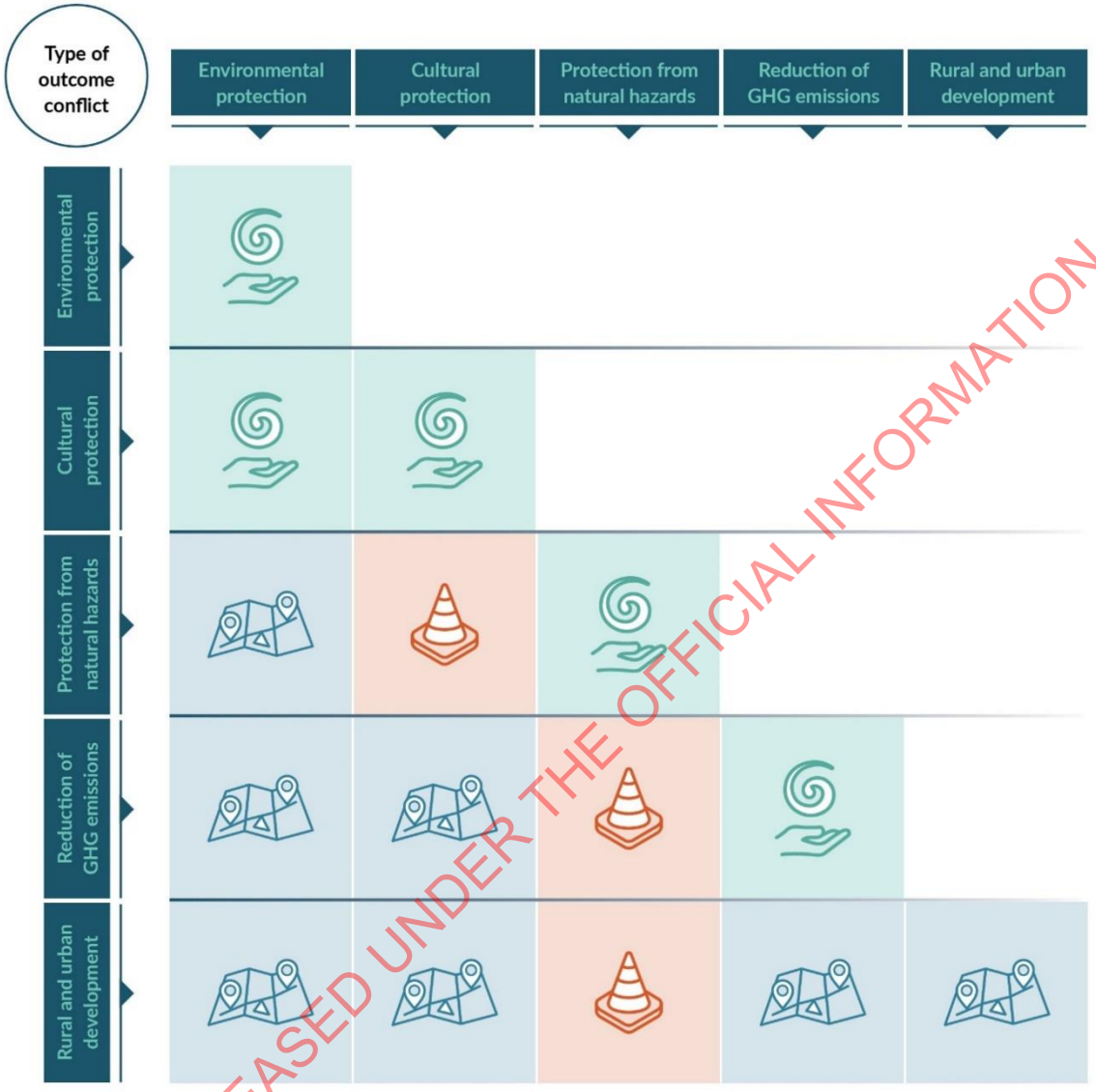
Infographic 4: Matrix illustrating how outcomes are achieved at place via guidance, rules setting and spatial mapping



Legend

	Unlikely to conflict. NPF or NBA Plans can provide insights on how outcomes can work well together.
	Spatial planning required to balance outcomes at place. NPF or NBA Plans could set requirements such as an Environmental Impacts Assessment for any activity which does not provide for prioritised outcome at place.
	Spatial planning to identify areas of natural hazard. NPF and NBA Plans could set special requirements for activities that occur in these places which prioritise health and safety.

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Appendix 4 – Analysis of proposed principles in the NBA

Principle	Analysis	Proposals
Discussion of proposed principles		
Integrated management of the environment (implementation principle in clause 18 of the exposure draft)	The principle of integrated management is intended to encapsulate integration across environmental domains. For example, the impacts of land use on water quality and the marine environment. Likewise, policies and regulations for different aspects of the environment should be aligned to ensure they are both efficient and effective. For example, policy and regulation for urban development and freshwater quality. The principle is reflective of the Te Oranga o te Taiao and the purpose of the NBA. Integrated management is critical to encouraging development that meets outcomes in all environmental domains. It will be necessary for the NBA to provide a definition for integrated management. In particular, officials consider the definition should embody a "mountains to the sea" approach (ki uta ki tai) that recognises interconnections between different components of the environment, as well as pursuing synergies between multiple outcomes. Further work on how integrated management should be defined will relate to ongoing work with iwi/Māori groups on Te Oranga o te Taiao.	Include integrated management as a principle that the Minister and planning committees must have regard to in preparing the NPF and NBA plans.
The precautionary principle (implementation principle in clause 18 of the exposure draft)	The precautionary principle, or approach, means that the absence of adequate scientific information should not be used as a reason to postpone measures to protect the environment. The precautionary principle is well recognised in international agreements that New Zealand is party to, and features in New Zealand environmental law such as in the Hazardous Substances and New Organisms Act 1996 (section 7) and the New Zealand Coastal Policy Statement 2010 (policy 3). The precautionary principle has also been recognised in RMA case law (see *McIntyre v Christchurch City Council* [1996] NZRMA 289, *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 at 134, *Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 40 at [100]-[140]) however the Panel recommended codifying the precautionary principle in the NBA, among other proposals, to deliver a system that better protects and enhances the natural environment. The report-back following MOG #5 agreed that the NBA would not provide a general overall duty to apply the precautionary approach but would instead have specific provisions identifying how the precautionary approach applies to different statutory decisions. The same report-back also agreed that the precautionary approach should be framed similar to Principle 15 of the Rio Declaration on Environment and Development 1992. The definition provided in the exposure draft is "*an approach that, in order to protect the natural environment if there are threats of*	Include the precautionary principle as a principle that the Minister and planning committees must have regard to in preparing the NPF and NBA plans. Frame the precautionary principle in a way that requires decision makers to use the best available information.

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	serious or irreversible harm to the environment, favours taking action to prevent those adverse effects rather than postponing action on the ground that there is a lack of full scientific certainty". Submissions on the exposure draft raised concerns with the current framing of the precautionary approach. In particular: • the definition refers to irreversible harm to the environment however most environmental harm is reversible over a long timeframe • the definition would not easily apply where a risk is apparent but the precise nature of adverse effects is unknown, such as risks associated with climate change • the framing did not work well with the setting of environmental limits (although officials note the environmental limits framework has since shifted, refer MOG #16 paper on environmental limits). Officials agree that the proposed definition for the precautionary approach raised issues and are undertaking further work to address these. As a preliminary view, officials consider some of these issues could be addressed by framing the precautionary principle in a similar way to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (section 34) and the Fisheries Act 1996 (section 10), which requires decision makers to use the best information available. Officials propose to include a version of the precautionary principle which would require decision makers, when making decisions on environmental management, to: a. make full use of the information and other resources available to them b. base decisions on the best available information, and c. take into any uncertainty or inadequacy in the information available. d. where there is uncertainty or inadequate information, favour caution and protection of the natural environment if there is a risk of harm to the environment. Importantly, these requirements would sit alongside the principles on good regulation and the requirements of section 32. As such, the level of protection provided, and the costs imposed, would need to be proportionate to the risks involved. "Best available information" would be defined as the best information that, in the particular circumstances, is available without unreasonable cost, effort, or time.	

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Management of cumulative adverse effects of the use and development of the environment (listed as an implementation principle in clause 18 of the exposure draft)	Managing cumulative adverse effects requires the likely cumulative effect of activities to be understood and reflected in decisions about environmental controls. It will be an important function of NBA plans and the NPF (in some cases) and will be a way to ensure that limits and targets are complied with. Cumulative effects should be a consideration for decisions on rules, policies, methods and objectives in the NPF and NBA plans, to ensure that the anticipated effects of activities are not considered in isolation. Cumulative effects management is already listed as a consideration for planning committees in the exposure draft (clause 24), however officials recommend lifting this to a higher level so that it also applies to the NPF where relevant.	Include the management of cumulative adverse effects of the use and development of the environment as a principle that the Minister and planning committees must have regard to in preparing the NPF and NBA plans.
The equitable distribution of the costs of regulation within and across the regions and communities of New Zealand, across generations, and between existing and future users	This principle supports the concept of both intergenerational and intragenerational equity, which are important aspects of sustainable development. The principle is modelled off section 5ZC of the CCRA, which requires the Commission and the Minister, in setting emissions budgets, to have regard to "the distribution of impacts across the regions and communities of New Zealand, and from generation to generation." The inclusion of the principle is intended to support the need for certain areas (particularly urban areas) to grow and change in response to the well-being needs of current and future generations and to provide a hook to overcome status quo bias and the entrenched interests of existing resource users. This includes, for example, ensuring that the costs of meeting limits in the proposed system does not entirely fall on new homeowners. Officials note this is not intended to derogate from the polluter pays principle insofar as it applies through the NBA, such as in the duty to avoid, remedy or minimise effects on the environment (section 17 RMA equivalent) and through compliance, monitoring and enforcement.	Include the equitable distribution of the costs of regulation within and across the regions and communities of New Zealand, across generations, and between existing and future users as a principle that the Minister and planning committees must have regard to in preparing the NPF and NBA plans.
Proportionality principles	Most of the proposed principles derive from international environmental law, which focus primarily on protecting the natural environment with less direct emphasis on the built environment. Therefore, officials propose to also include principles that would require proportionality in decision making. Officials propose to include the following (or similar) principles, which would apply to planning controls, designed under the NBA. These are drawn from the Government Expectations of Good Regulatory Practice and would provide that the NPF and NBA plan content should: • achieve their objectives in the least cost way • allow people to adopt innovative approaches to meeting their obligations • avoid duplicative requirements.	Include proportionality principles, drawn from the Government Expectations of Good Regulatory Practice as principles that the Minister and planning committees must have regard to in preparing the NPF and NBA plans.

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Discussion of other principles which were included in clause 18 of the exposure draft as "implementation principles"		
Ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue: **(implementation principle in clause 18 of the exposure draft)**	This principle is a procedural requirement relevant to the processes undertaken under the NBA. Public participation (to the extent that is important to good governance and proportionate to the significance of the matters at issue) is an important feature of the RM system. However, this principle should be factored into the design of the processes under the NBA, rather than apply as a general principle. Providing a general obligation on decision makers to ensure appropriate public participation may invite second-guessing of the processes set out in the legislation and may lead to unjustified legal risk (parties may claim that a process has allowed for either too little or too much public participation). Officials recommend carefully embedding appropriate public participation in processes established under the NBA. This could look like: • establishing criteria for notifying consent applications • timeframes for submissions on NBA plan changes • minimum public participation requirements for hearing procedures.	Do not include ensuring appropriate public participation to the extent that this is important to good governance and proportionate to the significance of the matters at issue as a standalone principle for all decision makers to have regard to for the reasons stated in the analysis column.
Recognise and provide for the application, in relation to [te taiao], of [kawa, tikanga (including kaitiakitanga), and mātauranga Māori]: **(implementation principle in clause 18 of the exposure draft)**	This principle supports Te Oranga o te Taiao and relates to the requirement to give effect to the principles of Te Tiriti. Similar considerations to the row above apply to the extent that this principle covers procedural matters or establishes a duty for decision makers which lacks clarity. The intention is to design processes in the NBA directly to provide for the application of kawa, tikanga (including kaitiakitanga) and mātauranga Māori. This will include: • providing for hearing processes that align with tikanga Māori • requiring planning committees to have regard to technical evidence and advice, including mātauranga Māori when preparing NBA plans. However, officials also note that the NBA needs to maintain flexibility for principles that support Te Oranga o te Taiao and Te Tiriti not to be fixed, and evolve over time. Work is underway with iwi/Māori groups to further develop the concept of Te Oranga o te Taiao, which will impact what, if any, principles are needed to support Te Oranga o te Taiao through decision making. The framing of the principle may need to be revised (ie, change the wording from "recognise and provide for") to match the legal weighting of the other proposed principles.	Note that officials are continuing to work with iwi/Māori groups on principles that support Te Oranga o te Taiao.
Promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act:	This principle supports Te Oranga o te Taiao and relates to the requirement to give effect to the principles of Te Tiriti. Ensuring effective iwi and hapū participation is an important feature of the RM system. However, similar considerations to the public participation principle apply here. The intention is to design processes in the NBA directly to provide appropriate mechanisms for effective participation by iwi and hapū. This will likely include:	Note that officials are continuing to work with iwi/Māori groups on principles that support Te Oranga o te Taiao

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(listed as an implementation principle in clause 18 of the exposure draft)	• a national Māori entity inputting to the NPF timeframes for submissions on NBA plan changes • early and full participation in engagement processes specifically for Māori entities (include measure to remove inequities), or engagement via public participation processes • minimum participation requirements for hearing procedures However, officials also note that the NBA needs to maintain flexibility for principles that support Te Oranga o te Taiao and Te Tiriti not to be fixed, and evolve over time. Work is underway with iwi/Māori groups to further develop the concept of Te Oranga o te Taiao, which will impact what, if any, principles are needed to support Te Oranga o te Taiao through decision making. The framing of the principle may need to be revised (ie, change the wording from "promote") to match the legal weighting of the other proposed principles.	
Recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te taiao] (implementation principle in clause 18 of the exposure draft)	This principle reflects environmental stewardship. It supports Te Oranga o te Taiao and relates to the requirement to give effect to the principles of Te Tiriti. Similar considerations to the rows above apply to the extent that this principle covers procedural matters or establishes a duty for decision makers which lacks clarity. In particular, the principle, as framed, establishes a strong obligation on decision makers (ie, recognise and provide for), and may lead to uncertainty around *how* authority is to be exercised and by *whom.* The intention is to design processes in the NBA directly to recognise the authority and responsibility of iwi and hapū to protect and sustain the health and well-being of te taiao. This will likely include; • opportunities for joint management agreements and mana whakahono ā rohe arrangements • iwi and hapū management plans provide for the autonomy to articulate iwi and hapū aspirations that must be had regard to • opportunities for transfers of powers. However, officials also note that the NBA needs to maintain flexibility for principles that support Te Oranga o te Taiao and Te Tiriti not to be fixed, and evolve over time. Work is underway with iwi/Māori groups to further develop the concept of Te Oranga o te Taiao, which will impact what, if any, principles are needed to support Te Oranga o te Taiao through decision making. The framing of the principle may need to be revised (ie, change the wording from "recognise and provide for") to match the legal weighting of the other proposed principles.	Note that officials are continuing to work with iwi/Māori groups on principles that support Te Oranga o te Taiao

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Appendix 5 – How principles form part of decision-making framework that flows from the NBA, through the NPF, RSS and NBA plans to consents, to achieve the purpose of the NBA

260. The following table illustrates how each principle might flow through different levels in the RM system, including in the NPF, RSS, NBA plans, and in consenting decisions.

261. The Minister would be required to consider the listed principles in the preparation of the NPF. It is intended that the principles would only be considered in lower levels of the system hierarchy (ie, in decisions on NBA plans, and then consenting) at a more granular level, or where the scenario was not covered in higher order instruments. It is not intended that the principles would apply cumulatively to the same issue.

262. Officials note that the NPF and NBA plans will be subject to evaluation processes, which will be similar to the current requirements for evaluating proposed provisions under section 32 of the RMA. These will in-part ensure that provisions are proportionate and the most appropriate way to achieve any proposal's objectives. Detailed evaluation requirements for these instruments are subject to delegated decisions.

263. The table below is ***not*** an indication of definite or proposed content for NPF, RSS or NBA plans. It is purely illustrative of how principles can inform decisions.

Principles / requirements	Representation in the NBA	Examples of how they could inform decisions in the NPF	Examples of how they could inform decisions in the RSS	Examples of how they could inform decisions in NBA plans	Examples of how they could inform consents
A principle requiring integrated management of the environment	Requires all decision makers to consider the principle of integrated management	<u>Applies to decision making on the content of the NPF.</u> Provides guidance on how to account for multiple aspects of the environment at once in a region, and how to maximise gains for multiple outcomes. Ensures consistency and workability across chapters of the NPF. Where possible, tools should manage multiple aspects of the environment in conjunction.	<u>Applies to decision making on the content of RSS as directed in the NPF.</u> Provides a mechanism for strategic integration of decisions under multiple Acts (the NBA, LGA, LTMA, CCRA) about environmental management, planning, climate change responses, and investment. Allows for a holistic consideration of matters, and the integration of planning and investment.	<u>Applies to decision making on the content of NBA plans, at a more granular level or where topic not covered by the NPF</u> Similar considerations to the NPF but at a regional or local level. Decisions on which activities should be permitted are based on what outcomes sought and effects positive for the region or area overall.	Consent may be granted on proposed conditions that relate to multiple aspects of the environment/ downstream effects, consistent with the NBA plan's policies and rules. No active requirement to consider integrated management unless activity/event/occurrence unanticipated by the plan and NPF and RSS do not provide adequate guidance.

		Downstream effects considered in national direction. Management units for limits reflect interconnections between ecosystems – does not result in fragmentation. Providing direction on how RSs can help integrate the use of different tools.	Could identify objectives and priority actions (both regulatory and non-regulatory) for a particular catchment or future regeneration area where multiple outcomes need to be achieved/reconciled.		
Precautionary principle	Requires all decision makers to consider best available information. Inadequate or uncertain, should not be used as a reason to postpone measures to protect the environment.	<u>Applies to decision making on the content of the NPF</u> Requires all new lifeline infrastructure in identified low-lying areas to be able to withstand 1/1000-year flooding event. Lack of data on the full extent of flooding risk and likelihood of extreme weather event has changed.	<u>Applies to decision making on the content of RSS as directed in the NPF</u> In the absence of more accurate data on flood plains, the RSS Committee might commission a risk assessment of flooding in the region and identify indicative flood risk areas where there is a lack of information and where a precautionary approach may be required.	<u>Applies to decision making on the content of NBA plans, at a more granular level or where topic not covered by the NPF</u> Natural Hazard and flood overlays in plan where flooding risk suspected but extent unknown due to lack of data. Rules in the overlay include greater requirement for permeable surfaces than the standard zone requirement. Note on avoiding duplication: Relying on the RSS' mapping which took a precautionary approach means flood overlay does not need to cover more area than already identified in RSS.	Precautionary approach only applied where activity/event/ occurrence unanticipated by the plan and NPF and RSS do not provide adequate guidance.

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Principles to support Te Oranga o te Taiao[43]	Detailed policy decisions on the specific principles necessary to support Te Oranga o te Taiao will be made in a future delegated decisions paper. Therefore, how the principles will work in practice is yet to be determined.				
A principle requiring management of cumulative adverse effects of the use and development of the environment	Requires all decision makers to consider the cumulative effects of activities on the environment.	Applies to decision making on the content of the NPF Targets and limits set in a way that addresses cumulative effects	NBA principles will apply to SPA as directed in the NPF. Taking a strategic, high-level view of desired outcomes, objectives, priorities etc for the region, or a particular part of the region, can reduce risk of case-by-case decision-making leading to adverse cumulative effects	Applies to decision making on the content of NBA plans, at a more granular level or where topic not covered by the NPF Activity classification takes cumulative effects into account.	Direction coming from NPF or NBA plans inform consent conditions. Consent authority may also have to consider whether activity's cumulative effects lead to tipping point/ threshold.
Equitable distribution of the costs of regulations within and across the regions and communities of New Zealand, across generations, and between	Requires all decision makers to consider the equitable distribution of impacts within and across the regions and communities of New Zealand, across generations, and between existing and future users.	Applies to decision making on the content of the NPF Provide direction to address nationally significant issues and in doing so help make sure that small local interests do not override significant national interests or create significant national costs. The NPF could help	NBA principles will apply to SPA as directed in the NPF. RSSs will have a long-term focus, identifying short and long-term need for regions.	Applies to decision making on the content of NBA plans, at a more granular level or where topic not covered by the NPF	

[43] Note the following principles were included in clause 18 of the exposure draft to support Te Oranga o Te Taiao:

a) Promote the integrated management of the environment
b) Recognise and provide for the application, in relation to [te taiao], of [kawa, tikanga (including kaitiakitanga), and mātauranga Māori]
c) Promote appropriate mechanisms for effective participation by iwi and hapū in processes undertaken under this Act
d) Recognise and provide for the authority and responsibility of each iwi and hapū to protect and sustain the health and well-being of [te taiao].

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existing and future users		councils decide it is necessary to lose a tree in a specific place to enable a new passenger transport route that will help meet the emissions reduction budget. Provides strategic direction on key long-term issues such as climate change and hazards, thus providing for future as well as current generations.			
Proportionality principles, drawn from the Government Expectations of Good Regulatory Practice	NBA would provide that NPF and NBA plan content should: • achieve their objectives in the least cost way • allow people to adopt innovative approaches to meeting their obligations • avoid duplicative requirements.	The NPF's overarching purpose is to provide direction on nationally significant issues. NPF should only prohibit use and development in areas at a national level if adaptive management or innovative approaches not possible. Targets should not be set in a way or timeframe that would impose an unreasonable financial burden on local government.	Does not apply to RSS's because they are non-regulatory. RSSs only have force through requirements for them to be reflected in NBA plans and council funding plans.	Proportionality principles only applied to rules/policies/methods where it hasn't already been applied in that particular case.	Any information requirements/requests need to be proportionate to scale of significance.
Principles proposed to be embedded in processes/decision-making criteria					

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Ensure appropriate public participation in processes undertaken under this Act, to the extent that is important to good governance and proportionate to the significance of the matters at issue	No overarching requirement (as suggested in clause 18 of the exposure draft), instead, NBA sets out processes for preparation of the NPF and NBA plans and provides for appropriate public participation at different levels of the system.	NPF preparation includes: • Avoiding unnecessary formality in BOI processes • Public submissions and hearings • Early engagement with stakeholders and Las on policy development • Engagement with stakeholders and Las on review report • Streamlined process for minor changes – no hearings, including shorter submissions period	The SPA will set out core requirements for the process to develop RSS, designed to ensure broad participation. RSS Committees will have flexibility to tailor the process to suit the circumstances/ communities of the region. The public will be able to Participate in identifying issues and opportunities the RSS will cover, and the draft RSS.	NBA preparation includes: • Submissions and hearing processes • Limited appeals • Plan will be able to identify affected parties	This will be front loaded in plan-development, including identification of affected persons and specify notification classes. Some decisions on notification could be delegated to consenting authorities via plans/NPF. There will be procedural steps to support participation at the consenting level (but directed by the plan/NPF).
Evaluation and other requirements					
Evaluation requirements	Policy work is ongoing, looking at how assessment requirements can best ensure any evaluation is proportionate with scale and significance of the planning instrument.				
Ensuring an appropriate assessment of alternatives (AoA) has been completed as part of identification of sites/areas for protection	NBA would require AoA to be completed in planning processes for NPF and RSSs	Spatial planning in the NPF would include AoAs for placement of inter-regional features like infrastructure.	Spatial planning of outcomes to be balanced at place to include AoAs to determine that an outcome cannot be achieved elsewhere.	NBA Plan rules to reflect planning decisions in NPF and RSS which considered AoAs.	Assessment of alternatives may need to be applicable to certain activities. For example the discharge of contaminants to water to determine whether there is an alternative point of discharge where it will meet a better environmental outcome.

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and development					

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Appendix 6 –

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266. **Outcomes** the FUA contributes to: well-functioning urban environment; reducing emissions; provision of infrastructure; and an urban form that promotes economic, social, cultural, and environmental benefits. It conflicts with National Planning Framework (NPF) objectives relating to preventing the loss of more highly productive land, which is worked through and resolved during Regional Spatial Strategy (RSS) development (below).

267. **Targets** the FUA contributes towards, set in the NPF:

- *development capacity* – the NPF requires large cities to enable, through their plans, at least enough development capacity to meet demand (plus a competitiveness margin in areas that are likely to be taken up (eg, are accessible, in areas of demand). This city must enable approximately 8,300 more dwellings a year (in areas likely to be taken up) over the next 30 years to accommodate growth
- *biodiversity* – the NPF sets a target to increase biodiversity in management units by 10 per cent. The FUA will need to identify areas for habitat restoration
- *emission reduction* – the NPF sets a target for reducing vehicle kilometres travelled across New Zealand by 20 per cent by 2035[45] and establishes a target for the FUA's region of 35 per cent.[46]

National planning framework will give direction on infrastructure policy and set development standards

268. Infrastructure provisions in the NPF will specify mandatory content to be included in Regional Spatial Strategies and NBA plans – eg:

- requiring lead and following infrastructure to be provided for in areas of housing development
- integration of infrastructure with other environmental domains or provisions of the NPF (eg, integrated stormwater planning that relates to biodiversity and coastal values)
- providing for infrastructure corridors and services required to support future capacity – for example transmission lines, transport links to growing urban areas, or telecommunications facilities
- protecting the operation of infrastructure services from reverse sensitivity effects.

[45] Per latest draft Emissions Reduction Plan.

[46] Targets such as this contribute to multiple additional targets; in this case also air quality to protect human health, and estuarine water quality related to limits on heavy metals to protect human health and maintain ecological integrity.

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269. The NPF will set out activity standards – eg, making some common activities like minor earthworks permitted activities so long as they comply with good practice standards. The NPF will also set out good practice conditions or methodologies when matters do need consents – eg, guidance on acceptable steps to avoid, remedy or mitigate adverse environmental effects. These standards should reduce the number of matters requiring consents, and promote a more consistent approach when consents are required. The infrastructure provisions of the NPF will be implemented through a mix of RSS and NBA plan provisions and planning standards.

Regional Spatial Strategy will make long-term strategic planning more joined-up and effective

270. The SPA committee (the territorial/unitary/regional councils in the region, Iwi and hapū through representative organisations, and central government) develops, consults on and considers the RSS. Central government committee members bring a national perspective on the strategic priorities for the region to the process. They ensure these national interests are identified and addressed and supported by well-coordinated agencies. Well-functioning urban form and significant additional housing are among the priorities.

. . . the RSS includes a high-level assessment of environmental limit management units

271. The RSS involves high-level identification and assessment of likely management units (in relation to matters covered by limits, and in line with previous work). Management units will be set through the NBA plan, consistent with direction in the NPF. A high-level assessment of effects on ecosystems and human health (eg, from pollution loads) and development capacity of different urban form and land use options determines that the likely most restrictive domain is maintaining the ecological health of the streams in the proposed FUA. Work is also progressed to consider infrastructure needed for this development, consistent with the policies set out to enable development infrastructure in the NPF.

272. The SPA committee estimates that a maximum of approximately 1250ha of new urbanisation is possible if best-practice low-impact design and mitigation techniques are applied, and if constructed wetlands of 40-60ha are established to mitigate the effects of stormwater runoff. A preference for four or five smaller wetlands (as opposed to one large wetland) is expressed in the RSS, as this will provide better opportunity to improve biodiversity values, connections to existing biodiversity corridors, recreational amenity and improve social and cultural wellbeing.

273. During preparation of the RSS, , iwi, hapū and other Māori entities with rights and interests 'at place' identify the longfin eel/tuna in a major stream that runs through the area as of high cultural value. This is reflected in the RSS, and the location of one of the constructed wetlands is prioritised adjacent to this stream to benefit the habitat of longfin eel/tuna and other culturally-important species. Restoring green spaces around streams with appropriate planting will improve ecological integrity by enhancing their functioning and resilience, biodiversity, and connectivity – by creating corridors to ecologically-intact areas elsewhere. These actions are reflected in the RSS implementation plan.

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. . . as well as the setting of parameters for development

274. The RSS process considered options to address the conflict between urbanisation and retaining rural production. The North-East FUA was identified for urbanisation as it provides sufficient development capacity, there are no other reasonably practicable and feasible options for providing this capacity within the same locality and market, and there are net benefits to urbanisation over retaining land for primary production (providing for housing more people, emissions and infrastructure provision outweighed the loss of highly productive soil in that specific location). Boundaries of the areas for urbanisation are selected to avoid **natural hazards** (namely significant flooding) and to protect areas of **high ecological and cultural values**. The RSS identifies areas of highly productive land for continued production surrounding the major stream bisecting and around the areas proposed for urbanisation (as these are both highly productive primary production land and at risk of significant flooding), as well as larger areas in other parts of the region.

275. Assumptions made in the pollution load and development capacity modelling are used to set parameters for development. These parameters, signalled in the RSS, set outcomes that will influence subsequent planning exercises. They also form the basis of an indicative package of lead and following **infrastructure** that will be required to urbanise the FUA while complying with environmental limits and targets. Following the NPF (infrastructure) policies and requirements, the RSS identifies the following will likely be required:

- new frequent public transport corridor, arterial road and active transport network, connecting to networks in the adjoining urban area
- new bulk water-supply infrastructure including the indicative location (ie, not property specific) for the extension of trunk watermain and reservoirs
- extension of the bulk wastewater network to service the area, along with upgrades of main interceptors within the existing urban area to provide capacity to the existing treatment plant
- provision of stormwater infrastructure, based on water sensitive design principles, to cater for future flooding, to manage water quality and hydrological changes arising from urbanisation, and to support improvements for biodiversity. This approach is guided by the NPF and supports several key NPF outcomes: urban housing, freshwater management, protecting cultural values, improving biodiversity, and managing land for natural hazards
- social infrastructure including schools (two new high schools, six primary schools, but the RSS does not identify their location) community and recreation facilities (library, aquatic / rec centre, community centre, sports fields, urban parks, also not spatially identified)
- the supply of electricity and communications infrastructure – able to be supplied in accordance with specific provisions in the NPF, the policy direction for which were carried over from RMA instruments.

Implementation Plan is critical to indicate sequence and timing of development

276. The RSS indicates the spatial location of the FUA, as well as other FUAs. The sequencing and timing of the FUA is considered as part of the Implementation Plan, taking into consideration infrastructure costs, efficiency (eg, proximity to urban areas where existing infrastructure can be leveraged), market indicators of demand, overall outcomes, and any private bids/proposals from developers.

277. Following consideration at Implementation Plan level, the FUA is planned for in the second tranche of future urban areas (expected to be urbanised at the start of the 10-30 year 'vision' timeframe). The Implementation Plan assigns owners to priority actions to progress urbanisation of the FUA. This includes actions **for infrastructure providers** to identify corridors for network infrastructure and protect them using their designation powers (or by purchasing the land), **for councils** to begin preparing an NBA plan that enables the FUA in line with the RSS, **for central government** to work with councils on different forms of public transport modes, and **for iwi and hapū** to identify significant sites and resources within the FUA.

278. Many of the actions to work towards the outcomes identified in the RSS are outside of the resource management system, and implementation plans cannot compel. For the system to work as envisioned and provide certainty to developers, central government will need to do a greater level of forward infrastructure commitment and coordination across portfolios and across political terms.

NBA plan will make what you can do clearer and easier

279. The NBA plan is developed by the NBA planning committee comprising the territorial and regional councils in the region and iwi and hapū through representative organisations. It is informed (and directed where required) by a range of existing and newly commissioned documents including: the NPF, RSS, iwi and hapū planning documents, science reports, mātauranga reports, and technical reports on demographics.

. . . the RSS supports the NBA plan to enable the FUA

280. The RSS provides a robust basis for the NBA plan, as it takes into account the key constraints and opportunities in the area (though a more detailed assessment is necessary for the NBA plan). Crown infrastructure and other providers and others have followed through with actions in the RSS implementation plan (such as applying for designations and/or purchasing the necessary land), in part because enabling the additional housing has been a priority for subsequent governments. The NBA plan rezones the FUA largely in line with the RSS for various intensities of housing, as well as appropriate accompanying commercial and business uses. It also zones for the anticipated reserves and applies appropriate plan provisions to protect values, including for future stream corridors and constructed wetland areas. Zoning for housing is consistent with the relevant provisions of the NPF. Rules related to urban form are limited to those that are allowed through the NPF.

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. . . the NBA plan has rules for permitted activities

281. Some activities (eg, sediment control and construction noise) follow the permitted activity standards and rules set in the infrastructure chapter of the NPF. The NBA plan permits three story residential buildings throughout. It permits higher density around areas of frequent public transport, in line with direction from the NPF on categories of housing zones. The plan encourages active transport (walking, cycling, disabled access) and strongly discourages activities that would go against achieving the anticipated outcomes of the FUA by making these discretionary. It provides for certain infrastructure (including public transport corridors and arterial road network, and bulk water supply and bulk wastewater networks) as designated by the responsible infrastructure providers, following requests from relevant requiring authorities that the plan do so.

. . . defines limits within which development must occur

282. The NBA plan formally defines the location and boundaries of management units. Of these, maintaining the ecological health of streams is confirmed as the most restrictive domain relevant to development in the area. The plan sets out detailed policies, rules, methods, standards, and other provisions for how to maintain the ecological health of the streams. It takes account of up-to-date modelling of forecast changes to the environment due to climate change. This includes detailed mapping to show how all the activities in the management unit could be coordinated to meet limits and targets.

283. The freshwater management unit and associated ecological integrity limit is largely as per the RSS. The availability of more detail and analysis at the NBA planning stage means 65ha of wetland area is needed for stormwater treatment and attenuation (because modelling of increased rainfall and runoff takes account of the latest climate change information). There is also further definition of requirements for stream setback and riparian planting. Due to the zoning for five constructed wetlands and setback rules, it seems 150 fewer houses will be permitted in the plan than envisioned in the RSS. Having considered this shortfall, the committee decides to increase the permitted density of an area close to the main proposed new commercial area. Rules include requirements for best practice low-impact design and mitigation techniques, as part of ensuring the ecological health of the streams is maintained and to achieve emissions reductions. Rules also require a wider setback and plantings of the stream that contains longfin eel/tuna to further improve the habitat. A reserve is advanced for this future constructed wetland and large stretch of the stream, designed around ensuring and improving access to mahinga kai. The stream protection and associated riparian plantings contribute to an increase in the ecological integrity of the freshwater and indigenous biodiversity at the site and so additional works to mitigate the effects of the development on those matters are not required.

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. . . and may feature an archaeological assessment

284. The planning committee commissions an initial archaeological assessment.[47] An independent archaeologist in partnership with the iwi seeks to identify any previously-unrecorded archaeological sites of significant value in the FUA and reflect these in the plan, including by prohibiting inappropriate development. The archaeological assessment informs identification of several specified areas within the FUA adjacent to these sites. The plan identifies that the iwi must be notified for all activities requiring earthwork consents within these areas.

NBA planning committee process

285. The proposed plan is heard and considered by an Independent Hearings Panel (IHP). Some landowners make submissions on the locations of proposed constructed wetlands. They suggest minor spatial changes that will see the wetlands deliver the same benefits, while developments will be able to proceed at less cost. The plan becomes operative and new development is enabled in line with the RSS and what was agreed in the RSS implementation plan.

286. The NBA plan was significantly refined and improved through the hearing process. As this is the first NBA plan in this region and the NBA planning committee accepts all the IHP's recommendations, no appeals are heard. The NBA planning committee is confident the operative plan will do a better job of achieving the desired outcomes than the initial proposed plan.

Design and approval of housing development

287. Our developer, **Successive Holdings**, has over twenty years' experience and established relationships with lenders, councils and mana whenua in the area. It submitted on the RSS, primarily in support of medium density housing and the need for this to start coming online within ten years. It also submitted in support of much of the proposed NBA plan and did not need to become a party to any appeals as there were none.

288. Successive Holdings purchased an 85-hectare farm (the site) within the 1250-hectare FUA three years after the RSS was finalised. It was able to factor holding costs into its offer, as the RSS implementation plan provided adequate confidence that the necessary infrastructure should be in place within a further five-to-seven years.

289. The NBA plan includes rules for housing zones (two different densities permitted within the 85ha farm), stream setbacks and planting (with several minor streams across the site), and reserve zones. Upon seeing the final NBA plan, Successive Holdings instructs planning consultants, engineers and architects to finalise all designs and plans in line with the relevant rules as much as possible, and seek the required permissions.

290. Successive Holdings is required to apply for, and then receives, the following:

[47] This occurring at the NBA plan stage is not a legislative requirement, though it is estimated over half of greenfield developments need an archaeological assessment and may require the application of a heritage protection order.

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- a series of permitted notices, including for arterial roads to provide assurance that they meet the district council's land development code
- consent for controlled earthworks activities, notified to Iwi, hapū and other Māori entities with rights and interests 'at place' per the NBA plan (as these earthworks include areas abutting an archaeological site), which was then issued with standard conditions specified in the NPF infrastructure chapter
- consent for controlled subdivision activities, to confirm certain conditions are met before enabling issue of survey plan and titles.

291. As information requirements were clear upfront (including through pre-application meetings), no further information was needed. No expert advice was required as technical issues were settled either at the NPF level or, for several more local technical issues, in the NBA plan. Other than the focused notification for the earthwork consent, no further consultation was required, and the consent decisions were not open to appeal.

Key points – a developer's experience of the new system

292. The overall experience for Successive Holdings, as illustrated in this scenario of the new system, features expected shifts[48] from the RMA system including:

- clarity on the desired location and density of future housing development from councils, iwi and central government
- clarity on environmental baselines, limits and targets. This saves significant costs associated with making an assessment themselves and making the case for why their development can proceed
- increased clarity on the activities that are possible in different areas of the region, and to what density
- no need to commission and pay for expert reports related to many activities (including some types of infrastructure) – or to conflict with council on these, as they are specified through the NPF and in many cases not able to be relitigated
- reduced time and costs on appeals, due to the general reduction in scope of appeals through the system (and also due to additional reduction as this was the first NBA plan for this region)
- no need to do an individual archaeological assessment, as this was undertaken at the NBA plan stage and provided clarity on what is needed
- fewer resource consents required, with associated savings in cost and time
- increased clarity on information required for consents and permitted notices, including the form of this information
- more certainty that all applications will be processed within the prescribed number of working days

[48] Many of the benefits flow from a more prescriptive planning system and rely on more upfront investment in infrastructure.

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- a different development contribution, with some elements higher (such as for the constructed wetland and wastewater upgrade necessary to service growth) and other elements lower due to providers having coordinated better, and secured corridors earlier and at less cost
- some decreased design and construction costs, due to clarity of requirements earlier on and the ability to lock in designs, products and contractors without the need for repeated variations
- some increased construction costs, due to the need to implement best practice low-impact design
- no need to undertake private plan changes, and no struggle to get traction with infrastructure providers.

293. These changes in time and costs are eventually passed on to buyers of the new homes. Inhabitants of the new well-designed communities enjoy the good active transport, recreational opportunities, and access to public transport and other public facilities that make them a desirable place to live.

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Appendix 7 – Treaty Impact Analysis summary

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

Policy Topic	Analysis
The purpose, including Te Oranga o te Taiao and Managing adverse effects	Prior to this paper, the agreed policy as to the purpose of the NBA included the requirement that the use of the environment complies with environmental limits and that specified outcomes for the benefit of the environment are promoted. If a proposed activity met both these requirements but still had potential adverse effects then there was a further requirement that those adverse effects be avoided, remedied or mitigated. "Mitigate" was defined to include offsetting or compensation. The policy recommendation in MOG #17 provides that, if an activity involves adverse effects on biodiversity, cultural and heritage values, those effects must be managed in accordance with the following hierarchy. (i) adverse effects must be avoided where practicable; and (ii) any residual adverse effects that cannot be avoided must be minimised where practicable; and (iii) after avoidance and minimisation, any remaining adverse effects must be remedied where practicable; and (iv) after avoidance, minimisation and remediation, any remaining adverse effects must be offset where practicable; and (v) after avoidance, minimisation, remediation and offsetting, any remaining adverse effects must be compensated for where appropriate; and (vi) any offset or compensation to address biodiversity values must comply with the Principles for and offsetting and compensation. This recognises that the protection of biodiversity, cultural and heritage values, compared to other values, is less amenable to compensation or offsetting approaches (for example you can't easily build a replacement wetland or other habitat, or a replacement historic or heritage site). With respect to this recognition of practicable means to preserve and enhance biodiversity, the policy proposal addresses matters of interest for Māori to the extent that upholding Te Oranga o te Taiao means upholding the health of the natural environment and recognizing the interconnectedness of all parts of the natural environment. Protecting and enhancing biodiversity is an essential component of this. Likewise, the recognition of this special quality of cultural and historic values will assist in protecting the intrinsic relationship between iwi and hapū and te taiao. In cases where offsetting or compensation is being considered as a way to protect biodiversity, Ministers will use their delegated authority (to develop the principles that govern this offsetting and compensation) to ensure that this occurs in situations where it will be effective. This paper also clarifies that the definition for adverse effects will exclude trivial effects. There will be some subjectivity to the concept of what is "trivial" and so the development of this definition will be monitored closely to ensure that it does not discount values that are important to Māori by classifying them as "trivial". A clear and accurate definition of the term "trivial" will help to ensure

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	that Māori are not needlessly inhibited from using and developing their land in a way that supports the well-being of their current and future generations. Further guidance and direction on how decision makers on how to uphold Te Oranga o te Taiao is needed. The Minister for the Environment and Associate Minister for the Environment will make any remaining decisions in relation to the purpose and Te Oranga o te Taiao in accordance with the policy intent in the MOG #17 paper.
Te Tiriti o Waitangi clause	The Panel recommended the Treaty clause in the NBA require decision makers to 'give effect to' the principles of Te Tiriti o Waitangi. This is a significant change from the RMA, which requires decision makers to 'take into account' the principles and addresses a key issue of insufficient recognition of Te Tiriti in the RMA. The Panel noted that "in successive reports the Waitangi Tribunal has found the RM system often falls short of fully adhering to the principles of Te Tiriti". MOG #6 agreed to a treaty clause being included in the NBA to give effect to the principles of Te Tiriti o Waitangi. This paper recommends that no further legislative direction for the Treaty clause in the NBA/SPA as it may have the unintended consequence of impacting the general effect and non-exhaustive policy intent of the Treaty clause. However, further direction on how to exercise the clause will be provided for in the NPF. This will provide further guidance on how the principles of the Tiriti are to be given effect by those exercising powers and performing functions and duties under the NBA and SPA. This will allow for a more consistent approach to upholding Te Tiriti as well as ensuring that the non-exhaustive policy intent of the Treaty clause is maintained.

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Environmental outcomes list and conflict resolution	This paper recommends that the outcomes recommend by the Committee be adopted with minor changes. Of these outcomes there are several of potential interest to improving the Crown's obligation to protect the interests of Māori. These are: a. the protection or, if degraded, restoration of the ecological integrity, health, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity b. the protection or, if degraded, restoration of outstanding natural features and outstanding natural landscapes c. the protection or, if degraded, restoration of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins d. the protection or, if degraded, restoration of the relationship of iwi, hapū and, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga. While these are not the only outcomes that will be important to Māori, they are an important part of upholding the principle of active protection of Māori interest by the Crown by ensuring the outcomes above are given regard to in the NPF and NBA plans. When there are conflicts between outcomes the matters in section 6 of the RMA will be given particular priority. Section 6 deals with the relationship of Māori and their culture and traditions with their ancestral lands, water, sites wāhi tapu and other taonga. The confirmation that this relationship is a matter of national importance will help to ensure that places that are important to this relationship will be spared from significant adverse effects by shifting activities to alternative locations. The proposed delegation (to empower the Minister for the Environment as to the test for what is nationally important) will help ensure that there is accurate identification of places that are important for this relationship.
Implementation principles	This paper recommends that the NBA should include a high-level statement of principles in Part 2 of the NBA. This will require the Minister (in making decisions on the NPF) and NBA committees (in making decisions on NBA plans) to consider various principles. This would include principles to support Te Oranga o te Taiao (as agreed in MOG #7). However, given further work is underway with iwi/Māori groups to refine the concept of Te Oranga o te Taiao, the precise wording of any principles to support Te Oranga o te Taiao is yet to be determined. The way the Te Oranga o te Taiao is implemented by NBA decision makers is a critical matter of interest for Māori. Delegating the authority on the final details of the principles to guide this implementation will help ensure this is done effectively.

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Costs and benefits for Māori

Policy Topic	Analysis
Overall policy	There may be increased costs for Māori in terms of the time and other resources needed to engage with decision makers, particularly: when trying to assess how to apply the hierarchy when assessing the effects of particular activities in particular places; and when trying to assess whether effects are trivial or not. However, this should result in better outcomes for Māori, particularly in terms of helping to uphold Te Oranga o te Taiao through the protection and enhancement of biodiversity and the recognition of the special quality of cultural and historic values in order to protect the intrinsic relationship between iwi and hapū and te taiao.

Protecting and transitioning Treaty settlements

Policy Topic	Analysis
Overall policy	Treaty settlement transition and discussions regarding upholding settlements is occurring simultaneously (and in some cases subsequently) to policy development, which risks settlement arrangements not being addressed as an intrinsic part of the system.

Waitangi Tribunal Recommendations

Policy Topic	Analysis
Overall policy	The Panel noted that "in successive reports the Waitangi Tribunal has found the RM system often falls short of fully adhering to the principles of Te Tiriti", and went on to say, "we concur with the large number of reports, expert opinions and submissions on the Tiriti clause that the current section 8 of the RMA is entirely inadequate for the degree of recognition and protection of Māori interests that is required by the Treaty". They considered a change to a 'give effect to' weighting would "modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it". The effectiveness of this clause will also be furthered by the non-exhaustive list clauses in the NBA to provide guidance to decision makers about which parts of the NBA should have particular regard to the NBA. The Waitangi Tribunal released a report on the Treaty of Waitangi settlement 262. One of the recommendations from this report was to give "*effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others*". A further recommendation on this point was to reform the RMA regime so that "*those who have power under the Act are compelled to engage with kaitiaki in order to deliver control, partnership, and influence where each of these is justified.*" The recommendations in this paper will help move the RM system in this direction where kaitiaki interests are given some priority by decision makers as well. The outcomes having to have regard to in the NPF and NBA plans will mean that these planning documents will need to consider the relationship of iwi, hapū and whānau, and their tikanga and traditions, with ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga.

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Māori rights and interests in freshwater and other natural taonga

Policy Topic	Analysis
Overall policy	The identification of synergistic approaches will help in the simultaneous achievement of multiple outcomes that are important to Māori, such as: (i) the restoration of relationship of iwi and hapū with ancestral lands, water, sites, wāhi tapu, and other taonga. The confirmation that the relationship of Māori and their culture and traditions with ancestral lands, water, sites, wāhi tapu and other taonga is a matter of national importance will help to ensure that aspects of water and other taonga that are important to this relationship will be spared from significant adverse effects by shifting activities to alternative locations. The proposed delegation (to empower the Minister for the Environment as to the test for what is nationally important) will help ensure that there is accurate identification of places that are important for this relationship in terms of water and other taonga.

Māori Crown relations risks and opportunities

Policy Topic	Analysis
Overall policy	These recommendations involve delegating further detailed decision making or discretion to Ministers. There is a risk in respect of the relationship between Ministers and iwi, hapū and other Māori groups, if this is not carried out consistently with the principle of partnership.

Overall assessment

Policy Topic	Analysis
All policy options	The overall assessment is that these recommendations are consistent with Treaty principles and achieve the reform objective.

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Appendix 8: Cost-Benefit Analysis
Paper 3 – NBA Decision-making Framework

1. Reducing cost is a core part of the RM reform objective to improve system efficiency and effectiveness. Overall, the NBA is expected to reduce costs through streamlined planning systems that are directed by the NPF and other gains in system efficiency.

2. It is difficult to assess the costs associated with the recommendations on Part 2 of the NBA set out in this paper, which focus on the purpose, Treaty clause, limits, outcomes and implementation principles. Together, these establish a legislative framework for decision making throughout the system.

3. This is because of the significant uncertainties and assumptions around how the future RM system will work, and the difficulty of comparing this to the counterfactual under the RMA. However, taken together, the proposed decision-making framework is intended to reduce costs overall, including by:

   a. reinforcing the need to front-load decisions in the NPF and NBA plans, and providing clear guidance to ensure that these decisions meet the RM Reform objectives. Better information about forward planning should lead to improved consistency and efficient decision making which will contribute to resources being used, conserved and allocated in a more efficient way.

   b. more clearly defining the development envelope through establishment of protection and development priorities in national direction and planning instruments. Increased certainty will ensure that critical natural and cultural values are protected while providing for necessary development to give urban and rural areas confidence to invest

   c. assisting decision makers to resolve potential conflicts between outcomes and avoiding the broad judgment approach that prevailed under the RMA for a long time

   d. providing guiding principles for situations where flexibility is required, and where unanticipated activities or effects arise

   e. providing more clarity to decision makers and system users on how to give effect to the principles of Te Tiriti.

4. Officials note that the proposed decision-making framework will also increase costs, particularly in the preparation of the NPF and NBA plans, associated with more rigorous decision-making requirements. However, these requirements need to be considered in the context of a number of design features of the new RM system intended to balance environmental protection and enabling development, and ensure proportionality (eg, NBA limits for the natural environment, the planning processes and requirements for the NPF, RSSs and NBA plans, evaluation requirements, and a compliance, monitoring and enforcement strategy).

5. The table below sets out costs and benefits associated with key recommendations in this paper, compared to previous decisions on Part 2 matters.

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System area	Change	Cost / Benefit	Affected parties
Te Oranga o te Taiao	Increased certainty about the meaning of Te Oranga o te Taiao, including (but not limited to) clarifying that it relates to the relationship of all New Zealanders with the natural environment	**Benefit** of increased certainty	All system users
Management of Adverse Effects	Protection of biodiversity values and heritage	**Increased cost** to manage adverse effects.	Developers
Management of Adverse Effects	No net loss for limits through offsetting and compensation	**Benefit** of access to biodiversity and heritage.	Public
Te Tiriti o Waitangi	Providing interpretative aids and non-legislative guidance on how the principles of Te Tiriti are to be given effect to	**Benefit** of increased certainty of how to give effect.	Planning committees, consent authorities, Developers
Outcomes conflict resolution	Increased certainty about where development can occur.	**Benefit** of certainty of investment.	Developers
Outcomes conflict resolution	Efficient use of resources to achieve protection and development.	**Benefit** of cost-effective delivery of outcomes.	Local government and public
Outcomes conflict resolution	Increased planning requirements	**Increased cost** to complete plans.	Planning committees
Decision-making principles	Increased certainty in decision making for example, of permitted and prohibited activities in plans.	**Benefit** of certainty of investment.	Developers
Decision-making principles	Decisions must consider equity across regions and generations	**Benefit** of equitable distributions of regulatory costs.	Public (eg, new homeowners)

6. As this table demonstrates, it is expected that the outcomes, conflict resolution and decision-making principles proposed in this paper will contribute to efficiency gains, in some respects increase, and in other respects decrease costs.

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7. Some of these benefits will be experienced through the consenting stage through more efficient decision making and certainty for developers. Other benefits will be spread over decades as the quality of outcomes for the country increases. This reflects an intergenerationally equitable system and the intention for outcomes to be achieved over time.

8. Officials note that the benefits of an improved environment and community well-being are difficult to quantify but are expected to be significant. MfE's initial analysis concluded that the introduction of environmental limits and a positive outcomes-based approach is likely to improve environmental quality over time versus the status quo. While officials are not able to assess the magnitude of this improvement, the natural environment has a high total economic value. The overall value range for New Zealand's marine and land-based ecosystems is between $520 billion ($458 billion for marine and $62 billion for land based) and $1.8 trillion NZD ($NZD 2020).

9. Taking the conservative value of $520 billion, this represents around 1.6 times New Zealand's gross domestic product (GDP) ($308 billion in June 2020, Stats NZ 2020b). Therefore, even a small marginal improvement in the quality of the environment would deliver large economic benefits. For example, a 1 per cent improvement in land-based ecosystem services would have a total economic value of $620 million, using the most conservative valuation available. Including marine based ecosystem services would increase this to $5.2 billion.

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Ministry for the Environment
Manatū Mō Te Taiao

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BRF- 1480 RM Reform 146 – Papers for Ministerial Oversight Group: Institutional arrangements for central government and strategic decisions about the NPF

Date Submitted:	7 April 2022	Tracking #: BRF-1480	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	**Forward** papers to the RM Reform Ministerial Oversight Group (MOG).	8 April 2022
CC Hon Grant Robertson, Minister of Finance Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti Hon Dr Megan Woods, Minister of Housing Hon Nanaia Mahuta, Minister of Local Government Hon Poto Williams, Minister for Building and Construction Hon Damien O'Connor, Minister of Agriculture Hon Willie Jackson, Minister for Māori Development Hon Michael Wood, Minister of Transport Hon Kiri Allan, Minister of Conservation, Associate Minister for Arts, Culture and Heritage, Associate Minister for the Environment Hon Phil Twyford, Associate Minister for the Environment Hon James Shaw, Minister of Climate Change	**Provide** any feedback on the recommendations in the enclosed papers to the Minister for the Environment.	14 April 2022

Actions for the Minister for the Environment's Office Staff	Forward papers to MOG Ministers Forward any feedback received to the Ministry for the Environment
Actions for MOG Ministers' Office Staff	Provide papers to Ministers Forward any feedback to the Minister for the Environment
Number of attachments: 2	Titles of attachments: 1. N/A

Ministry for the Environment contacts

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BRF-1480 RM Reform 146 – Papers for Ministerial Oversight Group: Institutional arrangements for central government and strategic decisions about the NPF

1. This briefing provides the Ministerial Oversight Group (MOG) with resource management (RM) reform papers on:
   a. institutional arrangements for central government
   b. strategic decisions about the National Planning Framework (NPF).
2. These papers were prepared for the MOG #17 meeting on 12 April 2022. Due to the volume and significance of decisions to be discussed at this meeting the Minister for the Environment has directed that they be considered by the MOG outside of the meeting.
3. There has been general agreement between agencies on the draft recommendations of these papers and they have been provided with versions updated following feedback from the Minister for the Environment.

Next steps

4. Amendments to the recommendations in these papers are requested to be sent to the Minister for the Environment by 14 April 2022. Agreement to recommendations will be presumed if no feedback is received by this date.
5. Any amendments to the recommendations in these papers will be reflected in a draft minute of decisions that will be circulated to the MOG and finalised.

Recommendations

6. We recommend that you:
   a. **request** that the Ministerial Oversight Group provide feedback to you by 14 April 2022 on the recommendations of the following RM reform papers:
      i. institutional arrangements for central government
      ii. strategic decisions about the NPF.

Signature

E Moncrieff

Liz Moncrieff
Director, Natural and Built System
Ministry for the Environment **07 April 2021**

Hon David Parker
Minister for the Environment **Date**

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Resource Management Reform paper:

Strategic decisions about the National Planning Framework

Summary slides

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Strategic decisions about the National Planning Framework

Background information

Purpose of Paper

- This paper provides advice on the delivery of the National Planning Framework (NPF) and the outstanding matters relating to the NPF in the Natural and Built Environments Act (NBA).

Status Quo and Previous Recommendations and Decisions

- There are 25 separate existing national direction instruments (NPSs, NESs, Planning Standards and s360 Regulations) under the Resource Management Act 1991 (RMA) with new instruments and amendments currently under development.
- The Panel recommended that "*all existing and new national direction should be brought together into a coherent combined set and any conflicts between them be resolved*".
- Previous MOG decisions have emphasised the intent is for the NPF to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the RM system.
- Development of new national direction for infrastructure is underway and led by Te Waihanga.

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Strategic decisions about the National Planning Framework

Problem definition and objective

- The Panel identified several fundamental weaknesses with the role and implementation of RMA national direction (ND), including there being:
    - insufficient ND and key gaps on some critical topics
    - a lack of strategic oversight on what new ND is prioritised and developed
    - imperfect alignment and coherence between ND instruments.
- The NPF will need to be delivered in stages. The first NPF must be in place in time and include the necessary direction to inform Regional Spatial Strategies (RSSs).
- It is important that the NPF generally retains the policy intent of all existing ND.

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Strategic decisions about the National Planning Framework

Proposed approach

- Delivery of the NPF will be staged. The first NPF will generally retain the policy intent of all existing ND alongside some new content, noting some changes to policy intent will be needed to ensure compatibility with the NBA. Further detail will be added through future amendments.
- The proposed approach ensures the first NPF will be in place in time and provide the direction needed to inform RSSs.
- Redrafting of existing ND will focus on inconsistencies, alignment with the NBA, and amending RMA-specific provisions. The key focus of new content will be infrastructure, direction for RSSs and plugging key gaps in existing ND where possible.
- The first NPF will be in formal effect by 2025. To meet this timeframe, drafting needs to begin now and the process for the first NPF will need to differ from the standard process.

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Strategic decisions about the National Planning Framework

Other matters

Process

- A Board of Inquiry will review the NPF and make recommendations to the Minister.
- More streamlined processes available for smaller scale amendments to the NPF.
- The first NPF would be notified as soon as practicable after the enactment of the NBA and be in formal effect by 2025 at the latest.

Transition

- The NPF would be focussed primarily on providing direction to RSSs and NBA plans.
- Existing ND would carry on until NBA plans are in force, largely in its current form, to inform consenting and RMA decisions so that local authorities have clear direction to continue implementing priority ND.
- Retain powers to develop and amend ND during the transition period.

Monitoring and review

- Establish a regular nine-year review cycle of the NPF, and allow for earlier reviews at the Minister's discretion.

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Strategic decisions about the National Planning Framework

Key Recommendations

- **agree** that the NPF will be staged to ensure timely delivery of priority content in the first NPF with further content being added through future amendments
- **agree** that the priority content for the first NPF includes:
  - the redrafting of all existing ND
  - infrastructure content and other new content to fill key gaps in existing ND such as direction needed to inform RSSs
  - an overarching layer focused on resolving conflicts where practicable and necessary cross-cutting direction
- **agree** the first NPF will be notified after the enactment of the NBA and be in formal effect by 2025 at the latest
- **direct** officials from the Ministry for the Environment to commence redrafting of existing ND for the NPF
- **agree** that a Board of Inquiry process be established for developing and amending the NPF, with the flexibility to adopt a more streamlined process for less substantial changes
- **agree** that all existing ND will remain in force independent of the NPF to direct RMA plans and policy statements and decision-making during the transition period
- This paper also seeks authorisation for the Minister for the Environment (in consultation with relevant ministers) to make further detailed policy decisions relating to the NPF including its content, monitoring and review, the process for developing and amending the NPF, and transitional provisions.

Strategic decisions about the National Planning Framework

Key messages

The National Planning Framework

1. The National Planning Framework (NPF) will be one of central government's primary levers with which to influence (and direct) the resource management system (RM system).
2. The NPF will play an equivalent role in the new Resource Management (RM) system to that of national direction (ND) under the Resource Management Act 1991 (RMA), combining and expanding on the functions of ND to provide direction and guidance to both Regional Spatial Strategies (RSSs) and Natural and Built Environments Act (NBA) plans.

Content and delivery

3. The delivery of the NPF will be staged so the first NPF can be notified as soon as practicable after enactment of the NBA. More comprehensive detail will be added to the NPF over time.
4. At MOG #16, Ministers agreed that the rollout of the RM system will be sequenced, with RSSs being developed ahead of NBA plans.
5. The first NPF will incorporate the policy intent of all existing and emerging (where possible[1]) ND. The policy intent of existing ND will generally be retained noting some changes will be needed for compatibility with the NBA.
6. The first NPF will include new direction on infrastructure alongside other new content needed to plug key gaps in existing ND and necessary direction for RSSs. It will have an overarching layer focussed on cross-cutting direction for RSSs and some direction on resolving conflicts.
7. All existing ND will require some level of redrafting to ensure it is fit for purpose in the new RM system. The amount of work this requires will vary between instruments.
8. Significant work is currently underway to develop new ND and amend existing instruments. The policy intent of this work will be incorporated into the NPF and this work should be done in a way that facilitates a smoother incorporation into the NPF.

Timing and process

9. The first NPF must be in place in time to provide necessary direction to RSSs to ensure the RM system is effectively implemented. The first NPF will be notified as soon as practicable after the NBA is enacted and come into formal effect by 2025 at the latest to inform RSSs.
10. Amendments to the NPF will be delivered through a Board of Inquiry process as recommended by the Resource Management Review Panel (the Panel), with the Minister for the Environment (the Minister) responsible for delivering the NPF. The NPF will be secondary legislation under the NBA, agreed by Cabinet and recommended to the Governor General for approval.

[1] For the avoidance of doubt, reference to 'existing' ND in this paper also includes emerging ND (instruments currently under development or amendment).

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11. The process for the first NPF will need to differ from the standard process to ensure delivery of the first NPF.

Monitoring and review

12. The Minister will be required to state in the NPF how it will be monitored but will have flexibility to determine how and what monitoring is required. The NPF will also be subject to a regular nine-year review cycle, with the ability for intervening reviews at the discretion of the Minister.

Transitional arrangements

13. Transitional arrangements will be required to manage how and when the NPF comes into effect, whether the first NPF is exempt from some of the NBA requirements, and the status and effect of existing ND during the transition period.

14. To support the staged transition, existing ND will remain in force largely unchanged to direct RMA plans, policy statements and decision-making until all NBA plans are in place.

15. Key benefits of this approach are that it will allow:

    a. councils to continue implementing all RMA national direction while the new RM system is being established

    b. new ND (eg, for infrastructure) to direct RMA plans, policy statements and decision making ahead of NBA plans being in force.

Delegations

16. This paper seeks authorisation for further detailed decisions on content and delivery, timing and process, monitoring and review, and transitional arrangements to be delegated to the Minister, in consultation with relevant Ministers.

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RM Reform Paper: Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Content and timing of the NPF

1. **note** that previous Cabinet and MOG decisions clarify that the National Planning Framework (NPF) is intended to be an integrated framework for providing central government direction on matters of national significance or matters for which consistency is desirable (at national or sub-national scale) in the resource management system (RM system)
2. **note** that Te Waihanga is developing national direction for infrastructure for the NPF
3. **note** that Ministers agreed at MOG #16 that the rollout of the new RM system will be sequential
4. **agree** that the NPF will be staged to ensure timely delivery of priority content in the first NPF and further content will be added through future amendments
5. **agree** that the priority content for the first NPF includes:
   a. the redrafting of all existing Resource Management Act 1991 (RMA) national direction (ND), including addressing inconsistencies
   b. infrastructure content and other new content to fill key gaps in existing ND such as direction needed to inform RSSs
   c. an overarching layer focused on resolving conflicts where practicable and to provide necessary cross-cutting direction
6. **agree** that the first NPF will be notified after the enactment of the NBA and be in formal effect by 2025 at the latest
7. **direct** officials to commence redrafting of existing ND for the NPF
8. **note** that Ministry for the Environment officials will work with other agencies to prepare the NPF
9. **authorise** the Minister for the Environment to make further detailed policy decisions relating to the content of the NPF in consultation with relevant ministers

Process for developing and amending the NPF

10. **note** that the Resource Management Review Panel recommended a Board of Inquiry (BOI) process for developing and amending ND
11. **agree** that a BOI process be established for developing and amending the NPF, with the flexibility to adopt a more streamlined process for less substantial changes
12. **agree** that the process for the first NPF will need to differ from the standard process for amending the NPF and the policy intent of existing ND will generally be retained in the first NPF noting that some changes will be needed for compatibility with the NBA
13. **agree** that the BOI will be chaired by a current or former Environment Court Judge, with a minimum of three other commissioners
14. **agree** that minor or technical changes can be made to the NPF without a formal public consultation process
15. **authorise** the Minister for the Environment to make further policy decisions relating to the process for developing and amending the NPF, the types of provisions that it can contain and its relationship to other tools in the RM system (eg, resource consents) in

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consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

16. **note** that the role of the National Māori Entity in relation to nominating members to the responsible Minister to be considered for appointment to the BOI is addressed in the MOG #17 paper – *Role, funding and participation of Māori in the RM system*

17. **authorise** the Minister for the Environment to make further policy decisions relating to the process to appoint members to the BOI, with the intention of ensuring that BOIs can be established efficiently and without unnecessary delay, which could include establishing a standing pool of commissioners, or appointing a BOI convenor in consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

18. **authorise** the Minister for the Environment to make further policy decisions relating to the process for developing the first NPF and ensuring the policy intent of existing ND is adequately protected, in consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

19. **note** that at MOG #3 Ministers agreed that the NPF will be issued by the Governor-General through an Order in Council

20. **authorise** the Minister for the Environment in consultation with the Attorney-General to make further decisions on who drafts the NPF and how the NPF is drafted

Monitoring and review

21. **note** that monitoring and review of the NPF will be needed to ensure it is delivering on its purpose

22. **agree** that a regular nine-year review cycle is established for the NPF, with the ability for the responsible Minister to review the NPF in part or in full at any time

23. **agree** that the NBA requires the NPF to include information on how the NPF's effectiveness and implementation will be monitored

24. **authorise** the Minister for the Environment to make further detailed policy decisions relating to monitoring and review of the NPF in consultation with relevant Ministers

Transition to the new RM system

25. **note** that in the period between the enactment of the NBA and the date that the first NBA plans are in force for a region (the "transition period"), existing RMA regional policy statements, regional plans and district plans (RMA plans and policy statements) will need to continue to apply to ensure there is a rule framework for planning and consenting decisions

26. **note** that during the transition period local authorities will continue to implement all existing ND

27. **agree** that all existing ND will remain in force independent of the NPF to direct RMA plans and policy statements and decision-making during the transition period

28. **agree** that powers under the RMA to develop and amend existing ND will remain in force during the transition period, which could allow new ND (eg, for infrastructure) to direct RMA plans, policy statements and decision making ahead of NBA plans being in force

29. **agree** that the NPF will not have legal effect on decisions made under RMA plans and policy statements during the transition period, but rather have legal effect on:

    a. the development of RSSs and NBA plans; and
    b. planning and consenting decisions once NBA plans are in force

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30. **authorise** the Minister for the Environment to make further policy decisions about the transition in consultation with relevant Ministers relating to:
    a. the details of powers to develop and amend existing ND during the transition period
    b. determining if any consequential amendments to existing ND are needed to apply to RMA plans and policy statements during transition
    c. transitional requirements to support the staged development of the NPF, including deadlines for including mandatory content
    d. enabling the first NPF to be developed in accordance with the recommendations in this paper

Upholding Treaty settlements

31. **note** the Crown has responsibilities through Accords that are to be fulfilled in developing the NPF and/or elements of the NPF[2]
32. **note** there are at least 12 documents produced by entities established through settlements that outline vision, outcomes and objectives for specific rohe or taonga, with more likely to be provided through new settlements
33. **note** that documents produced by these entities will need to be recognised and provided for (or other legal weightings) by joint committees
34. **note** that some arrangements though settlements impose requirements on those developing and making decisions on RMA ND, including Te Pā Auroa (Te Awa Tupua Framework for the Whanganui River), Te Waiū-o-Te-Ika (Framework for the Whangaehu River), and Te Ture Whaimana (vision and strategy for the Waikato River)

Other

35. **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations agreed to in this paper and those decisions delegated to the Minister for the Environment
36. **authorise** the Minister for the Environment to make any minor, technical or consequential changes that arise during the drafting of the Bill to reflect the proposals in this paper and ensure the desirable functioning of the NPF in consultation with relevant Ministers.

[2] Waikato Tainui (Kiingitanga Accord, Environment Accord 2010), Maniapoto (Environment Accord 2011, Waieaia Accord 2010), Raukawa (Environment Portfolio Accord 2010, Wider Crown-Raukawa Accord), Parihaka (Relationship Agreement Te Huanga ō Rongo (MfE and other agencies), Ngā Rauru Kiitahi (Te Mata-o-te-Here (variation to the Paepae Rangatira Accord)) Whanganui Iwi (Te Pākurukuru), Ngāti Porou (Crown Relationship Accord 2014), Ngā hapū o Ngāti Porou (Whakamana Accord, Environment Relationship Instrument 2019, Environmental Covenant (to be prepared by ngā Hapū), Te Arawa River Iwi (Environment Portfolio Accord 2010), Te Arawa Lakes Trust (Environment Protocol (within Deed Schedule)), Tūwharetoa (Accord 2019, Whole of Government Accord), Te Waiū-o-te-Ika (Te Waiū-o-Te-Ika framework - 2019 , Ngati Rangi-MfE Relationship Agreement 2019), Taranaki Whānui ki Te Upoko o Te Ika (Crown Environment Portfolio Agreement 2011, Whole of Government Accord).

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RM Reform Paper: Strategic decisions about the National Planning Framework

Introduction

Purpose

1. This paper provides advice on the delivery of the National Planning Framework (NPF) and the outstanding matters relating to the NPF for inclusion in the Natural and Built Environments Act (the NBA).

Status quo under the current RMA system

2. The Resource Management Act 1991 (RMA) currently enables national direction through the development of National Policy Statements (NPSs), National Environmental Standards (NESs), National Planning Standards (Planning Standards) and section 360 regulations. Collectively these are known as National Direction (ND). There are 25 tools currently in effect in the existing suite of ND. New pieces of ND are being developed concurrent to the reform process, for example the NPSs on Indigenous Biodiversity, Highly Productive Land, and industrial process heat related to greenhouse gas emissions.

Resource Management Review Panel's recommendations

3. The Resource Management Review Panel (the Panel) acknowledged several fundamental weaknesses with the role and implementation of ND, which significantly contributed to the underperformance of the RMA system, including there being:
   a. insufficient ND and key gaps on some critical topics
   b. a lack of strategic oversight on what ND is prioritised and developed
   c. imperfect alignment and coherence between ND instruments.
4. To address these issues, the Panel recommended that there should be a mandatory set of ND on specified matters of national significance. The Panel recommended that "all existing and new ND should be brought together into a coherent combined set and any conflicts between them be resolved". It also suggested that ND in the new RM system be retained as separate instruments.
5. In December 2020, Cabinet agreed that a single integrated framework - the NPF - is the best approach to address the problems identified by the Panel. Cabinet agreed the NPF would combine and replace existing forms of ND (refer CAB-20-MIN-0522, recommendation 69).

Previous Ministerial Oversight Group decisions

6. The NPF is intended to be an integrated framework that will function as a more workable whole than the separate instruments currently prepared under the RMA. Previous Ministerial Oversight Group (MOG) decisions have emphasised this intent. At MOG #3 it was agreed that the intent of the NPF is to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the RM system (refer rec 3.5 from MOG #3).
7. Further detail on relevant Panel recommendations and Cabinet and MOG decisions related to the role and function of the NPF can be found in Appendix 2.

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Role of the NPF

8. The NPF is a key component for ensuring the success of the new RM system and achieving the Government's objectives of reform. It will be one of central government's primary levers with which to influence and direct the RM system.

9. The NPF is intended to provide integrated direction on matters of national significance, or where national consistency is desirable, as directed by the NBA. This will include by setting environmental limits and targets and providing direction and guidance on resolving conflicts between competing priorities.

10. The NPF is expected to combine the functions and policy intent of existing ND and provide appropriate direction and guidance to both RSSs and NBA plans.

The delivery of the NPF will need to be staged

11. Delivering a full and comprehensive first NPF would unduly delay the rollout of the new RM system, due to the scale of the task and significant gaps in the evidence required to inform some detailed content.

12. At MOG #16, Ministers agreed that the rollout of the RM system will be sequenced, with RSSs being developed ahead of NBA plans. The NPF will also take a staged approach, focussing initially on redrafting existing ND, infrastructure content and RSS direction and building towards a more comprehensive NPF over subsequent iterations.

Vision for the NPF

13. To help with decisions on staging the delivery of the NPF, this section provides an indication of how the structure, overarching layer, topic-area content, and limits and targets content could look in the NPF in time.

Structure

14. The structure of the NPF will be important in creating a user-friendly instrument that reduces complexity and helps provide certainty to plan makers. This paper is not seeking decisions about the structure of the NPF.

15. Figure 1 is an illustrative table of contents for a potential structure of the NPF (noting that the structure will be refined through the process of drafting the NPF).

Figure 1: Illustrative table of contents for NPF

PART 1 – INTRODUCTION AND GENERAL PROVISIONS	
Sections:	**Introduction**
	NPF definitions
	PLACEHOLDER FOR OTHER ADMINISTRATIVE CONTENT
PART 2 – OVERARCHING LAYER	
	PLACEHOLDER FOR OVERARCHING CONTENT
PART 3, 4, 5, 6… - CONTENT SPECIFC SECTIONS (eg, infrastructure)	
Chapters:	**Outcomes**
(by topic area as appropriate)	**Policies**
	Limits
	Targets
	Standards and Rules
	Implementation Requirements

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PART 7 – PLAN PROCESSES	
Sections:	**NBA Plan Template**
	RSS Template
	Mapping Requirements
	Notification Requirements
	PLACEHOLDER FOR OTHER PLAN PROCESS CONTENT
PART 8 – IMPLEMENTATION AND MONITORING	
Sections:	**Implementation processes for applying the NPF**
	Timeframes for implementation
	Monitoring the efficiency and effectiveness of the NPF
	Monitoring requirements in RSSs
	Monitoring requirements in NBA plans
	PLACEHOLDER FOR OTHER IMPLEMENTATION AND MONITORING CONTENT

The NPF would include an overarching layer to provide cross-cutting direction

16. An overarching layer would provide cross-cutting direction and integration in the new RM system. The overarching layer could be the logical home for content that relates to multiple topic areas and utilising it would help avoid duplication in topic-based sections.

17. The overarching layer could provide content on the following matters:

    a. further explanation of the mandatory topics in the NBA

    b. direction on integrated management and conflict resolution, including cross-cutting direction for RSSs and NBA plans

    c. overarching content on limits and targets.

18. Conflict resolution will need to take place at all levels in the RM system. It will not be possible for the NPF to avoid or resolve all conflicts. Figure 2 below provides an illustrative example of how integrated management could be reflected throughout the new RM system.

Figure 2: Illustrative example of conflict resolution and integrated management within the new RM system

Conflict resolution and integrated management within the new RM system

Conflict resolution and integrated management at a national level could help achieve better outcomes and improve the efficiency and effectiveness of the whole RM system.

The example below is illustrative only, but indicates how integrated management and conflict resolution could be managed at different levels of the RM system in relation to renewable energy:

a. **NBA**: could include a provision that decisions made under the NBA must not be inconsistent with decisions taken under the Climate Change Response Act 2002.

b. **Overarching layer of the NPF**: could identify climate mitigation and adaptation as a key long-term priority, including reference to the Emissions Reduction Plan.

c. **Topic-specific sections of the NPF**: could direct RSSs to identify and map locations of strategic importance for renewable energy infrastructure and supporting infrastructure, and locations of outstanding natural features and landscapes. It could also provide direction for NBA plans on how to manage overlaps.

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d. **RSSs**: could identify and map these areas to identify where outstanding natural landscapes cannot be developed on and where specific renewable energy infrastructure generation, transmissions and distribution will be located based on the NPF direction.

e. **NBA plans**: could provide appropriate zoning frameworks and rules to enable such renewable energy infrastructure activities and manage adverse effects and state any consenting requirements.

Further information on conflict resolution principles for the RM system is included in MOG #17 paper – *NBA decision-making framework.*

Content

19. In the fullness of time, the NPF is likely to include detailed content across all mandatory matters in the NBA, and potentially a range of other matters of national significance. New content would cover current gaps in existing ND, including infrastructure, natural hazards, climate adaption, greenhouse gas emissions reduction, cultural heritage and outstanding natural features and landscapes.

20. The policy intent of all existing ND would generally be incorporated into the NPF. All existing ND, even those well-suited to a transition (eg, NPS-FM and the NPS-UD), will require some redrafting. This will be necessary to ensure that ND that was developed under the RMA is fit for purpose in the new RM system. It is not a straightforward 'copy and paste' exercise.

Limits and targets

21. Limits and targets are two tools to support environmental protection and restoration in the new RM system. MOG #16 confirmed that limits are generally intended to protect human health and ecological integrity and maintain the overall current state of the natural environment. Targets generally seek restoration and improvement in the natural environment and other outcomes above the current state.

22. The NPF would be the instrument that sets limits and targets at a national level. The NPF could also set out an approach for setting limits and targets at a regional level where it is appropriate for variation around the country.

23. While limits and targets are a key element of the NPF, refer to MOG #17 paper – *NBA decision-making framework* - for more detailed discussion and recommendations on these tools.

Recommended approach to the first NPF

24. The NPF will be staged to ensure timely delivery of priority content in the first NPF and further content will be added through future amendments. The first NPF will incorporate the policy intent of all existing ND,[3] alongside some new content including infrastructure.

25. The approach to repurposing drafting existing ND will have a particular focus on inconsistencies, alignment with the NBA, and amending RMA-specific provisions. The core policy intent will generally be retained through this process noting that some changes will be necessary for compatibility with the NBA. Redrafting of existing ND will need to commence as soon as possible.

26. The key focus of new content would be infrastructure, direction for RSSs and plugging key gaps in existing ND where possible (eg, greenhouse gas emissions, natural hazards,

[3] Note that some 'emerging' RMA ND will not be ready to be incorporated at the time the first NPF is delivered and will need to be incorporated through later amendments to the NPF.

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allocation and limits and targets)[4]. There would be an overarching layer focussed on cross-cutting direction for RSSs and conflict resolution.

27. Infrastructure content could include standards and codes to support a nationally consistent approach to infrastructure. Te Waihanga has established a team and has begun work to develop this content.

28. The first NPF would be notified shortly after enactment of the NBA and expected to be in formal effect by 2025 at the latest. The proposed Board of Inquiry (BOI) process for making amendments to the NPF once it is in place is described below. The process for the first NPF will need to differ from this to ensure the first NPF is in place as soon as practicable.

Rationale for recommendation

29. This approach ensures the first NPF is in place in time and provides the necessary direction to inform RSSs. This approach makes good use of existing ND and plugs key gaps not covered by existing ND. More depth in some topics and direction for NBA plans will be included through future amendments to the NPF.

30. Incorporating all existing ND and retaining the policy intent will provide certainty to councils and ensure they continue implementing existing ND.

31. This paper seeks agreement to this overall approach to the timing and content of the first NPF. There are still detailed decisions to be made about the breadth and depth of any new content and the extent to which further work is carried out on individual existing ND instruments to ensure they are fit for purpose. This paper seeks that authorisation is delegated to the Minister to make these detailed policy decisions in consultation with relevant Ministers.

Risks of the preferred option

32. Under any staged approach, there is a risk that development of new content and substantial amendments to the NPF could have implications for RSS direction. This could require joint committees to reconsider RSSs relatively quickly and duplicate efforts. This risk can be best managed by providing clear direction for RSSs in the first NPF and clear communication on the scope of future amendments to the NPF as early as possible.

33. The timeframes for the preferred approach option are tight. This may make it difficult for engagement in developing the first version NPF. This risk can be managed by continuing to engage with [redacted] and by developing an early plan for broader engagement.

34. Involvement of other policy agencies will also be necessary to prepare the first NPF. Officials will develop a programme to enable this collaboration.

Other options considered

35. Officials also considered the following two options for the first NPF:

    a) *A first NPF deemed to have legal effect through the NBA and in force at the time of enactment of the NBA.* This option was discounted as it would not help achieve the change sought in the reform objectives and risked embedding the RMA approach for the first 10+ years of the new RM system. There also would not be an opportunity to adequately engage partner with iwi and Māori groups or key stakeholders.

[4] This list is illustrative only and detailed decisions about content of the first NPF will be made by the Minister in consultation with relevant ministers.

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b) *A substantial repurposing of all existing ND and comprehensive new content, notified at least 12 months after enactment.* This option was discounted as it could not be delivered in a timely manner. It would delay the rollout of all aspects of the new RM system and result in increased cost and uncertainty for all RM system users.

Outstanding primary legislation decisions relating to the NPF

36. The remaining decisions for the NBA relating to the NPF cover:
    a. process
    b. monitoring and review
    c. transitional arrangements
    d. other minor and technical matters.

Process for amending the NPF

37. This section describes the proposed standard process for making amendments once the first NPF is in place. The process for delivering the first NPF will need to differ from the standard process described in this section, to ensure it is notified and in force as soon as possible after the enactment of the NBA.

38. The proposed process to develop and amend the NPF closely follows the recommendations of the Panel and is intended to be robust and transparent. It is proposed that a BOI is appointed to make recommendations to the Minister.

39. The BOI would be chaired by a current or former Environment Court Judge, with a minimum of three commissioners either selected from a standing pool which has been pre-approved by Cabinet or selected by a Panel convener appointed by the Minister and approved by Cabinet. Either of these options would ensure timely BOI appointments, with Cabinet oversight of either all members or the convener. This approach would include being able to co-opt expert members to the BOI for consideration of specific subject matter.

40. Changes or additions to the NPF will be publicly notified and submitters will have a right to be heard. The BOI will have the ability to determine an appropriate process (for example, use of sub-panels sitting concurrently, pre-hearing meetings, alternative dispute resolution processes and commissioning expert reports as required for specific subject areas).

41. A more streamlined process (a shorter submission process and no hearing) is proposed where the scale and nature of the proposed change does not represent a significant change from, or require substantial amendments to, existing direction in the NPF. The existing ability to make very minor or technical changes without a formal public consultation process will also be retained. The NPF can be amended at the Minister's discretion at any time, without having to wait for the nine-year review (discussed below).

42. Input from local authorities, Māori and interested parties during both the policy development phase and the formal BOI process will support the development of an effective NPF. Māori participation in the NPF is also necessary to give effect to the principles of te Tiriti o Waitangi (te Tiriti). Māori participation will include engagement through the BOI process after the NPF (or amendments to it) are notified, as well as targeted engagement with Māori during policy development. This is likely to require a combination of engagement with iwi and hapū at place, technical input, and a role for the National Māori Entity. Further advice on the role of Māori in the NPF and appointing

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Māori members to the BOI is included in the MOG #17 paper – *Role, funding and participation of Māori in the RM system*.

43. This paper seeks endorsement of this overall approach to the process for developing and amending the NPF. It recommends that the detailed policy decisions on the process, including for the first NPF, are delegated to the Minister for the Environment in consultation with relevant Ministers.

A delegation to decide who drafts the NPF

44. At MOG #3, Ministers agreed the NPF will be made by the Governor-General in Council. The key policy rationale for requiring the NPF to be made by Order in Council was to ensure that the NPF is subject to Cabinet scrutiny.

45. Under the Legislation Act 2019, the Parliamentary Counsel Office (PCO) is responsible for drafting all secondary legislation made by Order in Council, unless the Attorney-General directs otherwise. The RMA alters this default position, so that PCO is not responsible for drafting national policy statements. This approach means that national policy statements under the RMA do not need to follow the standard form of regulations. Officials consider there is value in taking a similar approach for the NPF, as it would better enable options for a user-friendly digital NPF.

46. Officials recommend authorising the Minister to make decisions about who drafts the NPF and how it is drafted in consultation with the Attorney-General.

Monitoring and review

47. Monitoring and review of the NPF will be needed to test whether it is delivering on its purpose. The Panel recommended a duty on the Minister to monitor the effectiveness of all ND, alongside a mandatory nine-year review period. Officials agree with the intent of the Panel's recommendations.

48. The NBA would include a requirement for the Minister to state in the NPF how it will be monitored. This requirement will allow for flexibility for the Minister to decide how and what monitoring is needed, along with both a regular nine-year review cycle and the ability for intermittent reviews at the Minister's discretion. Officials also propose that review of the NPF would follow the same BOI process as that used for the development of the NPF.

49. Officials recommend that more detailed decisions on the monitoring and review of the NPF are delegated to the Minister.

Transitional arrangements

50. Transitional provisions in legislation will be required to facilitate the transition from the RMA to the new RM system. At MOG #16 on 29 March 2022, MOG agreed to principles to guide the development of transitional provisions in the NBA and delegated detailed decisions on these provisions to the Minister.

51. The transition period refers to the time between enactment of the NBA and all NBA plans taking effect (at which point the new RM system is fully in force). During the transition period, existing ND will carry on (outside the NPF) largely in its current form to inform consenting and RMA decision-making. The NPF's primary role during the transition period will be to inform the development of RSSs and NBA plans.

52. The key benefit of this approach is that during the transition period, the NPF can focus on directing the development of RSSs and NBA plans. Existing RMA direction can focus on directing day-to-day planning and consenting decisions under the RMA. It would not

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be practicable for the NPF to do both of these things as it would create significant litigation risk, complexity and uncertainty. These issues could disrupt the implementation of priority ND.

53. To support the approach to transition, the ability to develop and amend ND will continue to apply after the NBA is enacted until such a time as it is no longer needed. This could allow amendments to existing ND (eg, new infrastructure direction) to direct day-to-day planning and consenting decisions ahead of NBA plans being in force.

54. This paper seeks agreement from MOG to delegate detailed transitional arrangements for both the NPF and existing ND instruments, in alignment with the MOG #16 decisions and the policy approach outlined in this paper. The delegations sought will allow flexibility for a range of transition approaches, depending on the best fit with wider decisions.

Other primary legislation decisions

55. There are a range of other minor matters that will need to be clarified in the NBA in relation to the NPF. Officials recommend that the Minister is given a broad delegation for minor and technical matters to ensure the Minister can direct PCO during the drafting process over the coming months.

Treaty impact analysis

56. The preferred approach for the first NPF is in many respects consistent with the goal to create a more Treaty consistent RM system. The NPF and all future amendments must be developed under the legal standard of to "give effect to the principles te Tiriti", and the intent of Te Oranga o te Taiao should be reflected in the NPF. There is also a role for a National Māori Entity to input into the development of the NPF and appointments to the BOI. These changes are a significant improvement on the status quo.

57. Whether the NPF is consistent with the principles of te Tiriti will depend on detailed decisions to come, including on the approach taken to develop and engage on the NPF. The Treaty impact analysis (TIA) has highlighted several risks, including that incorporating existing ND in the new RM system could inherit existing deficiencies in respect of giving effect to the principles of te Tiriti, particularly if time constraints limit Māori involvement in the development of the first NPF.

58. A fuller summary of the analysis of the Treaty impacts of the proposals in this paper are contained in Appendix 1.

Engagement

Agency

59. Agencies broadly supported the proposed approach provided that relevant agencies and Ministers were involved throughout the development of the NPF. Ministry of Transport and Waka Kotahi raised concerns about the complexity of having existing ND remain in force alongside the NPF and the impact this could have on decision-makers.

Iwi/Māori groups

60. MfE officials have had initial conversations with [redacted] about the NPF. Both groups noted the importance of having a robust process for engaging with iwi and hapū on the content of the NPF, and that the National Māori Entity should not replace this.

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61. [redacted] emphasised that the detail of the NPF process and content would determine how effective the NPF was, and that it is difficult to offer support or critique of such high-level proposals. For example, key aspects of the new system include:

    a. what Māori participation in the development of the NPF looks like

    b. how existing ND is redrafted and new content is developed to give effect to the principles of te Tiriti

    c. how the purpose of te Oranga or te Taiao is incorporated into the NPF.

62. The decisions this paper is seeking do not provide this level of detail. Officials will need to continue to work with [redacted] hrough the more detailed policy development phase of the NPF.

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Appendix 1: Strategic decisions about the NPF – Treaty Impact Analysis

Status quo

1. The Resource Management Act 1991 (RMA) currently enables national direction through the development of National Policy Statements (NPSs), National Environmental Standards (NESs), National Planning Standards (Planning Standards) and section 360 regulations. Collectively these are known as National Direction (ND). There are 25 tools currently in effect in the existing suite of ND under the RMA. New pieces of ND are being developed concurrent to the reform process, for example the NPSs on Indigenous Biodiversity and Highly Productive Land. This ND is made under the RMA and so it contains RMA-specific language and content, it is largely focused on managing effects, and it has been developed under the legal standard to "take into account" the principles of the Treaty of Waitangi.

Summary of analysis

Gives effect to the principles of te Tiriti o Waitangi

2. Most existing ND has been developed under the legal standard of to "take account of the principles of te Tiriti o Waitangi" (te Tiriti) under the RMA. The NPF and all future amendments must be developed under the legal standard of to "give effect to the principles te Tiriti", and the intent of Te Oranga o te Taiao should be reflected in the NPF. These changes are a significant improvement on the status quo. The preferred approach option allows for existing ND to be redrafted with this in mind.

3. The process for developing and amending the NPF would include consultation on changes made through a BOI process and pre-notification engagement with iwi/hapū/Māori. There is also a role for a National Māori Entity to input into the development of the NPF and appointments to the BOI. There is also a formal review requirement, which provides ongoing opportunities for Māori to input to updates to the NPF.

4. Māori participation in the development of the detailed NPF content will be needed to ensure a quality NPF and to give effect to the principles of te Tiriti. The importance of Māori participation in the NPF has been consistently reflected in feedback received from the Māori interest groups MfE engages with, including

5. Ongoing engagement with iwi/hapū/Māori will be required during policy development. This is likely to require a combination of engagement with mana whenua at place, technical input, and a role for the National Māori Entity.

Māori Crown relations risks and opportunities

6. The Panel's recommendations and subsequent MOG decisions agree that the RM system should have a role for Māori that gives effect to the principles of te Tiriti. Failure to provide those opportunities will result in not giving effect to the principle of partnership (as described by the courts). MOG #3 agreed to enabling a process to develop the NPF that ensures a role for Māori, and ensures decision-making is informed by appropriate evidence and technical expertise including mātauranga Māori. Not providing for this agreed outcome represents a relationship risk.

7. The preferred approach provides for the opportunity for Māori to be part of the decision-making through the BOI process and pre-notification engagement with iwi/hapū/Māori. Greater clarity on how the NPF will meet its te Tiriti obligations and requirements will also be provided in subsequent reports, briefings and delegated decision papers.

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Costs and benefits for Māori

8. Financial costs and benefits for Māori related to the process to develop, amend and approve the NPF are to a certain extent addressed in MOG #17 Paper – *Role, funding and participation of Māori in the RM system*. That paper notes the principles for the funding of the RM system overall that were established in MOG #15, and indicates 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.

9. Some of the ways the funding principles could benefit Māori include: in contributing to the creation of a participatory model more consistent with Waitangi Tribunal recommendations in respect of Māori participation; shifting the economic burden from Māori to the 'user'; and empowering Māori to engage at the regional and local level to reach outcomes that are more consistent with Māori values (cultural and environmental). However, it should be noted, an exercise to quantify the costs and benefits of the preferred approach in this paper has not been undertaken.

Protecting and transitioning Treaty settlements

10. The NPF content, once developed, will apply nationwide, including affecting land and water subject to Treaty settlements. Treaty settlements relating to the Waikato River, the Whanganui River, and the Whangaehu River are particularly relevant. The policy mechanism for transitioning these settlements into the RM system is not yet determined but will need to uphold the intent of these agreements, and this will need to be reflected in the NPF.

11. MfE is undertaking work on the impact of reform on specific Treaty Settlement arrangements. This work will inform the development of the NPF. The Crown has committed to uphold Treaty settlements in the RM system and this will need to be reflected through the NPF. This intent is also reflected in the recommendations in this paper.

Waitangi Tribunal Recommendations

12. The Waitangi Tribunal Stage 2 report on claim Wai 23582 discussed the need for co-design of ND. It recommended that the approach of co-design of policy options with a National Māori Entity should be made a regular feature of government where Māori interests are concerned.

13. This paper acknowledges that Māori participation in the development of the NPF is needed to ensure a quality NPF and to give effect to the principles of te Tiriti and that engagement with Māori and local authorities will be required during policy development. Further information on the role of Māori and the National Māori Entity in inputting to the NPF and appointing Māori members to the BOI is included in the MOG #17 paper – *Role, funding and participation of Māori in the RM system.*

Māori rights and interests in freshwater and other natural taonga

14. A comprehensive set of ND exists for freshwater management in the form of the NPS-FM, the Freshwater 2020 (NES-F), and stock exclusion regulations, which made some progress in addressing Māori rights and interests in freshwater. Preserving this progress in the NPF will likely be part of the Māori freshwater rights and interests work programme, although it will not be sufficient to fully address these rights and interests. The preferred option approach does not preclude any options to further address Māori freshwater rights and interests and allows for new content to be included in the first version NPF and subsequent versions to address interests in other natural taonga.

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Limitations of this assessment

15. Officials have had initial discussions with [redacted] The preferred approach has not been tested in detail with Māori. However, engagement with Māori is ongoing on a range of matters directly and indirectly related to the content of the NPF and other parts aspects of the RM new system.
16. There have been time restrictions on completing the analysis. However, further detailed work on developing the NPF following this paper will continue to benefit from Treaty impact analysis (TIA) at the relevant stages.
17. Several pending decisions could impact the effectiveness of the NPF and this TIA, including detailed policy direction for other parts of the RM system such as the establishment of the National Māori Entity.

Summary of Overall assessment

18. The preferred approach for the first NPF is in many respects consistent with the goal to create a more Treaty consistent RM system. The NPF and all future amendments must be developed under the legal standard of to "give effect to the principles te Tiriti", and the intent of Te Oranga o te Taiao should be reflected in the NPF. There is also a role for a National Māori Entity to input into the development of the NPF and appointments to the BOI. These changes are a significant improvement on the status quo.
19. Whether the NPF is consistent with the principles of te Tiriti will depend on detailed decisions to come, including on the approach taken to develop and engage on the NPF. The Treaty impact analysis (TIA) has highlighted several risks, including that incorporating existing ND in the new RM system could inherit existing deficiencies in respect of giving effect to the principles of te Tiriti, particularly if time constraints limit Māori involvement in the development of the first NPF.

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Appendix 2 – Previous recommendations and decisions relevant to the NPF

Relevant Resource Management Review Panel Recommendations[5]

Recommendation #	Recommendation
Ch. 2, Recommendation 9	There should be greater use of mandatory national direction, including the identification of features and characteristics that contribute to the quality of both natural and built environments, and to respond to climate change.
Ch 2, Recommendation 11	Any conflicts in achieving the outcomes should be resolved through national direction or, in the absence of such direction, in combined plans.
Ch 3, Recommendation 4	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.
Ch 6, Recommendation 2	Mandatory national direction should be required for: a. climate change mitigation consistent with the emissions reduction plan under the Climate Change Response Act 2002 (CCRA) and in a way that aligns with and supports emissions pricing b. climate change adaptation and reduction of risks from natural hazards consistent with the national climate change risk assessment and national adaptation plan under the CCRA.
Ch 7, Recommendation 3	The purpose for national direction should be setting objectives, policies, limits, targets, standards and methods in respect of matters of national significance to give effect to the purpose and principles in the Natural and Built Environments Act (NBA) and to resolve any conflicts between these matters.
Ch 7, Recommendation 6	There should be a single board of inquiry process for the preparation and review of both national policy statements and national environmental standards, except for minor changes for which an alternative process can be adopted.
Ch 7, Recommendation 7	All existing and new national direction should be brought together into a coherent combined set and any conflicts between them resolved.
Ch 7 Recommendation 8	National directions should be reviewed every nine years but intermediate changes should also be allowed for as necessary.
Ch 12, Recommendation 2	The Minister for the Environment should provide national direction on how the system should be implemented, including national direction developed with Māori on how to incorporate Māori perspectives and mātauranga Māori into the system.

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[5] https://environment.govt.nz/assets/Publications/Files/rm-panel-review-report-web.pdf.

Relevant Cabinet and Ministerial Oversight Group Decisions

December 2020 Cabinet Paper: Reforming the Resource Management System
agreed that the purpose of the National Planning Framework (NPF) will be to address matters of national significance or matters where national consistency would be desirable; **agreed** that the NPF will include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA;
MOG #2
6. **Agreed** that Cabinet's resource management reform objective three to "give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori" should result in the following outcomes: a. process and substance of the NPF and plan-making decisions give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori
MOG #3
3.2 **Agreed** the NPF may also provide direction where consistency is desirable on a sub-national scale
4 **Agreed** the role of the NPF is to: - take a strategic approach to identify central government priorities across the NBA to direct and influence regional spatial strategies, and natural and built environment plans - provide a mechanism by which the NBA and SPA will give effect to the principles of Te Tiriti and reflect te ao Māori - support the implementation of natural environment limits and natural and built environment outcomes in the NBA, including high level resolution of competing matters - enable consistency and support decision-making by providing methodologies, standards and direction - provide national, regional, local or spatially specific direction (where appropriate)
3.5 **Agreed** the intent of the NPF is to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the system
3.6 **Agreed** that the NPF may include outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions or however these are replaced in the NBA (for nationally significant outcomes or where consistency is desirable)

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3.9 **Agreed** to the policy intent of enabling a process that ensures:

- effective public consultation
- a role for Māori that gives effect to the principles of Te Tiriti
- appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision-making
- opportunities are available for early engagement with decision-makers, including local government, on spatial strategies and NBA plans
- robust evaluation and analysis built into appropriate decision-points
- flexibility to design a process that is proportionate to the scale and impact of what is being proposed, in some cases this may require submitters to be heard or use of independent commissioner
- consideration is given to integrated management, cumulative effects and the purpose of the Act before developing and recommending direction for the NPF

3.11 **Agreed** the NPF will be made by the Governor-General in Council

3.12 **Agreed** the NPF will be secondary legislation for the purpose of the Legislation Act 2019, which will mean it will be disallowable instrument and must be presented to the House of Representatives

MOG #6

Agreed to begin work on the NPF section for infrastructure and urban development so that it is in place early in the transition process

MOG #11 and 12

Agreed that the National Māori Entity have functions in:

- system oversight/monitoring
- input to NPF development
- appointments of any Māori representatives to NPF Board.

MOG #15

Agreed that the critical issues for MOG decision-making will be:

- the NPF: national direction and conflict resolution role envisaged by Resource Management Review Panel

Natural Environments sub-MOG meeting #1, 28 Oct 2021

Agreed that the NBA will require local authorities to monitor the state of the environment within their region or district:

- to the extent necessary to effectively carry out their functions and duties under the Act
- in accordance with any standards, methods, indicators or other requirements set out in the NPF or other regulations made under the Act

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MOG #16
Transition pathways **Agreed** that the following principles will be used to guide development and decision-making on legislative transitional provisions for the SPA and NBA (*Note – only principles of particular relevance to NPF are listed below*): • where practicable, the transition should enable the outcomes of the new system to be realised rapidly • existing RMA instruments and authorisations should be carried over to the new Resource Management (RM) system until lapsed, expired, surrendered, cancelled or replaced by new RM system products and authorisations • until such time as NBA Plans have legal weight, procedures and decision-making on actions that commence after enactment of the SPA and NBA (such as lodged consent applications, notified plans and plan changes, water conservation order applications, heritage order applications, notice of requirement applications, compliance procedures and court proceedings) will proceed under the provisions of the RMA (unless an alternative approach has been provided for in respect of specific actions/processes), but, where practicable, will have regard to the purpose, outcomes and treaty clause of the NBA; as well as any limits, targets, national direction and regional spatial direction developed under the SPA and NBA as applicable **Noted** that there is a hierarchy of instruments in the new RM system with the NPF providing overall direction to RSSs that provide guidance to the NBA Plans **Agreed** that a sequential rollout approach will be taken to implement the new RM system
Allocation **Agreed** to include allocation principles of sustainability efficiency, and equity in the NBA and that: a. the NPF provide direction on the meaning and application of these principles b. Ministers, when developing allocation approaches in the NPF, must have regard to these principles c. joint committees must have regard to these principles when developing allocation approaches in plans (subject to direction in the NPF) **Agreed** to adopt the Panel's recommendations to better enable and incentivise the use of more sustainable, equitable and efficient allocation and charging approaches by: a. providing an enhanced enabling framework for resource allocation and user charges in the NBA b. expanding the ability of central government to direct the use of allocation approaches and user charges through subordinate legislation including the NPF c. requiring the development of specific resource allocation approaches through plans (in line with any direction).
Environmental limits and targets **Agree** that the level of environmental limits to protect ecological integrity will be defined as the current state of ecological integrity **Agree** that environmental limits to protect human health will not be prescribed according to the current state of the environment

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Note that targets for ecological integrity and human health will be required to avoid locking in existing unacceptable degradation of the natural environment and ensure that those environments are improved and restored.

Agree that where a part of the natural environment is already unacceptably degraded, the NPF will set out a minimum level or target which regions must manage to (that is, a target equal to the limit/current state will not be acceptable)

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

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

Relevant Environment Committee Inquiry recommendations[6]

Description	Recommendation
Te Tiriti o Waitangi *Clause 6*	Consideration should be given as to what role the NPF could play in giving additional expression to the principles of Te Tiriti through both the NPF processes and substantive content.
Requirement to have a national planning framework *Clause 9*	There must always be a NPF.
Purpose of the NPF *Clause 10*	To clarify that the purpose of the NPF in clause 10 is to: further the purpose of the NBA by providing integrated direction on matters of national significance and matters for which national or sub-national consistency is desirable assist in resolving conflicts set strategic direction That in setting strategic direction, the NPF must: provide direction on how to achieve the environmental outcomes provide direction on how the well-being of present and future generations is to be provided for within environmental limits (or wording to align with the role of limits and the purpose in Part 2) address key long-term issues and priorities
Topics the NPF must include *Clause 13*	The NPF should have mandatory content on all outcomes in clause 8 The level of detail provided on each outcome can differ To strengthen the conflict resolution provision in clause 13(3) by requiring the Minister to have regard to the extent to which it is appropriate for conflicts to be resolved at a national level by the NPF or at a regional level by NBA plans

[6] https://www.parliament.nz/resource/en NZ/53SCEN_ADV_111944_EN7947/04507cf313c5dd512769fbce7387db0e4d5974d2.

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Institutional arrangements for central government

Summary slides

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Background information

This paper outlines a proposed approach to institutional arrangements to support the reformed system

- The Panel did not make specific recommendations on institutional reform but noted the complexity of the current system and a need for streamlining and clarity of roles and responsibilities.
- The Panel recommended central government have a greater role in central planning and be a member of SPA committees.
- The Ministerial Oversight Group has already made several decisions concerning the role of central government and institutional arrangements in the future system and is considering further related recommendations at MOG #17. These decisions do not amount to major institutional reform.

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Decisions sought

Decisions are required as to the structure and approach of proposed institutional reform

- **agree in principle** that an interdepartmental executive board (IEB) support the implementation of the SPA
- **note** that the Minister for the Environment will work with the Minister for the Public Service to take more detailed proposals to Cabinet relating to the IEB
- **agree** to the Ministry for the Environment having responsibility for stewardship, oversight, monitoring and administration for the NBA
- **agree in principle** to the IEB having stewardship, oversight, monitoring and administration responsibility for the SPA
- **note** that there will be monitoring and oversight roles for other entities including the National Entity, the Parliamentary Commissioner for the Environment and the Environmental Protection Authority
- **note** that further institutional changes could support implementation in the long term but are not necessary to support effective implementation from enactment
- **agree** to defer any exploration of options related to regional compliance, monitoring and enforcement to the next Parliamentary term

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BRF 1354: Institutional arrangements for central government

Key messages

1. This paper seeks decisions on institutional arrangements to support the implementation of the Strategic Planning Act (SPA), and system stewardship, monitoring and oversight of both the Natural and Built Environment Act (NBA) and SPA from enactment. These decisions do not amount to or require large scale institutional reform.

   Coordinating and supporting central government input into SPA committees

2. Officials propose that an interdepartmental executive board (IEB) support the implementation and system stewardship of the SPA. An IEB would be an efficient way of ensuring the central government appointees to SPA committees have suitable cross-agency support. This could be a repurposing of the current Strategic Planning Reform Board or a new IEB. Further details about the form and functions of the IEB will be agreed by Cabinet.

   System stewardship, monitoring and oversight of the SPA and NBA

3. This paper proposes that primary responsibility for the stewardship, monitoring and oversight of the NBA should sit with the Ministry for the Environment (MfE). This is a continuation of the current role MfE plays for the RMA (although with stronger monitoring and oversight requirements).

4. This paper proposes in-principle agreement that the proposed IEB has stewardship, monitoring and oversight responsibilities for the SPA, with the servicing department for the IEB formally administering the legislation.

   Further institutional changes could be considered as reforms are implemented.

5. While major institutional reforms are not required to progress the reforms, further changes to existing institutions could be considered at a later date. For example, at Ministerial Oversight Group (MOG) #10 it was noted that specific decisions on the design of regionally consolidated compliance, monitoring, and oversight services need to occur in the context of broader decisions about the governance of the system and the responsibilities of institutions to be decided at a later MOG. We recommend this is deferred until the next parliamentary term. Other work could include looking at jurisdictional issues between the Environment Court and District Court, and the role of the Parliamentary Commissioner for the Environment and the Environmental Protection Authority.

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Recommendations

The Ministerial Oversight Group is recommended to:

Coordinating and supporting central government input to SPA committees

1. **agree** in principle that an interdepartmental executive board (IEB) support the implementation of the Strategic Planning Act (SPA)
2. **note** that the Minister for the Environment will work with the Minister for the Public Service to take more detailed proposals to Cabinet relating to the IEB consistent with the process under the Public Service Act 2020
3. **note** the IEB and Ministry for the Environment (MfE) will need to uphold Treaty settlements, rights under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and existing natural resource arrangements under the Resource Management Act 1991 (RMA) and related matters, and that the central government role to plan for, implement and monitor settlement commitments will continue within the future system
4. **note** there are separate papers delegated from Ministerial Oversight Group (MOG) #15 on policy decisions relating to upholding the rights referred to at 3 above

System stewardship, monitoring, and oversight of the NBA and SPA

5. **agree** that MfE have primary responsibility for stewardship, oversight, monitoring, and administration of the Natural and Built Environments Act (NBA)
6. **agree in principle** that the IEB has stewardship, oversight, monitoring, and administration responsibility for the SPA, with the SPA formally administered by the IEB's servicing department (to be determined through Cabinet decisions on the IEB)
7. **note** that there will be monitoring and oversight roles for other entities including the National Entity, the Parliamentary Commissioner for the Environment and the Environmental Protection Authority
8. **note** that further work is underway as to the most appropriate servicing department for the SPA, given the breadth of matters considered as part of regional planning processes
9. **note** that detailed decisions on stewardship, monitoring and oversight of the NBA and SPA is subject to a delegated decisions paper

Further institutional changes could be considered as the reforms are implemented

10. **note** that further institutional changes could support implementation in the longer term but are not necessary to support effective implementation from enactment
11. **agree** to defer detailed exploration of options for regional compliance monitoring and enforcement to the next parliamentary term.

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Institutional arrangements for central government

Purpose

1. This paper seeks decisions on institutional arrangements to support the Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA) from enactment. These include decisions on how to support and coordinate central government input into SPA committees, as well as stewardship, monitoring and oversight of both the SPA and NBA. These decisions do not amount to or require large scale institutional reform. The overall picture of the institutional system from enactment of the NBA and SPA can be found in Appendix C.

Status quo under the current system

2. The Resource Management Act 1991 (RMA) is administered by the Ministry for the Environment, but a wide range of institutions are responsible for its implementation. This is primarily undertaken by the Ministry for the Environment, the Department of Conservation, the Environmental Protection Authority, local authorities, and the courts.

3. Iwi/hapū/Māori also have a significant and growing role in resource management decision-making through Treaty settlements, the recognition of Takutai Moana rights, voluntary agreements with local authorities and collaborative policy development with central government.

4. Other public and private institutions also participate in the resource management system, contribute to or lead national direction, and influence the outcomes achieved.

5. Broadly, most of the functions in the reformed system are already being performed by an entity within the current system to some extent. The one exception is central government's role in relation to regional spatial strategies (RSSs). While central government has participated directly in strategic spatial planning in the past, there is no directly comparable institutional role in the current system to contributing to the decision-making of joint committees for RSSs across New Zealand.

Panel's recommendations

6. The Resource Management Review Panel (the Panel) noted several issues with current institutional arrangements:

   a. numerous decision-makers and lack of clear roles and responsibilities

   b. incentives not necessarily well-aligned with environmental objectives

   c. te ao Māori world view and Te Tiriti are inconsistently provided for

   d. insufficient capacity, capability and funding.

7. The Panel recommended that a future environmental management system should be based on streamlined and clarified roles and responsibilities and improved partnership between central and local government and Māori. The Panel did not give great emphasis to the impacts of reform on institutional design, although they made recommendations/suggestions that could amount to some level of institutional change. These included:

   a. recommending the expansion of the role of the Parliamentary Commissioner for the Environment to include a more formalised and independent auditing and oversight role, with a requirement for regular reporting;

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b. recommending that new regional hubs should be established to undertake resource management compliance, monitoring, and enforcement options;

c. noting an additional role for the Environmental Protection Authority in supporting and advising local authorities in compliance, monitoring, and enforcement through the proposed regional hubs;

d. recommending central government be a member of the SPA committees

Proposals

8. This paper proposes a number of decisions about institutional arrangements in the reformed RM system (across the NBA and SPA) to support its implementation.

9. Immediate arrangements to support implementation of the reformed system include:

   a. agreement to an IEB to coordinate and support central government input into SPA committees [this paper's recommended option]

   b. establishment and operation of the National Entity [decisions sought in the Ministerial Oversight Group (MOG) #17 paper "Role of Māori in the System"]

   c. allocation of roles and responsibilities for administration, oversight, stewardship and system monitoring of the NBA and SPA [this paper makes recommendations about this]

   d. establishment and operation of a Board of Inquiry as part of the process to develop the National Planning Framework (NPF) [decisions sought in the MOG #17 paper "Strategic decisions about the National Planning Framework"].

Greater Central Government role in regional spatial planning

Coordinating and supporting central government input to SPA committees

10. Central government will need to support the SPA committees and particularly the ministerial appointees to develop RSSs. In particular, central government will need to coordinate across agencies to provide coherent strategic and technical input to the SPA committees – for example, central government's view of how to translate national priorities into regional contexts.

11. Committees will make the final decisions on how to resolve any tensions, but central government's coordination role may need to include identifying options to resolve tensions from its perspective. Central government will need to have the capacity to contribute to several RSSs simultaneously across multiple regions at one time. It is anticipated that during transition the first three RSSs will be developed concurrently.

Officials recommend an interdepartmental executive board perform this function

12. Officials seek an in-principle decision that an IEB is the appropriate vehicle to coordinate and support central government input to SPA committees. The Minister for the Environment would work with the Minister for the Public Service to take more detailed recommendations to Cabinet in late 2022, including whether to transition the existing SPR Board, and the remit, purpose, function, role and scope of the IEB.

13. An IEB is made up of public service chief executives and is designed to work collaboratively to address complex issues that cannot be solved by one single agency.

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Opportunities for the IEB to give effect to the principles of Te Tiriti o Waitangi

14. The IEB and MfE would be subject to the requirements in the PSA to support the Crown in its relationship with Māori under the Treaty. These institutions would also need to give effect to the principles of Te Tiriti as they deliver their functions under the SPA and NBA.

15. The IEB and MfE would need to develop the capability and access the advice they need in order to understand and incorporating giving effect to Te Tiriti principles and te ao Māori in carrying out their functions. Choices about the IEB's membership, appointment of independent advisors, and the make-up of staff provide an opportunity to build in new capability. The IEB would likely be appointed at the same time as the National Entity. The IEB and MfE could consult the National Entity on how best to give effect to the principles of Te Tiriti.

Funding implications

16. [redacted]

System stewardship, monitoring, and oversight of the NBA and SPA

The Ministry for the Environment should have stewardship, oversight, monitoring, and administrative responsibility for the NBA

17. This is a continuation of the Ministry's role for the RMA (although with stronger monitoring requirements). We will be seeking further delegated decisions on system stewardship functions in May 2022, which will flesh out the details of those roles.

18. There are strong arguments for the Ministry for the Environment having primary responsibility for oversight of the effectiveness of the resource management system, including the effectiveness of the Natural and Built Environments Act and national direction made under it (as recommended by the Panel). The National Entity, the Parliamentary Commissioner for the Environment and others will also have a role in oversight and monitoring. Retaining this responsibility would also be consistent with the Ministry's overall responsibility to advise on all aspects of environmental administration under the Environment Act 1986. In parallel, it is anticipated that the Minister for the Environment will have an explicit monitoring role set out in the NBA.

19. Decisions on how the NPF is monitored, and how this is integrated with system wide monitoring, will be sought in delegated decisions in May. The Minister for the Environment (and potentially the Minister of Conservation subject to delegated decisions) would have the responsibility for notifying the NPF for the Board of Inquiry process, making final decisions (through Cabinet) and making recommendations to the Governor-General.

20. Informal cross-agency working arrangements will be needed for input into both the development of the NPF and system stewardship. For example, the Ministry of Housing and Urban Development would likely need to take a leading role on monitoring aspects of urban performance and advising on urban policy alongside the Ministry for the Environment.

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The proposed IEB should have stewardship, oversight, monitoring, and administrative responsibility for the SPA

21. Officials seek an in-principle decision that the IEB have stewardship, oversight, monitoring, and administrative responsibility for the SPA. The IEB will be well placed to monitor, review and report on how well the SPA is supporting appropriate long-term planning for transport, infrastructure, housing, climate resilience and environmental protection in each region.

22. The National Entity, the Parliamentary Commissioner for the Environment and others will also have a role in oversight and monitoring. The IEB will also work with a range of other stakeholders, including Crown Entities in fulfilling its stewardship, monitoring, and oversight role.

23. While the IEB would have the primary stewardship, monitoring, and oversight responsibility in practice, officials seek an in-principle decision that the SPA would be formally administered by the IEB's servicing department. The servicing department would propose amendments to the legislation and associated regulations as required to ensure that they remain fit for purpose, but this would be consistent with the advice provided by the IEB on these matters.

24. The Ministry for the Environment is the current servicing department for the Strategic Planning Reform Board. There are a number of options for the servicing department for the proposed IEB, which could include MfE continuing in this role and minimising transaction costs, or sitting within a central agency recognising the cross-portfolio nature of the SPA (eg, the Treasury or Department of Prime Minister and Cabinet), or within an agency with particular expertise (eg, Department of Internal Affairs for the local government link, Ministry of Housing and Urban Development for spatial planning expertise). Decisions on the servicing department will be taken as part of the Cabinet process to establish an IEB.

25. Officials will be seeking further delegated decisions about monitoring in May, including how the performance of the IEB would be monitored.

National Entity will have a monitoring function

26. The proposed National Entity will have a Treaty performance monitoring function across the RM system and may inform the Ministry/IEB and provide recommendations to mitigate against breaches to the Te Tiriti. MfE and the IEB should actively engage with the National Entity in exercising their responsibilities for oversight, stewardship and monitoring of both the NBA and SPA.

Further institutional changes could be considered as reforms are implemented

27. As the reforms are implemented further changes to institutions could be considered as the system beds in and other reforms are implemented (eg, the Three Waters reforms and any outcomes from the Review into the Future for Local Government).

28. Institutional arrangements to support managed retreat will be considered as part of the policy development for the Climate Adaptation Act, likely next parliamentary term.

29. At MOG #10 it was noted that specific decisions on the design of regionally consolidated CME services need to occur in the context of broader decisions about the governance of the system and the responsibilities of institutions to be decided at a later MOG. Officials recommend this is deferred until the next parliamentary term.

30. Other work could include looking at the role of the Parliamentary Commissioner for the Environment, the role of the Environmental Protection Authority, and the jurisdictional issues between the Environment Court and District Court.

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Treaty impact analysis

31. Overall, the treaty impact of the proposals in this paper depend on what happens next, including how the IEB is designed and how it and MfE undertake their new functions in providing oversight of the SPA and NBA. These next steps should provide opportunities to strengthen the Crown as a treaty partner, and to deliver benefits for Māori in the new resource management system. A full summary of the analysis of the Treaty impacts of the recommendations of this paper is contained in Appendix A.

Engagement

Agency

32. Agencies have been generally supportive of the proposals in the paper. However, some agencies, particularly the Department of Conservation, have raised concerns on how the IEB will come to a coordinated view and the processes via which agencies can individually provide technical input to SPA committees. At MOG #16 it was agreed that central government would provide strategic direction into the system, further work is on-going on the scope and mechanism for this.

Local government

33. Conversations with the Local Government Steering Group have predominantly focused on the identity of the central government appointee, and the joint committees themselves. Some relevant feedback to the institutions work is noted below:

- The central government representative will need convening power across departments - the machinery of government and the public sector legislation need to ensure the officials who is part of the RSS can represent the Government and genuinely make decisions and not need to revert to Wellington
- The role, scope and authority of this person needs to be carefully considered; will need some system behind the system to give them the authority they need
- Need to be careful the central government representative isn't dominated by health/education; they will need a deep understanding of the region.

Iwi/Māori groups

34. [redacted] summarised key feedback was:

    a. *when setting out the monitoring roles make sure to bring in the role of the National Māori entity in relation to treaty monitoring*. Officials agree and have implemented this role into the paper.

    b. *exploring ways in which the National Entity can influence RSS decision-making, including being represented on SPA committees.* Officials consider that there could be an opportunity to do this via the IEB engaging with the National Entity when the IEB develops strategic direction for the RSSs [subject to delegated decisions].

35. ILG did not provide specific feedback on institutional arrangements.

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Appendix A – Summary Treaty Impact Analysis

Status quo
Both the Panel and the kaitiaki survey 2019 were clear that current institutions inconsistently provide for te ao Māori and obligations under Te Tiriti o Waitangi and institutions have insufficient capability when it comes to implementing or understanding the perspectives of Māori.

Summary of analysis

Gives effect to the principles of Te Tiriti o Waitangi

- Institutions to implement the reforms need to be designed and develop capabilities to meet the reform objective to *give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori including mātauranga Māori.*
- Choices about whether a government department should undertake a function or an IEB be established to do so, are "machinery of government" choices about how the Crown organises itself. Once these choices have been made however, there will be opportunities to strengthen the Crown as a treaty partner. And when new Crown institutions have been established and existing institutions have been given new functions, they will need to give effect to the principles of Te Tiriti o Waitangi as required by the NBA and SPA. This treaty impact analysis focuses on these next steps to establish new entities and functions.
- The establishment of the recommended IEB, and its design (decisions about its functions, membership/remit, appointed advisor/s, resources and staffing), would be done under the Public Service Act (PSA), and would need to meet the Act's requirements that:
    - The public service supports the Crown in its *relationships* with Māori under te Tiriti
    - IEBs and department CEs develop and maintain public service *capability* to *engage* with Māori and understand *Māori perspectives*
    - IEBs and CEs, as part of being good *employers*, recognise the aims and aspirations of Māori, employment requirements of Māori and need for greater involvement of Māori in the workplace.
- Once established, the IEB would then be a new part of the Crown. It would then need to not only give effect to the above requirements of the PSA but would also give effect to the principles of Te Tiriti under the SPA and NBA when engaging in the resource management system. For example, these broader principles would apply when the IEB provides cross government support and develops direction for the Crown's representatives at SPA committees. There would also be opportunities to incorporate te ao Māori including mātauranga Māori into this direction.
- MfE and the IEB should actively engage with the National Entity in exercising their responsibilities for oversight, stewardship and monitoring of the NBA and SPA. The National Entity will have a Treaty performance monitoring function across the RM system and may inform the Ministry/IEB and provide recommendations to mitigate against breaches to the Te Tiriti.

Māori Crown relations risks and opportunities

- The creation of a new entity (the IEB) and the allocation of new functions to MfE would provide opportunities to strengthen the Crown as a Treaty partner, including its capability to engage with Māori. Whether these opportunities are realised depends on the design of the IEB and MfE's ongoing capability development. It would be important to seek advice from Te Arawhiti on this.
- The IEB would likely be appointed at the same time as the National Entity, and it would be important to build the relationship between them and with MfE. MfE should also continue to build its relationships with hapū/iwi/Māori. These relationships could focus on exchanging of ideas/knowledge which supports Central Government with increased capability/capacity in understanding te ao Māori. This would have long term benefits in future policy development for Crown Māori relations.

Costs and benefits for Māori

- It will be important for the CEs of MfE and on the IEB, and their staff, to have a high level of understanding of te ao Māori and mātauranga Māori. The Kaitiaki survey noted that capability in this area is currently insufficient for the Crown and creates capacity issues for Māori. Crown agents may rely on Māori to provide them with the capability, placing significant pressures on Māori and Crown agents to meet the expectations and obligations under section 14 of PSA and Te Tiriti.
- The Iwi Leaders Group recently identified tikanga Māori as being their priority, above Te Tiriti and its principles. While recognised in common law and as a source of law of its own, this might not be easy to make compatible with the practices of the IEB or MfE. This could be a cost to both parties. Relationships will be key to navigating through this.
- If the proposed IEB and MfE meet their Public Service Act requirements and deliver their functions under the SPA and NBA well, this should benefit Māori in a range of ways. For example, the institutions could improve outcomes for Māori as their employees. The IEB could coordinate development of strategic direction that supports the aspirations of mana whenua on the SPA committees, and results in more equitable outcomes for Māori in regions.

Protecting and transitioning Treaty settlements

- The institutions proposed in this paper would need to continue to uphold Treaty settlements that the Crown has entered into and rights under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and existing natural resource arrangements under the RMA and related matters. The central government role to plan for, implement and monitor settlement commitments will continue within the future system. The institutions will need the capability to do this.
- There are at least 12 documents produced by entities established through settlements that outline vision, outcomes and objectives for specific rohe or taonga.

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Waitangi Tribunal Recommendations

- The Waitangi Tribunal's report into the Wai 262 claim called for the Crown-Māori relationship to move beyond grievance to a new era based on partnership. Te Pae Tawhiti is the all-of-government response to the Wai 262 claim, aiming to improve Crown-Māori relationship. The institutional proposals in this paper would need to be progressed with regard to Te Pae Tawhiti.
- A general finding from the Waitangi Tribunal is that the RM system should deliver effective influence and appropriate priority to the Kaitiaki interests in all areas of environmental management when decisions are made by others. Waitangi Tribunal also recommends the Crown urgently take such action or actions as necessary to ensure that under-resourcing no longer prevents iwi and hapū from participating effectively in RMA processes, .Through the development of an IEB, and the role of Māori in the system recognises the importance of building capacity and capability for hapū/Iwi/Māori in the future system.

Māori rights and interests in freshwater and other natural taonga

- Iwi/hapū/Māori have a deep and inextricable link to wai Māori. Any decision making over its natural flow and use, necessarily impacts Māori ways of being, knowing and existence.
- Options in this paper do not preclude any options to address Māori rights and interests in freshwater and other natural taonga, because the paper focuses on the institutional arrangements for central government rather than the role of hapū/iwi/Māori. However, ensuring that these institutions give effect to the principles of the Treaty will be important.
- [redacted]

Limitations of this assessment

- The impact of the proposals in this paper depend on policy decisions still to come (eg, the purpose and make-up of the IEB).
- Full analysis on protecting and transitioning treaty settlements is subject to another workstream (still underway) so this analysis only gives an initial view of the types of issues that may come up through an IEB process.
- The analysis of impact on Māori rights and interests is also indicative, as Cabinet has also yet to agree on next steps to progress the freshwater allocation and Māori rights and interests in freshwater work programmes. We have yet to develop detailed policy options, or to have substantive policy discussions with [redacted]

Overall assessment

Overall, the impact of the central government institutional proposals in this paper depend on what happens next, including how the IEB is designed and how it and MfE undertake their new functions in providing oversight of the SPA and NBA.

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Appendix B: Options Analysis

Problem or opportunity - status quo
• Choice of institutional form for central govt to coordinate and support input to RSSs

This issue sets out the way in which central government coordinates itself to engage with SPA committees.
This will have an impact on the operation of SPA committees in the future system, as it will establish the institutional structure supporting the central government member on those committees to provide joined-up advice
The status quo has an impact on this analysis. The SPR Board is already established and provides a useful foundation for a future IEB, potentially creating efficiencies in an implementation IEB.

Options assessment	Protect and where necessary restore the natural environment (including….) Better enable development within biophysical limits…..	Give effect to the principles of Te Tiriti….	Better prepare for adapting to climate change and risks….	Improve system efficiency and effectiveness, and reduce complexity….
What the reform objective might mean for institutions	*Ensure that dual purposes of protecting/restoring the natural environment and enabling development within biophysical limits are embedded into institutional arrangements*	*Institutional arrangements:* *give effect to Te Tiriti principles, and ensure existing settlements are upheld in carrying out its functions in relation to RSSs;* *have the capability and access the advice it needs in order to understand and incorporate Te Tiriti principles and te ao Māori in carrying out its functions in relation to RSSs*	*Institutions have access to good information to support making hard decisions and address trade-offs*	*Institutions support decision making happening at the national level where appropriate.*
Option 1: IEB to support central government input into RSS's, and development of national priorities	• Provides a mechanism for resolving tensions to provide collective advice to Ministers where possible • Aligns strategy and planning in overlapping policy areas • Provides for multiple agency views to be represented across both natural environment and development	• Can build in giving effect to Te Tiriti principles, Te Oranga o te Taiao and upholding existing settlements into the formal purpose of IEB. • Ability to formally have Māori policy and partnering agencies sitting as members (eg, TPK, Te Arawhiti) • Can formally appoint Māori advisors to the IEB	The Public Service Commissioner has the ability to invite independent advisors to the IEB	• Shared accountability of advice should provide buy-in from across agencies to the policy positions • Conflict resolution likely to require more time • Clear distinction between provision of collective advice through IEB and other roles in the system • Helps ensure that all agencies take their responsibilities seriously due to joint responsibility of Board members • SPR Board already has servicing department and legislative experience that can be adapted to enhance administrative continuity

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				• Potential for higher cost than a lead agency approach, although likely still cheaper than other institutional options • Inability for some government entities outside the legal Crown to be a voting IEB member (eg, Crown entities)
Option 2: An existing department to support central government input into RSS and development of national priorities	• May risk the supporting department's view exerting a disproportionate influence on policy and process • Risk of separate or conflicting advice from agencies	• Would be dependent on supporting department having appropriate mechanisms in place	Higher likelihood of inability to resolve trade-offs between agency interest and shared interests voluntarily	• Would require informal agency engagement processes, but may not have buy-in to decisions made by the servicing department so decisions may be relitigated further down the system. • Faster decision-making mechanisms if one department is able to provide final advice • Risk that work is not prioritised for all agencies • Difficulty in selecting an obvious candidate for lead agency • Requires minimal institutional change • Risk of resources being diverted to other policy issues or functions in response to changing ministerial priorities

Conclusion

Option 1: IEB to support central government input into RSS's, and development of national priorities is preferred. It better aligns with the reform objectives, allowing multiple agency views to be represented across both the natural and built environment, is effectively able to have both Māori policy and partnering agencies as members and Māori expert advisors, and increases the likelihood of buy-in for collective governmental advice.

The limitations of the IEB model in terms of involvement of agencies/Crown entities beyond the remit can be mitigated through consultation and being appointed as advisors. An IEB is more likely to be able to resolve trade-offs and avoid one department exerting a disproportionate influence over policy and process.

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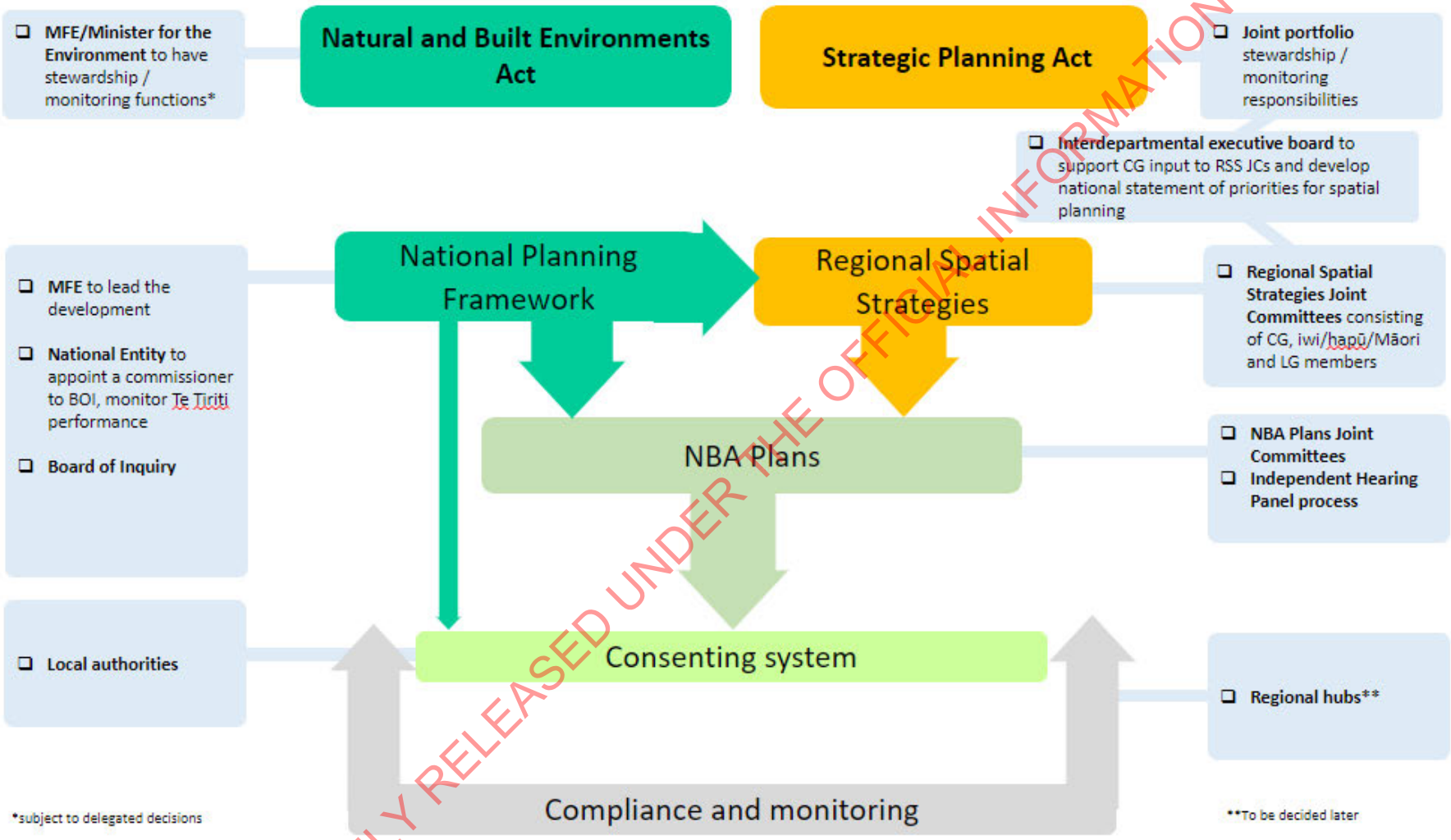
Appendix C: Draft Institutional Arrangements Diagram



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MINUTE

RM Reform Ministerial Oversight Group Meeting #17

Date	Tuesday 12 April, 5:00 to 6:00pm
Location	Zoom
Chair	Hon Grant Robertson, Minister of Finance
Deputy Chair	Hon David Parker, Minister for the Environment
Attendees	Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti Hon Dr Megan Woods, Minister of Housing Hon Nanaia Mahuta, Minister of Local Government Hon Poto Williams, Minister of Building and Construction Hon Damien O'Connor, Minister of Agriculture Hon Michael Wood, Minister of Transport Hon Kiritapu Allan, Minister of Conservation, Associate Minister for Arts, Culture and Heritage, and Associate Minister for the Environment Hon Phil Twyford, Associate Minister for the Environment Hon James Shaw, Minister of Climate Change
Apologies	Hon Willie Jackson, Minister for Māori Development

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

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

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

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

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

PART B: COMPOSITION AND APPOINTMENTS

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

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

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

20. **agree** that the Ministerial Oversight Group will make decisions on joint committee composition via round robin. [note: these decision are in Paper 1A]

21. **[recommendation deleted]**

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

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

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

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

24. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the approach chosen for the composition of committees in recommendation 20 and on the parameters in recommendation 22

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

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

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

28. [redacted]

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29. **agree** that the legislation will provide for a process through which local authorities and iwi and hapū representative organisations[1] in the region seek to agree on a composition arrangement for the SPA joint committee, including:
    a. the host council
    b. the number of members of the SPA joint committee
    c. the appointing bodies who can appoint the members
    d. any other arrangements as agreed by all parties
30. **agree** that the legislation will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:
    a. the host council
    b. the number of members of the NBA joint committee
    c. the appointing bodies who can appoint the members
    d. any other arrangements as agreed by all parties
31. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans
32. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees
33. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:
    a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress
    b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement
34. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC
35. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met
36. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:
    a. the host council
    b. the number of members of the joint committee
    c. the appointing bodies who can appoint the members (subject to delegated decisions in the *Role, funding and participation of Māori in the RM system* paper)

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

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37. **agree** that the LGC will then publish its determination or decision on the committee composition
38. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions
39. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 34 above
40. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council
41. **agree** that the appointing bodies will be required to have an appointment process
42. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments
43. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees
44. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making
45. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)
46. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments
47. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

PART C: DECISION-MAKING ON PLANS

48. **agree** that SPA and NBA committees will be autonomous decision-making bodies and that the members will not be required to ratify decisions with their appointing bodies before agreeing to RSSs and NBA plans
49. **note** that the Local Government Steering Group (LGSG) has recommended Statement of Community Outcomes be developed by each council to articulate the place-based aspirations of their communities,
50. **note** that officials are supportive of the intent for Statement of Community Outcomes, but do not support a prescriptive legislative requirement, and are seeking to provide joint committees with flexibility for the types of place-based documents they wish to consider
51. **agree** that SPA committees must before finalisation of the RSS provide all appointing bodies a time period to provide feedback on the RSS, and the committee must give weight to the feedback when finalising the RSS and provide a response to the relevant appointing body
52. **agree** that SPA and NBA committees cannot delegate final decisions on plans to other bodies or entities (including subcommittees), unless necessary to uphold Treaty settlements or other existing arrangements under the RMA
53. **note** that the *Role, funding and participation of Māori in the RM system* paper seeks delegated decisions for transfers of powers (per RMA s33), which may provide for additional exceptions to recommendation 52

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54. **agree** that SPA and NBA committees can establish geographic, issues-based, or cross-regional subcommittees in an advisory capacity to support decision-making at their discretion and may appoint any person(s) to these subcommittees
55. **note** that at MOG #11/12 Ministers agreed that SPA committees could use a 'collaborative planning process' to address cross-boundary issues through establishing cross-regional spatial planning committees involving more than one region to develop a cross-boundary spatial plan and that this plan would be automatically assumed into the region's RSS
56. **agree** to amend the recommendation on cross-regional planning committees agreed at MOG #11/12 for SPA committees, to clarify that the intention is that they are used where alternative coordination mechanisms are not suitable, and to provide for supportive conditions/criteria
57. **authorise** the Minister for the Environment, in consultation with the Minister for Local Government, to take further decisions on the cross-regional planning committees, including what conditions should be met for their use
58. **agree** that SPA and NBA committees may determine their own chairing arrangements, and will be empowered to appoint a single chair, chair/s, or a non-voting independent chair
59. **note** that the committee chair/s will play an essential role in making committees work well and enabling collaborative decision making
60. **note** that the availability of suitable chairs for the Independent Hearing Panels (IHPs) is an important determinant of the number of regions in each tranche in the development of NBA Plans, how many tranches are required and therefore the length of time for the transition to the new RM system
61. **note** that the requirements for a successful IHP chair includes chairing skills, attracting respect, having the confidence of the parties, an ability to work though the issues, and developing well-considered recommendations
62. **note** that MOG agreed at MOG #14[2] that an IHP chair must be an Environment Judge and that all IHP members, including the chair, must be appointed by the Chief Environment Court Judge (CEJ).[3] The CEJ must use "a process that ensures the IHP is independent and has the skills, knowledge and experience required to fulfil its statutory functions"; and MOG also authorised[4] the Minister for the Environment to make further policy decisions relating to the process for determining who is appointed to IHPs, including the chair
63. **note** that an alternate Environment Judge will be able to be appointed as an IHP chair
64. **note** that a retired Environment Judge under the age of 75 can be appointed as an alternate Environment Judge provided certain criteria relating to necessity and term are met; and that current and acting District Court Judges and current and acting Māori Land Court Judges can be appointed as alternate Environment Judges
65. **agree** that temporary Environment Judges be able to be appointed as alternate judges for the purpose of chairing IHPs, and that these appointments would be exempt from the eligibility criteria for alternate Environment Judges (as per RMA s249(2)), as well as the eligibility criteria for judges stipulated in s15 of the District Court Act

[2] MOG #14, 17 November 2021. Paper 3, recommendation (14) agreed.
[3] Recommendation (18) agreed. Briefing BRF-946 dated 9 December 2021.
[4] MOG #14, 17 November 2021. Paper 3, recommendation (42) agreed.

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66. **agree** that SPA and NBA committees must make every effort to achieve consensus in decision-making for decisions on plans
67. **agree** that the Ministerial Oversight Group will determine how joint comities will determine the voting rules when consensus cannot be reached via round robin [note: these decision are in Paper 1A]
68. **agree** that the chair/s of the SPA and NBA committees may initiate mediation at any time, and the chair/s is responsible for appointing the mediator
69. **agree** that for decisions on strategies and plans, SPA and NBA committees can produce minority reports to reflect where there are substantial dissenting views
70. **agree** that where the chair/s of the SPA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first) the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may either:
    a. undertake a review and make a direction to the committee; or
    b. appoint an independent person to undertake a review and make a direction to the committee
71. **agree** that where the chair/s of the NBA committee determine/s that agreement cannot be reached (the required vote cannot be reached and only when mediation has been used first), the backstop provision is that disputes will be escalated to the Minister responsible for administering the Act who may appoint an independent person to undertake a review and make a direction to the committee
72. **agree** that a direction made by the Minister or independent person appointed by the Minister under recommendations 70 and 71 will be made available to the committee, and for public transparency the committee would be required to publish it
73. **agree** that Ministerial intervention powers will be provided where a member or committee is unable to effectively fulfil their responsibilities under the SPA or NBA, and delegated decisions will be sought on this detail (as authorised by MOG #15)

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PART D: RESOURCING THE COMMITTEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART E: CROSS-CUTTING ISSUES AND OTHER MATTERS

Unitary authorities, including Auckland Council, and the Chatham islands

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

Top of the South/Te Tau Ihi

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

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

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

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

    EITHER

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

    OR

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

    OR

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

    OR

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

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

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

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94A. **authorise** the Minister for the Environment, Minister for Local Government, and Associate Minister for the Environment (Hon Kiritapu Allan) to make further decisions on configurations for Top of the South/Te Tau Ihu

Interaction with Local Government Act 2002 (LGA)

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

Functions and powers

96. **note** that local authorities planning departments are regulatory monopolies, and lack the incentives to improve their efficiency and effectiveness

97. **note** elected members of local authorities have said that they have limited accountability over their planning departments

98. **note** that the report on the cost of consenting infrastructure projects in New Zealand by Te Waihanga/Infrastructure Commission (report) in 2022 found:
    a. significant increases in the time and direct costs of consenting infrastructure projects (70% increase since 2014), with consenting costs being up to 5.5% of the total project cost for large projects and up to 12% for smaller projects
    b. the time taken to issue a consent for an infrastructure project has increased by 150% since 2014, and that the average time to consent large projects can take 12 to 15 months

99. **note** that the costs and time taken to process consents is a common complaint about the RMA

100. **note** that the increase in costs and timeframes for decisions on consents has been caused in part by:
    a. the use of RMA mechanisms (including requests for further information, eg s92 requests) to request additional information and evidence from applicants while pushing the timeframes to make a decision without impacting the legislative timeframes6
    b. local authorities requesting detailed evidence that can involve significant cost and time to compile. The evidence required is often not commensurate with the effects of the project and is often informed by perceived risk rather than a technical understanding of the project

101. **note** that the increase in costs and timeframes for decisions on consents has significantly diminished the reputation of the RMA, and has reduced confidence in consenting processes

102. **note** that the use of the practices in recommendation 100 means that local authority planning departments often meet their statutory timeframes and other performance indicators, even though the time taken to make decisions are well above the statutory timeframes in the RMA

103. **note** that as a result of planning departments meeting their performance indicators (which do not count the time added from requests for further information), elected

[6] s91 and 92 requests are often used to press pause on the statutory timeframes of a consent while local authorities continue to process the consent. The use of these mechanisms could mean that a consents that has taken 100 days to process in real time, only took 20 days under RMA time.

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councillors don't have the evidence to improve their planning department's efficiency and effectiveness or funding where this is the cause

104. **note** that the findings in the report show that past amendments to the RMA, which did not include accountability mechanisms, did not improve the effectiveness and efficiency of consenting

105. **note** that Parliament and Ministers have a range of accountability mechanisms to ensure Government departments are meeting their statutory and self-imposed responsibilities. These mechanisms include oversight from Ministers, Select Committee and Parliament including via annual review, estimate hearings, and statements of intent

106. **note** that not all of the mechanisms are appropriate at a local government level, but mechanisms to enable elected councillors to hold their planning departments to account are needed

107. **note** that while it is inappropriate for elected councillors to interfere in an individual consent, they should be responsible for and control overall efficiency and effectiveness, but are sometimes prevented from doing so by their planning departments

108. **agree** that local authorities will have the responsibility to ensure that NBA functions and processes are cost-effective, timely, efficient and consistent, and that these responsibilities should be stated in the NBA

109. **authorise** the Minister for the Environment, in consultation with the Minister for Local Government, to make further decisions on the mechanisms needed by local government to effect appropriate control of their planning departments. This will include any functions, powers, or duties are delegated under the NBA to an employee, or hearings commissioner appointed by the local authority.

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Paper 1A: Regional governance in the reformed resource management system – composition and decision-making of joint committees

The Ministerial Oversight Group (MOG) is recommended to:

1. **note** that composition of Spatial Planning Act (SPA) and Natural and Built Environments Act (NBA) joint committees (joint committees) and their voting rules are part of an overall package of Māori participation mechanisms, and should not be considered in isolation.

Minimum requirements for Māori-appointed membership of joint committees

2. **note** that composition of joint committees will be agreed following a regionally-led process between local authorities and iwi/hapū/Māori to reflect a region's particular circumstances, and that if agreement cannot be reached, the Local Government Commission will make the decision on committee composition
3. **agree** that SPA and NBA joint committees must have a minimum of two Māori-appointed members
4. **note** that:
    a. the requirement to "give effect to" the principles of Te Tiriti will need to be considered in determining composition
    b. there will be a requirement on the iwi and hapū representative organisations to engage with their members and other Māori entities representing rights and interests at place in the region, in determining composition and Maori-appointed membership

Voting rules where a joint committee cannot reach consensus

5. **agree** that where the chair/s of a joint committee determines that consensus cannot be reached, the committee will use a voting rule requiring agreement from a majority of committee members (50 per cent plus one) in attendance

Consequential matters

6. **note** that the proposals above will be given effect to through the Spatial Planning Bill and the Natural and Built Environments Bill, which hold category 4 priority on the 2022 Legislation Programme (to be referred to a select committee in 2022)

7. **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations agreed to in this paper.

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

The Ministerial Oversight Group (MOG) is recommended to:

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

Context and prior decisions

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

Who from te ao Māori participates across the system

4. **note** that, in general, proposals aim to provide for iwi/hapū/Māori to self-identify who will represent them in resource management (RM) processes However, the proposals also recognise that in some cases more specificity is required to ensure that:
   a. there is clarity about which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
   b. the Crown sets up processes that avoid or resolve conflict
   c. the system is able to function effectively and efficiently and in accordance with its policy intent
   d. Treaty settlements and other existing natural resource arrangements under the RMA are upheld
5. **note** that the proposals for 'who' from te ao Māori participates across the system provide for
   a. roles for iwi and hapū, including in relation to composition and appointment processes for NBA and SPA committees
   b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space and resource 'at place'[7]
   c. roles for expert Māori practitioners
   d. a role for national Māori organisations as part of the National Māori Entity nominations process

[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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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
   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[8] 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"

[8] 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 (eg, 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, 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 of Local Government, Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) in consultation with the Minister for the Public Service 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 in principle**, subject to the further work to be carried out under the delegation given in recommendation 44, 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 the form and constitution of the National Māori Entity, including such matters as the application 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

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50. **authorise** the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development and the Associate Minister for the Environment (Hon Kiri Allan), to make detailed decisions on further options for how the regional cluster appointments process may work including:
    a. the way clusters are structured and organised, including whether this detail should be in secondary legislation or a Schedule to the NBA
    b. the high-level process (including which Ministers approve final membership and what happens if the final approver does not agree with the membership put forward)
    c. timeframes for implementation
    d. dispute resolution processes

Other matters

51. **authorise** the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti and the Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Minister for the Public Service, to make further decisions on whether an interim National Māori Entity will be established, including (if relevant) the details of this establishment and the interim Entity's functions
52. **note** that future advice on membership, implementation and budget (as referenced in Annex E) are closely linked to the MOG decisions on functions, powers, form and appointments processes
53. **authorise** the Minister for the Environment and the Associate Minister for the Environment (Hon Kiri Allan) to make detailed decisions on National Māori Entity membership (including numbers, criteria, fees, appointment terms, change management and removal processes), implementation (including transition arrangements and timeframes), and budget (including further information on budget estimates as referenced in Annex E)

Regional Governance (see Annex C for supporting analysis)

Who participates in SPA and NBA committee composition and appointments processes

54. **note** that Paper 1: Regional Governance and decision-making in the new resource management system seeks agreement to a range of matters related to SPA and NBA committees, including composition and appointment processes
55. **note** that [redacted] 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[9] representing rights and interests 'at-place'[10] in agreeing composition and identifying appointing bodies

[9] See recommendation 7.

[10] 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 Local Government, 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[11] 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

[11] 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* Agreements (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[12] 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 of Housing, 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

[12] BRF-1356 Delegated Decisions on plan content relationship with other documents and financial contributions.

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1993, and other land types in which Māori have an interest, in consultation with relevant Ministers

Funding Māori participation (see Annex E for supporting analysis)

Further advice sought at MOG #15

91. **note** that at MOG #15 officials were directed to:
    a. [rec 23] report back to MOG on:
        i. the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the new system
        ii. options for central government funding to support local government and iwi/Māori to participate in the new system
    b. [redacted]

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

92. **note** that:
    a. it is difficult to estimate the cost of local government funding for Māori participation in the current system
    b. [redacted]

Mechanisms to support appropriate funding at the regional and local level

93. **note** that MOG #15 agreed:
    a. [rec 22] that where roles are set out under the NBA for Māori participation, funding be provided as set out below:
        i. at a national level that all reasonable costs for participation in national-level functions (eg, setting national limits and targets) will be funded by the Crown
        ii. in Joint Committees and in the associated secretariat, this will be jointly funded by the relevant regional and/or local authorities
        iii. for other regional/local functions (eg, compliance and system performance monitoring), participation will be funded by the regional or local authorities that carry out the function

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

b. [rec 28] In-principle that timebound funding be provided by central government to support local government and Māori to build capability and capacity to participate effectively in the new system

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

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

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

b. MWaR and Engagement Agreements, or other similar arrangements

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

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

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

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

A. Committee budget setting

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

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

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

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

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

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

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

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

100. **agree** that:

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

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

D. Monitoring, information provision and reporting

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

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

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

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

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

F. [redacted]

105. **note** that the approach agreed under recommendation 104 should be reviewed 5 years after the commencement of the SPA/NBA

Opportunities for aligning future engagement

106. **note** that officials are not anticipating any further consultation on RM reform policy for the SPA and NBA in advance of the Select Committee process

107. **agree** that officials should identify and follow up on opportunities for alignment of engagement across Three Waters, RM Reform (which includes the Climate Adaptation Act) where it meets the needs of iwi and hapū

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

The Ministerial Oversight Group (MOG) is recommended to:

Embedding the King Salmon approach to the planning hierarchy

1. **note** that Cabinet agreed for the NBA to echo the hierarchy described in *Environmental Defence Society Inc v the New Zealand King Salmon Company Ltd* [2014] NZSC 38 whereby Part 2 is implemented through national direction, and plans give effect to national direction [Cab-20-MIN-0522 para 65 refers]

2. **note** that the drafting of the NBA will therefore need to ensure that decision makers cannot apply the purpose and related provisions (Part 2) in ways that are inconsistent with higher order documents that implement Part 2. (For example, NBA joint committees making decisions on NBA plan content cannot use an overall broad judgement under Part 2 to undermine NPF content that implements Part 2)

3. **authorise** the Minister for the Environment in consultation with the Associate Minister for the Environment (Hon Kiri Allan) to make detailed decisions on the design of the provisions to achieve this result

Purpose, including current progress on Te Oranga o te Taiao

4. **note** that the MOG agreed to include Te Oranga o te Taiao in the purpose of the exposure draft of the Natural and Built Environment Act (NBA)

5. **note** that the Environment Select Committee (the Committee) endorsed the inclusion of Te Oranga o te Taiao in the purpose of the NBA and recommended further work be carried out with national iwi/Māori groups to:

   a. improve its effectiveness by defining it clearly and describing how different aspects of the legislation will support upholding it

   b. ensure that, in addition to the relationships that iwi and Māori have with te taiao, it is clear that all New Zealanders have relationships with, and responsibilities to look after, the natural environment

   c. consider the extent to which the Te Mana o te Wai hierarchy could be incorporated within the purpose clause

Clarifying Te Oranga o te Taiao

6. **note** that officials have worked across government, with the Local Government Steering Group, and with iwi technicians on Te Oranga o te Taiao, including the links between Te Oranga o te Taiao and the Te Mana o te Wai hierarchy as recommended by the Committee and the MOG

7. **note** that officials' work with iwi technicians has, consistent with the policy intent decided by the MOG on 2 June 2021, clarified that:

   a. conceptually, Te Oranga o te Taiao is consistent with a number of similar concepts present in the Resource Management Review Panel's (the Panel) report which build on some of the concepts in the existing RMA

   b. operationally, Te Oranga o te Taiao can work at a systems, planning, and local level by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Te Oranga o te Taiao in the NBA

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

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

17. **note** that drafting advice will be sought from the Parliamentary Counsel Office (PCO) as to whether any other legislative guidance and direction is needed to help decision makers under the NBA to uphold Te Oranga o te Taiao

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

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19. **agree** that the 'built' environment will be referenced in the purpose of the NBA in a manner that:
    a. accords with the priority given to limits and targets for ecological integrity and human health
    b. accords with the requirements to avoid~~s~~, minimise~~s~~ or remedy, offset or compensate for all adverse effects except trivial effects
    c. enables the built environment and urban rural areas to grow and change to support the wellbeing of people, to ensure better outcomes for the environment, and to mitigate and adapt to the effects of climate change
    d. explicitly does not create a 'back door' for the types of aesthetic amenity considerations that have allowed narrow private interests to block housing developments
20. **note** that further work, including in relation to definitions, will be undertaken on reflecting how the 'built' environment includes modified parts of the rural environment
21. **note** that the list of outcomes is designed to elaborate on the purpose of the NBA and will help ensure that the purpose is interpreted in a way which recognises the importance, and the needs, of the 'built' and rural environments
22. **note** that officials will progress drafting based on the decisions in this paper
23. **authorise** the Minister for the Environment and Associate Minister for the Environment (Hon Kiri Allan), in consultation with the Ministers of/for Finance, Māori Crown Relations: Te Arawhiti, Housing, Local Government, Agriculture, Māori Development, Transport and Conservation, and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan) to make decisions in relation to further legislative and non-legislative guidance and direction for the NBA purpose and Te Oranga o te Taiao consistent with the policy intent in this paper

Managing adverse effects

24. **note** that the exposure draft mirrored the language used in section 5 of the Resource Management Act (RMA), which defines 'sustainable management' to include, "avoiding, remedying, or mitigating any adverse effects of activities on the environment"
25. **agree** that the purpose of the NBA should refer to an expanded effects management hierarchy where adverse effects must be avoided, minimised, remedied, offset or compensated to better align with best practice and case law
26. **agree** that in most cases, adverse effects should be managed in that order, meaning that:
    a. adverse effects must be avoided where practicable
    b. any adverse effects that cannot be avoided must be minimised where practicable
    c. after avoidance and minimisation, any remaining adverse effects must be remedied where practicable
    d. after avoidance, minimisation and remediation, any remaining adverse effects must be offset
    e. after avoidance, minimisation, remediation and offsetting, any remaining adverse effects must be compensated for
27. **agree** that adverse effects will be defined to exclude trivial effects
28. **note** that there will be cases where a more or less stringent approach to managing adverse effects is appropriate

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

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

29A. **note** that officials have recommended exceptions for some Māori land, taonga species, improved pasture, plantation forestry, and geothermal areas in the version of the National Policy Statement for Indigenous Biodiversity that is currently being circulated for Ministerial feedback pending consideration by Cabinet in May. The exceptions respond to feedback received through the public consultation undertaken in 2019/2020, and are intended to ensure that the requirements in the NPS do not unduly constrain use and development. Officials consider that similar exceptions are likely to be needed in relation to the requirements proposed in this paper

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

    a. adverse effects on biodiversity including:

        i. indigenous biodiversity

        ii. non-indigenous biodiversity when it supports indigenous biodiversity

    with specified exceptions for some Māori land, taonga species, improved pasture, plantation forestry, and geothermal areas

    b. adverse effects on cultural values including:

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

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

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

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

33. **authorise** the Minister for the Environment in consultation with the Minister of Housing, Minister of Agriculture, Minister for Māori Development, Minister of Conservation, Associate Minister for the Environment (Hon Kiri Allan) and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan) to make detailed decisions under recommendation 30 on:

    a. the scope of any exceptions for Māori land, taonga species, improved pasture, plantation forestry, and geothermal areas

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b. the additional requirements for managing adverse effects on cultural values, including on which cultural values are covered by the requirements set out in recommendation 31 and which principles apply

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

35. **agree** that the duty referred to in recommendation 34 should now require adverse effects to be avoided, minimised, remedied, offset or compensated for to align with the NBA purpose

Te Tiriti o Waitangi

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

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

38. **note** that officials will work with the PCO on whether there are other ways of providing legislative direction (for example by using a preamble or explanatory note) that can assist interpretation without creating uncertainty as to how to apply the Treaty clause

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

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

Environmental limits and targets

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

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

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

    c. where a part of the natural environment is already unacceptably degraded, the NPF will set out a minimum level or target which regions must manage to (that is, a target equal to the limit/current state will not be acceptable)

    d. the NBA plans must include targets set at least at the level of the limit, or the NPF directed minimum level or target (whichever is higher quality), for each aspect of the natural environment for which limit attributes are prescribed

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

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

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

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

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

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

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

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

f. the exemption must be subject to a time limit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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64. **agree** that a target:
    a. in the NPF will be a measurable and time-bound direction designed to help achieve an outcome
    b. in a NBA plan will be a measurable and time-bound direction to help achieve an NBA outcome in the NPF and/or the NBA plan
65. **agree** that the NBA includes definitions for targets, sub-targets and minimum level targets

Environmental outcomes in the NBA

66. **agree** to adopt the Committee's recommended outcomes list as the policy intent, with some minor changes reflecting further engagement as well as addressing any gaps created or issues identified
67. **note** that RSSs will provide further detail on some outcomes including where and how they are achieved
68. **note** that some outcomes include more directive language than others (such as "protection"), and that this could imply an internal hierarchy between the listed matters
69. **agree** that the NBA will expressly state that there is no hierarchy between the listed matters
70. **agree** that the NBA will set out the outcomes in line with the policy intent of:
    a. the protection or, if degraded, restoration of:
        i. the ecological integrity, mana, and mauri of air, freshwater, coastal waters, estuaries, soils, and indigenous biodiversity
        ii. outstanding natural features and outstanding natural landscapes
        iii. the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers, and their margins
        iv. the relationship of iwi, hapū and, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna and other taonga
        v. conservation of cultural heritage
    b. in relation to climate change and natural hazards:
        i. reduced greenhouse gas emissions
        ii. increased removal of greenhouse gases from the atmosphere
        iii. reduced risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change
    c. well-functioning urban and rural areas, including by:
        i. enabling use and development for housing, business use, and primary production to meet the diverse and changing needs of people and communities
        ii. the ongoing and timely provision of infrastructure services
        iii. an urban form and rural areas that promote economic, social, cultural, health, safety, and environmental benefits
        iv. the prioritisation of highly productive land for land-based primary production
        v. enhanced public access to and along the coastal marine area, lakes, and rivers

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71. **agree** that officials will continue to work with the PCO on refining the wording of the outcomes to ensure the policy intent is achieved

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

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

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

    a. the purpose of the NBA

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

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

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

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

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

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

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

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

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

79. [redacted]

Minimising and resolving conflicts between outcomes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86A. **note** that Te Waihanga has established a team and is working closely with MfE officials to develop infrastructure content for the NPF

86B. **note** that the new system is intended to drive a more proactive approach to planning for infrastructure. This should include identifying where infrastructure could be best located to reduce its environmental impacts. However, previous MOG decisions do not create requirements to identify the best locations for infrastructure in the NPF, RSS or combined plans. This creates risks that some infrastructure might not be catered for through planning processes, especially if it has operational or functional needs that coincide with the characteristics of outstanding natural landscapes or biodiversity (for example, wind farms that need to be located in exposed places)

86C. **note** that Officials will do more work to determine when the acceptable locations for infrastructure should be required to be mapped, to ensure that it is catered for despite the requirements specified in recommendations 86 – 87

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

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

b. outstanding natural landscapes and outstanding natural features

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

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

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

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

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

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

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

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

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

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

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

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

    d. the scope of any exceptions for Māori land, taonga species, improved pasture, plantation forestry, and geothermal areas

    e. when the acceptable locations for infrastructure should be required to be mapped, to ensure that it is catered for taking into account the requirements specified in recommendations 86 – 87

Implementation principles

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

    a. principles supporting Te Oranga o te Taiao

    b. integrated management of the environment

    c. the precautionary principle

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

    e. the equitable distribution of the costs of regulation within and across the regions and communities of New Zealand, across generations, and between existing and future users (noting that officials will work with the PCO to ensure that this principle will be drafted in a way that covers rural communities)

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

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i. achieve their objectives in the least cost way

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

iii. avoid duplicative requirements

94. **note** that in relation to the application of the precautionary approach[13] the MOG earlier agreed "that the NBA will require that a precautionary approach is adopted with a similar framing to Principle 15 of the Rio Declaration on Environment and Development 1992 (the Rio Declaration)"

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

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

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

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

99. **agree** that officials will work with the PCO on the specific drafting of the proposed principles to reflect the policy intent set out in this paper

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

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

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

102. **note** that the NBA will also include procedural principles equivalent to section 18A of the RMA, consistent with the decision at MOG #4 that officials would "work with PCO to draw together and modernise provisions relating to presumptions and existing use in Part 3 of the RMA for the NBA" (recommendation 27).

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

Paper 4: Strategic decisions about the National Planning Framework

The Ministerial Oversight Group (MOG) is recommended to:

Content and timing of the NPF

1. **note** that previous Cabinet and MOG decisions clarify that the National Planning Framework (NPF) is intended to be an integrated framework for providing central government direction on matters of national significance or matters for which consistency is desirable (at national or sub-national scale) in the resource management (RM) system
2. **note** that Te Waihanga is developing national direction for infrastructure for the NPF
3. **note** that Ministers agreed at MOG #16 that the rollout of the new RM system will be sequential
4. **agree** that the NPF will be staged to ensure timely delivery of priority content in the first NPF and further content will be added through future amendments
5. **agree** that the priority content for the first NPF includes:
   a. the redrafting of all existing Resource Management Act 1991 (RMA) national direction (ND), including addressing inconsistencies
   b. infrastructure content and other new content to fill key gaps in existing ND (eg, direction needed to inform RSSs including content on natural hazard risk reduction and climate change adaptation)
   c. an overarching layer focused on resolving conflicts where practicable and to provide necessary cross-cutting direction
6. **agree** that the first NPF will be notified after the enactment of the NBA and be in formal effect by 2025 at the latest
7. **direct** officials to commence redrafting of existing ND for the NPF
8. **note** that Ministry for the Environment officials will work with other agencies to prepare the NPF
9. **authorise** the Minister for the Environment to make further detailed policy decisions relating to the content of the NPF in consultation with relevant ministers

Process for developing and amending the NPF

10. **note** that the Resource Management Review Panel recommended a Board of Inquiry (BOI) process for developing and amending ND
11. **agree** that a BOI process be established for developing and amending the NPF, with the flexibility to adopt a more streamlined process for less substantial changes
12. **agree** that the process for the first NPF will need to differ from the standard process for amending the NPF and the policy intent of existing ND will generally be retained in the first NPF noting that some changes will be needed for compatibility with the NBA
13. **agree** that the BOI will be chaired by a current or former Environment Court Judge, with a minimum of three other commissioners
14. **agree** that minor or technical changes can be made to the NPF without a formal public consultation process
15. **authorise** the Minister for the Environment to make further policy decisions relating to the process for developing and amending the NPF, the types of provisions that it can

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contain and its relationship to other tools in the RM system (eg, resource consents) in consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

16. **note** that the role of the National Māori Entity in relation to nominating members to the responsible Minister to be considered for appointment to the BOI is addressed in the MOG #17 paper – *Role, funding and participation of Māori in the RM system*

17. **authorise** the Minister for the Environment to make further policy decisions relating to the process to appoint members to the BOI, with the intention of ensuring that BOIs can be established efficiently and without unnecessary delay, which could include establishing a standing pool of commissioners, or appointing a BOI convenor in consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

18. **authorise** the Minister for the Environment to make further policy decisions relating to the process for developing the first NPF and ensuring the policy intent of existing ND is adequately protected, in consultation with the Minister of Conservation, Minister of Local Government, and Associate Minister for the Environment Allan (on the role of Māori)

19. **note** that at MOG #3 Ministers agreed that the NPF will be issued by the Governor-General through an Order in Council

20. **authorise** the Minister for the Environment in consultation with the Attorney-General to make further decisions on who drafts the NPF and how the NPF is drafted

Monitoring and review

21. **note** that monitoring and review of the NPF will be needed to ensure it is delivering on its purpose

22. **agree** that a regular nine-year review cycle is established for the NPF, with the ability for the responsible Minister to review the NPF in part or in full at any time

23. **agree** that the NBA requires the NPF to include information on how the NPF's effectiveness and implementation will be monitored

24. **authorise** the Minister for the Environment to make further detailed policy decisions relating to monitoring and review of the NPF in consultation with relevant Ministers

Transition to the new RM system

25. **note** that in the period between the enactment of the NBA and the date that the first NBA plans are in force for a region (the "transition period"), existing RMA regional policy statements, regional plans and district plans (RMA plans and policy statements) will need to continue to apply to ensure there is a rule framework for planning and consenting decisions

26. **note** that during the transition period local authorities will continue to implement all existing ND

27. **note** that officials will undertake further work to explore whether there are opportunities for earlier application of certain aspects of the new RM system, including the NPF.

28. **agree** that all existing ND will remain in force independent of the NPF to direct RMA plans and policy statements and decision-making during the transition period

29. **agree** that powers under the RMA to develop and amend existing ND will remain in force during the transition period, which could allow new ND (eg, for infrastructure) to direct RMA plans, policy statements and decision making ahead of NBA plans being in force

30. **agree** that the NPF will not have legal effect on decisions made under RMA plans and policy statements during the transition period, but rather have legal effect on:

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a. the development of RSSs and NBA plans; and
b. planning and consenting decisions once NBA plans are in force

31. **authorise** the Minister for the Environment to make further policy decisions about the transition in consultation with relevant Ministers relating to:

a. the details of powers to develop and amend existing ND during the transition period

b. determining if any consequential amendments to existing ND are needed to apply to RMA plans and policy statements during transition

c. transitional requirements to support the staged development of the NPF, including deadlines for including mandatory content

d. enabling the first NPF to be developed in accordance with the recommendations in this paper

Upholding Treaty settlements

32. **note** the Crown has responsibilities through Accords that are to be fulfilled in developing the NPF and/or elements of the NPF[14]

33. **note** there are at least 12 documents produced by entities established through settlements that outline vision, outcomes and objectives for specific rohe or taonga, with more likely to be provided through new settlements

34. **note** that documents produced by these entities will need to be recognised and provided for (or other legal weightings) by joint committees

35. **note** that some arrangements though settlements impose requirements on those developing and making decisions on RMA ND, including Te Pā Auroa (Te Awa Tupua Framework for the Whanganui River), Te Waiū-o-Te-Ika (Framework for the Whangaehu River), and Te Ture Whaimana (vision and strategy for the Waikato River)

Other

36. **invite** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations agreed to in this paper and those decisions delegated to the Minister for the Environment

37. **authorise** the Minister for the Environment to make any minor, technical or consequential changes that arise during the drafting of the Bill to reflect the proposals in this paper and ensure the desirable functioning of the NPF in consultation with relevant Ministers.

[14] Waikato Tainui (Kiingitanga Accord, Environment Accord 2010), Maniapoto (Environment Accord 2011, Waieaia Accord 2010), Raukawa (Environment Portfolio Accord 2010, Wider Crown-Raukawa Accord), Parihaka (Relationship Agreement Te Huanga ō Rongo (MfE and other agencies), Ngā Rauru Kiitahi (Te Mata-o-te-Here (variation to the Paepae Rangatira Accord)) Whanganui Iwi (Te Pākurukuru), Ngāti Porou (Crown Relationship Accord 2014), Ngā hapū o Ngāti Porou (Whakamana Accord, Environment Relationship Instrument 2019, Environmental Covenant (to be prepared by ngā Hapū), Te Arawa River Iwi (Environment Portfolio Accord 2010), Te Arawa Lakes Trust (Environment Protocol (within Deed Schedule)), Tūwharetoa (Accord 2019, Whole of Government Accord), Te Waiū-o-te-Ika (Te Waiū-o-Te-Ika framework - 2019 , Ngati Rangi-MfE Relationship Agreement 2019), Taranaki Whānui ki Te Upoko o Te Ika (Crown Environment Portfolio Agreement 2011, Whole of Government Accord).

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Paper 5: Institutional arrangements for central government

The Ministerial Oversight Group (MOG) is recommended to:

Coordinating and supporting central government input to SPA committees

1. **agree** in principle that an interdepartmental executive board (IEB) support the implementation of the Spatial Planning Act (SPA)
2. **note** that the Minister for the Environment will work with the Minister for the Public Service to take more detailed proposals to Cabinet relating to the IEB consistent with the process under the Public Service Act 2020
3. **note** the IEB and Ministry for the Environment (MfE) will need to uphold Treaty settlements, rights under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and existing natural resource arrangements under the Resource Management Act 1991 (RMA) and related matters, and that the central government role to plan for, implement and monitor settlement commitments will continue within the future system
4. **note** there are separate papers delegated from MOG #15 on policy decisions relating to upholding the rights referred to at 3 above

System stewardship, monitoring, and oversight of the NBA and SPA

5. **agree** that MfE have primary responsibility for stewardship, oversight, monitoring, and administration of the Natural and Built Environments Act (NBA)
6. **agree in principle** that the IEB has stewardship, oversight, monitoring, and administration responsibility for the SPA, with the SPA formally administered by the IEB's servicing department (to be determined through Cabinet decisions on the IEB)
7. **note** that there will be monitoring and oversight roles for other entities including the National Entity, the Parliamentary Commissioner for the Environment and the Environmental Protection Authority
8. **note** that further work is underway as to the most appropriate servicing department for the SPA, given the breadth of matters considered as part of regional planning processes
9. **note** that detailed decisions on stewardship, monitoring and oversight of the NBA and SPA is subject to a delegated decisions paper

Further institutional changes could be considered as the reforms are implemented

10. **note** that further institutional changes could support implementation in the longer term but are not necessary to support effective implementation from enactment
11. **agree** to defer any exploration of options for regional compliance monitoring and enforcement to the next parliamentary term.

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