



Cabinet

Minute of Decision

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Reforming the Resource Management System

Portfolio **Environment**

On 14 December 2020, following reference from the Cabinet Business Committee, Cabinet:

Part One: The Need for Reform

Background

- 1 **noted** that the Resource Management Act 1991 (RMA) has not adequately protected the natural environment or enabled development where needed;
- 2 **noted** that resource management reform is an opportunity to improve the quality of the natural environment, deliver better for cities and towns, simplify processes, and improve outcomes for Māori;

Review of the resource management system in the last term of government

- 3 **noted** that the Resource Management Review Panel (Panel) was appointed in July 2019 to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits [CAB-19-MIN-0585.01];
- 4 **noted** that the Panel reported in June 2020 and that its report, 'New Directions for Resource Management in New Zealand', identified a number of issues that have led to deterioration of the natural environment and poor management of urban development;
- 5 **noted** that the Panel recommended that the RMA be repealed and replaced, and to enact:
 - 5.1 a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA);
 - 5.2 a Strategic Planning Act (SPA) to integrate with other key legislation relevant to development and require statutory long-term regional spatial strategies;
 - 5.3 a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change;
- 6 **noted** that in relation to the NBA the Panel recommended:
 - 6.1 focusing on positive outcomes for the natural and built environments;

- 6.2 achieving these outcomes through a system of limits to protect the natural environment, and targets to achieve outcomes for both the natural and built environments;
- 6.3 recognising the concept of Te Mana o te Taiao;
- 6.4 requiring decision makers to give effect to the principles of Te Tiriti o Waitangi and establish a stronger strategic role for Māori in the system;
- 6.5 setting national priorities and direction to guide local decision-making (ie, mandatory national direction);
- 6.6 requiring combined plans for each region, and streamlining the process for developing and changing plans;
- 6.7 improving evidence, monitoring, feedback and oversight;
- 6.8 moving to equitable and efficient resource allocation within limits;

Progressing with resource management reform

- 7 **agreed** to proceed with resource management reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas;
- 8 **agreed** to adopt the Panel's recommendation that the RMA be repealed and replaced and that three new pieces of legislation be enacted – the NBA, SPA, and CAA – the names of which may be refined;
- 9 **agreed** to aim to pass this legislation in the current term of government;
- 10 **noted** that the detailed development of this legislation will take time, and high-level decisions for the NBA are required now to commence the reform process;

Part Two: The Process for Reform

Objectives for the reform process

- 11 **noted** that setting clear reform objectives is important to provide a consistent basis for decision making, to help focus its direction, and to assist with resolving any policy conflicts as they arise;
- 12 **agreed** to the following reform objectives:
 - 12.1 protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations;
 - 12.2 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;
 - 12.3 give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori;
 - 12.4 better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change;

12.5 improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input;

13 **noted** that to achieve these objectives, it will be necessary to:

13.1 make decisions underpinned by the best, and robust, available evidence;

13.2 provide certainty during a planned transition to the new system;

13.3 start preparing for the implementation of the new system, including carrying over existing national direction (for example, on freshwater and urban development);

Sequencing the reform process

14 **noted** that given the significance of resource management reform a special process will be used to develop the NBA, and the SPA and CAA developed in parallel;

Exposure draft of the NBA

15 **agreed** that the exposure draft of the NBA and supporting consultation material will be referred to a select committee for the purpose of an inquiry;

16 **agreed** that the NBA exposure draft will contain its structure and indicative headings, with certain aspects fully drafted to reflect policy decisions in the submission under CAB-20-SUB-0522 and subsequent delegated decisions (as outlined in paragraphs 27 and 28);

17 **agreed** that the NBA exposure draft and supporting consultation material progress as follows:

17.1 initial in-principle policy decisions are made by Cabinet now;

17.2 further policy decisions for the exposure draft and supporting consultation material made through to April 2021;

17.3 the final exposure draft and supporting consultation material be submitted to Cabinet in May 2021 to consider for presentation to the House as a parliamentary paper;

17.4 following approval by Cabinet, the paper be referred by the House to select committee, by notice of motion;

17.5 select committee undertake an inquiry on the exposure draft and supporting consultation material;

18 **noted** that the terms of reference for the select committee inquiry will be provided to Cabinet for consideration alongside the exposure draft;

19 **noted** that following its inquiry, the select committee will report back to the House, and the Minister for the Environment (Minister) will return to Cabinet with advice on the committee's recommendations;

20 **noted** that the exposure draft may signal but not include all policy details of the NBA, these will continue to be developed in parallel to the select committee inquiry;

21 **noted** that the Minister will bring all remaining policy decisions to Cabinet in the second half of 2021, with the intention of introducing the NBA to the House at the end of 2021, followed by a standard legislative and select committee process;

- 22 **noted** that the Minister intends that the NBA will be passed by late 2022;
- 23 **invited** the Minister to provide monthly progress updates on the reform to the Cabinet Environment, Energy and Climate Committee (ENV);

Process for the SPA and CAA to be determined

- 24 **agreed** that the SPA and CAA will not have an exposure draft process, but that their policy direction will be signalled in the NBA supporting consultation material
- 25 **invited** the Minister to report back to Cabinet on the process for developing the SPA in early 2021
- 26 **noted** that the Minister of Climate Change has submitted a separate paper on the process for developing the CAA and any associated funding [CBC-20-MIN-0121];

Establishing a Ministerial Oversight Group

- 27 **agreed** to establish a Ministerial Oversight Group for the reform comprising the Ministers of/for Finance (Chair), Māori Crown Relations: Te Arawhiti, Housing, Environment (Deputy Chair), Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan), Associate Environment (Hon Phil Twyford), and Climate Change;
- 28 **authorised** the Ministerial Oversight Group to take further policy decisions, including to:
- 28.1 refine policy decisions sought in the submission under CAB-20-SUB-0522 as needed;
 - 28.2 make further policy decisions for the NBA exposure draft and supporting consultation material;
 - 28.3 make policy and process decisions needed to progress the remaining content of the NBA Bill;
 - 28.4 make decisions on associated matters relating to the SPA and CAA;

Working together across government

- 29 **agreed** that the Ministry for the Environment (MfE) will be the lead agency on the NBA;
- 30 **noted** that the Ministerial Oversight Group will receive joint advice from agencies;
- 31 **noted** that due to the connections with other legislation a more formal structure may be needed to progress the SPA;
- 32 **noted** that the Minister for the Environment and Minister for the Public Service will seek Cabinet agreement if a formal structure is needed to progress the SPA;
- 33 **noted** that the impact of this reform on other government work programmes will vary in scale and nature and may require amending of other policies or legislation ;

A partnership approach with Māori and iwi

- 34 **noted** that the Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (the Treaty);
- 35 **noted** that further engagement with Māori is necessary to meet the Crown's Treaty obligations;
- 36 **noted** that on 19 November 2020, several national Māori entities wrote to the Prime Minister advising of the formation of a collective (the Collective) with the purpose of engaging with the Crown on Māori rights and interests in freshwater and resource management reform;
- 37 **noted** that on 3 December 2020, the Collective met with the Prime Minister, Ministers for/of Māori Crown Relations: Te Arawhiti, Environment, Local Government, Māori Development, Associate Environment (Hon Kiritapu Allan) and other members of the Māori caucus;
- 38 **noted** that at this meeting a shared commitment was expressed to find a way forward on freshwater and resource management reform;
- 39 **invited** the Minister to report back to the Ministerial Oversight Group on how the government will work with the Collective and on the establishment of a substantive work programme;

Upholding existing legislation and agreements

- 40 **noted** that the RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation;
- 41 **noted** that engagement with Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of natural resource arrangements agreed by Māori and the Crown in current Treaty settlement negotiations; as well as for:
- 41.1 rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;
 - 41.2 natural resource arrangements agreed by Māori and local government under existing provisions of the RMA;
- 42 **agreed** that the Crown will engage with affected Post Settlement Governance Entities, to discuss how their settlement arrangements will be carried over into a new system;

Engagement with local government and stakeholders

- 43 **noted** that local government has significant expertise relevant to reform and will be partners in implementing the new system;
- 44 **agreed** that officials report back to the Ministerial Oversight Group on how local government is involved in the reform process in early 2021;
- 45 **agreed** that select committee processes will be the primary method of engagement for stakeholders and the general public in the next stage of the reform;

Part Three: Initial In-Principle Policy Decisions

- 46 **agreed** to initial in-principle NBA policy decisions in order to proceed promptly with developing the exposure draft, including:
- 46.1 the purpose and supporting provisions of the NBA;
 - 46.2 the proposal to establish a mandatory set of national policies and standards to support the establishment of the environment biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework;
 - 46.3 introducing the requirement for a single planning document for each region (including the coastal marine area) under the NBA – provisionally called Natural and Built Environments Plans;
- 47 **noted** that these initial decisions closely follow the Panel’s recommendations and may be refined as detailed policy is considered by the Ministerial Oversight Group, and engagement with the Collective and local government undertaken;

NBA purpose and supporting provisions

- 48 **agreed** that the purpose and supporting provisions of the NBA be progressed by the Parliamentary Counsel Office on the basis of Appendix 1 to the submission under CAB-20-SUB-0522 which closely reflects the Panel’s indicative drafting;

Integrated management of natural and built environments

- 49 **noted** that the Panel considered whether to separate legislative frameworks for land use planning and environmental protection, but recommended that the NBA should retain an integrated approach;
- 50 **noted** that there are options as to how objectives detailed in paragraph 12 will be achieved for natural and built environments through the purpose, supporting provisions, and definitions of the NBA;
- 51 **agreed** that, in the meantime, the definitions for the natural environment and built environment are adopted as detailed in Appendix 1 to the submission under CAB-20-SUB-0522;
- 52 **noted** that these definitions will be tested further, including how they apply to rural and urban areas, to ensure that no unintended consequences arise;
- 53 **agreed** that officials will report to the Ministerial Oversight Group on these definitions and how the proposed purpose of the NBA will achieve the objectives for reform proposed in paragraph 12;

The purpose of the NBA must protect the natural environment and enable development

- 54 **noted** that the proposed purpose of the NBA is to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao;
- 55 **noted** that this purpose would be achieved by ensuring:
- 55.1 the use, development and protection of natural and built environments is within biophysical limits

- 55.2 positive outcomes for the environment are identified and promoted
- 55.3 subject to paragraphs 55.1 and 55.2, the adverse effects of activities on the environment are avoided, remedied or mitigated

56 **noted** that this is a major shift from the RMA, which focuses on individual adverse effects (rather than outcomes);

Recognising the concept of Te Mana o Te Taiao

- 57 **noted** that the Panel recommends that the NBA purpose include the concept of Te Mana o Te Taiao – ‘the mana of the environment’;
- 58 **agreed** that the Ministerial Oversight Group work with the Collective on how to best express Te Mana o Te Taiao to ensure that it is clear and workable;

Giving effect to the principles of Te Tiriti o Waitangi

- 59 **noted** that the NBA requirement for all persons who exercise functions and powers under the NBA to ‘give effect to’ the principles of Te Tiriti o Waitangi is a significant change from the RMA which requires decision-makers to ‘take into account’ of the principles;
- 60 **noted** that the Panel advised that a national policy statement should be required on how to give effect to the principles of Te Tiriti, but that the Minister’s initial view is that this direction should be included in the provisions of the NBA itself;

Proposed system of environmental biophysical limits and targets

- 61 **agreed** that biophysical limits should be central to protecting and sustaining the natural environment’s biophysical resources and the ecosystem services they provide;

Proposed system of outcomes to guide those undertaking functions under the NBA

- 62 **agreed** that a set of outcomes to be pursued by those exercising powers and functions under the NBA will replace the existing ‘matters of national importance’ and ‘other matters’ in Part 2 of the RMA;

Implementation principles, particularly relating to resolving conflicting objectives

- 63 **noted** that implementation principles in the NBA will assist Ministers and others exercising functions and powers under it;
- 64 **agreed** that the NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override or be contrary to, biophysical limits;
- 65 **agreed** that the NBA 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;
- 66 **noted** that should there be any doubt about which outcomes are to prevail in the event they come into conflict, this will be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environments Plans;

National Planning Framework

- 67 **agreed** that the system for central government direction under the NBA be provisionally called the National Planning Framework;

- 68 **agreed** that the purpose of the National Planning Framework will be to address matters of national significance or matters where national consistency would be desirable;
- 69 **agreed** that the National Planning Framework 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;
- 70 **noted** that further work is needed on the National Planning Framework including:
- 70.1 establishing the process to develop and amend central government direction;
 - 70.2 its relationship to plans, consents and activities;
 - 70.3 the role of the Minister of Conservation, and
 - 70.4 the process for developing and implementing targets and limits;

Natural and Built Environments Plans

- 71 **agreed** that combined planning documents are required under the NBA, and that they be provisionally called Natural and Built Environments Plans;
- 72 **noted** that shifting to one planning document per region will be an important change for the resource management system and would consolidate over 100 existing RMA regional and district planning documents into about 14;
- 73 **noted** that further work is needed on the membership, roles, functions and powers of future regional planning arrangements, including the role for central government agencies, ministers and local government;
- 74 **noted** that how resource consenting occurs under the NBA and Natural and Built Environments Plans is yet to be determined, but will be designed to meet the objectives of the reform, including improving system efficiency and effectiveness

Drafting instructions

- 75 **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office based on the agreed and in-principle decisions above;
- 76 **authorised** the Minister, in consultation the Ministerial Oversight Group, to issue further drafting instructions on matters delegated to them;

Part Four: Supporting Reform Implementation and Transition from the Old to the New System

- 77 **noted** that significant resourcing and support from central government will be required both in the short and long-term, including:
- 77.1 to develop and test combined plans to serve as models for local authorities;
 - 77.2 the consolidation of existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework;
 - 77.3 the incorporation of mātauranga Māori and tikanga Māori;

- 77.4 support to increase capacity and capability throughout the system (including for iwi and local authorities);
- 77.5 an improved environmental monitoring and reporting system to enable effective setting and operation of new limits and targets;

s 9(2)(f)(iv)



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s 9(2)(f)(iv)

Part Five: Other Matters

Legislative implications

- 86 **noted** that this reform will result in legislation that will repeal and replace the RMA, introduce legislation covering other elements of the system, and has important interfaces with many other pieces of legislation;
- 87 **noted** that the RMA interfaces with over 60 pieces of Treaty settlement legislation, and that reform proposals will be assessed to ensure they do not have unintended consequences for existing settlements, or those currently being negotiated;
- 88 **noted** that the Natural and Built Environments Bill will reform the law relating to the management of New Zealand's natural resources;
- 89 **noted** that the Minister will seek the inclusion of the Natural and Built Environments Bill in the 2021 Legislation Programme, with a category 4 priority;

s 9(2)(f)(iv)

Impact Analysis

- 93 **noted** that MfE will provide an interim regulatory impact statement to the Ministerial Oversight Group and then to Cabinet to support the release of the exposure draft;
- 94 **noted** that CIPA requirements do not apply to this proposal as the impact on emissions is indirect and is unable to be quantified with any level of certainty;

Communications

95 **noted** that the Minister will announce decisions relating to the reform process following Cabinet's approval of the above proposals.

Michael Webster
Secretary of the Cabinet

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