



## Resource management reform briefing #1 – Process, timeframes and initial policy matters

Date Submitted:	6 November 2020	Tracking #: 2020-B-07257	
Security Level	In confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	<p>Discuss the contents of this brief with officials</p> <p>Agree to meet with your colleagues to discuss oversight of the reform</p> <p>Agree to forward this briefing to Associate Ministers for the Environment</p>	For discussion on Tuesday 10 November

Actions for Minister's Office Staff	<p><b>Provide</b> this briefing to the Minister to support a further discussion with officials.</p> <p><b>Return</b> the signed report to MfE.</p> <p><b>Forward</b> this briefing to Associate Ministers for the Environment.</p>
Number of appendices: 4	<ol style="list-style-type: none"> <li>1. Resource management reform indicative timeline</li> <li>2. RM Panel's indicative drafting of Part 2</li> <li>3. PCE's indicative drafting of Part 2</li> <li>4. Amended Ministry for the Environment indicative drafting of Part 2</li> </ol>

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
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Chief Advisor	Kevin Guerin		-
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# Resource management reform briefing #1 – Process, timeframes and initial policy matters

## Key Messages

1. This briefing:
  - a) confirms your preferred process, timeframes and proposed objectives for resource management reform
  - b) seeks further direction on Ministerial oversight arrangements and other matters needed to help us develop your first Cabinet paper
  - c) provides an indicative draft of the purpose and principles of the proposed Natural and Built Environments Act (NBA) for discussion
  - d) outlines the immediate next steps to keep progressing reform at pace.
2. At our meeting with you on Tuesday 3 November, you set out your preferred approach to advancing resource management reform. We are working to develop a draft Cabinet paper and detailed reform programme based on this approach. The attached indicative timeline (Appendix 1) maps this programme over this term of government.
3. You have signalled your intention to establish a Ministerial group to oversee the reform programme. We recommend a small group to ensure streamlined working and decision-making arrangements. We suggest you test the interest of your colleagues and set up a meeting to discuss your proposed approach to reform as soon as possible.
4. Despite the head start provided by the Resource Management Review Panel (the Panel) this will be a large, complex project. As indicated by our initial conversation on purpose and principles, further work is also needed as we translate Panel proposals into legislation.
5. We have identified success factors that we believe are critical to delivering effective and enduring reform. These factors include adequate resourcing for transition to, and implementation of, the new system. It would be desirable to signal this through an initiative for Budget 2021.

## Recommendations

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6. We recommend that you:
  - a. **note** that officials intend to use this briefing to discuss the further direction we need from you on:
    - i. the scope and sequencing of Bills
    - ii. the objectives of reform
    - iii. your preferred Ministerial oversight arrangements
    - iv. cross-agency working arrangements
    - v. the timing of Cabinet decisions
  - b. **agree** to meet with your preferred Ministerial colleagues to discuss oversight arrangements for resource management reform

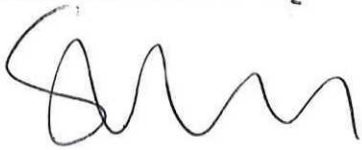
Yes/No

- c. **note** the attached material on indicative proposals for the purpose and principles of the Natural and Built Environments Act for discussion with officials
- d. **note** that we are preparing further advice on national direction and combined plans for our subsequent policy discussion with you
- e. **agree** to forward this briefing to Associate Ministers for the Environment

Yes/No

**Signature**

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Simon King  
**Director, Natural and Built System**

6/11/2020

Hon David Parker  
**Minister for the Environment**

**Date**

## Resource management reform briefing #1 – process, timeframes and initial policy matters

### Confirming your preferred process and timeframes

7. We met with you on Tuesday 3 November 2020 to discuss advancing the Labour Party Manifesto 2020 commitment to repeal and replace the Resource Management Act 1991 (RMA), building on the work of the Resource Management Review Panel during the last term of government.
8. You set out your preferred approach to advancing this significant piece of work at pace. Key aspects of this approach were:

#### *Policy approach*

- a) advancing reform on the basis of the Panel's proposals, with flexibility to depart from or refine proposals on some issues
- b) refining the Panel's proposals for the purpose and principles of the NBA, building on recent commentary from the Parliamentary Commissioner for the Environment (PCE)
- c) ensuring important jurisprudence from the Supreme Court's *King Salmon* decision is adequately embedded in the future system
- d) seeking initial policy decisions from Cabinet in November

#### *Legislative process*

- e) advancing proposals for the NBA in advance of proposals for strategic planning and climate change adaptation legislation
- f) developing the NBA through a two-stage select committee process, allowing some policy content to be developed on a slower time frame
- g) integrating the NBA, strategic planning and climate change adaptation proposals at the second select committee stage to produce a coherent legislative package
- h) introducing a first Bill with some proposals for the NBA by May 2021

#### *Ministerial working arrangements*

- i) establishing a Ministerial group to oversee development of reform proposals

#### *Stakeholder and public engagement*

- j) promoting the select committee processes as the primary mechanism for stakeholder and public engagement

#### *Interdepartmental working arrangements*

- k) using the Ministry for the Environment to lead the development of the NBA
- l) establishing a cross-agency group to develop the proposed Strategic Planning Act.

9. The attached indicative timeline (Appendix 1) maps the programme over this term of government. We intend to discuss this with you to ensure it aligns with your expectations.
10. There are a number of further process and timing details we need your guidance on in advance of Cabinet decisions. These are discussed below.

### **Confirming the scope and sequencing of bills**

11. Your preferred approach requires us to prepare multiple streams of policy and legislative advice, with an initial priority on the NBA.
12. We recommend the first Natural and Built (NB) bill focuses on the big structural policy decisions needed to establish the new planning framework. It should include enough scope and detail that submitters to select committee can engage with it in its own right. As highlighted in the timeline, Cabinet decisions this year will be followed by further Cabinet decisions in early 2021 to ensure a pipeline of drafting instructions to Parliamentary Counsel Office (PCO).
13. More detailed, technical and specific content can follow in the second NB bill, with multiple Cabinet decisions again anticipated to maintain momentum. Strategic planning and climate change adaptation content would be progressed in parallel.
14. On this basis we propose progressing five streams of work:
  - a) first NB bill: Purpose and principles, National Planning Framework (NPF) replacing existing national direction, Natural and Built Environment Plans (NBPs) replacing all current regional and district plans
  - b) second NB bill: Remainder of Panel proposals covering content in the existing RMA<sup>1</sup>, transitional arrangements and potentially matters arising from freshwater allocation work
  - c) strategic planning proposals
  - d) climate change adaptation proposals
  - e) Implementation measures including:
    - i. development of the NPF, including reviewing current national direction and developing the te Tiriti element
    - ii. development of model plans.
15. While the Panel proposed separate Acts for strategic planning and climate change adaptation, there may be other legislative options for progressing these proposals. These legislative structures can be determined as policy is finalised.
16. As shown on the timeline, the select committee process for the second NB bill and strategic planning proposals should be combined to ensure policy overlaps can be appropriately managed. The second bill (or bills) will be introduced before the end of 2021. We have begun discussions with PCO but they have not confirmed the viability of this timeline yet.

### **Confirming your objectives for reform**

17. We recommend that you set clear objectives to help focus the reform work programme, as used successfully in your work on freshwater.
18. Given the multiple portfolios likely to be impacted by reform, we further recommend that Cabinet agreement is sought on your preferred objectives. We will also use them to guide our regulatory impact analysis work.

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<sup>1</sup> Including but not limited to: consenting, proposals of national significance, designations, economic instruments, allocation principles and methods, Māori Advisory Board, mana whenua engagement processes, Environment Court, water conservation orders, heritage orders.

19. We present five objectives for reform in the table below for further discussion.

**Table 1: Objectives for resource management reform**

Objective	Brief description
<b><i>Protect and enhance the natural environment</i></b>	This objective recognises the crucial role of the resource management system in protecting ecosystems and the natural environment. Importantly, it also acknowledges that our natural environment is currently degraded and in an overall worse state than when the RMA was developed in 1991, while risks to ecosystems have increased. To ensure we are resilient as a country, any new system must also therefore be able to restore or enhance the natural environment.
<b><i>Better enable urban and other development within environmental limits</i></b>	This objective recognises the role of the resource management system in enabling and managing the development, use and allocation of natural and physical resources to support the wellbeing of people and communities. It is also clear that this must occur without compromising important protections for the natural environment.
<b><i>Provide for a more effective role for Māori and improved recognition of Te Tiriti o Waitangi</i></b>	This objective recognises the importance of Te Tiriti o Waitangi in environmental management, rangatiratanga and the role of mana whenua as kaitiaki. It aims to provide for a more effective role for mana whenua in the system, actively protecting and restoring the relationships Māori have with aspects of the environment and areas of cultural significance to Māori and upholding Tiriti settlement arrangements.
<b><i>Better prepare for and address climate change and risks from natural hazards</i></b>	This objective acknowledges the significance of climate change for resource management issues and the need for urgent action to both reduce greenhouse gas emissions and adapt to a changing climate. It also recognises the role of the resource management system in reducing risks from other natural hazards.
<b><i>Improve system efficiency and effectiveness, and reduce complexity</i></b>	This objective is about improving regulatory stewardship and ensuring the resource management system is well-designed with interventions and processes that are efficient, effective and proportionate. It is also about simplifying the system, so compliance costs are reduced for all parties, and it is understood and accessible for decision-makers and those impacted by decisions.

### **Confirming your preferred Ministerial working arrangements**

20. You have signalled your intention to establish a Ministerial group to oversee the reform programme. A large number of Ministers have some interest in reform<sup>2</sup>. However, we recommend a smaller group covering all aspects of reform (i.e. NBA, strategic planning and climate change adaptation) to ensure streamlined working arrangements.

<sup>2</sup> For example: Infrastructure: Hon Grant Robertson; Māori Crown Relations: Hon Kelvin Davis; Housing: Hon Dr Megan Woods; Energy and resources: Hon Dr Megan Woods; Local Government: Hon Nanaia Mahuta; Health: Hon Andrew Little; Economic and Regional development: Hon Stuart Nash; Transport: Michael Wood; Conservation: Kiri Allan; Agriculture: Hon Damien O'Connor; Climate Change: Hon James Shaw; Māori Development: Hon Willie Jackson; Emergency Management: Kiri Allan; Associate Environment: Hon Phil Twyford.

21. We suggest you test the interest of your colleagues in joining an oversight group for resource management reform, so that its membership can be reflected in initial Cabinet decisions. We also suggest you set up a meeting to discuss your proposed approach with relevant colleagues as soon as possible.

### **Progressing cross-agency working arrangements**

22. You have signalled your support for establishing cross-agency working arrangements to develop the Panel's proposed Strategic Planning Act (SPA). We are working with the Public Service Commission and a core group of agencies<sup>3</sup> to progress the preferred option for doing so - an interdepartmental executive board established by Order in Council under the Public Service Act 2020.
23. Given the timeline, this work must also progress at pace. Cabinet decisions are likely needed prior to Christmas. The Chief Executives of these agencies are next meeting on 13 November. We recommend you meet with your interim board to outline expectations over the next three years.
24. We will come back with further advice following the scheduled meeting of Chief Executives.

### **Confirming the timing of first Cabinet decisions**

25. You outlined your intention to seek Cabinet decisions initiating the legislative reform programme and seeking the first tranche of policy decisions as soon as possible, ideally in November 2020.
26. We request further direction on your preferred process for developing the Cabinet paper seeking these decisions to ensure it meets your expectations. Specifically:
- a) the level of detail in which you wish to signal your intention to agree with, or deviate from, the Panel proposals
  - b) the scope of detailed policy decisions to be used as the basis of drafting instructions
  - c) your preferred approach to Ministerial engagement, and intention of using a Cabinet Committee prior to Cabinet<sup>4</sup>
  - d) connections with related decisions, such as the potential establishment of interagency working arrangements.
27. Regulatory Impact Statement (RIS) requirements will also apply. While this work has started, we are highly unlikely to be able develop a fully compliant RIS within the preferred timeframe. Instead, we recommend considering an approach to beginning with a high level RIS that gets progressively more developed in subsequent Cabinet decisions. We are discussing this approach with Treasury.
28. The table below summarises the steps needed for Cabinet decisions and indicative dates. Given the steps required, our preferred approach is to aim for a December Cabinet meeting.

### **Steps needed for Cabinet decisions**

Step	Indicative dates
confirm reform process, timelines, Ministerial and interagency working arrangements	10 – 17 November

<sup>3</sup> Ministry of Housing and Urban Development, Ministry of Transport, Department of Internal Affairs, Te Arawhiti, Te Puni Kōkiri.

<sup>4</sup> Cabinet guidelines suggest the need to take this paper to the Māori-Crown relations committee, see CO (19) 3.

confirm policy matters for first NB bill (purpose and principles, NPF, NBPs)	10 – 17 November
draft Cabinet paper provided to your office (departmental consultation in parallel)	20 November
Ministerial consultation	26 November – 3 December
lodgement	3 December
Cabinet committees (Environment/ Māori-Crown relations)	10 December
Cabinet meeting	14 December

29. We will discuss these steps and your preferred timeframes to ensure it meets your expectations.

### Critical success factors for effective and enduring reform

30. Despite the head start provided by the Panel this will be a large, complex project. We have identified factors that we believe are critical to the successful delivery of complex resource management reform at pace. These factors fall into the following categories:

- a) ensuring high quality policy and legislation
- b) maintaining good relationships with Tiriti partners
- c) ensuring reform is supported and enduring
- d) adequate resourcing for transition to, and implementation of, the new system.

31. The table below sets out measures that could be built into the design of your proposed policy and legislative process to bolster the capability of the Ministry and ensure successful and timely delivery of reform. We look forward to discussing these factors with you.

Critical success factors	Possible measures to ensure successful delivery of reform
<p><b>Ensuring high quality policy and legislation</b></p> <ul style="list-style-type: none"> <li>Many of the Panel's policy proposals will require further refinement and detail eg, the design of joint committees, methods to reduce complexity and costs in consenting.</li> <li>There are also improvements that can be made to some of the Panel's proposals to ensure the overall reform is transformational eg, the overall approach to national direction, the extent to which environmental limits and outcomes apply across the resource management system.</li> <li>In some cases, the Panel's proposals can be simplified to improve system efficiency and effectiveness, and reduce complexity.</li> </ul>	<ul style="list-style-type: none"> <li>MfE could establish technical policy groups to work with us in further developing the Panel's proposals.</li> <li>Release an exposure draft for comment early in the new year.</li> <li>Consider innovative select committee processes to increase engagement and participation.</li> <li>Early and substantial investment in transition and building the capacity and capability needed to implement and operate the new regulatory system.</li> </ul>
<p><b>Maintaining good relationships with Tiriti partners</b></p>	<ul style="list-style-type: none"> <li>We will provide you with further advice on this factor.</li> </ul>



<ul style="list-style-type: none"> <li>• The resource management system is of great significance to Māori and critical to Māori-Crown relations.</li> <li>• The Panel's proposals create significant new roles for Māori and the Panel acknowledged that further engagement was needed on some of their proposals, such as Te Mana o te Taiao.</li> <li>• All Tiriti of Waitangi settlement legislation that have resource management aspects must be carried over into the new system.</li> </ul>	
<p><b>Ensuring reform is supported and enduring</b></p> <ul style="list-style-type: none"> <li>• There is a risk that those with proposed decision-making roles in the new system – local government, mana whenua, Parliamentary Commissioner for the Environment and Environmental Protection Authority – will not support its implementation unless they are involved in policy development.</li> </ul>	<ul style="list-style-type: none"> <li>• MfE establishes technical policy groups made up of representatives from these agencies to support further development of the Panel's proposals.</li> </ul>
<p><b>Adequate resourcing for transition and implementation (as did not occur in 1991)</b></p> <ul style="list-style-type: none"> <li>• Effective setting and operation of new limits and targets will require additional science and a much improved environmental monitoring and reporting system.</li> <li>• Transition to new plans and integrating and replacing national direction will need to occur in parallel with policy and legislation.</li> <li>• The same applies to development of new institutions and practices for planning and consenting, advice on economic instruments and upgrading of all existing online guidance and tools.</li> <li>• Existing funding for reform expires on 30 June 2021.</li> <li>• New capabilities will be required for system oversight and engagement in regional spatial planning processes.</li> <li>• Transition could be faster, with greater buy-in, through support for councils and iwi/ Māori in the transition process.</li> </ul>	<ul style="list-style-type: none"> <li>• Cross-agency working arrangements to maximise the efficiency and effectiveness of the public service.</li> <li>• Consider a budget bid for 2021.</li> </ul>

## Proposals for the purpose and principles of the Natural and Built Environments Act

32. At our last meeting, you also requested further advice on the Panel and PCE proposals for the purpose and principles of the NBA.

### **The report of the Resource Management Review Panel**

33. The Panel recommended replacing the RMA with a new NBA. As set out in Appendix 2, the Panel recommended the NBA have a different purpose to the RMA, based around enhancing the quality of the environment and achieving positive outcomes to support the wellbeing<sup>5</sup> of current and future generations.
34. Supporting the Panel's proposed purpose statement is the requirement for specific, explicit environmental limits to safeguard the natural environment, which must not be breached. These limits would be set by the Minister for the Environment through the new NPF or councils through NBPs.
35. The Panel also listed 21 unweighted "outcomes" that must be provided for by those exercising functions and powers under the NBA. These outcomes effectively replace the matters of national importance and other matters sections of the RMA. These outcomes can be supported by targets set by the Minister for the Environment or councils.

### **The Parliamentary Commissioner for the Environment's proposed drafting**

36. The Parliamentary Commissioner for the Environment (PCE) closely examined the Panel's approach. While supportive of a range of aspects, he raised concerns related to:
  - a) the risk the Panel's drafting could be interpreted using a "broad overall judgement" approach in which protection of the natural environment is traded off against other wellbeings (undermining the approach confirmed in the *King Salmon*<sup>6</sup> case)
  - b) the Panel's 21 un-weighted outcomes being overly wide-ranging, covering topic matter that is unachievable through the NBA alone, and are likely to conflict with each other
  - c) spatial planning being in an Act separate to the NBA rather than being part of it.
37. The PCE suggested their own drafting for the RMA Part 2 replacement (Appendix 3) which provides a clear priority for sustaining and safeguarding the natural environment, and its life-supporting capacity to be provided for before other uses. Enabling people and communities to provide for their wellbeing, health and safety, and allocation of resources, is secondary.
38. The PCE's approach stays with a limit setting approach that shares much in common with that proposed by the Panel. However, the PCE reverts back to specifying matters of national importance (divided between te ao Māori, the natural environment, the built environment, and protection of certain areas) instead of Panel's outcomes approach.

### **The Ministry's proposals for a purpose and supporting provisions**

*The Panel's report is a sound starting point but can be improved upon*

39. The Ministry for the Environment considers that:
  - a) The Panel's drafting serves as a sound basis upon which a new purpose statement and supporting provisions concerning limits, outcomes and targets can be further refined

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<sup>5</sup> With "wellbeing" being defined as including social, economic, environmental and cultural wellbeing of people and communities and their health and safety.

<sup>6</sup> *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38

- b) The Panel's approach can be improved further through incorporating important key elements from the PCE's report, matters raised by you on 3 November 2020, and additional insights gained through engagement with officials from other government agencies<sup>7</sup>. Appendix 4 provides one possible illustration of what we think the NBA purpose statement and supporting provisions covering limits, targets and goals could look like (noting that final drafting will be prepared by PCO). We look forward to discussing this further with you.

*Establishing a clear hierarchy in which the natural environment comes first*

40. Central to the Ministry's approach (as with that of the Panel and the PCE) is the concept that the life-supporting capacity and integrity of the natural environment must be protected and sustained for current and future generations before consideration is given to social or economic uses. The Ministry's recommendations convey a stronger variant of the PCE's drafting to make this hierarchy clear.
41. We agree with the Panel's and PCE's approach that environmental limits must provide a basis to protect the natural environment. Although very similar in approach to the Panel's drafting, we recommend using a version of the PCE's drafting which moves the section on environmental limits forward (so better emphasising their importance in the hierarchy) and makes the duties to set limits clearer by having the provisions in one place. This is now reflected in section 3 of the Ministry's indicative drafting.

*Moving from managing adverse effects toward promoting positive outcomes*

42. The NBA must seek to achieve positive outcomes for the environment overall if environmental improvement, including the restoration of degraded ecosystems or resources, is to be achieved. Both the current RMA and the PCE's approach largely omit explicit reference to environmental improvement or positive outcomes.
43. The Ministry supports the Panel's intent to move away from a primary focus on managing adverse effects and more towards achieving positive outcomes. This will provide a basis for proactive, rather than reactive, planning to occur for the natural and built environment, and better enable the system to address cumulative environmental effects.
44. In our view, the NBA needs to set out improvement in the natural environment as part of the Act's purpose. Positive outcomes should be sought to be achieved for both the natural and built environments. Environmental targets, set through the NPF<sup>8</sup> and NBPs, would set out the improvement to be achieved and when, as part of achieving positive environmental outcomes.
45. Consistent with a more outcomes-focused approach, we consider that greater direction can be provided to councils and decision-makers by adopting goals (what the Panel referred to as outcomes) as enduring statements of what must be provided for in achieving the purpose of the Act.
46. We have taken the common elements from both the Panel's drafting and the PCE's drafting as the basis for a set of goals to be prescribed in legislation. Noting the PCE's concerns, the goals have been condensed, and a clearer distinction made between those goals where the decision-maker has a duty to act, and those goals where the decision-maker needs to enable others to undertake activities that contribute towards achieving goals.
47. To preserve the hierarchy that places the safeguarding of the natural environment first, the

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<sup>7</sup> The Treasury, Ministry of Transport, Department of Conservation, Department of Internal Affairs, Ministry of Housing and Urban Development, Ministry of Health, and Ministry of Business, Innovation and Employment

<sup>8</sup> This would replace the current set of national environmental standards and national policy statements to achieve the purpose, function and effect of both types of instrument

achievement of goals must occur while still complying with environmental limits and working towards the achievement of targets.

*Incorporating the core elements of the King Salmon approach*

48. We also understand that you wish to see the core elements of the *King Salmon* case incorporated into new legislation. We will discuss how to best approach this with the PCO.
49. We note, however, that the approach we have taken (and which borrows from the Panel and the PCE) encapsulates the main features and concepts contained in that case, particularly in establishing a hierarchy of environmental protection through limits and binding targets that will span decisions throughout the system. We also note that the Panel considered they had incorporated the core elements of *King Salmon* in their proposals.

*Te Mana o te Taiao*

50. We consider that the inclusion of Te Mana o te Taiao as part of the purpose section of the NBA in the manner set out Appendix 4, would meet the approach you wish to see regarding Te Mana o te Taiao. The Panel considered that including Te Mana o te Taiao in the purpose statement would better align the resource management system with te ao Māori. They stated that doing so “would reflect the core value that the health of natural resources is integral to the health and wellbeing of people and communities, and give effect to the fundamental truth accepted in all communities that life itself depends on the health of our natural resources” (see p.98 of their report). We agree.
51. Subject to meeting environmental limits and targets, the wellbeing of people and communities should be enabled across the four domains of wellbeing – cultural, economic, environmental and social. The Tiriti and te ao Māori working group that supported the Panel advised that providing for Te Mana o te Taiao doesn't require environmental protection at all costs and that, subject to environmental limits and targets, natural resources can be used whilst still upholding the mana of the natural environment.

*Te Tiriti o Waitangi*

52. Based on the Panel's report, we have included to see a Tiriti clause in the attached draft purpose and principles for the NBA that requires persons exercising functions and powers to give effect to the principles of Te Tiriti o Waitangi. Additionally, as per the Panel report, 'Te Tiriti o Waitangi' would be defined to have the same meaning as 'Treaty' in the Treaty of Waitangi Act 1975.
53. There is broad support for a 'give effect to' statutory weighting. The Panel's report, along with the Environmental Defence Society, Productivity Commission and the Waitangi Tribunal, have all identified that the current Tiriti clause is inadequate and the statutory weighting should be changed to 'give effect to'. This was reinforced by submitters on the Panel's Issues and Options paper, with 'give effect to' the most supported suggestion on the Tiriti clause. The Panel suggest that a change to 'give effect to' would modernise the Tiriti clause and “send a strong signal that those performing functions under the Act should give greater weight to it” (pg.100). A stronger statutory weighting would provide improved recognition of Te Tiriti o Waitangi and be a key part of ensuring that Māori interests are not 'balanced out' under the Act.
54. The Panel recommended the Tiriti clause refer to the principles rather than refer directly to Te Tiriti o Waitangi. They noted that “referring to the principles arguably enables the Tiriti partnership to go beyond the transaction that was made in 1840 and evolve” (pg.101).

9(2)(h)

55. We look forward to discussing our approach to the purpose and principles of the NBA with you on 10 November.

### Next steps

56. At our meeting on Tuesday 3 November, you agreed to meet with officials weekly to progress resource management reform. We are scheduled to meet you next on Tuesday 10 November. We recommend using the contents of this briefing to inform that discussion.
57. Based on our understanding of the Cabinet decisions you wish to seek before Christmas, we recommend the next meeting also focuses on direction needed to develop the draft Cabinet paper. We will build on the contents of this briefing by providing further policy advice on national direction and combined plans in advance of that meeting.
58. After the first Cabinet paper is sufficiently developed, subsequent meetings will begin focusing on other aspects of reform such as strategic planning, climate change adaptation proposals, more detailed aspects of the NBA proposals and the implications of reform on national direction.

### Indicative meeting schedule

Topic	Date
Purpose and principles, reform process timeline and scope of the first bill, Ministerial working arrangements, budget	10 November 2020
NPF (national direction) and NBPs (combined plans), interagency working arrangements	Week of 16 November 2020
Strategic planning, climate change adaptation, more detailed aspects of NBA, future of NPF (national direction)	Further meetings



s9(2)(f)(iv)







## Appendix 2: RM Panel's indicative drafting of Part 2

### Section 5 – Purpose

- 1) The purpose of this Act is to enhance 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.
- 2) The purpose of this Act is to be achieved by ensuring that:
  - (a) positive outcomes for the environment are identified and promoted;
  - (b) the use, development, and protection of natural and built environments is within environmental limits and is sustainable; and
  - (c) the adverse effects of activities on the environment are avoided, remedied or mitigated.
- 3) In this Act environment includes—
  - (a) ecosystems and their constituent parts;
  - (b) people and communities; and
  - (c) natural and built environments whether in urban or rural areas.
- 4) In this Act wellbeing includes the social, economic, environmental and cultural wellbeing of people and communities and their health and safety.

### Section 6 – Te Tiriti o Waitangi

In achieving the purpose of this Act, those exercising functions and powers under it must give effect to the principles of Te Tiriti o Waitangi.

### Section 7 – Outcomes

To assist in achieving the purpose of this Act, those exercising functions and powers under it must provide for the following outcomes:

#### *Natural environment*

- (a) enhancement of features and characteristics that contribute to the quality of the natural environment;
- (b) protection and enhancement of:
  - (i) nationally or regionally significant features of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and their margins;
  - (ii) outstanding natural features and outstanding natural landscapes;
  - (iii) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (c) enhancement and restoration of ecosystems to a healthy functioning state;
- (d) maintenance of indigenous biological diversity and restoration of viable populations of indigenous species;
- (e) maintenance and enhancement of public access to and along the coastal marine area, wetlands, lakes, rivers and their margins;

#### *Built Environment*

- (f) enhancement of features and characteristics that contribute to the quality of the built environment;
- (g) sustainable use and development of the natural and built environment in urban areas including the capacity to respond to growth and change;
- (h) availability of development capacity for housing and business purposes to meet expected demand;
- (i) strategic integration of infrastructure with land use;

#### *Tikanga Māori*

- (j) protection and restoration of the relationship of iwi, hapū and whanau and their tīkanga and traditions with their ancestral lands, cultural landscapes, water and sites;
- (k) protection of wāhi tapu and protection and restoration of other taonga;
- (l) recognition of protected customary rights;

#### *Rural*

- (m) sustainable use and development of the natural and built environment in rural areas;
- (n) protection of highly productive soils;

- (o) capacity to accommodate land use change in response to social, economic and environmental conditions;

*Historic heritage*

- (p) protection of significant historic heritage;

*Natural hazards and climate change*

- (q) reduction of risks from natural hazards;
- (r) improved resilience to the effects of climate change including through adaptation;
- (s) reduction of greenhouse gas emissions;
- (t) promotion of activities that mitigate emissions or sequester carbon; and
- (u) increased use of renewable energy.

**Section 8 – Environmental limits**

- 1) Environmental limits are the minimum standards prescribed through national directions by the responsible Minister to achieve the purpose of this Act.
- 2) Environmental limits –
  - (a) must provide a margin of safety above the conditions in which significant and irreversible damage may occur to the natural environment;
  - (b) must be prescribed for, but are not limited to:
    - (i) the quality, level and flow of fresh water;
    - (ii) the quality of coastal water;
    - (iii) the quality of air;
    - (iv) the quality of soil;
    - (v) the quality and extent of terrestrial and aquatic habitats for indigenous species;
  - (c) may be quantitative or qualitative.
- 3) Local authorities are not precluded from setting standards that are more stringent than those prescribed by the Minister.

**Section 9 – Implementation**

- 1) This section states the approach to be adopted in implementing this Part but does not limit or affect the exercise of functions under this Act in any other respect.

*Principles*

- 2) Those performing functions under this Act must do so in a way that gives effect to this Part and:
  - (a) promotes the integrated management of natural and built environments;
  - (b) ensures public participation in processes under this Act to an extent that recognises the importance of public participation in good governance and is proportionate to the significance of the matters at issue;
  - (c) promotes appropriate mechanisms for effective participation by iwi, hapū and whanau in processes under this Act;
  - (d) provides for kaitiakitanga and tikanga Māori and the use of mātauranga Māori;
  - (e) complements other relevant legislation and international obligations;
  - (f) has particular regard to any cumulative effects of the use and development of natural and built environments; and
  - (g) takes a precautionary approach where effects on the environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences.

*Ministerial duties: outcomes and environmental limits*

- 3) The responsible Minister must through national direction identify and prescribe:
  - (a) features and characteristics that contribute to enhancing the quality of natural and built environments;
  - (b) targets to achieve continuing progress towards achieving the outcomes specified in section 7;
  - (c) the environmental limits specified in section 8(2)(b);
  - (d) nationally significant features of the matters set out in section 7(b)(i);
  - (e) outstanding natural features and outstanding natural landscapes under section 7(b)(ii) that are of national significance;

- (f) areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 7(b)(iii) that are of national significance;
  - (g) methods and requirements to give effect to the enhancement and restoration of ecosystems for the purposes of section 7(c);
  - (h) methods and requirements to give effect to the maintenance of indigenous biodiversity and restoration of viable populations of indigenous species for the purposes of section 7(d);
  - (i) how the principles of Te Tiriti o Waitangi will be given effect through functions and powers exercised under this Act; and
  - (j) methods and requirements to respond to natural hazards and climate change for the purposes of section 7(q) to 7(u).
- 4) The responsible Minister is the Minister for the Environment except in relation to the coastal marine area for which the Minister of Conservation is the responsible Minister in consultation with the Minister for the Environment.

*Hierarchy: resolution of conflicts*

- 5) The use and development of natural and built environments must be within prescribed environmental limits and comply with binding targets, national directions and regulations.
- 6) Subject to (5), any conflict in or doubt about the application of matters in section 7 must be reconciled and clarified as necessary in a way that gives effect to the purpose of this Act:
  - (a) by the Minister through national direction or by regulation; or
  - (b) in the absence of any such direction or regulation, by the provisions of policy statements and plans.

## Appendix 3: PCE's indicative drafting of Part 2

### Purpose

The purpose of this Act is to:

- (1) Ensure that the use, development and protection of the natural environment and the built environment is managed in a way that will -
  - (a) sustain the potential of the natural environment to meet the reasonably foreseeable needs of future generations; and
  - (b) safeguard the life-supporting capacity of air, water, soil, and ecosystems (including restoring life-supporting capacity where it has been lost); and
  - (c) avoid, remedy, or mitigate any adverse effects of activities on the natural environment.
- (2) Subject to subclause (1), enable people and communities to determine how the natural environment and the built environment may be used to promote their social, economic, and cultural wellbeing and their health and safety.
- (3) Provide for the allocation of public freshwater resources, air and coastal space in a manner which is consistent with subsection (1).
- (4) Provide for spatial planning.
- (5) In this section:
  - (a) The natural environment means natural resources including land, water, air, soil, minerals, and all forms of plants and animals (except humans) and other living organisms (whether native to New Zealand or introduced) and their habitats, and includes ecosystems.
  - (b) The built environment includes human-made buildings, structures, places, facilities, infrastructure and their interactions which collectively form parts of urban and rural areas in which people live, work, and recreate.

### Environmental Limits

- (1) The purpose of environmental limits is to assist decision makers to achieve section 1(1), by specifying detailed requirements that must be met in using, developing, and protecting natural resources.
- (2) The responsible Minister must prescribe environmental limits consistent with meeting the purpose set out in section 1(1), including for:
  - (a) fresh water
  - (b) the water in estuaries
  - (c) coastal water
  - (d) air
  - (e) land and soil
  - (f) the terrestrial and aquatic habitats of indigenous species:
- (3) The Minister may also prescribe environmental limits in relation to the state of any other natural resource.
- (4) Environmental limits must provide a margin of safety above the conditions in which the potential of the natural resource to meet the reasonably foreseeable needs of future generations, or its life-supporting capacity, would be at risk.
- (5) Where the life-supporting capacity of a natural resource has already been compromised, the responsible Minister must prescribe targets and timeframes that will restore the margin of safety required by subsection (4).
- (6) An environmental limit may be quantitative or qualitative.

### Te Tiriti o Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it must [take into account/give effect to] the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.

### **Matters of national importance in relation to Te Ao Māori**

In achieving the purpose of this Act, all persons exercising functions and powers under it must recognise and provide for the following matters of national importance:

- (a) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga
- (b) the protection of protected customary rights
- (c) kaitiakitanga
- (d) matauranga Māori

### **Matters of national importance in relation to the use, development and protection of the natural environment**

In achieving the purpose of this Act, all persons exercising functions and powers under it must recognise and provide for the following matters of national importance:

- (a) the maintenance of indigenous biodiversity and ecosystems in a healthy functioning state (including the restoration of degraded ecosystems and species that do not have viable populations)
- (b) the maintenance and enhancement of public access to and along the coastal marine area, estuaries, wetlands, lakes, rivers and their margins
- (c) the protection of highly productive soils
- (d) the protection of freshwater, estuaries, and coastal water.

### **Matters of national importance in relation to the use, development and protection of the built environment.**

In achieving the purpose of this Act, all persons exercising functions and powers under it must have particular regard to the following matters of national importance:

- (a) making spatial provision for infrastructure and other use, development and protection of the built environment.
- (b) the benefits of a built environment that makes efficient use of space and minimises waste, pollution and energy consumption
- (c) the reduction of greenhouse gas emissions
- (d) the reduction of risks from natural hazards
- (e) adaptation to the effects of climate change
- (f) facilitating land use change that will improve environmental outcomes.

### **Protection of certain places**

- (1) In achieving the purpose of this Act, all persons exercising functions and powers under it must ensure that the following places are protected from inappropriate subdivision, use and development:
  - (a) the coastal environment, wetlands, estuaries, lakes and rivers and their margins
  - (b) specified outstanding natural features and specified outstanding natural landscapes
  - (c) specified areas of significant indigenous vegetation and specified significant habitats of indigenous fauna
  - (d) waahi tapu and other taonga
  - (e) specified historic heritage
  - (f) land that has been specified in national direction or a combined plan as subject to high risk from particular natural hazards, including sea level rise.
- (2) In this section subdivision, use and development is inappropriate unless:
  - (a) it is identified as a nationally significant activity in national direction or as a regionally significant activity in a combined plan and it is functionally necessary for it to be located in the place; or
  - (b) it will not significantly detract from or destroy:
  - (c) the natural character of any place described in paragraph (1)(a); or

- (d) the qualities which contributed to the decision to specify any place described in paragraphs (1)(b), (c) (e) or (f); or
- (e) the qualities that mana whenua value about any place described in paragraph (1)(d); or
- (f) it will not significantly increase the risk of loss of life, injury or damage to property arising from the natural hazard for any place described in paragraph (f).

## Appendix 4: Amended Ministry for the Environment drafting of Part 2

Note: the drafting below is indicative and is for illustrative purpose only. Drafting of the provisions in the Natural and Built Environments Bill will be prepared by the Parliamentary Counsel Office and may vary in various respects.

### Definitions

**Natural environment** means natural resources including land, water, air, soil and all forms of plants and animals (except humans) and other living organisms (whether indigenous or non-indigenous) and their habitats, and includes ecosystems

**Built environment** includes buildings, structures, places, facilities, infrastructure and their interactions which collectively form parts of urban and rural areas in which people live, work and recreate.

### 1: Purpose

The purpose of this Act is to:

- (1) Ensure the use, development, and protection of the natural environment and the built environment is managed in a way that will recognise and provide for Te Mana o Te Taiao.
- (2) (1) is to be achieved through application of the following hierarchy:
  - (a) safeguarding New Zealand's natural environment for current and future generations, including the preservation of life-supporting capacity
  - (b) promoting improvement in the state of the natural environment, including its life-supporting capacity
  - (c) subject to (a) and (b), enabling people and communities to meet their environmental, economic, social and cultural wellbeing
- (3) For the purpose of this Act recognising and providing for Te Mana o Te Taiao is to be achieved through 2 (a)-(c)
- (4) (2) is to be achieved though, and in accordance with, the following hierarchy:
  - (a) setting limits on, and targets for, the use of natural environment and protection of human health
  - (b) identifying and promoting positive outcomes for the use of the natural environment and built environment including through the setting of environmental targets
  - (c) planning and managing uses of the natural and built environments, including for the achievement of goals

### 2: Te Tiriti o Waitangi

All persons exercising functions and powers under this Act must give effect to the principles of the **Te Tiriti o Waitangi**

### 3: Environmental limits and targets

- (1) The relevant Minister must, through the National Planning Framework prescribe **environmental limits** under 1(2)(a) including for:
  - (a) freshwater
  - (b) water in estuaries
  - (c) coastal water and the marine environment
  - (d) air
  - (e) land and soil
  - (f) terrestrial and aquatic habitats of indigenous species

- (2) The relevant<sup>9</sup> Minister may set binding or non-binding **targets** for the achievement of positive outcomes in section 1(2)(b) through the National Planning Framework
- (3) In setting limits under 3(1), or positive targets for the natural environment under 3(2), the Minister must adopt a **precautionary approach** and provide a margin of safety above the conditions which the life-supporting capacity would be at risk.
- (4) Local authorities are not precluded from setting standards or limits in natural and built environment plans that are more stringent than limits or targets prescribed by the Minister
- (5) An environmental limit or target may be quantitative or qualitative

#### **4: Goals to be provided for**

- (1) Subject to section 3, all persons exercising functions and powers under this Act must provide for:
  - (a) Protecting and restoring:
    - i. the life supporting capacity of air, water and soil
    - ii. indigenous biodiversity and the resilience of freshwater and marine terrestrial and aquatic ecosystems
    - iii. the relationship of iwi, hapū and whanau and their tikanga and traditions with their ancestral lands, cultural landscapes, water and sites, wāhi tapu and other taonga
  - (b) Protecting:
    - i. significant historic heritage and landscapes from inappropriate use and development
    - ii. public access to recreational areas, and to and along the coast, rivers, lakes, streams and their margins
    - iii. the character of the coastal environment and identified outstanding natural features
  - (c) Enabling:
    - i. urban development that anticipates the demands for housing and business capacity and the changing needs of people and communities
    - ii. the efficient provision of infrastructure and the integration of infrastructure with land use
  - (d) Promoting:
    - i. increased resilience to the effects of climate change through adaptation, and the reduction of risks from natural hazards
    - ii. the increased use of renewable energy and the reduction greenhouse gas emissions
- (2) The relevant Minister may set binding or non-binding targets for the achievement of goals in section 4(1) through the National Planning Framework.

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<sup>9</sup> Minister for the Environment, noting that further policy work is required for the Minister of Conservation