



Cabinet

Minute of Decision

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Resource Management System Reform: Update on How Reform Objectives will be Achieved

Portfolio Environment

On 25 October 2022, Cabinet:

Underperforming resource management system

- 1 **noted** that there is broad consensus that the resource management system introduced by the Resource Management Act 1991 (RMA) takes too long, costs too much and has neither adequately protected the environment nor sufficiently enabled development;
- 2 **noted** that resource consenting has become more costly, with council consenting fees increasing between 2014/15 and 2018/19 by 66 percent and 124 percent for non-notified and notified consents respectively;
- 3 **noted** that consenting is also taking longer, with median decision-making timeframes increasing by 50 percent between 2014/15 and 2018/19;
- 4 **noted** that the New Zealand Infrastructure Commission/Te Waihangā (Infracom) has reported on the negative impacts for infrastructure providers, and has estimated that infrastructure developers are collectively spending \$1.29 billion annually on resource consent processes, representing 5.5 percent of total project costs;
- 5 **noted** that international benchmarking indicates New Zealand is at the upper end of approval costs, with equivalent resource consenting costs in the United Kingdom/European Union being between 0.1 percent to 5 percent of total project costs;
- 6 **noted** that Infracom has also estimated that decision-making timeframes on consents for infrastructure projects have increased by 150 percent for consents issued between 2010-2014 compared to 2015-2019;

Resource management reform

- 7 **noted** that on 14 December 2020, Cabinet agreed to proceed with resource management reform (reform) on the basis of the June 2020 report and recommendations of the Resource Management Review Panel chaired by Hon Tony Randerson KC [CAB-20-MIN-0522];
- 8 **noted** that Cabinet agreed to five reform objectives [CAB-20-MIN-0522]:
 - 8.1 protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations;

- 8.2 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;
- 8.3 give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori;
- 8.4 better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change;
- 8.5 improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input;
- 9 **noted** that an exposure draft of key aspects of the Natural and Built Environment Bill was referred to the Environment Committee for an enquiry in June 2021, with the Committee reporting in November 2021;
- 10 **noted** that the Environment Committee's recommendations have informed subsequent Ministerial Oversight Group (MOG) decisions on the framework of the new resource management system;
- 11 **noted** that a list of all matters considered by the MOG and Ministers under delegation is included at Appendix 1 to the paper under CAB-22-SUB-0458;
- 12 **noted** that during the reform process, the government has engaged with a range of interests, including Local Government New Zealand and the Local Government Steering Group, a group consisting of Mayors and senior officials set up to advise on the reforms;
- 13 **noted** that the government has also engaged with Māori collective groups – Freshwater Iwi Leaders Group (iwi leaders) and Te Wai Māori Trust, and Te Tai Taka – and Post-Settlement Governance Entities;
- 14 **noted** that the Waitangi Tribunal published its Interim Report on Māori Appointments to Regional Planning Committees on 2 September 2022, following the Wai 2358 priority hearing into the proposed approach to Māori appointments on those committees;
- 15 **noted** that the Waitangi Tribunal did not find any Treaty breaches in the Crown's proposed process for selecting appointing bodies and appointing Māori representatives to regional planning committees;
- 16 **noted** that aspects of the new system that are intended to address the problems of the RMA, deliver efficiencies, and enable better outcomes for development, the natural environment, and Māori include:
- 16.1 a National Planning Framework that will provide a stronger, more integrated set of national directions and help resolve conflicts between the proposed Natural and Built Environment Act outcomes;
- 16.2 regional spatial planning to provide long-term, high level, strategic direction for integrated planning in a region;
- 16.3 a faster plan development process that will consolidate the current 100 plus RMA plans into 15 Natural and Built Environment Act plans;

- 16.4 independent hearing panels, which will help improve plan quality and enable appeal rights to be limited to panel recommendations not adopted by regional planning committees, thereby reducing delay, cost, and re-litigation in the system;
- 16.5 reducing the number of resource consents needed through a more enabling permissions approach and a more efficient consent process;
- 16.6 a fast-track resource consenting pathway for a defined set of infrastructure projects that provide urgent infrastructure, and environmental and social benefits;
- 16.7 a framework to improve environmental outcomes based on environmental limits and targets and the concept of Te Oranga o te Taiao, to support a more responsible and positive relationship with the natural environment;
- 16.8 a more effective role for Māori and requiring decision-makers to 'give effect to' the principles of the Treaty of Waitangi / Te Tiriti o Waitangi;
- 17 **noted** that, in addition to the above, the costs and time involved in planning processes will reduce under the new system because:
- 17.1 infrastructure and housing needs will be identified in regional spatial strategies and enabled by Natural and Built Environment Act plans;
- 17.2 the development capacity needed in regions over 30 years will be identified, saving time and cost for central and local government, as well as households;
- 17.3 Infracom is developing an infrastructure chapter for the National Planning Framework, which will nationally standardise planning for the provision and approval of new infrastructure;
- 17.4 more activities will be permitted and fewer resource consents needed;
- 17.5 the designations process will be more flexible and available to a wider group of providers;
- 18 **noted** that when enacted, the Spatial Planning Act and the Natural and Built Environment Act will work in conjunction to:
- 18.1 address cumulative environmental effects, thus halting the slide in environmental outcomes;
- 18.2 embed land supply and house building opportunities in the places they are needed, therefore avoiding inflated urban land costs;
- 18.3 enable infrastructure, including renewable energy generation that will support the affordable decarbonisation of the economy;

Benefits and cost savings of the reform

- 19 **noted** that a supplementary analysis report has been produced that provides an analysis of the reform proposals;
- 20 **noted** that the supplementary analysis report indicates, even with conservative (or low range) assumptions applied, that the new system should deliver a cost benefit ratio of 2.58 over the 30-year assessment period (i.e. \$2.58 in benefits for every \$1 in cost);

- 21 **noted** that the supplementary analysis report indicates, on mid-range assumptions, that monetised benefits could realistically deliver a higher cost benefit ratio of 4.90 over the 30-year assessment period (i.e. \$4.90 in benefits for every \$1 in cost);
- 22 **noted** that the supplementary analysis report references improved environmental outcomes that cannot be monetised in the same way but are also significant;
- 23 **noted** that regulatory impact analysis will be provided to support future regulatory decisions (e.g. for the National Planning Framework, the regional spatial strategies, or Natural and Built Environment Act plans);
- 24 **noted** that the supplementary analysis report and an associated summary document will be published when the Bills are presented to Parliament;

Progress towards the reform objectives

- 25 **noted** that an assessment by officials of policy decisions made to date against the reform objectives has highlighted where the decisions will support the objectives, where there is some uncertainty about how the new system could play out over time, and the importance of effective implementation of, and transition to, the new system;
- 26 **noted** that work will continue throughout the legislative process and the system transition and implementation phase, to ensure the system will meet the reform objectives;
- 27 **noted** that the Spatial Planning Reform Board, an interdepartmental executive board created under the Public Service Act 2020, has been responsible for developing the proposed Spatial Planning Bill, and has emphasised the need for well-targeted and resourced implementation of the reform;

Freshwater and geothermal working group

- 28 **noted** that the Crown acknowledged to the High Court in 2012 that Māori have rights and interests in freshwater and geothermal resources;
- 29 **agreed** that the Natural and Built Environment Bill provide for the establishment of a freshwater and geothermal working group (working group), consisting of Crown and iwi appointees;
- 30 **agreed** that the scope of resources to be considered by the working group be RMA-type allocation for freshwater and geothermal resources;
- 31 **agreed** that the working group's role be to produce a report that includes recommendations on engagement between the Crown and iwi/hapū at the local level on freshwater and geothermal allocation matters;
- 32 **agreed** that the Natural and Built Environment Bill will require the working group to provide the report to the government no later than October 2024, with a government response to be tabled in the House of Representatives within 6 months of receiving the report;
- 33 **noted** that the government will not notify further national direction on allocation principles and methods until after it has responded to the working group's report;

- 34 **noted** that claimed proprietary, or common law, interests:
- 34.1 are separate from the scope of the working group;
 - 34.2 [REDACTED]
 - 34.3 will not be determined, elevated or extinguished by the Natural and Built Environment Bill or resource allocation processes under it;

Crown and iwi/hapū engagement at the local level on freshwater and geothermal allocation

- 35 **agreed** that the Natural and Built Environment Bill will require the Crown to engage with iwi/hapū at the local level on resource freshwater and geothermal allocation matters within the Bill's plans, and that the outcome of this engagement may be reflected in an allocation statement if agreed between the Crown and the iwi/hapū;
- 36 **agreed** that the Crown will support the submission of any agreed allocation statement to a regional planning committee;
- 37 **agreed** that the regional planning committee must then update the allocation provisions of its Natural and Built Environment Act plan either through the next plan review or within five years of the statement being received (whichever is first);
- 38 **noted** that the process and framework for this Crown engagement with iwi/hapū would be developed and recommended by the working group, and that regulations could be used to add statutory weight to the process and framework;
- 39 **noted** that the requirement on the Crown to engage with iwi/hapū will not come into effect until the government has responded to the working group report;

Shorter-term consents for freshwater

- 40 **agreed** that only shorter-term Natural and Built Environment Act consents, of 10 years or less, for freshwater takes and discharges can be granted until a Natural and Built Environment Act plan has been updated following receipt of an allocation statement for an area, except as specified in paragraph 41 below;
- 41 **agreed** that there be exemptions to the shorter-term Natural and Built Environment Act consent duration referred to in paragraph 40 above, enabling consents for up to 35 years where the primary activity is:
- 41.1 renewable electricity generation;
 - 41.2 reticulated municipal water supply;
 - 41.3 the construction, upgrading or maintenance of specified nationally significant infrastructure;
- 42 **noted** that it is important the duration of consents for the likes of new water storage infrastructure providers is long enough to provide sufficient investment certainty, and that there may need to be discussion on this issue, and potential further exemptions, at select committee;

Resource user charges

- 43 **agreed** that existing provisions enabling rents/royalties/charges be carried over from the RMA to the Natural and Built Environment Bill (under section 360 and/or 64A of the RMA covering sand, shingle, shell and other natural material and occupation of marine/river space);
- 44 **agreed** that the approach in paragraph 43 above supersede previous MOG decisions in relation to resource user charges;
- 45 **noted** that this approach would allow for the continuation of payments of royalties for sand and shingle extraction to councils, and to Customary Marine Title holders consistent with rights under the Marine and Coastal Area (Takutai Moana) Act 2011;
- 46 **noted** that any resource user charges other than those already authorised by statute would require Parliamentary approval;

Preservation clause

- 47 **agreed** to include a Māori rights and interests preservation clause in the Spatial Planning Bill and the Natural and Built Environment Bill to the following effect:
- 47.1 these Bills will not determine or extinguish (or create) any proprietary or customary rights or interests, or aboriginal title, that may exist in freshwater and geothermal resources;
- 47.2 the preservation clause will not affect the validity of any the functions, duties and powers carried out under the Bills;

Te Oranga o te Taiao statements

- 48 **agreed** that the Natural and Built Environment Bill will enable iwi and hapū to submit their own Te Oranga o Te Taiao statements (which may include their position on allocation matters) to regional planning committees;

Decisions required to maintain the policy intent of existing national direction in the National Planning Framework

- 49 **noted** that previous MOG decisions relating to matters that must be considered when setting management units for environmental limits and targets are not fully compatible with the agreed approach to retain the policy intent of RMA national direction in the National Planning Framework (NPS);
- 50 **noted** that in implementing the National Policy Statement for Freshwater Management 2020 (NPS-FM), regional councils are required to identify freshwater management units, and to notify plan changes to implement the NPS-FM no later than 31 December 2024;
- 51 **noted** that in implementing the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, regional councils are required to identify airsheds;
- 52 **noted** that freshwater management units and airsheds identified by regional councils may not correspond to management units set under the Natural and Built Environment Bill;

- 53 **noted** that to ensure a smooth transition from the RMA to the Natural and Built Environment Act once enacted, and to avoid significant reworking of existing freshwater management units and airsheds, it is necessary to adjust MOG decisions on management units as they relate to freshwater and air;
- 54 **agreed** that MOG decisions relevant to setting management units will not necessarily apply to setting limits and targets in management units for freshwater and air (at least for the first generation of Natural and Built Environment Act plans);

Setting up subcommittees to support RMA freshwater planning content in Natural and Built Environment Act plans

- 55 **noted** that significant work is being undertaken by regional councils to give effect to the NPS-FM through developing freshwater content in regional plans;
- 56 **noted** that a key difference between the processes to develop freshwater plan content under the RMA and the Natural and Built Environment Bill is that content will no longer be prepared (and final decisions made) by regional councils, but instead by regional planning committees, who will be stewards of the new system;
- 57 **noted** that it may be desirable to have a specialist subcommittee of a regional planning committee to carry over freshwater content in regional plans (developed under the RMA) into Natural and Built Environment Bill plans, and to continue supporting the regional planning committee in developing freshwater content;
- 58 **agreed** that the Natural and Built Environment Bill will enable a subcommittee of a regional planning committee to be established in each region to make recommendations on proposed freshwater plan provisions in the first Natural and Built Environment Act plans, with this to be turned on region by region through an Order in Council as required;
- 59 **agreed** that the subcommittee be comprised of members nominated by the regional council and the Māori appointing body;
- 60 **noted** that some Treaty settlements may influence the nature of Māori representation on a subcommittee, but that (as with regional planning committees) a 50:50 co-governance model is not being mandated for them;
- 61 **agreed** that the subcommittee's role would be to make recommendations to the regional planning committee on the proposed content of the freshwater component of the Natural and Built Environment Act plan, prior to notification of the plan;
- 62 **noted** that an independent hearing panel, which will make recommendations to a regional planning committee on all aspects on a Natural and Built Environment Act plan, including freshwater content, will benefit from having skills/experience in freshwater quality, quantity and ecology;
- 63 **agreed** that the Natural and Built Environment Bill will require the Chief Environment Court Judge, when appointing members to an independent hearing panel, to ensure the panel collectively has skills/experience in 'freshwater quality, quantity and ecology' in addition to the matters currently included in the Bill;

Fast-track designation and consenting pathway

64 **agreed** to include a fast-track designations and resource consenting pathway, based on the COVID-19 Recovery (Fast-track Consenting) Act 2020, in the Natural and Built Environment Bill, which will be available for a defined set of infrastructure projects referred to in paragraph 65 below;

65 **agreed** that the fast-track pathway will be available for the following types of project:

Communications

65.1 broadcasting facilities;

65.2 telecommunications networks;

Energy

65.3 electricity and gas distribution and transmission networks;

65.4 renewals of consents for renewable energy generation (including hydro);

65.5 wind and solar energy generation;

Housing

65.6 housing developments that significantly contribute to addressing a region's housing demand or need, including in scale or type (e.g. affordable houses);

Transport

65.7 airports, including any airport-related navigation infrastructure;

65.8 ports operated by port companies;

65.9 state and local rail (including interisland ferry facilities);

65.10 state and local roads and rapid transit facilities;

Water

65.11 flood control and protection (including drainage);

65.12 water, wastewater or stormwater distribution or treatment;

Other central and local government assets

65.13 corrections facilities (including the provision of rehabilitation and reintegration);

65.14 defence facilities operated by the New Zealand Defence Force;

65.15 educational facilities;

65.16 fire and emergency services facilities;

65.17 health facilities;

66 **noted** that the activities in paragraph 65 above are defined, as appropriate, by various pieces of legislation applying to them;

- 67 **agreed** that similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020, the Minister for the Environment will determine whether projects are eligible to access the fast-track pathway (but jointly with the Minister of Conservation if the coastal marine area is involved);
- 68 **agreed** that, also similar to the COVID-19 Recovery (Fast-track Consenting) Act 2020, unless the Minister for the Environment decides to decline an application, they must invite written comment on the application from relevant local authorities and relevant Ministers before deciding to refer the application to an expert consenting panel;
- 69 **noted** that an expert consenting panel would be appointed by the Chief Environment Court Judge;

Timing and process for the introduction of legislation for the Spatial Planning Bill and the Natural and Built Environment Bill

- 70 **noted** that bills for the Spatial Planning Bill and the Natural and Built Environment Bill will need to be introduced to the House soon to enable them to be passed in this term of government;
- 71 **noted** that work being done on the reform is complex, and that the Parliamentary Counsel Office will need to continue to polish the technical quality of the Bills;
- 72 **noted** that the polishing of the Bills will be informed by recommendations from a system efficiency working group comprising a range of highly experienced experts;

Transition and implementation

- 73 **noted** the importance of a well-managed transition and effective implementation to the success of the new resource management system;
- 74 **noted** that the MOG has agreed to a sequential rollout and tranced approach to implementation so that different groups of regions will develop their first-generation regional spatial strategy and Natural and Built Environment Act plans at different times;
- 75 **noted** that this avoids a dual system where the Natural and Built Environment Act and RMA are operating side-by-side, a complication that existed during the transition from the Town and Country Planning Act 1953 to the RMA;
- 76 **noted** that Ministers will have a role in overseeing the implementation of the new system via mechanisms to be confirmed;
- 77 **noted** that a future Cabinet paper will seek decisions on the role of an interdepartmental executive board under the Public Service Act 2020 to provide governance, central government input, and stewardship of the Spatial Planning Act;

Upholding Treaty of Waitangi settlements and takutai moana rights

- 78 **noted** that MOG Ministers have agreed a legislative process to uphold Treaty of Waitangi settlements that will involve deeds to amend being agreed with Post-Settlement Governance Entities and an omnibus Bill or Bills to amend relevant settlement Acts;

79 **noted** that Ministers have made decisions to ensure that resource management related rights under the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld, which will include provisions in the Spatial Planning Bill and Natural and Built Environment Bill, and amendments to the Marine and Coastal Area (Takutai Moana) Act 2011.

Rachel Hayward
Acting Secretary of the Cabinet

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