

## In Confidence

Office of the Minister for the Environment

Chair, Cabinet

### **Resource management system reform – update on how the reform objectives will be achieved**

#### **Proposal**

- 1 This paper provides an update on resource management reform (RM reform) and the benefits it will deliver. It also seeks agreement to final policy and process decisions ahead of introducing the Spatial Planning Bill and Natural and Built Environment Bill to Parliament.

#### **Relation to government priorities**

- 2 The Labour Party 2020 Manifesto committed to repealing the Resource Management Act 1991 (RMA) and replacing it with the Spatial Planning Act (SPA) and Natural and Built Environment Act (NBA) this parliamentary term.<sup>1</sup> This was confirmed by Cabinet in December 2020,<sup>2</sup> and is consistent with the overarching Government priority of *Laying the Foundations for the Future*.

#### **Executive Summary**

- 3 There is broad consensus that the resource management system introduced by the RMA takes too long, costs too much and has neither adequately protected the environment nor sufficiently enabled development.
- 4 Plans under the RMA have been too restrictive to enable housing or infrastructure development where needed, and have not effectively managed cumulative environmental effects for the natural environment.
- 5 Preserving 'amenity' has prevented development. This has contributed to rapidly increasing urban land prices and New Zealand's housing being amongst the least affordable in the OECD.
- 6 Resource consenting has become more costly. Between 2014/15 and 2018/19, council consenting fees increased by 66% and 124% for non-notified and notified consents respectively.<sup>3</sup> Consenting is also taking longer with median decision-making timeframes increasing by 50% between the same years.
- 7 The New Zealand Infrastructure Commission/Te Waihanga (Infracom) has reported on the negative impacts for infrastructure providers. It has estimated that

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<sup>1</sup> The SPA was originally referred to as the *Strategic* Planning Act, and the NBA as the Natural and Built Environment's Act (changes from original *highlighted*).

<sup>2</sup> CAB-20-MIN-0522 paragraphs 7 to 9 refer.

<sup>3</sup> The Ministry for the Environment's National Monitoring System, 2014/15 and 2018/19 datasets.

infrastructure developers are collectively spending \$1.29 billion<sup>4</sup> annually on resource consent processes, representing 5.5% of total project costs. International benchmarking indicates New Zealand is at the upper end of approval costs with equivalent costs in the United Kingdom/European Union of between 0.1% to 5%. Infracom has also estimated that decision-making timeframes on consents for infrastructure projects have increased by 150% for consents issued between 2010-14 compared to 2015-19.

- 8 The costs and time involved in planning processes will reduce under the new system because:
  - 8.1 infrastructure and housing needs will be identified in regional spatial strategies (RSS) and enabled by Natural and Built Environment Act plans (NBA plans)
  - 8.2 the development capacity needed in regions over 30 years will be identified, saving time and cost for central and local government, as well as developers and households
  - 8.3 Infracom is developing an infrastructure chapter for the National Planning Framework (NPF), which will nationally standardise planning for the provision and approval of new infrastructure
  - 8.4 plans will be consolidated from over 100 RMA plans to 15 NBA plans across the country and will be faster to prepare, reducing from 10 years under the current system to a maximum of 4 years, enabling greater regulatory predictability for end users
  - 8.5 independent hearing panels (IHP) will help improve plan quality and enable appeal rights to be limited to IHP recommendations not adopted by regional planning committees (RPC), reducing delay, cost, and re-litigation in the system
  - 8.6 more activities will be permitted and fewer resource consents needed
  - 8.7 fast-track consenting, which has reduced consenting time by (on average) 15 months per project, will continue for a defined set of infrastructure projects
  - 8.8 the designations process will be more flexible and available to a wider group of providers.
- 9 Under the RMA's hierarchy of avoid, remedy or mitigate, mitigate has more often been applied. While adverse effects have been mitigated, residual adverse effects have accumulated over 30 years. This is most evident in declining water quality and loss of biodiversity, which the RMA has not prevented.
- 10 The new system will move from managing for effects to managing for outcomes. The intergenerational environmental test will refer to Te Oranga o Te Taiao. There will be a framework of outcomes, limits, and targets for protecting, restoring, or improving the state of, the natural environment.

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<sup>4</sup> *The cost of consenting infrastructure projects in New Zealand*, a report for The New Zealand Infrastructure Commission, D Moore, J Loan, S Wyatt, K Woock, S Carrick, Z Hartmann, July 2021.

- 11 The new system will require decision-makers to 'give effect to' the principles of the Treaty of Waitangi/Te Tiriti o Waitangi (Te Tiriti), as the Conservation Act 1987 currently requires.
- 12 The SPA and NBA will work in conjunction to:
- 12.1 address cumulative environmental effects, thus halting the slide in environmental outcomes under the RMA
  - 12.2 embed land supply and house building opportunities in the places they are needed, therefore avoiding inflated urban land costs
  - 12.3 enable infrastructure, including renewable energy generation that will support the affordable decarbonisation of the economy.
- 13 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. 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 (PSGEs).
- 14 A supplementary analysis report (SAR) analyses the reform proposals. The SAR indicates that, even with conservative (or low-range) assumptions applied, the new system should deliver a cost benefit ratio of 2.58 over the 30-year assessment period (ie \$2.58 in benefits for every \$1 in cost). In addition, the SAR references improved environmental outcomes that cannot be monetised but are also significant.
- 15 On mid-range assumptions, the SAR indicates that monetised benefits could realistically deliver a higher cost benefit ratio of 4.90 (\$4.90 in benefits for every \$1 in cost). This arises from a greater reduction in consent volumes, and giving greater recognition of a fuller range of potential cost savings for users associated with consenting. This results in total consent efficiency benefits increasing from \$210 million to \$430 million per year, with a corresponding present value (PV) increase of \$3.35 billion (ie from \$10.039 billion to \$13.389 billion).
- 16 Insufficient implementation support was a key failing of the RMA. Such support will be crucial for the new system to achieve the reform objectives. Budgets 21 and 22 have provided a strong Government commitment to fund the transition into the new system.
- 17 Officials have been working to address remaining matters associated with the introduction of the legislation. This paper seeks decisions needed to finalise the Bills.
- 18 This reform is based on the review done by the Resource Management Reform Panel chaired by retired Court of Appeal Judge Hon Tony Randerson KC (the Randerson Panel).
- 19 I intend to have the Bills ready soon for introduction to the House, and continue to expect they can pass by the end of the Parliamentary term. I am seeking agreement to a process for introduction of the Bills.

## Background

- 20 The Government appointed the Randerson Panel in July 2019.<sup>5</sup> In June 2020 the Panel provided its report, *New Directions for Resource Management in New Zealand*. The Panel had consulted extensively and built on earlier work by the Productivity Commission, Local Government New Zealand, the Property Council, Infrastructure New Zealand, the Employers & Manufacturers Association, and the Environmental Defence Society, amongst others.
- 21 In December 2020, Cabinet agreed to proceed with reform on the basis of the Randerson Panel's recommendations to repeal and replace the Resource Management Act 1991 (RMA) with three new Acts – the Natural and Built Environment Act (NBA), Spatial Planning Act (SPA) and Climate Adaptation Act (CAA).<sup>6</sup> Cabinet established a Ministerial Oversight Group (MOG) to progress the reform<sup>7</sup> and agreed to the reform objectives, being:
- 21.1 protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations
  - 21.2 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
  - 21.3 give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
  - 21.4 better prepare for adapting to climate change and risks from natural hazards, and better mitigate the emissions contributing to climate change
  - 21.5 improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.<sup>8</sup>
- 22 An exposure draft of key aspects of the Natural and Built Environment Bill (exposure draft) was referred to the Environment Committee for an inquiry in June 2021.<sup>9</sup> This provided the public with an early opportunity to provide input on some key aspects of the new system. The Committee reported back the findings of its inquiry to the House in November 2021. Its report and recommendations have informed subsequent MOG decisions on the new resource management system.

<sup>5</sup> CAB-19-MIN-0585.01 refers.

<sup>6</sup> CAB-20-MIN-0522 refers. The CAA is following different timeframes and is outside the scope of this paper.

<sup>7</sup> The Ministerial Oversight Group comprises the Ministers of/for Finance (Chair), Environment (Deputy Chair), Māori Crown Relations: Te Arawhiti, Housing, Building and Construction, Local Government, Conservation, Agriculture, Māori Development, Transport, Associate Environment and Associate Arts, Culture and Heritage Hon Kiritapu Allan, Associate Environment Hon Phil Twyford, and Climate Change.

<sup>8</sup> CAB-20-MIN-0522, paragraph 12 refers.

<sup>9</sup> The exposure draft outlined key aspects of the NBA: the purpose and principles (including the Te Tiriti clause); the environmental outcomes that decision-makers must work towards achieving; the NPF; and key NBA plan development provisions.

- 23 The MOG has met 17 times and agreed to over 500 recommendations. A list of all matters considered by the MOG and Ministers under delegation is included at Appendix 1.
- 24 I was authorised by the MOG to make further detailed policy decisions in consultation or jointly with various other Ministers (the group being determined depending on the issue) to enable the drafting of legislation.<sup>10</sup>
- 25 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.
- 26 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 (PSGEs).
- 27 Additionally, 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. Its findings are outlined in paragraphs 69 to 72.

#### **The resource management system has been underperforming**

- 28 There is broad consensus that the resource management system introduced by the RMA takes too long, costs too much, and has neither adequately protected the natural environment, nor enabled housing or infrastructure development where needed.
- 29 The RMA has contributed to poor alignment between land use and infrastructure plans, processes and funding across the system. It also took over two decades for the courts to settle how and when the hierarchy of RMA instruments is to be applied.
- 30 Central government has, until recently, not made best use of the RMA, by failing to issue national policy statements with clear priorities and environmental bottom lines. Likewise, local government has struggled to deliver a well-functioning system.
- 31 Plans have been poorly drafted and too slow to change, partly due to the multiple avenues open to relitigate decisions. They have not effectively managed cumulative environmental effects on the natural environment.
- 32 Plans have had unnecessary rules in urban areas and not enabled housing or infrastructure development where needed, contributing to rapidly increasing urban land prices and New Zealand's housing being amongst the least affordable in the OECD.
- 33 It is estimated that infrastructure developers are collectively spending \$1.29 billion<sup>11</sup> annually on resource consent processes and, while not solely to blame, the inefficiency of the RMA has contributed to New Zealand's \$210 billion<sup>12</sup> combined infrastructure gap.

<sup>10</sup> MOG #15 Paper 2: Critical issues and delegated decisions, 13 December 2021, paragraph 3 refers.

<sup>11</sup> *The cost of consenting infrastructure projects in New Zealand*, a report for The New Zealand Infrastructure Commission, D Moore, J Loan, S Wyatt, K Wook, S Carrick, Z Hartmann, July 2021.

<sup>12</sup> 2022 Treasury Investment Statement.

- 34 The health of our natural environment has also degraded through the accumulation of decisions on plans and consents being made on a case-by-case basis. The ongoing decline in the quality of our freshwater and continued loss of indigenous biodiversity<sup>13</sup> since the RMA was introduced are just two examples.
- 35 Under the RMA's hierarchy of avoid, remedy or mitigate, mitigate has more often been applied. While adverse environmental effects have been mitigated, residual adverse effects have accumulated over 30 years. This is most evident in declining water quality and loss of biodiversity, which the RMA has not prevented. Nor has the RMA enabled sufficient housing development, and there has not been adequate funding of enforcement.
- 36 An overemphasis on managing effects of activities under the RMA has led to a lack of longer-term, strategic planning. The Panel noted that the RMA "does not explicitly set out outcomes to be achieved, other than the high-level goal of sustainable management".<sup>14</sup> This has made forward planning difficult. The system has an excessive bias towards the status quo in both rural and urban areas, and there has been insufficient use of economic instruments to complement regulation.
- 37 There has been a lack of capacity and capability in central and local government to undertake the roles expected of them. Many people, including elected councillors, think planning has become overly cumbersome without delivering positive outcomes. And when processes have become inefficient, councillors have not had sufficient accountability and governance tools to effectively oversee their planning departments.
- 38 The RMA was intended to provide for better recognition and protection of Māori interests in resource management but it failed to adequately do so. Involvement and engagement with Māori has been inconsistent across the country.
- 39 There have been successive legislative amendments targeting aspects of the RMA, and a proliferation of new arrangements to work around it. While necessary to address deficiencies in the system, these workarounds indicate that the system has been inflexible and underperforming.

#### **Resource management reform will address issues in the current system**

- 40 The new system will improve on the RMA by enabling better outcomes for the natural environment, development, system efficiency, Māori, and climate change mitigation and adaptation.

#### *Improving environmental outcomes*

- 41 The new system will improve environmental outcomes by setting up a framework to protect, restore, and improve the state of, the environment. The NBA will be explicit about development needing to occur within environmental limits and associated targets.
- 42 The concept of Te Oranga o Te Taiao will support a more responsible and positive relationship with the natural environment. Te Oranga o te Taiao recognises the essential relationship between the ecological integrity of the natural environment and

<sup>13</sup> Around 40 800 ha of indigenous forest, scrub and shrubland was converted to non-indigenous land cover between 1996 and 2018. In the same period, 44 800 ha of indigenous grasslands and 5 500 ha of other indigenous cover were also converted to non-indigenous cover types.

<sup>14</sup> *New Directions for Resource Management in New Zealand*, page 17, paragraph 19.

its capacity to sustain all life and the economy. Te Oranga o te Taiao will be operationalised through limits and targets set in the National Planning Framework (NPF).

- 43 The NBA will also include implementation principles to guide how decisions should be made. They will ensure sufficient consideration is given to important matters such as integrated management, cumulative effects, and the precautionary principle.
- 44 Environmental limits and targets will be set through the NPF and will reduce the impacts of cumulative effects. Limits will set bottom lines, and targets will drive ongoing improvement.
- 45 Limits and targets will be set in management units, within which there will be 'no net loss' of ecological integrity. For limits relating to ecological integrity, there will be a limited exemptions regime based on strict criteria. Exemptions will be provided for infrastructure where it cannot be situated elsewhere and, when appropriate, offsetting will be required.
- 46 The existing compliance, monitoring and enforcement regime will be strengthened. Cost recovery provisions will allow costs to be recovered for compliance, monitoring of permitted activities, and investigation of non-compliant activities. There will also be increases in some financial penalties.

#### *Improving development outcomes*

- 47 Part 2 of the NBA will contain outcomes focused on enabling housing and infrastructure, and these will place clear expectations on decision-makers to consider how these outcomes can be met through the NPF, regional spatial strategies (RSS), and Natural and Built Environment Act plans (NBA plans).
- 48 The NPF will set a new direction for decision-makers to plan for, and enable, development within limits. The NPF will be rolled out in stages to support the development of RSS and NBA plans. It will give direction to regional planning committees (RPC) to actively plan for additional infrastructure capacity to support urban development, through the infrastructure chapter developed by Infracom.
- 49 Over time, the NPF is expected to include a suite of nationally consistent standards for activities often associated with infrastructure and development (eg sediment and noise control). These standards will be used to reduce the complexity of information requirements when consenting occurs, and can also be the basis of permitted activity criteria.
- 50 Medium density residential standards enabled through legislation in 2021 will be carried over into the NPF to assist with addressing housing supply demand and promoting urban development.<sup>15</sup>
- 51 The SPA will require spatial planning at the regional level through RSS. RSS will provide long-term, high level, strategic direction for integrated planning in a region. RSS will identify where housing can be provided and will support a coordinated approach to infrastructure funding and investment. Delivery of RSS will be supported by implementation plans that provide direction to decision-makers and investors.

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<sup>15</sup> The medium density residential standards were introduced through the Resource Management (Enabling Housing and Other Matters) Amendment Act 2021.

- 52 A more flexible process will enable designations to be available for a wider range of providers, including renewable electricity generators. A two-stage process for notices of requirement will enable improved delivery of infrastructure, as well as ensuring people can have a say on the effects of construction and operation activities where appropriate.
- 53 I propose that a fast-track resource consenting pathway, based on the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) be available for a defined set of infrastructure projects. The FTCA has reduced consenting time by (on average) 15 months per project.
- 54 The SPA and NBA will contain provisions that will expressly prevent decision-makers considering impacts on certain amenity values.<sup>16</sup>

#### *Improving system efficiency and reducing costs to users*

- 55 Better enabling infrastructure and development projects will lead to efficiency gains as less designations and consents will be moving through councils, and the time taken to process consents and designations will be reduced.
- 56 The system will improve efficiency and reduce costs through the NPF and NBA plans. The NPF will provide direction on resolving conflicts between the proposed NBA outcomes (eg developing infrastructure versus protecting outstanding natural features). This will remove the need for this resolution to occur at the consenting stage.
- 57 The process to develop NBA plans will emphasise decision-making at a strategic level and will reduce preparation time from (on average) 7 years under the RMA to a maximum of 4 years. An inconsistent collection of over 100 RMA plans will be consolidated into 15 NBA plans, with a greater focus on consistency between them.
- 58 NBA plans will enable a more efficient consenting process through proportional information requirements and more clearly stating who is to be notified for what activities. The number of activity classes will be reduced from 6 in the RMA to 4 in the new system, with a greater number of permitted activities. The number of resource consents needed will be reduced through the use of a wider scope of permitted activities.
- 59 A key to unlocking cost savings is the development of standards for common activities carried out in construction and development projects. These are needed for permitted activities enabled by NBA plans. Even when resource consents are required, standards will avoid complex and bespoke consent conditions.
- 60 Standards will be enabled through the development chapter of the NPF, which is being developed by Infracom. Much of the expertise needed to draft appropriate standards lies in the private sector, and I expect this expertise will be accessed.
- 61 A lack of accountability mechanisms in the RMA has contributed to an increase in costs and timeframes for decisions on consents. The NBA will make it clear that responsibility for efficiencies lies with elected councils and will contain mechanisms to ensure councils have proper control of their planning departments' activities.

#### *Role of Māori in the system*

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<sup>16</sup> For example, explicitly preventing the consideration of effects on scenic views from private properties and from land transport assets that are not stopping places.



- 62 The new system will provide a more effective role for Māori by requiring decision-makers to 'give effect to' the principles of Te Tiriti o Waitangi (Te Tiriti), as the Conservation Act 1987 currently requires.
- 63 Through the RMA, its predecessor statutes and the new SPA and NBA, central government (through Parliament) delegates to local authorities the power to make planning laws – subject to the direction of the law and (in future) the NPF.
- 64 In doing so central government is delegating Te Tiriti Article 1 rights. Planning has significant impacts on the allocation of scarce resources (eg the use of forests, fisheries, water, flora, fauna and taonga) and clearly engages Te Tiriti Article 2 interests for Māori. It also engages Article 3 issues for Māori and non-Māori, with rights of all being represented via democratically elected councils and (for SPA committees) central government.
- 65 As identified in the Randerson Panel's report, resource management reform will provide for a system that gives effect to the principles of the Te Tiriti. In considering how to do that, the MOG has been mindful of the need to consider kāwanatanga rights and responsibilities, as well as rangatiratanga rights and responsibilities; together with the rights of all New Zealanders.
- 66 Māori will be able to appoint representatives to RPC. Regions will be able to determine how many Māori and local government members will be on each committee – provided that the minimum membership is six, and the minimum number of Māori representatives is two, meaning that the Government is not mandating 50:50 co-governance.
- 67 An independent National Māori Entity will monitor Te Tiriti performance in the system, provide input into the NPF, and provide recommendations to central and local government. This is to be set up in a way that does not usurp the mana of hapū, iwi, and Māori in an area.
- 68 Officials have assessed the impacts of the policy proposals on Te Tiriti obligations and have determined that overall the policy proposals will make the system consistent with the principles of Te Tiriti.
- 69 The Waitangi Tribunal (Tribunal) published its *Interim report on Māori Appointment to Regional Planning Committees* on 2 September 2022 following the Wai 2358 priority hearing on the selection of Māori representatives to RPC.
- 70 The Tribunal did not find any Treaty breaches in the Crown's proposed process for selecting appointing bodies and appointing Māori representatives to RPC.<sup>17</sup>
- 71 Also, key aspects of the Crown's proposal were identified by the Tribunal as "Treaty compliant at a high level of principle",<sup>18</sup> including:
- 71.1 iwi and hapū leading and facilitating a self-determined process
  - 71.2 the process for deciding appointing bodies

<sup>17</sup> Page 107 of the Tribunal's report.

<sup>18</sup> Pages 107 and 108 of the Tribunal's report.

- 71.3 the requirement that iwi and hapū engage with their members, and with relevant rights and interests holders<sup>19</sup>
- 71.4 the requirement for iwi and hapū leading the process to keep a record of the engagement.
- 72 The Tribunal did not reach a view on whether the whole process was Treaty compliant, noting that bespoke arrangements negotiated through Treaty settlements, or other processes, could potentially affect the proposed appointments process in some regions.
- 73 RPC must have regard to iwi and hapū management plans and other planning documents prepared by Māori (eg those produced by customary marine title groups).
- 74 The Government has agreed to uphold the integrity, intent and effect of Treaty settlements, Takutai Moana commitments, and existing Joint Management Agreements (JMA) and Mana Whakahono a Rohe arrangements.
- 75 A new tool of Engagement Agreements will provide a straightforward way for iwi, hapū, customary marine title groups, and (where appropriate) other Māori groups with interests to agree with RPC on how they will be engaged in strategy and plan development.
- 76 Existing tools such as JMA, Mana Whakahono a Rohe, and Transfer of Powers will be enhanced, and the legislative barriers to their uptake removed. These tools will enable local flexibility in relationships between Māori and local authorities.

*Adapting to climate change and natural hazards, and reducing emissions*

- 77 The resource management system will have an important role to play in mitigating and adapting to climate change. The NPF must “not be inconsistent with” provisions of an Emissions Reduction Plan or a National Adaptation Plan.
- 78 The NPF will provide direction on reducing natural hazard risks and on climate change adaptation. RSS will identify areas that are at risk of sea level rise and other natural hazards and require an appropriate response. The combination of the NPF, RSS and NBA plans will direct development to areas that have a lower risk profile from natural hazards.
- 79 RSS will enable regions to identify areas for protection and enhancement, enabling development and land use change to be located away from these areas.
- 80 NBA plans will be required to provide for environmental outcomes to reduce greenhouse gas emissions and increase the removal of greenhouse gases from the atmosphere.

**Benefits and cost savings of the reform**

- 81 A Supplementary Analysis Report (SAR) has been produced that provides an analysis of the reform proposals (see **Appendix 3**). The SAR builds on *the Interim Regulatory Impact Statement: Reforming the resource management system* (interim RIS) that was prepared for the exposure draft. It has assessed the reform proposals

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<sup>19</sup> This would include groups such as the Māori Council and urban Māori authorities and communities, where they have relevant local interests.

against the status quo, with emphasis placed on implementation costs, risks and associated risk management.

- 82 The SAR indicates that even with conservative (or low-range) assumptions applied:
- 82.1 the new system should provide monetised benefits of \$10.039 billion in present value (PV) over the 30 year assessment period and
  - 82.2 for every dollar in cost, the new system should deliver a cost benefit ratio of 2.58 over that period (ie \$2.58 in benefits for every \$1 in cost).
- 83 Public good benefits generated by a well-functioning resource management system will accrue to all New Zealanders, including future generations. These benefits include improved environmental outcomes referenced by the SAR that cannot be monetised in the same way as other outcomes, but are also significant.
- 84 Central government costs for infrastructure and development projects are likely to decrease due to lower consenting and designation costs; and corridor protection providing investment certainty and an opportunity to purchase land earlier in the development cycle. This includes school sites, where a just-in-time approach has led to high land purchase costs that could have been reduced with early spatial planning.
- 85 As NBA plans become more certain, users will be able to better judge which activities are likely to receive consent, enabling them to better assess consenting costs associated with development.
- 86 The new system will provide annual average benefits from increased housing affordability of between \$146 million (low-range scenario) and \$834.3 million (mid-range scenario). Resource Economics estimate that most of the additional housing will be supplied at the average and low-price levels.
- 87 Compared with the conservative (low-range) 2.58 cost benefit ratio (see paragraph 82), the SAR indicates on mid-range assumptions that monetised benefits could realistically deliver a higher cost benefit ratio of 4.90 (ie \$4.90 in benefits for every \$1 in cost) over the 30 year assessment period. This arises from:
- 87.1 altering upwards the assumption about consent volume reductions, and giving greater recognition of a fuller range of potential cost savings for users associated with consenting. This results in total consent efficiency benefits increasing from \$210 million (low-range) to \$430 million (mid-range) per year with a corresponding PV increase of \$3.35 billion (ie to \$13.389 billion)
  - 87.2 increasing the total benefits derived from the contribution of the SPA and RSS to enhanced infrastructure and planning outcomes from \$257 million (low-range) to \$642 million per year (mid-range)
  - 87.3 increasing housing supply benefits over the next 30 years from PV \$2.2 billion (low-range) to PV \$7.5 billion (mid-range) – this being due to more competitive land markets, improved housing supply elasticity, improved transparency in consenting processes, and improved clarity and consistency in national direction.
- 88 For non-monetised environmental outcomes, there is significant scope for improvements over time in the health of the natural environment – in such areas as

soils, land use (eg through spatial planning), indigenous biodiversity, water bodies and transport emissions.

### Progress towards the reform objectives

- 89 Officials have assessed the policy decisions made to date against the reform objectives, highlighting where the decisions will support the reform objectives, and where there is some uncertainty about how the new system could play out over time through the NPF, RSS, NBA plans and other delegated instruments. Both this assessment (see Appendix 2) and the SAR (see Appendix 3) highlight the importance of effective implementation of, and transition to, the new system.
- 90 Work will continue through the legislative process and the system transition and implementation phase to ensure the system meets the reform objectives. This includes externally assessing the efficiency of the new system. Ministers will be provided with a report (due in December 2022) on options to keep improving system efficiency outcomes which will feed into the select committee process.
- 91 The Spatial Planning Reform Board is an interdepartmental executive board (IEB) created under the Public Service Act 2020, and has been responsible for developing the SPA. The Board comprises Chief Executives from the Ministry for the Environment (MfE), Treasury, Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry of Transport, and Department of Conservation. The Board has provided the following comment:
- 91.1 There is recognition and support across the Board on the policy progress made in preparing the NBA and SPA, particularly in recent weeks to more effectively address the objective of better enabling development within natural environmental limits, the response to the Waitangi Tribunal decision and issues raised by iwi leaders.
- 91.2 We consider the Bills are moving in the right direction to support Cabinet's objectives of the reform to be met, and Select Committee provides an avenue to make further refinements if required. We recognise the importance of key system components being developed fully following the legislation (eg NPF, RSS, NBA plans) to maximise the benefits of reform being realised.
- 91.3 The success of the reforms will depend on a well-targeted and resourced implementation programme, including across the Crown's agencies, local government and iwi, hapū, Māori.

### Remaining decisions

- 92 In 2012, on behalf of the Crown, Deputy Prime Minister Hon Bill English acknowledged that Māori have rights and interests in freshwater and geothermal resources, as the Supreme Court subsequently recorded and commented:<sup>20</sup>

Mr English summarised the Crown position as being that it acknowledges that Māori have "rights and interests in water and geothermal resources". [...] The Crown position is that any recognition must "involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use. Currently

<sup>20</sup> *New Zealand Māori Council v Attorney General* [2013] NZSC 6 at [145], on appeal from *New Zealand Māori Council v Attorney-General* [2012] NZHC 3338.

the Ministry for the Environment has responsibility for progressing policy development around these issues.” The Court should accept that it is not an empty exercise.

93 Ministers have made a commitment that RM reform will not preclude options for addressing these rights and interests. And it was agreed at MOG #16 that direction on allocation methods (including the allocation principles of sustainability, equity and efficiency) may be issued through the NPF. This direction would then inform subsequent NBA plan content.

94 However, Māori have expressed concern about how rights and interests may be impacted, particularly in implementation such as RPC developing allocation provisions in NBA plans. Iwi leaders have asked us to consider two proposals to address this.

95 I seek agreement to these two proposals, to provide confidence in the legislation that progress on freshwater and geothermal rights and interests will be made:

95.1 the establishment of a freshwater and geothermal working group (working group)

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

96 These proposals seek to strike a balance between:

96.1 providing confidence to iwi/hapū that meaningful progress on freshwater and geothermal allocation matters will be made and that there is a clear pathway to for this at the local level

96.2 a staged process that provides the time and space for important detailed elements for implementation of these proposals to be worked through (key to this is the timing outlined at paragraph 104)

96.3 enabling the new system and NBA plans (including allocation content) to be implemented while a pathway on freshwater and geothermal rights and interests is progressed.

*Freshwater and geothermal working group*

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98 I propose that the scope of resources to be considered by the working group be RMA-type allocation for freshwater and geothermal resources. This is consistent with the Crown’s 2012 acknowledgement.

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<sup>21</sup> Including in a letter from Freshwater Iwi Leaders Group and Te Wai Māori Trust to the Prime Minister on 22 June 2022.

- 100 There is no proposal to determine, elevate or extinguish claimed proprietary rights through the NBA or resource allocation processes under it.
- 101 The NBA would provide for the establishment of the working group, which would consist of Crown and iwi appointees. Its role would 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.
- 102 The working group would be required to provide the report to the Government with recommendations no later than October 2024. A response from the Government would be required to be tabled in the House of Representatives within 6 months of receiving the report.
- 103 The working group would make recommendations only. It would not be resolving or settling any rights and interests. The allocation principles of the NBA, based on those in the Randerson Panel's report, would continue.
- 104 The Government would not notify any detailed national direction on allocation until after it had responded to the working group's report.<sup>22</sup> Also, the legislative requirement (described below) on the Crown to engage with iwi/hapū would not come into effect until the Government had responded to the working group report.

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

- 105 The NBA would include a requirement on the Crown to engage with iwi/hapū at the local level on freshwater and geothermal allocation matters within NBA plans. The outcome of this engagement may be reflected in an allocation statement if agreed between the Crown and the iwi/hapū.
- 106 The Crown would support the submission of any agreed allocation statement to the RPC; and the RPC must then update the allocation provisions of its NBA plan either through the next plan review or within 5 years of the allocation statement being received (whichever is first). This process will not hold up allocation plans consistent with the NBA being made by the RPC in the meantime.
- 107 The process for Crown engagement with iwi/hapū would be developed and recommended by the working group. Regulations could be used to add statutory weight to the process and framework.

*Shorter-term consents for freshwater*

- 108 Shorter-term NBA consents, of 10 years duration or less, will apply to freshwater takes and discharges until an NBA plan has been updated following receipt of an allocation statement for an area.
- 109 There would be exemptions to shorter-term consent duration, enabling consents for up to 35 years (the standard maximum for resource allocation) where the primary activity is:
- 109.1 renewable electricity generation
  - 109.2 reticulated municipal water supply

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<sup>22</sup> That is, national direction further to the existing references to freshwater allocation in the National Policy Statement for Freshwater Management 2020 (NPS-FM).

109.3 the construction, upgrading or maintenance of specified nationally significant infrastructure.

110 It is important that the duration of consents for the likes of new water storage infrastructure providers is long enough to provide sufficient investment certainty. There may need to be discussion on this issue, and potential further exemptions, at select committee.

*Resource user charges*

111 The MOG decided to expand the range of resources that charges could be levied on to make them more robust (charges being payment for the use of a resource – whether as a charge, fee, levy or tax).

112 I propose to defer this expansion until the Government has responded to the working group report. In the interim I recommend that existing provisions enabling rents/royalties/charges be carried over from the RMA to the NBA (under section 360 and/or 64A of the RMA covering sand, shingle shell and other natural material and occupation of marine/river space).

113 This 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 (Te Takutai Moana Act).

114 Any resource user charges other than those already authorised by statute would require Parliamentary approval.

*Preservation clause*

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117 Consistent with the working group and allocation statements, I propose that:

117.1 a preservation clause be included in the SPA and NBA

117.2 the clause cover freshwater and geothermal resources.

118

119 I therefore propose that the preservation clause provide to the following effect:

119.1 the SPA and NBA 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

119.2 the preservation clause will not affect the validity of any the functions, duties and powers carried out under the SPA and NBA.

#### *Te Oranga o te Taiao Statements*

120 I propose that the NBA will enable iwi and hapū to submit their own Te Oranga o Te Taiao statements (which may include their position on allocation matters) to RPC. These statements would not have statutory weighting.

#### *Decisions required to maintain the policy intent of existing national direction in the NPF*

121 As work on re-drafting existing RMA national direction (RMA ND) into the NPF has progressed, it has become clear 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 ND in the NPF.

122 In particular, these decisions would impact the policy intent of the National Policy Statement for Freshwater Management 2020 (NPS-FM) and the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 with respect to freshwater management units (FMUs) and airsheds. This is because FMUs and airsheds may not correspond to management units set under the NBA.

123 I therefore propose amending the decisions about matters relevant to setting management units in the NBA so that they do not necessarily apply to management units for limits and targets for freshwater or air (at least for the first generation of NBA plans). I do not propose amending the decisions in relation to other domains for which limits and targets are required.

124 In implementing the NPS-FM, regional councils are required to identify FMUs, and to notify plan changes to implement the NPS-FM no later than 31 December 2024. Airsheds and associated monitoring systems have also been set by councils to manage air quality. The intention is to ensure a smooth transition from the RMA to the NBA, and the proposed amendment will ensure those management units do not require significant re-working when incorporated into NBA plans.

#### *Setting up subcommittees to support RMA freshwater planning content in NBA plans*

125 Significant work is being undertaken by regional councils to give effect to the NPS-FM through developing freshwater content in regional plans.

126 A key difference between the processes to develop freshwater plan content under the RMA and the NBA, is that content will no longer be prepared (and final decisions made) by regional councils. These decisions will instead be made by regional planning committees (RPC), who will be stewards of the new system.

127 To continue to support the work on giving effect to the NPS-FM (which will be carried over into the NPF), I propose that:

127.1 the NBA will enable a subcommittee of an RPC to be established in each region to make recommendations on proposed freshwater plan provisions in the first NBA plans, with this to be turned on region by region through an Order in Council as required



- 127.2 the subcommittee be comprised of members nominated by the regional council and Māori appointing bodies. Some Treaty settlements may influence the nature of Māori representation on a subcommittee
- 127.3 the NBA will not put requirements on composition of subcommittees, meaning that (as with RPC) the Government is not mandating a 50:50 co-governance model for them
- 127.4 the subcommittee's role would be to make recommendations to the RPC on the proposed content of the freshwater component of the NBA plan, prior to notification of the plan.
- 128 The independent hearing panel (IHP), which will make recommendations to an RPC on all aspects on an NBA plan including freshwater content, will benefit from having skills/experience in freshwater quality, quantity and ecology
- 129 I propose that the NBA require the Chief Environment Court Judge, when appointing members to an IHP, to ensure the IHP 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*

- 130 I propose that a fast-track designations and resource consenting pathway based on the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) will be available for a defined set of infrastructure projects listed in paragraph 132.
- 131 To assist consideration of this matter, MfE commissioned two reports on carrying a fast-track pathway into the NBA. One report (authored by Judge Laurie Newhook) recommended that a fast-track pathway be enabled in the NBA for specific infrastructure, and the other (authored by Guy Salmon) recommended that a fast-track process not continue.
- 132 The MOG has agreed in principle to include a fast-track pathway in the NBA; and I propose that the set of infrastructure projects eligible for this pathway be:

*Communications*

- 132.1 broadcasting facilities
- 132.2 telecommunications networks

*Energy*

- 132.3 electricity and gas distribution and transmission networks
- 132.4 renewals of consents for renewable energy generation (including hydro)
- 132.5 wind and solar energy generation

*Housing*

- 132.6 housing developments that significantly contribute to addressing a region's housing demand or need, including in scale or type (eg affordable houses)

*Transport*

132.7 airports, including any airport-related navigation infrastructure

132.8 ports operated by port companies

132.9 state and local rail (including interisland ferry facilities)

132.10 state and local roads and rapid transit facilities

*Water*

132.11 flood control and protection (including drainage)

132.12 drinking water, wastewater or stormwater distribution or treatment

*Other central and local government assets*

132.13 corrections facilities (including the provision of rehabilitation and reintegration)

132.14 defence facilities operated by the New Zealand Defence Force

132.15 educational facilities

132.16 fire and emergency services facilities

132.17 health facilities.

133 The activities in paragraph 132 are defined, as appropriate, by various pieces of legislation applying to them.

134 Similar to the FTCA, 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).

135 Also similar to the FTCA, 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 (which would be appointed by the Chief Environment Court Judge).

**Timing and process for the introduction of legislation for the SPA and NBA**

136 Passing legislation for the SPA and NBA in this term of government will require the bills to be introduced to the House soon. To this end, it is intended that:

136.1 the near-final draft bills be submitted to the Cabinet Business Committee (CBC) meeting on 31 October 2022

136.2 the Parliamentary Counsel Office (PCO) continue making any final adjustments to the bills following the CBC meeting, and prior to their introduction to the House.

137 An indicative timeline for introducing and passing the legislation is:

137.1 **November 2022:** SPA and NBA bills introduced to the House and first reading

137.2 **November 2022 – May 2023:** Select committee process

137.3 **May 2023:** Second reading

137.4 **June 2023:** Committee of the Whole House and third reading.

138 Ministers have agreed to the consequential amendments needed to other legislation arising from the repeal of the RMA and its replacement with the NBA.

*Trade-offs and risks associated with proposed timing*

139 The resource management reform project will have taken four years from setting up the Randerson panel to the enactment of the new legislation. This reflects the scope and complexity of the project.

140 While the work done on the reform has been of high quality, PCO will need to continue to polish the technical quality of the bills. And as with any major reform, I expect experience will show areas for future improvement.

141 To ensure the bills are efficient and workable, MfE has established an external system efficiency working group to evaluate the system from an efficiency perspective and identify improvements. The group has a range of highly experienced experts on it. The group is due to provide a final report in mid-December 2022, and its recommendations will inform the polishing of the bills.

142 The polishing work may result in a technical Supplementary Order Paper being referred to the select committee considering the bills early in 2023.

143



**Transition and implementation**

144 A well-managed transition and effective implementation are critical to the success of the new resource management system. Work is well underway to set up a transition and implementation programme ahead of the legislation coming into force. The

shortcomings in RMA implementation show that sufficient funding will be critical to the successful implementation of the new system.

- 145 Budget 2021 provided \$131.8 million for the design, enactment, transition, capacity building, and initial implementation of the new system. Budget 2022 provided an additional \$179 million, \$164 million of which is held in tagged contingency. Given the scope of the work required to implement the new system, decisions will need to be made to ensure funding is allocated to areas most important for implementation over the next 4 years.
- 146 Some areas of transition and implementation will be particularly important and will present some of the biggest challenges and risks for successful delivery. These areas include:
- 146.1 the development of the NPF and limits and targets by central government with the involvement of local government and Treaty partners
  - 146.2 establishing the new regional governance arrangements and working with three regions to develop 'model' RSS and NBA plans
  - 146.3 supporting Māori participation and involvement, including the establishment of the National Māori Entity, and transitioning Treaty settlement commitments into the new system
  - 146.4 assessing how the system is being implemented and impacting across different sectors and the costs and benefits this creates for system users
  - 146.5 maintaining progress across key government priorities, including housing, climate change and freshwater.
- 147 Officials will provide more detailed advice on the approach to implementation, including how risks will be managed.

*MOG decisions relating to transition and implementation*

- 148 The MOG has agreed to a sequential rollout and tranced approach to implementation so that different groups of regions will develop their first-generation RSS and NBA plans at different times. The first tranche of RSS and NBA plans will involve the three 'model' regions.
- 149 This approach aims to accelerate overall implementation, provide a broad base to test the components of the new system, and provide system partners, implementers and users with clarity and certainty around implementation expectations. I expect to identify the first regions to undertake a model RSS and NBA plan process in late 2022.
- 150 The MOG noted that investment in a well-integrated digital infrastructure would underpin an effective, efficient resource management system.<sup>23</sup> I will seek decisions on the capital investment in digital transformation at a later date.

*Ministerial oversight of the implementation phase*

- 151 Given the size and scale of the reform and the range of ministerial and agency interests in the system, I expect Ministers will have a role in overseeing the

<sup>23</sup> MOG #15, Paper 1, recommendation 36(a).

implementation phase. I will seek decisions on the mechanisms to enable Ministerial oversight at a later date.

- 152 The development of the NPF will require a strong cross-government approach to help resolve tensions between the reform objectives and support a more efficient system on the ground. Each iteration of the NPF, including the first iteration, will go through a Cabinet process.
- 153 The Spatial Planning Reform Board has been responsible for developing the SPA. I intend that this board be repurposed to provide ongoing governance, stewardship and oversight of the SPA and central government input into the development and implementation of the first RSS. I will bring a paper to Cabinet later this year on the functions and membership of a new IEB to administer the SPA.

#### *Upholding Treaty of Waitangi settlements*

- 154 Ministers have agreed to the legislative process to uphold Treaty of Waitangi settlements. An omnibus bill or bills is proposed to amend relevant settlement Acts and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act) informed by discussions with those affected groups.
- 155 No previous proposed legislation has had the scale of impact on existing Treaty settlement commitments that the new reform legislation does, because of the extent to which the RMA forms part of those settlement commitments.

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- 157 The omnibus bill(s) is also likely to include amendments to the SPA and NBA to ensure they remain aligned with the settlement legislation.

- 158 The timing of the omnibus bill(s) will depend on the timing of the SPA and NBA, and how long it takes for agreement on deeds to amend to be reached with PSGEs. Because the content of the omnibus bill(s) can only be finalised once the content of the SPA and NBA is certain, there will be a delay between the SPA and NBA receiving Royal Assent and the omnibus bill(s) upholding Treaty settlements and NHNP Act being enacted.

- 159 Given this delay, I am working with other Ministers to determine how to provide legislative clarity in the SPA and NBA as to how the Crown intends to uphold impacted Treaty settlements and the NHNP Act.

- 160 Officials are also working with groups where the Crown has committed arrangements through negotiations but settlement legislation has not been enacted, to determine how their arrangements will be upheld and the necessary form of commitment required before the introduction of the SPA and NBA.

#### *Upholding takutai moana rights*

- 161 Te Takutai Moana Act sets out processes for the recognition of iwi, hapū and whānau customary interests in the common marine and coastal area (as customary marine

title and protected customary rights) and specifies the rights which flow from that recognition. Cabinet agreed when commencing the resource management reform to uphold resource management related rights under Te Takutai Moana Act.

- 162 Upholding these rights will require provisions in the SPA and NBA, and amendments to Te Takutai Moana Act. Delegated Ministers have made policy decisions on this issue informed by advice from independent experts on takutai moana issues.<sup>24</sup> Provisions to uphold the rights will be worked through with PCO.

### Financial Implications

- 163 This paper proposes additional work to address freshwater and geothermal allocation matters:
- 163.1 the establishment of a freshwater and geothermal working group, which will run through until October 2024. The costs of this group and associated work will be met from within existing funding
- 163.2 Crown and iwi/hapū engagement at the local level on these matters. The scale of this work, and the accompanying costs are unquantifiable at this stage as it is dependent on the outcomes of the working group. Any funding needs, which could be substantial, would be sought via Budget 2025.

### Legislative Implications

- 164 Resource management reform will be implemented through new primary legislation that will repeal and replace the RMA. Amendments to other legislation will be needed to give effect to the reform.
- 165 The RMA also interfaces with over 70 pieces of Treaty settlement legislation. The proposed legislative process to ensure Treaty settlements, and settlements currently being negotiated are upheld, as well as the NHNP Act, is explained above.<sup>25</sup>

### Impact Analysis

#### Regulatory Impact Statement

- 166 The SAR is attached at Appendix 3. It is supplementary to the interim RIS provided for the NBA exposure draft. Among other things, it comments on the transitional period extension for some changes, to allow more detailed consultation with affected Māori.
- 167 The SAR is described as follows:
- 167.1 A quality assurance panel with members from the Treasury, Ministry for the Environment and Ministry of Business, Innovation and Employment has reviewed the Supplementary Analysis Report (SAR), “The new resource management system” produced by the Ministry for the Environment dated 22 July 2022. The SAR was modified by the Ministry on 21 September 2022 and an Addendum was inserted which provides an update on further policy

<sup>24</sup> Members were selected for their expertise in takutai moana rights and resource management and comprised Tom Bennion, Andrew Irwin, Matanuku Mahuika, Sarah Shaw and Annette Sykes.

<sup>25</sup> BRF-1656, RM Reform 177 refers.

decisions that have been made since the SAR was finalised. The panel considers that it partially meets the quality assurance criteria.

- 167.2 The SAR represents a lot of work on a major and complex reform. It clearly states the problem with the current system and makes the case for change. The SAR outlines the potential for significant benefits from system-wide reform relative to the status quo.
- 167.3 The pace at which the proposals have been developed means that much of the detailed policy and implementation decisions are still to be made. This makes it very challenging for the SAR to fully address the range of likely impacts, costs, benefits and risks associated with the chosen reform option, and how it will be implemented. There is a risk that the costs, challenges and any delays to implementation could impact on the realisation of the stated benefits of the reforms. However, the SAR highlights issues which can usefully inform remaining decisions to help manage some of these risks.
- 167.4 A range of consultation has been undertaken, but the full range of specific proposals has not yet had the benefit of broad public consultation. Proposed future consultation will therefore be important as the potential costs and benefits of changing the country's resource use planning documents and consenting arrangements will be large – not just in terms of local authority processing costs. Māori, community, business and resource users will all face potential costs and benefits in ensuring their interests are protected and reflected throughout the process.
- 167.5 The SAR and Addendum acknowledge that there are significant uncertainties and risks in key areas including: Treaty obligations, Māori participation and representation, changes in resource allocation, sector impact, and system funding requirements. The Addendum indicates the intention to postpone some changes until more extensive consultation has been undertaken with Māori. It will be important to ensure that Māori interests are well integrated with wider system changes that are likely to be occurring in parallel.
- 167.6 As much of the detail around how the new system will be operationalised has yet to be developed, there is limited quantitative evidence of the effectiveness of the chosen option. However, further in-depth work is proposed in the SAR and impact analysis will be required to support future regulatory decisions. The panel considers that developing a detailed implementation strategy will be essential for ensuring the effective implementation of the new system. It will also be important to more clearly outline the intentions for post-implementation review.

### **Climate Implications of Policy Assessment**

- 168 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirmed that the CIPA requirements do not apply to this proposal as the threshold for significance is not met. An assessment of the emissions impacts of policy proposals will be included in the Cabinet paper seeking agreement to introduce the bills to the House.

### **Population Implications**

- 169 Resource management reform will affect all New Zealanders, including the wellbeing and health of current and future generations. The reform is intended to improve

outcomes in line with the reform objectives and create a more equitable resource management system.

- 170 Under the new system, there will be significant change to how urban areas are designed and planned. A key aspect of the reform objectives is a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure. This will improve how urban areas function, with benefits for a large proportion of the population and many communities.
- 171 The reform will also impact rural communities. Better enabling development within limits will ensure that economic, social, cultural, health, safety and environmental benefits are provided for in rural areas.
- 172 The reform will be significant for Māori, including for existing Treaty settlement legislation. The intent of the reform is to establish a resource management system that achieves a much more effective strategic role for Māori.

### **Human Rights**

- 173 These proposals are considered to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Resource management reform aims to improve people's economic, environmental, social and cultural wellbeing, including health and safety, which will have a positive contribution to New Zealanders' human rights.
- 174 The full bills will be assessed against the New Zealand Bill of Rights Act 1990 prior to introduction to ensure they are consistent with the Act. The conclusion of this assessment will be included in the Cabinet paper seeking agreement to introduce the bills to the House.

### **Consultation**

- 175 The following agencies were consulted on an earlier version of this paper: Crown Law; Department of Conservation; Department of Corrections; Department of Internal Affairs; Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry for Culture and Heritage; Ministry of Education; Ministry of Health; Ministry of Housing and Urban Development; Ministry for Primary Industries; Ministry of Transport; New Zealand Defence Force; Oranga Tamariki; PCO; Te Arawhiti; Te Puni Kōkiri; and Treasury. The Department of Prime Minister and Cabinet was informed.

### **Communications**

- 176 I intend to make an announcement about the introduction of the SPA and NBA bills.

### **Proactive Release**

- 177 I intend to proactively release this paper as soon as practical following Cabinet's approval of this paper.



## Recommendations

The Minister for the Environment recommends that Cabinet:

### *Underperforming resource management system*

- 1 **note** 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 **note** that resource consenting has become more costly, with council consenting fees increasing between 2014/15 and 2018/19 by 66% and 124% for non-notified and notified consents respectively<sup>26</sup>
- 3 **note** that consenting is also taking longer, with median decision-making timeframes increasing by 50% between 2014/15 and 2018/19
- 4 **note** that the New Zealand Infrastructure Commission/Te Waihanga (Infracom) has reported on the negative impacts for infrastructure providers, and has estimated that infrastructure developers are collectively spending \$1.29 billion<sup>27</sup> annually on resource consent processes, representing 5.5% of total project costs
- 5 **note** 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% to 5% of total project costs
- 6 **note** that Infracom has also estimated that decision-making timeframes on consents for infrastructure projects have increased by 150% for consents issued between 2010-14 compared to 2015-19

### *Resource management reform*

- 7 **note** that in 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 **note** 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

<sup>26</sup> The Ministry for the Environment's National Monitoring System, 2014/15 and 2018/19 datasets. (Also applicable to recommendation 3.)

<sup>27</sup> *The cost of consenting infrastructure projects in New Zealand*, a report for The New Zealand Infrastructure Commission, D Moore, J Loan, S Wyatt, K Woock, S Carrick, Z Hartmann, July 2021. (Also applicable to recommendations 5 and 6.)

- 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 **note** 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 **note** that the Environment Committee's recommendations have informed subsequent Ministerial Oversight Group (MOG) decisions on the framework of the new resource management system
- 11 **note** that a list of all matters considered by the MOG and Ministers under delegation is included at Appendix 1
- 12 **note** 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 **note** 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 (PSGEs).
- 14 **note** 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 **note** that the 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 (RPC)
- 16 **note** 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 (NPF) which will provide a stronger, more integrated set of national direction and help resolve conflicts between the proposed Natural and Built Environment Act (NBA) 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 NBA plans
- 16.4 independent hearing panels (IHP), which will help improve plan quality and enable appeal rights to be limited to IHP recommendations not adopted by RPC, 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
- 16.7 a framework to improve environmental outcomes based on environmental limits and targets and on an intergenerational environmental test referring to 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 **note** 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 (RSS) and enabled by NBA 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 developers and households
- 17.3 Infracom is developing an infrastructure chapter for the NPF, 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 **note** that the Spatial Planning Act (SPA) and NBA 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 **note** that a supplementary analysis report (SAR) has been produced that provides an analysis of the reform proposals
- 20 **note** that the SAR indicates, even with conservative (or low-range) assumptions applied, the new system should deliver a cost benefit ratio of 2.58 over the 30-year assessment period (ie \$2.58 in benefits for every \$1 in cost)
- 21 **note** that the SAR indicates, on mid-range assumptions, monetised benefits could realistically deliver a higher cost benefit ratio of 4.90 over the 30-year assessment period (ie \$4.90 in benefits for every \$1 in cost)

- 22 **note** that the SAR references improved environmental outcomes that cannot be monetised in the same way but are also significant
- 23 **note** that regulatory impact analysis will be provided to support future regulatory decisions (eg for the NPF, RSS, or NBA plans)
- 24 **note** that the SAR and an associated summary document will be published when the bills are presented to Parliament

*Progress towards the reform objectives*

- 25 **note** 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 **note** that work will continue through the legislative process and the system transition and implementation phase, to ensure the system will meet the reform objectives
- 27 **note** that the Spatial Planning Reform Board, an interdepartmental executive board created under the Public Service Act 2020, has been responsible for developing the SPA, and has emphasised the need for well-targeted and resourced implementation of the reform

*Freshwater and geothermal working group*

- 28 **note** that the Crown acknowledged to the High Court in 2012 that Māori have rights and interests in freshwater and geothermal resources
- 29 **agree** that the NBA provide for the establishment of a freshwater and geothermal working group (working group), consisting of Crown and iwi appointees
- 30 **agree** that the scope of resources to be considered by the working group be RMA-type allocation for freshwater and geothermal resources
- 31 **agree** that the working group's role is 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 **agree** that the NBA require the working group to provide the report to the Government by 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 **note** 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 **note** that claimed proprietary, or common law, interests:
- 34.1 are separate from the scope of the working group
- 34.2 
- 34.3 will not be determined, elevated or extinguished by the NBA or resource allocation processes under it

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

- 35 **agree** that the NBA require the Crown to engage with iwi/hapū at the local level on resource freshwater and geothermal allocation matters within NBA 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 **agree** that the Crown will support the submission of any agreed allocation statement to an RPC
- 37 **agree** that the RPC must then update the allocation provisions of its NBA plan either through the next plan review or within 5 years of the statement being received (whichever is first)
- 38 **note** 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 **note** 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 **agree** that only shorter-term NBA consents, of 10 years or less, for freshwater takes and discharges can be granted until an NBA plan has been updated following receipt of an allocation statement for an area, except as specified in recommendation 41
- 41 **agree** that there be exemptions to the shorter-term NBA consent duration in recommendation 40, 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 **note** that it is important that 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 **agree** that existing provisions enabling rents/royalties/charges be carried over from the RMA to the NBA (under section 360 and/or 64A of the RMA covering sand, shingle, shell and other natural material and occupation of marine/river space)
- 44 **agree** that the approach at recommendation 43 supersede previous MOG decisions in relation to resource user charges
- 45 **note** 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 **note** that any resource user charges other than those already authorised by statute would require Parliamentary approval

*Preservation clause*

- 47 **agree** to include a Māori rights and interests preservation clause in the SPA and NBA to the following effect:

47.1 these Acts 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 Acts

*Te Oranga o te Taiao statements*

- 48 **agree** that the NBA will enable iwi and hapū to submit their own Te Oranga o Te Taiao statements (which may include their position on allocation matters) to RPC

*Decisions required to maintain the policy intent of existing national direction in the NPF*

- 49 **note** 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 NPF

- 50 **note** that in implementing the National Policy Statement for Freshwater Management 2020 (NPS-FM), regional councils are required to identify freshwater management units (FMUs), and to notify plan changes to implement the NPS-FM no later than 31 December 2024

- 51 **note** that in implementing the Resource Management (National Environmental Standards for Air Quality) Regulations 2004, regional councils are required to identify airsheds

- 52 **note** that FMUs and airsheds identified by regional councils may not correspond to management units set under the NBA

- 53 **note** that to ensure a smooth transition from the RMA to the NBA, and to avoid significant re-working of existing FMUs and airsheds, it is necessary to adjust MOG decisions on management units as they relate to freshwater and air

- 54 **agree** 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 NBA plans)

*Setting up subcommittees to support RMA freshwater planning content in NBA plans*

- 55 **note** that significant work is being undertaken by regional councils to give effect to the NPS-FM through developing freshwater content in regional plans

- 56 **note** that a key difference between the processes to develop freshwater plan content under the RMA and the NBA, is that content will no longer be prepared (and final

decisions made) by regional councils but instead by regional planning committees (RPC), who will be stewards of the new system

57 **note** that it may be desirable to have a specialist subcommittee of an RPC to carry over freshwater content in regional plans (developed under the RMA) into NBA plans, and to continue supporting the RPC in developing freshwater content

58 **agree** that the NBA will enable a subcommittee of an RPC to be established in each region to make recommendations on proposed freshwater plan provisions in the first NBA plans, with this to be turned on region by region through an Order in Council as required

59 **agree** that the subcommittee be comprised of members nominated by the regional council and the Māori appointing body

60 **note** that some Treaty settlements may influence the nature of Māori representation on a subcommittee, but that (as with RPC) a 50:50 co-governance model for them is not being mandated for them

61 **agree** that the subcommittee's role would be to make recommendations to the RPC on the proposed content of the freshwater component of the NBA plan, prior to notification of the plan

62 **note** that an IHP, which will make recommendations to an RPC on all aspects on an NBA plan including freshwater content, will benefit from having skills/experience in freshwater quality, quantity and ecology

63 **agree** that the NBA will require the Chief Environment Court Judge, when appointing members to an IHP, to ensure the IHP 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 **agree** to include a fast-track designations and resource consenting pathway, based on the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), in the NBA, which will be available for a defined set of infrastructure projects in recommendation 65

65 **agree** 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 (eg 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 **note** that the activities in recommendation 65 are defined, as appropriate, by various pieces of legislation applying to them

67 **agree** that similar to the FTCA, 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 **agree** that, also similar to the FTCA, 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 **note** that an expert consenting panel would be appointed by the Chief Environment Court Judge

*Timing and process for the introduction of legislation for the SPA and NBA*

70 **note** that bills for the SPA and NBA will need to be introduced to the House soon to enable them to be passed in this term of government

71 **note** 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 **note** that the polishing of the bills will be informed by recommendations from an system efficiency working group comprising a range of highly experienced experts



*Transition and implementation*

- 73 **note** the importance of a well-managed transition and effective implementation to the success of the new resource management system
- 74 **note** 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 RSS and NBA plans at different times
- 75 **note** that this avoids a dual system where the NBA 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 **note** that Ministers will have a role in overseeing the implementation of the new system via mechanisms to be confirmed
- 77 **note** 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 SPA

*Upholding Treaty of Waitangi settlements and takutai moana rights*

- 78 **note** that MOG ministers have agreed a legislative process to uphold Treaty of Waitangi settlements that will involve deeds to amend being agreed with PSGEs and an omnibus bill or bills to amend relevant settlement Acts
- 79 **note** 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 SPA and NBA and amendments to the Act.

Authorised for lodgement

Hon David Parker

Minister for the Environment

**Appendix 1: System map and list of Ministerial Oversight Group (MOG) and delegated decisions papers considered to date**

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# Appendix 1A: Resource Management Reform System Map

## Natural and Built Environment Act

- Enable Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment
- Enable people and communities to use the environment in a way that supports intergenerational wellbeing

## Spatial Planning Act

- Long-term, strategic spatial planning relating to necessary or anticipated major land use changes
- Integrate planning, transport, infrastructure and associated investment

## Climate Adaptation Act

- Address complex issues associate with managed retreat

### System Stewardship and Oversight

How are the system and its parts performing?

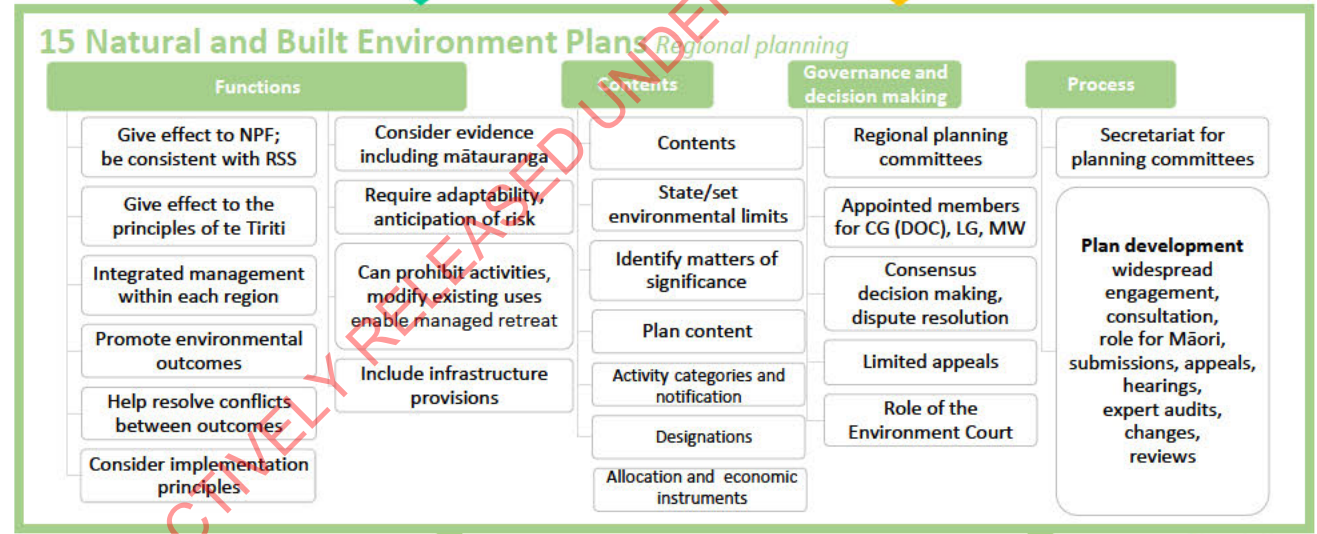
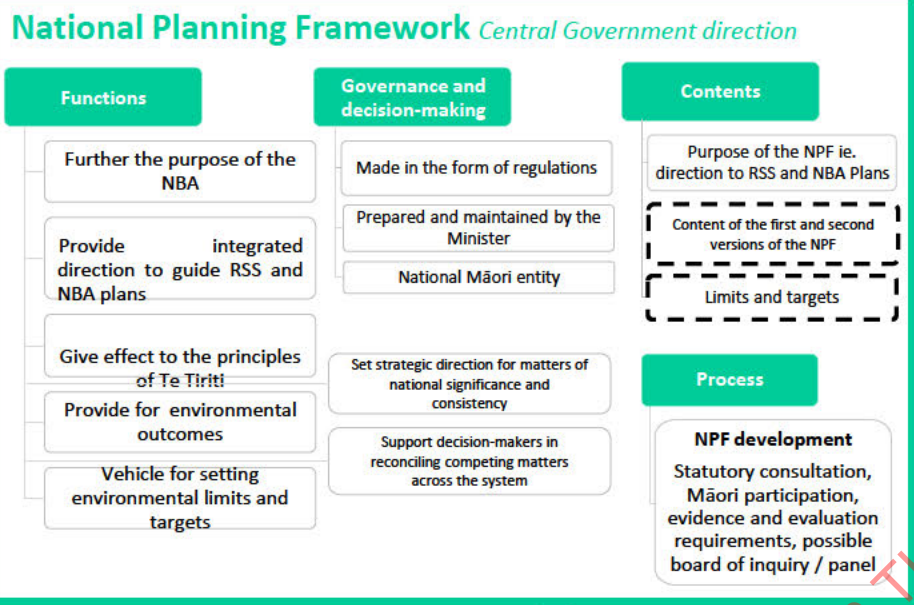
Are obligations being fulfilled?

Is the system giving effect to the principles of Te Tiriti?

Where does it need to change?

### Key system components

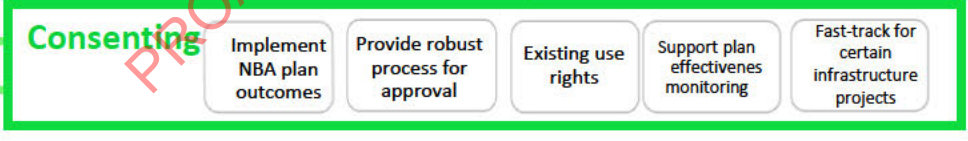
- Governance and decision-making in the system
- Role of local and central government
- Role of Māori in the system
- Funding the system
- Allocation and economic instruments
- Upholding Treaty Settlement legislation
- Resulting changes to other legislation
- Transition
- Implementation
- Digital transformation



**RSSs to influence council funding plans**  
(e.g. Long-Term Plans (LGA), Regional Land Transport Plans (LTMA) take active steps towards implementing RSS)

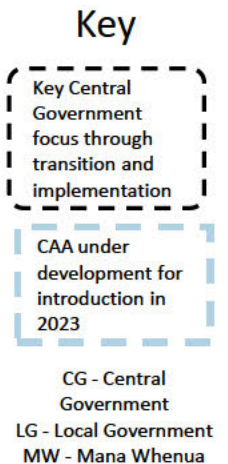
**External components**  
**Statutory and non-statutory plans feed into RSS/ NBA plans**  
(e.g. iwi management plans, conservation management strategies; fisheries management plans; technical guidance documents; documents referred to in the NPF; council climate change risk assessments)

**CAA policy instruments (TBC)**



### Monitoring and Reporting

- State of the Environment
- Limits and targets
- Long-term NBA outcomes
- Matters of significance to Māori
- NPF and Planning/RSS Policy Effectiveness



# Appendix 1B: Record of Ministerial Oversight Group and delegated decision-making

**Table 1: MOG Decision-making**

Agenda Item	Title of Papers
<b>MOG #1 – 26 January 2021</b>	
Item 1: Confirming Governments expectations of the outcomes of resource management reform	Paper on confirming Governments expectations of resource management reform
	What resource management reform should seek to achieve (A3)
Item 2: MOG process and decision making, including engagement with local government, and working with Te Tai Kaha	Paper on overall process for the Ministerial Oversight Group
	Draft Terms of Reference; RM Reform Ministerial Oversight Group
	Schedule of Ministerial Oversight Group meetings and decisions needed
<b>MOG #2 – 15 February 2021</b>	
Item 2: Agreeing outcomes of reform	Paper on confirming expectations of resource management reform outcomes
	Achieving the resource management reform outcome: housing supply is a response to demand A3
Item 3: Purpose and supporting provisions of the Natural and Built Environments Act (NBA)	Paper on further policy decisions on the purpose and supporting provisions of the Natural and Built Environments Act
<b>MOG #3 – 8 March 2021</b>	
Item 2: Agreeing policy for the National Planning Framework	Further policy proposals for the National Planning Framework
<b>MOG #4 – 22 March 2021</b>	
Item 2: Natural and Built Environment Plans	Paper 1: Overview of content in the exposure draft of the NBA and the full NBA Bill
	Paper 2: Further proposals for Natural and Built Environment Plans
Item 3: Carrying over parts of the RMA for drafting	Paper 3: Carrying over certain parts of the Resource Management Act that are unlikely to have different policy intent in new system
Item 4: Strategic Planning Act Regional Spatial Strategies	Paper 4: Testing ambition for Regional Spatial Strategies under the Strategic Planning Act
Item 5: Climate Adaption Act – degree and nature of central government involvement in managed retreat processes	Paper 5: Climate Adaption Act – Degree and nature of central government involvement in managed retreat processes
<b>MOG #5 – 7 April 2021</b>	
Item 2: Select Committee inquiry into the NBA exposure draft	Paper 1: Approach for Select Committee inquiry into the Natural and Built Environments Act exposure draft
<b>MOG #6 – 3 May 2021</b>	
Item 1: NBA Treaty clause and feedback from regional hui with iwi and hapū	Paper 1: NBA Treaty clause and feedback from regional hui with iwi hapū
Item 2: Te Mana o Te Taiao	Paper 2: Te Mana o Te Taiao
Item 3: Panel's approach to NBA plan governance and proposed governance structure for new water services entities	Paper 3: Panel approach to NBA plan governance
	Paper 4: Three waters service delivery Reforms: Update on key aspects of the reforms
Item 4: Infrastructure subgroup report back and general MOG business	Paper 5: General MOG business: use of subgroups and infrastructure subgroup report back
<b>MOG #7 – 31 May 2021</b>	
Item 1: Policy decisions on the Strategic Planning Act	Paper 1: The Strategic Planning Act: purpose, function and scope of regional spatial strategies, and integration with the resource management system
Item 2: Te Oranga o te Taiao	Paper 3: Including Te Oranga o te Taiao in the Natural and Build Environments Act exposure draft
Item 3: Addressing gaps and inconsistencies between proposed NBA outcomes and mandatory direction in the National Planning Framework	Paper 2: Addressing gaps and inconsistencies between proposed NBA outcomes and mandatory direction in the National Planning Framework
<b>MOG #8 – 14 June 2021</b>	
Item 1: System governance	Paper 1: System governance and decision-making
<b>MOG #9 – 6 July 2021</b>	
Item 2: Land and resource use and responsibilities under the NBA	Slide pack 1: A more enabling permissions regime
Item 3: Initial Strategic Discussion on Governance Options	Slide pack 2: Initial Strategic Discussion on Governance Options
<b>MOG #10 – 11 August 2021</b>	

Item 1: A more enabling consenting regime	Paper 1: A more enabling consenting regime
Item 2: Land and resource use responsibilities under the NBA	Paper 2: Land and resource use responsibilities under the Natural and Built Environments Act
Item 3: A robust compliance monitoring and enforcement (CME) regime	Paper 3: A robust compliance monitoring and enforcement (CME) regime Including slides – MOG #10 – A robust compliance monitoring and enforcement (CME) regime
Item 4: Monitoring and oversight	Paper 4: Monitoring and oversight
<b>MOG #11 &amp; #12 – 4 October 2021</b>	
Item 2: Governance and decision-making	Paper 1: Governance and decision-making
Item 3: Māori participation in the system	Paper 2: Māori participation in the system
Item 4: Regional spatial strategy development and reviews, and geographical scale	Paper 3: Regional spatial strategy development and review, and geographical scale
Item 5: NBA plan development processes	Paper 4: NBA plan development processes
Item 6: Establishing and implementing the new system	Paper 5: Establishing and implementing the new system.
<b>MOG #13 – 18 October 2021</b>	
Item 1: An efficient and effective planning and consenting system	Paper 1: An Efficient and effective planning and consenting system
Item 2: Consequential amendments	Paper 2: Consequential amendments
Item 3: Protective Mechanisms in the Natural and Built Environments Act	Paper 3: Protection Mechanisms in the Natural and Built Environments Act
<b>MOG #14 – 17 November 2021</b>	
Item 1: Strategic Planning Act (SPA) – Problem statement vision and the critical shifts we need to achieve (and report-backs from MOG #17)	Paper 1: Strategic Planning Act (SPA) – Problem statement vision and the critical shifts we need to achieve (and report-backs from MOG #17)
Item 2: Strategic Planning Act Implementation agreements and links to funding processes	Paper 2: Strategic Planning Act Implementation agreements and links to funding processes
Item 3: Courts and Appeals in the new Planning System	Paper 3: Courts and Appeals in the new Planning System
<b>MOG #15 – 13 December 2021</b>	
Item 1: Funding the Operation of the Resource Management System	Paper 1: Funding the Operations of the Resource Management System
Item 2: Critical Issues and Delegated Decisions Item 2B: Takutai Moana Rights	Paper 2: Critical issues and delegated decisions
Item 3: Enabling Infrastructure in the New System through designations	Paper 3: Enabling Infrastructure in the new system through designations.
<b>MOG #15B – 10 March 2022</b>	
Item 1: Presentation by Ministry for the Environment Officials	Presentation: Transforming New Zealand's Resource Management System – What it looks like as a whole. Overview of – A. The reform objectives and key system changes B. Key decisions made to date C. How the future system will differ from the current system D. Indicative transition processes E. The critical issues remaining for decisions F. Key anchor points across remaining decisions
<b>MOG #16 – 29 March 2022</b>	
Item 1: Role of Central Government in the new system	MOG #16 Paper 1: Role of Central Government in the new system.
Item 2: Resource Allocation and User Charges	MOG #16 Paper 2: Resource Allocation and User Charges.
Item 3: Environmental Limits and Targets	MOG #16 Paper 3: Environmental Limits and Targets.
Item 4: Transitional Pathways	MOG #16 Paper 4: Transition Pathways
Item 5: Update on Targeted Engagement	Paper 5: Update on targeted engagement on RM Reform – our future resource management system.
<b>MOG #17 – 12 April 2022</b>	
Item 1: Regional Governance and decision-making	Paper 1: Regional governance and decision-making for plans in the reformed resource management system.
Item 2: Role of Māori in the system	Paper 2: Role, funding and participation of Māori in the RM system. (Including separate annexes 0 – E)

Item 3: NBA decision-making framework, including environmental limits	Paper 3: NBA Decision-making Framework
Supplementary papers circulated outside the meeting	BRF-1480 RM Reform 146 – Papers for Ministerial Oversight Group: Institutional arrangements for central government and strategic decisions about the NPF
	Paper 4: Strategic decisions about the National Planning Framework
	Paper 5: BRF-1354: Institutional arrangements for central government
<b>September 2022 Round-robin MOG paper</b>	
BRF-1965 RM Reform 223 - Decisions to resolve remaining policy and drafting issues needed for the NBA and SPA	

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**Table 2: Delegated decision papers by topic**

At 8 September 2022

Topics	Title of papers
<b>System-wide matters</b>	
System Governance	<ul style="list-style-type: none"> <li>BRF-1639 Delegated decisions on Planning Boundaries for Te Taihū. Top of the South Island</li> <li>BRF-1716 Delegated decisions on regional governance and decision-making arrangements</li> </ul>
Role of Central Government in the new system	<ul style="list-style-type: none"> <li>BRF-961 Role of the Minister of Conservation in the Future System</li> </ul>
Role of Māori in the system	<ul style="list-style-type: none"> <li>BRF-1562 Delegated decisions on Māori appointment process to Natural and Built Environments and Spatial Planning Committees</li> <li>BRF-1568 Detailed decisions for addressing Māori land matters in the new Resource Management system</li> <li>BRF-2057 Definitions of Māori land proposed for RM Reform; NPS-HPL; NPSIB</li> <li>BRF-1608 Delegated decisions on further details about the National Māori Entity</li> <li>BRF-1635 Delegated decisions on the design of Mana Whakahono ā Rohe, Joint Management Agreements and Transfer of Powers tools</li> <li>BRF-1929 RM Reform 218 – Delegated decisions on upholding existing agreements under the RMA – Mana Whakahono a Rohe, Joint Management Agreements and Transfers of Power</li> <li>BRF-1679 Delegated decisions on Māori freshwater rights and interests preservation clause and statutory timeframe (may fit better elsewhere – allocation?)</li> <li>BRF-1692 Delegated decisions for describing Māori representative organisations and record keeping requirements</li> </ul>
Connection with climate outcomes	<ul style="list-style-type: none"> <li>BRF-1220 Detailed decisions for linking the new resource management system with the climate response system</li> </ul>
Transitioning Treaty settlements	<ul style="list-style-type: none"> <li>BRF-1714 Upholding statutory acknowledgements and Treaty Settlement Joint Entities in the new resource management system</li> <li>BRF-1740 Delegated decisions on upholding takutai moana rights</li> <li>BRF-1822 Upholding Treaty settlements and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 in the SPA and NBA: General Clause</li> <li>BRF-1994 RM Reform 224 – Upholding Treaty settlements and NHNP Act in the SPA and NBA: Further briefing on legislative provisions</li> </ul>
Transition and implementation	<ul style="list-style-type: none"> <li>BRF-1730 Delegated decisions on Transitional provisions for the SPA and NBA – Key Transitional Issues</li> <li>BRF-1848 Delegated decisions on Amendments to other legislation consequential to the Natural and Built Environments Act</li> <li>BRF-1901 Key commencement, savings and transitional provisions for decision under the NBA and SPA</li> </ul>
System monitoring and oversight	<ul style="list-style-type: none"> <li>BRF-1536 Detailed decisions for system monitoring and oversight (NBA and SPA)</li> </ul>
Consequential amendments	<ul style="list-style-type: none"> <li>BRF-2046 RM Reform 230 – Delegated decisions on Amendments to other legislation consequential to the Natural and Built Environments Act</li> </ul>
<b>Spatial Planning Act</b>	
SPA	<ul style="list-style-type: none"> <li>BRF-1225 Integrating the Local Government Act 2002 and the Land Transport Management Act 2003 with the Spatial Planning Act</li> <li>BRF-1538 Delegated decisions for consequential changes to other legislation because of the Spatial Planning Act</li> <li>BRF-1582 Delegated decisions on implementation plans and agreements</li> </ul>
<b>Natural and Built Environments Act</b>	
Decision-making framework	<ul style="list-style-type: none"> <li>Decisions taken between MOG #5 and MOG #6 Paper one – Natural and Built Environment Definitions</li> <li>Decisions taken between MOG #5 and MOG #6 Paper four – Further decisions on the purpose and supporting provisions of the NBA</li> <li>BRF-1530 Delegated decisions on protection of cultural values</li> <li>BRF-1559 Delegated decisions for section 6 replacement provisions (including criteria for biodiversity and highly vulnerable biodiversity)</li> <li>BRF-1964 RM Reform 225 - Advice on Ministerial consultation about BRF-1559 RM Reform 196 – Delegated decisions for section 6 replacement provisions (including criteria for biodiversity and highly vulnerable biodiversity)</li> <li>BRF-1733 Detailed decisions on Natural and Built Environments Act (NBA) plan and consent decision-making framework</li> </ul>
NPF	<ul style="list-style-type: none"> <li>BRF-482 Delegated decisions required for the NPF</li> <li>BRF-1192 Delegated decisions on NPF transitional arrangements</li> <li>BRF-1193 Content and staging of the National Planning Framework</li> <li>BRF-1556 Delegated decisions on the process for prescribing environmental limits and associated targets in the National Planning Framework</li> <li>BRF-1884 RM Reform 221 – Developing environmental limits and associated targets in the National Planning Framework</li> </ul>

Topics	Title of papers
Plan-making	<ul style="list-style-type: none"> <li>• BRF-946 Delegated decisions for NBA plan development processes</li> <li>• BRF-1356 Delegated decisions for plan content, relationship with other documents and financial contributions</li> <li>• BRF-1411 Delegated decisions for NBA plan change processes</li> <li>• BRF-1471 Delegated decisions for IHP appointments and general hearing provisions</li> <li>• BRF-1710 Detailed decisions for plan development and plan change timeframes and miscellaneous planning provisions</li> </ul>
Consenting	<ul style="list-style-type: none"> <li>• BRF-1027 Retaining and removing RMA planning and consenting provisions</li> <li>• BRF-1382 Delegated decisions on Natural and Built Environments Act (NBA) procedural consenting matters</li> <li>• BRF-1636 Delegated decisions on Natural and Built Environments Act (NBA) – Consent Reviews</li> <li>• BRF-1511 Detailed decisions for consent mechanisms, emergency and other provisions</li> <li>• BRF-1821 Additional decisions on Natural and Built Environments Act (NBA) procedural consenting matters</li> <li>• BRF-2099 RM Reform 236 - Detailed decisions on a merits-based consenting pathway</li> </ul>
Appeals	<ul style="list-style-type: none"> <li>• BRF-1001 Delegated decisions for NBA consent appeals</li> <li>• BRF-1609 Delegated decisions for Court capacity and other Court provisions</li> </ul>
Protection mechanisms/land management	<ul style="list-style-type: none"> <li>• BRF-1186 Delegated Decisions for Contaminated Land Management Framework and Liability Regime</li> <li>• BRF-1368 Delegated decisions for Water Conservation Orders</li> <li>• BRF-1389 Detailed decisions for heritage protection orders</li> <li>• BRF-1573 Additional Delegated decisions for Water Conservation Orders to reflect Ministers feedback</li> </ul>
Infrastructure and designations	<ul style="list-style-type: none"> <li>• BRF-1447 Delegated decisions for designations</li> <li>• BRF-1900 RM Outstanding matters from BRF-1447 (delegated decisions on designations) and other miscellaneous matters in relation to designations</li> <li>• BRF-2128 - Aide Memoire - Response to feedback from Minister of Local Government on BRF-1447 RM Reform 151 and BRF-1900 RM Reform 209 (delegated decisions on designations)</li> </ul>
Allocation matters	<ul style="list-style-type: none"> <li>• BRF-1399 Delegated decisions for aquaculture</li> <li>• BRF-1680 Delegated decisions on the resources covered by the allocation framework</li> <li>• BRF-1684 Delegated decisions on exemptions to short transitional consents (for resource allocation)</li> <li>• BRF-1886 Delegated decisions on the coastal marine area under Part 7 and Part 7A of the Resource Management Act 1991</li> <li>• BRF-1955 Briefing note to support decisions on resource user charges</li> </ul>
Monitoring, reporting, compliance, and enforcement	<ul style="list-style-type: none"> <li>• BRF-849 Detailed decisions on compliance monitoring and enforcement, including the introduction of a civil liability regime in the NBA</li> <li>• BRF-1068 Detailed decisions for new compliance toolbox</li> <li>• BRF-2127 RM Reform 234 – Revised version of BRF-1580, 1804 detailed decisions for evaluation reports in the new RM system</li> </ul>

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**Appendix 2: High-level assessment of the progress made towards the reform objectives and key areas for implementation**

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## Appendix 2: High-level assessment of the progress made towards the reform objectives and key areas for implementation

Below is a high-level assessment by officials of whether the legislative policy decisions taken to date are on track to meet the reform objectives set by Cabinet. Its focus is on the anticipated content of the draft NBA and SPA bills. The assessment also notes the critical areas of implementation required to ensure the objectives are achieved on the ground.

A core function of the resource management system is to deal with a wide range of outcomes that are often in tension and sometimes conflicting. A successful system will achieve values that positively reinforce each other over the long term. It is also important to note that there are factors outside the resource management system that will affect whether reform objectives are achieved over the long-term, for example:

- macroeconomic circumstances, population and tourism numbers, and societal expectations of how people achieve their wellbeing (particularly the material and energy intensities of lifestyles)
- due to global emissions, climate change is already putting and will increasingly put major pressure on the natural environment, including indigenous species and their ecosystems, no matter what New Zealand does to reduce our emissions
- any possible future local government changes informed by the work on the Future for Local Government including incentives on local councils and decision makers
- infrastructure funding and financing work under the Urban Growth Agenda.

Reform objective	Assessment of progress towards the reform objectives	Key implementation areas
<p><i>Natural environment</i></p> <p>Protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations.</p>	<p>The assessment has indicated that significant progress has been made, in that the decisions taken to date are likely to provide a greater level of protection of the natural environment. There is some uncertainty about whether the legislation will address underlying incentives and behaviours and if ensuring the framework is practical for enabling development will undermine natural environment outcomes. Implementation will also be key to realising this potential.</p> <p>Key aspects of the system that support the objective:</p> <ul style="list-style-type: none"> <li>• environmental limits will set a minimum standard for biophysical elements of the natural environment; whereby no net loss can occur across a management unit<sup>1</sup></li> </ul>	<p>NPF and NBA plans set robust limits and targets.</p> <p>Appropriate guidance and direction on Te Oranga o te Taiao.</p> <p>Accurate and widespread environmental monitoring and data.</p> <p>Identifying and mapping relevant areas/places in planning instruments.</p> <p>Ensuring application of exemptions framework does not significantly undermine natural environmental outcomes.</p>

<sup>1</sup> Note the policy assumes that humans can adequately know limits and adjust behaviour in time to stop degradation below limits.

Reform objective	Assessment of progress towards the reform objectives	Key implementation areas
	<ul style="list-style-type: none"> <li>• environmental outcomes that actively enhance the natural environment</li> <li>• the intergenerational concept of Te Oranga o te Taiao, the wellbeing of the environment, underpins the reforms</li> <li>• protection for existing section 6 matters (including exemptions), and an additional layer of protection of highly vulnerable biodiversity areas.</li> </ul>	Strong central government oversight.
<p><i>Development</i></p> <p>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.</p>	<p>The assessment highlighted significant progress has been made. It identified areas that will support the objective and some uncertainty as to what can be developed and where when taking into account Te Oranga o te Taiao, environmental limits and targets, and the effects management hierarchy. Implementation and national direction currently being developed will play a key role in enabling development within environmental limits and resolving tensions between environmental outcomes.</p> <p>Key aspects of the system that support the objective:</p> <ul style="list-style-type: none"> <li>• RSSs will enable central government and regions to plan for change and growth, and to better align infrastructure and land use decisions to support this outcome will provide for urban and rural areas to grow and change</li> <li>• NBA plans are required to provide for development outcomes to enable urban and rural areas to grow and change</li> <li>• strong national direction will enable development within environmental limits</li> <li>• the planning and consenting framework will enable development within limits by reducing the number of resource consents needed through a more enabling permissions approach, a more efficient consent</li> </ul>	<p>Strong central government oversight and involvement in RSS development.</p> <p>RSS and NPF informing and directing NBA plans, including re/allocation approaches.</p> <p>Outcomes based planning culture.</p> <p>Appropriate resourcing for Māori and capacity building of central and local government.</p>

Reform objective	Assessment of progress towards the reform objectives	Key implementation areas
	process, clearer information requirements and limited appeals.	
<p><i>Te Tiriti</i></p> <p>Give effect to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.</p>	<p>The assessment has highlighted that significant progress has been made, in that the legislative design moves the system closer to consistency with the principles of Te Tiriti. While aspects of the system support this objective, engagement between Māori and the Crown has not covered all policy areas (due to prioritisation of key issues), which limits the degree of confidence the Crown can have as to how far this objective is achieved. The legislative process, particularly the select committee process, will provide Māori with an opportunity to engage on the overall system. The ongoing work to transition over settlements and resolve Māori rights and interests in freshwater and geothermal resources is also crucial.</p> <p>Key aspects of the system that support the objective:</p> <ul style="list-style-type: none"> <li>• decision makers are required to give effect to the principles of Te Tiriti</li> <li>• Te Oranga o te Taiao</li> <li>• Māori will have a more effective role in the new system, at a local, regional and national level</li> <li>• mātauranga Māori will inform the setting of limits, targets and other regulatory instruments</li> <li>• all Treaty settlements under the RMA will be upheld.</li> </ul>	<p>Appropriate resourcing for Māori at all levels and capacity building of central government and local government.</p> <p>Appropriate guidance and direction to support giving effect to the principles of Te Tiriti and upholding Te Oranga o te Taiao.</p> <p>Ongoing work to resolve Māori rights and interests in freshwater and geothermal resources.</p> <p>Ongoing work with PSGEs to successfully translate existing settlements into the new system.</p> <p>Appropriate collaboration in the development of the first NPF.</p>
<p><i>Climate and risk</i></p> <p>Better prepare for adapting to climate change and risks from natural hazards as well as mitigating the emissions which contribute to climate change.</p>	<p>The assessment has highlighted significant progress has been made. It concluded that aspects of this objective are likely to be met by the decisions made to date on natural hazard risk, climate adaptation and mitigation provisions in the NBA and SPA. The legal links between those Acts and the Climate Change Response Act 2002 will also contribute to meeting the objective. Policy development for the CAA (which focuses on the development of a managed retreat system) will also play a key role.</p>	<p>NPF to provide content on specific greenhouse gas discharging activities, natural hazard risk reduction and climate change adaptation.</p> <p>Strong central government involvement in RSSs and ongoing oversight.</p>

Reform objective	Assessment of progress towards the reform objectives	Key implementation areas
	<p>Key aspects of the system that support the objective:</p> <ul style="list-style-type: none"> <li>• the NPF is required to be not inconsistent with the National Adaptation Plan and Emissions Reduction Plan</li> <li>• NPF, RSS and NBA plans will support adaptation and natural hazard risk reduction (including those risks that will be exacerbated by climate change) by providing tools for risk identification and assessment, identifying areas at risk from the consequences of sea-level rise and other natural hazards (eg, flooding) and requiring those risks to be responded to through planning decisions</li> <li>• NBA plans are required to provide for environmental outcomes to reduce greenhouse gas emissions and increase the removal of greenhouse gases from the atmosphere</li> <li>• the ability under the NBA to modify or extinguish existing land uses, and to modify or cancel land use consents for reasons that include reducing natural hazard risks and climate change adaptation.</li> </ul>	
<p><i>System performance</i></p> <p>Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.</p>	<p>The assessment has highlighted significant progress has been made. It identified that there are key areas where efficiencies can be seen and effectiveness is improved. However the volume of decisions made, and the timeframe to assess has made it difficult to determine efficiency and effectiveness across the whole system. Increasing efficiency in the system is often in tension with achieving other objectives. The overall system performance will need to be tested and refined through the select committee process and through implementation.</p> <p>Key aspects of the system that support the objective:</p> <ul style="list-style-type: none"> <li>• the NPF and RSS will help resolve conflicts between outcomes</li> </ul>	<p>Provide clear and timely guidance and direction to system decision-makers (eg regional planning committees) and users.</p> <p>Strong ongoing oversight.</p>

Reform objective	Assessment of progress towards the reform objectives	Key implementation areas
	<ul style="list-style-type: none"> <li>• planning will be more integrated and consolidated, with fewer plans to navigate</li> <li>• the process to develop plans (including the use of IHP) will emphasise decision-making at a strategic level. It will streamline requirements for consents and provide for efficiencies in applications and decision-making, including information requirements and in relation to appeals</li> <li>• local authorities will ensure community input and local voices are provided for in the system.</li> </ul>	

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**Appendix 3: Supplementary Analysis Report (SAR)**

Available in full at : <https://environment.govt.nz/assets/publications/Supplementary-Analysis-Report.pdf>

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