

[In confidence]

Office of the Minister for the Environment

Cabinet Business Committee

Reforming the resource management system

Proposal

- 1 This paper proposes the repeal and replacement of the Resource Management Act 1991 within this term of government, in accordance with Labour Party policy at the 2020 election.
- 2 This reform will be based on the recommendations of the Resource Management Review Panel, led by retired Court of Appeal Judge Hon Tony Randerson QC, which reported in June 2020. As recommended by the Panel, I seek agreement to three new Acts:
 - a Natural and Built Environments Act
 - a Strategic Planning Act
 - a Managed Retreat and Climate Change Adaptation Act.
- 3 I also seek your agreement to the proposed process for reform, initial in-principle policy decisions for the NBA, and initial funding to support this work.

Executive Summary

- 4 There is broad consensus that the resource management system introduced by the Resource Management Act 1991 (RMA) has not adequately protected the natural environment or enabled development where needed. Ecosystems have been degraded by poorly managed cumulative effects, biodiversity lost, and the response to climate change challenges slow. The RMA has also under-delivered for our urban areas. Decisions made under it have entrenched subjective amenity values and contributed to rapidly increasing urban land prices. New Zealand's housing is now amongst the least affordable in the OECD.
- 5 The Resource Management Review Panel (Panel) undertook a comprehensive review of the resource management system in the last term of government. The Panel identified systemic issues and produced comprehensive recommendations for reform. I propose to proceed with reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas.
- 6 The Panel recommended the RMA be repealed and replaced by three new pieces of legislation:

- a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)
 - a Strategic Planning Act (SPA) to integrate with other legislation¹ relevant to development and require long-term regional spatial strategies
 - a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change.
- 7 I propose this recommendation be adopted, and to progress the NBA first. Given the significance of this reform I propose to use a special process for the NBA, by developing an exposure draft that will be subject to a select committee inquiry ahead of legislation being formally introduced to the House. The exposure draft will contain the main structure and likely headings of the full NBA, with certain aspects fully drafted. The SPA and CAA will not have an exposure draft process but will be developed in parallel with the NBA.
- 8 Due to the scale and pace of policy decisions needed for the reform, I propose that a Ministerial Oversight Group be established. This Group will work through the policy details needed to progress the NBA, its exposure draft, and the supporting consultation material. It will be delegated with decision-making authority on these matters, and for associated matters relating to the SPA and CAA.
- 9 I seek agreement to initial in-principle policy decisions needed to proceed promptly with developing the exposure draft of the NBA. These decisions may be revisited, including as a result of engagement with Māori and others, by the proposed Ministerial Oversight Group, and/or after the select committee inquiry. These decisions include:
- the purpose and supporting provisions of the NBA
 - establishing a mandatory set of national policies and standards to support the establishment of the biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework
 - providing for a single planning document for each region (including the coastal marine area) under the NBA – consolidating over 100 existing regional and district planning documents into about 14 – and provisionally called Natural and Built Environments Plans.
- 10 I propose that purpose and supporting provisions of the NBA are provisionally adopted, generally as proposed by the Panel. At this stage in the reform process I consider any changes to the Panel's proposed drafting should be considered carefully.
- 11 There is a range of views held by Ministers, government agencies, the Parliamentary Commissioner for the Environment and non-governmental organisations as to how the natural and built environment should be referred to within the purpose of the NBA, including how they apply in urban and rural areas. I will direct officials to report to the Ministerial Oversight Group on this matter in early 2021.

¹ The (proposed) Natural and Built Environments Act, Local Government Act 2002, Climate Change Response Act 2002, and Land Transport Management Act 2003.

- 12 Engaging with Māori on this reform will be critical. I propose engaging with the newly formed Māori Collective² to refine policy options as proposals are developed. I consider it appropriate to make the in-principle policy decisions proposed in this paper ahead of this engagement due to their high-level nature, and on the basis they will be discussed with the Collective before the exposure draft is confirmed by Cabinet next year.
- 13 Engaging with local government and stakeholders is also important. I propose that officials engage with local government and other experts to ensure that high-quality advice is available in a timely and cost-effective way.
- 14 The Ministry for the Environment (MfE) will be the lead agency on developing the NBA, but there is a strong case for collective leadership of the SPA. The Minister of the Public Service and I will seek decisions from Cabinet in 2021 if we consider a formal structure under the Public Services Act 2020 is required for the SPA.
- 15 Legislation is the beginning of the reform process. Its implementation will take a number of years and doing so successfully will be critical to the enduring success of this reform. Accordingly, I propose starting work now on a number of aspects of the new system, including the National Planning Framework and working with willing local authorities to prepare the first combined planning documents to serve as models for others.
- 16 s 9(2)(f)(iv)

Navigation of this paper

- 17 This Cabinet paper is divided into four parts:
- Part One: The need for reform (paragraphs 18 to 27)
 - Part Two: The process for reform, including objectives, sequencing, governance arrangements, and engagement approaches (paragraphs 28 to 67)
 - Part Three: Initial in-principle policy decisions (paragraphs 68 to 108), including on the:
 - purpose and supporting provisions of the NBA (the equivalent of the current Part 2 of the RMA)
 - replacement for national direction, through a (provisionally called) National Planning Framework
 - replacement of resource management policy statements and plans through a single planning document for each region, called (provisionally) Natural and Built Environments Plans

² Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities. The Collective has been formed to engage with the Crown on Māori rights and interests in freshwater and resource management reform.

- Part Four: Supporting reform implementation and transition from the old to the new system (paragraphs 109 to 122)
- Part Five: Other matters (paragraphs 123 to 144).

PART ONE: THE NEED FOR REFORM

Background

Problems with the Resource Management Act 1991

- 18 There is broad consensus that the resource management system introduced by the RMA in 1991 has not adequately protected the natural environment or enabled development where needed. Ecosystems have been degraded by poorly managed cumulative effects, biodiversity lost, and the response to climate change challenges slow. It has also under-delivered for our urban areas. Decisions made under the RMA have entrenched subjective amenity values and contributed to rapidly increasing urban land prices. New Zealand's housing is now amongst the least affordable in the OECD.
- 19 Successive amendments have added complexity to the RMA, rendering it unwieldy, and there have been significant problems with its implementation. There is frustration with the quality of RMA plans and processes, the interaction and alignment between the RMA and other legislation, the coherence and effectiveness of national direction, and insufficient tools for Māori to engage meaningfully.
- 20 Resource management reform is an opportunity to improve the quality of the natural environment, deliver well-functioning cities and towns, simplify processes under it, and improve outcomes for Māori.

We reviewed the resource management system in the last term of Government

- 21 The Resource Management Review Panel (Panel) was appointed in July 2019 [CAB-19-MIN-0585.01 refers] to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits. Chaired by Hon Tony Randerson QC, the Panel produced an Issues and Options paper in November 2019.
- 22 The Panel met with local government and stakeholders from industry, primary production, environmental, and Māori organisations. This significant engagement programme informed the Panel's final recommendations.
- 23 The Panel reported in June 2020. Its report, *New Directions for Resource Management in New Zealand*, identified a number of issues that have led to deterioration of the natural environment and poor management of urban development. The Panel made comprehensive recommendations for improvement (as summarised in Appendix 2), including to repeal and replace the RMA, and to enact:
- a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)

- a Strategic Planning Act (SPA) to integrate with other key legislation³ relevant to development and require statutory long-term regional spatial strategies
- a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change.

24 In relation to the NBA the Panel recommended:

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

Progressing with resource management reform

25 I propose to proceed with resource management reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas. This is an ambitious, once in a generation opportunity to ensure we have a resource management system that delivers positive environmental outcomes while providing for development to address our urban and infrastructure needs. Delivering the reform, while retaining the aspects of the current system that work, will be a challenge but one this Government is in a unique position to deliver.

26 I seek agreement to adopt the Panel's recommendations that the RMA be repealed and replaced and that three new pieces of legislation be enacted – the NBA, SPA, and CAA – the names of which may be refined.

27 Detailed development of this legislation will take time, and initial in-principle decisions for the NBA are required now to commence the reform process – see Part Three of this paper.

³ The NBA, Local Government Act 2002, Climate Change Response Act 2002, and Land Transport Management Act 2003.

PART TWO: THE PROCESS FOR REFORM

Objectives for the reform process

- 28 Setting clear reform objectives is important to provide a consistent basis for decision-making, to help focus its direction, and to assist with resolving any policy conflicts as they arise. I propose the following objectives to guide the reform process:
- protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations)
 - better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure
 - give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
 - better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
 - improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.
- 29 To achieve these objectives, we will need to:
- make decisions underpinned by the best and robust, available evidence
 - provide certainty during a planned transition to the new system
 - start preparing for the implementation of the new system, including carrying over existing national direction (for example, on freshwater and urban development).

Sequencing the reform process

- 30 Given the significance of resource management reform, I seek agreement to use a special process to develop the NBA and have the SPA and CAA developed in parallel.

Exposure draft of the NBA

- 31 I propose to develop an exposure draft of the NBA that will be released alongside supporting consultation material. This will be subject to a select committee inquiry ahead of legislation being formally introduced to the House. I consider this approach crucial to ensuring the NBA is passed during this term of government.
- 32 The exposure draft of the NBA will contain its structure and indicative headings, with certain aspects fully drafted to reflect policy decisions made through this Cabinet paper and subsequent delegated decisions (the process to make these decisions is outlined in paragraphs 44 to 46).
- 33 The exposure draft will be accompanied by supporting consultation material that provides an overview of the proposed system, and poses questions for feedback.
- 34 I propose the development of the exposure draft and supporting consultation material progress as follows:

- initial in-principle policy decisions are made by Cabinet now
- further policy decisions for the exposure draft and supporting consultation material made through to April 2021
- the final exposure draft and supporting consultation material be submitted to Cabinet in May 2021 to consider for presentation to the House as a parliamentary paper
- following approval by Cabinet, the paper be referred by the House to select committee, by notice of motion
- select committee undertake an inquiry on the exposure draft and supporting consultation material.

35 I have directed MfE to prepare the terms of reference for the select committee inquiry. These will be provided to Cabinet for consideration alongside the exposure draft. The terms will propose that the select committee be supported by officials as advisors, seek public submissions, and undertake hearings. Following its inquiry, the select committee will report back to the House, and I will return to Cabinet with advice on the committee's recommendations.

36 The exposure draft may signal but not include all policy details of the NBA. Details such as consenting processes, heritage protection mechanisms, designations, proposals of national significance, Environment Court workings, water conservation, allocation methods, compliance, monitoring and enforcement and transitional arrangements will continue to be developed in parallel to the select committee inquiry.

37 I will bring all remaining policy decisions to Cabinet in the second half of 2021, with the intention of introducing the NBA to the House at the end of 2021. A standard legislative and select committee process will follow and I intend the NBA will be passed by late 2022, well before the end of this term of government.

38 The NBA is the core piece of legislation in the reform package, and I will be working to avoid any delays with it. I will provide monthly progress updates on the reform to the Cabinet Environment, Energy and Climate Committee (ENV).

Process for the SPA and CAA to be determined

39 The SPA will embed a strategic and long-term approach to planning for land use and the coastal marine area, including identification of areas suitable for development, areas to protect or enhance, social and network infrastructure needs, and vulnerability to climate change and natural hazards. Regional spatial strategies developed under the SPA will facilitate more efficient land and development markets to improve housing supply, affordability and choice, and climate change mitigation and adaptation.

40 The CAA will address the complex legal and technical issues associated with managed retreat, where it is required for climate change adaptation or reducing risks from associated natural hazards.

41 The SPA and CAA will be developed in parallel with the NBA so that policy overlaps are addressed and overlaps with other government programmes are managed. The SPA and CAA will not have an exposure draft process, but their policy direction will be signalled in the NBA supporting consultation material.

- 42 I will report back to Cabinet on the process for developing the SPA in early 2021. The Minister of Climate Change will report to Cabinet on the process for developing the CAA.
- 43 I intend to bring the SPA together with the NBA so that both pieces of legislation are passed together.

Establishing a Ministerial Oversight Group

- 44 Due to the scale and pace of policy decision-making required, I recommend that Cabinet establish a Ministerial Oversight Group delegated with this decision-making.
- 45 I propose that this Ministerial Oversight Group comprise the Ministers of/for Finance (Chair), Māori Crown Relations: Te Arawhiti, Housing, Environment (Deputy Chair), Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment Hon Kiritapu Allan, Associate Environment Hon Phil Twyford, and Climate Change. I will call the first meeting of these Ministers at the beginning of 2021.
- 46 The scope of the authority delegated to the Ministerial Oversight Group will include:
- refining policy decisions sought by this paper as needed
 - further policy decisions for the NBA exposure draft and supporting consultation material
 - policy and process decisions needed to progress the remaining content of the NBA bill
 - decisions on associated matters relating to the SPA and CAA.

Working together across government

- 47 MfE will be the lead agency on the NBA and is already working with relevant agencies. I propose that Cabinet directs that this continue, as I intend the Ministerial Oversight Group receive joint agency advice, rather than an array of differing positions.
- 48 I note that Ministers of the Crown, and government agencies and entities are also involved in specific processes under the RMA, such as responsibility for designations. These are not issues addressed in this paper. Ministers and agencies will be consulted on this as the reform progresses with a view to these powers being retained.
- 49 Due to the connections with other legislation⁴ a more formal structure may be needed to progress the SPA. This could be done using a structure recently enabled by the Public Service Act 2020, for example an interdepartmental executive board. If a more formal structure is needed, the Minister for the Public Service and I will seek decisions from Cabinet in early 2021.

Reform will impact and need to align with other government work programmes

- 50 The impact of this reform on other government work programmes will vary in scale and nature and may require amendment of other policies or legislation.

⁴ The (proposed) NBA, Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002.

- 51 Major work programmes that the reform connects with include freshwater rights and interests and wider allocation reform, environmental monitoring and reporting, Three Waters reform, the Urban Growth Agenda, the Community Resilience programme, Treaty settlements currently under development, Te Pae Tawhiti (the whole of government response to Wai 262 report), Crown Minerals Act 1991 review, and marine protection reforms.
- 52 These work programmes, as well as the reform proposed here, have a significant cumulative impact on government departments and agencies, local government, iwi and system users, especially in the context of the COVID recovery. Careful planning and management is therefore needed to ensure that they align and are complementary. In some instances, it may be preferable to stop, delay or slow work programmes to ensure legal alignment or manage resources until this reform is completed.

A partnership approach with Māori and iwi

- 53 The Panel identified the importance of providing for a much more effective role for Māori throughout the resource management system and made a number of recommendations for doing so. The Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (Treaty). The Panel also recommended the creation of a National Māori Advisory Board with a range of functions including providing advice to government and oversight of the resource management system from the perspective of mana whenua.
- 54 I consider the Panel's recommendations provide the right direction. However, as the Panel itself notes, further engagement with Māori is necessary to meet the Crown's Treaty obligations.
- 55 On 19 November 2020, several national Māori entities⁵ wrote to the Prime Minister advising of the formation of a collective (the Collective) with the purpose of engaging with the Crown on Māori rights and interests in freshwater and resource management reform. It is significant that these entities have united to engage on environmental matters, bringing together a broad range of Māori leaders and experts.
- 56 On 3 December 2020, the Collective met with the Prime Minister, Ministers for/of Māori Crown Relations: Te Arawhiti, Local Government, Māori Development, Associate Environment Hon Kiritapu Allan, other members of the Māori caucus and me. The discussion was constructive and reflected a high degree of goodwill. A shared commitment was expressed to find a way forward on freshwater and resource management reform.
- 57 I propose to work with the Collective on policy development for the NBA. After further discussions with the Collective I will report back to the Ministerial Oversight Group on how we do so and on the establishment of a substantive work programme.
- 58 We have to balance the need to make progress on policy issues with the need to preserve space for this engagement to take place. I consider it appropriate to make in-principle policy decisions now due to their high-level nature, and on the basis they will be discussed with the Collective before the exposure draft is confirmed by Cabinet

⁵ Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities.

next year. This work with the Collective will not impede any iwi or Māori entity from submitting to the select committee.

- 59 Officials will keep Treaty partners up to date through existing MfE and cross-agency communication channels.

Upholding existing legislation and agreements

60 The RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation. When setting the scope for the Panel's Review, Cabinet noted that Treaty settlements that include provision for iwi engagement in aspects of the resource management system will be carried over into a new system [CAB-19-MIN-0337 refers].

61 Engagement with Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of natural resource arrangements agreed by Māori and the Crown, or the subject of current Treaty settlement negotiations; as well as:

- rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- natural resource arrangements agreed by Māori and local government under existing provisions of the RMA, such as the transfer of powers under section 33 or Mana Whakahono ā Rohe entered into under section 58O.

62 To ensure this, the Crown will engage with affected Post-Settlement Governance Entities to discuss how their settlement arrangements will be carried over into a new system.

Working with local government

63 Local government has significant expertise relevant to reform and will be partners in implementing the new system. It is therefore essential to engage with local government throughout the reform process. MfE has begun engagement with local government and Local Government New Zealand (LGNZ).

64 Officials will report back to the Ministerial Oversight Group on how local government is involved in the reform process in early 2021.

Engagement with wider stakeholders

65 A wide range of stakeholders are interested in and ready to contribute their advice on the reform.

66 Other than Māori and local government, engagement prior to the release of the exposure draft will be limited to selected stakeholders necessary to ensure the new system works. Select committee processes will be the primary method of engagement for wider stakeholders and the general public. This approach will ensure resources are focused on developing the NBA exposure draft.

67 Officials will keep stakeholders up to date through existing MfE and cross-agency communication channels, and engage their expertise as appropriate.

PART THREE: INITIAL IN-PRINCIPLE POLICY DECISIONS

68 I seek your agreement to initial in-principle NBA policy decisions in order to proceed promptly with developing the exposure draft. These initial decisions closely follow the Panel's recommendations and relate to the overall structure of the NBA, including:

- the purpose and supporting provisions of the NBA
- the proposal to establish a mandatory set of national policies and standards to support the establishment of the biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework
- introducing the requirement for a single planning document for each region (including the coastal marine area) under the NBA – provisionally called Natural and Built Environments Plans.

69 These initial decisions may be refined as detailed policy is considered by the Ministerial Oversight Group and engagement with the Collective and local government is undertaken. As noted in paragraph 34, the full exposure draft and supporting consultation material will be submitted for Cabinet consideration to present to the House as a parliamentary paper.

NBA purpose and supporting provisions

70 The purpose and supporting provisions of the NBA will set out the overall premise of the legislation and drive the outcomes it will achieve. They are not yet finally settled, and I expect will be the subject of debate throughout the development of the legislation. There are alternatives to the Panel's indicative drafting, including from the Parliamentary Commissioner for the Environment (PCE). Getting the purpose and supporting provisions right is critical to ensure reform appropriately enables development within environmental limits as intended.

71 Meantime, I propose the purpose and supporting provisions of the NBA be progressed on the basis of Appendix 1 – which closely reflects the Panel's indicative drafting, but with some specific changes I believe are desirable and may assist in focusing debate.

Integrated management of natural and built environments

72 There has been a call by some to have separate legislative frameworks for land use planning (development) and environmental protection. The Panel considered this issue closely and recommended that the NBA should retain an integrated approach for land use planning and environmental protection. I agree with this approach.

73 However, this does not mean that the natural environment and the built environment should always be managed in the same way, in both urban and rural areas. There is a range of views held by Ministers, government agencies, the PCE and non-governmental organisations on how best to achieve this.

74 As articulated by the objectives outlined in paragraph 28, the reform will both protect and where necessary restore the natural environment and better enable development. There are options as to how these objectives will be achieved through the purpose, supporting provisions, and definitions of the NBA.

75 Meantime, I propose that the definitions recommended by the Panel for the natural environment and the built environment are provisionally adopted for further consideration. These are:

- natural environment: land, water, air and all forms of plants and animals (except people), including the complex ecosystems these make up
- built environment: buildings, structures, infrastructure, facilities, and the interactions which contribute to the ways in which people live, work or undertake recreational activities.

76 Further testing of these definitions, including how they apply to rural and urban areas, should ensure that no unintended consequences arise, such as an interpretation that requires rural areas to be maintained in their natural unmodified state. I will direct officials to report to the Ministerial Oversight Group on this matter, including how the proposed purpose of the NBA will achieve the reform objectives.

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

77 In line with the recommendation of the Panel, the NBA will retain an integrated approach to resource management. Accordingly, I propose that the purpose of the NBA be to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.

78 I also propose that the purpose is achieved by ensuring:

- (a) the use, development and protection of natural and built environments is within biophysical limits
- (b) positive outcomes for the environment are identified and promoted
- (c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated.

79 The hierarchy in these provisions is such that both (a) and (b) must be met before any consideration of the management of adverse effects. This is a major shift from the RMA, which focuses on individual adverse effects (rather than outcomes) and has not adequately protected our environment.

80 I note that how this purpose (including the words 'quality' and 'protection') relates to the built environment could be perceived to have unintended consequences for how development is enabled under the future system. This will be an issue that will be addressed following the report back by officials to the Ministerial Oversight Group as directed in paragraph 76.

Recognising the concept of Te Mana o Te Taiao

81 I recommend adopting the Panel's recommendation that the NBA purpose should also include the concept of Te Mana o te Taiao – 'the mana of the environment'. This refers to the fundamental significance of the natural environment and the importance of prioritising its health and wellbeing. It conveys a holistic, intergenerational perspective expressed well in te ao Māori. In relation to freshwater management, Te Mana o te Wai has gained widespread acceptance and is now integral to the regulatory regime.

82 While the Panel's indicative definition of Te Mana o te Taiao is a good start, further work is required with Māori on how to best express this concept to ensure that it is

clear and workable. The Ministerial Oversight Group will undertake this work with the Collective.

Giving effect to the principles of Te Tiriti o Waitangi

- 83 The NBA would require all persons who exercise functions and powers under the NBA to 'give effect to' the principles of Te Tiriti o Waitangi.⁶ This is a significant change from the RMA which requires decision-makers to 'take into account' the principles of the Te Tiriti o Waitangi. As the Panel states, a change to 'give effect to' "will modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it".⁷
- 84 However, as the Panel noted, it will "be important to make clear that giving effect to Te Tiriti is not intended to create a priority right for Māori to the allocation of resources"⁸. The use of 'give effect to' will not create a 'veto' for Māori interests to always prevail in every resource consent decision. The intention is to ensure that the principles of Te Tiriti and the purpose of the NBA are met concurrently.
- 85 The Panel advised that further guidance and direction would be needed on how to give effect to the principles of Te Tiriti. The Panel proposed that this be provided via a mandatory national policy statement that would be developed through an appropriate process with Māori.
- 86 However, my initial view is that this direction should be included in the provisions of the NBA itself, with a discretion for the responsible Minister to supplement this through the National Planning Framework (see Appendix 1, Section 9(4)(j)). This option will be explored with Māori before a final decision is taken.

Proposed system of environmental biophysical limits and targets

- 87 I agree with the Panel and the PCE that biophysical limits should be central to protecting and sustaining the natural environment's biophysical resources and the ecosystem services they provide. These biophysical resources are freshwater, coastal waters, air, soils, biodiversity, and terrestrial and aquatic habitats. Biophysical limits will apply in both urban and rural areas.
- 88 The Panel proposed limits as minimum standards for environmental outcomes, prescribed by the responsible Minister (generally Environment) to achieve the purpose of the NBA. These limits would be supported by a system of binding or non-binding targets to achieve continuing progress towards achieving the specified outcomes. I agree with these proposals.

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

- 89 A set of outcomes to be pursued by those exercising powers and functions under the NBA would replace the existing 'matters of national importance' and 'other matters' in Part 2 of the RMA. I propose that these outcomes, based mainly on the Panel's recommendations, be grouped into related subject matters – natural environment, built

⁶ Although the Panel adopted the Māori language reference to Te Tiriti, it proposed that it would be defined in a way that refers to both its English and Māori versions, as per the current definition of 'Treaty' under the RMA and the Treaty of Waitangi Act 1975.

⁷ Page 100 of the Panel's report.

⁸ Page 103 of the Panel's report.

environment, Tikanga Māori, rural, historic heritage, natural hazards and climate change.

90 These outcomes would flow through to subsequent decision-making through the National Planning Framework and Natural and Built Environments Plans.

91 The Panel recommended listing as an outcome the 'enhancement of features and characteristics that contribute to the quality of the built environment'. While it was not the Panel's intention, I consider this inclusion could perpetuate subjective amenity values hindering development. This has therefore been removed from Appendix 1.

92 However, I do recognise that urban design considerations contribute to well-functioning urban areas. These matters are more appropriately addressed at a lower level in the NBA, such as through the National Planning Framework.

Implementation principles, particularly relating to resolving conflicting objectives

93 Implementation principles listed in the NBA will assist Ministers and others exercising functions and powers under it (see Appendix 1, Section 9(2)). In particular, the Panel (and the PCE) identified the lack of means under the RMA to resolve conflicts between provisions. I agree that this issue should be addressed.

94 In the *King Salmon*⁹ decision, the Supreme Court held that national policy statements under the RMA can contain directive policies that are akin to "environmental bottom lines". Such bottom lines were consistent with the purpose of the RMA. The Court found that local authorities making decisions on plans cannot use an "overall broad judgement" under Part 2 of the RMA to override clear and directive provisions in a national policy statement, because this would be inconsistent with the requirement to "give effect to" a national policy statement.

95 I propose that the NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override or be contrary to, biophysical limits.

96 The Court in *King Salmon* also held that the RMA sets up a hierarchy of planning documents, with increasing specificity over content and location on moving from the principles level (Part 2 of the RMA), to national documents (eg, the New Zealand Coastal Policy Statement), and then to local authority plans.¹⁰ Documents higher in the hierarchy are binding on lower order documents.

97 I propose that the NBA echo the hierarchy described in *King Salmon* whereby Part 2 is implemented through national direction, and plans give effect to national direction.

98 Should there be any doubt about which outcomes are to prevail in the event they come into conflict, I propose that this be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environments Plans.

⁹ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38.

¹⁰ Regional policy statements, regional plans and district plans.

National Planning Framework

- 99 The Panel recognised the important role of direction from central government in resource management, and proposed that the current forms of national direction be retained in the new system.
- 100 I propose that the system for central government direction under the NBA be provisionally called the National Planning Framework. Its purpose will be to address matters of national significance or matters where national consistency would be desirable.
- 101 The National Planning Framework would include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA. This consolidation of national direction was also recommended by the former Parliamentary Commissioner for the Environment in 2016, but is a departure from the approach recommended by the Panel. I intend to start work now on how current national direction can be consolidated and carried over under the NBA.¹¹
- 102 Further decisions from the Ministerial Oversight Group will be needed on the National Planning Framework to support the development of the exposure draft, including:
- establishing the process to develop and amend central government direction
 - its relationship to plans, consents and activities
 - the role of the Minister of Conservation
 - the process for developing and implementing targets and limits.

Natural and Built Environments Plans

- 103 The Panel recommended significant rationalisation to regional and local planning arrangements, centred around one combined plan per region. I agree, and propose that combined plans are required under the NBA, and be provisionally called Natural and Built Environments Plans.
- 104 Shifting to one planning document per region will be an important change from the RMA. This will consolidate over 100 existing RMA regional and district planning documents into about 14. However, I want to ensure that this will be practical given the diverse nature and complexity of existing RMA plans.
- 105 Further work is needed on the membership, roles, functions and powers of future regional planning arrangements, including the role for central government agencies. It will also be important to retain some level of subsidiarity for local communities (ie, delegating decisions to the lowest practicable local level), to ensure they retain a voice in plan-making processes. Planning under the NBA should be based on strong national direction and integrated planning within regions, but not every detailed rule needs to be decided regionally.

¹¹ Pending the National Planning Framework, national direction will continue to be developed and implemented (including on freshwater and urban development).

106 How matters such as resource consenting or heritage protection will occur under the NBA and Natural and Built Environments Plans is yet to be determined, but will be designed to meet the objectives of the reform as outlined in paragraph 28.

Authority to issue drafting instructions

107 I recommend Cabinet approve the issuing of drafting instructions to the Parliamentary Counsel Office (PCO) based on the agreed and in-principle decisions outlined above.

108 I also recommend that the Ministerial Oversight Group is authorised to issue drafting instructions on all further matters delegated to them by this paper.

PART FOUR: SUPPORTING REFORM IMPLEMENTATION AND TRANSITION FROM THE OLD TO THE NEW SYSTEM

A managed transition from the old to the new system

109 Inadequate implementation of the RMA and institutional issues have contributed to the poor environmental and urban development outcomes.¹² Implementation issues with the RMA, at least until more recently, include:

- insufficient national direction, especially in the face of declining water quality, rising greenhouse gas emissions and housing shortages
- no template plan formats or sample plans to guide local authorities, resulting in low quality drafting in varied formats
- insufficient funding for planning tribunals and the Environment Court to consider plans (ie, appeals on plans) leading to years of delays.

110 The COVID-19 response demonstrates that policy and implementation need to work closely together to be successful. Early work on implementation is needed now to enable an efficient transition to the new resource management system, and to signal the Government's commitment to that transition. Providing support for this will result in a faster and smoother transition with greater buy-in from system partners and stakeholders.

111 Significant resourcing and support from central government will be required both in the short and long-term. This will include:

- developing and testing combined plans to serve as models for local authorities
- consolidation of existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework
- incorporation of mātauranga Māori and tikanga Māori
- support to increase capacity and capability throughout the system (including for iwi and local authorities)
- an improved environmental monitoring and reporting system to enable effective setting and operation of new limits and targets – the recent report from the PCE

¹² Implementation failures are not limited to the RMA, but also include wider legislation such as the Building Act 2004 and Local Government Act 2002.

recommended action here – which will be delivered through a separate work-stream led by Associate Minister for the Environment Hon James Shaw.

s 9(2)(f)(iv)

[Redacted text block containing multiple paragraphs and bulleted points, all obscured by grey bars.]

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■ s 9(2)(f)(iv) [Redacted]

■ [Redacted]

■ [Redacted]

The need for an effective environmental monitoring and reporting system

118 Essential to the effective functioning of a system of limits and targets will be the ability to monitor and report on them. The work that Associate Environment Minister Hon James Shaw is leading on the environmental monitoring and reporting system seeks to coordinate science data and monitoring in a nationally consistent manner (as recommended by the PCE).

119 While this is a separate programme of work, it is closely connected and will be crucial to informing decision-making under the NBA, as well as demonstrating whether the system is functioning effectively and delivering on its outcomes.

120 s 9(2)(f)(iv) [Redacted]

121 The PCE's recent report, *A review of the funding and prioritisation of environmental research in New Zealand*, says that the way public funds are invested in environmental research is fragmented and disconnected from government priorities, and makes recommendations for change.

PART FIVE: OTHER MATTERS

s 9(2)(h) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

¹³ The Minister for Statistics and Associate Minister for the Environment Hon James Shaw.

Legislative Implications

- 126 The decisions from this paper will result in legislation that will repeal and replace the RMA. The bill for the NBA (the Natural and Built Environments Bill) should be included on the legislative reform programme as a category 4 Bill (to be referred to a select committee in 2021).
- 127 Reform will also have a range of implications for other legislation, some potentially significant, which will require consequential amendments.
- 128 The RMA has important interfaces with the Building Act 2004, Climate Change Response Act 2002, Conservation Act 1987, Crown Minerals Act 1991, Environmental Reporting Act 2015, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Fisheries Act 1996 (and 1983), Hazardous Substances and New Organisms Act 1996, Heritage New Zealand Pouhere Taonga Act 2014, Land Transport Management Act 2003, Local Government Act 2002, Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Hapū o Ngāti Porou Act 2019, Maritime Transport Act 1994, Public Works Act 1981, Reserves Act 1977, and Urban Development Act 2020.
- 129 As noted in paragraphs 60 to 62, the RMA also interfaces with Treaty settlement legislation, and reform proposals will be assessed to ensure they do not have unintended consequences for existing settlements, or those currently being negotiated.

[Redacted content]

Impact Analysis

Regulatory Impact Statement

- 132 No Regulatory Impact Statement (RIS) has been submitted for these proposals although Cabinet's impact analysis requirements apply.
- 133 MfE and the Treasury have agreed on the following approach to meeting Cabinet's impact analysis requirements at later stages of the resource management reform process (see Appendix 3 for more details):

- Cabinet will be provided with an interim RIS to support its consideration of whether to release the NBA exposure draft. This interim RIS would explain the regulatory interventions within the exposure draft alongside presenting alternatives and interim impact analysis to support consultation. It would also be released publicly alongside the exposure draft to guide public feedback
- MfE will provide the Ministerial Oversight Group with the interim RIS, whether in working draft form or having completed quality assurance, as soon as practical
- a final RIS will then be prepared prior to Cabinet making final policy decisions on the complete NBA Bill. The final RIS will address the remainder of the policy areas while also incorporating feedback gathered through consultation on the exposure draft
- a regulatory impact assessment will be completed for the SPA and the CAA at the time policy decisions are sought on these.

134 MfE and Treasury will adapt the agreed arrangement if changes are required as the reform progresses.

Climate Implications of Policy Assessment

135 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the impact on emissions is indirect and is unable to be quantified with any level of certainty.

136 An objective of the reform is to 'better mitigate emissions contributing to climate change' and it is likely that the reform programme will lead to decisions that will ultimately have significant greenhouse gas emissions implications. However, it is difficult to assess at this stage how the proposals will impact emissions. The CIPA team will work with officials to assess the emissions impacts of policy proposals as they are advanced.

Population, gender and disability implications

137 These proposals may have some gender or disability implications. The way urban areas are designed and planned has the potential to have significant implications for different groups (including for mobility and mental health).

138 Resource management reform will be significant for Māori, including for existing Treaty settlement legislation. The Panel's recommendations would achieve a much more effective role for Māori in the resource management system, and I intend to use these as a foundation for engagement with Māori.

Human Rights

139 These proposals are not in any way inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. This 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.

Consultation

- 140 The following agencies have been consulted on the proposals in this paper (excluding Appendix 1): the Treasury; Ministry of Housing and Urban Development; Department of Internal Affairs; Ministry of Transport; Department of Conservation; Te Puni Kōkiri; Office for Māori Crown Relations; Te Arawhiti, Ministry for Primary Industries; Land Information New Zealand; Ministry of Culture and Heritage; Ministry of Justice; Ministry of Health; Ministry of Business, Innovation and Employment; New Zealand Defence Force; and Ministry of Education.
- 141 The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

Communications

- 142 I intend to announce the proposed reform process following Cabinet approval. I also intend to reach out to all other parties represented in Parliament.

Proactive Release

- 143 I intend to proactively release this Cabinet paper as soon as practical after Cabinet's decision.

Recommendations

The Minister for the Environment recommends that the Committee:

PART ONE: THE NEED FOR REFORM

Background

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

We reviewed the resource management system in the last term of Government

- 3 note that the Resource Management Review Panel (Panel) was appointed in July 2019 [CAB-19-MIN-0585.01 refers] to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits
- 4 note that the Panel reported in June 2020 and that its report, *New Directions for Resource Management in New Zealand*, identified a number of issues that have led to deterioration of the natural environment and poor management of urban development
- 5 note that the Panel recommended that the RMA be repealed and replaced, and to enact:
 - 5.1 a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)
 - 5.2 a Strategic Planning Act (SPA) to integrate with other key legislation relevant to development and require statutory long-term regional spatial strategies

- 5.3 a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change
- 6 note that in relation to the NBA the Panel recommended:
- 6.1 focusing on positive outcomes for the natural and built environments
 - 6.2 achieving these outcomes through a system of limits to protect the natural environment, and targets to achieve outcomes for both the natural and built environments
 - 6.3 recognising the concept of Te Mana o te Taiao
 - 6.4 requiring decision makers to give effect to the principles of Te Tiriti o Waitangi and establish a stronger strategic role for Māori in the system
 - 6.5 setting national priorities and direction to guide local decision-making (ie, mandatory national direction)
 - 6.6 requiring combined plans for each region, and streamlining the process for developing and changing plans
 - 6.7 improving evidence, monitoring, feedback and oversight
 - 6.8 moving to equitable and efficient resource allocation within limits

Progressing with resource management reform

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

PART TWO: THE PROCESS FOR REFORM

Objectives for the reform process

- 11 note that setting clear reform objectives is important to provide a consistent basis for decision making, to help focus its direction, and to assist with resolving any policy conflicts as they arise
- 12 agree to the following reform objectives:
- 12.1 protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations
 - 12.2 better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure

- 12.3 give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
 - 12.4 better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
 - 12.5 improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input
- 13 note that to achieve these objectives, it will be necessary to:
- 13.1 make decisions underpinned by the best, and robust, available evidence
 - 13.2 provide certainty during a planned transition to the new system
 - 13.3 start preparing for the implementation of the new system, including carrying over existing national direction (for example, on freshwater and urban development)

Sequencing the reform process

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

Exposure draft of the NBA

- 15 agree that the exposure draft of the NBA and supporting consultation material will be referred to a select committee for the purpose of an inquiry
- 16 agree that the NBA exposure draft will contain its structure and indicative headings, with certain aspects fully drafted to reflect policy decisions made by this Cabinet paper and subsequent delegated decisions (as outlined by recommendations 27 and 28)
- 17 agree that the NBA exposure draft and supporting consultation material progress as follows:
- 17.1 initial in-principle policy decisions are made by Cabinet now
 - 17.2 further policy decisions for the exposure draft and supporting consultation material made through to April 2021
 - 17.3 the final exposure draft and supporting consultation material be submitted to Cabinet in May 2021 to consider for presentation to the House as a parliamentary paper
 - 17.4 following approval by Cabinet, the paper be referred by the House to select committee, by notice of motion
 - 17.5 select committee undertake an inquiry on the exposure draft and supporting consultation material
- 18 note that the terms of reference for the select committee inquiry will be provided to Cabinet for consideration alongside the exposure draft

- 19 note that following its inquiry, the select committee will report back to the House, and the Minister for the Environment (Minister) will return to Cabinet with advice on the committee's recommendations
- 20 note that the exposure draft may signal but not include all policy details of the NBA, these will continue to be developed in parallel to the select committee inquiry
- 21 note that the Minister will bring all remaining policy decisions to Cabinet in the second half of 2021, with the intention of introducing the NBA to the House at the end of 2021, followed by a standard legislative and select committee process
- 22 note that the Minister intends that the NBA will be passed by late 2022
- 23 invite the Minister to provide monthly progress updates on the reform to the Cabinet Environment, Energy and Climate Committee (ENV)

Process for the SPA and CAA to be determined

- 24 agree that the SPA and CAA will not have an exposure draft process, but that their policy direction will be signalled in the NBA supporting consultation material
- 25 invite the Minister to report back to Cabinet on the process for developing the SPA in early 2021
- 26 note that the Minister of Climate Change will report to Cabinet on the process for developing the CAA and any associated funding

Establishing a Ministerial Oversight Group

- 27 agree to establish a Ministerial Oversight Group for the reform comprising the Ministers of/for Finance (Chair), Māori Crown Relations: Te Arawhiti, Housing, Environment (Deputy Chair), Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment Hon Kiritapu Allan, Associate Environment Hon Phil Twyford, and Climate Change
- 28 agree to delegate further policy decisions to the Ministerial Oversight Group, including to:
- 28.1 refine policy decisions sought by this paper as needed
- 28.2 make further policy decisions for the NBA exposure draft and supporting consultation material
- 28.3 make policy and process decisions needed to progress the remaining content of the NBA bill
- 28.4 make decisions on associated matters relating to the SPA and CAA

Working together across government

- 29 agree that the Ministry for the Environment (MfE) will be the lead agency on the NBA
- 30 note that the Ministerial Oversight Group receive joint advice from agencies

- 31 note that due to the connections with other legislation¹⁴ a more formal structure may be needed to progress the SPA
- 32 note that the Minister for the Environment and Minister for the Public Service will seek Cabinet agreement if a formal structure is needed to progress the SPA
- 33 note that the impact of this reform on other government work programmes will vary in scale and nature and may require amending of other policies or legislation

A partnership approach with Māori and iwi

- 34 note that the Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (Treaty)
- 35 note that further engagement with Māori is necessary to meet the Crown's Treaty obligations
- 36 note that on 19 November 2020, several national Māori entities¹⁵ wrote to the Prime Minister advising of the formation of a collective (the Collective) with the purpose of engaging with the Crown on Māori rights and interests in freshwater and resource management reform
- 37 note that on 3 December 2020, the Collective met with the Prime Minister, Ministers for/of Māori Crown Relations: Te Arawhiti, Environment, Local Government, Māori Development, Associate Environment Hon Kiritapu Allan, other members of the Māori caucus
- 38 note that at this meeting a shared commitment was expressed to find a way forward on freshwater and resource management reform
- 39 invite the Minister to report back to the Ministerial Oversight Group on how the government will work with the Collective and on the establishment of a substantive work programme

Upholding existing legislation and agreements

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

¹⁴ The (proposed) NBA, Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002.

¹⁵ Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities.

- 42 agree that the Crown will engage with affected Post Settlement Governance Entities, to discuss how their settlement arrangements will be carried over into a new system

Engagement with local government and stakeholders

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

PART THREE: INITIAL IN-PRINCIPLE POLICY DECISIONS

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

NBA purpose and supporting provisions

- 48 agree that the purpose and supporting provisions of the NBA be progressed by the PCO on the basis of Appendix 1 – which closely reflects the Panel's indicative drafting

Integrated management of natural and built environments

- 49 note that the Panel considered whether to separate legislative frameworks for land use planning and environmental protection, but recommended that the NBA should retain an integrated approach
- 50 note that there are options as to how objectives detailed in recommendation 12 will be achieved for natural and built environments through the purpose, supporting provisions, and definitions of the NBA
- 51 agree that meantime the definitions for the natural environment and built environment are adopted as detailed in Appendix 1
- 52 note that these definitions will be tested further, including how they apply to rural and urban areas, should ensure that no unintended consequences arise

- 53 agree that officials will report to the Ministerial Oversight Group on these definitions and how the proposed purpose of the NBA will achieve the objectives for reform proposed in recommendation 12

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

- 54 note that the proposed purpose of the NBA is to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao

- 55 note that this purpose would be achieved by ensuring:

- (a) the use, development and protection of natural and built environments is within biophysical limits
- (b) positive outcomes for the environment are identified and promoted
- (c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated

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

Recognising the concept of Te Mana o Te Taiao

- 57 note that the Panel recommends that the NBA purpose include the concept of Te Mana o te Taiao – ‘the mana of the environment’

- 58 agree that the Ministerial Oversight Group work with the Collective on how to best express Te Mana o Te Taiao to ensure that it is clear and workable

Giving effect to the principles of Te Tiriti o Waitangi

- 59 note that the NBA requirement for all persons who exercise functions and powers under the NBA to ‘give effect to’ the principles of Te Tiriti o Waitangi is a significant change from the RMA which requires decision-makers to ‘take into account’ of the principles

- 60 note that the Panel advised that a national policy statement should be required on how to give effect to the principles of Te Tiriti, but that the Minister’s initial view is that this direction should be included in the provisions of the NBA itself

Proposed system of environmental biophysical limits and targets

- 61 agree that biophysical limits should be central to protecting and sustaining the natural environment’s biophysical resources¹⁶ and the ecosystem services they provide

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

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

¹⁶ Freshwater, coastal waters, air, soils, biodiversity, and terrestrial and aquatic habitats.

Implementation principles, particularly relating to resolving conflicting objectives

- 63 note that implementation principles in the NBA will assist Ministers and others exercising functions and powers under it
- 64 agree that the NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override or be contrary to, biophysical limits
- 65 agree that the NBA echo the hierarchy described in *King Salmon*¹⁷ whereby Part 2 is implemented through national direction, and plans give effect to national direction
- 66 note that should there be any doubt about which outcomes are to prevail in the event they come into conflict, this be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environments Plans

National Planning Framework

- 67 agree that the system for central government direction under the NBA be provisionally called the National Planning Framework
- 68 agree that the purpose of the National Planning Framework will be to address matters of national significance or matters where national consistency would be desirable
- 69 agree that the National Planning Framework will include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA
- 70 note that further work is needed on the National Planning Framework including:
- 70.1 establishing the process to develop and amend central government direction
 - 70.2 its relationship to plans, consents and activities
 - 70.3 the role of the Minister of Conservation, and
 - 70.4 the process for developing and implementing targets and limits

Natural and Built Environments Plans

- 71 agree that combined planning documents are required under the NBA, and that they be provisionally called Natural and Built Environments Plans
- 72 note that shifting to one planning document per region will be an important change for the resource management system and would consolidate over 100 existing RMA regional and district planning documents into about 14
- 73 note that further work is needed on the membership, roles, functions and powers of future regional planning arrangements, including the role for central government agencies, ministers and local government

¹⁷ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38.

74 note that how resource consenting occurs under the NBA and Natural and Built Environments Plans is yet to be determined, but will be designed to meet the objectives of the reform, including improving system efficiency and effectiveness

Authority to issue drafting instructions

75 invite the Minister to issue drafting instructions to the Parliamentary Counsel Office (PCO) based on the agreed and in-principle decisions above

76 authorise the Minister in consultation the Ministerial Oversight Group to issue further drafting instructions on matters delegated to them by this paper

PART FOUR: SUPPORTING REFORM IMPLEMENTATION AND TRANSITION FROM THE OLD TO THE NEW SYSTEM

77 note that significant resourcing and support from central government will be required both in the short and long-term, including:

77.1 to develop and test combined plans to serve as models for local authorities

77.2 the consolidation of existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework

77.3 the incorporation of mātauranga Māori and tikanga Māori

77.4 support to increase capacity and capability throughout the system (including for iwi and local authorities)

77.5 an improved environmental monitoring and reporting system to enable effective setting and operation of new limits and targets

78 s 9(2)(f)(iv) [Redacted]

s 9(2)(f)(iv) [Redacted]

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80.5 s 9(2)(f)(iv) [Redacted]

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[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

[Redacted]

[Redacted]

[Redacted]

PART FIVE: OTHER MATTERS

Legislative Implications

86 note that this reform will result in legislation that will repeal and replace the RMA, introduce legislation covering other elements of the system, and has important interfaces with many other pieces of legislation

87 note that the RMA interfaces with over 60 pieces of Treaty settlement legislation, and that reform proposals will be assessed to ensure they do not have unintended consequences for existing settlements, or those currently being negotiated

88 note that the Natural and Built Environments Bill will reform the law relating to the management of New Zealand’s natural resources

89 approve the inclusion of the Natural and Built Environments Bill in the 2021 Legislation Programme, with a priority 4

s 9(2)(f)(iv)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Impact Analysis

93 note that MfE will provide an interim regulatory impact statement to the Ministerial Oversight Group and then to Cabinet to support the release of the exposure draft

94 note that CIPA requirements do not apply to this proposal as the impact on emissions is indirect and is unable to be quantified with any level of certainty

Communications

95 note that the Minister will announce decisions relating to the reform process following Cabinet's approval of this paper

Proactive Release

96 note that the Minister will proactively release this paper as soon as practical.

Proactively released under the Official Information Act

Appendix 1: Illustrative drafting of the NBA purpose and supporting provisions

Please note that this drafting has not been drafted by the Parliamentary Counsel Office and is attached for indicative purposes only.

Interpretation key

- Proposed modifications in additions and deletions or *italicised text where moved*

Key definitions as used in the Panel's Report

Built Environment: includes human-made buildings, structures, places, facilities, infrastructure, and their interactions which collectively form part of urban and rural areas in which people live and work.

Natural Environment: includes, land, water, soil, minerals and energy, all forms of plants, animals (except humans) and other living organisms (whether native to New Zealand or introduced) and their habitats, and includes ecosystems.

Te Mana o te Taiao: refers to the importance of maintain the health of air, water, soil and ecosystems and the essential relationship between the health of resources and their capacity to sustain all life.

Section 5 Purpose

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

Section 6 Te Tiriti o Waitangi

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

Section 8 7 - Environmental Biophysical limits

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

Section 7 8 - Outcomes

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

Natural environment

 - (a) enhancement of features and characteristics that contribute to the quality of the natural environment;
 - (b) protection and enhancement of:
 - (i) nationally or regionally significant features of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and their margins:

- (ii) outstanding natural features and outstanding natural landscapes:
- (iii) areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (c) enhancement and restoration of ecosystems to a healthy functioning state;
- (d) maintenance of indigenous biological diversity and restoration of viable populations of indigenous species;
- (e) maintenance and enhancement of public access to and along the coastal marine area, wetlands, lakes, rivers and their margins;

Built environment

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

Tikanga Māori

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

Rural

- (l) sustainable use and development of the natural and built environment in rural areas;

(m) protection of highly productive soils;

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

Historic heritage

(o) protection of significant historic heritage;

Natural hazards and climate change

(p) reduction of risks from natural hazards;

(q) improved resilience to the effects of climate change including through adaptation;

(r) reduction of greenhouse gas emissions;

(s) promotion of activities that mitigate emissions or sequester carbon; and

(t) increased use of renewable energy.

(2) [\[placeholder clause to link to the SPA\] When providing for the outcomes in \(1\) local authorities must provide for the applicable regional spatial strategies prepared under the Strategic Planning Act 202X.](#)

Section 9 Implementation

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

Principles

(2) Those performing functions under this Act must do so in a way that gives effect to this Part and:

(a) promotes the integrated management of natural and built environments;

(b) ensures public participation in processes under this Act to an extent that recognises the importance of public participation in good governance and is proportionate to the significance of the matters at issue;

(c) promotes appropriate mechanisms for effective participation by iwi, hapū and whanau in processes under this Act;

(d) provides for kaitiakitanga and tikanga Māori and the use of mātauranga Māori;

- (e) complements other relevant legislation and international obligations;
- (f) has particular regard to any cumulative effects of the use and development of natural and built environments; and
- (g) takes a precautionary approach where effects on the natural environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences.

Ministerial duties: outcomes and biophysical environmental limits

(3) The responsible Minister must through ~~national direction~~ the National Planning Framework:

- (a) *identify and prescribe the ~~biophysical environmental~~ limits specified in section 7(2)(b);*
- (b) *nationally significant features of the matters set out in section ~~87~~(b)(i);*
- (c) *outstanding natural features and outstanding natural landscapes under section ~~87~~(b)(ii) that are of national significance;*
- (d) *areas of significant indigenous vegetation and significant habitats of indigenous fauna under section ~~87~~(b)(iii) that are of national significance;*
- (e) *methods and requirements to give effect to the enhancement and restoration of ecosystems for the purposes of section ~~87~~(c);*
- (f) *methods and requirements to give effect to the maintenance of indigenous biodiversity and restoration of viable populations of indigenous species for the purposes of section ~~87~~(d);*
- (g) *methods and requirements to respond to natural hazards and climate change for the purposes of section ~~87~~(q) to ~~87~~(u).*

(4) The responsible Minister may through the National Planning Framework identify and prescribe any other matter the Minister considers appropriate, including:

- (h) features and characteristics that contribute to enhancing the quality of natural and built environments;
- (i) targets to achieve continuing progress towards achieving the outcomes specified in section ~~87~~;

- (j) how the principles of Te Tiriti o Waitangi will be given effect through functions and powers exercised under this Act; and
- (5) ~~(4)~~ The responsible Minister is the Minister for the Environment except in relation to the coastal marine area for which the Minister of Conservation is the responsible Minister in consultation with the Minister for the Environment.

Hierarchy: resolution of conflicts

- (6) ~~(5)~~ The use and development of natural and built environments must be within prescribed biophysical environmental limits and comply with binding targets, national directions and regulations.
- (7) ~~(6)~~ Subject to (6)(5), any conflict in or doubt about the application of matters in section ~~87~~ must be reconciled and clarified as necessary in a way that gives effect to the purpose of this Act:
- (a) in the first instance by the Minister through the National Planning Framework ~~national direction~~ or by regulation; and ~~or~~
 - (b) ~~in the absence of any such direction or regulation, by the provisions of policy statements and plans.~~ subject to any direction in the National Planning Framework or regulations, by the provisions of Natural and Built Environments Plans.

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Appendix 2: Summary of the Resource Management Review Panel's recommendations

Panel recommendation	Detail of recommendation
Repeal and replace the RMA with a NBA and a new purpose and principles/supporting provisions	<ul style="list-style-type: none"> • Focus the system on positive outcomes for the natural and built environments. • Achieve these outcomes through a system of limits to protect the natural environment and targets to achieve outcomes for both the built and natural environments. • Recognise the concept of Te Mana o te Taiao in the purpose of the NBA and require decision makers to give effect to the principles of Te Tiriti o Waitangi.
Enact a SPA	<ul style="list-style-type: none"> • Provide long-term regional spatial strategies that integrate land use planning, environmental regulation, infrastructure provision and climate change response matters under several statutory frameworks. • Set long-term (30-50 year) strategic goals.
Enact a CAA	<ul style="list-style-type: none"> • Address the complex legal and technical issues associated with managed retreat. • Establish an adaption fund.
Set national priorities and direction to guide local decision-making (mandatory national direction)	<ul style="list-style-type: none"> • Require the government to produce national direction under the NBA that sets environmental limits for certain resources (air, water, soil, biodiversity) and gives effect to the principles of Te Tiriti o Waitangi. • Review current and future national direction to ensure it is integrated and addresses conflicts between achieving outcomes.
Require combined plans for each region, and streamline the process for developing and changing plans	<ul style="list-style-type: none"> • Require all current RMA policy statements and plans in each region¹⁸ to be combined into one integrated plan under the authority of a regional joint committee, cutting the number of resource management plans in New Zealand from over 100 to about 14. • With better plans in place, a simplified consenting process.
Establish a stronger strategic role for Māori in the system	<ul style="list-style-type: none"> • Include mana whenua representation on joint committees that develop regional spatial strategies and regional combined plans. • Enable effective partnering of local government and mana whenua in planning and delivery.
Improve evidence, monitoring, feedback and oversight	<ul style="list-style-type: none"> • Create a nationally coordinated environmental monitoring and reporting system to improve the collection of data and information and monitoring and reporting on environmental outcomes, in line with the recommendations of the Parliamentary Commissioner for the Environment (PCE). • Establish regional hubs for all resource management compliance, monitoring and enforcement functions, with assistance from central government. • Strengthen enforcement powers and penalties.
Move to equitable and efficient resource allocation within limits	<ul style="list-style-type: none"> • Address issues with resource allocation by providing different principles under the NBA than that of the 'first in, first served' principle under the RMA. • Central and local governments should consider the role of non-regulatory approaches to achieving positive outcomes, including the use of economic instruments.

¹⁸ These would include regional policy statements, regional plans, and district plans.

Appendix 3: Impact analysis process for resource management reform

MfE has developed the following high-level process in consultation with the Treasury's Regulatory Quality Team (RQT) to ensure that resource management reform is supported by appropriate impact analysis.

An interim regulatory impact statement (RIS)

- Cabinet will be provided with an interim RIS to support its consideration of whether to release an exposure draft covering key policy areas of the proposed Natural and Built Environments Act (NBA). This interim RIS will explain the regulatory interventions within the exposure draft alongside presenting alternatives and interim impact analysis to support consultation.
- As detailed policy decisions to inform the exposure draft are proposed to be delegated to a group of Ministers, MfE will provide the group with a version of the interim RIS – whether in working draft or having completed quality assurance – as soon as practical.
- RQT and MfE will agree on the schedule as the process gets settled which will include finalising the dates for completing quality assurance of the interim RIS.

A final NBA RIS

- A final RIS will then be prepared prior to Cabinet making final policy decisions on the complete NBA Bill. This final RIS will address the remainder of the policy areas while also incorporating feedback gathered through consultation on the exposure draft.
- MfE and RQT will work together to finalise how this RIS will be structured and quality assurance completed.

Impact Analysis for the remainder of the reform

- Impact analysis will be completed for the SPA and the CAA at the time policy decisions are sought on these.
- Dates and process for the remainder of the reform programme are yet to be finalised and will be informed by Cabinet's decisions on timeframes.

MfE and RQT will collaborate to adapt the agreed arrangement if changes are required as the reform progresses.

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