

In Confidence

Office of the Minister for

Chair, Cabinet Environment, Energy and Climate Committee

Comprehensive review of the resource management system: confirming the scope and terms of reference

Proposal

1. This paper seeks agreement to the final scope and terms of reference for a comprehensive review of the resource management system.

Background

2. On 1 July 2019, Cabinet agreed to undertake a comprehensive review of the resource management system, led by an expert advisory group [ENV-19-MIN-0036 refers].
3. Cabinet noted that my preferred scope is a comprehensive review of the Resource Management Act 1991 (RMA), including work on spatial planning across the RMA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA).
4. Cabinet agreed that I would report back to finalise the scope and terms of reference for the review following initial consultation on:
 - my preferred review scope with Māori and a targeted group of stakeholders
 - the scope of spatial planning reform with relevant Ministers.
5. I launched the comprehensive review on 24 July 2019 and released a draft terms of reference for consultation.
6. Cabinet has also confirmed the appointment of the Chair and members of the Resource Management Review Panel (the Panel), and agreed that they start working based on my preferred scope [CAB-19-MIN-0442 refers].¹

Scope of the review

7. Following the consultation agreed to by Cabinet, I intend to keep the review aligned with my preferred scope. While there was little support for narrowing the scope, several stakeholders considered my preferred scope to be ambitious in the time available.
8. Some issues were raised through consultation that I consider should not be addressed by this review, or overlap with other government programmes. These include extending the scope to cover a wider range of legislation, looking at fundamental institutional reform of local government, addressing Māori rights and interests in freshwater allocation,² and broader constitutional questions relating to the Treaty of Waitangi.

¹ The Panel consists of the Hon Tony Randerson QC (Chair), Rachel Brooking, Dean Kimpton, Amelia Linzey, Raewyn Peart MNZM, Kevin Prime MBE ONZM.

² Issues relating to Māori rights and interests in freshwater are being progressed under the Essential Freshwater – Healthy Water, Fairly Allocated work programme in line with the *A New Approach to the Crown/Māori Relationship for Freshwater* agreed by Cabinet in July 2018 [ENV-18-MIN-0032 refers].

9. I have agreed with Urban Growth Agenda (UGA) Ministers that work on spatial planning will take a broad approach considering the full range of benefits for urban and non-urban areas. Spatial planning should consider the 'making room for growth' narrative underpinning the UGA, facilitating an abundance of development opportunities in our fastest growing urban centres. Spatial planning should also promote low-emissions urban form and protection for greenbelts, water catchments, and food production areas.
10. The Waitangi Tribunal released the findings of their Wai 2358 Freshwater and Geothermal Resources inquiry stage 2 report during the period I was consulting on the scope of the review. This report will be provided to the Panel for their consideration. While the Wai 2358 report makes specific RMA recommendations that clearly fall within my preferred scope, some of the recommendations will be more appropriately considered in the context of the next phase of freshwater policy reform.

Feedback on key issues the review should address

11. Cabinet invited Ministers to write to me with any specific issues relevant to their portfolios that fall within my preferred scope, to enable them to be considered as part of the review process. I have provided these letters to the Panel to take into consideration.
12. Issues raised by Ministers included strengthening provisions in Part 2 of the RMA and adding new matters, enabling the system to more directly influence climate change mitigation and resilience, enabling spatial planning to integrate and coordinate decision making, ensuring a more effective and influential role for Māori in the system, and clarifying central and local government roles in the system.
13. I have also agreed with the Minister of Fisheries that coastal occupation charging will be considered in the review. Officials will report back to relevant Ministers in late 2019 on whether open ocean aquaculture issues should also be included.
14. Feedback from Māori was clear that the review needs to recognise the importance of the resource management system in delivering positive outcomes for iwi, hapū and whānau. Among the key objectives for Māori are ensuring that the system better reflects the Māori world view, upholding current RMA provisions relating to Māori interests and the Treaty of Waitangi, and enabling Māori to play a greater role in resource management decision making.
15. Māori also want the review to address shortcomings with implementation of the current system. This includes addressing barriers to the use of joint management agreements and transfers of power, capacity and funding constraints on Māori engaging in the system, and how local government is required to take Māori interests into account when making decisions.
16. Stakeholders highlighted a number of key issues for the review to examine including clarifying legislative interfaces, improving implementation and practice, addressing capability and capacity shortfalls, reconsidering the allocation of institutional roles and responsibilities, and enabling a greater role for spatial planning.
17. Further detail on the issues raised by Ministers, iwi/Māori and stakeholders is provided in **Appendix 1**.

Confirming the terms of reference for the review

18. The final terms of reference for the Panel are attached as **Appendix 2**.
19. The final terms of reference incorporate feedback received through consultation, including by:

- clarifying the aim of the review is “to improve environmental outcomes and better enable urban and other development within environmental limits” (clause 5 of the terms of reference)
 - confirming the Panel can identify wider alignment issues within the resource management system, and other issues that fall outside of the scope or timeframe of the review, in their final report (clause 12)
 - clarifying that, like existing Treaty settlements, existing orders made under the Marine and Coastal Area (Takutai Moana) Act 2011 are out of scope except insofar as how a new resource management system will provide for them (clause 20)
 - requiring the Panel’s recommendations to be consistent with the principles of the Treaty of Waitangi (clause 35)
 - confirming that officials, and not the Panel, will consider complementary measures to support the transition to a new system and address culture, capacity and capability (clause 45).
20. Appendix 1 of the terms of reference lists key issues the review should address. This list does not reflect all of the matters raised through consultation. Addressing remaining issues will need to take place in the subsequent phase(s) of policy development to give effect to the Panel’s recommendations.

Engagement with Māori

21. Cabinet agreed to confirm the Panel’s engagement approach with Māori following initial consultation. My officials and I have consulted with pan-Māori groups, run regional hui around the country, and received written feedback directly from iwi and hapū.
22. Feedback from Māori was clear that they wish to be involved throughout the review, and for Māori insights to influence all aspects of designing a new system. Some wish to be involved at a hapū as well as a iwi level. There was criticism of the lack of external engagement prior to previous Cabinet decisions about the scope of the review, insufficient Māori representation on the Panel and the restricted time and capacity Māori will have to engage meaningfully with the review. Some iwi and hapū declined to provide specific comments on review scope on the basis that any future system should be collaboratively designed with Māori from the outset.
23. To ensure that the review is well aligned with the Government’s objectives for Māori Crown relations I propose an engagement approach that reflects:
- the need for the Panel to engage with Māori and inform itself of Māori interests in order to develop its recommendations. This will be assisted by a supporting reference group dedicated to Māori issues. This will have a broad range of perspectives represented. It will be mainly Māori in membership, but will have two or three non-Māori members experienced in these issues
 - the fact that the Panel’s report will not in itself result in legislative changes and will be followed by further opportunities for engagement, collaboration and co-design in line with Cabinet’s agreed Guidelines for Engaging with Māori [CAB-18-MIN-0456 refers]. By the time of this engagement, Ministers will have had an opportunity to consider the implications of the WAI 2358 report, which address several key issues for Māori under the RMA.
24. This review and the process of developing a new system should also build upon current RMA provisions relating to Māori and recent progress made through Treaty settlements. Ultimately the review should help improve Māori wellbeing and provide tangible cultural and environmental outcomes for Māori.

25. During its review, officials at the Ministry for the Environment will support the Panel to engage with national level Māori organisations and with iwi (and hapū who attend) directly through regional hui, to clarify the issues in the system and test high level recommendations that will be reflected in the Panel's report.³
26. I recommend the Government reaffirms its commitment to a broad, open process of public consultation following Cabinet consideration of the Panel's proposals. Officials should also be tasked with looking for opportunities to collaboratively refine policy options with Māori where appropriate. This will provide Māori with greater clarity about how and when they can be involved in the review prior to legislative changes being made.
27. I will report to the Cabinet Maori Crown Relations: Te Arawhiti (MCR) Committee on issues for Māori arising from the review before the Panel provides its final report to me, as required by Cabinet Office circular CO (19) 3 – Better Co-ordination of Contemporary Treaty of Waitangi Issues.

Other matters

28. To supplement the skills of the Panel, reference groups relating to te ao Māori, the urban and built environment, and the natural environment will be established. The Panel can seek information from these groups, which will include economics expertise, as required. The groups will not have decision-making responsibilities and are not intended to represent views of specific stakeholders or iwi/Māori.
29. Cabinet agreed that I would lead discussions with the Cabinet Environment, Energy and Climate (ENV) Committee at key stages as the review progresses, and establish a Ministerial governance group to oversee the review, once the work of the Panel is underway [ENV-19-MIN-0036 refers]. I intend to use ENV to provide ministerial oversight for the review, with regular discussions on the review as it progresses. Other interested Ministers will be invited to these discussions as necessary.
30. I will ask officials to provide advice on how the review has addressed matters raised by Minister's for Cabinet's consideration alongside the Panel's report.

Next steps

31. The Panel is now underway and has provided me with a draft issues and options paper. This will be finalised and publicly released following the final decisions sought by this paper and used to solicit feedback for the Panel to consider in writing their report.

Consultation

32. The following agencies have been consulted on the proposals in this paper: 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 Civil Defence and Emergency Management, Ministry of Justice, Ministry of Health, Ministry of Business, Innovation and Employment, New Zealand Defence Force, Ministry of Education and Statistics New Zealand. The Department of Prime Minister and Cabinet has been informed of the proposals.
33. The following interest groups and stakeholders were given the opportunity to comment on the scope of the review: the Environmental Defence Society, members of Resource Reform New Zealand,⁴ Local Government New Zealand, Iwi Leaders Group, New

³ The Panel also has access to a range of feedback from Māori over recent years through the Government's freshwater rights and interests and allocation work, various Waitangi Tribunal inquiries, the work of Kāhui Wai Māori, and the nationwide hui held in 2018 organised by the Minister for Māori Crown Relations: Te Arawhiti.

Zealand Māori Council, Te Tumu Paeroa,⁵ Federation of Māori Authorities, Kāhui Wai Māori,⁶ Ngā Aho,⁷ Resource Management Law Association, New Zealand Planning Institute, Environment and Conservation Organisations of NZ (ECO), Forest & Bird, Farming Leaders Group, Fish & Game, New Zealand Law Society, Council of Trade Unions, Interim Climate Change Committee and Sustainability Council. All councils and iwi authorities were provided with the draft terms of reference and provided with an opportunity to comment.

Financial implications

34. There are no financial implications associated with this paper. Funding for the review has been approved by Cabinet in Budget 2019 in line with my preferred scope.

Legislative implications

35. A comprehensive review will result in proposals for future legislative change, and Cabinet's agreement will be sought as to how and when further consultation will occur.

Regulatory impact analysis

36. Regulatory Impact Analysis (RIA) requirements do not apply to this paper.

Human rights, gender implications and disability perspective

37. There are no human rights, gender and disability implications associated with this paper.

Publicity

38. I intend to announce the final scope and process for a comprehensive review of the RMA once this is approved by Cabinet.

Proactive Release

39. I intend to proactively release this paper in whole at the time of announcing the final scope of the review.

Recommendations

The Minister for the Environment recommends that the Committee:

1. **Note** that Cabinet has agreed to undertake a comprehensive review of the resource management system, led by an expert Resource Management Review Panel [ENV-19-MIN-0036 refers]
2. **Note** that the Minister for the Environment was asked to report back to Cabinet to finalise the scope and terms of reference for the review following initial consultation

Scope of the review

3. **Agree** that the final scope of the review will be a comprehensive review of the RMA, including work on spatial planning across the RMA, LGA and LTMA

⁴ Resource Reform New Zealand is a significant coalition of stakeholders supporting resource management system reform. It includes EDS, the EMA, Property Council New Zealand, Infrastructure New Zealand, and Business New Zealand.

⁵ Te Tumu Paeroa is led by the Māori Trustee.

⁶ Kāhui Wai Māori is an advisory group to the Essential Freshwater work programme.

⁷ Ngā Aho is a network of Māori and indigenous urban design professionals who come together to support each other to better service the design aspirations of Māori and indigenous communities.

4. **Note** that the spatial planning work will take a broad scope that explores the full range of potential benefits of spatial planning across the resource management system
5. **Note** that:
 - 5.1. the Minister for the Environment has agreed with the Minister of Fisheries that coastal occupation charging will be considered by the review
 - 5.2. officials will report back to relevant Ministers in late 2019 on whether open aquaculture should be included in the review
6. **Note** that issues relating to Māori rights and interests in freshwater allocation are out of scope, but that the Waitangi Tribunal's recommendations relating to the RMA in their Wai 2358 Freshwater and Geothermal Resources report will be considered as part of the review

Engagement with Māori

7. **Note** that feedback from Māori that they expect to be closely involved throughout the review
8. **Note** the Panel will engage with Māori through national level bodies and regional hui led by the Ministry for the Environment to help identify issues and test high level recommendations
9. **Agree** that the next phase of the review, following the delivery of the Panel's report, will be a broad, open process of public consultation following Cabinet consideration of the Panel's proposals
10. **Note** that I will direct officials to look for appropriate opportunities to collaboratively refine and co-design policy options with Māori during the next phase of the review in line with Cabinet's agreed Guidelines for Engaging with Māori
11. **Note** that the Minister for the Environment will report to the Cabinet Māori Crown Relations: Te Arawhiti Committee report on issues for Māori arising from the review before the Panel provides its final report

Terms of reference

12. **Agree** to the final terms of reference for the review attached in **Appendix 2**

Other matters

13. **Note** that reference groups relating to te ao Māori, the urban and built environment, and the natural environment will be established to supplement the skills of the Panel
14. **Note** that reference groups will include members with economics expertise
15. **Note** that the Minister of the Environment intends to use the Cabinet Environment, Energy and Climate (ENV) Committee as the Ministerial governance group for the review.

Authorised for lodgement.

Hon David Parker
Minister for

Appendix 1: Feedback received from Ministers, iwi/Māori and stakeholders on issues for the review to address

I received a wide range of feedback from Ministers, iwi/Māori, and stakeholders on the issues the review should address. I have passed this feedback on to the Panel to consider. A summary of the issues raised, and a list of the groups who provided feedback, is provided below.

Ministers

Summary of issues raised by Ministers in scope of the review
<p><i>Objectives and alignment</i></p> <ul style="list-style-type: none"> strengthen existing provisions in Part 2 of the RMA and strengthen or add to the matters of national importance (eg, housing and urban; defence and national security) strengthen environmental bottom-lines, integrate ecological bottom lines across multiple environmental domains and use these to effectively manage cumulative effects consider separate decision making criteria for protecting environmental bottom lines, addressing the impact of development on wellbeing, and stewardship of the public estate resolve tensions between competing national objectives, and those that have national benefits but local effects enable the system to more directly influence the transition to a low emissions and climate resilient future provide better cultural and environmental outcomes and opportunities for whānau, iwi, and Māori align with the Government’s objectives for Māori Crown relations and reinforce and more effectively implement sections 6(e), 7(a) and 8 of the RMA relating to Māori interests and the Treaty of Waitangi
<p><i>Functions and processes</i></p> <ul style="list-style-type: none"> retain, strengthen and clarify designations process for critical infrastructure and public works provide an efficient, flexible and responsive system that enables cities and regions to make room for growth and develop and change over time enable spatial planning to integrate and co-ordinate decision making across land use planning, and infrastructure planning and investment strengthen opportunities for health input into planning decisions ensure a more effective and influential role for Māori in the resource management system better manage cumulative effects ensure stronger compliance, monitoring and enforcement reduce complexity and cost to enable more effective and efficient implementation
<p><i>Institutions</i></p> <ul style="list-style-type: none"> ensure decisions makers are incentivised to respond to the needs of all communities (both current and future), including having the financial and political incentives for urban growth ensure there is the necessary capability, capacity and culture throughout the system clarify central and local government roles and support with fit-for-purpose funding, guidance and partnership tools

Summary of issues raised by iwi/Māori

Objectives and alignment

- the reformed legislative framework needs to recognise appropriately and meaningfully provide for te ao Māori
- have principles that capture a Māori perspective central to the system's framework
- move past current western 'resource management' frameworks to a holistic socio-ecological wellbeing framework
- use a tikanga-based view which prioritises the health and wellbeing of te taiao and moves the conversation away from an anthropocentric lens
- the system must uphold the principles of Te Tiriti o Waitangi/the Treaty of Waitangi and actions in the system must have genuine regard for Te Tiriti, not just 'take them into account'
- include tikanga philosophies, beliefs in legislation, policies and practices which protect and care for the qualities and quantities of natural and cultivated resources
- include mātauranga Māori knowledge in the system
- the health and wellbeing of Te Taiao should be a priority and ecological health a primary objective

Functions and processes

- enable Māori to play a greater role in resource management decision making, including acknowledging and supporting hapū and whanau involvement
- properly implement current provisions in the RMA relating to Māori interests and the Treaty of Waitangi
- use a broader range of measures of ecosystem health and include Mātauranga Māori
- Māori principles should provide a foundation for spatial planning in resource management and spatial planning can enable early and high level involvement from cultural and spiritual perspectives
- there needs to be greater clarity about the role of local government in relation to Māori including more direction from the centre to take Māori views into account in decision making
- the system needs to be stronger regarding compliance, monitoring and enforcement
- need to strengthen the capability and capacity of the planning and resource management workforce to respond to the aspirations and diversity of Māori
- the RMA must ensure that tangata whenua can bring a cultural lens to all actions under the RMA, and that perspective must be valued as a Te Tiriti partner
- the RMA must recognise that it is hapū and iwi who hold mana i te whenua and are the everyday kaitiaki of the whenua, ngahere [forests], awa and moana
- a national co-governance board for freshwater is needed
- the RMA participation provisions must be amended to include hapū, to provide for genuine co-governance and co-management of freshwater taonga
- the Crown must directly resource tangata whenua, including hapū to effectively participate in the resource management process
- the RMA and LGA must have tangata whenua/ hapū monitoring provisions for natural resources
- the provision for tangata whenua to require and produce a cultural impact assessment to inform a consent application should be firmly protected

- make consultation and decision making appropriate and adequate for tangata whenua, including appropriate models and time frames (ie. collaborative and intergenerational)

Institutions

- the relationship between iwi-Māori and central and local government entities should be informed and framed by Treaty partnership principle and not simply a stakeholder
- address capacity and funding constraints on Māori engaging meaningfully in the system
- ensure local government is required to take Māori interests into account when making decisions
- consider the roles of Post Settlement Governance Entities (PSGE) and iwi authorities in relation to delegated functions such as joint management agreements and transfers of power
- consider whether all entities with delegated functions (such as PSGE) should be included in Council funding processes with support for capacity and capability building
- consider how to better support established entities (iwi authorities, post-settlement governance entities, mandated iwi organisations)

Proactively released

Stakeholders

Summary of issues raised by stakeholders
<p><i>Objectives and alignment</i></p> <ul style="list-style-type: none"> • consider alignment issues more widely, for example between the RMA and the Building Act and between the RMA and Kāinga Ora • consider what environmental law principles should guide New Zealand’s environmental and resource management law • take into account significant case law, such as <i>King Salmon</i> and <i>Davidson</i> decisions and be clear if these outcomes were intended, or otherwise clarify expected outcomes • if better urban development is an objective, then we need a range of housing at different price points, size, location and typologies
<p><i>Functions and processes</i></p> <ul style="list-style-type: none"> • consider roles, responsibilities and resources to give effect to spatial plans, including how infrastructure funding and delivery (currently provided under LGA and LTMA) will be integrated • consider what a full suite of national policy statements and national environmental standards looks like and how they can be implemented in a timely way • consider the extent to which the issues result from problems with implementation, rather than the legislative provisions themselves • plan-making, and decision-making relating to development applications should consider the practical needs of various participants, including efficient timeframes and affordability, as well as the overall environmental and economic outcomes achieved • address implementation barriers, including issues relating to planning practice and institutional capability and capacity, would resolve a number of key issues • address issues relating to planning practice, some of which may be mechanisms within the legislation to assist with consistent and improved implementation and practice • ensure the role of Māori in resource management, decision making processes and planning practice is confirmed • address the potential for duplication, gaps, uncertainty and confusion with regard to some activities that are managed by both regional plans and district plans • consider the relationship between sometimes conflicting and competing national policy statements and how these matters should be reconciled through the development of policy statements and plans • support resourcing and capacity building for Māori to be able to respond to RMA processes • local government requires clarity on their role in carrying out the principles of the Treaty of Waitangi in relation to the RMA • the time to change a district plan should be proportional to the complexity of the plan change • provide clear and efficient transitional provisions to moving towards a new system
<p><i>Institutions</i></p> <ul style="list-style-type: none"> • need to look at institutional roles and responsibilities and the hierarchy of central government, local government, and the courts to ensure an integrated decision making system • consider how will agencies be funded to deliver functions including spatial planning

Table of feedback received from Ministers, Iwi/Māori, and Stakeholders

Ministerial Feedback	<p>Hon Kelvin Davis, Minister for Māori Crown Relations:Te Arawhiti, 27 August 2019</p> <p>Hon Kelvin Davis, Minister of Corrections, 24 October 2019</p> <p>Hon Phil Twyford, Minister of Transport, 26 August 2019</p> <p>Hon Dr Megan Woods, Minister of Energy and Resources, 30 August 2019</p> <p>Hon Dr Megan Woods on behalf of the collective Housing and Urban Development Ministers, 10 September 2019</p> <p>Hon Chris Hipkins, Minister of Education, 10 September 2019</p> <p>Hon Nanaia Mahuta, Minister for Māori Development, 30 July 2018</p>	<p>Hon Nanaia Mahuta, Minister of Local Government, 9 September 2019</p> <p>Hon Stuart Nash, Minister of Fisheries, 2 October 2019</p> <p>Hon Damien O'Connor, Minister of Agriculture, 1 September 2019</p> <p>Hon Ron Mark, Minister of Defence, 2 September 2019</p> <p>Hon James Shaw, Minister for Climate Change, 30 August 2019</p> <p>Hon Julie Anne Genter, Associate Minister for Health, 2 September 2019</p> <p>Hon Eugenie Sage, Minister for Conservation, 30 August 2019</p>
Iwi/Maori Feedback	<p>Ngā Aho</p> <p>Papa Pounamu</p> <p>New Zealand Maori Council</p> <p>Ngati Tama ki Te Waipounamu Trust</p> <p>Nga Tirairaka O Ngati Hine</p> <p>Ngati Toki, Ngati Horahia</p>	<p>Ngati Torehina ki Matakā</p> <p>Te Atiawa ki Te Tau Ihu</p> <p>Te Orewai</p> <p>Te Waiariki, Ngati Korora, Ngati Takapari, Ngati Kawiti o Waiomio, Ngati Hine, Ngati Kopaki, Ngati Te Ara, Te Kapotai, Ngati Manu, Te Orewai, Ngati Te Tarawa, and Ngati Wai</p>
Key Stakeholder Feedback	<p>Resource Reform New Zealand</p> <p>Resource Management Law Association</p> <p>Property Council New Zealand</p> <p>New Zealand Planning Institute</p> <p>Forest & Bird</p> <p>New Zealand Law Society</p> <p>Environment and Conservation Organisations of NZ</p> <p>Business NZ</p>	<p>Fish & Game</p> <p>Tauranga City Council</p> <p>Interim Climate Change Committee</p> <p>Local Government New Zealand</p> <p>ADLS Inc.</p>
Regional hui locations – held during September and October 2019	<p>New Plymouth</p> <p>Ohakune</p> <p>Palmerston North</p> <p>Wellington</p> <p>Blenheim</p> <p>Tauranga</p> <p>Greymouth</p> <p>Whakatāne</p>	<p>Rotorua</p> <p>Gisborne</p> <p>Wairoa</p> <p>Hamilton</p> <p>Napier</p> <p>Auckland</p> <p>Whangarei</p> <p>Kaitia</p>

Appendix 2: Final Terms of Reference for the Resource Management Review Panel

Proactively released