

CABINET PAPER PROACTIVE RELEASE COVERSHEET

Minister	Hon David Parker	Portfolio	Environment
Name of package	Comprehensive review of the resource management system: releasing the Resource Management Review Panel's final report	Date of release (intended publish date)	1 October 2020

List of documents intended for proactive release

Date	Title	Author
23 July 2020	Cabinet paper: Comprehensive review of the resource management system: releasing the Resource Management Review Panel's final report	Office of Minister for the Environment
23 July 2020	Appendix 1: Extracts from the report of the Resource Management Review Panel: summary and key recommendations	Office of Minister for the Environment
23 July 2020	Cabinet minute ENV-MIN-0028	Cabinet Office

Information withheld

NIL.

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Environment, Energy and Climate Committee

Comprehensive review of the resource management system: releasing the Resource Management Review Panel's final report

Proposal

- 1 This paper notes my intention to publicly release the final report of the Resource Management Review Panel.

Relation to Government priorities

- 2 As part of building a productive, sustainable and inclusive economy, this Government is committed to improving the effectiveness of the resource management system [CAB-18-0246 refers]. Our three main steps for doing this have been:
 - 2.1 The Resource Management Amendment Act 2020 was enacted to reduce complexity, speed up freshwater plans and restore public participation opportunities in the Resource Management Act 1991 (RMA).
 - 2.2 The COVID-19 Recovery (Fast-track Consenting) Act 2020 has introduced a short-term consenting process to fast track projects that can boost employment and economic recovery in response to COVID-19. It speeds up resource consenting and designation processes by curtailing rights of participation and appeal rights, while protecting environmental standards and Treaty of Waitangi obligations.
 - 2.3 A comprehensive review of the resource management system has considered broader and deeper reform to fix issues that have affected the system for many years.

Background

- 3 On 1 July 2019, Cabinet agreed to undertake a comprehensive review of the resource management system (the review), led by the Resource Management Review Panel (the Panel) [ENV-19-MIN-0036 refers]. The Panel was chaired by Hon Tony Randerson QC.¹
- 4 The aim of the review is to improve environmental outcomes and better enable urban and other development within environmental limits. The scope of the

¹ The other Panel members were Rachel Brooking, Dean Kimpton, Amelia Linzey, Raewyn Peart MNZM, and Kevin Prime MBE ONZM.

review is a comprehensive review of the RMA, including work on spatial planning across the RMA, Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA).

- 5 Under its terms of reference, the Panel was required to provide me with a report recommending how to improve the resource management system and strengthen spatial planning. The report was to provide detailed policy proposals for significant parts of a new Act or Acts and indicative legislative drafting of key provisions.
- 6 Cabinet invited Ministers to write to me with issues relevant to their portfolios that fell within the scope of the review [ENV-19-MIN-0036 refers]. The issues raised by Ministers were considered as part of the review process.

The Panel's review

- 7 The Panel has carried out the review in line with its terms of reference.
- 8 The Panel members sought and heard a wide range of views about the system. This included engaging with Māori and key stakeholder groups and testing their proposals with expert reference groups.
- 9 On 23 June 2020, I updated the Māori-Crown Relations: Te Arawhiti Committee on the Panel's process in engaging with Māori and the key messages the Panel was received through that engagement.

The Panel's report

- 10 The Panel has delivered its report: *New directions for resource management in New Zealand* (the report). The report is the most comprehensive government review of the RMA since its introduction in 1991.
- 11 The report recommends two new pieces of interrelated legislation:
 - 11.1 the repeal of the RMA and its replacement with the Natural and Built Environment Act (NBEA). This would have a substantially different approach but would incorporate some of the key principles of the RMA that remain appropriate
 - 11.2 new legislation the Panel has called the Strategic Planning Act.
- 12 As summarised in the report's introduction, the focus of the NBEA would be on enhancing the quality of the environment and on achieving positive outcomes to support the wellbeing of present and future generations. This would include recognition of the concept of Te Mana o te Taiao, which refers to the importance of maintaining the health of natural resources, such as air, water and soil, and their capacity to sustain life.
- 13 This new focus would be achieved through a system designed to deliver specified outcomes, targets and limits for both the natural and built environments. Significant changes to processes are recommended including stronger national direction and the introduction of combined plans for each

region. The Panel expects these changes to result in clearer direction, reduced complexity, and opportunity for enhanced environmental quality.

- 14 The proposed Strategic Planning Act would set long-term strategic goals and facilitate the integration of legislative functions across the resource management system. These would include functions exercised under the new NBEA, the LGA, the LTMA and the Climate Change Response Act 2002.
- 15 This Strategic Planning Act would be designed to integrate land use planning with the provision of infrastructure and associated funding and investment. Regional spatial planning would play a critical part in delivering the intended outcomes for the resource management system. This new legislation would include strategic planning for urban growth and responding to change, measures to respond to the effects of climate change, and the identification of areas unsuitable for development due to their natural values or importance to Māori.
- 16 Managing the effects of climate change has been a significant focus of the review. The Panel have concluded that the complexities of the process of managed retreat (for example in coastal areas) require new discrete legislation they suggest be called the Managed Retreat and Climate Change Adaptation Act.
- 17 In total, the report makes over 140 recommendations and provides indicative drafting for key parts of new legislation. A summary and key recommendations, extracted without alteration from the Panel's report, are attached as **Appendix 1**. The report addresses the issues identified in the detailed terms of reference.
- 18 The report addresses almost all of the issues raised by Ministers. A small number of issues were not addressed because they related to matters of detail or implementation practice that are better managed through later stages of the review or in the implementation of legislation.

Public release of the Panel's report

- 19 Given the high degree of public interest in the report, I intend to publicly release it by August.

Next steps for the review

- 20 Cabinet agreed to a broad, open process of public consultation in the next phase of the review following Cabinet consideration of the Panel's proposals [CAB-19-MIN-0585.01].
- 21 The incoming government will make all decisions about how to progress the findings of the review.

Financial Implications

- 22 There are no financial implications associated with this paper. Funding for the review was approved by Cabinet in Budget 2019.

Legislative Implications

- 23 There are no legislative implications associated with this paper. Cabinet agreement will be sought to any future legislative changes arising from the Panel's proposals.

Impact Analysis

Regulatory Impact Statement

- 24 Regulatory impact analysis requirements do not apply to this paper.

Climate Implications of Policy Assessment

- 25 A Climate Implications of Policy Assessment is not required for this paper, although the Panel's report does include recommendations relating to climate change and the resource management system.

Population Implications

- 26 There are no population implications associated with this paper.

Human Rights

- 27 There are no human rights implications associated with this paper.

Consultation

- 28 No agencies were consulted on this paper.

Communications

- 29 I intend to release the Panel's report by August. The release will be accompanied by a media statement, which will describe the process to date but will not promote or oppose the proposals. That will be for the next government to consider.

Proactive Release

- 30 I intend to proactively release this paper at the time of announcing the release of the Panel's report.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that in July 2019 Cabinet agreed to undertake a comprehensive review of the resource management system, led by an expert Resource Management Review Panel (the Panel) [ENV-19- MIN-0036]
- 2 **note** that the Panel has undertaken the review and delivered its report in accordance with the scope of the review and its terms of reference as agreed by Cabinet

- 3 **note** that the Minister for the Environment intends to publicly release the Panel's report by August
- 4 **note** that the incoming government will make all decisions about how to progress the findings of the review.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Proactively released

Appendix 1: Extracts from the report of the Resource Management Review Panel: summary and key recommendations

Proactively released

Summary of the report

Aims of the review

The Resource Management Review Panel was appointed by the Minister for the Environment, the Hon David Parker, to undertake a comprehensive review of the resource management system in New Zealand. The main focus was the Resource Management Act (the RMA) but we were also asked to review the relationship between the RMA, the Local Government Act (LGA), the Land Transport Management Act (LTMA) and the Climate Change Response Act (CCRA).

The specific aim of the review under our terms of reference was to improve environmental outcomes and better enable urban and other development within environmental limits.

This summary outlines the principal reasons which led to the review and the main recommendations in our report. The more detailed recommendations follow this summary but the report itself should be read for a full understanding.

The drivers of the review

The key concerns prompting the review include:

- **New Zealand's natural environment is under significant pressure:** the way we use land and water has proved to be unsustainable for the natural environment. The quality of our freshwater, coastal and marine environments is in serious decline, and biodiversity is under significant threat.
- **Urban areas are struggling to keep pace with population growth:** poorly managed urban growth has led to increasing difficulty in providing affordable housing, worsening traffic congestion, greater pollution, and reduced productivity.
- **An urgent need to reduce carbon emissions and adapt to climate change:** the impacts of climate change are already affecting where people live and how we use our environment. Our land and resource use patterns need to change to mitigate and adapt to the effects of climate change and we need a resource management system that supports New Zealand's commitments to reduce greenhouse gas emissions.
- **The need to ensure that Māori have an effective role in the system, consistent with the principles of Te Tiriti o Waitangi:** when it was enacted, the RMA was a significant step forward for Māori, offering opportunities for shared management of the environment. However, it has failed to live up to its promise, leaving Māori out of critical decision-making.
- **The need to improve system efficiency and effectiveness:** significant criticisms of the RMA have been its increasing complexity, cost and delay caused by its processes, uncertainty, and lack of responsiveness to changing circumstances and demands.

The need for new legislation

When the RMA was introduced in 1991 it contained a number of valuable principles which it is important to retain. One of these was the principle of sustainability to ensure the needs of future generations are taken into account. However, in the ensuing period of nearly 30 years, the RMA

has been subjected to numerous amendments designed to improve its effectiveness but which have instead resulted in a doubling of its original length and an unduly complex patchwork of provisions.

Rather than attempt to amend the RMA, the Panel has concluded that the Act should be repealed and replaced with new legislation which we propose be named the Natural and Built Environments Act (NBEA). This would have a substantially different approach from the RMA but would also incorporate some of the key principles of the previous legislation which remain appropriate. The aim of the NBEA would be to establish more enduring solutions and bring to an end the series of ad hoc interventions that have been an undesirable feature of legislative change to date.

The Panel has also recommended a new separate piece of legislation which we have called the Strategic Planning Act. The purpose of the Strategic Planning Act would be to set long-term strategic goals and facilitate the integration of legislative functions across the resource management system. These would include functions exercised under the NBEA, the LGA, the LTMA and the CCRA to enable land and resource planning to be better integrated with the provision of infrastructure as well as associated funding and investment. Our consultation found strong support for greater use of spatial planning to identify areas suitable for development as well as areas or features it is important to protect. Spatial strategies developed at regional level, encompassing land and the coastal marine area, would play a critical part in delivering the outcomes intended for the resource management system.

The preparation and approval of spatial strategies under this new legislation would be the responsibility of a joint committee comprising representatives of central and local government as well as mana whenua.

We expect this new approach to result in stronger coordination between these parties in developing long-term strategic planning for both the natural and built environments, with closer links between land and resource planning and associated funding and investment.

Revised purpose and principles for the NBEA

One criticism of the purpose of the RMA has been its focus on managing the adverse effects of activities on the environment rather than promoting more positive outcomes. The Panel proposes a new purpose for the NBEA: enhancing the quality of the environment to support the wellbeing of present and future generations. That purpose will be achieved by promoting positive outcomes for both the natural and built environments, ensuring that use, development and protection of resources only occurs within prescribed environmental limits and that the adverse effects of activities on the environment are avoided, remedied or mitigated.

A further purpose of the NBEA would be to recognise the concept of Te Mana o te Taiao which is an expression of the importance of maintaining the health of air, water, soil and ecosystems and their capacity to sustain life. A similar concept is already incorporated in section 5(2)(b) of the RMA.

The concept of wellbeing has long been embedded in planning legislation and is also a feature of other legislation including the LGA. In the new legislation it would continue to be widely defined to include social, economic, environmental and cultural wellbeing as well as health and safety.

The environment would also be broadly defined to include the natural and built environments, whether in rural or urban areas.

In brief, the revised purpose and principles would establish a system designed to deliver specified positive outcomes for both the natural and built environments. The use and development of resources would be enabled so long as this can be achieved sustainably and within prescribed minimum limits to protect natural resources such as water, air, soils and natural habitats. The new legislation would also require the setting of targets to achieve ongoing improvement of the quality of both the natural and built environments.

Protecting and enhancing the natural environment

The revised purpose and principles under the NBEA now recognise an expanded range of outcomes that are to be provided for in respect of both the natural and built environments. Those relating to the natural environment include many of the features recognised under the RMA such as the protection of the coastal environment, wetlands, lakes and rivers, outstanding natural landscapes, improving the health of ecosystems and avoiding further loss of biological diversity. To improve certainty, the new Act requires the Minister to identify through national direction natural features that are of national significance. Regional councils would identify features that are of regional significance.

In addition, we have proposed the setting of mandatory environmental limits (sometimes referred to as bottom lines) for biophysical aspects of the environment including freshwater, coastal water, air, soil and habitats for indigenous species.

We expect the changes we propose in the NBEA will provide a greater level of protection for features of the natural environment which we know are highly valued by New Zealanders and, over time, for the restoration of resources such as our waterways which have become degraded.

Managing urban growth

Another criticism of the RMA has been the lack of provision for managing urban growth. This has become particularly urgent in larger urban areas experiencing substantial increases in population but insufficient capacity to accommodate growth. The Panel proposes this be addressed in several ways. The revised purpose and principles of the NBEA will provide for specific outcomes for the built environment, including the availability of development capacity for housing and business purposes to meet expected demands, and the strategic integration of infrastructure with land use.

These outcomes would be supported by the use of national policy statements such as those currently in use, the greater use of economic instruments and, importantly, by the Strategic Planning Act we propose. We expect that spatial strategies prepared on a regional basis under the Strategic Planning Act would identify areas suitable for urban growth (as well as areas not suitable for development) and would also facilitate the provision of infrastructure necessary to support growth. Effective ways to achieve this integration have been a missing element of the resource management system to date.

The new purpose and principles under the NBEA would further improve certainty in the resource management system by requiring the resolution of any potential conflicts between the identified

outcomes through national direction by the Minister for the Environment or in the combined plans we propose at local government level.

The effects of climate change

The need to address the effects of climate change has been a particular focus of the Panel's work. The Panel has concluded that the resource management system should complement the CCRA and the emissions trading scheme to help New Zealand achieve the agreed targets for reduction of greenhouse gas emissions. As well, the resource management system needs to enable adaptation to the impacts of climate change and reduction of risk from natural hazards.

The Panel has recommended these issues be addressed in a number of ways, including by providing outcomes in the purpose and principles of the NBEA designed to reduce risks from natural hazards, improve resilience, reduce greenhouse gas emissions, promote activities that mitigate emissions or sequester carbon and to increase the use of renewable energy. This would be supported by mandatory national direction and through combined plans at local government level. We also expect the regional spatial strategies developed under the proposed Strategic Planning Act will be an important means of identifying areas at risk of inundation as well as climate change mitigation measures consistent with the CCRA.

Finally, we propose a new discrete piece of legislation which we have called the Managed Retreat and Climate Change Adaptation Act. This would establish an adaptation fund to enable central and local government to support necessary steps to address the effects of climate change and would also deal with the many complex legal and technical issues involved in the process of managed retreat.

We expect these recommendations to result in a much improved and better co-ordinated response to these challenges.

Improving engagement with Māori

Our consultation processes have highlighted the need for a significantly greater role for Māori in the resource management system.

In the revised purpose and principles for the NBEA we have recommended that those involved in the administration of the legislation should give effect to the principles of Te Tiriti o Waitangi rather than taking them into account as currently provided in the RMA. To provide clarity about what this means in the context of the NBEA, the Panel has recommended that the Minister for the Environment be required to give national direction on how the principles of Te Tiriti will be given effect through functions and powers exercised under the NBEA.

The Panel is also recommending that mana whenua should participate in decision-making for the proposed regional spatial strategies and in the making of combined plans at local government level. These are important changes that will give Māori an effective role in decision-making on resource management issues at a strategic level.

The Panel has also recommended the creation of a National Māori Advisory Board to advise central and local government on resource management from the perspective of mana whenua and an integrated partnership process between mana whenua and local government to address resource management issues at local government level.

We expect the combination of these provisions to provide a significant and effective role for Māori in the resource management system.

System efficiency and effectiveness

In our report we have highlighted deficiencies in the resource management system, including undue complexity and inefficient processes leading to unnecessary expense and delay. We have also commented on the provisions of the RMA tending to favour the status quo and which hinder the ability of the system to respond to change.

To address these issues, we have proposed:

- greater use of mandatory national direction by the Minister for the Environment to guide planning at local government level
- the use of combined plans which would bring together the plans prepared by regional councils and territorial authorities in each region
- a more streamlined process for the preparation and change of plans
- a much greater focus on the quality of plans which is expected to provide clearer guidance and a reduction in the time and effort spent on individual resource consent processes
- providing greater clarity about notification of resource consent applications
- an alternative process to deal with resource consents raising localised issues such as boundary issues between neighbours
- an improved ability to have more serious disputes over consents referred directly to the Environment Court
- improvements in the designation process including extending the default lapse period to better protect opportunities for the provision of public infrastructure
- a wider range of mechanisms guided by specified principles to allocate resources such as freshwater and the use of coastal space
- more focus on the use of economic instruments to complement regulatory land use controls
- enhancing the ability of regional councils to modify or extinguish resource consents for natural resources such as discharges into fresh water where environmental limits are threatened
- giving territorial authorities the ability to change land use consents in narrowly defined circumstances, such as where necessary to implement a managed retreat process as part of adapting to climate change
- improving enforcement under the resource management system, including the use of regional hubs to co-ordinate enforcement effort in each region and introducing stronger penalties for offences
- improving monitoring and oversight of the resource management system, including through a new national environmental monitoring system and an enhanced audit and reporting function for the Parliamentary Commissioner for the Environment.

Perhaps the greatest single process change is our proposal for mandatory combined plans in each region. At present there are well in excess of 100 policy statements and plans in existence throughout the country. Under our proposal for combined plans, the number of plans would reduce to just 14. Preparation of these combined plans would be undertaken by a joint committee comprising representatives of the regional council, the constituent territorial authorities in the region along with representatives of mana whenua. The Ministry for the Environment would have an auditing role to ensure quality and consistency.

An independent panel, chaired by a sitting Environment Judge, would hear submissions, review the combined plan and make recommendations on its provisions. Decisions would then be made by the joint committee, and a streamlined appeal process would follow based on the model recently used for the Auckland Unitary Plan.

Our proposals for plan making are expected to have significant beneficial results:

- a simplified and more efficient process
- better quality plans
- the resolution of uncertainty arising from overlapping functions of regional councils and territorial authorities
- greater clarity in plans including by minimising potential conflicts between the outcomes specified in the purpose and principles of the NBEA
- fewer resource consent applications as a result of clearer guidance in plans.

Next steps

Cabinet is responsible for making all decisions about how to progress the Panel's report and recommendations. Cabinet has indicated that a broad, open process of public consultation will follow its consideration of the Panel's proposals. Wide engagement with New Zealanders and stakeholders is anticipated for the introduction of any new legislation.

Hon Tony Randerson QC, Chair

Amelia Linzey

Dean Kimpton

Kevin Prime

Rachel Brooking

Raewyn Peart

Summary of key recommendations

Chapter 1 Integrating land use planning and environmental protection

Key recommendation – Integrating land use planning and environmental protection

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| 1 | An integrated approach for land use planning and environmental protection, encompassing both the built and the natural environments, should be retained in reformed legislation. |
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Chapter 2 Purpose and principles

Key recommendations – Purpose and principles

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| 1 | The RMA should be repealed and replaced with new legislation to be called the Natural and Built Environments Act. |
| 2 | The purpose of the Natural and Built Environments Act should be to enhance the quality of the natural and built environments to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao. |
| 3 | The purpose of the Act should be achieved by ensuring: positive outcomes for the environment are promoted; the use, development and protection of natural and built environments is within environmental limits; and the adverse effects of activities on the environment are avoided, remedied or mitigated. |
| 4 | The environment should be defined broadly to include:
(i) ecosystems and their constituent parts
(ii) people and communities
(iii) natural and built environments whether in urban or rural areas. |
| 5 | There should be a requirement to give effect to the principles of Te Tiriti o Waitangi. |
| 6 | Current matters of national importance should be replaced by positive outcomes specified for the natural and built environments, rural areas, tikanga Māori, historic heritage, and natural hazards and the response to climate change. |
| 7 | Mandatory environmental limits should be specified for certain biophysical aspects of the environment including freshwater, coastal water, air, soil and habitats for indigenous species. |
| 8 | Ministers and local authorities should be required to set targets to achieve continuing progress towards achieving the outcomes. |
| 9 | There should be greater use of mandatory national direction, including the identification of features and characteristics that contribute to the quality of both natural and built environments, and to respond to climate change. |
| 10 | Principles to guide implementation should be identified. |
| 11 | Any conflicts in achieving the outcomes should be resolved through national direction or, in the absence of such direction, in combined plans. |

Key recommendations – Purpose and principles

- 12 Indicative drafting of the new purpose and principles identified in this chapter along with associated definitions are provided in appendix 1 of this report.

Chapter 3 Te Tiriti me te ao Māori

Key recommendations - Te Tiriti o Waitangī me te ao Māori

- 1 The concept of ‘Te Mana o te Taiao’, should be introduced into the purpose of the Natural and Built Environments Act to recognise our shared environmental ethic.
- 2 Specific outcomes should be provided for ‘Tikanga Māori’, including for the relationships of mana whenua with cultural landscapes.
- 3 The current Treaty clause should be changed so that decision-makers under the Act are required to ‘give effect to’ the principles of Te Tiriti o Waitangī.
- 4 A national policy statement should be required on how the principles of Te Tiriti will be given effect through functions and powers exercised under the Act.
- 5 A more effective strategic role for Māori in the system should be provided for, including representation of mana whenua on regional spatial planning and joint planning committees.
- 6 A National Māori Advisory Board should be established to monitor the performance of central and local government in giving effect to Te Tiriti and other functions identified in the report.
- 7 The current Mana Whakahoā ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues.
- 8 The current legislative barriers to using the transfer of power provisions and joint management agreements should be removed and there should be a positive obligation on local authorities to investigate opportunities for their use.
- 9 The current definitions of the terms ‘iwi authority’ and ‘tangata whenua’ should be replaced with a new definition for ‘mana whenua’.
- 10 Provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest.
- 11 The funding and support options recommended in this chapter should be implemented.

Chapter 4 Strategic integration and spatial planning

Key recommendations - Strategic integration and spatial planning

- 1 There should be a new Strategic Planning Act to promote the social, economic, environmental and cultural wellbeing of present and future generations through the long-term strategic integration of functions exercised under the Natural and Built Environments Act, LGA, LTMA and CCRA.
- 2 The Strategic Planning Act should provide a framework for mandatory regional spatial planning for both land and the coastal marine area.

Key recommendations - Strategic integration and spatial planning

- 3 Regional spatial strategies should set long-term objectives for urban growth and land use change, responding to climate change, and identifying areas inappropriate to develop for reasons such as their natural values or their importance to Māori.
- 4 There should be flexibility for:
 - (i) the responsible Minister to determine sequencing, timing and priorities for preparation of these strategies
 - (ii) spatial strategies to cover two or more regions or to focus on sub-regions in response to particular issues.
- 5 Regional spatial strategies should set a strategic direction for at least the next 30 years, informed by longer-term data and evidence as appropriate, such as 100 year plus projections for climate change.
- 6 Regional spatial strategies should be strategic and high level with project and site-level detail provided through separate implementation agreements and subsequent combined planning and funding processes.
- 7 Regional spatial strategies should be prepared and approved by a joint committee comprising representatives of central government, the regional council, all constituent territorial authorities in the region, mana whenua and an independent chair.
- 8 There should be significant stakeholder and community involvement in the preparation of these strategies, including through public submissions and a process similar to the special consultative procedure under the Local Government Act.
- 9 Joint committees should seek consensus, but dispute resolution procedures should be provided including a facilitated mediation process and power for the Minister to resolve any remaining disputes.
- 10 Regional spatial strategies should be consistent with national direction under the Natural and Built Environments Act.
- 11 Combined plans and regional and local funding plans should be consistent with spatial strategies.
- 12 Regional spatial strategies should be fully reviewed at least every nine years with flexibility for review within that period when required.

Chapter 5 A more responsive system: addressing status quo bias

Key recommendations – A more responsive system

- 1 The principles that should guide the design of a more responsive resource management system are:
 - (i) sustainability
 - (ii) fairness and equity
 - (iii) early notice and adequate time for transition
 - (iv) balancing responsiveness with certainty for investment.

These principles are reflected in the recommendations in chapter 6 Climate change and natural hazards, chapter 7 National direction, chapter 8 Policy and planning framework,

	chapter 9 Consents and approvals and chapter 11 Allocation of resources and economic instruments.
2	<p>The protections generally afforded to existing uses and consented activities should be retained except that:</p> <ul style="list-style-type: none"> (i) the powers of regional councils to modify or extinguish regional consents should be strengthened to achieve agreed outcomes and be more responsive to change (ii) the powers of territorial authorities should be extended to enable them to modify or extinguish existing land uses and land use consents in specific circumstances. These should be confined to: <ul style="list-style-type: none"> a) where necessary to adapt to the effects of climate change or to reduce risks from natural hazards or b) where there is high risk of significant harm or damage to health, property or the natural environment, for example by the breach of an environmental limit.

Chapter 6 Climate change and natural hazards

Key recommendations – Climate change and natural hazards

1	<p>Outcomes should be introduced for the following matters in the purpose and principles of the proposed Natural and Built Environments Act:</p> <ul style="list-style-type: none"> (i) reduction of risks from natural hazards (ii) improved resilience to the effects of climate change, including through adaptation (iii) reduction of greenhouse gas emissions (iv) promotion of activities that mitigate emissions or sequester carbon (v) increased use of renewable energy.
2	<p>Mandatory national direction should be required for:</p> <ul style="list-style-type: none"> (i) climate change mitigation consistent with the emissions reduction plan under the CCRA and in a way that aligns with and supports emissions pricing (ii) climate change adaptation and reduction of risks from natural hazards consistent with the national climate change risk assessment and national adaptation plan under the CCRA.
3	<p>Regional spatial strategies developed under the proposed Strategic Planning Act should be used to address at a strategic level:</p> <ul style="list-style-type: none"> (i) climate change mitigation, informed by the emissions reduction plan under the CCRA (ii) climate change adaptation and natural hazard risk reduction, informed by the national adaptation plan under the CCRA.
4	<p>Reducing greenhouse gas emissions, climate change adaptation and reducing risks from natural hazards should be included in the functions and powers of both regional councils and territorial authorities under the proposed Natural and Built Environments Act.</p>
5	<p>Combined plans should be used to regulate land and resource use to give effect to the national direction and implement spatial strategies. This would include provisions under the proposed Natural and Built Environments Act to allow for adaptive planning measures.</p>

6	Powers under the Natural and Built Environments Act to modify established land uses should be used to address climate change adaptation and reduction of risks from natural hazards.
7	A Managed Retreat and Climate Change Adaptation Act should be introduced to: <ul style="list-style-type: none"> (i) provide for managed retreat, powers to change established land uses and to address liability and options for potential compensation (ii) establish an adaptation fund to enable central and local government to support necessary steps to address climate change adaptation and reduction of risks from natural hazards.

Chapter 7 National direction

Key recommendations – National direction	
1	The current forms of national direction should be retained: national policy statements, national environmental standards, national planning standards and regulations.
2	The present functions of the Minister for the Environment and the Minister of Conservation should be continued, including the mandatory requirement for a New Zealand Coastal Policy Statement.
3	The purpose for national direction should be setting objectives, policies, limits, targets, standards and methods in respect of matters of national significance to give effect to the purpose and principles in the Natural and Built Environments Act and to resolve any conflicts between these matters.
4	Mandatory national direction should be required on the topics specified in section 9(3) of the purpose and principles of the Natural and Built Environments Act.
5	The power for the Minister for the Environment to issue discretionary national directions should be retained with some modification of the matters to be taken into account before deciding whether to do so.
6	There should be a single board of inquiry process for the preparation and review of both national policy statements and national environmental standards, except for minor changes for which an alternative process can be adopted.
7	All existing and new national direction should be brought together into a coherent combined set and any conflicts between them resolved.
8	National directions should be reviewed every nine years but intermediate changes should also be allowed for as necessary.
9	The respective roles of national policy statements and national environmental standards should be clarified and provision should be made for them to be issued separately or in a single instrument.
10	The making of regulations should generally be confined to their traditional role of dealing with administrative matters but regulations to address substantive issues should be allowed in limited circumstances and subject to appropriate safeguards.
11	National planning standards should have a more confined role and should be established by a process overseen by an expert advisory group which would make recommendations to the Minister for the Environment.

12	<p>To improve responsiveness to national direction:</p> <ul style="list-style-type: none"> (i) the ability to review existing regional permits and consents should be strengthened (ii) land use consents granted by territorial authorities and existing land use rights should be able to be reviewed but only in exceptional circumstances. These should be confined to: <ul style="list-style-type: none"> (a) where necessary to adapt to the effects of climate change or to reduce risks from natural hazards, or (b) where there is high risk of significant harm or damage to health, property or the natural environment, for example by the breach of an environmental limit.
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Chapter 8 Policy and planning framework

Key recommendations - Policy and planning framework	
1	There should be a mandatory plan for each region combining regional policy statements and regional and district plans.
2	The functions of regional councils and territorial authorities should be clarified in the way described in this chapter.
3	<p>The combined plans should be prepared by a joint committee comprising a representative of the Minister of Conservation and representatives of:</p> <ul style="list-style-type: none"> (i) the regional council (ii) each constituent territorial authority in the region (iii) mana whenua.
4	The role of combined plans in the new system should be to demonstrate how the outcomes set out in the purpose of the Natural and Built Environments Act will be delivered in a region, including resolution of any conflicts or tensions between outcomes (if not resolved through national direction).
5	The joint committee should have authority to prepare and notify the combined plan and to make all decisions relating to the plan and subsequent processes without the need for ratification by the constituent local authorities.
6	The joint committee and the secretariat supporting it should be funded by the constituent local authorities.
7	The evaluation process currently undertaken under section 32 of the RMA should be retained under the Natural and Built Environments Act but should be modified in the way described in this chapter.
8	Prior to notification the Ministry for the Environment should undertake an audit of the plan.
9	After notification and receipt of submissions by interested parties, including the constituent local authorities and mana whenua, a hearing should be conducted by an independent hearing panel chaired by an Environment Judge.
10	The independent hearing panel should make recommendations to the joint committee which should have authority to decide which recommendations to accept or reject.

11	In respect of any recommendation rejected by the joint committee there should be a right of appeal to the Environment Court on the merits by any submitter. Where recommendations are accepted by the joint committee the right of appeal should be to the High Court and limited to questions of law.
12	This process should also apply to plan changes with some variation to account for the nature, scale and complexity of the change.
13	The preparation of combined plans should usually be undertaken after the preparation of a spatial strategy for the relevant region and reviewed at least every nine years with flexibility to review more often.
14	Private plan changes should still be possible but with greater constraints on when and in what circumstances that may occur.
15	These new provisions should replace all plan-making processes available under current legislation including the current Schedule 1 process, and streamlined processes and collaborative planning.

Chapter 9 Consents and approvals

Key recommendations - Consents and approvals

1	Current resource consent types should remain: land use and subdivision consents, and water, discharge and coastal permits.
2	The current list of activities should remain, except for the non-complying category which should be removed.
3	The current rules on notification of consent applications should be substantially changed by removing the 'no more than minor' effects threshold and replacing existing provisions with a combination of presumptions and plan provisions specifying when notification is to occur and in what form.
4	Information requirements should be proportionate to the nature, scale and complexity of the issue.
5	The matters to be considered on an application for resource consent should be amended in various respects including shifting the focus to identified outcomes and removing the 'subject to Part 2' reference and the permitted baseline test.
6	The direct referral process should be modified. Where the relevant consent authority declines to consent to the referral the Environment Court should be permitted to approve direct referrals on stated criteria.
7	An alternative dispute resolution process should be established for controlled or restricted discretionary activities in prescribed circumstances. Parties to the process should still be able to exercise rights of appeal but only by leave of the Environment Court.
8	An 'open portal' for consent applications should be established to coordinate agency responses and encourage the bundling of applications.
9	Proposals of national significance should remain but with a simplified process involving Ministerial referral to the Environment Court in accordance with prescribed criteria.

Chapter 10 Designations, heritage and water conservation orders

Key recommendations - Designations	
1	Eligibility to exercise designation powers should be centred on public-good purposes.
2	Those eligible should include: <ul style="list-style-type: none"> (i) a list of approved requiring authorities in the legislation: Ministers of the Crown, local authorities, and network utility operators that meet specified criteria (ii) other requiring authorities approved by the Minister for the Environment based on specified criteria.
3	A new default lapse period of 10 years should be available for all designations, with extensions of up to another 10 years subject to specified criteria.
4	There should be two stages in the designation process: <ul style="list-style-type: none"> (i) a notice of requirement defining the designation footprint (ii) a construction and implementation plan confined to addressing construction and operational effects.
5	Flexibility to combine these two stages should be provided.
6	The relevant considerations for a designation requirement should be modified to also include: <ul style="list-style-type: none"> (i) consistency with the regional spatial strategy (ii) its contribution to the outcomes identified in the Act, any national direction and the combined plan (iii) the opportunity for co-location of infrastructure within the designation.
7	Requiring authorities should prepare a construction and implementation plan. This should consider the environmental effects of the construction and implementation of the work and the appropriate controls to manage those effects.
8	Notices of requirement should continue to be publicly notified with appeal rights retained.
9	The construction and implementation plan should be available for public and territorial authority comment prior to construction works commencing.
10	Consideration should be given to extending designations into the coastal marine area.
Key recommendations - Heritage orders	
11	The Ministry of Culture and Heritage should continue its Strengthening Heritage Protection project as part of resource management reform. This work should include <ul style="list-style-type: none"> (i) investigating potential provisions for national direction on heritage (ii) reviewing heritage order provisions (iii) exploring options for dealing with 'demolition by neglect' issues.
12	This work should also investigate the interface between the Natural and Built Environments Act and the Heritage New Zealand Pouhere Taonga Act 2014 to provide greater clarity about which agency has primary responsibility for which aspects of heritage protection.

Key recommendations - Designations

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| 13 | Subject to the outcomes of the review above one option for heritage orders could be to provide interim protection for a heritage site while more enduring solutions are explored. |
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Key recommendations - Water conservation orders

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| 14 | <p>We recommend that the water conservation order process should be included in the Natural and Built Environments Act, retaining the current purpose, but with the following changes:</p> <ul style="list-style-type: none">(i) applications should be heard by the Environment Court in a one-stage process, with a draft order and recommendations made by the Court and referred to the Minister for the Environment for final decision-making(ii) applications should include a statement of proposed changes to the relevant planning documents which would be required to give effect to the order(iii) the Court's recommendations should include changes to relevant planning documents to give effect to the order(iv) ministerial approval of the order would include changes to planning documents which would give direct effect to the order without further process(v) hearings should be held at the closest practical location to the water body in question(vi) the application and hearing process should include mana whenua(vii) any relevant planning documents should 'give effect' to any order(viii) once an order is made it should be a matter for consideration in any consent applications that may impact on the water body. |
| 15 | Further work should be undertaken by the Ministry for the Environment and the Department of Conservation to investigate and develop policy on the effectiveness of water conservation orders as discussed in this chapter. |

Chapter 11 Allocation of resources and economic instruments

Key recommendations - Allocation of resources and economic instruments

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| 1 | The Natural and Built Environments Act should retain the current allocative functions for resources in the RMA. |
| 2 | Allocation principles of sustainability, efficiency and equity should be included in the new Act to provide greater clarity on the outcomes sought and a consistent framework for the development of more detailed measures. |
| 3 | The allocation principles should not be included in the purpose and principles of the Natural and Built Environments Act but should be in a part of the Act focused on allocation. |
| 4 | A combination of regulatory and market-based mechanisms is needed to allocate resources. These should be enabled under the Natural and Built Environments Act and developed in the context of specific resources through strategic planning, national direction and combined plans. |

Key recommendations – Allocation of resources and economic instruments

5	To enable sustainable, efficient and equitable allocation of resources, the Natural and Built Environments Act should adopt a more balanced approach to the prioritisation of existing users in resource consent processes. This includes: <ul style="list-style-type: none"> (i) encouraging shorter permit durations, with flexibility to provide longer-term permits for major infrastructure (ii) providing stronger powers to review and change consent conditions (iii) providing for a wider range of matters to be considered in consent renewal processes (iv) providing powers to direct common expiry of permit terms.
6	To promote more competitive urban land markets, national direction should be used to require the use of data on urban land prices, analysis of regulatory stringency, and a clear and flexible approach to urban land use regulation.
7	Further work should be undertaken to explore the use of targeted rates to capture uplift in land values as a result of public works.
8	To encourage greater use of economic instruments: <ul style="list-style-type: none"> (i) future legislation should ensure there is a broad mandate for the use of tradable rights and permits, incentives and environmental taxes and charges (ii) central government should provide institutional support for the development and use of economic instruments by local authorities through a combination of national direction, guidance, and support for capability.

Chapter 12 System oversight

Key recommendations - National environmental monitoring system

1	The Ministry for the Environment should establish in consultation with other agencies a comprehensive, nationally coordinated environmental monitoring system with the following features: <ul style="list-style-type: none"> (i) it should incorporate and build on the current National Monitoring System, with improvements to be more systematic about the data it collects and to make it easier for councils to use (ii) it should be supported with sufficient resourcing to improve the capacity and capability of central and local government, including science and data capability.
2	The Minister for the Environment should provide national direction on how the system should be implemented, including national direction developed with Māori on how to incorporate Māori perspectives and mātauranga Māori into the system.
3	The Ministry for the Environment should be responsible for implementing the system and monitoring performance of the system at a national level.
4	Local authorities should continue to have primary responsibility for the collection of data and the monitoring of system performance at local government level.
5	Combined plans should provide for monitoring and reporting.

Key recommendations - Environmental reporting

6	The Ministry for the Environment and the Government Statistician should continue to be responsible for regular reporting to the Minister for the Environment on environmental outcomes at a national level.
7	There should be clear links between the Natural and Built Environments Act and Environmental Reporting Act.
8	Local authorities should be required to report regularly to the Ministry for the Environment on the state of the environment in their regions and districts.
9	Reports on the state of the environment should be made publicly available.

Key recommendations - Oversight of system performance

10	The Ministry for the Environment should have primary responsibility for oversight of the effectiveness of the resource management system, including the effectiveness of the Natural and Built Environments Act and national direction made under it.
11	The combined planning joint committees should have oversight of the performance and effectiveness of combined plans.

Key recommendations - Auditing of system performance and responding to evidence of poor outcomes

12	The Parliamentary Commissioner for the Environment's role should be expanded to include a more formalised and independent auditing and oversight role of the performance and effectiveness of the resource management system and on the state of the environment.
13	The Parliamentary Commissioner for the Environment should be required to provide regular reports to Parliament on the performance and effectiveness of the resource management system and on the state of the environment.
14	These reports should be made publicly available and the Minister for the Environment should be required to identify steps to be taken to respond to issues identified.
15	Local authorities should also be required to state how they will respond to issues identified that relate to their regions and districts.

Chapter 13 Compliance, monitoring and enforcement

Key recommendations - Compliance, monitoring and enforcement

1	System links should be established between compliance monitoring, state of the environment monitoring and monitoring progress towards outcomes.
2	New regional hubs should be established to undertake resource management compliance, monitoring and enforcement options.
3	The offence and penalties regime should be strengthened, including by: (i) increasing the maximum financial penalties (ii) deterring offending by extending the circumstances in which commercial gain may be taken into account in sentencing

Key recommendations - Compliance, monitoring and enforcement

	<ul style="list-style-type: none"> (iii) adjusting the maximum imprisonment term so most prosecutions may be heard as judge-alone trials (iv) prohibiting insurance for fines and infringement fees under the Natural and Built Environments Act (v) enabling creative sentencing options (vi) developing new Solicitor-General prosecution guidelines for environmental cases.
4	<p>A number of new compliance, monitoring and enforcement measures should be introduced and existing measures improved, including by</p> <ul style="list-style-type: none"> (i) enabling regulators to recover costs associated with permitted activity and unauthorised activity monitoring (ii) amending the power to require disclosure of information about those carrying out the allegedly contravening activity (iii) creating a new offence for contravention of a condition of consent (iv) enabling abatement notices for the contravention of a consent notice, or any covenant imposed by condition of consent (v) establishing a new power to allow a regulator to apply for a consent revocation order in response to serious or repeated non-compliance (vi) providing for enforcement of undertakings.

Chapter 14 Institutional roles and responsibilities

Key recommendations – Institutional roles and responsibilities

1	Additional resourcing should be provided to the Ministry for the Environment to undertake its expanded role, including providing support for local authorities and mana whenua.
2	Additional resources should be provided to the Office of the Parliamentary Commissioner for the Environment to enable the Office to undertake expanded oversight and auditing roles.
3	Participation by mana whenua in resource management processes should be supported by central government and local government funding and capability-building assistance.
4	The Ministry for the Environment should work with professional institutes and organisations to ensure those administering the reformed RMA are appropriately equipped and upskilled to implement it.
5	The Ministry for the Environment should provide easily accessible public guidance on all the essential aspects of a reformed RMA.
6	A climate change adaptation fund should be established, and hazard risk management guidance provided by central government, to enable local authorities to take pre-emptive adaptation action on climate change effects.

Key recommendations – Environment Court

7	A sitting or retired Environment Judge should chair boards of inquiry on proposed national direction.
8	A sitting Environment Judge should chair independent hearing panels considering combined plans.
9	The Environment Court should continue to have all its present jurisdiction and a new appellate role in the combined plan/independent hearing panel process.
10	The Environment Court should hear all applications for proposals of national significance.
11	Consideration should be given to a potential role for the Environment Court under separate legislation on managed retreat.
12	The changes recommended in this chapter to improve access to justice should be adopted.
13	The number of judges, commissioners and registry staff at the Environment Court should be increased as necessary to ensure the Court has sufficient capacity to carry out the increased range of functions we propose.

Chapter 15 Reducing complexity

Key recommendation – Reducing complexity

1	The RMA should be repealed and replaced by the Natural and Built Environments Act to reduce complexity and improve overall coherence of the legislation.
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Chapter 16 Transition to a reformed system

Key recommendations – Transition to a reformed system

1	Work on developing transitional arrangements as part of implementing the reforms we propose in this report will need to balance stability and a smooth transition with implementation of the reforms as soon as practicable.
2	The key components of the transition are: <ul style="list-style-type: none"> (i) the timing and sequencing of national direction, regional spatial strategies and combined plans (ii) the impact on existing processes, consents and activities under the RMA (iii) the financial and resourcing implications to develop and implement the reformed system (iv) supporting the change in culture.
3	Work should commence as soon as possible on the preparation of the Strategic Planning Act, the Natural and Built Environments Act and the Managed Retreat and Climate Change Adaptation Act.
4	The Strategic Planning Act should come into effect before or at the same time as the Natural and Built Environments Act, but the Managed Retreat and Climate Change Adaptation Act could come later.
5	The new legislation for the reforms we propose should be in place by the time the proposed COVID-19 recovery legislation expires.

Key recommendations – Transition to a reformed system

6	We would expect mandatory national directions to be completed within three years of the introduction of the Natural and Built Environments Act.
7	We would expect the overall transition process to be completed within ten years of the introduction of the Strategic Planning Act and the Natural and Built Environments Act.
8	Some work should commence immediately, such as data collection and analysis to establish a robust evidence base for setting targets and limits.
9	The Minister should select one region to develop the first regional spatial strategy, followed by development of the combined plan, to provide a model for other regions to follow.

Proactively released



Cabinet Environment, Energy and Climate Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Comprehensive Review of the Resource Management System: Release of the Review Panel's Final Report

Portfolio **Environment**

On 23 July 2020, the Cabinet Environment, Energy and Climate Committee:

- 1 **noted** that on 27 June 2019, the Cabinet Environment, Energy and Climate Committee agreed to undertake a comprehensive review of the resource management system, led by an expert Resource Management Review Panel (the Panel) [ENV-19- MIN-0036];
- 2 **noted** that the Panel has undertaken the review and delivered its report in accordance with the scope of the review and its terms of reference as agreed by Cabinet [CAB-19-MIN-0585.01];
- 3 **noted** that further work will be required on the issue of urban tree protection;
- 4 **noted** that the Minister for the Environment intends to publicly release the Panel's report by August 2020;
- 5 **noted** that the incoming government will make all decisions about how to progress the findings of the review.

Vivien Meek
Committee Secretary

Present:

Hon Grant Robertson
Hon David Parker (Chair)
Hon Stuart Nash
Hon Shane Jones
Hon Nanaia Mahuta
Hon Damien O'Connor
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Officials Committee for ENV