



PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop	Portfolio	RMA Reform
Name of package	Repealing the Natural and Built Environment Act (NBA) 2023 and Spatial Planning Act (SPA) 2023	Date to be published	16 February 2024

List of documents that have been proactively released		
<i>Date</i>	<i>Title</i>	<i>Author</i>
29 November 2023	BRF 3951 Delivering your resource management priorities: repeal of the Natural and Built Environment Act (NBA) 2023 and Spatial Planning Act (SPA) 2023	Ministry for the Environment
4 December 2023	CAB-23-SUB-0473 Repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023	Ministry for the Environment
4 December 2023	CAB-23-MIN-0473 – Cabinet Minute of Decision	Cabinet Office
18 December 2023	CAB-23-SUB-0499 Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill: Approval for Introduction	Ministry for the Environment
18 December 2023	CAB-23-MIN-0499 – Cabinet Minute of Decision	Cabinet Office
<p>Information redacted YES</p> <p>Any information redacted in this document is redacted in accordance with the Ministry for the Environment’s policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.</p> <p>Summary of reasons for redaction</p> <p>Some information has been withheld from the above documents to maintain legal professional privilege and the confidentiality of advice tendered by Ministers of the Crown and officials.</p>		

Briefing 3951: Delivering your resource management priorities: repeal of the NBA and SPA

Date submitted: 29 November 2023

Tracking number: BRF-3951

Security level: In-Confidence

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon Chris Bishop Minister for RMA	<ol style="list-style-type: none"> 1. Indicate preferred policy options to deliver repeal of NBA and SPA by Christmas 2. Provide feedback on draft Cabinet Paper to introduce repeal bill by 19 December 2023 (attached) 	30 November 2023

Actions for Minister's office staff
<p>If agreed to, forward this briefing to: Hon Nicola Willis, Minister of Finance; Hon Chris Bishop, Minister of Housing and Infrastructure; Hon Dr Shane Reti, Minister for Health; Hon Simeon Brown, Minister for Energy, Local Government and Transport; Hon Paul Goldsmith, Minister for Arts, Culture and Heritage and Treaty of Waitangi Negotiations; Hon Judith Collins, Minister of Defence; Hon Todd McClay, Minister for Agriculture, Forestry and Hunting and Fishing; Hon Tama Potaka, Minister for Conservation and Māori Crown Relations: Te Arawhiti; Hon Melissa Lee, Minister for Economic Development; Hon Simon Watts, Minister for Climate Change; Hon Penny Simmonds, Minister for the Environment; Hon Chris Penk, Minister for Land Information; Hon Shane Jones, Minister for Oceans and Fisheries, and Resources</p> <p>Return the signed briefing to the Ministry for the Environment (rmreform@mfe.govt.nz and ministerials@mfe.govt.nz).</p>

Appendices and attachments
<p>Appendix 1: Policy decisions to enable drafting to commence</p> <p>Appendix 2: Draft Cabinet Paper, Repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023</p>

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Principal Author	Eve Williams – Briefing Ross Scrivener – Cabinet paper		
Responsible Manager	Rhedyn Law Sarah King (Spatial Planning Policy Office)		

Key contacts at Ministry for the Environment

Deputy Secretary	Nadeine Dommissé Mark Vink (Executive Director, Spatial Planning Board)	027 549 7733	<input type="checkbox"/>
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Minister's comments

BRF-3951: Delivering your resource management priorities: repeal of the NBA and SPA

Key messages

1. This briefing provides advice on repealing the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) by Christmas.
2. To achieve repeal within this timeframe, the scope of the repeal legislation will need to be very narrow, and process steps will need to be shortened or skipped.
3. Even a slightly longer timeframe (but still within the 100-day period) would enable the consideration of other amendments that could help progress the Government's work programme, for example amending the Resource Management Act 1991 (RMA) to include the NBA's emergency response regulation-making power and pushing out the timeframes for the freshwater planning process. § 9(2)(f)(iv)
4. This briefing sets out what can be achieved through a 'pre-Christmas' repeal and recommends actions that can be taken during or after the repeal process to mitigate risks of proceeding at pace. A draft paper seeking Cabinet's agreement to the repeal and its associated process is attached for your feedback.
5. This timeframe provides limited opportunities for engagement with your colleagues across other portfolios, with Post-Settlement Governance Entities (PSGEs), relevant Māori groups and local government. We can provide advice and support to your Office to assist engagement with other affected Ministers and to help navigate the necessary process steps to ensure repeal by Christmas.
6. There are two areas where your direction is needed before the repeal legislation can be drafted: the approach to savings and transitional arrangements (including those related to the fast-track consenting process provided in the NBA), and consequential amendments made to other acts through the NBA and SPA. Appendix 1 sets out these decisions in detail and seeks your agreement to begin drafting.
7. Subsequent briefings will address your other resource management priorities as discussed in our recent meeting with you, including the proposed new fast-track consenting legislation to be introduced within the first 100 days in office.

Recommendations

We recommend that you:

- a. **confirm** your intention to repeal the following acts by Christmas 2023:
 - i. Natural and Built Environment Act 2023 (NBA) Yes / No
 - ii. Spatial Planning Act 2023 (SPA) Yes / No
- b. **agree** to the specific recommendations in Appendix 1, indicating your decisions in that appendix
Yes / No
- c. **authorise** officials to instruct the Parliamentary Counsel Office (PCO) to draft based on the matters agreed in Appendix 1
Yes / No
- d. **note** that repealing the NBA and SPA by Christmas will require a streamlined Cabinet and legislative process with very limited time for engagement with other Ministers or external groups
- e. **note** that even a slightly longer timeframe (but still within the 100-day period) would enable the consideration of other amendments that could help progress the Government's work programme
- f. **direct** officials to update the attached Cabinet paper to reflect your decisions on this briefing, working towards lodging the final paper on 1 December for Cabinet decisions on 4 December
Yes / No
- g. **authorise** officials to engage with PSGEs, customary marine title groups, groups who are yet to agree a historical Treaty settlement with the Crown and other Māori groups where appropriate, and local government to inform them of Cabinet's decision to repeal the NBA and SPA and the process that will be followed
Yes / No
- h. **direct** officials to prepare a letter to PSGEs, other Māori groups where appropriate, and local government to inform them of repeal
Yes / No
- i. **note** the bill must be lodged with Cabinet by 14 December 2023 to enable repeal by Christmas, and meeting this timeframe relies on keeping the scope of the bill restricted to what you direct via this briefing
- j. **agree** to seek approval for the repeal bill to be passed through the House under urgency and bypass the select committee phase
Yes / No
- k. **agree** to seek Cabinet agreement to delegate authority to you as Minister Responsible for RMA Reform, to make further decisions in line with the scope of recommendations agreed in the Cabinet paper, including to:
 - i. make decisions on the technical detail of the bill, including for savings and transitional provisions and consequential and other amendments
 - ii. issue additional drafting instructions to PCO

- iii. agree in consultation with the Minister for Māori-Crown Relations: Te Arawhiti to make further decisions on statutory acknowledgements that have been expanded under the NBA and RMA

Yes / No

- I. **agree** that the Minister Responsible for RMA Reform will consult with other ministers as necessary in making delegated decisions, including the Minister for Infrastructure, Housing, Local Government, Transport, Agriculture, Māori-Crown Relations: Te Arawhiti, Oceans and Fisheries, Conservation and Environment

Yes / No

- m. **note** that officials will provide you with further advice on options to advance your wider resource management priorities

- n. **agree** to forward this briefing to Hon Nicola Willis, Minister of Finance; Hon Chris Bishop, Minister of Housing and Infrastructure; Hon Dr Shane Reti, Minister for Health; Hon Simeon Brown, Minister for Energy, Local Government, Transport and Energy; Hon Paul Goldsmith, Minister for Arts, Culture and Heritage and Treaty of Waitangi Negotiations; Hon Judith Collins, Minister of Defence; Hon Todd McClay, Minister for Agriculture, Forestry and Hunting and Fishing; Hon Tama Potaka, Minister for Conservation and Māori Crown Relations: Te Arawhiti; Hon Melissa Lee, Minister for Economic Development; Hon Simon Watts, Minister for Climate Change; Hon Penny Simmonds, Minister for the Environment; Hon Chris Penk, Minister for Land Information; Hon Shane Jones, Minister for Oceans and Fisheries, and Resources

Yes / No

Signatures



Nadeine Dommissie
Deputy Secretary

Environmental Management and Adaptation

Date: 29 November 2023



Mark Vink
Executive Director
Spatial Planning Board

29 November 2023

Date:

Hon Chris Bishop
Minister for RMA Reform



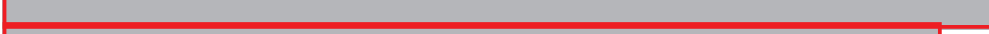

Date:

Delivering your resource management priorities: repeal of the NBA and SPA

Purpose

1. The purpose of this briefing is to provide advice to achieve your intention to repeal the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) by Christmas 2023. We seek decisions on your preferred approach, policy choices and next steps. We attach a draft Cabinet paper to initiate repeal for your consideration.

Background

2. The Government has committed to repealing the NBA and SPA by Christmas 2023 and introducing legislation into Parliament for a permanent fast-track consenting regime for infrastructure projects within the first 100 days in office.
3. Despite recent reform, much of the Resource Management Act 1991 (RMA) remains in effect and councils continue to apply the RMA in their planning and resource consenting decisions. While some NBA processes have commenced and are already being applied, most implementation of the NBA and SPA has not yet begun.
4. Repealing the NBA and SPA will be largely a technical process, but there are several complexities to be addressed, including:
 - a) providing savings and transitional provisions for matters under the NBA that have already commenced so they are not left unresolved by the repeal – such as some compliance and enforcement actions and the issuing of freshwater-related short duration consents
 - b) consequentially amending over 150 other acts and secondary legislation – the NBA and SPA made many consequential amendments to other legislation which must be reversed
 - c) if desired, providing ‘bridging’ provisions to enable a fast-track consenting process to continue until a more permanent regime can be enacted, following introduction within the first 100 days of being in office.
5.  § 9(2)(f)(iv)



6. To manage risks arising from the short time frame for repeal, we recommend informing Post-Settlement Governance Entities (PSGEs), customary marine title groups, groups yet to agree a historical Treaty settlement with the Crown and other Māori groups where appropriate, and local government as the key implementor of the RM system, of the repeal process.

7. There are process, timing and policy choices available to advance this work and to finalise the Cabinet decisions you need. These are discussed below.
8. We also provide advice and some options for your consideration on aspects of the NBA [and SPA] which you may wish to retain. We have identified some provisions that could also be saved. We advise that only the most urgent be included in legislation to be introduced before Christmas 2023.
9. The remaining provisions, including some RMA amendments to better support your priorities, would require additional engagement with Treaty partners, local government and key stakeholders. § 9(2)(f)(iv)

Analysis and advice

Process for repeal

10. Cabinet decisions are required to enable the Parliamentary Counsel Office (PCO) to start drafting of the repeal bill. There is only one opportunity to seek necessary policy decisions from Cabinet to achieve repeal of the NBA and SPA by Christmas 2023. The attached Cabinet paper must be lodged with Cabinet office on Friday, 1 December 2023, for decisions by Cabinet on Monday, 4 December 2023. This involves lodging late (normally papers must be lodged by 10am on the preceding Thursday) and bypassing Cabinet committee consideration beforehand.
11. It is common for minor drafting and policy issues to emerge during drafting of bills; therefore, the draft Cabinet paper includes a recommendation for you to seek a delegation from Cabinet so that you can make necessary decisions in line with initial Cabinet decisions, with the delegated authority covering decisions on the technical detail of the bill, including for savings and transitional provisions and consequential amendments and issuing further drafting instructions to PCO required to draft the bill. If there are any issues arising with major implications for other portfolios, we recommend they are discussed with the relevant Minister/s.
12. We have begun discussions with PCO to understand process issues from its perspective. PCO confirms it can deliver a narrowly scoped repeal bill including priority consequential, saving and transitional provisions and, if preferred, savings provisions for the existing fast-track regime. It is important to note that if the policy scope of the bill increases PCO will need more time to draft the bill and repeal before Christmas will not be possible.
13. Regulatory Impact Statement (RIS) requirements apply to bills. A RIS would normally be submitted to Cabinet alongside the policy Cabinet paper, and then published when the bill is introduced to the House. We have notified the Treasury's Regulatory Impact Analysis (RIA) team that we were not able to prepare an accompanying RIS due to time constraints. This RIS would have assessed the impacts of the repeal and the costs and risks of maintaining the RMA while replacement legislation is developed. The Treasury's RIA Team notes that regulatory impact analysis to support development of replacement legislation should meet Cabinet requirements.

14. Once a bill has been drafted, it is submitted to Cabinet with a covering paper that seeks approval to introduce the bill. To achieve repeal by Christmas, the paper seeking approval to introduce the bill will need to be lodged on Thursday, 14 December 2023 for Cabinet approval on Monday, 18 December 2023. The bill can then be introduced to the House on 19 December. This paper will make it clear what consultation with other Ministers and external consultation has occurred.
15. To achieve repeal before Christmas 2023, the bill will need to be progressed through Parliament under urgency. This would likely mean the bill passes all its readings and the Committee of the Whole House stage in one day, bypassing the select committee stage. You may move an urgency motion (standing order 296). The motion can be moved without advance notice and is not debated by the House, although you must inform the House why the Government wishes to take urgency. We will provide you with speeches and other material to support you through the parliamentary process closer to the time.
16. The process described above is set out in the table at paragraph 45 for reference.

Engagement

17. Repealing the NBA and SPA by Christmas 2023 provides limited opportunities to engage with Treaty partners, PSGEs, local government, or other key stakeholders. We recommend you authorise officials to undertake limited targeted engagement relevant Māori groups and local government as key implementers of the resource management system to inform them of the repeal process.

Engagement with Māori

18. To support delivery of a repeal and meet obligations under Treaty settlements and other obligations, and to reduce the risk of delay and impacts to the Māori Crown relationship arising from potential litigation, we recommend directing officials to undertake targeted engagement to inform PSGEs, customary marine title groups, groups who are yet to agree a historical Treaty settlement with the Crown and other Māori groups where appropriate, of Cabinet's decision to repeal the NBA and SPA, what it will mean for them, and the process to be taken.
19. Given the timeframes available, we would need to be clear with groups that this engagement is likely limited to the sharing of information. This would include early discussions with PSGEs to ensure Treaty settlement and other commitments that place obligations on you or the Ministry, such as requirements for early engagement on a 'no surprises' basis, are met. We will provide you with a letter to send to PSGEs, other Māori groups where appropriate.
20. You may also consider engaging with groups such as the National Iwi Chairs' Forum, Freshwater Iwi Leaders Group, Te Tai Kaha, PSGEs, and iwi/hapū on the broader implications for the Crown-Māori relationship of repeal given the additional strategic role and participation opportunities for Māori under the NBA, and the resourcing and time these groups committed to working through the reforms to date. We recommend you discuss potential engagement with these groups with officials.

Engagement with local government

21. Local government will need clarity on how the repeal will affect their current or upcoming planning processes. In some cases, local government had halted scheduled processes in anticipation of the NBA and SPA. We suggest providing a clear message to local

government that RMA processes should continue, and that the government is committed to working closely with the sector as wider resource management priorities are progressed. We will provide you with a letter to inform local government of repeal.

22. We recommend you direct officials to use existing relationships and communication channels with local government to inform the sector of the repeal and its broad implications for their operations.

Communicating the repeal

23. There was a high level of public interest throughout the process of the resource management reforms. We anticipate sustained interest in the subsequent repeal of the NBA and SPA. We will work with your office on a communications approach to inform the public of the repeal and anticipated next steps to reform the RMA, including introducing a fast-track consenting regime within 100 days of taking office.

Policy decisions required for repeal of the NBA and SPA

Repeal of the NBA is mostly a technical process, but there are drafting complexities to address

24. A small number of NBA functions have commenced and are already being used. We recommend the repeal legislation includes savings and transitional provisions related to these functions. This will help ensure an orderly repeal and provide certainty for those who have already begun processes or applications under the new legislation.
25. Key matters that we consider may need savings and/or transitional provisions include:
 - a) fast-track consenting (further advice on options to retain a fast-track regime is provided below)
 - b) compliance and enforcement (we also consider there is a strong argument to retain some aspects of the NBA compliance and enforcement regime to provide stability to regulators and regulated parties. This is discussed in more detail below)
26. There are some other provisions of the NBA that are in force, but we are not aware that any applications or proceedings have been initiated. These aspects do not currently need savings or transitional provisions, but this position may change. This category includes:
 - a) applications for requiring authority status
 - b) notice of requirement for designation
 - c) Mana Whakahono ā Rohe and joint management arrangements.
27. There are also some provisions in force that resulted in improvements to processes or resolved administrative inconsistencies in the system which should be retained, or savings and transitional provisions provided. This category includes:
 - a) statutory acknowledgements
 - b) matters required to ensure that Treaty settlements and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld.

28. Appendix 1 sets out these provisions, the high-level rationale for savings or transitional arrangements, and seeks your decisions on each provision.

Consequential amendments

29. The NBA made amendments to over 150 other acts and secondary legislation, including the RMA. For amendments that refer to NBA provisions, or where RMA provisions have been repealed and replaced by equivalent NBA provisions (such as transfers of power), we recommend that the most straightforward approach is to change them to either what they were before the NBA amended them or the most appropriate wording as determined by PCO.
30. A minority of amendments do not result in references to NBA provisions in this way, so repealing the NBA does not result in a need to change them. Many of the consequential amendments are technical and detailed and you have a choice as to whether they should remain or change. For example, one amendment that would remain if not specifically repealed is the shorter maximum duration for freshwater-related consents. This was an amendment to the RMA, but was a transitional arrangement related to the NBA. It should therefore be repealed through the bill.
31. We suggest, as part of a delegation from Cabinet, you consult other Ministers as necessary determine whether the repeal bill changes any of these other amendments. We will provide you with further advice on these specific amendments if necessary.

Repeal of the Spatial Planning Act is more straightforward

32. As the spatial planning process in the SPA is yet to be triggered, and no other decisions have been made under the SPA, no transitional arrangements are needed. Consequential amendments to 12 pieces of legislation will need to be changed through the repeal of the SPA.
33. The Spatial Planning Board (the Board), an interdepartmental executive board of public sector chief executives, was established under the Public Services Act 2020 as a vehicle for co-ordinating and aligning spatial planning across agencies. Initially set up to govern the cross-agency process used to develop the SPA, the Board's functions then shifted to co-ordinating central government's participation in regional spatial strategies and overseeing implementation of the SPA. The Board will not be disestablished by the repeal of the SPA, and so a decision will be required about whether it is continued with amended functions or disestablished. We will provide you with separate advice on cross-agency working arrangements for RMA reform, including the potential role of the Board.¹

§ 9(2)(f)(iv)

¹ The Board members are the chief executives of the Ministry for the Environment (Chair), Department of Conservation, Department of Internal Affairs, Ministry of Housing and Urban Development and Ministry of Transport. Departments represented by the Board are Department of Conservation; Department of Internal Affairs; Ministry for Culture and Heritage; Ministry for Primary Industries; Ministry for the Environment; Ministry of Business, Innovation, and Employment; Ministry of Education; Ministry of Health; Ministry of Housing and Urban Development; Ministry of Māori Development—Te Puni Kōkiri; Ministry of Transport; Office for Māori Crown Relations—Te Arawhiti; and The Treasury.

s 9(2)(f)(iv)



Policy decisions required to retain a fast-track consenting regime

Repeal of NBA means there will be no fast-track consenting regime unless technically saved

- 38. The NBA provides a fast-track process for specified infrastructure and housing developments that meet certain requirements. Under this pathway the Minister for the Environment² has the ability to refer an activity to an Expert Consenting Panel (ECP). This is similar to the referral process under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). The FTCA self-repealed in July 2023.³
- 39. When the NBA is repealed, there will be no fast-track referral process and the only 'faster consenting' processes that will remain will be direct referral and proposals of national significance as provided for currently in the RMA. These existing RMA processes are for publicly notified consents, whereas fast-track consenting under the NBA allows for a more truncated process and there is no ability to publicly notify.

² Jointly with Minister of Conservation, if the activity is in the coastal marine area (defined under the RMA)

³ Consents and notices to designate for these projects could be lodged with EPA to be considered by Expert Consenting Panel (ECP) by 11 January 2024, but no 'new' referral projects to ECP can be made.

40. Retaining a fast-track consenting regime will provide an alternative consenting pathway to deliver specified housing and infrastructure in the interim before a replacement regime is in place. You have options how to achieve this. Our recommended approach is to retain the NBA fast-track consenting provisions until a replacement regime is enacted following introduction within 100 days of taking office. This will have drafting and technical implications and will require further engagement with PCO.
41. There will be implications for Treaty settlements and other arrangements,⁴ and rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapu o Ngāti Porou Act 2019. It will be important to put appropriate mechanisms in place to ensure that Treaty settlements and other rights and arrangements are upheld through the application of fast-track provisions.⁵
42. You have other options including, but not limited to, developing stand-alone legislation, or amending the RMA to include FTCA or the NBA fast-track consenting. However, we consider these options could have broader implications, are more technically complex and have more uncertain implications for Treaty settlement legislation. All these matters would impact on the ability to repeal the NBA by Christmas.
43. If you agree to the recommended approach to save the NBA fast-track provisions, officials will provide you with further advice in January 2024 on options to introduce a new regime within 100 days of taking office. These options may have implications for the durability of existing Treaty settlements and other arrangements, and rights under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapu o Ngāti Porou Act 2019, which will need to be considered. Depending on the policy choices made, a process for working through how settlements can be upheld with PSGEs, and other relevant groups may be required.

Timeframes

44. Based on your clear signalling to repeal the NBA and SPA before Christmas 2023, we have developed the table below which contains the series of steps needed to pass repeal legislation. These timeframes will be guided by Department of Prime Minister and Cabinet and PCO's coordination of other 100-day commitments and are indicative only. We have begun discussions with PCO who consider that the timeline may be viable if the scope and complexity of repeal are kept very narrow.
45. We will discuss these steps and your preferred timeframes to ensure it meets your expectations.

Table 1: Steps needed for introducing repeal legislation		
	Step	Indicative dates
Briefing	Confirm repeal process, goals, timelines and policy matters for the repeal bill	29 November

⁴ Including Mana Whakahono ā Rohe and joint management agreements.

⁵ There were mechanisms to uphold Treaty settlements and other rights and arrangements under the NBA through Schedules 1 and 2, and under the FTCA through various provisions, including the requirement to act consistently with Treaty settlements.

Cabinet paper	Draft Cabinet paper provided to your office (departmental/Ministerial consultation in parallel)	29 November
	Lodgement	1 December
	Cabinet/Cabinet Committee meeting	4 December
Engagement	Targeted engagement with PSGEs, relevant Māori groups, and local government to inform them of the repeal process	4-21 December
Drafting	PCO draft bill	4 -14 December
	Additional briefings as needed to seek decisions on emerging policy issues (delegated decision making to Minister for RMA Reform as agreed by Cabinet)	In parallel with drafting
LEG paper	Draft legislative Cabinet paper and near-final bill provided to your office (departmental/Ministerial consultation in parallel)	11 December
	LEG paper and bill lodgement with Cabinet office	14 December
	Cabinet meeting, followed by introduction of the bill to the House after PCO's final quality assurance processes	18 December
Parliamentary process	Bill accorded urgency by the House, select committee stage bypassed	19-21 December

Treaty of Waitangi/Te Tiriti o Waitangi analysis

46. Māori have a significant interest in the resource management system and our natural resources more broadly. Successive Waitangi Tribunal panels have found that the RMA breaches the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.⁶ Many, if not most, historical Treaty settlements reached between iwi and the Crown have included agreements or mechanisms of varying complexity that have sought to address deficiencies in the RMA in terms of Māori involvement. The RM Review Panel also identified several issues related to the Treaty and te ao Māori.
47. The issues identified by the Waitangi Tribunal and RM Review Panel will likely continue to be present in the RMA. Without legislative changes the ability to address these underlying issues would be limited and would rely on a high degree of voluntary effort or non-legislative mechanisms.
48. All decisions relating to the resource management system will have degrees of significance to Māori and the Māori Crown relationship, because the:

⁶ See, for example, Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 66 and 115 and [Extracts-from-Waitangi-Tribunal-commentary-findings-and-recommendations-on-the-RMA.pdf \(environment.govt.nz\)](#).

- a) extent of RMA related settlement or other commitments and agreements set out in settlement legislation
- b) resource management related rights available under both the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- c) effective participation of tangata whenua in decision-making regarding the natural environment and associated infrastructure outcomes has significance within te ao Māori
- d) process for Crown and iwi and hapū engagement on freshwater allocation matters.

49. § 9(2)(h) [Redacted]

Other considerations

Consultation

- 50. Officials undertook limited consultation with other agencies on the content of this paper. Generally, agencies were supportive of the proposals in this paper. Treasury and the Ministry of Transport sought a narrower scope of delegation power.
- 51. We can liaise with your Office to support any additional Ministerial and external consultation that you wish to undertake. We also worked with PCO to ensure legislative timeframes, windows for drafting, and Parliamentary processes were feasible.

Risks and mitigations

- 52. There are some complexities in the repeal process. There is a risk in moving fast that some matters will be left unresolved and may cause problems in the ongoing implementation of the RMA. Errors in the repeal bill could result in uncertainty for system users that could potentially require another urgent bill to resolve.

53. § 9(2)(h) [Redacted]

- 54. The Government's coalition agreements provide a mandate to progress repeal of the NBA and SPA by Christmas and provide a mandate for action.

§ 9(2)(h)

[REDACTED]

Financial, regulatory and legislative implications

- 56. The decisions from this paper will result in legislation that will repeal the NBA and SPA. The proposals may require amendment to the RMA as well as consequential amendments to other statutes.
- 57. Existing Treaty settlement legislation, the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are connected to the RMA.
- 58. Costs of any changes will be addressed as part of budget processes within existing departmental and non-departmental funding.
- 59. Fiscal implications, both in terms of savings and costs for future reforms to the RMA, will be addressed through upcoming fiscal processes, eg, Mini-Budget and Budget 2024.

Next steps

- 60. **Discuss** the proposed approach to delivering on your resource management priorities with officials.
- 61. **Indicate** your preferred options as set out in this briefing by Wednesday, 29 November 2023 to enable the attached Cabinet paper to be finalised (draft Cabinet paper attached).
- 62. **Receive** the updated Cabinet paper, incorporating your policy choices, for your comments, finalisation, and signature by Thursday, 30 November 2023 to enable the Cabinet paper to be circulated to your Ministerial colleagues.
- 63. **Lodge** Cabinet paper with Cabinet Office on Friday, 1 December for consideration on Monday, 4 December 2023.
- 64. **Introduce** the NBA and SPA Repeal Bill 2023 by Tuesday, 19 December 2023.

Compliance and enforcement provisions	applications and receive decisions	<p>The NBA compliance and enforcement provisions are in force and actions or proceedings have already begun to be taken under them.</p> <p>Transitional and savings provisions are likely needed to allow for proceedings, matters before the Environment Court (such as enforcement orders, abatement notice appeals, and applications for suspension/revocation), and relevant council actions already in progress to be resolved.</p>	<p>5. agree that the repeal bill may provide transitional and savings provisions for any compliance and enforcement actions under the RMA using provisions from Part 11 of the NBA (read into the RMA by Schedule 1) (dependent on decisions to retain some compliance and enforcement provisions, see recommendation 24)</p>	<p>Yes/No</p>
Freshwater-related resource consents	<p>To provide a pathway for actions or proceedings that have already begun to be taken under the compliance and enforcement provisions</p>	<p>The NBA changed the maximum duration for freshwater-related resource consents (affected resource consents) issued under the RMA. The new maximum duration is linked to an NBA implementation event (with some exemptions). This maximum duration applies to freshwater-related consents applied for from 24 August 2023.</p> <p>Councils may have issued resource consents with a descriptive expiry date (eg, this consent expires 5 years after freshwater allocation rules take effect). These will need to be changed to a fixed date expiry date.</p>	<p>6. note that the NBA changed the maximum duration of RMA freshwater-related resource consents (affected resource consents) and linked the expiry to an NBA implementation event</p> <p>7. note that this change applies to all consents lodged from 24 August 2023</p> <p>8. note that repealing the NBA will reinstate the previous 35-year maximum</p> <p>9. note that some, but not all, affected resource consents may have been issued with a descriptive expiry date</p> <p>10. agree that affected resource consents applied for but not yet determined will be considered under the 35-year maximum</p> <p>11. agree that the repeal bill will provide transitional provisions to enable consent authorities to change a descriptive consent duration to a fixed date</p> <p>12. agree that the ability to change a descriptive consent duration will be subject to a process that includes consultation with the affected consent holder</p> <p>13. agree that the NBA amendment to the RMA relating to shorter maximum duration for freshwater related consents is repealed through the bill</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
Requiring authority status	<p>To provide a pathway for applications for requiring authority status to be considered if lodged prior to the date of repeal and for any granted applications to be retained.</p>	<p>The NBA expanded the scope of who can apply for the status of a requiring authority to add:</p> <ul style="list-style-type: none"> a council-controlled organisation; or a network utility operator approved as a requiring authority under section 513; or an applicant, other than a network utility operator, approved as a requiring authority under section 513. <p>Currently, no applications have been initiated. However, it is appropriate to provide transitional and savings provisions in the event an application is received and considered prior to the date of repeal.</p>	<p>14. agree that the repeal bill may provide transitional and savings provisions for applications for requiring authority status that are under consideration and any requiring authority status granted prior to the date of repeal</p>	<p>Yes/No</p>
Notice of Requirement	<p>To enable the applicants who have requiring authority status under the NBA and who have lodged</p>	<p>Currently, we are not aware if any applications have been initiated. However, it is appropriate to provide transitional and savings provisions in the event a notice of requirement is lodged prior to the date of repeal.</p>	<p>15. agree that the repeal bill may provide transitional and savings provisions for any notices of requirement lodged by any requiring authority granted requiring authority status under the NBA</p>	<p>Yes/No</p>

	notice of requirements to continue to progress these their notice of requirement	<p>Mana Whakahono ā Rohe and joint management arrangements under the RMA. Areas that differ are that joint management agreements cannot be unilaterally terminated under the NBA, and groups representing hapū can initiate Mana Whakahono ā Rohe under the NBA.</p> <p>Currently, no Mana Whakahono ā Rohe and joint management arrangements have been initiated under the NBA. However, it is appropriate to provide transitional and savings provisions in the event arrangements are initiated and considered prior to the date of repeal.</p>	<p>Yes/No</p>
<p>Mana Whakahono ā Rohe or joint management agreements</p>	<p>To provide a pathway for Mana Whakahono ā Rohe and joint management arrangements under the NBA to be considered if initiated prior to the date of repeal and for any approved arrangements to be retained.</p>	<p>16. agree that the repeal bill may provide transitional and savings provisions for any Mana Whakahono ā Rohe or joint management agreements that have been initiated under Part 3</p>	<p>Yes/No</p>
<p>Statutory acknowledgements</p>	<p>Retain the requirement for ongoing provision of information about resource consent applications by consent authorities to PSGEs that have statutory acknowledgements provided in Treaty settlements.</p>	<p>This provision was included to resolve administrative inconsistency between council areas and reflect best practice, creating an even playing field across PSGEs. It reflects obligations in some old Treaty settlements which are time bound and, in some cases, have expired. As currently offered in recent settlements this redress does not expire. The obligation does not affect decisions to be made by the consent authority on notification or affected persons of those applications.</p> <p>The provision took immediate effect so currently applies to RMA consenting.</p> <p>We would also recommend further engagement with PSGEs to ensure consistency between this obligation and Treaty settlement legislation and documentation, which we would undertake on your behalf.</p>	<p>Yes/No</p>
<p>Nga Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and the Marine and Coastal Area (Takutai Moana) Act 2011</p>	<p>Retain the minor process improvements made to the Marine and Coastal (Takutai Moana) Act 2011 through the NBA, with minor amendments.</p>	<p>There were some minor process improvements made to the Marine and Coastal (Takutai Moana) Act 2011 through the NBA. These minor changes do not need to be repealed but need minor amendments to remove references to some NBA matters (such as permitted activity notices).</p>	<p>Yes/No</p>
Consequential amendments			
<p>NBA and SPA consequential amendments</p>	<p>Change consequential amendments made by the NBA and the SPA to other</p>	<p>The NBA made amendments to over 150 other acts and secondary legislation, including the RMA. For amendments that refer to NBA provisions, or where RMA provisions have been repealed and replaced by equivalent NBA provisions (such as transfers of power), we recommend that the most straightforward</p>	<p>Yes/No</p>
<p>19. agree that consequential amendments made by the NBA and the SPA to other legislation that result in reference to the NBA or SPA will be changed to either what they were before they were amended, or the most appropriate wording as determined by PCO</p>			<p>Yes/No</p>

<p>legislation that result in reference to the NBA or SPA to either what they were amended, or the most appropriate wording as determined by PCO</p> <p>Where amendments were made by the NBA to other legislation that does not link directly to NBA provisions, we will work with other agencies to determine whether any changes are necessary.</p>	<p>approach is to change them to either what they were before the NBA amended them or the most appropriate wording as determined by PCO.</p> <p>A minority of amendments do not result in references to NBA provisions in this way, and the repeal of the NBA does not result in a need to change them. For example, the NBA made several amendments to the RMA, including provisions relating to freshwater planning, freshwater farm plans, and the duration for some freshwater-related consents. It also amended the Urban Development Act 2020 (UDA) to remove the requirement that Kāinga Ora always be the consent authority for resource consent applications connected with specified development projects under the UDA. These amendments change the operation of the RMA and UDA and work the same way irrespective of whether the NBA is in force or is repealed. Similarly, some minor process improvements were made to the Marine and Coastal (Takutai Moana) Act 2011, which do not need to be repealed but need minor amendments to remove references to some NBA matters (such as permitted activity notices)</p> <p>Many of these amendments are technical and detailed and you have a choice as to whether they should remain or change. We suggest, as part of a delegation from Cabinet, working with other Ministers and agencies to determine whether the repeal bill changes any of these amendments.</p> <p>Consequential amendments to 12 pieces of legislation will need to be changed through the repeal of the SPA.</p>	<p>20. note that some amendments made by the NBA to other legislation do not link directly to NBA provisions and the repeal of the NBA will not change them</p> <p>21. agree that the bill will reinstate section 33 of the RMA, which was repealed by the NBA</p> <p>22. note that we will provide you further advice on these specific amendments</p> <p>23. agree that the Minister Responsible for RMA Reform will direct officials to consider whether any of the other amendments referred to in recommendation 20 are necessary and report back to Cabinet on this work with the draft repeal bill</p>	<p>Yes/No</p>
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Options to make targeted changes to the RMA through the repeal of the NBA and SPA

Options for pre-Christmas introduction

<p>[Redacted]</p>	<p>[Redacted]</p>	<p>[Redacted]</p>	<p>§ 9(2)(f)(iv)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	<p>[Redacted]</p>
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Options for post-Christmas introduction or as part of fast-track bill			
Compliance and enforcement provisions	Transferring broader improvements to the compliance and enforcement provisions from the NBA to the RMA	These provisions are less critical than those above but still support more effective and efficient compliance processes. They include:	26. agree to further work on which elements of the compliance regime from the NBA should be reflected in the RMA
		<ul style="list-style-type: none"> new measures such as enforceable undertakings, adverse publicity orders, powers of entry, limitation period for infringement fines and wider use of abatement notices electronic service of documents, requirements to publish guidance (MFE) and information about functions and strategies (all regulators) longer duration for excessive noise directions. 	
NBA emergency response regulation-making power	Preserving the NBA emergency response regulation-making power	<p>The emergency response regulation-making power in section 796 reduces the need for bespoke legislation and associated Orders in Council to be developed to help respond and recover from future emergency events, such as have been developed under the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA). Orders under SWERLA are limited to the response and recovery work underway to deal with the severe weather events of early 2023. We recommend retaining this provision to ensure these powers can be used to deal with future severe weather events and other emergencies prior to your full RMA reforms.</p> <p>These provisions will require additional drafting time.</p>	27. agree to further work on inserting the emergency response regulation-making power in section 796 of the NBA into the RMA
		<p>§ 9(2)(f)(iv)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>	



Cabinet

Minute of Decision

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Repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023

Portfolio RMA Reform

On 4 December 2023, Cabinet:

- 1 **agreed** to progress the repeal of the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) before Christmas 2023 as set out in the Government's coalition agreements;
- 2 **noted** that the repeal of the NBA and SPA is the first part of the Government's three-phase programme to improve the resource management system that also includes:
 - 2.1 introducing a fast-track infrastructure consenting regime and making other surgical amendments to the Resource Management Act 1991 (RMA);
 - 2.2 amending or developing national direction under the RMA;
 - 2.3 introducing new resource management legislation into Parliament by the end of this parliamentary term that will replace the current RMA legislation;
- 3 **noted** that repealing the NBA and SPA will be a largely technical process focused on:
 - 3.1 transitioning and saving some matters that are already in use in accordance with NBA provisions to enable an orderly repeal;
 - 3.2 reversing consequential and other amendments made by the NBA and SPA to other legislation;

Transitional and savings provisions for the NBA and SPA

- 4 **agreed** that the repeal bill will contain savings and transitional provisions for those aspects of the NBA compliance framework that are already in effect to provide for decisions on consent applications received, costs incurred, and proceedings commenced prior to the repeal, as described in Appendix 1 attached under CAB-23-SUB-0473;
- 5 **agreed** that the decision to grant freshwater consents applied for since 24 August 2023 that have not been decided by a consent authority at the date that the repeal of the NBA takes effect will have their duration determined in accordance with the 35-year maximum duration provided for in section 123 of the RMA;

- 6 **agreed** that the preclusion of public notification that applied to applications for replacement freshwater consents lodged since 24 August 2023 where a notification decision has not been made by a consent authority at the date that the repeal of the NBA takes effect will no longer apply and that such applications can be notified in accordance with the standard RMA notification requirements;
- 7 **agreed** that any resource consent granted in accordance with the shorter duration consent provisions are valid consents in terms of the RMA;
- 8 **agreed** that NBA requiring authority applications in progress will cease to be processed;
- 9 **agreed** that NBA requiring authority applications that have been approved will be revoked, except for applicants meeting the RMA definition of network utility operators, who will be deemed requiring authorities under the RMA;
- 10 **agreed** that notices of requirement lodged by NBA requiring authorities under the RMA will cease to be processed and any notices of requirement that have been confirmed cannot be exercised;
- 11 **agreed** that any Mana Whakahono ā Rohe and joint management agreements initiated under the NBA prior to enactment of the repeal bill will fall away at repeal and the parties involved may then re-start the process under the RMA;
- 12 **agreed** that the repeal bill will enable groups representing hapū that have initiated a Mana Whakahono ā Rohe under Part 3 of the NBA to initiate a Mana Whakahono ā Rohe under the RMA as though it were an iwi authority;
- 13 **agreed** that the repeal bill will amend the RMA to retain the requirement in the NBA for ongoing provision of information about resource consent applications by consent authorities to post-settlement governance entities (PSGEs) that have statutory acknowledgements provided in Treaty settlements;
- 14 **agreed** that the repeal bill will provide transitional and savings provisions for the following matters under the NBA:
- 14.1 any transfers of powers made under section 57 of the NBA;
- 14.2 any matters required to ensure that Treaty settlements and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld;
- 15 **noted** that the repeal of the SPA will not require any transitional or savings arrangements;

NBA and SPA consequential and other amendments

- 16 **agreed** that all amendments (including repealed clauses) made by the NBA that are not described in Appendix 2, attached under CAB-23-SUB-0473, and all amendments (including repealed clauses) made by the SPA will be changed to either what they were before they were amended, or the most appropriate wording as determined by the Parliamentary Counsel Office (PCO);
- 17 **noted** that the amendments made by the NBA and described in Appendix 2 were made for reasons independent of the NBA and SPA and improve legislative coherence and workability;

- 18 **agreed** that the amendments described in Appendix 2 be retained, with adjustments to align with the RMA where necessary;
- 19 **invited** the Minister Responsible for RMA Reform to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft a bill reflecting the decisions above and below;

Process for the repeal legislation

- 20 **agreed** to pass legislation repealing the NBA and SPA by Christmas 2023;
- 21 **noted** that a bill to repeal the NBA and SPA will need to be introduced to the House by 19 December 2023 to enable it to be passed within the desired timeframe;
- 22 **authorised** the Minister Responsible for RMA Reform to take any further decisions on the repeal bill that are within the scope of Cabinet's decisions, including to:
- 22.1 take decisions on the technical detail of the bill, including for savings and transitional provisions and consequential and other amendments;
 - 22.2 issue additional drafting instructions to PCO;
- 23 **agreed** that the Minister Responsible for RMA Reform will consult with other ministers as necessary in making delegated decisions;
- 24 **agreed** that targeted engagement will be undertaken in relation to the draft bill and focused on local government, Māori, and key sector stakeholders;
- 25 **noted** that the Minister Responsible for RMA Reform will write to PSGEs and other relevant Māori groups and local government informing them of the repeal;
- 26 **agreed** that passing the repeal bill before the end of 2023 will require:
- 26.1 progressing the bill through Parliament under urgency between 19 and 21 December 2023;
 - 26.2 bypassing the select committee phase;
- 27 **invited** the Minister Responsible for RMA Reform to report back to Cabinet on 18 December 2023 seeking approval to a draft bill;

Fast-track infrastructure consenting process

- 28 **agreed** that the repeal bill will retain the NBA fast-track consenting process (including the institutional roles) with any necessary amendments as required for workability purposes, as determined between officials and PCO, until a replacement fast-track infrastructure consenting regime is developed and put in place;
- 29 **agreed** that, through the repeal process, the integrity, intent and effect of Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements are upheld;
- 30 **agreed** that the repeal bill will ensure that decision makers under the NBA fast track provisions give the same or equivalent effect to Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements as they have to in relation to resource consenting processes and notices of requirement under the RMA;

31 **agreed** that the repeal bill will retain clauses 4 and 5 of Schedule 2 of the NBA as a backstop process to engage with PSGEs and other relevant parties to uphold Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements in relation to fast track consenting, with a nine-month delay before the process begins;

32 s 9(2)(f)(iv)

A large rectangular area of the document is redacted with a solid grey fill. The redaction covers the text of paragraph 32 and the beginning of paragraph 33. The text 's 9(2)(f)(iv)' is visible at the top left of the redacted area.

33 **directed** the Ministry for the Environment to work with other agencies to provide Cabinet with options on a fast-track consenting pathway;

34 **noted** that the Minister Responsible for RMA Reform intends to:

34.1 submit a further paper to Cabinet in early 2024 seeking policy decisions on the design of the fast-track consenting process;

34.2 introduce a bill to progress a new fast-track regime within the first 100 days of office;

35 **agreed** that the Minister of Agriculture, Minister for the Environment, and Associate Minister of Agriculture (Animal Welfare, Skills) make a public statement on the Government's intent relating to freshwater prior to Christmas 2023.

Rachel Hayward
Secretary of the Cabinet



Cabinet

Summary

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Repealing the Natural and Built Environment Act and the Spatial Planning Act

Portfolio

RMA Reform

This paper seeks agreement to:

- repeal the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) prior to Christmas 2023;
- the process for repealing the NBA and SPA;
- the transitional and savings provisions to be included in a repealing bill (**Appendix 1**);
- retain the NBA fast track consenting process (with any necessary amendments for workability) until a replacement fast-track infrastructure consenting regime is developed and implemented.

Appendix 2 sets out consequential amendments in other acts made by the NBA that are proposed to be retained.

The Minister Responsible for RMA Reform recommends that Cabinet:

- 1 agree to progress the repeal of the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA) before Christmas 2023 as set out in the Government's coalition agreements;
- 2 note that the repeal of the NBA and SPA is the first part of the Government's three-phase programme to improve the resource management system that also includes:
 - 2.1 introducing a fast-track infrastructure consenting regime and making other surgical amendments to the Resource Management Act 1991 (RMA);
 - 2.2 amending or developing national direction under the RMA;
 - 2.3 introducing new resource management legislation into Parliament by the end of this parliamentary term that will replace the current RMA legislation;

- 3 note that repealing the NBA and SPA will be a largely technical process focused on:
- 3.1 transitioning and saving some matters that are already in use in accordance with NBA provisions to enable an orderly repeal;
 - 3.2 reversing consequential and other amendments made by the NBA and SPA to other legislation;

Transitional and savings provisions for the NBA and SPA

- 4 agree that the repeal bill will contain savings and transitional provisions for those aspects of the NBA compliance framework that are already in effect to provide for decisions on consent applications received, costs incurred, and proceedings commenced prior to the repeal, as described in Appendix 1 attached under CAB-23-SUB-0473;
- 5 agree that the decision to grant freshwater consents applied for since 24 August 2023 that have not been decided by a consent authority at the date that the repeal of the NBA takes effect will have their duration determined in accordance with the 35-year maximum duration provided for in section 123 of the RMA;
- 6 agree that the preclusion of public notification that applied to applications for replacement freshwater consents lodged since 24 August 2023 where a notification decision has not been made by a consent authority at the date that the repeal of the NBA takes effect will no longer apply and that such applications can be notified in accordance with the standard RMA notification requirements;
- 7 agree that any resource consent granted in accordance with the shorter duration consent provisions are valid consents in terms of the RMA;
- 8 agree that NBA requiring authority applications in progress will cease to be processed;
- 9 agree that NBA requiring authority applications that have been approved will be revoked, except for applicants meeting the RMA definition of network utility operators, who will be deemed requiring authorities under the RMA;
- 10 agree that notices of requirement lodged by NBA requiring authorities under the RMA will cease to be processed and any notices of requirement that have been confirmed cannot be exercised;
- 11 agree that any Mana Whakahono ā Rohe and joint management agreements initiated under the NBA prior to enactment of the repeal bill will fall away at repeal and the parties involved may then re-start the process under the RMA;
- 12 agree that the repeal bill will enable groups representing hapū that have initiated a Mana Whakahono ā Rohe under Part 3 of the NBA to initiate a Mana Whakahono ā Rohe under the RMA as though it were an iwi authority;
- 13 agree that the repeal bill will amend the RMA to retain the requirement in the NBA for ongoing provision of information about resource consent applications by consent authorities to post-settlement governance entities (PSGEs) that have statutory acknowledgements provided in Treaty settlements;

- 14 agree that the repeal bill will provide transitional and savings provisions for the following matters under the NBA:
- 14.1 any transfers of powers made under section 57 of the NBA;
 - 14.2 any matters required to ensure that Treaty settlements and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld;
- 15 note that the repeal of the SPA will not require any transitional or savings arrangements;

NBA and SPA consequential and other amendments

- 16 agree that all amendments (including repealed clauses) made by the NBA that are not described in Appendix 2, attached under CAB-23-SUB-0473, and all amendments (including repealed clauses) made by the SPA will be changed to either what they were before they were amended, or the most appropriate wording as determined by the Parliamentary Counsel Office (PCO);
- 17 note that the amendments made by the NBA and described in Appendix 2 were made for reasons independent of the NBA and SPA and improve legislative coherence and workability;
- 18 agree that the amendments described in Appendix 2 be retained, with adjustments to align with the RMA where necessary;
- 19 invite the Minister Responsible for RMA Reform to issue drafting instructions to the Parliamentary Counsel Office (PCO) to draft a bill reflecting the decisions above and below;

Process for the repeal legislation

- 20 agree to pass legislation repealing the NBA and SPA by Christmas 2023;
- 21 note that a bill to repeal the NBA and SPA will need to be introduced to the House by 19 December 2023 to enable it to be passed within the desired timeframe;
- 22 authorise the Minister Responsible for RMA Reform to take any further decisions on the repeal bill that are within the scope of Cabinet's decisions, including to:
- 22.1 take decisions on the technical detail of the bill, including for savings and transitional provisions and consequential and other amendments;
 - 22.2 issue additional drafting instructions to PCO;
- 23 agree that the Minister Responsible for RMA Reform will consult with other ministers as necessary in making delegated decisions;
- 24 agree that targeted engagement will be undertaken on the draft bill and focused on local government, Māori, and key sector stakeholders;
- 25 note that the Minister Responsible for RMA Reform will write to PSGEs and other relevant Māori groups and local government informing them of the repeal;

- 26 agree that passing the repeal bill before the end of 2023 will require:
- 26.1 progressing the bill through Parliament under urgency between 19 and 21 December 2023;
 - 26.2 bypassing the select committee phase;
- 27 invite the Minister Responsible for RMA Reform report back to Cabinet on 18 December 2023 seeking approval to a draft bill;

Fast-track infrastructure consenting process

- 28 agree that the repeal bill will retain the NBA fast track consenting process (including the institutional roles) with any necessary amendments as required for workability purposes as determined between officials and PCO, until a replacement fast-track infrastructure consenting regime is developed and put in place;
- 29 agree that, through the repeal process, the integrity, intent and effect of Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements are upheld;
- 30 agree that the repeal bill will ensure that decision makers under the NBA fast track provisions give the same or equivalent effect to Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements as they have to in relation to resource consenting processes and notices of requirement under the RMA;
- 31 agree that the repeal bill will retain clause 4 and 5 of Schedule 2 of the NBA as a backstop process to engage with PSGEs and other relevant parties to uphold Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements in relation to fast track consenting, with a nine-month delay before the process begins;
- 32 direct the Ministry for the Environment to work with other agencies to provide Cabinet with options on a fast-track consenting pathway;
- 33 agree that the Minister of Agriculture and Minister for the Environment make a public statement on the Government's intent relating to freshwater prior to Christmas 2023;
- 34 note that the Minister Responsible for RMA Reform intends to submit a further Cabinet paper in early 2024 seeking decisions on the design of the fast-track infrastructure consenting process and other possible amendments to the RMA, including amending planning timeframes for freshwater plans, as part of the 100 day plan.

Rachel Clarke
for Secretary of the Cabinet

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The Cabinet

IN CONFIDENCE

Office of the Minister Responsible for RMA Reform

Chair, Cabinet

Repealing the Natural and Built Environment Act and the Spatial Planning Act

Proposal

1. This paper seeks agreement to the process for repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) in accordance with the Government's coalition agreements.

Relation to Government priorities

2. The Government has committed to:
 - 2.1 repealing the NBA and SPA by Christmas 2023 and introducing legislation into Parliament for a permanent fast-track consenting regime for infrastructure projects within the first 100 days of office
 - 2.2 immediately starting work on a longer-term programme to replace the Resource Management Act 1991 (RMA) with new planning laws, with first readings of new legislation to occur this term.

Executive Summary

3. Consistent with our coalition agreements, I propose to pass legislation repealing the NBA and the SPA by the end of 2023. This will largely be a technical process focused on transitioning and saving some parts of the NBA that are already in use to enable an orderly repeal; and reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions).
4. Repealing the NBA and SPA by Christmas 2023 will require expedited drafting, engagement and Parliamentary processes. To finalise the bill, I recommend Cabinet delegates authority to me to make further policy and drafting decisions in line with the scope of the recommendations in this paper. I recommend the repeal bill is passed through the House under urgency and the select committee phase is bypassed.
5. We have also committed to introducing legislation into Parliament for a permanent fast-track consenting regime for infrastructure projects within the first 100 days of office. Until this regime is developed, there are two interim options. The first option is to repeal the bulk of the NBA but save its fast-track regime, the second is to have a short hiatus with no fast-track regime until a new fast-track bill is enacted.
6. I consider it is preferable to have some form of fast-track regime in place and propose that the current fast-track process under the NBA be retained for the interim. I propose that agencies work on options for developing a fit-for-purpose, permanent fast-track regime, and I will bring a separate paper to Cabinet in early 2024 seeking decisions on its design.
7. I intend to return to Cabinet on 18 December 2023 with a draft repeal bill for approval for immediate introduction to the House.

Background

- 8. The previous government passed the NBA and SPA in August 2023 to replace the RMA. While we agree the RMA needs to be replaced, we do not think the NBA and SPA will deliver an overall improvement.
- 9. We have committed to repealing the NBA and SPA, returning to the RMA in the interim, and developing new resource management legislation. The legislation that will replace the RMA is expected to better balance environmental protection and development, be simpler and more concise, and go back to basics to make it easier to build housing and infrastructure.

Our resource management priorities for this term of government

- 10. Repeal of the NBA and SPA and the creation of a fast-track consenting regime is the first part of this government's three-phase programme to improve resource management in New Zealand. Problems with the RMA are well known and, therefore, until replacement legislation is in place, our second phase will focus on making short-term improvements to the resource management system to assist progression of our manifesto and coalition agreement objectives.
- 11. A central component will be developing new, or amending existing, National Policy Statements and National Environmental Standards under the RMA with the goals of reducing regulatory burden on the primary sector and unlocking investment and growth in infrastructure, renewable energy and housing and business development. Our Going for Housing Growth strategy will include amending the RMA's medium density residential standards (MDRS).
- 12. § 9(2)(f)(iv) [Redacted]
- 13. This phase is also an opportunity to start addressing coalition commitments relating to freshwater. Regional councils are developing new freshwater plans now, so we will need to look at the timeframes imposed on councils and the impact of Te Mana o te Wai as a first step. For clarity, I recommend Ministers of Agriculture and the Environment make a public statement on our intent relating to freshwater prior to Christmas 2023.
- 14. § 9(2)(f)(iv) [Redacted]
- 15. The third phase will involve developing legislation to replace the RMA and introducing this to Parliament by the end of this term. This work will take time and we intend to start immediately.

Policy decisions required for repeal of the NBA and SPA

- 16. While some NBA processes have commenced and are being used, most implementation of the NBA and SPA has not yet begun. Councils continue to apply much of the RMA in their planning and resource consenting decisions. Repeal of the NBA and SPA will, therefore, largely be a technical process.

Transitional and savings provisions required for an orderly repeal

IN CONFIDENCE

17. A limited number of NBA functions that have commenced and are currently being used will require savings and transitional provisions to provide for an orderly repeal. These are required so that users of the system who are relying on provisions that are in force have a clear understanding of how their interests are affected by the repeal.
18. I expect that savings and transitional provisions may be required for:
 - 18.1 compliance and enforcement actions that have commenced under the NBA
 - 18.2 applications made and in progress under the NBA's fast-track consenting regime
 - 18.3 freshwater consents issued after the NBA came into force and any of those consents that have their duration linked to the making of allocation rules in plans under the NBA
 - 18.4 applications made under the NBA's expanded scope of who can apply for the status of a requiring authority and notices of requirement lodged by requiring authorities that have been granted requiring authority status under the NBA
 - 18.5 Mana Whakahono ā Rohe or joint management agreements that have been initiated under Part 3 of the NBA
 - 18.6 matters required to ensure that Treaty settlements and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and Marine and Coastal Area (Takutai Moana) Act 2011 are upheld
 - 18.7 transfers of powers made under section 57 of the NBA
 - 18.8 extension of statutory acknowledgements provided for under the NBA and RMA.
19. See **Appendix 1** for more detail on the nature of the savings and transitional provisions required to issue drafting instructions to the Parliamentary Counsel Office (PCO).

Upholding Treaty settlements

20. It will be important to ensure that legislative amendments made as a result of repealing the NBA do not undermine Treaty settlements and other arrangements,¹ and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and Marine and Coastal Area (Takutai Moana) Act 2011. Transitional and savings provisions may be required for this purpose.

Consequential and other amendments made by the NBA and SPA

21. The NBA amended over 150 other acts and secondary legislation. The majority of these amendments changed references to RMA provisions to NBA provisions and will need to be reversed. However, some amendments made by the NBA to other legislation do not link directly to NBA provisions and the repeal of the NBA will not change how these amendments operate. For example, the NBA made several amendments to the RMA, including aquaculture, freshwater planning, freshwater farm plans, and the transfer of powers provisions.

¹ These include Mana Whakahono ā Rohe and joint management agreements.

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22. Many amendments improve legislative coherence and workability and do not rely on the NBA being in force. More detail is contained in **Appendix 1** and a table at **Appendix 2** shows amendments made to other legislation that are proposed to be retained, with any adjustments made to align with the RMA where necessary.

Authority to issue drafting instructions

23. I recommend Cabinet approve the issuing of initial drafting instructions to PCO based on the agreed decisions outlined above.

Timeframes and process for the repeal bill

24. Delivering repeal before Christmas will require an expedited policy, drafting, engagement, and parliamentary process.

Legislative drafting and delegated decision-making

25. PCO notes that the timeframe for developing the bill, iterative drafting, resolving detailed policy and legal questions, settling and consulting on this bill is extremely tight. Repeal before Christmas will allow time to make only the bare minimum of changes needed to repeal the legislation and undo the consequential amendments.
26. Given the limited time available to draft and introduce the repeal bill, I recommend Cabinet delegates authority to me to make further decisions within the scope of the policy recommendations in this paper. I propose the delegated authority cover:
- 26.1 making decisions on the technical detail of the bill, including for savings and transitional provisions and consequential and other amendments
 - 26.2 issuing further drafting instructions to PCO required to draft the bill.
27. In exercising my delegated authority, I will consult with other interested Ministers where necessary to ensure repeal provisions are fit for purpose. This may include the Minister of/for Infrastructure, Housing, Health, Local Government, Transport, Energy, Culture and Heritage, Treaty of Waitangi Negotiations, Defence, Agriculture, Māori-Crown Relations: Te Arawhiti, Conservation, Oceans and Fisheries, Resources, Environment, and Land Information.
28. I will outline where I have made further decisions under delegation when I bring the draft bill to Cabinet seeking approval for introduction of the repeal legislation.

Engagement with local government and Māori

29. Repealing the NBA and SPA before the end of 2023 will only allow for very targeted engagement with local government, Māori, and key sector stakeholders during the drafting of the bill. This will focus on general messages about the repeal process.
30. Local government will need clarity on how the repeal will affect their current or upcoming planning processes.
31. The RMA interfaces with 78 pieces of Treaty of Waitangi settlement legislation to varying degrees of complexity. The Crown needs to uphold its statutory obligations in relation to Treaty settlements, customary rights, and other arrangements.

32. § 9(2)(f)(iv)

33. I will write to PSGEs and other relevant Māori groups and local government informing them of the repeal.

Parliamentary process

34. Passing the repeal bill before Christmas 2023 will require the bill to progress through all stages of the House under urgency and bypass the select committee process. Given that the proposals in this paper will result in a narrow and technically focused repeal bill that reflects our coalition agreements, I consider this reduces the risks of using a condensed parliamentary process to progress the repeal.

Risks of an expedited repeal process

35. As noted above, there are some complexities in the repeal process. There is a risk in moving fast that some matters will be left unresolved and may cause problems in the ongoing implementation of the RMA and other legislation amended as a part of repeal. Errors in the repeal bill could result in uncertainty for system users that could potentially require another urgent bill to resolve. Using an expedited Parliamentary process will also likely raise concerns about the ability for the public to input into the repeal process.

36. I am comfortable that our clear commitment and coalition agreement to repeal the NBA and SPA provides a mandate to progress this quickly.

Retaining an interim fast-track infrastructure consenting regime

37. The Government has committed to establishing a fast-track infrastructure consenting regime. A bill to introduce this process and make other essential statutory amendments will have its first reading as part of the Government’s 100-day plan.

38. The NBA contains a fast-track process for infrastructure and housing developments that meet certain requirements. When the NBA is repealed, there will be no fast-track or streamlined consenting process available.

39. Until a new fast-track regime is developed, there are two options for how to proceed. This first is to repeal the bulk of the NBA but retain its fast-track regime and let this continue in the interim. The second is to have a short hiatus with no fast-track regime until a new fast-track bill is enacted.

40. On balance, I recommend retaining the NBA’s fast-track provisions until a more fit for purpose fast-track consenting process is developed. I also recommend retaining any other relevant provisions that are required to ensure the NBA fast-track pathway can function in the interim.

41. I propose that the repeal bill retain appropriate protections for Treaty settlements and other arrangements under schedule 2 of the NBA, but repurposed for drafting and workability, to ensure decision-makers for fast-track processes act in a manner consistent with these commitments.

42. Clause 4 of schedule 2 provides for a process for the Crown to engage with PSGEs, ngā hapū o Ngāti Porou, and parties to MWāR and JMAs and enter into agreements

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to uphold the integrity, intent and effect of those arrangements in the context of the new legislation. I propose that this be retained, but with an appropriate delay (9 months) in the event that these interim fast-track arrangements remain in place longer than expected.

43. These mechanisms are an interim measure to protect settlements and other arrangements. More permanent mechanisms will need to be considered in developing the permanent fast-track regime.

Next steps

44. I intend to return to Cabinet by 18 December 2023 with a draft repeal bill for introduction to the House. I also intend to bring a further paper to Cabinet in early 2024 seeking decisions on the design of the fast-track infrastructure consenting regime and authority to issue drafting instructions.

Communications

45. I intend to publicly announce our intention to repeal following Cabinet approval. The Ministers of Agriculture and the Environment will make a public statement on our intent relating to freshwater prior to Christmas 2023.

Financial Implications

46. Financial implications of repeal, work within the RMA frameworks, and replacement of the RMA will be addressed in wider Budget considerations and are expected to be managed within existing funding. Fiscal implications, both in terms of savings and costs for future reforms to the RMA, will be addressed through upcoming fiscal processes, eg, Mini-Budget and Budget 2024.

Legislative Implications

47. The decisions from this paper will result in legislation that will repeal the NBA and SPA. The repeal bill should be included on the Legislation Programme as a category 2 for 2023 (to be passed this year).

Cost-of-Living Implications

48. The proposals in this paper are not expected to have direct or indirect impacts on the cost of everyday expenses for households or implications on costs for businesses.

Use of External Resources

49. No external resources have been used in the development of this Cabinet paper.

Impact Analysis

Regulatory Impact Statement

50. Cabinet has decided to suspend the requirement for Regulatory Impact Statements for decisions relating to 100 Day Plan proposals (taken within the 100 Days) which solely involve the repeal of legislation.

Treaty of Waitangi impacts

51. Repeal of the NBA and SPA has implications under the Treaty of Waitangi, due to:

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- 51.1 the extent of the interaction between most historical Treaty settlements and the resource management system, and the need to ensure arrangements contained in those settlements are upheld
- 51.2 the enhanced strategic, representative and participatory roles provided for iwi and hapū under the NBA and SPA that will be reduced by a return to the RMA
- 51.3 the need to ensure any relevant relationship obligations (as set out in Treaty settlement documents) to engage early on matters of mutual importance are met.

52. § 9(2)(h) [Redacted]

53. § 9(2)(f)(iv) [Redacted]

Climate Implications of Policy Assessment

- 54. Climate Implications of Policy Assessment requirements do not apply to the proposals in this paper.

Population Implications

- 55. Repeal of the NBA and SPA will result in Māori losing the enhanced strategic, representative, and participatory roles they gained under the new legislation.

Human Rights

- 56. Proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 57. The following agencies were provided with a short period to review the content of this paper: Department of Prime Minister and Cabinet ,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; Ministry for Culture and Heritage; and Ministry of Business, Innovation and Employment, Ministry of Health, Department of Corrections, Public Service Commission, Land Information New Zealand, Department of Education, New Zealand Defence Force, Waka Kotahi New Zealand Transport Agency, and New Zealand Infrastructure Commission Te Waihangā.

Proactive Release

- 58. As soon as practicable after decisions being confirmed by Cabinet and public announcements made, we intend to proactively release this paper, subject to redactions as appropriate equivalent to those under the Official Information Act 1982.

Recommendations

The Minister Responsible for RMA Reform recommends that the Committee:

- 1 **agree** to progress the repeal of the NBA and SPA before Christmas 2023 as set out in the Government's coalition agreements
- 2 **note** that repeal of the NBA and SPA is the first part of the Government's three-phase programme to improve the resource management system that also includes:
 - 2.1 introducing a fast-track infrastructure consenting regime and making other surgical amendments to the RMA
 - 2.2 amending or developing national direction under the RMA
 - 2.3 introducing new resource management legislation into Parliament by the end of this term that will replace the current RMA legislation
- 3 **note** that repealing the NBA and SPA will be largely a technical process focused on:
 - 3.1 transitioning and saving some matters that are already in use in accordance with NBA provisions to enable an orderly repeal
 - 3.2 reversing consequential and other amendments made by the NBA and SPA to other legislation

Transitional and savings provisions for the NBA and SPA

- 4 **agree** that the repeal bill will contain savings and transitional provisions for those aspects of the NBA compliance framework that are already in effect to provide for decisions on consent applications received, costs incurred, and proceedings commenced, prior to the repeal as described in **Appendix 1**
- 5 **agree** that the decision to grant freshwater consents applied for since 24 August 2023 that have not been decided by a consent authority at the date that the repeal of the NBA takes effect will have their duration determined in accordance with the 35-year maximum duration provided for in section 123 of the RMA
- 6 **agree** that the preclusion of public notification that applied to applications for replacement freshwater consents lodged since 24 August 2023 where a notification decision has not been made by a consent authority at the date that the repeal of the NBA takes effect will no longer apply and that such applications can be notified in accordance with the standard RMA notification requirements
- 7 **agree** that any resource consent granted in accordance with the shorter duration consent provisions are valid consents in terms of the RMA
- 8 **agree** that NBA requiring authority applications in progress will cease to be processed
- 9 **agree** that NBA requiring authority applications that have been approved will be revoked, except for applicants meeting the RMA definition of network utility operators, who will be deemed requiring authorities under the RMA
- 10 **agree** that notices of requirement lodged by NBA requiring authorities under the RMA will cease to be processed and any notices of requirement that have been confirmed cannot be exercised
- 11 **agree** that any Mana Whakahono ā Rohe and joint management agreements initiated under the NBA, prior to enactment of the repeal bill, will fall away at repeal and the

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parties involved may then re-start the process under the RMA the parties involved may then re-start the process under the RMA the parties involved may then re-start the process under the RMA

- 12 **agree** that the repeal bill will enable groups representing hapū that have initiated a Mana Whakahono ā Rohe under Part 3 of the NBA to initiate a Mana Whakahono ā Rohe under the RMA as though it were an iwi authority
- 13 **agree** that the repeal bill will amend the RMA to retain the requirement in the NBA for ongoing provision of information about resource consent applications by consent authorities to PSGEs that have statutory acknowledgements provided in Treaty settlements
- 14 **agree** that the repeal bill will provide transitional and savings provisions for the following matters under the NBA:
- 14.1 any transfers of powers made under section 57 of the NBA
 - 14.2 any matters required to ensure that Treaty settlements and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and the Marine and Coastal Area (Takutai Moana) Act 2011 are upheld
- 15 **note** that the repeal of the SPA will not require any transitional or savings arrangements

NBA and SPA consequential and other amendments

- 16 **agree** that all amendments (including repealed clauses) made by the NBA that are not described in Appendix 2 and all amendments (including repealed clauses) made by the SPA will be changed to either what they were before they were amended, or the most appropriate wording as determined by PCO
- 17 **note** that the amendments made by the NBA and described in Appendix 2 were made for reasons independent of the NBA and SPA and improve legislative coherence and workability
- 18 **agree** that the amendments described in Appendix 2 be retained, with adjustments to align with the RMA where necessary
- 19 **authorise** the Minister Responsible for RMA Reform to issue drafting instructions to the Parliamentary Counsel Office (PCO) based on the decisions made in this paper

Process for the repeal legislation

- 20 **agree** to pass legislation repealing the NBA and SPA by Christmas 2023
- 21 **note** that a bill to repeal the NBA and SPA will need to be introduced to the House by 19 December to enable it to be passed within the desired timeframe
- 22 **agree** to delegate further decisions on the repeal bill that are within the scope of Cabinet's decisions in this paper to the Minister Responsible for RMA Reform, including to:
- 22.1 make decisions on the technical detail of the bill, including for savings and transitional provisions and consequential and other amendments
 - 22.2 issue additional drafting instructions to PCO
- 23 **agree** that the Minister Responsible for RMA Reform will consult with other ministers as necessary in making delegated decisions, and this may include the Minister of/for Infrastructure, Housing, Health, Local Government, Transport, Energy, Culture and Heritage, Treaty of Waitangi Negotiations, Defence, Agriculture, Māori-Crown Relations: Te Arawhiti, Conservation, Oceans and Fisheries, Resources, Environment and Land Information

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- 24 **agree** that targeted engagement will be undertaken about the draft bill and focused on local government, Māori, and key sector stakeholders
- 25 **note** that the Minister Responsible for RMA Reform will write to post settlement governance entities and other relevant Māori groups and local government informing them of the repeal
- 26 **agree** that passing the repeal bill before the end of 2023 will require:
- 26.1 progressing the bill through Parliament under urgency between 19 and 21 December
- 26.2 bypassing the select committee phase
- 27 **invite** the Minister Responsible for RMA Reform will bring a draft repeal bill to Cabinet for approval on 18 December 2023, ahead of its introduction to the House

Fast-track infrastructure consenting process

- 28 **agree** that the repeal bill will retain the NBA fast track consenting process (including the institutional roles) with any necessary amendments as required for workability purposes as determined between officials and PCO, until a replacement fast-track infrastructure consenting regime is developed and put in place
- 29 **agree** that, through the repeal process, the integrity, intent and effect of Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management agreements are upheld
- 30 **agree** that the repeal bill will ensure that decision makers under the NBA fast track provisions give the same or equivalent effect to Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements as they have to in relation to resource consenting processes and notices of requirement under the RMA
- 31 **agree** that the repeal bill will retain clause 4 and 5 of Schedule 2 of the NBA as a backstop process to engage with PSGEs and other relevant parties to uphold Treaty settlements, Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, Mana Whakahono ā Rohe and joint management arrangements in relation to fast track consenting, with a nine-month delay before the process begins
- 32 **direct** the Ministry for the Environment to work with other agencies to provide Cabinet with options on a fast-track consenting pathway
- 33 **agree** that the Ministers of Agriculture and the Environment make a public statement on our intent relating to freshwater prior to Christmas 2023
- 34 **note** that the Minister Responsible for RMA Reform will provide a further Cabinet paper in early 2024 seeking decisions on the design of the fast-track infrastructure consenting process and other possible amendments to the RMA, including amending planning timeframes for freshwater plans, as part of the 100 day plan.

Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RMA Reform

Appendix 1 - More detail on the nature of the savings and transitional provisions required to issue drafting instructions to the Parliamentary Counsel Office (PCO).

Compliance and enforcement

1. The Legislation Act applies general savings provisions that allow the continuation of compliance and enforcement proceedings under way, and the investigation and taking of action for offences committed during the period the NBA was in effect. However, additional savings and transitional provisions are required to provide certainty to regulated communities about how some process matters in the NBA are applied up to and following repeal. I propose the following additional savings and transitional provisions be included:
 - 1.1 Consent authorities may continue to apply s286(5) relating to compliance history, and s674-675 of the NBA relating to financial assurances, to decisions on resource consent applications lodged with a consent authority but not yet determined at the date of repeal, as if the NBA had not been repealed
 - 1.2 Consent decisions made while the NBA was in effect that relied on NBA provisions (eg, consideration of compliance history (s286(5) NBA), imposition of financial assurance (s674-675 NBA)), including any consent conditions and other requirements, remain valid following repeal.
 - 1.3 Proceedings commenced between 24 August 2023 and the NBA repeal date seeking suspension or revocation of a resource consent under s661 of the NBA may continue as if the NBA had not been repealed, including any relevant regulations.
 - 1.4 Any abatement notice issued as if s649(1)(d) and (e) of the NBA applied in relation to offending that occurred between 24 August 2023 and the date of repeal of the NBA, will remain valid after repeal, and subsequent proceedings under the RMA for a contravention of any such abatement notice may continue as if the NBA had not been repealed.
 - 1.5 Any action taken in respect of the new offence of a breach of a consent condition (s701(1)(c) of the NBA), in relation to offending that occurred between 24 August 2023 and the NBA repeal date, may proceed to completion as if the NBA had not been repealed.
 - 1.6 Clause 66(3)(a) of Schedule 1 of the NBA continues to apply to s338(4) in respect of any offence under s338 of the RMA committed between 24 August 2023 and the repeal date, as if the NBA had not been repealed, providing for continuation of the limitation period of 2 years for contraventions committed during this period.
 - 1.7 Reasonable monitoring and compliance enforcement costs incurred by consent authorities between 24 August 2023 and the NBA repeal date, which relied on the application of s 722 of the NBA under clause 66(6) of Schedule 1 of the NBA, can be recovered.

Freshwater consents under the RMA linked to NBA provisions

2. The NBA amended the Resource Management Act to introduce a shorter maximum duration for certain freshwater consents and linked their duration to NBA plan rules. These amendments apply to applications for consent lodged since 24 August 2023.
3. Public notification of these shorter duration consents was precluded for current consent holders replacing existing consents.
4. The repeal of the NBA will have consequences for these shorter duration freshwater consents where a consent:
 - 4.1 has not been decided at the date of repeal (ie, a decision to grant or refuse the application has not been made)
 - 4.2 is for a replacement freshwater consent where a notification decision and a decision to grant or refuse the application has not been made at the date of the repeal
 - 4.3 has been granted with a descriptive consent duration which refers to the NBA.
5. For freshwater consents that have not been decided prior to the NBA being repealed, it will not be clear what maximum duration these consents can be granted for. I recommend that the decision to grant these applications be under the RMA's previous 35-year maximum duration from the date that the repeal takes effect.
6. For replacement freshwater consents where the notification decision has not been made prior to the NBA being repealed, it will not be clear whether or not they can be publicly notified. I recommend that they be eligible for public notification as they otherwise would have been prior to the enactment of the NBA, in accordance with the relevant RMA setting. I also recommend that the decision to grant these applications be under the RMA's previous 35-year maximum duration.
7. Any consents that have issued with descriptive durations linked to the making of certain NBA plan rules the expiry date will no longer be discernible, as a consequence of the repeal. For example, the consent may specify that it expires five years after allocation rules in an NBA plan take effect. These consents are likely to give rise to compliance and enforcement issues and there is no mechanism under the RMA to change the duration of a consent.
8. Officials have met with regional council representatives who have provided an indication that descriptive durations are not likely to be common, if they have been used at all. I propose that officials keep a watching brief on this potential issue, and I will report back to Cabinet if further changes to the RMA are required.

Requiring authorities and notices of requirement

9. The NBA increased the number and scope of requiring authorities who may have access to designation powers. It did this by giving council-controlled organisations (CCOs) the same automatic requiring authority status as Ministers of the Crown and local authorities.
10. The repeal of the NBA will remove the status of CCOs as requiring authorities. In the period up until repeal, it is possible that CCOs have lodged notices of requirement and associated outline plans under the RMA with a processing authority.

11. I propose that the repeal bill provides a provision to stop authorities processing notices of requirement (and any outline plans) lodged by CCOs who were granted their requiring authority status solely by the NBA.
12. If an authority has issued its recommendations and the notice of requirement is confirmed, I propose that transitional provisions specify that the notice of requirement cannot be exercised.
13. On 23 November 2023, the NBA also broadened the scope and number of 'non-network' entities that could apply to the Minister for the Environment to become a requiring authority.
14. I do not envisage that those entities will progress their applications prior to the repeal. However, in the unlikely event that this does occur, I propose transitional provisions halt the application process or revoke requiring authority status if this has been granted.
15. From 23 November 2023, network utility operators meeting the current RMA definition can only use the NBA requiring authority pathway to apply for requiring authority status. However, following the repeal, these applicants will be able to reapply under the RMA. I propose that any entity meeting the RMA definition of network utility operator that is granted requiring authority status under the NBA, will be deemed an RMA requiring authority.
16. I will consider whether further changes are needed to the RMA to consider the scope of requiring authority provisions and progress broader improvements to the designation process itself.

Mana Whakahono ā Rohe and joint management agreements

17. Since 24 August 2023, relevant parties have been able to initiate and agree Mana Whakahono ā Rohe and joint management agreements under the NBA. This includes groups representing hapū being able to initiate Mana Whakahono ā Rohe (they were previously unable to do so under the RMA). The NBA requires the Minister for the Environment to be notified when Mana Whakahono ā Rohe and joint management agreements are initiated.
18. To date, officials are not aware of any notification to the Minister for the Environment that any Mana Whakahono ā Rohe has been initiated or joint management agreement requested under the NBA.
19. Therefore, as part of the transition to the RMA following the NBA's repeal, I recommend that:
 - 19.1 any Mana Whakahono ā Rohe initiated, or joint management agreements requested, under the NBA, prior to enactment of the repeal bill, fall away – the parties involved may then re-start the process under the RMA
 - 19.2 where a group representing hapū has initiated a Mana Whakahono ā Rohe under Part 3 of the NBA, that group representing hapū will be able to initiate a Mana Whakahono ā Rohe under the RMA as though it were an iwi authority.

Upholding Treaty settlements

20. It will be important to ensure that legislative amendments made as a result of repealing the NBA do not undermine Treaty settlements and other arrangements,¹ and rights under Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and Marine and Coastal Area (Takutai Moana) Act 2011. Transitional and savings provisions may be required for this purpose.

Transfers of power

21. Since 24 August 2023, transfers of power have been able to be made under section 57 of the NBA. As a result, transitional provisions are needed in the repeal bill to transition those transfers of powers from the NBA to the RMA.

Provision of information on consent applications affecting statutory acknowledgement areas

22. The NBA provided for the provision of information on consent applications to PSGEs that have statutory acknowledgements in Treaty settlements, which are time bound and, in some cases, had expired. These provisions took effect at NBA Royal assent, so they currently apply to RMA consenting.
23. This provision was included to resolve administrative inconsistency between council areas and reflect best practice, creating an even playing field across PSGEs. The obligation does not affect decisions to be made by the consent authority on notification or affected persons of those applications.
24. I propose to amend the RMA to retain this provision.

Consequential and other amendments made by the NBA and SPA

25. I propose that all other amendments made by the NBA and SPA (including repealed clauses) will be changed to what they were before they were amended or to the most appropriate wording as determined by Parliamentary Counsel Office (PCO).
26. Among other changes, this approach will result in:
- 26.1 section 33 of the RMA being reinstated. This enables councils to transfer their functions, powers and duties to another public authority and was repealed by the NBA
 - 26.2 amendments made to the RMA relating to the maximum duration of freshwater related consents being reversed
 - 26.3 the amendment to the Urban Development Act 2022 intended to align with the NBA's Treaty of Waitangi clause being reversed.
27. Repeal of the SPA is more straightforward. The spatial planning process in the SPA is yet to be triggered, and no decisions have been made under the SPA. Therefore no transitional arrangements are needed. The SPA made consequential amendments to 12 pieces of legislation that will be reversed through the repeal. Officials will work with

¹ These include Mana Whakahono ā Rohe and joint management agreements.

PCO to ensure these changes are made and any pieces of legislation that were consequentially amended by the SPA are reversed.

Appendix 2: Amendments by the NBA to other legislation that are proposed to be retained through repeal

Section	Summary of provision	Benefits of retaining
Resource Management Act 1991		
S 28B(d)	A new s 28(d) was inserted add an additional function for the Minister of Aquaculture. This new function is to make decisions on the allocation of authorisations under part 7A where the Minister is specified as a decision-maker in a regional plan.	This is a pragmatic improvement that was needed irrespective of the NBA, and it should be retained.
80A	Section 80A was amended to address implementation issues with the existing drafting. The amended section now sets a more prescriptive process that allows Councils to include some specific 'non-freshwater' content, enabling plans and policy statements to be retained as single planning instruments.	Removing these changes would re-introduce the previous issues and cause additional confusion as work to develop planning instruments is already underway ahead of the statutory deadline for freshwater planning instrument notification in December 2024.
85AA RMA	Sets out that regional coastal plans must be updated to show the areas gazetted as aquaculture settlement areas under the Māori Commercial Aquaculture Claims Settlement Act 2004, without using a Schedule 1 plan change process.	This section ensures that where aquaculture settlement areas are established during negotiations under the Settlement Act, they are recognised in the planning maps of relevant plans. There are restrictions placed on who can apply for coastal permits within aquaculture settlement areas (see section 165E RMA) so it is important to ensure plan users are aware of where aquaculture settlement areas are located.
88 RMA	Provides that, if a person applies for resource consent relating to an area where an applicant seeks customary marine title, the person must comply with s 62A of the Marine and Coastal Area (Takutai Moana) Act 2011 (which requires the person to notify applicant groups, provide a list of the groups notified, and record their views).	These amendments improve the application process in a way that is not linked to the NBA.
Section 165I RMA Section 165U RMA	Process-related provisions in Part 7A where Minister of Aquaculture is decision-maker for	These provisions enable the Minister of Aquaculture to undertake strategic cross-regional allocation for aquaculture, where plans have been amended using s360A (see below). This is particularly important to support the

Section	Summary of provision	Benefits of retaining
<p>Section 165UA RMA</p> <p>Section 165W RMA</p> <p>Section 165X RMA</p> <p>Section 165YA RMA</p>	<p>allocation of space for aquaculture including through RMA authorisations.</p>	<p>emerging open ocean aquaculture industry, where multiple spatially separated sites, potentially spanning across regional boundaries, are likely to be considered best-practice to manage biosecurity risks, deliver consistent production models, and provide for economically feasible operations.</p>
<p>Sections 165ZB to 165ZE RMA</p>	<p>Minister of Aquaculture powers to suspend receipt of applications for aquaculture activities</p>	<p>This power enables the Minister of Aquaculture to place a temporary stay on receipt of aquaculture applications in particular situations.</p> <p>The amendments were to enhance an existing power in order to allow the Minister to place temporary stays on the receipt of application at their own initiative, to include management of a biosecurity concern as a criterion (not just responding to high or competing demand for space), and to allow a wider range of options to manage the demand or biosecurity concern, including amending the plan using s360A (see below) and gazetted aquaculture settlement areas under the Māori Commercial Aquaculture Claims Settlement Act (which is particularly important where there is growing demand and a risk that this demand will take up the best sites for development before areas can be preserved for settlement (which is required to be representative of the space occupied by other aquaculture users)).</p>
<p>Sections 217B to 217M of the RMA</p>	<p>Amendments to freshwater farm plan (FW-FP) section of the RMA were made to:</p> <ul style="list-style-type: none"> • allow the Minister for the Environment to modify the land use area thresholds in Part 9A of the RMA (which determine when a farm must have an FW-FP) • provide a pathway for industry organisations to provide FW-FP certification and audit services to their members, if they can meet assessment 	<p><i>Industry organisation amendments:</i> to further support industry in the implementation of freshwater farm plans, the RMA was amended to provide a pathway for these programmes to provide FW-FP certification and audit services to their members (as part of the existing, often export driven assurance services several industry organisations provide to their farmers). These amendments allow the Minister for Environment to set standards against which programmes can be assessed to determine their suitability to provide certification and audit services to their members.</p>

Section	Summary of provision	Benefits of retaining
Sections 360A and 360B RMA	standards issued by the Minister for the Environment.	<p><i>Thresholds amendments:</i> formerly the size thresholds (over 20 hectares for arable/pastoral farms, over 5 hectares for horticultural farms) in the RMA (which set where a FW-FP is required) did not allow for larger or different thresholds to be considered when rolling out FW-FPs</p> <p>These amendments enable the Minister for the Environment (in consultation with the Minister for Agriculture) to change these default thresholds above which FW-FP are required. These changes allow more flexibility on where, when and how FW-FP can be rolled out in an area or region.</p>
Sections 360A and 360B RMA	Minister of Aquaculture power to recommend regulations that amend plans for aquaculture activities	The amendments enhance the existing s360A power that enables the Minister of Aquaculture to amend plans. The enhancements were designed to better enable the Crown's aquaculture settlement obligations to be delivered and to enable emerging aquaculture opportunities (e.g., open ocean aquaculture). This includes enabling the Minister of Aquaculture to be responsible for allocating space including through RMA authorisations (see discussion on section 165I et al earlier in the table).
Maori Commercial Aquaculture Claims Settlement Act 2004		
17(2) MCACSA	The provision has been changed to remove an unnecessary link to the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004	The removal of the unnecessary link is an improvement and its retention does not clash with the repeal of the NBA or SPA.
50(6)(a) MCACSA	Section 50(6) was replaced to fix a section reference error. The new section 56(a) should be retained (but not section 56(6)(b), which refers to the NBA)	The correction of the error needs to be retained.
Marine and Coastal Area (Takutai Moana) Act 2011		
67(1)(a) MACA	The provision requires any person seeking to carry out an activity that affects a right held by a customary marine title group to make a request to the group for permission. The amendment clarifies that this must be in writing.	This is a process clarification that can be retained without any links to the NBA

Section	Summary of provision	Benefits of retaining
67(6) MACA	The provision requires consent authorities to refer resource consent applications to customary marine title groups as soon as practical after receiving them (unless the group has already notified its permission right decision).	This is a process clarification that can be retained without any links to the NBA.
86 MACA	The provision provides that a planning document under the Takutai Moana Act has no effect until it is lodged with any of the agencies listed in sections 88 to 91A whose jurisdiction is relevant to the contents of the planning document.	This change relates to the considerations required by the Minister for Aquaculture before recommending the making of regulations related to aquaculture. It aligns with the amendments to section 360B of the RMA and can be retained without any links to the NBA.
91A MACA	Section 91A requires the Minister responsible for aquaculture to consider customary marine title groups' planning documents lodged with that Minister when recommending the making of regulations that directly affect the customary marine title area under section 360B of the RMA.	This change relates to the considerations required by the Minister for Aquaculture before recommending the making of regulations related to aquaculture. It aligns with the amendments to section 360B of the RMA and can be retained without any links to the NBA.
Urban Development Act 2020		
31 UDA	Section 31 sets out how Kāinga Ora must assess an urban development project that has been selected. A new subsection (2) has been inserted that states that Kāinga Ora may stop an assessment at any time if it decides that the project should not be established as the specified development project.	Provides for an easier process if the decision is made not to proceed with a specified development project (removes the need to publicly notify a project if it is not proceeding under the UDA), and is not linked to NBA more generally
39 UDA	Section 39 has been rewritten. The new version provides that Kāinga Ora may decide that a project should not be established as a specified development project.	Provides for an easier process if the decision is made not to proceed with a specified development project (it can just stop unless Kāinga Ora were directed to assess it or it was publicly notified), and is not linked to NBA more generally.
60(6) UDA	A new s 60(6) is added. This provides that a development plan may provide that Kāinga Ora	Provides for an easier process for the consent authority functions to be retained by the territorial authority, and is not linked to NBA more generally

Section	Summary of provision	Benefits of retaining
	will not become the consent authority for the project area	
69(4)(a) to (d) UDA	The new provisions provide for improved evaluation considerations	Provides for an easier process and protects the work that is underway for the two projects currently being assessed for a potential specified development project, and is not linked to NBA more generally
86(a) UDA	The new provisions relate to Kāinga Ora not necessarily being the consent authority	Provides for an easier process for the territorial authority to retain the consent authority functions, and is not linked to NBA more generally
109(1)(b) UDA	The new provision relates to Kāinga Ora not necessarily being the consent authority	Provides for an easier process, and is not linked to NBA more generally
112A UDA	The new provision provides for Kāinga Ora to transfer consent authority functions	Provides clarity that Kāinga Ora can transfer consenting authority functions back to a territorial authority at any time, and is not linked to NBA more generally



Cabinet

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.

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill: Approval for Introduction

Portfolio **RMA Reform**

On 18 December 2023, Cabinet:

- 1 **noted** that on 4 December 2023, Cabinet agreed to pass legislation repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) by Christmas 2023 [CAB-23-MIN-0473];
- 2 **noted** that, as agreed by Cabinet, the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill (the Bill):
 - 2.1 includes transitional and savings provisions for NBA functions that have commenced and are being used;
 - 2.2 addresses consequential and other amendments made by the NBA and SPA;
 - 2.3 retains the NBA fast-track consenting process while a permanent fast-track process is developed;
- 3 **agreed** to enable Part 2 (purpose and principles) of the Resource Management Act 1991 (RMA) to apply to decision-making roles and functions where Part 1 of the NBA currently does in relation to NBA fast-track consenting, to better integrate with the existing regulatory framework under the RMA;
- 4 **agreed** that the Bill end engagement on the transitional National Planning Framework by:
 - 4.1 formally ending the engagement process started under Schedule 5, Part 4, Clause 36(a) of the NBA;
 - 4.2 disestablishing the Board of Inquiry that was set up under Schedule 5, Part 1, Clause 11 of the NBA;
- 5 **agreed** that the Bill include a 'no compensation' clause to clarify that no compensation is payable to any person as result of the repeal of either the NBA or SPA;
- 6 **agreed** to retain the amendment made by the NBA, to insert section 62A into the Marine and Coastal Area (Takutai Moana) Act 2011, through the Bill as this amendment was made for reasons independent of the NBA;

- 7 **agreed** to retain section 104 of the NBA in the Bill, for the purposes of the interim fast-track consenting process;
- 8 **authorised** the Parliamentary Counsel Office to make drafting-related and technical amendments prior to introduction;
- 9 **noted** that the Bill amends the RMA to extend the notification date for planning instruments to give effect to the National Policy Statement for Freshwater Management 2020 by three years until 31 December 2027, as agreed by Cabinet on 11 December 2023 [CAB-23-MIN-0486];
- 10 **noted** that following repeal of the SPA, the Spatial Planning Board will provide the Minister Responsible for RMA Reform with advice on options to progress spatial planning to inform the Government's work programme early in 2024;
- 11 **approved** the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill for introduction, subject to final approval by the Government caucuses and sufficient support in the House of Representatives;
- 12 **agreed** that the Bill be introduced and progressed through all stages under urgency between 19 and 21 December 2023, bypassing the select committee process;
- 13 **agreed** that the Bill come into effect one day after the Governor-General gives Royal Assent.

Rachel Hayward
Secretary of the Cabinet



Cabinet

Summary

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.

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill: Approval for Introduction

Portfolio	RMA Reform
Purpose	This paper seeks approval to introduce the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill (the Bill) to the House.
Previous Decisions	<p>In August 2023, the previous Government passed the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) to replace the Resource Management Act 1991 (RMA).</p> <p>On 4 December 2023, Cabinet agreed to progress the repeal of the NBA and the SPA before Christmas 2023 [CAB-23-MIN-0473].</p>
Proposal	<p>The Bill gives effect to the decision to repeal the NBA and the SPA. The repeal is a largely technical process focused on:</p> <ul style="list-style-type: none"> • transitioning and saving some parts of the NBA that are already in use to enable an orderly repeal; • reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions). <p>The Minister Responsible for RMA Reform is seeking agreement to the inclusion of minor and technical changes (paragraphs 8 and 9) and to consequential and other amendments as set out in paragraphs 11 to 16.</p> <p>The Bill is still in the process of being finalised by the Parliamentary Council Office. A hard copy will be delivered separately on Monday morning.</p>
Impact Analysis	Not required.
Compliance	A departmental disclosure statement is attached .

Timing Matters Introduced: 19 December 2023, bypassing the select committee phase and progressing through Parliament under urgency between 19 and 21 December.

Enacted: before the end of 2023.

Communications None indicated.

Consultation Paper prepared by MfE (RMA Reform). DoC, Corrections, DIA (Local Government), DPMC (Prime Minister), LINZ, MCH, MPI (Agriculture), MBIE (Energy), Defence, MoE, MoH, MHUD, MoT, Te Arawhiti, TPK and the Treasury (Infrastructure) were consulted. PSC were also consulted.

The Minister indicates that the Cabinet was consulted.

The Minister Responsible for RMA Reform recommends that Cabinet:

- 1 note on 4 December 2023, Cabinet agreed to pass legislation repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) by Christmas 2023 [CAB-23-MIN-0473];
- 2 note that, as agreed by Cabinet, the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill (the Bill):
 - 2.1 includes transitional and savings provisions for NBA functions that have commenced and are being used;
 - 2.2 addresses consequential and other amendments made by the NBA and SPA;
 - 2.3 retains the NBA fast-track consenting process while a permanent fast-track process is developed;
- 3 agree to enable Part 2 (purpose and principles) of the Resource Management Act 1991 (RMA) to apply to decision-making roles and functions where Part 1 of the NBA currently does in relation to NBA fast-track consenting, to better integrate with the existing regulatory framework under the RMA;
- 4 agree that the Bill end engagement on the transitional National Planning Framework by:
 - 4.1 formally ending the engagement process started under Schedule 5, Part 4, Clause 36(a) of the NBA;
 - 4.2 disestablishing the Board of Inquiry that was set up under Schedule 5, Part 1, Clause 11 of the NBA;
- 5 agree that the Bill include a 'no compensation' clause to clarify that no compensation is payable to any person as result of the repeal of either the NBA or SPA;

- 6 agree to retain the amendment made by the NBA, to insert section 62A into the Marine and Coastal Area (Takutai Moana) Act 2011, through the Bill as this amendment was made for reasons independent of the NBA;
- 7 authorise the Parliamentary Counsel Office to make drafting-related and technical amendments prior to introduction;
- 8 note that the Bill amends the RMA to extend the notification date for planning instruments to give effect to the National Policy Statement for Freshwater Management 2020 by three years until 31 December 2027, as agreed by Cabinet on 11 December 2023 [CAB-23-MIN-0486];
- 9 note that following repeal of the SPA, the Spatial Planning Board will provide the Minister Responsible for RMA Reform with advice on options to progress spatial planning to inform the Government's work programme early in 2024;
- 10 approve the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill for introduction, subject to final approval by the Government caucuses and sufficient support in the House of Representatives;
- 11 agree that the Bill be introduced and progressed through all stages under urgency between 19 and 21 December 2023, bypassing the select committee process;
- 12 agree that the Bill come into effect one day after the Governor-General gives Royal Assent.

Rebecca Davies
for Secretary of the Cabinet

Hard-copy distribution:
The Cabinet

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Office of the Minister Responsible for RMA Reform

Chair, Cabinet

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval to introduce the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill (the Bill) to the House. The Bill will repeal the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA).

Policy

Background

- 2 The previous Government passed the NBA and SPA in August 2023 to replace the Resource Management Act 1991 (RMA). While we agree the current RMA needs to be replaced, we do not think the NBA and SPA will deliver an overall improvement.
- 3 We have committed to repealing the NBA and SPA, returning to the RMA in the interim, and developing new resource management legislation. The legislation needs to make it easier to develop new housing and infrastructure, enable primary industry, and better balance environmental protection. New legislation will be premised on the enjoyment of property rights.
- 4 On 4 December 2023, Cabinet agreed [CAB-23-MIN-0473] to pass legislation repealing the NBA and SPA by Christmas 2023. The repeal is largely a technical process focused on:
 - 4.1 transitioning and saving some parts of the NBA that are already in use to enable an orderly repeal
 - 4.2 reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions).
- 5 On 11 December 2023, Cabinet agreed [CAB-23-MIN-0486] to the Repeal Bill amending the RMA to extend the notification date under the Freshwater Planning Process for planning instruments giving effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM) by three years to 31 December 2027.

Transitional and savings provisions [Schedule 1]

- 6 The Bill includes transitional and savings provisions for a limited number of NBA functions that have commenced and are currently being used. These are required to give users of the system relying on provisions already in force a clear understanding of how their functions and interests are affected by the repeal.
- 7 As agreed by Cabinet, the Bill includes provisions for:

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- 7.1 transitioning and saving compliance and enforcement provisions that have commenced under the NBA to provide for decisions on consent applications received, costs incurred, and proceedings commenced prior to the repeal
 - 7.2 providing that freshwater consents applied for since 24 August 2023 that have not been decided by a consent authority at the date of repeal of the NBA will have their duration determined in accordance with the 35-year maximum duration provided for in the RMA
 - 7.3 revoking all applications made under the NBA's expanded scope of who can apply for the status of a requiring authority (except for applicants meeting the RMA definition of network utility operator), and ceasing notices of requirement lodged by requiring authorities that were granted requiring authority status under the NBA
 - 7.4 providing that any Mana Whakahono ā Rohe and joint management agreements initiated under Part 3 of the NBA will fall away at repeal, and parties may then re-start the process under the RMA
 - 7.5 retaining the extension of statutory acknowledgements provided for under section 271 of the NBA in the RMA
 - 7.6 transitioning and saving any transfer of power initiated under section 57 of the NBA as if it were a transfer of power made under section 33 of the RMA.
- 8 In addition, I recommend that Cabinet agree to include minor and technical changes in the Bill to:
- 8.1 close off the engagement process on the transitional National Planning Framework (NPF), which would have provided national direction under the NBA
 - 8.2 formally disestablish the NPF Board of Inquiry that had been appointed to hear submissions and make recommendations on the transitional NPF.
- 9 I also recommend that Cabinet agree to include a 'no compensation clause' in the Bill. These clauses are standard in situations such as this and clarify that no compensation is payable to any person as a result of the repeal.
- 10 Repeal of the SPA is more straightforward. The spatial planning process in the SPA is yet to be triggered, and no decisions have been made under the SPA. Therefore, no transitional arrangements are needed.

Consequential and other amendments made by the NBA and SPA [Schedule 2]

- 11 The NBA and SPA amended over 150 other acts and secondary legislation, including the RMA. The Bill changes these amendments to their pre-amendment wording or to the most appropriate wording as determined by the Parliamentary Counsel Office.
- 12 Cabinet also agreed to retain some amendments made by the NBA to other legislation where these were focused on improving legislative coherence and were independent of the NBA and SPA.

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- 13 During the drafting process officials have identified one further amendment made to the Marine and Coastal Area (Takutai Moana) Act 2011 (new section 62A¹) to improve processes that are not connected to the NBA, which should be retained. I propose this amendment be retained through the Bill.

Retaining NBA fast-track consenting until a permanent fast-track process is developed [clauses 8-10 of Schedule 1]

- 14 As agreed by Cabinet, the Bill retains the NBA's fast-track consenting provisions until a more fit-for-purpose fast-track consenting process is developed in the new year. Other provisions are also required to ensure the NBA fast-track pathway can function in the interim, including provisions to uphold Treaty settlements, Takutai Moana legislation, and other arrangements.
- 15 Under the NBA, aspects of Part 1 (including the purpose statement and Te Tiriti o Waitangi/Treaty of Waitangi clause) apply to Ministerial decision-making about referring an application to the Expert Consenting Panel. To a varying extent, these clauses in Part 1 also apply to the Environmental Protection Authority (EPA) and Expert Consenting Panel when/if performing other functions conducted in accordance with the NBA fast-track consenting provisions.
- 16 I recommend that Part 2 (purpose and principles) of the RMA apply to decision-making roles and functions where Part 1 of the NBA currently does in relation to NBA fast-track consenting, to better integrate with the existing regulatory framework under the RMA.

Role of the Spatial Planning Board

- 17 While repeal of the SPA is more straightforward, it does require consideration of the future role of the Spatial Planning Board (the Board).
- 18 The Board is an interdepartmental executive board established under the Public Service Act 2020 of public sector chief executives with responsibilities for spatial planning.² The Board oversaw development of the SPA. Following the passage of legislation, the Board was repurposed to govern implementation of the SPA, with a focus on coordinating central government's involvement in the development of each regional spatial strategy.
- 19 On repeal, the Board's functions in relation to the SPA become redundant, so I have asked the Board to advise me on potential options for this Government to progress spatial planning early in the new year. I intend to seek Cabinet decisions on any future role of the Board alongside decisions about the Government's priorities for resource management in early 2024.

Extending the deadline for freshwater planning instruments [Part 4 of Schedule 2]

¹ This clarifies the roles of resource consent applicants and consent authorities where there are applicant groups seeking customary marine title.

² The Board members are the chief executives of the Ministry for the Environment (Chair), Department of Internal Affairs, Ministry of Housing and Urban Development and Ministry of Transport. Departments represented by the Board are Department of Conservation, Department of Internal Affairs, Ministry for Culture and Heritage, Ministry for Primary Industries, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Māori Development – Te Puni Kōkiri, Ministry of Transport, Office of Māori Crown Relations – Te Arawhiti, and the Treasury.

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- 20 The Bill includes an amendment to the RMA to give effect to the extension agreed by Cabinet for the notification date for planning instruments giving effect to the NPS-FM.
- 21 This extends the statutory obligation for councils to notify planning instruments under the Freshwater Planning Process that give effect to the NPS-FM from 31 December 2024 until 31 December 2027. Making the change before Christmas provides councils and communities with some relief and certainty over that period.

Next steps

- 22 § 9(2)(f)(iv) [Redacted]

Impact analysis

Regulatory Impact Statement

- 23 On 29 November 2023, Cabinet agreed to suspend the requirement for Regulatory Impact Statements for decisions relating to 100 Day Plan initiatives by exempting them from providing Regulatory Impact Statements when the Government is repealing legislation and not seeking approval for new policy [CAB-23-MIN-0468].
- 24 As the Bill's scope is limited to repeal of the NBA and SPA and does not seek approval for new policy, no regulatory impact assessment is required.
- 25 Regulatory impact assessment requirements apply to the extension of the deadline for regional councils to publicly notify freshwater planning instruments to 31 December 2027, which are not part of the 100-Day Plan at this time. The Treasury and the Ministry for the Environment have agreed that decisions to change the deadline will be subject to post-implementation assessment in line with other 100-day Plan initiatives, and when Cabinet makes further decisions relating to the NPS-FM.

Compliance

- 26 The Bill complies with each of the following:
 - 26.1 the principles of the Treaty of Waitangi
 - 26.2 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper at **Appendix One**)
 - 26.3 the principles and guidelines set out in the Privacy Act 2020
 - 26.4 relevant international standards and obligations
 - 26.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 27 The Ministry of Justice is vetting the Bill against the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 and will produce a compliance report before the Bill is introduced.

- § 9(2)(h) [Redacted]

s 9(2)(h)



Consultation

- 34 The following agencies were provided with a short period to review the content of 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; Ministry for Culture and Heritage; and Ministry of Business, Innovation and Employment, Ministry of Health, Department of Corrections, Public Service Commission, Land Information New Zealand, Department of Education, and New Zealand Defence Force.
- 35 The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.
- 36 Targeted engagement has been undertaken in relation to the draft Bill and focused on local government and Māori. Engagement with local government has indicated a

³ Waitangi Tribunal panels have found that the RMA breaches the principles of the Treaty. Key findings include that the RMA is inadequate in terms of recognition and protection of Māori interests required by the Treaty, particularly in terms of the RMA's participation mechanisms for Māori as well as allocation methods for access and use of natural resources.

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desire from this sector for clear information about the repeal, to help manage the transition, and to work closely with the Government as new policy is developed.

- 37 Feedback from iwi and hapū at place has signalled the need for significant investment in building capability and capacity for Māori to participate effectively in the repealed resource management structure. Iwi and hapū have also communicated a need to ensure that the repealed structure be more efficient and less complex than the current process, and nervousness about perceived winding back of gains made in the NBA.

Binding on the Crown

- 38 The Bill binds the Crown. It repeals the NBA and SPA, which has the effect of reinstating the RMA. The RMA binds the Crown in the circumstances set out in section 4.

Creating new agencies or amending law relating to existing agencies

- 39 The Bill will stop the requirement to establish the National Māori Entity on 1 March 2024 under section 66 of the NBA.

Allocation of decision-making powers

- 40 The Bill does not involve the allocation of decision-making powers between the Executive, the Courts, and Tribunals.

Associated regulations

- 41 The Bill enables regulations to be made (by the Governor-General by Order in Council on the recommendation of the Minister for the Environment) for savings and transitional matters [clause 18 of Schedule 1]. Regulations may provide for more detailed transitional and savings provisions in certain circumstances or where necessary to facilitate orderly transition from the NBA.
- 42 The Bill also enables regulations to be made to provide a process for upholding Mana Whakahono ā Rohe and joint management agreements in relation to the Bill [clause 7 of Schedule 1] as well as regulations that are intended to support the fast-track consenting process.

Other instruments

- 43 The Bill includes no provisions that empower the making of other instruments.

Definition of Minister/department

- 44 The Bill does not contain a definition of Minister, department, or chief executive of a department.

Commencement of legislation

- 45 Clauses 5-7 of Schedule 1 of the Bill would come into force 9 months after Royal Assent. These clauses set out the process for the Crown to engage with Post-Settlement Governance Entities, ngā hapū o Ngāti Porou, and parties to Mana Whakahono ā Rohe and joint management agreements, and enter into agreements to uphold the integrity, intent and effect of those arrangements in the context of the NBA. As agreed by Cabinet, these clauses are retained with delayed commencement in the

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event that the interim fast-track consenting arrangements remain in place longer than expected.

46 The rest of the Bill would come into force on the day after Royal Assent.

Parliamentary stages

47 Cabinet previously agreed to pass legislation repealing the NBA and SPA by Christmas 2023. Cabinet also agreed that passing the Bill in this timeframe will require:

47.1 the Bill to be introduced by 19 December 2023

47.2 progressing the Bill through Parliament under urgency between 19 and 21 December

47.3 bypassing the select committee phase.

Proactive Release

48 I intend to proactively release this Cabinet paper on the Ministry for the Environment website.

Recommendations

I recommend that Cabinet:

1 **note** that Cabinet agreed on 4 December 2023 to pass legislation repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) by Christmas 2023 [CAB-23-MIN-0473]

2 **note** that, as agreed by Cabinet, the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill:

2.1 includes transitional and savings provisions for NBA functions that have commenced and are being used

2.2 addresses consequential and other amendments made by the NBA and SPA

2.3 retains the NBA fast-track consenting process while a permanent fast-track process is developed

3 **agree** to enable Part 2 (purpose and principles) of the Resource Management Act 1991 (RMA) to apply to decision-making roles and functions where Part 1 of the NBA currently does in relation to NBA fast-track consenting, to better integrate with the existing regulatory framework under the RMA

4 **agree** that the Bill end engagement on the transitional National Planning Framework by:

4.1 formally ending the engagement process started under Schedule 5, Part 4, Clause 36(a) of the NBA

4.2 disestablishing the Board of Inquiry that was set up under Schedule 5, Part 1, Clause 11 of the NBA

I N C O N F I D E N C E

- 5 **agree** that the Bill include a ‘no compensation’ clause to clarify that no compensation is payable to any person as result of the repeal of either the NBA or SPA
- 6 **agree** to retain the amendment made by the NBA, to insert section 62A into the Marine and Coastal Area (Takutai Moana) Act 2011, through the Bill as this amendment was made for reasons independent of the NBA
- 7 **agree** to the Parliamentary Counsel office making drafting-related and technical amendments prior to introduction
- 8 **note** that the Bill amends the RMA to extend the notification date for planning instruments to give effect to the National Policy Statement for Freshwater Management 2020 by three years until 31 December 2027, as agreed by Cabinet on 11 December 2023 [CAB-23-MIN-0486]
- 9 **note** that following repeal of the SPA, the Spatial Planning Board will provide the Minister Responsible for RMA Reform with advice on options to progress spatial planning to inform the Government’s work programme early in 2024
- 10 **approve** the Bill for introduction, subject to final approval by the Government caucus and sufficient support in the House of Representatives
- 11 **agree** that the Bill be introduced and progressed through all stages under urgency between 19 and 21 December, bypassing select committee
- 12 **agree** that the Bill come into effect one day after the Governor-General gives Royal Assent.

Authorised for lodgement

Hon Chris Bishop
Minister Responsible for RMA Reform

Appendix One: Departmental Disclosure Statement

Departmental Disclosure Statement

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 December 2023.

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Part One: General Policy Statement

The Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill repeals the Natural and Built Environment Act 2023 (**NBA**) and the Spatial Planning Act 2023 (**SPA**). The Bill delivers on the Government's policy commitment to repeal the NBA and SPA and reinstate the Resource Management Act 1991 (**RMA**) as the primary legislation for New Zealand's resource management system, pending the Government's proposed future resource management reform.

The Bill aims to deliver an orderly return to the RMA, which is achieved by:

- transitional and savings provisions for some parts of the NBA that are already in use, to provide continuity and certainty for system users,
- minor amendments to the RMA for clarity and workability, and
- reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions).

Transitional and saving arrangements in this Bill include retention of the NBA fast-track consenting process. Provisions ensure that fast-track consenting remains for significant projects until an alternative fast-track infrastructure consenting regime can be introduced to the RMA. These provisions also ensure Treaty settlements are upheld for fast-track consenting.

The Bill also extends the RMA freshwater planning deadline to provide time to replace the National Policy Statement for Freshwater Management 2020.

As spatial planning under the SPA has not yet begun and no decisions have been made under the SPA, no transitional or savings provisions are required for this act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Reports used to inform the development of the NBA are relevant to the transitions and savings provisions and to the retention of NBA fast-track provisions. These are listed in Appendix 1.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Cabinet suspended the requirement for Regulatory Impact Statements for decisions relating to 100-day plan proposals (taken within the 100-day period) that solely involve the repeal of legislation [CAB-23-MIN-0468].	
The extension of the deadline for councils to notify freshwater planning instruments is not covered by the 100-day exemption and, due to time constraints, a RIS was not developed. Instead, the Treasury and Ministry for the Environment have agreed that decisions to change the deadline will be subject to post-implementation assessment in line with other 100-day Plan initiatives, and when Cabinet makes further decisions relating to commitments to replace the National Policy Statement for Freshwater Management 2020 (NPS-FM).	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Bill was prepared under urgency. Analysis of the costs and benefits or potential loss of income or wealth attributable to the policy has not been considered.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>This Bill does not introduce any new legislative provisions as it reverts to previous law and transitions/saves some existing provisions. The RMA has remained in force alongside the NBA and SPA and, with some small exceptions like the new fast-track provisions, has continued to be the relevant resource management law. The Bill represents no change for most users. It does not create new obligations or standards, or substantively impact existing obligations or standards. Given the timeframe for the repeal, a cost-benefit analysis was not undertaken.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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This Bill does not introduce any new legislative provisions as it reverts to previous law and transitions/saves some existing provisions. There are no changes to impact on New Zealand's international obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Due to limited time, high-level Treaty impact assessments were provided to Cabinet on the NBA and SPA repeal [CAB-23-MIN-0473] and the extension of notification date for freshwater planning instruments [CAB-23-SUB-0468]. The assessments identified that this Bill has implications under the Treaty of Waitangi due to the complex interactions between Treaty settlements and the resource management system, including in relation to water, and the greater role in planning and decision-making that iwi/hapu would have had under the NBA, which is now being repealed. They also noted Waitangi Tribunal findings in relation to the RMA in terms of recognition and protection of Māori interests.
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Given the timeframes for the repeal, only limited engagement with Post-Settlement Governance Entities and other Māori groups has been able to occur.
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Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/ .

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>In repealing the NBA, offences and penalties provisions revert to those in the RMA section 338 and 339. Two offences created by the NBA will cease to exist, these being: contravention of any condition of a resource consent (NBA s701(1)(c), and contravention of s669 which imposes a duty to comply with an enforceable undertaking (NBA s701(1)(f)).</p> <p>The Bill also has the effect of removing civil pecuniary penalties (NBA s717). These provisions had not come into force.</p> <p>The Legislation Act applies general savings provisions that allow the continuation of compliance and enforcement proceedings under way, and the investigation and taking of action for offences committed during the period the NBA was in effect.</p> <p>The Bill (Schedule 1) specifies some transitional and savings provisions to provide certainty to regulated communities about how some process matters in the NBA are applied up to and following repeal.</p> <p>By returning to the RMA, maximum penalties for offences return to 2 years imprisonment. The effect is to reestablish the availability of jury trials under the jurisdiction of the District Court.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>The Bill re-establishes the RMA as the primary legislation for resource management, with some transitional and savings provisions. Apart from the removal of two offences created by the NBA, there are no substantial policy changes.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Due to the associated timeframes for the Bill, only limited engagement has occurred with local authorities, Post-Settlement Governance Entities and other Māori groups.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Schedule 1 contains a no compensation clause (Clause 19). It states that a “person is not entitled to any compensation or other payment or benefit for any of the following that arises from the enactment or operation of this Act: (a) any adverse effect on their rights or interests: (b) any loss or transfer of their functions, duties, powers, office, or employment: (c) any other loss or damage suffered or likely to be suffered by the person.”</p> <p>Adverse outcomes that would give rise to compensation claims are not expected from this Bill. The clause is included to preclude claims for compensation in the event that the repeal Bill creates unanticipated situations.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
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The NBA SPA Repeal Bill includes the following relevant clauses:

- Clause 7 of Schedule 1 gives the Governor-General power to make regulations by Order in Council to provide a process for giving effect to Mana Whakahono ā Rohe and joint management agreements, if necessary, as part of the transition.
- Clause 8 of Schedule 1 modifies the regulatory powers associated with the fast-track process, to align with equivalent RMA regulation making powers.
- Clause 18 of Schedule 1 gives the Governor-General power to make regulations by Order in Council to facilitate the orderly transition from the NBA to the RMA. The power is limited to transitional and savings provisions and regulations made under this power will be secondary legislation.

These powers are needed given the speed of repeal and the need to adapt to situations as and if they arise.

Schedule 2 includes various amendments, some of which restore regulatory powers to those that existed prior to the NBA being enacted.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Appendix One: Further Information Relating to Part Two

Question 2.1 — Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?

The following reports are relevant to the transitional and savings provisions and the retention of fast-track.

New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel June 2020

<https://environment.govt.nz/assets/Publications/Files/rm-panel-review-report-web.pdf>

Natural and Built Environments Bill Exposure Draft (19 June 2021) Parliamentary Paper on Exposure Draft of the Natural and Built Environments Bill

<https://environment.govt.nz/publications/natural-and-built-environments-bill-parliamentary-paper-on-the-exposure-draft/>

Summary of Initial Impact Analysis of RM Reform (30 June 2021)

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/summary-of-initial-impact-analysis-of-rm-reform/>

Inquiry on the Natural and Built Environments Bill: Parliamentary Paper (Report of the Environment Committee, November 2021) https://www.parliament.nz/resource/en-NZ/SCR_116599/0935c4f14c63608e55c528b75167a69daee92254

Government Response to Report of the Environment Committee on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

https://www.parliament.nz/resource/en-NZ/PAP_119748/89cc271ebe07331c5be669f6396b3ea5d621c8d3