



PROACTIVE RELEASE COVERSHEET

Minister	Hon David Parker	Portfolio	Environment
Name of package	Reforming the resource management system – amending Treaty settlement legislation	Date to be published	Following third reading of the Spatial Planning Bill and the Natural and Built Environment Bill

List of documents that have been proactively released

Date	Title	Author
4 April 2023	Cabinet paper: Reforming the resource management system – amending Treaty settlement legislation	Ministry for the Environment
4 April 2023	MCR-23-MIN-0006 - Cabinet Māori Crown Relations – Te Arawhiti Committee Minute of Decision	Cabinet Office

Information redacted

YES

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.

Summary of reasons for redaction

Some information has been withheld from both the Cabinet paper and minute, under:

- section 9(2)(f)(iv) of the Official Information Act 1982 to maintain the confidentiality of advice tendered by Ministers of the Crown and officials; or
- section 9(2)(j) of the Official Information Act 1982 to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations

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Office of the Minister for the Environment

Chair, Cabinet Māori Crown Relations: Te Arawhiti Committee

Reforming the resource management system: amending Treaty settlement legislation

Proposal

- 1 This paper seeks agreement to the approach for amending Treaty settlement legislation so it may be upheld in the reformed resource management system. This agreement would enable drafting of Treaty settlement amendment bills to commence.

Relation to government priorities

- 2 The Labour Party 2020 Manifesto committed to repealing the Resource Management Act 1991 (RMA) and replacing it with a Spatial Planning Act (SPA) and Natural and Built Environment Act (NBA) this parliamentary term. This was confirmed by Cabinet in December 2020 [CAB-20-MIN-0522 refers] and is consistent with the overarching Government priority of *Laying the Foundations for the Future*.¹

Executive Summary

- 3 No previous proposed legislation has had the breadth of impact on existing Te Tiriti o Waitangi settlement commitments that the Spatial Planning Bill (SP Bill) and Natural and Built Environment Bill (NBE Bill) do, because of the extent to which the RMA interacts with those commitments.
- 4 Cabinet has previously agreed that all affected Treaty settlements, and other arrangements iwi/hapū have in relation to the RMA, will need to be transitioned into the new resource management regime [CAB-20-MIN-0522 refers]. This will entail amendments to deeds of settlement and settlement legislation. As Treaty settlements and other arrangements include many resource management provisions, this is a large task.
- 5 The Crown intends to uphold the integrity, intent and effect of Treaty settlement redress, not to provide additional redress or renegotiate any settlement (ie an approach of 'no more, no less').
- 6 Amendments to Treaty settlements and other arrangements can only take place with the agreement of the post-settlement governance entities (PSGEs) or relevant iwi/hapū. The process of reaching agreement involves significant engagement from the Crown; and engagement leads from the Ministry for the Environment (MfE) have established good working relationships with nearly all affected groups. Some discussions are further progressed than others, which reflects the varying complexity

¹ The NBA was originally referred to as the Natural and Built Environment~~s~~ Act, and the SPA as the Strategic Planning Act (changes from original underlined).

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of the settlements and different levels of engagement and capacity among the groups.²

- 7 As introduced, Schedule 2 to the SP Bill and the NBE Bill includes a commitment by the Crown to use its best endeavours to promote the enactment of legislation necessary to amend Treaty settlements no later than 18 months after enactment of the SP and NBE Bills (ie by late 2024/early 2025).
- 8 To meet this timeframe, I propose amending Treaty settlement legislation by way of two omnibus bills, to be passed by s.9(2)(f)(iv). To streamline the process on the Crown's part, this paper seeks Cabinet agreement to:
 - 8.1 amend statutory acknowledgment provisions (which feature in most Treaty settlements) in settlement legislation, to reflect the NBE and SP Bills;
 - 8.2 delegate authority to joint Ministers to make further policy decisions to uphold settlements (and agreements reached in current settlement negotiations) and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act);
 - 8.3 authorise Ministers to sign amendments to deeds of settlement and the deed of agreement with Ngā Hapū o Ngāti Porou; and
 - 8.4 authorise me to issue drafting instructions to the Parliamentary Counsel Office (PCO) to amend Treaty settlement legislation and the NHNP Act.
- 9 Additional to needing to reach agreement with PSGEs, there are other factors that could make it more challenging to amend Treaty settlements within the 18 month timeframe. These include changes to the SP and NBE Bills and external factors, such as the impact of Cyclone Gabrielle. Although some mitigations are in place, it is possible that subsequent Treaty settlement amendment bills will be required beyond the two proposed in this paper, although. This will become clear in 2024.

Background

- 10 Almost all Treaty settlements include some form of natural resources redress which interacts with the RMA, ranging from statutory acknowledgements over land and water bodies to more complex joint management arrangements.
- 11 In addition, and outside of settlements, hapū and iwi also interact with the RMA through:
 - 11.1 rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the NHNP Act;
 - 11.2 co-management of natural resources with councils through joint management agreements (JMAs) under the RMA; and
 - 11.3 relationship agreements with councils through Mana Whakahono ā Rohe (MWAR) under the RMA.
- 12 In December 2020, Cabinet agreed that all affected Treaty settlements, including those in negotiations, will need to be transitioned into the new resource management system [CAB-20-MIN-0522 refers].

² Where the context requires, the term 'PSGEs' used in this paper should be taken to refer to other affected groups as well.

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- 13 In June 2021, the resource management reform Ministerial Oversight Group (MOG) agreed to eight principles for the reform, including to give effect to the principles of Te Tiriti and to uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori [MOG meeting #8 refers].
- 14 Since early 2022, MfE with support from the Office for Māori Crown Relations – Te Arawhiti has been engaging with PSGEs, groups in Treaty settlement negotiations, Ngā Hapū o Ngāti Porou, and hapū/iwi participating in other arrangements, on the potential impact of the resource management reform.
- 15 Following the introduction of the SP and NBE Bills to the House in November 2022, this engagement has intensified to focus on specific measures to uphold individual and collective redress arrangements.
- 16 As introduced, Schedule 2 of both the SP and NBE Bills sets out the following process for upholding Treaty settlements, the NHNP Act, and other arrangements:

4 Process for upholding Treaty settlements, NHNP Act, and other arrangements

- (1) The Crown must uphold the integrity, intent, and effect of Treaty settlements, the NHNP Act, and other arrangements in accordance with this clause.
- (2) The Crown must, unless otherwise agreed with the relevant party,—
 - (a) discuss with each relevant party, for the purpose of agreeing, how the integrity, intent, and effect of the Treaty settlement, the NHNP Act, or the other arrangement will be upheld in relation to this Act; and
 - (b) support the capacity of the relevant party to participate effectively in those discussions, including by providing appropriate resources; and
 - (c) enter into any agreements with the relevant party that are necessary to uphold the Treaty settlement, the NHNP Act, or the other arrangement, including by entering into a deed to amend the entity's Treaty settlement deed.
- (3) If necessary to give effect to an agreement relating to a Treaty settlement or the NHNP Act, the Crown must—
 - (a) take all necessary steps within the Crown's authority to introduce a Bill to the House of Representatives that—
 - (i) amends the relevant party's Treaty settlement Act or the NHNP Act; and
 - (ii) is in a form that has been agreed by the relevant party; and
 - (b) use the Crown's best endeavours to promote the enactment of the Bill no later than 18 months after the enactment of this Act.

Proposed approach to amending Treaty settlement legislation

- 17 The proposed amendments to Treaty settlements arising from the resource management reform will be the most wide-ranging to date, involving changes to both deeds of settlement and settlement legislation. Given the large number of settlements involved (78),³ plus the NHNP Act, the proposed approach outlined below attempts to streamline the Crown's processes for achieving this whilst maintaining alignment with the implementation of the SP and NBE Bills.

³ The number of settlement Acts is lower (73), as some settlements have been combined in statute. For the purposes of this paper, settlement Acts include the Hawke's Bay Regional Planning Committee Act 2015, which implemented aspects of the deeds of settlement with Ngāti Pāhauwera and Maungaharuru-Tangitū Hapū; and the Te Rohe o Rongokako Joint Redress Act 2022, which gives effect to specific cultural redress shared between Ngāti Kahungunu and Rangitane and provided for in the respective deeds of settlement.

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- 18 The caveat to this approach is that the Crown does not determine the timeframes for amending Treaty settlements, because this must be a product of agreement with PSGEs. Treaty settlement redress is often hard-won, as the product of years of negotiation.
- 19 PSGEs will need time and space for meaningful consideration of the proposed amendments, including engaging with their members. Securing this agreement should be viewed as a necessary step rather than an impediment to reform. Requests for simultaneous engagement with PSGEs on other aspects of resource reform and other government policies also cause work for PSGEs. Government officials seek to coordinate this engagement where possible.

Deeds to amend

- 20 In most cases it will be necessary to amend the deeds of settlement between PSGEs and the Crown to confirm how Treaty settlement arrangements will be upheld in the reformed resource management system. This also applies to the deed of agreement which underpins the NHNP Act. Such 'deeds to amend' will need to be signed before any accompanying amendments to settlement legislation or the NHNP Act can be introduced to the House.
- 21 In some cases, it may be possible to use a simpler instrument to make the necessary adjustments, but this will depend on the terms of each deed and the internal governance obligations and wishes of each PSGE.
- 22 To date, deeds to amend full and final Treaty settlements have typically only been undertaken for minor/technical issues or where parties identify an issue. The Minister for Māori Crown Relations: Te Arawhiti has signed such deeds on behalf of the Crown since the advent of that portfolio. Amending full and final Treaty settlements to reflect a wider policy reform will set a precedent.
- 23 I seek your authorisation for the Minister for Māori Crown Relations: Te Arawhiti to sign deeds to amend, which reflect:
- 23.1 Cabinet's decisions with regard to statutory acknowledgements, as proposed at paragraphs 39-40 below; and
- 23.2 further policy decisions by joint Ministers to uphold Treaty settlements, under the delegations proposed at paragraphs 45.1, 45.2, and 46.
- 24 Similarly, I seek your authorisation for the Minister with responsibility for the Marine and Coastal Area (Takutai Moana) Act 2011 to sign a deed to amend the agreement with Ngā Hapū o Ngāti Porou which reflects policy decisions by joint Ministers under the delegations proposed at paragraphs 45.3 and 46.

Omnibus bills

- 25 To meet the timeframes set out in Schedule 2 of the SP and NBE Bills, I intend to introduce amendments to Treaty settlement legislation, in the form of omnibus bills, following the enactment of the SP and NBE Bills. Each omnibus bill will subsequently be divided into separate Treaty settlement amendment bills via Supplementary Order Paper (SOP) at the Committee of the Whole stage (under Standing Order 317).
- 26 There is insufficient time to make amendments to Treaty settlements by way of amendment to the SP and NBE Bills currently before the House. Deeds to amend will

IN CONFIDENCE

need to be agreed before settlement legislation can be amended; and it will not be possible to achieve this with all PSGEs in time for amendments to be drafted and considered, if the Bills are to be passed this parliamentary term.

- 27 It is important for maintaining trust and confidence that clarity on the final shape of the SP and NBE Bills is provided to PSGEs before they are asked to amend their settlements.
- 28 My intention is that Treaty settlement legislation will be amended through either of two omnibus bills, with:
- 28.1 the first bill to be introduced in s.9(2)(f)(iv) (following enactment of the SP and NBE Bills); and
- 28.2 the second bill to be introduced in s.9(2)(f)(iv).
- 29 The proposed timeframes for these omnibus bills – as outlined at **Appendix One** – would enable the Crown to meet its statutory commitment under Schedule 2 of the SP and NBE Bills to use its best endeavours to promote the enactment of legislation necessary to amend Treaty settlements no later than 18 months after enactment of the SP and NBE Bills (ie by late 2024/early 2025).
- 30 I anticipate that the first omnibus bill will:
- 30.1 focus on amendments that are relatively straightforward, such as upholding statutory acknowledgements under the new resource management system (as discussed further below); and
- 30.2 help to provide momentum for further amendments to settlements to be made through the second omnibus bill.
- 31 I expect that the second omnibus bill will amend a majority of settlements, including those with more complex natural resource arrangements, which require more time to agree on how they will be upheld under the new resource management system. I hope to commence issuing drafting instructions s.9(2)(f)(iv).
- 32 Meeting the timeframes is of course subject to reaching agreement with PSGEs on the proposed amendments to their settlements. Even the relatively straightforward amendments proposed for the first omnibus bill will take time to work through with PSGEs, making it challenging to introduce legislation before the House rises. It is also possible that not all settlements are able to be amended by these two omnibus bills, and that Cabinet may need to consider subsequent legislation to amend the remaining settlements. These timing risks are discussed further at paragraphs 51-56.

Treaty settlement bills before the House

- 33 In addition to existing Treaty settlement legislation, there are likely to be Treaty settlement bills before the House which will also need to be amended, through select committee or by SOP, to reflect the SP and NBE Bills once they have been enacted.

Statutory acknowledgements

- 34 Statutory acknowledgements apply to sites of significance (including rivers, lakes, mountains, wetlands, coastal areas and geothermal resources) where the land in question is owned by the Crown. The relevant settlement legislation acknowledges a

IN CONFIDENCE

statement of the claimant group's associations to the area, and enhances their ability to participate in specified RMA processes. Local authorities and courts are required to meet certain requirements or take certain actions before making decisions which may impact on areas with statutory acknowledgements.

- 35 Statutory acknowledgements are the most common RMA-related Treaty settlement redress, appearing in 67 settlements to date. Although there are some differences in wording – as drafting has evolved since the first statutory acknowledgements appeared in the 1998 Ngāi Tahu settlement – the redress is generally consistent across all Treaty settlements.
- 36 The SP and NBE Bills carry across most of the existing RMA provisions relating to statutory acknowledgements. However, one of the key reforms in the new resource management system is the intention to have more permitted activities and less consenting. Activities which would previously have required resource consents under the RMA, or which were the subject of consent applications provided to iwi and hapū as part of notification requirements under settlement legislation, may now be permitted.
- 37 To address this, the NBE Bill includes a new power requiring decision-makers to have regard to statutory acknowledgments when determining activity status in a natural and built environment plan (NBE plan), and in particular where a proposed activity is on, or adjacent to, or may affect, land that is the subject of a statutory acknowledgement.
- 38 The SP and NBE Bills include other provisions which ensure the integrity, intent and effect of statutory acknowledgements is upheld in the new resource management system, such as:
 - 38.1 providing that statutory acknowledgements attached to regional spatial strategies (RSSs) and NBE plans will be considered part of those documents (rather than being treated as for 'public information only');
 - 38.2 requiring regional policy committees to consider statutory acknowledgements when developing RSSs;
 - 38.3 including reference to statutory acknowledgements in the outcomes clause of the NBE Bill; and
 - 38.4 removing the 20 year limit on councils providing summaries of consent applications to the holders of statutory acknowledgements.
- 39 **Appendix Two** outlines the current standard statutory acknowledgement provisions in the RMA and in settlement legislation (first column). The second column shows how those existing provisions are being carried over into the SP and NBE Bills (as introduced), and includes the new provisions outlined above. The third column proposes amendments to settlement legislation to reflect these changes, including transitional provisions and consequential amendments.
- 40 I seek your agreement to the proposed approach to amending statutory acknowledgement provisions in settlement legislation as set out in **Appendix Two**. Further, I seek authorisation to:

IN CONFIDENCE

- 40.1 make necessary changes to this approach to reflect any subsequent amendments to relevant provisions of the SP and NBE Bills through the parliamentary process; and
 - 40.2 instruct PCO to draft amendments to settlement legislation accordingly, subject to reaching agreement with the relevant PSGEs.
- 41 This standardised approach will promote consistency across settlements and enable drafting on the first omnibus bill to commence.

Delegated authority to make further policy decisions

- 42 In December 2021, the MOG agreed that policy decisions:
- 42.1 relating to upholding Treaty settlement arrangements agreed by Māori and the Crown and in current Treaty settlement negotiations will be made jointly by:
 - 42.1.1 the Minister for the Environment;
 - 42.1.2 the Associate Minister for the Environment (Hon Kiritapu Allan);⁴
 - 42.1.3 the Minister for Māori Crown Relations: Te Arawhiti; and
 - 42.1.4 the Minister for Treaty of Waitangi Negotiations;
 - 42.2 relating to upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and legislative interfaces and consequential amendments will be made by:
 - 42.2.1 the Minister for the Environment;
 - 42.2.2 the Associate Minister for the Environment (Hon Kiritapu Allan); and
 - 42.2.3 the Minister responsible for Takutai Moana legislation; and
 - 42.2.4 the Minister of Transport and Minister for Oceans and Fisheries are to be consulted;
 - 42.3 relating to upholding natural resource arrangements agreed by Māori and local government under existing provisions of the RMA to be made jointly by:
 - 42.3.1 the Minister for the Environment;
 - 42.3.2 the Associate Minister for the Environment (Hon Kiritapu Allan); and
 - 42.3.3 the Minister of Local Government [MOG meeting #15 refers].
- 43 In December 2020, Cabinet authorised the MOG to take further policy decisions, including those “needed to progress the remaining content” of the NBE Bill and decisions on “associated matters” relating to the SP Bill (and Climate Change

⁴ Hon Peeni Henare is now the relevant Associate Minister for the Environment.

IN CONFIDENCE

Adaptation Bill).⁵ Cabinet also authorised me, in consultation with the MOG, to issue further drafting instructions on matters delegated to them [CAB-20-MIN-0522 refers].

44 These authorisations did not specifically refer to amending Treaty settlement legislation or the NHNP Act, or contemplate the use of separate bills (beyond the SP and NBE Bills) for this purpose.

45 Accordingly, for the avoidance of doubt, I seek authorisation for:

45.1 the Minister for the Environment, the Associate Minister for the Environment (Hon Peeni Henare), and the Minister for Māori Crown Relations: Te Arawhiti, to jointly make decisions required to uphold Treaty settlement arrangements, including necessary amendments to Treaty settlement legislation;

45.2 the Minister for the Environment, the Associate Minister for the Environment (Hon Peeni Henare), and the Minister for Treaty of Waitangi Negotiations, to jointly make decisions required to uphold agreements reached with the Crown in current Treaty settlement negotiations, including necessary amendments to Treaty settlement bills before the House;

45.3 the Minister for the Environment and the Minister responsible for Takutai Moana legislation to jointly make decisions, in consultation with the Minister of Transport and Minister for Oceans and Fisheries, required to uphold rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and NHNP Act, including necessary amendments to this legislation; and

45.4 the Minister for the Environment to issue drafting instructions to PCO arising from decisions delegated to joint Ministers above.

46 s.9(2)(j)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

47 With regard to upholding other natural resource arrangements (see paragraph 42.3), Schedule 2 of the SP and NBE Bills contains a regulation-making power to provide for a process for giving effect to MWaR and JMAs. There is no avoidance of doubt issue in relation to this, as primary legislative amendment is not involved.

Transitional provisions and consequential amendments

48 The staged implementation of the SP and NBE Bills means that parts of the RMA will continue to remain in force while elements of the new system are phased in. In

⁵ The same suite of Cabinet decisions authorised me to issue drafting instructions in relation to specific policy decisions set out elsewhere in the minute, but this did not include amendments to Treaty settlements.

IN CONFIDENCE

amending Treaty settlement legislation, transitional provisions will be required to ensure that the Crown continues to meet its obligations to PSGEs throughout this interim period, which may last up to 10 years.

- 49 There are also likely to be a number of relatively minor amendments required to settlement legislation to reflect the SP and NBE Bills. This includes, for example, reference to provisions in the RMA which have been carried over to the new legislation, or where new entities such as the regional planning committees have taken on existing functions.
- 50 I seek authorisation to instruct PCO to draft such transitional provisions and consequential amendments to settlement legislation, to ensure that the intent of settlements is upheld under the new resource management system, including during its implementation.

Risks

- 51 In addition to taking the necessary time to reach agreement with the PSGEs on the proposed amendments, other factors present risks to the timeframes for both omnibus bills, including:
- 51.1 the potential for delays in the passage of the SP and NBE Bills;
 - 51.2 the prospect of significant amendments to the SP and NBE Bills, which could require agreed positions with PSGEs to be revisited;
 - 51.3 the potential for delays to the passage of the omnibus bills (for example, due to other legislative priorities);
 - 51.4 the approach adopted by PSGEs towards approving the proposed amendments to their settlements, which will depend on the provisions of their trust deed and their own tikanga. For example, PSGE processes for making significant decisions may require a vote by members, which could take several months (and have implications for the timing of the first omnibus bill in particular); and
 - 51.5 a risk that some PSGEs take this opportunity to reiterate concerns they had at the time redress was agreed, including where redress provided to other iwi was disputed, or seek the addition of redress mechanisms developed since their settlement.
- 52 One or more of these factors could lead to the situation where, despite best endeavours, the timeframes for the first and/or second omnibus bills are not met, and/or some settlements are not amended within the 18 month timeframe set out in the SP and NBE Bills. This would require subsequent Treaty settlement amendment bills, although this will not be clear until 2024.
- 53 To mitigate some of these risks, the SP and NBE Bills require the Crown to monitor the discussions with PSGEs, Ngā Hapū o Ngāti Porou, and hapū or iwi who are party to other arrangements, and report to the relevant party every three months on progress.
- 54 In maintaining the commitment to use 'best endeavours' to reach agreement, officials will also be documenting the process undertaken to engage with PSGEs including any areas of disagreement. As noted in paragraph 58, the Crown has offered a

IN CONFIDENCE

funding contribution to PSGEs to provide them with additional technical and legal capacity.

- 55 There is also a risk that an extended period of time between the SP and NBE Bills passing and the amendment of settlement legislation may undermine the settlement framework and damage confidence in the durability of settlements.
- 56 To partially mitigate this risk, the SP and NBE Bills provide that until a Treaty settlement, the NHNP Act, or other arrangement is amended to reflect the new resource management system, a decision-maker must give them the same or equivalent effect as they currently have under the RMA. This will still create some challenges given the fundamental nature of the reform.

Financial Implications

- 57 There are no financial implications of the proposals in this paper.
- 58 Schedule 2 of the SP and NBE Bills commits the Crown to support the capacity of the relevant party to participate effectively in those discussions, including by providing appropriate resources. In December 2022, the Minister of Finance and I approved the drawdown of part of the Budget 2022 tagged contingency *Resource Management Reform Implementation*. This included s.9(2)(f)(iv) for contributions to PSGEs to support the implementation of amendments to Treaty settlements and other arrangements.

Legislative Implications

- 59 Legislative action is required as Treaty settlement legislation/NHNP Act sets out the arrangements for PSGEs/Ngā Hapū o Ngāti Porou to participate in resource management processes under the RMA, which will be repealed by the SP and NBE Bills.
- 60 Legislative bids have been submitted for:
- 60.1 the first Treaty settlement amendment bill to hold priority s.9(2)(f)(iv) on the 2023 legislation programme; and
- 60.2 the second Treaty settlement amendment bill to hold priority s.9(2)(f)(iv)
- 61 I recommend that the omnibus bills bind the Crown, as they will amend existing Treaty settlement Acts which already bind the Crown.

Impact Analysis**Regulatory Impact Statement**

- 62 The Treasury's Regulatory Impact Analysis team has determined that the proposal to amend statutory acknowledgement provisions in Treaty settlement legislation is exempt from the requirement to provide a Regulatory Impact Statement. The exemption is on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities, in the context of decisions which have already been made in relation to the Natural and Built Environment Bill and Spatial Planning

IN CONFIDENCE

Bill to transition affected Treaty settlements into the new resource management system.

Climate Implications of Policy Assessment

- 63 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

- 64 One of the principles of the reform is to give effect to the principles of Te Tiriti and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori. The intent of the reform is to establish a resource management system that achieves a more effective strategic role for Māori.

Human Rights

- 65 The proposals outlined in this paper do not raise any issues of inconsistency with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

- 66 The Office for Māori Crown Relations – Te Arawhiti, Department of Internal Affairs, Department of Conservation, and PCO have been consulted on this paper. The Ministerial Advisory Board for Upholding Treaty Settlements in Resource Management Reform were also consulted on the proposed legislative approach. The Department of Prime Minister and Cabinet has been informed.
- 67 PCO notes that developing the first omnibus bill in the timeframe set out in **Appendix One** will be challenging, especially as PSGEs will need to be consulted on the drafting and the bill will need to be aligned with changes made during the passage of the SP and NBE Bills. There is a risk that operating to the proposed timeframe may compromise the quality of the legislation, and the ability to ensure that it dovetails with the other Bills and accurately reflects agreements with PSGEs. These challenges may also result in a more difficult progress through the House.
- 68 As noted above, engagement has already commenced with the PSGEs and other representative groups with relevant arrangements under the RMA on how their agreements will be upheld under the new resource management system.

Communications

- 69 No external communications are planned in relation to the proposals in this paper. I may issue a statement when the first omnibus bill is introduced.

Proactive Release

- 70 I intend to release this paper proactively, making any necessary redactions, once the SP and NBE Bills have been passed.

Next steps

- 71 Subject to Cabinet's approval of the recommendations in this paper, officials will prepare drafting instructions for the first omnibus bill. In **s.9(2)(f)(iv)** subject to

IN CONFIDENCE

reaching agreement with PSGEs, I intend to seek Cabinet approval to introduce the first omnibus bill.

Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that the Government is committed to repealing the Resource Management Act 1991 (RMA) and replacing it with a Spatial Planning Act (SPA) and Natural and Built Environment Act (NBA) this parliamentary term [CAB-20-MIN-0522 refers];
- 2 **note** that no previous proposed legislation has had the breadth of impact on existing Te Tiriti o Waitangi settlement commitments that the Spatial Planning Bill (SP Bill) and Natural and Built Environment Bill (NBE Bill) do, because of the extent to which the RMA interacts with those commitments;
- 3 **note** that in December 2020, Cabinet agreed all affected Treaty settlements, including those in negotiations, will need to be transitioned into the new resource management regime [CAB-20-MIN-0522 refers];
- 4 **note** that Schedule 2 of the SP Bill and NBE Bill sets out a process for upholding Treaty settlements, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and other arrangements, including introducing amending legislation where it is necessary to give effect to agreements reached with iwi and hapū;
- 5 **authorise** the Minister for Māori Crown Relations: Te Arawhiti to sign deeds to amend Treaty settlements, which reflect:
 - 5.1 Cabinet's decisions with regard to statutory acknowledgements, as proposed at recommendations 8 and 9.1; and
 - 5.2 further policy decisions by joint Ministers to uphold Treaty settlements, under the delegations proposed at recommendations 10, 11 and 13;
- 6 **authorise** the Minister with responsibility for the Marine and Coastal Area (Takutai Moana) Act 2011 to sign a deed to amend the agreement with Ngā Hapū o Ngāti Porou which reflects policy decisions by joint Ministers under the delegations proposed at recommendations 12 and 13;
- 7 **note** the Minister for the Environment's intention that Treaty settlement legislation and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 will be amended through either of two omnibus bills, with:
 - 7.1 the first Treaty settlement amendment bill to be introduced in s.9(2)(f)(iv) (following enactment of the SP Bill and NBE Bill); and
 - 7.2 the second Treaty settlement amendment bill to be introduced in s.9(2)(f)(iv);
- 8 **agree** to the proposed approach to amending statutory acknowledgement provisions in settlement legislation as set out in Appendix Two to this paper;
- 9 **authorise** the Minister for the Environment to:

IN CONFIDENCE

- 9.1 make necessary changes to the approach in recommendation 8 to reflect any subsequent amendments to relevant provisions of the SP Bill and NBE Bill through the parliamentary process; and
- 9.2 instruct the Parliamentary Counsel Office to draft amendments to settlement legislation to reflect the approach to statutory acknowledgements set out at recommendations 8 and 9.1, subject to reaching agreement with the relevant post-settlement governance entities;
- 10 **authorise** the Minister for the Environment, the Associate Minister for the Environment (Hon Peeni Henare), and the Minister for Māori Crown Relations: Te Arawhiti, to jointly make further decisions required to uphold Treaty settlement arrangements, including necessary amendments to Treaty settlement legislation;
- 11 **authorise** the Minister for the Environment, the Associate Minister for the Environment (Hon Peeni Henare), and the Minister for Treaty of Waitangi Negotiations, to jointly make further decisions required to uphold agreements reached with the Crown in current Treaty settlement negotiations, including necessary amendments to Treaty settlement bills before the House;
- 12 **authorise** the Minister for the Environment and the Minister responsible for the Marine and Coastal Area (Takutai Moana) Act 2011 to jointly make decisions, in consultation with the Minister of Transport and Minister for Oceans and Fisheries, required to uphold rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, including necessary amendments to this legislation;
- 13 s.9(2)(j)
- 14 **authorise** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office arising from the decisions made by joint Ministers under the delegations at recommendations 10, 11, 12, and 13;
- 15 **authorise** the Minister for the Environment to issue instructions to the Parliamentary Counsel Office to draft transitional provisions and consequential amendments to settlement legislation to ensure that the integrity, intent and effect of Treaty settlement provisions is upheld under the new resource management system, including during its implementation;
- 16 **note** the risks to the timeframes for the proposed omnibus bills, and that subsequent Treaty settlement amendment bills may be required if all settlements are not able to be amended by the two omnibus bills;

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

- 17 **note** that legislative bids have been submitted for the first omnibus Treaty settlement amendment bill to hold a category ^{s.9(2)(f)(iv)} priority on the 2023 Legislation Programme s.9(2)(f)(iv), and the second Treaty settlement amendment bill to hold a category ^{s.9(2)(f)(iv)} priority s.9(2)(f)(iv); and
- 18 **agree** that the Treaty settlement amendment bills bind the Crown.

Authorised for lodgement

Hon David Parker

Minister for the Environment

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

Appendix One: Proposed timeframes for Treaty settlement amendment bills

Milestone/Activity	First omnibus bill	Second omnibus bill
Bill drafting and pre-introduction checks	s.9(2)(f)(iv)	s.9(2)(f)(iv)
Approval of Bill for introduction by LEG/Cabinet	s.9(2)(f)(iv)	s.9(2)(f)(iv)
Bill introduced	s.9(2)(f)(iv)	s.9(2)(f)(iv)
First reading	s.9(2)(f)(iv)	s.9(2)(f)(iv)
Select committee report back	s.9(2)(f)(iv)	s.9(2)(f)(iv)
Enactment	s.9(2)(f)(iv)	s.9(2)(f)(iv)

s.9(2)(f)(iv)

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Appendix Two: Statutory acknowledgement provisions under the proposed resource management reforms

To uphold the integrity, intent and effect of statutory acknowledgement provisions in Treaty settlement legislation, the following approach is proposed:

- s.9(2)(j)
[REDACTED]
- s.9(2)(j) The table below provides information on how these new provisions will differ from the current (RMA related) statutory acknowledgement provisions.
[REDACTED]
- A transitional provision will be inserted into the settlement Act providing for when the current provisions (relating to the RMA) cease to have effect and when the new provisions (relating to the SP and NBE Acts) take effect (ie, to avoid any gap during the period of transition from the current system to the new system).
- A similar approach would be taken with the provisions in the relevant deed of settlement.
- The proposed amendments below relate to those provisions of the NBE and SP Bills, as introduced, which interact with statutory acknowledgements. Any subsequent changes to the relevant provisions in the Bills through the parliamentary process will need to be reflected in the amendments to settlement legislation.
- It is important to note that no changes (or minor consequential changes only) are proposed to be made to sections providing for:
 - the statutory areas;
 - the Crown's acknowledgement of the statements of association for the statutory areas;
 - the obligation for Heritage New Zealand Pouhere Taonga and the Environment Court to have regard to statutory acknowledgements in determining whether the PSGE is an affected person, in relation to an application to modify an archaeological site in a statutory area;
 - the ability to use statutory acknowledgements as evidence of association with the statutory area;
 - how statutory acknowledgements apply to rivers, streams and lakes;
 - the exercise of other powers and performance of functions and duties; and
 - other rights to not be affected.

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- The majority of the changes proposed in the table below are consequential. However, there are several key changes including:
 - ensuring statutory acknowledgements will be treated as part of NBE plans and RSSs as a matter of course;
 - removing the 20 year limitation on providing the trustees with a summary of a consent application or a notice of application;
 - requiring RPCs to have regard to statutory acknowledgements when considering the appropriate activity category for an activity (as provided through the NBE Bill);
 - requiring RPCs to have regard to statutory acknowledgements when developing RSSs (as provided through the SP Bill); and
 - providing for the recognition of statutory acknowledgements as one of the system outcomes for the National Planning Framework (as provided through the NBE Bill).

Current provisions in RMA and settlement legislation	Provisions in the NBE and SP Bills as introduced	Proposed amendments to settlement legislation to reflect NBE/SP Bill
The RMA (ss 95B & 95E) and settlement legislation requires consent authorities to have regard to statutory acknowledgments when deciding whether an iwi is an affected person for a notification decision on resource consent applications.	The NBE Bill (cl 201) carries over section 95E of the RMA, and includes an RPC and the Minister among those who must have regard to a statutory acknowledgement in determining affected persons.	Consequential amendments to reflect provisions carried over from the RMA to the NBE Bill, and to include an RPC.
The RMA (s 274) and settlement legislation provides that the Environment Court must have regard to statutory acknowledgments when considering participation as a party in any proceedings before the Environment Court.	The NBE Bill (Schedule 13 cl 53) carries over s 274 of the RMA.	Consequential amendments to reflect provisions carried over from the RMA to the NBE Bill.
Schedule 11 of the RMA sets out all of the Acts that include statutory acknowledgements, with links to ss 95E and 274 RMA.	Schedule 14 of the NBE Bill carries over Schedule 11 of the RMA.	Consequential amendments to reflect provisions carried over from the RMA to the NBE Bill.
Settlement legislation provides that information relating to statutory acknowledgements must be attached to RMA planning documents. There are currently no equivalent provisions in the RMA	The NBE Bill (cl 111) and SP Bill (cl 20) provide for every statutory acknowledgement that applies in a region to: <ul style="list-style-type: none"> • must be attached to the NBE plan and RSS, 	Amendments to: <ul style="list-style-type: none"> • refer to s.9(2)(j) [redacted] and the NBE plan and RSS

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Current provisions in RMA and settlement legislation	Provisions in the NBE and SP Bills as introduced	Proposed amendments to settlement legislation to reflect NBE/SP Bill
<p>requiring statutory acknowledgements to be attached to plans.</p> <p>The attachment of information to any policy statement or plan is for information only, and the information is not:</p> <ul style="list-style-type: none"> part of the Plan (unless adopted by the relevant council); and is not subject to the processes for plan-making in Schedule 1 RMA. 	<p>respectively, for that region; and</p> <ul style="list-style-type: none"> be treated as part of those plans. <p>The NBE and SP Bills carry over the requirements in Treaty settlement legislation that the inclusion of this information is not subject to planning processes for preparation and change of plans.</p>	<p>(rather than the current statutory plans);</p> <ul style="list-style-type: none"> reflect the NBE and SP Bill provisions that every statutory acknowledgement must be "treated as part of" the natural and built environment plan and regional spatial strategy; s.9(2)(i) make consequential amendments to reflect provisions carried over, including reflecting that statutory acknowledgements will not be subject to the processes for plan making in the NBE and SP Bills.
<p>Settlement legislation provides that summaries of relevant resource consent applications must be provided to relevant iwi authorities. In most cases this is limited to a period of 20 years.</p> <p>The original intent of the 20 year period was to encourage arrangements that suited both iwi and councils to be developed through an ongoing relationship. This could include councils continuing to inform iwi of applications beyond this time as a matter of course. However, the 20 year limit has also lead to inconsistent practice, including where multiple iwi have statutory acknowledgements over the same area</p>	<p>Ministers have agreed that the 20 year time limit on providing summaries will be removed.</p> <p>As a transitional measure, the NBE Bill (cl 208) provides for summaries or notices to continue to be provided to PSGEs where the 20year time period has previously expired.</p>	<p>Amendments to:</p> <ul style="list-style-type: none"> s.9(2)(i) and make consequential amendments to reflect provisions carried over from the RMA to the NBE Bill.
<p>Settlement legislation provides that statutory acknowledgments may be cited by PSGEs and any member of the iwi in submissions before a consent authority, the Environment Court,</p>		<p>Consequential amendments to reflect Part 6AA of the RMA is carried over to the NBE Bill ((Part 5 Subpart 9).</p>

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Current provisions in RMA and settlement legislation	Provisions in the NBE and SP Bills as introduced	Proposed amendments to settlement legislation to reflect NBE/SP Bill
Heritage New Zealand Pouhere Taonga, the Environmental Protection Authority or a board of inquiry under Part 6AA of the RMA.		
Settlement legislation refers to 'statutory plans' (district plan, regional coastal plan, regional plan, regional policy statement, or proposed policy statement under the RMA) and 'relevant consent authorities'.	The NBE Bill (Part 4) and SP Bill (Part 2) will replace these plans with a NBE plan and RSS. Councils will continue to be the consent authorities for consents, certificates and registering for permitted activities. However, the consents and permitting regime will be directed by the planning instruments, to be developed by the RPCs. As noted above, RPCs will also have obligations with regard to statutory acknowledgements.	Consequential amendments to reflect these changes of definition, including the interpretation of statutory plan, and the inclusion of RPCs.
There is currently no requirement under the RMA to consider a statutory acknowledgement in developing and/or approving plans.	The NBE Bill (cl 5(f)) makes specific reference to recognition of statutory acknowledgements as one of the system outcomes for the national planning framework, to be provided for in all plans. Similarly, the SP Bill (cl 24(3)(a)(i)) includes statutory acknowledgements as an instrument the RPC must have regard to when preparing an RSS.	s.9(2)(i) [REDACTED]
There is currently no requirement under the RMA to consider statutory acknowledgements when setting activity status (eg, whether an activity is permitted) and notification requirements in plans.	The NBE Bill (cl 155) requires that when considering the appropriate activity category for an activity, an RPC (in the case of a plan) must have regard to any statutory acknowledgement which applies to the area where the proposed activity is to be carried out.	s.9(2)(i) [REDACTED]

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Cabinet Māori Crown Relations - Te Arawhiti Committee

Minute of Decision

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

Reforming the Resource Management System: Amending Treaty Settlement Legislation

Portfolio Environment

On 4 April 2023, the Cabinet Māori Crown Relations - Te Arawhiti Committee:

- 1 **noted** that the Government is committed to repealing the Resource Management Act 1991 (RMA) and replacing it with a Spatial Planning Act (SPA) and Natural and Built Environment Act (NBA) this parliamentary term;
- 2 **noted** that no previous proposed legislation has had the breadth of impact on existing Te Tiriti o Waitangi settlement commitments that the Spatial Planning Bill (SP Bill) and Natural and Built Environment Bill (NBE Bill) do, because of the extent to which the RMA interacts with those commitments;
- 3 **noted** that in June 2019, the Cabinet Environment, Energy and Climate Committee noted that Treaty of Waitangi settlements that include provision for iwi engagement in aspects of the resource management system will be carried over to a reformed RMA [ENV-19-MIN-0036];
- 4 **noted** that Schedule 2 of the SP Bill and NBE Bill sets out a process for upholding Treaty settlements, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and other arrangements, including introducing amending legislation where it is necessary to give effect to agreements reached with iwi and hapū;
- 5 **noted** that amendments to Treaty settlement legislation and deeds can only be made by agreement with the relevant post-settlement governance entities, Ngā Hapū o Ngāti Porou, or relevant iwi/hapū representative groups;
- 6 **authorised** the Minister for Māori Crown Relations: Te Arawhiti and Minister for the Environment to sign deeds to amend Treaty settlements, which reflect:
 - 6.1 Cabinet's decisions with regard to statutory acknowledgements, outlined at paragraphs 10 and 11.1;
 - 6.2 further policy decisions by joint Ministers to uphold Treaty settlements, outlined at paragraphs 12, 13 and 15;

- 7 **authorised** the Minister with responsibility for the Marine and Coastal Area (Takutai Moana) Act 2011 and the Minister for the Environment to sign a deed to amend the agreement with Ngā Hapū o Ngāti Porou which reflects policy decisions by joint Ministers under the delegations proposed at paragraphs 14 and 15;
- 8 **noted** the Minister for the Environment's intention that Treaty settlement legislation and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 will be amended through either of two omnibus bills, with:
- 8.1 the first Treaty settlement amendment bill to be introduced in s.9(2)(f(iv)) (following enactment of the SP Bill and NBE Bill); and
- 8.2 the second Treaty settlement amendment bill to be introduced in s.9(2)(f(iv)) ;
- 9 **noted** that amendments to statutory acknowledgement provisions in settlement legislation and deeds should be approached on a consistent basis across all settlements containing these provisions;
- 10 **agreed** to the proposed approach to amending statutory acknowledgement provisions in settlement legislation and deeds as set out in Appendix Two, attached under MCR-23-SUB-0006, for the purpose of seeking agreement with post-settlement governance entities;
- 11 **authorised** the Minister for the Environment to:
- 11.1 make necessary changes to the approach in paragraph 10 to reflect any subsequent amendments to relevant provisions of the SP Bill and NBE Bill through the parliamentary process; and
- 11.2 instruct the Parliamentary Counsel Office to draft amendments to settlement legislation to reflect the approach to statutory acknowledgements set out at paragraphs 10 and 11.1, subject to reaching agreement with the relevant post-settlement governance entities;
- 12 **authorised** the Minister for the Environment, Associate Minister for the Environment (Hon Peeni Henare), and Minister for Māori Crown Relations: Te Arawhiti to jointly make further decisions required to uphold Treaty settlement arrangements, including necessary amendments to Treaty settlement legislation;
- 13 **authorised** the Minister for the Environment, Associate Minister for the Environment (Hon Peeni Henare), and the Minister for Treaty of Waitangi Negotiations, to jointly make further decisions required to uphold agreements reached with the Crown in current Treaty settlement negotiations, including necessary amendments to Treaty settlement bills before the House;
- 14 **authorised** the Minister for the Environment and the Minister responsible for the Marine and Coastal Area (Takutai Moana) Act 2011 to jointly make decisions, in consultation with the Minister of Transport and Minister for Oceans and Fisheries, required to uphold rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, including necessary amendments to this legislation;

- 15 s.9(2)(j) [REDACTED]
[REDACTED]
- [REDACTED] [REDACTED]
[REDACTED]
- [REDACTED] [REDACTED]
[REDACTED]
- [REDACTED] [REDACTED]
[REDACTED]
- 16 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to give effect to decisions made by joint Ministers under the delegations at paragraphs 12 to 15;
- 17 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to draft transitional provisions and consequential amendments to settlement legislation to ensure that the integrity, intent, and effect of Treaty settlement provisions is upheld under the new resource management system, including during its implementation, as agreed with relevant post-settlement governance entities, Ngā Hapū o Ngāti Porou, or relevant iwi/hapū representative groups;
- 18 **noted** the risks to the timeframes for the proposed omnibus bills, as outlined in the paper under MCR-23-SUB-0006, and that subsequent Treaty settlement amendment bills may be required if all settlements are not able to be amended by the two omnibus bills;
- 19 **noted** that a category ⁶⁹ priority has been sought for the first omnibus Treaty settlement amendment bill s.9(2)(f)(iv) [REDACTED], and a category ⁶⁹ priority sought for the second Treaty settlement amendment bill s.9(2)(f)(iv) [REDACTED] on the 2023 Legislation Programme;
- 20 **agreed** that the Treaty settlement amendment bills bind the Crown.

Rachel Clarke
Committee Secretary

Present:
Hon Kelvin Davis (Chair)
Hon Willie Jackson
Hon David Parker
Hon Rino Tirikatene

Officials present from:
Office of the Prime Minister
Officials Committee for MCR