



OIAD-69

5 October 2021

9(2)(a)

Dear 9(2)(a)

Thank you for your email of 30 June 2021 requesting the following under the Official Information Act 1982 (the Act):

In relation to the Government's resource management reforms, please provide me with copies of all briefings the Ministry has provided to Ministers on the Treaty of Waitangi clause.

On 28 July 2021, the Ministry for the Environment extended the timeframes to respond to your request under section 15A(1)(b) of the Act, as consultations necessary to make a decision on the request were such that a proper response was not possible within the original timeframe.

The Ministry for the Environment has identified seven documents in scope of your request, as listed in the attached document schedule. Some information within these documents has been redacted as out of scope of your request or withheld under the following sections of the Act:

- 9(2)(a) protect the privacy of natural persons
- 9(2)(ba)(i) would likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 9(2)(h) maintain Legal Professional Privilege
- 18(d) will soon be Publicly Available

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at:
www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent.

If you have any queries about this, please feel free to contact our Ministerial Services team:
ministerials@mfe.govt.nz.

Yours sincerely

Electronically approved

Keita Kohere
Director – RM te ao Māori Policy

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the Official Information Act 1982

Document schedule

Document no.	Document date	Content	Decisions	OIA sections applied
1	9 April 2021	2021-B-07857: RM Reform 19 – Updates on NBA Treaty clause and feedback from regional hui with iwi and hapū	Released in Part	9(2)(a), 9(2)(ba)(i), 9(2)(h), 18(d)
2	6 November 2020	2020-B-07257: Resource management reform briefing #1 – Process, timeframes and initial policy matters	Released in part Some information has been redacted as Out of Scope	9(2)(f)(iv), 9(2)(h)
3	13 November 2020	2020-B-07272: Resource management reform briefing #2 – further advice on the reform process, and proposals for Part 2 of the RMA and planning framework	Released in full Some information has been redacted as Out of Scope	
4	5 February 2021	Talking points for meeting with (Out of Scope) on RM reform – Tuesday 9 February 2021	Released in full Some information has been redacted as Out of Scope	
5	4 February 2021	2020-B-07439: RM Reform 10 – Papers for Ministerial Oversight	Withheld in Full	18(d)

		Group Meeting #2 on February 2021		
6	12 February 2021	2021-B-07599: Supporting information for Associate Minister for the Environment Allan ahead of the MOG 2 Meeting	Withheld in Full	18(d)
7	1 April 2021	2021-B-07795: RM Reform – preparing Minister Allan for tea o Māori items at Ministerial Oversight Group #5	Withheld in Full	18(d)

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Document 1

2021-B-07857 RM Reform 19 – Updates on NBA Treaty clause and feedback from regional hui with iwi and hapū

Date Submitted:	Friday 9 April 2021	Tracking #: 2021-B-07857	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	<p>Provide feedback on NBA Treaty clause options enclosed in Appendix 1</p> <p>Approve circulation of the Appendices to this briefing to the iwi/Māori groups that officials are working with, with the Crown Law advice removed</p> <p>Approve circulation of the Appendices to this briefing as part of the MOG 6 pack</p>	12 April 2021
CC Hon Kiritapu Allan, Associate Minister for the Environment	N/A	N/A

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments #2	<p>Titles of appendices and attachments (ie separate attached documents): 9(2)(h)</p> <p>9(2)(ba)(i)</p> <p>4. Key themes for each Chapter 3 recommendation – regional hui 9(2)(ba)(i)</p> <p>9(2)(h)</p>

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Kevin Guerin		✓
Director	Keita Kohere		✓

RM Reform 19 – Updates on NBA Treaty clause feedback from regional hui with iwi and hapū

Purpose and context

1. The purposes of this paper are to provide a version of the Treaty clause table that is updated with feedback that has been received from recent hui with iwi and hapū on resource management reform, along with a more fulsome outline of the key themes from the feedback received and the full hui notes.

2. ^{18(d)}
- 3.

NBA Treaty clause

The Panel's approach

4. The Resource Management Review Panel (the Panel) had a significant engagement programme and met with stakeholders from industry, local government, the primary production sector, environmental non-government organisations and Māori organisations. This process included consultation on an Issues and Options paper, a reference group on te ao Māori, and a working group coordinated by Ministry for the Environment officials on the Treaty of Waitangi / Te Tiriti o Waitangi (Te Tiriti) and te ao Māori which worked collaboratively to produce a paper for the Panel.
5. The Panel's agreed approach after consultation was to;
 - a. require decision-makers under the Act to 'give effect to' the principles of Te Tiriti.
 - b. elevate the Tiriti clause to just after the purpose statement with the words 'Te Tiriti o Waitangi' (as opposed to the RMA's 'the Treaty of Waitangi (Te Tiriti o Waitangi)') with the definition the same as Treaty in section 2 of the RMA which refers to the definition in the Treaty of Waitangi Act 1975. They considered referring solely to Te Tiriti 'an important symbolic step'.

Criteria for the Treaty clause

6. The Treaty clause for a new RM system needs to:
 - a. achieve Cabinet's objective that the reforms give effect to principles of Te Tiriti and recognise te ao Māori including mātauranga Māori.
 - b. minimise uncertainty for all participants in the system.

Grouped list of options for the Treaty clause (appendices to be tabled at the meeting)

7. The Treaty clause table has been grouped, as discussed by the MOG Māori interests subgroup, into three categories of options.

8. 9(2)(h)

9(2)(ba)(i)

for information.

9(2)(ba)(i), 9(2)(h)

Conservation Act Treaty clause and the Ngāi Tai ki Tāmaki Case

10. Section 4 of the Conservation Act 1987 has a Treaty clause that reads, “**This Act shall so be interpreted and administered as to** give effect to the principles of the Treaty of Waitangi” (emphasis added). This contrasts with the Treaty clause proposed by the Panel which reads “**In achieving the purpose of this Act, those exercising functions and powers under it must** give effect to the principles of Te Tiriti o Waitangi” (emphasis added). The Panel’s proposal draws on aspects of the phraseology of the current RMA Treaty clause. As highlighted in bold there are key differences between the two clauses that would affect the interpretation of these clauses in their individual contexts.
11. Nevertheless, the case law relating to section 4 of the Conservation Act has relevance to the extent that it relates to ‘giving effect to’ the principles of the Treaty of Waitangi. A key case in this regard is Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation (Ngāi Tai case)¹ which highlights, among other matters and drawing on earlier judgements, that a clause that ‘gives effect to’ the principles of the Treaty is a “powerful” Treaty clause that requires more than procedural steps and that “substantive outcomes for iwi **may** be necessary including, in some instances, requiring that concession applications by others be declined” [at 52] (emphasis added).
12. However, in the Ngāi Tai case the Supreme Court “do not make a finding that s 4 does, in fact, require that no concessions be granted in relation to the Motu, other than to mana whenua applicants. We accept that s 4 does not create a power of veto by an iwi or hapū over the granting of concessions in an area in which the iwi or hapū has mana whenua.

¹ Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation - [2018] NZSC 122.

Nor does it give such an iwi or hapū authority to require that only entities associated with the iwi or hapū will be granted concessions in the area” [at 95].

Interactions with treaty settlements

13. Cabinet has agreed [see CAB-20-MIN-0522] that the Crown will engage with affected Post Settlement Governance Entities (PSGEs) to discuss how their settlement arrangements will be carried over into a new system.
14. Engagement with PSGEs has begun. At a general level, the intent is that all existing settlement arrangements will be upheld under the new system. However, the nature of some settlement arrangements (e.g., the Waikato River) makes this a more significant task than others.
15. At a hui with Waikato River Iwi on 30 March, it was raised by hui attendees that the new system had the potential to impact their settlement arrangements at a number of levels. This is due to unique nature of those arrangements, which centre on the Vision & Strategy for the Waikato River (Te Ture Whaimana) which forms part of the Regional Policy Statement and overrides inconsistent provisions in national planning documents. In addition, the Waikato River arrangements establish the Waikato River Authority (which has the power to amend the Vision & Strategy), provide for joint decision-making on River-related consents, and establish JMAs which involve the joint development of River-related aspects of regional and district plans.
16. Waikato-Tainui also noted the Crown's commitment in the 2008 Kiingitanga Accord to ensure that any new legislation when it is introduced into Parliament includes express legislative recognition of the Vision & Strategy in the same or substantially similar form to that presently provided.
17. Officials made a commitment to work directly with Waikato River Iwi to ensure their unique settlements are carried over into the new system, including working on wording for the Cabinet paper that will accompany the exposure draft to this effect. Further hui will be held with Waikato River Iwi, with the next hui to be held on 16 April.
18. Additionally, an initial meeting has been had with Ngā Tāngata Tiaki o Whanganui, on RM Reform and upholding the Crown's responsibilities to Te Awa Tupua. A follow up meeting is currently being scheduled.
19. It is also highly likely that other PSGEs will also wish to work closely with officials to ensure that unique aspects of their settlements are upheld and carried over.

Recent regional hui with iwi and hapū on resource management reform

20. Officials met with hapū and iwi in nine locations between on 17 March and 1 April to discuss the Panel's recommendations in the Te Tiriti and te ao Māori chapter of their report.
21. Hon Kiritapu Allan, Associate Minister for the Environment, led the first three hui in Taranaki, Wellington and Christchurch, which was hosted by Ngai Tahu. The remaining hui were held in Tauranga, Hamilton, Whakatāne, Whangārei, Auckland and Gisborne.
22. Key themes of the hui were (2021-B-07795 also refers):
 - a. Recognition of the need for reform and support for the direction, with strong requests for further, more in depth engagement, particularly at the early stages.
 - b. Divergent views on the concept of Te Mana o Te Taiao concept.

- c. Support for strengthening the Tiriti clause and principles.
 - d. A strong desire to work more strategically at a local level, with adequate support and funding.
 - e. Emphasis on the implementation needs to make the reform a success.
23. Appendix 3 provides a full summary of key themes from each hui, including the date and which hapū, iwi and organisations were in attendance.
24. Appendix 4 provides a summary of key themes within each recommendation from Chapter 3 of the Panel's report.

Next Steps

25. The key next steps, subject to your approval and any further feedback or changes you may wish, would be to circulate the Appendices of this briefing as part of the MOG 6 pack. We also suggest sending the Appendices of this briefing to the iwi/Māori groups we are working with (Freshwater Iwi Leaders Group, Te Wai Māori Trust, Federation of Māori Authorities, Kāhui Wai Māori and the New Zealand Māori Council) – with the Crown Law advice removed as being legally privileged.

Recommendations

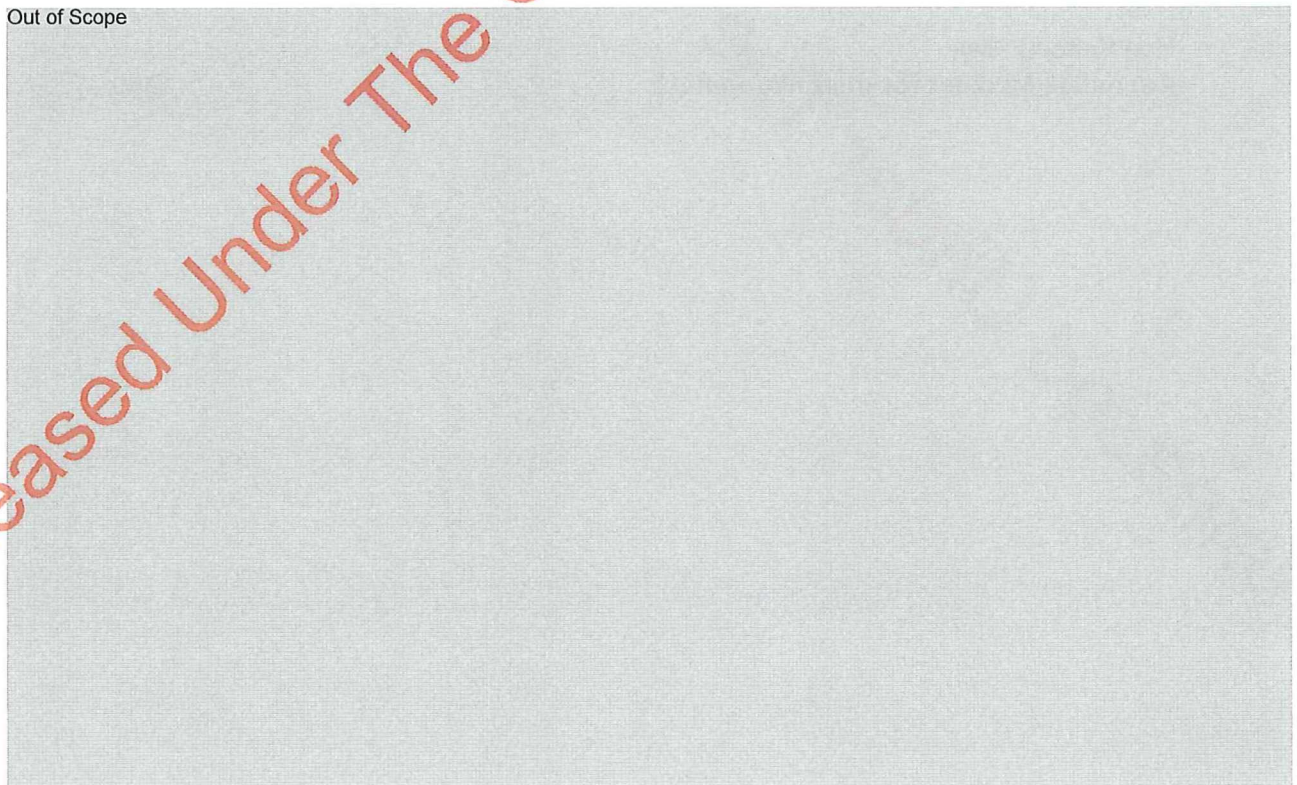
26. We recommend that you:

9(2)(h)



Yes/No

Out of Scope



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Signature



Keita Kohere
Director
Resource Management Reform

Hon David Parker
Minister for the Environment

Date

Hon Kiritapu Allan
Associate Minister for the Environment

Date

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9(2)(f)

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9(2)(f)

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Appendix 3: Key Themes from each region – Regional Hui

Hui Details	Key Themes
9(2)(a)	<ul style="list-style-type: none"> • There is a need to recognise mauri and the role of tangata whenua within concepts of 'Te Mana o Te Taiao' and tikanga. • Keeping the term tangata whenua would remain consistent with Te Tiriti, further defining these terms may achieve desired outcomes rather than introducing new terms. • Implementation and operationalising of the Act will be crucial to its success, particularly the "giving effect to" change and what that would look like. Attendees considered co-drafting natural and built environment plans and regional spatial strategies as well as joint decision making on panels was reflective of giving effect to the principles of Treaty. • Strong support for working with council strategically in a genuine partnership, elevating the weighting of hapū and iwi management plans and adequately resourcing hapū and iwi for these functions. • Concern for how a National Māori Advisory Board would be truly representative of all Māori, its success will depend on what information they have, including a process for hapū and iwi not represented to raise concerns. <hr/> <ul style="list-style-type: none"> • 'Te Mana o Te Taiao' needs to include mauri - 'Te mana me te mauri o te taiao' seemed more appropriate and supported. • Unanimous support for 'giving effect to' the principles of Te Tiriti - more appropriate than take into account. Guidance would be required for planners and those implementing these provisions for what 'giving effect' would look like in practice. • Crucial to work with mana whenua around representation on any committee that would oversee or make decisions on combined plans, including ensuring there are enough seats for the many different mana whenua groups. • The term 'Advisory' should not be in any National Māori Board with monitoring functions. • Funding Māori to participate in the system is key and there was general agreement to lift up iwi/Māori role to be strategic. <hr/> <ul style="list-style-type: none"> • Crucial that any new legislation upholds 9(2)(a) focused on Treaty partnership and what that looks like, understanding the takiwa, mana whenua and the determination of rangatiratanga. • It is not necessary or appropriate for the Crown to introduce definitions of mana whenua as representation already happens in the takiwa 9(2)(a) • 'Te Mana o Te Taiao' will need to be codified and the legislation underneath will be crucial. • 9(2)(a) want to retain the ability to articulate what is significant according to their tikanga, the current wording of 'landscapes' in the tikanga recommendation is too limiting. • 9(2)(a) are opposed to any National Board, they will represent and speak for themselves. • Co-design recognised as important and especially as it relates to Māori reserves. Calls for tools for 9(2)(a) to call in consents. • Support for more funding and support, including suggestions to change the way rates paid by 9(2)(a) are allocated. <hr/> <ul style="list-style-type: none"> • Definitions within 'Te Mana o Te Taiao' still needs to be worked through, such as addressing issues of using the word 'health' and the definition should include mauri. • Support for a 'give effect to' weighting for the Treaty clause. Mixed feedback on the use of 'principles' and general opposition to using the words 'Te Tiriti' to mean both the English and reo Māori texts. • Want to move towards working more in partnership with council and support mechanisms to improve this, including strengthening Mana Whakahono a Rohe, monitoring council performance and addressing capability gaps and barriers. • More work needs to be done on defining mana whenua. Questions were raised about what is included in the definitions and who is able to define.

- 'Te Mana o Te Taiao' has potential, but needs further work and consideration of additional concepts like mauri and whakapapa. Concern about using te reo Māori in legislation.
 - Support changing the Treaty clause to 'give effect to', and should refer to both the principles and the articles of the Treaty. Treaty obligations need to be reflected throughout the legislation.
 - Important that partners are people living on the land and the term ahi kā should be included alongside iwi, hapū and whānau. Roles for mana whenua should be distinct from mātāwaka.
 - Opposed to a National Māori Advisory Board, monitoring functions within the new system should sit with iwi and can be added to 9(2)(a)
 - Support for increased funding for engagement, kaitiaki and Māori representatives.
- 'Te Mana o Te Taiao' is not quite right, questions of appropriateness of using mātauranga in legislation and where concepts of tangata, whakapapa and mauri fit in.
 - Crucial that there are strong underlying principles of responsibility towards the environment in the legislation with clear limits, particularly in relation to economic and human activity.
 - Important that Māori shape their own tikanga, particularly as it evolves.
 - Support for stronger wording in Treaty clause; important that hapū are recognised as partners and it is not limited to PSGEs.
 - Support for an oversight Board to monitor councils, although they had questions about how it would be truly representative and have the right mandate.
- 9(2)(a) invited the Ministry for the Environment back for a further session with kaitiaki and hapū technicians to focus on the detail of the reforms and what this means for 9(2)(a)
 - Further work needs to be done on Te Mana o Te Taiao, with calls for the principles of the Treaty to be included for in the purpose of the act.
 - Support for "give effect", but do not support that principles of the Treaty mean partnership, want explicit reference to Tino Rangatiratanga.
 - Implementation is the key problem with the RMA – 'take into account' the principles of the Treaty has never been well implemented. The reforms must provide guidance and direction on what implementation might look with regard to 'give effect to the principles of the Treaty'.
 - Monitoring and enforcement should be at the local level and hapū and iwi kaitiaki should be funded to carry out this function.
 - Support for further opportunity to work strategically for both iwi and hapū, including funding, shared (50/50) decision making and representation.

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- Request for more direct iwi engagement on the RM Reform.
 - Concern about the robustness of Te Mana o Te Taiao given the tight timeframe of development, and the risk in it being misinterpreted.
 - Support for strengthening partnership with council, Te Tiriti clause and iwi management plans, noting that partnerships are not necessarily strengthened with formal agreements (referring to Mana Whakahono ā Rohe).
 - Questions about who will be considered a partner/mana whenua, clear implementation guidance that considers each region will be critical.
 - Not comfortable with a National Māori Advisory Board but would like to see monitoring mechanisms within the new system.
-
- Early engagement directly with hapū and iwi is a vital part in this Reform process and was raised as a concern.
 - There needs to be a coordinated approach from central government to engagement with Māori and legislation development, considering the volume of legislation currently underway.
 - Important hapū and iwi are involved in the development of Te Mana o Te Taiao concept, with an alternative framework presented.
 - Support for stronger resourcing for iwi and hapū to engage, important to consider the impacts on hapū capacity when technicians are consistently engaging at the national level.
 - Opposed to National Māori Advisory Board, creates an unnecessary layer of bureaucracy.

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Appendix 4: Key Themes within each Chapter 3 recommendation – Regional Hui

Recommendations	
Te Mana o te Taiao	<p><i>The concept of Mana o te Taiao to be included in the purpose of the NBA to recognise our shared environmental ethic. The Panel defined Te Mana o te Taiao as referring to:</i></p> <p><i>“the importance of maintaining the health of air, water, soil and ecosystems and the essential relationship between the health of those resources and their capacity to sustain all life”</i></p> <hr/> <p>Summary</p> <p>Concept</p> <ul style="list-style-type: none"> • Mauri, tangata and whakapapa are not reflected in the concept: questions around where they fit, some suggestion that mauri or whakapapa is more appropriate than mana. • Principles need to be strengthened to be aspirational, beyond maintaining, and ensure the environment is prioritised over economic opportunity. • Some requests for the Treaty to be included in the purpose. <p>Implementation</p> <ul style="list-style-type: none"> • Concern that putting Māori concepts and terms into legislation can undermine their meaning, people interpreting it may not necessarily believe it. • Some councils currently don't work well with Māori. Who gets to define the meaning, interpretations will vary. • Māori should be defining this according to tikanga. • Provides wiggle room if too conceptual, needs clear direction underneath, spatial plans are where the impacts are. • Need to work with hapū and iwi to agree on the concept.
Tikanga Māori	<p><i>Specific outcomes should be provided for ‘Tikanga Māori’ including for the relationships of mana whenua with cultural landscapes.</i></p> <p><i>The Panel’s intention by including cultural landscapes is to enable the multi-faceted relationships that mana whenua have with land and water to be adequately protected and restored.</i></p> <hr/> <p>Summary</p> <ul style="list-style-type: none"> • Some opposition –it is for Māori to determine tikanga, update and change to reflect evolving Māori communities and relationships with the environment. Concern about putting mātauranga and te reo Māori in legislation. • “Outcomes” is a start and good that it is stronger than “take into account”. • Generally seen as watered down or weak. • The word “landscape” is inaccurate and too limiting – mana whenua are connected to whenua not just landscapes, can also include mātauranga. • Ngāi Tahu have stronger wording in their settlement Act so this weakens it.
Treaty Clause	<p><i>The current Treaty clause should be changed so that decision-makers under the NBA are required to ‘give effect to’ the principles of Te Tiriti o Waitangi.</i></p> <p><i>The Panel chose to refer to the principles of Te Tiriti because it suggests that referring to the principles is more flexible than the articles of Te Tiriti and a reference to the articles could limit what could be achieved in a modern partnership.</i></p> <p><i>The Panel suggested that ‘Te Tiriti o Waitangi’ should have the same meaning as the word Treaty as defined in the current RMA which refers to section 2 of the Treaty of Waitangi Act 1975. This states the “Treaty means the Treaty of Waitangi as set out in English and in Māori in Schedule 1”.</i></p> <hr/> <p>Summary</p> <ul style="list-style-type: none"> • “Give effect” is better than “take into account”. • Needs to be clear what give effect means and what the principles are. • There is legislation currently (ie Conservation Act 1987) that has strong wording but has not resulted in partnership - important to provide guidance on how to operationalise this, be explicit about who and what. • Some opposition to using ‘Te Tiriti’ to mean both the English and reo Māori texts. • Some opposition to using partnership as opposed to tino rangatiratanga.
National Policy Statement – Principles of Te Tiriti	<p><i>A National Policy Statement (NPS) should be required on how the principles of Te Tiriti will be given effect through functions and powers exercised under the NBA.</i></p> <p><i>The Panel stated that the NPS should be developed through an appropriate process with Māori before undergoing a board of inquiry process.</i></p> <hr/> <p>Summary</p> <ul style="list-style-type: none"> • A lot of hapū and iwi felt that the council did not have an adequate understanding of what partnership is – this would need to be addressed as part of the implementation of the new system (not necessarily through NPS).

Mana Whenua Representation	<p><i>A more effective strategic role for Māori in the system should be provided for, including representation of mana whenua on regional spatial planning and joint planning committees.</i></p> <p><i>The Panel considered that if mana whenua are more involved at the strategic end of the system, decisions should be more consistent with te ao Māori, and the burden on mana whenua to be actively involved in lower-level decision-making should be reduced.</i></p> <p><i>In addition to mana whenua representation on regional spatial planning committees and combined planning committees, mātauranga Māori experts should be involved in setting environmental limits and targets to complement biophysical science and impact analysis.</i></p>
	<p>Summary</p> <ul style="list-style-type: none"> • Mana whenua representation is too low. • Requests for co-design and co-drafting. • Needs to be 50/50 with enough positions for each iwi, hapū, PSGE or trust to be represented, instead of council only providing a limited number of places then requiring Māori to decide between them who is represented. • Some request for the term ahi kā to be included – important to recognise those living on the land.
National Māori Advisory Board	<p><i>A National Māori Advisory Board should be established to monitor the performance of central and local government in giving effect to Te Tiriti and other identified functions.</i></p>
	<p>Summary</p> <ul style="list-style-type: none"> • Mixed responses, some rohe are in support and some strongly opposed saying it undermines iwi authority. • The need to monitor is generally recognised but there were questions of scope – a lot of calls for monitoring to be undertaken at the local level by funding hapū and iwi kaitiaki for these roles. • Some requests for it to include enforcement and be stronger than advisory, others would not be comfortable with anything stronger than advisory. • Only as good as the information they receive - resourcing should be extensive to have independent data and there needs to be a mechanism for all hapū and iwi to raise issues from those who are not represented. • Important that it is actually representative – what would the mechanism be for appointments and how would the Crown ensure they have an appropriate mandate?
Mana Whakahono ā Rohe	<p><i>The current Mana Whakahono ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues. This process would be an opportunity to discuss how mana whenua aspirations for the transfer of powers and joint management agreements can be realised and how iwi management plans can influence spatial and combined planning through the mana whenua representatives in those processes.</i></p>
	<p>Summary</p> <ul style="list-style-type: none"> • Mana Whakahono ā Rohe needs more clarity – implementation widely identified as reason for why it is ineffective. • Barriers include identifying who this applies to (related to the question of who is mana whenua) and capacity. • Timing is key – should be triggered when spatial plans are being developed. • Formalising relationships do not necessarily strengthen them – some informal relationships with councils are good, some formal relationships are not as strong.
Transfer of Powers and Joint Management Agreements	<p><i>The current legislative barriers to using the provisions for transfers of powers and joint management agreements should be removed and there should be a positive obligation on local authorities to investigate opportunities the use of those provisions.</i></p> <p><i>Further, local authorities would be formally required to give due consideration to any mana whenua requests to use these tools and local authorities would be required to report on their activities in this area.</i></p>
	<p>Summary</p> <ul style="list-style-type: none"> • Broad support of working more strategically with council. • Co-drafting and Co-management would reflect a true partnership. • Iwi management plans already capture iwi aspirations – needs to be elevated beyond consider. • Would like to preserve opportunities for Joint Management Agreements and extend this to all iwi, bring the bare minimum up for everything. • Crucial that funding is provided when as powers are transferred.
Definitions – Iwi Authority and Tangata Whenua	<p><i>The current definitions of the terms 'iwi authority' and 'tangata whenua' should be replaced with a new definition for 'mana whenua'.</i></p> <p><i>The term 'mana whenua' would be defined as "an iwi, hapū or whānau that exercises customary authority in an identified area".</i></p>
	<p>Summary</p>

- Using the term mana whenua may confuse things, if we are trying to uphold the treaty we should be using tangata whenua - language that is consistent with the Treaty and between other Acts.
- Better to clarify the language than change terms.
- May be more appropriate for Māori within each rohe to define which term is most appropriate and who that includes.
- Complicated when considering the process PSGEs have gone through to be recognised.

Costs	<i>Provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest.</i>
	Summary <ul style="list-style-type: none"> • Costs are a huge barrier for iwi so Māori are supportive of this recommendation. • Councils do not always fairly remunerate for what they are asking for, compared to market rate. • Need recognition of the time Māori spend educating council. • Costs can be exponential when dealing with multiple councils.
Funding and Support	<i>Funding and support options for Māori should be implemented</i>
	Summary <ul style="list-style-type: none"> • Support needed to engage with councils, particularly regional councils – e.g. background briefings when sitting on boards. • Suggestion for rates that iwi pay should be put aside for iwi. • Interest in co-designing funding with council.

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9(2)(ba)(i)

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Document 2

Resource management reform briefing #1 – Process, timeframes and initial policy matters

Date Submitted:	6 November 2020	Tracking #: 2020-B-07257	
Security Level	In confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Discuss the contents of this brief with officials Agree to meet with your colleagues to discuss oversight of the reform Agree to forward this briefing to Associate Ministers for the Environment	For discussion on Tuesday 10 November

Actions for Minister's Office Staff	Provide this briefing to the Minister to support a further discussion with officials. Return the signed report to MfE. Forward this briefing to Associate Ministers for the Environment.
Number of appendices: 4	<ol style="list-style-type: none"> Resource management reform indicative timeline RM Panel's indicative drafting of Part 2 3.9(2)(f)(iv) Amended Ministry for the Environment indicative drafting of Part 2

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Director	Simon King	022 047 5541	✓
Chief Advisor	Kevin Guerin	022 493 0067	-
Principal Analyst	Joe Beaglehole	-	-

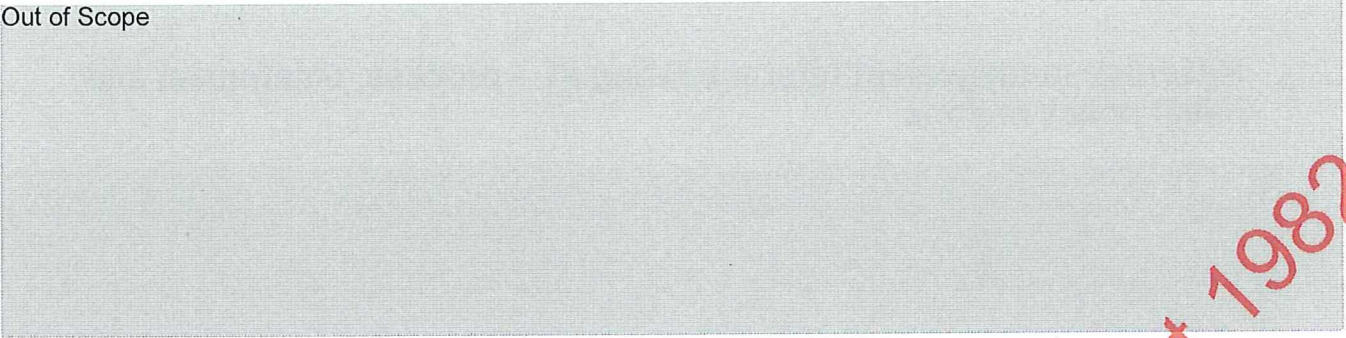
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Resource management reform briefing #1 – Process, timeframes and initial policy matters

Out of Scope

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Signature

Simon King
Director, Natural and Built System

6/11/2020

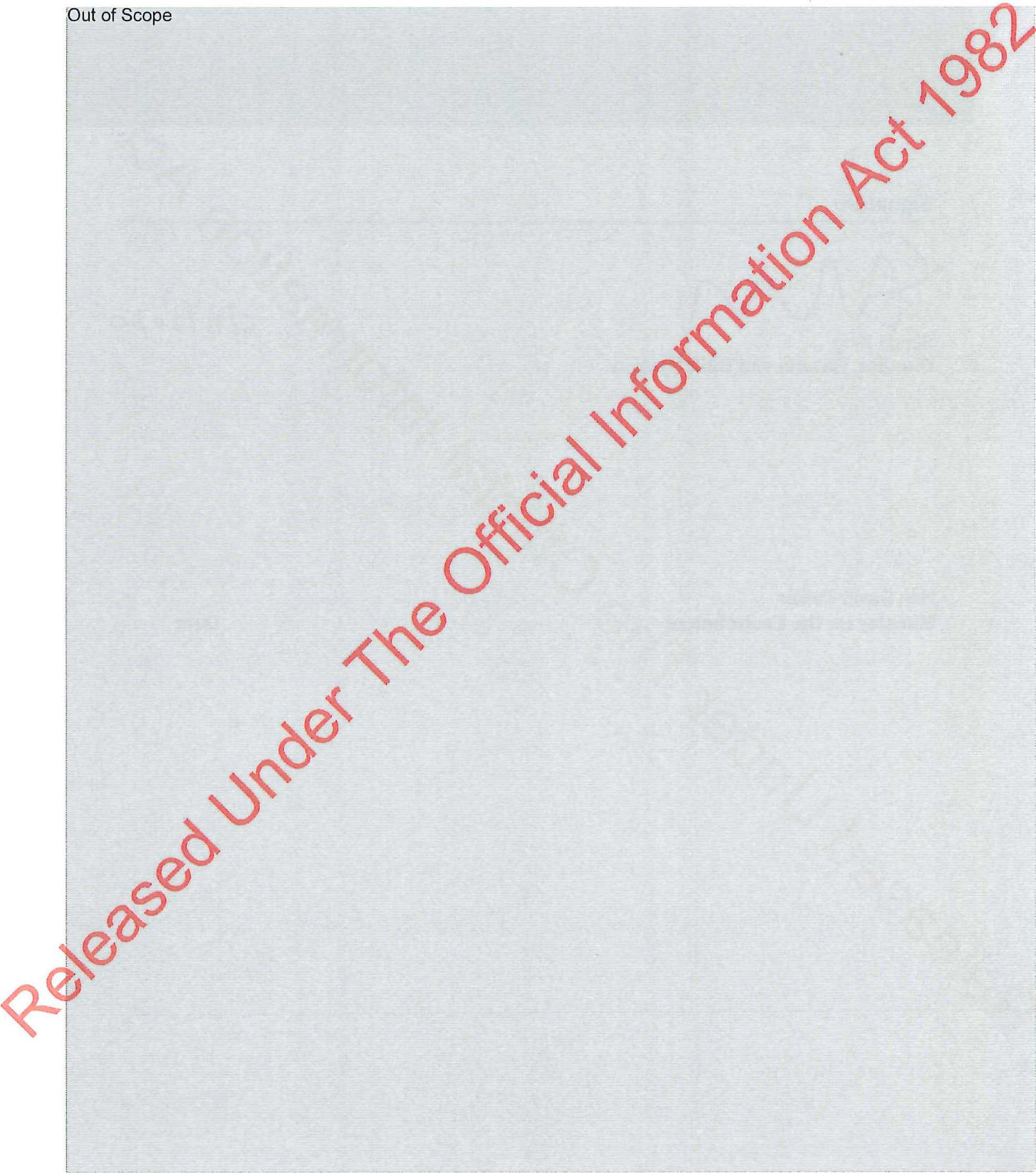
Hon David Parker
Minister for the Environment

Date

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Resource management reform briefing #1 – process, timeframes and initial policy matters

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Te Tiriti o Waitangi

52. Based on the Panel's report, we have included to see a Tiriti clause in the attached draft purpose and principles for the NBA that requires persons exercising functions and powers to give effect to the principles of Te Tiriti o Waitangi. Additionally, as per the Panel report, 'Te Tiriti o Waitangi' would be defined to have the same meaning as 'Treaty' in the Treaty of Waitangi Act 1975.
53. There is broad support for a 'give effect to' statutory weighting. The Panel's report, along with the Environmental Defence Society, Productivity Commission and the Waitangi Tribunal, have all identified that the current Tiriti clause is inadequate and the statutory weighting should be changed to 'give effect to'. This was reinforced by submitters on the Panel's Issues and Options paper, with 'give effect to' the most supported suggestion on the Tiriti clause. The Panel suggest that a change to 'give effect to' would modernise the Tiriti clause and 'send a strong signal that those performing functions under the Act should give greater weight to it' (pg.100). A stronger statutory weighting would provide improved recognition of Te Tiriti o Waitangi and be a key part of ensuring that Māori interests are not 'balanced out' under the Act.
54. The Panel recommended the Tiriti clause refer to the principles rather than refer directly to Te Tiriti o Waitangi. They noted that "referring to the principles arguably enables the Tiriti partnership to go beyond the transaction that was made in 1840 and evolve" (pg.101). However, a reference to the principles rather than te Tiriti itself may be challenged by some iwi. There will also be a need to provide direction and guidance for how the Tiriti clause is to be given effect to in more detail through the National Planning Framework and other parts of

the NBA. s 9(2)(h) We will provide you with further advice.

55. We look forward to discussing our approach to the purpose and principles of the NBA with you on 10 November.

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Appendix 2: RM Panel's indicative drafting of Part 2

Section 5 – Purpose

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

Section 6 – Te Tiriti o Waitangi

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

Section 7 – Outcomes

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

Natural environment

- (a) enhancement of features and characteristics that contribute to the quality of the natural environment;
- (b) protection and enhancement of:
 - (i) nationally or regionally significant features of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and their margins;
 - (ii) outstanding natural features and outstanding natural landscapes;
 - (iii) areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (c) enhancement and restoration of ecosystems to a healthy functioning state;
- (d) maintenance of indigenous biological diversity and restoration of viable populations of indigenous species;
- (e) maintenance and enhancement of public access to and along the coastal marine area, wetlands, lakes, rivers and their margins;

Built Environment

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

Tikanga Māori

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

Rural

- (m) sustainable use and development of the natural and built environment in rural areas;
- (n) protection of highly productive soils;

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

Historic heritage

(p) protection of significant historic heritage;

Natural hazards and climate change

(q) reduction of risks from natural hazards;

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

(s) reduction of greenhouse gas emissions;

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

(u) increased use of renewable energy.

Section 8 – Environmental limits

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

Section 9 – Implementation

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

Principles

- 2) Those performing functions under this Act must do so in a way that gives effect to this Part and:
 - (a) promotes the integrated management of natural and built environments;
 - (b) ensures public participation in processes under this Act to an extent that recognises the importance of public participation in good governance and is proportionate to the significance of the matters at issue;
 - (c) promotes appropriate mechanisms for effective participation by iwi, hapū and whanau in processes under this Act;
 - (d) provides for kaitiakitanga and tikanga Māori and the use of mātauranga Māori;
 - (e) complements other relevant legislation and international obligations;
 - (f) has particular regard to any cumulative effects of the use and development of natural and built environments; and
 - (g) takes a precautionary approach where effects on the environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences.

Ministerial duties: outcomes and environmental limits

- 3) The responsible Minister must through national direction identify and prescribe:
 - (a) features and characteristics that contribute to enhancing the quality of natural and built environments;
 - (b) targets to achieve continuing progress towards achieving the outcomes specified in section 7;
 - (c) the environmental limits specified in section 8(2)(b);
 - (d) nationally significant features of the matters set out in section 7(b)(i);
 - (e) outstanding natural features and outstanding natural landscapes under section 7(b)(ii) that are of national significance;

- (f) areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 7(b)(iii) that are of national significance;
 - (g) methods and requirements to give effect to the enhancement and restoration of ecosystems for the purposes of section 7(c);
 - (h) methods and requirements to give effect to the maintenance of indigenous biodiversity and restoration of viable populations of indigenous species for the purposes of section 7(d);
 - (i) how the principles of Te Tiriti o Waitangi will be given effect through functions and powers exercised under this Act; and
 - (j) methods and requirements to respond to natural hazards and climate change for the purposes of section 7(q) to 7(u).
- 4) The responsible Minister is the Minister for the Environment except in relation to the coastal marine area for which the Minister of Conservation is the responsible Minister in consultation with the Minister for the Environment.

Hierarchy: resolution of conflicts

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

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Document 3

Resource management reform briefing #2 – Further advice on the reform process, and proposals for Part 2 of the RMA and the planning framework

Date Submitted:	13 November 2020	Tracking #: 2020-B-07272	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	?

Out of Scope



Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Director	Lesley Baddon		✓

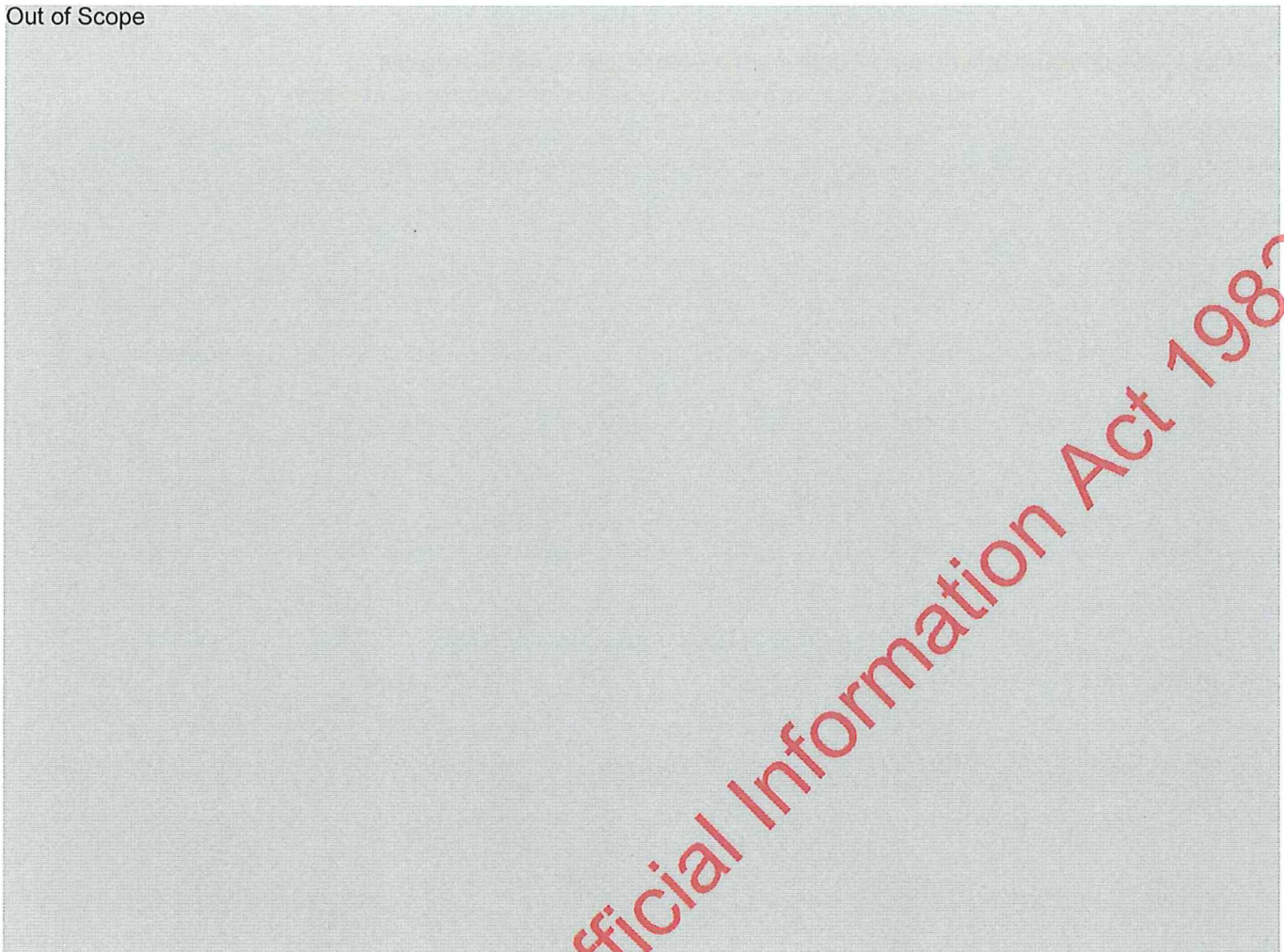
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Resource management reform briefing #2 – Further advice on the reform process, and proposals for Part 2 of the RMA and the planning framework

Out of Scope

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Out of Scope



Signature

Name of person signing out
Title - Manager or Director:
Name or the Team or Directorate:

Hon David Parker
Minister for the Environment

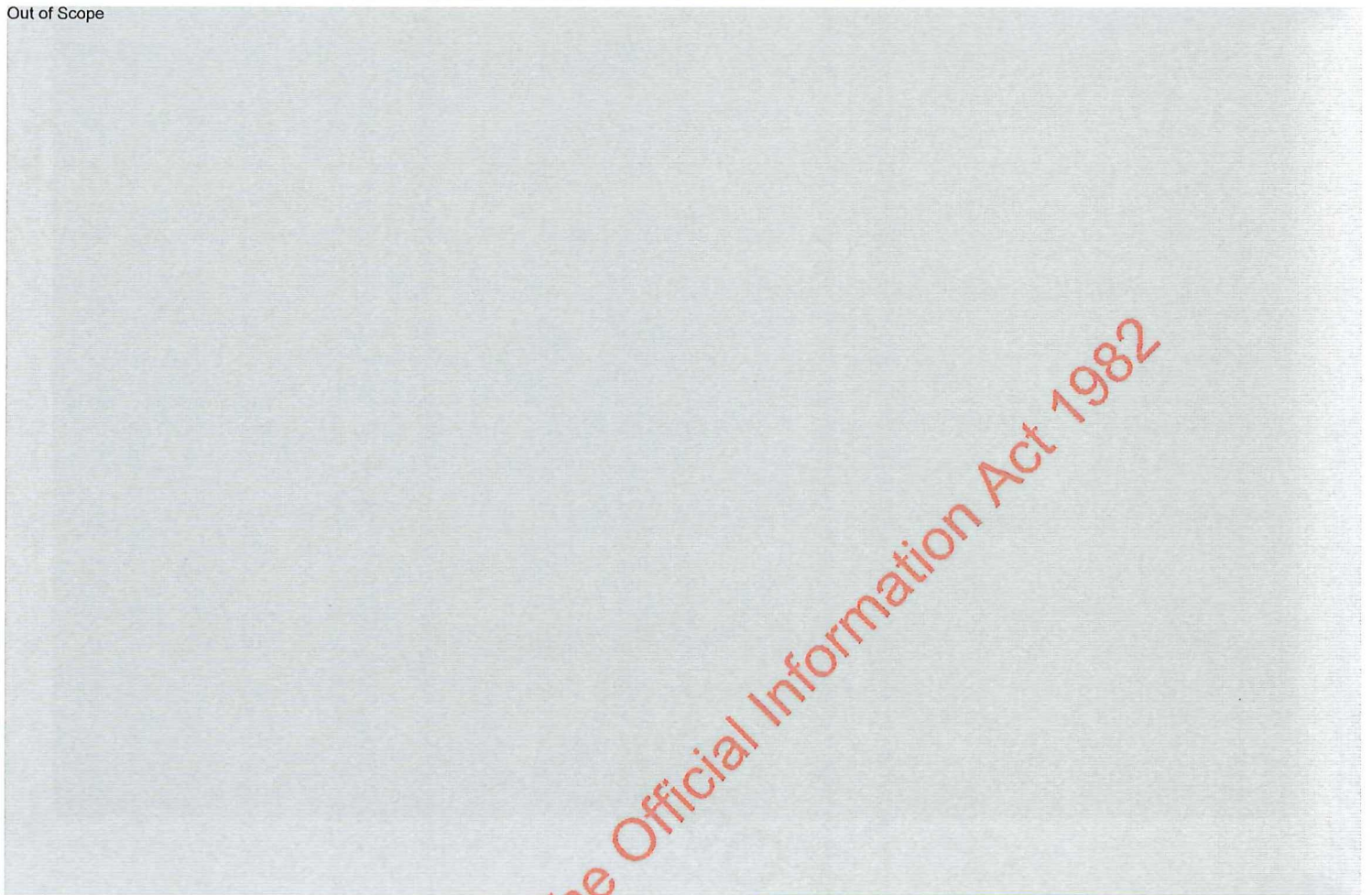
Date

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Appendix 1: NATURAL AND BUILT ENVIRONMENTS ACT PURPOSE, LIMITS AND OUTCOMES

INDICATIVE DRAFTING BASED ON DISCUSSIONS WITH MINISTER (AS AT 11 NOV)

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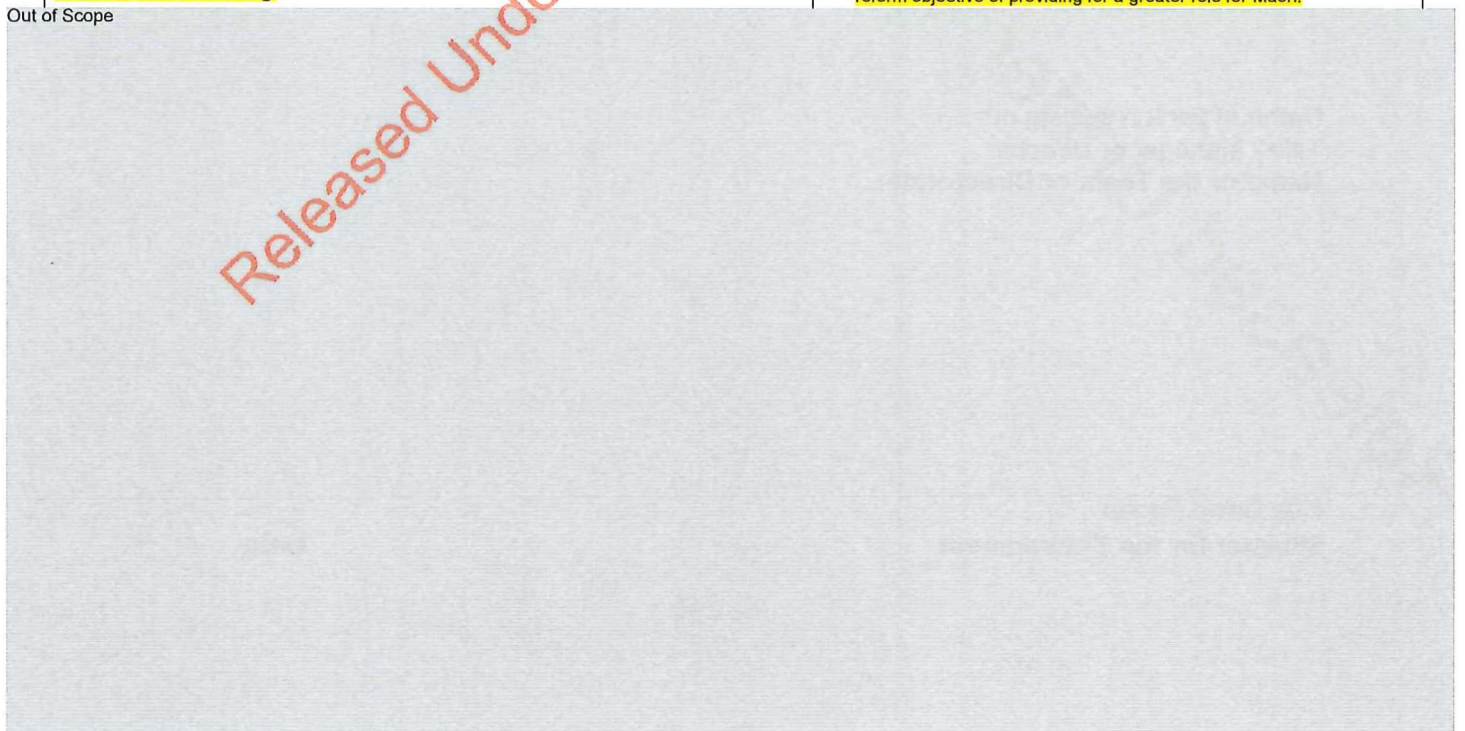


2: Te Tiriti o Waitangi

All persons exercising functions and powers under this Act must give effect to the principles of the Te Tiriti o Waitangi

- This wording is the same as used by the Panel. The PCE had similar wording but left the options to "take into account" the principles of the Treaty or the Treaty itself. "Give effect to" is used here as it is a more active duty than "take into account" and more consistent with the overall reform objective of providing for a greater role for Māori.

Out of Scope





Document 4

Talking points for meeting with Out of Scope on RM reform – Tuesday 9 February 2021

Date Submitted:	5 February 2021	Tracking #: 2021-B-07574	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Read before meeting on 9 February 2021	N/A
To Hon Kiritapu Allan, Associate Minister for the Environment	Read before meeting on 9 February 2021	N/A

Actions for Minister's Office Staff	Return the signed report to MfE
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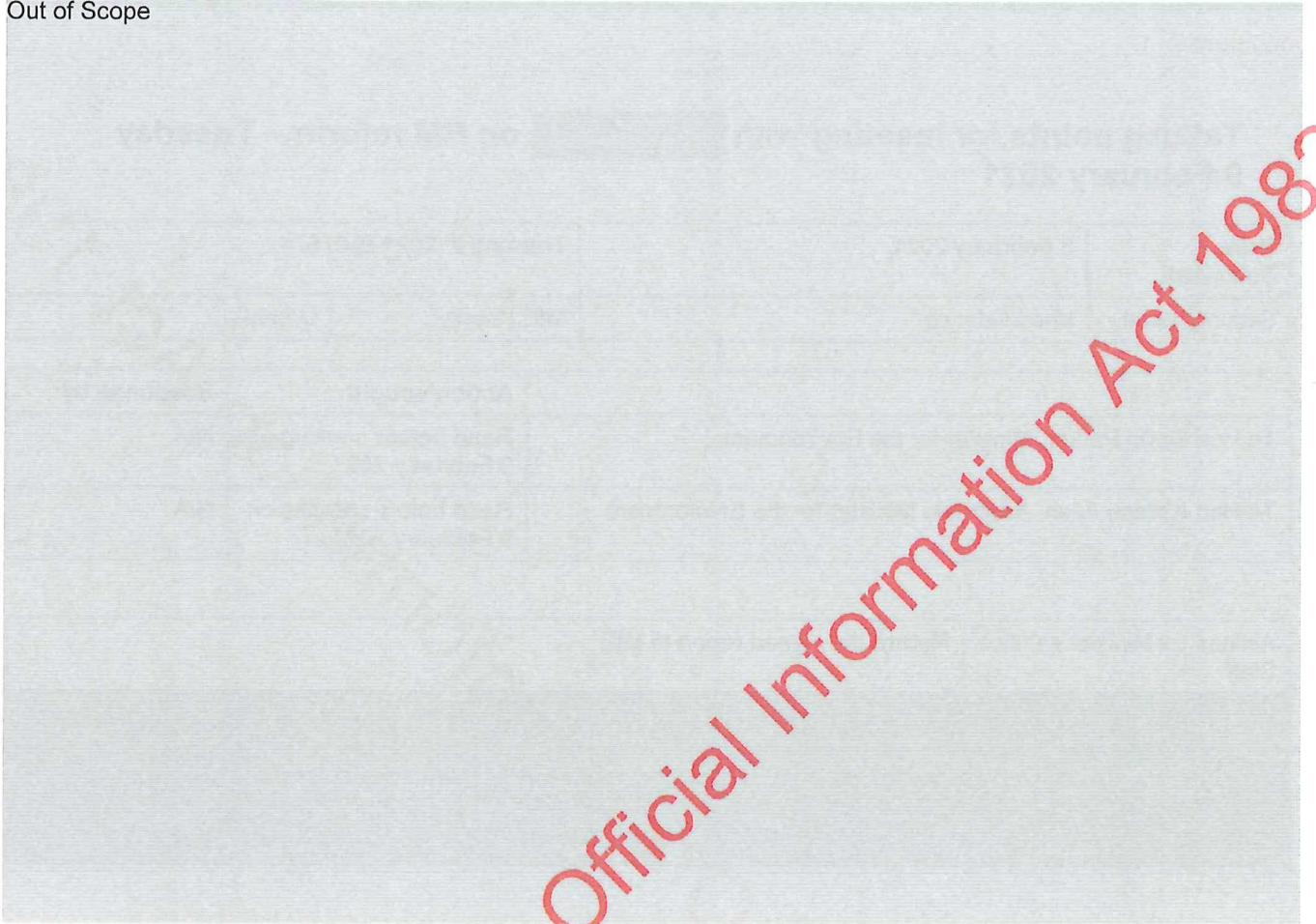
Out of Scope

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Dave Karl	-	
Director	Justin Strang	022 066 9013	✓

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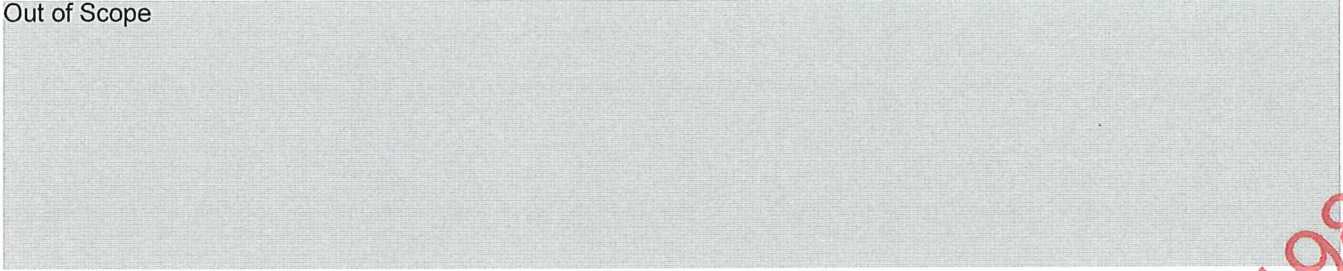


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9. Officials are proposing to use the in-principle policy approach agreed by Cabinet as a holding position while further work with ^{Out of Scope} is undertaken on the definition of 'Te Mana o te Taiao', how to refer to the principles of Te Tiriti o Waitangi in the NBA, and how best to implement the Treaty clause.

Released Under

Out of Scope



Signature

Justin Strang
Director, Resource Management Reform

Date

Hon David Parker
Minister for the Environment

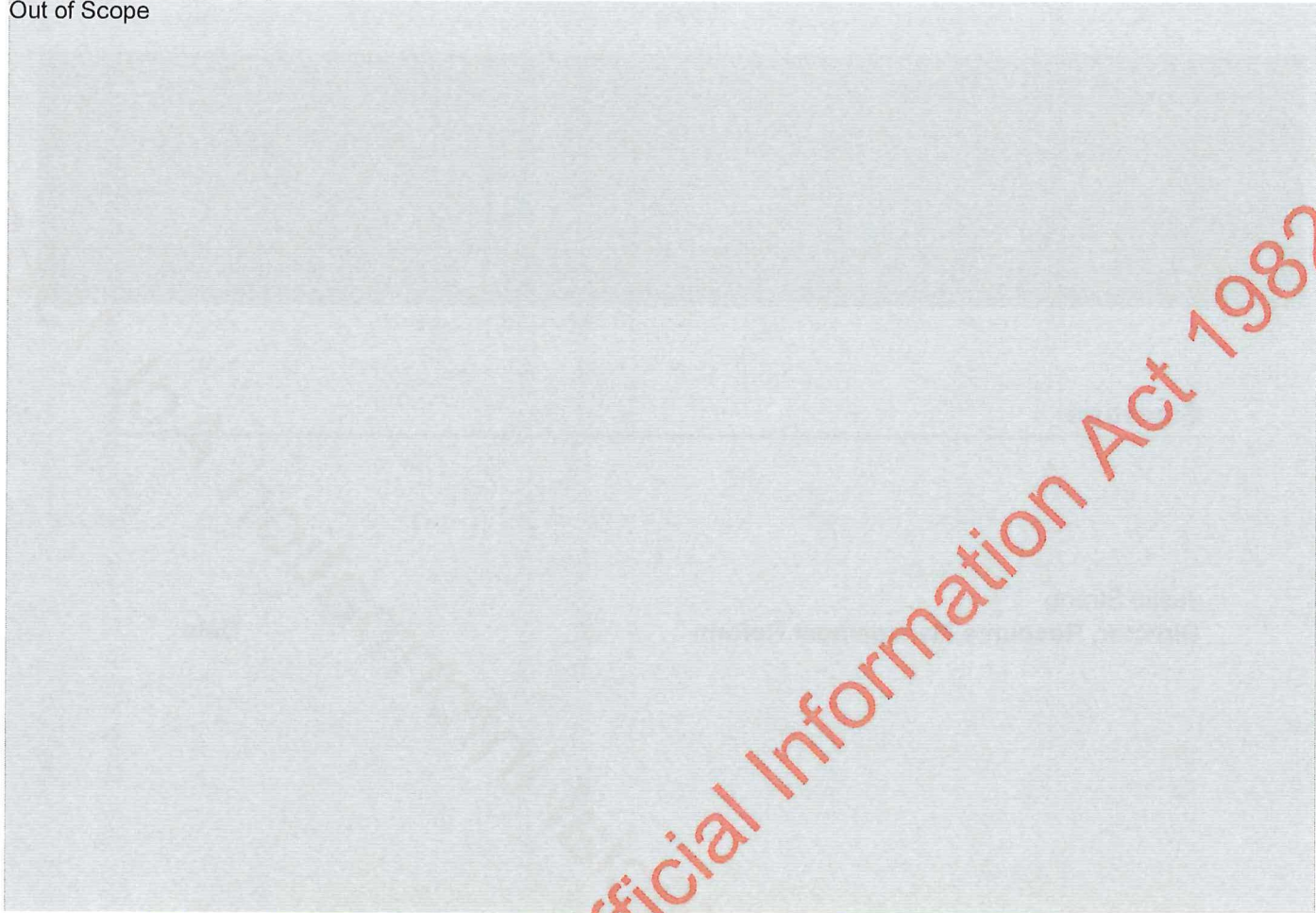
Date

Hon Kiritapu Allan
Associate Minister for the Environment

Date

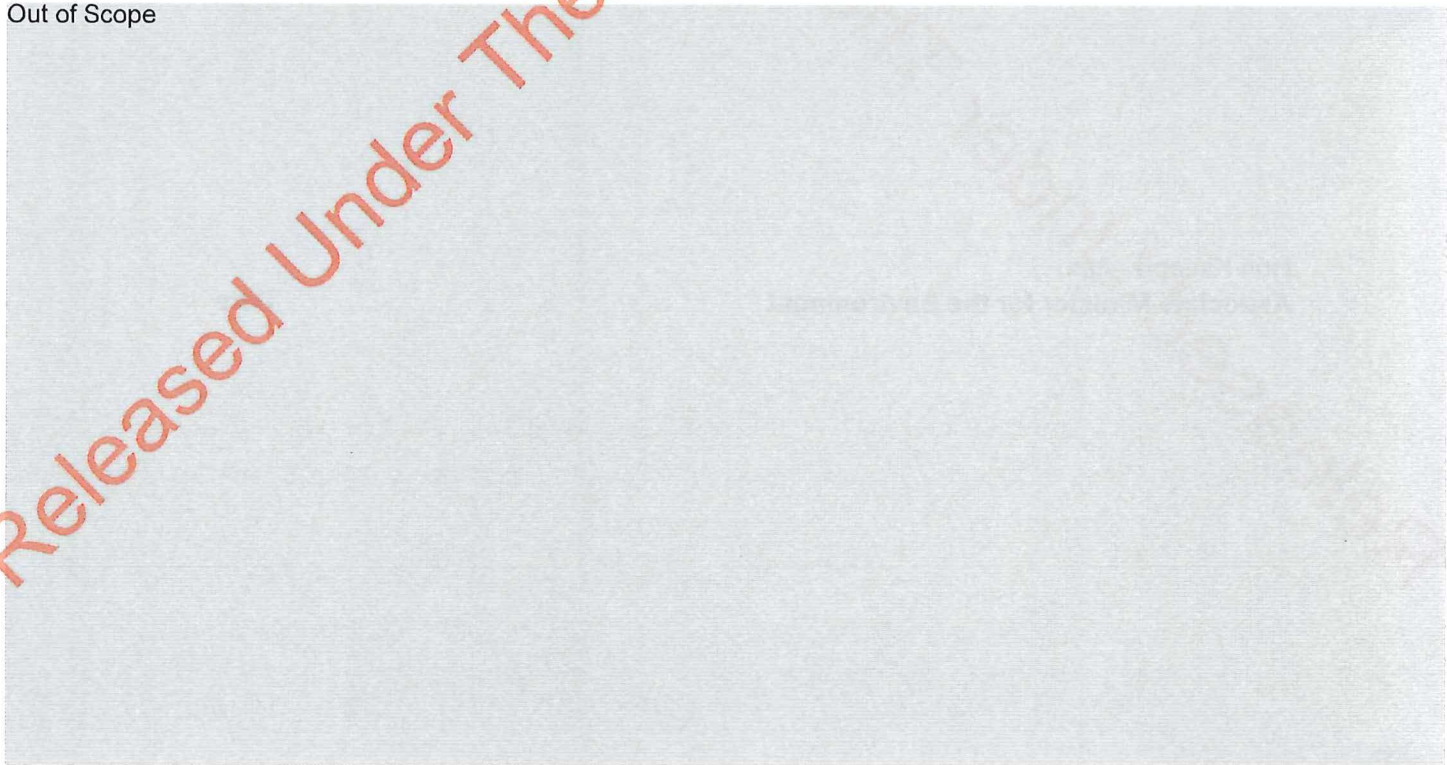
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- **Out of Scope** all their comments initial and without prejudice with a view towards exploring issues. Heartened by Cabinet's objective for the reforms to give effect to the principles of the Treaty and better recognise te ao Māori, including mātauranga Māori.

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Purpose statement and Te Mana o te Taiao

- Out of Scope

-

- Links between Te Mana o te Taiao, the Treaty clause and outcomes are key. More work required on where it would actually bit in the various parts of the new Act.

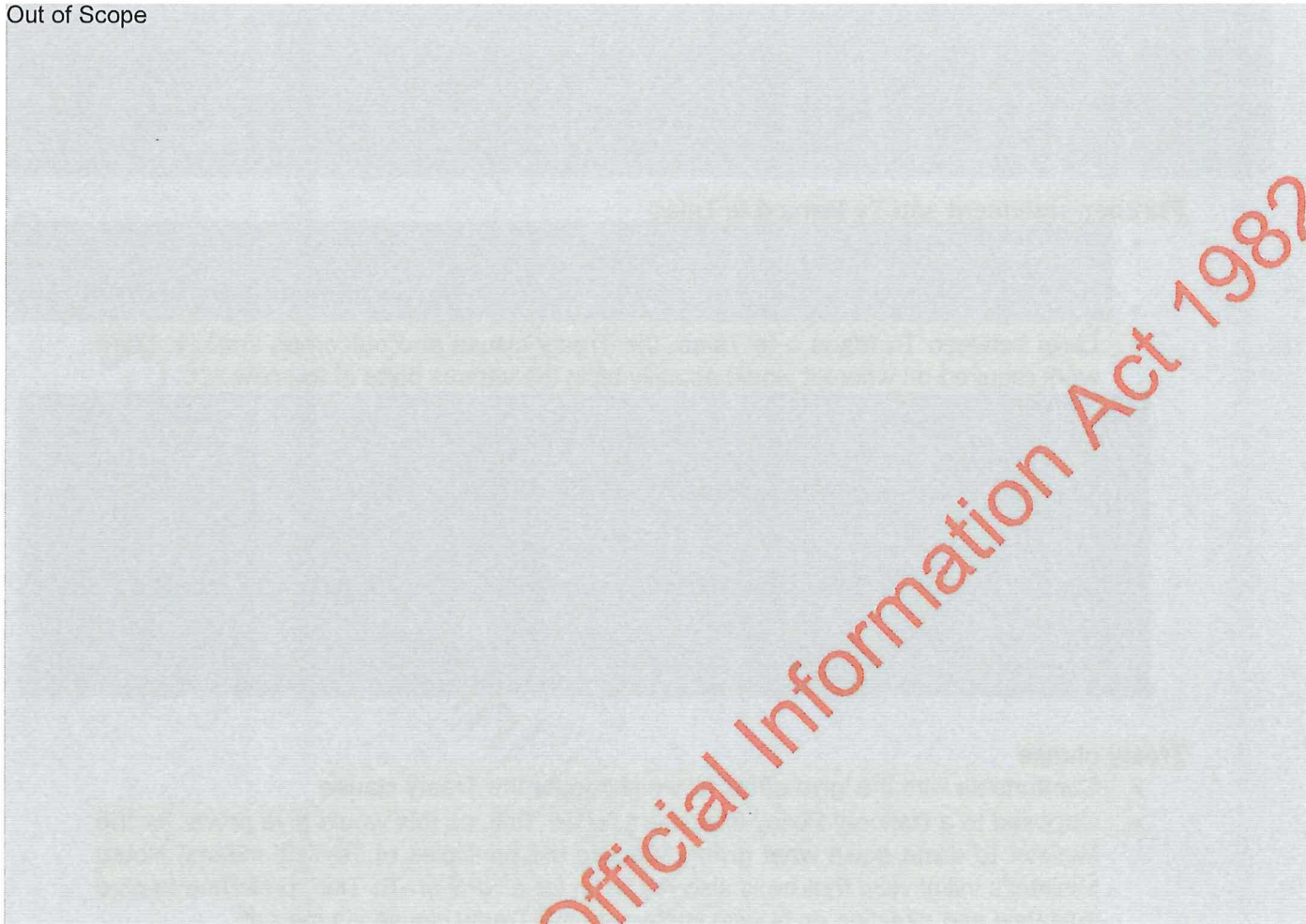
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Treaty clause

- Comfortable with the 'give effect to' weighting for the Treaty clause
- Opposed to a National Policy Statement for Te Tiriti, as this would give power for the Minister to dilute down what giving effect to the principles of Te Tiriti means. Noted Minister's initial view that he is also not keen for a NPS on Te Tiriti, preferring to give guidance and direction on how to implement the Treaty clause via the Act.
- Regarding the option of sub-clauses to the Treaty clause, wouldn't support articulation of the Treaty obligations in relation to the new Act in absolute terms, but may be comfortable exploring further sub-clauses that articulate the Treaty obligations in a non-exhaustive manner. Though this might be difficult and would need further work.

Out of Scope

Out of Scope



Recommendations:

A partnership approach with Māori and iwi

34 note that the Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (Treaty)

Out of Scope

