

Agenda – RM Reform Ministerial Oversight Group Meeting #6

Date: Monday 3 May 2021, 3.30 – 4.15 pm

Location: 2.1 EW

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

Attendees: Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti
Hon Megan Woods, Minister of Housing
Hon Nanaia Mahuta, Minister of Local Government
Hon Poto Williams, Minister for Building and Construction
Hon Damien O'Connor, Minister of Agriculture
Hon Peeni Henare, (Acting) Associate Minister of Culture and Heritage
Hon Willie Jackson, Minister for Māori Development
Hon Michael Wood, Minister of Transport
Hon Kiritapu Allan, Associate Minister for the Environment
Hon Hon Dr Ayesha Verrall, (Acting) Minister of Conservation
Hon Phil Twyford, Associate Minister for the Environment
Hon James Shaw, Minister of Climate Change

3.30 – 3.40	Agenda Item 1: NBA Treaty clause and feedback from regional hui with iwi and hapū	Lead speaker: Minister for the Environment
Description/key areas to focus discussion: <ul style="list-style-type: none">Confirmation of the option for how the Treaty clause should be expressed in the exposure draft of the NBA is sought.		
Decisions Sought <p>note that the Panel recommended a Treaty clause that read “<i>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</i>”</p> <p>note that a key policy dimension to consider regarding the Treaty clause is whether the clause should refer to the principles of Te Tiriti, the articles of Te Tiriti or to both</p> <ul style="list-style-type: none">agree to the Panel’s recommendations to elevate the Treaty clause to sit just after the purpose clause for the exposure draft of the NBA and that the Treaty clause refer to the definition of ‘Treaty’ in the Treaty of Waitangi Act 1975 <p>note that feedback from recent hui with iwi and hapū was provided to the MOG</p> <ul style="list-style-type: none">agree that the Treaty clause for the exposure draft of the NBA should be either:<ul style="list-style-type: none">(a) Option 1 – take into account the principles of the Treaty (status quo) OR		

- (b) Option 2 – take into account principles of the Treaty plus enhanced participatory rights (through other parts of the SPA and NBA) OR
- (c) Option 3 – give effect to principles of Te Tiriti (limited effect using the ‘standard modern form’ approach) OR
- (d) Option 4 – give effect to principles of Te Tiriti (general effect) OR
- (e) [preference of the MOG Māori interests subgroup] Option 5 – give effect to principles of Te Tiriti (general effect) plus:
 - a. participatory rights in preparing NBA and SPA plans and NPF
 - b. allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater)
 - c. the requirement that iwi management plans are taken into account in preparation of plans OR
- (f) Option 6 – give effect to Te Tiriti OR
- (g) Option 7 – give effect to the principles of Te Tiriti and Te Tiriti OR
- (h) Option 8 – honour te Tiriti / principles of te Tiriti OR
- (i) The option from [REDACTED] OR
- (j) The option from [REDACTED]

note that in respect of Option 5a above, the words “but not consenting” have been removed from an earlier version of this option. This change clarifies that a decision has not been taken to exclude Māori (or anyone) from consent decisions. Detailed decisions about participatory rights and consents are to be discussed at MOG#9 (6 July 2021). The previously stated intention to frontload participation into plan making processes is, in part, to simplify the consent process, but that does not mean there will be no participation at consent level where Māori or other interests are affected. For example, the Panel recommended that some boundary related disputes (eg height to boundary penetrations) may be resolved via alternative dispute processes rather than expensive defended consent hearings.

Supporting documents

> **Paper 1: NBA Treaty clause and feedback from regional hui with iwi and hap**

3.40 – 4.00	Agenda Item 2: Te Mana o Te Taiao	Lead speaker: Minister for the Environment
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Description/key areas to focus discussion:

- There are divergent views on how Te Mana o Te Taiao should be incorporated into the NBA exposure draft and the below options are provided to the MOG for consideration and decision.

Decisions Sought

note that Cabinet has agreed [CAB-20-MIN-0522] to objectives for the resource management reform, including an objective to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori

note that the Panel recommended the concept of Te Mana o te Taiao as a way of better aligning the resource management system to te ao Māori

note that engagement with iwi/Māori groups, mātauranga experts and through broader regional hui has highlighted:

- (a) the significant potential of Te Mana o Te Taiao (or similar) to improve recognition of te ao Māori in the resource management system if included in the purpose of the NBA;
- (b) that the Panel’s version lacks integrity for Māori; and

(c) the need for further work to progress a suitable proposal for the Bill proper

- ▶ agree to one of the following options (set out in Appendix 2) as an interim approach for Te Mana o te Taiao for the purposes of the NBA exposure draft:

(a)

(b)

(c)

- ▶ agree that officials will continue to work with iwi/Māori groups on Te Mana o te Taiao (or an equivalent concept)
- ▶ agree that the accompanying paper to the exposure draft will contain material on Te Mana o te Taiao (or equivalent), explain the work to come and seek feedback on key questions
- ▶ agree that the NBA clearly express an 'intergenerational environmental test' in the purpose or related provisions that ensures that the way present generations meet their needs or provide for their wellbeing does not compromise the ability of future generations to meet their own reasonably foreseeable needs or wellbeing

note that officials will provide further advice on any outstanding gaps in intergenerational equity elements of the proposed NBA

note that officials will work with PCO to ensure the NBA is clear that the way present generations meet their needs should not compromise the ability of future generations to meet their own reasonably foreseeable needs.

Supporting documents

- > Paper 2: Te Mana o Te Taiao

4.00 – 4.10

Agenda Item 3: Panel's approach to NBA plan governance and proposed governance structure for new water services entities

Lead speaker: Minister for the Environment

Description to focus discussion:

- The Resource Management Review Panel's proposed that a 'joint committee' governance model be used for decision-making on region-wide plans produced under the NBA.
- As agreed at MOG meeting #5 on 7 April 2021 this approach is proposed for inclusion in the NBA exposure draft.
- This represents a significant change to the status quo and will be subject to commensurate public scrutiny and debate.
- The Panel's approach is a good basis from which to start but includes a number of matters which will not be able to be drafted for the exposure draft. These will need to be covered in the paper accompanying the exposure draft.

Decisions Sought:

note that the MOG agreed on 7 April 2021 to include the Panels' option for Plan governance (the "joint committee" approach) in the NBA exposure draft

- ▶ agree the paper accompanying the NBA exposure draft highlight the Panel's approach within the context of achieving the resource management reform objectives and develop questions to enable feedback on this approach

note that after the select committee report back detailed subsidiary decisions will be needed to implement the governance approach

- ▶ agree a RM system governance paper that addresses governance across NBA plans, Strategic Planning Act and Climate Change Adaption Act governance will be prepared for MOG meeting #8

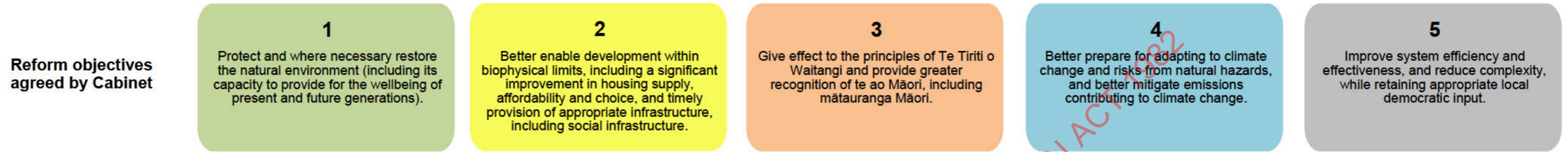
Supporting documents

<ul style="list-style-type: none"> > Paper 3: Panel approach to NBA plan governance > Paper 4: Three Waters Service Delivery Reforms: Update on key aspects of the reforms 		
4:10–4:15	Agenda Item 4: Infrastructure subgroup report back and general MOG business	Lead speaker: Minister for the Environment
<p>Description/key areas to focus discussion:</p> <ul style="list-style-type: none"> • The Minister of Finance and Minister for the Environment have agreed to the use of subgroups to streamline the operation of MOG meetings. • The infrastructure/urban development subgroup met on 29 April 2021 and agreed that recommendations would be brought to this MOG meeting. • The Minister for the Environment will give a verbal report back and table recommendations in relation to the role of infrastructure in the resource management system. 		
<p>Decisions Sought</p> <p><i>[Recommendations resulting from the Infrastructure/urban development subgroup will be tabled by the Minister for the Environment at this meeting]</i></p> <p>note that subgroups of Ministers will receive papers and/or meet as needed to discuss reform related issues on:</p> <ol style="list-style-type: none"> a. Māori interests b. infrastructure/urban development c. rural development d. natural environment e. transactional efficiencies <p>note that subgroups will be used to refine issues or options in relation to the above topics, but that any decision-making remains with the Ministerial Oversight Group unless specifically delegated to a subgroup on a particular matter.</p>		
<p>Supporting documents</p> <ul style="list-style-type: none"> > Paper 5: General MOG business: use of subgroups and infrastructure subgroup report back > Minute from RM Reform Ministerial Oversight Meeting #5 on 7 April 2021 > Action log from previous MOG meetings 		

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Key Decisions – RM Reform Ministerial Oversight Group Meeting #6

This note summarises key decisions being sought. The formal decision papers with advice and recommendations are attached separately.



Description of decisions sought in attached papers	Context and next steps (including outstanding decisions)	Objectives met	Implications versus status quo
Paper 1: NBA Treaty clause and feedback from regional hui with iwi and hapū			
<ul style="list-style-type: none"> Confirm the option for how the Treaty clause should be expressed in the exposure draft of the NBA. 	<ul style="list-style-type: none"> The Māori interest subgroup prefers option 5 – give effect to principles of Te Tiriti (general effect) plus: <ul style="list-style-type: none"> participatory rights in preparing NBA and SPA plans and NPF allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater) the requirement that iwi management plans are taken into account in preparation of plans. 	3	<ul style="list-style-type: none"> Scale of change dependant on the option chosen and how it is then reflected throughout the wider NBA, including its implementation.
Paper 2 – Te Mana o Te Taiao			
<ul style="list-style-type: none"> Confirm a preferred interim approach for the key environmental test, such as Te Mana o te Taiao or an equivalent concept, for the purposes of the NBA exposure draft. 	<ul style="list-style-type: none"> Proceed with developing the intergenerational environmental test for inclusion in the NBA Bill. Develop Te Mana o te Taiao content for the accompanying paper to the NBA exposure draft will be developed, including questions for feedback. Officials will continue to work with iwi/Māori groups and mātauranga experts on Te Mana o te Taiao (or equivalent concept) for inclusion in the full NBA Bill. 	3 1	<ul style="list-style-type: none"> Introducing a te ao Māori concept into the heart of the future resource management system could contribute to achieving objective 3, representing change from the status quo. Regardless of which option for a intergenerational environmental test is chosen additional capability and capacity will need to be built into the system and its implementation.
Paper 3 – Panel’s approach to NBA plan governance			
<ul style="list-style-type: none"> Note the significant issues and gaps in the Panel’s proposed approach to NBA plan governance. Agree that the accompanying paper to the exposure draft will be used to highlight these and questions included for response. 	<ul style="list-style-type: none"> The Panel’s approach includes a number of matters which will not be able to be drafted but will need to be covered in the accompanying paper to the exposure draft. If agreed, content and questions will be developed for inclusion in the accompanying paper to the exposure draft. 	Potentially all, but especially: 5 3	<ul style="list-style-type: none"> Scale of change partially dependant on the membership of NBA plan committees, how decision-making occurs and the role of mana whenua in these processes. Based on the Panel’s proposals there may be perception of loss of political accountability and local decision-making on local planning issues.

Recommendations – RM Reform Ministerial Oversight Group Meeting #6

Officials recommend that the Resource Management Reform Ministerial Oversight Group:

Agenda Item 1: NBA Treaty clause and feedback from regional hui with iwi and hapū

note that the Panel recommended a Treaty clause that read “*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*”

note that a key policy dimension to consider regarding the Treaty clause is whether the clause should refer to the principles of Te Tiriti, the articles of Te Tiriti or to both

agree to the Panel’s recommendations to elevate the Treaty clause to sit just after the purpose clause for the exposure draft of the NBA and that the Treaty clause refer to the definition of ‘Treaty’ in the Treaty of Waitangi Act 1975

note that feedback from recent hui with iwi and hapū was provided to the MOG

agree that the Treaty clause for the exposure draft of the NBA should be either:

- (a) Option 1 – take into account the principles of the Treaty (status quo) OR
- (b) Option 2 – take into account principles of the Treaty plus enhanced participatory rights (through other parts of the SPA and NBA) OR
- (c) Option 3 – give effect to principles of Te Tiriti (limited effect using the ‘standard modern form’ approach) OR
- (d) Option 4 – give effect to principles of Te Tiriti (general effect) OR
- (e) [preference of the MOG Māori interests subgroup] Option 5 – give effect to principles of Te Tiriti (general effect) plus:
 - a. participatory rights in preparing NBA and SPA plans and NPF
 - b. allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater)
 - c. the requirement that iwi management plans are taken into account in preparation of plans
- (f) Option 6 – give effect to Te Tiriti OR
- (g) Option 7 – give effect to the principles of Te Tiriti and Te Tiriti OR
- (h) Option 8 – honour te Tiriti / principles of te Tiriti OR
- (i) The option from [redacted] OR
- (j) The option from [redacted]

note that in respect of Option 5a above, the words “but not consenting” have been removed from an earlier version of this option. This change clarifies that a decision has not been taken to exclude Māori (or anyone) from consent decisions. Detailed decisions about participatory rights and consents are to be discussed at MOG#9 (6 July 2021). The previously stated intention to frontload participation into plan making processes is, in part, to simplify the consent process, but that does not mean there will be no participation at consent level where Māori or other interests are affected. For example, the Panel recommended that some boundary related disputes (eg, height to boundary penetrations) may be resolved via alternative dispute processes rather than expensive defended consent hearings

Agenda item 2 – Te Mana o Te Taiao

note that Cabinet has agreed [CAB-20-MIN-0522] to objectives for the resource management reform, including an objective to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori

note that the Panel recommended the concept of Te Mana o te Taiao as a way of better aligning the resource management system to te ao Māori

note that engagement with iwi/Māori groups, mātauranga experts and through broader regional hui has highlighted:

- the significant potential of Te Mana o Te Taiao (or similar) to improve recognition of te ao Māori in the resource management system if included in the purpose of the NBA;
- that the Panel’s version lacks integrity for Māori; and
- the need for further work to progress a suitable proposal for the Bill proper

agree to one of the following options (set out in **Appendix 2**) as an interim approach for Te Mana o te Taiao for the purposes of the NBA exposure draft:

- a. Option 1: the Panel’s proposal: ‘recognise the concept of Te Mana o te Taiao’ (with detailed feedback on the Panel’s proposal already received and proposals provided by iwi/Māori groups included in the accompanying paper); or

b.

c.

d.

agree that officials will continue to work with iwi/Māori groups on Te Mana o te Taiao (or an equivalent concept)

agree that the accompanying paper to the exposure draft will contain material on Te Mana o te Taiao (or equivalent), explain the work to come and seek feedback on key questions

agree that the NBA clearly express an ‘intergenerational environmental test’ in the purpose or related provisions that ensures that the way present generations meet their needs or provide for their wellbeing does not compromise the ability of future generations to meet their own reasonably foreseeable needs or wellbeing

note that officials will provide further advice on any outstanding gaps in intergenerational equity elements of the proposed NBA

note that officials will work with PCO to ensure the NBA is clear that the way present generations meet their needs should not compromise the ability of future generations to meet their own reasonably foreseeable needs.

Agenda item 3 – Panel’s approach to NBA plan governance and proposed governance structure for new water services entities

note that the MOG agreed on 7 April 2021 to include the Panels’ option for Plan governance (the “joint committee” approach) in the NBA exposure draft

agree the paper accompanying the NBA exposure draft highlight the Panel’s approach within the context of achieving the resource management reform objectives and develop questions to enable feedback on this approach

note that after the select committee report back detailed subsidiary decisions will be needed to implement the governance approach

agree a RM system governance paper that addresses governance across NBA plans, Strategic Planning Act and Climate Change Adaption Act governance will be prepared for MOG meeting #8

Agenda item 4 – General MOG business: use of subgroups and infrastructure subgroup report back

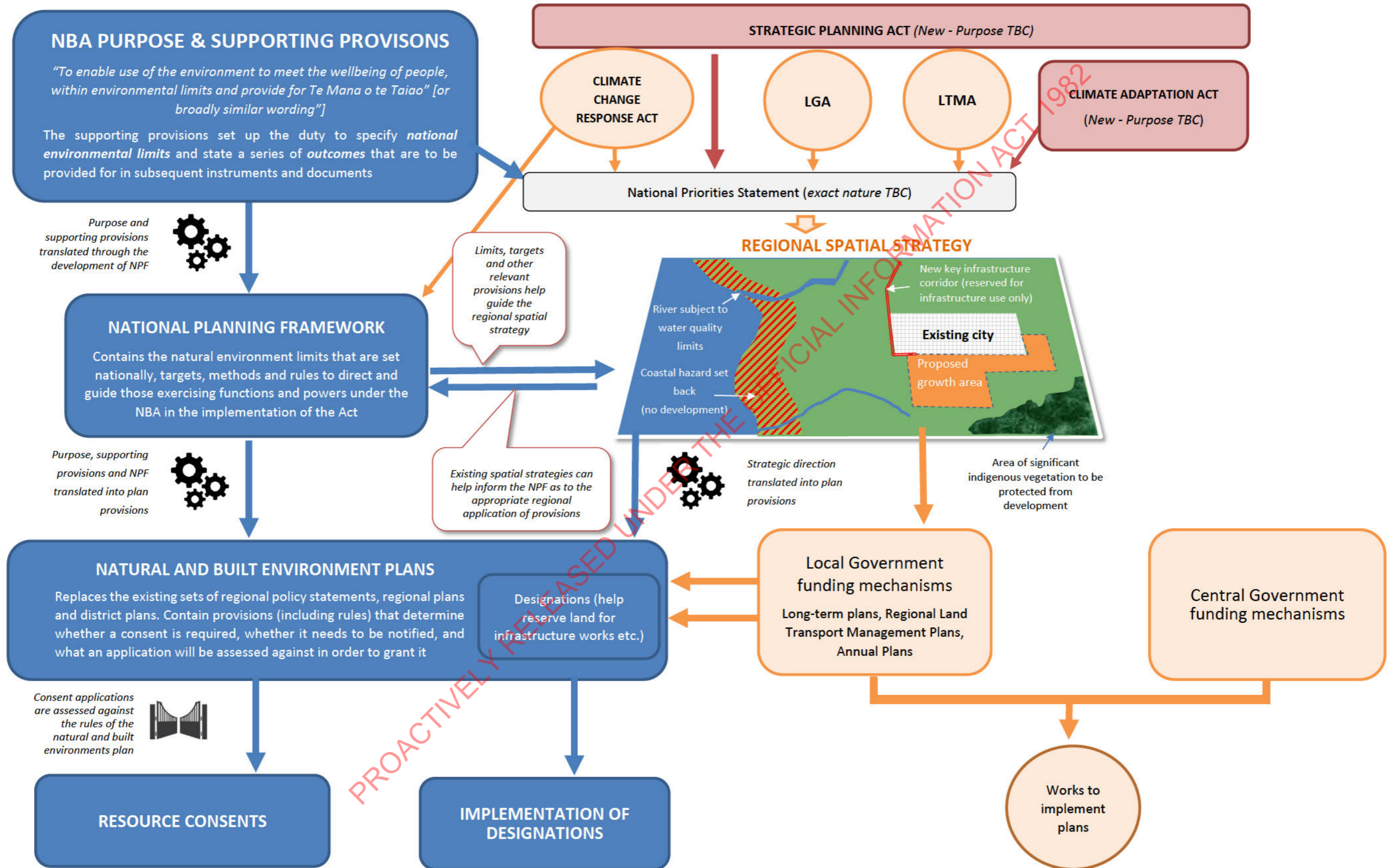
note that subgroups of Ministers will receive papers and/or meet as needed to discuss reform related issues on:

- a. Māori interests
- b. infrastructure/Urban development
- c. rural development
- d. natural environment
- e. transactional efficiencies

note that subgroups will be used to refine issues or options in relation to the above topics, but that any decision-making remains with the Ministerial Oversight Group unless specifically delegated to a subgroup on a particular matter.

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Proposed future system overview diagram



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Paper 1: NBA Treaty clause and feedback from regional hui with iwi and hapū

Purpose and context

1. The purposes of this paper are to provide to the Ministerial Oversight Group (MOG) 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. This will enable MOG to make a decision on a Treaty clause to be included in the exposure draft for the Natural and Built Environments Act (NBA).
2. The Māori interests subgroup of the MOG had a preliminary discussion on 6 April, which included discussion on the Treaty clause. The subgroup noted that no decision could be made until feedback from the recent hui with iwi and hapū in written form was received.
3. The subgroup subsequently had another discussion on 19 April at which they considered the Treaty clause options in light of the feedback from the recent hui with iwi and hapū. The subgroup expressed a preference for Option 5 with some additional explanatory wording that is provided in this paper.

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.

A	Take into account principles of the Treaty	1	Status quo
		2	Option 1 plus enhanced participatory rights (through other parts of the Strategic Planning Act and Natural and Built Environments Act)
B	Give effect to principles of Te Tiriti (both versions or Treaty of Waitangi Act definition)	3	'Standard modern form' Treaty clause
		4	Panel's approach and Conservation Act
		5	Option 4 plus <ul style="list-style-type: none"> • participatory rights in preparing NBA and SPA plans, and NPF • allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater) • the requirement that iwi management plans are taken into account in preparation of plans
C	Other variations	6	Give effect to te Tiriti (both versions or Treaty of Waitangi Act definition)
		7	Give effect to the principles of te Tiriti and te Tiriti
		8	Honour te Tiriti / principles of te Tiriti

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Interactions with treaty settlements

15. 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.

16. Engagement with PSGEs has begun. At a general level, the intent is that all existing settlement arrangements will be upheld under the new system. This will involve ensuring that decisions by the MOG on all aspects of the system (including national direction, planning and consenting⁴) are consistent with the intent and effect of the settlement arrangements. However, the nature of some settlement arrangements (eg., the Waikato River) makes this a more significant task than others.

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⁴ Note that decisions relating to consents as part of the system as a whole are currently scheduled for MOG to consider at MOG #9 on 6 July. However it is worth noting that in line with ensuring Treaty settlements are upheld the decisions made regarding the NBA Treaty clause and consents will need to be consistent with the intent and effect of Treaty settlements (along with all RM Reform decisions).

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21. 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

22. 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.

23. Hon Kiritapu Allan, Associate Minister for the Environment, led the first three hui in Taranaki, Wellington and Christchurch, which was hosted by Ngāi Tahu. The remaining hui were held in Tauranga, Hamilton, Whakatāne, Whangārei, Auckland and Gisborne.

24. Key themes of the hui were:

- 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
- c. support for strengthening te 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.

25. This paper contains a series of appendices that together provide the full package of feedback received from the recent hui:

- a. Appendix 3 provides a full summary of key themes from each hui, including the date and which hapū, iwi and organisations were in attendance
- b. Appendix 4 provides a summary of key themes within each recommendation from Chapter 3 of the Panel's report

- c. Appendix 5 provides the full notes from each of the hui, this is provided as an annex to this MOG pack.
- d. [REDACTED]

Recommendations

Recommendations

Note that the Panel recommended a Treaty clause that read “*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*”

Note that a key policy dimension to consider regarding the Treaty clause is whether the clause should refer to the principles of Te Tiriti, the articles of Te Tiriti or to both

Agree to the Panel’s recommendations to elevate the Treaty clause to sit just after the purpose clause for the exposure draft of the NBA and that the Treaty clause refer to the definition of ‘Treaty’ in the Treaty of Waitangi Act 1975

Note [REDACTED]

Note the feedback from recent hui with iwi and hapū in Appendices 3-6

Note [REDACTED]

Agree that the Treaty clause for the exposure draft of the NBA should be either:

- (k) Option 1 – take into account the principles of the Treaty (status quo) **OR**
- (l) Option 2 – take into account principles of the Treaty plus enhanced participatory rights (through other parts of the SPA and NBA) **OR**
- (m) Option 3 – give effect to principles of Te Tiriti (limited effect using the ‘standard modern form’ approach) **OR**
- (n) Option 4 – give effect to principles of Te Tiriti (general effect) **OR**
- (o) [**preference of the MOG Māori interests subgroup**] Option 5 – give effect to principles of Te Tiriti (general effect) plus:
 - a. participatory rights in preparing NBA and SPA plans and NPF
 - b. allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater)
 - c. the requirement that iwi management plans are taken into account in preparation of plans **OR**
- (p) Option 6 – give effect to Te Tiriti **OR**
- (q) Option 7 – give effect to the principles of Te Tiriti and Te Tiriti **OR**
- (r) Option 8 – honour te Tiriti / principles of te Tiriti **OR**
- (s) The option from [REDACTED] **OR**
- (t) The option from [REDACTED]

Note that in respect of Option 5a above, the words “but not consenting” have been removed from an earlier version of this option. This change clarifies that a decision has not been taken to exclude Māori (or anyone) from consent decisions. Detailed decisions about participatory rights and consents are to be discussed at MOG#9 (6 July 2021). The previously stated intention to frontload participation into plan making processes is, in part, to simplify the consent process, but that does not mean there will be no participation at consent level where Māori or other interests are affected. For example, the Randerson panel recommended that some boundary related disputes (eg, height to boundary penetrations) may be resolved via alternative dispute processes rather than expensive defended consent hearings.

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Paper 1 - Appendix 1: NBA Treaty Clause – Options

The table below describes three groupings of eight options for the Treaty of Waitangi/Te Tiriti o Waitangi clause (Treaty clause) along with legal commentary. All these options need to take into account other mechanisms to give expression and power to Māori interests.

Most options include the statutory weighting 'give effect to':

- 'Give effect to' is a significant change from the current RMA Treaty clause weighting of 'take into account'.
- At least seven pieces of legislation use the directing words 'give effect to' in their Treaty clause.
- A change to 'give effect to' was the most supported solution for the Treaty clause put forward by submitters on the Panel's Issues and Options paper and from Māori at hui.

OPTIONS		Drafting	Additional elements	Description of approach	Feedback from engagement with iwi/hapū
A	1	Take into account principles of the Treaty	N/A	Status quo in the Resource Management Act	There was no feedback from engagement with iwi/hapū that supported the status quo or a statutory weighting of taking into account
	2		Option 1 plus enhanced participatory rights (through other parts of the SPA and NBA)	Status quo in the Resource Management Act plus specific provisions to build participation into key parts of the Strategic Planning Act and Natural and Built Environments Act	

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B	3	<p>Give effect to principles of Te Tiriti</p> <p>(both versions or Treaty of Waitangi Act definition)</p>	<p><i>give effect to principles of Te Tiriti (limited effect)</i></p> <p>To adopt a Treaty clause following the 'standard modern form' eg, The main provisions of this Act that recognise and respect the Crown's responsibility to give effect to principles of Te Tiriti o Waitangi</p> <p>both versions of Te Tiriti or Treaty of Waitangi Act definition</p>	<p>This phrasing would mirror the Panel's proposed obligation to give effect to the principles of Te Tiriti, but alter the phraseology of the clause to reflect the 'standard modern form' (eg, approach taken in the Climate Change Response Act 2002, Exclusive Economic Zone and Continental Shelf (Environmental Effects) and others). This would, in addition to further provisions, reflect a consistent approach to that taken by Cabinet in relation to the Health reforms.</p>	<p><i>Note that feedback outlined in this box applies across all of the options that use 'give effect to'</i></p> <p>Taranaki: Give effect is much better than take into account.</p> <p>Wellington: 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 in terms of what 'giving effect' would be like in practice.</p> <p>Tauranga: Support for 'give effect to' weighting. Clearer directive than take into account.</p> <p>Hamilton: 'Give effect to' is better than 'take into account'. One you can ignore and one you can't. This is a positive shift.</p> <p>Whakatāne: Support give effect to.</p>
	4		<p><i>give effect to principles of te Tiriti (general effect)</i></p> <p>Panel approach and Conservation Act</p> <p>both versions of Te Tiriti or Treaty of Waitangi Act definition</p>	<p>This phrasing would retain the focus solely on the principles of Te Tiriti (eg, approach taken in the Conservation Act 1987). The Panel's stated intention was that this phrasing would "modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it"⁶</p>	<p>Taranaki: Discussion on section 4 of the Conservation Act. Comments that the Department of Conservation has not given effect to treaty for 35 years and it likely will continue to not happen unless there is clear guidance on what giving effect means, who gives effect and what it means on the ground</p> <p>Christchurch: Section 4 of the Conservation Act is good and could be strengthened. Important that the section is not subordinate to other provisions</p>

⁶ Pg.100, Resource Management Review Panel. 2020. New Directions for Resource Management in New Zealand: Report of the Resource management Review Panel.

	5		<p><i>give effect to principles of te Tiriti (general effect)</i></p> <p>plus</p> <ul style="list-style-type: none"> • participatory rights in preparing NBA and SPA plans and NPF • allocation principles (subject to outcomes of the work programme on Māori rights and interests in freshwater) • the requirement that iwi management plans are taken into account in preparation of plans. 	Option 4 plus the three elements noted	<p>Taranaki: One way to give effect is to co-draft – if tangata whenua are involved in the spatial planning process then they could feed in and be part of the plan development phase. No one could say “not giving effect” if they are at the table co-drafting</p> <p>Auckland: 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 a Rohe)</p>	
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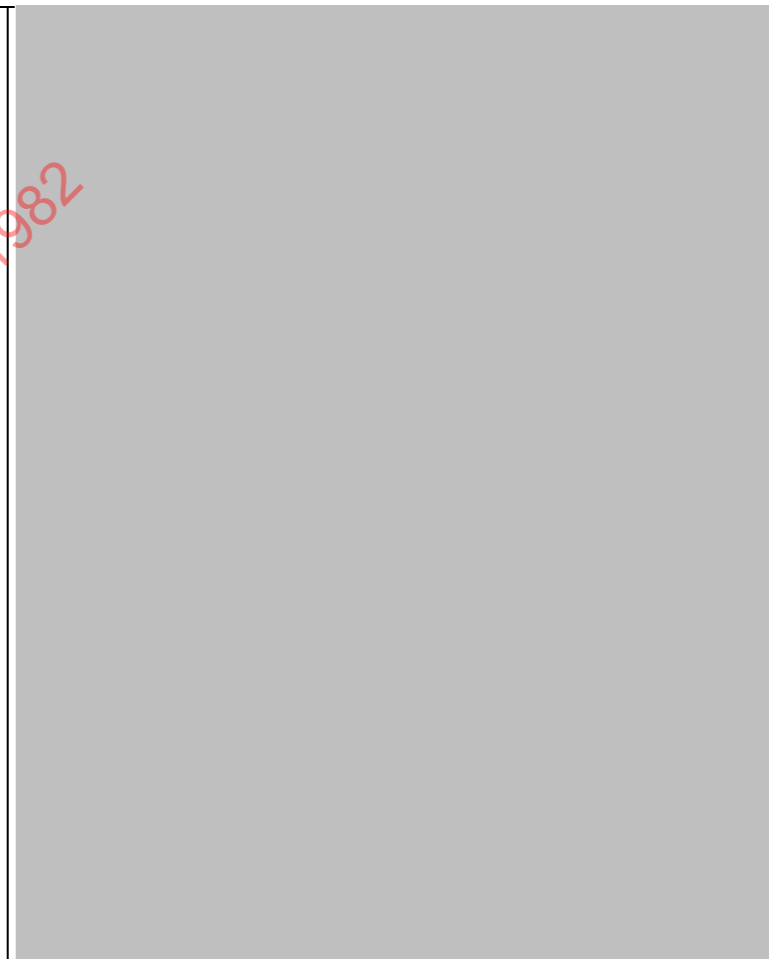
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C	6	Other Variations	<p><i>give effect to te Tiriti</i></p> <p>both versions of Te Tiriti or Treaty of Waitangi Act definition</p>	<p>Tauranga: Courts haven't favoured Māori through the principles.</p> <p>Whangārei: Support for "give effect", but do not support that principles of the Treaty mean partnership, want explicit reference to Tino Rangatiratanga.</p>	[Redacted]
	7		<p><i>give effect to the principles of te Tiriti and te Tiriti</i></p> <p>both versions of Te Tiriti or Treaty of Waitangi Act definition</p>	<p>Tauranga: Courts have made determinations to principles. A number have been interpreted in a modern context. The principles reflect the spirit and essence of Treaty in modern context. Wouldn't want to throw out baby with bathwater.</p> <p>Hamilton: Should be give effect to both the principles and the articles.</p>	

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	8		<i>honour te Tiriti / principles of te Tiriti</i>	<p>Including an overarching reference to honouring Te Tiriti would:</p> <ul style="list-style-type: none"> • be similar to the framing of Education and Training Act 2020 on which Crown Law Office did not provide advice • require further work to assess the full implications of this approach but including it in the exposure draft and engagement with Māori provide opportunities to progress this analysis 	<p>Tauranga: Don't like how 'Te Tiriti o Waitangi' is defined as both Te Tiriti and the Treaty. Treaty and Tiriti are two different things – can't look at them the same.</p> <p>Whangārei: Some calls for principles of the Treaty to be included for in the purpose of the Act.</p>
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Paper 1 – Appendix 2: NBA Treaty Clause – Options provided by Iwi Technicians

	Drafting	Description of approach	
<p>Note: the drafting and description of approach for this option has been provided directly</p>	<p>First preference: “All persons performing functions and exercising powers under this Act must act in a manner that:</p> <p>(a) is consistent with the Crown’s obligation to honour Te Tiriti o Waitangi; and</p> <p>(b) gives effect to the principles of Te Tiriti o Waitangi.”</p> <p>Second Preference: “This Act must be interpreted in a manner that best furthers—</p> <p>(a) the purpose of the Act; and</p> <p>(b) [Te Mana o Te Taiao]; and</p> <p>(c) Parliament’s intention that this Act is consistent with the Crown’s obligation to honour Te Tiriti o Waitangi.</p> <p>All persons performing functions and exercising powers under this Act must act in a manner [that] gives effect to the principles of Te Tiriti o Waitangi.”</p>	<p>The phrasing in this first approach:</p> <ul style="list-style-type: none"> • focuses on both the articles of Te Tiriti and the principles; • uses both the weightings ‘honour’ and ‘give effect to’; • is analogous, in part, to s4 of the Conservation Act and, in part, to s6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020; and • uses the phraseology ‘performing functions and exercising powers’ <p>The approach of referring to both Te Tiriti and its principles was in the Education and Training Act 2020, albeit with a different formulation</p> <p>This second approach also addresses both Te Tiriti and the principles but in a different manner</p> <p>First, ‘honouring Te Tiriti’ is addressed in an overarching guiding interpretation provision is analogous to s5 of the Waikato-Tainui Raupatu Claims Settlement Act (in respect of Parliament’s intention for Te Ture Whaimana)</p> <p>Secondly, separate section in the Act would then require decision-makers to give effect to the principles of Te Tiriti</p> <p>Note: Including Te Mana o Te Taiao would be subject to agreement being reached on that term and its meaning by the</p>	<p>PROACTIVELY RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982</p>

“(1) The purposes of this Act are:

(a) To give effect to Te Tiriti [or, as a second best alternative: “[to honour Te Tiriti o Waitangi and give effect to the principles of Te Tiriti]”]; and

(b) [any other purposes, eg, “To give effect to Te Mana o te Taiao”].

The inclusion of Te Tiriti clause in subsection (1) of the purpose section would underscore its central role and importance. That would in turn be reinforced by another subsection at the end of the purpose section (labelled subsection (2) below for shorthand) that states:

“(2) A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purposes of this Act.”

Subsection (2) above is modelled on section 3(2) of the Climate Change Response Act 2002, and will ensure Te Tiriti clause is implemented in all actions taken under the Act, which must be the intent/its impact

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Paper 1 – Appendix 3: Key Themes from Regional Hui

Hui details	Key themes
<p>Taranaki - 17 March 2021</p>	<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 the Treaty. • Strong support for working with council strategically in a genuine partnership, elevating the weighting of hapū iwi management plans and adequately resourcing hapū and iwi for these functions. • Concern for how a National 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.
<p>Wellington - 18 March 2021</p>	<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 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.
<p>Christchurch - 23 March 2021</p>	<ul style="list-style-type: none"> • Crucial any new legislation upholds settlement acts. • It is not necessary or appropriate for the Crown to introduce definitions of mana whenua, representation already happens in the takiwa of Ngāi Tahu. • 'Te Mana o Te Taiao' will need to be codified and the legislation underneath will be crucial. • the current wording of 'landscapes' in the tikanga recommendation is too limiting. • 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 to call in consents. • Support for more funding and support, including suggestions to change the way rates paid by are allocated.
<p>Tauranga - 25 March 2021</p>	<ul style="list-style-type: none"> • Definitions within 'Te Mana o Te Taiao' still needs to be worked through, such as health and 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.

<p>Hamilton - 26 March 2021</p>	<ul style="list-style-type: none"> • '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 principals 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 Waikato River Authority. • Support for increased funding for engagement, kaitiaki and Māori representatives.
<p>Whakatāne - 27 March 2021</p>	<ul style="list-style-type: none"> • '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 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 questions about how it would be truly representative and have the right mandate.
<p>Whangarei - 31 March 2021</p>	<ul style="list-style-type: none"> • [REDACTED] • 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.

<p>Auckland - 31 March 2021</p>	<ul style="list-style-type: none"> • 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 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 a Rohe). • Questions about who will be considered a partner/mana whenua, clear implementation guidance that considers each region will be critical.
<p>Gisborne - 1 April 2021</p>	<ul style="list-style-type: none"> • 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 our 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 Advisory Board, creates an unnecessary layer of bureaucracy.

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Paper 1 – Appendix 4: Key Themes from Regional Hui as they relate to each Chapter 3 recommendation

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. 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. • [REDACTED]
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>
	<p>Summary</p> <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	<p><i>Funding and support options for Māori should be implemented</i></p> <p>Summary</p> <ul style="list-style-type: none"> • Support needed to engage with councils, particularly regional councils – eg, 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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Paper 1 – Appendix 5: Full notes from Regional Hui

[Note - this appendix is provided as an annex to the MOG meeting pack]

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Paper 1 – Appendix 7:

[REDACTED]

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Paper 2: Te Mana o Te Taiao

Context

1. This paper seeks your agreement to an option for an interim approach to Te Mana o te Taiao for the purposes of the NBA exposure draft.
2. The NBA will serve as New Zealand's cornerstone environmental statute. As such, it will play an important role in protecting the needs and interests of future generations. One way these needs and interests are proposed to be reflected in the NBA is through reference to Te Mana o Te Taiao.
3. Cabinet has agreed [see CAB-20-MIN-0522⁷] to objectives for the resource management reform, including an objective to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori. In addition
 - a. MOG 3, agreed that the role of the NPF is, among other things, to provide a mechanism by which the NBA (and SPA) will give effect to Tiriti principles and reflect te ao Māori; and
 - b. MOG 4 agreed that NBA plans will implement Te Mana o Te Taiao and provide for kaitiakitanga and mātauranga Māori.
4. Cabinet agreed to use the Panel's version of Te Mana o Te Taiao as a starting point for the drafting of the NBA exposure draft [CAB-20-MIN-0522]. Cabinet also agreed that the Ministerial Oversight Group will work with the formed collective of Māori entities on how to best express Te Mana o te Taiao to ensure that it is clear and workable.
5. The concept of Te Mana o te Taiao has been socialised and engaged on widely as the means to include te ao Māori in the purpose of the NBA. This work is complex. While not yet complete, it has highlighted several issues with the Panel's version of the concept. The alternative options also require further engagement and analysis before inclusion in the NBA Bill proper.

The Panel's proposal

6. The Panel stated "that including the concept of Te Mana o te Taiao in the purpose statement of the NBA would better align the resource management system with te ao Māori"⁸. They stated that doing so "would reflect the core value that the health of natural resources is integral to the health and wellbeing of people and communities, and give effect to the fundamental truth accepted in all communities that life itself depends on the health of our natural resources"⁹. While the concept draws on ideas from te ao Māori, the Panel considered it one that all New Zealanders could identify with.
7. The Panel's proposed approach was to add 'recognise the concept of Te Mana o te Taiao' to the purpose statement of the NBA, as per their indicative drafting below:

⁷ <https://www.mfe.govt.nz/sites/default/files/media/RMA/cabinet-minute-reforming-the-resource-management-system.pdf>

⁸ Pg.98, Resource Management Review Panel. 2020. New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel.

⁹ Ibid, pg.98.

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.
8. The intention being that introducing the concept would promote a shared intergenerational environmental ethic for the natural environment. The Panel defined Te Mana o te Taiao as *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*. They stated that “Te Mana o te Taiao expresses in te reo the concept of safeguarding the life-supporting capacity of natural resources which has been a longstanding part of section 5 of the RMA”¹⁰.

Interaction of Te Mana o Te Taiao and the NBA’s proposed intergenerational environmental test

9. Any reference to Te Mana o Te Taiao and corresponding requirements on decision-makers will be implemented alongside other aspects of the proposed purpose of the NBA. Officials’ view is that reference to Te Mana o Te Taiao should complement and reinforce the NBA’s focus on enabling use of the environment that promotes the wellbeing of present and future generations, meeting natural environmental limits, and promoting specified outcomes for the natural and built environment.
10. The NBA will replace the RMA and serve as New Zealand’s cornerstone environmental statute. As such, it will take on the role of ensuring the needs and interests of future generations are reflected in decision-making today.
11. **Appendix 1** compares intergenerational elements of the purpose and supporting provisions of the NBA agreed to date and the current Part 2 of the RMA. Many of the RMA’s intergenerational elements are present in the proposed NBA, albeit in different form. For example, ‘sustainable management’ is replaced by a focus on specified limits and outcomes, as well as supporting the wellbeing of present and future generations. Other aspects of the RMA are not currently in NBA proposals, in particular, section 7 principles relating to the ethic of stewardship and finite characteristics of natural and physical resources.
12. Depending on the option that is selected, Te Mana of Te Taiao may contain concepts not referenced elsewhere in NBA proposals that strengthen its approach to intergenerational equity; in particular, reference to the ‘intrinsic value of ecosystems’. Once an approach to Te Mana o te Taiao is agreed, officials will provide further advice on any gaps in the intergenerational elements of the current proposals for the NBA we consider should be addressed.
13. Regardless of the option selected for Te Mana o Te Taiao, we will work with PCO to ensure the NBA is clear that the way present generations meet their needs should not compromise the ability of future generations to meet their own reasonably foreseeable needs.

Engagement with iwi/Māori Groups

14. 

¹⁰ Pg.75, Resource Management Review Panel. 2020. New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel.

15. Engagement with these iwi/Māori groups has suggested Te Mana o te Taiao should:
- prioritise the protection of te taiao and its life-supporting capacity.
 - recognise the interdependency of ecological, social, economic and cultural values, beyond merely natural environmental limits.
 - recognise the relationship between te taiao and iwi, hapū/ Māori.
 - have appropriate statutory weighting – the Panel’s proposal of ‘recognise the concept’ is unhelpfully vague.
 - be woven into the NBA as a whole and aligned with the use of appropriate mātauranga, at different decision-making levels.
 - clarify through public conversation some of the points raised through engagement to date, i.e., whether the inclusion of ‘mana’ is the most appropriate concept and is there another concept that articulates the life force of te taiao better, such as ‘mauri’?
16. The Minister for the Environment recognises each of these issues is being considered in the development of the NBA, but is concerned Te Mana o te Taiao is being unduly broadened to cover too many issues. This risks both complicating the NBA and undermining the core environmental protections the NBA must achieve.

Broader Engagement with Iwi and Hapū

17. Officials held engagement meetings for Māori, hapū and iwi representatives in nine locations between 17 March and 1 April 2021 to discuss the Panel’s recommendations in the Te Tiriti and te ao Māori chapter of their report. These meetings indicated that te ao Māori understandings of the environment are important in their own right, and are broadly consistent with the Government’s objectives for the NBA relating to environmental protection/restoration and development.
18. As part of the discussions, three key questions relating to the proposal regarding Te Mana o te Taiao were identified:
- Is Te Mana o te Taiao the right phrase to use?
 - What statutory weighting should be used?
 - How should the phrase be defined/described?
19. Meeting attendees also expressed a range of views on the concept of Te Mana o te Taiao, including:
- Concept:
- Mauri, tangata and whakapapa are not reflected in the concept: 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.
- Implementation:
- Concern that putting Māori concepts and terms into legislation can undermine their meaning, interpretation may be variable.
 - Māori should be defining Te Mana o te Taiao according to tikanga.

- c. Provides wiggle room if too conceptual, needs clear direction to underpin the concept.
- d. Need to work with hapū and iwi to agree on the concept.

Feedback on the Panel's proposal

20. The Panel's proposal has been extensively tested with iwi/Māori groups and in broader engagement with Māori where concerns have been raised about:
- a. "recognise the concept" language being unhelpfully vague. It is possible to recognise a concept without requiring any action be taken;
 - b. absence of key concepts vital to te ao Māori understanding of te taiao including mauri, whakapapa and tangata (including the innate connection between people and the environment); and
 - c. whether Te Mana o te Taiao is the right wording to resonate with Māori across the country.
21. Officials consider that the Panel's proposed definition dilutes the Māori concepts underpinning Te Mana o te Taiao. In our view, their definition does not fully capture the essence of the concept and may not accurately and appropriately represent the te ao Māori concepts underpinning Te Mana o te Taiao.

Options: an interim approach for Te Mana o te Taiao for the purposes of the NBA exposure draft

22. Cabinet has agreed [see CAB-20-MIN-0522] to objectives for the resource management reform, including an objective to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.
23. Officials' view is that Te Mana o Te Taiao should also complement and reinforce the NBA's focus on enabling use of the environment that promotes the wellbeing of present and future generations, meeting natural environmental limits, and promoting specified outcomes for the natural and built environment. It is worth exploring further whether there are alternatives to the Panel's proposal for Te Mana o te Taiao that would better meet these objectives.
24. Alternatives can include variants consistent with the general boundaries of the Panel's proposed approach that address the identified issues relating to defining Te Mana o te Taiao and the legal weight given to it. There are also additional alternatives, which would be a more significant change.
25. **Appendix 2** provides a summary table of the alternative options with officials' commentary, including:
- a. Option 1: the Panel's proposal: 'recognise the concept of Te Mana o te Taiao' (with detailed feedback on the Panel's proposal already received included in the accompanying paper);
 - b. Option 2: a proposal developed [REDACTED]
[REDACTED] change from a weighting of 'recognise the concept' to 'give effect to' and six key principles that Te Mana o te Taiao encompasses;
 - c. Option 3: a proposal developed by officials based on feedback from iwi/Māori groups and broader iwi and hapū engagement.

26. [REDACTED]

- [REDACTED]
27. We seek your agreement to one of these options as an interim approach for Te Mana o te Taiao for the purposes of the NBA exposure draft.
 28. One approach is to include Option 1 (the Panel's proposal) in the exposure draft clearly caveated as a strawman for discussion, acknowledging that the accompanying paper sets out in detail the feedback on the Panel's proposal already received, other proposals provided by iwi/ Māori groups and key questions and issues we are seeking feedback on.

Regardless of the option agreed by Ministers, the accompanying paper to the exposure draft should contain material on Te Mana o te Taiao and seek comment on the matters raised from the engagement, so submitters to the Select Committee inquiry have the opportunity to provide feedback on this important topic (for example, on whether the proposal resonates as a te ao Māori concept and whether it provides for or supports an intergenerational environmental test).

Next steps

29. Whatever interim approach is selected, work will continue with iwi/Māori groups, and through broader Māori engagement. A clear explanation of the issues, other options as appropriate and work still to come will be included in the accompanying paper.

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Recommendations

note that Cabinet has agreed [CAB-20-MIN-0522] to objectives for the resource management reform, including an objective to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori

note that the Panel recommended the concept of Te Mana o te Taiao as a way of better aligning the resource management system to te ao Māori

note that engagement with iwi/Māori groups, mātauranga experts and through broader regional hui has highlighted:

- the significant potential of Te Mana o Te Taiao (or similar) to improve recognition of te ao Māori in the resource management system if included in the purpose of the NBA;
- that the Panel's version lacks integrity for Māori; and
- the need for further work to progress a suitable proposal for the Bill proper

agree to one of the following options (set out in **Appendix 2**) as an interim approach for Te Mana o te Taiao for the purposes of the NBA exposure draft:

- a. Option 1: the Panel's proposal: 'recognise the concept of Te Mana o te Taiao' (with detailed feedback on the Panel's proposal already received and proposals provided by iwi/Māori groups included in the accompanying paper); or
- b. Option 2: alternative from [REDACTED] change from 'recognise the concept' to 'give effect to' and six key principles that Te Mana o te Taiao encompasses; or
- c. Option 3: alternative developed and agreed to by officials in response to concepts raised from engagement, [REDACTED] – change from 'recognise the concept of' to 'uphold'

agree that officials will continue to work with iwi/Māori groups on Te Mana o te Taiao (or an equivalent concept).

agree that the accompanying paper to the exposure draft will contain material on Te Mana o te Taiao (or equivalent), explain the work to come and seek feedback on key questions

agree that the NBA clearly express an 'intergenerational environmental test' in the purpose or related provisions that ensures that the way present generations meet their needs or provide for their wellbeing does not compromise the ability of future generations to meet their own reasonably foreseeable needs or wellbeing.

note that officials will provide further advice on any outstanding gaps in intergenerational equity elements of the proposed NBA

note that officials will work with PCO to ensure the NBA is clear that the way present generations meet their needs should not compromise the ability of future generations to meet their own reasonably foreseeable needs.

Paper2 – Appendix 1: Comparison of intergenerational elements of the RMA and NBA

<i>Component</i>	<i>Resource Management Act</i>	<i>Natural and Built Environments Act</i>
<i>Purpose statement</i>	<p>Section (5)(2) defines sustainable management as:</p> <p>“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—</p> <p>(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and</p> <p>(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</p> <p>(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.</p>	<p>Key concepts in the purpose and supporting provisions include:</p> <ul style="list-style-type: none"> • Enabling the use of the natural and built environments • Providing for the well-being of present and future generations • Te Mana o Te Taiao • Meeting environmental limits • Promoting specified outcomes • Avoiding, remedying, or mitigating adverse effects of activities on the environment.
<i>Well-being of future generations</i>	<p>The “reasonably foreseeable needs of future generations” are explicitly referenced in Section 5</p>	<p>The “wellbeing of future generations” is intended to be captured in the purpose of the NBA. Regardless of the option selected for Te Mana o Te Taiao, we will work with PCO to ensure the NBA is clear that the way present generations meet their needs should not compromise the ability of future generations to meet their own reasonably foreseeable needs.</p>
<i>Sustainability</i>	<p>Sustainability is captured through the concept of “sustainable management” (see above)</p>	<p>Sustainability is not explicitly referenced; however, it has been replaced with a focus on meeting environmental limits and promoting specified outcomes, including for the wellbeing of future generations</p>
<i>Environmental limits (or bottom lines)</i>	<p>Not explicitly referenced/provided for as a tool, but limits have been established on the basis of “5(2)(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems”, and (5)(2) “people and communities... health and safety”</p>	<p>Explicit duty to set limits is created as part of the purpose, with their primacy over other well-being matters established. The purpose of these [natural] environment limits is to protect “ecological integrity and human health.”</p>
<i>Stewardship of the environment</i>	<p>Section 7 requires decision-makers to have particular regard to (among other things):</p> <ul style="list-style-type: none"> • the ethic of stewardship • maintenance and enhancement of the quality of the environment • any finite characteristics of natural and physical resources 	<p>Specific reference to stewardship has not been included; however environmental limits and outcomes require aspects of the environment to be protected and restored. Kaitiakitanga has been included as an ‘implementation principle.’</p>
<i>Intrinsic value of the environment</i>	<p>Section 5(2)(b) references “Safeguarding the life-supporting capacity of air, water, soil, and ecosystems”, however it is unclear whose life is being supported and why it is being safeguarded. Section 7 requires decision-makers to have particular regard to the intrinsic values of ecosystems.</p>	<p>Not explicitly referenced, although the ‘intrinsic value of ecosystems’ could be reflected within the concept of Te Mana o Te Taiao.</p>

Paper 2 – Appendix 2: Summary table of alternative options

Option name	Short description	Officials' commentary
Option 1: The Panel's proposal	<p>'recognise the concept of Te Mana o te Taiao' and define it as referring to <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> <p>If included, the accompanying paper would need to set out in detail the feedback on the Panel's proposal already received along with other proposals provided by iwi/ Māori groups.</p>	<p>The wording does not provide for an active duty in relation to Te Mana o te Taiao. "Recognise the concept" could result in negligible practical effect. However, for any weighting, decision-makers cannot ignore the purpose of legislation.</p> <p>We have already received extensive feedback from iwi/Māori collective groups and in broader Māori engagement that this proposal does not accurately and appropriately reflect te ao Māori concepts and that there is a risk of cultural misappropriation.</p> <p>As the Panel's proposal has already been considered by officials and Māori, including it in the exposure draft for consideration again during the Select Committee process may represent a missed opportunity to advance the conversation on this complex and important topic.</p>
Option 2: Alternative	<p>The Purpose of the Act should include 'to give effect to Te Mana o te Taiao'</p> <p>Te Mana o te Taiao is a concept that refers to the fundamental importance of the environment to sustain life and recognises that development must occur in a way that preserves environmental wellbeing and ensures intergenerational equity.</p> <p>Te Mana o te Taiao encompasses six key principles relating to the roles of iwi, hapū, ahi kā and other New Zealanders:</p> <ul style="list-style-type: none"> • Equitable governance • Mana whakahaere (authority) • Sustainable development • Kaitiakitanga • Life-supporting capacity • Mauri (life-principle) <p>Te Tai Kaha are currently working on the best way in which these principles can be implemented, including in light of feedback received from consultation at national Māori hui.</p> <p>Supporting information for Option 2 is included in Appendix 3.</p>	<p>The proposal has been developed from a te ao Māori viewpoint and has been tested at a wānanga with mātauranga Māori experts.</p> <p>"Give effect to" is a much stronger action than "recognise the concept" and would require action by those exercising powers or carrying out duties, in the resource management system. Whilst 'give effect to' makes sense in the context of the Te Mana o te Wai in the National Policy Statement for Freshwater Management, where the reference is directly to the mana of the environment it might not make as much sense in this context – particularly in the light of a previous jurisprudence interpretation of 'give effect to' meaning 'implement', i.e., it might not make sense to 'implement' the mana of the environment. However, a weighting of 'give effect to' would send a strong signal that Te Mana o te Taiao should be given the highest level of consideration.</p> <p>The proposal links Te Mana o te Taiao to important concepts underpinning the Panel's recommendation including the intrinsic value of the environment and intergenerational equity.</p>
Option 3: Alternative in response to concepts raised through engagement	<p>The Purpose of the Act should include 'uphold Te Mana o te Taiao'</p> <p>Te Mana o te Taiao refers to the fundamental significance of the natural environment for:</p> <ol style="list-style-type: none"> (a) the intrinsic value of ecosystems, (b) the innate whakapapa relationship between iwi, hapū, ahi kā and te taiao, and (c) the interconnectedness between people and the natural environment, and the importance of this connection in sustaining all life. 	<p>The definition of Te Mana o te Taiao has been developed by officials building on the Panel's proposal and incorporating feedback from iwi/Māori collective groups (including feedback provided [REDACTED] in December 2020 and January 2021) and broader Māori engagement.</p> <p>It highlights: the intrinsic value of the environment; the whakapapa relationship between iwi, hapū, ahi kā and te taiao; and clear priority to restore and protect the environment to at least a state above natural environmental limits. The concept of whakapapa refers to the intrinsic and perpetual connection between iwi and hapū and the environment and would reinforce intergenerational equity provisions in the NBA.</p> <p>The proposal would be compatible with current decisions and drafting for the purpose section.</p>

Upholding Te Mana o te Taiao protects the mauri of te taiao and includes requiring that the use and development of the environment is undertaken within natural environmental limits and that priority is given to restoring and protecting the natural environment to, at minimum, a state above natural environmental limits so that all life can be sustained both now and in the future.

“Uphold” is a novel/untested legal weighting in an RM context but has been raised positively by some iwi/Māori groups and has been used in other legislation. It would not provide as strong a directive as ‘give effect to’ which is generally interpreted as the strongest weighting in the resource management system.

Initial feedback from iwi/Māori groups is that they support this option as an interim approach to Te Mana o te Taiao for the NBA exposure draft as it would be likely to generate constructive discussion in the Select Committee process of the issues and concepts raised in engagement to date. However, the definition has not been tested with mātauranga Māori or te ao Māori experts outside the Crown.

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Paper 2 – Appendix 3:

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Paper 3: Panel's approach to NBA plan governance

Supporting information

Context

1. This paper outlines the Resource Management Reform Panel's (the Panel) governance model for NBA plans under the Natural and Built Environments Act (NBA), for inclusion in the exposure draft.
2. This model is used due to decisions made at the Ministerial Oversight Group (MOG) Meetings #1, 2, 3, 4 and 5. In particular, MOG #5 agreed to include the Panel's 'joint committee' approach to NBA plan governance in the exposure draft.
3. Cabinet has previously:
 - a. made in-principle decisions that there should be one plan per region including both regional and territorial authority functions (CAB-20-MIN-0522 refers)
 - b. agreed that the Ministerial Oversight Group will make further decisions on NBA Plans to support the development of the exposure draft.
4. This paper highlights the strengths, issues, questions and some possible choices in the Panel's governance approach. The paper does not provide a comprehensive list of alternatives nor does it provide alternative plan governance options. The approach to these will be considered as part of the system wide governance (ie, NBA, SPA) discussion planned for MOG #8 on 10 June 2021.
5. Matters relating to freshwater rights and interests are subject to ongoing development. The role of iwi/Māori in respect to freshwater decision-making and governance will be a key dimension of discussions between the Crown and Māori. These issues are in turn interlinked with the design of the wider resource management governance and decision-making framework. Consequently, the final form of the NBA and governance entities may change depending on the outcome of discussions with the iwi/Māori groups.
6. The policy proposals for the governance of NBA plans in the Natural and Built Environment Act will reflect the MOG agreed principles for plan governance, give effect to the principles of te Tiriti, and feature the Panel's recommendation for a joint committee model.
7. The Panel's recommendations for plan governance must be considered within the context of:
 - a. work being undertaken on the role of local government (due to report back 2023) and the three waters reform which proposes the creation of supra regional 3 waters entities
 - b. the creation of new governance entities for regional spatial strategies (spatial strategies) under the Strategic Planning Act¹²
 - c. how the national planning framework (NPF) and spatial strategies's will direct the content of NBA plans creating a more centralised and regionalised system

¹² The Panel proposed the Joint Committee for the preparation of regional spatial strategies; Have an independent chairperson; a Ministerial appointee; and have local authorities represented by officials rather than elected members.

- d. the Panel's proposals for regional compliance, monitoring and enforcement (CME) hubs (MOG is yet to consider and make decisions on CME hubs).
8. New governance arrangements across the RM system will be considered at MOG meeting #8.
 9. Plan governance and decision-making is at the heart of the resource management system and any significant change to the status quo will be subject to public scrutiny and debate. Plan governance will be an important focus for the select committee process.
 10. Exposure draft content will include the joint committee proposal to the extent this can be drafted based on the Panel's approach. The accompanying paper will highlight the key matters of local democratic accountability and efficiency; and regionalisation of decision making and local planning issues. It is also proposed to include questions (rather than options given the amount of outstanding work) on the key issues outlined in Appendix 1 to this paper and summarised above
 11. Matters on which plan governance decisions are still required include:
 - a. NBA plan committee:
 - i. size and scope – are all councils represented, can size vary by region, is there a maximum size for efficiency
 - ii. local authority membership - elected members or officials and selection method
 - iii. mana whenua membership – selection method and the approach to representation
 - iv. split between local authorities and mana whenua – is it the same in all regions for all issues
 - v. funding – what is proportionate
 - vi. ability to direct local authorities to undertake work on its behalf
 - vii. role of the Minister of Conservation
 - viii. the status of NBA plan committees
 - b. Decision making:
 - i. consensus as the Panel proposed or alternatives
 - ii. dispute resolution – the Panel suggest facilitated mediation with Ministerial decisions if that fails
 - c. Existing and future Treaty settlements:
 - i. how to maintain (or enhance) but not diminish their effect
 - ii. interface of existing bodies.
 12. One NBA plan per region is considered by the Panel to be a key source of efficiency gains in the new system. Matters relating the plan development process and detailed decisions will be the subject of later MOG meeting(s), including:
 - a. how place-based planning is incorporated
 - b. how public and hapū/iwi engagement is run
 - c. the detailed plan making process

- d. how the plan-making body is constituted
 - e. responsibility for public engagement
 - f. the Independent Hearing Panel process.
13. The Panel recognised the crucial role of infrastructure provision and the designation process (or its replacement) in the new system. The role of infrastructure agencies as decision makers will also be addressed in an infrastructure paper coming to a forthcoming MOG meeting.

Further information on the Panels approach to governance of NBA plans

The Panel's approach to plan governance requires the creation of a "joint committee"

14. The Panel proposed one plan per region combining existing regional policy statements, regional plans and district plans. The new plans would be developed by a special combined plan committee (a 'joint committee') comprising representatives from local government, mana whenua and the Department of Conservation.
15. This committee would be a new decision-making body provided for under the NBA with the power to develop and approve plans for notification and accept or reject recommendations from an Independent Hearings Panel (IHP).
16. To carry out this role, the Panel noted that the committee needed support from a secretariat staffed with planning and technical experts who would do the drafting and administer the process. They envisioned the secretariat would be resourced by councils in the region and would also include mātauranga Māori experts.
17. The Panel's proposals included high-level references to a plan development process that would use good practice methods for collaborative development and engagement with local communities and iwi/hapū. The Panel also recommended that committee 'strive for consensus' in its decision making.
18. Once notified by the 'joint committee', the proposed NBA Plan would go through a process similar to the IHP process undertaken for the Auckland Unitary Plan. This involved a comprehensive submission and hearing process administered by an IHP chaired by a sitting Environment Court Judge. The key difference between this a process and that suggested by the Panel is that recommendations of the IHP would go to the 'joint committee' for decision (ie accepting or rejecting recommendations).
19. For clarity in this paper and to avoid confusion with joint committees created under the Local Government Act 'joint committees' as proposed by the Panel will be referred to as NBA plan committees.

The Panel's approach to governance creates two key issues

Context

20. The creation of an NBA plan committee changes the status quo, how plans are made, who makes the decision to notify a plan and who accepts or rejects the recommendations from the independent hearing panel.
21. The Panel's approach has a range of implications for local democratic accountability and efficiency; and regionalisation of decision making and local planning issues.

Local democratic accountability and efficiency

22. The Panel identified that a key benefit of the NBA plan committee approach would be integrated management (a key reform objective) across domains and across local authority boundaries. In addition, they considered that greater efficiency would be achieved by reducing the number of plans from over 100 to approximately 14. The Panel considered that the autonomy of the committee from its constituent councils was also key to better plan-making.
23. The Panel's approach proposes creating a NBA plan committee that sits apart from local authorities. This committee would be the "final" decision maker (ie accept or reject recommendations from the IHP) to achieve finality.
24. Decision-making on plans under the RMA currently happens when local authorities formally decide to notify a proposed plan; accept or reject submissions on a plan (and changes to the plan as a result); make decisions on appeals; and make the plan operative. While decisions on submissions (and the hearing process) can be delegated to a committee or a panel of experts, the local authority must formally adopt any recommendations made. These key decisions cannot be delegated.
25. In theory governance options with the highest degree of political accountability, are those where the decisions are being made by local directly elected representatives. Where there are appointed representatives or appointed elected representatives on a committee from all local authorities in a region and mana whenua representation this changes the nature of local democratic accountability.
26. The current system makes local authorities entirely accountable to the community for the decisions they make in the plan-making process. The Panel considered that, in reality this form of accountability has led to influential voices in the community achieving a preference for the status quo rather than outcomes that benefit those who do not have a voice in the system.
27. Local government decision making also occurs within a wider framework of national direction (and for local planning within the context of a regional policy statement); and the Environment Court making decisions on plan appeals. Therefore, in practice local authorities do not have full autonomy over decision making in the current system.
28. The Panel recommended that a joint committee be the decision maker on plans via a specific power in the NBA. This approach changes the level of accountability a local authority has for the decisions being made. The Panel propose that widening the accountabilities for plan making in the new system beyond individual local authorities' decisions on a NBA plan will result in better outcomes and a shift away from preferencing the status quo.
29. This gives rise to questions about the role of elected politicians to be accountable to their constituency for public spending, and budget setting, to make decisions and judgement calls, to lead the community and to be responsive to community views. Costs will be incurred by local authorities as a result of decisions on plans and plan content including for plan implementation or to achieve specific outcomes.
30. It will be necessary to consider these proposed changes in accountability mechanisms against Cabinet objectives for the reforms.

Regionalisation of decision making and local planning issues

31. The Panel recommended one plan for a region prepared by an NBA Plan committee and presents new opportunities to provide a full range and variety of local interests and priorities. Feedback from local government is that the localised or “bottom up” nature of many planning decisions needs to be recognised in the detailed design and process for NBA plans.
32. Aggregating plan governance to the regional level presents new opportunities for ‘on the ground’ local planning. The plan development process can help reconcile regional and local community-based planning, which often happens at the sub-district level by community boards creating community plans or visions or Treaty settlement plans for a particular river or natural taonga.
33. Planning may be more effective where the authority undertaking the planning and engagement is close to the community. An urban centre of a region will often be geographically distant from much of the region. Regions can be diverse with multiple centres and areas with different issues.
34. There are methods such as:
- an NBA plan committee creating a plan as a region and requiring territorial authorities to prepare local sections in accordance with specific direction
 - establishing working groups on specific topics, where the working groups include local authority and iwi/hapū representatives from throughout the region (not just the NBA plan committee)
 - working directly with local authorities and iwi/hapū groups.

There are issues and choices within the Panel’s approach to NBA plan governance

Context

35. Decisions on committee size, type of local authority membership, mana whenua membership, membership split, funding, extent to which a NBA plan committee can direct local authorities and the role of the Minister of Conservation still need to implement the Panel’s recommendations.
36. In addition, while the Panel recommended how a NBA plan committee makes decisions and resolves disputes, these recommendations have a number of practical or implementation implications and there are choices.

What is the optimum size for an NBA Plan committee?

37. While not specifying an ideal size for an NBA plan committee, the Panel noted that the size of the committee would have to be limited to ensure it can carry out its role effectively. Committee members would need to work together to make decisions and to collaborate to make appropriate decisions for the region as a whole.

Local Authority representation on the Committee

38. The Panel envisaged a mix of elected and non-elected experts on the committee. The method for the selection of local government membership and the balance between elected representatives, experts and iwi/hapu will be the subject of later MOG decisions.
39. There will be different perspectives on this balance and we have heard from local government that value-based planning decisions are best made by elected members. This

is because, in their view, elected members are responsible for understanding community preferences and are directly accountable to the community.

40. The tension between technocratic and value-based decision making exists in the current system and there is a choice between direct political representation on a committee or an expert based committee in the new system.
41. There are also choices as to whether the legislation specifies representation and selection on the committee, or whether this is determined regionally based on principles set in the legislation

Mana whenua representation on the Committee

42. The Panel recommended that mana whenua be represented on the NBA plan committee. How mana whenua are selected for a plan committee is still to be decided. As with local government, the Panel noted that in some regions not all mana whenua groups may be able to be represented to keep the committee size manageable. Determining the approach to representation and selection for mana whenua committee members, and who does so will be key.
43. Considerations also include whether a single approach should be developed for all regions to use or whether an approach is guided by legislation but based on regional context and local tikanga.

What should the split between local authorities and mana whenua be?

44. The relative split between mana whenua and local government on a NBA plan committee or proportionality among local authorities also requires a decision.
45. An aspect of both size and the split of representation is the issue of proportionality (for local authorities). A region with one large metro local authority and multiple smaller rural local authorities (where representation is chosen by local authority boundaries, not proportion of residents) could result in a disproportionate representation of one set of interests. For example, a large urban local authority may have greater influence so its interests predominate at the expenses of smaller, rural areas in the region, or an urban area may be out-numbered on the committee, skewing the interests away from the urban centre.
46. There are a number of existing Treaty settlement committee arrangements that create committees and which have a role in advising on or providing plan content. Cabinet has agreed that Treaty settlement arrangements will be carried over and not diminished. A regional approach to the composition of NBA plan committees that recognises existing Treaty settlements and possible new opportunities would be required.

What ability should the NBA plan committee have to direct local authorities?

47. An NBA plan committee's ability to direct local authorities to undertake activities on its behalf, such as plan engagement or raising rates to fund the committee and its ability to commit to future spending to achieve outcomes, raises questions of accountability.
48. An NBA plan committee will need specific powers and functions. Decisions have not been made on the extent to which an NBA plan committee could direct a local authority to undertake activities on its behalf or commit spending. The nature and extent of those powers and functions will need to be decided.

What is the status of an NBA Plan Committee?

49. The exact legal status of a NBA plan committee is currently undecided.
50. The Panel was clear that the NBA plan committee should not be a joint committee under the Local Government Act 2002. This approach raises questions of whether the Local

Government Official Information and Meetings Act 1987 applies, and whether procedural matters (such as standing orders) are replicated.

51. An additional outstanding matter is whether the committee will be 'enduring'. The Panels' approach suggests an enduring body as they considered that the plan committee would undertake monitoring of the Plan. Whether or not a committee is enduring will need to be considered against what they are expected to do, for example make decisions on private plan changes or resolve appeals, both matters that have not been decided yet.

What are the implications of consensus decision making as the Panel proposed?

52. The Panel recommended that NBA plan committees would have duty to reach consensus for decision making. They considered that this approach would ensure members make decisions for the good of the region and to recognise that committees may not be fully representative of every council or iwi/hapū.
53. Consensus decision-making creates a number of challenges including the potential for paralysis on key decisions and the time needed to work through contentious issues and the potential for a lowest common denominator outcome. In practice it is likely that voting will be required to resolve key issues.
54. A number of co-governance bodies and joint committees established through settlement must (not necessarily in the legislation) seek to achieve consensus in decision making, (eg the Waikato River Authority, Te Maru o Kaituna River Authority and the Rangitaiki River Forum). However, mechanisms are in place to enable decisions to be made where consensus cannot be reached including by majority, super-majority or elevation to the relevant Minister.

How should disputes be resolved?

55. To resolve disputes, the Panel envisioned the use of mediation, with the Minister able to step in and make a decision if agreement is not reached. This approach may have the unintended consequence of avoiding contentious issues. Having the Minister make a call over regional/local disputes may also reduce the legitimacy of the governing body in its own region.

What is the role of Minister of Conservation and DOC in NBA plan committees?

56. The Minister of Conservation has functions under the RMA for policy setting at a national level for the coastal marine area (CMA). These include preparing the New Zealand Coastal Policy Statement (NZCPS), directing a review of a regional coastal plan and being the local territorial authority and regional council for the Sub-Antarctic and Kermadec islands.
57. The common marine and coastal area is (with rare exception) managed as a public asset, although not "owned" by anyone¹³. The Minister of Conservation has proxy "landowner" functions and fiscal liabilities for the CMA. The Marine and Coastal Area (Takutai Moana) Act 2011 relies on the RMA to manage the allocation of space, and the protection of the value of the CMA to the public as 'a commons' and for Māori.
58. The Panel recommended that the Minister of Conservation retain the function to set national direction for the coastal marine area, and that any limits in the CMA should also be set by the Minister of Conservation. They considered that the CMA was sufficiently different to other parts of the environment to require a different level of Ministerial oversight. The Panel recommended that the Minister of Conservation should appoint a representative to the NBA plan committee preparing NBA plans.

¹³ Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana) came into force, it has ceased to be Crown land, and is no longer owned by anyone.

59. The Panel's report did not specify how the functions of the Minister of Conservation should be given effect to with regard to the relationship to an IHP process for NBA plans, and for the NBA plan committee to hold the approval role for plan decisions.
60. The Minister that has the CMA policy function should also have the stewardship role to ensure consideration is given to the crown's exposure to fiscal liability.
61. That Minister is currently the Minister of Conservation, hence the Panel recommendations for representation on the NBA plan committee. If the Minister of Conservation no longer has the role for national direction for the coast, then retaining functions in the NBA plan preparation and approval is not necessary.
62. There are options to achieve this including (these are not mutually exclusive):
- a. the Minister with policy and stewardship responsibilities having an appointee on the NBA plan committee to represent the NPF direction and assist with implementation in an integrated way
 - b. the Minister with policy and stewardship responsibilities for the CMA having an audit responsibility to remedy any inconsistencies between the NPF and NBA plan content
 - c. the Minister responsible for the NPF content approve the NBA plan provisions for the CMA.
63. The level of detail above does not need to be included in the exposure draft or accompanying paper. The issue of DOC's proxy 'landowner' and policy responsibilities for the CMA and the potential fiscal liabilities is highlighted here to ensure that governance issues covered by the Panel's approach are addressed. The role of the Minister of Conservation in the RM system will be addressed and decisions sought in a later MOG.

How should a NBA plan committee be funded and supported?

64. Ensuring that the proposed committees and their constituent members are adequately resourced to make good decisions will be crucial. How that happens is yet to be considered.
65. The Panel recommended that funding be provided for the committee to undertake "*administration, plan drafting, policy analysis, coordination of public engagement and commissioning expert advice*". Decisions are required on what a local authorities' contribution is to funding a committee as well as their role in providing planning advice and information and how this might work in practice.
66. The Panel envisaged the NBA plan committee being supported by a secretariat funded or provided by constituent local authorities. The rationale for this approach is that local government already has budget to carry out these functions under the RMA. The Panel considered that under the NBA they would effectively "pool" their resources to produce one plan and resource the IHP process. The Panel identified local government as the main source of funding for: the NBA Plan Committee (including mana whenua members); the committee's secretariat (including mātauranga Māori members) and the IHP (and any secretarial/technical support they may need).
67. Supporting a NBA plan committee will require local authorities to provide funds and resources. Smaller local authorities with limited budget for planning may benefit from a bigger pool of resources from across the region. It will be necessary to carefully consider how NBA plan committees are funded to minimise the potential for local authority's disagreement on a funding model.
68. Decisions will need to be made about whether the committee can set its own budget, or whether the amount of resources available to the committee is determined by the local authorities.

69. In addition, further decisions on the role local authorities play in the plan making process and how the NBA Committee undertakes engagement with the community will need to be made. These are key elements of the plan-making process which need to be worked through alongside the governance model.

A governance model and the choices within it for NBA plans needs to give effect to the RM Reform objectives

Context

70. A governance model for NBA plans needs to advance the Cabinet agreed objectives for reform. This includes protecting the environment, enabling development within limits and giving effect to the principles of te Tiriti,
71. A key RM Reform objective is to improve system efficiency and effectiveness while retaining appropriate local democratic input.
72. The balance and trade-offs between outcomes for reform will determine how the key issues are resolved and a preferred plan governance model for NBA plans. Plan governance does not occur in isolation and the plan development process has a role in meeting the objectives for RM reform.

A plan governance model must give effect to the principles of te Tiriti

Context

73. The Panel considered the inclusion of mana whenua on the committee as a key way to give effect to the principles of te Tiriti. The Panel was of the view that representation on the committee would ensure the plan development process was undertaken in a way that reflected Mātauranga Māori and tikanga. The Panel did note that not all mana whenua groups would have direct representation on the Committee.
74. The MOG#2 on 15 February 2021 considered whether Māori participation in resource management and in plan making will be resourced either as Treaty partners or 'in the public interest'. MOG #2 also agreed that an outcome of its RM reform objectives include giving effect to te Tiriti principles in the process and substance of plan making. Plan development and detailed plan content will be addressed in a later MOG.

Discussion

75. Giving effect to the principles of Te Tiriti in the context of plan governance can be achieved in a number of ways including iwi/hapū representation on a plan committee, a requirement that iwi management plans are taken into account in the preparation of plans, and participation and involvement in regional spatial strategies under the Strategic Planning Act.
76. The level of representation and how mana whenua are selected and by whom for a NBA plan committee are key decisions required. Considerations include:
- a. the level of representation and how mana whenua are selected for a NBA plan committee
 - b. how local or catchment level mana whenua interests are to be represented and balanced with region wide interests eg, how to provide for interests in particular natural taonga
 - c. how the effect of Treaty settlement arrangements are to be maintained (or enhanced) but not diminished eg, how those arrangements or established groups interact with the committee
 - d. how to not foreclose options for addressing rights and interests.

77. A number of local authorities already provide for iwi/hapū representation on plan development committees. However, as the RMA currently requires elected representatives to make key decisions (eg notification, decisions on submissions and making the plan operative) they may not participate in “governance” decisions unless iwi/hapū representatives have been given specific voting rights. Some Treaty settlements have also established roles for iwi and hapū in plan development and decision-making in relation to particular natural taonga.

Integration of NBA plans and regional spatial strategies is key to meeting reform objectives

Context

78. Cabinet has agreed to enact three new pieces of legislation: the Natural and Built Environment Act (NBA), the Strategic Planning Act (SPA) and the Climate Adaptation Act (CAA) (CAB-20-MIN-0522 refers). These new proposed Acts are intended to work together to contribute to integrated management of land-use, environmental regulation, spatial planning, and to support New Zealand’s response to the effects of climate change. For the system to work efficiently and deliver on Cabinet’s objectives for the reform, these Acts and the instruments within them need to be well integrated.
79. The National Planning Framework (NPF), spatial strategies and NBA plans each play an important, but distinct role within the system. The roles and functions of these instruments, what decisions are made where, and the relationships between them will shape system efficiency.

Discussion

80. NBA plans will be an implementation vehicle for both the NPF and spatial strategies, with some decisions on NBA plans limited by direction in these higher order instruments. Recommendations for the role and function of these instruments in relation to each other (including their respective legal weights on each other), and how to ensure that integration between them, and the wider system, is efficient will be provided at MOG #7.
81. NBA plans will implement the NPF and have a role to play in implementing spatial strategies (alongside implementation agreements). The NBA has a role to link the long-term strategy set out in the spatial strategy into short and medium term actions to achieve outcomes. This will be a key element of NBA plan decision making.
82. Regardless of who makes the final decisions on NBA plans, plan content directed from the NPF and spatial strategies’ centralises and regionalises key decisions and may remove a level of accountability from local authorities. Governance and decision-making for spatial strategies will be considered at a future MOG.

Content of exposure draft and accompanying paper (the Parliamentary Paper)

83. The exposure draft will contain the Panel’s approach to plan governance as outlined in Chapter 8 of the Panel’s report. The NBA plan governance approach in the exposure draft will not be complete and will not include how members of a committee are selected (both local government and mana whenua groups), the size of the committee or the role of local government in the plan development process.
84. The key issues should be highlighted in the accompanying paper to ensure that feedback on these issues is received enabling the select committee to inquire effectively into NBA plan governance and the Panel’s approach.
85. It is recommended that the accompanying paper highlight the key issues of:

- a. local democratic accountability and efficiency
 - b. regionalisation of decision making and local planning issues.
86. In addition, it is recommended that the accompanying paper include questions that address the issues and matters not included in the Panel's approach to NBA plan governance as outlined in Appendix 1 to this paper.

Treaty impacts

87. Our overall assessment is that changes to plan-making governance will change the context within which Treaty settlement arrangements operate and have the potential to provide opportunities for iwi/hapū. Designing a new system creates opportunities to provide an enhanced role for mana whenua in decision making across the RM system.
88. This assessment has been undertaken on the basis of the Panel's approach to plan decision making.
89. The impact on Treaty settlements cannot be fully assessed until a plan decision making approach has been agreed by MOG and appropriate engagement has been undertaken with the relevant PSGEs.

Treaty settlements

90. Plan decision making options will impact all Treaty Settlements that interact with the RMA in some way. This assessment focuses on the implications for types of Treaty settlement arrangements, rather than individual settlements. Once a plan decision making approach has been agreed it will be necessary to undertake clause by clause assessments of Treaty settlements to determine how they can be protected and appropriately transitioned (without being diminished).

Types of Treaty settlement arrangements that may be impacted

Legal effect of status, values, strategy documents and other matters:

91. These commitments require persons exercising functions, powers or duties under the RMA to apply a particular legal weighting to a relevant value or set of values, statement of recognition, strategy document or other matters. Generally a stronger weighting is applied in the case of local level planning while a weaker (or no) weighting is applied to all other functions et.al such as those performed at a national level or consenting decisions. Examples include the legal status provided through Treaty settlement legislation to the Waikato River Vision and Strategy, Te Pa Auroa nā Te Awa Tupua - the Te Awa Tupua Framework, several strategic documents developed by joint committees established through settlements and statutory acknowledgements.
92. In the case of an autonomous committee, in the affected regions, such consideration would likely need to be applied by the committee during plan development and decision making. Where a relevant responsibility is specifically assigned to a local authority (as opposed to 'any person exercising a function'), consideration would need to be given to how that responsibility should be delegated.
93. An autonomous committee for the whole region may ensure a more consistent application of legal status and may provide efficiencies by potentially removing some layers of statutory responsibilities.
94. Treaty settlement requirements may or may not be applied more effectively by an autonomous committee. This would depend on factors such as:

- a. what the overlap was between the region as a whole and the particular area (usually a catchment) to which the legal effect applied
- b. whether the committee had the specific expertise to consider the requirements (more so than at a sub-regional level).

Co-governance (with Crown):

95. Co-governance with the Crown applies in the case of Waikato and Waipa Rivers settlements where the Waikato River Authority (WRA - 50/50 iwi/Crown appointees) develops the Waikato River Vision and Strategy which is included as a whole in the Regional Policy Statement.
96. Consideration would need to be given to how an autonomous planning committee might interact with:
 - a. the WRA, ie whether the WRA should be represented on a committee in addition to mana whenua representatives, whether the WRA should advise the committee in some way
 - b. the vision and strategy, ie where in the new system the vision and strategy sits if regional policy statements are removed and what responsibilities might then fall to an autonomous planning committee that would have previously fallen to councils
 - c. existing joint management agreements between River iwi and councils, especially where plan development and decision making are included in those agreements.
97. These settlements include a number of specific plan-making related responsibilities for councils. Consideration will need to be given to whether any or all of these responsibilities should be delegated to the committee and in what way.

Joint committees

98. Joint committees are deemed to be Joint Committees of council under the Local Government Act. They are generally made up of half iwi and half council representatives and have direct input into the development of regional policy statements and plans under the RMA. One of the key roles of joint committees is to develop strategy documents (covering matters like vision, values and outcomes.) that most often must be recognised and provided for in regional and local planning. The effect of the documents tends to be most relevant at the level of the regional plan. Consideration should be given to:
 - a. how any committee might interact with the body or bodies that might develop plan whether:
 - i. a change of plan content developer or decision maker might impact on established relationships in relation to the joint committee
 - ii. iwi might lose a degree of influence in the plan making process if councillors who sit on the joint committee are no longer as involved in plan development and decision making as what they previously were
 - iii. the influence of the joint committee will be diluted in a combined planning setting
 - iv. iwi would want and have capacity to be involved in both a joint committee for a particular natural taonga and a region wide joint committee

Advisory boards

99. Advisory boards are either a group composed exclusively of iwi representatives or a joint group also including Crown, local government or other representatives. Local councils must have regard to their advice. Matters to consider include:

- a. how a committee should consider the advice of an advisory board
 - b. whether an advisory board's influence could be diluted where an autonomous committee leads the plan-making process
 - c. whether an advisory board should or could have representation on a committee
 - d. influence on the appointment of hearing commissioners.
100. Some settlements include a provision for iwi to maintain a register of preferred hearing commissioners which is lodged with council. Councils can choose commissioners from this list and in some cases must give the list special consideration when appointing commissioners, including for call-ins. In some cases, these obligations may apply to the proposed independent hearings process. These obligations can exist in relation to particular natural taonga so consideration will need to be given to how they may apply in a regional setting.

Iwi and hapū rights and interests in freshwater

101. Ministers have given an undertaking to Māori that RM reform will not limit options in relation to iwi and hapū rights and interests in freshwater.

102.

Waitangi Tribunal recommendations

103. The Panel considered relevant Tribunal findings and recommendations in developing its proposals. The Panel's proposal for plan-making governance preserves space to address Tribunal findings and recommendations in relation to partnership approaches for natural resource governance and management

Other impacts

104. Other impacts include:

- a. potential for more efficient engagement for iwi and hapū ie, being able to focus iwi and hapū resources into less processes
- b. a possible lessening of iwi and hapū influence there is less focus on local or catchment level interests and where some iwi and hapū cannot be directly represented on decision-making bodies. There would need to be more onus on the plan development process to provide an appropriate level of influence.
- c. whether having the IHP process led by Environment Court judges would give effect to the principles of the Treaty seeing as there are no Māori Environment Court judges
- d. Māori capacity to be involved in new institutions.

105.

- a.
- b.
- c.
- d.
- e.



Recommendations

note that the MOG agreed on 7 April 2021 to include the Panels' option for Plan governance (the "joint committee" approach) in the NBA exposure draft

agree the paper accompanying the NBA exposure draft highlight the Panel's approach within the context of achieving the resource management reform objectives and develop questions to enable feedback on this approach

note that after the select committee report back detailed subsidiary decisions will be needed to implement the governance approach

agree a RM system governance paper that addresses governance across NBA plans, Strategic Planning Act and Climate Change Adaption Act governance will be prepared for MOG meeting #8.

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Paper 3 – Appendix 1: Panel’s recommendations on plan governance and key questions

Panel’s recommended approach	Issue or trade-off (not an exhaustive list)	Possible questions
<p>A single NBA plan committee would be responsible for drafting the plan.</p> <p>To ensure that a single council could not “<i>defeat the purpose of the combined planning process</i>”.</p>	<ul style="list-style-type: none"> • Size of a committee and local government representation • Regional differences mean that one size may not fit all (eg, where Treaty settlements require a particular approach. • The role of local planning and local councils in region-wide planning • Legal status of the NBA committee 	<ul style="list-style-type: none"> • Is an autonomous NBA plan committee essential to achieve these benefits, as the Panel recommended? Why/why not? • Is less council control over planning and potentially lower commitment to implementation offset by allowing local authorities to submit through the development process? What alternatives should we consider? • How could an autonomous NBA plan committee be accountable to the community? • An autonomous committee would need to direct council funding and work to function. What are the advantages/disadvantages of this sitting with the committee?
<p>The NBA plan committee is made up of representatives of:</p> <ul style="list-style-type: none"> • the Minister of Conservation (they have a legislated role in managing the resources in the coastal marine areas and approving regional coastal plans) • the regional council • the territorial authorities • mana whenua. 	<ul style="list-style-type: none"> • Representation on a committee (elected or technical experts) • Selection processes for mana whenua committee members (and local government where needed) • The role of the Minister for Conservation • Favour efficiency/workability, and provide additional representation through the plan development process 	<ul style="list-style-type: none"> • Are the groups to be represented on the NBA plan committee the right ones? Why/Why not? • What role should the representative of the Minister of Conservation have? Why? • Should local government representatives on the NBA plan committee be elected officials or experts? • What does giving effect to the principles of te Tiriti mean or “partnership” with mana whenua look like for a NBA plan committee <ul style="list-style-type: none"> ○ what options are there to best use the limited time of iwi/Māori to shape and influence plans? What are the advantages/disadvantages? ○ how can methods best provide for existing relationships, joint decision-making and participation? ○ how should mana whenua representatives be chosen? ○ what effect could these proposals have on Treaty settlements? How should these be addressed?

Panel's recommended approach	Issue or trade-off (not an exhaustive list)	Possible questions
		<ul style="list-style-type: none"> Does there need to be the same split between mana whenua and local government representatives for every region? Why/why not?
<p>The size of the NBA plan committee may need to be limited so that it can carry out its role, and that delegates may need to represent more than one group.</p>	<ul style="list-style-type: none"> The committee will need to be kept to a manageable size All local governments in region represented (except where numbers may be too large) Not all mana whenua maybe able to be represented Representativeness or efficiency/workability 	<ul style="list-style-type: none"> What are the potential challenges with selecting committee members to represent more than one group? What method should be used, and why? Does the selection method need to vary for mana whenua and local government? Why/why not? What should be used if the method is different, and why? Do all councils need to be represented on the joint committee? Why/why not? Will the selection process for doing this need to be the same for every region? Is there a maximum size that should be set for efficiency? What is this and why? Should all councils have the same representation regardless of population size or financial contribution?
<p>The NBA plan committee is to use consensus based decision making.</p> <p><i>"To recognise these committees are not always fully representative ... we consider it is important to use consensus-based decision-making as much as possible, so voting rights are not at stake."</i></p>	<ul style="list-style-type: none"> How a committee makes its decision Choices directly relate to the degree of representativeness and whether the decisions involve underrepresented political issues and fiscal priorities 	<ul style="list-style-type: none"> What are the potential advantages/challenges with consensus decision making? Are there alternative decision making approaches that we should consider? What are the advantages/challenges with suggested alternatives?
<p>Funding a secretariat for each NBA plan committee would come from local authorities and would need to be agreed between the constituent councils.</p>	<ul style="list-style-type: none"> Agreement may be difficult to reach as councils disagree on their 'fair share' and have differences in population, economies and area of land 	<ul style="list-style-type: none"> What potential challenges are there with agreeing funding for the secretariat? What alternative options should we consider?

Panel's recommended approach	Issue or trade-off (not an exhaustive list)	Possible questions
<p>For “administration, plan drafting, policy analysis, coordination of public engagement and commissioning expert advice.”</p>		
<p>Acknowledged that the NBA plan committee may not be able to resolve disputes that arise during the formation of the committee and the plan development process</p> <p>For “funding, representation, processes to be adopted by the committee, the form and contents of the plan for notification, and the decision to accept or reject IHP recommendations”.</p> <p>Facilitated mediation was proposed and if it fails the Minister for the Environment will make the decision.</p>	<ul style="list-style-type: none"> • There are multiple places where dispute resolution is required and dispute resolution takes time reducing efficiency of the process 	<ul style="list-style-type: none"> • What are the advantages/challenges of this dispute resolution process? • Are there any alternative options that we should consider? • What are the advantages/disadvantages of these alternatives?

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Paper 5: General MOG business – use of subgroups

Context

1. The resource management (RM) reform process is substantial, and its timeframes ambitious. The number of decisions required, limited time available, and the extent of Ministerial interest in some reform topics is placing pressure on what can be achieved in each MOG meeting. This risks MOG meetings not focusing and making decisions on the critical issues needed to progress the RM reform process.
2. At MOG #5 this issue and the risk it poses to decision-making was discussed. In response the Minister of Finance and Minister for the Environment have agreed to the use of subgroups to streamline the operation of MOG meetings by providing a forum for Ministers with an interest in particular topics to discuss them and decide a way forward (or a narrowed set of options). The establishment of subgroups is provided for by paragraph nine of the MOG terms of reference.
3. To date two meetings of the Māori interests subgroup have met to discuss the NBA Treaty clause, and one meeting of an infrastructure subgroup was held to discuss the implications of the reform for infrastructure in the system.

Proposed subgroups

4. The following subgroups and associated membership is proposed. Due to the fast-paced nature of the RM reform programme it is noted not all Ministers may need to attend every meeting. To ensure Minister's time is used effectively there may also be instances where papers are circulated for comment without the need for a meeting.

Subgroup	Proposed membership
Māori interests	Environment (Hon David Parker) Māori Crown Relations: Te Arawhiti (Hon Kelvin Davis) Housing (Hon Megan Woods) Local Government (Hon Nanaia Mahuta) Māori Development (Hon Willie Jackson) Associate Environment (Hon Kiritapu Allan) Associate Environment (Hon Phil Twyford)
Infrastructure/Urban development	Infrastructure/Finance (Hon Grant Robertson) Corrections (Hon Kelvin Davis) Housing (Hon Dr Megan Woods) Environment (Hon David Parker) Local Government (Hon Nanaia Mahuta) Building and Construction (Hon Poto Williams) Transport (Hon Michael Wood) Associate Environment (Hon Phil Twyford) Climate Change (Hon James Shaw)
Rural development	Environment (Hon David Parker) Local Government (Hon Nanaia Mahuta) Agriculture (Hon Damien O'Connor) Associate Environment (Hon Kiritapu Allen) Conservation (Hon Dr Ayesha Verrall) Climate Change (Hon James Shaw)
Natural environment	Environment (Hon David Parker) Local Government (Hon Nanaia Mahuta)

	Agriculture (Hon Damien O'Connor) Associate Environment (Hon Kiritapu Allen) Conservation (Hon Dr Ayesha Verrall) Climate Change (Hon James Shaw)
Transactional efficiencies	Infrastructure/Finance (Hon Grant Robertson) Housing (Hon Dr Megan Woods) Environment (Hon David Parker) Local Government (Hon Nanaia Mahuta) Transport (Hon Michael Wood)

Recommendation

note that subgroups of Ministers will receive papers and/or meet as needed to discuss reform related issues on:

- a. Māori interests
- b. infrastructure/Urban development
- c. rural development
- d. natural environment
- e. transactional efficiencies

note that subgroups will be used to refine issues or options in relation to the above topics, but that any decision-making remains with the Ministerial Oversight Group unless specifically delegated to a subgroup on a particular matter.

Minute from RM Reform Ministerial Oversight Group Meeting #5 on 7 April 2021

MINUTE

RM Reform Ministerial Oversight Group Meeting #5

Date: Wednesday 7 April 2021, 3.30 – 4.15 pm

Location: 8.5 EW

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

Attendees: Hon Megan Woods, Minister of Housing
Hon Nanaia Mahuta, Minister of Local Government
Hon Poto Williams, Minister for Building and Construction
Hon Damien O'Connor, Minister of Agriculture
Hon Willie Jackson, Minister for Māori Development
Hon Michael Wood, Minister of Transport
Hon Phil Twyford, Associate Minister for the Environment
Hon James Shaw, Minister of Climate Change

Apologies: Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti
Hon Kiritapu Allan, Minister of Conservation, Associate Minister for the Environment, and Associate Minister for Arts, Culture and Heritage

Agenda Item 1: Report back on engagement with iwi/hapū and post-settlement governance entities

1. **noted** that officials provided a report back on engagement with iwi/hapū and post-settlement governance entities

Agenda Item 2: Report back from the sub-group meeting discussions on the Treaty clause

2. **noted** that Minister Parker tabled a paper outlining a range of Treaty clause options that was discussed by the subgroup. He noted that the subgroup agreed further work on the options is required, and no decisions will be taken until Ministers have reviewed the written report on the resource management hui. Decisions are required at MOG#6 meeting to ensure inclusion of provisions in the exposure draft.
3. **noted** that a written report on the hui will be circulated to Ministers prior to MOG#6

Agenda Item 3: Approach for Select Committee inquiry into the NBA exposure draft

1. **noted** officials' current intention to take the exposure draft, accompanying material and Select Committee inquiry information to Cabinet Environment, Energy and Climate Committee on 20 May 2021
2. **noted** that:
 - a. the scope of the Select Committee inquiry will be directed to reviewing the NBA exposure draft
 - b. officials will draft the inquiry Terms of Reference, notice of motion and accompanying material
 - c. officials are conducting ongoing complementary consultation on aspects of reform policy not detailed in the NBA exposure draft.
3. **agreed** to delay completion of the Select Committee inquiry package by 1 month to enable the inclusion of additional content on the decision-making process for Natural and Built Environments Plans, with Cabinet decisions being sought in late June
4. **agreed** that the exposure draft will contain provisions on a governance model for the preparation of NBA plans that reflect the recommendations of the Resource Management Review Panel (specifically Chapter 8, recommendations 3-6, and the relevant parts of recommendations 8-11) and that accompanying material will provide further analysis of that proposal to support detailed consideration of the provisions and possible alternatives by submitters
5. **agreed**, if needed, to insert placeholder clause headings in the NBA exposure draft that will demonstrate linkages between the Climate Change Response Act 2002 and the NBA
6. **agreed** that the NBA exposure draft will cover the remaining matters set out in the paper '*Approach to Select Committee inquiry into the Natural and Built Environments Act Exposure Draft*'.
7. **agreed** that infrastructure will be included in the NBA exposure draft and accompanying material, once relevant policy issues are addressed.

Agenda Item 4: Report backs and recommendations agreed outside of MOG meetings

8. **noted** that officials provided a written update on engagement with local government to date
9. **noted** that officials have prepared report back papers on the purpose of Natural and Built Environment Plans, the NBA definition of natural and built environments, and any unintended consequences for infrastructure and development resulting from the previously agreed framing of the NBA Purpose, and that these papers will be circulated and agreement sought from MOG Ministers between MOG #5 and MOG #6.

Action log from previous MOG meetings (for noting)

MOG #	Minute paragraph	Action
[Redacted content]		

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