Agenda – RM Reform Ministerial Oversight Group Meeting #10

Date: Wednesday 11 August 2021, 5.30 – 6.00 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 Dr 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 Kris Faafoi, Minister of Justice

Hon Willie Jackson, Minister for Māori Development

Hon Michael Wood, Minister of Transport

Hon Kiritapu Allan, Minister of Conservation, Associate Minister for the Environment and Associate Minister of Culture and Heritage

Hon Phil Twyford, Associate Minister for the Environment

Hon James Shaw, Minister of Climate Change

Time	Agenda item	Lead speaker	Relevant paper
5.30-5.40	**1. A more enabling consenting regime**	Minister for the Environment	Paper 1: A more enabling consenting regime **(pages 4 to 8)**
5.40-5.45	**2. Land and resource use responsibilities under the NBA**	Minister for the Environment	Paper 2: Land and resource use responsibilities under the Natural and Built Environments Act **(pages 9 to 12)**
5.45-5.55	**3. A robust compliance monitoring and enforcement (CME) regime**	Minister for the Environment	Paper 3: A robust compliance monitoring and enforcement (CME) regime **(pages 13 to 27)**
5.55-6.00	**4. Monitoring and oversight**	Minister for the Environment	Paper 4: Monitoring and oversight **(pages 28 to 41)**

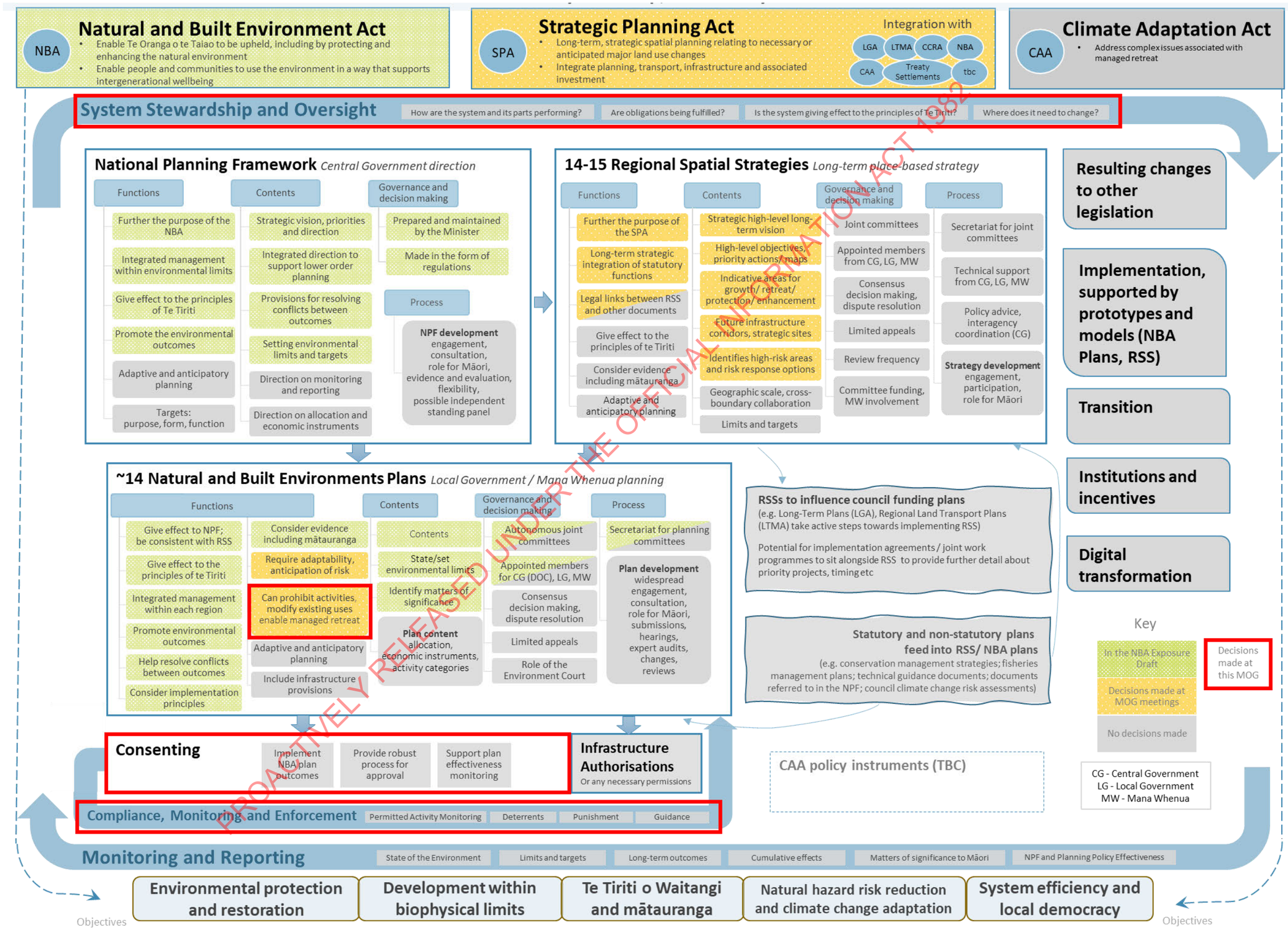
Attached for noting:

- *Minute from RM Reform Ministerial Oversight Group Meeting #9 on 6 July 2021 (pages 42-43).*
- *In-progress action log from previous MOG meetings (page 44).*

Ministerial Oversight Group Meeting #10 overview

Agenda item	Proposals	Key matters to discuss
1. A more enabling consenting regime	This paper seeks MOG agreement to a more focused role for consenting that implements NBA plans by: ○ adopting an enabling approach to activities, within environmental limits ○ seeking information or certification, or both ○ having a clear process and decision-making framework for the approval or decline of activities not enabled in a plan.	• Expanding the scope of permitted activities and a process to register these activities for monitoring. • Shifting the decision-making framework for consents away from a primary focus on adverse effects to outcomes and environmental limits. • A more effective categorisation of activities, the NPF and plans to have a stronger role in categorising activities.
2. Land and resource use responsibilities under the NBA	This paper seeks decisions on an approach to land and resources that will recognise that everyone has responsibilities towards the environment and will provide flexibility to change existing uses and review consents.	• The method of changing existing land uses through allowing certain types of NBA plan rules to apply to them and the extent to which existing buildings and/or infrastructure should be exempt from needing to comply.
3. A robust compliance monitoring and enforcement (CME) regime	This paper (and slide pack) sets out the proposed policy approach to compliance, monitoring and enforcement (CME) in the resource management system and the pathways for seeking further detailed decisions from Ministers and the MOG.	• The CME institutional arrangements of the future system – proposal to not take decisions on this. • The powers, tools and functions afforded to regulators. • The polluter-pays principle and the extent to which resource users should pay for the management and CME requirements of their activities. • Deterrence: whether fines, penalties and sanctions are sufficient • Opportunities for Māori to participate in CME
4. Monitoring and oversight	This paper (and slide pack) sets out the proposed policy approach to monitoring and oversight in the resource management system and the pathways for seeking further detailed decisions from ministers and the MOG.	• The range and nature of system monitoring, and oversight functions proposed for the future system. • Whether to delegate further decisions on environmental monitoring and reporting to the Environment sub-group.

Resource Management Reform System Map: indicating where MOG#10 agenda items sit in the system



Paper 1: A more enabling consenting regime

Purpose

1. The purpose of this paper is to build on the high-level decisions for consenting that Ministers made at MOG#4 and #9.

2. It seeks MOG direction on the role, key features and an approach of a future permissions system in the Natural and Built Environments Act (NBA). Officials are also seeking MOG decisions to delegate detailed decisions to subgroups (Transactional Efficiencies and Māori Interests).

Issues with consenting under the RMA

1. A lack of national direction and poor-quality plans has meant that significant resource use decisions have been made through consenting rather than through strategies and plans. This has meant that consenting processes have become uncertain, long and have not adequately addressed cumulative effects.

2. The current system is also designed so that consents are often triggered for activities that do not require merits assessment and are used to collect information (eg number of bores or neighbours' agreement), or to certify that proposed activities will be appropriately managed (eg by a suitable professional) for plan monitoring/cost recovery.

Panel's recommendations

3. The Panel considered that the key change required for the consenting system is stronger, more certain plans that better articulate desired outcomes and resolve conflicts, leading to a more efficient consenting regime and resulting in fewer consents.

4. The Panel did not recommend a significantly different consenting system from that currently provided by the RMA. The Panel proposed several key changes:
    a. removing the most stringent activity class[1]
    b. simplifying who/how to notify
    c. restricting appeals
    d. adopting the King Salmon approach[2]
    e. removing considerations of permitted baseline
    f. collecting information, monitoring, and enforcing the plans (to better understand and address cumulative effects)
    g. adopting digital technologies.

5. Officials generally agree with the Panel's recommendations, but additional assessment on several proposals is still required. There are further opportunities to simplify the RMA consenting system to better meet the RM reform objectives to enable development within limits and create a more effective and efficient system.

Proposals (recommendations 1, 2 and 3)

6. There will be more and stronger direction at a national and regional level in the future system. This is a key opportunity to refine the role of the future consenting system and, promote more robust decisions (ie. shifting to outcome focussed decisions). The future

[1] Non-Complying Activity – which is intended for activities not anticipated by a plan under the RMA.
[2] Decision makers for consents would be able to follow a clear hierarchy of considerations of matters and make robust decisions – and not referring back to Part 2 (purpose and principles of the RMA).

NBA regime will remove unnecessary consents and focus on meeting outcomes while managing adverse effects.

7. The primary role of the NBA consenting system is proposed to:
    a. implement the NBA plan outcomes, National Planning Framework (NPF) and the intent of the legislation,
    b. provide a robust process for the consideration of activities, where an activity is not enabled in a plan, and
    c. enable and support plan effectiveness monitoring.

8. This is proposed to be achieved by:
    a. adopting an enabling approach to activities within environmental limits
    b. seeking information, certification, or both
    c. having a clear process and decision-making framework for the approval or decline of activities.

9. For the proposed consenting system to operate effectively and efficiently, all system components including the NPF, Regional Spatial Strategies (RSS), and NBA plans will need to be certain and stronger, by providing for outcomes, setting targets and limits, providing strategic direction and integration, and resolving conflicts at an appropriate level in the system.

New approaches to meet the intent of the NBA

Adopting an enabling approach to activities within environmental limits (recommendation 4)

10. The RMA has a high permitted activity threshold,[3] and the shift to an outcome focussed framework means that there are opportunities to reset this threshold.[4]

11. The new system is proposed to be more enabling by expanding the scope of "permitted activity' category in plans, and reducing reliance on using a less permissive category to trigger resource consents for monitoring purposes and cost-recovery.[5]

Seeking information, certification, or both (recommendations 5 and 6)

12. However, it does not mean that 'permitted activities' do not need to be monitored for compliance or plan evaluation purposes. The RMA currently has limited ability to provide for registering permitted activities, and effective monitoring (including charging).

13. For activities that require monitoring, there needs to be a clear obligation that every person undertaking an activity must provide the information and certification (if required). A notice is proposed to be issued to 'certify' the activity as 'permitted' without going through a formal approval process.[6]

14. The process to collect information and certification is proposed to be straight forward, supported by criteria set out in plans [redacted] Digital tools will be critical for the efficiency and effectiveness of the future consenting system. [redacted]

[3] Due to case law, and risk averse practices (influenced by broad plan appeal rights).
[4] One such example of an 'ultra vires' permitted activity standard is the requirement for a person who wants to undertake an activity to obtain written approvals from certain neighbours before they can progress as a permitted activity.
[5] Consent authority must grant consent if the conditions are met (except for very limited circumstances).
[6] This type of permission or notice will be different to what is currently known as 'Certificate of Compliance' issued under s 139 of the RMA as it will not 'protect uses' (both implemented/not implemented) and is mandatory for persons undertaking the activities to obtain. The process to obtain a COC is not straightforward and has a process similar to the consenting process.

A clear process and decision-making framework for the approval or decline of activities (recommendations 7 to 16)

14 Plans in the new system will be clearer about what can be done without permission, and what cannot. Where an activity is not 'permitted' it will go through an 'approval' process where the relevant authority can assess (merits) the information and seek confirmation to determine whether the activity is in keeping with plan outcomes.

15. The proposal to expand the scope of Permitted Activities provides opportunities to review existing activity categories and how they work. Currently, these categories are not being used consistently or effectively across council plans. Clearer legislative direction on how activity categories should be used, and a clear decision-making framework and process will create a higher degree of consistency across plans.

16. We consider four broad categories of activity are required for the future system. They are:
    a. permitted (no consent required)
    b. prohibited (no consent can be applied for)
    c. activities that will need some level of merits-based assessment (eg restricted discretionary), albeit are considered appropriate (and very likely to meet outcomes)
    d. activities that may or may not meet outcome and require a higher level of assessment (eg discretionary/non complying).

17. These categories will better meet the overall intent of the reform, and shift consent decision makers from a focus on adverse effects to a focus on outcomes and ensuring environmental limits are met.

18. The Panel did not provide detailed recommendations on procedural steps such as information requirements or timeframes, or who/how to notify for the future permissions regime. We consider NPF and plans will play a stronger role in categorisation of activities, scope of information, certification required, directing who to notify and which approval pathways to take. There is also a need to provide clearer direction on who to notify through legislation, NPF plans in the future system.

19. There are opportunities to further simplify and comprehensively review the processes to implement the new legislation and be more outcome focussed. MOG agreement is sought to delegate decisions on the detail of the consenting system including procedures, key features, and decisions within the agreed approach, to the Transactional Efficiency sub-group (with the Minister of Agriculture also receiving this advice).

20. Decisions that relate to the role of iwi/hapū/Māori in the consenting system will be considered by the Māori interests sub-group.

Paper 1: Recommendations

1. **agree** that the primary role of the NBA consenting regime is to:
    a. implement the NBA plan outcomes, NPF and the intent of the legislation,
    b. provide a robust process for the consideration of activities, where an activity is not enabled in a plan, and
    c. enable and support plan effectiveness monitoring

2. **agree** the new regime will do this by:
    a. adopting an enabling approach to activities within environmental limits
    b. seeking information, certification or both

c. having a clear process and decision-making framework for the approval or decline of activities not enabled in a plan

3. **note** that for the proposed approach to operate as intended, all system components including the NPF, RSS and NBA plans will need to be certain and stronger, by providing for outcomes, setting targets and limits, providing strategic direction and integration and resolving conflict at an appropriate level in the system

4. **agree** to expand the scope of what is currently understood as 'Permitted Activities' under the RMA

5. **agree** to introduce a new type of permitted notices where users provide information or certification, or both to authorities but no merits-based assessment is required. The purpose of providing information, certification or both is to:
   a. ensure that the activity meets a standard or complies with certain matters, and
   b. enable monitoring and compliance of the NPF and the NBA plan

6. **note** that the efficacy of the consenting regime is reliant on the uptake of digital technologies to improve efficiency across the system, [redacted]

7. **agree** that there will be four broad categories of activities:
   a. Activities that are permitted
   b. Activities that are prohibited
   c. Activities that will need some level of merits-based assessment (albeit are considered appropriate and likely to meet outcomes
   d. Activities that may or may not meet outcomes and require a higher level of assessment

8. **agree** that the decision-making framework for consenting will shift away from a primary focus on adverse effects to focus on outcomes and ensuring environmental limits are met

9. **agree** that the National Planning Framework and plans will play a stronger role in providing direction, including categorising activities, identifying the scope of information, certification or both required, directing who to notify, and which approval pathways to take

10. **agree** that criteria in the NBA, content in the NPF and/or plans will direct who is to be notified of consents

11. **note** that there are opportunities to further simplify and review current consent processes to implement the new legislation and create a more enabling consenting system that is outcomes focussed

12. **authorise** the Transactional Efficiencies subgroup to make further decisions for the permissions system, including but not limited to the:
    a. categorisation of activities
    b. types of consents
    c. process by which the authorities validate 'permitted activities'
    d. approval pathways for consents (including information requirements, participation (notifications), timeframes, and the ability to hear submissions, suspend applications and seek information)
    e. decision-making framework (including but not limited to the relationship with NPF, RSS, the ability of authorities to consider the purpose and supporting principles into

Part 2 of the NBA including Te Oranga o te Taiao, and the ability to impose conditions)

f. other features that will assist with the workability of the consenting system (eg, commencement, duration, transferability and cost recovery)

13. **note** that the Minister of Agriculture will also receive advice in relation to further decisions for the consenting system and be invited to relevant meetings

14. **note** that the Māori Interests subgroup to consider matters which directly relate to the role iwi/hapū/Māori participation in consenting and report back to the MOG

15. **note** that decisions delegated to the Transactional Efficiencies and Māori Interests subgroups will be in line with MOG decisions that have been made or be guided by future MOG (and subgroup) decisions

16. **authorise** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to implement the decisions set out above (including delegated decisions) through a Bill.

Paper 2: Land and resource use responsibilities under the Natural and Built Environments Act

Purpose

21. The purpose of this paper is to build on the high-level decisions for land and resource use responsibilities Ministers made at MOGs#4 and 9.

22. MOGs #4 and 9 outlined that while the approach to land use and resource use presumptions should remain the same as in the RMA, some changes are required to respond to environmental challenges.

Issues under the RMA

23. The current system is slow to respond to environmental challenges and pressures. It protects existing uses[7] and consents. Poor environmental outcomes are locked in and new entrants locked out, making it difficult to reduce risk and adapt to or mitigate the effects of climate change.

24. The RMA treats land use differently from natural resources (such as water, air and the coastal marine environment), creating different issues.

25. The RMA takes a permissive approach to land use. Land can be used for anything unless a rule restricts its use,[8] reflecting established principles relating to the use of private land and providing investment certainty. The approach does not create a right to create adverse effects or disturb others and neither does it prevent planning regulations applying to future uses of land. However, some existing uses of land do receive immunity from changing plan rules, making it difficult to change those uses to achieve better environmental outcomes and creating status quo bias. People can also seek compensation if planning provisions make their land incapable of reasonable use, and frustrate policies by refusing compensation.[9]

26. By contrast, the RMA takes a restrictive approach to natural resources, reflecting that there is no inherent right to use these resources (such as taking or discharging to water, or occupying the coastal marine area). People can only use natural resources if the use is expressly allowed by a plan or national environmental standard, or they apply and are granted consent. Changes to regional rules affect all users of natural resources and consent holders once the rule becomes operative, and compensation is not payable.

27. The RMA deals with the unforeseen effects of activities (including both existing uses and consents) through a duty to avoid, remedy or mitigate adverse effects on the environment arising from their activity.

Panel recommendations

28. The Panel recommended retaining the protections generally given to existing uses and consents, but with two changes. First, regional councils should have more power to modify or extinguish consents. Second, territorial authorities should have power to modify or extinguish existing land uses and consents in particular circumstances (to adapt to the effects of climate change or reduce natural hazard risk, and where there is high risk of

[7] 'Existing uses' in the RMA means established activities that do not meet plan rules, but are allowed to continue in the circumstances set out in Part 3 RMA.
[8] Section 9 RMA.
[9] Section 85 RMA.

significant harm or damage to health, property or the natural environment, eg by breach of an environmental limit).[10]

Key shifts in the new system

29. The new system needs to better respond when there are poor environmental outcomes.

30. While the general presumptions – restrictive for natural resources and permissive for land uses, are appropriate to continue, they have created status quo bias.

31. Natural resources are under significant pressure and the adverse effects of overuse and degradation are felt by the community rather than individuals. Change is needed to ensure that consents are reviewed and amended to respond to environmental conditions.

32. Flexibility to modify or extinguish existing (land) uses is also required to ensure that outcomes can be achieved and there is an ability to reduce risk of natural hazards or adapt to or mitigate the effects of climate change, or address contaminated land. To provide certainty and clarity to plan users, the power to modify or extinguish should be limited to some parts of the NPF[11] and some types of general planning rules (Rec 5). There should also be a clear notification process so that everyone understands the intended effect of the rule (Rec 6).

33. This approach is necessary to achieve NBA outcomes and to address reducing the risk from natural hazards, climate change impacts, and contaminated land.

34. Under the RMA, landowners can lose existing use rights if they relocate the use involved, or change the way it is carried out, in order to improve environmental outcomes. This is an obviously perverse outcome. The system should not create barriers for landowners who want to do better. Instead it should enable such changes (Recs 15 and 17).

35. No plan or consent condition can predict every eventuality, so it is important to continue to have a provision to avoid, remedy or mitigate adverse effects. This will need to be coupled with a proportionate enforcement process.

Continuing existing approaches

36. Continuing to provide a process for certification for activities that do not need consent should also remain. Modifications to the current approach and process to align with proposed changes to consent reviews may be required (Recs 12(b), 16).

37. Retaining the presumption of no compensation for the effect of planning provisions on land, unless a provision renders the land incapable of reasonable use should remain (Rec 9 and 27). This approach is important as it allows for the efficient regulation of land for planning purposes. Changes may be required to modernise the provisions and align with an outcomes based approach.

38. Additional decisions will be required for detailed drafting including, clarifying procedures and processes. We are seeking delegation to the Transactional Efficiencies subgroup for further decisions (Rec 12(c)).

[10] RM Reform Panel Report at page 163.

[11] Relating to the natural environment (as defined in the NBA exposure draft, and excludes amenity matters) and natural hazard or climate change risk reduction, or adaptation to, or mitigation of, climate change, or contaminated land.

Paper 2: Recommendations

1. **agree** that the NBA will contain a duty on all persons to avoid, remedy or mitigate adverse effects on the environment, which will be effective in the NBA via a clear, workable and proportionate enforcement pathway (based on the approach in section 17, Part 3, and Part 12 RMA, but with greater enforcement powers where the duty is not complied with)
2. **agree** that the duty will apply notwithstanding that the activity is allowed by an existing use provision, or is lawfully established under any other provision of the NBA, subject to further work on any appropriate exceptions (based on the approach in section 17(1)(a) and (b), and (4) RMA)
3. **agree** that officials will undertake further work and seek later decisions on the relationship between the duty and the enforcement provisions in the NBA, to ensure a clear, workable and proportionate enforcement pathway
4. **authorise** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office relating to the decisions (including those delegated to the Transactional Efficiencies and Environment subgroups) sought by the paper titled *Land and resource use and responsibilities under the Natural and Built Environments Act*
5. **agree** that rules in NBA plans will apply to existing land uses following the approach in sections 10, 10A and 10B of the RMA, but with the below changes:
    a. require existing land uses to comply with plan rules that give effect to any parts of the National Planning Framework relating to the natural environment
    b. require existing land uses to comply with plan rules that give effect to any parts of the National Planning Framework that relate to natural hazard or climate change risk reduction, or adaptation to, or mitigation of, climate change, or contaminated land
    c. require existing land uses to comply with plan rules that reduce natural hazard or climate change risk, or adaptation to climate change, or address contaminated land (even if there is no National Planning Framework provision on those matters)
    d. provide an immunity from changing NBA plan rules for “static” or “completed” activities such as existing buildings or non-designated infrastructure (except for plan rules that reduce risk, or adapt to the effects of climate change, or address contaminated land)
6. **agree** that notification of new or amended NBA plan rules must include a process for identification of whether the notified rule is intended to apply to existing land uses and whether any transition period will be provided
7. **agree** that the NBA will provide that if, as a result of a proposed plan rule taking legal effect, a consent is required for an activity relating to natural resources (such as water, air, and the coastal marine area) that was previously lawful, the activity may continue until the rule becomes operative if:
    a. before the rule took legal effect, the activity was permitted or was lawfully established; and
    b. the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule took legal effect; and
    c. the activity has not been discontinued for a continuous period of more than 6 months (or any longer period specified in a relevant rule in the plan) since the rule took legal effect (replicating the approach in section 20A(1)(a)-(c) RMA)
8. **agree** that the NBA will provide that if, as a result of a proposed plan rule becoming operative, a consent is required for an activity relating to natural resources (such as water,

air, and the coastal marine area) that was previously lawful, the activity may continue after the rule becomes operative if:

a. before the rule became operative, the activity was permitted or was lawfully established; and
b. the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule became operative; and
c. the person carrying on the activity has applied for a consent within 6 months after the rule became operative and the application has not been decided or any appeals have not been determined (replicating the approach in section 20A(2)(a)-(c) RMA)

9. **agree** that the NBA will provide that there is no compensation for the effects of planning provisions on interests in land (based on section 85(1) RMA), and a provision stating that a consent relating to water does not give any property rights in water (based on section 122 RMA)

10. **agree** that there will be an exception to the principle of no compensation, where planning provisions render land incapable of reasonable use in a way that cannot be justified (based on section 85(2) to (6) RMA)

11. **agree** that the NBA will provide processes for the review of consents, which will include the circumstances, purpose, scope, powers, matters to be considered, outcomes, appeal processes, implementation (including potential for a transition period), and cost recovery mechanisms for reviews

12. **authorise** the Transactional Efficiencies subgroup to make further decisions on:
    a. processes for developing NBA plan rules that are intended to affect existing uses
    b. processes for Existing Use Certificates (including an ability to proactively change an existing use) and processes for Certificates of Compliance
    c. the no compensation provision and its exceptions
    d. processes for review of consents, to the Transactional Efficiencies subgroup

13. **note** the Minister of Agriculture will also receive advice in relation to these further decisions and be invited to relevant meetings

14. **note** that the Māori Interests subgroup will consider matters which directly relate to iwi/hapū/Māori participation in existing uses processes and report back to MOG

15. **agree** that the NBA will provide a process for Existing Use Certificates to provide written confirmation that a particular activity or use is lawful even though it contravenes NBA plan rules (based on the approach in section 139A RMA)

16. **agree** that the NBA will provide a process for:
    a. Certificates of Compliance to provide written confirmation that a particular activity or use does not require a consent (based on the approach in section 139 RMA); and
    b. the monitoring, review, and amendment of new and existing Certificates of Compliance

17. **agree** that the NBA will provide a mechanism for people to proactively change an existing use if that would reduce adverse effects of the use on the environment, and/or contribute towards positive environmental outcomes.

Paper 3: A robust compliance monitoring and enforcement (CME) regime

The slides at pages 17 to 27 supplement this paper.

Purpose

1. Officials seek MOG agreement to the proposed policy approach to compliance, monitoring and enforcement (CME) in the resource management system and the pathways for seeking further detailed decisions from Ministers and the MOG.

Context

2. Compliance, monitoring and enforcement means:

    a. compliance: adherence to environmental regulation, including the rules established under regional and district plans and meeting resource consent conditions and national environmental standards.

    b. monitoring: activities carried out to assess compliance with environmental regulation. This can be proactive (eg, permissions monitoring (including permitted activities)) or reactive (eg, investigation of suspected offences).

    c. enforcement: actions to respond to non-compliance with environmental regulation. Actions can be punitive (for the purpose of deterring or punishing the offender) and/or directive (eg, directing remediation of the damage or ensuring compliance with the RMA).

3. Robust and well-functioning compliance, monitoring and enforcement services are fundamental to any regulatory system. Without effective CME services, progress toward NBA plan objectives and environmental outcomes will be compromised.

Issues in the current system

4. The Panel identified a range of CME related challenges and shortcomings under the RMA and made recommendations to provide for more robust and effective CME outcomes in the future resource management system.

5. The Panel found the delivery of CME services by councils is highly variable. Some councils (predominantly regional) perform these services well, yet many (generally small district councils) perform this role poorly. Eleven councils undertake no CME activity at all. Causes for inadequate CME services include but are not limited to varying economies of scale across councils, and both direct and indirect executive and political bias. This undermines the robustness and credibility of the CME decision making process.

6. Current RMA provisions prevent regulators from recouping costs associated with some CME activities. RMA fines and penalties are also inadequate to provide a credible deterrent against offending. The Panel recognise poor funding and cost recovery options as a contributing factor to poor service delivery.

7. Other issues identified by the Panel are MfE's lack of capacity and capability to function effectively as system steward. There are also poor links between CME data, environmental monitoring and the policy cycle and limited opportunities for Māori to participate in CME.

Panel recommendations

8. The Panel recommended changes to the deterrence and regulatory tools currently available under the RMA. These changes include a substantive uplift in fines and penalties and changes to enable regulators to perform their role more effectively and efficiently.
9. Recommendations also seek to enable regulators to recover costs for monitoring the increased number of permitted activities under the NBA and for investigating non-compliance with plan provisions (see page 21). Officials consider these changes are important to support increased deterrence and a polluter pays approach to resource management.
10. The Panel also recommended consolidating district and regional council CME services into regional "hubs" that are structurally separate from councils and overseen by a government agency such as the EPA. MfE would remain as system steward but significantly bolster its capability and capacity to perform this function. Opportunities for Māori to participate at a governance and operational level would also be provided for.

Advice

11. Officials generally agree with the Panel's recommended changes to the CME toolbox.
12. The hub model proposed by the Panel is a significant shift in CME institutional arrangements. Officials consider that institutional change should be delayed in light of the extent of existing changes and wider local government reforms (eg. Three Waters Reform). However, officials consider there are still opportunities to improve CME performance across councils in the short term and address the issues raised by the Panel.
13. Officials seek your approval to continue to develop policy options to address the issues raised.

Paper 3: Recommendations

Polluter pays

1. **agree** that in principle, existing provisions enabling cost recovery by regulators for CME activity continue to be provided for and strengthened where necessary to minimise costs to the wider public
2. **agree** that cost recovery for permitted activity CME activities and investigations of non-compliance will be provided for in the NBA

Deterrence

3. **agree** in principle, to a substantive uplift in financial penalties in the NBA to support their deterrent purpose
4. **agree** to broaden the types of offences where fines for commercial gain can be considered by the courts at sentencing (currently limited to marine discharge offences)
5. **agree** to prohibit insurance for fines and infringement fees
6. **agree** that officials will investigate the use of alternative sentencing options that go beyond those currently available to the courts for NBA offences

7. [redacted]

8. **authorise** the Minister for the Environment to make specific detailed decisions on uplifted penalties and alternative sentencing options in consultation with the Minister of Justice

9. [redacted]

10. **authorise** the Minster for the Environment to determine the most appropriate policy response to resolve issues of synergy with wider criminal legislation in consultation with the Minister of Justice

Intervention tools

11. **agree** that the relevant provisions in Part 12 and Part 12A of the RMA which do not require any policy change can be drafted into the NBA

12. **agree** that the CME related provisions of section 332-333 (powers of entry) of the RMA can be drafted into the NBA

13. **agree** to increase the scope of information compliance officers may require to include the details of both principals (those directing the activity) and agents (those undertaking the activity)

14. **agree** to provide for alternative sanctions to traditional enforcement action (enforceable undertakings) for lesser offending

15. **agree** to broaden the scope of contraventions an abatement notice (directive to cease unlawful activity) can be issued for

16. **agree** to create a new offence for contravening a consent condition

17. **agree** to enable regulators to apply for a consent to be revoked in response to non-compliance

18. **agree** to enable a consenting/regulatory authority to consider an applicant's compliance history when deciding whether to grant/decline a consent application, or when formulating consent conditions

19. **authorise** the Minister for the Environment to make further decisions on the detail of the policy response for CME intervention tools in consultation with the Minister for Justice

Strengthened CME Services

20. **agree** that officials will continue to develop policy options to drive an uplift in CME practice at all councils in the short term, including addressing issues of political influence/bias, and resolve issues of institutional arrangements raised by the Panel in the longer-term

21. [redacted]

22. **note** that specific decisions on the design of regionally consolidated CME services need to occur in the context of broader decisions about the governance of the system and the responsibilities of institutions to be decided at a later MOG

23. [redacted]

Ministry for the Environment
Manatū Mo Te Taiao

MOG #10

A robust compliance monitoring and enforcement (CME) regime

Consolidated CME services, enhanced role for Māori, and strengthened tools and penalties

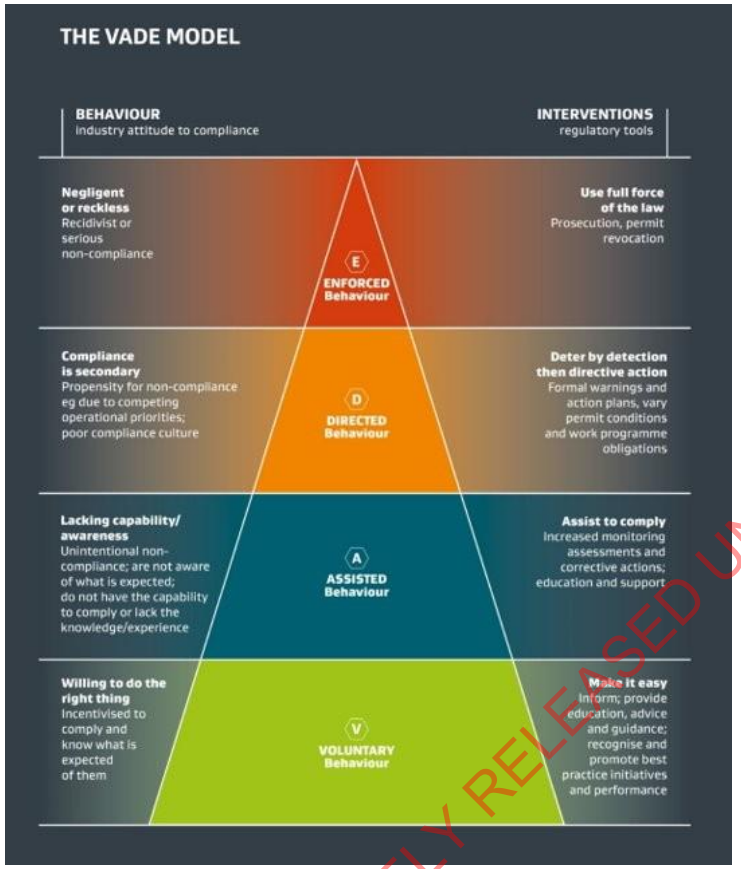
Compliance monitoring and enforcement

What we'll cover in these slides

Ministry for the Environment
Manatū Mō Te Taiao

- Principles of good CME services
- Issues with the existing system
- Recommendations of the Panel
- How we compare with international examples
- Options for the new system
- Our recommendations:
  - enhancements to the existing toolbox
  - continue to explore options to strengthen the role of Māori in CME services consistent with future MOG decisions
  - defer decisions on changes to institutional arrangements

Overarching Principles of CME



- **Robust CME services are a cornerstone of an effective regulatory system** poor CME services undermine the rest of the system.
- **Deterrence** the primary enforcement objective in resource management. Deters offending via the likelihood of being caught and meaningful punishment when required.
- **Polluter-pays:** Existing principle underlying the RMA. Stipulates that all natural resource users should pay for the measures required to avoid, remedy and mitigate adverse effects and the oversight of the activity.
- **CME is more than detecting and punishing non-compliance:** interactions with regulated parties are educative and advisory as well as directive and regulatory.

CME services under the existing system are often uncoordinated and under resourced.

This results in inadequate deterrence of offences, and a failure to hold offenders to account.

Consequently, the regulatory framework is undermined, leading to poor outcomes for the environment and community.

CME services in the existing system are highly variable

Capability

- Some regional and unitary councils deliver robust CME services. Many district and smaller regional councils do not. 11 councils deliver no CME service under the RMA, despite the duty to do so.
- Variation in CME performance is influenced by:
  - economies of scale across different sized councils
  - inadequate resourcing and bias/conflicts of interest by local government officials
  - competing functions and priorities (councils have many other important roles)
  - poor oversight from central government (MfE as regulatory steward)
  - lack of coordination and agreed best practice between councils
- The Panel found that the current system provides few opportunities for Māori to participate in CME services.
- CME service delivery is intertwined with a range of CME services of other regulatory systems (Building, Bylaws, Environmental Health, etc).

We need to enhance the CME toolbox

Deterrence

- RMA financial penalties are weak compared to other statutes in NZ and other jurisdictions abroad
- Commercial profits derived from offences almost alwaysoutweigh financial penalties
- More creative enforcement and sentencing options would be beneficial in the future RM system

Polluter pays

- Insurance for RMA fines is questionable
- Unable to recover costs related to permitted activity CME and investigations of non compliance

Intervention tools

- Opportunity to widen the scope of offences an abatement notice can be issued for
- Councils unable to address poor compliance history in new permissions (consents)
- Unjustifiably limited circumstances in which a permission can be revoked
- 12-month statute of limitations period should be increase to provide time for investigation of all aspects of offence including financial gains
- Poor links to wider criminal legislation (Solicitor General guidance, Criminal Procedure Act, jury trials)

What did the panel recommend?

Polluter pays

- Provide regulators with the ability to recover costs associated with CME of permitted activities and wider investigations of non-compliance

Deterrence

- Substantial uplift in financial penalties
- Widen the availability of fines for commercial gain to more offences (currently limited to marine pollution)
- Prohibit insurance for infringement and prosecution fines
- Abolishing jury trials for serious RM offending
- Improve synergies with wider criminal legislation
- Make available to the courts more creative sentencing options (eg. environmental restoration/enhancement)

***Please note this is only a summary of the Panels' recommendations on CME**

Intervention tools

- Provide for regulators to apply to have a consent revoked in response to non-compliance
- Enable enforcement officers to require information from both principals and agents
- Reconsider the 12-month statute of limitations period for filing prosecution charges
- Provide for the use of enforceable undertakings by regulators
- **Recommended by officials** - Provide for compliance history to be considered in the decision to grant/decline a consent application, or when specifying conditions in a consent

• *Capability*

- Reorganise CME services into **regional hubs, independent from Councils**
- Enhanced role for Māori in operations and governance of CME

Officials recommend that existing provisions in part 12 and 12A of the RMA that are fit for purpose should be retained

Provisions include:

- Section 310-313 (declarations)
- Section 332-333 (powers of entry)
- Section 330-331 (emergency works)
- Section 339A (Protection against imprisonment for dumping and discharge offences involving foreign ships)
- Section 339C (Amount of fine or other monetary penalty recoverable by distress and sale of ship or from agent)
- Section 340 (liability of principal for acts of agents)
- Section 341 (strict liability defences)
- Section 341B (liability and defences for discharging harmful substances)
- Section 343A-D (infringement offences)
- Part 12A (Enforcement Functions of the EPA)

International Practice

UK Model

- Urban/built form' planning regulation is separated from 'environmental/ biophysical' regulation
- Urban/built form matters are regulated by local councils, using an integrated national software platform that also manages compliance with building code requirements
- Environmental/biophysical matters are regulated by the national Environment Agency. Their regulatory responsibilities are comparable to those of Regional Councils in the NZ system
- System oversight is delivered centrally, with robust and transparent public reporting on all prosecution outcomes and enforcement actions
- Scotland and Wales have separate Environment Agencies

Canadian model

- Canadian constitution divides various regulatory jurisdictions between federal and provincial governments
- Environmental Protection Agency exists at a federal level and numerous regulators at the provincial level
- Federal governments set laws regulating macro resources (eg, fisheries, water, indigenous lands)
- Provincial governments set laws regulating property and civil rights, municipal institutions, local and private matters
- Indigenous groups can set laws for land they manage
- Highly litigious system with frequent jurisdictional disputes and variable environmental outcomes

Environment

Combined environmental and development legislation is unique to New Zealand. Any change to institutions delivering CME service needs to account for our legislative environment.

[IN-CONFIDENCE]

Future CME Institution Options

Ministry for the Environment

There are three viable options for CME service delivery

Status Quo

+ Potential improvements through greater guidance and oversight
+ Existing good practice retained
+ Non-NBA CME functions remain undisrupted

- Underlying issues remain
- Does not promote polluter pays
- Persist with inconsistent, fragmented, and overlapping regulatory landscape

Regional Consolidation

+ Preserves regional structures, initiatives and relationships.
+ CME governance in alignment with joint plan boundaries.

- Some vulnerability to local biases and conflict

- Regional and district issues are different, and a regional model must address both.
- Connections to other regulatory services need consideration

National Agency Model

+ Better manages local biases and conflicts of interest
+ Greater economies of scale
+ Greater flexibility in deploying resources

- May lose local reach and connection to community
- Institutional centralization requires significant investment
- Lost connections to permissions and policy cycle likely to lead to poor outcomes

Officials recommend strengthening existing practice and providing flexibility to consider institutional arrangements at a later date.

[IN-CONFIDENCE]

Institutional CME issues to consider

The future institutional design of CME services requires further policy development, including:

- whether **some elements of CME services should remain with local councils** (eg, noise control, signage and residential activities)
- the extent to which **CME services should be funded through cost recovery** and the extent of funding through other means (such as rates or taxes)
- what **specific governance arrangements will work best** in the context of decisions for institutional responsibilities and governance of the system
- How to ensure CME is **adequately resourced, prioritised** and **free from bias/conflicts of interest**
- how CME services in the future system will be **integrated with other related statutory frameworks** (eg, Building Act, Health Act, etc)

Decisions about CME services are closely interlinked with decisions about **the role of MfE as regulatory steward** (System oversight - also MOG #10) and about the **roles and responsibilities of institutions** in the system more broadly which will be decided at a later MOG.

Paper 4: Monitoring and oversight

The slides at pages 31 to 41 supplement this paper.

Purpose

1. Officials are seeking MOG agreement to the proposed policy approach to monitoring and oversight in the resource management system.
2. [redacted]
3. Compliance monitoring and enforcement is closely linked but will be addressed in a separate paper.

Why monitoring and oversight matters

4. A strong evidence base is required to inform limit setting, track progress towards targets and outcomes, and enable a responsive planning system that generally permits more activities.
5. The current system does not consistently provide quality information to inform decision-making. Feedback loops on the performance of the system and mechanisms to ensure decision makers are held to account are generally inadequate to understand and address issues in a timely way.
6. Without significant changes to the way data and information is gathered, reported and used for decision-making, many of the key shifts sought through reform will not be achieved. While some legislative change is required, continuing to invest in implementation will be essential to build capacity, capability and consistency. Some of this investment is already underway.
7. Not all the problems will be addressed legislatively, further support and investment is required to provide a strong evidence base.

Panel's recommendations

8. The Panel recommended introducing reporting and review cycles, including reviewing the Natural and Built Environments Act regularly, reporting on implementation of the National Planning Framework, and independent reporting to Parliament on the performance of the system. Any change to legislation needs to ensure the reporting system enables accountability and transparency on long term issues, including implementation.
9. The Panel also recommend increased monitoring and oversight functions be undertaken by a range of institutions, for example an expanded role for the Parliamentary Commissioner for the Environment. Further decisions on institutional aspects and gaps in monitoring and oversight functions will be sought in subsequent MOGs (see page 41).
10. A National Māori Advisory Board (NMAB) was proposed by the Panel to monitor Te Tiriti performance in the system. Iwi/Māori groups have indicated support for greater involvement in monitoring activities and oversight. However, iwi/Māori have concerns

about the NMAB including its advisory nature and the risk that it becomes viewed as a body representing all Māori rights and interests, thereby undermining the rangatiratanga of iwi and hapū at a local level.

11. [redacted] have proposed a Te Mana o te Taiao Commission as an alternative to the NMAB. This proposal would inform national policy (at the level of national direction) and have a stronger role in governance, decision-making and oversight. Officials are considering this proposal alongside other potential options for monitoring Te Tiriti and wider system performance.

Advice

12. [redacted]

Paper 4: Recommendations

1. **agree** that environmental monitoring and reporting in the system should be focused on supporting the purpose of the Natural and Built Environments Act, including upholding Te Oranga o te Taiao, and monitoring against environmental limits and targets, and environmental outcomes

Environmental outcomes

2. **agree** that the proposed approach to environmental monitoring and reporting under the Natural and Built Environments Act will include:
    a. providing for a suite of tools in the Natural and Built Environments Act to direct environmental outcome monitoring
    b. consistent and regular local-level environmental reporting
    c. the ability to involve Māori in developing and undertaking monitoring and reporting activities
    d. clear connections between the Natural and Built Environments Act and national environmental reporting under the Environmental Reporting Act 2015

Policy effectiveness

3. **agree** that there should be stronger requirements in legislation for responsible bodies to investigate, evaluate and respond when policy effectiveness monitoring identifies problems that need to be addressed
4. **note** that MOG #3 delegated monitoring and review provisions of the National Planning Framework to the Minister for the Environment

System performance

5. **agree** that the following functions of system monitoring and oversight should be reflected in the future system:
    a. stronger regulatory stewardship and operational oversight of the system by central government
    b. regular reporting to Parliament on the performance of the system, in relation to environmental limits, targets and outcomes of the Natural and Built Environments Act

c. legislated requirements for central government to respond to state of the environment and system performance reports

d. [redacted]

e. mechanisms to monitor how the system gives effect to the principles of Te Tiriti

f. a range of powers for ministers to intervene and direct the system

Delegations

6. **authorise** the Environment sub-group to make further decisions on:

   a. monitoring and reporting requirements in the Natural and Built Environments Act, including integration with the Environmental Reporting Act 2015

   b. the nature of actions required by local and central government to investigate and address issues identified during monitoring

   c. the processes and roles for monitoring the policy effectiveness of Regional Spatial Strategy and Natural and Built Environments Act plans

   d. the detailed functions for monitoring system performance

7. agree that decisions on potential changes to roles and responsibilities for monitoring and oversight will be made at the MOG #15 meeting alongside other decisions on system institutions.

Ministry for the Environment
Manatū Mō Te Taiao

MOG #10

RM Reform: Monitoring and oversight

Broad policy direction and pathways for future decisions

Contents

This slide pack seeks the Ministerial Oversight Group's agreement to:

1. The proposed policy approach to monitoring and oversight of:
   - A: Environmental outcomes*
   - B: Policy effectiveness
   - C: System performance
2. The pathways for seeking further detailed decisions in these areas will be delegated to the Ministers in the Environment subgroup.

* Note that 'Environmental outcomes' covers both the monitoring and reporting on natural and built environments

Good monitoring and oversight is fundamental to the new system

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Why it is important:

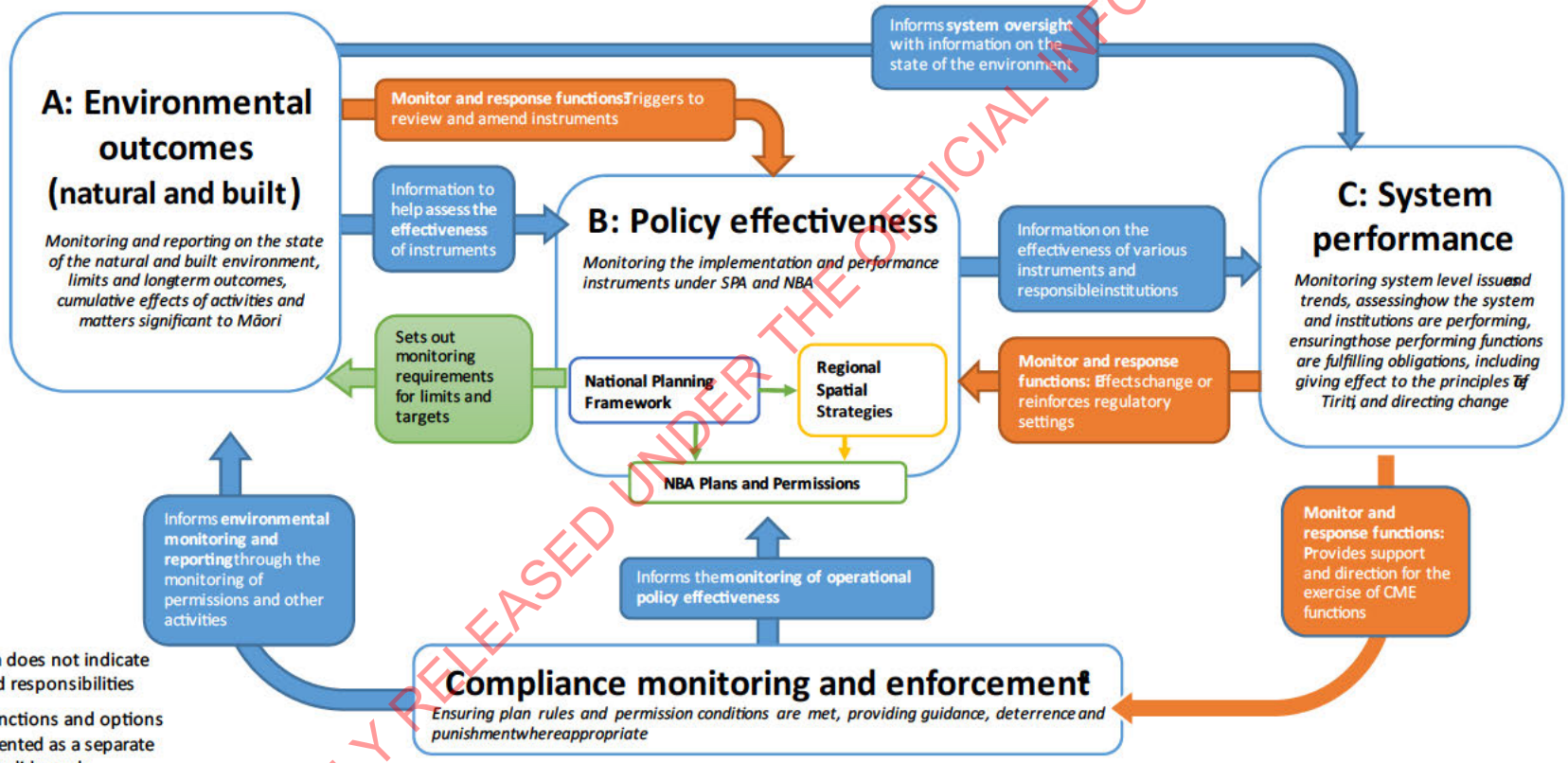
- **Long-term tracking:** Provides information to decision makers, Māori and the public on the state of the environment (both natural and built) and how it is changing over time
- **Effective feedback loops:** Provides information on how well the system is performing and where targeted intervention is needed to support outcomes and manage cumulative effects
- **Transparency and accountability:** Helps demonstrate the effectiveness of policies and plans and hold responsible bodies to account for system performance and outcomes, including in giving effect to the principles of Te Tiriti
- **Supports reform objectives:** Essential to making well informed decisions about the use and protection of the environment, understand constraints on development, monitor and protect resources and taonga of importance to Māori, inform decision making on climate change impacts, and more efficiently identify issues to support system efficiency and effectiveness

Monitoring and oversight has four distinct yet inter-related parts:

1) Compliance monitoring and enforcement 2) environmental monitoring and reporting 3) policy effectiveness monitoring and 4) system-level monitoring and oversight.

These parts need to be developed and implemented in an integrated way. The relationships are shown on the following slide

Core components of monitoring and oversight [1]



[1] Diagram does not indicate roles and responsibilities

[2] CME functions and options are presented as a separate MOG 10 slide pack

[IN-CONFIDENCE]

The Panel identified problems with monitoring and oversight

Monitoring and oversight has suffered from a lack of **resourcing and prioritisation** by both local and central government. System institutions have often lacked the**necessary tools, direction, and expertise** to effectively monitor environmental and system performance.

The impacts of this include:

- **Weak feedback loops between environmental monitoring and policy functions –** limiting our ability to understand the cause of problems and cumulative effects, and to respond appropriately and efficiently
- **Inconsistent and fragmented monitoring –** restricting the integration of regional and district information at a national level and the development of consistent longterm datasets across the country
- **A focus on monitoring system processes (e.g. timeliness) over outcomes–** resulting in a poor understanding of the impact of policy decisions
- **Inadequate Māori involvement in monitoring and oversight activities –** contributing to insufficient protection of resources and taonga of importance to Māori
- **Inconsistent levels of system oversight –** resulting in a lack of transparency and accountability for the performance and outcomes of the system

The RM Review Panel's recommendations

The Panel supported a system that:

Gathers robust information

⬇

Synthesises and reports information in a meaningful, integrated and accessible way

⬇

Evaluates system performance

⬇

Takes corrective action

The Panel's recommendations to improve monitoring and oversight in the system:

- Establish a nationally coordinated environmental monitoring system
- Regular mandatory monitoring and reporting on the state of the environment at national and local levels
- Stronger requirements for monitoring the effectiveness of regional spatial strategies and NBA plans
- The Ministry for the Environment to more actively lead monitoring and oversight of the system
- Establish a National Māori Advisory Board to monitor performance in giving effect to the principles of Te Tiriti and undertake other functions*
- Expand the role for the Parliamentary Commissioner for the Environment in monitoring the performance of the system and the agencies within it
- Mandatory requirements for government to respond to evidence of poor environmental outcomes and inadequate system performance as shown through reporting

Proposed approach to monitoring and system oversight – Overview

Environment

Monitoring and oversight should:

- support and align with the overall shift of the system towards a more strategic and outcomes-focused approach
- focus on supporting the purpose of the NBA, including upholding Te Oranga o te Taiao, and monitoring against environmental limits, targets and outcomes

Building from the Panel's recommendations, an effective monitoring and oversight system will:

- **Provide decision-makers and communities** high quality information about the state of the environment and current and emerging pressures and risks
- **Require timely information that supports responsive planning** and ongoing system improvements
- **Connect data sources** between environmental and regulatory data to draw insights
- **Give effect to the principles of Te Tiriti o Waitangi** and enable Māori to participate in monitoring and oversight
- **Ensure clear responsibilities and accountability** for system outcomes and delivery
- **Require regular reporting** on system performance and effectiveness in achieving long-term objectives
- **Have stronger oversight** of system and agency performance
- **Take corrective action** where there is evidence of poor performance or difficulties in implementation

Proposed approach – A: Environmental outcomes

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The Panel thought monitoring requirements for natural and built environment outcomes should be made explicit in the NBA but did not say how this should look or work in practice

A suite of tools to direct environmental outcomes monitoring and reporting are recommended under the NBA

Prescriptive monitoring against limits, targets and outcomes in the NPF and NBA plans	A general requirement to monitor the state of the environment at regional and local levels	Provision for the Minister for the Environment to set monitoring and reporting regulations
Why: more prioritised and consistent monitoring of nationally important issues	**Why**: to monitor wider effects on the environment, including cumulative effects, and locally important issues	**Why**: provides a mechanism for central government to efficiently address future data and monitoring gaps

We also support the Panel's recommendations for:

- Requirements under the NBA for consistent and regular local-level environmental reporting
- Greater Māori involvement in monitoring and reporting activities and incorporating mātauranga Māori, through the proposed integrated partnership process
- Establishing clear connections between the NBA and national environmental reporting under the Environmental Reporting Act 2015 (currently under amendment)

Key choices and decisions to come:

- What **areas of the environment require a prescriptive monitoring approach**, how that is resourced, and how information flows into national level reporting and decision making
- The **form and frequency of environmental reporting** required at local levels
- The **mechanisms and support needed for Māori involvement in monitoring and reporting** and how mātauranga Māori is incorporated
- How to **align monitoring and reporting under the NBA with the Environmental Reporting Act** and utilise the proposed ERA amendments
- Allocation of **roles and responsibilities for environmental monitoring and reporting**, including a potentially greater role for central government

Pathway for decisions:

Seek further detailed decisions on monitoring and reporting on NBA environmental outcomes through the Environment subgroup

Proposed approach – B: Policy effectiveness

The system should continue to require responsible bodies to monitor the implementation and effectiveness of regulations, policies, strategies and plans and take action when problems are identified

This includes monitoring the effectiveness of:

- The National Planning Framework (NPF) in supporting and giving effect to the purpose of the NBA
- Regional spatial strategies (RSS) in achieving the purpose of the Strategic Planning Act
- Compliance of NBA plans with environmental limits and the promotion of the NBA outcomes

However:

We recommend stronger requirements in legislation to investigate, evaluate and respond when monitoring identifies poor environmental outcomes or problems with regulatory instruments

Key choices and decisions to come:

- The **level of prescription** for how the NPF, RSS and NBA plans are monitored
- The **type and frequency of reporting** required for policy effectiveness monitoring
- [redacted]
- **How Māori are involved** in policy effectiveness monitoring and response mechanisms in ways that support their roles on joint committees

Pathway for decisions:

MOG #3 delegated monitoring and review provisions of the NPF to the Minister for the Environment

Delegate decisions on monitoring requirements and review periods for RSS and NBA plans to MOG subgroups

Proposed approach – C: System performance

- **We support strengthening monitoring system performance consistent with the Panel's recommendations**

We seek agreement to the following core functions for monitoring system performance:

- Stronger regulatory stewardship and operational oversight of the system by central government, including oversight for implementation of the National Planning Framework
- Regular reporting to Parliament on the performance and effectiveness of the system
- Legislated requirements for central government to respond to state of the environment and system performance reports
- [redacted]
- Mechanisms to monitor how the system gives effect to the principles of Te Tiriti
- A range of powers for ministers to intervene and direct actions from responsible bodies to respond to issues

Pathway for decisions:

Delegate further detailed decisions on functions through the Environment subgroup.

Delegate detailed decisions on roles and responsibilities on system performance at the MOG #15 meeting alongside wider decisions on system institutions

Enablers for Implementation

Implementing a new system of monitoring and oversight will require increased investment and a shift in focus across several areas:

Funding: Monitoring needs enduring investment so consistent data can be built up year on year. This will help decision-makers to determine what drivers and pressures pose the greatest threats to the environment and enable more effective monitoring.

Tools: We need to start developing digital platforms and tools that capture, manage and integrate environmental and regulatory data across the system. Funding obtained through Budget 21 is being used to work with system partners to build a clearer business case for digital transformation.

Capability and capacity: The capability and capacity of central and local government and Māori to undertake monitoring and oversight roles will need sustained development over the long term.

Central government priorities: Central government will need to adjust to effectively evaluate policy instruments, monitor system performance, and play a more active role in overseeing the implementation of the system.

Minute from RM Reform Ministerial Oversight Group Meeting #9 on 6 July 2021

RM Reform Ministerial Oversight Group Meeting #9

Date: Tuesday 06 July 2021, 4:45 – 5:45 pm

Location: 2.1EW

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

Attendees: Hon Kelvin Davis, Minister of Māori Crown Relations: Te Arawhiti

Hon Megan Woods, Minister of Housing

Hon Damien O'Connor, Minister of Agriculture

Hon Willie Jackson, Minister for Māori Development

Hon Michael Wood, Minister of Transport

Hon Kiritapu Allan, Minister of Conservation, Associate Minister for Arts, Culture and Heritage and Associate Minister for the Environment

Hon Phil Twyford, Associate Minister for the Environment

Hon James Shaw, Minister of Climate Change

Apologies: Hon Nanaia Mahuta, Minister of Local Government

Hon Poto Williams, Minister for Building and Construction

Agenda Item 1: a more enabling regime to replace the consenting and approval systems

Agenda Item 2: land and resource use and responsibilities under the NBA

1. **agreed** to an enabling permissions regime that provides for greater proportion of 'permitted activities', supported by the provision of adequate information, certification or both that conditions will be met.
2. **agreed** to having a clear process for approval or decline for activities not enabled by a plan.
3. **agreed** that decision making moves away from adverse effects and focuses on outcomes and environmental limits subject to further discussion on issues like reverse sensitivity and infrastructure outcomes.
4. **agreed** that the National Planning Framework and Natural and Built Environments Act plans play a strong role in providing clear direction for users of the plan to understand the approval process (for example categorising activities, information requirements and notification).
5. **agreed** to the 3 pathways for addressing land and resource use responsibilities and that the details of these pathways will be addressed at MOG #10.
6. **noted** that officials will report back on how the three pathways will affect Māori rights and interests, and allocation.
7. **agreed** that details of how a more enabling and efficient permissions system will come back to MOG #10.
8. **noted** the new permissions system will need to:
   a) give effect to the principles of Te Tiriti and uphold Treaty settlement legislation; and

b) reflect the 19 April decision of the Māori interests sub-group that iwi, hapū and Māori should participate in decision-making on permissions of major significance to Māori, including those relating to waterways and land owned by Māori.

9. **agreed** that the Māori issue sub-group will meet prior to MOG #10 to discuss consenting/permissions, governance, and definitions for the terms tangata whenua, mana whenua and mana whakahaere.

Agenda Item 3: Initial strategic discussion on governance options

10. **noted** that this discussion was held.

In-progress action log from previous MOG meetings (for noting)

MOG #	Minute paragraph	Action
[redacted]		