Agenda – RM Reform Ministerial Oversight Group Meeting #14

Date: Wednesday 17 November 2021, 5.00 – 6.00 pm

Location: Zoom

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 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
5.00 – 5.20	**1. Strategic Planning Act (SPA) - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)**	Minister for the Environment	Paper 1: Strategic Planning Act (SPA) - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)
5.20 – 5.40	**2. Strategic Planning Act mplementation agreements and links to funding processes**	Minister for the Environment	Paper 2: Strategic Planning Act implementation agreements and links to funding processes
5.40 – 5.55	**3. Courts and Appeals in the new Planning System**	Minister for the Environment	Paper 3: Courts and Appeals in the new Planning System
5.55 – 6.00	**4. Oral item: Upcoming paper for MOG #15 - Update and alternative decision-making pathways**	Minister for the Environment	*N/A*

Attached for supplementary information:

1. Resource Management Reform System Map
2. Strategic Planning Act decisions taken to date and contained in MOG #14 papers
3. Glossary of key terms and acronyms
4. Minute from the natural environment subgroup on Thursday 28 October 2021

Summary of recommendations: Paper 1: Strategic Planning Act (SPA) - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

Key messages and recommendations (see pages 4 to 16 for more detail)

Key messages

- The Randerson Panel made recommendations about the core components and broad objectives of the Strategic Planning Act (SPA). However, because the SPA is new legislation, there are additional questions about the precise role it will play in the new system and how far it will go – in an active sense – to achieving strategic outcomes.
- To address these policy questions, this paper defines the problem that the SPA is trying to solve, sets the vision for the SPA, and outlines the critical shifts and key enablers required to achieve that vision.
- The direction provided in this paper will guide more detailed legislative design (eg, the strength of influence the RSS will have over regional land transport plans).
- Officials have identified three critical shifts the SPA needs to make to achieve the intent of the Panel's report and meet the objectives of RM reform:
    - Regional Spatial Strategies (RSSs) will enable and drive change and adaptation in a region, rather than just enable it;
    - Local government, iwi/Māori, and central government will work in partnership to achieve the best long-term outcomes for the region (in the context of national and local objectives), rather than just work in partnership; and
    - The SPA and its supporting mechanisms will both coordinate and commit public and private investment to support the region's aspirations, rather than just coordinate it.
- Officials recommend these key shifts to affirm the active strategic role of the SPA and RSSs in the new system. This active (rather than more passive) approach is consistent with the intent of the Panel's report.
- Partners in a region will formulate a collective, high-level, long-term vision, with goals and key actions that then cascade through the system by strongly influencing key tactical levers (eg, implementation plans, Regional Land Transport Plans).
- Without a consistent commitment to the critical shifts (and a strong, active role for the RSSs), there is a risk the SPA will add an extra layer to the RM system with little tangible benefit.
- This paper also seeks agreement that the SPA has the same te Tiriti o Waitangi clause, and incorporation of Te Oranga o Te Taiao into the purpose clause, as the Natural and Built Environments Act (NBA).
- The paper also provides a report back on the scope of RSSs, the implementation of the National Planning Framework (NPF) through RSSs, and the evidence requirements for RSSs.

Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Critical shifts the Strategic Planning Act (SPA) needs to achieve (*see* Proposal: Part 1)

1. **note** that this paper builds on decisions made at MOG #7 on the purpose of the SPA and the scope of Regional Spatial Strategies (RSSs).
2. **note** that Appendix 1, Supporting Item 1 provides a strategic framework for the SPA, including a problem statement, vision statement, critical shifts and key enablers – which officials consider are consistent with the intent of the Panel's report and the objectives of Resource Management (RM) reform.
3. **agree** that the critical shifts that the SPA needs to achieve are:
    a. RSSs will enable and drive change and adaption in a region;
    b. local government, iwi and Māori, and central government will work in partnership to achieve the best long-term outcomes for the region (in the context of national and local objectives);
    c. the SPA and its supporting mechanisms will both coordinate and commit public and private investment to support the region's aspirations.
4. **note** that without a consistent commitment to the critical shifts, there is a risk that the SPA will add an extra layer to the RM system with little tangible benefit.
5. **note** that decisions on the critical shifts will guide more detailed decisions about the integration of the SPA with the Natural and Built Environments Act (NBA) and other legislation.

Integration of the SPA and NBA (*see* Proposal: Part 2)

6. **note** that misalignment of the core principles underpinning the SPA and NBA would create ambiguity and likely reduce overall efficiency and effectiveness, while increasing complexity and the risk of legal challenge.
7. **agree** in principle that Te Oranga o Te Taiao be incorporated into the Purpose clause of the SPA in a manner consistent with the NBA.
8. **note** that the definition of Te Oranga o Te Taiao in the NBA is expected to undergo some refinement as a result of the select committee inquiry report-back and engagement process.
9. **agree** that the intent of te Tiriti clause in the SPA will be to give effect to the principles of the Treaty of Waitangi and the clause will be drafted consistently with the same provision in the NBA.
10. **agree** that officials will report back to the MOG on the legislative framework created between the NBA and the SPA, including purpose clauses and other foundational components of the legislation, once there is a more complete suite of policy decisions on both the NBA and SPA.

Report-back to MOG on ancillary matters from MOG #7 (*see* Proposal: Part 3)

Refinements to the core 'scope/specified content' in RSSs agreed to at MOG #7

11. **note** that at MOG #7 Ministers agreed that the scope of RSSs should be consistent with the 'strategic' option.
12. **note** that consultation with internal and external stakeholders has revealed some opportunities to refine aspects of the RSS scope agreed at MOG #7.
13. **note** that, in addition to these refinements, Appendix 1, Supporting Item 2 adds the following new elements to RSSs:

a. existing, planned and future urban centres of scale (eg, metros, centres, town centres, satellite towns)

b. where appropriate, major natural resource areas that may be suitable for development, use, or extraction (eg, mineral and energy generation).

14. **agree** to the rescind the RSS scope agreed at MOG #7 and replace with the RSS scope set out in Appendix 1, Supporting Item 2.

Criteria for 'other strategic matters' to be considered by Joint Committees

15. **note** that at MOG #7 Ministers agreed that the scope of RSSs may also cover *'other major strategic matters that meet a statutory test or criteria relating to the significance of their impact on the nation or region'*, and *'invited officials to report back with a detailed proposal for the significance test or criteria'.*

16. **note** that the purpose of this recommendation was to ensure there is a mechanism for Joint Committees to consider and respond to other 'major' novel or unforeseen 'strategic matters' that may not have been anticipated at the time of drafting.

17. **agree** that, in addition to the specified matters listed within the SPA, RSSs may cover any other major strategic activity/features that the Joint Committee considers warrants inclusion, provided that it meets a significance test outlined in the SPA.

18. **agree** that the purpose of the significance test is to ensure that any additional major strategic activities or features are necessary to meet the purpose of the SPA and the RSS, and do not detract from the RSS's high-level and strategic focus.

19. **agree** that the significance test should assess whether an activity or feature meets one or more of the following criteria:

a. is of a scale or significance that is likely to drive regional or major sub-regional land, water and coastal use and transport patterns;

b. is likely to generate environmental effects (both positive and negative) that are best managed at the regional level (eg, impacts on water catchments and greenhouse gas emissions);

c. is of a scale or significance that requires regional or major subregional infrastructure planning and investment;

d. is a nationally significant feature or activity;

e. is critical for overall city/regional development and function;

f. is critical to the national or regional economy;

g. requires the collaboration of multiple infrastructure providers or multiple layers of government.

20. **agree** that the significance test be supported by further guidance that the Joint Committees may refer to and apply at their discretion, such as the activity or feature's *(indicative only, subject to further work on guidance)*:

a. size and geographic extent (eg, covers a large surface area)

b. impact (eg, impacts/benefits a large number or proportion of the region's population eg, many service users/large catchment)

c. complexity (eg, involves or requires coordination across multiple agencies and infrastructure providers)

d. wellbeings affected (eg, delivers/impacts on multiple wellbeings)

e. time horizon (eg, has long-term and/or irreversible implications)

f. cost (eg, is likely to involve a significant cost for the region).

Determining whether content in the NPF will be implemented through RSSs

21. **agree** that the purpose, scope and legal effect of the SPA is the appropriate way to clearly define what should be implemented through an RSS rather than an NBA plan.

Report back on evidential requirements for the SPA

22. **agree** that the SPA does not need to provide any further detail about what information and evidence is required for RSSs beyond that agreed in MOG #7.

23. **agree** that officials issue drafting instructions to the Parliamentary Council Office on the basis of decisions on this paper.

Paper 1: Strategic Planning Act - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

This paper is supplemented by:

Appendix 1, Supporting Item 1: Strategic framework for the Strategic Planning Act (page 17);
Appendix 1, Supporting Item 2: Refinements to the scope of Regional Spatial Strategies (as agreed at MOG #7) (pages 18 to 20);
Appendix 1, Supporting Item 3: Treaty of Waitangi impact analysis (pages 21 to 24); and
Appendix 1, Supporting Item 4: Cost-Benefit Analysis of critical shift options and te Tiriti o Waitangi clause alignment (pages 25 to 31).

Purpose

1. This paper provides you with a strategic framework for the SPA. It defines the problem that the SPA is trying to solve, sets the vision for the SPA, and outlines the critical shifts and key enablers required to achieve that vision

2. This paper also provides some of the report-backs sought through the MOG #7 paper on the SPA[3] (the MOG #7 SPA paper) and seeks your decisions on:

   a. the purpose statement in the SPA and te Tiriti o Waitangi clause, and an approach to Te Oranga o Te Taiao

   b. refinements to the Regional Spatial Strategies' (RSSs) core scope and the recommended approach to what and how the SPA and RSSs might consider "other matters of significance"

   c. the principles for how and when the National Planning Framework will be implemented through RSSs, and

   d. the evidential requirements in the SPA.

Resource Management Review Panel's recommendations

3. The Panel recommended the creation of a legislative framework that embeds spatial planning as the key mechanism for improving strategic integration across the resource management (RM) system. Spatial planning has the potential to improve strategic integration across statutes, functions, outcomes, and different tiers of central and local government.

4. Achieving the level of integration envisaged by the Panel will require a critical shift in the way that local government, central government, and iwi/Māori[4] work together. All parties involved in the development of RSSs will need to have a shared understanding of the problems that RSSs are intended to solve, the vision they are working towards, and the key shifts that all players in the system must contribute to make them happen.

Previous Ministerial Oversight Group (MOG) decisions

5. The MOG #7 meeting made a range of decisions on the purpose of the SPA and the purpose, function, and scope of RSSs. Ministers considered the value of taking a future-focused, outcomes-based approach to regional planning and received initial advice on the integration of RSSs with the wider RM system.

[3] *The Strategic Planning Act: purpose, function and scope of regional spatial strategies, and integration with the resource management system*
[4] Māori participation and the "who" in the system are subject to ongoing discussion and engagement. We have used the terms iwi/Māori as a placeholder pending final decisions.

6. It is important that Ministers and officials have a shared view of the role of the SPA in the new RM system, the vision for the SPA, and the critical shifts that we must enable through the SPA to realise this vision.

7. Officials consider that there is a shared understanding at a high level, but that having further clarity on these matters will help to simplify and streamline future decisions, maximise the benefits of the SPA, and mitigate many of the risks in relation to reducing system efficiency and effectiveness.

8. Clarity on these points will also support the development of the legislative architecture for the Natural and Built Environments Act (NBA) and SPA and the integration with other legislation.

Three critical shifts recommended

9. Appendix 2, supporting item 1 (page 17) provides a summary of the strategic framework for the SPA. It identifies the problem that the strategic planning system is trying to solve, the vision for the SPA, and the critical shifts and key enablers required to achieve that vision.

10. Officials have identified three critical shifts that the SPA and supporting mechanisms need to make to RM system design for the SPA to successfully deliver its vision:

    a. Regional Spatial Strategies (RSSs) will enable and drive change and adaptation, rather than just enable it;
    b. Local government, iwi and Māori, and central government will work in partnership to achieve the best long-term outcomes for the region (in the context of national and local objectives), rather than just work in partnership; and
    c. The SPA, and its supporting mechanisms, will both coordinate and commit public and private investment in key strategic assets that will support the region's aspirations, rather than just coordinate it.

11. Officials recommend these shifts because they are consistent with the intent of the Panel's report and will contribute to the RM reform objectives.

12. The critical shifts will work together to create momentum. They provide a mechanism to agree what you want to achieve and provide a range of levers to help regions to achieve those aspirations.

13. Without a consistent commitment to the recommended critical shifts, there is a risk that the SPA will add an extra layer to the RM system with little tangible benefit.

14. A summary of the analysis of the costs and benefits of the options considered are contained in Appendix 1, supporting item 4.

15. This paper also contains a report-back on te Tiriti o Waitangi clause options for use in the SPA. Appendix 1, supporting item 4 includes an analysis of the two options considered:

    a. Option 1: the SPA requires that people carrying out activities under this Act give effect to the principles of te Tiriti o Waitangi, and

    b. Option 2: the SPA has a te Tiriti o Waitangi clause consistent with what is currently in the Resource Management Act 1991 (ie, have regard to the principles of te Tiriti).

Proposal: Part 1

Critical shifts the SPA needs to achieve

16. It is important to ensure that there is clarity in the role the SPA is intended to take in the new RM system before we make a series of detailed decisions on the integration of the

SPA with other legislation such as the NBA, Land Transport Management Act 2003, Local Government Act 2002 (LGA) and the Conservation Act 1987.

17. Appendix 1, supporting item 1 articulates the problem that the SPA and supporting system will solve. It provides a summary of the problem that the strategic planning system is trying to solve, the vision for the SPA and the critical shifts and key enablers required to achieve that vision.

18. Officials have formulated the following vision for the SPA:

> *The SPA will establish a collaborative and effective process to develop clear long-term regional strategies and supporting mechanisms to ensure these regional spatial strategies (RSSs) are successful and resolve the big issues facing the region(s).*
>
> *RSSs will set out a vision and a pathway to drive how regions adapt, change and grow to realise their potential and enable resilient, sustainable regions and communities.*
>
> *The interest and aspirations of Māori will be embedded into the planning process and the regional strategies. The environmental, cultural, social and economic wellbeing of regions and communities will be continuously improved.*

19. Three critical shifts in RM design and practice are required to achieve this vision, the intent of the Panel's report and the objectives of RM reforms. We will examine each of them in turn.

20. The success of the SPA relies on the legislation and supporting system all working together to achieve the critical shifts.

21. Without a consistent commitment to the recommended critical shifts, there is a real risk that the SPA will add an extra layer to the resource management system with little tangible benefit. This would result in the SPA increasing the complexity of the resource management system; take time and resources from Māori, local government and central government with marginal benefits for the environment, climate change adaptation or enabling development.

Critical Shift 1: RSSs will enable and drive change and adaptation in a region

22. RSSs and other levers in the system must go further than merely enabling outcomes. If RSSs only identify opportunities for change, they will simply become aspirations without a plan and will add an extra layer of planning to the system with little tangible value. This will reduce buy-in to the regional visions and reduce the incentive for stakeholders to participate in RSS processes.

23. Officials recommend that RSS provide a single regional strategy that drives and enables decision-making on the use of land and the coastal marine area in the region to make it clear that RSSs require actions to be taken (or not taken) to achieve the outcomes of an RSS. This means that local government, central government, and iwi/Māori will need to work with communities and stakeholders to develop an RSS that:

    a. sets out a long-term vision

    b. identifies key needs, opportunities and challenges

    c. develops a coherent agenda for responding to these needs, opportunities and challenges

    d. defines measurable goals and identifies actions to achieve the region's vision.

24. All three critical shifts work together to achieve the momentum towards the vision. This will be primarily achieved through:

    a. NBA plans being consistent with the aspirations, goals and actions identified through RSSs;

b. more effective use of existing mechanisms such as long-term plans and LTMA mechanisms;

c. Implementation Plans and Agreements [Paper 3: *Strategic Planning Act implementation agreements and links to funding processes* refers];

d. private investment;

e. monitoring progress on key actions and towards the regional vision.[4]

Decisions made to date are generally consistent with the concept that RSSs enable and drive change

25. MOG #7 agreed that RSSs would be set at the strategic level and will be developed every nine years and will set the vision for 30+ year period. The core components of RSSs were agreed to, but the role of goals was not discussed. We consider that RSSs, including any goals, will need to be backed by robust evidence to ensure that they endure through multiple local and central government political cycles.[5]

26. This approach of using RSSs to 'drive' change is consistent with the intent of the Panel's report. The Panel recommended that RSSs have a strong legal weighting (ie, 'lower-level plans' should 'be consistent with' RSSs) and referred to RSSs identifying goals, timeframes and anticipated costs, which suggests that RSSs would do more than simply enable outcomes. Through MOG #7, you agreed that spatial strategies should have sufficient legal weight to ensure that any key strategic decisions made through the strategy are not revisited or relitigated when preparing NBA plans.

If Ministers decide that RSSs should enable and drive change, this will have an impact on future design decisions

27. The decision on whether RSSs should drive and enable, or simply enable change, growth or development of the use of land and the coastal marine area will have an impact on the legal weight that the RSSs can have on NBA plans.

28. If RSSs have a role in *driving* change, some of the actions identified in the RSS may affect how property can be used. For example, an RSS may identify an area that is at risk of coastal inundation and require NBA plan rules to manage the adverse effects of that inundation. Decisions on how to take action would then need to occur in NBA plans and consenting decisions. Whereas, if the RSS simply identified inundation zones and set out a vision to make a region more resilient to the effects of climate change, it could result in NBA plans not addressing the inundation risk and regions wouldn't increase their resilience to the effects of climate change.

29. To support bold decisions being made in the RSS, there must be robust quality assurance processes to ensure the RSS is sound. There also needs to be consideration of review and appeal rights. This will likely need to include the establishment of some links into NBA provisions to address impacts on individual property rights.[6] Over time, there will also likely need to be links to the Climate Change Adaptation Act.

Limitations on the role of spatial strategies

30. Even if RSSs provide a single strategy that drives and enables decision-making on the use of land and the coastal marine area in the region, there will still be limitations on the regional investment that can be contemplated by an RSS.

31. RSSs are high-level and long-term, so they will not be suitable for managing small-scale or highly-reactive infrastructure demands. Furthermore, the SPA and RSSs will not override the authority granted to other Ministers through their own legislation, or their

[5] This approach is also complementary to the *30-year Infrastructure Investment Strategy* developed by Te Waihanga, which will set out the long-term vision for New Zealand's infrastructure, identify opportunities and provide recommended actions along with a timeline and respons ble agencies which could serve as an input into RSSs.

[6] The accompanying paper [*Paper 4: Courts and Appeals in the New Planning System*] seeks decisions on the role of Courts and appeals in the new system. This includes consideration of the ability to launch appeals and how the system will manage the impacts of plans on property interests and property rights.

ability to fulfil their statutory responsibilities specified within their own legislation. The breadth of the impacts of the SPA (and RSSs) means that this is a potential unintended consequence that will need to be managed through its development.

Critical Shift 2: Local government, central government and iwi/ Māori will work in partnership to achieve the best long-term outcomes for the region (in the context of national and local objectives)

32. To enable integrated decision-making at a regional level, the second recommended critical shift is to ensure there is a clear requirement for central government, local government and iwi/ Māori to work in partnership *for the long-term benefit of the region* (in the context of national and local objectives). This shift recognises that:

    a. a collaborative partnership is required to develop RSSs

    b. parties should look for opportunities to work together beyond the strategic spatial planning process; and

    c. parties should be working together for the benefit of the region (as a whole)

33. Without a clear intention for these partners to focus on long-term regional outcomes there is a risk that the RSSs will not deliver their long-term vision and that investment in the regions will continue to be disjointed and siloed.

34. Underpinning effective partnerships is a clear understanding of the roles, responsibilities, and accountabilities that each party has in the strategic planning system. These roles and responsibilities will also help to inform other aspects of the SPA system (including Implementation Agreements, infrastructure funding, investment strategies by local and central government, system stewardship and audit and accountability).[7]

Parties will need to change the way they work to achieve this critical shift

35. Working in partnership for the long-term benefit of the region would require district councils, iwi/Māori and central government to shift their focus from a sub-regional or national focus to a regional focus, for the purposes of the RSS. This will affect consultation, funding and planning processes.

    a. For central government, there is an opportunity to consider how an RSS might influence agency 10-year plans. RSSs will influence their 10-year planning cycles, but agencies will need to maintain their ability to respond to short-term operational demands.

    b. Local government authorities will need to think strategically, beyond their current boundaries, and beyond a 10-year long-term plan and 30-year infrastructure plans to work and invest in a long-term, regionally focussed way (while still meeting their existing legislative obligations).

36. The Panel's report notes that the new system will impose capacity, capability and funding demands on Māori/Iwi groups and organisations that, if not attended to, would be unsustainable. The Panel's report states that this funding gap will need to be addressed by central and local government; and that central government should provide support to local government and Māori/Iwi in the new system.

37. Local authority accountability is clear under the Local Government Act 2002 (LGA). Territorial authorities must act primarily for the benefit of their region or district.[8] The LGA provides for triennial agreements between local authorities in a region to enable collaboration. This means there are existing mechanisms in the LGA to enable collaboration at a regional level on the development of RSSs, but the accountability of the local authority back to the electorate is paramount in the way this is achieved.

[8] Section 12(4) Local Government Act 2002

Interactions with the Future of Local Government review

38. The Future of Local Government review is currently considering the functions, structures, and funding of local government. The interim report cautions that any new structures should be transitional as reforms may see new structures recommended and that any transitional arrangements are designed with appropriate political accountability and funding mechanisms in place.

39. The review will make recommendations in its final report (due April 2023) on future local governance structures, including where RSSs are best placed and the collaboration and partnership required to deliver these plans.

Critical Shift 3: Coordination and commitment of public and private investment to support the region's aspirations

40. The third critical shift is to create efficient coordination and commitment of public and private investment to support the region's aspirations. Officials consider that both coordination and commitment are required to enable the vision for the SPA to be realised and for it to provide meaningful value to the reformed system.

41. Pre-existing funding mechanisms, such as for the LTMA and local government, can continue to be used but decisions will be informed by the RSS, which will help to better coordinate funding.

42. Implementation agreements are a key to the efficient coordination of public and private investment that will be provided for through the SPA.

43. Accompanying Paper 2, *Strategic Planning Act implementation agreements and links to funding processes*, describes how to coordinate investment and actions under RSSs.[9]

44. Mechanisms like Implementation Plans and Agreements[10] will give the private sector more certainty in the sequencing of public sector investment over the short to medium term. This could assist them in master-planning sub-regional areas identified for urban growth.

45. If we successfully achieve these three critical shifts, the SPA will achieve its vision and will support the overall RM reform objectives.

Proposal: Part 2

Refining the integration of the SPA and NBA

46. The success of RM reform will depend on effective integration between the SPA and NBA. There will need to be a consistent set of principles underpinning the two Acts.[11]

As agreed through MOG #7, key terms in the SPA and the NBA should be aligned where appropriate

47. At the MOG #7 meeting, Ministers agreed that key terms in the SPA and NBA should be aligned where appropriate, including the [environmental] outcomes described in the NBA. We have now received the first version of the draft Strategic Planning Act Bill and understand more about the feedback the select committee has received on the NBA.

48. It is particularly important to align the underlying purpose and long-term outcomes in the NBA with the SPA. The key difference between the two is how they will give effect to the purpose and outcomes:

[9] Officials recommend that Implementation Plans and Agreements commit the delivery partners through self-enforcing mutual obligation, supported by incentives and good relationships among partners and stakeholders.
[10] Officials do not expect that commitment of funding will occur through RSSs.
[11] The Acts will also need to be integrated with the Local Government Act, Land Transport Act, Climate Change Adaptation Bill, conservation legislation, Marine and Coastal Area (Takutai Moana) Act and Treaty Settlement Legislation.

- The NBA will do so through: mechanisms such as the National Planning Framework (NPF), NBA plans and consenting processes and decisions.
- The SPA will do so through: RSSs that drive and enable, working in partnership for the benefit of the region, and coordinated and committed planning and funding (including the integration with other legislation).

49. Any misalignment in the core principles underpinning the SPA and NBA will create ambiguity and reduce the efficiency and effectiveness of the RM system.

50. Through discussions with the Parliamentary Council Office, officials have identified that there is an opportunity to continue to refine 'Part 2' of both the NBA and SPA (which includes the purpose clauses) throughout the policy process. This will ensure that the legislative framework created by the SPA and NBA is as clear as possible and will assist the public and decision-makers to interpret the legislation.

As part of this alignment, we recommend that the upholding of Te Oranga o Te Taiao is incorporated into the purpose of the SPA

51. Te Oranga o Te Taiao is a foundational component of the purpose of the NBA (and upholding it will therefore flow through to the NPF). Consistency in the foundational principles underpinning the NBA and SPA is critical to a coherent legislative system. Officials therefore recommend that Ministers agree in principle to incorporate Te Oranga o Te Taiao into the SPA in a manner consistent with the NBA.

52. The definition of Te Oranga o Te Taiao in the NBA is likely to undergo further refinement as a result of the Select Committee and engagement process. Officials expect similar refinement to occur in the definition of environmental outcomes in the NBA, which Ministers agreed in principle would be incorporated into the SPA.[12]

53. Officials will report back to the MOG on Part 2 of the SPA, including purpose clauses and other foundational components of the legislation, once we have a more complete suite of the policy decisions on both the NBA and SPA. This is to ensure that the overarching framework of the Bills for both is clear, easy to navigate and enables effective administration and good decision-making.

We recommend alignment of te Tiriti o Waitangi clauses in the NBA and SPA

54. At the MOG #7 meeting, Ministers commissioned a report-back on the te Tiriti clause for the SPA. Officials recommend that the te Tiriti clause in the SPA should be the same as for the NBA, ie, *'all persons exercising powers and performing functions and duties under this Act must give effect to the principles of the Treaty of Waitangi.'* This means local authorities, central government and joint committees will all need to give effect to the principles of te Tiriti while exercising powers under the SPA.

55. This will provide consistency with the overarching objectives of the RM reforms:

    a. **give effect to the principles of the Treaty** – it would embed this objective into the foundation of the SPA

    b. **better enabling development within biophysical limits** – as it recognises Māori understanding of the unique qualities of the region which enables the identification of sites that are appropriate for development and areas that should be avoided due to environmental or cultural values

    c. **system efficiency and effectiveness** – it would ensure that actions under the SPA give effect to te Tiriti and avoid potential misalignment between NPFs, RSSs and NBA plans.

56. An alternative approach to the te Tiriti clause in the SPA is likely to create system inefficiency and reduce the trust and confidence of Māori in the system.[13]

[12] MOG #7 refers
[13] Appendix 1, supporting item 4 sets out an options analysis of te Tiriti clauses against the reform objectives.

57. It is important to note that the SPA is not intended to impact on the ability of other Ministers and government agencies to meet their own te Tiriti obligations.

Proposal: Part 3

Report-back to MOG on ancillary matters from MOG #7

The below reports back to the MOG on matters related to the scope of RSSs, the integration of the NPF and RSSs and the evidence requirements for the content of RSSs.

Refinements to the core 'scope/specified content' of RSSs

58. At MOG #7 Ministers agreed that the scope of RSSs should be consistent with the 'Strategic' Option agreed at MOG #7 (see Appendix 1, supporting item 3). The SPA work has progressed significantly since MOG #7. Since this time, input from agencies and external stakeholders has revealed some opportunities to refine the scope (or 'specified content') that Joint Committees must consider and cover in an RSS (to a greater or lesser degree, depending on the situation or regional context).

59. Officials propose that RSSs should also consider and cover the following issues:

    a. *existing, planned and future urban centres of scale (eg, metros, centres, town centres, satellite towns etc)*
    b. *where appropriate, major natural resource areas that may be suitable for development, use, or extraction (eg, mineral and energy generation).*

60. Officials also propose to refine the definitions of the following issues, including for example:

    a. *areas appropriate for urban development and change, ~~or very little direction about type)~~, including the broad location of planned and future employment and business activities, and the likely scale and intensity of residential land use*
    b. *rural areas at a high-level (~~including~~ eg, highly productive land), including ~~focus on~~ urban/rural interface issues*
    c. *current and future uses of coastal areas ~~and uses~~ at a high level, such as areas for aquaculture, ports, or restoration activities ~~with a focus o~~n, including urban/coastal interface issues*
    d. *indicative locations for major new social infrastructure to support growth and change (eg, hospitals and universities) and identification of the 'need' for other social and community infrastructure required to unlock growth and support complete communities (eg, schools and correctional facilities), including potential investment triggers*
    e. *cultural landscapes, areas of cultural heritage value, and resources of significance to Māori to be protected, restored, or enhanced.*

61. Appendix 1, supporting item 2 reproduces the original scope considered at the MOG #7 meeting and provides the rationale for the proposed changes.

62. Further minor refinements will continue to be made to the scope through the detailed drafting process with PCO. If any of these changes are significant or in some way alter the original policy intent, we will seek further direction from MOG.

Criteria for 'other strategic matters' to be considered by Joint Committees

63. At MOG #7 Ministers agreed that RSSs may also cover *'other major strategic matters that meet a statutory test or criteria relating to the significance of their impact on the nation or region',* and *'invited officials to report back with a detailed proposal for the significance test or criteria'.*

64. The purpose of this decision is to ensure there is a mechanism for Joint Committees to consider and respond to 'major' novel or unforeseen 'strategic matters' that were not anticipated at the time of drafting.

65. Officials have considered a range of options for determining which unanticipated strategic matters can be considered by Joint Committees, ranging from a prescriptive approach to granting full discretion to Joint Committees, with the option of further guidance criteria to support decision-makers.

66. To ensure that RSSs remain focused on the high-level and strategic, officials consider that there should be a relatively high bar for the inclusion of 'other strategic matters'. Officials therefore recommend that Ministers agree to a prescriptive approach which requires that Joint Committees apply a 'significance test' when considering which matters beyond the scope of the specified RSS content may be covered in an RSS.

67. Specifically, officials recommend that (subject to refinement through the PCO process) the significance test assess whether an activity or feature meets one or more of the following criteria:

    a. is of a scale or significance that is likely to drive regional or major sub-regional land, water and coastal use and transport patterns;

    b. is likely to generate environmental effects (both positive and negative) that are best managed at the regional level (eg, impacts on water catchments and GHG emissions);

    c. is of a scale or significance that requires regional or major subregional infrastructure planning and investment;

    d. is a nationally significant feature or activity;

    e. is critical for overall city/regional development and function;

    f. is critical to the national or regional economy;

    g. requires the collaboration of multiple infrastructure providers or multiple layers of government.

68. Officials also recommend that the statutory test be supported by further guidance that the Joint Committees may refer to and apply at their discretion, such as the activity or feature's *(indicative only, subject to further work on guidance):*

    a. size and geographic extent (eg, covers a large surface area)

    b. impact (eg, impacts/benefits a large number or proportion of the region's population eg, many service users/large catchment)

    c. complexity (eg, involves or requires significant coordination across multiple agencies and infrastructure providers)

    d. wellbeing affected (eg, delivers/impacts on multiple wellbeings)

    e. time horizon (eg, has long-term and/or irreversible implications)

    f. cost (eg, is likely to involve a significant cost for the region).

Determining whether content in the NPF will be implemented through RSSs

69. At the MOG #7 meeting, Ministers agreed that the NPF will be able to direct the implementation of provisions through either RSSs or the NPF. Ministers also established that the NPF will have two levels of legal weight on RSSs depending on the provision – either an active legal weight to implement (eg, give effect to) or to be 'consistent with' the NPF (when NPF direction is to be implemented through an NBA plan).

70. Through MOG #7, officials committed to reporting back on how to determine whether NPF matters should be implemented through RSSs or NBA plans.

71. Officials consider that it is important to have a consistent approach to this. However, officials recommend that the purpose, scope and legal effect of the SPA is the

appropriate way to clearly define what should be implemented through an RSS rather than an NBA plan. Adding criteria to the legislation to further define this would add complexity and unnecessary process steps to the development of the NPF.

Evidential requirements in the Strategic Planning Act

72. A strong evidence base for RSSs is needed to enable Joint Committees to make informed decisions. At the MOG #7 meeting, Ministers agreed that all RSSs should be informed by robust information and evidence, including mātauranga Māori. This decision was strengthened at the MOG #12 meeting, when Ministers agreed that RSSs should be based on the best available information. At the MOG #7 meeting, Ministers also directed officials to report back on whether any further information and evidential requirements should be prescribed in the SPA.

73. Officials consider that the legislation should be pitched at a high level in respect of evidential requirements. A prescriptive approach in primary legislation would present difficulties to the development of RSSs. Instead, Joint Committees should have the flexibility to develop RSSs that are suited to the unique regional context and will have a better understanding of the level of evidence that is necessary. Being too prescriptive might predetermine what a necessary level of data is; this might be different for each region, and it might change over time. This is the same approach taken in similar pieces of legislation.[14]

74. There is still a need for consistency and standards in respect of the information and evidence used to inform RSSs. This consistency is best achieved through secondary legislation (particularly national direction under the NPF) and guidance.

75. Robust RSSs will require a significant amount of information and evidence that may not exist at a regional or national level. They will also require central government to have a good understanding of existing information in the system, the best way to use that information, and the level of resourcing required to fill any gaps that exist. This is the subject of ongoing work.

Treaty impact analysis

76. One of the objectives of RM reform is to give effect to the principles of te Tiriti. Agreement is therefore sought for the SPA to have a te Tiriti clause that recognises this. The clause would be supplemented by the in-principle agreement to incorporate Te Oranga o Te Taiao into the purpose of the SPA.

77. The long-term strategic planning contemplated by the SPA would seek to give effect to the principles of te Tiriti. How successfully the SPA does this depends on decisions made at future MOG meetings on a range of matters including:

    a. the integration of te Tiriti and Te Oranga o te Taiao into the SPA legislation [this paper]
    b. governance arrangements and Māori participation in the system
    c. the transition of Treaty Settlements into the new RM system
    d. the treatment of Māori land in the system
    e. recognition of Māori aspirations, interests and values in the system
    f. quality assurance processes for approving plans.

78. Decisions flowing from this paper will not impact arrangements negotiated through Treaty Settlements, Takutai Moana rights or other existing RM arrangements. The Government is committed to upholding all these arrangements, and appropriately transitioning them

[14] For example, the Local Government (Auckland Council) Act 2009 and the Fisheries Act 1996

into the reformed RM system. The introduction of a new SPA layer in the system will make doing this more challenging.

79. Nor will decisions flowing from the paper preclude any potential options for addressing Māori rights and interests in freshwater, or the extent to which RSSs may be an appropriate place in the RM system for such rights and interests to be recognised. These matters remain to be determined.

Engagement

80. [redacted]

Local government

81. Officials discussed the strategic framework for the SPA including the proposed vision, critical shifts and key enablers with the Local Government Steering Group. There was general support for the approach identified.

Iwi/Māori groups

[redacted]

82. Officials discussed the proposed vision, critical shifts and key enablers with [redacted] They agreed that RSSs needed to drive the way land and resource use decisions were made. Some concerns were expressed about the focus on:

    a. growth (growth is not always a good thing) and

    b. land use and they wanted to see a clearer link to waterways. Officials are continuing to work this through.

83. [redacted] also expressed a view that if these documents are to drive change then officials need to ensure that there is a robust process to develop them and that the quality assurance process includes a Māori viewpoint.

84. Te Tai Kaha also expressed a view that the primacy of the natural environment needs to be built into the fundamental design of the SPA and that you can't retrofit it.

85. There was a lot of discussion about how the RSSs will integrate with the NPF and the NBA plans and with the mechanism under three waters reforms. [redacted] were keen to ensure that all parts integrated well together and that all parts were appropriately consulted on. There is some scepticism about how the elements that are currently subject to reform will be successfully integrated.

86. In relation to the incorporation of Te Oranga o Te Taiao in the SPA, [redacted] noted the select committee's recommendations in relation to further work happening and the potential inclusion of a hierarchy approach similar to Te Mana o te Wai. [redacted] indicated a strong desire to be part of the next stage of discussions on Te Mana o Te Wai.

87. In relation to te Tiriti clause, [redacted] were disappointed that an option of "to honour te Tiriti and give effect to its principles" was not considered as option as this is the type of clause they consider would be appropriate.

88. There was discussion about what effect Te Oranga o Te Taiao and te Tiriti clause would have on the way the SPA was used and RSSs were developed.

89. [redacted] raised the importance of iwi/Māori participation in the system and the need to provide for rangatiratanga and mana whakahaere. This is the concept that there will need to be inclusion of the right people to consider particular matters as they relate to a particular group's rights and interests.

90. Officials held two discussions with [redacted] where they agreed with the overall direction of the critical shifts. There was an emphasis on the need to ensure that quality control is built into the system to ensure sound decision-making processes have been followed. They also thought that lower-level plans should be required to give effect to the strategy.

91. Some concerns were raised that the SPA and RSSs may be construed as a "licence to pollute" and that the current RM system is failing the environment, so the SPA needs to be clear about the importance of protecting the environment and gave examples of how spatial planning had been used to degrade the environment in the past (eg, hydro power).

92. There was discussion about the proposed te Tiriti clause and Te Oranga o Te Taiao. [redacted] agreed that alignment between the NBA and SPA was important. [redacted] identified that there were clauses under the RMA that reinforced the existing te Tiriti clause under the RMA. [redacted] consider that it is important to carry over into the NBA and the SPA to ensure that these principles were realised in the legislation and that the new legislation did not result in te Tiriti having less influence. Officials undertook to consider these clauses.

93. [redacted] highlighted that Māori interests extend beyond cultural landscapes and cultural heritage sites and that the SPA needs to recognise this.

94. There was some discussion about the importance of discussing the scope of RSSs with Māori across the country and really understanding what Māori see as the key issues that should be included.

95. [redacted] expressed discomfort with the way that RSSs could be developed if iwi/Māori participation and governance arrangements were not designed appropriately.

Appendix 1: Strategic Planning Act - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

Supporting Item 1: Strategic Framework for the Strategic Planning Act

[IN-CONFIDENCE]

Strategic Framework for the Strategic Planning Act

Problem statement (that the Strategic Planning System is trying to fix)	In the current system, decisions about priorities, land use and investment are generally made by individual entities. This means that bold decisions, difficult trade-offs and strategy setting to facilitate the long-term adaptation, evolution and change in use of land and the coastal marine area at a regional level are not being made. This is because the current system prioritises the status quo and is geared towards local government bodies making local decisions that favour some of their constituents; and central government making decisions that serve the national interest; and iwi/Māori do not have a consistent strategic role or influence in the system. This results in an RM system that: • Does not facilitate the coordination of land use and the provision of infrastructure, leading to delays, inefficiencies and waste • Does not realise the full potential of our regions: environmental, cultural, social and economic wellbeing is undermined meaning that needs of communities and people are not consistently being met and the environment continues to degrade. • Fails to provide consistent role for iwi/Māori at a strategic level, which means that the interests, aspirations and values of Māori are not consistently reflected in planning across the motu • Does not prioritise taking effective, coordinated action to respond to climate change			
Vision statement for the SPA	The SPA will establish a collaborative and effective process to develop clear long-term regional strategies and supporting mechanisms to ensure these regional spatial strategies (RSSs) are successful and resolve the big spatial issues facing the region(s). RSSs will set out a vision and a pathway to **drive** how regions adapt and change to realise their potential and enable resilient, sustainable regions and communities. The interest and aspirations of iwi/Māori will be embedded into the planning process and the regional strategies. The environmental, cultural, social and economic wellbeing of regions and communities will be continuously improved.			
Critical shifts to the RM system that the SPA needs to achieve	One single RSS that **enables and drives** decision-making on use of land and the coastal marine area in the region/s	Clear requirement for local govt, central govt and iwi/Māori to work in partnership and make joint decisions **for the benefit of the region/s** (in the context of national and local objectives)		Efficient coordination and **commitment** of public and private investment in key strategic assets that will support the region's aspirations.
What do we need to enable these critical shifts	**What?**	**Who?**		**How?**
	A strategic document that: • Provides an integrated vision for the region, that considers the key development needs and opportunities for the region and establishes a coherent agenda to achieve it • Provides a roadmap built around a collectively held vision, including managing conflicts and trade-offs • Identifies actionable directions and measurable goals directed at achieving and monitoring progress towards the achievement of the vision.	Local government, central government and iwi/Māori are integrated into the Strategic Planning system, each have clear roles, responsibilities and accountabilities in the system The strategic planning process must be designed to build and unite communities as much as possible to create genuine societal momentum.	Incentives for: • participation • changing the way people work	Legislative, planning and funding and financing frameworks are integrated with each other.

The **SPA** is only one piece of the RM reform puzzle. The Panel report does not have a single problem statement for the SPA, so this is our attempt to create one

To meaningfully address the problem, we think that RSSs will need to do more than just enable change and set a vision, **they need to drive change.**

This is broadly in line with what the panel recommended it have a strong legal weighting which was described as 'lower level plans "to be consistent with" [the RSSs]'. It also made reference to identifying goals, timeframes and anticipated costs.

When designing these things, we must think about how we are helping to create the critical shifts

[IN-CONFIDENCE]

Appendix 1: Strategic Planning Act - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

Supporting Item 2: Refinements to the scope of Regional Spatial Strategies (as agreed at MOG #7)

The SPA work has progressed significantly since MOG #7. Since this time, input from agencies and external stakeholders has revealed some opportunities to tweak the scope (or 'specified content') that Joint Committees must consider and cover to a greater or lesser degree in the RSS (depending on the situation or regional context).
Below we outline some suggested refinements to the scope, with reasons provided.

	MOG #7 "Strategic Option" scope (and subsequent refinements)	Reason for refinement
	Note that the level of detail for which the below 'areas, features or activities' are expected to be covered in RSSs will depend on the situation, as set out in MOG #7 (level of detail). For example, we would expect a greater level of specificity for existing and planned areas (particularly constraints) or infrastructure, but less detail for future or 'visionary' activities further out in time. *Note that deleted text is shown as crossed out (eg, ~~xxxxxxx~~) and new text is show as RED.* *New scope elements and more significant refinements to the policy intent identified in the body of this paper and its recommendations are highlighted in light yellow shadowing.* *The table also includes some minor edits to clarify the original policy intent (see scope elements 1, 4, 7, 11 and 12).*	
1	***The scope of Regional Spatial Strategies (RSSs) should include the following:*** • areas to avoid/or treat with caution in regard to the use or development of land, consistent with the National Planning Framework (eg, significant natural environment areas on land and within the coastal marine area, rivers and waterways, cultural heritage areas, areas vulnerable to hazards/climate change, and highly productive land)	*Minor edits to clarify original policy intent*
2	• existing, planned and potential future urban centres of scale (eg, metros, centres, town centres, satellite towns etc) *[may require classification, to discuss with PCO]*	While it's implicit that these areas be identified, they are listed here for completeness since they will help form the spatial layout of regions and related infrastructure networks.
3	• areas appropriate for urban development and change ~~(with no or very little direction about type),~~ including the broad location of planned and future employment and business activities and the likely scale and intensity of residential land use	The addition of the word 'change' reflects the fact that dynamic urban areas and regions must not just allow for growth, they must also allow for land use to change (eg, from rural to urban; or, within urban areas – from industrial to commercial, or commercial to residential etc). The use of 'broad' reflects the fact that RSSs will generally not specify the type of development (eg, residential versus business or mixed use etc), however there may be some instances where this is necessary at a high level. For example, such as with heavy industry where the nature of the land use may have significant impacts on the adjacent natural environment, other land

		uses, or may require specialised infrastructure connections. High-level Information about the likely 'scale and intensity of residential use' will also enable infrastructure to be aligned and integrated with land use.
4	• at least sufficient development capacity required for housing and business to accommodate growth, and scenarios for how the region may develop in the future eg, intensification around public transit hubs and regeneration areas of significant scale	*Minor edits to clarify original policy intent*
5	• rural areas at a high-level (~~including~~ eg, highly productive land), including focus ~~on~~ urban/rural interface issues	The word 'focus' was used for the 'Narrow' option presented at MOG #7. The 'Strategic' option includes all of the narrow option plus a range of additional matters. This scope element has now been updated to focus on rural land use matters primarily (eg, highly productive land), rather than just focusing on rural/urban interface issues.
6	• current and future uses of coastal areas ~~and uses~~ at a high-level, such as areas for aquaculture, ports, or restoration activities ~~with a focus on~~, including urban/coastal interface issues	As per above, the word 'focus' was used for the 'Narrow' option presented at MOG #7. The 'Strategic' option included all of the narrow option plus a range of additional matters. This scope element has now been updated to focus on coastal areas/use primarily, rather than just focusing on the coastal/urban interface issues.
7	• major existing, planned and proposed (visionary) infrastructure corridors, networks and strategic sites required to meet current needs and accommodate future growth and change (eg, indicative transport corridors, including within the coastal marine area)	*Minor edits to clarify original policy intent [see above re edition of 'change']*
8	• major existing, planned and visionary infrastructure such as ports, airports, water and wastewater treatment plants, and opportunities to make better use of existing infrastructure networks	
9	• indicative locations for major new social infrastructure to support growth and change (eg, hospitals and universities) and identification of the 'need' for other social and community infrastructure required to unlock growth and support complete communities (eg, schools and correctional facilities), including potential investment triggers	See above re 'change'. The addition of 'universities' is to further clarify the likely scale of social infrastructure that is anticipated by 'major'. The additional text for other social infrastructure is intended to capture the fact that - while RSSs may not identify smaller-scale social infrastructure spatially - these infrastructure types are no less important for unlocking urban development and supporting thriving communities. For example, where existing or future growth area are identified, the RSS may also signal the likely future *need* for new social infrastructure (eg, schools) to support these growing communities. This could include certain demand thresholds that trigger the need for investment.
10	• cultural landscapes including areas of cultural heritage value, and resources of significance to Māori that should be protected, restored, or enhanced	Cultural landscapes' is a more encompassing and holistic reference that better reflect Māori/Iwi physical, cultural and spiritual connections to the land. [redacted] queried the inclusion of significance here and raised a concern that it could limit the interpretation. Officials consider it is intended to enable the inclusion of matters however it may be subject to further refinement through the drafting process.

11	• areas where significant change in land use is required to reduce impacts of land use and development on the environment, including the marine environment	*Minor edits to clarify original policy intent*
12	• areas for protection, restoration or improvement, such as wetlands, estuaries and harbours, blue and green corridors and networks, and regional parks	*Minor edits to clarify original policy intent*
13	• where appropriate, major natural resource areas that may be suitable for development, use, or extraction (eg, mineral and energy generation)	Subsequent feedback pointed out that the Panel's specified content (which formed the basis of the MOG #7 scope) addressed development and protection, but not wider natural resources use (eg, extraction or energy production such as windfarms, hydro or geothermal). The RSS could, in consultation with private providers (and taking into account commercial sensitivities), play a valuable role in helping to dentify existing, planned or future areas of significant natural resource use, within environmental limits and other constraints.
14	• areas that may be affected by climate change or other natural hazards, and measures that might be necessary to address such issues [climate adaptation]	
15	• Other major strategic matters that meet a statutory test or criteria relating to their significance (not included in Panel report)	***NB**: this links to the section of the paper titled - criteria for 'other strategic matters' to be considered by Joint Committees*

Appendix 1: Strategic Planning Act - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

Supporting Item 3: Treaty of Waitangi impact analysis

Status quo

- The SPA will make it mandatory for all regions to establish joint committees to develop a Regional Spatial Strategy (RSS).
- Under the current system, there is no legal requirement for spatial strategies outside Auckland, and no legal requirement for implementation agreements to support spatial plan implementation. This means that the SPA will introduce significant change to the planning system.
- To date, Ministers have not made a decision on how te Tiriti will be reflected in a specific clause in the SPA. However, "giving effect to the principles of the Treaty and better recognising te ao Māori, including mātauranga Māori" is a key objective of RMA reforms and design decisions made to date have sought to support that objective.
- It is important to note that in response to growth issues, and a focus on improving housing and urban outcomes, there are examples of central government agencies and Crown entities, local authorities, iwi/Māori, and infrastructure providers voluntarily committing to joint work programmes, such as:
    - the Urban Growth Partnership work programme being led by the Ministry of Housing and Urban Development (HUD). This includes joint work programmes to implement spatial plans and drive a long-term and integrated approach to land use and infrastructure planning.

Summary of analysis

Gives effect to the principles of te Tiriti o Waitangi

- This paper recommends that te Tiriti o Waitangi clause in the SPA should be consistent with the NBA clause: 'all persons exercising powers and performing functions and duties under this Act must give effect to the principles of the Treaty of Waitangi.'
- This means local authorities, central government and joint committees will all need to give effect to the principles of the Treaty while exercising powers under the Act
- An alternative approach to te Tiriti o Waitangi clause in the SPA is likely to create system inefficiency and reduce the trust and confidence of Māori in the system.[15]
- It is important to note that the SPA is not intended to impact on the ability of other Ministers and government agencies to meet their own te Tiriti o Waitangi obligations.
- Te Oranga o Te Taiao is a foundational component of the purpose of the NBA. The purpose of the NPF is to advance the purpose of the NBA, which includes upholding Te Oranga o te Taiao This means that the NPF will need to provide direction to RSSs that are consistent with the objective to uphold Te Oranga o Te Taiao. Consistency in the foundational principles underpinning the NBA and SPA is critical to a coherent legislative system. Officials therefore recommend that you agree in principle to incorporate Te Oranga o Te Taiao into the SPA in a manner consistent with the NBA.
- The decisions in this paper, and the SPA to date, will enable devolution of power, particularly if you decide that the SPA will drive and enable the change to realise the vision for the region as set out in the RSS. This devolution of power means that the onus is on the Crown to ensure that te Tiriti o Waitangi is upheld.
- There will need to be mechanisms in place to support the building of iwi/Māori capacity and capability to engage in the reformed system, including SPA processes.

Māori Crown relations risks and opportunities

- [redacted]

[15] Appendix Two, supporting item 2 sets out an options analysis against the reform objectives.

- The SPA is intended to have a transformative impact in the way we do regional planning as it will introduce regional spatial strategies that has been developed and agreed to by joint committees, that include iwi/Māori. These RSSs will have will drive and enable the way regions develop, working towards a 30-year vision.

Costs and benefits for Māori

- The SPA will formalise iwi/Māori participation in Joint Committees who will agree the RSSs. This will provide iwi/Māori with a legislated mechanism for partnership at a high level in the RM system. The SPA is intended to also provide opportunities for participation by iwi/Māori through mechanisms such as Implementation Agreements and through the development of and engagement on RSSs.
- The SPA will also formally recognise the connection between iwi/Māori and the environment through the inclusion of Te Oranga o Te Taiao in the SPA, and the expectation that cultural landscapes, cultural heritage sites and key areas for protection and restoration will be included in RSSs.

Protecting and transitioning Treaty settlements

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- Nor will decisions flowing from the paper preclude any potential options for addressing Māori rights and interests in freshwater, or the extent to which RSSs may be an appropriate place in the RM system for such rights and interests to be recognised. These matters remain to be determined.
- The SPA will include governance arrangements, RSSs and by association the Implementation Plans and Agreements that support delivery of RSSs. The RSS will identify the vision, objectives and priority actions for the region, and the Implementation Plans and Agreements will provide a plan for delivering the priority actions.
-

Waitangi Tribunal Recommendations

- The WAI 262 report found that the status quo resource management system largely reserved decision-making powers for the Crown. The new system needs to shift to greater participation by Māori across the planning and consenting regimes. The proposals in this paper would provide a decision-making role for iwi/hapū/Māori (through the RSS joint committee) in the implementation of RSSs.
- Issues concerning the lack or low level of Crown engagement or lack of consultation with iwi/Māori, and capacity and resourcing of iwi/Māori to participate fairly in the system, are raised in several Tribunal recommendations. As noted above, advice on funding iwi/hapū/Māori to participate effectively in RSS development and implementation will be provided for at a later MOG meeting.

Māori rights and interests in freshwater and other natural taonga

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- This assessment is indicative only, as Cabinet has yet to agree on next steps to progress the freshwater allocation and Māori freshwater rights and interests work programmes. We have yet to develop detailed policy options, or to have substantive policy discussions with or iwi/Māori more broadly.
- Māori freshwater rights and interests are typically grouped under four broad 'pou':
  - Water quality / Te Mana o te Wai
  - Recognition of relationships with water bodies
  - Governance and decision-making
  - Access and use for economic development.[17]
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-
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[16]

[17] These four pou were distilled from a series of over 20 regional hui held by along with a series of case studies commissioned by MfE, to assemble a comprehensive picture of what Māori rights and interests in freshwater entailed. They subsequently formed the basis of a joint work programme agreed to by the Crown and the ILG in 2015, and were reiterated by Cabinet in July 2018 (ENV-18-MIN-0032 refers).

	[redacted]

Overall assessment

- Overall, the proposals outlined in this paper will contribute to a system that upholds the principles of the Treaty. However, a further assessment will be required once further policy work has been completed as noted in the "limitations" section above.

Appendix 1: Strategic Planning Act - Problem statement, vision and the critical shifts we need to achieve (and report-backs from MOG #7)

Supporting Item 4: Cost-Benefit Analysis of critical shift options and Te Tiriti o Waitangi clause alignment

Problem or opportunity - status quo
• The MOG #7 meeting made a range of decisions on the purpose of the SPA and the purpose, function and scope of RSSs. Ministers considered the value of taking a future-focused, outcomes-based approach to regional planning and received initial advice on the integration of RSSs with the wider resource management (RM) system. • It is important to ensure that Ministers and officials have a shared view of the role of the SPA in the new RM system, the vision for the SPA (and the outcomes it is trying to achieve) and the key shifts that we must enable through the SPA to realise this vision. • Officials consider that there is a shared understanding at a high level, but that having further clarity on these things will help to simplify future decisions, maximise the benefits of the SPA and mitigate many of the risks in relation to reducing system efficiency and effectiveness. • Appendix 1, supporting item 1 sets out the overarching strategic framework for the SPA. It provides a summary of the problem that the strategic planning system is trying to solve, the vision for the SPA and the critical shifts and key enablers required to achieve that vision. • **Officials identified three critical shifts that SPA and supporting mechanisms need to make to RM system design for the SPA to successfully deliver its vision. The options considered for the three critical shifts are as follows:** a. **Regional Spatial Strategies (RSSs) will enable and drive change and adaptation, or just enable it;** b. **Under the SPA, local government, iwi and Māori, and central government will work in partnership to achieve the best long-term outcomes for the region (in the context of national and local objectives), or just work in partnership (but retaining pre-existing, separate objectives); and** c. **The SPA, and its supporting mechanisms, will both coordinate and commit public and private investment in key strategic assets that will support the region's aspirations, or just coordinate it.** • The success of the SPA relies on the legislation and supporting system all working together to achieve the critical shifts. • The critical shifts will initially impact primarily on parties to the joint committees: central government, local government and iwi/ Māori. However there will also be impacts for infrastructure providers and members of the community. • This advice reflects widely accepted concepts of what makes for an effective strategy, effective partnerships and effective planning and funding decisions. It reflects comments provided by [redacted] he preferred options for the critical shifts have been endorsed by the Strategic Planning Reform Board. • Without a consistent commitment to the critical shifts, there is a real risk that the SPA will add an extra layer to the resource management system with little tangible benefit. This would result in the SPA increasing the complexity of the resource management system, and take time and resources from Māori, local government and central government with marginal benefits for the environment, climate change adaptation or enabling development.

Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Critical Shift 1 - Option 1: RSSs will provide a single strategy that drives and enables change	• Applies what we know about what makes an effective strategy: o sets out a long-term vision o identifies key needs, opportunities and challenges	• Through the MOG #7 SPA paper you agreed that RSSs will be developed every 9 years and will set the vision for a 30+ year period. This means that the vision and the milestones will need to endure over the course of several local

and adaptation on the use of land and the coastal marine area in the	o develops a coherent agenda for responding to these needs, opportunities and challenges o defines measurable goals and identifies actions to achieve the region's vision. • Maximises the likely effectiveness of the RSSs in driving and enabling the adaptation and change in the use of land and the marine and coastal area to respond to the aspirations of the community to realise the vision. • Shared understanding of the social, cultural, environmental and economic potential in the region and a coherent agenda for realising that potential • Regions will have made difficult decisions and trade-offs to address the issues facing their region, which will: o reduce some of the barriers to development because the case for change will have been made through the RSS o productive/fertile lands are protected to increase food security o biodiversity corridors are protected o cultural landscapes are understood and respected o Regions are more resilient over time • Supports coordinated regional investment that maximises wellbeing • United view of the impacts that climate change will present for the region over the next 30+ years and actions and goals to work towards to mitigate the associated risks • This approach to RSSs is complementary to the 30-year infrastructure investment strategy developed by Te Waihanga. Where the long-term vision for New Zealand's infrastructure is identified, opportunities are identified and recommended actions are set out along a timeline with the responsible agencies identified.	and central government political cycles. The actions and goals identified as being required to realise the vision must be backed by robust evidence to ensure that the RSSs are not revisited unnecessarily outside of these cycles. • It is important to note that the commitment of specific funding is not expected to be achieved through the RSSs, but through existing mechanisms such as local government long-term plans, funding under the LTMA or other new mechanisms such as the implementation agreements which would be negotiated on a shorter timeframe. • If RSSs have a role in driving change, some of the actions identified in the RSS may affect the way people can use their property. This risk can be addressed through robust quality assurance processes to ensure the RSS is sound. There also needs to be consideration of review and appeal rights. This will likely need to include the establishment of some links into the provisions in the NBA to address the impacts on individual property rights

Critical Shift 1 – Option 2: RSSs will provide a single strategy that enables change and adaptation of the use of land and the coastal marine area in the region	• This option reflects a progression beyond the status quo, where (apart from Auckland) there is no requirement to have a regional spatial strategy. This means there will be an increase in the use of regional spatial planning. • It will reduce the need for consultation and engagement at law (eg, appeal mechanisms). • Might make it easier to agree because it is less likely to result in difficult trade-offs being made. • Shared understanding of the social, cultural, environmental and economic potential in the region.	• There is a risk that the government would be adding an extra layer to the planning system that provided little tangible value. This would mean that over time fewer people engaged with the RSS planning process, reducing the buy-in to the vision that the RSSs set out. • Limiting the role of RSSs to simply "enabling" would also meaning that the system efficiencies were less likely to be gained, as the "case for change" would not have been made through the RSSs and would be made either through NBA plans or consenting decisions. • It would limit the of value of RSSs in preparing and adapting to the effects of climate change and enabling development o For example: If the RSSs simply identified inundation zones and identified a vision of making a region more resilient to the effects of climate change, it would mean that NBA plans would not have to proactively consider the issue.
***Critical Shift 2: Option 1* Central government, local government and iwi/ Māori will work in partnership and make joint decisions for the long-term benefit of the region (in the context of national and local objectives)**	• Having a shared objective for the partnership will most likely result in the type of integrated decision-making that is sought to be achieved by the SPA. • Because their explicit recognition of what we want the partnership to work together for, it allows for proactive consideration of how this new role under the SPA will be incorporated or aligned with: o the current roles and responsibilities of Local Government under the Local Government Act 2002 o the varied roles, responsibilities and accountabilities of central government o the role, responsibilities and accountabilities of iwi/ Māori NB: Officials consider that it is possible for local authorities to engage in the development of RSSs under existing legislative provisions, provided that the benefit that RSSs provide for the region also benefit each individual district. Officials will continue to work to ensure that it is clear how provisions in the SPA integrate with the LGA.	• Working in partnership for the long-term benefit of the region would require district councils, iwi/ Māori and central government to shift their focus from a sub-regional or national focus to a regional focus, for the purposes of the RSS. This will affect consultation, funding and planning processes. • We will need to ensure there is sufficient funding and capability and capacity of all parties (especially for iwi/ Māori) to undertake their role in the system. • The future of local government review (currently underway) is to consider functions, structures and funding for future local governance reforms. The interim report cautions that any new structures should be transitional as reforms may see new structures recommended and that any transitional arrangements are designed with appropriate political accountability and funding mechanisms in place. An alternative is to break the local democratic link which holds politicians accountable to their electors. There would need to be compelling reasons and very substantial benefits to justify breaking the link of electoral accountability and this goes beyond the scope of the RM reforms as agreed by Cabinet. The accountability question also applies to central government representation on the SPA

		joint committee, and iwi/ Māori representatives.
Critical Shift 2: Option 2 - Central government, local government and iwi/ Māori will work in partnership and make joint decisions	• Officials consider that it is possible for local authorities to engage in the development of RSSs under existing legislative provisions, provided that the benefit that RSSs provide for the region also benefit each individual district. Officials will continue to work to ensure that it is clear how provisions in the SPA integrate with the LGA. • Might be faster to establish (but will likely be less enduring).	• Without a clear intention for these partners to focus on long-term regional outcomes there is a risk that the RSSs will not deliver their long-term vision and that investment in the regions will continue to be disjointed and siloed. • Local authority accountability is clear under the Local Government Act 2002 (LGA). Territorial authorities must act primarily for the benefit of their region or district. • The roles, responsibilities and accountabilities of central government are set out through a range of different legislation. This means that establishing an enduring partnership with central government is likely to require an additional focus beyond simply working in partnership to be effective and enduring due to the sheet scale of what central government does. Absence of certainty will likely result in frustrations in the partnership. • There is an inherent imbalance in the relationship between central and local govt and iwi/ Māori – this means that we will need ensure there is: o clarity in roles, responsibilities and accountabilities of all parties, which will be difficult to achieve when the role of the partnership is unclear. o sufficient funding and capability and capacity of all parties (especially for iwi/ Māori) to undertake their role in the system • The future of local government review (currently underway) is to consider functions, structures and funding for future local governance reforms. The interim report cautions that any new structures should be transitional as reforms may see new structures recommended and that any transitional arrangements are designed with appropriate political accountability and funding mechanisms in place.
Critical Shift 3: Option 1 – Efficient coordination and commitment to the integration of planning and funding	• The strategic planning system will go beyond an intention to coordinate and will result in an integrated commitment to action. This is central to the underlying ambition for RSSs to drive and enable change in the way land is used. • It will give the private sector more certainty in the sequencing of public sector investment over the	• May make it more difficult for projects to be funded that fall outside of the RSS (due to them being urgent, unexpected or not of a sufficient level of importance). This risk will need to be managed under either option.

	short to medium term. This could assist them in master-planning sub-regional areas identified for urban growth, and may result in a "snowball" effect of public and private investment towards certain aspirations in the RSS	
Critical Shift 3: Option 2 - Efficient coordination of the integration of planning and funding	• Will still create new mechanisms for coordinating investment which is an improvement from the status quo.	• Will be less likely to result in the widespread adoption of these mechanisms. • May make it more difficult for projects to be funded that fall outside of the RSS (due to them being urgent, unexpected or not of a sufficient level of importance). This risk will need to be managed under either option.

Conclusion

- We recommend using option 1 for each of the critical shifts to affirm the active strategic role of the SPA and RSSs in the new system, as opposed to the SPA performing a more passive, co-ordinating function. The recommended approach is consistent with the intent of the Panel's report and will contribute to the RM reform objectives. The alternative options will increase the risk that the SPA introduces a new layer of planning into the system without adding extra value, reducing system efficiency and effectiveness.

Problem or opportunity - status quo

- At the MOG #7 meeting, Ministers agreed that key terms in the SPA and NBA should be aligned where appropriate, including the [environmental] outcomes described in the NBA. We have now received the first version of the draft Strategic Planning Act Bill and understand more about the feedback the select committee has received on the NBA.
- It is particularly important to align the underlying purpose and long-term outcomes in the NBA with the SPA. The key difference between the two Bills is how they give effect to the purpose and outcomes:
- The NBA will do so through: mechanisms such as the National Planning Framework, NBA plans and consenting processes and decisions.
- The SPA will do so through: RSSs that drive and enable, working in partnership for the benefit of the region, and coordinated and committed planning and funding (including the integration with other legislation).
- Any misalignment in the core principles underpinning the SPA and NBA will create ambiguity and reduce the efficiency and effectiveness of the RM system.
- At the MOG #7 meeting, Ministers commissioned a report-back on the Te Tiriti clause for the SPA. Officials recommend that the Te Tiriti clause in the SPA should be 'all persons exercising powers and performing functions and duties under this Act must give effect to the principles of the Treaty of Waitangi.' This means local authorities, central government and joint committees will all need to give effect to the principles of te Tiriti while exercising powers under the Act

Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Option 1: SPA te Tiriti clause consistent with clause in NBA: "give effect to the principles of te Tiriti"	Consistent with the overarching reform objectives: • **Give effect to the Principles of the Treaty** • **Better enabling development within environmental biophysical limits**: Māori are disproportionately affected by the effects of housing supply and poor infrastructure. Māori	

	also have a role as kaitiaki, their traditional knowledge may help to identify sites that are appropriate for development, and sites that need to be protected due to their environmental of cultural value. • **Better preparing for, and adapting to, climate change risks and natural hazards**: Māori have an intergenerational connection to the land, where others may choose to relocate to their regions etc, it would be a dislocation from their whakapapa for Māori. This means that Māori have a unique investment in supporting their land to adapt to the changing environment. • **Improving system efficiency and effectiveness and reducing complexity**: Ensuring that actions under the SPA will give effect to Te Tiriti, avoid potential misalignment between NPFs, RSS's and NBA plans.	
Option 2: Te Tiriti clause in line with existing RMA provision ie "take into account the principles of te Tiriti"		Less consistent with overarching reform objectives: • **Give effect to the Principles of the Treaty**: May undermine the overall objective of giving effect to the principles of the Treaty. May make it difficult for Māori to trust that the RMA reforms have a genuine commitment to improving the way the Resource Management system recognises te Tiriti. • **Better enabling development within environmental biophysical limits**: It would potentially undermine the ability for Māori to share their aspirations for the area from both environmental, social and economic perspective. This could mean that opportunities for partnership or to maximise gains for Māori and the wider community are missed. This could also mean that inappropriate development is planned and gets challenged at a very late stage, replicating some of the frustrations in the current system. • **Better preparing for, and adapting to, climate change risks and natural hazards**: Planning for climate change adaptation without intentional involvement of Māori is inconsistent with the principles of the Treaty. This

		is because land has a deep cultural and spiritual. • **Improving system efficiency and effectiveness and reducing complexity**: Create confusion and potential misalignment between NPFs, RSS's and NBAs and inconsistencies in planning processes which would create ambiguity and inefficiency.
Conclusion		
Officials recommend that te Tiriti clause in the SPA should be 'all persons exercising powers and performing functions and duties under this Act must give effect to the principles of the Treaty of Waitangi.' This means local authorities, central government and joint committees will all need to give effect to the principles of te Tiriti while exercising powers under the Act. Officials consider that this clause is appropriate because it is consistent with the overarching objectives of the RM reforms.		

Summary of recommendations: Paper 2: Strategic Planning Act implementation agreements and links to funding processes

Key messages and recommendations (see pages 3 to 23 for more detail)

Key messages

- Officials agree with the Panel that the Strategic Planning Act (SPA) should require each region to have an implementation agreement (or similar mechanism) that would support delivery of the priority actions identified in the Regional Spatial Strategy (RSS).
- The Panel's report describes a single implementation agreement for each region. However, from a practical perspective, we propose the SPA:
    - require a summary Implementation Plan for each RSS
    - enable optional bilateral and multilateral Implementation Agreements to give effect to the Implementation Plan that focus on specific work programmes or geographical areas. The SPA should not prescribe the number or type of Implementation Agreements required as this will vary from region-to-region.
- Implementation Plans and Agreements combined would provide a collaborative mechanism to link projects and programmes to funding streams from different sources, connect key parties (public, partially privatised, and private), and sequence infrastructure provision in a logical way. They would be useful for developers and infrastructure providers to help understand the construction pipelines for different regions.
- RSSs would link to existing policy and funding frameworks through Implementation Plans and Agreements, and statutory links in the SPA between RSSs and Long-Term Plans (LTPs) and Regional Land Transport Plans (RLTPs).[18]
- Officials' recommendation is that Implementation Plans and Agreements are not legally enforceable but commit the parties through self-enforcing mutual obligation (moral suasion), supported by incentives and good relationships among partners and stakeholders.

Recommendations

The Ministerial Oversight Group is recommended to:

1. **agree** that the SPA:
    a. require a summary Implementation Plan for each Regional Spatial Strategy
    b. enable the Implementation Plan to be supported by optional multilateral or bilateral Implementation Agreements to give effect to the Implementation Plan
2. **agree** that the combined purpose of Implementation Plans and Agreements is to provide a collaborative mechanism to link projects and programmes to funding streams from different sources, connect key parties, and sequence infrastructure provision and other implementation actions in a logical way
3. **agree** in principle that Implementation Plans be approved by RSS joint committees in consultation with other delivery partners, to be revisited if required following further decisions on joint committees

[18] At MOG #7 it was decided that LTPs and RLTPs should "work towards" RSSs. Officials are undertaking further policy work to identify what this will mean in practice and will seek further decisions from MOG on the statutory links if required.

4. **agree** that any party with a role in the regulation or delivery of a priority action identified in the Regional Spatial Strategy be able to enter into an Implementation Agreement

5. **agree** that Implementation Agreements do not need to be approved by RSS joint committees

6. **agree** that Implementation Plans commit the parties through self-enforcing mutual obligation, supported by incentives and good relationships among partners and stakeholders

7. **agree** that where parties choose to enter into Implementation Agreements, the Agreements commit those parties through self-enforcing mutual obligation, supported by incentives and good relationships

8. **agree** that Implementation Agreements would not be expected in relation to business-as-usual projects, or projects or suites of projects that have already been agreed elsewhere, such as projects agreed to be funded through the National Land Transport Fund

9. **note** that these decisions are dependent on future decisions to be made at a later MOG about RSS joint committees and funding the new system, including Māori participation in the system, and will be revisited if necessary, following those decisions

10. **note** that officials will undertake further policy work on the detail of Implementation Plans and Agreements, and how they will link to existing policy and funding frameworks, including the merits of minor, incremental or substantive change

11. **note** that further work is required to address the potential roles of iwi/Māori[19] in RSS delivery. This will include consideration of opportunities for giving effect to the principles of Te Tiriti and upholding Te Oranga o Te Taiao, including the potential role of the proposed Integrated Planning Partnership Arrangements under the Natural and Built Environments Act to support RSS implementation

12. **authorise** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation, Minister of Transport and Associate Minister for Arts, Culture and Heritage (Hon Kiritapu Allan) to make further policy decisions in accordance with the MOG's decisions on this paper

13. **note** that the group of Ministers in recommendation 12 is the same group that was authorised to make decisions on Strategic Planning Act implementation at MOG #12.

[19] The various forms of Māori participation in the system are subject to ongoing discussion. We have used the term 'iwi/Māori' as a placeholder pending final decisions on the approach to Māori participation.

Paper 2: Strategic Planning Act implementation agreements and links to funding processes

This paper is supplemented by:

Appendix 2, supporting item 1: Impacts Analysis (pages 13 to 17);
Appendix 2, supporting item 2: Initial advice on key features of Implementation Plans and Agreements (pages 18 to 20); and
Appendix 2, supporting item 3: Treaty Impacts Analysis (pages 21 to 23).

Purpose

1. This paper seeks Ministerial Oversight Group (MOG) agreement to recommendations relating to mechanisms to support implementation of RSSs under the SPA. It recommends the SPA require each RSS to be accompanied by an Implementation Plan that summarises, prioritises and coordinates the key actions the partners in a region will take to implement the RSS. It also recommends the SPA enable optional bilateral or multilateral Implementation Agreements that are entered into by delivery partners[20] to give effect to the Implementation Plan.
2. [redacted]

Panel's recommendations

3. The Panel recommended that RSSs "should be strategic and high-level with project and site-level detail provided through separate implementation agreements and subsequent combined planning and funding processes." The implementation agreements would focus on steps to be undertaken in the next 3, 6 and 10 years, and would be updated more frequently than RSSs.
4. The Panel did not make any recommendations about the key features of implementation agreements, how they would influence decision-making under central and local government funding frameworks, or their implications for the role of RSS joint committees or central government institutional arrangements.
5. The Panel also proposed that RSSs contain content relevant to implementation, such as options or scenarios (with indicative costs and timing) that reconcile the opportunities and challenges identified in the RSS, measurable objectives and milestones, and a description of the approach to monitoring.

Previous Ministerial Oversight Group decisions

6. Previous MOG decisions relevant to this paper include:
   a. MOG #4 decision mandating officials to explore options that include and go further than the Panel's recommendations for how binding RSSs are on central and local government funding plans and processes.
   b. MOG #7 decisions that RSSs should be strategic and high-level and include a vision, objectives and priority actions for the region, and inform the development of more detailed implementation agreements.

[20] Delivery partners could include central government agencies, Crown entities, councils, infrastructure providers, iwi/Māori, community service providers, and others.

c. MOG #7 decisions that RSSs should have weight over Natural and Built Environments Act (NBA) plans, and Long-Term Plans (LTPs) and Regional Land Transport Plans (RLTPs) should work towards RSSs.

Status quo under the current system

7. In 2018, Cabinet established the Urban Growth Agenda (UGA) to improve urban outcomes. The UGA aims to enhance land supply, development capacity and infrastructure provision by removing constraints in the planning system. Initiatives delivered through the UGA include the National Policy Statement on Urban Development, the Infrastructure Funding and Financing Act (IFF Act) and the establishment of growth partnerships and spatial plans in some high growth areas. Central government partners with local government and iwi/Māori to accelerate urban development and align infrastructure investment. Examples of voluntary commitments and partnerships under the current system include:

   a. Urban Growth Partnerships, led by the Ministry of Housing and Urban Development (HUD), including joint work programmes to implement spatial plans and drive a long-term and integrated approach to land use and infrastructure planning[21]

   b. the Auckland Transport Alignment Project (ATAP) and Auckland housing work programme.[22]

8. These growth partnerships are yielding positive change, such as increased collaboration across local and central government administrative boundaries, planning for mass transit, the identification of future transport corridors, and improved access to labour markets.

9. Central government's resource commitment to each partnership depends on its role and the level of commitment from local government and iwi/Māori. The key central government agencies and entities involved are HUD, the Ministry of Transport, Waka Kotahi, the Treasury, Department of Internal Affairs, the Ministry of Business, Innovation and Employment, the Ministry for the Environment, Kāinga Ora, the Ministry of Education, and the local District Health Boards.

10. For most of the partnerships, joint task groups have been established to align, integrate and coordinate joint programmes for priority development areas. This involves setting shared development targets for each area, tracking progress against development programmes and addressing any delivery risks. Progress is reviewed monthly by the joint local government/central government/iwi Senior Manager and Chief Executive/DCE groups and reported quarterly to the joint Ministerial/Mayor/Chair governance groups.

11. A key pillar of the UGA is infrastructure funding and financing. The IFF Act has established the Infrastructure Levy Model to support the timely provision of infrastructure for housing and urban development. The Infrastructure Levy Model is primarily a financing tool and does not address all funding challenges faced by local government.

12. The proposals in this paper have been informed by the Urban Growth Partnerships and joint work programmes, and a Beca Limited case study on how Implementation Plans and Agreements could be used to deliver spatial plans in the Bay of Plenty.

[21] Urban Growth Partnerships have been established for the Hamilton to Auckland Corridor, the Waikato Metro area, Queenstown Lakes, Wellington-Horowhenua, and Tauranga-Western Bay of Plenty.
[22] Section 79(4)(f) of the Local Government (Auckland Council) Act 2009 (LGACA) requires the Auckland spatial plan to identify policies, priorities, land allocations, programmes and investments, and specify how resources will be provided to implement the strategic direction. Section 80(5) of the LGACA requires the Council to endeavour to secure and maintain the support of other parties in the implementation of the spatial plan.

International examples

13. research also indicates that implementation plans/agreements should:

14. This paper has also been informed by Beca Limited research on the implementation of spatial strategies in Australia, Canada and the United Kingdom. Officials can provide Ministers with a summary of that research on request.

15. The implementation agreements in the UK and Australian case studies focused primarily on regional economic development, with a secondary focus on infrastructure and land use. The Canadian example focused on land use and infrastructure, particularly transport infrastructure. The links between spatial plans and formal government funding arrangements between different levels of government differed in all the case studies.

16. The Beca research indicates that the content of RSSs and associated implementation plans/agreements will vary from region-to-region to reflect regional circumstances. For example, RSSs and supporting implementation plans/agreements for regions with high growth urban areas will have a strong focus on identifying future development areas and infrastructure needs to accommodate growth, while areas with little or no growth may have a stronger focus on regional economic development. Climate change will impact all regions, but in different ways.

    a. The Beca focus on shared priorities and not try to cover every aspect of a RSS

    b. incentivise collaborative implementation

    c. be capable of operating at multiple levels, including cross-regional, regional and sub-regional

    d. be sufficiently resourced, including a dedicated programme management office that could, for example, be hosted by a council in the region and the costs shared in an equitable way between central government and all councils in the region (further advice will be provided on this for a later MOG meeting).

Options considered

17. The following primary options were considered:

    a. **Voluntary:** The SPA would not require implementation agreements (or similar mechanisms). Parties would enter into agreements or joint work programmes on a voluntary basis, as is done for the existing urban growth partnerships.

    b. **Mandatory:** The SPA would require implementation agreements (or similar mechanisms) and contain core requirements in respect of their development, content, monitoring, review, and relationship to the RSS.

18. In relation to the status of implementation agreements (or similar mechanism), we have considered whether implementation agreements should:

    a. commit the parties through **self-enforcing mutual obligation** (moral suasion) and incentives

    b. commit the parties as a **contract** enforceable through the courts, or

    c. bind the parties by **statute** with sanctions for non-compliance in the SPA.

19. In addition to the primary and status options, we have considered detailed design options for the key features of implementation agreements (or similar mechanism), including:

    a. **Scope**: For example, whether implementation agreements should be narrowly focused on new lead infrastructure that requires coordination across multiple delivery partners, or broad enough to cover all priority actions identified in the RSS.

b. [redacted]

c.

d.

e.

20. A summary of the costs and benefits of these options is contained in Appendix 2, supporting item 1 (pages 13 to 17).

Proposals

Officials propose that Implementation Plans be mandatory, and the supporting Implementation Agreements be optional

21. MOG #7 decided that RSSs will be strategic, high-level and long-term. They will contain a vision for the region, high-level objectives, and priority actions. RSSs need flexibility and responsiveness to integrate land use and use of the coastal marine area with the provision of infrastructure and public amenities, to improve the wellbeing of communities.

22. RSSs are not intended to provide detailed information about projects, costs, or timing. Without a separate mechanism to provide this detail, there is a risk that RSS implementation will be poor, undermining the ability of RSSs to enable and drive change and adaptation in regions *(as recommended in the accompanying MOG #14 Paper 1 on the SPA problem statement, vision and critical shifts)*. Without an implementation agreement (or similar mechanism), there may be pressure to include project-level detail in RSSs, which would undermine their strategic function and create a need for frequent review.

23. Other reasons in support of an implementation agreement (or similar mechanism) include:

    a. RSSs will be implemented through investment as well as regulation in NBA plans. However, RSSs will not provide a prioritised pipeline of work, visibility of investment required by different parties, or an assessment of the costs and benefits of that investment.

    b. Multiple actors will play a role in delivering RSSs on the ground, both public and private. A coordinating mechanism is necessary to ensure that RSS implementation is sequenced efficiently and effectively across the delivery partners.

    c. Implementation agreements will establish a forum and strengthen relationships between the actors responsible for delivering RSSs in a region. They will help to shift the system from 'point in time' participation to ongoing dialogue.

24. For the above reasons, we recommend that the SPA:

    a. require a summary Implementation Plan for each RSS, to be approved by the RSS joint committee in consultation with other delivery partners[23]

    b. enable the Implementation Plan to be supported by optional multilateral or bilateral Implementation Agreements to give effect to the Implementation Plan. The Agreements would be memoranda of understanding between parties that have chosen to enter into them. They would not need to be approved by the RSS joint committee, as the committee is a planning rather than a delivery body. The SPA

[23] [redacted]

should not prescribe the number or type of Implementation Agreements required as this will vary from region-to-region.

25. The development of Implementation Plans and Agreements is not intended to provide an opportunity to revisit the strategic decisions made through the RSS process.

26. The SPA should provide flexibility for cross-regional Implementation Plans and Agreements, such as for a corridor like Hamilton to Auckland. This is consistent with MOG #12 decisions relating to the inclusion in the SPA of a statutory process for collaboration on cross-boundary issues by way of cross-regional committee.

27. Implementation Plans and Agreements would not change the existing roles and obligations (including statutory obligations) of central and local government and other infrastructure providers to provide infrastructure services and deliver infrastructure. Instead, they would bring these roles together to promote the coordinated delivery of infrastructure and services in a region.

Relationship between the Implementation Plan and Implementation Agreements

28. The difference between the summary Implementation Plan and the supporting Implementation Agreements is described in Table 1 below.

Table 1: Comparison of Implementation Plans and Agreements

Implementation Plan	Implementation Agreements
Provides the high-level plan for delivering the priority actions in the RSS. It should summarise: • key actions delivery partners will take to implement the RSS (eg, policy changes, NBA plans, area/structure plans, the initiation of key business cases) • prioritisation of the key actions and any inter-dependencies between them • how the delivery partners will monitor and report on progress towards achieving the RSS outcomes (consistent with any statutory requirements in the SPA).	Bilateral or multilateral agreements between delivery partners to give effect to the Implementation Plan. There could be multiple Agreements per Plan. The Agreements would: • have a narrower scope than the Implementation Plan (eg, they would be specific to a particular project or priority area) • be used when more than one party is responsible for delivering a key action/project identified in the Implementation Plan • provide a detailed programme of activities, establish the sequence of initiatives (business cases, delivery etc) and identify funding sources, including whether funding is committed or subject to other processes • be able to adapt to changes in central or local government policy or unforeseen events in terms of priorities and sequences of activity.
Mandatory: An Implementation Plan is required for each RSS.	Optional: Implementation Agreements are enabled but not mandated by the SPA. Implementation Agreements would not be expected for business-as-usual projects or project/programmes that have been agreed elsewhere (eg, projects already agreed to be funded through the National Land Transport Fund).
Approved by the RSS joint committee in consultation with other delivery partners.	Agreed by delivery partners on a voluntary basis. No need for the RSS joint committee to approve, as the committee is a planning body not a delivery body.

Officials propose the SPA contains core requirements for Implementation Plans and Agreements

29. Officials propose the SPA, or regulations made under the SPA, contain core requirements for key features of Implementation Plans and Agreements. These could include matters such as the scope, time period, parties and process to develop the Implementation Plans, the status of the Plans and Agreements, and monitoring, review and reporting requirements.

30. Appendix 2, supporting item 2 (pages 18 to 20) provides initial advice on the features of Implementation Plans and Agreements that could be specified in the SPA. If Ministers agree that the SPA should require Implementation Plans and enable optional Implementation Agreements, we will undertake further policy work and engagement to refine these proposals.

31. The legislative requirements should be clear and concise and not overly prescriptive. As part of the further work proposed, we will consider what should go into the SPA, or regulations made under the SPA, and what could be covered in non-statutory guidance.

32. Officials are seeking a delegation to the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government, Minister of Housing, Minister of Conservation, Minister of Transport and Associate Minister for Arts, Culture and Heritage (Hon Kiritapu Allan) to make further decisions on these matters. This is the same Ministerial group that was authorised to make decisions on SPA implementation at MOG #12.

Officials propose that Implementation Plans and Agreements be incentives driven

33. Implementation Plans and Agreements need to commit the parties to some degree to ensure delivery. The question is whether this commitment should be given effect through statute, contract, or self-enforcing mutual obligation. The commitments associated with Implementation Plans and Agreements are also affected by the extent to which:

    a. one government can bind a future government with respect to revenue raising and expenditure choices

    b. one local authority can bind a future local authority with respect to revenue raising and expenditure choices

    c. central government can bind local authorities with respect to revenue raising and expenditure choices

    d. it is appropriate for the Crown to bind iwi/Māori by statute or contract

    e. RSSs and implementation agreements under the SPA can constrain decisions made under the Local Government Act (LGA) and Land Transport Management Act (LTMA), which are subject to different purposes and processes.

34. A risk to the implementation of RSSs is the lack of certainty arising from changes in central or local government priorities. Public money can be committed across electoral cycles through long-term contractual arrangements and agreements, but the government of the day is entitled to review these arrangements. A long-term project or programme is less likely to be changed by an incoming government if it is supported by the community, based on robust evidence, and has been through a comprehensive business case process.

35. [redacted]

36. Officials recommend that Implementation Plans and Agreements should commit the parties through self-enforcing mutual obligation, supported by:

    a. links between RSSs and LTPs/RLTPs. Officials will provide further advice to a later MOG on legal links between RSSs and LTPs/RLTPs, and opportunities to streamline and better align the timing of these processes

    b. the use of non-regulatory tools to set expectations for central government agencies and Crown entities (discussed below)

    c. incentives (discussed below)

    d. the provision of the right tools, including IFF tools (this links to the UGA IFF work)

    e. good relationships among partners and stakeholders.

37. Further policy work and engagement with iwi/Māori is required to identify potential links between Implementation Plans and Agreements and the proposals for Integrated Planning Partnership Arrangements (IPPs) under the NBA.

Influence of Implementation Plans and Agreements on decision-making under central and local government funding frameworks

38. The predictability and certainty of funding is important for long-term planning and the coordinated delivery of RSSs. There is an opportunity to consider the use of existing funding frameworks and mechanisms to fund and implement RSSs, and the development of new funding frameworks and mechanisms to drive change.

39. The implementation of RSSs will need to be sufficiently resourced. However, the SPA itself will not contain the required funding or financing mechanisms. Instead, the SPA will need to link to existing and new frameworks and mechanisms through which money can be raised and spent by local authorities, central government agencies, and Crown entities.

40. The existing frameworks include:

    a. the LGA, through which local authorities plan and fund infrastructure and community services through LTPs (and associated infrastructure strategies, annual plans, and development contributions policies)

    b. the LTMA, under which central and local government co-fund land transport infrastructure through the National Land Transport Fund

    c. the Public Finance Act (PFA), through which central government manages its assets and liabilities, and establishes lines of responsibility for the effective and efficient management of public finances.

41. Officials propose that RSSs link to existing policy and funding frameworks through Implementation Plans and Agreements, supported by legal links in the SPA between RSSs and LTPs/RLTPs.

42. As noted above, officials recommend the Implementation Plans and Agreements commit the parties through self-enforcing mutual obligation, supported by incentives and good relationships among partners and stakeholders. Central and local government will need to understand how their Implementation Plan and Agreement commitments fit with their other obligations, responsibilities, and priorities.[24]

[24] Relevant policy and funding frameworks include the LTPs, RLTPs, GPS-Land Transport and GPS-Housing and Urban Development, and the plans made under the Climate Change Response Act.

43. Implementation Plans and Agreements will not replace the existing frameworks discussed above. However, further work is required to determine:

    a. how to prioritise central government investment across regions, particularly for central government agencies and Crown entities who operate under a national framework (eg, Waka Kotahi, KiwiRail)

    b. how the potential roles of iwi/Māori in RSS delivery should be addressed. This will include consideration of opportunities for giving effect to the principles of Te Tiriti and upholding Te Oranga o Te Taiao, including the potential role of IPPs under the NBA[25] to support RSS implementation. These matters will be addressed in advice for a later MOG.

    c. how to encourage private sector and community stakeholders to contribute to joint outcomes

    d. the need for, and extent of, amendments to other legislation

    e. whether the scope of LTPs/RLTPs can be narrowed or the process of their development streamlined

    f. how Implementation Plans and Agreements will allow for differences in funding cycles across different legislative regimes

    g. how to ensure the system continues to provide for small-scale infrastructure projects, maintenance and renewals

    h. how to ensure the new system is fit for purpose for areas with declining or stagnant populations, as well as for areas experiencing growth.

44. [redacted]

45. [redacted]

[25] For example, IPPs could include joint management agreements and transfers of powers.

[redacted]

Treaty impact analysis

46. Key Treaty impacts to note are:

    a. Cabinet has agreed that Treaty settlement arrangements (and existing resource management arrangements and Takutai Moana rights) must be upheld by the SPA. The SPA includes governance arrangements, RSSs and the Implementation Plans and Agreements that support delivery of RSSs. The RSS will identify the vision, objectives and priority actions for the region, and the Implementation Plans and Agreements will provide a plan for delivering the priority actions.

    b. Care will be needed to ensure that an Implementation Plan or Agreement does not reduce central or local government commitment to existing arrangements (eg, for a council and iwi/Māori to work together to restore an area of special value) by giving greater priority (eg, time and resourcing) to other projects. [redacted]

    c. We are proposing that RSS joint committees approve Implementation Plans, in consultation with other delivery partners, and potentially oversee RSS implementation. The Treaty impacts of the proposals in this paper are therefore dependent on future decisions about the composition of joint committees, and the processes to appoint members.

    d. Implementation Plans and Agreements would provide an opportunity for iwi/Māori to be involved in the prioritisation and delivery of priority actions identified in RSSs. This opportunity would extend to Māori groups, such as Māori land trusts, that may not be represented on the joint committee.

    e. The proposals do not appear to preclude any options to address Māori rights and interests in freshwater and other natural taonga.

47. Overall, the proposals outlined in this paper will contribute to a more Treaty consistent system. As discussed in the 'proposals' section of this paper, there are further decisions to be made on the detailed design options. We will complete further analysis of the Treaty impacts of those options.

48. A full summary of the analysis of the Treaty impacts of the recommendations of this paper is contained in Appendix 2, supporting item 3 (pages 21 to 23).

Engagement

Agency

49. Agencies are generally supportive of the proposals in the paper. The main point of contention raised through agency feedback was the joint view of the Ministry of Transport and KiwiRail that implementation agreements should not be required in respect of land transport projects that are already planned and/or funded under the LTMA. Recommendation 8 was added in response to this feedback.

Local government

50. The Local Government Steering Group is supportive of an implementation mechanism to support delivery of RSSs. Its view is that RSSs need to provide certainty and funding is critical to this. It supports a joint central and local government financial long-term agreement to give effect to the strategic direction in the RSS.

51. The Steering Group has raised the importance of democratic accountability for RSS development and implementation, particularly in relation to decisions about the prioritisation of projects for funding. Our recommendation is that RSS joint committees approve the Implementation Plans in consultation with other delivery partners and that this be revisited if necessary to align with future decisions on the composition and roles of RSS joint committees.

Iwi/Māori groups

52. [redacted] is supportive of a mandatory implementation plan (or similar mechanism) for RSSs that provides roles for iwi/Māori in RSS implementation. They have raised the need for internal iwi processes to identify which entities should be involved in RSS implementation. Further engagement will take place on the matters identified in this paper for further work.

53. [redacted] has raised concerns about progressing these proposals before decisions have been made about the composition and roles of RSS joint committees and the funding of Māori participation in the new system. They have raised the need for a partnership approach at all levels of the new system, including RSS implementation, and the need to address capability and capacity challenges to achieve this. They have also raised the risk of Implementation Agreements creating unnecessary complexity and bureaucracy in the system. Further engagement will take place on the matters identified in this paper for further work.

Appendix 2: Strategic Planning Act implementation agreements and links to funding processes

Supporting Item 1: Impacts Analysis

Problem or opportunity - status quo		
Under the current system, and in response to growth issues and a focus on improving housing and urban outcomes, there are examples of central government agencies and Crown entities, local authorities, iwi/Māori, and infrastructure providers voluntarily committing to joint work programmes, such as the Urban Growth Partnerships. There is an opportunity to build on and embed these current voluntary practices in the context of the proposed introduction of mandatory RSSs under the SPA. The critical choices that MOG is being asked to make are: • whether we need Implementation Plans and/or Agreements • whether Implementation Plans and/or Agreements should be mandatory under the SPA, or voluntary • how Implementation Plans and/or Agreements should 'bind' the parties. These are important issues as they will have a significant impact on the implementation of RSSs, and implementation of RSSs is critical to the success of the new system. The choices will affect not only the RSS joint committees but all other parties (public, partially privatised, and private) who will play a role in RSS implementation. The paper has been informed by quality research and analysis by Beca Limited, in addition to a report by the Environmental Defence Society on funding the SPA, policy work by officials and engagement with agencies, Crown entities, [redacted] Local Government Chief Executives Forum, the Local Government Steering Group, and other local government experts.		
Options assessment	**Advantages/benefits**	**Disadvantages/Costs/Risks**
Voluntary: The SPA does not require Implementation Plans or Agreements. As in the current system, parties can enter into agreements and joint work programmes on a voluntary basis.	• More flexible and potentially less costly in the short term, which would benefit parties that are not sufficiently resourced to enter into Implementation Plans/Agreements. • SPA would not contain provisions relating to Implementation Plans/Agreements, which would make the legislation shorter and simpler.	• There is a risk that RSS implementation would be poor, which would compromise the ability to achieve all the RM reform outcomes. • If RSSs are not implemented, they will impose costs on central government, local authorities, iwi/Māori, and others for no real benefit. • Would lead to a lack of consistency in approach to RSS implementation across New Zealand, which would be inefficient. • Without an Implementation Plan/Agreement (or similar mechanism), there may be pressure to include project-level detail in RSSs, which would undermine their strategic

		function and require frequent reviews of RSSs. Frequent reviews would undermine the intent for RSSs to provide certainty for investment and impose additional costs on the system.
Mandatory: The SPA requires a summary Implementation Plan, enables optional Implementation Agreements to give effect to the Plan, and contains core requirements relating to them.	• Would support successful implementation of RSSs, which is critical to the success of the new system. • A key risk to successful implementation of RSSs is the lack of certainty of government investment should a change in government priorities occur. The Implementation Agreements can manage this uncertainty by committing the parties through self-enforcing mutual obligation, while providing flexibility to adjust sequencing and timing of delivery (eg, to reflect changing central and local government priorities and changes in circumstances). • Would provide for greater consistency across regions, as each region would be required to meet core statutory requirements relating to their Implementation Plans/Agreements. This would create efficiencies in the system. • Would provide certainty and transparency about the roles, accountabilities, and performance of different delivery partners.	• Would introduce additional instruments into the system, which risks making the system more complex and less efficient. • Would add to the length and complexity of the SPA.
Implementation Plans and Agreements commit the parties through self-enforcing mutual obligation (moral suasion) and incentives.	• A high trust model is preferred by central government agencies and Crown entities and is likely to be preferred by local government. • It is practical and less likely to result in legal challenge.	• Relies on ongoing goodwill among the delivery partners. This can be supported through good design (eg, governance, monitoring and reporting requirements etc), non-regulatory tools to set expectations (eg, Cabinet

	• Making Implementation Plans and Agreements legally binding and enforceable through the courts would make it more difficult for RSS joint committees to agree the Plans and delivery partners may not want to enter into the Agreements. • Making Implementation Plans and Agreements legally binding and enforceable through the courts would introduce new opportunities for litigation into the system, which would be inconsistent with the efficiency objective of the reform. • As iwi/Māori could be parties to Agreements, it arguably wouldn't be appropriate for the Crown to bind them through statute, and a contractual approach might not be conducive to a good Treaty partnership.	Office Circular, letters of expectation), and incentives (eg, support to access funding).
Implementation Plans and Agreements commit the parties as a contract enforceable through the courts, or by statute with sanctions for non-compliance in the SPA.	• May provide greater certainty that Implementation Plans and Agreements will be delivered/enforced as it is less reliant on ongoing goodwill among the delivery partners.	• This option is not supported by central government agencies and Crown entities and is unlikely to be supported by local government. • Making Implementation Plans and Agreements legally binding and enforceable through the courts would make it more difficult for RSS joint committees to agree the Plans and delivery partners may not want to enter into Agreements. • Making Implementation Plans and Agreements legally binding and enforceable through the courts would introduce new opportunities for litigation into the system, which would be inconsistent with the RM reform efficiency objective.

Conclusion
Officials prefer the mandatory option (described above) as it would best support successful implementation of RSSs, which is critical to the success of the new system. The risk of additional complexity in the system can be mitigated through good legislative design and by not attempting to make the Implementation Plans and Agreements legally binding under contract law (enforceable through the courts) or statute (with sanctions for non-compliance in the SPA).

Interim options assessment for detailed design options relating to scope, parties and time period (subject to further advice)

Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
Narrow scope: Implementation Plans and Agreements are narrowly focused on new lead infrastructure that requires coordination across multiple delivery partners.	• Having a narrow scope could make them easier to agree and manage and afford a greater ability to focus on priority infrastructure. This is demonstrated well through ATAP.	• A narrow scope would be inconsistent with the purpose of the SPA and the integration functions of RSSs. • A narrow scope would reduce opportunities to achieve synergies in public and private investment where, for example, delivery actions relating to land use, environmental management and infrastructure are coordinated and sequenced in a sensible way. • A narrow scope may not be a good fit with the priority actions in all RSSs, which will vary from region-to-region. • A broad scope would provide less ability for iwi/Māori to be involved in RSS delivery.
Broad scope: Implementation Plans and Agreements are broad enough to cover all priority actions identified in the RSS.	• A broad scope would be consistent with the purpose of the SPA and the integration function of RSSs. • A broad scope would maximise opportunities to achieve synergies in public and private investment where, for example, delivery actions relating to land use, environmental management and infrastructure are coordinated and sequenced in a sensible way. • A broad scope would provide greater ability to tailor the Implementation Plans and Agreements to the unique circumstances of the region.	• A broad scope could make them more difficult to agree and require more resources to manage and deliver. • A broad scope could lead to lengthy Implementation Plans, which is not the intention. This risk can be mitigated through good regulatory design and guidance.

	• A broad scope would provide greater ability for iwi/Māori to be involved in RSS delivery.	
Parties to Implementation Agreements are restricted to bodies represented on the RSS joint committee and other public infrastructure providers.	• Smoother transition between RSS development stage, done via the joint committee, and the implementation stage. • Would be quicker and easier to agree.	• Parties who are not represented on the RSS joint committee would be excluded from entering into Implementation Agreements.
Parties to Implementation Agreements are unrestricted.	• Broader buy in and access to a greater range of expertise. • Better recognition of the range of delivery partners who will have a role in delivering priority actions identified in RSSs. • Involving private infrastructure providers would maximise opportunities to direct private investment to achieving RSS outcomes.	• May take longer to agree. • Greater potential for disagreement between parties.
Implementation Plans cover a 10-year period, with a particular focus on the next 3 years.	• Aligned with existing funding cycles, LTPs and RLTPs. • Easier to agree and manage than a 30+ year time period.	• Less consistent with the shift towards a longer-term outlook for planning and funding.
Implementation Plans cover 30+ years split into 10-year periods with the greatest focus and level of detail for the first 3-years, then 10-years, and progressively decreasing over time.	• Aligned with the time period for RSSs. • Consistent with the shift towards a longer-term outlook for planning and funding.	• A longer time period may make them harder to agree and manage. • Less certainty for the second and third decades, but the second and third decades could signal major investments with long lead times only.

Appendix 2: Strategic Planning Act implementation agreements and links to funding processes

Supporting Item 2: Initial advice on key features of Implementation Plans and Agreements

Scope

1. We propose that the scope of Implementation Plans and Agreements be broad enough to cover all priority actions identified in the RSS, instead of being restricted to a particular type or types of actions. This would align with the current approach to Urban Growth Partnership joint work programmes.

2. Implementation Plans and Agreements should not, however, attempt to comprehensively cover all actions that will support implementation of the RSS. Implementation Plans should be short and succinct documents. Implementation Agreements should not cover:

    a. business as usual projects, particularly where they can be delivered by a single party

    b. projects (or suites of projects) that relate to a priority action in the RSS and Implementation Plan, but which have already been agreed through other processes.

3. We propose the SPA, or regulations made under the SPA, include criteria for matters to be included in Implementation Agreements. For example, projects or programmes would need to meet one or more of the following criteria (or similar):

    a. necessary to deliver the strategic, core spine infrastructure/land use pattern required for implementation of the RSS

    b. large scale or high-cost projects (relative to ability of community/partner to afford)

    c. necessary to enable Māori to use and develop their land and participate fully in the region's economy

    d. complex to deliver, requiring multiple delivery agencies working on interdependent projects in sequence

    e. have a significant impact on the ability to achieve an outcome in the RSS (eg, anchor projects that drive key outcomes)

    f. necessary to de-risk major investments.

4. Other matters that may be appropriate for inclusion in Implementation Agreements include:

    a. incentives/gateway investment conditions (eg, approving a plan change to allow greater intensification, building a school in a future growth area)

    b. details on the timing of investment by local government, central government, iwi/Māori, private parties and/or communities (including any process steps to be met)

    c. sources of funding

    d. adaptive approaches, such as Real Options analysis or Dynamic Adaptive Policy Pathways, which set out the process for addressing changes over time (eg, in environment/ priority/budget/triggers)

    e. delivery mechanisms (eg, special purpose vehicles under the IFF Act)

    f. opportunities to cluster projects into integrated programmes.

Parties

5. We propose that Implementation Plans be agreed by RSS joint committees, in consultation with other delivery partners. Committees could potentially have an ongoing (but scaled-back) role to oversee RSS implementation. This would be consistent with the enduring partnership approach under the UGA and is supported by the Local Government Steering Group for the reform. Officials are still considering whether RSS joint committees should have an enduring role as a standing committee, the relationship between RSS joint committees and NBA joint committees, and committee dispute resolution processes. These matters will be covered in advice to a later MOG.

6. We propose there be no restriction on the parties (public or private) who could enter into Implementation Agreements. The Agreements could be particularly important for delivery partners who are not decision-makers on RSS joint committees.[26]

7. This approach will recognise the diverse range of parties who can contribute to achieving the outcomes of RSSs, such as iwi/Māori, public and private infrastructure providers, and community service providers. An inclusive approach would ensure that the full range of delivery partners are brought into decision-making on delivery, and that public and private investments are coordinated towards a common vision. This is consistent with emerging practice, such as in Drury where Te Tupu Ngātahi - the Supporting Growth Alliance (Waka Kotahi and Auckland Transport/Auckland Council) has been working with iwi/hapū, KiwiRail, Fulton Hogan, and other developers to redevelop the area. Further work is needed to determine the process by which parties will enter into an Implementation Agreement.

8. The proposed water service entities would potentially be major players in RSS implementation. There are ongoing discussions with officials working on the Three Waters reforms about the proposals in this paper.

Time period

9. The purpose of Implementation Plans and Agreements is to translate a strategy into a plan for action, including a detailed pipeline of work or visibility of investment needed by different parties, how that will be done, and the costs and benefits of investment. This requires a reasonable level of certainty, and certainty decreases over time.

10. The Panel recommended that implementation agreements cover a 10-year period, with a particular focus on the next 3 years. Alternatively, they could cover the 30 plus year period of the RSS, but be split into 10-year periods, with the greatest focus and level of detail for the first 3-years, then 10-years, and progressively decreasing over time (eg, as for the UFTI joint work programme). The content for the second and third decades could be limited to signalling planned major investments with long lead times.

11. We propose a 3/10/20/30-year split for Implementation Plans. This approach is consistent with the key system shift towards a longer-term outlook for planning and funding. It would still allow for change in each period: projects and programmes could be adjusted to reflect the priorities of an incoming government or council, but projects with greater certainty could be flagged further in advance. A longer timeframe would also allow the proposed water service entities and their asset management cycle/planning to be included.

12. The time period for Implementation Agreements will vary depending on the project or suite of projects covered.

[26] Examples include other infrastructure providers (eg, Crown Infrastructure Partners, council-controlled organisations, telecommunications providers, energy providers, KiwiRail, proposed water service entities), Kāinga Ora, Māori land trusts, developers, and community housing providers.

Development process

13. It will take significant time to prepare and agree Implementation Plans and Agreements. Providing core requirements in the SPA and having dedicated resource such as a Project Management Office (see below) will help, but many issues will need to be worked through on a region-by-region basis.

14. We propose the SPA, or regulations made under it, specify core requirements for the development of Implementation Plans and Agreements. These could, for example, include requirements for RSS joint committees to:

    a. approve the Implementation Plan within a specified time of RSS approval[27]

    b. oversee implementation (with clear guidance on expectations and accountability for committee members)

    c. identify those who may wish to enter into Implementation Agreements

    d. fund a Programme Management Office/secretariat to support the parties to the Implementation Agreements (subject to further advice in relation to funding the system that will be provided for a later MOG)

    e. establish a monitoring and reporting framework.[28]

15. Non-statutory guidance could be provided on how to incorporate the evidence and information used at the RSS development stage, such as a cost benefit analysis or mātauranga Māori, at the implementation stage.

16. The SPA or regulations will need to provide a process for resolving disputes between committee members, and this could apply to the committee's role in RSS implementation.

17. We do not propose that public consultation be required on Implementation Plans and Agreements, as RSS consultation should be sufficient.

18. Implementation Plans and Agreements would need to be reviewed frequently, such as annually, and updated in response to changing priorities (with reviews timed to inform the next LTPs). A review of an Implementation Plan or Agreement may trigger a review of the RSS, subject to certain criteria.

[27] And potentially resolution of any appeals (if applicable) or judicial review proceedings. This is subject to further advice.

[28] Officials are still considering which monitoring and reporting provisions should go into the SPA or regulations made under the SPA, and which provisions should go into RSSs or Implementation Plans. These matters link to wider advice on the monitoring and oversight of the new resource management system and will be the subject of advice to a future MOG or sub-group.

Appendix 2: Strategic Planning Act implementation agreements and links to funding processes

Supporting Item 3: Treaty Impacts Analysis

Status quo

- Under the current system, there is no legal requirement for spatial strategies outside Auckland, and no legal requirement for implementation agreements to support spatial plan implementation.
- However, in response to growth issues and a focus on improving housing and urban outcomes, there are examples of central government agencies and Crown entities, local authorities, iwi/Māori, and infrastructure providers voluntarily committing to joint work programmes, such as:
  - the Urban Growth Partnership work programme being led by the Ministry of Housing and Urban Development (HUD). This includes joint work programmes to implement spatial plans and drive a long-term and integrated approach to land use and infrastructure planning. The Urban Growth Partnerships include the Hamilton to Auckland Corridor, Waikato Metro area, Queenstown Lakes, Wellington-Horowhenua and Tauranga-Western Bay of Plenty.
  - Auckland Transport Alignment Project (ATAP) and Auckland housing work programme.

Summary of analysis

Gives effect to the principles of Te Tiriti o Waitangi

- We are proposing that the RSS joint committees (central government, local authorities, iwi/Māori) approve the Implementation Plans, including consultation with other delivery partners, and oversee RSS implementation. The Treaty impacts of the proposals in this paper are therefore dependent on future decisions about the composition of joint committees and appointment processes.
- We note that MOG is yet to make decision on the Treaty clause in the purpose of the SPA. At MOG #14, we are also seeking agreement from MOG for the SPA Treaty clause to be consistent with the NBA Treaty clause (give effect to the principles of Te Tiriti o Waitangi). We are also seeking agreement in principle to incorporate Te Oranga o te Taiao into the SPA. If this is agreed, it is expected that the upholding of Te Oranga o te Taiao would flow through to the Implementation Plans.

Māori Crown relations risks and opportunities

- Our proposal that RSS joint committees approve the Implementation Plans and potentially oversee RSS implementation supports a role for the committees that may extend beyond the approval of the RSS. This would provide greater opportunity to strengthen the relationship between members of the committees (central government, local authorities, and iwi/Māori), but may also pose greater risks to Māori-Crown relations if the committees are not successful. A future MOG meeting will look at this issue.

Costs and benefits for Māori

- Implementation Plans and Agreements would provide an opportunity for iwi/Māori to be involved in the prioritisation and delivery of priority actions identified in RSSs.
- The opportunity to be party to optional Implementation Agreements would extend to Māori groups, such as Māori land trusts, which may not be represented on the RSS joint committee.
- All parties who enter into an Implementation Agreement will be obliged to follow through on the actions they have committed to. We are proposing that these obligations be self-enforcing through mutual obligation (moral suasion), rather than being contracts enforceable through the courts, or subject to statutory penalties for non-compliance. There will be no obligation for iwi/Māori groups to enter into Implementation Agreements, meaning they will be able to do their own assessment of the costs and benefits of entering into an Agreement.
- Iwi/Māori participation in the new system, including through RSS joint committees will need to be funded. This would extend to the roles of the joint committees in relation to RSS implementation. Further analysis and engagement are required on whether such funding should also cover other RSS implementation processes. This will be considered further as part of advice on funding the new system to be provided for a later MOG meeting.

- As part of further work on detailed design choices for Implementation Plans and Agreements, we will consider the potential link between Implementation Plans and Agreements for RSSs and Integrated Planning Partnerships (IPP) under the NBA. For example, IPPs could potentially:
  - serve as Implementation Agreements between iwi/Māori, councils and other parties as appropriate
  - set out how iwi/Māori might participate in RSS implementation.

Protecting and transitioning Treaty settlements

- Cabinet has agreed that Treaty settlement arrangements (and existing resource management arrangements and Takutai Moana rights) must be upheld by the SPA. The SPA includes governance arrangements, RSSs and by association the Implementation Plans and Agreements that support delivery of RSSs. The RSS will identify the vision, objectives and priority actions for the region, and the Implementation Plans and Agreements will provide a plan for delivering the priority actions.
- [redacted]

Waitangi Tribunal Recommendations

- WAI 262 report found that the status quo resource management system largely reserved decision-making powers for the Crown. The new system needs to shift to greater participation by Māori across the planning and consenting regimes. The proposals in this paper would provide a decision-making role for iwi/Māori (through the RSS joint committee) in the implementation of RSSs.
- Issues concerning the lack or low level of Crown engagement or lack of consultation with iwi/Māori, and capacity and resourcing of iwi/Māori to participate fairly in the system, are raised in several Tribunal recommendations. As noted above, advice on funding iwi/Māori to participate effectively in RSS development and implementation will be provided for a later MOG meeting.

Māori rights and interests in freshwater and other natural taonga

- This section assesses the extent to which the advice contained in this paper:
  - may contribute to addressing Māori rights and interests in freshwater; and/or
  - may preclude options to address Māori rights and interests in freshwater.[29]
- This assessment is indicative only and will be updated following Cabinet decisions on next steps to progress the freshwater allocation and rights and interests work programmes. We are yet to have substantive policy discussions with [redacted] or iwi/Māori more broadly.
- Māori rights and interests in freshwater are typically grouped under four broad 'pou':
  - water quality / Te Mana o te Wai
  - recognition of relationships with water bodies
  - governance and decision-making
  - access and use for economic development.[30]
- [redacted]

[29] The accompanying paper to the NBA exposure draft states that the draft 'does not preclude any options for addressing freshwater rights and interests and their consideration as part of the ongoing discussions with iwi, hapū, and Māori' (para 25). Ministers Parker and Allan have also reassured [redacted] that the broader resource management reforms '[are] not intended to preclude any options that might be agreed as part of the freshwater rights and interests work programme' [redacted]

[30] These four pou were distilled from a series of over 20 regional hui held by the Iwi Advisors Group in 2014, along with a series of case studies commissioned by MfE, to assemble a comprehensive picture of what Māori rights and interests in freshwater entailed. They subsequently formed the basis of a joint work programme agreed to by the Crown and the ILG in 2015 and were reiterated by Cabinet in July 2018 (ENV-18-MIN-0032 refers).

- [redacted]
- We will explore these potential links in more detail once Cabinet has agreed on next steps for freshwater allocation and rights and interests.

- [redacted]

Overall assessment

- Overall, the proposals outlined in this paper will contribute to a more Treaty consistent system. However, a further assessment will be required once further policy work has been completed [redacted]

Summary of recommendations: Paper 3: Courts and Appeals in the new Planning System

Key messages and recommendations (see pages 7 to 24 for more detail)

Key messages

- The new system design will enable more upfront engagement, better quality plans and stronger regional decision-making. This allows reconsideration of the Court's role and appeals, including whether *de novo* merits appeals are appropriate.
- While appeal rights are an important part of how the new system will provide for natural justice, they also reduce efficiency and the same appeal process should not apply for all aspects of the system..
- Appeal rights are most critical for Natural and Built Environments Act (NBA) plans that will have the most direct potential impact on property rights, and this is where the primary opportunity to appeal decisions should be provided for. However, NBA plan-making is a process of delegated legislation and the decisions are of a policy character. Therefore, some limits on NBA plan appeals are appropriate.
- A strong role remains for the Environment Court, particularly in facilitating better quality decisions through Judges having a role in chairing all IHPs and in the development of the National Planning Framework (NPF).

Regional Spatial Strategies (RSS)

- RSS processes will be more effective and efficient if appeals are focused at the NBA stage, with only appeals to the High Court at the RSS stage.
- The paper has identified two options that would be appropriate within the overall system– judicial review only (as recommended by the Panel) or an appeal on points of law provided through the Act. While there are potential benefits from providing an appeal on points of law, work to date has not been able to establish sufficient benefits to justify including such an appeal right. Further work will be undertaken on this matter.
- The Strategic Planning Act (SPA) will make clear that a provision in an RSS cannot be deemed to have resulted in the taking of or injurious affectation of an interest in land.

NBA Plans

- Incentivising early and comprehensive input into NBA plan development and a robust and fair Independent Hearings Panel (IHP) process ensures appropriate consideration of all the issues, thereby reducing the need for appeals.
- Where appeals are provided (NBA plan committee rejects an IHP recommendation), an Environment Court rehearing will focus on the information considered by the IHP. This supports the upfront provision of information to the IHP.
- If an IHP recommendation is accepted, High Court appeals will be limited to points of law and any judicial review proceedings by the same person must be lodged at the same time.

NBA Consents

- Clearer and more certain plans that specify notification classes improve system efficiency and reduce the need for costly High Court challenges. The Environment Court can deal with challenges to notification. There will be no opportunity to relitigate the plan.
- Minor disputes (eg, controlled land use activities) will go to a local level dispute resolution process.
- Applications for larger scale activities (eg, discretionary water permits) will be decided through a robust consent authority process. Any appeal rights will be designed to ensure people engage with the consent authority process early and are incentivised to provide full information.

Declarations

- Retaining the ability to seek a declaration from the Environment Court on a matter that is unclear is an established way to improve certainty.

Dependencies

- Māori participation in plan development and decision-making is crucial. Effective participation allows appeals to be reduced.
- Significant increased resources will be needed to ensure the Environment Court has sufficient capacity to carry out its functions in the new system.

Paper does not preclude options

This paper seeks recommendations on a system-wide approach and does not appear to preclude any options that may be developed for a new allocation system, options to address Māori freshwater rights and interests, or options for infrastructure under the NBA.

Recommendations

The Ministerial Oversight Group is recommended to:

Approach to appeals

1. **agree** the approach to appeals will support the new planning system to achieve:
    a. more upfront participation
    b. stronger emphasis on regional processes and regional first-instance decisions
    c. faster processes
    d. greater certainty
    e. maintain safeguards to ensure lawful decision-making and robust processes

Environment Court capacity

2. **agree** that the number of judges, commissioners and registry staff at the Environment Court will need to be sufficient to ensure the Court has sufficient capacity to carry out its functions in the new system
3. **note** officials are undertaking ongoing work on transition and implementation matters. This includes (but is not limited to) training needs for decision-makers, and resourcing implications for the Environment Court (eg, numbers of Judges, Commissioners, and registry staff, and appointment of additional Judges holding Māori Land Court warrants)

National Planning Framework

4. **note** the Minister's delegation to determine the process to develop the NPF (including who may be appointed as Chairs and/ or members of Boards of Inquiry) (agreed in MOG #3, items 3.7 and 3.10)

5. **note** that officials are undertaking work on options for the process to develop the NPF, including consideration of a standing Board of Inquiry to be chaired and directed by an Environment Court Judge

6. **agree** that Environment Court Judges or Commissioners may be appointed as members of Boards of Inquiry

7. **agree** that there will be no right of appeal against decisions on the NPF, and the only avenue for legal challenge will be judicial review

Regional Spatial Strategies

8. **agree** that the Strategic Planning Act (SPA) will not include an appeal on merit or a rehearing process

9. **note** that consultation has identified some potential benefits of adding an appeal on points of law, but work to date has not established sufficient benefits to justify departing from the Panel recommendation that there only be the right to seek judicial review

10. **agree** that the SPA will not contain any appeal right unless subsequent work identifies significant benefits from including an appeal on points of law

11. **agree** to delegate to the Minister for the Environment decisions on the way SPA appeal provisions will be designed, in consultation with the Minister of Justice

12. **note** that Regional Spatial Strategies (RSS) will not have operative effect that changes what can be done with private property

13. **agree** that the SPA will include a provision equivalent to section 85(1) RMA to clarify the regulatory effect of the RSS

14. **note** that for the NBA, MOG #10 agreed to continue the general RMA approach based on s 85 RMA, and MOG #13 agreed to align processes for seeking a remedy with processes for NBA plan development[31]

15. **agree** that officials will undertake further work on processes to manage the situation where an NBA plan provision reflects a clear requirement in the RSS and a person seeks a remedy under the NBA. This may include the option of the NBA plan committee requesting the RSS committee to review the provision

NBA plan development and plan provisions

Independent Hearing Panels

16. **agree** that the chair of each Independent Hearings Panel will be an Environment Court Judge

17. **note** that MOG #11-12 (item 24) agreed to authorise the Minister for the Environment in consultation with the Minister of Local Government to make further policy decisions on the details of the NBA plan development process, plan reviews and plan change process

NBA plan appeals

18. **note** that MOG #11-12 agreed to officials developing further policy on appeals based on the Panel's recommendations and the Auckland Unitary Plan model, and that final

[31] MOG #13, Paper 2, paragraphs 104-124 and item 47(b).

recommendations on appeals will be provided after decisions on governance structure have been made[32]

19. **agree** that where the relevant NBA Plan Committee accepts an Independent Hearing Panel's recommendation, the only right of appeal will be to the High Court on points of law

20. **agree** that where the relevant NBA Plan Committee rejects an Independent Hearing Panel's recommendation, there will be a right of appeal to the Environment Court on the merits. The Environment Court will decide the appeal based on the record of the IHP hearing and will have discretion to allow fresh evidence only when:

    a. it is updating evidence relating to events or circumstances arising after the IHP hearing; or

    b. there has been a material and relevant change of circumstances relevant to the matter at issue

21. **note** that judicial review and the Declaratory Judgments Act 1908 will continue to be available in respect of NBA plans

22. **agree** that a person must not both apply for judicial review and lodge an appeal to the High Court on a point of law, unless the person lodges both applications together (following the approach in section 159 Local Government (Auckland Transitional Provisions) Act 2010)

Remedying defects in NBA plans

23. **agree** that the Environment Court may, in any proceedings before it, direct the NBA plan committee to amend the plan to which the proceedings relate (based on the approach in section 292 RMA) for the purpose of:

    a. remedying any mistake, defect, or uncertainty; or

    b. giving full effect to the plan

Changes to proposed NBA plans

24. **agree** that after hearing an appeal on a proposed NBA plan, the Environment Court may direct the NBA plan committee to prepare changes, consult affected parties, and submit the changes to the Court for confirmation (based on the approach in section 293 RMA)

NBA consents

First instance decisions

25. **note** that MOG #13 agreed (item 36) there will be additional processing pathways for consents, including where there is a request for an independent decision-making body (similar to direct referral).

26. **note that** MOG #13 also agreed to a national significance pathway and agreed selection criteria for both pathways (items 37 and 40), and noted that the role of the Environment Court as decision-maker would be determined later (item 43).

27. **note** the MOG #13 authorised the Minister for the Environment to make further decisions on the nature of the independent decision-making body on additional processing pathways (item 48(g)).

28. **agree** that the Minister for the Environment will have discretion to direct nationally significant proposals either to the Environment Court, or to a Board of Inquiry

29. **agree** that the NBA will contain a process allowing applicants to request direct referral to the Environment Court from the relevant consent authority (based on the direct referral

[32] MOG #11-12, Paper 3, item 7; Paper 4, items 19-20 and 27.

process in the RMA) and the request will be assessed using the selection criteria agreed in MOG #13 (item 37)

30. **agree** that where the Environment Court has made a decision on a matter identified as a proposal of national significance (NSP) or an application that was directly referred to the Environment Court, appeals against the Environment Court's decision will be to the High Court on points of law only

NBA consent appeals

31. **agree** that NBA plans will specify when disputes about consent decisions must be referred to a regional level alternative dispute resolution (regional ADR) process

32. **agree** that the regional ADR process will be available for minor disputes (eg, controlled land use activities) and any appeals on matters referred to regional ADR will require leave from the Environment Court to appeal to that Court

33. **agree** that where the NBA plan does not require the regional ADR process, parties will be able to appeal to the Environment Court. Appeal rights will be designed to ensure people engage with the consent authority process early and are incentivised to provide full information

Joining proceedings

34. **agree** that persons will be able to join Environment Court proceedings (based on the approach in s 274 RMA) with the following additional ability:

    a. persons representing a relevant aspect of the public interest will be able to join proceedings

Further appeals from all Environment Court decisions

35. **agree** that where the Environment Court has made a decision, there will be a right of appeal to the High Court on points of law (based on the approach in section 299 RMA)

36. **agree** that further appeals to the Court of Appeal and/ or Supreme Court will be possible only by leave of the relevant Court (based on the approach in section 149V RMA)

Declarations

37. **agree** that the Environment Court will continue to have the power to make declarations (based on the approach in sections 310-313 RMA) with the following amendment:

    a. challenges to notification decisions will be decided by the Environment Court, and any proceedings in the High Court will be brought only after the person has exhausted their rights in the Environment Court

Next steps, delegations and drafting

38. **note** that MOG #1 decisions authorised the Deputy Chair (Minister for the Environment) to take further detailed policy decisions beyond those taken by MOG where required to enable drafting, consulting relevant MOG Ministers where appropriate[33]

39. **note** MOG #4 decisions authorised officials to work with the Parliamentary Counsel Office to modernise the drafting of the equivalent of Parts 11 and 11A RMA in the NBA, and the decisions in MOG #14 provide authorisation for further policy changes

40. **note** further decisions may be sought from MOG and/ or subgroups about appeals as a result of upcoming governance decisions

[33] MOG #1, item 8.

41. **agree** to authorise the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to implement the decisions set out in this paper (including delegated decisions)

42. **agree** to authorise the Minister for the Environment, in consultation with the Minister of Justice, to make further policy decisions on:

    a. detailed processes, powers and functions of the Environment Court, including (but not limited to) matters relating to resourcing, regulation of proceedings, and costs, and how the judiciary will have expertise in te ao Māori, tikanga, and mātauranga Māori available to them

    b. the way that any SPA appeal provisions and related provisions will be designed

    c. processes to manage the situation where an NBA plan provision reflects a clear requirement in the RSS and a person seeks a remedy under the NBA. This may include the option of the NBA plan committee requesting the RSS committee to review the provision

    d. how tikanga matters will be provided for under the SPA and / or NBA, including whether the SPA and/ or NBA should contain an ability for the High Court and/ or Environment Court to state a case for the Māori Appellate Court or obtain advice of a court expert (pūkenga), based on the approach in s 61 Te Ture Whenua Māori Act 1993 and s 99 Marine and Coastal Area (Takutai Moana) Act 2011

    e. the details of the Independent Hearings Panels (IHP) process for NBA plans, including (but not limited to) who is appointed, what experience, training and accreditation are required, and who makes the appointments. This will include consideration of how IHPs will have expertise in te ao Māori, tikanga, and mātauranga Māori available to them

    f. details of NBA plan appeals, including (but not limited to) whether RSS and NBA plan committees will be able to appeal each other's decisions; whether decision-makers will have scope to go beyond submissions; and the nature of any appeal rights against such decisions

    g. details of NBA consent appeals, including a regional alternative dispute resolution process (ADR) for NBA consent disputes. Further work on ADR will include (but not be limited to) when it will be used, what training and accreditation will be needed for adjudicators, and who will appoint adjudicators

    h. details of the direct referral process, including the process for applicants to challenge a decision by a consent authority not to refer an application

Paper 3: Courts and Appeals in the New Planning System

This paper is supplemented by:

Appendix 3, supporting item 1: Te Tiriti o Waitangi impact analysis (pages 25 to 27);
Appendix 3, supporting item 2: Types of appeals and proceedings (pages 28 to 29);
Appendix 3, supporting item 3: Options analysis for SPA appeal provisions (pages 30 to 32).

Purpose

1. This paper seeks decisions on:
   a. the role of the High Court under the Strategic Planning Act (SPA)
   b. the role of the Environment Court under the Natural and Built Environments Act (NBA)
   c. whether and how appeal rights are provided for under the SPA and NBA.
2. The recommendations build on previous MOG decisions[34] about governance, Māori participation in the system, hierarchy and development of planning documents, and the consenting regime.
3. This paper makes recommendations about the Courts and appeals in key areas of the new planning system as follows:
   a. SPA
      i. appeals against Regional Spatial Strategies
   b. NBA – National Planning Framework
      i. roles for Judges in development process
   c. NBA - plan development and plan provisions
      i. roles for Judges on Independent Hearings Panels
      ii. appeals against NBA plan committee decisions
      iii. provisions that may render land incapable of reasonable use
      iv. amending defects and making consequential changes
   d. NBA - consents and approvals
      i. first instance decisions
      ii. challenges to notification decisions
      iii. appeals against consent authority decisions
      iv. parties joining proceedings
   e. NBA - declarations
4. This paper makes recommendations on a system-wide approach but does not appear to preclude any options that may be developed for a new freshwater allocation system and/ or options to address Māori freshwater rights and interests. Cabinet has yet to agree on next steps to progress the freshwater allocation and rights and interests work programmes, including engagement with the iwi/ Māori groups and iwi/ hapū/ Māori more broadly.
5. This paper makes recommendations about Judges and appeals in the National Planning Framework (NPF) but does not cover other NPF matters. This paper does not cover matters under the Climate Adaptation Act (CAA); compliance, monitoring and

[34] MOGs #3, #7, #10 - #13.

enforcement; designations; infrastructure under the NBA; appeals on consent reviews; or appeals on consent applications following the 'merits pathway' agreed in MOG #13. This paper does not cover whether RSS and NBA plan committees can appeal each other's decisions or appeals if a recommendation or decision goes beyond what a submitter sought. These decisions will be sought at a later date.

6. The recommendations in this paper have implications for the Environment Court's capacity and capability. The detailed sequencing and timing of transition to the new system will be crucial for later decision-making about what resources the Court will need for its role in the new system. Officials are engaging with the Transition and Implementation team on these matters and will continue to engage with the Environment Court Registry and the Ministry of Justice as detailed transition policy develops.

7. This paper is supported by the attached documents:

   a. Appendix 3, supporting item 1: Te Tiriti o Waitangi impact analysis (pages 24 to 26)

   b. Appendix 3, supporting item 2: Types of appeals and proceedings (pages 27 to 28)

   c. Appendix 3, supporting item 3: Options analysis for SPA appeal provisions (pages 29 to 31).

The policy issues

<u>The system is slow and litigious</u>

8. The current planning system is complex, expensive, inefficient and litigious.[35] As the Panel noted, tensions in the system are left unresolved, creating too much reliance on consenting processes and the Environment Court to set precedents.[36] Processes are often disproportionate to the decision being sought.[37]

9. People who cannot afford legal representation are discouraged from taking part.[38] For Māori, participation is resource-intensive and ineffective, and there is a lack of adequate funding and support.[39]

10. Other important problems that arise from the status quo are:[40]

    a. The extensive costs,[41] delays and uncertainty generated by appeals can facilitate 'gaming' of the system, including by people raising not in my back yard 'NIMBY' issues. There is extensive anecdotal evidence of developers agreeing to provide costly incentives to appellants in order to avoid or settle appeals (even in cases where the developer involved expects to 'win' if the appeal proceeds to a hearing).

    b. Parties are not incentivised to present their best evidence at first instance hearings. Instead, they often 'keep their powder dry' for the Environment Court.[42] This means that only those who are well resourced enough to go to court are able to see, and comment on the evidence that underpins final decisions. It therefore undermines public participation. In addition, it obviously creates inefficiencies.

[35] Panel Report at pages 18, 38, 59, 163, 224-225, 449, 451.
[36] At pages 225 and 228-229.
[37] At page 449.
[38] Environment-Court-Annual-Review-2018.pdf (environmentcourt.govt.nz) at page 5.
[39] At pages 114-115.
[40] "Better urban planning", New Zealand Productivity Commission, February 2017 Final-report.pdf (productivity.govt.nz)
[41] Including holding costs, which can dwarf the more direct costs of engaging lawyers and expert witnesses.
[42] This is because Environment Court appeals are *de novo* (meaning that the Court can consider any new evidence) and not by way of rehearing (meaning the Court considers evidence presented at the first instance hearing, with ability to hear fresh evidence only if needed).

11. New Zealand is unusual in providing *de novo* merits appeals on plans.[43] Commentators have highlighted the Environment Court's broad jurisdiction[44] and the ability of well-off parties to fight policy decisions through appeals.[45] Some have argued that because environmental problems are 'wicked' and value-laden, environmental law has an inevitably political flavour, and non-elected decision-makers (such as courts) should not be able to alter local body policy decisions.[46]

12. On the other hand, one New Zealand academic has described the Environment Court as 'the ultimate modern court' because it addresses public benefits while managing impacts on individual rights, with merits appeals an important part of that role.[47] A suggestion bringing both strands of thought together comes from the former Chief Justice of New Zealand. She observed that judicial method works best in a directive framework, so legislation should provide clear values and priorities if courts are making primary decisions and hearing merits appeals.[48]

13. Previous Resource Management Amendment Bills have sought to restrict the scope of Environment Court plan appeals but did not proceed, partly due to opposition from submitters. Recently there has been a trend towards special legislation for faster plan-making and processes, with reliance on Judges as chairs of independent hearings panels.[49] The RM reform process provides an opportunity to holistically reconsider the Court's role and appeals, including whether *de novo* merits appeals are appropriate.

Rebalancing the system

Shift to stronger policy documents and clearer institutional roles

14. The new planning system needs to be more responsive, effective, and certain. The focus will shift to setting policy through clear, directive and outcomes-focused planning documents, instead of relying on the consenting system. New spatial planning tools in the form of Regional Spatial Strategies will be part of this shift to stronger planning documents.

15. Achieving a more responsive and certain system also requires rebalancing of where decisions on policy documents are made. Policy decisions need to sit with Regional Spatial Strategy Committees and NBA plan committees as part of making planning documents, with greater emphasis on efficiency and finality.

16. The reform is an opportunity to consider what institutional role the Courts will have in the new system, how that will relate to the institutional roles of local decision-makers, how any appeals are provided for, and how appeal rights could be appropriately limited.

17. RSS Committees and NBA plan committees are intended to be representative regional entities (subject to future MOG decisions). MOG #11 to MOG #12 has agreed that joint committee composition will be worked through region-by-region.[50] The role of the Courts

[43] "Better urban planning", New Zealand Productivity Commission, February 2017 Final-report.pdf (productivity.govt.nz)
[44] Royden Somerville "A Public Law Response to Environmental Risk" (2004) 10 Otago LR 143 at 148.
[45] See for example, "Better urban planning", New Zealand Productivity Commission, February 2017 Final-report.pdf (productivity.govt.nz); "Evaluating the environmental outcomes of the RMA", Environmental Defence Society, June 2016 Evaluating the Environmental Outcomes of the RMA Report Final.pdf (eds.org.nz); "Culture and Capability in the New Zealand Planning System", Report to the New Zealand Productivity Commission, McDermott Consultants, July 2016 better-urban-planning-draft-report-mcdermott.pdf (productivity.govt.nz).
[46] See for example the Environment Court's annual review (2018) at pages 17-18. Environment-Court-Annual-Review-2018.pdf (environmentcourt.govt.nz); "Planning in Wonderland: The RMA, Local Democracy and the Rule of Law", Stephen Rivers-McCombs, June 2011 at Rivers-McCombs.pdf (wgtn.ac.nz); Report of the Minister for the Environment's Technical Advisory Group, February 2009, at pages 9-11.
[47] "Environment and the Law: The Normative Force of Context and Constitutional Challenges", Warnock, Journal of Environmental Law, 2020, 32, 365-389 at 378.
[48] The Rt Hon Dame Sian Elias, GNZM, Chief Justice of New Zealand "Righting Environmental Justice", Salmon Lecture 25 July 2013 at pages 11, 14-15.
[49] For more detail, see RM Reform Working Paper 9 "Role of the Environment Court."
[50] MOG #11-12 Minute, 4 October 2021, Paper 2, Items 11-13.

will include review of RSS and NBA plan committee decisions through appeals where appropriate. This contributes to providing for natural justice.

Providing for natural justice in the new system

18. The Legislative Design and Advisory Committee (LDAC) guidelines state that legislation should be consistent with the right to natural justice.[51] Although the requirements of natural justice vary depending on the particular context of the case, its purpose is to ensure people are dealt with fairly. Decision-makers must be unbiased and must provide those affected by the decision with the opportunity to be heard.

19. However, the value of appeals must be balanced against considerations of cost, delay, significance of the subject-matter, competence and expertise of the first instance decision-maker, and the need for finality. Concerns about costs and delays should generally be dealt with by limiting a right of appeal rather than denying it.[52]

20. A *de novo* merits appeal involves the Court considering all matters of fact and law afresh. The entire matter is heard again, and parties can introduce any evidence, regardless of whether they provided it at the first instance hearing. Under the status quo all appeals to the Environment Court are *de novo* (see Appendix 3, supporting item 2 (pages 27 to 28) for details about appeals and judicial review).

21. Appeal rights can be limited in various ways, including:[53]

    a. appeals on points of law – the Court considers whether the decision-maker applied the law correctly, but does not examine if the decision erred in the conclusion as to the facts[54]

    b. appeals by way of rehearing – the Court hears the appeal on the record of evidence considered by the previous decision-maker, with discretion to re-hear some or all of the evidence and to admit new evidence. It comes to its own conclusion on the merits

    c. appeals by way of case stated – a higher Court is asked to make a decision on how the law applies to a set of facts stated by a lower Court

    d. statutory restrictions on who can appeal.

Trade-offs between appeal rights across the system

22. Providing any appeal right is a trade-off between providing checks and balances in the system, and adding delays and costs. The Panel proposed, and this paper also proposes, that there not be a merit appeal or rehearing at the RSS level. With either the Panel's recommendation (only judicial review) and the alternative considered in this paper (appeals on points of law), the appeal against RSS decisions would be to the High Court and focus on matters related to the application of the law. Not having merit appeals will deliver the major gains in efficiency. The recommended approach will provide for merits appeals only at the NBA level, not for the RSS.

23. In terms of the two options that are considered workable for RSS appeals– just judicial review, or a provision in the Act allowing appeals on points of law on the RSS, officials do not anticipate that there would be a significant difference in the number of appeals that would be lodged. This is because the grounds for lodging an appeal on a point of law are similar to judicial review for error of law. If an appeal on points of law was

[51] LDAC Guidelines (2021 Edition) at section 4.5. The right to natural justice is recognised in the New Zealand Bill of Rights Act 1990.
[52] Legislation Guidelines (2018 Edition), Legislation Design and Advisory Committee, at pages 131-133.
[53] See "A short history of appeal", paper delivered at the Australia and New Zealand Law and History Society Conference in Christchurch (updated version), The Hon Justice Stephen Kós, President of the Court of Appeal, June 2018.
[54] The leading authority in New Zealand on appeals by way of rehearing is *Austin, Nichols & co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

provided for, efficiency could be increased by ensuring that any judicial review and any appeal would be heard at the same time.

24. The reason for considering providing an appeal on points of law is to allow some additional features to be built into the appeal process that could deliver benefits at no loss of efficiency. An appeals regime in the SPA can be designed for the particular circumstances, including to ensure that the Court has access to expertise in tikanga matters. The appeals regime could also provide for the High Court to substitute its own decision, reducing the delays that could arise from referring multiple decisions back to the RSS committee if judicial review was the only way for people to challenge decisions.

25. Providing for appeals on points of law at the RSS level creates an opportunity for efficiency gains at the NBA plan level by placing limits on appeals. Officials recommend following the Auckland Unitary Plan approach, where appeals are limited to points of law in the High Court if an Independent Hearings Panel recommendation has been accepted by the NBA plan committee. One justification for this limit is that the RSS appeal right has already provided the person with an opportunity to challenge any decisions at the RSS level that will flow through to the NBA plan and which directly affect that person. Another important justification is the IHP itself, which provides a robust process that reduces the risk of poor decision-making and therefore reduces the need for a merits appeal right as a check.

Panel's recommendations

26. The Panel's recommendations about institutions in the new system included a stronger role for central government, more collective decision-making by local authorities at the regional level, more partnership between local authorities and mana whenua, and an expanded role for the Environment Court.

27. The Panel recommended that there be no provision for decisions on RSS to be appealed. That would not remove the ability for an aggrieved party to seek a judicial review of the decision.

28. The Panel recommended an expanded role for the Environment Court and Judges under the NBA, as follows:[55]

    a. a sitting or retired Environment Judge should chair boards of inquiry on proposed national direction

    b. a sitting Environment Judge should chair independent hearing panels considering combined plans

    c. the Environment Court should continue to have all its present jurisdiction and a new appellate role in the combined plan/ independent hearing panel process

    d. the Environment Court should hear all applications for proposals of national significance

    e. the Environment Court should continue to have a role in relation to the taking of land for designations, and consideration should be given to a similar role under separate legislation on managed retreat

    f. changes should be made to improve access to justice[56]

    g. the number of judges, commissioners and registry staff at the Environment Court should be increased as necessary to ensure the Court has sufficient capacity to carry out the increased range of functions.

[55] At page 443.

[56] Specifically, the Panel recommended: reinstating appearance rights for persons or groups representing a relevant aspect of the public interest; removing the power to order security for costs; limiting costs awards to circumstances where parties have conducted proceedings in a frivolous, vexatious or unreasonable manner; and allowing the Environment Court to order that consent applicants should contribute to the costs of opposing parties.

Officials' recommendations: a system overview

System approach to appeals

29. Providing for appeals in the new system involves considering where in the system a decision is made, the nature and accountability of the decision-maker, and how the decision affects individuals. The new system needs to be more efficient and certain, with less costly delays from litigation, while providing appeal rights to hold decision-makers to account and ensure robust, lawful decision-making.

30. The new system also needs to avoid re-litigation of matters decided in other planning documents. This is crucial for efficiency and finality. The greater the weight of higher order planning documents on NBA plans, the less scope people will have to seek changes to NBA plan provisions through appeals.

31. MOG #7 agreed that RSS must 'implement' any provisions of the NPF where the NPF explicitly requires it and be 'consistent with' any other NPF provisions. RSS must have sufficient legal weight on NBA plans to ensure that any key strategic decisions made through the strategy are not revisited or relitigated when preparing NBA plans.[57]

32. The table below summarises officials' recommendations for appeal rights and roles for Judges in the new system. The next table gives examples of appeals across the system and the dependencies between RSS and NBA plan appeals. Judicial review[58] will remain available as a check on lawfulness together with recommended appeal rights.

Table 1: Summary of officials' recommendations (in *italics*)

System level	Content	Decision-maker	Appeals
Regional Spatial Strategies	Long-term high-level vision	Regional Spatial Strategy Committee	*Judicial review only.* *No appeals unless further work identifies significant benefits from an appeal on points of law*
National Planning Framework	Matters of national significance and/ or consistency	Responsible Minister after recommendations from Board *Further work on process to develop the NPF, including consideration of standing Board to be chaired and directed by a Judge*	*No appeals*
NBA Plans	Regional policy and rules	Independent Hearing Panel (IHP) makes recommendations *A Judge may be appointed as Chair or IHP member but this is not mandatory* NBA Plan Committee decides whether to accept or decline IHP recommendations	*Appeals to the Environment Court on the merits but by way of rehearing (rather than de novo) if NBA Plan Committee rejects IHP recommendation* *Appeals to the High Court on points of law if NBA Plan Committee accepts IHP recommendation*
NBA Consents	Notification Decides whether to notify (with	Consent authority or Commissioner/s (by delegation)	*Declarations from the Environment Court*

[57] MOG #7 Minute, 31 May 2021, Items 32-34.
[58] The Declaratory Judgments Act 1908 will also be available in respect of the SPA.

System level	Content	Decision-maker	Appeals
	direction from NPF and plan)		
	Authorises activities under NBA plan	Consent authority or regional Panel (majority of applications)	*For minor disputes, further policy work on a regional alternative dispute resolution process* *For significant disputes, appeals to Environment Court* *Further work on appeal rights and limits*
		Environment Court (direct referral) Environment Court or Board (nationally significant proposals)	*Appeals to the High Court on points of law* *Further work on process to challenge a refusal to directly refer an application*
NBA Declarations	Declares[59] and nterprets the law (when a matter is unclear)	Environment Court	*Appeals to the High Court on points of law*

Table 2: Examples of appeals across the system

Examples	Housing	Significant natural area	Renewable energy	Cultural landscapes
NPF[60] Example Content	Outcomes for housing supply	Outcomes for significant indigenous vegetation	Maps areas suitable for renewable energy. Sets activity status for turbine height in windfarms	Direction to map cultural landscapes, and for NBA plans to include provisions appropriately protect them
RSS Example Content	Maps densities to be achieved in different broad localities	Maps large area as SNA	Maps specific ONL as suitable for windfarm, with various options for access roads	Maps large area as subject to cultural landscape overlay
RSS Example Judicial Reviews	Whether the decision-maker applied the wrong legal test Whether the decision-maker failed to consider matters which should have been considered (or considered matters they should not have) Whether there was evidence reasonably capable of supporting the decision to include a particular map and/ or overlay in the RSS			
NBA Example Content	Detailed maps with high and medium density areas. Associated	Detailed maps. Rules, eg, Prohibited for any vegetation clearance	Detailed maps with one access road. Rules for construction activity, eg,	Detailed maps. Rules for activities inside overlay, eg, Open for construction of

[59] Declarations are not appeals, but provide a check on lawfulness of NBA plan decisions. See for example, *Environmental Defence Society v Kaipara District Council* [2010] NZEnvC 284.
[60] Judicial review will be available but there will be no appeals on the NPF.

	rules, eg, site coverage		Anticipated for earthworks up to specified volume	farm tracks up to specified earthworks volume
NBA Example Appeals	Detailed maps (how RSS large scale maps are translated to parcel boundaries) How RSS is translated into NBA (eg, whether to achieve density through site coverage rules or by other means) Notification (eg, whether plan rule should require limited notification to hapū of earthworks consents)			

Strategic Planning Act - officials' recommendations

Regional Spatial Strategies

Will there be appeals on RSS?

33. The Panel recommended that there be no provision for decisions on RSS to be appealed (other than judicial review). It is therefore recommended that Ministers agree that there not be provision for appeals to the Environment Court, either for *de novo* or rehearing consideration.

34. There was less consensus among those consulted on whether only judicial review should be available, or also an appeal on points of law to the High Court. The arguments put forward in favour or an appeal provision in the Act were:

    a. the need to ensure that effects of RSS on property interests are adequately managed, and that those aggrieved by an RSS decision can clearly see an avenue for addressing that issue

    b. the need to ensure that the Court has access to expertise in tikanga matters if considering an appeal that requires that; and

    c. The potential efficiency gains if the Court can make some decisions itself rather than referring all matters back to the RSS Committee for reconsideration.

Options

35. We have considered four approaches to appeals, all of which would include judicial review as well as the specified appeal option:

    a. the panel recommendation – no appeal; provision in the Act.

    b. an appeal on points of law to the High Court.

    c. a full *de novo* appeal, probably to the Environment Court, as is currently used for RMA plans.

    d. a rehearing appeal to the Environment Court.

36. If no appeal right is provided for in the SPA, the Court would still be able to intervene in RSS decision-making via judicial review (available by virtue of the Court's inherent jurisdiction). Judicial review concerns the decision-making process followed by a public body. Usually, an applicant seeking judicial review will claim that the decision-making body has made an error because it has applied the wrong legal test or acted improperly (such as making an error of law), acted unreasonably or it has acted in a procedurally unfair way (for instance, due to bias). A judicial review application could consider whether the RSS committee followed an appropriate process, correctly interpreted and applied the law, and what is "reasonable". If the Court finds an error of law, then the Court is most likely to direct the decision back to the decision-maker to address the error identified by the court.

37. In relation to an appeal to the High Court on a point of law, the court's role is substantive (not supervisory).[61] The Court has a range of options to grant relief, including the possibility of the Act allowing the Court to make a decision it thinks ought to have been made.[62]

38. In judicial review, the Court generally looks for a significant error before it grants relief. Where the appeal is on a point of law, the Court is more likely to look at how the law has been applied to the facts.

Analysis of options

39. Appendix 3 sets out in more detail the analysis of the options, including looking at the effect of appeal provisions on the RSS process and outcomes, but also how the NBA process can affect the need for appeals at the RSS stage.

40. Feedback from officials and local government CEOs did not support a *de novo* appeal. Issues with *de novo* appeals include the tendency for some parties to not fully participate in earlier processes and "keep their powder dry" for the appeal process, and the fact that many interested parties find it difficult to participate in appeal processes.

41. Depending on how the appeal provisions are designed, providing for an appeal on points of law in the SPA could provide greater confidence for those who could be affected by RSS decisions that there are good checks and balances in place, without creating the sorts of problems that appeals to the Environment Court would create. Whether this additional appeal provision is warranted would depend on whether it added sufficient value. That is further considered below.

42. The rehearing option was not considered to provide sufficient benefits to offset the costs, equity and other issues with that option (the full analysis is in Appendix 3).

43. The RSS will have a strong role in the overall planning regime, but its effect on any specific interest will depend in large part on how it is translated into the NBA. The overall RM system therefore needs to be considered in determining whether there are adequate checks and balances in place. Work will continue to consider how decisions will pass through the system, to ensure that the overall system delivers high quality and fair outcomes. Given the overall framework, the options of de novo appeal or rehearing are therefore not recommended.

44. It is recommended that further work be done to consider whether an appeal on points of law provision would add value to the system, particularly in relation to the ability to allow the Court to make some decisions. Unless significant benefits would be gained, it is recommended that the Panel recommendation of no appeal be adopted.

45. It is therefore recommended that MOG agree that no appeal provision be included in the SPA unless further work identifies significant benefits from an appeal on points of law, and that a decision on whether to provide for that be delegated to the Minister for the Environment.

Remedies for effects of plan provisions on interests in land

46. The Resource Management Act 1991 contains a provision (section 85) to address impacts of planning on private property rights. Subsection (1) states that "An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act." It is recommended that the SPA contain an equivalent provision.

47. Section 85 also sets out circumstances in which the Environment Court can rule that impacts on property rights are such that either the plan should be changed or an interest

[61] *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [300]-[301].
[62] High Court Rules 2016, r 20.18 and r 20.19. *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [300].

in the land acquired by the council. The planning provision needs to render the land incapable of reasonable use before the Court will grant these remedies. In practice, the Court has only granted relief if the effect on the property right is severe.

48. The RSS is not a regulatory plan. While its decisions may flow through into plan provisions that will alter property rights[63], those effects cannot be clearly known until the NBA plan has been drafted. It is therefore not recommended that the SPA contain any provisions equivalent to these, with any effects on property rights managed at the NBA stage.

49. In the NBA context, MOG #10 agreed to continue the general approach in section 85, and MOG #13 agreed to align processes for seeking a remedy with NBA plan development.[64] Currently people can rely on section 85 either in a submission or a plan change. However, the new system will encourage engagement earlier in the plan development process. The same approach could potentially be applied to people claiming their land is rendered incapable of reasonable use, requiring them to make any claim early in the process.[65]

50. The relationship between the RSS and NBA plan and the committees responsible for them needs further consideration in this context. The RSS will restrict and direct the contents of NBA plans. Situations could arise where an NBA plan provision renders land incapable of reasonable use, and the tests for the Court to grant a remedy are met, but the NBA plan committee has no real option to amend or remove the provision because there is only one way to reflect the RSS. In these circumstances the NBA plan committee could have no option but to offer to acquire the land.

51. Officials recommend that further work is needed on whether an NBA committee could request the RSS Committee to consider a review of part of their RSS, if implementation through the NBA Plan stage would result in undue effects on property rights that the NBA committee do not consider can be appropriately managed through the provisions relating to compensation and purchase of property rights. It is recommended that detailed decisions be delegated to the Minister for the Environment.

Natural and Built Environments Act - officials' recommendations

National Planning Framework

Role for Judges on Boards of Inquiry

52. The Panel recommended that a sitting or retired Environment Judge should chair Boards of Inquiry on proposed national direction. The Panel did not provide an explicit rationale. Its aim was an independent robust process with greater Māori involvement.[66]

53. MOG #3[67] agreed the NPF will be developed through a process that is proportionate to the scale and impact of what is being proposed. In some cases, this may require submitters to be heard or the use of independent commissioners. Officials are undertaking further work on the detailed process, including implications for capacity and capability, and will seek decisions via a separate briefing. Officials consider the MOG #3 approach will achieve the Panel's goals of an independent and robust process with a role for Māori.

54. Officials are also undertaking further work on options for the process to develop the NPF, including consideration of a standing Board of Inquiry to be chaired and directed by an

[63] MOG #7 agreed that spatial strategies must have sufficient legal weight on NBA plans to ensure that any key strategic decisions made through the strategy are not revisited or relitigated when preparing NBA plans.
[64] MOG #13, Paper 2, paragraphs 104-124 and item 47(b).
[65] LGATPA did not specifically set out how s 85 RMA applied. Submissions raising s 85 would have been dealt with like other submissions (ie, appeals limited to questions of law if the s 85 submission was rejected by the IHP and the Council accepted that recommendation).
[66] At page 213.
[67] MOG #3 Minute, 8 March 2021, Item 3.9.

Environment Judge. Engagement with the Environment Court Registry indicates significant resourcing implications if several Judges are involved in large processes at the same time (discussed further below).

No appeals on the NPF

55. The Panel did not envisage any appeal rights on the NPF, with legal challenge being via judicial review only. This is consistent with the general approach that appeals are provided where the rights or interests of a particular individual are affected by an administrative decision.[68] The NPF will be a national level document affecting large groups of people generally. Officials consider the Panel's approach to appeal rights is appropriate.

NBA plan development

Role for Judges on Independent Hearings Panels

56. The Panel recommended that an IHP should hear submissions and make recommendations to the NBA plan committee, with a sitting Environment Judge as chair of the IHP. The overall aim of the IHP is a robust, fair and responsive process.

57. MOG #11 to MOG #12 agreed to an NBA plan making process that results in robust plans through using IHPs. MOG agreed IHP processes will be easy to participate in, not unnecessarily formal, and exclude cross-examination.[69]

58. Officials consider robust IHP processes will reduce the risk of poor decisions being made, and therefore enable appeals to be limited to points of law where an IHP recommendation is accepted. Having a Judge as Chair of each IHP will ensure the process is robust.

59. This approach has implications for the Court's resources. Officials are undertaking further work on transition and implementation matters, including how to ensure the Court has sufficient capability and capacity to carry out its increased role in the new planning system.

60. Detailed decisions on the IHP process, including appointment processes for all IHP members, will be sought from the Minister for the Environment.

Appeals on NBA plans

61. The Panel recommended that appeals on NBA plans should follow the Auckland Unitary Plan (AUP) model. This means if an IHP recommendation is rejected by the NBA plan committee, any submitter can appeal to the Environment Court on the merits. If an IHP recommendation is accepted, appeals are to the High Court on questions of law.[70] The Panel viewed robust inclusive IHP hearings as a rationale for limiting appeals.[71]

62. MOG #11 to 12 agreed to a robust plan-making process using IHPs.[72] The IHP process is intended to be inclusive, encouraging of participation, and using alternative dispute resolution tools such as pre-hearing meetings and conferencing. Further, the IHP process will be chaired by a Judge and therefore provides comfort that appeals can be limited, through reducing the risk of poor first instance decisions.

63. NBA plan-making has a law-making and political character, as it involves decisions about what rules should apply in each region. The general approach is that appeal rights are not provided on these types of decisions. However, NBA plan-making is also a process of delegated legislation. It is therefore appropriate to have checks and balances in the

[68] LDAC Guidelines (2021 Edition) at chapter 28.
[69] MOG #11-12 Minute, 4 October 2021, Paper 4, Items 1 and 18.
[70] At page 257.
[71] At page 236.
[72] MOG #11-12 Minute, 4 October 2021, Paper 4, Items 1 and 18.

form of appeals, though not so broad as to risk undermining the policy decisions being made at the regional level.

64. Officials considered various options for limiting appeals, including: limiting all appeals to points of law;[73] limiting standing to appeal (eg, only some submitters); limiting the scope of appeals (eg, no appeals on amenity issues); and refining the Panel approach through merits appeals by way of rehearing (instead of *de novo*).

65. The alternatives of limited standing and scope are not recommended because wide participation at the plan development stage is important for plan legitimacy. Limits on standing and scope also create potential for litigation as people seek to challenge the boundaries[74] which adds complexity and uncertainty.

66. The alternative of limiting all appeals to points of law is not recommended. Where the IHP has made a recommendation after a robust hearing, but the NBA plan committee rejects it, people should have greater ability to challenge the decision. In these circumstances there is greater risk of poor decisions and merits appeals provide a safeguard.

67. Officials recommend a refined Panel approach (merits appeals by way of rehearing). This means the Court will decide the appeal based on the IHP hearing record, but with the ability to hear some or all the evidence if needed or request fresh evidence.[75] The IHP hearings are intended to be robust, fair and thorough, meaning the record will be of higher quality than under the status quo.[76]

68. Merits appeals by way of rehearing will be faster and less expensive than *de novo* appeals, as there will not be a fresh hearing in every instance.

Fixing defects in plans and addressing matters arising out of appeals

69. The Panel's recommendations are generally to follow the AUP model. That approach gave the Court power to direct the local authority to amend a plan for the purpose of remedying any mistake, defect or uncertainty, or giving full effect to the plan. The Court also had power (after hearing an appeal or inquiry) to direct the local authority to prepare changes to a proposed plan, consult, and submit the changes to the Court for confirmation. The same power exists in the status quo Schedule 1 process.[77]

70. Officials recommend the Court should retain the power to fix minor defects or make consequential changes if needed. The IHP itself should also have these powers. The more robust IHP process will mean these powers are seldom used because the IHP will contribute to better quality plans. This reduces any risk of the powers being seen to extend or change plan content.

<u>NBA Consents</u>

Decision-making on additional processing pathways for consents

71. MOG #13 agreed the NBA will contain additional processing pathways for consents, including where there is a request for an independent decision-making body (similar to direct referral). MOG #13 also agreed the NBA will contain a national significance

[73] As in the Christchurch Replacement District Plan process.
[74] Officials are considering whether RSS and NBA plan committees should have standing to submit and appeal each other's decisions, and will seek any necessary decisions after MOG has made detailed governance decisions.
[75] Eg, if the outcomes of some appeals already decided (such as transport or landscape matters) are relevant for the particular appeal now at issue (such as a rezoning appeal), the Court may require fresh evidence on how the rezoning appeal fits with the plan as it now stands. Criteria will ensure hearings do not become unnecessarily broad.
[76] See Judge Hassan and Judge Kirkpatrick 'Effective lawyering in the new plan making paradigm', NZLS CLE Environmental Law Intensive, for discussion of learnings from the AUP and Christchurch processes.
[77] Under sections 292 and 293 RMA. Section 156(4) LGATPA 2010 applies Part 11 RMA to any appeal.

pathway (proposals of national significance i.e. NSP)[78] with the role of the Environment Court as decision-maker to be determined later.[79]

72. The Panel recommended that the Environment Court continue to decide on requests directly referred to it and should decide all NSP. Currently the Minister has discretion to direct NSP either to the Environment Court or a Board of Inquiry. Only a few matters follow these pathways with around 96% of consents decided by local authorities.[80]

73. Officials recommend the Minister for the Environment should retain discretion to direct NSP either to the Court or a Board of Inquiry (BOI). This provides greater flexibility in circumstances where proposals raise significant technical issues but can be decided appropriately without drawing on the Court's resources. Any appeals against a decision of the Environment Court or a BOI on a matter that is NSP should be limited to points of law only in the High Court.

74. Regarding direct referral, the Panel noted it is intended to save time and cost for parties where the application is likely to be appealed in any event. Officials recommend the NBA should contain a process for direct referral to the Environment Court, based on the process in the RMA.

75. While the new system is shifting away from a reliance on consenting, there will still be a need to cater for a small number of large scale complex applications. This can be efficiently done through direct referral, with any appeals to the High Court on points of law only. Detailed policy decisions will be delegated to the Minister for the Environment, including on a process for applicants to challenge a decision not to directly refer a matter.

Challenges to decisions on notification of consents

76. Notification decisions determine who can participate in decision-making on consents. Although few applications are notified,[81] the Panel identified 'unnecessary debate, litigation and process involved in notification' as an issue.[82]

77. In MOG #13 officials recommended a more consistent and standardised approach to notification. NBA plans or the NPF will specify notification status for all activities that trigger consents and will be able to preclude or require notification. The NPF and NBA plans will also be able to prescribe specific parties as affected persons. Where notification classes cannot be specified, the NPF and NBA plans will have policies to guide consenting authorities to provide certainty and efficiency.[83] Policy debates about notification will largely occur through development of the NPF and NBA plans.

78. The greater clarity which this recommended approach to notification provides, will reduce the need for people to challenge decisions. Where challenges are made, the focus will likely be on how the NPF and NBA plan policies were applied. There is an opportunity to consider whether the Environment Court should deal with notification challenges rather than the High Court.

79. Under the status quo, people cannot apply for Environment Court declarations about notification[84] and the only avenue is judicial review.[85] The Panel did not recommend any change. However, officials have previously recommended that this new declaration

[78] MOG #13, Paper 1, item 36 and 40-43.
[79] MOG #13, Paper 1, item 44.
[80] National Monitoring System data 2014/15 – 2018/19, cited in the Panel's Report at page 261. In 2018, five direct referrals were lodged, and in 2019 four were lodged. See page 283 of the Panel's report. See also the annual reports of the Environment Court and the Registrar's annual reports.
[81] National Monitoring System data for 2018/2019 indicates 2% of consents were publicly notified and 1.8% were limited notified.
[82] At pages 262-263 and 276-278.
[83] MOG #13, Paper 1, items 6, 8-11.
[84] Section 310(g) expressly excludes declarations on issues relating to whether the notification provisions have been, or will be, contravened.
[85] At pages 262-263 and 276-278.

power be considered as part of wider RM reform.[86] An enabling power was introduced in 2005 but never brought into force. It was then repealed in 2017.

80. Officials recommend that as a specialist Court, the Environment Court is better placed to deal with notification issues, and it is less costly for parties than the High Court. Officials do not recommend ousting the right to judicial review,[87] but there should be a sequencing process so that parties exhaust any Environment Court rights first.

81. Therefore, officials recommend the Environment Court should be able to make declarations on issues relating to notification. However, this will not enable people to relitigate the content of the NPF and/or NBA plan provisions about notification.

82. Officials do not recommend any other changes to the current powers of the Environment Court to make declarations. Declarations can be used to hold planning authorities to account if they have not performed their statutory functions.[88]

Reducing and limiting appeals on substantive consent decisions

83. Under the status quo, applicants and submitters[89] can appeal. Few consent decisions are appealed (less than 0.5 per cent) and around 95 per cent of those resolve in mediation.[90] However, the Panel noted the consenting process is complex, costly and slow, partly because the potential for litigation creates risk-averse behaviour.[91]

84. The Panel identified that people either have full hearing and appeal rights, or no involvement. There is no 'middle way' to resolve challenges to consent decisions.[92] To address this gap, the Panel recommended alternative dispute resolution (ADR) so that if a party wishes to challenge a consent decision, there is a local process to address disputes before any appeal is filed.[93] The Panel suggested ADR could be used for 'minor disputes' and be binding, with no or limited appeals.

85. Officials recommend following the Panel's approach and developing the detailed policy with agencies and iwi technical groups, alongside other consenting matters. Options to be considered could include:

    a. using binding ADR for minor disputes such as controlled land use activities

    b. requiring leave to appeal (to be granted only in limited circumstances), if an adjudicator has made a binding decision on a minor consent dispute.

86. The new ADR process has implications for capacity and capability at the regional level. Efficiencies could be achieved through incorporating training in ADR into the Making Good Decisions programme. Ongoing engagement with the Transition and Implementation team is needed.

87. For consent disputes that are not suitable for ADR, officials recommend appeal rights should be provided. However, the new regime will have more robust hearing and decision-making processes at the regional level. Therefore, appeal rights should be designed in a way that incentivises people to engage early and provide full information to the consent authority. Options to be considered could include a rehearing approach

[86] In advice prepared for the 2018 RMA Amendment Bill. See Briefings 2018-B-04556 and 2018-B-05006.
[87] The right is a fundamental part of New Zealand's constitutional settings and any restrictions on it should be in limited circumstances, according to the LDAC Guidelines (2028) at section 28.1. See also Excluding or limiting the right to judicial review | The Legislation Design and Advisory Committee (ldac.org.nz)
[88] *Environmental Defence Society v Kaipara District Council* [2010] NZEnvC 284
[89] Officials recommended in MOG #13 that people who are notified will have standing to submit. Where the application is publicly notified, anyone will be able to submit.
[90] At pages 261-262.
[91] At page 265.
[92] At page 266. See also chapter 15 'Reducing complexity' at page 452. NB the Environment Court makes extensive use of ADR processes, but this occurs after appeals are filed.
[93] The Panel made different recommendations about ADR in the NBA plan development context. Decisions on this topic will be sought through a later detailed decisions paper, as MOG #11-12 has already made high level decisions about the NBA plan development process.

and/ or requiring leave to appeal in some circumstances. Further policy decisions will be delegated to the Minister for the Environment.

Parties to proceedings

88. The RMA provides for people to join proceedings as 'parties' through section 274 in prescribed circumstances. Submitters[94] and anyone who has an interest greater than the general public can join proceedings, although there are limits on trade competitors. The Auckland Unitary Plan (AUP) plan model followed the RMA approach.[95]

89. The Panel recommended continuing this approach with one amendment to allow persons representing a relevant aspect of the public interest to join proceedings.[96] The Panel's rationale was that public interest groups provide assistance to the Environment Court.

90. Officials agree with the Panel's approach. There is a slight risk of parties waiting to join appeals instead of engaging early. However, this is outweighed by the benefit of having information about the public interest available to the Court (eg, a party representing the public interest in affordable housing could join a proceeding on that topic).

The higher courts

Appeals against decisions of the Environment Court and High Court

91. Under the status quo, parties to an Environment Court proceeding may appeal its decision to the High Court on a question of law. Appeals to the Court of Appeal and Supreme Court require leave of those Courts.[97] The Environment Court may, in any proceedings before it, state a case for the opinion of the High Court on a question of law.[98]

92. The Panel recommended that rights of appeal to the High Court and beyond should continue. The Panel observed such cases 'are a miniscule percentage' and only likely 'in matters of real importance' where delay is outweighed by the importance of preserving access to the higher courts. The Panel recommended continuing the approach where judicial review is only available after exhausting other appeal rights.[99]

93. For NBA plan appeals, the Panel recommended the AUP model which provided further rights of appeal to the Court of Appeal and Supreme Court, but only with the leave of those courts.[100]

94. Officials agree with the Panel's approach. Officials' recommendations will reduce appeals generally, so there is no risk of increased litigation by preserving access to the higher courts. It is crucial that in the new system, mana whenua have access to the higher courts to ensure that the new obligation to give effect to the principles of Te Tiriti is met.

Treaty impact analysis

95. A full summary of the analysis of the Treaty impacts of the recommendations of this paper is provided in Appendix 1, supporting item 1 (pages 108 to 110).

96. Appeal processes for RSS can provide an avenue for Treaty partners and Māori groups to address concerns about how the principles of Te Tiriti have been addressed. But they can equally allow other parties to challenge provisions in an RSS that are a response to the Treaty requirements, and a *de novo* appeal system is likely to result in some key

[94] The Minister, the relevant local authority, and the Attorney-General can also join as parties; see s 274. RMA.
[95] See s 157(5) Local Government (Auckland Transitional Provisions) Act 2010, which applied Parts 11 and 11A RMA to appeals. Section 274 RMA is in Part 11, as are the sections dealing with High Court parties.
[96] This ability was repealed in 2009 although the Court can still grant leave for such persons to appear.
[97] At page 286. See ss 299, 305 and 308 RMA, ss 303 and 309 Criminal Procedure Act 2011, and s 74 Senior Courts Act 2016.
[98] Section 287 RMA.
[99] At page 466.
[100] At page 246.

decisions being made by the Courts rather than by the RSS Committee (which includes iwi representatives). An appeal on points of law will allow for Treaty partners to challenge decisions that do not comply with the Treaty clause in the Act, while maintaining the ability of the RSS committee to make decisions.

97. Appeals on NBA plans and consents are recommended to be more limited. This shifts the emphasis to first instance NBA plan processes and regional decision-making, where Māori will have greater involvement. However, in the new system decisions must give effect to the principles of Te Tiriti. Judicial review and appeals are ways to ensure this occurs. Therefore, to restrict appeal rights, the system needs processes and safeguards to ensure that the principles of Te Tiriti are given effect to.

Engagement

Agency

98. Agency feedback on appeals for the RSS was generally supportive of the proposed approach, particularly in relation to not having *de novo* appeals.

99. Agencies were generally supportive of the policy for the role of the Environment Court and appeals under the NBA. The following issues were raised:

100. [redacted]

Local government

101. The approach to appeals in the RSS was discussed with Local Government CEs group. They were supportive of not having a *de novo* appeal, provided private property right issues are addressed, and generally supported the proposed approach. The issues on private property rights that they raised have been addressed in the proposals.

102. Local government was generally supportive of the policy for the role of the Environment Court and appeals under the NBA.

Iwi/Māori groups

103. Material on the proposals for the Strategic Planning Act and appeals has been presented to both [redacted]

104. In consultation with [redacted] there was discussion about types of appeals and the importance of providing for Māori participation in decision-making and engagement in any circumstances where appeal rights may be limited [redacted] asked that we ensure the High Court can call on expertise in tikanga if needed.[101] [redacted]

[101] For example, section 61 of the Te Ture Whenua Māori Act 1993 allows the High Court to seek a certificate of opinion from the Māori Appellate Court.

105. Material on the proposals for the role of the Environment Court and NBA appeals was presented to both [redacted] Discussion in the [redacted] October meeting also covered RSS matters including process and appeals.

106. Relevant to this paper, feedback from iwi/Māori groups on the role of the Environment Court and NBA appeals included:

[redacted]

107. Concerns were raised about whether RSS development processes will provide thorough independent scrutiny. Ideally an IHP-type process would be used to ensure RSS are Treaty compliant and the development process is sound.

108. There is a need for both Māori participation in RSS decision-making and also participation in the development of RSS from the outset. If this participation is not provided for, then having no merits appeals would be a concern.

109. Timing of transition to the new system will be crucial, including how appeal rights will be provided during the significant period before the new NBA plans become operative.

110. Any role for Judges chairing Boards and IHPs is a question of capacity and skill. The Panel's recommendations about Judges chairing in the NPF development process (a single process at a national level) raise different issues from recommendations about Judges chairing NBA plan hearings (where there will be numerous processes and the documents are regional level).

111. The risk of judges in IHP processes coming to different conclusions from Judges deciding merits appeals was noted. However, it was also noted that Māori Land Court judges manage the same risk in the current system.

112. If sufficiently qualified people are available, it could be helpful to have more Environment Court judges with Māori Land Court warrants.

113. Māori need to be involved at a plan development level (contributing to plan content/provisions) and a decision-making level (making decisions on plan content). This includes iwi/ hapū on planning committees. Greater engagement at the start of the planning process may lessen the number of appeals.

114. Appeals against plan committee decisions could follow the Auckland Unitary Plan model, provided the front end/ first instance process is thorough.

115. An option to consider is whether the Environment Court could hear appeals on points of law.

116. Policy on the ability to join appeals as a party should include consideration of a separate limb to recognise Māori status.

117. The Courts' power to make minor changes arising from proceedings is valuable. Without it, people would have to commence additional proceedings.

118. Further engagement is scheduled on these matters as part of developing detailed policy.

[redacted]

119. Starting from the big picture questions is important (eg, if there is a need for an Environment Court in the new system, is this because of the specialist expertise it brings? How can it be made more diverse?)

120. Timeframes and processes have significant implications for the ability of Māori to participate. Rigorous timeframes and formal processes cause frustration for Māori communities and can result in them being marginalised and excluded. When Māori raise issues of tikanga at the Environment Court, too often there is no understanding of what it means, in terms of both processes and outcomes.

121. Getting oversight of the system in a way that has authenticity and integrity requires asking these bigger questions.

122. If moving to a rehearing model (instead of de novo), it is crucial to ensure there is an opportunity for fresh evidence when needed. Otherwise, there is a risk that new monitoring data is available but the plan is not keeping up with it and hearings are not considering it.

123. Generally, support the broad policy intent of improving Māori ability to partner in plan processes, ensure rights and interests are upheld, and avoid Māori having to do this through the courts by shifting away from appeals.

124. It is hard to translate what the processes mean to the whānau who are most affected by them.

125. Once matters are subject to appeal, it is very expensive for Māori to engage the legal and other consultants to participate

126. The principle of equity is crucial in thinking about participation. Too often it is those with the most resources who win, and those who cannot afford it have to stop participating.

127. The courts too often become a battle of experts. An option to address this would be to have one court-appointed expert in each discipline, who provides their opinion to the court, in the public interest. This would remove the burden of cost from affected communities, although it would also mean the evidence was not tested in an adversarial approach. Having a court-appointed expert would remove the leverage that well-off parties have, where they can win by engaging persuasive experts, but the outcome is more environmental degradation.

128. Tikanga based mediation facilitated by Māori is a way to achieve better outcomes. Having pūkenga with a good understanding of the dynamics of place (not Judges), is key.

    - There is a need to appoint Māori Environment Court Judges who are practitioners.

Appendix 3: Courts and Appeals in the New Planning System

Supporting item 1: Te Tiriti o Waitangi impact analysis

Status quo
Currently much of the focus of Māori participation in resource management occurs in the consenting system. Due to a lack of prescriptive involvement for Māori in the plan development process and in governance generally under the RMA, Māori have needed to rely on appeal rights (in both plan development and consenting) to have a voice in matters of interest and concern to them. Appeals are costly and time consuming, and Māori are not always adequately funded to participate. A shift towards stronger plans and fewer consents will change the focus for Māori participation towards decision-making, with fewer appeals anticipated in the new system. Appeals and the ability to join proceedings are an important safeguard for Māori to have access to the Courts as a check on the lawfulness of decisions. However, appeals should not be so broad that they risk undermining decisions on planning and consenting where Māori have participated in the decision-making and there has been a robust first-instance process.
Summary of analysis
Gives effect to the principles of Te Tiriti o Waitangi • Appeal rights can be restricted in the new system in a way that is compliant with the Crown's responsibility under te Tiriti, provided that the system as a whole is designed with appropriate safeguards, checks and balances. • There is a risk that restricting appeal rights could have an unintentional effect of reducing the effectiveness of the Tiriti clause by limiting the ability for Māori to enforce it. However, this needs to be balanced against the risk that overly broad appeal rights can allow parties to undermine the direction of an NBA plan that was drafted, notified and decided on with Māori involvement. • Instead, the risk can be addressed by ensuring that the new system as a whole ensures the principles of Te Tiriti are given effect to. Safeguards being considered across the system include: o Consultation/engagement or collaboration with Māori on the draft proposed NBA plan o Māori participation into decision-making (NBA plan committee and IHP) o Making decision-making bodies more robust and ensuring that the IHP Chair and members have expertise in tikanga, mātauranga Māori and the principles of Te Tiriti) o Accountability of decision makers to Māori (ie, by electoral process) o Legislative limits on powers o Ministerial control o National level direction on what is required to 'give effect to' the principles of Te Tiriti o Reporting and review requirements o Some form of oversight (eg, national advisory body) o Involvement in consenting as technical experts o Ability to participate in consenting as submitters. • More specifically in the NBA plan context, providing for merits appeals where an IHP recommendation is not accepted is a safeguard against the risk of a poor decision being made. • Judicial review will continue to remain available, as will access to the Court of Appeal and Supreme Court. • The new binding alternative dispute resolution (ADR) process for minor consent disputes should be developed in a way that ensures an accredited Panel of adjudicators have members with skills, experience and knowledge of tikanga, mātauranga Māori and the principles of Te Tiriti. Appointment processes should ensure that where deciding a matter requires these skills, an appropriate adjudicator is appointed. • Further, it will be important to ensure the Courts have appropriate expertise in these matters. Providing the ability for more Environment Court Judges who hold Māori Land Court warrants to be appointed could assist in this regard.

Costs and benefits for Māori

- It is crucial that Māori are funded to participate at each level of the process. This includes (but is not limited to) providing evidence, filing appeals, joining appeals as a party, and undertaking any training and accreditation processes required for appointment to Boards, Panels and similar decision-making bodies.
- Further work is required on the issues of funding and participation.

Protecting and transitioning Treaty settlements

- Binding alternative dispute resolution (ADR) should not be available in any circumstances where Treaty settlements have bespoke agreements about participation in decision-making.
- The NBA plan will set out when binding ADR is available (meaning Māori will be part of the decision-making at the plan stage when determining the availability of binding ADR). The NBA should contain parameters requiring that NBA plan rules cannot stipulate binding ADR where there is a Treaty settlement agreeing a different decision-making arrangement.

Māori rights and interests in freshwater and other natural taonga

- This section assesses the extent to which the advice in this paper:
    - o May contribute to addressing Māori rights and interests in freshwater; and/ or
    - o May preclude options to address Māori rights and interests in freshwater.
- This assessment is indicative only, given that Cabinet has yet to agree on next steps to progress the freshwater allocation and Māori freshwater rights and interests work programmes. We are yet to have substantive policy discussions with Te Tai Kaha (TTK), the Freshwater Iwi Leaders Group (FILG), Te Wai Māori Trust (TWMT), or hapū, iwi, and Māori more generally.
- Māori rights and interests in freshwater are typically grouped under four broad pou:
    - o Water quality, Te Mana o te Wai
    - o Recognition of hapū and iwi relationships with water bodies
    - o Governance and decision-making
    - o Access and use for economic development.[102]
- The recommendations in this paper do not appear to preclude any options to address Māori rights and interests in freshwater. The ability to file appeals and join appeals as a party means Māori will have the ability to challenge decisions of NBA plan committees and consent authorities on freshwater. Participation by Māori in governance entities means Māori will also have a role in defending decisions about freshwater, if other parties file appeals against decisions of NBA plan committees or consent authorities.

Limitations of this assessment

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

102 These four pou were distilled from a series of 20 regional hui held by the Iwi Advisors Group in 2014, along with a series of case studies commissioned by MfE, to assemble a comprehensive picture of what Māori rights and interests in freshwater entailed. They subsequently formed the basis of a joint work programme agreed by the Crown and the ILG in 2015, and were reiterated by Cabinet in July 2018 (ENV-18-MIN-0032 refers).

- [redacted]

Overall assessment

- The policy options are intended to form part of a system giving effect to the principles of Te Tiriti o Waitangi. These policy options provide Māori with the ability to challenge decisions where necessary, but also decrease the risk that decisions made with Māori involvement are undermined through later appeals. [redacted]

Appendix 3: Courts and Appeals in the New Planning System

Supporting item 2: Types of appeals and proceedings[103]

	Environment Court	High Court
Appeals and proceedings	*"De novo"/ on the merits* The Court approaches the matter afresh. There is another hearing in addition to the first instance/ local level or IHP hearing. The Court hears all the evidence again instead of using the evidence, record and transcript from the first hearing. The Court considers the whole decision and arrives at its own conclusions on the facts and the law. *De novo* appeals are generally appropriate where there is a reasonable possibility that the first instance decision-maker may have incorrectly ascertained the facts. *"Rehearing" / on the merits* The Court decides the appeal on the record of evidence considered by the previous decision-maker. The Court can decide to re-hear some or all of the evidence and admit new evidence. Re-hearings are generally appropriate where specific legal or factual errors are the focus. *Case stated* The Court may state a case for the opinion of the High Court on any question of law arising in a proceeding. The RMA gives this discretion to the Environment Court in section 287. It means the Environment Court can ask the High Court for its opinion, even if no party has filed an appeal on a point of law.	*Appeals on points of law* Can be framed as any of: • The decision-maker applied the wrong legal test • The decision-maker came to a conclusion without evidence (or a conclusion which on the evidence could not reasonably have been reached) • The decision-maker took into account matters which should not have been taken into account • The decision-maker failed to take into account matters which should have been considered *Judicial review* Can be framed as any of: unlawfulness; lack of procedural fairness; and irrationality or unreasonableness. The right to apply to the High Court for judicial review is a fundamental part of New Zealand's constitutional settings. In judicial review, the Court generally looks for a significant error before it grants relief. Where the appeal is on a point of law, the Court is more likely to look at how the law has been applied to the facts, and grant relief if there are good arguments for different interpretations. The RMA requires people to exhaust their appeal rights before seeking judicial review.
What happens after the first decision	If the Court agrees with the appellant, it issues a decision setting out its conclusions. This decision overturns (ie, replaces) the first instance decision. If the decision is on the NBA plan, the Court's findings on the most appropriate zone or most appropriate plan provisions must be inserted into the plan. Anyone wishing to appeal the Court's decision (including the first instance decision-maker) may appeal to the	*Appeals on points of law* If the High Court finds an error of law, it usually sends the original decision back to the decision-maker for further consideration, or sets aside ("quashes") the original decision. The error must have materially affected the result of the decision for the High Court to take these steps. Whether an error has had a material effect will depend on the circumstances of each case.

103 See the Legislation Guidelines (2021 Edition), Legislation Design and Advisory Committee. See also 'Te Pouārahi The Judge Over Your Shoulder', Crown Law 2019.

	High Court on a point of law (*see next column*).	People must seek leave to appeal to the Court of Appeal or the Supreme Court. Such appeals are on points of law. *Judicial review* Remedies include referring the decision back to the decision-maker; quashing the decision; requiring the decision-maker to do something that the law requires them to do; or preventing the decision-maker from doing something unlawful. The Court has discretion to refuse to grant relief.

Appendix 3: Courts and Appeals in the New Planning System

Supporting item 3: Options analysis for SPA appeal provisions

Four options were considered by officials:

1. the Panel recommendation – no appeal provisions in the SPA
2. the SPA contains an appeal on points of law to the High Court
3. the SPA provides for a limited appeal to the Environment Court
4. the SPA provides for a *de novo* appeal to the Environment Court.

Three criteria were used by officials when analysing the options:

1. Would the appeal provision provide improved and equitable protection of the interests of Treaty interests, private interests and interests of infrastructure providers who could be affected by RSS provisions, taking into account other protections that will be provided in the law.
2. Would the appeal provisions have negative effects on the way the RSS process operated, including by reducing levels of engagement or affecting trust in the process.
3. Would the appeal provisions increase the time and cost required to finalise an RSS, or cause an unfair distribution of costs across parties.

In carrying out the analysis, officials accepted the arguments of the Panel (see paragraphs 8-10) regarding the negative effects on RM processes of appeals on plans under the RMA. We also accepted the advice available (eg, from LDAC and CLO) on when appeals should be included in law, and what types of appeals would normally be utilised for particular situations.

Another key consideration was equity of access. This was emphasised in some consultation discussions. Inequity can arise because some parties feel able to appeal and others do not, and different parties will be able to bring different levels of resources to the appeal process. Official's view is that equity is important, because it is a factor that can count against the view that more extensive appeal rights will necessarily better protect property rights, Treaty interests, and communities. They can instead have the opposite effect, resulting in loss of property and other interests of some parties.

The equity issue is not only related to access to resources for appeals, but also comfort with legal processes and the legal status of the affected party (private individuals are less likely to risk appeal than incorporated societies; an incorporated society with a strong brand but few resources might not wish to risk having costs awarded against them because that might force them to close). In general, businesses are more likely to be comfortable appealing than community groups, communities with high levels of wealth and education are more likely to appeal than communities with lower wealth and education levels, and a commonly held interest (eg, dairy farmers in the catchment) are more likely to be represented at appeal than a narrow interest (eg, the only lavender farm in the catchment).

Equity is also affected if some parties are confident that they can use appeal provisions and that makes them less likely to work towards genuine win-win solutions or compromises that would benefit other parties.

Another consideration of importance in the discussions was the need for the RSS Committee to be able to do its job and make judgements. There is no perfect answer and the job of the committee is to seek the best outcome for a range of potentially competing interests. That is why the committees will have representatives of central government, local government and iwi. For them to do their job well, they will need full information on interests. That can only be achieved if there is high engagement, and MOG#11/12 agreed to proposals that were designed to allow the committee to maximise engagement, including by parties who might not normally participate in RM processes.

It is also important that the committee maintains sight of the entire RSS, as adjustments to one part can have flow on effects on other parts.

Appeal processes can move decisions to a court. They will generally result in only one part of the RSS being considered in isolation. There is a risk of the resultant RSS not working optimally as an overall strategy for the region, or becoming skewed towards certain types of interests rather than representing a good balance across interests.

	Protection of interests	RSS process implications	Costs and delays
No appeal (but judicial review still available)	Limited checks on the RSS committee decisions. The NBA plan will not allow for re-litigation of decisions made at the RSS stage, so appeal processes at that NBA plan stage will not be able to correct serious problems created at the RSS stage. Minimises the risk that parties to an appeal will have an unfair advantage over interests that are not able to participate in appeal processes.	Will encourage all parties to fully participate, but the lack of the reassurance of an appeal right may reduce trust for some parties.	Low risk of appeals adding costs and delays. The decision-maker needing to re-make the decision may add delays.
Appeal on points of law	Provides a check on the decision process. A slightly greater risk that outcomes will be inequitable because of variable ability to use appeal provisions.	A slightly greater risk of parties relying on appeals rather than fully participating. But may improve decisions if appeals are used appropriately.	If there are more appeals, will increase costs and delays compared to the no appeal option. But the appeals process design may assist in reducing delays eg, allowing the Court to make some decisions rather than have the matter referred back to the committee could reduce delays.
Rehearing by Environment Court	Higher risk of inequity of access compared to options 1 and 2. Could result in improved protection of some interests, but with a risk of flow on negative effects to others.	Higher risk of parties not fully participating in RSS development process. Potentially removes major decisions from the committee.	Significant potential for increases in costs and delays.
De novo appeal to Environment Court	High risk of inequity of access because of the costs and difficulties of participating in *de novo* appeals, particularly if expert witnesses need to be called.	Very high risk of the negative outcomes on the process (as identified by the Panel).	High costs and delays.

The analysis concluded that appeal processes which remove significant decisions from the RSS Committee to the courts are undesirable.

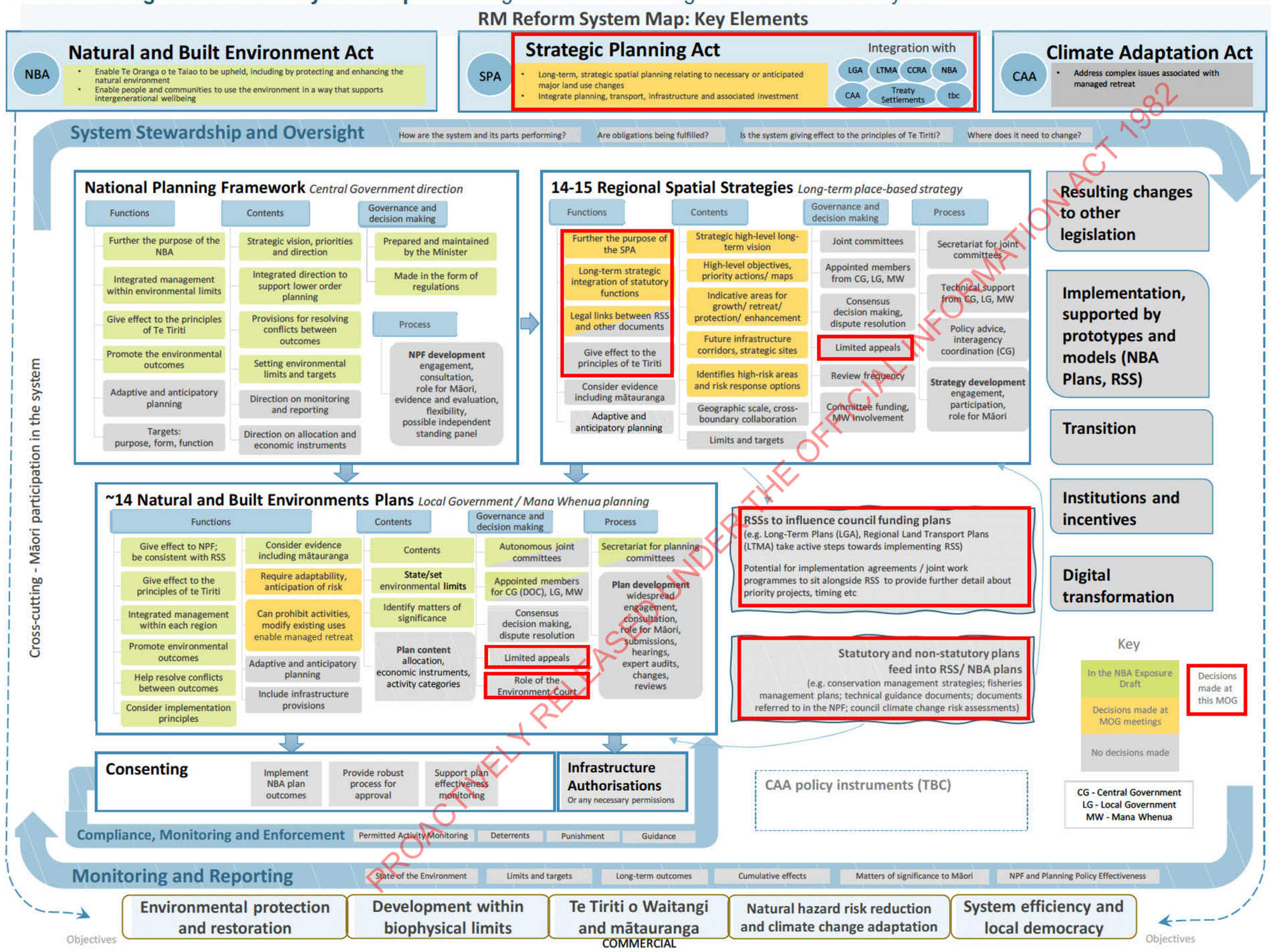
While they may appear to provide greater protection for private interests, they are just as likely to result in inequitable outcomes for different private interests, because of the varying ability to

participate in appeal processes set out above. When considering questions around section 85-equivalent provisions, it was also recognised that it is only at the NBA plan stage that effects on individual property rights (eg, a particular property in a city) can be assessed. The RSS needs to focus on the bigger picture. The analysis also considered the protections that would be provided by other provisions in the legislation, including process requirements agreed at MOG #11/12.

The analysis did conclude, however, that placing appeal provisions in the Act (on points of law to the High Court) would have some benefits. That would allow the way appeals were undertaken to be tailored for the SPA (particularly in relation to the matter raised), potentially allow the Court to make some decisions (reducing delays), and make the right of appeal more visible.

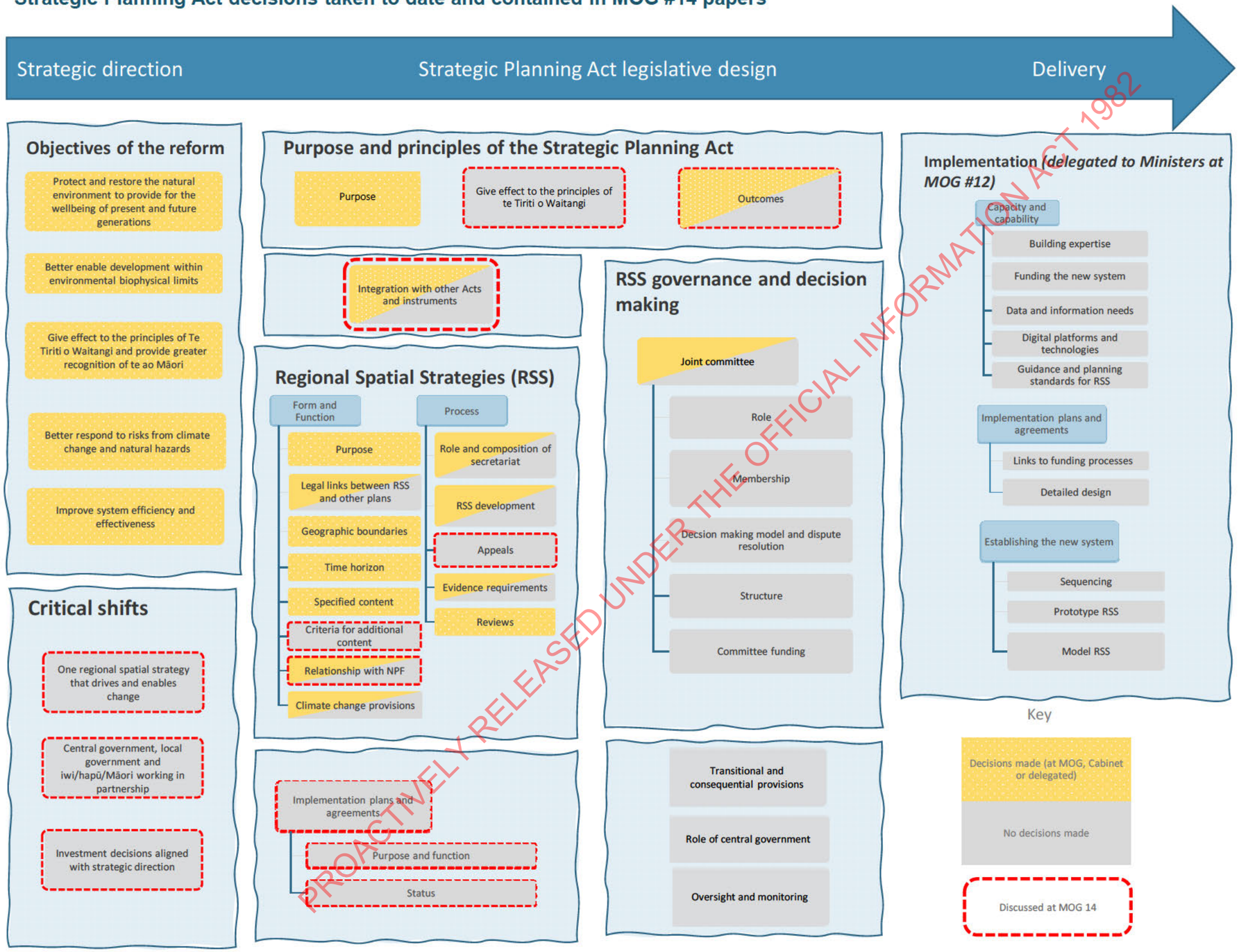
A key conclusion of the work was that checks and balances across the whole system need to be considered as a package.

Resource Management Reform System Map: indicating where MOG #14 agenda items sit in the system



Strategic Planning Act decisions taken to date and contained in MOG #14 papers

Strategic Planning Act decisions taken to date and contained in MOG #14 papers



Glossary of key terms and acronyms

Acronym/Term	Detail
ADR	Alternative Dispute Resolution
ATAP	Auckland Transport Alignment Project
BOI	Board of Inquiry
the Bill	Natural and Built Environments Bill
CAA	Climate Adaptation Act
CME	Compliance, monitoring and enforcement
the committee	the Environment select committee
the Court	Environment Court
EPA	Environmental Protection Authority
FILG/TWMT	Freshwater Iwi Leaders Group/Te Wai Māori Trust
IHP	Independent Hearing Panel
IFF Act	Infrastructure Funding and Financing Act
IPP	Integrated Partnerships Process
JMAs	Joint Management Agreements
KWM	Kāhui Wai Māori
LTMA	Land Transport Management Act
LDAC	Legislation Design and Advisory Committee
LTPs	Long-Term Plans
LGA	Local Government Act
MWaR	Mana Whakahono a Rohe
MOG	Ministerial Oversight Group
NBA	Natural and Built Environments Act
NBA Plans/Plans	Plans prepared under the Natural and Built Environments Act
NES	National Environmental Standard
NLTF	National Land Transport Fund
NPF	National Planning Framework
NPS-FM	National Policy Statement for Freshwater Management 2020
NSP	National Significance Pathway
PSGEs	Post Settlement Government Entities
PFA	Public Finance Act
The Panel	Resource Management Review Panel
RLTPs	Regional Land Transport Plans
RSS	Regional Spatial Strategies
SPA	Strategic Panning Act
TTK or FOMA/KWM/NZMC	Te Tai Kaha, which consists of Federation of Māori Authorities/Kāhui Wai Māori/New Zealand Māori Council
UGA	Urban Growth Agenda

MINUTE

RM Reform Ministerial Oversight Group Meeting #13

Date	Monday 18 October, 5 to 6pm
Location	Zoom
Chair	Hon David Parker, Minister for the Environment
Deputy Chair	N/A
Attendees	Hon Megan Woods, Minister of Housing Hon Nanaia Mahuta, Minister of Local Government Hon Poto Williams, Minister of Building and Construction 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 Grant Robertson, Minister of Finance Hon Kelvin Davis, Minister of Māori Crown Relations: Te Arawhiti Hon Damien O'Connor, Minister of Agriculture

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Paper 1: An efficient and effective planning and consenting system

Activity categories

1. **noted** that MOG #10 agreed that the NBA will have four broad categories of activities and expand the scope of what is known as permitted under the RMA
2. **agreed** that the NBA will prescribe the intent of each category to ensure stronger consistency, efficiency, and effectiveness in the future system
3. **agreed** that the legislation will require the Minister for the Environment (for the National Planning Framework (NPF)) and the NBA plan committees to make decisions on activity status by applying criteria that reflect the following policy intent:
    a. Permitted activities: where positive and adverse effects (including cumulative) including those relevant to outcomes are known and can be managed through standards and criteria
    b. Controlled activities: where potential positive and adverse effects (including cumulative and those relevant to outcomes) are generally known, but where tailored management and assessment of effects are required
    c. Discretionary activities:
        i. that are less appropriate (and should be discouraged) given they could potentially breach limits or not meet outcomes, or
        ii. where relevant effects including those relevant to outcomes are not known and need consideration, and effects may go beyond the boundaries of the site, or
        iii. that are unanticipated activities which may have positive effects and contribute to outcomes (unknown during plan development)
    d. Prohibited: activities that will not meet outcomes and/or breach limits, and therefore no resource consents can be applied for.

4. **agreed** that the provisions in the NBA will set out the following requirements in relation to each category:

    a. Permitted: No consent required if the activity complies with requirements specified for the permitted activity (including but not limited to written approvals from affected persons or certifications from suitably qualified persons). The NPF and/or the Plan may permit activities with requirements (eg, written approvals or certifications), or with no additional requirements. Individual activities, effects, or outcomes are not assessed (as these have been considered in the plan development stage). The NPF and/or Plans can direct if a permitted notice is required before undertaking the activity (to assist with monitoring of plan effectiveness)

    b. Controlled: Resource consent and merits assessment required. Councils may grant subject to conditions, or decline. The NPF/Plans will specify level of merits assessment, including outcomes or matters requiring control, and what information is required. Plan makers would be able to restrict matters of discretion to limit grounds for decline

    c. Discretionary: Resource consents and merits assessment required. Councils may grant subject to conditions, or decline. Councils may seek a broad range of information or confirmation from the persons proposing to undertake the activities

    d. Prohibited: No resource consents can be applied for. This will be directed by the NPF or regional spatial strategy

Notification of applications

5. **agreed** to retain the existing notification classes of non-notification, limited notification, and public notification

6. **agreed** that NBA plans and the NPF will retain the ability to preclude notification (limited/public) or require public notification

7. **agreed** that the presumption for activities in the Discretionary Activity category is public notification but plans or the NPF (if it sets a rule) will be able to specify non-notified or limited notified

8. **agreed** that for all activities, the planning committee or the Minister for the Environment (if they set rules in the NPF) will need to specify notification classes for all activities that trigger resource consents

9. **agreed** that if the planning committee or the Minister for the Environment (if they set rules in the NPF) does not specify notification classes at the time of development of NPF or plans, they must set policies in plans or the NPF to guide notification decisions, to ensure consistency, improve certainty and effectiveness

10. **agreed** that the NBA will enable the planning committee or the Minister for the Environment to identify certain affected persons in plans and the NPF for publicly or limited notified purposes

11. **noted** that this would enable a requirement to be included in the NBA or the NPF for limited notification of certain parties (or identified affected persons) such as mana whenua, or infrastructure agencies if, during NBA plan or the NPF development, this is considered appropriate or to give effect to the principles of the Treaty

12. **noted** that the requirement for hearings on resource consent applications (or no requirement) and ability to object or appeal will affect the overall efficiency of the future consenting system, and this will be considered in future by the MOG

13. **agreed** that the NBA will contain provisions which outline matters for plan makers or the Minister for the Environment (if they set rules triggering consents) to consider when they specify notification for activities (or make policies to guide notification:

    a. public notification is required if:

        i. secondary legislation (including the NPF) and NBA plans require it

ii. there are clear ambiguities whether an activity could meet or contribute to outcomes, of if it would breach a limit

iii. there are clear risks or impacts that cannot be mitigated by the proposal

iv. there are relevant concerns from the community

v. the scale and/or significance of the proposed activity warrants it

b. limited notification is required if:

i. secondary legislation and plans require the consenting authority to limited notify any person (note that this could include mana whenua through Integrated Partnership Processes and/or plan development processes)

ii. it is appropriate to notify any persons who may represent public interests (eg, mana whenua, or a network utility operator)

iii. an adjacent property owner may be impacted by the activity

iv. scale and/or significance of the proposed activity warrants it

c. non-notification is required if:

i. the activity is clearly aligned with the outcomes or targets set by the legislation or secondary legislation or NBA plan

ii. the secondary legislation (including the NPF) or NBA plan precludes notification

iii. all identified affected persons (could be identified through the NBA plan or NPF) have provided their approval (and no limited notification is required)

General consent processing pathways

14. **agreed** that the activity categories will specify the level of information required for consents and timeframes

15. **agreed** that NBA plans and the NPF will be able to specify information requirements for the consenting and permitting regime

16. **agreed** that information requirements will be proportionate to the size and scale of the proposed activity and defined by the activity classes. There will be reduced information required for activities in the 'controlled' category, but a higher level of information required for activities in a more stringent category, where a broader level of assessment is required

17. **agreed** to refine the scope of the councils' powers to request information (similar to the approach under s92 of the RMA) to ensure the information requested is proportionate to scale and significance of the proposal and linked to matters identified in NBA plans or the NPF, or relating to planning outcomes specified in the NBA plans or the NPF

18. **agreed** that councils will be able to request further information, defer an application, suspend processing of an application, extend timeframes, and return applications if they are incomplete

19. **noted** that councils currently can defer or suspend applications if the proposals require additional consents, consenting fees are not paid (at the time of lodgement and notification), and applicants are able to suspend processing of applications, should they consider it to be appropriate

20. **agreed** to retain councils' ability to defer or suspend applications and applicants' ability to suspend applications similar to the approach identified in s91 to 91F of the RMA, with all necessary modifications to reflect the new approach

21. **agreed** that councils will have powers to extend timeframes similar to the approach under s37 of the RMA with all necessary modifications to reflect the new approach including, clearer parameters regarding when and where councils may extend timeframes to achieve a more effective and efficient system

22. **noted** that there will be further MOG decisions to ensure councils will implement their roles effectively and accountable for the decisions they make

23. **agreed** to introduce a mandatory pre-application step for discretionary consents where the council and applicant would be able to discuss and determine information to be supplied, engagement, and expectations

24. **agreed** that the pre-application step will be encouraged for the 'controlled' category but not mandatory

25. **agreed** that pre-application meeting attendees will be based on the requirements and matters (including affected persons if relevant) outlined by the plan

26. **agreed** that where a pre-application meeting is mandatory, but does not occur, an application may be rejected

27. **agreed** that the existing presumption to not consult for resource consents should continue in the NBA but modified to exclude circumstances where a NBA plan or the NPF specifies that consultation should be undertaken or identifies certain parties to be affected or potentially limited notified, or is required by treaty settlement legislation

28. **noted** that engagement/consultation prior to lodgement of a consent application could include mana whenua, infrastructure operators or certain neighbours if identified by plans or the NPF or Treaty settlement legislation

29. **agreed** that the Minister for the Environment will have the power to prescribe forms and other templates (including but not limited to forms for applications for consent and forms for assessment of environmental effects) through the NPF and/or regulations, to assist with effectiveness and efficiency established in the NBA

30. **noted** that there are opportunities to reduce complexity and improve efficiency and effectiveness by putting matters of process (such as the service of documents and/or the lodgement of applications) into secondary legislation, and further decisions will be sought at a later date

Māori participation in consenting

31. **noted** the intent is to provide greater Māori participation in the plan development process (as discussed at MOG #11 and #12) by requiring Māori participation in plan development through technical and mātauranga input, and for plans to be more directive in information requirements, notification (including limited notified parties), and decisions

32. **agreed** that one of the purposes of the already agreed Māori participation in plan development is to ensure Māori can influence plan content including (but not limited to) how activities are categorised, notification status, where they may be identified an affected party and the information required for a consent

33. **agreed** that Māori can be identified as an 'affected person', have a role as a technical expert and be a submitter (on NBA plans and consents)

34. [redacted]

35. **authorised** the Minister for the Environment and Associate Minister for the Environment (Hon Kiritapu Allan) in consultation with the Minister for Māori Crown Relations: Te Arawhiti (Hon Kelvin Davis) and the Minister for Māori Development to make further policy decisions to the recommendations in this paper in relation to Māori participation in the planning and consenting system

Additional consent processing pathways

36. **agreed** that there will be an additional processing pathway in the NBA for circumstances where there is a:

    a. request for an independent decision-making body (similar to direct referral);

    b. proposal of national significance; or

    c. 'merits based' simplified pathway ie. similar to the consenting process under the COVID-19 Recovery (Fast-track Consenting) Act 2020

37. **agreed** that the NBA will provide an ability for councils and applicants to request that the proposal be decided by an independent body, assessed against specific criteria (based on the Panel's recommendations for direct referral), as follows:

    a. scale, significance, and complexity of proposed activity

    b. whether there is any particular need for urgency

    c. whether participation by the public would be materially inhibited if the request were granted; and

    d. any other relevant matter

38. **agreed** that the ability to request an independent decision-making body will be available for notified applications for consents and notified applications to change or cancel consent conditions.

39. **noted** that recommendation 38 does not preclude any decisions that may be sought from a later MOG or subgroup to request an independent decision-making body for other types of applications such as notices of requirement

40. **agreed** that the NBA will provide an ability for the Minister for the Environment, and the Minister for Conservation (in the same circumstances under the RMA) to call in a matter that is or is part of a proposal of national significance, assessed against specific criteria (based on the Panel's recommendations for proposals of national significance)

41. **agreed** that the criteria for decision-making on whether a matter is, or is part of, a proposal of national significance will be amended to simplify the drafting, based on the Panel's recommended wording as follows:

    a. in deciding if a matter (defined at present under section 141) is, or is part of, a proposal of national significance and whether to invoke the process under this Part the Minister for the Environment must have regard to—

        i. the nature, scale and significance of the proposal

        ii. its potential to contribute to achieving nationally significant outcomes for the natural or built environments and the social, economic, environmental and cultural wellbeing of people and communities

        iii. whether there is evidence of widespread public concern or interest regarding its actual or potential effects on the natural or built environment

        iv. whether it has the potential for significant or irreversible effects on the natural or built environment

        v. whether it affects the natural and built environments in more than one region

        vi. whether it relates to a network utility operation affecting more than one district or region

        vii. whether it affects or is likely to affect a structure, feature, place or area of national significance, including in the coastal marine area

        viii. whether it involves technology, processes or methods that are new to New Zealand and may affect the natural or built environment

        ix. whether it would assist in fulfilling New Zealand's international obligations in relation to the global environment

        x. whether by reason of complexity or otherwise it is more appropriately dealt with under this Part rather than by the normal processes under this Act

        xi. any other relevant matter

42. **agreed** that the proposal of national significance pathway will continue to be available for applications for resource consent or to change or cancel consent conditions (based on the approach in the RMA). This does not preclude any decisions that may be sought

from a later MOG or subgroup to use the proposal of national significance pathway for other matters

43. **agreed** that applications accepted onto an additional pathway will be decided by a Board of Inquiry or an independent expert panel

44. **noted** that the role of the Environment Court as a decision-maker will be determined in a later MOG when the role of the Environment Court is considered more fully across the system

45. **noted** that the details for the merits-based simplified pathway including criteria, who can apply and who the decision-makers should be is linked to work on Regional Spatial Strategies and infrastructure pathways, and will be brought back to a later MOG

46. [redacted]

No compensation for the effects of planning provisions on estates or interests in land

47. **agreed** that the no compensation provision and its exceptions will be based on the approach in RMA s85(1)-(6), but with amendments including the following:

    a. if the tests for a remedy are met in respect of a plan change application or appeal to the Environment Court (the Court), it will direct the entity responsible for making final decisions on the NBA plan to do whichever of the following the entity considers appropriate:

        i. modify, delete, or replace the provision in the plan or proposed plan in the manner directed by the Court: or

        ii. offer to acquire the relevant estate or interest in land under the Public Works Act 1981, and

        iii. if the holder of the estate or interest in land does not accept this offer, the planning provision in question remains in force, or comes into force without modification

    b. the timing and steps to seek a remedy will align with processes for NBA plan development and change, to minimise the number of processes in the system overall

    c. a provision stating that proactive planning to reduce risk does not automatically provide a right to a remedy, where the planning provision is taking a step now to reduce an increase in risk or a future risk

48. **noted** that further decisions may be sought from MOG and/or subgroups about the remedies in the no compensation provision, as a result of upcoming governance decisions

49. **noted** that further work is required on the development of planning provisions (including any remedies relating to planning provisions under the no compensation provision) in respect of land owned by Māori

Delegation and drafting

50. **authorised** the Minister for the Environment in consultation with the Minister of Local Government (Hon Nanaia Mahuta) to make further decisions to:

    a. refine the criteria and scope of information requests by councils so that they are proportionate to scale and significance of the activity

    b. refine councils' ability to reject, defer or suspend applications, extend timeframes and applicants' ability to suspend applications

    c. determine consenting timeframes (subject to further MOG decisions on other features that will impact on timeframes, such as appeals)

d. determine procedural steps in the consenting system, including but not limited to pre-application, lodgement of application (information requirements) and service of documents

e. refine the detailed selection criteria for each additional processing pathway

f. determine which entity or agency will apply selection criteria for each additional processing pathway

g. determine who will provide administrative support for additional processing pathways

h. determine the nature of the independent decision-making body on additional processing pathways

51. **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to implement the decisions set out in this paper (including delegated decisions) through a Bill.

Paper 2: Consequential amendments

The Ministerial Oversight Group is recommended to:

1. **authorised** the Minister for the Environment to approve consequential amendments (to the associated legislation and Bills referred to in the appendices, and to secondary legislation made under the RMA) stemming from existing and future MOG decisions about the NBA, subject to consultation with:

    a. the Minister of the agency responsible for administering the affected legislation and Ministers of other affected agencies; or

    b. for local Acts, the relevant local authority or other entity for local Acts, and the Minister of affected agencies

2. **noted** this delegation does not extend to iwi participation legislation or Bills (including Treaty settlements and Takutai Moana legislation as defined in the RMA) or the Urban Development Act 2020 and the Marine and Coastal Area (Takutai Moana Act 2012), as decisions on the necessary amendments will be sought separately.

Paper 3: Protection mechanisms in the Natural and Built Environments Act

Water Conservation Orders

1. **agree** that existing WCOs will be transitioned into the NBA
2. **agree** that protection of newly identified nationally significant water bodies will be managed primarily through the National Planning Framework (NPF) but that new WCOs are able to be sought in exceptional circumstances

2. **note** that if Ministers agree that WCOs are carried over, officials will undertake further work to develop a threshold test for any person to apply to seek new WCOs

3. **note** that this further work will include what rights people have to take action in circumstances where they consider sufficient protection has not been provided through the NPF

4. **note** that outstanding water bodies are already managed through the National Policy Statement for Freshwater Management (NPS-FM), and the policy intent is that the NPS-FM will be integrated into the NPF

Heritage orders

5. **noted** that NBA plans will play an important role in providing for heritage outcomes by protecting significant places
6. **agreed** the National Planning Framework will include direction to avoid blanket overlays in urban environments of Tier 1 authorities which unduly restrict urban intensification or renewal

7. **noted** that the National Policy Statement on Urban Development requires NBA plans for Tier 1 Urban Authorities to be based upon a site-specific analysis to justify why heritage (or any other qualifying matter) would make intensification inappropriate.
8. **agreed** that there is a need for a protection order process in the NBA, and that this process will be based on heritage orders in the RMA
9. **noted** the Panel's view on simplifying and improving heritage orders, and that this will guide policy development for protection orders
10. **agreed** that their purpose is to provide interim protection for a significant place
11. **agreed** that protection orders should relate to a place that advances one or more protection-oriented outcomes under the NBA
12. **noted** that officials will undertake further refinement of protection orders with iwi, hapū, and Māori groups so that the mechanism will give effect to the principles of te Tiriti and uphold te Oranga o te Taiao
13. **noted** that officials will undertake further work on appropriate methods to transition existing heritage orders into the new system
14. **agree** that further development on a role for mana whenua as Heritage Protection Authorities will be informed by engagement with iwi, hapū, and Māori
15. **authorise** to the Minister for the Environment to make further policy decisions on the process and other remaining details needed to draft protection orders, in consultation with other Ministers as appropriate

Urban tree protection

16. **noted** that councils are tasked with the protection of urban trees and vegetation, which contributes to a range of outcomes, for example, ecological integrity, protection of landscapes, indigenous vegetation and biodiversity, climate change, heritage, and equity of health and wellbeing
17. **noted** that accessibility to urban trees and nature is a key part of a well-functioning urban environment, and increases the liveability of more intensive housing
18. **noted** that councils are also tasked with enabling urban growth and development and to ensure housing supply meets the needs of their growing communities
19. **noted** that further work is being undertaken to better understand and to address the challenges associated with current and historic urban tree protection provisions that have proven onerous and inflexible for both councils and system users
20. **agreed** that there is a need to protect (and potentially restore/enhance) urban trees on public and private land in a way that balances these competing outcomes and can be implemented efficiently
21. **agreed** to authorise the Minister for the Environment to make further policy decisions on the legislative settings required for urban tree protection, working in consultation with other relevant Ministers as appropriate

Minute from natural environment subgroup on Thursday 28 October 2021

Recommendations

The Ministerial Oversight group is recommended to:

1. **note** that MOG #10 authorised the Environment sub-group to make recommendations to MOG on:
    a. monitoring and reporting requirements in the NBA, 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 NBA plans
    d. the detailed functions for monitoring system performance

Monitoring requirements in the NBA

2. **agree** that the NBA will require local authorities to monitor the state of the environment within their region or district:
    a. to the extent necessary to effectively carry out their functions and duties under the Act
    b. in accordance with any standards, methods, indicators or other requirements set out in the National Planning Framework (NPF) or other regulations made under the Act
3. **agree** that in undertaking state of the environment monitoring, the NBA will require local authorities to:
    a. prioritise monitoring of environmental limits and other matters set out in the NPF and regionally significant matters identified in the NBA plan
    b. use any nationally prescribed standards or methods for monitoring and data management
    c. incorporate mātauranga Māori and tikanga Māori monitoring methods where these are agreed by Māori
4. **agree** that the NBA will require local authorities to monitor the effectiveness and efficiency of policies, rules or other methods in their NBA plan and how effectively the plan:
    a. is being implemented
    b. upholds any environmental limits that apply in a region
    c. promotes the environmental outcomes under Part 2 of the NBA
    d. addresses or manages other matters of regional or local significance that have been identified within the NBA plan
5. **agree** that the NBA will carry over the RMA duties for local authorities to monitor:
    a. the exercise of any functions, powers, or duties delegated or transferred by them
    b. the efficiency and effectiveness of processes used by the local authority in exercising their powers or performing their functions or duties
    c. the exercise of the resource consents and permitted activities that have effect in its region or district, as the case may be

d. the exercise of protected customary rights in a region

Monitoring and reporting requirements under the NPF or other regulations

6. **agree** that the NBA will require the NPF to provide direction on how environmental limits and targets set under the NPF will be monitored, and that direction must:
   a. include any standards, methods, indicators, or other requirements that apply to the monitoring
   b. enable the aggregation of monitoring data at the national level
   c. set out how Māori will be enabled to be involved in the monitoring
7. **agree** that monitoring requirements set under regulations should draw on nationally prescribed standards, methods or indicators
8. **agree** that the NBA will enable the NPF to require local authorities to publish or report on monitoring activities and to act in response to deteriorating environmental trends or a threat to an environmental limit or risk to ecological integrity
9. **note** that the actions required by the NPF could include a pre-planned action or investigation when an event occurs or a threshold is triggered
10. **agree** that as part of the regulation making powers under the NBA, the Minister for the Environment will have the power to:
    a. set regulations that prescribe standards, methods, indicators, or other requirements applying to environmental monitoring
    b. require local authorities to provide or make available environmental monitoring data collected under the NBA as prescribed
11. **note** that these regulation making powers will be based on the current RMA powers under sections 360 (hk) and (hl)
12. **note** that officials will undertake further work on duties of local authorities to provide environmental monitoring data to central government, including potential options for penalties for failure to provide data (such as that provided in the Climate Change Response Act 2002), and will report back to MOG #15 as part of the advice on system monitoring and oversight

The role of monitoring strategies to provide integrated monitoring and reporting

13. **agree** that the NBA will require joint planning committees to prepare an integrated regional monitoring and reporting strategy that must set out:
    a. the overall approach to achieve integrated monitoring and reporting under the NBA, including monitoring and reporting on the state of the environment and the efficiency and effectiveness of the NBA plan
    b. how mātauranga Māori input will be sought and Māori will be involved in monitoring and reporting activities
    c. any joint management agreement/Mana Whakahono ā Rohe or transfer of powers arrangements for monitoring and reporting
    d. details of roles and responsibilities of the constituent councils within the region (and other entities where monitoring powers are shared or have been transferred) for monitoring and reporting activities
    e. how monitoring activities will be reported in accordance with any reporting requirements in the NBA and NPF
14. **agree** that the NBA will require the regional monitoring and reporting strategy to be published publicly by the joint committee alongside the NBA plan, for it to be kept up to

date, and reviewed in full when the full NBA plan is reviewed

NBA requirements for reporting on environmental monitoring activities

15. **agree** that the NBA will require local authorities to publish the results of their environmental monitoring activities at least annually in a form that is easily accessible to the public and central government

16. **agree** that the NBA will require joint committees to publish a regional-level assessment of environmental monitoring activities at least every five years showing the environmental changes, trends, pressures, emerging risks, and outlooks within their region

17. **note** that any environmental reporting requirements set out through the NPF will be incorporated with the regional assessment to avoid multiple lines of reporting

18. **note** that the NBA requirements would not preclude local authorities undertaking other reporting as they see fit

Response requirements under the NBA

19. **note** that local authorities or joint committees will be required to take action in accordance with any requirements set out in the NPF (see recommendation 8)

20. **note** that MOG #11 and #12:

    a. agreed that NBA plans will be reviewed on a cyclical basis in response to plan and other forms of monitoring

    b. authorised the Minister for the Environment in consultation with the Minister of Local Government to make further policy decisions on the details of the NBA plan review process

21. **agree** that response requirements under the NBA will be incorporated into the cyclical plan review process and that these requirements will be included in further decisions by the Minister for the Environment on the NBA plan review process

22. **agree** that the NBA will require local authorities or joint planning committees to take immediate action for any issue that poses a significant risk to ecological integrity or human health and this action should include an investigation and evaluation of the causes of the issue, and the preparation of a plan setting out the intended response

23. **note** that further work is needed as part of the cyclical review process to determine what thresholds might trigger immediate actions, what processes might be required, and who is responsible for acting

Integration with the Environmental Reporting Act 2015

24. **note** that officials have identified a range of mechanisms to potentially align or integrate the NBA with the Environmental Reporting Act (ERA)

25. **authorise** the Minister for the Environment and the Associate Minister for the Environment (Biodiversity) to make decisions on how the NBA and ERA will be more closely aligned

Providing for the role of Māori in monitoring and reporting under the NBA

26. **agree** that the NBA will require local authorities and joint committees to actively involve mana whenua (to the extent they wish to be involved) in developing mātauranga Māori, tikanga Māori and other monitoring methods and approaches for environmental and plan effectiveness monitoring and reporting

27. **note** that Māori representation on the joint committees will ensure that there is a role for Māori in governance and decision making for the regional monitoring and reporting strategy

28. **note** that officials will provide MOG with further detailed advice on Māori participation and decision-making in the resource management system and this will include how monitoring and reporting can be enabled through the enhanced Mana Whakohono a Rohe process

Central government oversight of monitoring and reporting functions

29. **note** that the system will have oversight mechanisms, including a range of ministerial intervention powers, for monitoring the actions taken by local authorities or joint planning committees. Advice on these mechanisms will be brought to MOG separately

Powers of entry for environmental monitoring and survey

30. **note** that section 333 of the RMA provides local authorities with powers of entry to private property for the purpose of conducting surveys, investigations, tests, or measurements for any purpose connected with the preparation, change or review of a policy statement or plan

31. **agree** to carry over the intent of section 333 of the RMA and to broaden that power to enable monitoring and surveying to be conducted beyond the preparation, change or review of a plan

32. **note** that further policy analysis is required on the approach to and implications of expanding section 333 powers

33. **authorise** the Minister for the Environment to make further decisions on expanding section 333 powers of entry for monitoring and surveying and to refer these decisions to a subsequent MOG for consideration

Other matters

34. **note** that roles and responsibilities for monitoring and reporting are indicative and will be finalised in conjunction with wider decisions around NBA plan governance arrangements

35. **note** that a number of Treaty of Waitangi settlements provide for joint management agreements that include monitoring and reporting functions under the RMA and these will need to be provided for and transitioned into the new system. Other joint management agreements and transfer of power related to monitoring and reporting which sit outside of Treaty settlements will also need to be considered for transition into the new system

36. **note** that ongoing investment will be required to implement a more robust environmental monitoring and reporting system. This includes technological and capacity and capability building across local and central government. Officials will provide further advice on how environmental monitoring and reporting will be funded at MOG #15

37. **note** that officials will provide further advice on system monitoring and oversight, and advice on funding this, at MOG #15

Delegation and drafting

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