Agenda – RM Reform Ministerial Oversight Group Meeting #15

Date: Monday 13 December 2021, 5.00pm to 6.00pm

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 Andrew Little, Minister for Treaty of Waitangi Negotiations
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
5.00pm to 5.20pm	**1. Funding the operation of the resource management system**	Minister for the Environment	Paper 1: Funding the operation of the resource management system
5.20pm to 5.40pm	**2. Critical issues and delegated decisions** **2b. Takutai Moana Rights**	Minister for the Environment Minister for Treaty of Waitangi Negotiations	Paper 2: Critical issues and delegated decisions *Verbal update only from the Minister of Treaty of Waitangi Negotiations*
5.40pm to 6.00pm	**3. Enabling infrastructure in the new system through designations**	Minister for the Environment	Paper 3: Enabling infrastructure in the new system through designations

Attached for supplementary information:

1. *Resource Management Reform System Map*
2. *Glossary of key terms and acronyms*
3. *Report-back from Māori Interests subgroup*
4. *Minute from RM Reform Ministerial Oversight Group Meeting #14 on 17 November 2021*
5. *In-progress action log from previous MOG meetings.*

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Paper 1: Funding the operation of the resource management system

Key messages and recommendations (see pages 9 to 30 for more detail)

Key messages

1. This paper seeks agreement to:
   a. funding principles for the new resource management (RM) system;
   b. the funding framework, tools, and reporting on costs in the new RM system; and
   c. the high-level approach for determining the responsibility for, and funding the management of, contamination.
2. The proposals in this paper contemplate funding for services provided under the Natural and Built Environments Act (NBA). The paper does not alter existing funding arrangements with respect to infrastructure funding (ie, development contributions), resource effect offsets (ie, financial contributions), or services provided under other legislation, such as consenting under the Building Act 2004. Work is underway, on the use of economic instruments, which may result in the development of alternate revenue streams associated with, for example, use of public resources.
3. Changes to the RM system are expected to result in more upfront effort and costs by central and local Government in planning and monitoring, less costs for system users, and greater recovery of costs from users for compliance monitoring.
4. Funding for the system will be considered in Budget 2022 and subsequent budgets as appropriate.

Funding principles

5. Funding principles are proposed to provide a common view on what is 'equitable' in respect of who should pay for what within the system. The principles intend to strengthen a user/polluter pays approach to reflect that it is their actions or inactions that should give rise to costs. The framework proposes departing from user/polluter pays when it is inefficient to allocate costs to users. In such cases, the funding principles propose it is most equitable that communities pay (ie, via rates).
6. It is proposed that central government would pay only where it is inefficient to allocate costs to communities. Where a user/polluter pays approach may lead to undesirable/unsustainable outcomes, exceptions to this approach are proposed.

Illustrative application of principles:

User/polluter-funding

7. User/polluter-funding is proposed for application processing, information requirements/expert advice (including advice from hapū/iwi/Māori, where sought/required), compliance monitoring related to specific activities, and investigations (where wrongdoing is established).
8. Upfront costs are expected to decrease for users overall (with fewer consent applications). However, recovery of downstream costs (ie, compliance monitoring costs), would shift from being largely paid via rates to directly by users. The impact of this will depend on the timeframes over which the activity occurs.

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Local government funding

9. Local government is proposed to fund local and regional planning, environmental reporting, systems performance monitoring at a local level, Māori participation at the local level, provision of information, education activities, and prosecutions.

Central government funding

10. Central government is proposed to fund the development of the National Policy Framework (NPF), the evaluation and monitoring of it, and guidance to support its implementation; support for the National Māori entity, environmental reporting; and systems oversight and support (including performance monitoring at a national level). Costs of central government participation, and areas where central government might resource costs of participation by others.

Funding for Māori participation

11. This paper recognises that adequate funding is critical to the maintenance of an enduring Treaty partnership between hapū/iwi/Māori and the Crown. It seeks to ensure that funding for Māori participation is provided for at all levels of the system by the appropriate parties. Officials propose that:

    a. the proposed national Māori entity will be funded by central government

    b. Māori participation on central government decision-making committees will be funded by central government

    c. Māori participation on local government decision-making committees/joint committees, and Māori expertise within secretariat arrangements, will be funded by local government.

Tools

12. Officials propose that the NBA provide for tools to support local government to charge for resource management functions, duties, and powers, including hourly rates, fixed charges, and formulas.

Reporting

13. To support transparency and systems performance monitoring, officials propose that local government report the revenues and costs for key RM system functions separately to general rates/other activities where this can be done efficiently to aid transparency, public accountability, and systems performance monitoring. As part of this, hapū/iwi/Māori, NGOs and business would also be encouraged to report their unmet costs, so improvements can be made to the system over time.

14. Officials intend to explore this further including whether it would be best achieved through amendments to existing Local Government Act 2002 (LGA) provisions, or via the NPF or other regulations promulgated under the NBA.

Contamination

15. Further work is proposed to explore a clear and pragmatic hierarchy of liability that identifies the most appropriate party responsible for contamination; develop the escalation framework; and to consider the role of iwi/Māori in managing contamination issues. Agreement is also sought that:

    a. the Environmental Protection Authority be explored as central government's regulatory agency for performing functions and duties and discharging powers

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related to the remediation of significant contamination identified through the escalation framework, and

b. the NBA provide for the tools necessary to support effective management of contamination liability, such as bonds and/or minimum insurance.

Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Context and opportunity

1. **note** that functions, duties and powers under the Resource Management Act (RMA) 1991 are funded through two main sources:

   a. through user pays charges and rates at a local/regional level, and

   b. taxes where central government functions are performed

2. **agree** that the funding approach under the reformed resource management system aims to:

   a. build on recommendations from the Resource Management Review Panel's (the Panel) report "New Directions for Resource Management in New Zealand", support the reform objectives agreed at MOG #2, and further previous decisions made by MOG

   b. ensure sufficient resourcing of functions and roles set out in the new system for these to be effective

   c. support costs attributable to certain activities being recovered from the users/polluters giving rise to the costs

   d. address potential barriers to the use of funding tools allowed for under the RMA, improve consistency of practices, and support the use of economic instruments

   e. improve alignment with, and consistency of, provisions with those under the Local Government Act 2002 (LGA)

   f. support improved transparency and systems performance monitoring

3. **note** that ensuring collaboration between central and local government and Māori will be fundamental to the success of the reforms, and work is underway to consider how best to reflect this in the Natural and Built Environments Act (NBA)

Funding functions, duties, and powers in the new system

4. **agree** to the following funding principles:

   a. **Principle 1** – users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers

   b. **Principle 2** – where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs

   c. **Principle 3** – where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do so

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d. **Principle 4** – at all levels within the system, costs and charges should be proportionate with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity

5. **agree** that the NBA require that local government must give effect to funding principle 1 while funding principles 2 to 4 will remain non-statutory

6. **agree** that, to mitigate the risk that funding principle 1 results in unsustainable outcomes, the NBA enables decision makers to charge less than full cost if:

   a. it is administratively inefficient to allocate and recover costs from users

   b. charging full cost may lead to an activity being undertaken at a scale (including not being undertaken) that would undermine achievement of NBA Plan outcomes, and/or

   c. charging may provide an incentive for non-compliance (eg, charging to register a permitted activity or to undertake compliance monitoring of permitted activities)

7. **note** that Principle 4 is consistent with the procedural principles under section 18A of the RMA

8. **note** that section 36 of the RMA limits the application of administrative charges in a way that is inconsistent with the approach taken in the LGA

9. **agree** the NBA charging provisions take a similar approach to that of section 150 of the LGA — "to prescribe fees or charges payable for a certificate, authority, approval, permit, or consent form, or inspection by, the local authority"[1] having applied the charging s principles

10. **note** that section 36AAA of the RMA requires a mix of subjective and objective tests that often lead to ratepayers picking up costs that would most equitably be funded by users

11. **note** the RMA is presently not explicit as to the tools local authorities may use when recovering costs, which is inconsistent with good legislative practice

12. **agree** that, in addition to tools used by local government under other legislation, the NBA provide tools to support local government to charge for resource management functions, duties, and powers, including:

    a. hourly rates

    b. fixed charges

    c. formulae

The role of economic instruments

13. **note** that work is underway on the development of economic instruments, which may generate revenue that could be used to support the delivery of administrative functions

14. **note** there is a risk that if not properly managed the cumulative impact of charging for administrative services, market allocation mechanisms, economic instruments, and the management of contamination liability could impose a significant cost on users

15. **agree** that further work is undertaken to understand the possible cumulative impact on users of funding, market allocation measures, economic instruments, and liability settings

[1] Refer 150(1) of the Local Government Act 2002.

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Funding Māori participation in the new system

16. **note** that multiple Waitangi Tribunal findings include that the Crown needs to ensure the RM system enables sufficient funding for iwi/Māori to participate effectively[2]

17. **note** that some parts of local government are presently funding Māori participation at a local and regional level, and while this is imperfect, it has improved in recent years

18. **note** the Panel's recommendation that "provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest"

19. **agree** that where an applicant requires iwi/Māori expertise (eg, to prepare a cultural impact assessment), this should be funded by the applicant in the same way as any other technical advice

20. **agree** that local authorities may consider whether, and how, iwi/Māori could recover reasonable costs for providing advice when iwi/Māori make a submission (eg, on a notified consent or plan) providing expert advice that ought to have been commissioned prior to notification

21. **agree** that where roles are set out under the NBA for Māori participation, funding be provided as set out below:

    a. at a national level that all reasonable costs for participation in national-level functions (eg, setting national limits and targets) will be funded by the Crown

    b. in Joint Committees and in the relevant secretariat, this will be jointly funded by the relevant regional and/or local authorities

    c. for other regional/local functions (eg, compliance and system performance monitoring), participation will be funded by the relevant regional or local authorities that carry out the function

    d. at the regional/local level, councils and hapū/iwi/Māori can agree to funding arrangements as needed

22. **agree** in-principle that the NBA explicitly require local government provide adequate funding to support Māori participation, subject to work on potential funding streams ie. economic instruments, and the use of funds that these may generate

23. **note** that there will be a suite of regulatory and non-regulatory measures to ensure adequate funding for Māori participation at a national and regional/local levels including:

    a. the regulatory requirement to 'give effect to the principles of Te Tiriti'

    b. the proposed regulatory requirement set out in recommendation 19

    c. data on funding for Māori participation gathered as a consequence of proposals set out in recommendations 29 to 32 relating to transparency, accountability, and performance monitoring recommendations

    d. the proposed National Māori Entity utilising reported financial data to monitor the statutory obligations set out in (a) and (b) above

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[2] For instance, see pages 101-102, 314, 338, and 343 of WAI 2358 Stage 2 Report on National Freshwater and Geothermal Resource Claims (2019); page 116 of WAI 2575 Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (2019); and page xi of WAI 2660 Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 1 Report (2020).

24. **note** that funding principles may help reduce barriers to transferring functions to hapū/iwi/Māori (as enabled under section 33 of the RMA), on the basis that costs covered by the user is equally efficient whether a council or hapū/iwi perform the function

25. **agree** in-principle that timebound funding be provided by central government to support local government and Māori to build capability and capacity to participate effectively in the new system

26. **note** that funding to support local government and Māori to prepare for participation in the new system is being sought through ongoing Budget 2022 processes

Supporting public participation

27. **note** that environmental NGOs and community groups have historically funded their own participation in planning and hearing processes

28. **note** that many environmental NGOs and community groups do not have the resources to enable them to engage substantively in the environmental management system

29. **note** that the Environmental Legal Aid Fund (the Fund) was established in recognition of this and allocates a pool of around $600,000 per annum providing up to $50,000 to pay for legal and expert testimony associated with appeals

30.

31. **note** the need to balance the need for community involvement in planning processes with a desire to improve efficiency and lower costs associated with the system

Supporting transparency, accountability, and performance monitoring in the new system

32. **note** that presently there is inconsistency in how costs and revenues associated with resource management functions are reported, making it difficult to determine the economic, social, or environmental impact of funding practices

33. **agree** in-principle that mandatory, nationally consistent reporting standards be developed and reflected through existing mechanisms in the LGA, regulation making powers in the NBA, or the NPF in consultation with the Minister for Local Government

34. **note** that this is another example of the need to establish an effective digital platform that supports functions under the NBA and SPA

35. **note** that improved financial reporting and systems performance monitoring will support greater efficiencies throughout the system

Transition and implementation

36. **note** the three investments that will underpin an effective, efficient resource management system are**:**
    a. well-integrated digital infrastructure
    b. support for the development of model plans
    c. support to develop capability and capacity, including among iwi/Māori, to operate the system as intended

37. **note** that further advice will be provided in support of upcoming budget bids and business case development consistent with these core investments

38. **note** that investment in these areas does not necessarily imply long term responsibilities for funding these areas and further work is required on the timeframes for any central government funding (if agreed)

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Providing a framework to manage contamination liability

39. **note** that the costs associated with managing contamination often fall to local or central government, which is inconsistent with the proposed funding principles

40. **agree** that the Environmental Protection Authority be explored as central government's agency for performing functions and duties and discharging powers related to the remediation of significant contamination identified in the escalation framework

41. **agree** that the NBA contain a clear hierarchy that clarifies responsibility and liability for contamination, for example between present and previous polluters and/or landowners, and central and local government

42. **agree** that the NBA provide for the tools necessary to support effective management of contamination liability, such as bonds and/or minimum insurance

43. **agree** to further work to develop the contamination liability management framework, including considering the role of iwi/Māori in managing contamination issues

Delegations

44. **authorise** the Minister for the Environment, in consultation with other Ministers where identified, further decision-making relating to:

    a. any central government funding to support local government and iwi/Māori to participate in the new system, in consultation with Associate Minister for the Environment Hon Allan, the Minister for Local Government and Minister for Māori Crown Relations: Te Arawhiti

    b. reporting standards, the regulatory mechanisms used to establish these, and the level of specificity that they contain, in consultation with the Minister for Local Government

    c. provision of liability instruments in the NBA and consideration of the institutional operating model and escalation framework

    d. other funding tools, such as those that exist under the RMA, in consultation with other relevant Ministers.

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Paper 1: Funding the operation of the resource management system

This paper is supplemented by Appendix 1 containing:

Supporting item 1: A Framework to Conceptualise Change (page 31)
Supporting item 2: Treaty of Waitangi Impact Analysis (pages 32 to 33)
Supporting item 3: High-level Options Analysis (page 34)
Supporting item 4: Summary of Feedback from Iwi/Māori groups (pages 35 to 37)
Supporting item 5: Summary of allowable funding arrangements under the Current RM framework (pages 38 to 41)
Supporting item 6: Report Commissioned by Te Tai Kaha Māori Collective – High-Level Principles for Funding of Reformed Resource Management System by Cognitus Economic Insight (pages 42 to 51)

Purpose

1. This paper seeks agreement to:
   a. the funding framework, tools, and reporting on costs to be enabled in the Natural and Built Environments Act (NBA) or regulations
   b. matters to be considered further in funding the resource management (RM) system
   c. the high-level approach for determining the responsibility for, and funding the management of, contamination
   d. delegate further decisions to the Minister for the Environment in consultation with relevant Ministers consistent with a. to c. above.

Context

2. The changes to the RM system are expected to result in more effort and cost by central and local government in planning and monitoring, less upfront cost for system users, and greater recovery of costs from users/polluters for compliance monitoring.
3. This paper proposes funding principles and a contamination liability framework that is consistent with:
   a. the Resource Management Review Panel's (the Panel) allocation principles of sustainability, equity, and efficiency
   b. the Treasury and Office of the Auditor General (OAG) guidance on charging for public goods and services
   c. prior Ministerial Oversight Group (MOG) decisions on "polluter pays" principles, funding compliance monitoring and increasing the role of Māori in the system.
4. These funding principles and the liability framework are intended to support:
   a. greater clarity for, and consistent, use of funding tools and reporting on costs
   b. sufficient resourcing of functions and roles set out in the new system
   c. a greater portion of costs attributable to certain activities being recovered from the users/polluters giving rise to the costs
   d. tools that the MOG is expected to consider when discussing allocation and economic instruments.
5. The core components of this paper have been consulted on with government agencies, Te Tai Kaha, Iwi Leaders Group and Te Wai Māori Trust, and an Auckland Council group,

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with further engagement planned with the [redacted] The paper has tried to address feedback, including feedback from iwi/Māori groups in Appendix 1 supporting item 4 with further work flagged where required.

Scope of paper

6. This paper contemplates charging and funding of system administration (eg, administrative services, central and local government planning services, environmental monitoring and compliance monitoring). The paper does not contemplate funding of infrastructure or offsets (ie, development contributions or financial contributions).

7. This paper provides examples of what the application of funding principles might mean for various functions such as applications, compliance inspections, planning, and Māori participation. However, it does not propose to mandate that certain functions, duties, or powers must be funded in a specific way. It will be for local and central government to apply the funding principles appropriately to their specific context.

8. Further work is planned on:

   a. Contamination and allocation and economic instruments

      i. This will include, consideration of additional tools that could be applied to funding the system.

      ii. While this paper does not consider funding that could be provided to directly support the full set of reform objectives, this could also be considered following further work and be informed by the proposed funding principles in this paper.

   b. Consideration of how to recognise the need for collaboration between central and local government and Māori.

   c. Funding for Māori participation

      i. Including the funding framework must operate effectively in a system that gives effect to the principles of Te Tiriti o Waitangi and provides greater recognition of te ao Māori, including mātauranga Māori.

      ii. This paper considers at a high level how the funding framework might apply to Māori participation, including where the costs of funding Māori participation will generally fall.

9. Further work is intended to:

   a. understand how the funding framework would apply to specific aspects of Māori participation, including Māori rights and interests in natural resources, and

   b. consider funding for:

      i. transition and implementation, particularly for IT infrastructure

      ii. developing model plans

      iii. capacity/capability building (including Māori capacity/capability).

10. The matters outlined above are currently, or expected to be, the subject of budget bids and/or business cases, so are not dealt with in detail in this paper.

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Context

Status Quo

11. Castalia[3] has estimated that consenting processes (including dispute resolution) cost stakeholders nearly $700 million annually, 57 per cent of annual system costs. System costs are summarised in the figure below – note that these are system process costs, rather than the total costs faced by those engaging in RM processes and there are significant challenges to accurately estimating costs in the current system.

12. This analysis did not separately look at costs faced by Māori, and this remains a gap in current cost analysis. Estimates of the consenting system costs currently faced by Māori will be difficult to measure, as a lot of time spent by Māori is not currently captured or recovered.

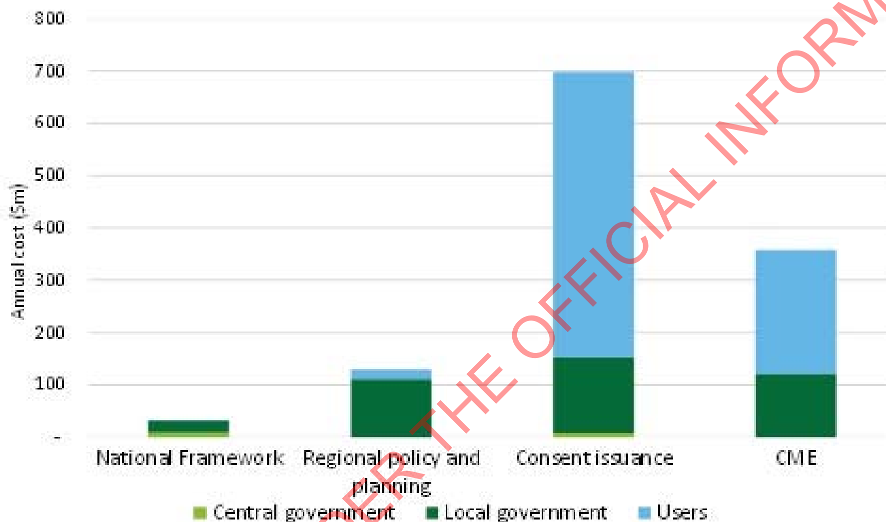

Figure 1: Annual cost of resource management system
Note the predominant 'user' cost for CME relates to users defending prosecutions.

13. The RM system is currently funded largely on a cost recovery and user-pays basis. Participants in plan-making processes generally 'pay their own way': Central government and local authorities cover their own costs in developing policy and planning instruments, while submitters pay their own costs in participating in those processes.

14. Costs associated with policy setting and planning that are incurred by local authorities are not recovered. While users face much of the process costs, other compliance, monitoring and enforcement (CME) costs, for example compliance inspection costs, are generally funded by local authorities, with only a relatively small element of cost recovery and, as such, rarely recovered. Accordingly, CME activities tend to be limited.

Problem Definition

15. Officials need to establish an appropriate funding framework in the reformed system. This should draw on what is already in the RMA (and related legislation), while picking up the Panel's recommendation and decisions made by the MOG. It is also an

[3] Economic analysis of the independent panel's proposed reforms to the resource management system, February 2021 (Castalia).

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opportunity to address problems with the current system. This results in the following aims:

a. sufficient resourcing of functions and roles set out in the new system, including funding for iwi/Māori participation
b. costs attributable to certain activities being recovered from users/polluters giving rise to the costs
c. improve alignment with, and consistency of, provisions with those under the Local Government Act 2002 (LGA)
d. address potential barriers to the use of funding tools allowed for under the RMA, improve consistency of practices, and support the use of economic instruments
e. support improved transparency and system performance monitoring.

Resourcing sufficiency

16. Work undertaken by Deloitte to review existing arrangements has highlighted:
    a. that the funding arrangements are inadequate in their support of key activities, notably CME
    b. a lack of recognition of the role that tangata whenua play in RM processes and consequential lack of explicit funding arrangements.[4]

17. The heavy reliance on general rates, and competing calls against these, may have contributed to the inadequacy of funding arrangements. Further, only 53 per cent of local authorities fund some Māori participation[5] and neither central nor local government are considered in Waitangi Tribunal findings[6] to adequately fund Māori to act as a partner to the Treaty of Waitangi (the Treaty).

Cost recovery, alignment and consistency

18. Users or applicants already pay for a significant portion of costs under the RMA as shown in the figure above. Section 36 of the RMA establishes what administrative charges may be used for, section 36AAA sets out what costs may be covered and when it is appropriate to charge, and the Resource Management (Discount and Administrative Charges) Regulations 2010 provide for discounts in charging.

19. These provisions, particularly section 36AAA (3) and (4), potentially constrain the use of charges[7] to a greater degree than other legislation, such as the LGA, and are open to some subjectivities in criteria, both of which drive inconsistencies. In contrast, under the LGA, local authorities have more flexibility to charge for the likes of approvals, applications, and permits.

20. The Resource Management (Discount and Administrative Charges) Regulations 2010 provide three grounds on which a charge may be discounted. All three grounds are highly administrative and narrowly focused. The current framework does not provide for discounts or waivers in a manner that may recognise the broader value of the activity to the community. The existing framework also fails to account for the impact of charging

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[4] Deloitte "Resource Management Act Reform: System funding review and pathways forward" 2021.

[5] National Monitoring System 2018/19 available at www.mfe.govt.nz.

[6] For instance, see pages 101-102, 314, 338, and 343 of WAI 2358 Stage 2 Report on National Freshwater and Geothermal Resource Claims (2019); page 116 of WAI 2575 Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (2019); and page xi of WAI 2660 Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 1 Report (2020).

[7] Deloitte (2021).

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on compliance with the RMA and does not seek to balance issues of equity, associated with who should pay, against the implications for environmental sustainability.

21. Existing practices have led to inconsistency in approaches across local government in the way similar activities (such as applications or CME) are funded, which has created confusion for local authorities and those who engage with them, particularly for users operating across local authority boundaries.

Barrier to use of funding tools

22. Deloitte (2021) found that local authorities are reluctant to adapt untested funding arrangements for instances where there may be limited precedent and greater risk of challenge. Deloitte found that, as a result of this caution, there are very few funding arrangements in use outside direct council and Crown funding for policy and plan setting activity, and user-pays and partial cost recovery for consenting processes. A summary of allowable funding tools under the current RMA framework is attached as Appendix 1, supporting item 5.

Transparency

23. The Local Government (Financial Reporting and Prudence) Regulations 2014 seek to support local government transparency and accountability for the way funds are raised and services funded. However, there still exists inconsistency in what data is available to support the assessment of present system settings. Without clear and consistent reporting at a sufficiently granular level, systems performance monitoring will likely remain difficult. Further, communities may struggle to understand the extent to which their rates contribute to local authority resource management costs when reporting does not distinguish funding of different functions.

The Panel Report

24. The Panel's Report did not directly discuss who should pay for each aspect of the new system and why, but did provide principles relating to allocation and economic instruments, and guidance on funding for certain aspects. The Panel suggested decisions relating to resource allocation and the use of economic instruments be guided by the principles of sustainability, efficiency, and equity.

25. The Panel's principles informed the design of the framework for funding in the new system, as these principles are also relevant when contemplating charging decisions; however, on their own the principles are open to interpretation, i.e., what is equitable in each set of circumstances for one party may be inequitable to another. We consider these principles are consistent with guidance from the Treasury and OAG.

26. Officials think that central government should provide greater direction on these principles to support decision makers in making trade-offs, to use a greater range of charging tools to ensure system costs fall where they should, and incentivise good behaviours.

27. Officials have applied the Panel's principles within the current system to develop the 'funding principles.'

Panel recommendations relevant to Māori participation

28. The principles of Te Tiriti are critical when contemplating funding for Māori participation within the system. The Panel recommended that Māori have the opportunity to participate across the resource management system at national and regional level in

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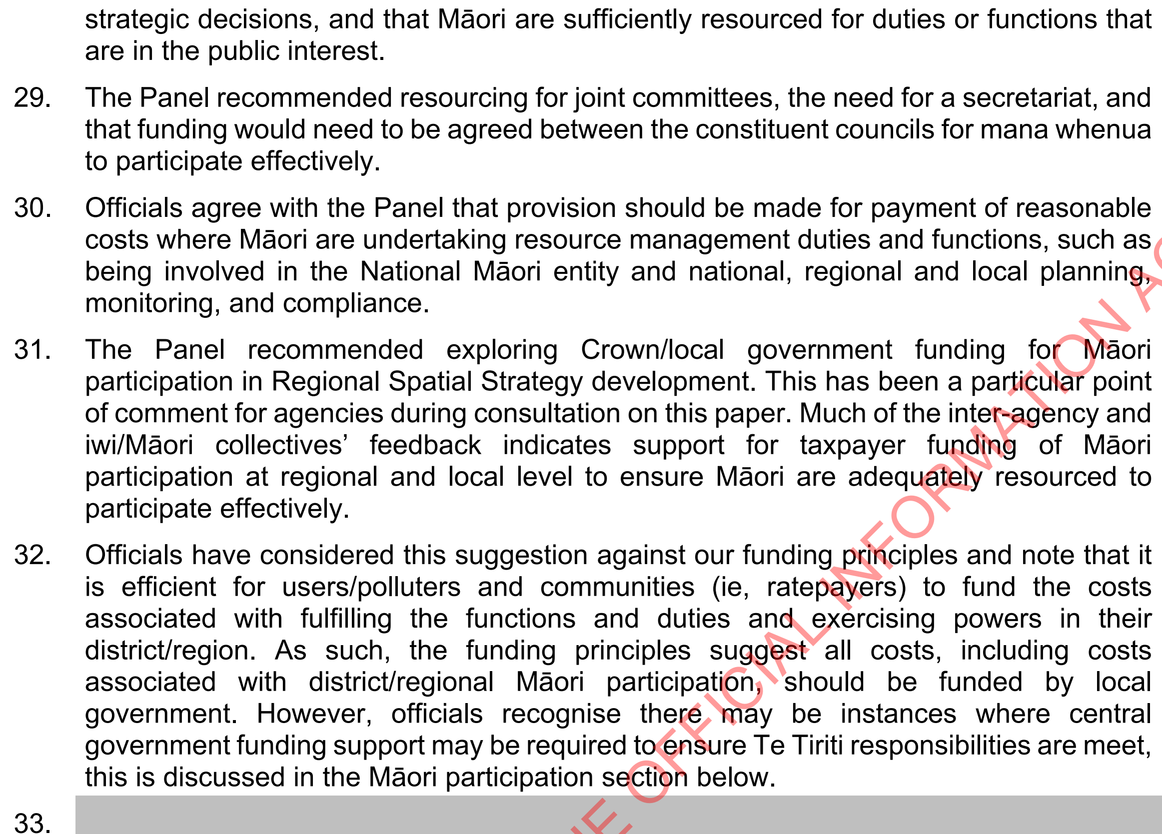

strategic decisions, and that Māori are sufficiently resourced for duties or functions that are in the public interest.

29. The Panel recommended resourcing for joint committees, the need for a secretariat, and that funding would need to be agreed between the constituent councils for mana whenua to participate effectively.

30. Officials agree with the Panel that provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions, such as being involved in the National Māori entity and national, regional and local planning, monitoring, and compliance.

31. The Panel recommended exploring Crown/local government funding for Māori participation in Regional Spatial Strategy development. This has been a particular point of comment for agencies during consultation on this paper. Much of the inter-agency and iwi/Māori collectives' feedback indicates support for taxpayer funding of Māori participation at regional and local level to ensure Māori are adequately resourced to participate effectively.

32. Officials have considered this suggestion against our funding principles and note that it is efficient for users/polluters and communities (ie, ratepayers) to fund the costs associated with fulfilling the functions and duties and exercising powers in their district/region. As such, the funding principles suggest all costs, including costs associated with district/regional Māori participation, should be funded by local government. However, officials recognise there may be instances where central government funding support may be required to ensure Te Tiriti responsibilities are meet, this is discussed in the Māori participation section below.

33.

Previous Ministerial Oversight Group decisions

34. Relevant decisions were made at MOG #10 and #11/12, including:

    a. agreement to a polluter pays principle within CME activity. This means that existing provisions enabling cost recovery by regulators for CME activity will continue to be provided for and strengthened where necessary to minimise costs to the wider public

    b. agreement that cost recovery for permitted activity CME activities and investigations of noncompliance will be provided for in the NBA

    c. noting that further advice will be provided on funding to enable effective [Māori] participation across the Resource Management system (MOG #11/12 paper 2, recommendation 25).

How the system is changing under the RM Reforms

35. The figure in Appendix 1 provides a conceptual overview of the anticipated key shifts in the RM system in the context of the existing funding arrangements. It is a simplified model. Changes in the RM system are intended to create greater clarity in policy and from plans with increased investment in CME and reduced focus on consents, driving more of the activity and, all else equal, cost towards central and local government. Based on information available at the time and assumptions required for estimation in the interim

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Regulatory Impact Statement prepared for the release of the exposure draft, process costs[8] per year were estimated to:

a. decrease by $149 million (19 per cent) for users (assuming fewer and faster consents)

b. increase $43 million (11 per cent) for local government, largely due to a greater focus on strategic planning which must be incorporated into NBA plans

c. increase by $19 million for central government, largely due to its expanded role in the system through the NPF and additional functions under the Strategic Planning Act.

36. It is important to note that proposals in this paper for compliance monitoring to become user/polluter pays would offset savings envisaged for users, the extent of the offset will require further work.

37. It is further important to note that increase in costs for local and central government need not fall on ratepayers and taxpayers. Depending on decision as to how revenue, which may be generated from the use of economic instruments, is used these costs could still be (indirectly) funded by users/polluters, for example, funding local government functions such as supporting Māori participation.

Options considered

38. The primary consideration behind the advice provided in this paper is how charging mechanisms support attainment of resource management reform objectives in a Treaty compliant, equitable, efficient, and sustainable way.

39. A summary of the analysis of the costs and benefits of these options is attached. The remainder of this section outlines our proposed option.

Context to funding principles

Reshaping the statutory decision-making framework

40. Deloitte have noted that for councils to use many of the tools presently available to them under the RMA in the way intended, they require greater direction from central government to assist them to navigate the local political environment. Funding principles in the NBA could address this issue by setting expectations for how trade-offs should be made to support attainment of reform outcomes.

41. Officials have developed 'funding principles' for inclusion in the NBA. These aim to apply the principles of equity, efficiency, and sustainability in a practical and meaningful way in a resource management context. The principles have also been developed with reference to the Treasury and OAG guidance on "Charging for Public Sector Goods and Services".

42. The principles remove the weight in assessing subjective matters like 'public interest' or 'public benefit'. These subjective assessments often result in contention, complexity, and cost to decision making processes. They can also be used by interested parties attempting to justify why they should not pay the full cost associated with their actions or inactions.

[8] Process costs are defined as both administrative costs to those running the RM system (central and local government) and compliance costs for RM system users.

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The funding principles

43. Applying the above to the reformed RM system, the following funding principles are proposed for the NBA:

    a. **Principle 1**: users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers.

    b. **Principle 2:** where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs.

    c. **Principle 3:** where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do so.

    d. **Principle 4:** at all levels, within the system costs and charges should be proportionate, with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity.

44. Principle 1 is proposed as a statutory principle that local government must give effect to, while principles 2 to 4 are proposed as non-statutory to enable flexibility in their application.

45. The advice in this paper also sits within a wider context of recognising that effective collaboration between all parties is critical to achieving better environmental outcomes over time. Further advice is being developed on the role of 'implementation principles' in the NBA, building off the Panel's report and the select committee recommendations.

Illustrative application of funding principles

46. This section provides an indication of how the application of the funding principles would affect who pays for what functions within the system and provides an explanation of why officials consider these principles are appropriate.

When users/polluters pay

Principle 1: Users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers.

Function	Who pays	Comment
Application processing and decision making (ie, consents, certificates, etc)	User pays	Cost recovered through fixed charges and hourly rates
Compliance monitoring relating to specific activities	User pays	Cost recovered through fixed charges, hourly rates and on an actual and reasonable costs basis
Private plan change	User pays	Cost recovered through fixed charges, hourly rates and on an actual and reasonable costs basis
Investigations	User pays	If no wrongdoing is found, community pays.

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47. User/polluter pays is the most equitable approach, but there are a range of other advantages and potential disadvantages to a user/polluter pays approach in the resource management system, which are set out below.

Some activities presently funded predominantly by ratepayers will become funded by users/polluters

48. One outcome of the reforms is to reduce the costs for those seeking consents by requiring clearer and more directive plans with more clearly delineated categories of activities. While this should result in greater use of permitted activities, officials expect increased emphasis on the need for effective compliance monitoring downstream.

49. It is important to note that all functions, duties, and powers that are currently user funded will continue to be user funded under this approach. The greatest impact of a user/polluter pays approach will be on monitoring activity compliance (eg, inspections), which is, by and large, presently funded by ratepayers. To continue ratepayer funding would reduce costs for users but would also remove price signals and incentives to minimise environmental effects.

50. Further, where ratepayers fund compliance monitoring and enforcement, these activities are frequently not undertaken at the scale necessary to support environmental sustainability. If current levels of compliance monitoring and enforcement continue under the new system, environmental sustainability outcomes would likely be undermined.

51. Due to differences in reporting practices among local government it has not been possible to quantify the potential impact of shifting the costs of compliance monitoring from ratepayers to users/polluters in the time available. For activities that are short-term, such as housing development, officials do not expect the cost impact to be significant.

52. For activities that are longer-term, such as mining or farming, there will be some additional cost. However, officials consider this is the most equitable approach and will incentivise sustainable environmental practice and support the efficient allocation of resources more broadly.

53. To give effect to the user/polluter pays approach, the NBA will need to prescribe the above funding principle and provide local government with tools such as the ability to use hourly rates, fixed charges, and formulae.

User/polluter pays supports environmental sustainability

54. Effective and efficient CME is a hallmark of a well-functioning regulatory system. Central and local government, mana whenua, and communities invest significant resources to establish a plan and rules-based framework for resource management. Without CME, lax compliance and unmonitored activities can undermine the whole system and threaten progress towards plan outcomes. CME action is essential to ensure the actions of a few do not adversely affect broader society nor breach important environmental limits and targets.

55. Historically, the extent of compliance and environmental monitoring undertaken by local government has varied across the country. However, councils have traditionally underinvested in monitoring, possibly because CME activities are usually funded through rates on which there are many other pressures and demands.

56. Effective monitoring is essential to ensuring activities are being undertaken within environmentally sustainable limits. A central shift from the current resource management regime will be the role played by the setting of 'limits'. This will place a much greater emphasis on the need for effective compliance and environmental monitoring at a local government level; in particular, the compliance of individuals undertaking consented activities.

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57. Moving the costs of activity compliance monitoring from ratepayers to those who use resources is equitable and will support sustainability. Those resource users who are found to be non-compliant are likely to be subject to more frequent, intensive, and expensive monitoring and thus higher costs. Hence, monitored parties are incentivised to stay compliant to minimise monitoring costs. Those who are unable to comply will more likely relinquish their resource use, enabling another party, who can comply, to take it up.

58. Officials note that this proposal is consistent with decisions made at MOG #10.

User/polluter pays can be administratively costly

59. The costs of applications (ie, consents, certificates, private plan changes, etc) is predominantly funded on a 'user pays' basis. Some councils seek to recover 100 per cent, others recover less (80 per cent) on the basis that enabling an activity has 'spillover' public benefits.[5]

60. The Panel identified the objective of fewer consents with the view that more activities should be managed through plans. While this may reduce the upfront cost for users, it will result in a greater emphasis on effective, ongoing CME to ensure activities are occurring with a sustainable manner (ie, within environmental limits). Consequently, the ongoing administrative cost associated with systems changes may rise for some types of activities.

61. There is also a risk that, if compliance (ie, registration of a permitted activity) is not easy, local authorities may spend considerable time and money chasing individuals for payment. Ultimately, where a local authority determines the expense of chasing fees outweighs the value of the revenue, they may write off debt or decide not to seek charges for these functions in such circumstances. It will be critical for the cost effectiveness of funding the system that councils and users are supported by easily accessible and usable administrative systems. Ensuring fit-for-purpose local and national IT infrastructure will be critical to this principle.

User/polluter pays may constrain economic activity

62. A user/polluter pays approach may constrain economic activity, particularly where compliance monitoring is not already undertaken on a user pays basis. However, as noted above, user/polluter pays ensures that the full costs of the activity are internalised into the decision-making process regarding whether the activity goes ahead or not. Arguably, if the returns of the economic activity do not outweigh the commercial and environmental costs it is not in society's best interests for the activity to proceed (though possible exceptions to also recognise wider public benefits are considered next). Potential impacts on economic activity also need to be considered in the context of the Building Act 2004 and infrastructure costs where user-pays arrangements also exist.

Waiving charges

63. The objectives of RM reforms include a desire to balance effective environmental management with the need to support development.

64. There are likely to be instances where a proposed activity provides wider value to the attainment of NBA Plan outcomes in addition to the private value to the user. Full cost-recovery may negatively impact on sustainability outcomes by resulting in the activity either not proceeding or proceeding at a scale that is less than optimal to realise the outcomes sought by Plans. For example, development of a mountain bike park would provide private commercial benefit but also wider economic and social benefit.

65. Where such a scenario occurs, there may be a rationale for charging less than full cost to incentivise the activity to proceed at the desired scale. Alternatively, full cost may be

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charged, and local government may choose another form of support, such as a grant or a rates waiver, to support the financial viability of the activity. In deciding whether to reduce user charges the local authority will need to consider the most effective incentive(s) among the suite of options available to them.

66. Officials also recognise that there may be instances where charging full cost may disincentivise compliance. This is a particular concern where permitted activities should be registered with the local authority and charging may lead to individuals deciding not to register. In deciding whether or not to provide a waiver or discount, the local authority will also need to consider the extent to which a possible infringement penalty would balance out the disincentive associated with charging and, therefore, charging could occur.

67. It is proposed that the NBA should not list the types of activities that may justify a move away from full user pays. Legislation should prescribe the matters decision-makers must take into account when exercising discretion to charge less than full cost, being if there is evidence that charging:

    a. may be administratively inefficient (ie, in that the cost associated with allocating and recovering costs exceeds the revenue to be recovered)

    b. full cost may lead to an activity being undertaken at a scale that would undermine achievement of plan outcomes, and/or

    c. full cost may provide an incentive for non-compliance (eg, charging to register a permitted activity or to undertake compliance monitoring of permitted activities).

Determining the impact

68. While preparing this advice officials sought to understand the potential implication for local government of a move to a 'user pays' approach, particularly for compliance monitoring. To do this, officials reviewed the data reported by local government to central government and reviewed councils' Long-Term Plans; officials also spoke with officials from Auckland Council and Local Government New Zealand.

69. Despite these efforts it was not possible to obtain the necessary data to provide a numerical assessment of potential impacts.

When local authorities pay

Principle 2: where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs.

Function	Who pays	Comment
• Local government planning • Local environmental monitoring and reporting Systems performance monitoring at local level • Māori participation (including in integrated partnership processes) • Provision of information • Education to the community on requirements and responsibilities • Prosecutions	Community	Funded via targeted or general rates

70. It is often not possible to quantify the value that individual members of the public derive from local government planning and systems monitoring in a way that enables a charge

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to be set; even if it were, it would be hugely administratively costly to try and attribute costs to each member of the community. In these circumstances it is most equitable and administratively efficient that funding contributions from this group come from rates, levies, or taxes.

71. For this reason, officials propose the use of targeted or general rates where these activities are at a local level, with separate reporting of the costs of key functions in the reformed system (as discussed below).

72. Applying the funding principle would mean that the community would predominantly pay for local government costs relating to planning, environmental and plan monitoring and reporting, Māori participation, general education, guidance, and advice. The community may also pay where an application is assessed as meeting the threshold for a partial exemption from charges on the basis of the waivers policy discussed above.

73. Officials expect central government will resource its own involvement in local/regional government planning. In this regard it will be important that agencies with roles to play are sufficiently resourced to actively engage across the various planning processes.

When central government pays

Principle 3: where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do so.

Function	Who pays	Comment
• Development of National Policy Framework • Support for Māori entity • Environmental reporting • Systems performance monitoring	The Crown	National level functions

74. Central government planning and systems monitoring is funded from general taxation. Officials recognise that the functions performed by central government are intended to provide guidance and performance monitoring across New Zealand.

75. It would be administratively inefficient to attempt to determine which region or group of New Zealanders' actions or inactions may give rise to the costs incurred by central government. As such, the best balance of equity and efficiency is for costs to be meet out of general taxation.

76. The implications of this are that central government will pay for costs relating to the development of the NPF, Māori participation in central government processes, national environmental reporting, and systems performance monitoring and oversight.

77. Officials expect local government will resource its own involvement in central government functions. In this regard it will be important that local authorities sufficiently resource themselves to actively engage.

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Support for efficiency, incentives and proportionate costs

Principle 4: at all levels within the system, costs and charges should be proportionate, with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity.

78. Prior funding principles focus on which party should bear the costs associated with different functions, duties, and powers and which tools should be available/used to support this. funding principle 4 is intended to support the RM Reform objective of system efficiency and to manage costs to different parties involved in the system. It has similarities to the procedural principles under section 18A of the RMA.

79. It will be important that guidance is provided to councils to support this principle to ensure it cannot be interpreted narrowly as a potential justification for not appropriately funding Māori participation at a local level, in line with the overall objectives of reform.

Funding Māori Participation

80. The reformed RM system anticipates a significant role for iwi/Māori, which will place additional demands on iwi/Māori capacity.

81. This paper recognises that adequate funding is critical to the maintenance of an enduring Treaty partnership between hapū/iwi/Māori and the Crown and seeks to ensure that funding is provided for at all levels of the system by the appropriate parties. The costs to hapū/iwi/Māori of an underfunded system are well understood and include:

    a. plans and consents are developed without adequate reference to the rights and interests of hapū/ iwi/ and Māori in the area, lack mātauranga, and have gaps in protection of taonga Māori

    b. hapū, iwi, and Māori having to fill those gaps, providing their expert advice and views as a Treaty partner for free through a submission process

    c. a lack of value for their time as kaitiaki means that roles are underfunded and hapū/iwi/Māori lack the resources to build their own capability and capacity to participate effectively in the system

    d. long-term underinvestment in capacity and capability building means that hapū/iwi/Māori may not be prepared to pick up all of the roles the new system provides for them, and thus achieve the transformational gains sought by the Crown

    e. hapū/iwi/Māori resort to using resources from their Treaty settlements to pay for their own Rangatira to participate in decision-making roles, which is not in line with Tiriti principles, including partnership and Rangatiratanga.

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Function	Who pays	Comment/Assumption/Analysis
• Partnership relations/ Māori as Te Tiriti partners Functions within the national Māori Entity	The Crown	To enable Māori participation at the national level, carrying out functions relating to system oversight and monitoring, input into NPF development. (This recommendation is in line with MOG #12 Māori participation paper).
• Māori participation in Planning (plan-making) • Application decision-making • Compliance and monitoring	Community	To enable and support local iwi, hapū, and Māori participation at a local level, including regional planning, consent decision making, monitoring and compliance.
Māori participation provided to individual applicants (ie, cultural impact analysis, technical expertise).	User pays	Engaging with applicants as they seek consent, a certificate, and environmental and cultural values reports/impact assessments.
Māori participation through making a submission on a consent or plan.	Further work required	Making submissions on applications to provide advice or represent a particular (ie, commercial) perspective.

82. The proposals for funding and charging in this paper were a topic of discussion at wānanga with [redacted] There was some support at both wānanga for the overall framework, with some specific feedback on how it could apply to funding roles for Māori in the RM system. Both groups considered that funding Māori participation in the new system was a significant Treaty issue and that it was important the framework was used in a way that supported and strengthened relationships between the Treaty partners. Further thoughts from FILG/ [redacted]

Context

83. Māori participation in the resource management system, at all levels, has been variable. In recognition that this is not in keeping with the partnership established under Te Tiriti o Waitangi, a key outcome sought from the reforms is the increased participation of Māori in the system.

84. Adequate Māori participation may also result in lower certain costs by, for example, reducing the need for Māori to challenge authority decisions. Shifting engagement from making submissions on plans and consents to being fully involved in the 'front end' of plan making should reduce costs incurred through hearings for both councils and Māori. Closer working relationships between Māori and councils will improve processes for users for example, the local authority facilitating users to connect with relevant Māori interests to support cultural impact assessments. Greater involvement in the planning process may also improve certainty for users.

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85. While some iwi and hapū have established strong relationships with central and local government, others have not. A key reason is the variability in resources available to Māori to support their participation and the capability of some councils to engage effectively.

86. The Waitangi Tribunal has repeatedly raised issues regarding lack of adequate funding to support Māori participation in local government functions and, as such, recognised that the Crown has not been meeting its Tiriti obligations in this regard.

87. Officials note that in reforming the RM system and delegating functions, duties, and powers to local government the Crown does not absolve itself of responsibility for ensuring that the delegated functions, duties, and powers are exercised as intended to achieve the desired outcomes.

88. Below officials set out how officials consider Māori participation might be funded and the rationale for funding.

Māori as Te Tiriti partners

89. It is intended that Māori will participate in national level functions in the reformed RM system including the development and continual review of the National Policy Framework and systems performance monitoring (such as environmental reporting and Te Tiriti performance oversight).

90. At a strategic level, it is intended that Māori will participate in local government planning, such as the development and review of Regional Spatial Strategies, Natural and Built Environment Plans, standards, policy, and process development. Māori will also participate in local systems performance monitoring, Iwi Management Plan development, and through Integrated Partnership Agreements. There may also be a role for Māori in application,[9] assessment and decision-making.

91. Applying the funding principles suggests a starting point of local government funding Māori participation within their locality/region.

92. The legislation will impose a stronger duty on local government to 'give effect to' the principles of Te Tiriti. The proposal for a national Māori entity will also enable strong monitoring of how funding for Māori participation is occurring. The proposals in the Transparency with Funding and Systems Performance section of this paper support the national Māori entity to discharge its monitoring role.

93. Māori in various localities may continue to experience inequity in their ability to participate in local government activities, impact Māori rights and interests and the sustainability of the system and attainment of outcomes sought from reforms. This is a concern where, for example:

    a. the local political environment makes adequate funding for iwi/Māori challenging

    b. a local authority has a small rating base and/or complex iwi/hapū arrangements and the costs associated with the local authority supporting Māori participation would result in a significant cost imposition, particularly on poorer communities.

94.

[9] For example, consents, public or private plan changes.

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95.

96. In respect of (b) above it should be recognised that for some local authorities providing adequate support for Māori participation will be a challenge. This presents a risk that Māori within those localities may not be adequately funded and subsequently disadvantaged in their ability to participate as compared to Māori in other localities. This has been a particular issue raised by

97. Conversations with highlighted that local government are supportive of Māori participating fully in the system and are not adverse to funding Māori participation. However, they are concerned with the cumulative cost impact associated with funding this, along with other costs imposed by systems reforms and the reliance/potential impact on rates. This is particularly acute for smaller authorities.

Māori as citizens

98. Provision for appointed Māori representation to engage with central and local government does not preclude individual iwi/hapū or Māori organisations from also being involved. For example, where they consider the position of those appointed to operate at a national or local level on behalf of Māori does not reflect their specific view. In such an instance officials consider that the most equitable approach is for the default position to be that costs incurred would be self-funded.

99. To the extent a submission seeks to represent provide advice and as such, inform and educate decision makers from a te ao Māori perspective there is an argument that such submissions ought to receive funding. To the extent that a submission seeks to represent, for example, a commercial position, there is an argument that such a submission should be self-funded.

100. Officials propose dealing with the above distinctions as part of further work to understand the scope of potential government funding support for local authorities.

Users

101. Processes at this level are put in place to assure the efficient, sustainable use of the environment and its resources. In this regard, officials do not consider there is a need to treat individual Māori users (such as a Māori company seeking to undertake a commercial development) differently from non-Māori users.

102. In the preparation of an application, for example for a consent or certificate of compliance, the applicant may be required to provide a cultural impact statement; the applicant may also choose to engage directly with relevant iwi and/or hapū to lessen the risk of future objections. In these instances, the 'user pays' principle clearly applies, and the applicant would be expected to remunerate Māori for their time and expertise as they would any other consultant supporting them to develop their application.

103. Councils may also seek to support Māori and applicants to engage through the provision of a centralised service to help make connections and efficiency facilitate consultation.

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This may be a more efficient way for Māori, particularly Māori with limited resources, and applicants to engage and would be cost-recovered by Council from the applicant.

104. noted that in the South Island, for example, councils successfully apply "user pays" charging for Māori expertise through directing applicants to seek advice from one of a number of Ngāi Tahu Regional Environmental Entities (REEs), such as Mahanui Kurataiao, on a broad range of activities that require consent. The application is not considered complete without the assessment of the relevant REE. This approach has enabled Ngāi Tahu Runaka to have their advice on resource consents funded in a sustainable way, and for consenting authorities to set clear expectations for applicants.

105. Councils may also seek Māori expertise in the assessment of the application. For larger councils, this expertise may be 'in-house,' for smaller councils, this expertise may be engaged as needed. Either way, officials would expect councils to incorporate these costs into the charges faced by applicants.

106. An iwi/hapū/Māori commercial entity or individual may also, like other members of the community, wish to submit on an application or appeal a decision. Officials would not consider it equitable for applicants to pay for the costs submitters/appellants incur (noting, however, the further work proposed above, and views raised by

Funding participation generally

107. Reforms have focused on striking a better balance between environmental protection and supporting development. In part this is being achieved through reducing the need for consenting by placing more emphasis on planning processes and limiting appeals.

108. A common issue that has been raised is the ability of individuals and communities to participate and influence local authority decisions. This is particularly with regards to large developments such as windfarms, mines, and quarries.

109. Engagement in these processes often requires members of the public to procure expensive legal, planning, engineering and/or environmental scientific advice. Communities will often pool their resources and fund-raising to support their participation. The general view within communities is that this presents a significant imbalance between the applicant, who often holds substantial resources, and the affected community.

110. Central government has provided the Environmental Legal Aid Fund (the 'Fund') to contribute up to $50,000 towards legal and expert witness costs in cases involving environmental law before a court, board of inquiry or hearing authority. The Fund has a total annual pool of $600,000. In the 2020/21 Financial Year, the Fund received 41 applications requesting a total of $1,365,130.48 (excluding GST) with funding distributed to 31 applicants.

111. The new system will seek to limit appeal opportunities and provide greater participation in planning. Therefore, it is uncertain whether the purpose and criteria under which the Fund operates will continue to be appropriate or whether the Fund could be re-oriented to support greater engagement in planning processes.

Transparency with Funding and systems performance monitoring

112. Section 259(1)(da) to (dd) of the LGA provides for the making of regulations to support financial reporting. The Local Government (Financial Reporting and Prudence) Regulations 2014 set out reporting standards and forms relating to local government financial reporting.

113. Councils are subsequently required to report on resource management-related functions and costs in Long Term Plans. However, the level of detail and data vary considerably

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across local authorities. This inconsistency, and lack of a granular view, makes it difficult for individuals and communities to understand what they are paying for and to monitor the economic impact of resource management activities.

114. In the new system officials consider that those involved in delivering services, or receiving public funds to support participation in the system, should always be able to demonstrate to the public the costs they incur in delivering a particular service or function under legislation and the revenue ascribed to those costs.

115. Officials also consider that consistently collected financial data, reported in a common, easily accessible form, will be critical to support systems performance monitoring and efficiencies.

Officials propose improving transparency and enabling systems performance monitoring

116. Officials propose that the NBA provide for the making of regulations to prescribe 'reporting standards' that local government must satisfy when publishing data on costs associated with resource management functions and the revenue streams used to fund those costs, including costs and funding relevant to supporting Māori participation. Such reporting would support assessments of the ongoing economic impact of RM reforms and assist users to understand the costs incorporated in the charges they face. The alternative of using existing arrangements under the LGA will also be considered as part of further work.

Improving transparency for users

117. There is variability in local government practices relating to reporting to users on the costs that they are paying for, and the detail of costs that are being charged. Officials propose that regulated reporting standards address this issue to support effective systems performance monitoring and to drive efficiency in the system.

Topic interfaces

118. How the operation of services in the system are funded is a distinct topic, but it also connects/overlaps with issues of allocation, economic instruments, and liability. Each of these areas has a different primary focus, but they all generate revenue, which could be used to fund the operation of the system.

119. Ministers need to contemplate each matter in its own right. However, there is a risk that in considering each matter in isolation, Ministers may not contemplate the possible cumulative behaviour or cost implications associated with various combinations of tools being used together. For example, if enabled and applied, costs associated with the following could cumulatively see the reformed system impose a significant financial burden:

    a. gaining a resource consent
    b. providing a bond to remediate future damage
    c. purchasing an allocation (eg, of nitrogen)
    d. annual resource occupation charges in recognition of exclusive use of a resource/area
    e. annual resource use charges in recognition of the value in using common resources
    f. regular cost recovered compliance monitoring charges.

120. This is also in the context of broader activity costs where work done by Sapere Research Group for the Infrastructure Commission reports that Council fees only represent on average seven per cent of a project's total consenting costs. Nearly 70 per cent of these

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costs related to external expert and legal costs. With these wider costs incorporated consenting costs were reported to represent almost 16 per cent of project costs for project costs under $200,000.[11]

121. Officials therefore propose that further work in these areas understand the potential cumulative impact and how this might be effectively managed.

Funding implementation and transition

122. Implementation will see various parties incur a range of costs. Greatest among these are likely to be:

  a. digital technology development

  b. model plan development

  c. capacity building (including for Māori).

123. Implementation timeframes will vary for each of the above, however, officials anticipate that each area would take years to implement. These timeframes run the risk that parties in the system become 'used to' central government financial assistance. It will therefore be critical to clearly identify the roles and responsibilities of central government in each of the above areas and clarify what will trigger central government funding support coming to an end.

Digital Technology development

124. Digital technology will be a critical enabler of systems efficiency, compliance, effective systems performance monitoring, and Māori participation. Work is presently underway to consider the most effective and efficient way to establish a cohesive IT infrastructure at a central, regional, and local level that reduces inequalities in capacity and public participation. From a funding perspective officials considered lessons from past efforts in New Zealand to develop a National Online Building Consent System. Both attempts were largely unsuccessful, with one of the key reasons being government playing only a coordinating role with local government.

125. Access to sufficient data, provided in a consistent format, is necessary to support effective national systems performance monitoring. Such a consistent national system will also support realising government outcomes associated with a more efficient system. Officials will do further work on a business case to explore how these costs are best funded.

Model plan development

126. To support the effective and efficient roll out of a consistent planning process nationally it is proposed that, following enactment, central government work with a selected region to trial and refine an RSS development process followed by an NBA plan.

127. Officials recognise that model plan development is a learning process for all system partners and, as such, costs for all parties are likely to be higher than a standard development process. For this reason, government may consider it appropriate to provide some funding support. It will be important that, if providing funding, it is made clear that government does not see itself having an ongoing role in funding local government planning costs.

Capacity building (including for Māori)

128. New central and local government planning models will require significant technical (for planning, environmental science, economic modelling, and mātauranga Māori) expertise. Officials anticipate a lack of capability and capacity in Local Government and among iwi/Māori to support establishment. Funding may be made available to support

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procurement of the expertise that is available. However, supporting development of capability and capacity, particularly among iwi/Māori, will be important to enable Māori to participate and to support central and local government to meet their statutory obligations.

129. Should central government wish to provide support officials would suggest that this be in the form of accredited programmes that will provide the skills needed to engage effectively (ie, governance training). Central government may have a role in funding provision of pathways to education by developing more planners, environmental scientists.

130. Further work is required to identify what will be needed to build capability, in particular Māori capability, the role of central government and the best placed agencies to lead.

Contamination Liability

131. New Zealand has a legacy of pollution and contamination (such as soil, freshwater and marine) associated with past practices involving the storage and use of hazardous substances, and disposal of hazardous wastes, and activities such as mining, fuel storage, sheep dips, gas works, timber treatment and the manufacture and use of pesticides.

132. The RMA does not provide a clear hierarchy of parties liable for contamination.

133. There are insufficient regulatory tools and financial assurance measures to ensure contamination is managed and remediated to protect human health and restore the environment. This leads to ambiguity and uncertainty; it is difficult to hold polluters to account and allocate liability where multiple parties have past or present interests in a contaminated site.

134. Local and central government often bear the cost of remediation and clean-up of sites at the ratepayers' and taxpayers' expense. While there are existing tools, such as the ability to require bonds or use IRD's Environmental Restoration Accounts, these tools are either rarely used or poorly understood.

Why a liability regime in the NBA is needed

135. A clear liability regime places the cost, responsibility, and regulatory burden of pollution predominantly on the persons responsible for that pollution. It also serves to clarify responsibilities of the polluter and landowners at the point of property sale and purchase.

136. The proposals align with the proposed 'funding principles' for the NBA and are seen as the most equitable approach.

137. A liability regime is considered an important part of a mature contamination management framework and there are many examples of similar liability regimes from comparable international jurisdictions.

The foundations of a framework to address contamination liability

138. Officials propose:

    a. an 'escalation framework' whereby less significant contamination is dealt with at a local or regional level and more significant contamination could be dealt with by a central government regulator

    b. enhancing the regulatory tools to provide financial assurance measures such as the provision of bonds, civil remedies, mandatory minimum insurance requirements, and the use of tax treatments

    c. developing integrated institutional arrangements between local, regional, and central government to effectively risk manage contamination liability

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d. a government agency (such as Environmental Protection Authority) may be best placed to manage any central government functions, duties, or powers relating to remediation of significant contamination identified through the escalation framework.

139. Further work is required to develop each of the above aspects of the framework.

Financial Implications

140. Crown funding to support central government's role in the system, transition, and Māori participation will be considered in Budget 2022 and subsequent Budgets as appropriate.

141. Further work is required to develop the purpose, application criteria, and operating model associated with the recommended funds to support Māori and general public participation.

Treaty impact analysis

142. This paper recognises that adequate funding is critical to the maintenance of an enduring Treaty partnership between hapū/iwi/Māori and the Crown, and seeks to ensure that funding is provided for at all levels of the system by the appropriate parties. The costs to hapū/iwi/Māori of an underfunded system are well understood and include:

a. plans and consents are developed without adequate reference to the rights and interests of hapū/iwi/Māori in the area, lack mātauranga, and have gaps in protection of taonga Māori

b. hapū/ iwi/Māori having to fill those gaps, providing their expert advice and views as a Treaty partner for free through a submission process

c. a lack of value for their time as kaitiaki means that roles are underfunded and whānau lack the resources to build their own capability and capacity to participate effectively in the system

d. long-term underinvestment in capacity and capability building means that hapū/iwi/Māori may not be prepared to pick up all of the roles the new system provides for them, and thus achieve the transformational gains sought by the Crown

e. hapū/iwi/Māori resort to using resources from their Treaty settlements to pay for their own Rangatira to participate in decision-making roles, which is not in line with Te Tiriti principles including partnership and Rangatiratanga.

143. The options in this paper do not create additional costs for Māori and seek to ensure adequacy of funding to support participation and reform objectives and giving effect to the principles of the Treaty. Nothing in the paper precludes any options to address Māori rights and interests in freshwater, though a limitation of the paper is that allocation and economic instruments are to be considered separately, which [redacted] in particular did not support.

144. A full summary of the analysis of the Treaty impacts of the recommendations of this paper is attached.

Engagement

Agency

145. Comments were provided by several agencies and attempts have been made to address these, or delegation sought to work through further matters. Areas not addressed have been flagged earlier in the paper as out of scope of this paper.

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Local Government

146. Conversations with [redacted] have highlighted the following:

   a. Outside of rates, local government have few mechanisms to generate revenue to fund the costs associated with the reforms. There is potential for other revenue streams that enable local authorities to recognise the value uplift generated from consents and use of local public resources. Further, the importance of considering funding in the context of decisions on responsibilities and governance/institutional arrangements was highlighted, noting that local government only raises rates for functions is that it is responsible for.

   b. Local government already fund Māori participation in many different ways (consistent with section 81 of the LGA) and are supportive of greater Māori participation in the system. It is unclear, however, whether Māori are participating as Te Tiriti partners or members of the local community. The former gives rise to central government funding, while the latter suggests communities pay.

   c. There are some councils, particularly smaller ones and those with a high number of iwi/hapū, that would be disproportionately impacted. For these councils, funding adequate Māori participation could result in significant rates rise that could be unacceptable to the community, and the LGA process for consultation on rates increases may cause challenges.

   d. Some form of government assistance and/or alternative revenue streams are desired to support local government to give effect to systems reforms, in particular Māori participation.

Iwi/Māori groups

147. The key points raised by [redacted] are set out in Appendix 1, supporting item 4. [redacted] further provided a note in Appendix 1, supporting item 6 proposing funding principles which go beyond the scope of this paper, and officials propose should inform further work on allocation and economic instruments.

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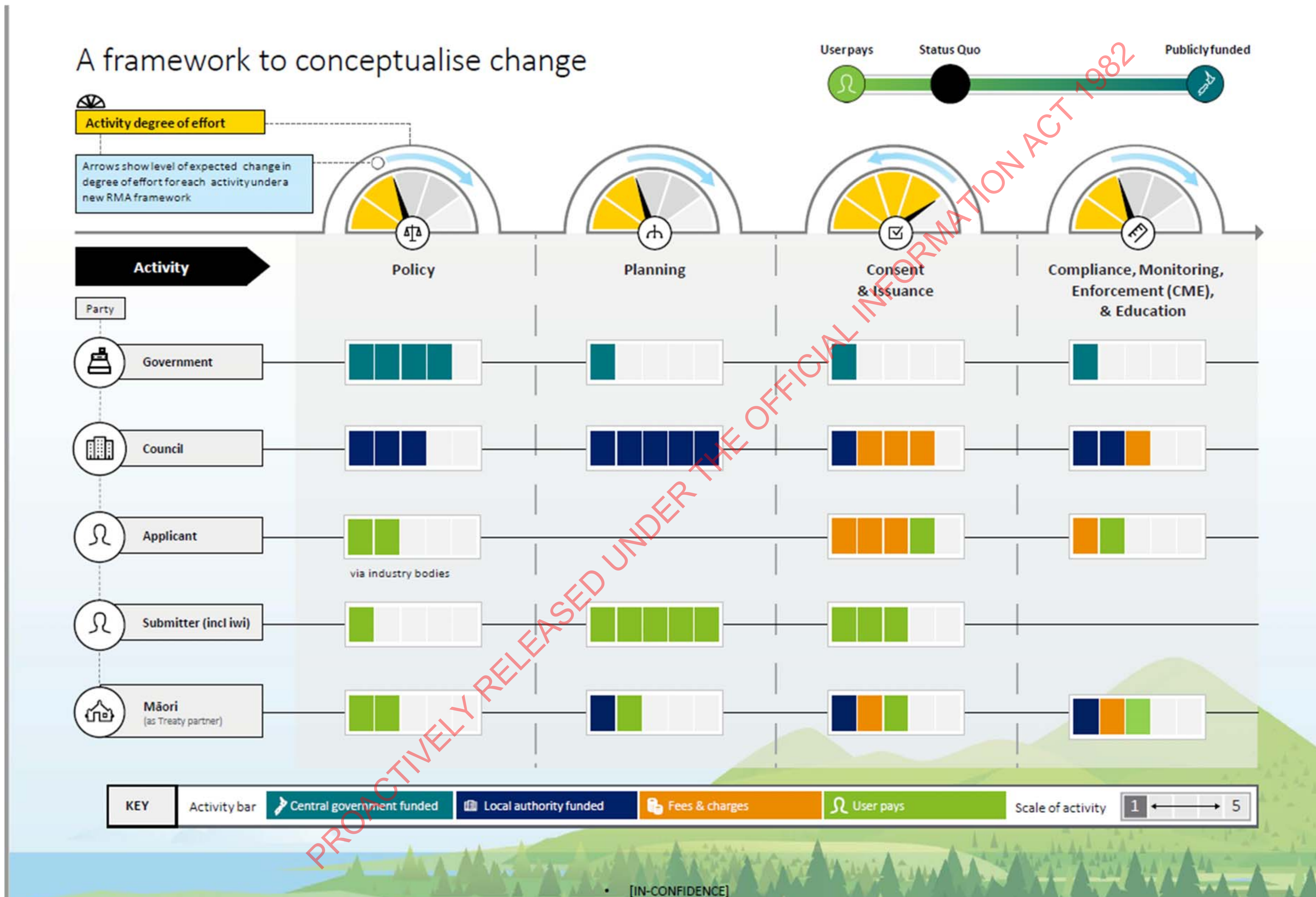
Appendix 1: Funding the operation of the resource management system

Supporting Item 1: A Framework to Conceptualise Change



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Appendix 1: Funding the operation of the resource management system

Supporting Item 2: Treaty of Waitangi Impact Analysis

Status quo
Māori participation in the system has been variable at all levels. A key outcome sought from the reforms is to increase of Māori participation in the new system. Assuring adequate funding to support Māori participation will be critical to achieving this outcome.

Summary of analysis

Gives effect to the principles of Te Tiriti o Waitangi (Te Tiriti):

- To give effect to the principles of Te Tiriti O Waitangi, and to uphold Te Oranga o te Taiao, Māori will be involved at all levels of the system. To ensure Māori participation is effective and adequate, funding from Central/Local Government will be provided.
- Māori will partner in Central government led functions including monitoring of Te Tiriti compliance within the system. Māori participation as partners in administering decision making under the NBA at a national level will be Crown funded.
- Māori participation at a regional level will be funded by Local Government, with further work to be carried out to explore Crown funding to support the transition to the new system. The legislation will impose a stronger duty on Local Government to give effect to the principles of Te Tiriti.

Māori Crown relations risks and opportunities

- The analysis of policy options does not present any risks to relationships between Ministers and iwi, hapū and other Māori groups, or the relationship between the Ministry and iwi, hapū and other Māori groups.
- There is a risk that if Māori are underfunded at regional and local level by Local Government, the obligation falls to Central government to provide support to mitigate any risk to the Māori-Crown relationship.

Costs and benefits for Māori

- The policy options for funding Māori participation throughout the system do not create additional costs for Māori, and funding options seek to ensure that Māori/iwi/ hapū are supported to participate effectively.
- The reformed RM system anticipates a significant increase in roles for iwi/Māori, which will place additional demands on iwi/Māori capacity. Further work is required to identify what will be needed to build capability, capacity, and resourcing for Māori throughout the system and best placed agencies to lead.

Protecting and transitioning Treaty settlements

- The legislation will need to recognise existing settlements for funding Māori participation.

Waitangi Tribunal Recommendations

- The Waitangi Tribunal has made findings and recommendations that the Crown cannot absolve itself of its Te Tiriti obligations by statutory devolution of its environmental management powers and functions to Local Government. The Crown's Te Tiriti duties

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remain and must be fulfilled, and it must make statutory delegates accountable for fulfilling them too.

-

Māori rights and interests in freshwater and other natural taonga

- The advice contained in this paper has not been assessed for how it may contribute to, or preclude options for, addressing Māori rights and interests in freshwater. These possible impacts will need to be explored further as part of the further advice on funding Māori participation.

Limitations of this assessment

- At this point, Economic instruments and Allocation are being considered separately to the Funding and Charging workstream. This has created limitations in certain areas and will require further work.

Overall assessment

- The policy options in this paper have considered funding Māori participation in detail, in consultation with the Māori Policy workstream, to ensure that adequate funding is provided to support Māori participation throughout the system, which is a key outcome sought from the reform of increased participation of Māori in the system.

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Appendix 1: Funding the operation of the resource management system

Supporting item 3: High-level Options Analysis

This paper is seeking high level decisions for areas of further exploration for us to complete a detailed impact analysis in RIS.

Problem or opportunity: status quo		
MOG is being asked to consider how the administration of the new system should be funded. This covers the approach to who pays for what and using which tools. However, it does not cover funding of infrastructure or tools that may be considered in work on allocation and economic instruments. This will impact costs borne by users, Māori, ratepayers and taxpayers. There are limitations in the evidence base and the ability to assess the impacts due to data constraints and detailed decisions still to be made. However, further work is also proposed in several key areas. Officials propose addressing some of the problems under the status quo in the proposed approach (some of which could be addressed under either of the broad options below) and both options include improving the scope and ease of ability to apply user-pays in practice.		
Options assessment	**Advantages/Benefits**	**Disadvantages/Costs/Risks**
Option 1: higher levels of Central government funding	• Lessens the burden on ratepayers • Provides greater certainty that critical functions such as Māori participation and CME will be undertaken at adequate levels	• Removes price signals that support efficiency • Creates inequality as taxpayer sin one part of New Zealand will subsidise local authorities in other parts
Option 2: higher levels of Local Government funding	• Increases the burden on ratepayers • May create friction between local authorities and Māori when determining funding to support Māori participation	• Retains price signals, ensuring local authorities and ratepayers • are cognisant of the costs associated with their choices Minimises inequity at a national level
Conclusion		
Option 2 is recommended It is important for systems efficiency, equity, and suitability that those who give rise to costs face those costs. Officials recognise the risks associated with potential ongoing under-investment in CME and consider the funding principles proposed for the NBA will mitigate this risk. We also recognise the risks to underfunding of Māori participation and consider a statutory requirement to require local authorities adequately fund Māori participation, along with monitoring of the National Māori entity will mitigate this risk. Officials also note the National Māori entity will draw on improved data as a consequence of proposals to improve financial reporting. Finally, further work will be undertaken to assist those local authorities who meet specified criteria, to effectively engage with Māori.		

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Appendix 1: Funding the operation of the resource management system

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Appendix 1: Funding the operation of the resource management system

***Supporting Item 5: Summary of allowable funding arrangements under the current RM framework*[11]**

Table 1: Funding arrangements under the current RM framework

Funding arrangements	Description	NZ usage
	Funding arrangements allowable under the RMA	
Financial Contributions (s 108(2)(a))	Councils may include financial contributions as a condition on a resource consent. These can be money and/or land to mitigate the environmental effects of proposals and incentivise good environmental design. The RMA requires councils to specify in their plans the circumstances under which financial contributions will be imposed.	In use
Administrative Charges (s 36)	Councils may set administration charges for a range of plan change, resource consent, heritage protection and notice of requirement activities, including monitoring and compliance. Charges are dependent on the complexity of the task and the time taken to complete it and levied on a cost recovery or partial cost recovery basis.	In use
Bonds (s 108A)	Councils may include a bond as a condition of a resource consent. This legally binding promise, or upfront cash payment held in trust, can incentivise developers to comply with the conditions of consent or enable the council to complete the conditions. The bond can be designed to ensure construction or maintenance is completed and/or environmental harm is minimised. For instance, an upfront bond is imposed on marine farms to ensure the farm is not abandoned for commercial or other reasons.	In use, and required for aquaculture
Coastal Occupation (s 64A)	Councils may set a coastal occupation charge. This must be spent by councils on the sustainable management of coastal marine areas. Section 64A(1) provides principles to guide councils when setting coastal charges.	In limited use
Royalties (s 112 and s 359)	**Royalties on consented removal of sand and shingle:** section 112 of the RMA contemplates the ability to require a royalty as either a condition of consent, or under regulations for the extraction of sand, shingle, shell or other natural materials from the coastal marine area. Regional councils collect these royalties on behalf of the Crown.	Rarely imposed in practice
	Geothermal energy royalties: as with sand and shingle, the RMA allows regional councils to collect on behalf of the Crown a royalty for the use of geothermal resources. To date, the Crown has not exercised its power to charge a royalty.	Not in use
Targeted rates	Changes to the Waikato Regional Plan in 2011 changed the Waikato Regional Plan to improve the water quality of Lake Taupo (particularly nitrogen levels). This involved public funds of $81.5m funded from: the Ministry (45%) and additional rates charged by Waikato Regional Council (33%) and Taupō District Council (22%).	In limited use

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[11] Deloitte (2021)

	Funding arrangements allowable under the LGA 2002	NZ usage
Development contributions (LGA 2002 ss197AA and 198) (LGA s198)	To recover a "fair, equitable and proportionate portion of the costs of capital expenditure necessary to service growth" (LGA s197AA) a local authority can decide that developers and their clients should bear the costs of new infrastructure, such as reserves, roads, water and wastewater infrastructure, and community facilities. The local authority can require development contributions when resource or building consents are granted, or authorisation for service connection (LGA s198).	In use
	Other funding methods allowable via regulations	**NZ usage**
Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991	Section s360(1)(c) of the RMA allows for regulations to be set to enable funding arrangements and allocation mechanisms, with the following in place: • Rent for occupation of Crown land in coastal marine area: reg 8; • Royalty for extraction of sand, gravel etc from land of the Crown in coastal marine area: reg 9; • Royalty for any coastal or water permit which involves the use of geothermal energy: reg 14.	Allowable, but not commonly used

	Publicly funded arrangements	NZ usage
Public subsidies	Targeted 'grant-in' aid such as funding from legal aid or the Environmental Legal Assistance Fund	In limited use
No/indirect charge General rates / taxation	No charge for use, or costs are absorbed within general tax pool or general rates	In use
	Enforcement-based funding arrangements	**NZ usage**
Enforcement charges	Fines, penalties, and fixed charges	In use
Court costs	At the discretion of the court as a result of enforcement activity	In use

1. The Resource Management Review Panel's Report summarised seven funding arrangements available under the RMA, which are listed first in the table above.[12] In addition, funding arrangements are available under the LGA 2002, via regulation, publicly available subsidies, or enforcement charges (including recovery of court costs). Any residual costs to the government or the councils of running the RM framework are funded through general rates or general taxation.
2. Section 36 of the RMA provides broad powers for local authorities to fix charges in relation to RMA processes. Charges must be fixed in specific amounts or determined by reference to scales of charges or other formulae fixed by the local authority, following the process set out in section 150 of the LGA 2002. Section 150(4) of the LGA 2002 requires that any charges must not recover more than the reasonable costs incurred by the local authority for the matter for which the fee is charged. This is consistent with s36AAA (2) of the RMA. Charges must be set

[12] At 325-326.

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in accordance with criteria, including charges being reasonable, and the benefit of the local authority's actions to which the charge relates is obtained by those persons as distinct from the community as a whole. If a charge does not allow the local authority to recover its actual and reasonable costs, the local authority may levy an additional charge.

3. The extent to which different funding arrangements are utilised in New Zealand varies:

- Administrative charges, and financial contributions are widely used. There is clear guidance in legislation and case law to support local authorities' charging regimes which provides certainty to both the local authorities and applicant. The charging basis is typically limited to cost recovery or partial cost recovery and the risk of challenge is low. These arrangements are in most common use.
- Bonds are used in some cases and are required for coastal occupation. There is no clear guidance provided regarding the size of these in legislation. Bonds are intended to provide an incentive to manage risk (bonds may be considered a form of insurance in relation to compliance).
- Royalties are a well-established market mechanism, used in extractive industries (such as coal, gold, oil, and other minerals) as well as DOC concessions to public conservation land. Section 112 of the RMA contemplates the ability to require a royalty as either a condition of consent, or under regulations (section 360(1)(c)) for the extraction of sand, shingle, shell or other natural materials from the coastal marine area. However, estimating the rate to be employed in relation to public goods such as air or water may be difficult to benchmark and controversial. The effective deployment of royalty-based funding arrangements also requires supporting systems, policies and processes to be developed such as valuation and trading mechanisms, and a scientific basis upon which to measure and monitor the sustainable level of resource. Royalties are not commonly imposed or collected from extracted industries under the RMA, or where imposed, they are for a nominal rate.
- Tendering and auction processes are examples of mechanisms that are both a funding arrangement and an allocation mechanism. These mechanisms require a clear pool of resources to help bidders to ascertain scarcity and therefore the potential value of resources. Ideally – as is the case for radio spectrum auctions – all allocations are bid for at the same time. Auction processes may require considerable up-front capital, which may have an equity effect, particularly in relation to access to resources for iwi or hapū lacking liquid funds to bid competitively for these resources, unless a specific allocation is reserved (such as fisheries). An auction process delivers a market price based on information available at a point in time – technology or other developments can create alternative uses or dramatically change the value of existing use over time.

4. While s 360(1)(c) of the RMA allows for regulations to be set to enable funding arrangements and allocation mechanisms, the only regulations in force that impose charges pursuant to this section are the Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991 (1991 Regulations). These regulations contemplate royalties being charged for the following:

- the occupation of the coastal marine area (within the common coastal and marine area)
- the occupation of the bed of any river or lake that is the land of the Crown
- the abstraction of any sand, shingle, shell, and other natural materials from those areas
- the use of geothermal energy.

5. There is no evidence of royalties being charged under the 1991 regulations.

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6. Under section 360(1)(c), the Minister may refund or remit all or a proportion of these fees, either generally or as in any particular case, at the Minister's discretion. There is little guidance as to the circumstances in which the Minister may exercise this discretion.
7. Section 360(1)(i) also includes "providing for any other such matters contemplated by, or necessary for giving full effect to, this Act and for its due administration," which could allow for the broadening of the scope or coverage of developing further regulations under the RM framework to enable any processes and supporting mechanisms needed to give effect to a broader set of funding arrangements.
8. Section 64A of the RMA, sets out a regime for coastal occupation charges. This was introduced following the 1991 Regulations. The 1991 regulations themselves were not amended to reflect section 64A.

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Appendix 1: Funding the operation of the resource management system

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Paper 2: Critical issues and delegated decisions

Key messages and recommendations (see pages 55 to 63 for more detail)

Key Messages

1. Significant progress has been made on shaping the new resource management system. However, a number of residual policy decisions are still required to draft the Strategic Planning Bill and Natural and Built Environments Bill (the bills), and limited time is available for Ministerial Oversight Group (MOG) meetings.
2. Engagement on key reform proposals is currently underway with Māori, local government, and sector stakeholders as agreed by Cabinet.[13] The Government remains committed to passing legislation this term, with engagement scheduled to conclude in February 2022 and introduction occurring later in 2022.
3. The SPR Board agreed an introduction date in the second half of 2022 will be necessary to ensure the current scope of legislation is possible. Cabinet has noted that the MOG is expected to review progress in March 2022, including the outcome of the engagement process, take final in-principle policy decisions for the reform, and clarify steps towards the legislation introduction date.[14]
4. Note that MOG #14 signalled a shift to using future MOG meeting time to focus on the most critical reform issues.
5. This paper implements this shift by proposing that MOG decision-making focuses on the most critical issues for the reform programme and delegate other remaining decisions to the Minister for the Environment, in consultation with other relevant Ministers, as appropriate. Decisions relating to Māori rights and interests are proposed to be delegated jointly to the Minister for the Environment (Hon David Parker) and Associate Minister for the Environment (Hon Kiritapu Allan).

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[13] CAB-21-MIN-0469 refers.
[14] CAB-21-MIN-0469 paragraph 24 refers.

Recommendations

The Ministerial Oversight Group is recommended to:

1. **agree** to focus the MOG forward agenda only on critical issues and the interactions between them
2. **agree** that the critical issues for MOG decision-making will be:
   a. governance, including joint committees
   b. the role of iwi/Māori in the system
   c. allocation and economic instruments
   d. the National Planning Framework: national direction and conflict resolution role envisaged by Resource Management Review Panel
   e. Te Oranga o te Taiao - balancing environmental limits, development (housing, infrastructure), natural hazards, and climate change responses
   f. the role of Central government
   g. transition and implementation of the new system
3. **agree** that second order policy decisions will be made by the Minister for the Environment, in consultation with other relevant portfolio Ministers, as appropriate, as indicated in Table 2 of this paper
4. **agree** that the policy decisions:
   a. relating to Māori rights and interests will be made jointly to the Minister for the Environment and Associate Minister for the Environment (Hon Kiritapu Allan), in consultation with other relevant Ministers through the Māori interests sub group
   b. relating to upholding Treaty settlement arrangements agreed by Māori and the Crown and in current Treaty settlement negotiations will be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Treaty of Waitangi Negotiations
   c. relating to upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 and legislative interfaces and consequential amendments will be made by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), and the Minister responsible for Takutai Moana legislation (noting the Minister responsible for the Takutai Moana legislation is not a usual member of the MOG), and the Minister of Transport and Minister for Oceans and Fisheries are to be consulted
   d. relating to upholding natural resource arrangements agreed by Māori and local government under existing provisions of the Resource Management Act 1991 (RMA) to be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan) and the Minister of Local Government
5. **direct** officials to instruct Parliamentary Counsel to draft, with any necessary modernisation, the provisions described in Appendix 2 for the Natural and Built Environments Bill or Strategic Planning Bill, subject to any specific policy decisions made by MOG or Ministers under delegation relating to these provisions
6. **authorise** the Deputy Chair (Minister for the Environment) to make decisions on minor policy changes regarding the transfer of provisions from the Resource Management Act to the Natural and Built Environments Bill or Strategic Planning Bill, to improve implementation and achieve the reform objectives

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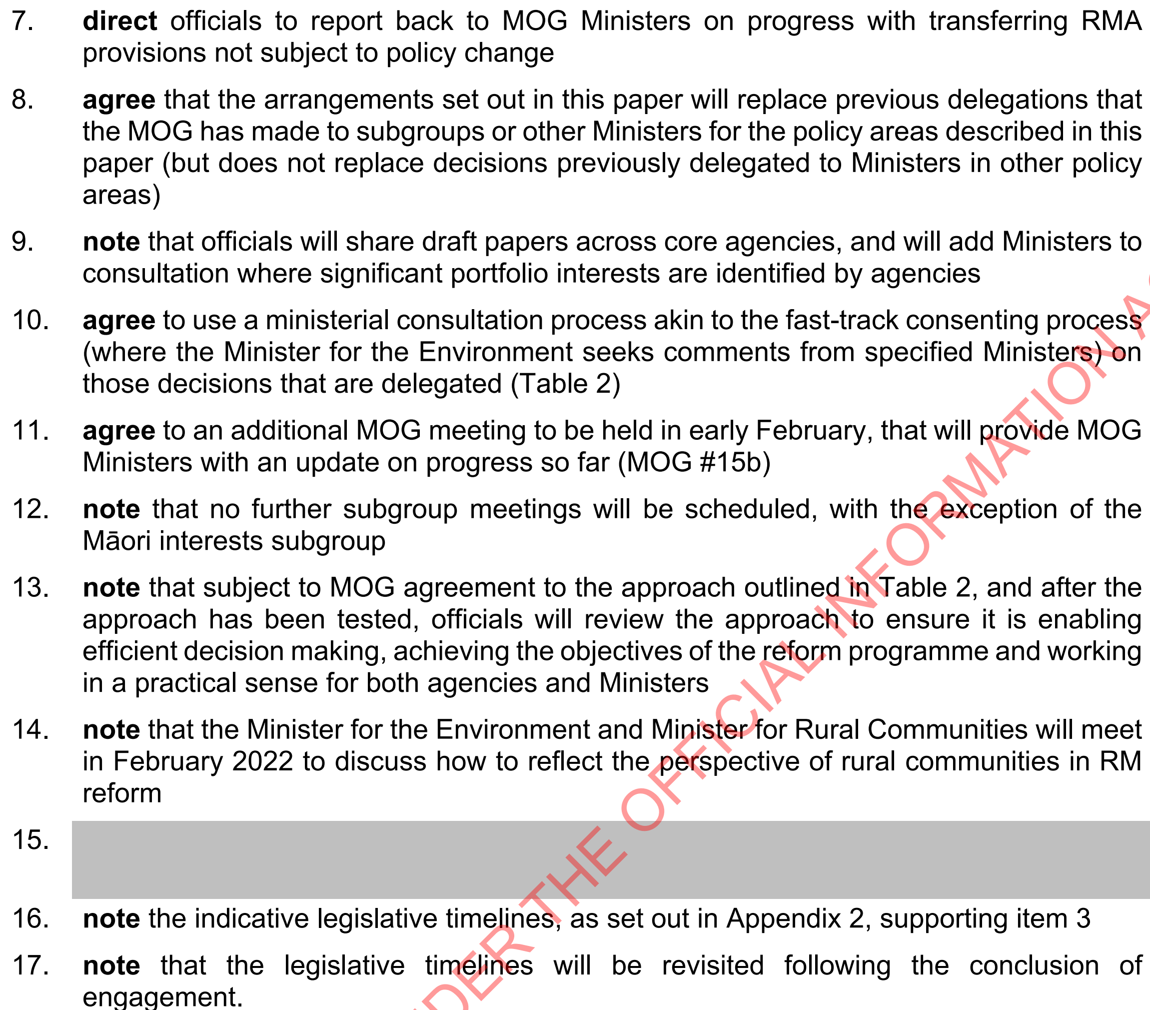
7. **direct** officials to report back to MOG Ministers on progress with transferring RMA provisions not subject to policy change
8. **agree** that the arrangements set out in this paper will replace previous delegations that the MOG has made to subgroups or other Ministers for the policy areas described in this paper (but does not replace decisions previously delegated to Ministers in other policy areas)
9. **note** that officials will share draft papers across core agencies, and will add Ministers to consultation where significant portfolio interests are identified by agencies
10. **agree** to use a ministerial consultation process akin to the fast-track consenting process (where the Minister for the Environment seeks comments from specified Ministers) on those decisions that are delegated (Table 2)
11. **agree** to an additional MOG meeting to be held in early February, that will provide MOG Ministers with an update on progress so far (MOG #15b)
12. **note** that no further subgroup meetings will be scheduled, with the exception of the Māori interests subgroup
13. **note** that subject to MOG agreement to the approach outlined in Table 2, and after the approach has been tested, officials will review the approach to ensure it is enabling efficient decision making, achieving the objectives of the reform programme and working in a practical sense for both agencies and Ministers
14. **note** that the Minister for the Environment and Minister for Rural Communities will meet in February 2022 to discuss how to reflect the perspective of rural communities in RM reform
15.



16. **note** the indicative legislative timelines, as set out in Appendix 2, supporting item 3
17. **note** that the legislative timelines will be revisited following the conclusion of engagement.

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Paper 2: Critical issues and delegated decisions

This paper is supplemented by Appendix 2:

Supporting items 1a and 1b: MOG forward agenda issues alignment table and system impacts diagram (pages 64-65)
Supporting item 2: Provisions to be transferred from the Resource Management Act to the Natural and Built Environments Bill or Strategic Planning Bill (pages 66-67)
Supporting item 3: Indicative timeframes for Resource Management Reforms (page 68)

Purpose

1. This paper provides an update on the process and timeframes to develop the Strategic Planning Bill and Natural and Built Environments Bill (the bills) and seeks agreement from the Ministerial Oversight Group (MOG) to focus the agenda of their remaining meetings on the most critical issues.
2. This paper proposes a process for the second order and detailed policy decisions to be delegated to the Minister for the Environment, (and jointly with Associate Minister for the Environment Hon Kiritapu Allan for decisions regarding Māori rights and interests), in consultation with other relevant Ministers, as appropriate.

Context

3. To date, Cabinet and the MOG have made many substantial decisions on the framework for the future resource management system, but some outstanding critical issues remain along with a range of detailed decisions to give effect to higher-order policy decisions already made.
4. Considering the critical decisions remaining, the high volume of further detailed decisions to be made, and the need to incorporate engagement outcomes, officials recommend reconsidering the approach for providing advice to the MOG.
5. The MOG Terms of Reference, agreed at MOG #1, "authorised the Deputy Chair (Minister for the Environment) to take further detailed policy decisions beyond those taken by the MOG where required to enable drafting, consulting relevant MOG Ministers as appropriate" (MOG #1, Recommendation 8).
6. As such, the Minister for the Environment is already authorised to make detailed policy decisions that are consistent with decisions already made by the MOG.

Options for progressing remaining policy decisions

7. The following options were considered for progressing the remaining policy decisions:
    a. option one: schedule additional MOG meetings:
        i. this option has advantages for policy development but may delay the introduction of the bills
    b. option two (preferred): prioritise time of currently scheduled MOG meetings for critical issues:
        i. this option would allow for key issues to be decided within existing timeframes and for drafting to continue at pace. No additional MOG meetings will be scheduled.

Discussion of options

8. Scheduling additional MOG meetings (option one) would result in a more robust process with continued broad oversight by the MOG of policy decisions, with the benefit of additional engagement ultimately improving implementation outcomes.

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9. However, extending the timeframe for policy decisions would have flow-on effects, such as delaying the drafting and introduction of the bills and placing at risk the ability to enact the new system during the current parliamentary term.

10. Prioritising critical issues (option two) will focus the MOG decision-making on the remaining critical issues for the reform. This approach intends to allow for key issues to be decided while enabling drafting on detailed policy matters to continue at pace to meet the timeframes set for the reform.

11. Risks remain for the proposed timeframes of option two, as the critical issues identified are complex and may require substantial time to reach decisions. Robust consultation is essential for success but adds to the risk of delays.

12. Officials recommend that MOG decision-making focus on the following critical issues and the interactions between them:

    a. governance, including joint committees

    b. the role of iwi/Māori in the system

    c. allocation and economic instruments

    d. National Planning Framework: national direction and conflict resolution role envisaged by Resource Management Review Panel

    e. Te Oranga o te Taiao - balancing environmental limits, development (housing, infrastructure), natural hazards, and climate change responses

    f. role of Central government in the NBA and SPA

    g. transition and implementation of the new system.

13. Other outstanding policy decisions are proposed to be delegated to the Minister for the Environment, in consultation with other relevant Ministers as appropriate. Decisions relating to Māori rights and interests are proposed to be delegated jointly to the Minister for the Environment and Associate Minister for the Environment Hon Kiritapu Allan, in consultation with other relevant Ministers through the Māori interests subgroup.

14. Delegation of policy matters as anticipated by this process is not unusual. Minor, technical and residual policy matters are often delegated to Ministers through the Cabinet process to ensure that decision making is efficient.

15. Delegations have been proposed by identifying portfolios where Ministers have a responsibility or interest in those decisions and have been agreed by relevant agencies. This will not preclude other agencies with portfolio interests not listed here from providing input into decision papers.

16. Delegated decisions will be sought primarily through briefing notes to Ministers, with meetings scheduled if and when necessary for discussion.

17. In addition, officials propose an additional MOG meeting is held in early February, to provide MOG Ministers with an update on progress so far. This meeting (MOG #15b) will provide a summary of decisions to date, the system emerging from these decisions, remaining key decisions and timelines for achieving them and a verbal update on engagement so far.

18. It is proposed that the MOG forward agenda contain the following papers for discussion:

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Table 1: Proposed Forward Agenda

Agenda item	Description
MOG #15b – 10 Feb 2022	
Check in on progress to date	Summary of decisions to date, the system emerging from these decisions, remaining key decisions and timelines for achieving them, and a verbal update on engagement so far
MOG #16 – TBC 2022	
Role of Central government in the NBA and SPA	Decisions on functions and role of Central government in SPA and NBA, including as part of joint committees.
Transition and implementation	Options for transition pathways
Allocation and economic instruments	Deciding what tools to use to manage scarce public resources to achieve limits, targets, and objectives; and deciding who gets to use these resources and how any revenue generated from the use of tools will be administered
MOG #17 – TBC 2022	
NBA decision-making framework, including environmental limits	Progressing the Select Committee recommendations and seeking final decisions on the core components of the NBA decision-making framework and their flow through the planning hierarchy. Includes: • Te Oranga o te Taiao, • Te Tiriti clause • Purpose • Outcomes • Environmental limits • Implementation principles • Key definitions (eg, the environment)
National Planning Framework, including environmental limits	Scope to be confirmed, noting that previous MOG papers provided decisions on the NPF and identified that further decisions would be delegated. There is anticipated value in a short paper that responds to any outstanding matters and integration issues across the system.
The role of Central government	Decisions on institutional arrangements for the future system, including the role of the SPA Board
Role of iwi/Māori in the system	Includes final decisions on: • National Māori entity • Role in joint committees • Role in plan preparation • Other roles in consenting and CME • Integrated Partnerships Process • 'Who' participates • How Māori land should be treated in the new system
Governance, including joint committees	Decisions on governance arrangements for SPA and NBA, including legal status, membership, decision-making, dispute resolution for joint committees and secretariat.
Stocktake of MOG decisions on system design and how they achieve the reform objectives	This paper provides an opportunity to check in on progress made in MOG #16 and #17 to land the critical decisions.

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19. Appendix 2, supporting items 1a and 1b (pages 65-66) provide further context for the MOG forward agenda items. The issues matrix (supporting item 1a) shows how the items for consideration by the MOG align with the critical issues for the RM system, and the system diagram (supporting item 1b) highlights which parts of the resource management system are impacted by decisions sought in the proposed forward agenda for MOG #16 and #17.

Proposed criteria for determining the Ministers included in decision making

20. The issues delegated to the Minister for the Environment (set out in Table 2 below) will require consultation with other Ministers. The list of other Ministers has been developed by applying the following lens to the issues:
    a. Consistency with existing MOG delegations
    b. Impact on agency functions or statutory objectives, eg, will this decision directly affect:
        i. Ministerial/agency function (eg, on-the-ground delivery, exercise of regulatory responsibilities); or
        ii. the ability of a Minister/agency to achieve their mandated objectives/outcomes.
21. Table 2 is indicative only. Ministers will be consulted where significant portfolio interests are identified as the policy progresses, using the same criteria described above. For example, the Minister for Māori Crown Relations: Te Arawhiti will be consulted on decisions affecting Māori rights and interests whether these relate to freshwater, Treaty settlements, or Māori customary rights.
22. Officials will continue to share draft papers, enabling agencies to work together to identify portfolio interests and provide robust joined-up advice to Ministers.
23. Officials propose that Ministers use a process akin to the fast-track process to discuss issues and gain consensus on those matters in Table 2. This will include a minimum ten-day timeframe for Ministers to respond.
24. Subject to your agreement, and after the approach in Table 2 has been trialled, officials will review the approach to ensure it is efficient, achieving the objectives of the reform programme and working in a practical sense for both agencies and Ministers.
25. It may be necessary to seek additional decisions through briefings, if subsequent work identifies further issues requiring Ministerial decisions.

Table 2: Issues delegated to the Minister for the Environment (in consultation with other Ministers, as appropriate)

Topics	Indication of Ministers who will be consulted
Legislative interfaces and consequential amendments to other legislation (other than integration of the LGA and LTMA with the SPA)	The Minister(s) responsible for administering the relevant legislation

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Topics	Indication of Ministers who will be consulted
Integration of the Local Government Act 2002 and Land Transport Management Act 2003 with the Strategic Planning Act	Minister of Finance, Minister of Housing, Minister of Local Government, Minister of Transport, Minister of Conservation, Associate Minister for the Environment (Allan)
Climate change (Climate Change Response Act, NBA, SPA)	Minister of Finance, Minister of Housing, Minister of Local Government, Minister of Transport, Minister of Conservation, Minister for Infrastructure, Minister of Rural Communities, Minister of Agriculture, Minister of Climate Change
Monitoring and system oversight, including ministerial intervention powers (SPA and NBA)	Minister of Finance, Minister of Housing, Minister for Māori Crown Relations: Te Arawhiti, Minister of Local Government, Minister of Conservation, Minister of Transport, Minister for Māori Development, Associate Minister for the Environment (Shaw)
Coastal/Marine policy, including aquaculture (Officials expect this work will affect both the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019)	Minister for Māori Crown Relations: Te Arawhiti, Minister for Oceans and Fisheries, Minister of Conservation, Minister of Transport, Associate Minister for the Environment (Allan), Minister responsible for Takutai Moana legislation
Evaluation (evaluation/cost benefit analysis requirements for Regional Spatial Strategies)	Minister of Finance, Minister of Housing, Minister of Local Government, Minister of Conservation, Associate Minister for the Environment (Allan) *(in relation to Māori rights and interests)*, Associate Minister for Arts, Culture and Heritage (Allan), Minister of Transport.
RSS Implementation Plans and Implementation Agreements – funding and financing arrangements	Minister of Finance, Minister of Housing, Minister of Local Government, Minister of Conservation, Associate Minister for the Environment (Allan) *(in relation to Māori rights and interests)*, Minister of Transport, Associate Minister for Arts, Culture and Heritage (Allan)
NBA Plan mechanisms and functions	Minister of Local Government, Minister of Conservation, Associate Minister for the Environment (Allan)

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Topics	**Indication of Ministers who will be consulted**
NBA consenting and permitting regime, which includes but is not limited to activity categories, notification, permitted notices/certificates (existing uses and compliance), rights to object (not to the Courts), alternative consenting, and other features that will assist the workability of the regime and aligning with the outcome framework *(delegated to Transactional Efficiencies (TE) and Māori Interests (MI) subgroups in MOG #10 - need to rescind MOG #10 recommendation)*	Minister of Local Government, Minister of Conservation, Associate Minister for the Environment (Allan), Minister for Agriculture, Biosecurity and Rural Communities, Minister of Transport
NBA Emergency Powers	Minister of Civil Defence, Minister of Conservation, Minister for Agriculture, Biosecurity and Rural Communities, Minister of Transport
Consent reviews (not relating to allocation/rights and interests) *(delegated to TE and MI subgroups in MOG #10 - need to rescind MOG #10 recommendation)*	Minister of Local Government, Minister of Conservation
Commencement, savings and transitional provisions for plans and consents	Minister of Conservation, Minister for Local Government, Minister of Transport
Detailed decisions on appeal, Courts and alternative dispute resolution *(delegated to the Minister for the Environment and Minister of Justice at MOG #14)*	Minister of Justice, Minister for Transport, Minister for Māori Development *(in relation to proposals to improve capacity/capability of the judiciary in te ao Māori/tikanga Māori/ mātauranga Māori matters)*
Urban Trees/Vegetation policy *(delegated to the Minister the Environment at MOG #13)*	Minister of Conservation, Associate Minister for the Environment (Allan), Associate Minister for the Environment (Twyford), Associate Minister for the Environment (Biodiversity) (Shaw)
Water conservation orders	Minister of Conservation, Associate Minister for the Environment (Allan)

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Topics	Indication of Ministers who will be consulted
Heritage Protection orders *(delegated to Minister for the Environment and others at MOG #13)*	Minister of Local Government, Minister of Conservation, Associate Minister for the Environment (Allan), Associate Minister for Culture and Heritage (Allan), Minister for Māori Development
Designations – additional detail, including appeals on designations *(will be delegated as a result of separate MOG #15 paper)*	Minister of Local Government, Minister for Infrastructure, Minister of Transport, Minister of Conservation
Definitions and Miscellaneous provisions *(where they are not already covered by the topics above or previous MOG decisions)*	In consultation with other Ministers as appropriate

Related matters

MOG subgroups

26.

27. There are still a number of key issues to land that affect Māori interests and there is particular value in ensuring that the Māori Interests subgroup has an opportunity to test final advice closely and report back to the MOG with their views.
28. Officials note there was an intention to submit a paper to the rural development subgroup which covered the impacts of the proposed system on rural communities, noting that decisions have not yet been taken on all parts of the system. Officials consider these impacts can be explicitly identified, with advice provided, in relevant papers still going to the MOG or in briefings delegated to Ministers.
29. The Minister for the Environment and Minister for Rural Communities have agreed to meet in February 2022 to discuss how the perspective of rural communities is being considered in the RM reform programme.

Joint decisions

30. In addition to matters delegated to the Minister for the Environment, in consultation with other relevant ministers identified in Table 2 above, officials recommend that some matters (described below) be delegated to multiple Ministers as joint decisions.
31. Officials recommend the following proposed delegated decisions pathway for policy decisions:

    a. relating to Māori rights and interests: to be made jointly by the Minister for the Environment and Associate Minister for the Environment (Hon Kiritapu Allan), in consultation with other relevant Ministers through the Māori Interests sub group;

    b. relating to upholding Treaty settlement arrangements agreed by Māori and the Crown, and in current Treaty settlement negotiations: to be made jointly by the

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Minister for the Environment, the associate minister for the Environment (Hon Kiritapu Allan), the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Treaty of Waitangi Negotiations;

c. upholding rights recognised under the Takutai Moana Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and legislative interfaces and consequential amendments: to be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), and the Minister responsible for Takutai Moana legislation (noting the Minister responsible for the Takutai Moana legislation is not a usual member of the MOG), and the Minister of Transport and Minister for Oceans and Fisheries are to be consulted;

d. relating to upholding natural resource arrangements agreed by Māori and local government under existing provisions of the Resource Management Act 1991: to be made jointly by the Minister for the Environment, the Associate Minister for the Environment (Hon Kiritapu Allan), the Minister of Local Government, the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Māori Development.

Transfer of Resource Management Act (RMA) provisions

32. If agreed, officials will instruct Parliamentary Counsel to draft, with any necessary modernisation, the provisions described in Appendix 2 for the Natural and Built Environments Bill or Strategic Planning Bill, subject to any specific policy decisions made by MOG or Ministers under delegation relating to these provisions.

33. Officials propose that decisions on minor policy changes regarding the transfer of provisions from the RMA to the Natural and Built Environments Bill or Strategic Planning Bill be delegated to the Minister for the Environment, to improve implementation and achieve the reform objectives.

34. MfE officials will work with relevant agencies on this transfer process and will report back to MOG ministers as this work progresses.

Funding

35. Funding issues for Central government associated with delivery of the reforms are being considered in Budget 2022 as current reform funding expires on 30 June 2024.

Legislative timelines

36. As agreed by Cabinet, engagement with Māori, local government, and sector stakeholders will occur between November 2021 and February 2022 [CAB-21-MIN-0469 refers].

37. The ability to finalise the bills will depend on the outcome of this engagement and the timing of MOG decisions in early 2022.

38. Officials propose to report back to the MOG in early 2022, following the conclusion of the engagement, with revised timelines for the drafting and introduction of legislation.

39. Appendix 2, supporting item 3 (page 75) shows an indicative timeline of options for the remainder of the Resource Management Reform programme

40.

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Treaty impact analysis

41. All policy recommendations for delegated decisions will continue to include Treaty impacts analysis.

Engagement

42. The approach proposed in this paper was jointly developed by the Ministry for the Environment and the Treasury.

43. All agencies involved with Resource Management reform were consulted and agree that the seven critical issues identified are the correct ones. Most support the approach outlined, noting it will streamline the process.

44.

45. Agency input on delegated decision pathways is reflected in Table 2. PCO has reviewed the indicative timeframe options shown in Appendix 2, supporting item 3 (page 68)

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Appendix 2: Critical issues and delegated decisions

Supporting item 1a: Table displaying alignment of MOG agenda items with identified seven critical issues

MOG Item	Governance	Role of iwi/ Māori	Allocation and economic instruments	National Planning Framework	Te Oranga o te Taiao/Environmental Limits	Role of Central Government	Transition and Implementation
MOG #15b 10 Feb 2022							
Summary of progress to date	✓	✓	✓	✓	✓	✓	✓
MOG #16 10 Mar 2022							
Role of Central government in the NBA and SPA						✓	
Transition and implementation							✓
Allocation and economic instruments		✓	✓				
MOG #17 April							
The role of Central government (interim institutional arrangements for the system)		✓				✓	
NBA decision-making framework, including environmental limits		✓	✓	✓	✓		
National Planning Framework, including environmental limits				✓	✓		
Role of iwi/Māori in the RM system	✓	✓		✓	✓		✓
Governance, including joint committees	✓	✓	✓			✓	
Stocktake of MOG decisions on system design and how they achieve the reform objectives	✓	✓	✓	✓	✓	✓	✓

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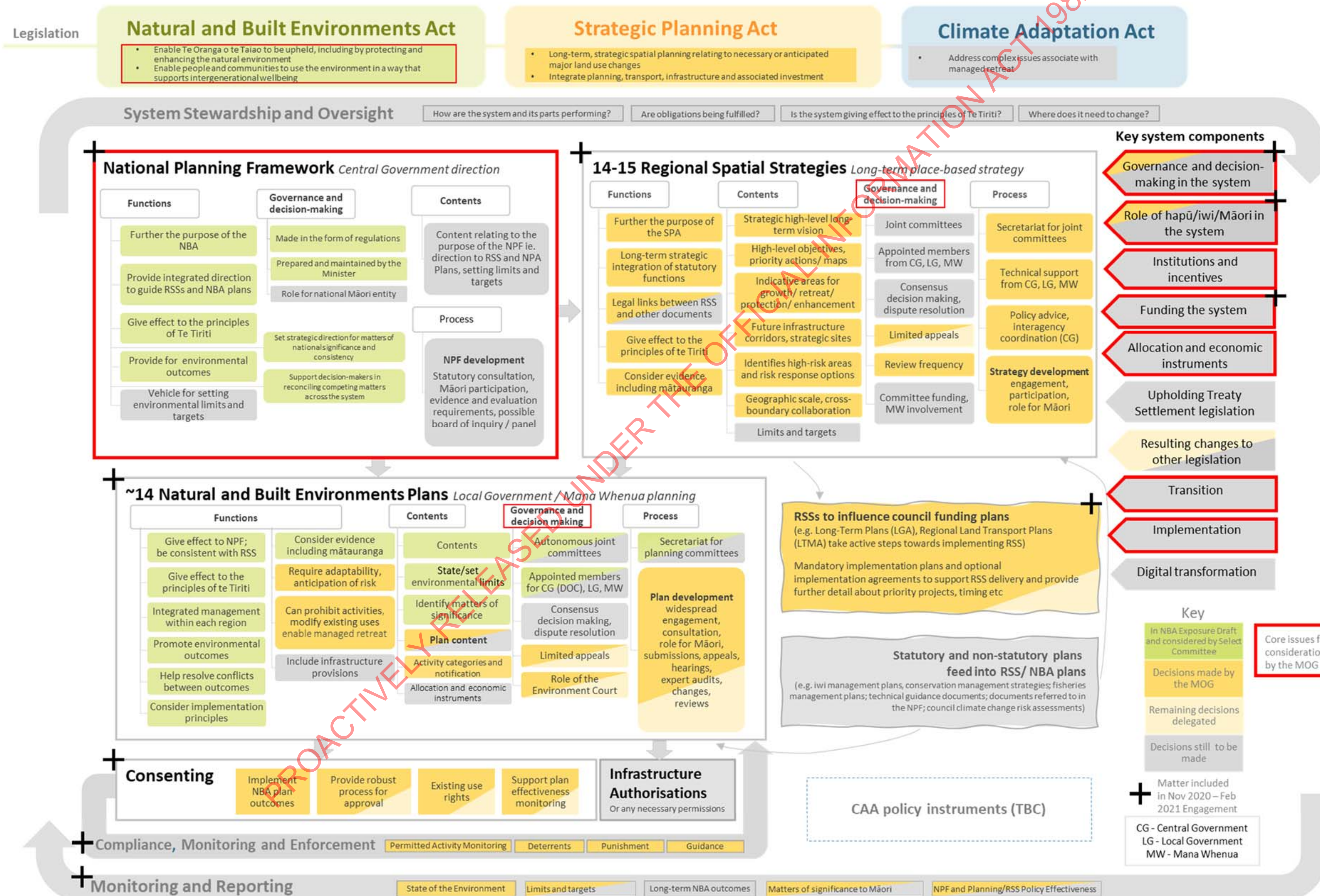
Appendix 2: Critical issues and delegated decisions

Supporting item 1b: RM Reform system diagram - showing which parts of the resource management system are impacted by decisions sought in the in the proposed forward agenda for MOG #16 and #17



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Appendix 2: Critical issues and delegated decisions

Supporting item 2: Provisions to be transferred from the Resource Management Act to the Natural and Built Environments Bill or Strategic Planning Bill, subject to any specific policy decisions made by MOG or Ministers under delegation relating to these provisions

RMA Part	Decision sought
Part 1	Provisions equivalent to Part 1 of the RMA, providing for: o availability of documents for inspection o the ability of persons to act under resource consents with permission o the Acts to bind the Crown o the application of the Acts to ships and aircraft of foreign States Noting that work is still underway in relation to the scope of exceptions to the NBA and SPA binding the Crown
Part 3	Provisions equivalent to Part 3 of the RMA, to provide for rights, duties, restrictions, and defences that apply to: o the use of land and water, the coastal marine area and the beds of lakes and rivers; o discharges to land, air and water; o noise; and o procedures under the Act. Noting that work is still underway in relation to: o the role of limits in the system o rights and duties in relation to permitted activities o activities in the coastal marine area o discharges and dumping
Part 4	Provisions equivalent to Part 4 to provide for functions, duties and powers as apply to central and local government, applicants and other public authorities, officers and persons under that Part Noting that work is still underway in relation to: o the respective functions, duties and powers of Ministers under the new system o functions, duties and powers in relation to the NPF, limits, and plans - establishment and roles of joint committees
Parts 4A and 12A	Continuation of the Environmental Protection Agency and provisions equivalent to Parts 4A and 12A providing for the Agency's functions and cost recovery mechanism, and enforcement functions Noting that work is still underway in relation to enhanced or altered enforcement functions for all regulators, which may consequentially affect the agency.
Part 14	Provisions equivalent to Part 14 of the RMA providing for equivalent miscellaneous provisions to those contained in that Part

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Schedule 10	Provisions equivalent to Schedule 10 of the RMA providing requirements for instruments creating esplanade strips or access strips

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Appendix 2:

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Paper 3: Enabling infrastructure in the new system through designations

Key messages and recommendations (see pages 74 to 90 for more detail)

Key messages

1. New Zealand needs a resource management system that recognises infrastructure underpins the wellbeing of people and communities, and provides certainty through strategic planning and efficient, cost-effective processes.
2. The Resource Management Act 1991 (RMA) provides a framework for 'designations' that enables infrastructure providers to identify and protect land required for infrastructure, to specify the construction and operation activities that will occur in the designated area, and any management measures or conditions for those activities. The agency responsible for the designation (rather than the territorial authority) makes the decisions on the designation, subject to checks and balances, including appeals to the Environment Court.
3. Officials agree with the RM Review Panel that infrastructure designations are a valuable tool and the Natural and Built Environments Act (NBA) should include a framework for designations similar to that in the RMA.
4. Ministers are being asked to make decisions in respect of the following:
   a. the overall approach to designations in the new system
   b. aspects of the existing RMA provisions that can be carried over, with amendments to ensure fit with the new system
   c. modifications to the designation process:
      i. access to designations
      ii. design of designations including two stage process and notification processes (activity classes)
      iii. notices of requirement
      iv. other minor amendments
      v. safeguards that should apply for landowners - lapsing period
   d. scope of designations:
      i. for the Coastal Marine Area (CMA), agree not to extend the designations process to decision-making in the CMA as part of the RM reform
      ii. agree to further investigate the extension of the designations process to decision-making in the CMA if the issues that this extension is intended to address remain after RM reform is implemented
      iii. for regional consents, agree not to extend the designation process to regional consents as part of the RM reform
      iv. agree to further investigate the extension of the designations process to regional consents if the issues that this extension is intended to address remain after RM reform is implemented.
5. Officials note that consultation with [redacted] has identified important issues that will need to be considered in the detailed design of the designations provisions.

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Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Overall approach and carry over of RMA provisions

1. **note** that decisions that affect infrastructure in the new system are being made across the whole work programme, and that the designations regime will need to be consistent with the wider system design

2. **agree** that the existing designation framework in the RMA be carried over and aligned with the new system, with the modifications discussed in this paper, and subject to further work on identified issues

3. **note** that further work is required to ensure the designation framework upholds existing Treaty Settlements, and will give effect to the principles of Te Tiriti o Waitangi

4. **agree** that the policy intent of those aspects of the RMA designations framework listed in Appendix 3, Supporting item 1 can be carried over into the NBA and updated in accordance with modern drafting techniques

5. **authorise** the Minister for the Environment to make decisions on minor policy changes to the designations policy framework to improve implementation and achieve the reform objectives

Advice is on designations rather than infrastructure across the system

6. **note** that enabling infrastructure will be achieved through the design of the full system. This paper focuses on aspects of the designation process, which contributes to MOG's request for "advice on how infrastructure services and associated designations will be enabled within the new system".

Modifications to the designation process

Access to designations

7. **agree** that designation powers are available as of right for Ministers of the Crown and local authorities, and that this should be extended to Waka Kotahi and Kāinga Ora, and council-controlled organisations

8. **agree** in principle that designation powers should be made available to other public and private infrastructure providers, subject to the approval of the Minister responsible for the NBA, with eligibility based on criteria linked to 'public good' outcomes

9. **agree** that a process is provided that enables the responsible Minister to add approved infrastructure providers to a schedule in the NBA or National Planning Framework; and that
   a. Ministers, Waka Kotahi, Kāinga Ora and local authorities and council-controlled organisations will be automatically included in the schedule
   b. other public and private providers or private projects are able to be added or removed from the schedule.

10. **note** that once established, the water service entities will also be granted designation powers as of right

11. **note** that criteria will be developed to support evaluation of public and private provider applications against 'public good' outcomes, including consideration of adaptation and natural hazard purposes, and advice will be provided to Ministers at a later date

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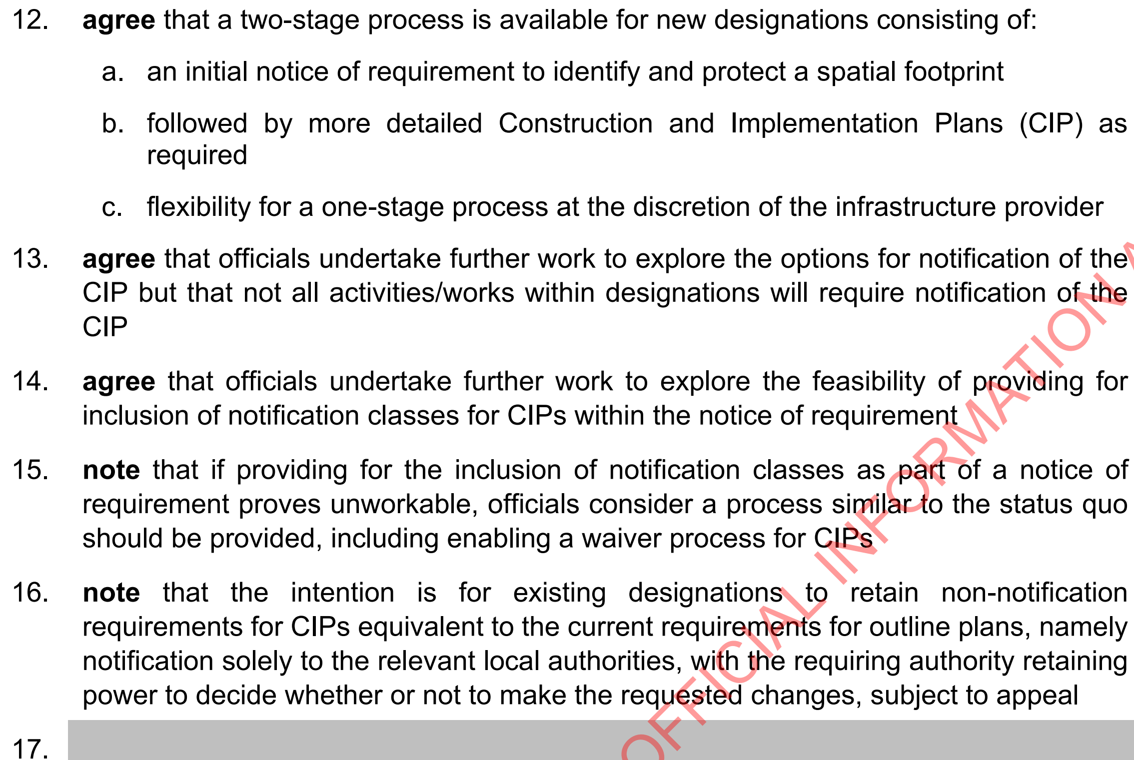

Design of designations - two stage process and notification processes (activity classes)

12. **agree** that a two-stage process is available for new designations consisting of:
    a. an initial notice of requirement to identify and protect a spatial footprint
    b. followed by more detailed Construction and Implementation Plans (CIP) as required
    c. flexibility for a one-stage process at the discretion of the infrastructure provider

13. **agree** that officials undertake further work to explore the options for notification of the CIP but that not all activities/works within designations will require notification of the CIP

14. **agree** that officials undertake further work to explore the feasibility of providing for inclusion of notification classes for CIPs within the notice of requirement

15. **note** that if providing for the inclusion of notification classes as part of a notice of requirement proves unworkable, officials consider a process similar to the status quo should be provided, including enabling a waiver process for CIPs

16. **note** that the intention is for existing designations to retain non-notification requirements for CIPs equivalent to the current requirements for outline plans, namely notification solely to the relevant local authorities, with the requiring authority retaining power to decide whether or not to make the requested changes, subject to appeal

17.

Notices of Requirement

18. **agree** that officials undertake further work on the matters that should be considered when issuing a notice of requirement for a designation

Other minor amendments

19. **agree** that officials undertake further work on a process in the NBA to allow designations to be easily altered to respond to changes which make the provisions of the District Plan more lenient, affecting the underlying or surrounding zone (similar to the process involved in keeping NBA Plan provisions aligned with national direction)

20. **agree** that where changes are needed to infrastructure to accommodate the development of another type of infrastructure, and where there are no contrary reasons, that the provider of the second infrastructure can designate also for the purpose of relocating the first infrastructure

21. **agree** that where it is logical to allow for one infrastructure provider to accommodate within its designation the spatial needs of another, and the two parties are willing to collaborate and agree funding, the NBA designation provisions should provide for that outcome

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Safeguards that should apply for landowners

22. **agree** that the following recommendations do not seek to secure decisions in relation to Māori land, which is subject to a separate paper and recommendations as to how it should be treated across the RM system as part of papers going to MOG #17.

    Either:

    a. **: agree** that a default lapse period is necessary and that the minimum default lapse period be 10 years

    Or:

    b.

23. **note** that these options are subject to further work to ensure the principles of Te Tiriti are given effect to, and further advice will be provided regarding this

24. **note** that further decisions will be sought regarding designations and how they are to relate to Māori land

Scope of designations

25. **note** that improving the cost and time needed to plan and provide infrastructure are key measures for success of the RM reform and should be considered in ongoing monitoring, testing and reporting of the RM reform policy development and implementation process over the next decade

26. **note** that addressing the costs and delays experienced by infrastructure providers in the current system is an important challenge for the new system which will need to be addressed across the design of the whole

Coastal marine area

27. **note** that the better planning and protection of infrastructure in the coastal marine area form part of the Cabinet objectives for the RM reform

28.

29. **note** that this work could be addressed after passage of the NBA and SPA once there is clarity about how infrastructure is enabled through the NPF, RSSs and other core components of the new system

30. **agree** not to extend the designations process to decision-making in the CMA as part of the RM reform

31. **agree** to further investigate the extension of the designations process to decision-making in the CMA if the issues that this extension is intended to address remain after RM reform is implemented

Regional consents

32. **note** that extending designations to decision-making on regional consents, departing from the RM Panel's recommendation, would raise complex and sensitive issues including for freshwater, and have significant implications for, Treaty Settlements, freshwater and decisions in other areas, including three waters where councils retain consenting authority

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33. **note** that consideration of any changes in the way regional consent matters are handled should be deferred until there is more clarity about how the new RM and three waters systems are working and the need for further changes

34. **agree** not to extend the designation process to regional consents as part of the RM reform

35. **agree** to further investigate the extension of the designations process to regional consents if the issues that this extension is intended to address remain after RM reform is implemented.

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Paper 3: Enabling infrastructure in the new system through designations

This paper is supplemented by Appendix 3:
Supporting item 1: Aspects of the RMA designation framework that can be carried over into the NBA, pages 92 to 93
Supporting item 2: Treaty of Waitangi impact analysis, pages 94 to 96
Supporting item 3: Preliminary analysis for extending designations into the Coastal Marine Area and including regional consents – FOR INFORMATION ONLY, pages 97 to 102
Supporting item 4: RM Panel recommendations relevant to infrastructure, page 103

Purpose

1. This paper provides advice on how infrastructure services and associated designations will be enabled within the new system.

Background

2. The paper draws on a detailed working paper developed by a cross-agency group – known as the Infrastructure Working Group[15] – and in consultation with the broader group of infrastructure agencies. In some cases, the advice of the MfE RM Reform team differs from views held (variously) by infrastructure agencies, and the paper makes it clear when this is the case.

3. The paper primarily addresses how designations will fit within the new resource management system. Advice on ensuring the system is fit for purpose for infrastructure will also be provided as part of work on environmental limits, strategic planning, governance arrangements and the assessment criteria for the National Planning Framework, plans and consents, among other things.

The importance of infrastructure services to the wellbeing of people and communities and the environment

4. Infrastructure underpins the wellbeing of people and communities. Infrastructure investment will be essential for a successful transition to a net zero-carbon emissions economy, and for supporting communities to adapt to the effects of climate change. Infrastructure is also needed to deliver access to opportunities of all types, including housing, education, health and security.

5. Much of this infrastructure is constructed and operated according to statutory duties and responsibilities set out in specific legislation, e.g., Transpower, Education, Transport, and Defence.

6. For this reason, the new system should:

   a. recognises the importance of infrastructure for supporting overall wellbeing, including for supporting housing affordability and the transition to a net zero-carbon emissions economy

   b. provides greater certainty through long term strategic planning

   c. is sufficiently agile to accommodate rapid change across the different types and scales of infrastructure

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d. improves the efficiency and cost-effectiveness of the provision for infrastructure, including reducing the time and cost of resource management processes

e. contributes to protecting and enhancing the natural environment, and recognises the intrinsic relationship between the function of human infrastructure and the natural infrastructure that underpins our stormwater networks, ecosystems and the services provided

f. incentivises and strengthens partnerships with Māori and upholds te Oranga o te Taiao.

7. To achieve these multiple outcomes, it is important that the specific needs of infrastructure are considered when designing the provisions throughout the new system.

Resource Management Review Panel - issues and recommendations

8. The Resource Management Review Panel (the 'Panel') stated that "the reformed system should ensure infrastructure is adequately planned for in advance, well integrated with land use, and delivered and operated efficiently so it can support improving wellbeing outcomes." The Panel noted many issues with the current resource management system that have hampered delivery of infrastructure including:

a. lack of recognition of the benefits of infrastructure development for wellbeing within the system (ie, within the purpose and principles of the RMA)

b. a focus on managing the effects of resource use rather than on planning to achieve specified outcomes

c. lack of effective integration across the resource management system (in particular between the RMA, Local Government Act 2002, Land Transport Management Act 2003)

d. excessive complexity, uncertainty and cost within the system

e. lack of adequate national direction

f. weak and slow policy and planning

9. The Panel made a number of recommendations in relation to infrastructure within the new system (see Appendix 3 for list), including:

a. improved recognition of the built environment with the purpose and related provisions of the NBA

b. mandatory national direction for infrastructure

c. use of the Strategic Planning Act and Regional Spatial Strategies to align infrastructure and land use planning across the proposed NBA, Local Government Act 2002 and Land Transport Management Act 2003.

10. Beyond that, the Panel's main focus for infrastructure related to designations. The Panel recommended retaining designations, but with some modifications to eligibility criteria, an extended default lapse period and process improvements. These recommendations are discussed in detail in the next part of the paper.

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Advice is on designations rather than infrastructure across the system

11. MOG asked for "advice on how infrastructure services and associated designations will be enabled within the new system". This paper focusses on designations, which are infrastructure rules developed by infrastructure providers that enable an infrastructure specific overlay to local rules. It addresses most aspects of the designations system. Many of the recommendations seek to delegate decisions, rather than putting these issues to MOG for determination.

12. Other aspects of the RMA Review framework for infrastructure are yet to be determined, including the relationship of infrastructure outcomes to rules relating to limits, targets, water, and the coastal marine area. Aspects of infrastructure governance are also yet to be considered, including the role of infrastructure Ministers in the NPF and RSS, and the role of iwi with respect to infrastructure.

13.

Definition of Infrastructure

14. There are a number of definitions which are of significance to infrastructure sitting in the RMA. A general definition of infrastructure (which specifically identifies structures and facilities as a long list, including pipelines gas and oil; telecommunications; radio; electricity, water supply etc) sits in the interpretation section of the RMA.

15. Further definitions, more specific to the application of designations, sit at section 166 of the RMA, the beginning of the suite of provisions for designations. The list of definitions includes definitions of eligible infrastructure and public work. There are also links to definitions and meanings in the Infrastructure Funding and Financing Act 2020.

16. Definitions specific to local authorities have also created inconsistencies across local authority boundaries. Some types of infrastructure are not captured by existing infrastructure related definitions.

17. The current reform offers an opportunity to simplify and clarify the terminology to enable a clear and more certain regulatory framework. A general definition of infrastructure could be used as the basis for developing policy further down the hierarchy of the system. For example, a definition could set out what types of infrastructure warrant access to designating (land acquisition) power; or could better provide flexibility for new technologies or natural infrastructure.

18. Definitions will be considered as part of the work being done for "carry-over" of existing provisions and will be provided to Ministers for delegated authority.

Advice on enabling infrastructure

Status Quo – RMA Designations

19. Under the RMA, designations allow 'requiring authorities' a means to identify and protect land for infrastructure, to specify the construction and operation activities that will occur in the designated area, and any management measures or conditions for those activities. The designation is identified as an 'overlay' to local land use controls and zoning provisions in the district plan. Designations safeguard public works by

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preventing land being used in a way that is incompatible with the public work. These safeguards can apply to future works (eg, a planned road) or existing works (eg airport approach paths). There are also safeguards to ensure landowners can make reasonable use of their land.

20. Ministers of the Crown, and local authorities are automatically requiring authorities. Network utility operators (which can be private providers of infrastructure) can apply to the Minister for the Environment to become a requiring authority.

21. The designations provisions recognise the importance of national and local authority infrastructure to communities and provide public accountability for central and local government. They also provide for access to acquire land through the Public Works Act 1981.

22. Designations are subject to a set of tests to prevent designations being used indiscriminately and ensure the requiring authority accepts financial responsibility.

23. Designations are introduced and reviewed through a process set out in bespoke provisions, with the agency responsible for the designation making the decisions on the designation rather than the territorial authority. Designations can be varied and cancelled and all development within a designation is subject to an outline plan of works process between the agency responsible for the designation and the relevant territorial authority.

24. During engagement with [redacted] both groups raised concerns that Māori land has often been included in designations, as it appears less developed than other land. This has resulted in alienation and/or splitting of Māori land.

Improving the operation of designations under the NBA

25. Our advice on designations covers the following issues:

    a. Overall approach to designations in the new system

    b. Carry-over provisions: aspects of the existing RMA provisions that can be carried over, with amendments to ensure fit with the new system.

    c. Modifications to the designation process: aspects of designations that could be amended to improve efficiency, including recommendations from the Panel and further changes as agreed in principle by the Infrastructure Working Group:

        1. Access to designation powers

        2. Designation process improvements

            i. Two stage process

            ii. Notification of activities within a designation

        3. Matters for consideration

        4. Other minor amendments

        5. Safeguards that should apply for landowners

    d. Scope of designations: considering whether to extend the designation process from land use to include:

        1. the coastal marine area

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2. regional consents.

26. An assessment of the Treaty of Waitangi impacts of the proposals in this paper is included in Appendix 2. The Māori subgroup (on November 24, 2021) considered participation in the system and noted that advice on the treatment of Māori land would be provided in MOG #16 next year. This report back should link with the work on matters for consideration for designations' notices of requirement, and recommendations for how Māori land should be treated in the designations process.

Overall approach - how designations fit in the new system

27. Officials agree with the RM Review Panel that the policy functions and intent of the existing designation framework in the RMA should be carried over and aligned with the new system (see Appendix 3, Supporting Item 1 for aspects of the RMA designations framework that can be carried over into the NBA and modernised). Building on the work of the Panel, officials have also identified a number of ways this framework can be improved.

28. In the new system, designations will sit within the context of the purpose of the NBA, including te Oranga o te Taiao, and the need to give effect to the principles of Te Tiriti o Waitangi. The National Planning Framework (NPF) and Regional Spatial Strategies (RSSs) will also direct how infrastructure planning works:

    a. The NPF provides an opportunity to support the efficient provision of infrastructure. For example, the standards for sediment control, required by regional councils to manage earthworks, could be set nationally. This could mean that a consent for this activity is no longer required, reducing costs, and providing certainty for construction and operation.

    b. RSSs will identify long-term regional needs, and opportunities and challenges, including for supporting infrastructure.

29. MOG #7 agreed that RSSs must have sufficient legal weight on NBA plans (of which designations are a part) to ensure that key strategic decisions are not revisited or relitigated when preparing NBA plans. Ministers also agreed at MOG #14 that RSSs should play an active role in 'enabling and driving change and adaptation' in the way that land and the coastal marine area is used. This means the RSS will have an important role in ensuring that infrastructure provision is consistent with the RSS and that the infrastructure identified in an RSS can be implemented through subsequent designations and consents under the NBA and funding processes.

30. Overall, for the NBA to work successfully for infrastructure, the combination of the tools offered by the NPF, the RSS, the designations process and NBA plans must ensure infrastructure providers can respond to long-term priorities and growth projections and immediate development requirements.

31. Within the context of the wider system, providing a framework for designations recognises the importance of infrastructure for people and communities, and ensures tools are available for infrastructure providers to identify and protect land and manage the environmental effects of activities.

32. Officials agree that the policy intent of the following aspects of the designation process should be carried over to the new system:

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a. designation means a provision in an NBA Plan providing for infrastructure delivered by an approved infrastructure provider.

b. designations are developed through a notice of requirement from the approved infrastructure provider to the joint committee, a hearing process before an Independent Hearing Panel (IHP) or the joint committee (if required) and recommendations from the joint committee are decided by the approved infrastructure provider.

c. designations have interim effect from when the infrastructure provider gives a notice of requirement to the planning committee.

d. designations are included in NBA Plans once confirmed by the relevant approved infrastructure provider.

e. designations be given effect when put into an NBA Plan, provided that there is also a mechanism to ensure Committees publish it in the NBA Plan.

f. retain a process for non-notified CIPs

g. existing provisions enabling designations to be altered or removed, by notice from the infrastructure provider to the relevant local authority.

h. existing RMA provisions relating to the reasonable use of underlying land.

i. existing RMA provisions relating to the review of designations through NBA Plans.

j. existing provisions enabling transfer of rights and responsibilities of designations.

Designation process improvements

Which infrastructure providers should get access to designations?

33. Under the RMA, Ministers of the Crown and local authorities are automatically ‘requiring authorities’ and have access to designation provisions. Other infrastructure providers must meet the definition of a ‘network utility operator’ and apply to the Minister for the Environment to become a ‘Requiring Authority’ to access the designation provisions.

34. The definition of ‘network utility’ generally applies to ‘linear infrastructure’ (gas, power and water distribution infrastructure and radio telecommunications). However, it also applies to airports and ‘eligible infrastructure’ under the Infrastructure Funding and Financing Act 2020 which includes water services, transport infrastructure; or community; or environmental resilience infrastructure.

35. The Panel recommended that eligibility for access to designations be centred on the delivery of infrastructure for public good purposes and observed that private providers can also deliver such services. The Panel also suggested that use of designations should be considered for climate change adaptation and natural hazard management purposes.

Analysis

36. Officials agree with the RM Panel proposals. However, further work is required to develop criteria for a test for ‘public good’.

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37. Extending eligibility broader than provided for in the RMA needs to be carefully considered. Designations should not be able to be leveraged for commercial benefit, and enabling a wider range of organisations access to designation provision may result in a proliferation of designations including a proliferation of designations for the same space. The current policy approach gives preference to the earlier designation and no work can be undertaken without obtaining the consent of the agency responsible for the first designation.

38. The criteria for public good should also include the opportunity for Māori to have access to designation powers. This is likely to be available for their role as iwi authorities, for example developing geothermal power, and further policy work is required on this.

39. Officials do consider it necessary to retain the ability to grant requiring authority status to a provider for a specific project, rather than to a provider in general, especially for commercial entities, including iwi authorities. This will also be considered in the development of the criteria for the public good test.

40. Infrastructure providers have requested that Waka Kotahi, Kāinga Ora, and council - controlled organisations be included as of right, and MfE RM Reform team agree that this is appropriate. They had also requested that other entities, such as KiwiRail, ports and airports be included as of right. However, as these entities are commercially focussed (SOEs, partially privately owned, etc), it is not appropriate to include them as of right. They will have the ability to apply, subject to the criteria for delivery of infrastructure for public good, for status as a requiring authority.

41. The role of the future Water Service Entities also needs to be accommodated. These will be public statutory entities at arm's length from Ministers and local authorities. Given their role in providing key public services, the intention is that they have access to designation powers.

Two stage process

42. Currently, designations 'overlay' land use zones and specify the purpose of the infrastructure within the footprint of the designation (eg, education purposes), the nature of the activities expected to occur, and conditions relating to the management of their effects.

43. Unless waived, development within a designation is typically subject to a requirement to provide an Outline Plan which outlines construction to take place within the designation, including any matters to avoid, remedy or mitigate adverse effects on the environment. The Outline Plan is provided to the local council, which has 20 working days to request changes to the Outline Plan.

44. If the infrastructure provider decides not to make the council's requested changes, the council can appeal to the Environment Court. Some infrastructure agencies advise that this may result in inefficiencies in both the initial "notice of requirement for a designation" (Stage 1) and the later outline plan process (Stage 2). These problems are set out below.

'Just in time' designations.

45. Currently, Outline Plans are only notified to the council. Some infrastructure providers, particularly those undertaking ongoing construction within existing designations, consider this to be a significant advantage of the current system, however, for some infrastructure providers, this is problematic because they consider that a practice has

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developed where Councils and the Environment Court expect project level detail when a designation is first proposed because the public are unable to submit on Outline Plans.

46. This requirement for detail occurs even if a designation is proposed well in advance to prevent the land being used for incompatible development and to provide certainty for those planning private development that depends on that planned infrastructure.

47. This pressure to prematurely provide project detail, combined with the default lapsing period, have contributed to some agencies moving to 'just-on-time' designations and overly complex conditions that try to address matters of detail that simply aren't known early on for some projects.

Designations as applications rather than plan rules

48. Infrastructure providers consider that designations have come to be seen by councils, residents and the Courts as applications that should be subject to 'conditions' akin to a resource consent, rather than being a provision in a plan. This approach fails to acknowledge that, unless waived, designations are subject to additional scrutiny by Councils in the outline plan process.

49. This has led to prescriptive conditions being incorporated in designations that may materially restrict an infrastructure providers' ability to respond to changing demands over time. For example, limits on the size of a school roll may address concerns about excessive noise at the time of development but, over time, may undermine the intent and purpose of the designation.

Outline plan requirements

50. Unless waived by council, outline plans are typically required for works carried out under a designation. In some cases, Councils usefully agree to waive the need for outline plans, but infrastructure providers consider that this practice is inconsistent, adding further complexity to the designation process, especially for infrastructure providers dealing with 80 different local authorities.

Panel Recommendation

51. The Panel proposed 'restructuring' the existing two-stage process (notice of requirement and outline plan) to enable the spatial location (footprint) of the infrastructure to be identified and protected in advance of the more detailed environmental assessment required for management of construction and operation effects, where possible. The Panel proposed that Outline Plans be replaced by Construction and Implementation Plans (CIPs) that provide for public as well as Council input on the management of construction and operational effects associated with designations. The Panel proposed that there be flexibility to combine these processes.

Analysis

52. Officials consider the two-step approach suggested by the Panel is useful for new designations, particularly for projects that require route/site protection for longer term planning. Officials also agree that it is important that flexibility within the system is maintained for those projects that need to be advanced more quickly or are subject to future ongoing development (eg, school redevelopments, maintenance and renewals of three waters infrastructure). The ability to designate those projects in a combined one step process should also be available, as should the ability for the local authority

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to waive the requirement for a subsequent CIP in specified circumstances if the resultant project works are minor or of minimal effect. In this way, it is considered that the design of the reformed designation process could better provide for the varying scale and scope of public good infrastructure projects and activities.

Public notification requirements

53. A particular concern for infrastructure providers is the Panel's recommendation that both the initial designation 'footprint' and the CIPs which follow with the specific detail of construction and operation should be publicly notified. Public notification adds significant time and cost to a project.

54. Currently, a notice of requirement for a designation may (or may not) be publicly notified, but any subsequent Outline Plan is only provided to the council to review and request changes.

55. MfE officials agree that not all new notices of requirement and CIPs would necessarily require public or even limited notification.

56. Under the RMA, the role for hapū/iwi/Māori has been limited to when they are affected parties or submit on publicly notified Notices of Requirement. The NBA will need to ensure all processes 'give effect' to the principles of Te Tiriti. As the system design evolves in the next few months, what this means for designations will need to be worked through.

Activity classes and notification requirements

57. Officials have considered three alternative notification options for activities within the designation, which may also include CIPs. These options are focused on new designations, not existing designations. For existing designations there is no proposal for notification requirements to go beyond what is currently required under the RMA for outline plans.

Option 1: Notify all activities/CIPs (Panel recommendation):

58. This option would require a process for public comment on all activities/CIPs.

Option 2: A discretion for the local authority/joint committee to notify, limited notify or non-notify activities/CIPs

59. This approach will allow local authorities to determine public consultation requirements, including limited notification to iwi and councils or waiving notification requirements.

Option 3: Allow for the inclusion of notification classes for activities/CIPs within the notice of requirement for new designations

60. Option 3 could be made available in addition to Option 2. It would allow an infrastructure provider to specify notification classes at the time they give a notice of requirement for a designation based on the nature of the effects and the level of information available. This could be done based on a menu of three options:

    a. No further notification of an activity/CIP should be required where the nature of the effects associated with the designated works can easily be defined and managed (potentially through controls within the designation).

    b. A focused activity/CIP notification/review process should be enabled to the applicable local authority/joint committee where the nature of the effects is either:

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i. unable to be easily defined and managed; or

ii. expected to have some impact on the public domain and/or taonga Māori and the management of the specific effect would benefit from input from the relevant public domain agencies and iwi/Māori.

c. Public notification of the activity/CIP should be required if the location of effects and effects management is not sufficiently defined at Stage 1 (for example a mass rapid transit corridor is identified but not travel mode is yet to be determined), or the corresponding impact on neighbours, iwi/Māori or the public domain is better addressed through a public engagement process at Stage 2 when matters of detail and effects management are better defined.

Analysis

61. Options 1 and 2 provide flexibility to consult the public based on the level of information available about construction and operation of infrastructure at different stages in its development.

62. Option 3 provides greater process certainty for infrastructure providers, as it would allow bespoke notification requirements to be confirmed as part of the notice of requirement. Infrastructure providers anticipate that 3(a) and 3(b) would be used in most cases (as per the status quo) but that option 3(c) would be available and used when considering a future proofing project with limited detail (for example, 30-year route protection).

63. Officials see merit in Option 3; however, more work is required to consider the mechanics of this approach, including the appropriate process for determining notification classes, decision-making responsibilities, the role of Māori, the role of local government (and / or the joint committee), and appeals.

64. While there is recognition of the potential value of this approach in Option 3, it is important that the design is integrated and aligned with the rest of the system, especially the wider NBA planning hierarchy. This will support the objective of improving efficiency across the system. This work will need to be done in consultation between the infrastructure working group and the Planning Team in the RM Reform work programme and will require further feedback and input from iwi/Māori groups.

65. Preliminary engagement with [redacted] has highlighted that further work is required to consider how the principles of Te Tiriti, in particular partnership and participation, can be given effect in this process. Also of note is the different roles that Māori have in the system – for example, as general landowners of marae, urupā and other taonga sites, as owners of Māori land, as iwi/hapū, as iwi authorities. The system should provide for these different roles, in appropriate places within the system.

What tests and matters for consideration should apply when issuing a notice of requirement for a designation?

Context

66. Under the RMA a territorial authority making recommendations to an infrastructure provider must consider the effects on the environment of allowing the requirement, having particular regard to (section 171(1)):

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a. any relevant provisions of a New Zealand coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan

b. whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work

c. whether the work and designation are reasonably necessary for achieving identified objectives; and

d. any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

67. In addition to the above existing matters, the Panel recommended the inclusion of further matters for consideration, namely:

a. consistency with the Regional Spatial Strategy

b. the contribution of the project to the outcomes identified in the NBA, any national direction and the NBA plan, and

c. the opportunity for co-location of infrastructure within a designation.

68. One of the main problems for infrastructure providers is the significant risk, time and costs associated with the designation and consenting processes. In particular, they have identified that the "alternatives" and "reasonably necessary" tests cause delays and increase costs and may unreasonably compromise a project. The existing tests, together with the matters of national importance under section 6 of the RMA, combine into a significant quantity of information that has to be provided under the current system. Many large infrastructure projects are appealed to the Environment Court, and the preparation of evidence to support these matters can take years and cost millions of dollars.

Analysis / Discussion

69. Officials agree that it is appropriate to update the tests set out above to fit with the new system. The matters for consideration should be designed to ensure they reflect the purpose (including te Oranga o te Taiao and giving effect to the principles of Te Tiriti) and outcomes of the NBA and intended hierarchy of legislative instruments within the new system.

70. Work to date has identified the following issues that need to be addressed in updating the matters for consideration:

Additional requirements proposed by the RM Panel – consistency with the RSS, NBA outcomes, the NPF and the NBA Plan

71. There is some concern among infrastructure providers that additional requirements, such as those proposed by the Panel, could increase rather than decrease the time, cost and complexity of consenting infrastructure projects. The intent of this proposal was to streamline processes to help with enabling infrastructure, so further work is required here to ensure that this is achieved.

Existing criteria – the 'alternatives' test

a. Officials are considering whether or not infrastructure development that is proposed to occur in infrastructure corridors identified in RSS should no longer be subject to the 'alternatives' test (as alternative options would already have been considered through the RSS process).

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b. Officials are considering whether or not additional criteria are needed to ensure an appropriate consideration of alternatives has been undertaken when a designation is to apply to land of cultural significance to hapū/iwi/Māori. The Crown needs to ensure that the criteria give effect to Te Tiriti principles (particularly partnership and active protection) when making decisions that would affect taonga Māori, and that alternatives that might avoid or reduce those effects have been considered.

Existing criteria – the 'reasonably necessary' test

a. Officials are considering whether or not this 'test' could simply be removed, as infrastructure providers justify whether or not projects are 'reasonably necessary' under business case and funding processes in any event

b. If it is removed, more work would need to be done to understand whether the full costs of the project are considered in the business case, including the cost of any cultural redress that may be needed to remedy adverse effects on hapū/iwi/Māori

72. Historically, it has been relatively easy for Requiring Authorities to designate_Māori land, which has led to extensive alienation. More recent developments have extended greater protections to Māori land, for example, provisions in the Infrastructure Funding and Financing Act 2020, and restrictions set out in the Urban Development Act 2019, in relation to Māori land.

73. This is of ongoing concern to Māori, and work on these tests (above) will need to give further consideration to how the system should treat Māori land. It may not be helpful, for example, to preclude Māori land from being designated, if the delivery of the infrastructure would support giving effect to the principles of Te Tiriti, such as providing services of particular benefit for Māori. There are linkages with the discussion below on safeguards in the system, including lapse periods.

74. While there is generally strong agreement on the need to reconsider these matters, it is important that they are designed alongside the other parts of the system, to ensure that there is alignment and consistency with other matters and tests required in the system. There will be value to users of the system if, for example, the matters required to be considered for the RSS are aligned with those required for designations or consents. This will support the objective of improving efficiency across the system.

75. Therefore, Officials plan to seek decisions on assessment criteria for designations alongside similar assessment criteria for the NPF, Plans and consents in the new year.

Other minor amendments

Clarifying the measures enabling co-location of infrastructure in the same designation

76. Designations and the underlying zone exist in tandem. A designation allows for the construction and operation of the specified infrastructure, while the zoning provides for the activities that the land should be used for until required for the specified infrastructure. The designation overrides the underlying zoning.

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77. A problem arises when a zoning is changed in a way that is more permissive than the provisions in the designation. A current example of this is the NPS-UD permitting higher buildings than generally provided for in school designation which overlays residential zones.

Analysis / Discussion

78. Infrastructure Working Group officials agree that the NBA should include a process to allow designations to be easily altered to respond to changes to the underlying NBA Plan rules that are more permissive than the rules in a designation. The process would be similar to that where the planning committee needs to amend its plan to maintain compliance with national direction. This could also be addressed through addressing how conditions are set on designations.

Clarifying the measures enabling co-location of infrastructure in the same designation

Context

79. The RM Panel recommended that the opportunity for co-location of infrastructure within a designation should be a matter for consideration when issuing a notice of requirement. Officials have completed further work in this issue.

80. Two types of issue commonly arise in which more than one infrastructure provider can interact in respect of a single designation (co-location):

   a. one provider needs to affect other infrastructure to achieve an aim (and will have financial responsibility for that) while the other infrastructure is not seeking to be affected, eg, a provider of a new road needs to shift a Transpower pylon

   b. one provider seeks to benefit from another's designation, eg, an electricity transmission provider needs an expanded footprint along a new roading corridor (and would pay the roading provider to buy extra land).

81. In both cases, one provider needs a designation, or access to the land under a designation, for a purpose, and must interact with another provider to achieve that purpose. Roading is a common scenario for co-location of infrastructure.

82. At issue currently is that – to use the above examples – (A) the roading provider is not always able to designate for infrastructure over which it has no jurisdiction (or financial responsibility); and (B) the electricity provider needs to persuade the roading authority to designate for and buy extra land (ordinarily at the electricity provider's expense). The Public Works Act 1981 provisions are also unhelpful in this situation[16].

83. Section 177 RMA does provide for a new designation to overlap an earlier designation subject to the consent of the earlier designator; however, the wording is awkwardly drafted and does not capture example B.

84. Overlapping designations are also problematic when the earlier designation is altered. There is no clarity about whether it still has priority if the alteration occurs after the second designation is created, i.e., does alteration equate to a new, later designation.

85. The Utilities Access Act 2010 provides for how an infrastructure may access another's designation but does not provide for permission to access, therefore, failing to fully capture the needs in examples A and B.

[16] Under the Public Works Act 1981 one public work body cannot acquire land for use solely by another.

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Analysis / Discussion

86. The new system is an opportunity to streamline the process for co-location of infrastructure. It will need to provide a safeguard for earlier infrastructure to be able to continue to operate (example A), and for lead designating infrastructure to not be required to solve administrative or process problems at its expense for a whole set of infrastructure providers (example B).

87. The Regional Spatial Strategy may provide an avenue for identifying corridors or space for a range of infrastructure providers/operators. However, to ensure that the co-location of infrastructure within one provider's designation is more easily expedited, officials recommend:

    a. where changes are needed to infrastructure to accommodate the development of another type of infrastructure, and where there are no contrary reasons, that the provider of the second infrastructure can designate also for the purpose of relocating the first infrastructure

    b. agree that where it is logical to allow for one infrastructure provider to accommodate within its designation the spatial needs of another, and the two parties are willing to collaborate and agree funding, the NBA designation provisions should provide for that outcome.

What safeguards need to apply where the provider doesn't own the underlying land – default lapse period

Context

88. Designations provide material powers over the land to which they apply even in circumstances where the land is not yet owned by the infrastructure provider. This includes restricting uses of the land that would compromise the activity for which the designation was sought. These are important powers for route and site protection but it is appropriate that their continued application is subject to ongoing public accountability.

89. Under the RMA these measures include:

    a. a 'reasonable use test' to safeguard the interests of underlying landowners – this means that where a landowner is refused the right to use their land as they wish they have a right to seek compensation (in the Environment Court) (this provision to be "carried over");

    b. during the review of district plans, designations are assessed. Requiring Authorities may rollover designations with or without modification, remove or add new designations. This process is subject to public input through submissions (this provision to be "carried over"); and

    c. a default lapse period of five years for all designations (a "use it or lose it" approach), designed to prevent "planning blight" (questioned by infrastructure agencies).

90. There are two distinct issues arising in relation to the lapse period. The first issue relates to the Panel's recommendation for the two-stage process (see discussion on this in paragraphs 42 onwards above). For large infrastructure projects, the design, notice of requirement and consenting processes can take five to 10 years. The five-year default has driven infrastructure agencies to roll these processes into one, and this has also contributed to increases in consenting costs. The combination of a more

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deliberate two stage process, and an increase in the default lapse period is intended to improve this issue and reduce costs. Some infrastructure providers have expended significant time and cost to renew designations when these lapse periods expire, as they cannot allow for the designation to lapse.

91. The second question is whether it is necessary at all. MfE RM Reform officials believe that it is, for the following reasons.

92. The intent of the lapse period is to prevent 'planning blight' on the buildings or property affected by the designation. Of the three safeguard measures described above, the lapse period is anomalous if it does not take account of the idea of longer-term route/site protection suggested as part of the RSS provisions.

93. The Panel proposed increasing the default lapse period from five years to 10 years, with the ability to seek further extensions up to a maximum of 20 years. Where infrastructure is identified in the RSS, officials consider the lapse period could be lengthened to align with the timeframes of the RSS – potentially out to 30 years plus. A risk of this approach, however, is that insufficient recognition could be given to the importance of Māori land as a taonga. Such land may require specific treatment and further protections from an increased lapse period. Further advice will be provided on this as part of broader considerations on the treatment of Māori land.

94. The MfE RM Reform officials agree with the Panel that a set lapse period is required, given plan review mechanisms cannot be relied upon with certainty to address planning blight. It considers:

    any lapse period should be set at a minimum of 10 years with the ability to seek further extensions but no ability for Council or submitters to seek a shorter period

    these minimum lapse periods should be increased to align with the timeframes in the regional spatial strategies (up to 30 years) where the infrastructure aligns with the relevant regional strategy.

Analysis / Discussion

95. The Infrastructure Working Group considers further work is needed to determine whether the 'reasonable use' test (2(a) above) and plan review process for designations (2(b) above) provide adequate protections for property owners, without setting a specific lapse period.

96. The 'reasonable use' test is based on treating the land as a purely economic commodity, but this is an ineffective "safeguard" to protect the relationship of Māori with their ancestral lands as "taonga tuku iho", particularly with respect to wāhi tapu and other taonga associated with the land. There may also be other instances where general land owned by Māori needs to be "safeguarded", for cultural, heritage or other reasons (including for the protection of Māori reservations). As stated above, further advice will be provided on this issue as part of a wider consideration of issues relating to Māori land.

97. Policy outlining how NBA plans will be reviewed is still being developed. However, it is anticipated that the full review of plans will be undertaken in a less intensive manner than is required under the RMA. If Ministers do wish to consider removing of the lapse period for designations altogether, further advice could be developed and provided (potentially alongside future advice on plan reviews).

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Scope of designations – should they be extended to include the CMA and regional consents

Context

98. Under the RMA, designations only apply to land use activities (activities regulated under a district plan). Designations do not extend to the Coastal Marine Area (CMA), or regional consenting matters. The Panel recommended that:

    "*consideration be given to extending the designation process to the coastal marine area, acknowledging there are some complexities that would need to be worked through. In particular, there are implications for the Marine and Coastal Area (Takutai Moana) Act 2011 and protected customary rights as well as Tiriti settlements including for aquaculture and fisheries […])*"

99. The Panel was silent on issues relating to the practice of regional consenting matters with respect to designations.

Analysis / Discussion

100. There are problems associated with the planning and provision of infrastructure that will be critical for the new system to address if the Reforms are to deliver on Cabinet objectives. These will require whole of system testing and practical application. Some of the potential solutions lie in changing the approach to the role of designations as they are currently treated in relation to the CMA and regional consenting. There are significant risks, however, to opening either question, which the Panel identified in relation to the CMA.

101. In engagement with [redacted] there was a very clear message from both, that they will not support the extension of designations to the CMA or regional consents. One of their key reasons for opposing is the challenge that would arise for integrated management – with multiple parties making decisions on these aspects of the system, it would be harder to measure and understand cumulative impacts.

102. In discussing these issues, and potential options, the Infrastructure Working Group carried out some analysis. This has been included in Appendix 3, Supporting Item 3 as background information for Ministers.

103. There is also still some way to go in the system design to land provisions for how infrastructure is planned and provided for in the new system. These are potentially significant changes, and it will take some time to work through them and to test their effectiveness. Some of this is likely to take several years, as will some of the inter-related and complex issues that would need to be considered if further work on these issues progresses at this time.

104. [redacted]

105. In relation to regional consents, there are challenges about:

    a. the balancing of regional and national concerns and the certainty for infrastructure provision within a frame of integrated regional management – a commitment of this reform programme

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b. allocation of resource, including water takes and discharges – raising more complex issues for Crown-Māori relations

c. decisions made as part of the three waters confirming that water related consents would remain with the regional consenting framework.

106. It is therefore suggested that consideration of any changes in the way regional consent matters are handled in relation to designations be deferred until the new RM and the three waters systems are more settled. A full review could then be undertaken to evaluate the operation of the new systems.

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Appendix 3: Enabling infrastructure in the new system through designations

Supporting item 1: Aspects of the RMA designation framework that can be carried over into the NBA

1. To enable the NBA bill to be progressed, officials have identified several aspects of the RMA's designation framework that can simply be carried over and modernised:

    a. a definition of a designation is included in the NBA that refers to a provision in an NBA Plan providing for infrastructure delivered by an approved infrastructure provider

    b. designations are developed through a notice of requirement from the approved infrastructure provider to the joint committee, a hearing process before an IHP or the joint committee (if required) and recommendations from the joint committee are decided by the approved infrastructure provider

    c. designations are included in NBA Plans once confirmed by the approved infrastructure provider

    d. designations are given effect when included in an NBA Plan, in accordance with a process to ensure Councils include confirmed designations in the NBA Plan

    e. retain a process for non-notified CIPs

    f. designations may be altered or removed by notice from the approved infrastructure provider to the relevant local authority / joint committee

    g. designations ensure reasonable use of underlying land by the landowner and provide for compensation under the Public Works Act 1981

    h. designations are reviewed at the same time NBA Plans are reviewed

    i. rights and responsibilities of designations may be transferred to another approved infrastructure provider

Mapped RMA provision	Recommendation
166 Definitions 167 Application to become requiring authority	Agree that designation means a provision in an NBA Plan providing for infrastructure delivered by an approved infrastructure provider.
168 Notice of requirement to territorial authority 168A Notice of requirement by territorial authority 169 Further information, notification, submissions, and hearing for notice of requirement to territorial authority 170 Discretion to include requirement in proposed plan 171 Recommendation by territorial authority	Agree that designations are developed through a notice of requirement from the approved infrastructure provider to the joint committee, a hearing process before an IHP or the joint committee (if required) and recommendations from the joint committee are decided by the approved infrastructure provider.
172 Decision of requiring authority 173 Notification of decision on designation 174 Appeals 175 Designation to be provided for in district plan	Agree designations be included in NBA Plans once confirmed by the relevant approved infrastructure provider.
175 Designation to be provided for in district plan	Agree that designations be given effect when put into an NBA Plan, provided that there is also a

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176 Effect of designation	mechanism to ensure Councils publish it in the NBA Plan.
176A	Agree to retain a process for non-notified CIPs
181 Alteration of designation 182 Removal of designation	Agree that existing provisions enabling designations to be altered or removed, by notice from the infrastructure provider to the relevant local authority will be carried over and updated.
176 Effect of designation 177 Land subject to existing designation or heritage order 179 Appeals relating to sections 176 to 178 184 Lapsing of designations which have not been given effect to 184A Lapsing of designations of territorial authority in its own district 185 Environment Court may order taking of land	Agree that existing RMA provisions relating to the reasonable use of underlying land, and existing RMA provisions relating to the review of designations through NBA Plans will be carried over and updated.
178 Interim effect of requirements for designations	Agree that designations have interim effect from when the infrastructure provider gives a notice of requirement to the planning committee.
180 Transfer of rights and responsibilities for designations 180A When financial responsibility is transferred to responsible SPV	Agree existing provisions enabling transfer of rights and responsibilities of designations will be carried over and updated.

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Appendix 3: Enabling infrastructure in the new system through designations

Supporting item 2: Treaty of Waitangi impact analysis

1. The policy options put forward in this policy paper have been assessed to ensure the recommendations give effect to the principles of Te Tiriti o Waitangi, in line with wider system reform

2. Māori, like other citizens, rely on effective infrastructure which supports their overall wellbeing. Infrastructure is particularly significant for Māori because of its potential effects on the natural environment and the potential impacts on Māori land and cultural values. These impacts can be both positive (eg, water infrastructure for environmental improvement and economic development) and negative (eg, environmental degradation). It can also form a part of Māori investment and partnership portfolios.

3. Infrastructure provisions will need to be carefully considered with regard to the potential alienation of Māori land during land acquisition processes. There is a need to ensure safeguards are put in place against future alienation via infrastructure proposals.

4. Overall, hapū/iwi/Māori must have a role in contributing to infrastructure development and decision-making processes at both a development and decision-making level, since the location and potential effects of infrastructure is of great material importance to them. Without their involvement, the resulting Notices of Requirement and Designations could lack the necessary technical input that would enable projects to maximise benefits and minimise costs for hapū/iwi/Māori; and could create relationship risks for the Crown.

5. Further work on the status quo and new aspects of the designation system will need to be undertaken with iwi/Māori groups and some aspects will need to be tested with hapū/iwi/Māori in further phases of reform.

A Role for Māori in the Designation Process

6. One of the transformational shifts for the resource management system is a more strategic role for Māori and greater weight for the principles of Te Tiriti. Previous MOG decisions have confirmed a role for iwi/Māori in the development of RSS and NBA plans. Planning committees for RSS and NBA plans will include iwi/Māori representatives and the processes for development will include iwi/Māori participation commensurate with their status as Te Tiriti partners.

7. These overall transformational shifts apply to the Crown's obligations under the NBA when enabling infrastructure. Under the RMA, the role for iwi/Māori has been limited to when they are affected parties or submit on publicly notified Notices of Requirement. The limited role councils have in the current process has sometimes offered iwi/Māori an additional window of influence, such as where councils agree to consult with them or require technical information. However, this limited role is not consistent with Tiriti principles, particularly active protection, partnership, or rangatiratanga over taonga.

8. The NBA aims to provide a role for Māori that 'gives effect' to the principles of Te Tiriti. It is instructive to use the Tribunal's guidance for a Treaty-compliant system as articulated in Wai 262 as a basis for addressing the nature of partnership:

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a. Control by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority

b. Partnership models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard

c. Effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others.[17]

9. Further to this, there are a number of Treaty Settlements and existing partnerships between Māori and Local Government that will need to be upheld when designing the process for establishing new designations, approving work within a designation, and determining whether designations extend to new areas such as the CMA and to regional consents.

Relationship between infrastructure in the Coastal Marine Area and Takutai Moana rights

10. Officials note that there is an important link to the Marine and Coastal Area (Takutai Moana) Act 2011, which provides for recognition of Māori customary rights as customary marine title in the takutai moana. The RMA permission right flowing from customary marine title is subject to certain 'accommodated activities' which includes 'accommodated infrastructure'.

11. Other activities to be carried out under a resource consent within a customary marine title are subject to an RMA permission right under section 66 of the Marine and Coastal Area (Takutai Moana) Act 2011.

Effects of Designations

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Impacts on addressing Māori freshwater rights and interests

14. This section addresses the extent to which the advice contained in this paper:

a. may contribute to addressing Māori rights and interests in freshwater; and/or

[17] Ko Aotearoa Tenei, A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Waitangi Tribunal 2011. p112. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68356054/KoAotearoaTeneiTT1W.pdf

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b. may preclude options to address Māori rights and interests in freshwater.

15. This assessment is indicative only, as Cabinet has yet to agree on next steps to progress the freshwater allocation and Māori rights and interests in freshwater work programmes. Officials have yet to develop detailed policy options, or to have substantive policy discussions wit

16. Māori rights and interests in freshwater are typically grouped under four broad 'pou':

    a. water quality/te Mana o te Wai;

    b. recognition of relationships with water bodies;

    c. governance and decision-making; and

    d. access and use for economic development.

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Appendix 3: Enabling infrastructure in the new system through designations

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Pages 98 - 102 are withheld in full and have been removed

Appendix 3: Enabling infrastructure in the new system through designations

Supporting item 4: RM Panel recommendations relevant to infrastructure

- Mandatory national direction for infrastructure.
- Use of Regional Spatial Strategies to align infrastructure and growth.
- A definition:
  - Infrastructure means the structures, facilities and networks required nationally or in a region or district to support the functioning of communities and the health and safety of people and includes the network and community infrastructure and community facilities defined in section 197 of the Local Government Act 2002.
- Eligibility to exercise designation powers should be limited to, and centred on, public-good infrastructure.
- Those eligible should include:
  - a list of approved Requiring Authorities in the legislation: Ministers of the Crown, local authorities, and network utility operators that meet specified criteria; and,
  - other Requiring Authorities approved by the Minister for the Environment based on specified criteria (including public benefit).
- A new default lapse period of 10 years should be available for all designations, with extensions of up to another 10 years subject to specified criteria.
- There should be an option to undertake the designation process in two stages (with flexibility to combine them):
  - 'why and where' - a notice of requirement defining the designation footprint and the effects of that footprint
  - 'how' - a publicly notified construction and implementation plan confined to addressing construction and operational effects.
- The relevant statutory considerations for a designation should be extended to also include:
  - consistency with the regional spatial strategy
  - its contribution to the outcomes identified in the Act, any national direction and the combined plan
  - the opportunity for co-location of infrastructure within the designation.
- Notices of requirement should continue to be publicly notified with appeal rights retained.
- Requiring Authorities should prepare a construction and implementation plan (CIP). This should consider in detail the construction and implementation effects and identify appropriate controls to manage those effects. The CIP could be submitted in multiple stages.
- The construction and implementation plan should be available for public and territorial authority comment prior to construction works commencing. The territorial authority would be able to make changes to the CIP.
- Consideration should be given to extending designations into the coastal marine area

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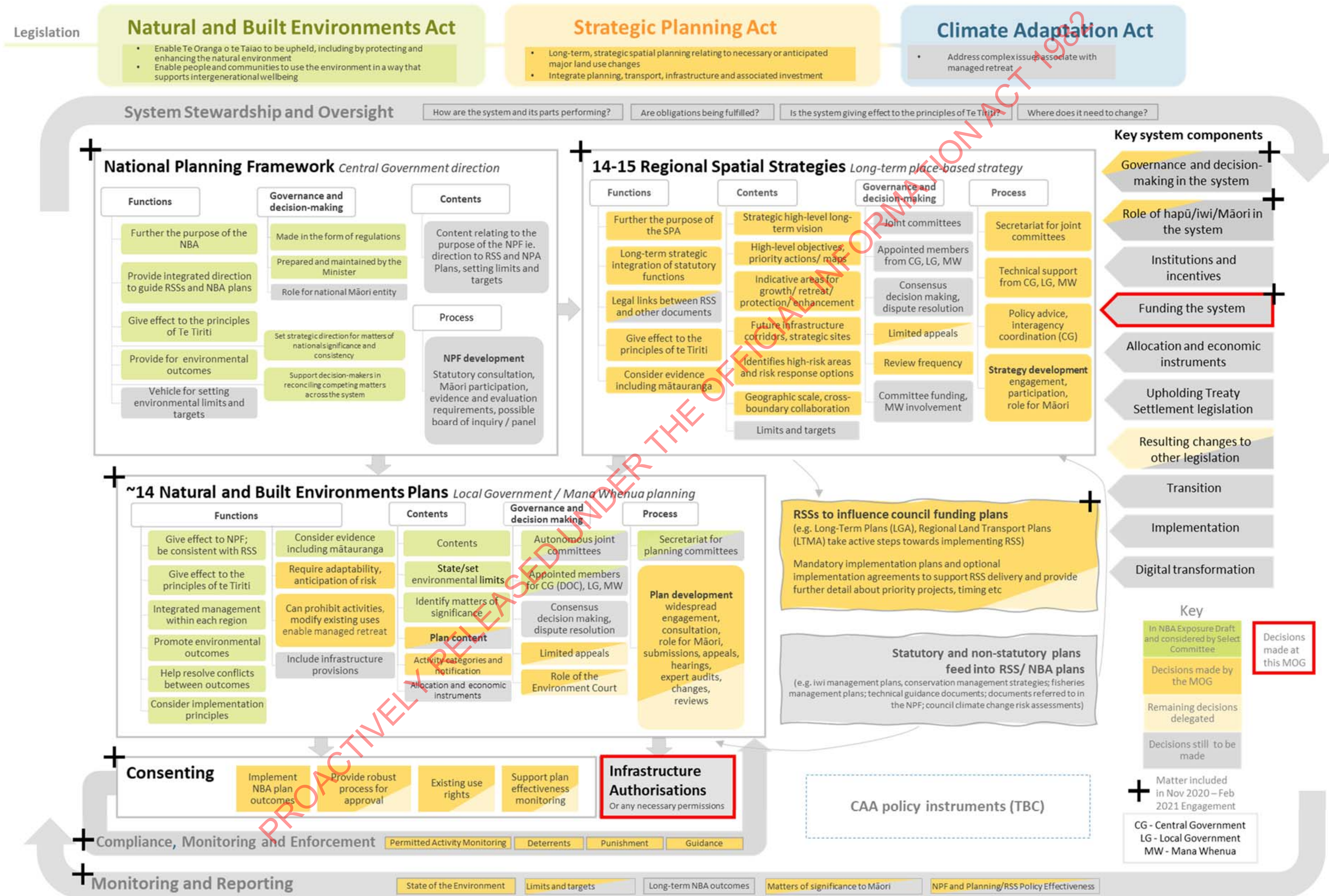
Resource Management Reform System Map: indicating where MOG #15 agenda items sit in the system



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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

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MINUTES - RM Māori interests subgroup meeting on 24 November 2021

MINUTES

RM Māori interests subgroup meeting

Date	Wednesday 24 November 2021, 5:15pm – 5:45 pm
Location	Zoom
Chair	Hon Kiritapu Allan, Associate Minister for the Environment,
Attendees	Hon Kelvin Davis, Minister of Māori Crown Relations: Te Arawhiti Hon David Parker, Minister for the Environment
Apologies	Hon Megan Woods, Minister of Housing Hon Nanaia Mahuta, Minister of Local Government Hon Willie Jackson, Minister for Māori Development

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Background

1. **noted** that the status quo doesn't work for identifying 'who' from iwi/Māori should be enabled to partner and participate in the RM system and that the Panel highlighted this issue
2. **noted** that decisions on who partners and participates from te ao Māori are becoming critical to advancing broader policy decisions across the RM reform programme

Iwi/Māori group views

3. **noted** whilst there are distinct views from hapū/iwi/Māori, some common ground through feedback to date includes:
   a. the importance of self-identification for Māori
   b. a greater role for hapū in the system – rather than just RMA iwi authorities
   c. a range of Māori groups including urban Māori and Māori Land trusts/ahi kā should have a role (but different views on how roles and influence should play out for different functions)
   d. whakapapa relationship to Te Taiao is significant and confers distinct rights (although there are different views on the extent of the distinct rights and who these fall to)
   e. the importance of not losing what is working now in terms of representation and identifying who participates at different levels and processes
4. **noted** that [redacted] have also advised that providing for supported and resourced self-identified iwi/Māori appointments and identifying who participates would achieve efficiencies by helping avoid litigation with the Crown or between hapū/iwi/Māori groups (with attendant costs and delays)

Initial direction of travel

5. **noted** that officials are seeking Ministers' feedback on the following initial direction of travel to guide further work on who participates:

a. support for the Panel's proposal for self-identification, which would involve as a first step enabling tikanga processes to determine representation, with 'circuit breakers' and timeframes prescribed in the legislation for appointments processes as a backup

b. implementation support is required for successful self-identification processes

c. there is no clear case for an overarching defined term for who participates, and alternatives should be explored which are not mutually exclusive

d. the level of prescription in legislation will differ for different parts of the RM system, but an inclusive approach to participation in plan development and consenting should be enabled

e. partnering and participation guaranteed through Treaty settlements or under the Takutai Moana Act/Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act is to be upheld

Next steps

6. **noted** that Te Tiriti considerations, including the principles of rangatiratanga and partnership, reinforce the importance of co-development of options for who participates.

7. **noted** that further engagement is intended on this issue, including (but not limited to) Cabinet approved engagement with hapū/iwi/Māori

8. **noted** that a brief update on this work, including any feedback from the subgroup, will be provided for MOG #15, and that further advice will go to MOG #17 seeking decisions on how who participates will be provided for and supported in legislation

9. **agreed** that further work will be undertaken to consider what is meant by Māori land and how it should be treated across the RM system, with a report back provided as part of MOG #17.

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Minute from RM Reform Ministerial Oversight Group Meeting #14 on 17 November 2021

Date	Wednesday 17 November, 5:00pm to 6:00pm
Location	Zoom
Chair	Hon Grant Robertson, Minister of Finance
Deputy Chair	Hon David Parker, Minister for the Environment
Attendees	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 Megan Woods, Minister of Housing
	Hon Nanaia Mahuta, Minister of Local Government
	Hon Damien O'Connor, Minister of Agriculture

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

The Ministerial Oversight Group:

Critical shifts the Strategic Planning Act (SPA)

1. **noted** 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. **noted** 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. **agreed** 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. **noted** 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.

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5. **noted** 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

6. **noted** 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. **agreed** 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. **noted** 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. **agreed** 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. **agreed** 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

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

11. **noted** that at MOG #7 Ministers agreed that the scope of RSSs should be consistent with the 'strategic' option.

12. **noted** that consultation with internal and external stakeholders has revealed some opportunities to refine aspects of the RSS scope agreed at MOG #7.

13. **noted** 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. **agreed** 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. **noted** 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. **noted** 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. **agreed** 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.

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18. **agreed** 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. **agreed** 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) or otherwise warrant inclusion in the RSS on the basis of their level of significance or strategic importance;

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

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

The Ministerial Oversight Group:

1. **agreed** 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. **agreed** 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. **agreed** 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
4. **agreed** 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. **agreed** that Implementation Agreements do not need to be approved by RSS joint committees
6. **agreed** that Implementation Plans commit the parties through self-enforcing mutual obligation, supported by incentives and good relationships among partners and stakeholders
7. **agreed** 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. **agreed** 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. **noted** 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. **noted** 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. **noted** that further work is required to address the potential roles of iwi/Māori[1] 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. **authorised** the Minister of Finance, Minister for the Environment, Associate Minister for the Environment (in relation to Māori rights and interests), Minister of Local Government,

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

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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. **noted** 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.

Paper 3: Courts and Appeals in the new Planning System

The Ministerial Oversight Group

Approach to appeals

1. **agreed** 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. **agreed** 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. **noted** 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. **noted** 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. **noted** 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. **agreed** that Environment Court Judges or Commissioners may be appointed as members of Boards of Inquiry

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

9. **noted** 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

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10. **agreed** that the SPA will not contain any appeal right unless subsequent work identifies significant benefits from including an appeal on points of law
11. **agreed** 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. **noted** that Regional Spatial Strategies (RSS) will not have operative effect that changes what can be done with private property
13. **agreed** that the SPA will include a provision equivalent to section 85(1) RMA to clarify the regulatory effect of the RSS
14. **noted** 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[2]
15. **agreed** 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. **agreed** that the chair of each Independent Hearings Panel will be an Environment Court Judge
17. **noted** 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. **noted** 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 recommendations on appeals will be provided after decisions on governance structure have been made[3]
19. **agreed** 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. **agreed** 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:

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

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

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

22. **agreed** 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. **agreed** 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. **agreed** 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. **noted** 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. **noted** 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. **noted** 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. **agreed** that the Minister for the Environment and the Minister of Conservation (in the same circumstances under the RMA) will have discretion to direct nationally significant proposals either to the Environment Court, or to a Board of Inquiry

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

30. **agreed** 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

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

32. **agreed** 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. **agreed** 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. **agreed** 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. **agreed** 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. **agreed** 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. **agreed** 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. **noted** 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[4]

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

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41. **agreed** 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. **agreed** to authorise the Minister for the Environment, in consultation with the Minister of Justice and other Ministers where appropriate, 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 section 61 of Te Ture Whenua Māori Act 1993 and section 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.

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[IN-CONFIDENCE]

In-progress action log from previous MOG meetings

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