

Agenda – RM Reform Ministerial Oversight Group Meeting #2

Date: Monday 15 February 2021, 3.45 – 4.30 pm

Location: 8.5 EW

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

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

3.45 – 3.50	Agenda Item 1: Actions from previous meeting	Lead speaker: Minister of Finance
<p>Description/key areas to focus discussion:</p> <ul style="list-style-type: none"> • This item seeks to follow up on any actions arising from the previous meeting, including confirming the minutes from the MOG meeting on 26 January and provide a brief update to the MOG on directed actions • Key updates to note: <ul style="list-style-type: none"> ○ [REDACTED] ○ DIA is working with MfE and other officials to prepare an engagement plan for working with local government on reform and will report back to the Minister of Local Government and the Minister for the Environment at a later date. ○ MfE are also continuing their work on developing an engagement plan for Treaty Partners and wider Māori organisations. 		
<p>Supporting documents</p> <ul style="list-style-type: none"> • Minute from MOG Meeting #1 on 26 January 2021 		
3.50 – 3.55	Agenda Item 2: Agreeing outcomes of reform	Lead speaker: Minister for the Environment
<p>Description/key areas to focus discussion:</p> <ul style="list-style-type: none"> • This item seeks to confirm Ministers' expectations regarding the outcome of the reforms, based on the objectives agreed by Cabinet and as follow up to discussions at the first MOG meeting. • Key items for consideration are: <ul style="list-style-type: none"> ○ It is important that we find agreement to the amended outcomes for reform today ○ The outcomes under objective two 'to better enable development within environmental biophysical limits' have been amended to remove the wording "housing costs improve relative to incomes," to focus the outcome on responsive housing supply ○ Joint Ministry of Housing and Urban Development and Treasury advice from officials identifies the policy options within RM reform (including RM Panel suggestions) that influence housing supply. 		

- The policy choices include space for MOG to indicate further advice to be provided as part of the RM reform programme
- The outcomes under objective three to 'give effect to principles of Te Tiriti and recognise Te ao Māori including mātauranga Māori' were revised to reflect MOG's direction
- [REDACTED]
- [REDACTED]
- The outcomes under objective five to 'improve system efficiency and effectiveness while retaining appropriate local democratic input' have been revised to encourage more representative and proportionate public participation.

Supporting documents

- Paper on confirming expectations of resource management reform outcomes
- Achieving the resource management reform outcome: housing supply is responsive to demand A3

3.55 – 4.30	Agenda Item 3: Purpose and supporting provisions of the Natural and Built Environments Act (NBA)	Lead speaker: Minister for the Environment
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Description/key areas to focus discussion:

- This item addresses:
 - The first set of further policy decisions needed on the purpose and supporting provisions of the Natural and Built Environments Act (NBA)
 - How the purpose and supporting provisions align with reform objectives, including how they will deliver desired environmental and development outcomes
 - [REDACTED]
- Key items for consideration are:
 - Clarifying the purpose statement to remove ambiguity and better align with reform objectives
 - Confirming the current duty to avoid, remedy or mitigate adverse effects on the environment should continue to apply to effects on the environment as a whole. This will ensure there is a basis for managing effects on the environment not covered by specified limits and outcomes, such as nuisance effects like noise, glare, odour, and traffic congestion.
 - Providing flexibility for natural environment limits to be set at different levels for different circumstances and locations, if provided for in the National Planning Framework
 - Revising the list of outcomes for the NBA by better aligning them with the objectives of reform, consolidating the list to reduce repetition, and grouping outcomes to provide clearer direction for decision makers (protect and restore, protect, enable, promote or similar wording)
 - Assigning implementation principles to the parts of the NBA to which they are most relevant, rather than in a single section
 - These are the key MOG decisions needed. The attached paper contains other matters for which delegated authority to the Minister for the Environment to make final decisions is sought.

Supporting documents

- Paper on further policy decisions on the purpose and supporting provisions of the Natural and Built Environments Act

Minute from RM Reform Ministerial Oversight Group Meeting #1 on 26 January 2021 (for item 1)

MINUTE

RM Reform Ministerial Oversight Group – Meeting #1

Date: Tuesday 26 January 2021, 3.00 – 3.45 pm

Location: 8.5 EW

Attendees: Ministers of/for Finance (Chair), Environment (Deputy Chair), Māori Crown Relations: Te Arawhiti, Local Government, Building and Construction, Māori Development, Transport, Conservation, Associate Environment and Associate Arts, Culture and Heritage (Hon Kiritapu Allan)

Apologies: Minister of/for Housing, Agriculture, Associate Environment (Hon Phil Twyford) and Climate Change

Agenda Item 1:

Confirming Government's expectations of the outcomes of resource management reform

Lead speaker: Minister for the Environment

Decisions –

Changes from circulated recommendations shown in red.

- **Agreed** that Cabinet's resource management reform objective to "protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations" should result in the following outcomes:
 - a. The natural environment is protected and restored, and the health of New Zealand's fresh water, coastal water, air, soil, ecosystems and their ability to sustain life are maintained in line with Te Mana o te Taiao
 - b. nationally and regionally significant landscapes, natural features, habitats for indigenous species, native biodiversity and the natural character of the coast, lakes & rivers are maintained or where appropriate enhanced
 - c. important indigenous species and their ecosystems are protected and where necessary restored
- **Discussed changes as indicated** – that Cabinet's resource management reform objective to "better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure" should result in the following outcomes:
 - a. More flexibility for people to use resources and for places to change, while looking after the natural environment
 - b. The right infrastructure, in the right place at the right time, that provides adequate access to economic and social opportunities and enables people to maximise their wellbeing
 - c. Housing ~~costs improve relative to incomes and~~ supply is responsive to demand, with competitive land markets enabling more efficient land use and responsive development, which helps improve housing supply, affordability and better meets a range of housing needs (by type, size, location and price point) *[Advice sought on the topics covered in outcome 2.c, including how this outcome could influence RM reform policy options i.e. policy options that will support housing supply to be responsive to demand]*
- **Discussed changes as indicated** – Cabinet's resource management reform objective to "give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori" should result in the following outcomes:

- a. Process and substance of the National Planning Framework and plan-making decisions give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori
 - b. [REDACTED]
 - c. Māori customary rights, cultural values and Treaty settlements are protected, and equitable access to resources for Māori is ensured
 - d. Improved central and local government capability to effectively work with Māori
- **Discussed changes as indicated** – Cabinet’s resource management reform objective to “*better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change*” should result in the following outcomes:
 - a. [REDACTED]
 - b. [REDACTED]
- **Discussed changes as indicated** – that Cabinet’s resource management reform objective to “*improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input*” should result in the following outcomes:
 - a. Unnecessary costs removed and net benefits maximised
 - b. Greater certainty, consistency, fewer plans, consents and appeals, faster plan preparation and faster approvals
 - c. External costs fall where they should and the burden of system processes shifts towards the public sector
 - d. Decisions and decision-making better reflects communities of interest, with greater decision making by Government and more collaborative regional decision-making changing the role of councils *[Further advice sought on this outcome to ensure more effective and proportionate public participation]*
 - e. Greater public input into strategic decisions and less direct input into site-specific appeals
 - **Agreed that the outcomes for objectives 2, 3, 4 and 5 will be amended and recirculated to the MOG for discussion and agreement at the next MOG meeting on 15 Feb 2021.**

Agenda Item 2:
Lead speaker: Minister for the Environment
<p>Decisions:</p> <p>Agreed to the Ministerial Oversight Group Terms of Reference (as attached)</p> <p>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</p> <p>Agreed to the MOG meeting schedule, noting it will be updated to reflect the outcomes of MOG meetings and policy work</p> <p>Agreed to consider other policy matters for the full NBA, Strategic Planning Act and Managed Retreat and Climate Change Adaptation Act</p> <p>Agreed that officials engage with local government to inform policy decisions for the exposure draft and select committee inquiry using available mechanisms, including but not limited to, the established reference group, LGNZ sector meetings, and SOLGM</p>

Agreed that DIA working with MfE will prepare an engagement plan for working with local government that will be reported back to the Environment and Local Government Ministers

Agreed that a process will be developed for engagement with Treaty Partners and wider Māori organisations.

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Confirming expectations of resource management reform outcomes (for item 2)

Introduction

1. At the first Ministerial Oversight Group (MOG) meeting on 26 January 2021, MOG discussed Government's expectations of the outcomes of RM reform.
2. The MOG agreed that Cabinet's resource management reform objective to "*protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations*" should result in the following outcomes:
 - a. The natural environment is protected and restored, and the health of New Zealand's fresh water, coastal water, air, soil, ecosystems and their ability to sustain life are maintained in line with Te Mana o te Taiao
 - b. nationally and regionally significant landscapes, natural features, habitats for indigenous species, native biodiversity and the natural character of the coast, lakes & rivers are maintained or where appropriate enhanced
 - c. important indigenous species and their ecosystems are protected and where necessary restored.
3. The MOG agreed that the outcomes for reform objectives 2, 3, 4 and 5 be amended and recirculated to the MOG for discussion and agreement at the next MOG meeting on 15 February 2021.

Amended outcomes of reform

Changes to outcomes as directed by the MOG

4. The recommendations below are the amended outcomes of reform.
5. Further advice from officials on the housing outcomes for objective two is attached as a separate paper, as requested. This advice was jointly prepared by HUD and Treasury and is based on the Panel's recommendations. The attached A3 and proposed wording of the housing outcome was discussed with and approved by the Minister of Finance and Minister of Housing.

6.







7. Officials have also developed revised wording of the outcomes for the reform objective to "*improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input*" and the objective to "*to give effect to the principles of Te Tiriti of Waitangi and provide greater recognition of te ao Māori, including matauranga Māori*".

Recommendations

Officials recommend that the MOG:

1. agree that Cabinet's resource management reform objective two to "*better enable development within environmental biophysical limits including a significant*

improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure” should result in the following outcomes: more flexibility for people to use resources and for places to change, while looking after the natural environment

- a. the right infrastructure, in the right place at the right time, that provides adequate access to economic and social opportunities and enables people to maximise their wellbeing
 - b. housing supply is responsive to demand, with competitive land markets enabling more efficient land use and responsive development, which helps improve housing supply, affordability and better meets a range of housing needs (by type, size, location and price point)
2. note for discussion the additional information requested on how the RM reform policy proposals will supply outcome
3. agree that Cabinet’s resource management reform objective three to *“give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori”* should result in the following outcomes:
- a. process and substance of the National Planning Framework and plan-making decisions give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori
 - b. 
 - c. Māori customary rights, cultural values and Treaty settlements are protected, and equitable access to resources for Māori is ensured
 - d. improved central and local government capability to effectively work with Māori
4. agree that Cabinet’s resource management reform objective four to *“better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change”* should result in the following outcomes:
- a. 
 - b. 
 - c. 
 - d. 
 - e. 
5. agree that Cabinet’s resource management reform objective five to *“improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input”* should result in the following outcomes:
- a. unnecessary costs removed and net benefits maximised
 - b. greater certainty, consistency, fewer plans, consents and appeals, faster plan preparation and faster approvals
 - c. external costs fall where they should and the burden of system processes shifts towards the public sector
 - d. decisions and decision-making provides reasonable opportunities for public participation, including by communities currently under-represented in the system, and better reflects communities of interest
 - e. greater public input into strategic decisions and less direct input into site-specific appeals, with the input of communities proportionate to the issues at stake.

Achieving the resource management reform outcome: housing supply is responsive to demand

Cabinet has agreed that an objective for the reform is to **better enable development within environmental biophysical limits, improving housing supply, affordability & choice & timely provision of infrastructure.**

To achieve this objective, the Ministerial Oversight Group (the MOG) discussed that one of the outcomes we need to achieve is **housing supply is responsive to demand, with competitive land markets enabling more efficient land use and responsive development, which helps improve housing supply, affordability and better meets a range of housing needs (by type, size, location and price point).**

The following table sets out **how the resource management reforms will help us to achieve this outcome** by focusing on the different policy options being considered in the reforms.

Component of the reforms	What we need the policy reforms to achieve (i.e. what we need the reforms to do)	How the policy options help housing supply to be responsive to demand (how it will play out in practice)
Purpose and Outcomes	<ul style="list-style-type: none"> Provide clear reference to ensuring housing supply and choice in the outcomes, and ensure outcomes are considered equally. Reduce the scope to oppose development on subjective grounds, such as protecting existing amenity/character. Focus on maximising the overall net benefit of development and change for the wider community. Enable environmental limits to respond to local conditions and allow for improvement over time. 	<ul style="list-style-type: none"> An explicit focus on housing in the purpose of a future NBA helps increase housing supply by requiring that decision-makers emphasise the wider public benefits of housing at both the planning and consenting stages (rather than focusing narrowly on the local effects on existing communities, as is currently the case). Allowing limits to be applied flexibly (e.g. in dense urban areas versus rural), and improve over time, will ensure that urban areas are able to grow and change (and prevent development out to pristine areas).
National Planning Framework	<ul style="list-style-type: none"> Provide clear national direction that builds on the NPS-UD (e.g. requires an increase in housing supply opportunities and emphasises the need for urban areas to develop, grow and change). 	<ul style="list-style-type: none"> Clearer direction helps increase housing supply by reducing regulatory barriers to development where people want to live and work, and ensures councils provide at least sufficient development capacity in those areas to meet demand. Gives government the ability to define what constitutes 'sufficient' development capacity to maintain a responsive and competitive land market (including floor space). Provides developers with a much wider range of development opportunities for which to respond to demand.
<p style="color: red; font-weight: bold; opacity: 0.5; transform: rotate(-45deg); font-size: 2em;">PROTECTED BY REASONS UNDER THE PROVISIONS OF THE OFFICIAL INFORMATION ACT 1982</p>		
Combined plans and consenting	<ul style="list-style-type: none"> The combined plans will demonstrate how the housing supply outcomes set out in the NBA will be delivered in each region. The plans will need to resolve conflicts or tensions between the outcomes and ensure an integrated approach to land use and infrastructure planning. Consenting costs and timeframes could be reduced by shifting public engagement and decision-making further-up the planning hierarchy, reducing the time taken to bring on new supply. 	<ul style="list-style-type: none"> Streamline planning and consenting processes to reduce direct development costs and reduce unnecessary uncertainty and delay. Consents are issued based on a development's contribution to positive outcomes, beyond just local effects, enabling developments which respond to wider demand. Combined plans provide the development capacity outlined in regional strategic plans (giving developers a range of development opportunities for which to respond to demand).
Oversight and monitoring	<ul style="list-style-type: none"> Improve oversight, monitoring and enforcement powers to ensure strategic plans, combined plans and consenting decisions set out how housing and urban outcomes will be achieved, and national direction can be enforced. Recognise and leverage HUD's stewardship role over the resource management system in urban areas, including in strategic decision making and oversight. 	<ul style="list-style-type: none"> Increased oversight, monitoring and enforcement ensures plans make it easier to develop and build, and deliver on government's policy intent for increased housing supply. Increased government understanding of the housing and urban situations of different regions will allow local and central government to better target its policy responses (including delivery of new housing directly or indirectly to areas of need).

Key interdependencies

- Development of the built environment must be within environmental limits (and is therefore dependent on how these limits are set and applied, including the application of the precautionary approach)
- The practical application of the "avoid, remedy and mitigate adverse effects" clause and the need for a proportionate approach
- Regional strategies and combined plans are strongly dependent on the purpose and principles of any future NBA which provides the legal hooks and parameters for National Direction
- Success also depends on how spatial strategies and combined plans implement national direction
- Development capacity is dependent on infrastructure planning, funding mechanisms and economic

Further policy decisions on the purpose and supporting provisions of the Natural and Built Environments Act (for item 3)

Key messages

1. This paper seeks further decisions to refine proposals for the purpose and supporting provisions of the proposed Natural and Built Environments Act (NBA).
2. The purpose and supporting provisions replace Part 2 of the Resource Management Act 1991 (RMA) and sit at the top of the proposed decision-making hierarchy. These provisions will play a crucial role under the NBA as they will guide development and interpretation of the National Planning Framework and Natural and Built Environment Plans. They will also influence decision-making under the proposed Strategic Planning Act (SPA).
3. Cabinet has made in-principle decisions about the purpose and supporting provisions of the NBA. Officials propose further clarification of current proposals to better achieve Cabinet's agreed objectives for resource management reform. The table below summarises the proposed changes.

Table 1: Clarifying and refining the proposed purpose and supporting provisions of the NBA

Purpose statement	<p>Officials recommend clarifying that the use and development of natural and built environments is to be enabled:</p> <ul style="list-style-type: none"> • within natural environment limits • where it contributes to the wellbeing of current and future generations • and promotes beneficial outcomes for the natural and built environments overall.
Duty to avoid, remedy or mitigate adverse effects (as contained in the purpose statement)	<p>Officials recommend that the current duty to avoid, remedy or mitigate adverse effects (or similar) on the environment should continue to apply to effects on the environment as a whole. This will ensure there is a basis for managing effects on the environment when not covered by specified limits and outcomes, including nuisance effects like noise, glare, odour and traffic congestion.</p> <p>Officials will undertake further work to ensure measures to avoid, remedy and mitigate adverse effects on the environment are proportionate and do not impose unreasonable costs on development.</p>
Natural environment limits	<p>Officials recommend:</p> <ul style="list-style-type: none"> • clarifying that the purpose of natural environment limits is to protect the life-supporting capacity of the environment and human health • natural environment limits should be flexible enough to accommodate different levels of environmental quality in different circumstances and locations, if provided for in the National Planning Framework • adding 'water in estuaries' to the matters for limits must be set and broadening 'biodiversity' to include 'habitats and ecosystems' • adopting <i>only</i> the more general 'precautionary approach' in limit setting processes, rather than an additional specific requirement for a 'margin of safety above significant or irreversible harm' to remove duplication and improve the practicality and flexibility of provisions.
Outcomes to be pursued by decision-makers under the NBA, including	<p>Officials recommend:</p> <ul style="list-style-type: none"> • better aligning the list of outcomes with the objectives of the reforms

<p>outcomes for housing supply and infrastructure provision</p>	<ul style="list-style-type: none"> • consolidating and refining the list to reduce repetition • grouping outcomes as follows (or similar) to provide clearer guidance about the actions expected from decision-makers: <ul style="list-style-type: none"> ○ protect and restore ○ protect ○ enable ○ promote • Delegating the Minister for the Environment to make final detailed decisions about the expression and grouping of outcomes in consultation with other Ministers as relevant.
<p>Approach to the resolution of conflicts under the NBA</p>	<p>Officials recommend:</p> <ul style="list-style-type: none"> • noting that it will not be feasible for National Planning Framework and Natural and Built Environment Plans to foresee and conclusively resolve all tensions, so the Act will also need to ensure that mechanisms exist to enable decisions-makers to do so during lower order decision-making (such as consenting) • that officials will work with the Parliamentary Counsel Office to determine the best way to reflect decisions on the resolution of conflicts throughout the NBA.
<p>Good practice implementation principles and Ministerial duties</p>	<p>Officials recommend:</p> <ul style="list-style-type: none"> • reflecting most principles as part of the specific substantive and procedural decision-making requirements in relevant parts of the NBA • removing principles that relate to complementing existing legislation and implementing international obligation.

4. Concerns have been raised by some agencies that the above framing of the purpose does not provide the necessary certainty that development, including the delivery of infrastructure, will be better enabled through the new legislation. This reflects concerns raised by operational agencies that the proposed duty to promote “beneficial outcomes for the natural and built environments overall” is not clear and introduces a degree of ambiguity if applied to real-life cases. This may prove unworkable in practice. An alternative purpose which expressly enables development within limits has been favoured by some agencies.

5. In the development of an exposure draft of the new legislation, officials will need to work to remedy these issues, ensuring that the framing of the purpose in line with the MOG’s policy intent does not result in any unintended consequences for the development and infrastructure delivery.

6. 

7.

8.

Recommendations

9. It is recommended that you:

1. note the indicative drafting provided as Appendix 1 to the Cabinet paper CAB-20-SUB- 0522 requires further refinement by the Parliamentary Counsel Office to ensure it meets the objectives for the resource management reform

Purpose statement

2. agree the purpose of the Natural and Built Environment Bill reflect the overall policy intention of the proposed NBA that the use of the natural and built environments is enabled within 'natural environment limits' and in a way that provides for the wellbeing of current and future generations
3. agree the purpose and supporting provisions also clarify:
 - a. natural environment limits are set to protect the life-supporting capacity¹ of the natural environment and human health
 - b. beneficial outcomes are to be promoted for the natural and built environments overall
 - c. in addition to meeting limits or promoting outcomes, activities must be carried out in a way that ensures any other adverse effects of activities on the environment are avoided, remedied, or mitigated (or similar wording)
4. agree officials will undertake further work and report back to the Ministerial Oversight Group to ensure that the framing of the purpose in line with the Ministerial Oversight Group's policy intent does not result in any unintended consequences for development and infrastructure delivery.
5. agree officials will undertake further work to ensure measures developed to avoid, remedy and mitigate (or similar) adverse effects on the environment are proportionate and donot impose unreasonable costs on development

6.

7. agree that officials will work with Parliamentary Council Office to refine key definitions needed for the Bill's purpose statement to clearly match Minister's policy intent and avoid any unintended consequences

8.

Natural environment limits

9. agree to clarify that the purpose of natural environmental limits is to protect the life-supporting capacity of the natural environment and human health
10. agree natural environment limits are set in a way that is flexible enough to accommodate different levels of environment quality in different circumstances and locations, if provided for in the National Planning Framework

¹ Note that further work may be required to provide a clearer definition of life-supporting capacity.

11. agree to adopt only the more general requirement for a 'precautionary approach' when setting limits, rather than also including a 'margin of safety' requirement
12. note that the Minister for the Environment intends to make the following minor changes to the list of natural environment limits:
 - a. add 'water in estuaries' of the natural environment for which limits must be set
 - b. broaden the focus of limits to protect indigenous species to include "biodiversity, habitats, and ecosystems", or similar phrasing with the same intent
13. note that the NBA will include a system of targets associated with improving the natural and built environments to be detailed in future papers to the Ministerial Oversight Group on development for the National Planning Framework and Natural and Built Environment Plans


Natural and built environment outcomes

14. agree to refine proposals relating to natural and built environment outcomes to better reflect objectives of reform, consolidate the number of outcomes and group them so that the actions expected of those exercising functions and powers under the Act is clearer (protect and restore, protect, enable, promote or similar wording)
 15. agree to delegate to the Minister for the Environment to make final detailed decisions about the expression and grouping of outcomes in consultation with other Ministers as relevant
6. *Resolution of conflicts*
16. note that it will not be feasible for National Planning Framework and Natural and Built Environment Plans to foresee and conclusively resolve all tensions, so the Act will also need to ensure that mechanisms exist to enable decisions-makers to do so during lower order decision-making (such as consenting)
 17. agree that officials will work with the Parliamentary Counsel Office to determine the best way to reflect decisions on the resolution of conflicts throughout the NBA

Implementation principles

18. agree to include proposals relating to good practice implementation principles and Ministerial duties as part of the specific substantive and procedural decision-making requirements to which they are relevant
19. agree to remove principles that relate to complementing existing legislation and implementing international obligation

Next steps

20. note that officials will work with Parliamentary Counsel Office to progress drafting on the basis of these decisions
21. note that Ministers will need to revisit decisions made about the purpose and supporting provisions of the NBA to ensure they remain fit for purpose as policy is developed and agreed on other aspects of the NBA and the SPA
22. 
23. note the Minister for the Environment will make decisions on the other minor technical matters in this paper as per the agreed terms of reference for the Ministerial Oversight Group.

Supporting information

Context

9. Cabinet has made in-principle decisions about the purpose and supporting provisions of the proposed NBA (CAB-20-MIN-0522 refers). This paper seeks further decisions needed to refine these provisions. The provisions that Cabinet has agreed to are attached at Appendix 1 for ease of reference.
10. The purpose and supporting provisions of the NBA replace Part 2 of the RMA and sit at the top of the proposed decision-making hierarchy. These provisions will play a crucial role in the proposed scheme of decision-making under the NBA, as they will guide development of the National Planning Framework and Natural and Built Environment Plans. They will also influence decision-making under the proposed SPA. Appendix 2 shows how the purpose of the NBA and its outcomes are intended to be achieved and will be implemented in other parts of the NBA (for which policy is still being developed).
11. As agreed by Cabinet, officials have assessed the proposals for the NBA purpose and supporting provisions to understand how well they achieve the objectives of reform and their workability. The recommendations in this paper address these identified shortcomings.
12. Proposals to refine the NBA purpose and supporting provisions cover the following matters:
 - a. purpose statement
 - b. key definitions
 - c. reference to Te Mana o te Taiao
 - d. giving effect to the principles of Te Tiriti o Waitangi
 - e. the duty to set natural environment limits
 - f. specifying natural and built environment outcomes to be sought
 - g. resolution of conflicts
 - h. good practice implementation principles and Ministerial duties
13. The purpose and supporting provisions (including definitions) need to be linked with decision-making provisions throughout the NBA and SPA. To ensure they are fit for purpose, we will need to revisit decisions about these provisions as policy on the NBA and the SPA is progressed.

Further policy decisions on the purpose and supporting provisions

Purpose of the proposed Natural and Built Environments Act

Context

14. Cabinet has made an in-principle decision that the purpose of the NBA should be to “promote the quality of the environment to support the wellbeing of current and future generations and to recognise the concept of Te Mana o te Taiao”. Environment would be defined broadly to include both the built and natural environments, and people and communities². The second clause establishes how the overall purpose is achieved by requiring that:
 - a. the use, development and protection of natural and built environments is within biophysical limits
 - b. positive outcomes for the environment are identified and promoted
 - c. subject to (a) and (b), adverse effects on the environment are avoided, remedied

² Note that as per the current RMA definition of environment, hazards are treated as an effect on the environment, rather than as part of the environment.

or mitigated.

Issues and choices

15. A number of issues have been identified associated with the purpose statement, including:
- a. the meaning of “promoting the quality of the environment” is not clearly defined, and may require an ‘overall broad judgement’ in decision-making about protection of the natural environment, as competing matters could be prioritised over natural environment limits. This would be inconsistent with the intent to apply the approach taken in the *King Salmon*³ case.
 - b. “promoting the quality of the environment” may be too broad in its interpretation to be applied practically in the built environment without impacting on development. While some aspects of the built environment do need to be protected, such as the safe operation of roads or significant heritage, the duty to protect could be used to preserve the status quo of the built environment (including existing subjective amenity values) stymieing housing and infrastructure development.
 - c. the reference to “use, development and *protection* of... built environments” is very broadly framed and could unintentionally imply that the built environment ought to be generally protected in the same way as the natural environment
 - d. the reference to limits and positive outcomes referred to in the purpose statement is insufficiently clear to provide strong direction about what they seek to achieve.
16. The Resource Management Review Panel (the Panel) proposed that the management approach needed to promote the ‘quality of the environment’ and its differences for the natural and built environments would be defined through the National Planning Framework (promulgated by central government). The Panel also proposed separate implementation principles on the resolution of conflicts, as well as definitions to aid interpretation of their preferred wording. It is preferable to make the overall intent for the natural and built environment as clear as possible in the purpose statement of primary legislation to improve certainty in the system, although further guidance will still be necessary in subordinate instruments.
17. Officials’ view is that the purpose of the NBA should be focused on ensuring the use⁴ of the natural and built environments is enabled within natural environment limits to recognise and provide for the wellbeing of current and future generations. This would make the priority of natural environment protections clearer in the purpose of the Act. It would also avoid using the subjective phrase ‘quality of the environment’ as a goal for the built environment, which may have unintended negative consequences for the reform’s housing supply objectives. Development of housing and infrastructure can be clearly framed as a use of the natural and built environment that can achieve wellbeing.
18. The purpose and supporting provisions should also make clear:
- a. natural environment limits should be set to protect the life-supporting capacity of the natural environment and human health (see further discussion on limits below)
 - b. positive outcomes for the environment are identified and promoted
 - c. adverse effects on the environment generally (including the built and natural environments) are to be avoided, remedied or mitigated (or similar wording).
19. Officials have a preference to maintain a general duty to ‘avoid, remedy or mitigate’ adverse effects on the environment (or similar wording) as part of the NBA purpose statement. This wording is used in the RMA currently, and the intent in the NBA would be to provide a basis for management of ‘residual’ adverse effects on the environment (typically as the consenting stage) which are not already covered by limits or other protections, such as noise, odour, glare and traffic congestion. However, leaving the phrase ‘avoid, remedy

³ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38. The broad overall judgement approach previously treated the matters of importance in Part 2 of the RMA as having to be considered together with more or less equal weighting, which diminished the relative importance of protecting the natural environment (which is at the heart of sustainability and sustainable management).

⁴ Used in this context is taken as including development.

or mitigate' without further refinement in application or clarification in later NBA provisions or the National Planning Framework creates a risk of returning to the practice under the RMA in which it has been used to maintain the status quo and oppose development on grounds such as effects on amenity.

20. As Barry Rae has emphasised (quoted in a recent speech by the Parliamentary Commissioner for the Environment⁵) "the bottom line is that the RMA requires adverse effects to be avoided, remedied or mitigated irrespective of the benefits of the proposed development. This is understandable in respect of the natural environment, but is totally at odds with the reality of the built environment. ... The management of current complex urban growth, intensification and restructuring ... cannot be left simply to the avoidance, remediation and mitigation of adverse effects on the existing environment."
21. Officials will undertake further work on the requirement to 'avoid, remedy or mitigate' to ensure its application is proportionate to circumstances and does not impose unreasonable costs on development.
22. Matters relating to incorporating Te Mana o te Taiao as part of the purpose of the NBA are discussed below.

Recommendations

Agree the purpose of the Natural and Built Environment Bill reflect the overall policy intention of the proposed NBA that the use of the natural and built environments is enabled within 'natural environment limits' and in a way that provides for the wellbeing of current and future generations

Agree the purpose and supporting provisions also clarify:

- natural environment limits are set to protect the life-supporting capacity of the natural environment and human health
- beneficial outcomes are to be promoted for the natural and built environments overall
- in addition to meeting limits or promoting outcomes, activities must be carried out in a way that ensures any other adverse effects of activities on the environment are avoided, remedied, or mitigated (or similar wording)

Agree officials will undertake further work and report back to the Ministerial Oversight Group to ensure that the framing of the purpose in line with the Ministerial Oversight Group policy intent does not result in any unintended consequences for development and infrastructure delivery.

Agree officials will undertake further work to ensure measures developed to avoid, remedy and mitigate (or similar) adverse effects on the environment are proportionate and do not impose unreasonable costs on development

Te Mana o te Taiao

Context

23. Including 'Te Mana o te Taiao' in the purpose of the NBA is intended to incorporate a te ao Māori concept into the heart of the Act and reflect that the fundamental importance of the natural environment is shared environment ethic between Māori and non-Māori New Zealanders.
24. This proposal is crucial for realising the reform objective of better recognising te ao Māori and supports other objectives including better protecting and restoring the natural environment.

⁵ Parliamentary Commissioner for the Environment (2020) *Salmon Lecture on RMA Reform – Coming Full Circle*.¹²

25.

Issues and choices

26. Officials have identified issues with the Panel's proposal for Te Mana o te Taiao. These include that their proposed definition for Te Mana o te Taiao does not fully capture the essence of the concept, and that the statutory weighting proposed, 'to recognise the concept', could have negligible practical effect.

27.

28.

Key definitions

29. Cabinet noted the need to ensure definitions for words used in the purpose and supporting provisions of the NBA do not lead to unintended consequences. A number of issues have been identified with current definitions, and in particular those used for the natural and built environments, and infrastructure:
- a. *Natural environment*: There is a need to clarify that protection of the natural environment does not imply preservation of the status quo with regard to certain matters such as plants and animals grown for human use, animal and pest plants, cultivated land and land used for production forestry. And ensuring the definition is consistent from a te ao Māori perspective.
 - b. *Built environment*: The current definition of the built environment includes all human-made places in urban or rural areas, and therefore farms, orchards and primary production generally. There is a need to clarify the contents of the built environment and its relationship to the natural environment to ensure the policy intent of enabling development and use of housing, infrastructure and other human-made structures and facilities is clear.
 - c. *Infrastructure*: the definition provided by the Panel appears incomplete and relies on a listing approach which may inadvertently omit some types of infrastructure and is not future-proofed for types of infrastructure not currently in existence. A definition that incorporates the function of infrastructure may be a more useful starting point.
30. Officials will work with Parliamentary Counsel Office to ensure definitions needed in the purpose and supporting provisions make the policy intent of the NBA and avoid unintended consequences. This will include further work with the Ministry of Culture and Heritage to establish where historic heritage should fit within these definitions.

Recommendations

Note that officials will work with Parliamentary Council Office to refine key definitions needed for the Bill's purpose statement to clearly match Minister's policy intent and avoid any unintended consequences

Giving effect to the principles of Te Tiriti o Waitangi

Context

31. The Panel recommended the Treaty clause in the NBA require decision-makers to 'give effect to' the principles of Te Tiriti o Waitangi. Cabinet adopted this recommendation as a starting point for the NBA exposure draft and noted this would be a significant change from the RMA, which requires decision-makers to 'take into account' the principles. As the Panel stated, this change would modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it.

Issues and choices

32.

33.

A duty to set natural environment limits

Context

34. Cabinet has agreed to adopt the Panel's proposal that natural environment limits should be an important feature of the NBA. These limits would be standards that are set to protect aspects of the natural environment and would be mandatory for freshwater, coastal waters, air, soils and terrestrial and aquatic habitats for indigenous species.

Issues and choices

35. The intended role of natural environment limits is to protect specified natural resources from significant and irreparable harm to their capacity to support life. Protection of these resources is important for the health and wellbeing of current and future generations (ensuring those resources remain available to them) and for recognising the intrinsic value of the natural environment. The reason for setting natural environment limits should be made clear in the purpose and supporting provisions of the NBA.

Biophysical or natural environment

36. The current proposals refer to 'biophysical' limits, and the term has been used in several resource management documents to date. However, the term 'biophysical' has multiple

meanings and could cause confusion⁶. Referring to 'natural environment limits' is a more accurate reflection of intent.

Flexibility in certain circumstances

37. Although the intent is for life-support capacity of the natural environment to be maintained or improved overall, the system of natural environment limits will need to incorporate flexibility to allow for:
 - a. recognition that it may be appropriate to set a limit below the current state of the environment in some circumstances or locations
 - b. appropriate transition timeframes for meeting limits
38. If limits are blanket in coverage and no flexibility is provided, then there is risk that development and use (eg, new urban development) to achieve other wellbeing objectives will be stopped, or the ability to carry out emergency works to safeguard life or property prevented.
39. There also needs to be some flexibility to accommodate circumstances where there may be a localised breach of a limit, but this can be more than made good by wider benefits to the natural environment elsewhere. It may be possible to do this through specifying that the National Planning Framework and plans may set out the circumstances in which this approach will be acceptable.

Adopting a precautionary approach

40. Cabinet has previously agreed *both* that limits should be set in a way that allows for a 'margin of safety above significant or irreversible harm' and to adopt a precautionary approach. Applying both safety buffers would set limits much higher than is intended, and we recommend only applying the 'precautionary approach'.
41. Adopting a 'precautionary approach' in setting limits is a more practical option for addressing uncertainty about impacts on the natural environment. This is because it is less prescriptive and allows a wider range of methods to be used, such as adaptive management techniques that incorporate frequent review periods and monitoring. Additionally, taking a precautionary approach may result in de facto safety margins being adopted to accommodate data availability, accuracy and modelling limitations.

Clarifying the status of estuaries and reference to biodiversity

42. Estuaries contain high levels of biodiversity but are significantly affected by the cumulative effects of freshwater contamination and runoff from adjoining land. Under the Panel's suggested definition of 'freshwater' or 'coastal water', limits would be required for water in estuaries. However, as water in estuaries is generally brackish (a mix of freshwater and seawater) and therefore not strictly 'coastal water', it is unclear which of the limits (freshwater or coastal water) would apply to estuaries. It is therefore suggested that 'the water quality in estuaries' be included in the list of matters for which limits should be set. This would enable a specific approach for these unique and highly valued ecosystems.
43. Clarifying the current framing of limits to protect indigenous biodiversity is proposed. Cabinet's in-principle decisions propose a requirement to set limits for "the quality and extent of terrestrial and aquatic habitats for indigenous species". To allow more flexibility in developing controls to protect indigenous species, our preference is that this limit take a broader focus and reference biodiversity, habitats and ecosystems.

Further work to be undertaken on targets

44. While natural environment limits are intended to help protect the life-supporting capacity of the natural environment, it is also proposed that there will be a set of targets associated with improving the health of natural environments and achieving outcomes in built environments. As with limits, it is intended that targets can be set through the National

⁶ Biophysics is also a branch of physical sciences.

Planning Framework, and through Natural and Built Environment plans. Further work is still being carried out on the nature and content of targets, as well as how they will be set.

Recommendations

Agree to clarify that the purpose of natural environmental limits is to protect the life-supporting capacity of the natural environment and human health

Agree natural environment limits are set in a way that is flexible enough to accommodate different levels of environmental quality in different circumstances and locations, if provided for in the National Planning Framework

Agree to adopt only the more general requirement for a 'precautionary approach' when setting limits, rather than also including a 'margin of safety' requirement

Note that the Minister for the Environment intends to make the following minor changes to the list of natural environment limits:

- a. add 'water in estuaries' of the natural environment for which limits must be set
- b. broaden the focus of limits to protect indigenous species to include "biodiversity, habitats, and ecosystems", or similar phrasing with the same intent

Note that the NBA will include a system of targets associated with improving the natural and built environments to be detailed in future papers to the Ministerial Oversight Group on development for the National Planning Framework and Natural and Built Environment Plans

Specifying natural and built environment outcomes to be achieved


Context

45. Cabinet has also agreed to establish a set of outcomes to be pursued by those exercising powers and functions under the NBA, to replace the existing 'matters of national importance' and 'other matters' in Part 2 of the RMA.
46. The purpose of the outcomes is to provide direction on the priorities to be worked towards when implementing the NBA. It is expected that the content of the outcomes would direct the content of the National Planning Framework and plans and guide other decisions made by those exercising functions and powers under the NBA. Outcomes are not expected to be achieved in every location at all times. Their implementation through regional spatial strategies and plans will identify the particular circumstances and locations where specific outcomes (or combinations of outcomes) are to be achieved. The identification of beneficial outcomes under the National Planning Framework is intended to direct the rest of the system, and reduce the potential for provisions in plans that favour or lock in the status quo for land or resource use.

Issues and choices

47. The policy intent of the outcomes is to provide goals for decision-makers to work towards in managing the natural and built environments. This in turn can provide certainty to those undertaking activities subject to the Act about what is to be encouraged or likely to be permissible. The lack of desired outcomes is a key gap in the existing resource management system. Stated outcomes are a useful device for setting expectations about what they system should deliver, as well as monitoring performance towards achieving it.
48. Cabinet's in-principle decision is to adopt a lengthy set of 21 outcomes grouped by topic matters (natural environment, built environment, tikanga Māori, rural, historic heritage, natural hazards and climate change). The current set also includes some generally stated outcomes that are intended to be refined through the National Planning Framework, for

example, “enhancement of features and characteristics that contribute to the quality of the natural environment”.

49. Officials’ view is that the current lengthy list creates unnecessary complexity and relies too much on secondary instruments to give meaning to the NBA. Although the subheadings for the current list of outcomes are intended to assist interpretation, feedback from the likes of Local Government New Zealand suggests the headings cause confusion by implying that outcomes fall exclusively under a single heading. This confusion exists despite the Panel’s report emphasising: “the specific outcomes identified are not intended to be exclusive to each category.”
50. As currently drafted, all the outcomes listed are to be ‘provided for’. The direction to ‘provide for’ in this context generally creates the requirement for provisions to be included (and presumably regulated for) in instruments such as the National Planning Framework and in plans. However, a number of the outcomes listed would require the commitment of private resources. For example, it is hard to regulate to require an increase in the use of renewable energy when the decisions around providing such energy may be in the hands of private companies, and decisions on use are typically in hands of consumers. This suggests a need to further clarify the requirements on decision-makers with regard to different types of outcomes.
51. Officials have also noted that some of the outcomes themselves could be worded or refined to better achieve the objectives for the reform. Examples of issues with the current outcomes include:
- a. a number of the protection directives do not specify what the subject matters is to be protected from (in the RMA it is ‘from inappropriate subdivision, use and development’)
 - b. the renewable energy outcome makes no mention of generation (which is important to increase supply of renewable energy for use)
 - c. the place of outcomes for the wider marine environment (not just the coast) is not clear
 - d. 
 - e. there needs to be more active duty on public landowners to reduce the risk from natural hazards (at present it would be to provide for the reduction of risk).
52. The list of outcomes to be achieved under the NBA should be refined to:
- a. better align them with the objectives sought for the reform
 - b. consolidate the number of outcomes to assist in reducing complexity
 - c. remove the potential confusion associated with the current subheadings and group the outcomes according to the actions expected from those exercising functions and powers under the Act (Appendix 3 provides an example of how this could be approached).
53. If Ministers agree with the general approach to be taken, further work is needed by officials to test and finalise the list of outcomes. It is proposed to report back to the Minister for the Environment seeking final decisions on the list of outcomes to be reflected in the exposure draft.

Agree to refine proposals relating to natural and built environment outcomes to better reflect objectives of reform, consolidate the number of outcomes and group them so that the actions expected of those exercising functions and powers is clearer (protect and restore, protect, enable, promote or similar wording)

Agree to delegate to the Minister for the Environment to make final detailed decisions about the expression and grouping of outcomes

Resolution of conflicts

54. The proposals above contain specified requirements for natural environment limits and an expanded list of outcomes that must be provided for, some of which are likely to conflict in certain cases. In order to provide clarity about how these potential conflicts are to be resolved, Cabinet has agreed that:
- a. The NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override, natural environment limits
 - b. The NBA echo the hierarchy described in the *King Salmon* decision of the Supreme Court whereby Part 2 is implemented through national direction, and plans in turn give effect to national direction
 - c. The NBA require any conflicts between outcomes to be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environment Plans
55. These decisions are currently reflected in proposals for the purpose and supporting provision of the NBA within the implementation principles on the hierarchy and resolution of conflicts.
56. The strong emphasis on the prescription of natural environment limits and the mandatory content required in the National Planning Framework is expected to provide direction to assist in resolving potential conflicts. For example, by setting minimum standards for the quality of aspects of the natural environment that must be met. More comprehensive plans will also assist in addressing conflicts between the proposed outcomes. For example, through classification of more activities as either 'permitted', or 'prohibited'.
57. Despite the development of a more comprehensive planning framework, it is inevitable that conflicts between outcomes will continue to arise in consenting decisions, including in ways not anticipated by plans. It will not be feasible for the National Planning Framework and Natural and Built Environments Plans to foresee and conclusively resolve all tensions in advance, and so the Act will need to ensure that appropriate mechanisms are made available to enable decisions makers to do so at the consenting stage if necessary. This issue will be addressed in later advice on the proposals for reform of resource consent decision-making criteria and processes.
58. The approach to the resolution of conflicts agreed by Cabinet relates primarily to the requirements of National Planning Framework and Natural and Built Environment Plans. These decisions may be better reflected as part of mandatory content of these instruments. Officials will work with Parliamentary Counsel Office to determine the best way to reflect these decisions, be it in the purpose and supporting provisions, or other parts of the NBA.

Note that it will not be feasible for National Planning Framework and Natural and Built Environment Plans to foresee and conclusively resolve all tensions in advance, so the Act will also need to ensure that appropriate mechanisms exist to enable decisions-makers to do so during lower order decision-making (such as consenting)

Agree that officials will work with Parliamentary Counsel Office to determine the best way to reflect decisions on the resolution of conflicts throughout the NBA

Other implementation principles

Context

59. Cabinet's in-principle decisions include a number of other implementation principles and duties to guide Ministers and others exercising functions and powers under the NBA. These respond to difficulties experience with the interpretation and implementation of the RMA. They fall into the following areas:

- a. **Good practice principles:** These are intended to guide decision-making under the NBA. The principles relate to integrated management of resources, public participation, Māori participation, cumulative environmental effects and the precautionary approach.
- b. **Duties:** These are intended to establish mandatory requirements for the Minister for the Environment (and where applicable the Minister of Conservation) to develop necessary measures for the system to work as intended (through the National Planning Framework).

Issues and choices

60. We support the policy intent behind the good practice implementation principles and duties but they are better incorporated into the specific decision-making parts of the NBA to which they are relevant (eg, for the National Planning Framework and Natural and Built Environment plans) or other provisions where appropriate. Appendix 4 suggests how this could be achieved.
61. Most principles do not apply to all system decisions and decision-makers uniformly. For example, promoting integrated management of the natural and built environments is best achieved through the National Planning Framework and Natural and Built Environment Plans, rather than consenting processes. Likewise, public participation is important for decision-making about the environment, but appropriate provisions for participation will vary between decision-making processes. If these processes are established in relevant sections of the Act, there is no need for an additional general principle. An additional principle may also provide an avenue for legal challenge, creating uncertainty and inefficiency.
62. Some principles also appear to only signal that those exercising functions and powers are able to undertake certain actions. These are the principles that relate to complementing existing legislation and implementing international obligations. Officials' view is that they are unnecessary.
63. The initial view of officials is that principles providing for kaitiakitanga, tikanga Māori and the use of mātauranga Māori, and Māori participation, could be expressed as part of a requirement to 'give effect to the principles of Te Tiriti o Waitangi.' or in other sections of the NBA relating to specific decision-making processes.
64. Officials will work with the Parliamentary Counsel Office to reflect the policy intent of the implementation principles (other than those we recommend removing) as specific substantive and procedural decision-making requirements in the relevant parts of the NBA. Once decisions about natural environment limits and natural and built environment outcomes are confirmed, these decisions need aligning with the proposed duties of Ministers to develop components of the National Planning Framework.

Agree to include proposals relating to good practice implementation principles and Ministerial duties as part of the specific substantive and procedural decision-making requirements to which they are relevant

Agree to remove principles that relate to complementing existing legislation and implementing international obligations.

Treaty impacts

65. Developing proposals for Tiriti-consistent purpose and supporting provisions of the NBA presents an important opportunity for Māori-Crown relations.
66. Previous feedback provided by Māori suggests iwi/hapū are likely to support a system that better aligns with the overall policy intention of the proposed NBA that the use of the natural and built environments is enabled within 'natural environment limits' and in a way that provides for the wellbeing of current and future generations. This support will be contingent on factors such as:
 - a. the degree to which Māori are involved in limit-setting processes
 - b. whether mātauranga Māori informs the limit setting process
 - c. the specific natural environment matters (eg, freshwater quality) for which limits must be set and the values and environmental outcomes to be protected and provided for
 - d. whether the targets that aim to go beyond limits to achieve continuing progress are ambitious enough to restore and protect natural environmental taonga.
67. Some Treaty settlements have established new frameworks for the management of specific natural taonga and the iwi involved are likely to want assurance that any limit-setting regime is consistent with the tikanga and kawa of those frameworks.
68. Further, Māori take a strong interest in the mechanisms to protect Māori cultural values and customary rights in relation to resource allocation and development that can take place within natural environment limits.
69. This assessment is informed by submissions to the Resource Management Review Panel, previous engagement with Māori on resource management matters and reports of the Waitangi Tribunal.

Treaty settlements

70. Potential implications for specific Treaty settlements are becoming clearer as policy development moves to process-focused sections of the NBA, especially decision-making mechanisms. An approach to engagement with post-settlement governance entities (PSGEs) on the transition of Treaty settlement redress is being developed.

Appendix 1: Illustrative drafting of the NBA purpose and supporting provisions from the Cabinet Paper of 14 December 2020

Please note that this drafting has not been drafted by the Parliamentary Counsel Office and is attached for indicative purposes only.

Key definitions as used in the Panel’s Report

Built Environment: includes human-made buildings, structures, places, facilities, infrastructure, and their interactions, which collectively form part of urban and rural areas in which people live and work.

Natural Environment: includes, land, water, soil, minerals and energy, all forms of plants, animals (except humans) and other living organisms (whether native to New Zealand or introduced) and their habitats, and includes ecosystems.

Te Mana o te Taiao: refers to the importance of maintain the health of air, water, soil and ecosystems and the essential relationship between the health of resources and their capacity to sustain all life.

<p>Section 5 Purpose</p> <ul style="list-style-type: none">(1) The purpose of this Act is to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.(2) The purpose of this Act is to be achieved by ensuring that:<ul style="list-style-type: none">(a) the use, development and protection of natural and built environments is within biophysical limits;(b) positive outcomes for the environment are identified and promoted; and(c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated.(3) In this Act environment includes–<ul style="list-style-type: none">(a) ecosystems and their constituent parts;(b) people and communities; and(c) natural and built environments whether in urban or rural areas.(4) In this Act wellbeing includes the social, economic, environmental and cultural wellbeing of people and communities and their health and safety.
<p>Section 6 Te Tiriti o Waitangi</p> <p>In achieving the purpose of this Act, those exercising functions and powers under it must give effect to the principles of Te Tiriti o Waitangi.</p>
<p>Section 7 Biophysical limits</p> <ul style="list-style-type: none">(1) Biophysical limits are the minimum standards prescribed through the National Planning Framework by the responsible Minister to achieve the purpose of this Act(2) Biophysical limits –<ul style="list-style-type: none">(a) must provide a margin of safety above the conditions in which significant and irreversible damage may occur to the natural environment;(b) must be prescribed for, but are not limited to:<ul style="list-style-type: none">(i) the quality, level and flow of fresh water:(ii) the quality of coastal water:(iii) the quality of air:(iv) the quality of soil:

- (v) the quality and extent of terrestrial and aquatic habitats for indigenous species:
 - (c) may be quantitative or qualitative.
- (3) Local authorities are not precluded from setting standards that are more stringent than those prescribed by the Minister.

Section 8 Outcomes

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

Natural environment

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

Built environment

- (f) sufficient development capacity for housing and business to respond to demand and provide for urban growth and change;
- (g) housing supply and choice to meet diverse and changing needs of people and communities;
- (h) strategic integration of infrastructure with land use;

Tikanga Māori

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

Rural

- (l) sustainable use and development of the natural and built environment in rural areas;
- (m) protection of highly productive soils;
- (n) capacity to accommodate land use change in response to social, economic and environmental conditions;

Historic heritage

- (o) protection of significant historic heritage;

Natural hazards and climate change

- (p) reduction of risks from natural hazards;
- (q) improved resilience to the effects of climate change including through adaptation;
- (r) reduction of greenhouse gas emissions;

- (s) promotion of activities that mitigate emissions or sequester carbon; and
 - (t) increased use of renewable energy.
- (2) When providing for the outcomes in (1) local authorities must provide for the applicable regional spatial strategies prepared under the Strategic Planning Act **202X**

Section 9 Implementation

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

Principles

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

Ministerial duties: outcomes and biophysical limits

- (3) The responsible Minister must through the National Planning Framework:
- (a) identify and prescribe the biophysical limits specified in section 7(2)(b);
 - (b) nationally significant features of the matters set out in section 8(b)(i);
 - (c) *outstanding natural features and outstanding natural landscapes* under section 8 (b)(ii) that are of national significance;
 - (d) areas of significant indigenous vegetation and significant habitats of indigenous fauna under section 8 (b)(iii) that are of national significance;
 - (e) methods and requirements to give effect to the enhancement and restoration of ecosystems for the purposes of section 8 (c);
 - (f) methods and requirements to give effect to the maintenance of indigenous biodiversity and restoration of viable populations of indigenous species for the purposes of section 8 (d);
 - (g) methods and requirements to respond to natural hazards and climate change for the purposes of section 8 (q) to 8 (u).
- (4) The responsible Minister may through the National Planning Framework identify and prescribe any other matter the Minister considers appropriate, including:
- (h) features and characteristics that contribute to enhancing the quality of natural and built environments;
 - (i) targets to achieve continuing progress towards achieving the outcomes specified in section 8;
 - (j) how the principles of Te Tiriti o Waitangi will be given effect through functions and powers exercised under this Act; and

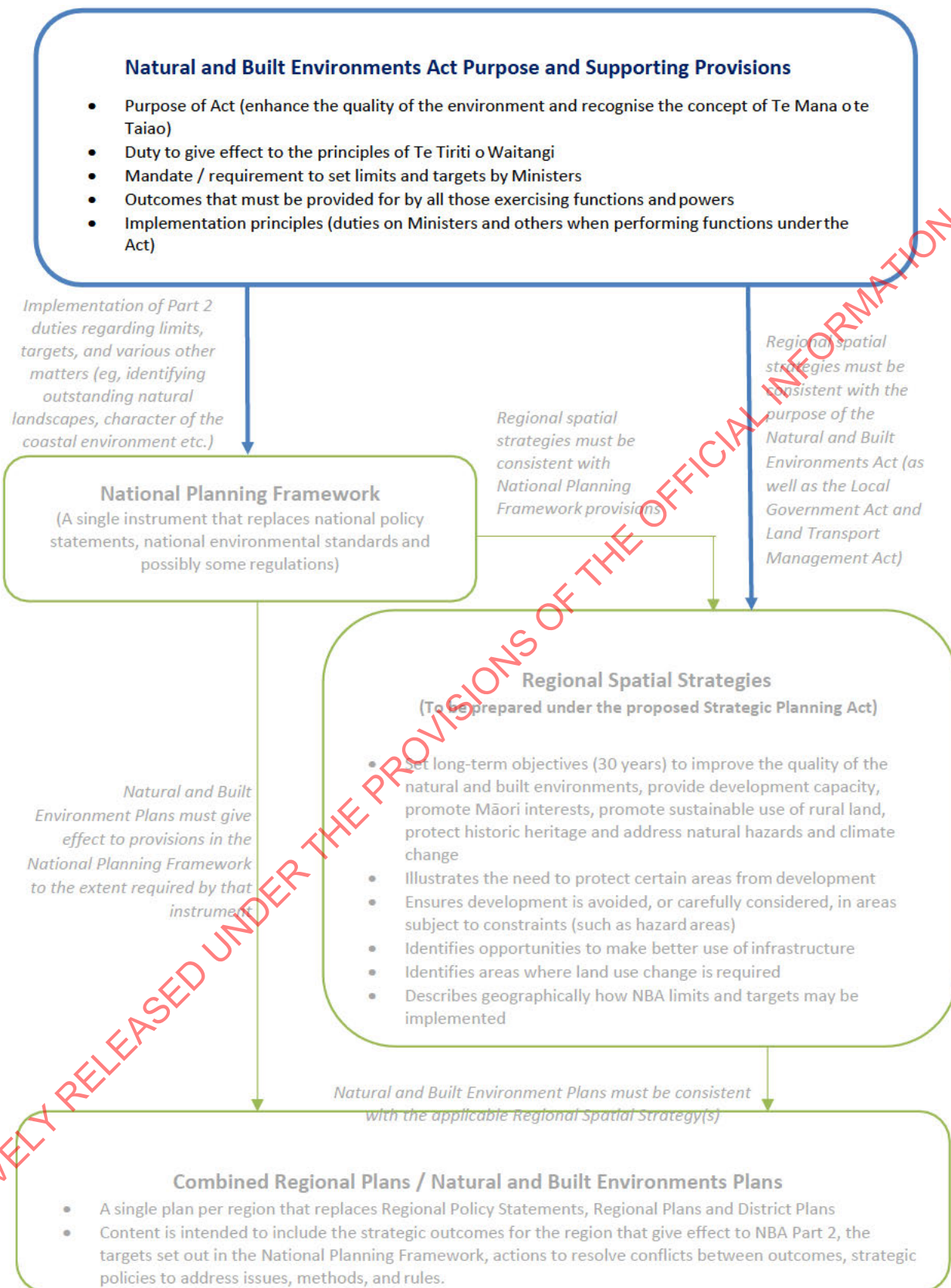
- (5) The responsible Minister is the Minister for the Environment except in relation to the coastal marine area for which the Minister of Conservation is the responsible Minister in consultation with the Minister for the Environment.

Hierarchy: resolution of conflicts

- (6) The use and development of natural and built environments must be within prescribed biophysical limits and comply with binding targets, national directions and regulations.
- (7) Subject to (6), any conflict in or doubt about the application of matters in section 8 must be reconciled and clarified as necessary in a way that gives effect to the purpose of this Act:
- (a) in the first instance by the Minister through the National Planning Framework national direction or by regulation; and
 - (b) subject to any direction in the National Planning Framework or regulations, by the provisions of natural and built environments plans.

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Appendix 2: How the NBA purpose is implemented as proposed by the Panel



Appendix 3: Example of consolidating and grouping NBA outcomes by legal duty

Protect and restore: the expectation is that the National Planning Framework (NPF), plans and decisions will seek not only to maintain the existing state and integrity of the named resource or subject matter, but seek to improve that state (if it has been degraded) to a quality that may be specified in the NPF, plan or a consent condition.

Protect: the NPF, plans and decisions are expected to maintain the state and integrity of the resource or subject matter specified. 'Protect' does not mean 'no use' of the resource or subject matter, but that it needs to be kept safe from harm.

Enable: the NPF, plans and decisions should provide the conditions needed to make specified actions or activities possible or easier. This could include lighter regulation of certain activities or, in other circumstances, ensuring that the effects of other activities do not detrimentally impact the specified activity.

Promote: the NPF, plans and decisions should seek to actively encourage, support or further the progress of the specified subject matter. This could include NPF or plan provisions that enable or protect certain matters or resources, complementing other actions outside the scope of the NBA.

Recommended outcomes
<p>The following are protected and restored:</p> <ul style="list-style-type: none">• the ecological integrity of ecosystems - to a healthy functioning state• viable populations of indigenous species• indigenous biological diversity• the relationship of iwi, hapū and whanau and their tikanga and traditions with their ancestral lands, identified cultural landscapes, waters and sites.• significant historic heritage including identified heritage landscapes - from inappropriate subdivision, use and development• public access to and along the coastal marine area, wetlands, lakes, rivers and their margins• wāhi tapu and other taonga
<p>The following are protected:</p> <ul style="list-style-type: none">• nationally or regionally significant features of the natural character of the coastal environment (including the coastal marine area) wetlands, lakes, rivers and their margins• nationally or regionally significant outstanding natural features and outstanding natural landscapes• protected customary rights• highly productive soils - from inappropriate subdivision and use
<p>The following are enabled:</p> <ul style="list-style-type: none">• at least sufficient development capacity for housing, business and other services to respond to demand and provide for urban growth and change• housing supply to meet the diverse and changing needs of people and communities

- efficient provision of infrastructure services to support the needs of people

The following are promoted:

- the reduction of greenhouse gas emissions and activities that mitigate emissions or sequester carbon
- improved resilience to the effects of climate change, including through adaptation
- the increased generation and use of renewable energy
- the reduction of risks from natural hazards

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Appendix 4: How implementation principles might be incorporated in parts of the NBA

Principle	Recommended approach
Promotes the integrated management of natural and built environments	This principle is developed as part of the requirements of the National Planning Framework, Natural and Built Environment plans, and planning evaluation reports.
Ensures public participation in processes under this Act, to an extent that recognises the importance of public participation in good governance, and is proportionate to the significance of the issue	This principle should be taken forward by specifying public participation processes in the NBA for development of the National Planning Framework, Natural and Built Environment plans, consenting processes, and other relevant areas.
Promotes appropriate mechanisms for effective participation by iwi, hapū and whanau in processes under this Act	As above, mechanisms for Māori participation should be built into relevant processes of the NBA. If these processes are established, there is no need for an additional principle.
Has particular regard to any cumulative effects of the use and development of natural and built environments	<p>Cumulative effects are likely to be addressed through some of the proposed improvements to the existing system, such as setting limits, integrating plan-making functions, improved data gathering, and feedback loops that link monitoring with plan reviews. In addition to these general improvements, the consideration of cumulative effects should be made a substantive requirement during the following decisions:</p> <ul style="list-style-type: none"> • when setting limits through the National Planning Framework • when developing Natural and Built Environment plans, and in particular translating limits to the local level • when monitoring the effectiveness of the National Planning Framework and Natural and Built Environment plans, so that changes can be made if cumulative effects are becoming harmful • when considering whether a consent application can be granted, based on the existing cumulative effects of consents • conditions, including review conditions, associated with resource consents – particularly for the allocation or use of resources such as water.

Takes a precautionary approach where effects on the natural environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences

The precautionary approach should be developed as part of the decision-making requirements for the National Planning Framework, Natural and Built Environment Plans, and consents. This includes:

- setting limits and policies to achieve outcomes through the National Planning Framework. In setting these, a precautionary approach could result in a 'safety buffer' that accommodates uncertainty about environmental data, or adaptive management methods, such as frequent monitoring and review requirements
- for Natural and Built Environment plans, the principle is also relevant when translating limits and outcomes down to the local level
- at the consenting level, the principle is relevant to setting consent conditions based on the information available in applications (ie, setting more stringent conditions if there is a lack of information to make a decision).

This should apply to the whole environment, rather than being restricted to the natural environment. For example, hazards can equally effect people and the built environment.

Complements other relevant legislation and international obligations

While alignment of decision-making under different legislation is an important issue, this is not likely to be advanced by including a general principle in the NBA. Rather it should be addressed by central government, through national policy, as required.

Complying with international obligations is best addressed by central government rather than local government. Where necessary, international commitments should be addressed on a case-by-case basis through national policy and regulation.

Various duties for Ministers and local authorities to develop measures for making the system work as intended through the National Planning Framework and Natural and Built Environment Plans

These duties should be developed as part of mandatory content requirements in the National Planning Framework and Natural and Built Environment Plans.

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