

## Agenda – RM Reform Ministerial Oversight Group Meeting #3

**Date:** Monday 8 March 2021, 3.30-4.15 pm

**Location:** 2.1 EW

**Chair:** Hon Grant Robertson, Minister of Finance

**Deputy Chair:** Hon David Parker, Minister for the Environment

**Attendees:** Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti  
 Hon Megan Woods, Minister of Housing  
 Hon Nanaia Mahuta, Minister of Local Government  
 Hon Poto Williams, Minister for Building and Construction  
 Hon Damien O'Connor, Minister of Agriculture  
 Hon 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

3.30 – 3.35	Agenda Item 1: Actions from previous meeting	Lead speaker: Minister of Finance
<p><b>Description</b></p> <ul style="list-style-type: none"> <li>• This item seeks to follow up on any actions arising from the previous meeting, including confirming the minutes from MOG #2 on 15 February and provide a brief update to the MOG on directed actions</li> <li>• The relevant updates on directed actions from MOG #2 are:               <ul style="list-style-type: none"> <li>– [REDACTED]</li> <li>– Officials are continuing work to ensure that the framing of the purpose in line with the MOG's policy intent does not result in any unintended consequences for development and infrastructure delivery and will report back at MOG #4. (Log of actions reference: MOG #2, minute paragraphs 14 and 18).</li> </ul> </li> </ul>		
<p><b>Supporting documents</b></p> <ul style="list-style-type: none"> <li>• Log of actions from previous MOG meetings (MOG #3 Ministers pack, pages 5-6)</li> <li>• Minute of MOG meeting #2 on 15 February 2021 (MOG #3 Ministers pack, pages 7-11)</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul>		
3.35 – 4.15	Agenda Item 2: Agreeing policy for the National Planning Framework	Lead speaker: Minister for the Environment
<p><b>Description</b></p> <ul style="list-style-type: none"> <li>• This item seeks further decisions on proposals to provide central government direction in the new system, provisionally called the National Planning Framework.</li> <li>• The decisions will cover:               <ul style="list-style-type: none"> <li>– purpose and role in the system</li> <li>– form and function</li> <li>– the process and safeguards, including for limits and targets</li> <li>– direction that is mandatory for central government to provide.</li> </ul> </li> </ul>		

**Supporting documents**

- Further policy proposals for the National Planning Framework (MOG #3 Ministers pack, pages 16-29)

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## Recommendations – RM Reform Ministerial Oversight Group Meeting #3

Officials recommend that the MOG:

### Agenda Item 1: Actions from previous meeting

- 3.a confirm the minute of MOG meeting #2 on 15 February 2021
- 3.b 

### Agenda Item 2: Agreeing policy for the National Planning Framework


*Purpose and role in the system*

- 3.1 note that Cabinet has agreed that the purpose of the National Planning Framework is to provide direction on matters of national significance, or matters where national consistency is desirable
- 3.2 agree the National Planning Framework may also provide direction where consistency is desirable on a sub-national scale
- 3.3 agree to delegate authority to the Minister for the Environment to determine if a threshold test would be appropriate on matters of national significance and the criteria it would contain, in consultation with other Ministers as appropriate
- 3.4 agree the role of the National Planning Framework is to:
  - a. take a strategic approach to identify central government priorities across the NBA to direct and influence regional spatial strategies, and natural and built environment plans
  - b. provide a mechanism by which the NBA and SPA will give effect to the principles of Te Tiriti and reflect te ao Māori
  - c. support the implementation of natural environment limits and natural and built environment outcomes in the NBA, including high level resolution of competing matters
  - d. enable consistency and support decision making by providing methodologies, standards and direction
  - e. provide national, regional, local or spatially specific direction (where appropriate)

*The form of the National Planning Framework*

- 3.5 agree the intent of the National Planning Framework is to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the system
- 3.6 agree that the National Planning Framework may include outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions or however these are replaced in the NBA (for nationally significant outcomes or where consistency is desirable)
- 3.7 agree to delegate authority to the Minister for the Environment to determine detailed policy for preparation, reviewing and amending the document in parts, provision for content specific to certain district/regions and how to enable and provide for overarching direction through the National Planning Framework

*The process to develop the National Planning Framework, including limits and targets*

- 3.8 agree to the policy intent of enabling a process that ensures:
- a. effective public consultation
  - b. a role for Māori that gives effect to the principles of Te Tiriti
  - c. appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
  - d. opportunities are available for early engagement with decision-makers on spatial strategies and NBA plans
  - e. robust evaluation and analysis built into appropriate decision-points
  - f. flexibility to design a process that is proportionate to the scale and impact of what is being proposed, in some cases this may require submitters to be heard or use of independent commissioners
  - g. consideration is given to integrated management, cumulative effects and the purpose of the Act before developing and recommending direction for the NPF
- 3.9 agree to delegate authority to the Minister for the Environment to determine details of the process for developing the National Planning Framework consistent with the policy intent described above in consultation with other Ministers as appropriate
- 3.10 agree the National Planning Framework will be made by the Governor-General in Council
- 3.11 agree the National Planning Framework will be secondary legislation for the purpose of the Legislation Act 2019, which will mean it will be disallowable instrument and must be presented to the House of Representatives
- 3.12 

*Mandatory proposals for direction*

- 3.13 agree the NBA identify a list of mandatory topics for which the responsible Minister must issue central government direction as a priority to support effective management of the natural and built environment and provide for timely input into regional spatial planning, including:
- a. natural environment limits
  - b. natural hazards and climate change
  - c. other nationally significant matters including nationally or regionally significant features, outstanding natural features and outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna (or similar wording to reflect the outcomes in the NBA)
  - d. methods and requirements for enhancing and restoring ecosystems (or similar wording to reflect the outcome in the NBA)
  - e. methods and requirements for the protection, restoration, maintenance and enhancement of indigenous biodiversity (or similar wording to reflect the outcome in NBA)
- 3.14 agree to include urban and infrastructure in the mandatory list, subject to a report back from officials on the scope of the work and relative funding source
- 3.15 note that the responsible Minister has discretion to issue central government direction on other nationally significant matters or matters where consistency is desirable, such as on outcomes in the NBA or targets to support natural environment limits



## Log of actions from previous MOG meetings (for noting only)

MOG #	Minute paragraph	Action	Status
1	13	A process will be developed for engagement with Treaty Partners and wider Māori organisations	In progress
2			In progress
2	14	Officials to 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	In progress, update delayed to MOG #4
	18	Officials will provide an update on recommendation 14 to the next MOG meeting (March 2021)	
2	15	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	In progress
2	27	Ministry for the Environment officials to provide advice on the reference to the quality of coastal waters in the list of natural environmental limits to the Minister for the Environment and Minister of Agriculture	In progress
2	35	Ministers 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	In progress
2			In progress
1	2c	Advice is sought on the topics covered in outcome 2.c. including how this outcome could influence RM reform policy options (ie, policy options that will support housing supply to be responsive to demand)	Complete

MOG #	Minute paragraph	Action	Status
1	4a	Outcome regarding 'Greater resilience to natural hazards, with national climate change risk assessments....' considered too high-level and combining complex issues - outcome to be re-worded	Complete
1	5d	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 to be provided on this outcome to ensure more effective and proportionate public participation	Complete
1	6	The outcomes for objectives 2, 3, 4 and 5 to be amended and recirculated to the MOG for discussion and agreement at the next MOG meeting on 15 Feb 2020	Complete
1	12	DIA working with MfE to prepare an engagement plan for working with local government that will be reported back to the Environment and Local Government Ministers	Complete
2	10	Minister for the Environment to confirm wording for outcome 5.c to clarify or provide examples of this outcome - "external costs fall where they should and the burden of system processes shifts towards the public sector"	Complete
2	38	Corrections and Oranga Tamariki officials will be part of the RM Reform officials' group to ensure social wellbeing is considered in work on the reform purpose and principles	Complete
2			Complete

## Minute from RM Reform Ministerial Oversight Group Meeting #2 on 15 February 2021 (for item 1)

### MINUTE

#### RM Reform Ministerial Oversight Group meeting #2

**Date:** Monday 15 February 2021, 3.45 – 4.30 pm

**Location:** Zoom

**Chair:** Hon David Parker, Minister for the Environment (under delegation from Hon Grant Robertson, Minister of Finance)

**Deputy Chair:** n/a

**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 Kiritapu 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

**Apologies:** Hon Michael Wood, Minister of Transport

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#### Agenda Item 1: Actions from previous meeting

1. **Confirmed** minute of MOG meeting #1 on 26 January 2021
2. **Noted** that DIA and MfE officials are developing an engagement plan for working with local government
3. **Noted** that MfE officials, supported by Te Arawhiti, are developing a process for engaging with Treaty Partners and wider Māori organisations.

#### Agenda Item 2: Agreeing outcomes of reform

4. **agreed** 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:
  - 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 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)
5. **noted** the additional information requested on how the RM reform policy proposals will support the housing supply outcome
6. **agreed** 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. [see para 9 below]
  - 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
7. **agreed** 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.

8. **agreed** 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. [see para 10 below]
  - 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

9.

10. **delegated** to the Minister for the Environment to confirm wording for outcome 5.c to clarify or provide examples of this outcome - “external costs fall where they should and the burden of system processes shifts towards the public sector”

**Agenda Item 3:** Purpose and supporting provisions of the Natural and Built Environments Act (NBA)

11. **noted** 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*

12. **agreed** 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

13. **agreed** the purpose and supporting provisions also clarify:

- a. natural environment limits are set to protect the life-supporting capacity<sup>1</sup> 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)

14. **agreed** that 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

15. **agreed** that 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

16.

17. **agreed** that officials will work with Parliamentary Counsel Office to refine key definitions needed for the Bill’s purpose statement to clearly match Minister’s policy intent and avoid any unintended consequences

18. **noted**, in respect of recommendation 14, that officials will provide an update to the next MOG meeting (March 2021)

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



19. **noted**, in respect of recommendation 15, the Minister of Housing's comment that MfE officials should continue to work with MHUD officials

20.

*Natural environment limits*

21. **agreed** to clarify that the purpose of natural environmental limits is to protect the life-supporting capacity of the natural environment and human health
22. **agreed** 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
23. **agreed** to adopt only the more general requirement for a 'precautionary approach' when setting limits, rather than also including a 'margin of safety' requirement
24. **noted** 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
- [see also para 26 below]
25. **noted** 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
26. **agreed** with the Minister for the Environment, that the reference to 'water in estuaries' in recommendation 23 a. above, be amended to read 'the quality of estuaries'
27. **agreed** that Ministry for the Environment officials would provide advice on the reference to the quality of coastal waters in the list of natural environmental limits to the Minister for the Environment and Minister of Agriculture

*Natural and built environment outcomes*

28. **agreed** 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)
29. **agreed** 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

*Resolution of conflicts*

30. **noted** 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)

31. **agreed** 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*

32. **agreed** 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
33. **agreed** to remove principles that relate to complementing existing legislation and implementing international obligation

*Next steps*

34. **noted** that officials will work with Parliamentary Counsel Office to progress drafting on the basis of these decisions
35. **noted** 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

36.

37. **noted** 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

38.

39.

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## Further policy proposals for the National Planning Framework (for item 2)

### Key messages

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1. This paper requests further decisions on proposals to provide central government direction, or intervention in the planning system in the proposed Natural and Built Environments Act (NBA). It takes into account decisions that have been made at the Ministerial Oversight Group Meetings 1 and 2.
2. The further policy proposals for the NPF provisions of the NBA cover the NPF's:
  - a. purpose and role in the system
  - b. form
  - c. process and safeguards, including for limits and targets.
  - d. mandatory proposals for direction.

#### *Purpose and role in the system*

3. The purpose of the NPF should be to provide direction on matters of national significance or where national or regional consistency is required.
4. The role of the NPF should be to take a strategic approach to set central government priorities across the NBA, provide a mechanism to give effect to the principles of Te Tiriti and reflect te ao Māori, implement limits and targets, enable consistency and support decision making, and provide spatially specific direction where appropriate. A strategic, aligned and integrated NPF is essential for an outcomes focused system.

#### *Form of the NPF*

5. The NPF should provide an integrated and cohesive set of direction to guide the system and support decision-makers in reconciling competing matters across the system.
6. It is intended that the same functions and powers provided under the RMA would be enabled (outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions) but may be adjusted based on any decisions from the Ministerial Oversight Group on upcoming workstreams.
7. Officials recognise the importance of investment certainty and supporting the transition to the new system. Work is underway on a prototype single statement to test the approach and this will support the assessment of the existing suite of national direction. It is anticipated that the policy intent of the existing tools will be transferred, but not necessarily the instruments themselves.

*Officials recommend to delegate authority to the Minister for the Environment to determine the detailed policy for the form of the NPF in the exposure draft. Process for developing the NPF*

8. Officials do not recommend that the NPF is developed and amended through a single prescriptive process such as a Board of Inquiry. Rather, officials recommend that a flexible process is enabled that can be proportional to the scale and intervention of the proposal.
9. Officials propose that the process should ensure:
  - a. effective public consultation
  - b. a role for Māori that gives effect to Te Tiriti
  - c. appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
  - d. opportunities are available for early engagement with decision-makers on regional spatial strategies and NBA plans

- e. robust evaluation and analysis
  - f. flexibility to design a process that is proportionate to the scale and impact of the proposal
  - g. consideration is given to integrated management, cumulative effects and the purpose of the Act before developing and recommending direction for the NPF.
10. [REDACTED]
- The use of mātauranga Māori will be provided for in the development of the National Planning Framework, including for limits and targets.

#### *Mandatory topics for development*

11. Mandatory direction refers to topics for which the responsible Minister must issue central government direction as a priority to support effective management of the natural and built environment and provide for timely input into regional spatial planning. This list has been focused to the critical areas to support the future system and recognises that we will not be able to provide direction on everything immediately.
12. The proposed topics are:
  - a. natural environment limits
  - b. natural hazards and climate change
  - c. other nationally significant matters including nationally or regionally significant features, outstanding natural features and outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna
  - d. methods and requirements for enhancing and restoring ecosystems
  - e. methods and requirements for the protection, restoration, maintenance and enhancement of indigenous biodiversity.
13. The responsible Minister has discretion to issue central government direction on other nationally significant matters or matters where consistency is desirable.

## **Recommendations**

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14. Officials recommend that you:

#### *Purpose and role in the system*


- 3.1 note that Cabinet has agreed that the purpose of the National Planning Framework is to provide direction on matters of national significance, or matters where national consistency is desirable
- 3.2 agree the National Planning Framework may also provide direction where consistency is desirable on a sub-national scale
- 3.3 agree to delegate authority to the Minister for the Environment to determine if a threshold test would be appropriate on matters of national significance and the criteria it would contain, in consultation with other Ministers as appropriate
- 3.4 agree the role of the National Planning Framework is to:
  - a. take a strategic approach to identify central government priorities across the NBA to direct and influence regional spatial strategies, and natural and built environment plans
  - b. provide a mechanism by which the NBA and SPA will give effect to the principles of Te Tiriti and reflect te ao Māori

- c. support the implementation of natural environment limits and natural and built environment outcomes in the NBA, including high level resolution of competing matters
- d. enable consistency and support decision making by providing methodologies, standards and direction
- e. provide national, regional, local or spatially specific direction (where appropriate)

*The form of the National Planning Framework*

- 3.5 agree the intent of the National Planning Framework is to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the system
- 3.6 agree that the National Planning Framework may include outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions or however these are replaced in the NBA (for nationally significant outcomes or where consistency is desirable)
- 3.7 agree to delegate authority to the Minister for the Environment to determine detailed policy for preparation, reviewing and amending the document in parts, provision for content specific to certain district/regions and how to enable and provide for overarching direction through the National Planning Framework

*The process to develop the National Planning Framework, including limits and targets*

- 3.8 agree to the policy intent of enabling a process that ensures:
  - a. effective public consultation
  - b. a role for Māori that gives effect to the principles of Te Tiriti
  - c. appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
  - d. opportunities are available for early engagement with decision-makers on spatial strategies and NBA plans
  - e. robust evaluation and analysis built into appropriate decision-points
  - f. flexibility to design a process that is proportionate to the scale and impact of what is being proposed, in some cases this may require submitters to be heard or use of independent commissioners
  - g. consideration is given to integrated management, cumulative effects and the purpose of the Act before developing and recommending direction for the NPF
- 3.9 agree to delegate authority to the Minister for the Environment to determine details of the process for developing the National Planning Framework consistent with the policy intent described above in consultation with other Ministers as appropriate
- 3.10 agree the National Planning Framework will be made by the Governor-General in Council
- 3.11 agree the National Planning Framework will be secondary legislation for the purpose of the Legislation Act 2019, which will mean it will be disallowable instrument and must be presented to the House of Representatives
- 3.12 

*Mandatory proposals for direction*

- 3.13 agree the NBA identify a list of mandatory topics for which the responsible Minister must issue central government direction as a priority to support effective

management of the natural and built environment and provide for timely input into regional spatial planning, including:

- a. natural environment limits
  - b. natural hazards and climate change
  - c. other nationally significant matters including nationally or regionally significant features, outstanding natural features and outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna (or similar wording to reflect the outcomes in the NBA)
  - d. methods and requirements for enhancing and restoring ecosystems (or similar wording to reflect the outcome in the NBA)
  - e. methods and requirements for the protection, restoration, maintenance and enhancement of indigenous biodiversity (or similar wording to reflect the outcome in NBA)
- 3.14 agree to include urban and infrastructure in the mandatory list, subject to a report back from officials on the scope of the work and relative funding source
- 3.15 note that the responsible Minister has discretion to issue central government direction on other nationally significant matters or matters where consistency is desirable, such as on outcomes in the NBA or targets to support natural environment limits

## Supporting information

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### Context

15. Cabinet has made in-principle decisions about the purpose and form of central government direction, including provisionally referring to it as the National Planning Framework (NPF) in the proposed NBA (CAB-20-MIN-0522 refers).
16. Cabinet has also agreed that the Ministerial Oversight Group (MOG) will make further decisions on aspects of the NPF to support the development of the exposure draft. In developing the recommendations in this paper, we have assessed the extent to which proposals achieve the objectives of system reform, as well as their workability.
17. The further policy proposals for the NPF provisions of the NBA cover the following matters:
  - a. Approach
  - b. Purpose and role in the system
  - c. The form of the NPF
  - d. The process and safeguards, including for limits and targets
  - e. Mandatory proposals for direction
18. The NPF will have a direct relationship to regional spatial strategies developed under the proposed Strategic Planning Act (SPA), as well as plans developed under the NBA. The process to develop regional spatial strategies will be a key mechanism for communities and iwi to identify and plan for their values and priorities. We plan to seek decisions on the legal relationship between the NPF and the SPA at the upcoming MOG 6 meeting on 3 May.

### Approach

19. The Resource Management Review Panel (the Panel) proposed a new and extended role for central government in the resource management system. The Panel proposed a new, stronger focus on regional planning, and a collaborative relationship between central government, local government and iwi to identify and work towards desired outcomes



within environmental limits. This poses significant new opportunities for central government in particular.

20. The role of the proposed NPF will be critical to translating national priorities into regional and local regulatory planning, through both the regional strategies proposed by the SPA, and NBA plans.
21. This is a new approach which will require capacity and capability building across the system. It will mean focusing on the nationally significant outcomes for which central government will provide direction, and designing new methods and tools to achieve them.

## **Purpose and role in the system**

### *Context*

22. Cabinet has made an in-principle decision that the purpose of the NPF will be to address matters of national significance or matters where national consistency would be desirable (CAB-20-MIN-0522 refers).

### *Discussion*

23. The NPF is an 'umbrella term' used to describe how central government direction is to be provided on the use, protection and management of the natural and built environment in the interests of all New Zealanders. It will be a key mechanism for central government to intervene in the future system and influence the content and outcomes sought by regional spatial strategies and NBA plans.
24. The NPF is the critical step between long-term enduring outcomes in the NBA and providing clear, practical and measurable direction for local authorities and communities to implement. The intent is for direction to be provided on nationally significant issues. In the first instance this is likely to be derived from the purpose of the NBA, natural environmental limits and outcomes.
25. Our advice is that the term 'national significance' should recognise that the environmental management system is dynamic. This would give the Minister for the Environment the discretion and agility to provide direction on matters which emerge over time that are of a scale or level of importance that is significant at a national level, but are not encapsulated in the provisions on limits, outcomes or the purpose statement of the NBA. This is important to provide a degree of flexibility which allows unforeseen issues or matters identified through a strategic lens to be addressed, without constant amendments to the primary legislation. We seek agreement for authority to be delegated to the Minister for the Environment, in consultation with other ministers, to determine if a threshold test would be appropriate and the criteria it would contain.
26. To be successful, the NPF will need to provide content ranging from national level policies, direction on priorities to guide the system and help manage conflicts, policy direction that is able to cater to local circumstances, standardisation of methods and tools, and prescriptive content that impacts on the ground in a timely manner. This range of content is needed to allow for different approaches depending on the matter being addressed.
27. The Panel recommendations did not explicitly provide for direction aimed at prioritisation and conflict resolution, and instead recognised that the significant gaps should be filled and the suite of national direction must be integrated.
28. Our advice is that in an outcome-focused system it is imperative that central government direction is more active in setting its priorities and helping to manage conflicts across the natural and built environment. The proposed outcomes of the NBA are not hierarchical and are intended to be enduring, long-term goals for the system. The NPF must therefore provide direction as priorities, pressures and opportunities for the natural and built environment change over time. A strategic approach would also better enable integrated management at a national level, and provide more considered direction to support decision-makers reconciling competing matters and prioritising within their communities.

29. The proposal for a strategic approach under the NPF does not duplicate proposals for the SPA. The SPA will integrate across land-use and funding decisions at a regional and local level. Central government's active participation in the development of regional spatial strategies will be a key mechanism to translate the NPF into effect on the ground. In order for this to be effective, the direction under the NBA must be integrated and future-focused. Clear prioritisation would directly support central government participation in regional spatial strategy processes, and may involve facilitation across regional boundaries where necessary.

*Standardisation and consistency for the right things can make planning faster and more efficient*

30. Achieving greater standardisation and consistency in the NBA by providing methods, standards and guidance to support spatial strategy and plan-making processes should make planning and consenting processes faster and more efficient. This doesn't mean that the outcomes within each region or across environments would be the same. However, the process to identify spatial features or measure standards would be, and the plans to which they contribute would be more useable.

31. Cabinet has already agreed that the Minister may provide direction where national consistency is required. We recommend also clarifying that the Minister can provide direction where consistency is required on a sub-national scale. This will make it clear that direction is able to be provided without requiring the same outcome across the whole country. Sub-national consistency can be important for cross-boundary issues over regions, or where particular issues may impact on specific areas of the country and is consistent with the current approach under the RMA.

32. The future system needs to retain the ability to both provide policy direction that allows regions to cater to local circumstances, and provide prescriptive policies, assessment criteria or rules that are less adaptable to local circumstances but are able to be applied in a timely way.

33. For example, setting natural environment limits could require a combination of policy direction, standardisation (methods or processes) and prescriptive rules or policies. It is likely that a prescriptive approach is needed when setting limits, to provide a more immediate response on the ground to protect the state of the environment.

*The NPF will play a critical role in ensuring the principles of Te Tiriti o Waitangi are applied through the system*

34. The NPF will also play a fundamental role in giving effect to the principles of Te Tiriti o Waitangi (Te Tiriti) through both the process to develop and the substance across domains and themes. This is consistent with the objectives and outcomes agreed at the Ministerial Oversight Group

*Recommendations*

- 3.1 note that Cabinet has agreed that the purpose of the National Planning Framework is to provide direction on matters of national significance, or matters where national consistency is desirable
- 3.2 agree the National Planning Framework may also provide direction where consistency is desirable on a sub-national scale
- 3.3 agree to delegate authority to the Minister for the Environment to determine if a threshold test would be appropriate on matters of national significance and the criteria it would contain, in consultation with other Ministers as appropriate
- 3.4 agree the role of the National Planning Framework is to:



- a. take a strategic approach to identify central government priorities across the NBA to direct and influence regional spatial strategies, and natural and built environment plans
- b. provide a mechanism by which the NBA and SPA will give effect to the principles of Te Tiriti and reflect te ao Māori
- c. support the implementation of natural environment limits and natural and built environment outcomes in the NBA, including high level resolution of competing matters
- d. enable consistency and support decision making by providing methodologies, standards and direction
- e. provide national, regional, local or spatially specific direction (where appropriate)

## The form of the National Planning Framework

### *Approach*

35. One of the greatest criticisms of the implementation of the RMA was that insufficient direction and guidance was provided by central government on which national priorities should be recognised in regional and local planning. The exception to this was comprehensive policy and outcomes in the New Zealand Coastal Policy Statement, which is in its second issue at present. When other direction was delivered at least a decade into the life of the RMA, it tended to be reactive, ad hoc and often internally mis-aligned. It has been an attempt to 'fix' failures of the system, and councils have been required to respond outside of their planning cycles without guidance as to how to resolve conflicts when they arise.
36. To respond to this, the Panel have proposed a set of mandatory national direction to ensure that central government plays its part in the new system. Officials have gone further, proposing a framework approach that establishes the need to integrate significant issues, nationally, regionally and at the local level.

### *Context*

37. There are choices about the form of national direction in the future system. Under the RMA, instruments are issued individually, with 25<sup>3</sup> national instruments already in place. The Panel recognised that there is a lack of strategic oversight and co-ordination between national direction, and the existing suite of national direction is not well integrated. The Panel recommended that national direction should be brought together in a coherent set to be read in one place, with any conflicts between instruments resolved.
38. Cabinet has made an in-principle decision that the National Planning Framework will include and replace existing forms of national direction, combining current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA.

### *Issues and choices*

39. Officials agree with the intent of the Panel's proposal, however we recommend further changes to current practice to better integrate the proposed suite of national direction. The current legal framework in the RMA inhibits integrated management by providing for multiple individual instruments. This has allowed central government to make national direction which sidesteps the difficult trade-offs and instead requires councils and their

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<sup>3</sup> This includes 5 national policy statements, 8 national environmental standards, 11 regulations and the national planning standards.



communities to prioritise and reconcile across domains and instruments, primarily through the development of their individual regional and district plans.

- 40. This impacts negatively on achieving the outcomes current national direction is intended to support. The introduction of direction on how conflicts should be managed through the NPF will better enable integration at a national level, and may better support content from existing instruments being carried into the new system.
- 41. It must be recognised it will not be possible, nor would it be appropriate for the NPF to resolve all conflicts for every circumstance. However, the NPF can provide a clearer set of priorities and processes to assist decision-makers. The NPF, regional spatial strategies and the NBA plans will all work together to resolve competing outcomes and priorities on the ground.

42.

43.

- 44. Work is on-going on a prototype single statement to test this approach and the implications for transition. Officials recognise the importance of investment certainty and supporting central government, local government and our partners to transition to the new system.
- 45. The work underway will support the assessment of the existing suite of national direction in the new system and the development of transitional provisions. We anticipate the policy intent of the existing tools should be transferred, but not necessarily the instruments themselves. This recognises that changes will be needed to achieve the significant shifts in the system to be more strategic, integrated and outcomes focused.
- 46. [REDACTED] have requested that greater clarity is given [REDACTED] we recognise the importance of this and will seek further decisions once the work identified above has progressed, and the outcomes for the NBA are determined.
- 47. Cabinet has already agreed in principle to a more simplified power for providing direction. This would combine the current role of national policy statements, national environment standards, regulations and national planning standards. It is intended that the same functions and powers provided under the RMA would be enabled (outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions) but these may be adjusted based on any decisions from the Ministerial Oversight Group on upcoming workstreams.
- 48. The first set of national planning standards under the RMA address the structure and form of plans, including mapping. There are significant benefits to setting this type of standardisation from enactment of the NBA and we anticipate some form of national planning standards being a component of the NPF. This will be addressed in the second phase of reform.

*Recommendation*

3.5 agree the intent of the National Planning Framework is to provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the system



- 3.6 agree that the National Planning Framework may include outcomes, objectives, policies, rules, assessment criteria, methods, standards, limits, targets, definitions, directions or however these are replaced in the NBA (for nationally significant outcomes or where consistency is desirable)
- 3.7 agree to delegate authority to the Minister for the Environment to determine detailed policy for preparation, reviewing and amending the document in parts, provision for content specific to certain district/regions and how to enable and provide for overarching direction through the National Planning Framework

## **The process to develop the National Planning Framework, including limits and targets**

### *Approach*

49. The proposed National Planning Framework is intended to ensure that nationally significant outcomes and limits are recognised and given effect to throughout the planning system. If successful, the framework has the potential to play a powerful role in the system. As such, it will inevitably imply significant costs and benefits through the system.
50. This means that the NPF must be based on robust evidence and a sound process with appropriate and proportionate checks and balances to its development, implementation and monitoring and enforcement.

### *Context*

51. The RM Panel recommended that a board of inquiry process be followed for the development and review of national policy statements and national environmental standards, in order to ensure a robust process, allow for a full range of views and provide an independent safeguard against the risk of abuse of process.
52. The National Planning Framework will be secondary legislation under the NBA. It is important that the scope and content of secondary legislation is understood and that there are clear boundaries on the scope of power<sup>4</sup>.

### *A robust process will be needed*

53. We agree with the Panel that a robust process that allows for a range of views is important to develop enduring direction in the future system. However, officials consider that there are alternative mechanisms that can provide for public participation and safeguards in the process.
54. The RMA in 1991 required national policy statements be developed via a board of inquiry process. This was amended in 2005 as the process was considered too complex and time consuming. The process to develop the NPF must be efficient and enable direction to be provided in a timely manner, whilst also recognising that this must not be at the expense of good quality policy and decision-making. The process must also provide for public participation and a role for Māori that gives effect to the principles of Te Tiriti.
55. It is important that the NPF is enduring, and developed in a robust and transparent manner with clear mechanisms for public participation and input. The tools and processes must be efficient and enable the system to be responsive to adapt and change supported by systematic monitoring and evaluation.
56. The process must also be flexible to be designed proportionate with the scale and intervention of proposals, and allow for technical expertise including mātauranga Māori and independent advice to inform decision-making.
57. The future system needs to enable both policy direction and prescriptive regulatory direction. Policy direction needs be flexible to local circumstances and would generally be implemented through a regional spatial strategy and natural and built environment plan.

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<sup>4</sup> Legislation Design Advisory Committee Guidelines, 2018



Prescriptive direction, such as rules or limits that take effect immediately, may impact on people's property or their surrounding environment. A different type of process that allows submitters to be heard may be needed for prescriptive type direction.

58. Officials don't consider that a single board of inquiry process will provide flexibility to address the broad range of types of direction that will be needed in the future system. Official's view is that the process can be robust and transparent by including key process steps for the development of the National Planning Framework, without being highly prescriptive.
59. This would allow the process to be designed with the Minister for the Environment at the time of developing the NPF. This aligns with the reform objective to reduce complexity, whilst providing the public, iwi and stakeholders with greater certainty about the process and the ability to participate.
60. Officials are seeking agreement to the principles of good process and we will work with Parliamentary Counsel Office (PCO) to translate this in the exposure draft. The key process steps that we anticipate in the legislation are:
- matters that the Minister must consider before developing and making final decisions on central government direction under the NPF, including the purpose of the NBA, integrated management and cumulative effects
  - the process to develop the NPF must include consideration of Te Mana o te Taiao and giving effect to the principles of Te Tiriti
  - matters that the Minister must consider before deciding the type of process to follow
  - different process tracks or enabling provisions to provide flexibility to design a process that is proportionate to the scale and impact of what is proposed. For example, enabling provisions that allow the Minister to appoint independent panel members to hear submissions, conduct mediation and expert conferencing, allow for the establishment of a rolling board of inquiry or independent process, or a process track that requires submissions to be heard for proposed direction that would directly impact on property rights
  - public consultation
  - robust evaluation and analysis prior to consultation and before final decisions are made.

*The NPF will be a key mechanism by which the NBA will give effect to the principles of Te Tiriti*

61.

62. The setting of limits and targets is likely to be very technically complex. It is important that there is flexibility in the process to allow the development of limits and targets to be informed by evidence, including mātauranga Māori and independent advice.
63. A process that provides for early engagement with Māori and local government early in the process is recommended and will better support the development and implementation of the NPF. The intent is for the process to be designed to provide opportunities for early engagement with decision-makers.

*Systematic monitoring and evaluation of the NPF*

64. It will be important that the progress of the NPF is monitored and evaluated well, which has not occurred under the RMA. This may require amendments to the NPF to ensure that it is forward looking and addressing emerging issues as they arise. Officials are looking further

at the process for amending and updating the NPF and have sought deleted authority for the Minister for the Environment to determine the detailed design of this.

*Safeguards on the process*

65. Officials recognise that the powers sought through secondary legislation are at the upper end of significance tests. The NPF will likely span the continuum between high-level policy direction and prescriptive regulations. It is recommended that the NPF is made by the Governor-General on the advice of Ministers, following Cabinet scrutiny.
66. Under the Legislation Act 2019, the NPF will be tabled in the House of Representatives for Regulations Review Committee review and disallowance. The Attorney-General will be empowered to direct who drafts the NPF under the Legislation Act 2019.

*Recommendations*

- 3.8 agree to the policy intent of enabling a process that ensures:
  - a. effective public consultation
  - b. a role for Māori that gives effect to the principles of Te Tiriti
  - c. appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
  - d. opportunities are available for early engagement with decision-makers on spatial strategies and NBA plans
  - e. robust evaluation and analysis built into appropriate decision-points
  - f. flexibility to design a process that is proportionate to the scale and impact of what is being proposed, in some cases this may require submitters to be heard or use of independent commissioners
  - g. consideration is given to integrated management, cumulative effects and the purpose of the Act before developing and recommending direction for the NPF
- 3.9 agree to delegate authority to the Minister for the Environment to determine details of the process for developing the National Planning Framework consistent with the policy intent described above in consultation with other Ministers as appropriate
- 3.10 agree the National Planning Framework will be made by the Governor-General in Council
- 3.11 agree the National Planning Framework will be secondary legislation for the purpose of the Legislation Act 2019, which will mean it will be disallowable instrument and must be presented to the House of Representatives
- 3.12

**Mandatory proposals for direction**

67. The Panel proposed that mandatory national direction be provided on limits, targets, the quality of the natural and built environment, Te Tiriti, natural hazards and climate change and other natural matters including the coast.
68. Cabinet has agreed in-principle to the purpose and supporting provisions of the NBA, and this included a list of mandatory matters for which the Minister must issue direction.

*The scope of mandatory direction*

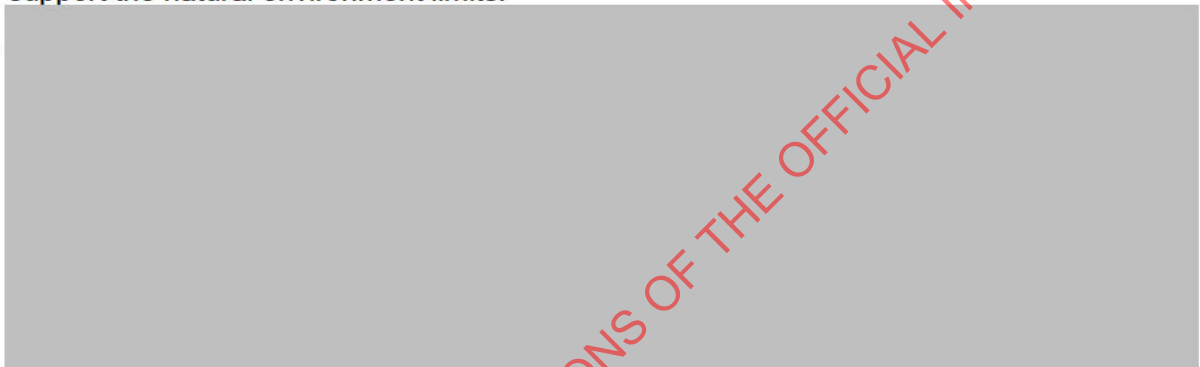
69. Officials from MfE recommended the more focused list of mandatory directions set out in the December cabinet paper. This list recognises that we cannot provide all of the direction at once and we need to prioritise. It is proposed to focus on the significant gaps in the



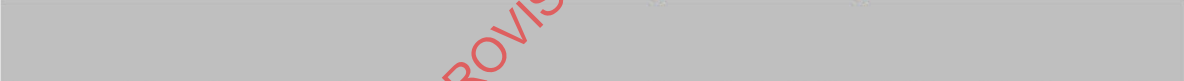
current system, and the areas where direction is needed to support effective management of the natural and built environments in order to support regional spatial strategies in a timely way.

70. This would see direction required for natural environment limits and natural hazards and climate change. The NPF would also provide direction such as methodologies to support consistent identification of outstanding natural landscapes and outstanding natural features, nationally and regionally significant features and areas of significant indigenous vegetation and fauna, and methods and requirements relating to ecosystems and the protection, restoration, maintenance and enhancement of indigenous biodiversity.
71. The Ministry for the Environment has submitted a budget initiative seeking funding for Resource Management Reform. If this initiative is funded through Budget 2021, the funding sought for central government direction will be sufficient to deliver mandatory direction on the matters listed above.
72. The Minister would retain discretion to provide direction on other nationally significant matters or matters where consistency is required, such as on outcomes, or targets to support the natural environment limits.

73.



74. The Panel recommendations were for a mandatory National Policy Statement on Te Tiriti.



75. Feedback has been received from agencies seeking to include additional topics on the mandatory list for direction in the NBA, including historic heritage and greenhouse gases. Whilst it is recognised that historic heritage and greenhouse gases are likely to be matters of national significance, it is not recommended that these are included on the list of mandatory direction. The list of mandatory direction has purposely been focussed on the topics or areas where it is critically important that direction is provided following enactment of the NBA.

*Recommendations*

- 3.13 agree the NBA identify a list of mandatory topics for which the responsible Minister must issue central government direction as a priority to support effective management of the natural and built environment and provide for timely input into regional spatial planning, including:
- a. natural environment limits
  - b. natural hazards and climate change
  - c. other nationally significant matters including nationally or regionally significant features, outstanding natural features and outstanding natural landscapes, areas of significant indigenous vegetation and significant habitats of indigenous fauna (or similar wording to reflect the outcomes in the NBA)
  - d. methods and requirements for enhancing and restoring ecosystems (or similar wording to reflect the outcome in the NBA)

- e. methods and requirements for the protection, restoration, maintenance and enhancement of indigenous biodiversity (or similar wording to reflect the outcome in NBA)
- 3.14 agree to include urban and infrastructure in the mandatory list, subject to a report back from officials on the scope of the work and relative funding source
- 3.15 note that the responsible Minister has discretion to issue central government direction on other nationally significant matters or matters where consistency is desirable, such as on outcomes in the NBA or targets to support natural environment limits

## Treaty impacts

76. Our overall assessment is that proposals for the National Planning Framework set out in this paper, preserve opportunities to:

- a. work together with Māori to design a National Planning Framework that meets the Cabinet agreed reform objective 'give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including matauranga Māori'
- b. enhance Māori participation in the development of national direction
- c. pursue Māori Crown partnership approaches in the development of national direction.

77. Building on these opportunities will support improved Te Tiriti consistency of the resource management system.

78.

79. There are several relevant policy matters that will require further consideration and on which we expect Māori to have strong views. These include:

- a. Māori roles in the design of the NPF, including the role of a National Māori Advisory Board if such a Board is established
- b. Māori roles in the development of NPF content, including the setting of natural environment limits
- c. the use of matauranga Māori in setting natural environment limits
- d. Māori roles in making recommendations on the NPF content including Māori representation in any board of inquiry, hearing panel or alternative process
- e. how the NPF will account for iwi, hapū and whānau interests at a local level
- f. how existing national direction will be transitioned to the NPF, in particular those pieces of national direction on which Māori have had significant influence such as the National Policy Statement for Freshwater Management.

80.

81. This assessment is informed by submissions to the Resource Management Review Panel, previous engagement with Māori on resource management matters and findings and recommendations of the Waitangi Tribunal.

*Treaty settlements*



82. Several Treaty settlement arrangements interact with the current national direction framework either through specific provisions regarding national direction or through broader responsibilities placed on the Government in relation to policy development.
83. Some Treaty settlement arrangements provide for post-settlement governance entities (PSGE) input specifically into the development of national direction. Because these provisions do not specify the process through which that input must be provided, we do not consider any particular drafting would be required in the NPF provisions to be included in the exposure draft, to preserve these commitments. Work will be done to ensure these commitments are honoured in the new system and planning for engagement with PSGEs is underway.
84. Some Treaty settlements have established new frameworks for the management of specific natural taonga for example Te Pā Auroa nā Te Awa Tupua – Te Awa Tupua Framework and the Waikato and Waipa Rivers co-governance arrangements, including legislative provisions and strategy documents that are equal to or take precedence over national direction in the existing RMA planning hierarchy. Further work needs to be done on how the National Planning Framework would interact with these localised frameworks in a way that honours those settlements and does not overcomplicate the management of those natural taonga for iwi. Planning for engagement with PSGEs includes a focus on Treaty settlements that have complex interactions with the RMA.

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