

Agenda – RM Reform Ministerial Oversight Group Meeting #4

Date: Monday 22 March 2021, 10.00 – 10.45 am

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

10.00 – 10.05	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 follows up on any actions arising from the previous meeting, including agreeing the minutes from MOG meeting #3 on 8 March 2021. • Officials have provided a paper providing an overview of content in the exposure draft compared to the complete NBA bill in response to an action from MOG #3 requesting this information. • Officials have provided advice to support a report back at item 7 to confirm the framing of the NBA purpose and supporting provisions does not result in unintended consequences for infrastructure and development. This report back is in response to an action from MOG #2. 		
<p>Supporting documents</p> <ul style="list-style-type: none"> • Minute from RM Reform Ministerial Oversight Meeting #3 on 8 March 2021 • Log of actions from previous MOG meetings • Key decisions – RM Reform Ministerial Oversight Group Meeting #4 • Recommendations - RM Reform Ministerial Oversight Group Meeting #4 • Paper 1: Overview of content in the exposure draft of the NBA and the full NBA Bill 		
10.05 – 10.20	Agenda Item 2: Natural and Built Environment Plans	Lead speaker: Minister for the Environment
<p>Description/key areas to focus discussion:</p> <ul style="list-style-type: none"> • This item addresses: <ul style="list-style-type: none"> ○ the first set of policy decision for Natural and Built Environment Plans ○ including the role and purpose of plans, plan development and plan decision making arrangements. • Key items for consideration are: 		

- the role and purpose of NBA plans, including the need for plans to implement the National Planning Framework and regional spatial strategies, give effect to the principles of Te Tiriti o Waitangi and be outcomes focused
 - [REDACTED]
 - the principles for designing the plan making process
 - confirming that regional councils will retain core natural resource functions and territorial authorities retain core land use and subdivision functions
 - [REDACTED]
- These are the key MOG decisions needed. The attached paper also contains other matters for which delegated authority to the Minister for the Environment to make final decisions is sought.

- Supporting documents**
- Key decisions - RM Reform Ministerial Oversight Group Meeting #4
 - Recommendations - RM Reform Ministerial Oversight Group Meeting #4
 - Paper 2: Further proposals for Natural and Built Environment Plans

10.20 – 10.25	Agenda Item 3: Carrying over parts of the RMA for drafting	Lead speaker: Minister for the Environment
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Description/key areas to focus discussion:

- Parts of the Resource Management Act (RMA) can be carried across to the Natural and Built Environments Bill with updates to drafting to reflect modern drafting techniques. Officials are seeking agreement to carry over five parts of the RMA to the Natural and Built Environments Act (NBA) to enable NBA drafting to begin.

- Supporting documents**
- Key decisions – RM Reform Ministerial Oversight Group Meeting #4
 - Recommendations - RM Reform Ministerial Oversight Group Meeting #4
 - Paper 3: Carrying over certain parts of the Resource Management Act that are unlikely to have different policy intent in new system



- [REDACTED]
- [REDACTED]
- [REDACTED]

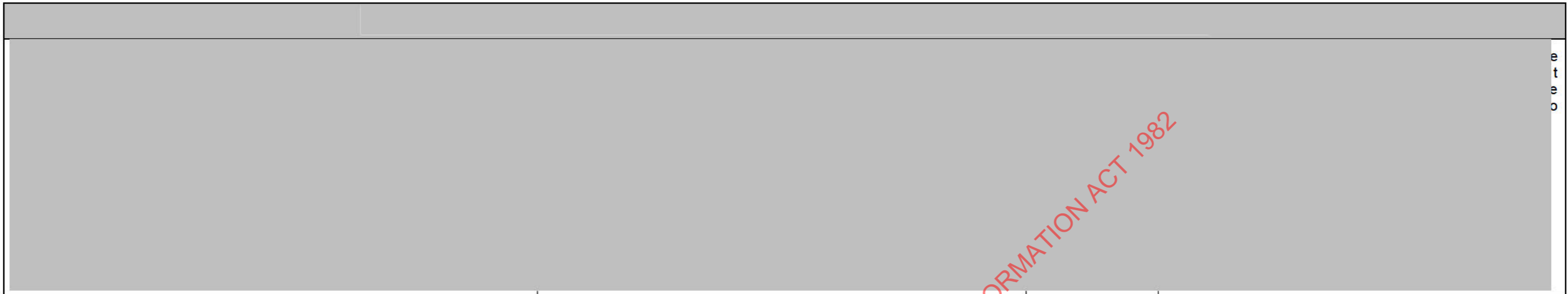
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Key Decisions – RM Reform Ministerial Oversight Group Meeting #4 (for items 2-6)

1. This note summarises key decisions being sought. The formal decision papers with advice and recommendations are attached separately.
2. Reform objectives agreed by Cabinet:
 - a. protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations)
 - b. better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure
 - c. give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
 - d. better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
 - e. improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

Description of decisions sought in attached papers	Context and next steps (including outstanding decisions)	Objectives met	Implications versus status quo
NBA Planning System (consistent with National Planning Framework and Regional Spatial Strategies)			
<p>There will be one plan per region to protect the natural environment, manage the built environment, manage the use of natural and physical resources and enable and regulate activities.</p>	<p>This will combine functions delivered by regional councils and territorial authorities.</p> <p>Big shifts –</p> <ul style="list-style-type: none"> • plans are stronger, more strategic • cumulative effects are better anticipated, and competing outcomes are better integrated and resolved • less time and costs into the system, as less effort goes into individual consenting decisions, and more collective effort into designing and implementing plans • plans are based on a sound knowledge and evidence base. 	<p>All</p>	<p>This approach will mean:</p> <ul style="list-style-type: none"> • more up-front public investment in the system • a significant shift in culture and capability • a critical dependence on the development and implementation of better stronger plans • councils will have to work together and make regional decisions as well as local • plans and the processes and decision-making arrangements to develop and implement them will look different.
<p>Natural and Built Environment Plans will:</p> <ul style="list-style-type: none"> • translate the direction in the National Planning Framework (NPF) and provided by Regional Spatial Strategies (RSSs) into a regulatory framework for each region • give effect to the principles of Te Tiriti o Waitangi and provide for kaitiakitanga, tikanga Māori and use of matauranga Māori • focus on outcomes while managing effects, and providing a means to resolve resource use conflicts and tensions • look forward and address cumulative effects • promote integrated management. 	<p>Stronger national direction in the NPF especially on limits will constrain some elements of plan making. The NPF was discussed in MOG #3. RSSs will be discussed as part of the Strategic Planning Act (SPA) in MOG #4 with high level policy in MOG #6.</p> <div style="background-color: #cccccc; height: 20px; width: 100%;"></div> <p>An outcomes based approach can enable activities and protect resources and respond to regional needs. Identifying outcomes and stating limits should increase certainty and thereby be more efficient. Plans can identify and confirm areas for protection or development.</p>	<p>All</p>	<p>Principles at this stage, not detailed design, but with:</p> <ul style="list-style-type: none"> • key dependency with the SPA to provide strategic direction, for which decisions have not yet to be made. • likely greater certainty for environment, development and iwi/Māori. • intention to declutter planning and consenting, with stronger plans and fewer consents.

<p>The approach to plan making (both the processes to be followed and the arrangements for decision making) will be of high interest to stakeholders and partially determine the achievement of outcomes. It must be fair and proportionate.</p>	<p>Proposed principles include:</p> <ul style="list-style-type: none"> • appropriate evidence and expertise • robust evaluation and analysis • effective public engagement • a role for Māori that gives effect to the principles of Te Tiriti o Waitangi (including exercising kaitiakitanga and mana whakahaere) • roles for public, key stakeholders and local authorities • submissions and limited appeals • an impartial, expert and non-adversarial review process. 	<p>All objectives, as how plans are made is an important consideration in what the plans achieve.</p>	<p>Public participation versus efficiency considerations.</p> <p>After notification a plan is heard by an Independent Hearing panel that makes recommendations to the decision maker.</p>
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NBA purpose and supporting provisions – avoiding unintended consequences for development and infrastructure

<p>Officials will monitor natural environmental limits and other relevant system settings closely for unintended consequences as policy work progresses.</p>	<p>MOG #2 commissioned further work to ensure no unintended consequences. It is too early to determine the final impact. The system has been designed to outline how decisions are made and add detail in layers through the NPF, RSSs and plans.</p>	<p>b. better enable development within biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.</p>	<p>Will:</p> <ul style="list-style-type: none"> • integrate land use and infrastructure decisions to respond to demand for housing and services • more explicitly recognise the benefits of use (not just focussed on negative effects) • focus on outcomes to be worked towards includes infrastructure and development outcomes, not just protection of the natural environment • contribute to climate change response and natural hazard risks • support economic development including in the primary sector.
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3. [Redacted]

- [Redacted]
- [Redacted]

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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			
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			
2			
3	3.8	Officials to explicitly consider Cabinet's objective to "improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input" when progressing policy in relation to recommendation 3.6	In progress
3	3.17	Report back from officials on the scope of the work and relative funding source of including urban and infrastructure in the mandatory national direction list	In progress

MOG #	Minute paragraph	Action	Status
3	3.21	Officials to report back to a future MOG meeting (7 April 2021) with advice on the definitions for natural and built environments, recognising feedback that the reference to natural and built environments does not sufficiently capture the rural environment	In progress
3	3.22	Officials to report back to a future MOG (22 March or 7 April 2021) to clarify the contents of the exposure draft compared with what will be covered in the Bill as introduced	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
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			
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			
2			

MOG #	Minute paragraph	Action	Status
		Reform purpose and principles, would be circulated to all Ministerial Oversight Group Ministers	
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	Complete
	18	Officials will provide an update on recommendation 14 to the next MOG meeting (March 2021)	
3			

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Recommendations – RM Reform Ministerial Oversight Group Meeting #4

Officials recommend that the MOG:

Agenda Item 1: Actions from previous meeting

1. confirm the minute of MOG meeting #3 on 8 March 2021
2. note that officials have provided an overview of content in the exposure draft of the NBA and will provide further advice on the exposure draft, supporting material and scope of the select committee inquiry

Agenda Item 2: Further proposals for Natural and Built Environment Plans

3. note that Cabinet has agreed that there will be one plan per region
4. agree that the primary purpose of Natural and Built Environment Plans is to:
 - a. protect the natural environment
 - b. manage the built environment
 - c. enable and regulate activities
 - d. manage the use of natural and physical resources
5. agree that a Natural and Built Environment plan structure and contents will address resource use and allocation (regional councils) and land use and subdivision (territorial authorities) matters holistically to achieve integrated management
6. agree that further policy specifically on the approach for unitary authorities including Marlborough, Nelson and Tasman to develop a combined plan for that region be reported back to a future MOG
7. agree the role of Natural and Built Environment Plans is to regulate the natural and built environment at a regional and district level by:
 - a. implementing the outcomes, natural environment limits and Te Mana o te Taiao as set out in purpose and supporting provisions of the NBA
 - b. implementing the National Planning Framework and contributing to the implementation of regional spatial strategies
 - c. responding to the wellbeing of future generations and reflecting the needs of communities
8. agree that regional spatial strategies play a key role in the planning system and will direct a policy and regulatory response to matters through NBA plans at a regional and district level
9. agree that Natural and Built Environment plans will identify regional and district natural and built outcomes as well as how outcomes will be achieved through policies, rules and other methods, and processes (or however they may be expressed)
10. agree that plan provisions can regulate activities and resources at a regional and district level by protecting, enabling, managing or prohibiting them (in the broadest sense), including through (but not exclusive to) outcomes, policies, rules and other methods, or processes
11. agree that Natural and Built Environment plans have a role in:
 - a. promoting the integrated management of natural and built environments
 - b. providing for kaitiakitanga and tikanga Māori and the use of mātauranga Māori
 - c. having particular regard to any cumulative effects of the use and development of natural and built environments

- d. taking a precautionary approach where effects on the natural environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences
12. agree that in the process of developing Natural and Built environment plans consideration by decision makers needs to be given to the resolution of conflicts and tensions by:
- a. spatially identifying areas or places where development is prioritised or areas and places where protection of the natural and built environment needs to be prioritised;
 - b. other methods that seek to resolve tensions between the natural and built environment

13.

14. note that the intent is for plans to be forward looking and enabling in areas where activities have been identified as being appropriate and restrictive where protection is required

15. note that further work is required on the relative weight and influence of other statutory plans prepared under other legislation on Natural and Built Environment Plans

16.

17. agree that any new plan decision making model should:

- a. be efficient and workable
- b. provide a strategic role for Māori to ensure NBA plans include mātauranga Māori
- c. reflect Māori interests and
- d. give effect to the principles of Te Tiriti o Waitangi, and maintain local government accountability

18.

19. agree that the plan development and plan change process be fair and proportionate to the size and scale of the process or change and must ensure:

- a. robust evaluation and analysis of the plan provisions are built into appropriate decision points
- b. effective public engagement and consultation that includes seeking views from diverse groups within the community
- c. a role for Māori that gives effect to the principles of Te Tiriti o Waitangi
- d. appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
- e. a role for public and key stakeholders
- f. a role for constituent local authorities
- g. an ability to make submissions, be heard and appeal decisions (in certain circumstances)
- h. an impartial, expert and inquisitorial review hearing process (such as an expert Independent Hearing Panel)

20. agree that alternate plan change processes may be developed including (but not limited to) in circumstance where a change is minor, has limited impact or addresses inconsistencies, where a change is required to implement the national planning framework, a regional spatial strategy or other matter of significance

21.

22. agree that regional councils retain their core natural resource functions and territorial authorities retain their core land use and subdivision functions; and gaps and overlaps as identified in the Panel's report should be clarified

23. agree that if an overlap in functions remain the Natural and Built Environment Plan must take a coordinated and consistent policy approach and indicate who is responsible for any consenting

24.

25.

26.

Agenda Item 3: Carrying over parts of the RMA for drafting

27. agree that MfE officials work with PCO to carry across Parts 9A, 9B, 10, 11 and 11A of the RMA into the NBA and update in accordance with modern drafting techniques

28. agree in principle, subject to detailed advice and consultation with Māori and local government, to adopt the Panel's proposals that Regional Spatial Strategies should be:

- a. broad in scope
- b. focused on the major strategic issues and options for a region
- c. high-level (eg, indicative locations rather than site specific) but informed by robust analysis, evidence and information as appropriate to the particular issue or opportunity, and timeframe
- d. focused on spatial matters (things that can be mapped) and associated provisions

29. agree in principle, subject to detailed advice and consultation with Māori and local government, that RSS have sufficient legal weight on NBA plans to ensure that key strategic decisions and trade-offs are made through RSS and do not need to be revisited or duplicated in the preparation of NBA plans

30. note that this level of legal weight will shape policy choices about Māori and community engagement/consultation, and evidence requirements for the preparation of RSS

31. invite officials to report back to the MOG on options for how binding RSS are on local and central government funding plans and processes that, **either:**

- a. are within the envelope of the Panel's recommendations that those plans be 'consistent with' RSS, including the 'agreement' option described on pages 2 and 3 of the SPA Appendix, **OR**
- b. include options that go further than the Panel's recommendations in relation to the influence of RSS on local and central government funding processes (such as the 'commitment' option outlined in page 2 of the SPA Appendix)

32.

33.

Agenda Item 6: Report back to confirm framing of purpose

34. note that the paper 'NBA purpose and supporting provisions - avoiding unintended consequences for development and infrastructure' responds to an action from the 15 February MOG meeting to ensure the NBA purpose and supporting provisions do not result in unintended consequences for infrastructure and development
35. note that where and how natural environmental limits are set could have a significant impact on infrastructure that can be built or development that can occur
36. note that making the effects of activities subject to the 'avoid, remedy, mitigate' duty could have a significant impact on infrastructure that can be built or development that can occur
37. note that officials will monitor natural environmental limits, the 'avoid, remedy, mitigate' framework for managing environmental effects and other relevant system settings closely for potential unintended consequences as policy work progresses and that further work is currently underway on this (refer MOG #2 Minute para 15)
38. agree to close the action (refer MOG #2 Minute para 14) to report back on whether the NBA purpose and supported provisions will have unintended consequences, but note that officials will continue work to identify and avoid unintended consequences as further policy work progresses as part of future papers to be provided to MOG
39. agree that officials report to MOG with advice on how infrastructure services and associated designations will be enabled within the new system, including:
 - a. how infrastructure services will be enabled (within natural environment limits) through the purpose, national planning framework, regional spatial strategies and natural and built environment plans
 - b. commentary drawing on worked examples from Waka Kotahi and other agencies as relevant
40. note that officials will continue working to ensure that there are strong linkages between regional spatial strategies under the Strategic Planning Act and natural and built environment plans under NBA, particularly in relation to recognising the importance of infrastructure and ensuring it will be able to be provided efficiently

41.

Minute from RM Reform Ministerial Oversight Group Meeting #3 on 8 March 2021 (for item 1)

MINUTE

RM Reform Ministerial Oversight Group meeting #3

Date: Monday 8 March 2021, 3.30 – 4:15pm

Location: 2.1EW

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 Kiri Allan, Minister of Conservation, Associate Minister for the Environment, and Associate Minister for Arts, Culture and Heritage
Hon James Shaw, Minister for Climate Change
Hon Michael Wood, Minister of Transport
Hon Phil Twyford, Associate Minister for the Environment

Apologies: Hon Willie Jackson, Minister for Māori Development

Agenda Item 1:

Actions from previous meeting

3.a **confirmed** the minute of MOG meeting #2 on 15 February 2021

Papers for MOG meeting #3

3.b

3.c

Agenda Item 2: Agreeing policy for the National Planning Framework

Purpose and role in the system

- 3.1 **noted** 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 **agreed** the National Planning Framework may also provide direction where consistency is desirable on a sub-national scale
- 3.3 **agreed** 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 **agreed** 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 o Waitangi 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 **agreed** 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 **agreed** 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 **agreed** 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
- 3.8 **directed** officials to explicitly consider Cabinet's objective to "improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input" when progressing policy in relation to recommendation 3.6

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

- 3.9 **agreed** 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 o Waitangi

- 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, including local government, 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
- 3.10 **agreed** 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
- 3.11 **agreed** the National Planning Framework will be made by the Governor-General in Council
- 3.12 **agreed** 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
- 3.13
- 3.14 **agreed** to amend 3.9d to include the words 'including local government' after the word decision-makers (as shown above) to reflect the valuable role of local government in the development of the National Planning Framework
- 3.15 **agreed** recommendations 3.9 – 3.13, subject to further advice at a future MOG meeting (7 April 2021) on the Treaty clause, specifically whether it should refer to the principles of Te Tiriti o Waitangi or Te Tiriti o Waitangi directly

Mandatory proposals for direction

- 3.16 **agreed** 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)

- 3.17 **agreed** 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
- 3.18 **noted** 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 heritage or other outcomes in the NBA, or targets to support natural environment limits
- 3.19 **agreed** that reference to heritage could be recognised as part of recommendation 3.18 (ie, a discretionary matter requiring central government direction, rather than a mandatory topic)

Other matters raised

3.20

- 3.21 **agreed** that officials will report back to a future MOG meeting (7 April 2021) with advice on the definitions for natural and built environments, recognising feedback that the reference to natural and built environments does not sufficiently capture the rural environment
- 3.22 **agreed** that officials will report back to a future MOG (22 March or 7 April 2021) to clarify the contents of the exposure draft compared with what will be covered in the Bill as introduced
- 3.23 **noted** that Minister Parker and Minister Robertson will be provided with a copy of the exposure draft a week earlier than it is provided to the MOG ministers.

Paper 1: Overview of content in the exposure draft of the NBA and the full NBA Bill (for item 1)

1. At Ministerial Oversight Group (MOG) meeting #3 on 8 March 2021, MOG Ministers agreed that officials will report back to a future MOG (22 March or 7 April 2021) to clarify the contents of the exposure draft compared with what will be covered in the Bill as introduced.
2. Below is a list of the clauses that are either already in the exposure draft, or expected to be.
3. National Planning Framework and Natural and Built Environment Plan provisions that have been instructed on but not yet drafted represent officials best guess at what the exposure draft may cover.
4. The exposure draft will be accompanied by supporting material which will:
 - a. contextualise the inquiry, including the reasons behind reform and objectives for reform
 - b. summarise the reform process, including the Government's intentions for the remainder of the NBA, SPA and CAA programmes and system transition
 - c. explain what the exposure draft does and does not seek to do (to help focus submitters on the exposure draft and not on other evolving policy areas)
 - d. briefly summarise the Resource Management Review Panel Report as a foundation for reform policy development
 - e. explain the new plain language drafting style
 - f. explain the policy intent behind the exposure draft provisions.
5. Further information on the scope of the select committee inquiry and supporting material will be provided at the next MOG meeting on 3 May.

Clauses in the NBA exposure draft

Part 1 Preliminary provisions

Clause: Outline of Act

Clause: Interpretation

Clause: Act binds the Crown

Part 2 Purpose and Principles

Clause: Purpose of this Act

Clause: Natural Environment Limits

Clause: Outcomes applying to the natural and built environments

Clause: [Te Tiriti o Waitangi/Treaty of Waitangi]

New part: Implementation principles

Clause: Implementation principles

New Part: National Planning Framework

Clause: Purpose of National Planning Framework

- Threshold test for 'matters of national significance' (subject to delegated decisions)

Clause: National Planning Framework made as a regulation

- Can be made in part or in full
- Will be disallowable instrument/presented to House of Representatives

Clause: Contents of National Planning framework

- Enables direction at range of scales
- Enables different types of direction (outcomes, policies, rules, methods etc)

Clause: Mandatory content for National Planning Framework

- Including urban and infrastructure (subject to delegated decisions)

Clause: Process to make National Planning Framework

- [placeholder process for developing NPF must meet the agreed principles]

Clause: [Placeholder for national planning standards to demonstrate intention to be included in future system]

New Part: Natural and Built Environment Plans

Clause: Purpose of NBA Plans

- Describes purpose of NBA plans.

Clause: Requirement to prepare NBA plans [the decision maker TBC]

- [Placeholder only]

Clause: Functions of local authorities in relation to NBA plans

- Describes functions of territorial authorities and regional councils in relation to NBA plans.

Clause: Process for developing and changing plans – by NBA plan committee

- Placeholder for outline of the plan process principles.
- Placeholder for alternative plan change process.

Clause: Matters to be considered by NBA plan committee

- Matters that a plan decision maker must take into account when making decisions on a NBA plan. For the exposure draft this clause will include:
 - spatially identifying areas
 - other methods to resolve natural and built environment conflicts.

Clause: Content of NBA plans

- Content of a plan must meet the following principles:
 - promoting the integrated management
 - providing for kaitiakitanga and tikanga Māori and the use of mātauranga Māori
 - having particular regard to any cumulative effects
 - taking a precautionary approachand
 - implement the NPF and RSS's
 - include outcomes, policies rules and other methods
 - the ability to regulate activities and resources.

Clause: [Placeholder - additional content to outline topics a plan should address, relates to functions of territorial authorities and regional councils]

Clause: Relationship of NBA plans to other planning instruments/hierarchy

- Sets out NBA's role in implementing the NPF and RSS

Matters relating to the National Planning Framework that will not be in the exposure draft

- National Planning Standards – detail related to process, functions and powers.
- Regulations, including emergency regulations and powers.
- Detailed provisions such as stringency and leniency, relationship to designations, water conservation orders.
- Monitoring and review requirements of NPF.
- Relationship to SPA and RSS.
- Relationship to existing use rights, activities, consents.

Matters relating to NBA plans that are not in the exposure draft

- Who the decision maker is on plans.
- Overlapping functions of territorial authorities and regional councils.
- Specifics of the plan making process [consultation engagement requirements, process steps, timeframes].
- Additional matters for consideration by plan decision makers.
- Plan content – topic based matters and link to Purpose and Principles and local authorities functions.
- Legal weight of NPF and RSS's in relation to NBA plans.

Recommendations

note that officials have provided an overview of content in the exposure draft of the NBA and will provide further advice on the exposure draft, supporting material and scope of the select committee inquiry

Paper 2: Further proposals for Natural and Built Environment Plans (for item 2)

Context

1. This paper requests decisions on proposals for 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, 2, and 3.
2. Cabinet has made in principle decisions that there should be one plan per region covering both regional and territorial authority functions (CAB-20-MIN-0522 refers).
3. Cabinet has also agreed that the Ministerial Oversight Group will make further decisions on Natural and Built Environment Plans (NBA plans) to support the development of the exposure draft. In developing the recommendations in this paper, we have assessed the extent to which a range of planning system proposals achieve the objectives of reform, as well as their workability.
4. Cabinet has agreed that the new legislation will need to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori. NBA plans will be a key mechanism for achieving this. Cabinet has also agreed that RM Reform must maintain local democracy. Who and how decisions are made on plans is key to meeting this principle.
5. This briefing does not address all the decisions needed for NBA plans. It provides for the role and purpose of plans, consideration for how decisions are made and who the decision maker should be; and how plans should be developed. In addition further work is required on plan content (including where it relates to consenting), residual functions of local authorities, Ministerial oversight of plans and the planning system and the role of merits based appeals.
6. The high level policy proposals for NBA plans cover the following matters:
 - a. the purpose of NBA plans
 - b. the role of NBA plans
 - c. plan decision making
 - d. process for developing and changing plans
 - e. functions of local authorities in relation to NBA plans
 - f. presumptions about resources and land use, and existing uses
7. Importantly, NBA plans will have a direct relationship to the National Planning Framework and regional spatial strategies (RSS) the latter developed under the proposed Strategic Planning Act (SPA). In turn, these will inform the content of NBA plans. The process to develop NBA plans will be a key mechanism for communities and iwi to identify and ensure their values and priorities will be met. We plan to seek decisions on the statutory relationship between NBA plans, the National Planning Framework and RSS's at a future MOG meeting.
8. NBA plans will also have a relationship with the proposed Climate Adaptation Act (CAA) and there may be a need for specific process and roles and responsibilities for managed retreat and climate change adaptation. The relationship between the CAA, the SPA and the NBA, and how that is expressed through NBA plans will need further work and will be the subject of a future MOG.

Policy proposals for the planning system

Approach

9. The Resource Management Review Panel (the Panel) proposed one plan per region combining existing regional policy statements, regional plans and district plans. The plan would be developed and notified by a committee made up of representatives appointed by local authorities, mana whenua and a representative of the Minister of Conservation. An Independent Hearing Panel (IHP) would hear submissions and make recommendations back to the committee with merit based appeals on those parts not accepted by the committee (retaining points of law appeals).
10. The Panel's proposals change who develops plans by introducing a joint committee and independent hearing panel. These proposals result in significant changes to the functions of local authorities. The joint committee, and not the council, will make decisions to notify and finalise the plan. The Panel's proposals also change the role of Māori in plan development and a plan decision making approach to give effect to the principles of Te Tiriti o Waitangi.
11. This new approach will require adjustments across the system for local government and Māori. It will mean central government providing support for the system to ensure the development of stronger plans that are efficient and effective and achieve better environmental outcomes.
12. As a result of the cumulative changes to the planning system, all existing regional and district plan content will need to be reviewed and evaluated to determine if it fits the new approach.
13. The Ministry is giving consideration to how phasing of the preparation of new plans in some regions may be done with central government support to create a model plan. Advice is also being developed for later consideration by the MOG on transitional policy provisions for existing plans into the new system.

Purpose of Natural and Built Environment Plans

Context

14. The Panel recommended combining the regional policy statement and all the resource management plans of a region into one single plan per region, for land, freshwater and the coastal marine area. The Panel saw this as the single most important way to achieve integrated management of resources in a region, between the natural and built environment and across land and the coastal marine area boundary. They also considered that a system with fewer plans would be less complex to administer and more efficient.
15. The Panel also recommended that the unitary authorities of Tasman, Marlborough and Nelson be combined for the purposes of creating a combined plan.
16. Cabinet noted [CAB-MIN-0522 refers] that shifting to one planning document per region is an important change for the resource management system, consolidating over 100 existing RMA regional and district planning documents into approximately 14 plans for New Zealand.

Discussion

17. Natural and Built Environment Plans (NBA Plans) are the mechanism that will regulate and enable activities as well as protecting and managing the natural and built environment.
18. A significant criticism of the existing system is the disconnect between different plans and the lack of integrated management of resources, often leading to complexity, unacceptable cumulative effects and poor environmental outcomes.
19. Having one plan per region is a significant change for the planning system and will require local authorities to collaborate and have a different plan decision making model and working arrangements.

20. Plans will need to be outcomes focused (to reflect the Purpose and Principles) and better resolve resource and land use tensions. The plan making process, including decision making, will need to be robust, inclusive, provide a role for Māori and maintain local democratic input.
21. Our advice is that one plan per region that covers both resource use, allocation and land use management will allow plan provisions to be better integrated. Contributing to more cohesive management of the natural and built environment to achieve better integrated management, a key reform objective.
22. Nelson, Tasman and Marlborough are three existing unitary authorities. The Panel recommended that they combine for the purpose of plan making to create one combined plan for the three regions. The implications of combining three regions for the purposes of plan making has not been fully assessed but will be addressed at a future MOG meeting.

Recommendations

note that Cabinet has agreed that there will be one plan per region

agree that the primary purpose of Natural and Built Environment Plans is to:

- protect the natural environment
- manage the built environment
- enable and regulate activities
- manage the use of natural and physical resources

agree that a Natural and Built Environment plan structure and contents will address resource use and allocation (regional councils) and land use and subdivision (territorial authorities) matters holistically to achieve integrated management

agree that further policy specifically on the approach for unitary authorities including Marlborough, Nelson and Tasman to develop a combined plan for that region be reported back to a future MOG

Role of Natural and Built Environment Plans in the system

Context

23. The Panel's recommendations for the wider system are relevant to understanding the role Natural and Built Environment Plans play in achieving natural and built environment outcomes.
24. The Panel recommended that plans:
- a. sit within a context of more cohesive national direction and stronger regional direction
 - b. give effect to the principles of Te Tiriti o Waitangi
 - c. move from solely managing adverse effects to achieving positive environmental outcomes and managing adverse effects
 - d. are efficient and enable development to occur, within clearly stated environmental limits
 - e. ensure resource use and land management tensions and conflict are resolved.

Discussion

NBA plans sit in the context of stronger national priorities and regional strategic direction

25. A strong and cohesive National Planning Framework (NPF) is important for NBA plans to be effective. The NPF needs to clearly identify national priorities and have clear national outcomes.

There will also be a relationship with the NPF in relation to any direction it gives on NBA plan structure and format.

26. The Spatial Planning Act will require spatial strategies (RSS's) for each region. They will provide a high level, long-term vision for a region and how it will change over time. RSS's will help regions address and respond to current and future challenges and opportunities, such as population growth, housing and business needs, climate change and natural environmental challenges.

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32. Iwi management plans, transfers of functions, joint management agreements and Mana Whakahono ā Rohe are tools in the current system that provide for greater Māori involvement in planning. These continue to be useful tools. The Panel recommended a number of improvements to Mana Whakahono ā Rohe as part of an "Integrated Partnerships Process".

33. Ministers agreed (MOG #2) that the NBA purpose and principles should include recognition of "Te Mana o te Taiao". Ministers also agreed that one of the outcomes for reform be "process and substance of the National Planning Framework and plan-making decisions give effect to the principles of Te Tiriti o Waitangi and reflect te ao Māori including mātauranga Māori".

34. Treaty settlements have increasingly recognised the role of Māori in resource management through the provision of joint management and co-governance arrangements for environmental taonga.

35. There is significant overlap between the topics that plans cover and the interests of Māori such as the quality of freshwater, cultural heritage, the mauri of the coastal environment, and the protection of taonga species. More enabling policies to realise Māori aspirations for their land, marae, and papakāinga and housing are also important.

36. NBA plans will be an important mechanism to enable Māori to reflect te ao Māori perspectives on the environment and manage resources in a way that actively protects Māori interests. They are also a key mechanism for giving effect to the principles of Te Tiriti. Plans that better reflect

te ao Māori and mātauranga Māori may have a role to reinforce existing Treaty Settlements that involve Māori in resource management decisions.

37. Currently Iwi management plans, transfers of functions, joint management agreements and Mana Whakahono ā Rohe play a role in providing te ao Māori perspectives

38.

39.

We also recommend working with local government to understand their experience of working with existing mechanisms (eg iwi management plans).

NBA Plans need to be outcomes focused

40. The Panel found the current planning approach focused almost solely on managing adverse effects. The shift away from effects management to planning for positive outcomes is a significant change in how New Zealand will manage resources. Planning for outcomes requires identifying a desired outcome while also managing effects.
41. An outcomes based approach works for both protecting resources (eg biodiversity) and enabling activities (eg housing and infrastructure) and responds directly to the needs of communities in each region. For example, for the protection of resources, where a plan would indicate which resources need managing, protecting or restoring. Outcomes would specify the desired outcome and policies would indicate what needs to be considered to ensure that outcomes are achieved through the consent process. Rules and other processes (eg compliance or monitoring) can be used to prevent or manage activities and effects to ensure the outcome is achieved.
42. An outcomes approach works equally in an enabling framework. For example to meet a specific regional target for housing growth an identified plan outcome might be “to accommodate X additional housing capacity within 500m of key public transport nodes”. A corresponding policy might then specify that a certain level of increased housing density is required. The rule framework would then enable housing to achieve that density, subject to appropriate standards being met. Importantly, in achieving the outcome of higher density housing, effects can still be managed (eg stormwater run-off, transport congestion).
43. Our advice is that NBA plans need to focus on positive outcomes while also managing adverse effects. Shifting focus to positive outcomes enables the benefits of an activity to be measured and evaluated alongside the effects of an activity and enables plans to be more responsive to the needs of communities.

NBA Plans need to be more efficient

44. The effects based approach of the RMA was often seen as inefficient. Plans require consents for a large range of activities and effects and plans often identify and manage a large number of potential adverse effects. Consents are more often than not granted, subject to a large number of conditions.
45. A more efficient plan can be achieved through clear identification of desired outcomes and a statement of limits. Activities that achieve the outcomes and are within the limits should be

'allowed' (subject to appropriate standards). Being clear about which activities or developments are 'allowed' or 'not allowed' to achieve development or environmental protection outcomes; and the conditions they need to meet improves certainty for both communities and development sectors.

46. This approach does rely on good compliance enforcement and monitoring, which will be necessary to ensure limits are not being exceeded and conditions are being met.

NBA plans will need to better resolve resource use conflicts and tensions

47. A fundamental purpose of any planning system is to provide a means for resource use tensions and conflicts to be resolved. Both the NPF and RSS's will contribute to managing natural and built environment tensions, but it is in NBA plans where tensions and conflicts will need to be comprehensively considered and addressed.

48. Our advice is that NBA Plans play an important role in regulating and managing land and resource use to appropriately resolve natural and built environment tensions. This can be achieved by identifying areas, places and resources for protection or development and how they might be managed through outcomes, policies, rules, other methods and processes.

Recommendations

agree the role of Natural and Built Environment Plans is to regulate the natural and built environment at a regional and district level by:

- implementing the outcomes, natural environment limits and Te Mana o te Taiao as set out in purpose and supporting provisions of the NBA
- implementing the National Planning Framework, contributing to the implementation of regional spatial strategies and reflecting the needs of communities
- responding to the wellbeing of future generations

agree that regional spatial strategies play a key role in the planning system and will direct a policy and regulatory response to matters through NBA plans at a regional and district level

agree that Natural and Built Environment plans will identify regional and district natural and built outcomes as well as how outcomes will be achieved through policies, rules and other methods, and processes (or however they may be expressed)

agree that plan provisions can regulate activities and resources at a regional and district level by protecting, enabling, managing or prohibiting them (in the broadest sense), including through (but not exclusive to) outcomes, policies, rules and other methods, or processes

agree that Natural and Built Environment plans have a role in:

- promoting the integrated management of natural and built environments
- providing for kaitiakitanga and tikanga Māori and the use of mātauranga Māori
- having particular regard to any cumulative effects of the use and development of natural and built environments
- taking a precautionary approach where effects on the natural environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences

agree that in the process of developing Natural and Built environment plans, consideration by decision makers needs to be given to the resolution of conflicts and tensions by:

- spatially identifying areas or places where development is prioritised or areas and places where protection of the natural and built environment needs to be prioritised;
- other methods that seek to resolve tensions between the natural and built environment

note that the intent is for plans to be forward looking and enabling in areas where activities have been identified as being appropriate and restrictive where protection is required

note that further work is required on the relative weight and influence of other statutory plans prepared under other legislation on Natural and Built Environment Plans

Plan decision making

Context

49. The Panel proposed a committee made up of local government representatives (not necessarily elected officials) of a region, mana whenua representatives and a representative of the Minister of Conservation to prepare, consult and make decisions on plans. The Panel considered that partnership on an NBA committee is a key way that the NBA could give effect to the principles of Te Tiriti o Waitangi. The Panel recommended that in some circumstances, as a result of the large number of local authorities or mana whenua in a region (and therefore the size of committee), not all local authorities or mana whenua groups would be able to be represented on the plan committee.
50. Along with having one plan per region, who makes decisions on plans and how they are made was one of the most significant changes to the planning system proposed by the Panel, who considered it a key way to give effect to the principles of Te Tiriti o Waitangi, to achieve integrated management, and provide an efficient process.
51. Under the RMA, elected representatives of local authorities (except in some circumstances) approve a plan. This authority to approve cannot be delegated. The process of making the plan may be delegated to council staff, to a joint committee (made under the Local Government Act) or to co-governance groups, but the decision making power rests with elected representatives of a local authority. This approach intends to ensure plans are accepted as legitimate by the community and decision makers are accountable for their decisions.
52. There are a number of exceptions where the elected representatives are not the decision maker. For example, requiring authorities decide whether to accept or reject a designation; the Minister of Conservation is the decision maker on plans in the coastal marine area; and the Environment Court makes the final decision on appeals. A Board of Inquiry is the decision maker on proposals of national significance.

Discussion

53. The Panel proposes a role for Māori alongside local government representatives as part of the committee making final decisions on plans. To develop an appropriate workable plan decision

making model to prepare, notify and make final decisions on a plan, decisions need to be made on how Māori should be involved, and the desired level of democratic representation and accountability.

54. Important considerations in designing decision-making arrangements, include ensuring the principles of Te Tiriti o Waitangi are given effect to, deciding what partnership looks like for plan making and who is accountable for plans in a system that has traditionally held elected representative to account.
55. These arrangements become challenging when applied to multiple mana whenua groups and local authorities in a region, each of which have been operating in different ways in relation to plan making for territory in their jurisdiction.

A role for Māori in decision making.

56. A role for Māori in decision-making on NBA plans that gives effect to the principles of Te Tiriti is important to achieving review objectives and enabling positive outcomes for Māori. It will also be important for upholding Treaty settlement arrangements through the reform process.

57. There are a wide range of examples for partnerships for decision making and we are conscious that the needs of each region will be different. We are also aware that this work must not cut across decision making options being developed in the work on Māori rights and interests in freshwater.

58.

59. Recent Treaty settlements have resulted in a range of different ways of involving Māori that provide models for governance:

- a. The Hawke's Bay Regional Planning Committee is a co-governance body established through Treaty settlement legislation that has a statutory role to oversee the review and development of the Regional Policy Statement and regional plans for the Hawke's Bay region. The committee is split 50/50 between regional councillors and PSGE representatives. Their decisions need final approval from the Hawke's Bay Regional Council, but the council cannot decline or modify the committee's decisions without the agreement of at least 80% of the committee's membership.
- b. Te Awa Tupua is an indivisible legal entity covering the Whanganui river catchment. There are several mechanisms and bodies established to support Te Awa Tupua. Tupua te Kawa is an overarching framework for holistic management of the catchment and its relationship with Whanganui iwi; the river is represented by te Pou Tupua, a dual office with a crown appointee and an iwi appointee; and Te Kōpuka nā Te Awa Tupua is a permanent joint committee that includes iwi, councils, DOC, Fish & Game NZ, Genesis Energy and representatives from a number of regional industry and conservation interests. They are responsible for developing Te Heke Ngahuru strategy document.

60. Other models for involving Māori more broadly in decision-making include joint management agreements and non-treaty based partnerships between Māori and local authorities (eg Te Arawa and Rotorua Lakes District Council). Local government is increasing their use of Māori wards, which provide for a level of proportional representation of Māori across all local government functions. However, electoral representation is not a complete substitute for participation in natural resource and land use plan making.

61. In Auckland, the Independent Māori Statutory Board (IMSB) was established as part of the 2010 local government reforms. IMSB membership includes representatives of mana whenua

and mataawaka (Māori whose ancestral ties lie outside the region). Two representatives are voting members of all Auckland Council committees, including the Planning Committee.

62. Councils may also include iwi members on key council committees, sometimes with voting rights. Several regional and district councils have included iwi representatives on their planning committees, or have specific “komiti Māori” that help them fulfil their consultation requirements. Tāmaki Makaurau’s Mana Whenua Forum is a council supported group made up of representatives of Tāmaki iwi who meet on a regular basis to decide on matters of shared interest. The decision-making on these committee is often limited in some way, usually by deferring to full Council for approval. In some cases these roles are also established by Treaty legislation.

Local government democracy and accountability

63. The Panel’s recommended approach of plan development and plan decision making resting with an NBA plan committee represents a significant change to democratic accountability for plan making.
64. The Panel’s’ approach where a committee develops, notifies and makes decisions on a plan (and future plan changes) means democratically elected councillors would no longer have the responsibility of making these decisions on behalf of their communities. Instead the responsibility would move to an appointed body (the NBA plan committee) which may not contain representation from all local authorities (or mana whenua).
65. In the current system democratic accountability plays an important function. Elected representatives can understand local issues and be seen by ratepayers as responsible for decisions. They can also be voted out of office if their communities consider their decision-making faulty or wrong. However, the excessive influence of hyper local interests to maintain the status quo and the impact of amending land uses and improving discharges to achieve better environmental outcomes can influence decision makers away from their statutory responsibilities.
66. Difficult environmental and land use decisions will still need to be made, regardless of who makes them. In designing a new system it is necessary to consider the level of democratic accountability that is desired for plan making and consider the role of elected representatives in making those decisions.

There are options for plan decision making arrangements

67. The development of one plan per region requires a new and different approach to plan decision making arrangements. An approach that balances efficiency with an appropriate level of democratic accountability and a role for Māori is necessary. In addition, a different approach may be needed to change a NBA plan once it is in place. All advice and commentary provided in this section is preliminary

68. Understanding what a Treaty partnership is for plan making is a key aspect of determining plan decision making arrangements. The principle of partnership may be achieved through multiple different mechanisms including representation on a NBA plan committee, Māori advisory boards, partnership in plan development or a high level of weight for Iwi management plans in the system. Different combinations of arrangements maybe appropriate depending on the number of iwi/Māori groups, Treaty settlements, existing joint management agreements or Mana Whakahono ā rohe.

69. Maintaining democratic accountability might require each local authority to be represented on a plan committee and then require each local authority to make the final decision on the plan (regardless of the make-up of any committee formed to undertake plan development).

70. Democratic accountability requires a clear role for local authorities in the plan making process, including ensuring that specific types of advice (eg funding and finance implications or the ability to effectively implement the plan) have weight in the decision making process.
71. Our advice is that any new plan decision making model should; be efficient and workable, provide a strategic role for Māori to ensure NBA plans include mātauranga Māori, reflect Māori interests, and give effect to the principles of Te Tiriti o Waitangi, and maintain local government accountability.
72. Direction from MOG ministers is sought on the relative importance of these three principles to determine an appropriate model for plan decision making.

73.

New plan decision making arrangements will need to be supported and funded

74. New plan decision making arrangements for NBA plans will need to be supported through funding and resourcing from constituent local authorities in order to operate. Administrative and technical secretariat support could be provided by local authorities providing people or direct funding (or both).
75. Local authorities already bear the cost of plan decision making and plan making processes. Any additional cost created by a new process needs to be considered. Local authorities within a region will be at different stages of plan making processes when it comes to transitioning and therefore costs may not be evenly spread across local authorities. We will provide additional advice to future MOG's on the costs of proposed plan decision making models and how they will be spread.

Recommendations

agree that any new plan decision making model should; be efficient and workable, provide a strategic role for Māori to ensure NBA plans include mātauranga Māori, reflect Māori interests, give effect to the principles of Te Tiriti o Waitangi, and maintain local government accountability

Process for developing and changing plans

Context

76. The Panel recommended that the plan development process be based on the Auckland Unitary Plan process, and would include following key steps:
- a. a NBA plan committee drafts and notifies the proposed plan, with extensive community and stakeholder engagement
 - b. an independent hearings panel (IHP) hears submissions, including pre-hearing mediation and expert conferencing and makes recommendations to the NBA plan committee

- c. the NBA plan committee accepts or rejects recommendations with merit appeals limited to those decisions that were rejected.
77. The Panel also recommended that alternative plan making processes in the RMA not be carried over into the new legislation, like the streamlined planning process. Additionally, the new Freshwater Planning Process enacted in 2020 would be incorporated into one new plan making process. The panel also recommended that there remain a role for private plan change processes but they be more restricted.

Discussion

78. The process for creating and amending NBA Plans is closely related to plan decision making. The process needs to provide for public participation and robust evaluation of policy within the main steps of plan development and decision-making. The plan making process will need to include rigorous evaluation of policy direction and content, include an extensive pre-notification participation process and consultation with relevant parties.
79. Partnership with Māori, consulting relevant stakeholder groups such as affected central government departments and special interest groups will ensure a variety of views have been obtained and the policy is robust.
80. Plan change processes should be proportionate to the size and scale of the proposal. In addition alternate processes may be required to quickly and efficiently give effect to the National Planning Framework or regional spatial strategies.
81. Our advice is that effective public participation can be achieved by requirements that seek engagement early in the process, welcomes a diverse range of views and targets different communities of interest. Public participation should also include the ability to make submissions and be heard. Improved tools, including greater use of digital platforms, will enable a greater reach so that everyone has access to the process.
82. The hearing process to consider submissions on NBA plans should be impartial, expert and have some elements of an inquisitorial review (such as an Independent Hearing Panel IHP). The IHP would, be made up of people with the right skills and expertise, hear submissions and test evidence to provide robustness and independence to the decision-making process. An IHP process can also ensure good practice, consistency across regions, and the appropriate implementation of national and strategic policies and directions.

Recommendations

agree that the plan development and plan change process be fair and proportionate to the size and scale of the process or change and must ensure:

- robust evaluation and analysis of the plan provisions are built into appropriate decision points
- effective public engagement and consultation that includes seeking views from diverse groups within the community
- a role for Māori that gives effect to the principles of Te Tiriti o Waitangi
- appropriate evidence and technical expertise including mātauranga Māori and independent advice to inform decision making
- a role for public and key stakeholders
- a role for constituent local authorities
- an ability to make submissions, be heard and appeal decisions (in certain circumstances)

- an impartial, expert and inquisitorial review hearing process (such as an expert Independent Hearing Panel)

agree that alternate plan change processes may be developed including (but not limited to) in circumstance where a change is minor, has limited impact or addresses inconsistencies, where a change is required to implement the national planning framework, a regional spatial strategy or other matter of significance

Functions of local authorities and the Minister of Conservation in relation to NBA plans

Context

83. The Panel highlighted an overlap between regional and territorial authorities RMA functions for development capacity, natural hazards, contaminated land, indigenous biodiversity, noise and surface water.
84. The Minister of Conservation and the Minister of Local Government both have the powers and functions of local authorities in respect of a number of offshore islands. This can include both regional council functions and territorial authority functions or just territorial authority functions. They are required to prepare and administer plans for these functions.
85. In addition, the Minister of Conservation has a function to approve regional coastal plans.

Discussion

86. Clear assignment of functions between regional councils and territorial authorities is important to avoid policy and consenting and gaps in regulation. Overlaps can lead to duplication of effort and gaps may lead to poor environmental outcomes through a lack of an appropriate level of environmental management or protection.
87. Our advice is that the current approach in the RMA of regional councils managing natural resources (air, water, coast, soil etc) and territorial authorities managing the use and development of land, and subdivision is well established. The preparation of one plan per region will assist with integrated management, reduce conflicting policies and reduce duplication of consenting functions.
88. Clarifying the respective functions of regional councils and territorial authorities to avoid overlaps and gaps is required. Particularly in the areas of climate change adaptation and natural hazards, contaminated land, indigenous biodiversity, noise and surface of the water. Clarity is required to more clearly distinguish between the policy and implementation roles of the regional and district councils with respect to the matters that overlap in the current system.
89. We understand the intention is for the Minister of Conservation to retain responsibilities for the coastal marine area, how other local authority functions for both the Minister of Conservation and Minister of Local Government may be allocated for offshore and outlying islands requires further analysis by officials.

Recommendations

agree that regional councils retain their core natural resource functions and territorial authorities retain their core land use and subdivision functions; and gaps and overlaps as identified in the Panel's report should be clarified.

agree that if an overlap in functions remain the Natural and Built Environment Plan must take a coordinated and consistent policy approach and indicate who is responsible for any consenting

Presumptions about resources and land use and existing uses

Context

90. To clearly express how the National Planning Framework and Natural and Built Environment Plans will work in enabling and constraining use of the natural and built environment, the exposure draft should contain duties and presumptions about land and resource use and existing uses (commonly referred to as existing use rights). These matters are addressed in the current Part 3 of the RMA, and sections 85 and 185.
91. The Panel proposed that existing uses should be able to be extinguished where necessary to adapt to the effects of climate change or to reduce risks from natural hazards and where there is a high risk of significant harm or damage to health, property or the natural environment (eg the breach of an environmental limit). The Panel further suggested that the complexity of issues surrounding risk reduction through managed retreat may need specific legislation.
92. The RMA (s85) sets out that no compensation is payable for restrictions imposed under a RMA plan unless they prevent reasonable use and are unfair. The Panel recommended a review of s85 (and s185) to improve clarity.

Discussion

93. Presumptions about land and resource use are key to the way plans operate within the system. Under the RMA land can be used for anything unless a rule or consent expressly says otherwise. The use of natural resources (eg water) is not permitted unless expressly allowed by a consent or other regulation. In practice, RMA plans tend to include 'catch all' rules that require consents for any uses that are not specifically dealt with.
94. The RMA protects existing uses of land, allowing uses that would otherwise not be permitted to continue providing the effects remain 'the same or similar in character, intensity, and scale'. The provisions mean that undesirable land use can continue in perpetuity. They can discourage landowners from voluntarily making changes to improve environmental outcomes, due to the focus on maintaining the status quo. This approach will present problems when addressing managed retreat or other climate change adaptation measures. It could also impede progress in relation to other environmental goals.
95. Under the RMA (section 17) every person has a general duty to avoid adverse effects on the environment, regardless of whether the activity is carried out in accordance with the planning framework. As the duty can only be enforced on a case by cases basis it is not effective in circumstances where there may be multiple activities contributing to a poor environmental outcome.
96. Our advice is there is no need to fundamentally change presumptions for land (you can undertake any activity unless controlled by a rule) and resource use (you cannot undertake any activity unless allowed by a rule) but that these need to form part of the exposure draft to understand the wider system.
97. Existing use provisions will need to change to take into account current environmental pressures and the effects of climate change and this should be signalled in the exposure draft.

98

99.

Treaty impacts

100. Our overall assessment is that these high-level proposals for the planning system are likely to have a positive impact on the Treaty relationship by involving Māori early and more comprehensively in planning where it matters most to them. The interface between NBA plans and Treaty settlements will need careful consideration to ensure their mana is upheld and they remain effective for their respective iwi.

101. Our analysis is based on:

- a. previous engagement with Māori on resource management matters, including engagement undertaken by the Panel in developing their recommendations
- b. findings and recommendations of the Waitangi Tribunal.

Consistency with Waitangi Tribunal Recommendations

102. The Waitangi Tribunal has produced considerable commentary on the RMA since 1991.¹ There are several observations and recommendations related to partnership and co-governance of natural resources, as well as on the purpose of the RMA.

103. It is clear that Waitangi Tribunal commentary and recommendations regard partnership between Māori and government as essential for environmental management. Not every provision of an NBA plan will be of equal interest to Māori, but kaitiaki interests will stretch into many planning topics at the regional and district levels, including (but not limited to) freshwater management, biodiversity, coastal activities, earthworks, heritage, wahi tapu, and many land-use activities that have the potential to affect their taonga or, for example, the management of their own activities on Trust land.

¹ These have been compiled by MfE and proactively released as *Extracts from Waitangi Tribunal commentary, findings and recommendations on the Resource Management Act 1991*

https://www.mfe.govt.nz/sites/default/files/media/RMA/19-D-02140b_0.pdf

104. Between this clear overarching recommendation and the proposed intention of the NBA to require everyone carrying out functions under it to “give effect to the principles of Te Tiriti o Waitangi,” the choice to include Māori in the development of plans is a logical one.
105. It is instructive to use the Tribunal’s guidance for a Treaty-compliant system as articulated in Wai 262 as a basis for addressing the extent of Māori involvement in NBA plans:
- control by Māori of environmental management in respect of taonga, where it is found that the kaitiaki interest should be accorded priority
 - partnership models for environmental management in respect of taonga, where it is found that kaitiaki should have a say in decision-making but other voices should also be heard
 - effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others.²
106. The commentary raised in Wai 2200 about the RMA being insufficiently remedial is relevant to planning under the NBA as well. The Panel has proposed introducing an outcomes focus in the purpose and principles of the NBA, including targets to achieve outcomes. NBPs as a result will shift to achieving outcomes in a region, which creates opportunities for Māori to put a more remedial regime in place for their taonga.

Treaty settlements

107. There are several Treaty settlement commitments and mechanisms, both recorded in settlement legislation and in relationship agreements that interact with planning provisions in the RMA. These range from statutory acknowledgements to unique legal identities like Te Awa Tupua. These commitments must be protected and provided for in the new RM system [CAB-20-MIN-0522 refers].
108. The proposal for an NBA plan committee that includes Māori, could complement some existing natural resources arrangements established through settlement legislation in a region.
109. However, the relationship between NBA plan committees and existing co-governance bodies will be different region to region and within each region depending on the specific taonga, and the composition, purpose and functions of existing bodies.
110. There are other settlement mechanisms that relate to the process for plan-making (like the power to nominate commissioners) as well as mandatory plan contents (like Tupua te Kawa and the Waikato River Authority Vision and Strategy). These will need to be provided for in a reformed planning system.
111. A key issue is how specific arrangements will relate to a NBA plan committees. Specific Treaty settlements and arrangements will need to be worked through on a case by case basis to ensure that nothing is lost through the new arrangements.
112. A few settlements will intersect significantly with the resource management system that it is clear that a customised approach will be needed. Te Awa Tupua is an indivisible legal entity with its own kawa and many aspects of NBA planning could impact the settlement if not managed carefully.

² Ko Aotearoa Tenei, A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Waitangi Tribunal 2011. P112.

https://forms.justice.govt.nz/search/DOCUMENTS/WT/wt_DOC_68356054/KoAotearoaTeneiTT1W.pdf

Paper 3: Drafting certain parts of the Resource Management Act that are likely to be needed in new system (for item 3)

1. To meet timeframes for the RM reform, Parliamentary Counsel would like to undertake certain work that is likely necessary for the full Natural and Built Environments Bill at the end of 2021. Undertaking this work now is necessary to enable a workable drafting workload for later in 2021.
1. This drafting will be for the full Natural and Built Environments Bill at the end of 2021, and not included in the exposure draft.
2. The table below outlines the provisions officials seek agreement to be ready to carry across as appropriate to the Natural and Built Environments Bill. Final decisions have not yet been made on these issues. If subsequent MOG decisions alter the policy intent, the drafting will be updated accordingly.

Part of Current RMA	Instruction to PCO
Part 9A Freshwater farm plans	Carry across the policy in this Part and update to reflect new drafting techniques
Part 9B Effect of nitrogenous fertiliser on freshwater quality and freshwater ecosystems	Carry across the policy in this Part and update to reflect new drafting techniques
Part 10 Subdivision and reclamations	Carry across the policy in this Part and update to reflect new drafting techniques
Part 11 Environment Court	Carry across the policy in this Part and update to reflect new drafting techniques
Part 11A Act not to be used to oppose trade competitors	Carry across the policy in this Part and update to reflect new drafting techniques

Recommendations

agree that MfE officials work with PCO to carry across Parts 9A, 9B, 10, 11 and 11A of the RMA into the NBA and update in accordance with modern drafting techniques

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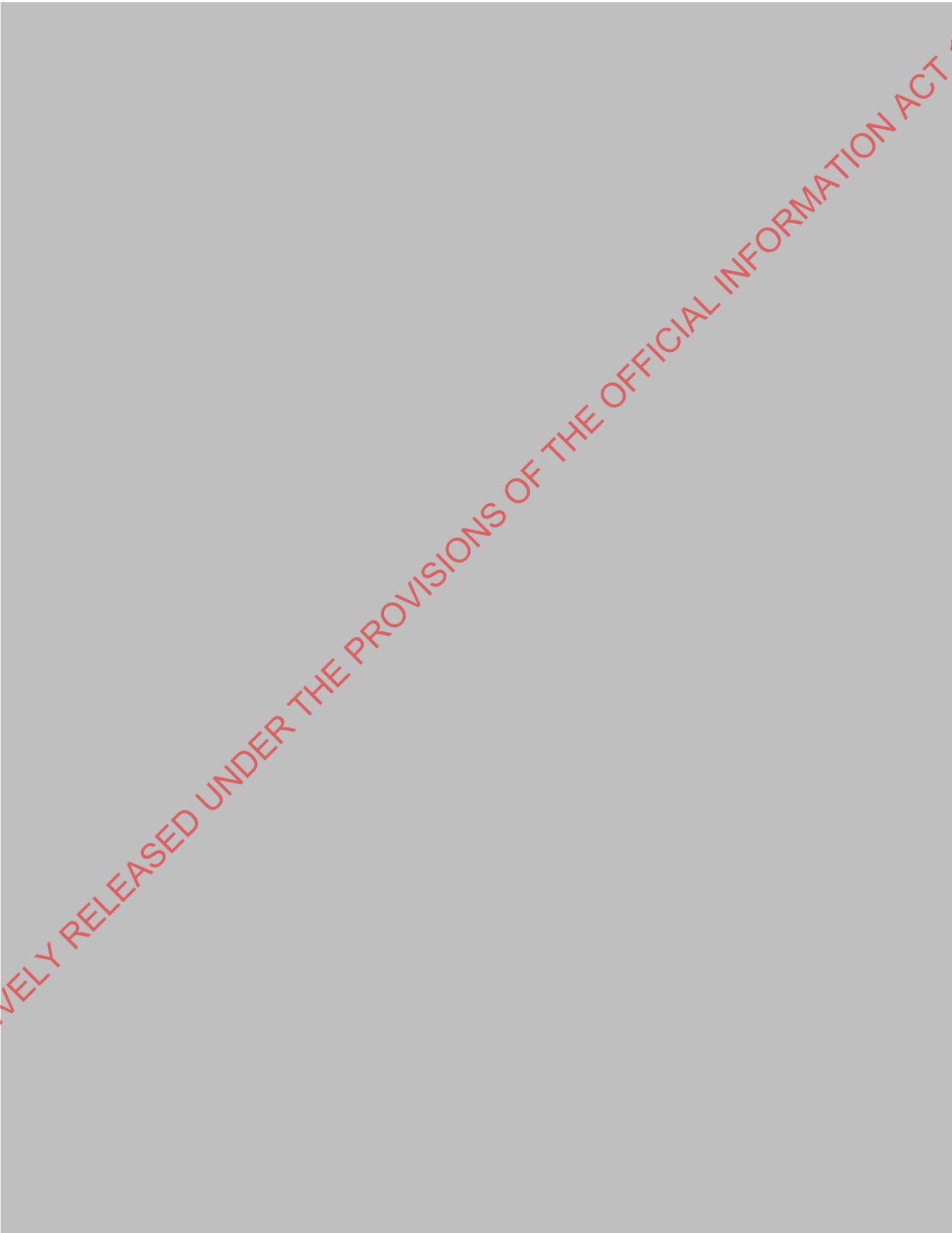
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Paper 6: NBA Purpose – avoiding unintended consequences for development and infrastructure (for item 6)

Key Messages

1. This paper follows up on an action from the second Ministerial Oversight Group (MOG) on 15 February for further work to ensure the Natural and Built Environments Act (NBA) purpose and supporting provisions does not result in unintended consequences¹³ for infrastructure and development.
2. It is too early to determine the final impact of the proposals on development and infrastructure. This is because other important aspects of the system (the National Planning Framework and natural and built environment plans) are still being designed and implemented.
3. The natural environmental limits and ‘avoid’ remedy, mitigate’ framework for managing environmental effects could have a significant impact on infrastructure and development. However, we cannot say whether there will be unintended consequences arising from these limits until we understand their specificity and application.
4. The system has been intentionally designed so the purpose and supporting provisions in the legislation broadly outline how decisions are made with detail, then added progressively to, in layers via regulations and plans. Specifically addressing the purpose and supporting provisions in plans negates the need to revert back to the purpose, in line with the *King Salmon* decision. The MOG has already agreed that use and development should be enabled within natural environmental limits. Where and how limits are set could have a significant impact on infrastructure that can be built or development that can occur.
5. Officials will monitor natural environmental limits and other relevant system settings closely for potential unintended consequences as policy work progresses. A further report back to MOG will also be provided which will cover how infrastructure services can be better enabled through the purpose, the national planning framework and NBA plans.
6. It is important to have a resource planning system that is enabling of infrastructure. An Act that enables infrastructure will lead to better environmental (as well as social and economic) outcomes. Also in infrastructure, New Zealand faces a number of challenges: an infrastructure deficit estimated at \$75 billion, population growth, assets reaching ‘end of life’, rapidly increasing level of service aspirations and macro-environmental imperatives such as climate change adaptation and mitigation. To meet these challenges, we require a planning system capable of enabling a significant increase investment in infrastructure (both new and replacement infrastructure) while also improving environmental outcomes.

Supporting information

Context

7. The MOG made further decisions on the NBA purpose and supporting provisions at the 15 February meeting, including:
 - a. the purpose of the NBA would reflect the overall policy intent that use of the natural and built environments is enabled within environmental limits

¹³ For example, preventing development where there seems to be no sound reason for doing so or impose unreasonable or disproportionate costs

- b. the purpose and supporting provisions also clarify:
- i. natural environmental limits are set to protect the life-supporting capacity of the built environment and human health,
 - ii. beneficial outcomes are to be promoted, and
 - iii. adverse effects of the environment are to be avoided, remedied or mitigated (or similar wording)
- c. further work would be undertaken on the framing of the NBA purpose to ensure the purpose aligned with the objectives of reform and does not result in any unintended consequences for infrastructure and development
- d. further work be undertaken to ensure measures developed to avoid, remedy or mitigate adverse effects on the environment are proportionate and do not impose unreasonable costs on development.
8. This paper completes the action calling for further work ensuring the purpose does not result in unintended consequences for infrastructure and development.
9. Further work on ensuring measures developed to avoid, remedy or mitigate adverse effects on the environment are proportionate and do not impose unreasonable costs on development is ongoing and will be reported back separately.

It is important to have a resource planning system that is enabling of infrastructure

10. An Act that enables new or replacement (including upgraded) infrastructure will lead to better environmental (as well as social and economic) outcomes: a large percentage of this investment activity is directly related to improving environmental outcomes including water quality, transport emissions, waste recovery and renewable energy production.
11. New Zealand faces a number of infrastructure challenges: an infrastructure investment deficit estimated at \$75 billion, population growth, assets reaching 'end of life', rapidly increasing level of service aspirations and macro-environmental imperatives such as climate change adaptation and mitigation. To meet these challenges, we require a planning system capable of enabling a significant increase in the investment to build new or replacement infrastructure while also improving environmental outcomes.

How the new resource management system will work in practice

The NBA purpose and supporting provisions cannot be considered in isolation

12. Assessing the unintended consequences of the NBA purpose and supporting provisions is only possible by considering how they interact with the other parts of the future resource management system. This is outlined by the A3 diagram at the end of this paper.
13. In summary, the NBA purpose and supporting provisions:

Do:	Do not:
<ul style="list-style-type: none"> • prioritise compliance with natural environmental limits • encourage recognition of the beneficial outcomes of activities • envisage a balancing approach to activities above (in compliance with) limits 	<ul style="list-style-type: none"> • apply to resource consents and notices of requirement for designations (as the purpose applies to role and content of the NPF and plans) • require for every individual consent, notice of requirement, activity or site:

<ul style="list-style-type: none"> • apply to the content of the NPF and NBA plans. 	<ul style="list-style-type: none"> ○ consideration against every target or outcome in the purpose and supporting provisions ○ demonstration that there is a net benefit for both natural and built environments • require the blanket application of limits across every site in New Zealand
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Reflecting the impact of the King Salmon and Davidson decisions

14. As previously agreed in principle by Cabinet [CAB-20-MIN-0522 para 65 refers] the NBA will mirror the hierarchy described in the *King Salmon* Supreme Court case.¹⁴ Read together with the subsequent Court of Appeal *R J Davidson* case¹⁵ this means:

- a. the National Planning Framework (NPF) will give meaning and specificity to the NBA purpose and supporting provisions (eg, limits and outcomes), including direction on how to weigh up competing matters
- b. NBA plans will in turn implement the policy direction in the NPF, giving further specificity and detail in a regional/local context
- c. individual applications for resource consents or notices of requirement for designations (to be included in plans) are not considered against the purpose of the NBA or its supporting provisions, but are instead considered against the relevant plans
- d. decision-makers would only look beyond plans if the relevant plan did not address the issues at play (ie, the plan was incomplete), illegally prepared (eg, did not give effect to the NPF), or uncertain. In this situation, decision makers would:
 - i. determine the matter with reference to the NPF
 - ii. only resort to the purpose and supporting provisions in the NBA if the NPF was similarly incomplete or illegally prepared.

Linkages with the Strategic Planning Act will flow both ways

15. Limits and outcomes in the NPF are expected to be reflected in regional spatial strategies (RSS) prepared under the Strategic Planning Act (SPA).
16. Limits may be reflected as areas where certain types of activities are not allowed, or areas identified for protection or restoration. Outcomes and targets may be reflected as long-term objectives that the regional spatial strategy requires to be met, or particular areas that should enable or encourage development.
17. Regional spatial strategies are also expected to influence or feed into the NPF and plans (note that the appropriate legal weighting of this influence is still being determined).
18. The SPA should enable mapping of particular environmental matters to assist decision-making and the preparation of NPF and plans. The NPF could be informed by the long-term objectives and locational choices of activities identified in regional spatial strategies. Plans are expected to help implement (or at least not be inconsistent with) the provisions of regional spatial strategies.

¹⁴ Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38.

¹⁵ R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316.

The impact of natural environmental limits on infrastructure and development

20. The overall policy intent of the NBA purpose is to enable the use of the natural and built environments within environmental limits in a way that provides for the wellbeing of current and future generations. As per the intended system design, limits will be articulated in the NPF and flow into plans (and regional spatial strategies).
21. Where and how limits are set could have a significant impact on infrastructure and development. However, we cannot say whether there will be unintended consequences arising from these limits until we understand their specificity and application.
22. To understand the implications of the natural environmental limits for development and infrastructure delivery, we need clarity on:
- a. the definition of 'life supporting capacity', which is what natural environmental limits are intended to protect (work is underway on this)
 - b. the application of the precautionary principle (work is also underway on this)
 - c. the breadth and scope of limits – both mandatory and discretionary
 - d. the level of prescription of the natural environmental limits
 - e. the extent to which the limits can be flexible – when, where and in what circumstances
 - f. the extent to which councils can set standards that are more stringent than the natural environmental limits set in the NPF
 - g. various other matters of detail (including the characteristics of particular types of development and infrastructure their intended location).
23. At the third MOG meeting of 8 March 2021, Ministers agreed the NPF will:
- a. have the role of providing direction or consistency at national, regional, local or spatially specific direction (where appropriate)
 - b. support the implementation of natural environment limits and NBA outcomes including the high-level resolution of competing matters
 - c. include urban and infrastructure on the list of mandatory national direction to be included in the NPF (subject to a report from officials on the scope of the work and the funding source).

Other system settings for managing the impact on infrastructure and development

24. There are several other tools for mitigating the risk of unintended consequences for infrastructure and development. These include decisions already made by the MOG, further detailed work being undertaken by officials in line with MOG decisions, and further work still to come, as outlined by the table below:

System setting	Comment / status
Constraining the application of the proposed 'avoid, remedy or mitigate' (or	Agreed action at MOG meeting #2 on 15 February. Work currently underway.

<p>similar) clause proportionate and do not impose unreasonable costs on infrastructure and development.</p> <p>Any reduction of environmental controls applicable to infrastructure should likely be accompanied by a narrower definition of 'infrastructure' in order to limit the potential for unintended compliance loopholes.</p>	
<p>Restating the NBA purpose to 'enable use of the environment...'</p>	<p>MOG agreed that the purpose of the NBA be worded to better align with the overall intent to 'enable use of the environment' within natural environmental limits (MOG #2, minute para 12).</p>
<p>Reframing infrastructure related outcomes of the NBA to better enable and recognise the benefits of infrastructure.</p>	<p>The updated list of outcomes to be provided for in the NBA will include more positively worded infrastructure related outcomes associated with:</p> <ul style="list-style-type: none"> • the provision and protection of infrastructure and • renewable energy generation and transmission.
<p>Including infrastructure and urban outcomes in the list of matters for which the Minister for the Environment must set national direction on through the National Planning Framework.</p>	<p>MOG agreed to include urban and infrastructure in the list of matters for which it will be mandatory to provide national direction, subject to further work being undertaken on the scope of the work and funding (MOG #3, draft minute paragraph 3.17).</p>
<p>Giving the Minister for the Environment a more explicit power through the National Planning Framework to specify which NBA outcomes have priority over others to assist in resolving conflicts.</p>	<p>Officials propose to clarify with Parliamentary Counsel that, under the NBA, the Minister for the Environment is able to prioritise between competing NBA outcomes in the NPF as part of 'resolving conflicts' between outcomes.</p>
<p>Ensuring it clear in the NBA is clear that individual resource consents and designations are not to be assessed against the NBA purpose and supporting provisions (so the purpose does not become a gateway test for every application where benefits have to be proven in addition to complying with limits).</p>	<p>Officials intend to instruct Parliamentary Counsel that the NBA be clear that consents and notices of requirement for designations are not to be assessed or considered against the purpose of the NBA or its supporting provisions.</p>
<p>Use the NPF to reduce variability in the treatment of infrastructure in local authority plans.</p>	<p>Officials will investigate the extent to which the NPF can be used in relation to infrastructure in order to minimise</p>

	variability, uncertainty and misinterpretation.
A strong link between regional spatial strategies and plans would benefit key infrastructure.	<p>Officials are continuing to work on the appropriate mechanisms and legal weighting for regional spatial strategies to ensure they are properly implemented as part of work on the proposed SPA.</p> <p>In a separate paper, officials are recommending that RSS have sufficient legal weight on NBA plans to ensure that key strategic decisions and trade-offs are made through RSS and do not need to be revisited or duplicated in the preparation of NBA plans.</p>

Departmental comments

25. Much of the feedback from agencies on avoiding unintended consequences for development and infrastructure concerned the subject matter and design of environmental limits and how the phrase ‘avoid, remedy or mitigate’ would be applied, in particular:
- the potentially uncertain nature of environmental limits based on life supporting capacity and the precautionary approach
 - the duty to promote statutory natural and built outcomes that relate to limited aspects of wellbeing
 - the duty to mitigate local impacts without a similarly express duty to give weight to wider benefits.
26. Although important, these are matters which relate to the content of later NBA system elements (primarily the National Planning Framework and NBA Plans) and the processes by which they are developed and applied. MOG meeting #6 is proposed to include consideration of infrastructure in the planning system.
27. Agencies expressed concerns that the paper taken to MOG #2 ‘*Further policy decisions on the purpose and supporting provisions of the Natural and Built Environments Act*’ did not provide Ministers a full, detailed explanation of the nature of the unintended consequences that may arise from the purpose and supporting provisions, including how local impacts are expected to be assessed against wider benefits. There is an active example of where Council and community environmental concerns have resulted in a recommendation to not renew an existing stormwater discharge activity, which would have resulted in closure of an existing prison facility.
28. [REDACTED] have expressed a desire to not close the ‘unintended consequences work’ for this report back but instead have a further report back to MOG as part of work on integrating infrastructure services and associated designations into the new system. This work should show how infrastructure can be better enabled and include worked examples.
29. [REDACTED] have concerns that this paper implies that resource consents and designations are both to be treated as ‘approvals’ in the NBA system. They wish to make it clear that consents are a form of approval, whereas designations are a form of notification (by the requiring authority to undertake works or acquire land) where the requiring authority makes the final decision.

30. Some agencies also have concerns that this paper underplays the importance of infrastructure in the new NBA system and are concerned that infrastructure appears to be treated as an after-thought. In particular, they are concerned that this paper provides insufficient assurance that the local and national benefits of infrastructure and benefits will be strongly recognised in the setting of limits or other direction in the National Planning Framework (or in plans). It is proposed that these matters be included in the proposed report to MOG on 'infrastructure in the planning system' (MOG meeting #6).
31. Ministry for the Environment officials are of the view that the NBA must have strong environmental protections (through natural environment limits) and be capable of managing adverse impacts that are not covered by limits if the ability of the environment to sustain life is to be sustained, and the objectives of the RM Reform (including those relating to giving effect to the principles of Te Tiriti o Waitangi) are to be met. This will inevitably mean that in some instances controls that limit the development of infrastructure will be appropriate.

Recommendations

note that the paper '*NBA purpose and supporting provisions - avoiding unintended consequences for development and infrastructure*' responds to an action from the 15 February MOG meeting to ensure the NBA purpose and supporting provisions do not result in unintended consequences for infrastructure and development

note that where and how natural environmental limits are set could have a significant impact on infrastructure that can be built or development that can occur

note that making the effects of activities subject to the 'avoid, remedy, mitigate' duty could have a significant impact on infrastructure that can be built or development that can occur

note that officials will monitor natural environmental limits, the 'avoid, remedy, mitigate' framework for managing environmental effects and other relevant system settings closely for potential unintended consequences as policy work progresses and that further work is currently underway on this (refer MOG #2 Minute para 15)

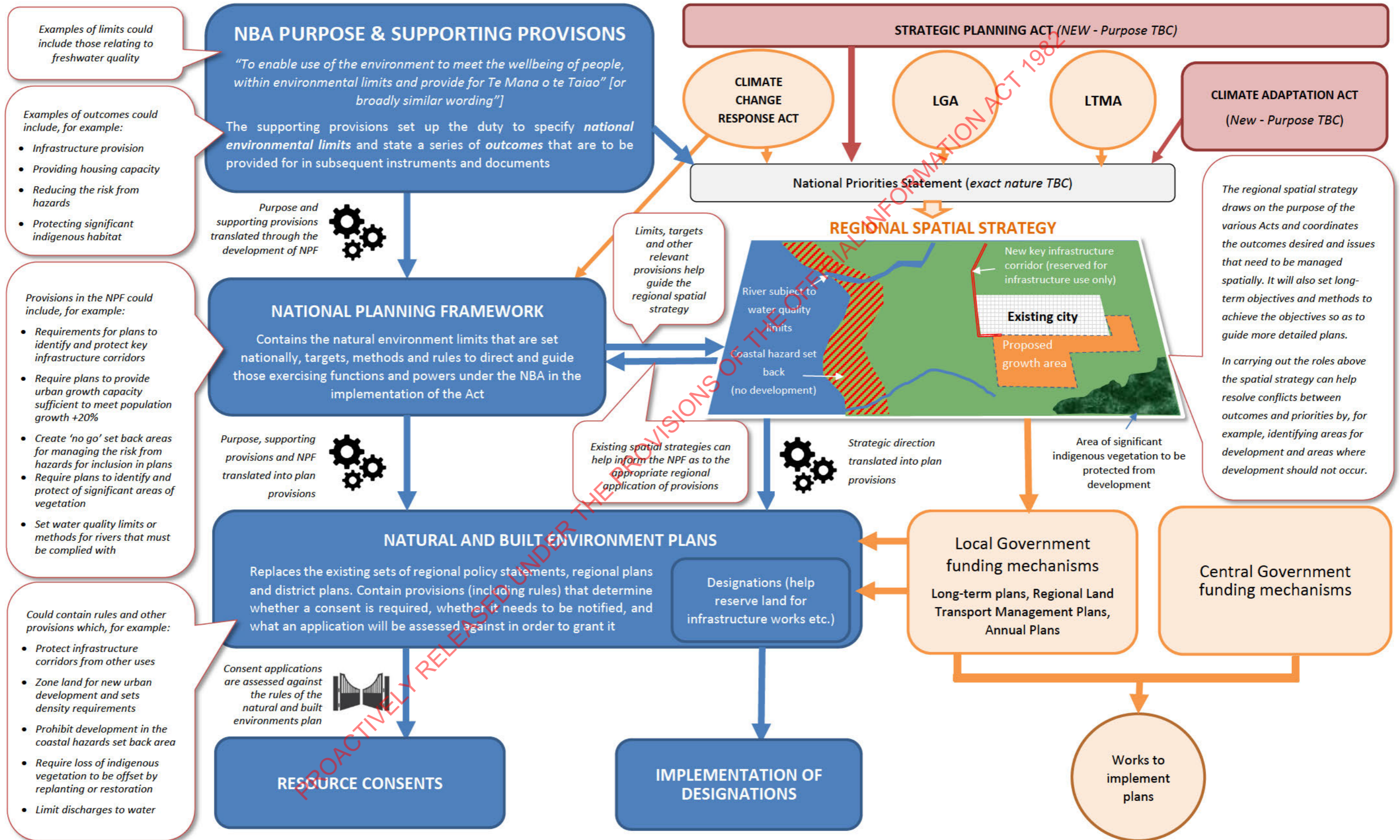
agree to close the action (MOG #2 Minute para 14) to report back on whether the NBA purpose and supported provisions will have unintended consequences, but note that officials will continue work to identify and avoid unintended consequences as further policy work progresses as part of future papers to be provided to MOG

agree that officials report to MOG with advice on how infrastructure services and associated designations will be enabled within the new system, including:

- how infrastructure services will be enabled (within natural environment limits) through the purpose, national planning framework, regional spatial strategies and natural and built environment plans
- commentary drawing on worked examples from Waka Kotahi and other agencies as relevant

note that officials will continue working to ensure that there are strong linkages between regional spatial strategies under the Strategic Planning Act and natural and built environment plans under NBA, particularly in relation to recognising the importance of infrastructure and ensuring it will be able to be provided efficiently.

Appendix 1: How the NBA purpose and supporting provisions flow through to consent and designation decisions



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