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[In confidence]

Office of the Minister for the Environment

Cabinet Business Committee

Reforming the resource management system

Proposal

- 1 This paper proposes the repeal and replacement of the Resource Management Act 1991 within this term of government, in accordance with Labour Party policy at the 2020 election.
- 2 This reform will be based on the recommendations of the Resource Management Review Panel, led by retired Court of Appeal Judge Hon Tony Randerson QC, which reported in June 2020. As recommended by the Panel, I seek agreement to three new Acts:
 - a Natural and Built Environments Act
 - a Strategic Planning Act
 - a Managed Retreat and Climate Change Adaptation Act.
- 3 I also seek your agreement to the proposed process for reform, initial in-principle policy decisions for the NBA, and initial funding to support this work.

Executive Summary

- 4 There is broad consensus that the resource management system introduced by the Resource Management Act 1991 (RMA) has not adequately protected the natural environment or enabled development where needed. Ecosystems have been degraded by poorly managed cumulative effects, biodiversity lost, and the response to climate change challenges slow. The RMA has also under-delivered for our urban areas. Decisions made under it have entrenched subjective amenity values and contributed to rapidly increasing urban land prices. New Zealand's housing is now amongst the least affordable in the OECD.
- 5 The Resource Management Review Panel (Panel) undertook a comprehensive review of the resource management system in the last term of government. The Panel identified systemic issues and produced comprehensive recommendations for reform. I propose to proceed with reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas.
- 6 The Panel recommended the RMA be repealed and replaced by three new pieces of legislation:

- a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)
 - a Strategic Planning Act (SPA) to integrate with other legislation¹ relevant to development and require long-term regional spatial strategies
 - a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change.
- 7 I propose this recommendation be adopted, and to progress the NBA first. Given the significance of this reform I propose to use a special process for the NBA, by developing an exposure draft that will be subject to a select committee inquiry ahead of legislation being formally introduced to the House. The exposure draft will contain the main structure and likely headings of the full NBA, with certain aspects fully drafted. The SPA and CAA will not have an exposure draft process but will be developed in parallel with the NBA.
- 8 Due to the scale and pace of policy decisions needed for the reform, I propose that a Ministerial Oversight Group be established. This Group will work through the policy details needed to progress the NBA, its exposure draft, and the supporting consultation material. It will be delegated with decision-making authority on these matters, and for associated matters relating to the SPA and CAA.
- 9 I seek agreement to initial in-principle policy decisions needed to proceed promptly with developing the exposure draft of the NBA. These decisions may be revisited, including as a result of engagement with Māori and others, by the proposed Ministerial Oversight Group, and/or after the select committee inquiry. These decisions include:
- the purpose and supporting provisions of the NBA
 - establishing a mandatory set of national policies and standards to support the establishment of the biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework
 - providing for a single planning document for each region (including the coastal marine area) under the NBA – consolidating over 100 existing regional and district planning documents into about 14 – and provisionally called Natural and Built Environments Plans.
- 10 I propose that purpose and supporting provisions of the NBA are provisionally adopted, generally as proposed by the Panel. At this stage in the reform process I consider any changes to the Panel's proposed drafting should be considered carefully.
- 11 There is a range of views held by Ministers, government agencies, the Parliamentary Commissioner for the Environment and non-governmental organisations as to how the natural and built environment should be referred to within the purpose of the NBA, including how they apply in urban and rural areas. I will direct officials to report to the Ministerial Oversight Group on this matter in early 2021.

¹ The (proposed) Natural and Built Environments Act, Local Government Act 2002, Climate Change Response Act 2002, and Land Transport Management Act 2003.

- 12 Engaging with Māori on this reform will be critical. I propose engaging with the newly formed Māori Collective² to refine policy options as proposals are developed. I consider it appropriate to make the in-principle policy decisions proposed in this paper ahead of this engagement due to their high-level nature, and on the basis they will be discussed with the Collective before the exposure draft is confirmed by Cabinet next year.
- 13 Engaging with local government and stakeholders is also important. I propose that officials engage with local government and other experts to ensure that high-quality advice is available in a timely and cost-effective way.
- 14 The Ministry for the Environment (MfE) will be the lead agency on developing the NBA, but there is a strong case for collective leadership of the SPA. The Minister of the Public Service and I will seek decisions from Cabinet in 2021 if we consider a formal structure under the Public Services Act 2020 is required for the SPA.
- 15 Legislation is the beginning of the reform process. Its implementation will take a number of years and doing so successfully will be critical to the enduring success of this reform. Accordingly, I propose starting work now on a number of aspects of the new system, including the National Planning Framework and working with willing local authorities to prepare the first combined planning documents to serve as models for others.
- 16 s 9(2)(f)(iv)

Navigation of this paper

- 17 This Cabinet paper is divided into four parts:
- Part One: The need for reform (paragraphs 18 to 27)
 - Part Two: The process for reform, including objectives, sequencing, governance arrangements, and engagement approaches (paragraphs 28 to 67)
 - Part Three: Initial in-principle policy decisions (paragraphs 68 to 108), including on the:
 - purpose and supporting provisions of the NBA (the equivalent of the current Part 2 of the RMA)
 - replacement for national direction, through a (provisionally called) National Planning Framework
 - replacement of resource management policy statements and plans through a single planning document for each region, called (provisionally) Natural and Built Environments Plans

² Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities. The Collective has been formed to engage with the Crown on Māori rights and interests in freshwater and resource management reform.

- Part Four: Supporting reform implementation and transition from the old to the new system (paragraphs 109 to 122)
- Part Five: Other matters (paragraphs 123 to 144).

PART ONE: THE NEED FOR REFORM

Background

Problems with the Resource Management Act 1991

- 18 There is broad consensus that the resource management system introduced by the RMA in 1991 has not adequately protected the natural environment or enabled development where needed. Ecosystems have been degraded by poorly managed cumulative effects, biodiversity lost, and the response to climate change challenges slow. It has also under-delivered for our urban areas. Decisions made under the RMA have entrenched subjective amenity values and contributed to rapidly increasing urban land prices. New Zealand's housing is now amongst the least affordable in the OECD.
- 19 Successive amendments have added complexity to the RMA, rendering it unwieldy, and there have been significant problems with its implementation. There is frustration with the quality of RMA plans and processes, the interaction and alignment between the RMA and other legislation, the coherence and effectiveness of national direction, and insufficient tools for Māori to engage meaningfully.
- 20 Resource management reform is an opportunity to improve the quality of the natural environment, deliver well-functioning cities and towns, simplify processes under it, and improve outcomes for Māori.

We reviewed the resource management system in the last term of Government

- 21 The Resource Management Review Panel (Panel) was appointed in July 2019 [CAB-19-MIN-0585.01 refers] to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits. Chaired by Hon Tony Randerson QC, the Panel produced an Issues and Options paper in November 2019.
- 22 The Panel met with local government and stakeholders from industry, primary production, environmental, and Māori organisations. This significant engagement programme informed the Panel's final recommendations.
- 23 The Panel reported in June 2020. Its report, *New Directions for Resource Management in New Zealand*, identified a number of issues that have led to deterioration of the natural environment and poor management of urban development. The Panel made comprehensive recommendations for improvement (as summarised in Appendix 2), including to repeal and replace the RMA, and to enact:
- a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)

- a Strategic Planning Act (SPA) to integrate with other key legislation³ relevant to development and require statutory long-term regional spatial strategies
- a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change.

24 In relation to the NBA the Panel recommended:

- focusing on positive outcomes for the natural and built environments
- achieving these outcomes through a system of limits to protect the natural environment, and targets to achieve outcomes for both the natural and built environments
- recognising the concept of Te Mana o te Taiao
- requiring decision makers to give effect to the principles of Te Tiriti o Waitangi and establish a stronger strategic role for Māori in the system
- setting national priorities and direction to guide local decision-making (ie, mandatory national direction)
- requiring combined plans for each region, and streamlining the process for developing and changing plans
- improving evidence, monitoring, feedback and oversight
- moving to equitable and efficient resource allocation within limits.

Progressing with resource management reform

25 I propose to proceed with resource management reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas. This is an ambitious, once in a generation opportunity to ensure we have a resource management system that delivers positive environmental outcomes while providing for development to address our urban and infrastructure needs. Delivering the reform, while retaining the aspects of the current system that work, will be a challenge but one this Government is in a unique position to deliver.

26 I seek agreement to adopt the Panel's recommendations that the RMA be repealed and replaced and that three new pieces of legislation be enacted – the NBA, SPA, and CAA – the names of which may be refined.

27 Detailed development of this legislation will take time, and initial in-principle decisions for the NBA are required now to commence the reform process – see Part Three of this paper.

³ The NBA, Local Government Act 2002, Climate Change Response Act 2002, and Land Transport Management Act 2003.

PART TWO: THE PROCESS FOR REFORM

Objectives for the reform process

- 28 Setting clear reform objectives is important to provide a consistent basis for decision-making, to help focus its direction, and to assist with resolving any policy conflicts as they arise. I propose the following objectives to guide the reform process:
- protect and where necessary restore the natural environment (including its capacity to provide for the wellbeing of present and future generations)
 - 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
 - give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
 - better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
 - improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.
- 29 To achieve these objectives, we will need to:
- make decisions underpinned by the best and robust, available evidence
 - provide certainty during a planned transition to the new system
 - start preparing for the implementation of the new system, including carrying over existing national direction (for example, on freshwater and urban development).

Sequencing the reform process

- 30 Given the significance of resource management reform, I seek agreement to use a special process to develop the NBA and have the SPA and CAA developed in parallel.

Exposure draft of the NBA

- 31 I propose to develop an exposure draft of the NBA that will be released alongside supporting consultation material. This will be subject to a select committee inquiry ahead of legislation being formally introduced to the House. I consider this approach crucial to ensuring the NBA is passed during this term of government.
- 32 The exposure draft of the NBA will contain its structure and indicative headings, with certain aspects fully drafted to reflect policy decisions made through this Cabinet paper and subsequent delegated decisions (the process to make these decisions is outlined in paragraphs 44 to 46).
- 33 The exposure draft will be accompanied by supporting consultation material that provides an overview of the proposed system, and poses questions for feedback.
- 34 I propose the development of the exposure draft and supporting consultation material progress as follows:

- initial in-principle policy decisions are made by Cabinet now
- further policy decisions for the exposure draft and supporting consultation material made through to April 2021
- the final exposure draft and supporting consultation material be submitted to Cabinet in May 2021 to consider for presentation to the House as a parliamentary paper
- following approval by Cabinet, the paper be referred by the House to select committee, by notice of motion
- select committee undertake an inquiry on the exposure draft and supporting consultation material.

35 I have directed MfE to prepare the terms of reference for the select committee inquiry. These will be provided to Cabinet for consideration alongside the exposure draft. The terms will propose that the select committee be supported by officials as advisors, seek public submissions, and undertake hearings. Following its inquiry, the select committee will report back to the House, and I will return to Cabinet with advice on the committee's recommendations.

36 The exposure draft may signal but not include all policy details of the NBA. Details such as consenting processes, heritage protection mechanisms, designations, proposals of national significance, Environment Court workings, water conservation, allocation methods, compliance, monitoring and enforcement and transitional arrangements will continue to be developed in parallel to the select committee inquiry.

37 I will bring all remaining policy decisions to Cabinet in the second half of 2021, with the intention of introducing the NBA to the House at the end of 2021. A standard legislative and select committee process will follow and I intend the NBA will be passed by late 2022, well before the end of this term of government.

38 The NBA is the core piece of legislation in the reform package, and I will be working to avoid any delays with it. I will provide monthly progress updates on the reform to the Cabinet Environment, Energy and Climate Committee (ENV).

Process for the SPA and CAA to be determined

39 The SPA will embed a strategic and long-term approach to planning for land use and the coastal marine area, including identification of areas suitable for development, areas to protect or enhance, social and network infrastructure needs, and vulnerability to climate change and natural hazards. Regional spatial strategies developed under the SPA will facilitate more efficient land and development markets to improve housing supply, affordability and choice, and climate change mitigation and adaptation.

40 The CAA will address the complex legal and technical issues associated with managed retreat, where it is required for climate change adaptation or reducing risks from associated natural hazards.

41 The SPA and CAA will be developed in parallel with the NBA so that policy overlaps are addressed and overlaps with other government programmes are managed. The SPA and CAA will not have an exposure draft process, but their policy direction will be signalled in the NBA supporting consultation material.

- 42 I will report back to Cabinet on the process for developing the SPA in early 2021. The Minister of Climate Change will report to Cabinet on the process for developing the CAA.
- 43 I intend to bring the SPA together with the NBA so that both pieces of legislation are passed together.

Establishing a Ministerial Oversight Group

- 44 Due to the scale and pace of policy decision-making required, I recommend that Cabinet establish a Ministerial Oversight Group delegated with this decision-making.
- 45 I propose that this Ministerial Oversight Group comprise the Ministers of/for Finance (Chair), Māori Crown Relations: Te Arawhiti, Housing, Environment (Deputy Chair), Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment Hon Kiritapu Allan, Associate Environment Hon Phil Twyford, and Climate Change. I will call the first meeting of these Ministers at the beginning of 2021.
- 46 The scope of the authority delegated to the Ministerial Oversight Group will include:
- refining policy decisions sought by this paper as needed
 - further policy decisions for the NBA exposure draft and supporting consultation material
 - policy and process decisions needed to progress the remaining content of the NBA bill
 - decisions on associated matters relating to the SPA and CAA.

Working together across government

- 47 MfE will be the lead agency on the NBA and is already working with relevant agencies. I propose that Cabinet directs that this continue, as I intend the Ministerial Oversight Group receive joint agency advice, rather than an array of differing positions.
- 48 I note that Ministers of the Crown, and government agencies and entities are also involved in specific processes under the RMA, such as responsibility for designations. These are not issues addressed in this paper. Ministers and agencies will be consulted on this as the reform progresses with a view to these powers being retained.
- 49 Due to the connections with other legislation⁴ a more formal structure may be needed to progress the SPA. This could be done using a structure recently enabled by the Public Service Act 2020, for example an interdepartmental executive board. If a more formal structure is needed, the Minister for the Public Service and I will seek decisions from Cabinet in early 2021.

Reform will impact and need to align with other government work programmes

- 50 The impact of this reform on other government work programmes will vary in scale and nature and may require amendment of other policies or legislation.

⁴ The (proposed) NBA, Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002.

- 51 Major work programmes that the reform connects with include freshwater rights and interests and wider allocation reform, environmental monitoring and reporting, Three Waters reform, the Urban Growth Agenda, the Community Resilience programme, Treaty settlements currently under development, Te Pae Tawhiti (the whole of government response to Wai 262 report), Crown Minerals Act 1991 review, and marine protection reforms.
- 52 These work programmes, as well as the reform proposed here, have a significant cumulative impact on government departments and agencies, local government, iwi and system users, especially in the context of the COVID recovery. Careful planning and management is therefore needed to ensure that they align and are complementary. In some instances, it may be preferable to stop, delay or slow work programmes to ensure legal alignment or manage resources until this reform is completed.

A partnership approach with Māori and iwi

- 53 The Panel identified the importance of providing for a much more effective role for Māori throughout the resource management system and made a number of recommendations for doing so. The Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (Treaty). The Panel also recommended the creation of a National Māori Advisory Board with a range of functions including providing advice to government and oversight of the resource management system from the perspective of mana whenua.
- 54 I consider the Panel's recommendations provide the right direction. However, as the Panel itself notes, further engagement with Māori is necessary to meet the Crown's Treaty obligations.
- 55 On 19 November 2020, several national Māori entities⁵ wrote to the Prime Minister advising of the formation of a collective (the Collective) with the purpose of engaging with the Crown on Māori rights and interests in freshwater and resource management reform. It is significant that these entities have united to engage on environmental matters, bringing together a broad range of Māori leaders and experts.
- 56 On 3 December 2020, the Collective met with the Prime Minister, Ministers for/of Māori Crown Relations: Te Arawhiti, Local Government, Māori Development, Associate Environment Hon Kiritapu Allan, other members of the Māori caucus and me. The discussion was constructive and reflected a high degree of goodwill. A shared commitment was expressed to find a way forward on freshwater and resource management reform.
- 57 I propose to work with the Collective on policy development for the NBA. After further discussions with the Collective I will report back to the Ministerial Oversight Group on how we do so and on the establishment of a substantive work programme.
- 58 We have to balance the need to make progress on policy issues with the need to preserve space for this engagement to take place. I consider it appropriate to make in-principle policy decisions now due to their high-level nature, and on the basis they will be discussed with the Collective before the exposure draft is confirmed by Cabinet

⁵ Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities.

next year. This work with the Collective will not impede any iwi or Māori entity from submitting to the select committee.

- 59 Officials will keep Treaty partners up to date through existing MfE and cross-agency communication channels.

Upholding existing legislation and agreements

- 60 The RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation. When setting the scope for the Panel's Review, Cabinet noted that Treaty settlements that include provision for iwi engagement in aspects of the resource management system will be carried over into a new system [CAB-19-MIN-0337 refers].

- 61 Engagement with Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of natural resource arrangements agreed by Māori and the Crown, or the subject of current Treaty settlement negotiations; as well as:

- rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- natural resource arrangements agreed by Māori and local government under existing provisions of the RMA, such as the transfer of powers under section 33 or Mana Whakahono ā Rohe entered into under section 58O.

- 62 To ensure this, the Crown will engage with affected Post-Settlement Governance Entities to discuss how their settlement arrangements will be carried over into a new system.

Working with local government

- 63 Local government has significant expertise relevant to reform and will be partners in implementing the new system. It is therefore essential to engage with local government throughout the reform process. MfE has begun engagement with local government and Local Government New Zealand (LGNZ).

- 64 Officials will report back to the Ministerial Oversight Group on how local government is involved in the reform process in early 2021.

Engagement with wider stakeholders

- 65 A wide range of stakeholders are interested in and ready to contribute their advice on the reform.

- 66 Other than Māori and local government, engagement prior to the release of the exposure draft will be limited to selected stakeholders necessary to ensure the new system works. Select committee processes will be the primary method of engagement for wider stakeholders and the general public. This approach will ensure resources are focused on developing the NBA exposure draft.

- 67 Officials will keep stakeholders up to date through existing MfE and cross-agency communication channels, and engage their expertise as appropriate.

PART THREE: INITIAL IN-PRINCIPLE POLICY DECISIONS

68 I seek your agreement to initial in-principle NBA policy decisions in order to proceed promptly with developing the exposure draft. These initial decisions closely follow the Panel's recommendations and relate to the overall structure of the NBA, including:

- the purpose and supporting provisions of the NBA
- the proposal to establish a mandatory set of national policies and standards to support the establishment of the biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework
- introducing the requirement for a single planning document for each region (including the coastal marine area) under the NBA – provisionally called Natural and Built Environments Plans.

69 These initial decisions may be refined as detailed policy is considered by the Ministerial Oversight Group and engagement with the Collective and local government is undertaken. As noted in paragraph 34, the full exposure draft and supporting consultation material will be submitted for Cabinet consideration to present to the House as a parliamentary paper.

NBA purpose and supporting provisions

70 The purpose and supporting provisions of the NBA will set out the overall premise of the legislation and drive the outcomes it will achieve. They are not yet finally settled, and I expect will be the subject of debate throughout the development of the legislation. There are alternatives to the Panel's indicative drafting, including from the Parliamentary Commissioner for the Environment (PCE). Getting the purpose and supporting provisions right is critical to ensure reform appropriately enables development within environmental limits as intended.

71 Meantime, I propose the purpose and supporting provisions of the NBA be progressed on the basis of Appendix 1 – which closely reflects the Panel's indicative drafting, but with some specific changes I believe are desirable and may assist in focusing debate.

Integrated management of natural and built environments

72 There has been a call by some to have separate legislative frameworks for land use planning (development) and environmental protection. The Panel considered this issue closely and recommended that the NBA should retain an integrated approach for land use planning and environmental protection. I agree with this approach.

73 However, this does not mean that the natural environment and the built environment should always be managed in the same way, in both urban and rural areas. There is a range of views held by Ministers, government agencies, the PCE and non-governmental organisations on how best to achieve this.

74 As articulated by the objectives outlined in paragraph 28, the reform will both protect and where necessary restore the natural environment and better enable development. There are options as to how these objectives will be achieved through the purpose, supporting provisions, and definitions of the NBA.

75 Meantime, I propose that the definitions recommended by the Panel for the natural environment and the built environment are provisionally adopted for further consideration. These are:

- natural environment: land, water, air and all forms of plants and animals (except people), including the complex ecosystems these make up
- built environment: buildings, structures, infrastructure, facilities, and the interactions which contribute to the ways in which people live, work or undertake recreational activities.

76 Further testing of these definitions, including how they apply to rural and urban areas, should ensure that no unintended consequences arise, such as an interpretation that requires rural areas to be maintained in their natural unmodified state. I will direct officials to report to the Ministerial Oversight Group on this matter, including how the proposed purpose of the NBA will achieve the reform objectives.

The purpose of the NBA must protect the natural environment and enable development

77 In line with the recommendation of the Panel, the NBA will retain an integrated approach to resource management. Accordingly, I propose that the purpose of the NBA be to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.

78 I also propose that the purpose is achieved by ensuring:

- (a) the use, development and protection of natural and built environments is within biophysical limits
- (b) positive outcomes for the environment are identified and promoted
- (c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated.

79 The hierarchy in these provisions is such that both (a) and (b) must be met before any consideration of the management of adverse effects. This is a major shift from the RMA, which focuses on individual adverse effects (rather than outcomes) and has not adequately protected our environment.

80 I note that how this purpose (including the words 'quality' and 'protection') relates to the built environment could be perceived to have unintended consequences for how development is enabled under the future system. This will be an issue that will be addressed following the report back by officials to the Ministerial Oversight Group as directed in paragraph 76.

Recognising the concept of Te Mana o Te Taiao

81 I recommend adopting the Panel's recommendation that the NBA purpose should also include the concept of Te Mana o te Taiao – 'the mana of the environment'. This refers to the fundamental significance of the natural environment and the importance of prioritising its health and wellbeing. It conveys a holistic, intergenerational perspective expressed well in te ao Māori. In relation to freshwater management, Te Mana o te Wai has gained widespread acceptance and is now integral to the regulatory regime.

82 While the Panel's indicative definition of Te Mana o te Taiao is a good start, further work is required with Māori on how to best express this concept to ensure that it is

clear and workable. The Ministerial Oversight Group will undertake this work with the Collective.

Giving effect to the principles of Te Tiriti o Waitangi

- 83 The NBA would require all persons who exercise functions and powers under the NBA to 'give effect to' the principles of Te Tiriti o Waitangi.⁶ This is a significant change from the RMA which requires decision-makers to 'take into account' the principles of the Te Tiriti o Waitangi. As the Panel states, a change to 'give effect to' "will modernise the RMA Tiriti clause and send a strong signal that those performing functions under the Act should give greater weight to it".⁷
- 84 However, as the Panel noted, it will "be important to make clear that giving effect to Te Tiriti is not intended to create a priority right for Māori to the allocation of resources"⁸. The use of 'give effect to' will not create a 'veto' for Māori interests to always prevail in every resource consent decision. The intention is to ensure that the principles of Te Tiriti and the purpose of the NBA are met concurrently.
- 85 The Panel advised that further guidance and direction would be needed on how to give effect to the principles of Te Tiriti. The Panel proposed that this be provided via a mandatory national policy statement that would be developed through an appropriate process with Māori.
- 86 However, my initial view is that this direction should be included in the provisions of the NBA itself, with a discretion for the responsible Minister to supplement this through the National Planning Framework (see Appendix 1, Section 9(4)(j)). This option will be explored with Māori before a final decision is taken.

Proposed system of environmental biophysical limits and targets

- 87 I agree with the Panel and the PCE that biophysical limits should be central to protecting and sustaining the natural environment's biophysical resources and the ecosystem services they provide. These biophysical resources are freshwater, coastal waters, air, soils, biodiversity, and terrestrial and aquatic habitats. Biophysical limits will apply in both urban and rural areas.
- 88 The Panel proposed limits as minimum standards for environmental outcomes, prescribed by the responsible Minister (generally Environment) to achieve the purpose of the NBA. These limits would be supported by a system of binding or non-binding targets to achieve continuing progress towards achieving the specified outcomes. I agree with these proposals.

Proposed system of outcomes to guide those undertaking functions under the NBA

- 89 A set of outcomes to be pursued by those exercising powers and functions under the NBA would replace the existing 'matters of national importance' and 'other matters' in Part 2 of the RMA. I propose that these outcomes, based mainly on the Panel's recommendations, be grouped into related subject matters – natural environment, built

⁶ Although the Panel adopted the Māori language reference to Te Tiriti, it proposed that it would be defined in a way that refers to both its English and Māori versions, as per the current definition of 'Treaty' under the RMA and the Treaty of Waitangi Act 1975.

⁷ Page 100 of the Panel's report.

⁸ Page 103 of the Panel's report.

environment, Tikanga Māori, rural, historic heritage, natural hazards and climate change.

- 90 These outcomes would flow through to subsequent decision-making through the National Planning Framework and Natural and Built Environments Plans.
- 91 The Panel recommended listing as an outcome the ‘enhancement of features and characteristics that contribute to the quality of the built environment’. While it was not the Panel’s intention, I consider this inclusion could perpetuate subjective amenity values hindering development. This has therefore been removed from Appendix 1.
- 92 However, I do recognise that urban design considerations contribute to well-functioning urban areas. These matters are more appropriately addressed at a lower level in the NBA, such as through the National Planning Framework.

Implementation principles, particularly relating to resolving conflicting objectives

- 93 Implementation principles listed in the NBA will assist Ministers and others exercising functions and powers under it (see Appendix 1, Section 9(2)). In particular, the Panel (and the PCE) identified the lack of means under the RMA to resolve conflicts between provisions. I agree that this issue should be addressed.
- 94 In the *King Salmon*⁹ decision, the Supreme Court held that national policy statements under the RMA can contain directive policies that are akin to “environmental bottom lines”. Such bottom lines were consistent with the purpose of the RMA. The Court found that local authorities making decisions on plans cannot use an “overall broad judgement” under Part 2 of the RMA to override clear and directive provisions in a national policy statement, because this would be inconsistent with the requirement to “give effect to” a national policy statement.
- 95 I propose that the NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override or be contrary to, biophysical limits.
- 96 The Court in *King Salmon* also held that the RMA sets up a hierarchy of planning documents, with increasing specificity over content and location on moving from the principles level (Part 2 of the RMA), to national documents (eg, the New Zealand Coastal Policy Statement), and then to local authority plans.¹⁰ Documents higher in the hierarchy are binding on lower order documents.
- 97 I propose that the NBA echo the hierarchy described in *King Salmon* whereby Part 2 is implemented through national direction, and plans give effect to national direction.
- 98 Should there be any doubt about which outcomes are to prevail in the event they come into conflict, I propose that this be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environments Plans.

⁹ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38.

¹⁰ Regional policy statements, regional plans and district plans.

National Planning Framework

- 99 The Panel recognised the important role of direction from central government in resource management, and proposed that the current forms of national direction be retained in the new system.
- 100 I propose that the system for central government direction under the NBA be provisionally called the National Planning Framework. Its purpose will be to address matters of national significance or matters where national consistency would be desirable.
- 101 The National Planning Framework would include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA. This consolidation of national direction was also recommended by the former Parliamentary Commissioner for the Environment in 2016, but is a departure from the approach recommended by the Panel. I intend to start work now on how current national direction can be consolidated and carried over under the NBA.¹¹
- 102 Further decisions from the Ministerial Oversight Group will be needed on the National Planning Framework to support the development of the exposure draft, including:
- establishing the process to develop and amend central government direction
 - its relationship to plans, consents and activities
 - the role of the Minister of Conservation
 - the process for developing and implementing targets and limits.

Natural and Built Environments Plans

- 103 The Panel recommended significant rationalisation to regional and local planning arrangements, centred around one combined plan per region. I agree, and propose that combined plans are required under the NBA, and be provisionally called Natural and Built Environments Plans.
- 104 Shifting to one planning document per region will be an important change from the RMA. This will consolidate over 100 existing RMA regional and district planning documents into about 14. However, I want to ensure that this will be practical given the diverse nature and complexity of existing RMA plans.
- 105 Further work is needed on the membership, roles, functions and powers of future regional planning arrangements, including the role for central government agencies. It will also be important to retain some level of subsidiarity for local communities (ie, delegating decisions to the lowest practicable local level), to ensure they retain a voice in plan-making processes. Planning under the NBA should be based on strong national direction and integrated planning within regions, but not every detailed rule needs to be decided regionally.

¹¹ Pending the National Planning Framework, national direction will continue to be developed and implemented (including on freshwater and urban development).

106 How matters such as resource consenting or heritage protection will occur under the NBA and Natural and Built Environments Plans is yet to be determined, but will be designed to meet the objectives of the reform as outlined in paragraph 28.

Authority to issue drafting instructions

107 I recommend Cabinet approve the issuing of drafting instructions to the Parliamentary Counsel Office (PCO) based on the agreed and in-principle decisions outlined above.

108 I also recommend that the Ministerial Oversight Group is authorised to issue drafting instructions on all further matters delegated to them by this paper.

PART FOUR: SUPPORTING REFORM IMPLEMENTATION AND TRANSITION FROM THE OLD TO THE NEW SYSTEM

A managed transition from the old to the new system

109 Inadequate implementation of the RMA and institutional issues have contributed to the poor environmental and urban development outcomes.¹² Implementation issues with the RMA, at least until more recently, include:

- insufficient national direction, especially in the face of declining water quality, rising greenhouse gas emissions and housing shortages
- no template plan formats or sample plans to guide local authorities, resulting in low quality drafting in varied formats
- insufficient funding for planning tribunals and the Environment Court to consider plans (ie, appeals on plans) leading to years of delays.

110 The COVID-19 response demonstrates that policy and implementation need to work closely together to be successful. Early work on implementation is needed now to enable an efficient transition to the new resource management system, and to signal the Government's commitment to that transition. Providing support for this will result in a faster and smoother transition with greater buy-in from system partners and stakeholders.

111 Significant resourcing and support from central government will be required both in the short and long-term. This will include:

- developing and testing combined plans to serve as models for local authorities
- consolidation of existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework
- incorporation of mātauranga Māori and tikanga Māori
- support to increase capacity and capability throughout the system (including for iwi and local authorities)
- an improved environmental monitoring and reporting system to enable effective setting and operation of new limits and targets – the recent report from the PCE

¹² Implementation failures are not limited to the RMA, but also include wider legislation such as the Building Act 2004 and Local Government Act 2002.

recommended action here – which will be delivered through a separate work-stream led by Associate Minister for the Environment Hon James Shaw.

s 9(2)(f)(iv) [Redacted]

[Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

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■ s 9(2)(f)(iv) [Redacted]

■ [Redacted]

■ [Redacted]

The need for an effective environmental monitoring and reporting system

118 Essential to the effective functioning of a system of limits and targets will be the ability to monitor and report on them. The work that Associate Environment Minister Hon James Shaw is leading on the environmental monitoring and reporting system seeks to coordinate science data and monitoring in a nationally consistent manner (as recommended by the PCE).

119 While this is a separate programme of work, it is closely connected and will be crucial to informing decision-making under the NBA, as well as demonstrating whether the system is functioning effectively and delivering on its outcomes.

120 s 9(2)(f)(iv) [Redacted]

121 The PCE's recent report, *A review of the funding and prioritisation of environmental research in New Zealand*, says that the way public funds are invested in environmental research is fragmented and disconnected from government priorities, and makes recommendations for change.

PART FIVE: OTHER MATTERS

s 9(2)(h) [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

¹³ The Minister for Statistics and Associate Minister for the Environment Hon James Shaw.

s 9(2)(h)

Legislative Implications

- 126 The decisions from this paper will result in legislation that will repeal and replace the RMA. The bill for the NBA (the Natural and Built Environments Bill) should be included on the legislative reform programme as a category 4 Bill (to be referred to a select committee in 2021).
- 127 Reform will also have a range of implications for other legislation, some potentially significant, which will require consequential amendments.
- 128 The RMA has important interfaces with the Building Act 2004, Climate Change Response Act 2002, Conservation Act 1987, Crown Minerals Act 1991, Environmental Reporting Act 2015, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, Fisheries Act 1996 (and 1983), Hazardous Substances and New Organisms Act 1996, Heritage New Zealand Pouhere Taonga Act 2014, Land Transport Management Act 2003, Local Government Act 2002, Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Hapū o Ngāti Porou Act 2019, Maritime Transport Act 1994, Public Works Act 1981, Reserves Act 1977, and Urban Development Act 2020.
- 129 As noted in paragraphs 60 to 62, the RMA also interfaces with Treaty settlement legislation, and reform proposals will be assessed to ensure they do not have unintended consequences for existing settlements, or those currently being negotiated.

s 9(2)(f)(iv)

[Redacted content]

Impact Analysis

Regulatory Impact Statement

- 132 No Regulatory Impact Statement (RIS) has been submitted for these proposals although Cabinet’s impact analysis requirements apply.
- 133 MfE and the Treasury have agreed on the following approach to meeting Cabinet’s impact analysis requirements at later stages of the resource management reform process (see Appendix 3 for more details):

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- Cabinet will be provided with an interim RIS to support its consideration of whether to release the NBA exposure draft. This interim RIS would explain the regulatory interventions within the exposure draft alongside presenting alternatives and interim impact analysis to support consultation. It would also be released publicly alongside the exposure draft to guide public feedback
- MfE will provide the Ministerial Oversight Group with the interim RIS, whether in working draft form or having completed quality assurance, as soon as practical
- a final RIS will then be prepared prior to Cabinet making final policy decisions on the complete NBA Bill. The final RIS will address the remainder of the policy areas while also incorporating feedback gathered through consultation on the exposure draft
- a regulatory impact assessment will be completed for the SPA and the CAA at the time policy decisions are sought on these.

134 MfE and Treasury will adapt the agreed arrangement if changes are required as the reform progresses.

Climate Implications of Policy Assessment

135 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the impact on emissions is indirect and is unable to be quantified with any level of certainty.

136 An objective of the reform is to 'better mitigate emissions contributing to climate change' and it is likely that the reform programme will lead to decisions that will ultimately have significant greenhouse gas emissions implications. However, it is difficult to assess at this stage how the proposals will impact emissions. The CIPA team will work with officials to assess the emissions impacts of policy proposals as they are advanced.

Population, gender and disability implications

137 These proposals may have some gender or disability implications. The way urban areas are designed and planned has the potential to have significant implications for different groups (including for mobility and mental health).

138 Resource management reform will be significant for Māori, including for existing Treaty settlement legislation. The Panel's recommendations would achieve a much more effective role for Māori in the resource management system, and I intend to use these as a foundation for engagement with Māori.

Human Rights

139 These proposals are not in any way inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. This reform aims to improve people's economic, environmental, social and cultural wellbeing, including health and safety, which will have a positive contribution to New Zealanders' human rights.

Consultation

- 140 The following agencies have been consulted on the proposals in this paper (excluding Appendix 1): the Treasury; Ministry of Housing and Urban Development; Department of Internal Affairs; Ministry of Transport; Department of Conservation; Te Puni Kōkiri; Office for Māori Crown Relations; Te Arawhiti, Ministry for Primary Industries; Land Information New Zealand; Ministry of Culture and Heritage; Ministry of Justice; Ministry of Health; Ministry of Business, Innovation and Employment; New Zealand Defence Force; and Ministry of Education.
- 141 The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

Communications

- 142 I intend to announce the proposed reform process following Cabinet approval. I also intend to reach out to all other parties represented in Parliament.

Proactive Release

- 143 I intend to proactively release this Cabinet paper as soon as practical after Cabinet's decision.

Recommendations

The Minister for the Environment recommends that the Committee:

PART ONE: THE NEED FOR REFORM

Background

- 1 note that the Resource Management Act 1991 (RMA) has not adequately protected the natural environment or enabled development where needed
- 2 note that resource management reform is an opportunity to improve the quality of the natural environment, deliver better for cities and towns, simplify processes, and improve outcomes for Māori

We reviewed the resource management system in the last term of Government

- 3 note that the Resource Management Review Panel (Panel) was appointed in July 2019 [CAB-19-MIN-0585.01 refers] to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits
- 4 note that the Panel reported in June 2020 and that its report, *New Directions for Resource Management in New Zealand*, identified a number of issues that have led to deterioration of the natural environment and poor management of urban development
- 5 note that the Panel recommended that the RMA be repealed and replaced, and to enact:
 - 5.1 a Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA)
 - 5.2 a Strategic Planning Act (SPA) to integrate with other key legislation relevant to development and require statutory long-term regional spatial strategies

- 5.3 a Managed Retreat and Climate Change Adaptation Act (CAA) to support New Zealand's response to the effects of climate change
- 6 note that in relation to the NBA the Panel recommended:
- 6.1 focusing on positive outcomes for the natural and built environments
 - 6.2 achieving these outcomes through a system of limits to protect the natural environment, and targets to achieve outcomes for both the natural and built environments
 - 6.3 recognising the concept of Te Mana o te Taiao
 - 6.4 requiring decision makers to give effect to the principles of Te Tiriti o Waitangi and establish a stronger strategic role for Māori in the system
 - 6.5 setting national priorities and direction to guide local decision-making (ie, mandatory national direction)
 - 6.6 requiring combined plans for each region, and streamlining the process for developing and changing plans
 - 6.7 improving evidence, monitoring, feedback and oversight
 - 6.8 moving to equitable and efficient resource allocation within limits

Progressing with resource management reform

- 7 agree to proceed with resource management reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas
- 8 agree to adopt the Panel's recommendation that the RMA be repealed and replaced and that three new pieces of legislation be enacted – the NBA, SPA, and CAA – the names of which may be refined
- 9 agree to aim to pass this legislation in the current term of government
- 10 note that the detailed development of this legislation will take time, and high-level decisions for the NBA are required now to commence the reform process

PART TWO: THE PROCESS FOR REFORM

Objectives for the reform process

- 11 note that setting clear reform objectives is important to provide a consistent basis for decision making, to help focus its direction, and to assist with resolving any policy conflicts as they arise
- 12 agree to the following reform objectives:
 - 12.1 protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations
 - 12.2 better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure

- 12.3 give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
 - 12.4 better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
 - 12.5 improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input
- 13 note that to achieve these objectives, it will be necessary to:
- 13.1 make decisions underpinned by the best, and robust, available evidence
 - 13.2 provide certainty during a planned transition to the new system
 - 13.3 start preparing for the implementation of the new system, including carrying over existing national direction (for example, on freshwater and urban development)

Sequencing the reform process

- 14 note that given the significance of resource management reform a special process will be used to develop the NBA, and the SPA and CAA developed in parallel

Exposure draft of the NBA

- 15 agree that the exposure draft of the NBA and supporting consultation material will be referred to a select committee for the purpose of an inquiry
- 16 agree that the NBA exposure draft will contain its structure and indicative headings, with certain aspects fully drafted to reflect policy decisions made by this Cabinet paper and subsequent delegated decisions (as outlined by recommendations 27 and 28)
- 17 agree that the NBA exposure draft and supporting consultation material progress as follows:
- 17.1 initial in-principle policy decisions are made by Cabinet now
 - 17.2 further policy decisions for the exposure draft and supporting consultation material made through to April 2021
 - 17.3 the final exposure draft and supporting consultation material be submitted to Cabinet in May 2021 to consider for presentation to the House as a parliamentary paper
 - 17.4 following approval by Cabinet, the paper be referred by the House to select committee, by notice of motion
 - 17.5 select committee undertake an inquiry on the exposure draft and supporting consultation material
- 18 note that the terms of reference for the select committee inquiry will be provided to Cabinet for consideration alongside the exposure draft

- 19 note that following its inquiry, the select committee will report back to the House, and the Minister for the Environment (Minister) will return to Cabinet with advice on the committee's recommendations
- 20 note that the exposure draft may signal but not include all policy details of the NBA, these will continue to be developed in parallel to the select committee inquiry
- 21 note that the Minister will bring all remaining policy decisions to Cabinet in the second half of 2021, with the intention of introducing the NBA to the House at the end of 2021, followed by a standard legislative and select committee process
- 22 note that the Minister intends that the NBA will be passed by late 2022
- 23 invite the Minister to provide monthly progress updates on the reform to the Cabinet Environment, Energy and Climate Committee (ENV)

Process for the SPA and CAA to be determined

- 24 agree that the SPA and CAA will not have an exposure draft process, but that their policy direction will be signalled in the NBA supporting consultation material
- 25 invite the Minister to report back to Cabinet on the process for developing the SPA in early 2021
- 26 note that the Minister of Climate Change will report to Cabinet on the process for developing the CAA and any associated funding

Establishing a Ministerial Oversight Group

- 27 agree to establish a Ministerial Oversight Group for the reform comprising the Ministers of/for Finance (Chair), Māori Crown Relations: Te Arawhiti, Housing, Environment (Deputy Chair), Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment Hon Kiritapu Allan, Associate Environment Hon Phil Twyford, and Climate Change
- 28 agree to delegate further policy decisions to the Ministerial Oversight Group, including to:
- 28.1 refine policy decisions sought by this paper as needed
- 28.2 make further policy decisions for the NBA exposure draft and supporting consultation material
- 28.3 make policy and process decisions needed to progress the remaining content of the NBA bill
- 28.4 make decisions on associated matters relating to the SPA and CAA

Working together across government

- 29 agree that the Ministry for the Environment (MfE) will be the lead agency on the NBA
- 30 note that the Ministerial Oversight Group receive joint advice from agencies

- 31 note that due to the connections with other legislation¹⁴ a more formal structure may be needed to progress the SPA
- 32 note that the Minister for the Environment and Minister for the Public Service will seek Cabinet agreement if a formal structure is needed to progress the SPA
- 33 note that the impact of this reform on other government work programmes will vary in scale and nature and may require amending of other policies or legislation

A partnership approach with Māori and iwi

- 34 note that the Panel's firm view is that the future system should provide a direct role for Māori in decision-making and in the design of measures and processes to give effect to the principles of the Treaty of Waitangi (Treaty)
- 35 note that further engagement with Māori is necessary to meet the Crown's Treaty obligations
- 36 note that on 19 November 2020, several national Māori entities¹⁵ wrote to the Prime Minister advising of the formation of a collective (the Collective) with the purpose of engaging with the Crown on Māori rights and interests in freshwater and resource management reform
- 37 note that on 3 December 2020, the Collective met with the Prime Minister, Ministers for/of Māori Crown Relations: Te Arawhiti, Environment, Local Government, Māori Development, Associate Environment Hon Kiritapu Allan, other members of the Māori caucus
- 38 note that at this meeting a shared commitment was expressed to find a way forward on freshwater and resource management reform
- 39 invite the Minister to report back to the Ministerial Oversight Group on how the government will work with the Collective and on the establishment of a substantive work programme

Upholding existing legislation and agreements

- 40 note that the RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation
- 41 note that engagement with Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of natural resource arrangements agreed by Māori and the Crown in current Treaty settlement negotiations; as well as for:
- 41.1 rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- 41.2 natural resource arrangements agreed by Māori and local government under existing provisions of the RMA

¹⁴ The (proposed) NBA, Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002.

¹⁵ Comprising the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kahui Wai Māori, and the Federation of Māori Authorities.

- 42 agree that the Crown will engage with affected Post Settlement Governance Entities, to discuss how their settlement arrangements will be carried over into a new system

Engagement with local government and stakeholders

- 43 note that local government has significant expertise relevant to reform and will be partners in implementing the new system
- 44 agree that officials will report back to the Ministerial Oversight Group on how local government is involved in the reform process in early 2021
- 45 agree that select committee processes will be the primary method of engagement for stakeholders and the general public in the next stage of the reform

PART THREE: INITIAL IN-PRINCIPLE POLICY DECISIONS

- 46 agree to initial in-principle NBA policy decisions in order to proceed promptly with developing the exposure draft, including:
- 46.1 the purpose and supporting provisions of the NBA
 - 46.2 the proposal to establish a mandatory set of national policies and standards to support the establishment of the environment biophysical limits, outcomes and targets specified in the NBA – provisionally called the National Planning Framework
 - 46.3 introducing the requirement for a single planning document for each region (including the coastal marine area) under the NBA – provisionally called Natural and Built Environments Plans
- 47 note that these initial decisions closely follow the Panel's recommendations and may be refined as detailed policy is considered by the Ministerial Oversight Group, and engagement with the Collective and local government undertaken

NBA purpose and supporting provisions

- 48 agree that the purpose and supporting provisions of the NBA be progressed by the PCO on the basis of Appendix 1 – which closely reflects the Panel's indicative drafting

Integrated management of natural and built environments

- 49 note that the Panel considered whether to separate legislative frameworks for land use planning and environmental protection, but recommended that the NBA should retain an integrated approach
- 50 note that there are options as to how objectives detailed in recommendation 12 will be achieved for natural and built environments through the purpose, supporting provisions, and definitions of the NBA
- 51 agree that meantime the definitions for the natural environment and built environment are adopted as detailed in Appendix 1
- 52 note that these definitions will be tested further, including how they apply to rural and urban areas, should ensure that no unintended consequences arise

- 53 agree that officials will report to the Ministerial Oversight Group on these definitions and how the proposed purpose of the NBA will achieve the objectives for reform proposed in recommendation 12

The purpose of the NBA must protect the natural environment and enable development

- 54 note that the proposed purpose of the NBA is to promote the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao

- 55 note that this purpose would be achieved by ensuring:

- (a) the use, development and protection of natural and built environments is within biophysical limits
- (b) positive outcomes for the environment are identified and promoted
- (c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated

- 56 note that this is a major shift from the RMA, which focuses on individual adverse effects (rather than outcomes)

Recognising the concept of Te Mana o Te Taiao

- 57 note that the Panel recommends that the NBA purpose include the concept of Te Mana o te Taiao – ‘the mana of the environment’

- 58 agree that the Ministerial Oversight Group work with the Collective on how to best express Te Mana o Te Taiao to ensure that it is clear and workable

Giving effect to the principles of Te Tiriti o Waitangi

- 59 note that the NBA requirement for all persons who exercise functions and powers under the NBA to ‘give effect to’ the principles of Te Tiriti o Waitangi is a significant change from the RMA which requires decision-makers to ‘take into account’ of the principles

- 60 note that the Panel advised that a national policy statement should be required on how to give effect to the principles of Te Tiriti, but that the Minister’s initial view is that this direction should be included in the provisions of the NBA itself

Proposed system of environmental biophysical limits and targets

- 61 agree that biophysical limits should be central to protecting and sustaining the natural environment’s biophysical resources¹⁶ and the ecosystem services they provide

Proposed system of outcomes to guide those undertaking functions under the NBA

- 62 agree that a set of outcomes to be pursued by those exercising powers and functions under the NBA will replace the existing ‘matters of national importance’ and ‘other matters’ in Part 2 of the RMA

¹⁶ Freshwater, coastal waters, air, soils, biodiversity, and terrestrial and aquatic habitats.

Implementation principles, particularly relating to resolving conflicting objectives

- 63 note that implementation principles in the NBA will assist Ministers and others exercising functions and powers under it
- 64 agree that the NBA clearly state that in achieving a target or outcome, activities must comply with, and cannot override or be contrary to, biophysical limits
- 65 agree that the NBA echo the hierarchy described in *King Salmon*¹⁷ whereby Part 2 is implemented through national direction, and plans give effect to national direction
- 66 note that should there be any doubt about which outcomes are to prevail in the event they come into conflict, this be reconciled and clarified through the National Planning Framework or, in the absence of such direction, through Natural and Built Environments Plans

National Planning Framework

- 67 agree that the system for central government direction under the NBA be provisionally called the National Planning Framework
- 68 agree that the purpose of the National Planning Framework will be to address matters of national significance or matters where national consistency would be desirable
- 69 agree that the National Planning Framework will include and replace existing forms of national direction, combining the current functions and powers of existing national policy statements, national environmental standards, most (if not all) regulations and national planning standards under the RMA
- 70 note that further work is needed on the National Planning Framework including:
- 70.1 establishing the process to develop and amend central government direction
 - 70.2 its relationship to plans, consents and activities
 - 70.3 the role of the Minister of Conservation, and
 - 70.4 the process for developing and implementing targets and limits

Natural and Built Environments Plans

- 71 agree that combined planning documents are required under the NBA, and that they be provisionally called Natural and Built Environments Plans
- 72 note that shifting to one planning document per region will be an important change for the resource management system and would consolidate over 100 existing RMA regional and district planning documents into about 14
- 73 note that further work is needed on the membership, roles, functions and powers of future regional planning arrangements, including the role for central government agencies, ministers and local government

¹⁷ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38.

74 note that how resource consenting occurs under the NBA and Natural and Built Environments Plans is yet to be determined, but will be designed to meet the objectives of the reform, including improving system efficiency and effectiveness

Authority to issue drafting instructions

75 invite the Minister to issue drafting instructions to the Parliamentary Counsel Office (PCO) based on the agreed and in-principle decisions above

76 authorise the Minister in consultation the Ministerial Oversight Group to issue further drafting instructions on matters delegated to them by this paper

PART FOUR: SUPPORTING REFORM IMPLEMENTATION AND TRANSITION FROM THE OLD TO THE NEW SYSTEM

77 note that significant resourcing and support from central government will be required both in the short and long-term, including:

77.1 to develop and test combined plans to serve as models for local authorities

77.2 the consolidation of existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework

77.3 the incorporation of mātauranga Māori and tikanga Māori

77.4 support to increase capacity and capability throughout the system (including for iwi and local authorities)

77.5 an improved environmental monitoring and reporting system to enable effective setting and operation of new limits and targets

78 s 9(2)(f)(iv) [Redacted]

s 9(2)(f)(iv) [Redacted]

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80.5 s 9(2)(f)(iv) [Redacted]

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[Redacted]

PART FIVE: OTHER MATTERS

Legislative Implications

86 note that this reform will result in legislation that will repeal and replace the RMA, introduce legislation covering other elements of the system, and has important interfaces with many other pieces of legislation

87 note that the RMA interfaces with over 60 pieces of Treaty settlement legislation, and that reform proposals will be assessed to ensure they do not have unintended consequences for existing settlements, or those currently being negotiated

88 note that the Natural and Built Environments Bill will reform the law relating to the management of New Zealand's natural resources

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89 approve the inclusion of the Natural and Built Environments Bill in the 2021 Legislation Programme, with a priority 4

s 9(2)(f)(iv)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Impact Analysis

93 note that MfE will provide an interim regulatory impact statement to the Ministerial Oversight Group and then to Cabinet to support the release of the exposure draft

94 note that CIPA requirements do not apply to this proposal as the impact on emissions is indirect and is unable to be quantified with any level of certainty

Communications

95 note that the Minister will announce decisions relating to the reform process following Cabinet's approval of this paper

Proactive Release

96 note that the Minister will proactively release this paper as soon as practical.

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Appendix 1: Illustrative drafting of the NBA purpose and supporting provisions

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

Interpretation key

- Proposed modifications in additions and deletions or *italicised text where moved*

Key definitions as used in the Panel's Report

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

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

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

Section 5 Purpose

- (1) The purpose of this Act is to promote enhance the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.
- (2) The purpose of this Act is to be achieved by ensuring that:
 - (a) ~~(b)~~ *the use, development and protection of natural and built environments is within environmental biophysical limits and is sustainable;*
 - (b) ~~(a)~~ *positive outcomes for the environment are identified and promoted; and*
 - (c) subject to (a) and (b), the adverse effects of activities on the environment are avoided, remedied or mitigated.
- (3) In this Act environment includes—
 - (a) ecosystems and their constituent parts;
 - (b) people and communities; and
 - (c) natural and built environments whether in urban or rural areas.
- (4) In this Act **wellbeing** includes the social, economic, environmental and cultural wellbeing of people and communities and their health and safety.

Section 6 Te Tiriti o Waitangi

In achieving the purpose of this Act, those exercising functions and powers under it must give effect to the principles of Te Tiriti o Waitangi.

Section ~~8~~ 7 - Environmental Biophysical limits

- (1) ~~Biophysical Environmental~~ limits are the minimum standards prescribed through the ~~National Planning Framework national directions~~ by the responsible Minister to achieve the purpose of this Act
- (2) ~~Biophysical Environmental~~ limits –
 - (a) must provide a margin of safety above the conditions in which significant and irreversible damage may occur to the natural environment;
 - (b) must be prescribed for, but are not limited to:
 - (i) the quality, level and flow of freshwater;
 - (ii) the quality of coastal water;
 - (iii) the quality of air;
 - (iv) the quality of soil;
 - (v) the quality and extent of terrestrial and aquatic habitats for indigenous species;
 - (c) may be quantitative or qualitative.
- (3) Local authorities are not precluded from setting standards that are more stringent than those prescribed by the Minister.

Section ~~7~~ 8 - Outcomes

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

Natural environment

 - (a) enhancement of features and characteristics that contribute to the quality of the natural environment;
 - (b) protection and enhancement of:
 - (i) nationally or regionally significant features of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes, rivers and their margins;

- (ii) outstanding natural features and outstanding natural landscapes:
- (iii) areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (c) enhancement and restoration of ecosystems to a healthy functioning state;
- (d) maintenance of indigenous biological diversity and restoration of viable populations of indigenous species;
- (e) maintenance and enhancement of public access to and along the coastal marine area, wetlands, lakes, rivers and their margins;

Built environment

- ~~(f) enhancement of features and characteristics that contribute to the quality of the built environment;~~
- ~~(g) sustainable use and development of the natural and built environment in urban areas including the capacity to respond to growth and change;~~
- ~~(h) availability of development capacity for housing and business purposes to meet expected demand;~~
- (f) sufficient development capacity for housing and business to respond to demand and provide for urban growth and change;
- (g) housing supply and choice to meet diverse and changing needs of people and communities;
- (h) strategic integration of infrastructure with land use;

Tikanga Māori

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

Rural

- (l) sustainable use and development of the natural and built environment in rural areas;

- (m) protection of highly productive soils;
- (n) capacity to accommodate land use change in response to social, economic and environmental conditions;

Historic heritage

- (o) protection of significant historic heritage;

Natural hazards and climate change

- (p) reduction of risks from natural hazards;
- (q) improved resilience to the effects of climate change including through adaptation;
- (r) reduction of greenhouse gas emissions;
- (s) promotion of activities that mitigate emissions or sequester carbon; and
- (t) increased use of renewable energy.

- (2) [\[placeholder clause to link to the SPA\] When providing for the outcomes in \(1\) local authorities must provide for the applicable regional spatial strategies prepared under the Strategic Planning Act 202X.](#)

Section 9 Implementation

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

Principles

- (2) Those performing functions under this Act must do so in a way that gives effect to this Part and:
 - (a) promotes the integrated management of natural and built environments;
 - (b) ensures public participation in processes under this Act to an extent that recognises the importance of public participation in good governance and is proportionate to the significance of the matters at issue;
 - (c) promotes appropriate mechanisms for effective participation by iwi, hapū and whanau in processes under this Act;
 - (d) provides for kaitiakitanga and tikanga Māori and the use of mātauranga Māori;

- (e) complements other relevant legislation and international obligations;
- (f) has particular regard to any cumulative effects of the use and development of natural and built environments; and
- (g) takes a precautionary approach where effects on the natural environment are uncertain, unknown or little understood but have potentially significant and irreversible adverse consequences.

Ministerial duties: outcomes and biophysical environmental limits

(3) The responsible Minister must through ~~national direction~~ the National Planning Framework:

- (a) *identify and prescribe the ~~biophysical environmental~~ limits specified in section 7(2)(b);*
- (b) *nationally significant features of the matters set out in section ~~87~~(b)(i);*
- (c) *outstanding natural features and outstanding natural landscapes under section ~~87~~(b)(ii) that are of national significance;*
- (d) *areas of significant indigenous vegetation and significant habitats of indigenous fauna under section ~~87~~(b)(iii) that are of national significance;*
- (e) *methods and requirements to give effect to the enhancement and restoration of ecosystems for the purposes of section ~~87~~(c);*
- (f) *methods and requirements to give effect to the maintenance of indigenous biodiversity and restoration of viable populations of indigenous species for the purposes of section ~~87~~(d);*
- (g) *methods and requirements to respond to natural hazards and climate change for the purposes of section ~~87~~(q) to ~~87~~(u).*

(4) The responsible Minister may through the National Planning Framework identify and prescribe any other matter the Minister considers appropriate, including:

- (h) features and characteristics that contribute to enhancing the quality of natural and built environments;
- (i) targets to achieve continuing progress towards achieving the outcomes specified in section ~~87~~;

(j) how the principles of Te Tiriti o Waitangi will be given effect through functions and powers exercised under this Act; and

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

Hierarchy: resolution of conflicts

- (6) ~~(5)~~ The use and development of natural and built environments must be within prescribed biophysical environmental limits and comply with binding targets, national directions and regulations.
- (7) ~~(6)~~ Subject to (6)(5), any conflict in or doubt about the application of matters in section ~~87~~ must be reconciled and clarified as necessary in a way that gives effect to the purpose of this Act:
- (a) in the first instance by the Minister through the National Planning Framework ~~national direction~~ or by regulation; and ~~or~~
 - (b) ~~in the absence of any such direction or regulation, by the provisions of policy statements and plans.~~ subject to any direction in the National Planning Framework or regulations, by the provisions of Natural and Built Environments Plans.

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Appendix 2: Summary of the Resource Management Review Panel's recommendations

Panel recommendation	Detail of recommendation
Repeal and replace the RMA with a NBA and a new purpose and principles/supporting provisions	<ul style="list-style-type: none"> Focus the system on positive outcomes for the natural and built environments. Achieve these outcomes through a system of limits to protect the natural environment and targets to achieve outcomes for both the built and natural environments. Recognise the concept of Te Mana o te Taiao in the purpose of the NBA and require decision makers to give effect to the principles of Te Tiriti o Waitangi.
Enact a SPA	<ul style="list-style-type: none"> Provide long-term regional spatial strategies that integrate land use planning, environmental regulation, infrastructure provision and climate change response matters under several statutory frameworks. Set long-term (30-50 year) strategic goals.
Enact a CAA	<ul style="list-style-type: none"> Address the complex legal and technical issues associated with managed retreat. Establish an adaption fund.
Set national priorities and direction to guide local decision-making (mandatory national direction)	<ul style="list-style-type: none"> Require the government to produce national direction under the NBA that sets environmental limits for certain resources (air, water, soil, biodiversity) and gives effect to the principles of Te Tiriti o Waitangi. Review current and future national direction to ensure it is integrated and addresses conflicts between achieving outcomes.
Require combined plans for each region, and streamline the process for developing and changing plans	<ul style="list-style-type: none"> Require all current RMA policy statements and plans in each region¹⁸ to be combined into one integrated plan under the authority of a regional joint committee, cutting the number of resource management plans in New Zealand from over 100 to about 14. With better plans in place, a simplified consenting process.
Establish a stronger strategic role for Māori in the system	<ul style="list-style-type: none"> Include mana whenua representation on joint committees that develop regional spatial strategies and regional combined plans. Enable effective partnering of local government and mana whenua in planning and delivery.
Improve evidence, monitoring, feedback and oversight	<ul style="list-style-type: none"> Create a nationally coordinated environmental monitoring and reporting system to improve the collection of data and information and monitoring and reporting on environmental outcomes, in line with the recommendations of the Parliamentary Commissioner for the Environment (PCE). Establish regional hubs for all resource management compliance, monitoring and enforcement functions, with assistance from central government. Strengthen enforcement powers and penalties.
Move to equitable and efficient resource allocation within limits	<ul style="list-style-type: none"> Address issues with resource allocation by providing different principles under the NBA than that of the 'first in, first served' principle under the RMA. Central and local governments should consider the role of non-regulatory approaches to achieving positive outcomes, including the use of economic instruments.

¹⁸ These would include regional policy statements, regional plans, and district plans.

Appendix 3: Impact analysis process for resource management reform

MfE has developed the following high-level process in consultation with the Treasury's Regulatory Quality Team (RQT) to ensure that resource management reform is supported by appropriate impact analysis.

An interim regulatory impact statement (RIS)

- Cabinet will be provided with an interim RIS to support its consideration of whether to release an exposure draft covering key policy areas of the proposed Natural and Built Environments Act (NBA). This interim RIS will explain the regulatory interventions within the exposure draft alongside presenting alternatives and interim impact analysis to support consultation.
- As detailed policy decisions to inform the exposure draft are proposed to be delegated to a group of Ministers, MfE will provide the group with a version of the interim RIS – whether in working draft or having completed quality assurance – as soon as practical.
- RQT and MfE will agree on the schedule as the process gets settled which will include finalising the dates for completing quality assurance of the interim RIS.

A final NBA RIS

- A final RIS will then be prepared prior to Cabinet making final policy decisions on the complete NBA Bill. This final RIS will address the remainder of the policy areas while also incorporating feedback gathered through consultation on the exposure draft.
- MfE and RQT will work together to finalise how this RIS will be structured and quality assurance completed.

Impact Analysis for the remainder of the reform

- Impact analysis will be completed for the SPA and the CAA at the time policy decisions are sought on these.
- Dates and process for the remainder of the reform programme are yet to be finalised and will be informed by Cabinet's decisions on timeframes.

MfE and RQT will collaborate to adapt the agreed arrangement if changes are required as the reform progresses.

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DRAFT

Te Tai Kaha & Crown officials Hui on Freshwater Rights and Interests and Resource Management Reform

NOTES

2.00 – 3.30 pm Thursday 22 July 2021

Environment House 1C and MS Teams

Invitees:

Te Tai Kaha: Matthew Smith, Anne Carter, Annette Sykes

Te Arawhiti: Benedict Taylor, John Grant

TPK: Tikitu Tutua-Nathan, Tata Lawton

MfE: Keita Kohere, Will Collin, Adriana Bird Lucy Bolton, Taimania Clark, Paula Warren, John Edwards , Jane White

Apologies: Kate Sedgley

Karakia Timatanga
Strategic Updates (15mins)
MfE
<ul style="list-style-type: none"> • Update on Engagement <p>NOTES</p> <p>Themes from Feedback from current round of hui:</p> <ul style="list-style-type: none"> - There is a general frustration with councils - Giving effect may not be strong enough. - There were multiple themes around capability and capacity - Low turn out for some regions -
TTK
Technical Discussions
Irrelevant

Irrelevant

Māori Appointments (20mins)

- Initial thinking around high level decisions and process for policy development

NOTES

OFFICIALS

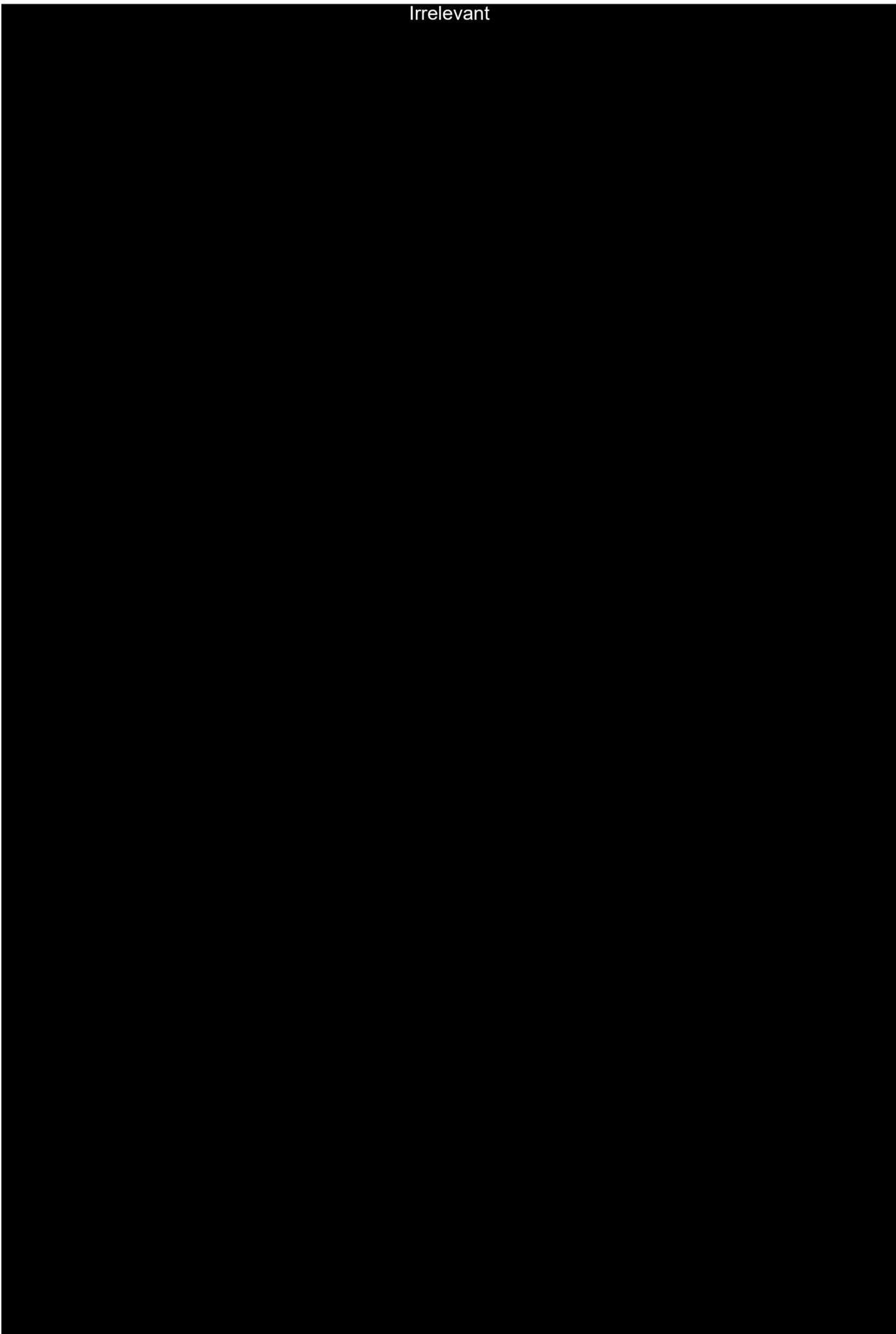
- This work links to Governance in the broader sense.
- Looking specifically at how those Māori members become members of the committee.
- Acknowledge there are a lot of interconnected decisions, but aware we need to be working concurrently (hence flagging it early to provide an opportunity for TTK to be involved right from the beginning)
- There is no timeframe yet for when substantive decisions will be made
- Some key questions to reflect on:
 - Where on the scale from full autonomy to prescription through legislation should this sit?
 - How do we provide for flexibility?
 - How do we set that out in legislation?
 - What support and resources enable this?

Action: Further discussion has been flagged for forward work program.

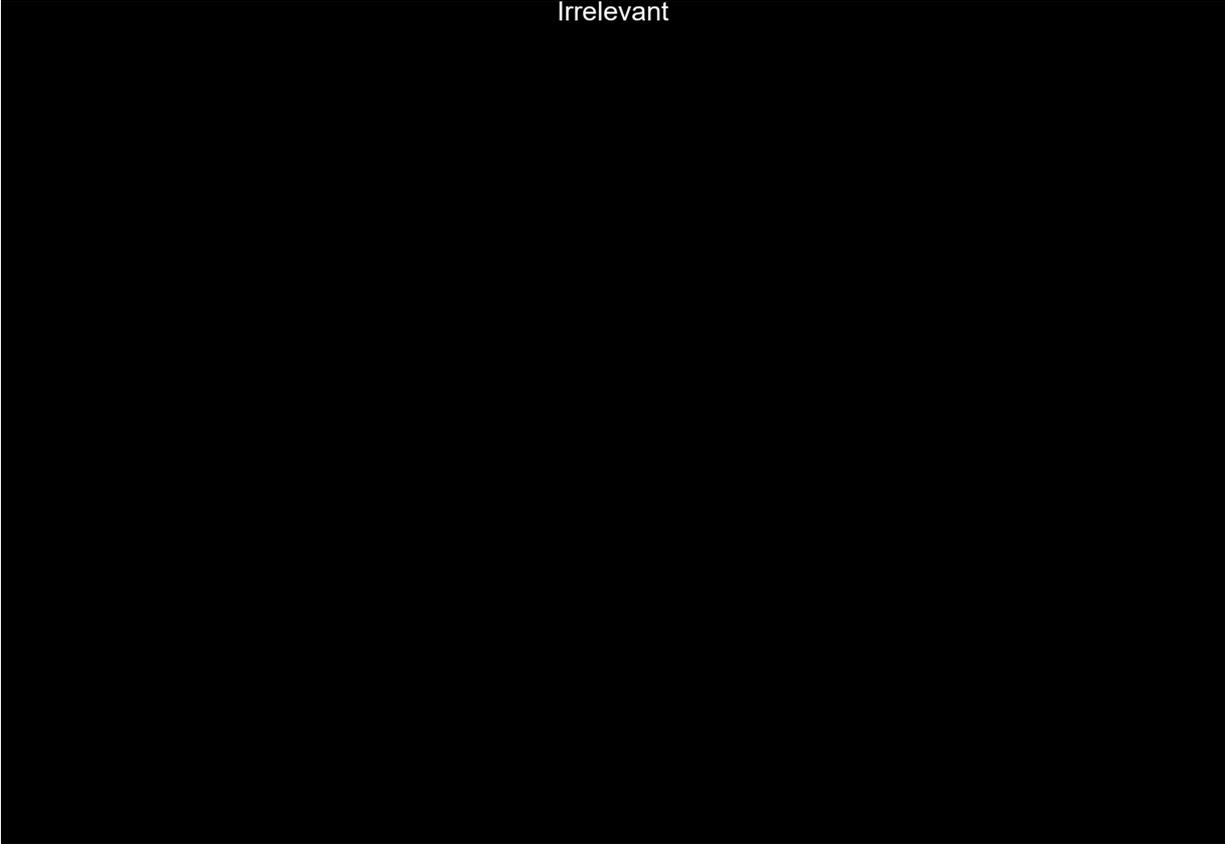
Note – TTK are producing 3 papers relating to mana whakahaere (happy to share when complete)

Irrelevant

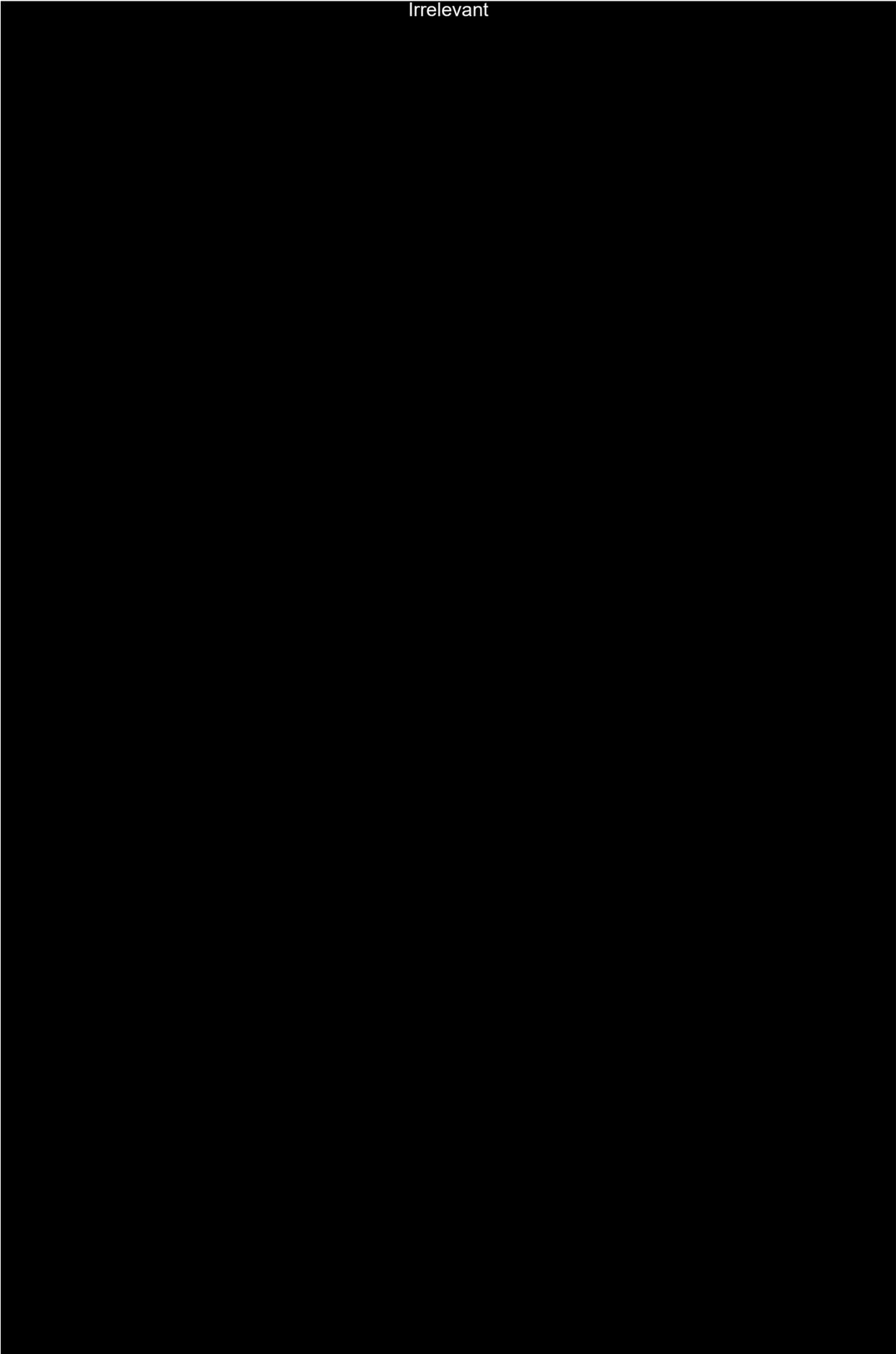
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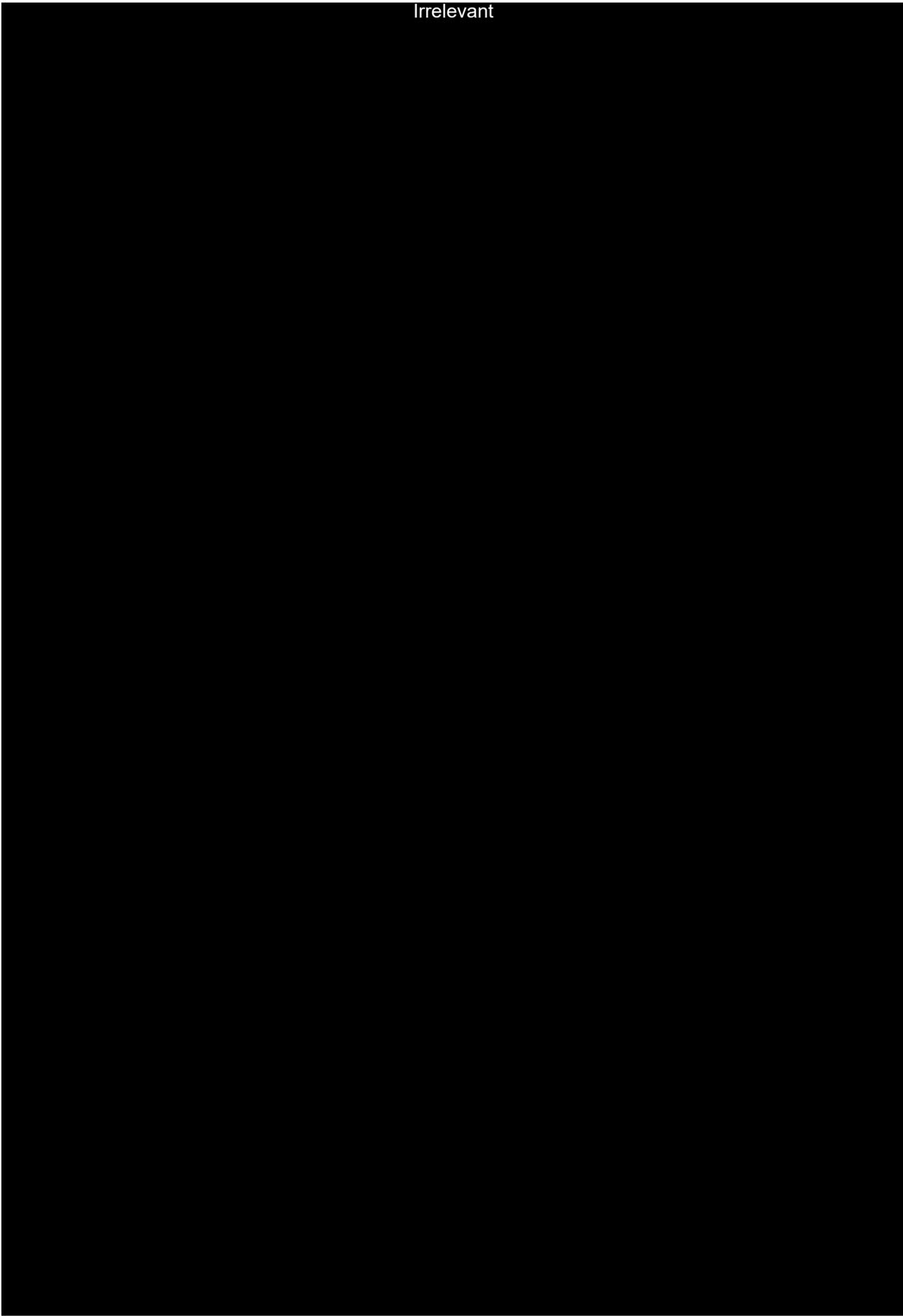
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DRAFT

ILG and Wai Māori Trust & Crown officials Hui on Freshwater Rights and Interests and Resource Management Reform

NOTES

Technical Discussion

12.30 – 2.00pm Thursday 29 July 2021

Environment House 1C and MS Teams

Invitees:

Iwi Leaders Group and Wai Māori Trust: Nicki Douglas, Jamie Ferguson, Graeme Hastilow, Donna Flavell, Riki Ellison, Tina Porou Dave Marshall? (which group)

Te Arawhiti: Benedict Taylor, John Grant

TPK: Tikitu Tutua-Nathan, Tata Lawton

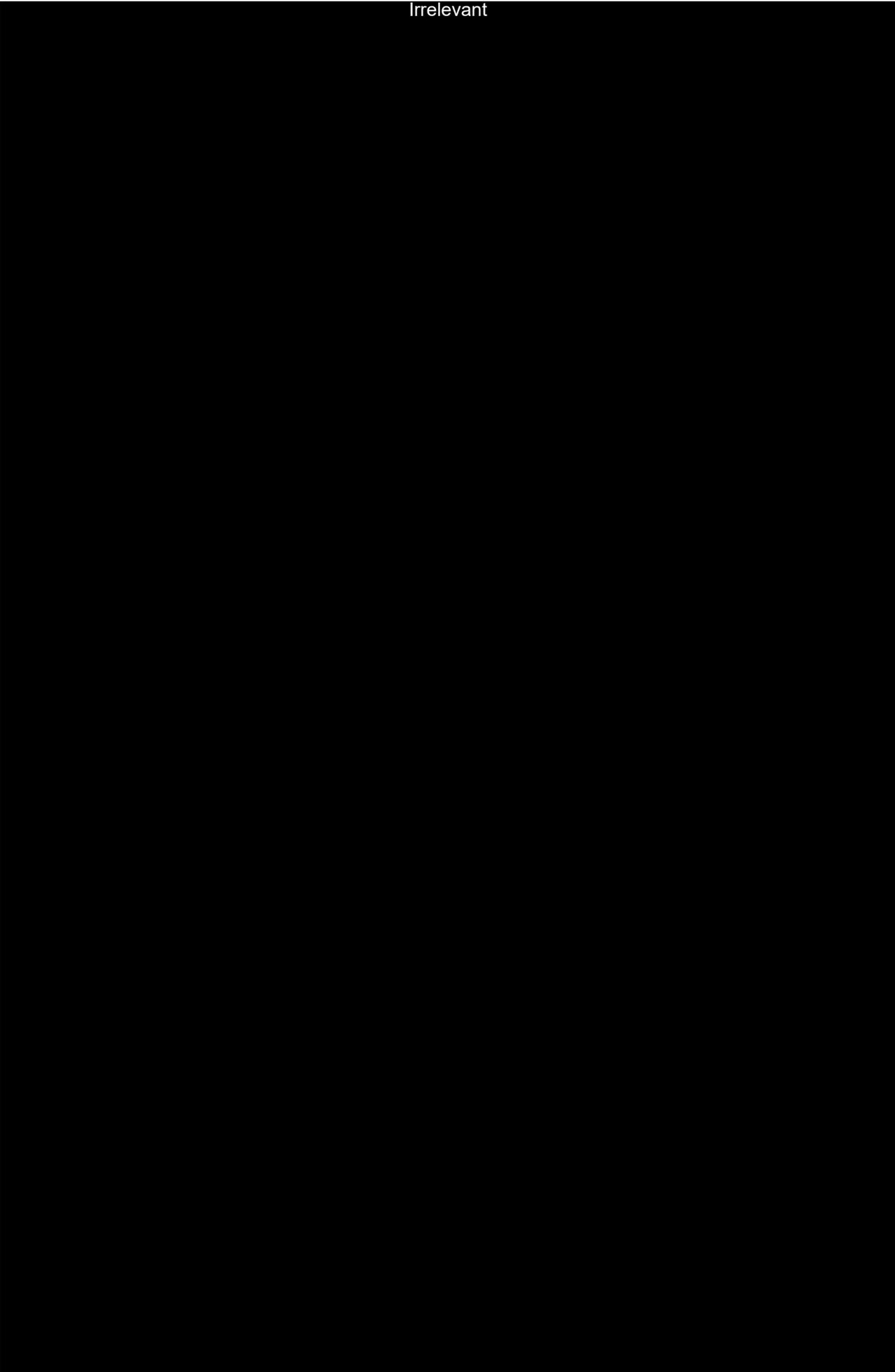
MfE: Glenn Webber, Kylie Brown, Will Collins, Lucy Bolton, Adriana Bird, Mark Vink, Paula Warren, John Edwards, Taimania Clark, Sarah King, Keith Miller, Jane White

Apologies: Kate Sedgley, Keita Kohere

Karakia Timatanga

Irrelevant

Irrelevant



Irrelevant

Māori Appointments (20mins)

- Initial thinking around high level decisions and process for policy development

Appointments of members (iw, hapu, manawhenua committee members)
 How to appoint reps to joint committees
 Feels this policy should be co-designed or Māori led, but potentially paling in comparison to other bigger discussions. So, How involved do you want to be in this and what kind of process to take? Where on the scale of full autonomy to prescribed should this sit?
 Flexibility vs prescription.
 What support and resourcing is required to make sure those processes are effective.
 (points to consider)

ILG:

Want to be closely involved

Bespoke? Allow autonomy with an added backstop

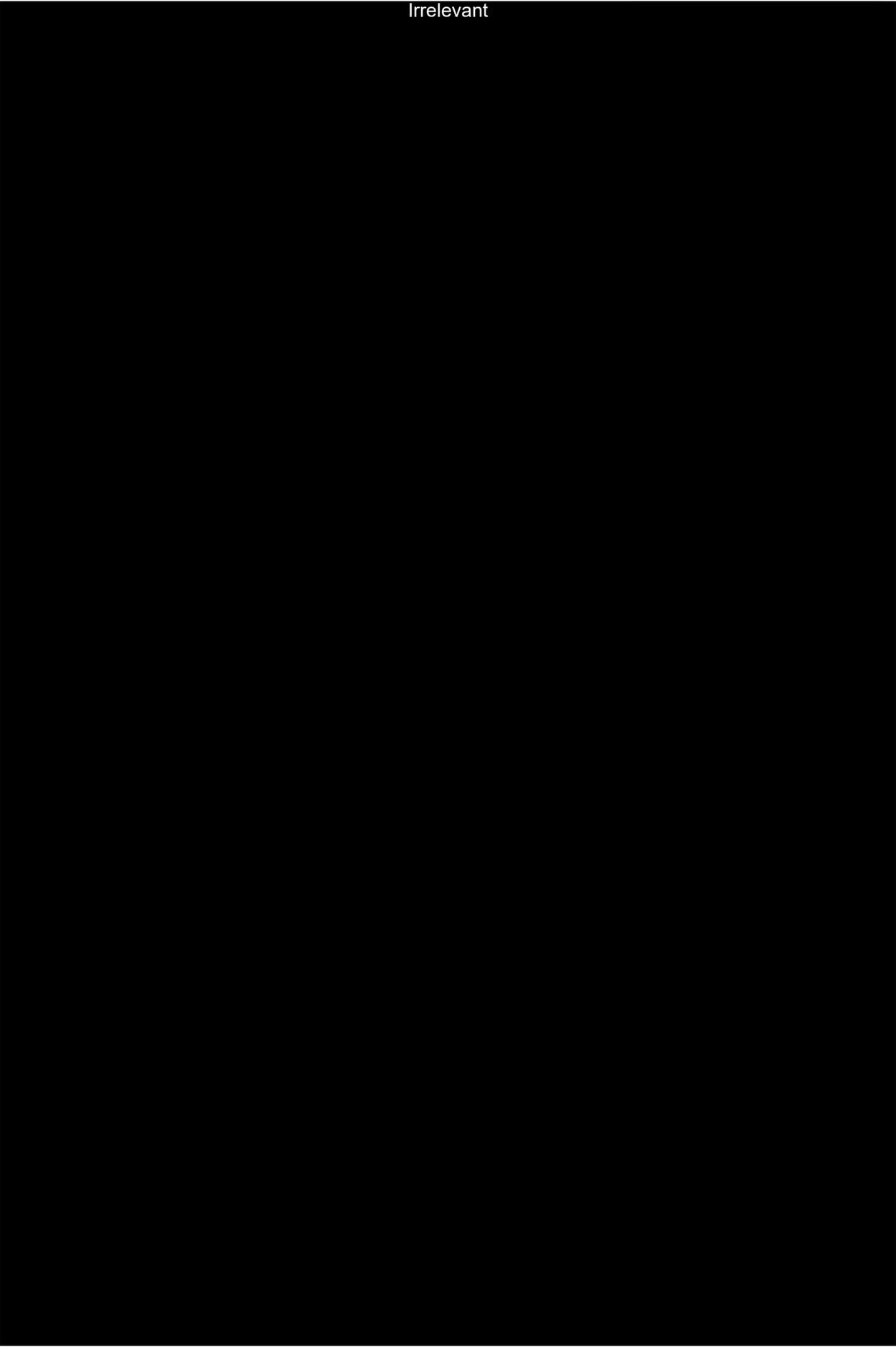
Timeframes are important for an effective system. Have to set a committee up by certain timeframe

MFe. That will be part of the detailed design.

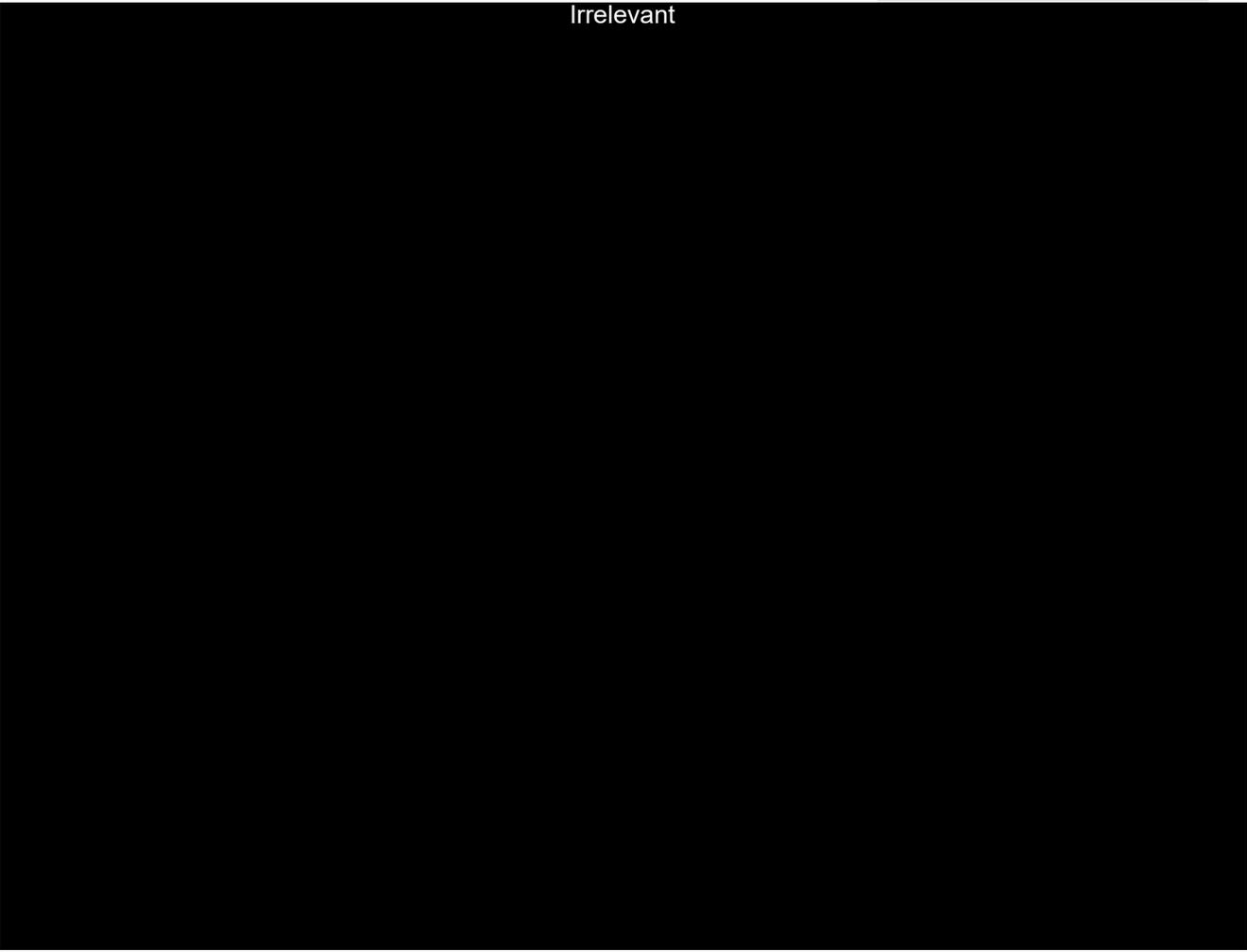
Starting point for committee membership, what types of people do we want on them?
 (skills based vs rep based)**Next steps: needs to be implemented into the forward agenda (action)****May need another governance wananga to address various questions****SPA items next week**

Irrelevant

Irrelevant



Irrelevant



23 August 2021

Hon Kelvin Davis
Minister for Māori Crown Relations: Te Arawhiti
By Email: k.davis@ministers.govt.nz

Hon David Parker
Minister for the Environment
By Email: d.parker@ministers.govt.nz

Hon Nanaia Mahuta
Minister of Local Government
By Email: n.mahuta@ministers.govt.nz

Hon Willie Jackson
Minister for Māori Development
By Email: w.jackson@ministers.govt.nz

Hon Kiritapu Allan
Associate Minister for the Environment
By Email: k.allan@ministers.govt.nz

E ngā Minitā, tēnā kōutou

RESOURCE MANAGEMENT REFORMS

The following paper has been prepared by Te Tai Kaha Māori Collective Leadership Group for our meeting with you, by Zoom, on 23 August 2021, 6.30pm.

It sets out the key principles which Te Tai Kaha believe should underpin the current reforms, to give effect to the principles of te Tiriti, and the role of Māori in the reformed Resource Management system.

Nā māua noa, nā



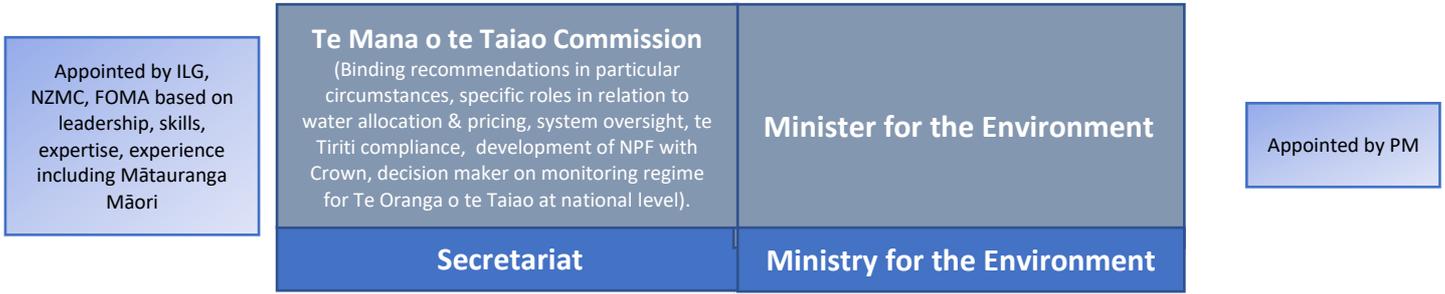
Kingi Smiler
Chair, Te Tai Kaha Māori Collective

Te Tai Kaha Proposals for a Reformed Resource Management System

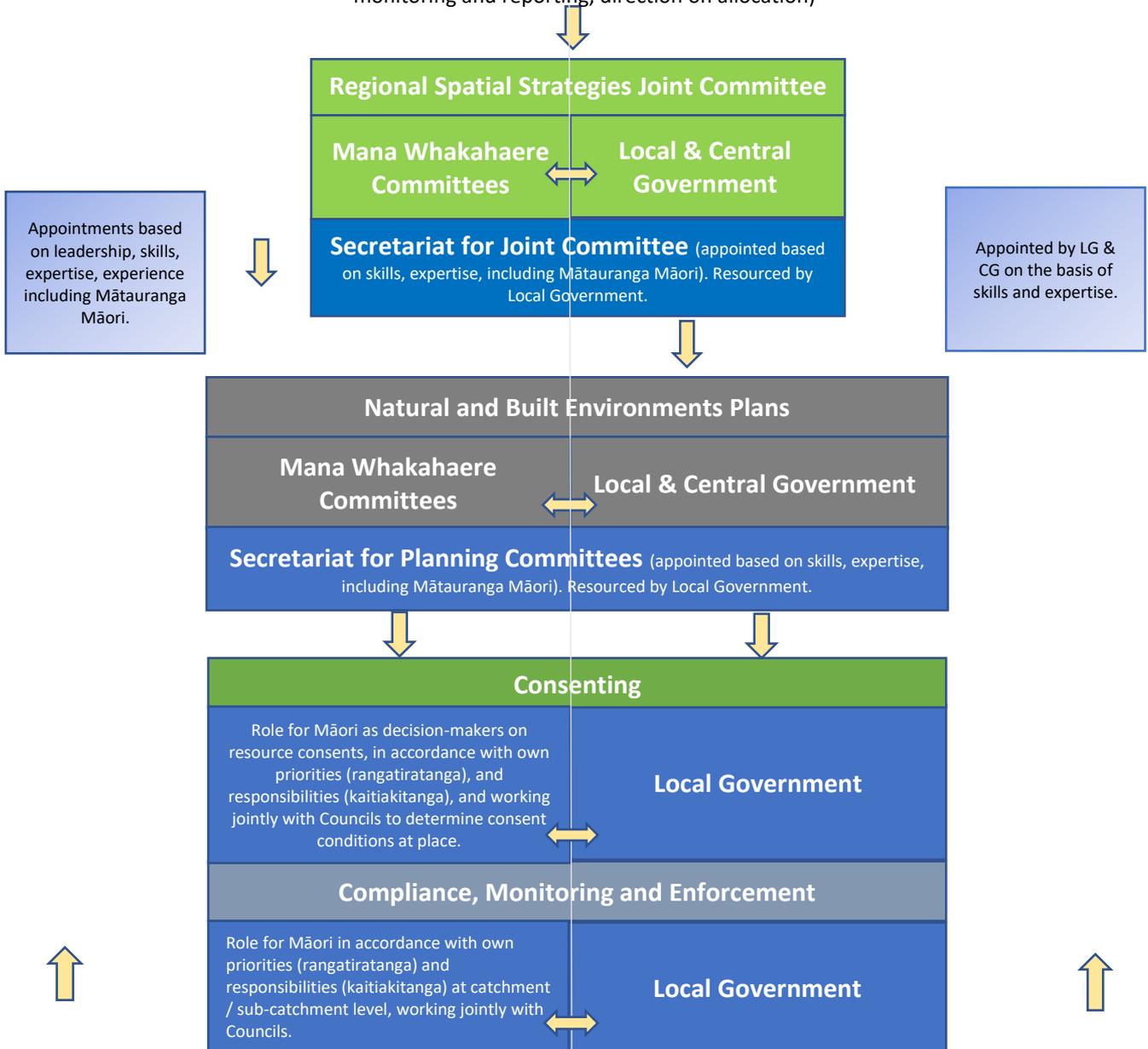
Rangatiratanga

Kāwanatanga

Purpose of NBA & SPA - Give effect to te Tiriti / principles



National Planning Framework (Strategic vision, priorities, and direction, setting environmental limits & targets, monitoring and reporting, direction on allocation)



Monitoring and Reporting

Role of Māori in governing and determining the framework of State of Environment monitoring. In order to implement Te Oranga o te Taiao/Te Mana o te Taiao and provide for kaitiakitanga, Māori determine the areas to be monitored and the regime at all levels.

Guide to Te Tai Kaha Resource Management System Map

The Te Tai Kaha Resource Management System Map should be read as an initial draft, a work in progress. Te Tai Kaha would welcome the opportunity to work collaboratively with Ministers and Officials to co-design a system based on this approach.

In addition, Te Tai Kaha have provided comments to Officials on the Māori participation in the system draft (powerpoint presentation) 13 August 2021 version. Te Tai Kaha high level analysis and concerns are set out at Appendix 1.

System Map Assumptions

Te Tai Kaha System Map is based on the following assumptions:

- Joint Committees are based on the principle of partnership 50:50, with Co-Chairs.¹
- Autonomous joint committees, and consensus decision making.
- The functions and contents at each level are broadly similar to that proposed by Officials in the document System Overview Map (Version 1, dated 4 August 2021) and provided to Te Tai Kaha on 13 August 2021 unless specified otherwise.
- Funding of the system at the national level is by central government.
- Funding at the regional level / local level is primarily local government with a funding stream from central government in recognition of the role of iwi, hapū, ahi kā, Māori in the resource system, and in accordance with the legislative requirement to “give effect to te Tiriti principles / te Tiriti”.

How to give effect to Te Tiriti and its principles

In order to give effect to Te Tiriti, and its principles a conceptual framework for this needs to inform how the relationship between those with rangatiratanga and kāwanatanga is given effect and implemented. The “Two House Model” proposed by Professor Whatarangi Winiata in 1997,² is a useful model to guide thinking about how partnership can be given effect through the implementation of the Resource Management system.

The model conceptualises ‘houses’ or modes of representation and participation that require mechanisms and capacity for implementation:

- The Tikanga Pākehā house where kāwanatanga is given effect
- The Tikanga Māori house where rangatiratanga is given effect
- The Tikanga Tiriti house where partnership is given effect.

Each area of the reformed Resource Management system needs to provide for mechanisms and capacity for all modes of representation and participation. Te Tai Kaha proposed approach is based on this model.

¹ Material provided by Te Arawhiti shows there are at least 24 Co-governance and Co-governance structures currently in existence operating in the resource management space.

² Sometimes referred to as the ‘Raukawa-Mihinare Model’, ‘Treaty House Model’, or ‘Tikanga House Model’. Winiata, 1997. The Treaty of Waitangi Māori Political Representation.

Mana whakahaere

Te Tai Kaha prefers the term “**mana whakahaere**” as it is a more expansive and inclusive term in depicting specific relationships with natural features / resources / environments than “**mana whenua**” does.

This in turn better reflects the full range of iwi, hapū and ahi kā rights and obligations, and achieves a te Tiriti compliant regulatory framework by ensuring that **all** kaitiaki can fulfil their kaitiakitanga obligations.

Mana Whakahaere:

Iwi, hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource.

Te Tai Kaha have consistently raised concerns about the use of the term **mana whenua** in the context of resource management. Refer Appendix 1.

Te Tai Kaha recommend that ‘**mana whenua**’ be replaced with the term ‘**mana whakahaere**’.

Mana Whakahaere Committees

Te Tai Kaha propose a *participant representation model*.³ Mana whakahaere committees should encompass a skill – based decision-making ethos designed to progress / achieve tikanga-informed principles.

Appointer

The appointment process should be consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) expectation that indigenous people choose their own representatives. The proposed approach is modelled on similar principles and processes to that used for the appointment of the Auckland Independent Māori Statutory Board. A selection body would be created for each region / catchments for the purpose of appointing persons to the Mana Whakahaere Committees for SPA and NBA joint committees.

The Appointer will also be responsible for identifying who has mana whakahaere in each region and catchment and sub-catchment.

Criteria for Appointment

Each proposed qualified person should be an acknowledged leader with skills, knowledge, or experience (a) to participate effectively in the mana whakahaere committee: and (b) to contribute to achieving the purposes of the mana whakahaere committee.

The appointer will be required to ensure a mix of skills, knowledge and experience including in mātauranga, tikanga, sciences, law, and planning. Appointments should constitute a broad representation of Māori society, which will include gender diversity, youth, and urban Māori. A residential requirement in the region / catchment may also be appropriate.

³ Discussion Document, Further Democratising Māori Decision-making to give effect to Te Mana o te Wai, Professor Jacinta Ruru, Professor Andrew Geddis, Mihiata Pirnie and Jacobi Kohu – Morris, June 2021.

Decision – making

Mana Whakahaere Committees should be set up with guiding tikanga principles. The goal will be “consensus” decision making, as this practice is most consistent with tikanga and already expected of co-management entities.⁴

Accountability

Accountability mechanisms link to the initial selection process for how relevant interests are represented on mana whakahaere committee. Under the *participant representation model* there will to be:

- Requirements to regularly report to and consult with those who hold relevant interests; and
- Mechanisms to allow for members to be held to account and replaced as members of the mana whakahaere committee in defined circumstances.

Dispute Resolution

Arrangements will include appropriate mediation / appeal process which will be time bound.

Treaty Settlement Arrangements

The reformed system should not assume that Post Governance Settlement Entities established for the purposes of settling historical claims hold customary and proprietary rights and interests, including those still to be determined. The recent Whakatohea decision in relation to the Marine and Coastal Area (Takutai Moana) Act 2011 is evidence of this point.

The Supreme Court decision in *Proprietors of Wakatū et al v Attorney-General* [2017] NZSC 17 is also relevant. In this case the Supreme Court recognised the standing of a kaumatua to advance a claim on behalf of the hapū who are the customary owners of Te Tau Ihu.

The appointers for Mana Whakahaere Committees should be required to have regard to existing Treaty Settlement arrangements in a region/catchments in making appointments.

Existing Treaty Settlements Resource Management responsibilities, powers, and benefits will need to transition appropriately into the new reformed Resource Management system.

Funding

Funding will be required to support the operation of Mana Whakahaere Committees, and the provision of technical advice, including mātauranga Māori.

It will also be important for iwi, hapū, ahi kā and Māori to be supported at the catchment and sub-catchment level to support their active participation, and build capability and capacity e.g., plan development, consent conditions, participation in monitoring.

The following principles should apply in relation to funding:

- An integral part of the new Resource Management system i.e., funding is “locked in”.
- Annual and ongoing, i.e., certainty of funding arrangements (e.g., to enable fulltime employees).
- Adequate resources to achieve the outcomes sought.

⁴ For example, see schedule 1 of the Waikato – Tainui Taupata Claims (Waikato River) Settlement Act 2010).

- Level of autonomy over budget spending, and decisions about building capability and capacity.

Links to Three Waters and Local Government Review

Te Tai Kaha understand that the Three Waters, Resource Management reforms, and Local Government Review are all significant reforms, with different timelines.

There should however be consistent principles across all such reforms particularly as they relate to te Tiriti.

In the context of Three Waters⁵, we note the following principles and analysis that flow through policy initiatives:

- Partnership and active protection.
- Requirements to fund and support capability and capacity of mana whenua.
- Requirement for water service entities to have general collective competence in understanding the principles of the Treaty of Waitangi and mātauranga Māori, tikanga Māori, and te ao Māori.
- Māori representation at the strategic level with **equal rights** to territorial authorities.
- Kaupapa Māori appointment processes for Māori representatives.

Such principles should also be evident in the Resource Management reforms. The exception to this is the use of the word *mana whenua* needs to be replaced with Te Tai Kaha recommendation of Mana Whakahaere Committees.

⁵ 14 June 2021, CAB 21 – MIN – 0228 Minute: Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three, Cabinet Office; and 14 June 2021, Cabinet Paper: Protecting and Promoting Iwi / Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three, Office of the Minister of Local Government.

Appendix 1

Te Tai Kaha Comments on Māori Participation DRAFT powerpoint slides version received on 13 August 2021

Te Tai Kaha Māori Collective met with the Chief Executives Strategic Planning Reform Board on 18 August 2021 (by Microsoft Teams) to discuss material developed by Officials on Māori Participation and a version of the MoG 11 paper on Governance and Decision – making. Te Tai Kaha acknowledge the opportunity accorded the Collective to share and exchange views with Chief Executives.

Te Tai Kaha have significant concerns about the quality of the advice and analysis provided by Officials to Ministers on how to give effect to the principles of te Tiriti, and the depth of understanding of the complexity of existing arrangements, or indeed the significant change required to transform the current system.

There is significant risk that problems identified by the Randerson Review Panel will not be resolved, or that solutions proposed will not be practical or effective, resulting in a lost opportunity for change, and additional costs driven into the system unnecessarily.

Who are te Tiriti partners...?

The Natural and Built Environments Bill Exposure Draft, and the draft papers for the Ministerial Oversight Group 11 (MoG) suggest that te Tiriti partners are iwi and hapū.⁶ This is not backed up with any analysis of what te Tiriti actually states, or indeed any analysis of Waitangi Tribunal Report Findings. The narrow focus on iwi and hapū, appears to be driven by Te Tiriti Settlement Policy which has focussed on the settlement of historical claims with hapū and iwi.

The assumption that Post Settlement Governance Entities (PSGEs) are the voice of Māori for all purposes, is not tested, or analysed. That was not the intention for PSGEs. They were required by Crown policy as te Tiriti settlement redress institutions. They are not the holders of pre-existing customary rights which are as a matter of tikanga generally held at the hapū level.

It is also important to recognise that the legal / policy environment when PSGEs were established contained a number of assumptions that no longer hold true, including that te Tiriti did not recognise and protect Māori proprietary rights in freshwater; and that the RMA was and would remain Aotearoa's principal piece of environmental legislation. The supervening 'reset' in both of those areas justifies a similar reset in the identification of who the correct Māori rights – holding bodies are for post – RMA purposes. Stronger te Tiriti based representation in accordance with tikanga is consistent with the proposed strengthening of te Tiriti clause in the RMA replacement legislation.

In that regard, and returning to first principles, the Whanau o Waipareira Report states:

“...in terms of the Treaty's words, the guarantee of lands and fisheries in the Māori text of article 2 is 'ki ngā Rangatira, ki ngā hapū, ki ngā tangata katoa' – to the chiefs and tribes and to all [Māori] people....In the strict words of the Treaty, 'iwi' would not be a useful term to describe the Crown's Treaty partner today, for iwi are not provided for.⁷

⁶ Natural and Built Environments Bill Exposure Draft, e.g., Clauses 5,8,18.

⁷ Te Whanau o Waipareira Report Wai 414, Waitangi Tribunal Report 1998, page 18

The Randerson Review states: “The Tiriti partners are mana whenua and the Crown.”⁸ The report contains no analysis of how the Panel reached that conclusion.

Te Tai Kaha have significant concerns about the use of the word *Mana whenua* as proposed by the Randerson Review Panel. However, Te Tai Kaha agrees with the Review Panel:

- That the approach to Māori needs to be “inclusive” rather than an “exclusive”.
- An enhanced role for Māori in the reformed Resource Management system.
- New definitions i.e., remove Iwi Authority.
- “Integrated partnerships” with Councils.

Te Tai Kaha are concerned that the analysis and proposals presented by Officials prefer an “exclusive” and “narrow” approach. This has significant risks of litigation, driving cost into the system and delay.

Context: What? and Who?...

Officials haven’t asked *what* the context is and therefore *who* “at place”.⁹

What?	Particular areas, water sources, space, and resources.
Who?	Who exercises authority (mana whakahaere) and other obligations (kaitiaki and manaakitanga)? The answer is likely to be a range of different Māori entities: iwi, hapū, ahi kā (Māori landowners), marae, including urban Māori.

Māori participation in the system...

The whole approach of the paper “Māori participation in the system” is reductive.

A key objective of the reform is to “give effect to the principles of Te Tiriti of Waitangi and provide greater recognition of te ao Māori, including Mātauranga Māori”.

There is no real focus on giving effect to the principle of “partnership” i.e., 50:50, although co-chair arrangements are proposed as an option in the paper *Draft MoG 11 Governance 13 August 2021*.

There is also no information on more progressive examples of giving expression to partnership already in existence and peppered across the regional sector. Te Tai Kaha Technical Advisors have provided this feedback to Officials repeatedly.

Te Tai Kaha urge Ministers and Officials to set the baseline for Māori partnership and participation at current best practice in terms of co-governance and co-management. There is no evidence to suggest that setting a baseline below best practice will raise the bar. In fact, Te Tai Kaha would argue that provisions such as Section 81(1) of the Local Government Act 2002, and Section 58L to

⁸ Report of the Resource Management Review Panel, June 2020, page 89.

⁹ There is no such analysis in the Māori participation in the system DRAFT (powerpoint slides), and Paper 1: Governance and decision-making at the regional level.

58U of the Resource Management Act 1993 Mana Whakahono ā rohe Agreements, and Section 33 transfer of powers have had limited uptake and therefore effectiveness.

Mana Whenua...

It is unclear in the papers presented what definition of 'Mana Whenua' is being used. The Randerson Report proposed the term 'mana whenua' be defined as 'an iwi, hapū or whānau that exercises customary authority in an identified area'.¹⁰ The Randerson Report states that engaging at the iwi or iwi authority level does not reflect the reality of kaitiakitanga, which may operate at the hapū or whānau level.

The language in the papers¹¹ suggests that 'mana whenua' equates to iwi or hapū.

There is no acknowledgement in the paper that:

- The use of 'mana whenua' in the Resource Management Act has been controversial and the mechanism to resolve uncertainty has not proved to be very effective.¹²
- The term has been subject to significant litigation.
- There are different views among Māori as to whether 'mana whenua' as a term refers to people who hold customary authority, or the customary authority itself, or both.
- It can imply exclusive relationships, and therefore has been avoided for that reason in Treaty settlement documents.
- The definition is not sufficiently nuanced to recognise the various layers of rights and interests.
- Needs to be considered in the context of the obligations of kaitiaki, whānaungatanga, and ahikāroa.
- The use of 'mana whenua' does not really help with the problems of identifying the right mana whenua groups.

In *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Ltd* [2020] NZHC 2768 the High Court found in relation to 'mana whenua' there is no way of determining who has 'primary' mana whenua. These matters can only be assessed through reference to tikanga Māori and mātauranga on the questions posed.

Mana whakahaere...

Te Tai Kaha prefers "mana whakahaere" as it is a more inclusive term in depicting a wider relationship with natural features / resources / environments than 'mana whenua' does.

That in turn better reflects the full range of iwi, hapū and ahi kā rights and obligations, and achieves a te Tiriti compliant regulatory framework by ensuring that all kaitiaki can fulfil their kaitiakitanga obligations.

¹⁰ Report of the Resource Management Review Panel, June 2020, page 112.

¹¹ Māori participation in the system DRAFT (powerpoint slides) and Paper 1: Governance and decision-making at the regional level (versions received by Te Tai Kaha on 13 August 2021).

¹² Section 30 of Te Ture Whenua Māori Act 1993.

Integrated Partnerships Process (Joint Management Agreements / Section 33 transfer of powers)...

The paper on Māori participation in the system¹³ refers to existing tools such as Joint Management Agreements and Section 33 transfer of powers. These are tools that have had limited uptake and effectiveness under the current Resource Management system and are subject to flaws identified in Waitangi Tribunal Report Findings, including the Wai – 2358 Stage 2 Report.

For example, even in regard to the new mechanism for Mana Whakahono ā Rohe agreements, the Waitangi Tribunal's Stage 2 Report concluded:

For this new participation arrangement to be more than a mechanism for consultation, legislative amendment is required, and resources must be found. The Mana Whakahono ā Rohe agreements have the potential to improve relationships and to ensure that iwi are consulted on policy statements and plans. They will likely result in an enhanced role for Māori in decision-making at the front-end, planning stage of the RMA. But the range of matters iwi and councils are required to negotiate and agree on is very limited. Our finding was that the Mana Whakahono ā Rohe provisions have not made the RMA Treaty-compliant.¹⁴

Identifying and recording who participates at different points in the new system...

The paper on Māori participation¹⁵ seeks Ministers views on what is required in legislation vs enabling self-determination / tikanga / kaupapa Māori processes for identifying who participates at the regional and local level, and for resolving disputes?

Article 18, of the UN Declaration on the Rights of Indigenous Peoples provides:

Indigenous people have rights to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutes.

The Review Panel report was very clear that Local Authorities and applicants for resource consents in the current system find it difficult to know who is mana whenua, in an area, and therefore which mana whenua group(s) to engage with.¹⁶

The powerpoint slides on Māori participation suggests Te Kāhui Māngai (a Te Puni Kōkiri website holding information on iwi authorities and hapū which helps local authorities meet their RMA

¹³ Māori participation in the system DRAFT (powerpoint slides), page 11 (Version received by Te Tai Kaha on 13 August 2021)

¹⁴ Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claims Report (Wai 2358, 2019), page 542.

¹⁵ Māori participation in the system DRAFT (powerpoint slides) page 12 (Version received by Te Tai Kaha on 13 August 2021).

¹⁶ Report of the Resource Management Review Panel, June 2020, page 88 (Version received by Te Tai Kaha on 13 August 2021).

obligations to record iwi and hapū information) as a “tool” for assisting local authorities identify who participates at different points in the system.¹⁷

This tool has not proven effective in the current RMA system. The Randerson Review was in fact critical of this particular tool¹⁸, and assigned the role of resolving issues of which groups local authorities should be working with to their proposed Māori Advisory Board.

It is unclear from the limited analysis presented by Officials how this particular tool is proposed to be modified or enhanced to be more effective. Officials present no analysis on how such proposals might be consistent or compliant with Article 18 of the UN Declaration on the Rights of Indigenous Peoples.

Funding for Māori participation in the system...

The paper on Māori participation¹⁹ asks Ministers whether a “public interest” test for funding Māori participation is the “best course of action”, or whether it would be more appropriate to fund participation as “Treaty partners”.

Te Tai Kaha strongly reject any suggestion of a “public interest” test.

Funding should be available for iwi, hapū, ahi kā, and Māori participation in the reformed Resource Management system, which gives effect to te Tiriti / principles on the following basis:

- An integral part of the new Resource Management system i.e., funding is “locked in”.
- Annual and ongoing, i.e., certainty of funding arrangements (e.g., to enable fulltime employees).
- Adequate resources to achieve the outcomes sought.
- Level of autonomy over the budget, and decisions about building capability and capacity.

¹⁷ Māori participation in the system DRAFT (powerpoint slides) page 12 (Version received by Te Tai Kaha on 13 August 2021).

¹⁸ Report of the Resource Management Review Panel, June 2021, page 93.

¹⁹ Māori participation in the system DRAFT (powerpoint slides) page 13 (Version received by Te Tai Kaha on 13 August 2021).

Meeting with Ministers and Te Tai Kaha Māori Collective Leadership Group

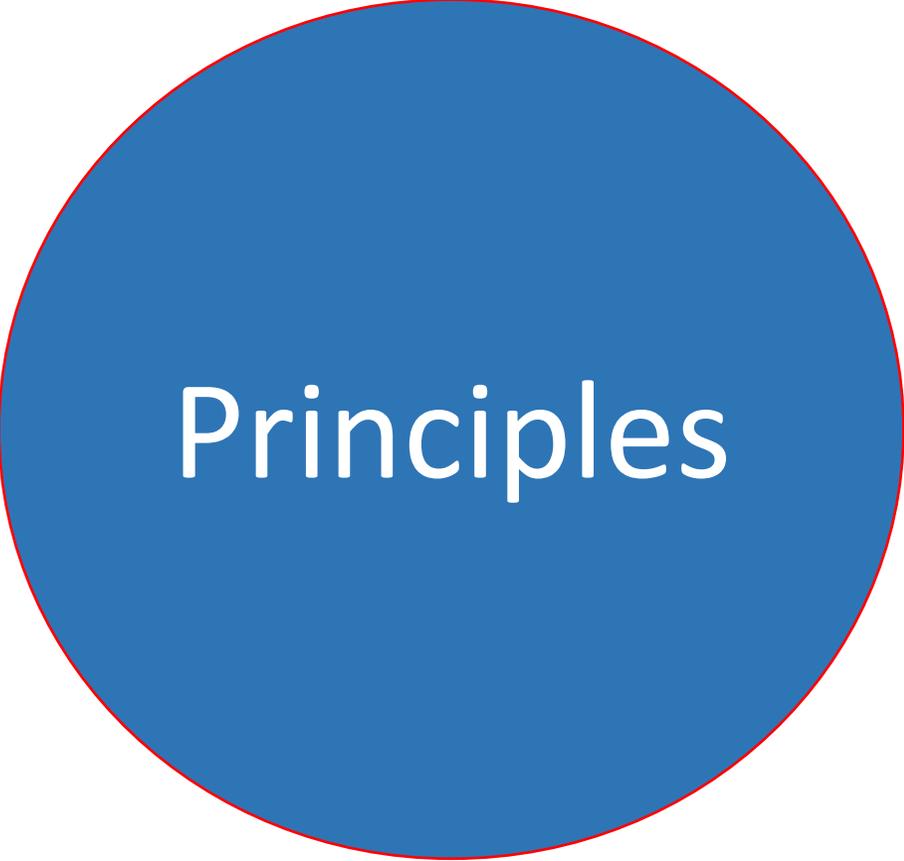
10 September 2021



Designing a te Tiriti compliant Resource Management System

Outcome: A bicultural resource management framework, based on 'partnership', that gives effect to te Tiriti/principles, and Te Oranga o te Taiao / Te Mana o te Taiao

Te Tiriti compliant framework and Mana Whakahaere



Principles

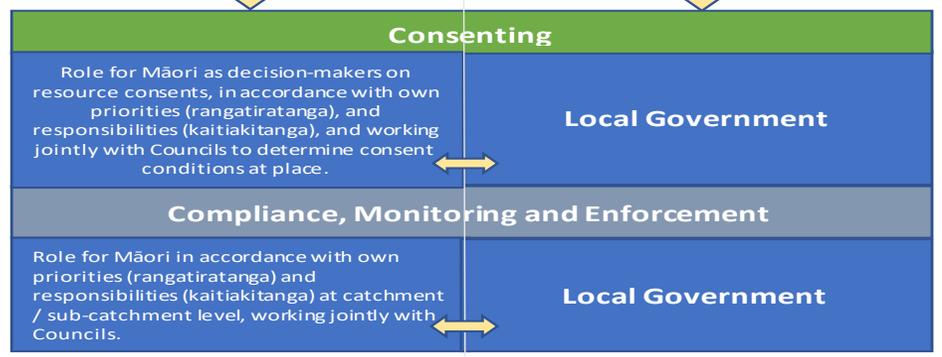
- Legitimacy
- Acknowledge and recognise rights holders, in tikanga terms
- Exercise of rangatiratanga
- Equitable
- Efficient
- Provides **certainty** for all
- **Tika** / right at the local level

Purpose of NBA & SPA - Give effect to te Tiriti / principles

Confirm our proposals presented to Ministers on 23 August 2021 for a bicultural resource management system



National Planning Framework (Strategic vision, priorities, and direction, setting environmental limits & targets, monitoring and reporting, direction on allocation)



Monitoring and Reporting

Role of Māori in governing and determining the framework of State of Environment monitoring. In order to implement Te Oranga o te Taiao/Te Mana o te Taiao and provide for kaitiakitanga, Māori determine the areas to be monitored and the regime at all levels.

Issues / Concerns re Māori participation

- Lacks **principles** to assess proposals
- To be te Tiriti compliant need to address “**rights** and interests”
- Needs to provide for existing Māori customary and **proprietary rights** and interests
- Providing adequate **funding and resourcing** for Māori participation

Issues / Concerns re Māori participation

- Term “Mana Whenua” is not defined and needs to be replaced by **Mana Whakahaere**
- We **reject** Crown Law advice that deciding a te Tiriti compliant system is a “**policy choice**” for the Crown only
- To give effect to te Tiriti / principles will require **active protection** of “rights and interests” of Māori as well as redress for past **under-allocation** of rights to Māori consistent with te Tiriti principle **of right to remedy** for past breaches.

Mana Whakahaere

Iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource.

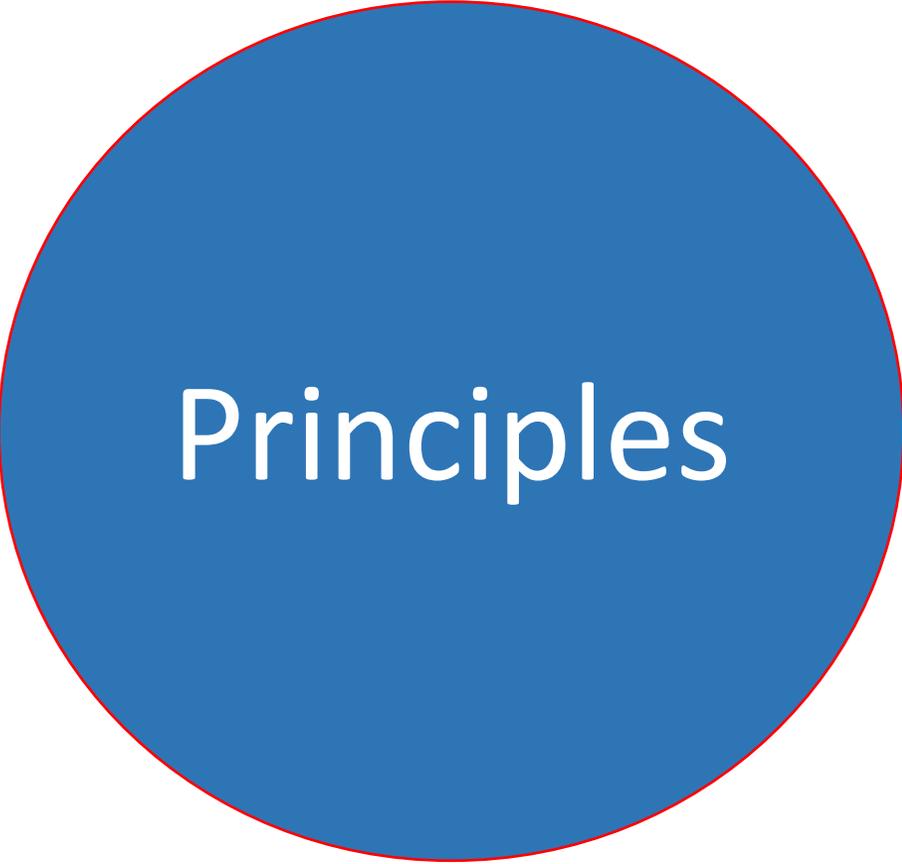
- “Inclusive” of PSGEs and iwi, hapū, ahi kā (Māori landowners), marae, urban Māori and built from the ground up.
- It depicts a wider relationship with natural features, resources, and the environment
- Encourages and promotes relationships between entities, not hierarchical
- Consistent with Te Mana o te Wai, and Mana Whakahaere as defined in the NPS-FM & already in use in some water catchments
- Best practise co-governance / management arrangements in settlements transition as an integral part of achieving Mana Whakahaere

Further information for Māori Interests Sub-group meeting on 13 September

Te Tai Kaha Māori Collective



Te Tiriti compliant framework and Mana Whakahaere



Principles

- Legitimacy
- Acknowledge and recognise rights holders, in tikanga terms
- Rangatiratanga
- Equitable
- Efficient
- Provides **certainty** for all
- **Tika** / right at the local level

Mana Whakahaere

Iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource.

- “Inclusive” of PSGEs and iwi, hapū, ahi kā (Māori landowners), marae, urban Māori and built from the ground up.
- It depicts a wider relationship with natural features, resources, and the environment
- Encourages and promotes relationships between entities, not hierarchical
- Consistent with Te Mana o te Wai, and Mana Whakahaere as defined in the NPS-FM & already in use in some water catchments
- Best practise co-governance / management arrangements in treaty settlements transition as an integral part of achieving Mana Whakahaere

Local Level – Mana Whakahaere Councils

- Determined by those that exercise Mana Whakahaere to a particular area, water source, space and resource at place, in accordance with tikanga
- Links to NPS-FM and Te Mana o te Wai
- “Collective” appoints representatives to Joint Committees
- Established through legislation
- Timebound, linked to establishment and ongoing Resource Management system requirements
- Dispute resolution mechanisms

Regional Level

- Appointed by the “Collective” at the local level, to reflect built from the ground up
- Appointments to Joint Committees for SPA and NBA plans based on skills, expertise, including Mātauranga Māori, and interests e.g. urban Māori
- Informed by the principles of Representative and Participant Delegate Models
- Established through legislation
- Timebound process
- Dispute Resolution mechanisms

National Level

- Appointed by Iwi Leaders Group, New Zealand Māori Council and Federation of Māori Authorities, peak National Māori bodies, including urban
- Based on leadership, skills expertise, experience including Mātauranga Māori
- Established through legislation
- Roles and functions as specified in Te Tai Kaha Māori Collective paper of 23 August 2021

Assessment against Principles

Legitimacy	A workable system of participation from the local level.
Acknowledge and recognise rights holders, in tikanga terms	Provides for those who exercise Mana Whakahaere over a particular area, water source, space and resource
Rangatiratanga	Recognition of Māori decision-making and authority
Equitable	Inclusive of PSGEs, iwi, hapū, ahi kā (landowners), marae and urban Māori
Efficient	Timebound processes and integrates with NPS – FM 2020
Provides certainty for all	Provides a structure that is clear in its procedures for representation.
Tika / rights at the local level	Built from the ground up, and recognises rights holders, and all legitimate interests.

Timeline

Timeframe by which arrangements in place,
following enactment of NBA and SPA

Local Level	18 – 24 months
Regional Level	18 – 24 months
National Level	6 months

21 September 2021

Hon. Eugenie Sage
Chair, Environment Committee
Parliament Buildings
WELLINGTON

By email: en@parliament.govt.nz

Tēnā koe

**INQUIRY ON THE NATURAL AND BUILT ENVIRONMENTS BILL: TE TAI KAHA MĀORI
COLLECTIVE ADDITIONAL INFORMATION**

Enclosed is additional information from Te Tai Kaha Māori Collective on the Natural and Built Environments Bill Exposure draft. This follows from our Oral submission to the Environment Committee on 30 August 2021.

This additional information is focussed primarily on the practicalities of building from the “ground up” a resource management system which is Te Tiriti compliant, and acknowledges and recognises rights holders, in tikanga terms. It also restates our concerns about the approach to limit setting in the Natural and Built Environments Bill Exposure draft.

We thank the Committee for the time allowed for our oral presentation and the constructive dialogue with Committee members.

Nāku noa, nā



Kingi Smiler
Chair, Te Tai Kaha Māori Collective.

How to build a Te Tiriti compliant Resource Management System

In order to give effect to Te Tiriti, and its principles a conceptual framework for this needs to inform how the relationship between those with rangatiratanga and kāwanatanga is given effect and implemented. The “Two House Model” proposed by Professor Whatarangi Winiata in 1997,¹ is a useful model to guide thinking about how partnership can be given effect through the implementation of the Resource Management system.

The model conceptualises ‘houses’ or modes of representation and participation that require mechanisms and capacity for implementation:

- The Tikanga Pākehā house where kāwanatanga is given effect
- The Tikanga Māori house where rangatiratanga is given effect
- The Tikanga Tiriti house where partnership is given effect.

Each area of the reformed Resource Management system needs to provide for mechanisms and capacity for all modes of representation and participation. Te Tai Kaha proposed approach is based on this model.

Principles

Te Tai Kaha request that the Environment Committee in considering submissions, in accordance with the Terms of Reference for this Inquiry, consider the principles on which proposed changes should be assessed as being Te Tiriti Compliant. The following principles have been developed in relation to Māori representation and decision – making for Te Tai Kaha Māori Collective by Tā Taihākurei Durie, New Zealand Māori Council :

- Legitimacy
- Acknowledge and recognise rights holders, in tikanga terms
- Rangatiratanga
- Equitable
- Efficient
- Provides **certainty** for all
- **Tika** / right at the local level

Mana whakahaere

Te Tai Kaha submission to the Environment Committee indicated our strong preference for the term “**mana whakahaere**” as it is a more expansive and inclusive term in depicting specific relationships with natural features / resources / environments than “**mana whenua**” does.

Mana whakahaere better reflects the full range of iwi, hapū and ahi kā rights and obligations, and achieves a te Tiriti compliant regulatory framework by ensuring that **all** kaitiaki can fulfil their kaitiakitanga obligations.

¹ Sometimes referred to as the ‘Raukawa-Mihinare Model’, ‘Treaty House Model’, or ‘Tikanga House Model’. Winiata, 1997. The Treaty of Waitangi Māori Political Representation.

Mana Whakahaere:

Iwi, hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource.

Te Tai Kaha recommend that ‘mana whenua’ be replaced with the term ‘**mana whakahaere**’, for the following reasons:

- It is “Inclusive” of PSGEs and iwi, hapū, ahi kā (Māori landowners), marae, urban Māori and built from the ground up.
- Depicts a wider relationship with natural features, resources, and the environment.
- Encourages and promotes relationships between entities, not hierarchical.
- Consistent with Te Mana o te Wai, and the principle of Mana Whakahaere as defined in the NPS-FM.
- Is already in use in some water catchments.
- Best practice co-governance / management arrangements in treaty settlements transition as an integral part of achieving Mana Whakahaere.

Te Tai Kaha oppose the term *mana whenua* for the following reasons:

- The use of ‘mana whenua’ in the Resource Management Act has been controversial and the mechanism to resolve uncertainty has not proved to be very effective.²
- The term has been subject to significant litigation.
- There are different views among Māori as to whether ‘mana whenua’ as a term refers to people who hold customary authority, or the customary authority itself, or both.
- It can imply exclusive relationships, and therefore has been avoided for that reason in Treaty settlement documents.
- The definition is not sufficiently nuanced to recognise the various layers of rights and interests.
- Needs to be considered in the context of the obligations of kaitiaki, whānaungatanga, and ahikāroa.
- The use of ‘mana whenua’ does not really help with the problems of identifying the right mana whenua groups.

In *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Ltd* [2020] NZHC 2768 the High Court found in relation to ‘mana whenua’ there is no way of determining who has ‘primary’ mana whenua. These matters can only be assessed through reference to tikanga Māori and mātauranga on the questions posed.

² Section 30 of Te Ture Whenua Māori Act 1993.

Reforms Resource Management System – Governance : Built from the “ground up”

Local Level - Mana Whakahaere Committees

- Determined by those that exercise Mana Whakahaere to a particular area, water source, space, and resource at place in accordance with tikanga.
- This is consistent with the National Policy Statement on Freshwater Management and the requirement to give effect to Te Mana o te Wai.
- “Collective” appoints representative to Joint Committees.
- Set up with guiding tikanga principles.
- Established through legislation.
- Establishment of Mana Whakahaere Committees timebound and linked to establishment and ongoing Resource management system requirements.
- Dispute resolution mechanism.

Regional Level

- Appointed by the “Collective” at the local level, to reflect built from the ground up.
- Appointments to Joint Committees for SPA and NBA plans based on skills, expertise, including Mātauranga Māori, and interests e.g., urban Māori.
- Informed by the principles of Representative and Participant Delegate Models.
- Joint Committees are based on the principle of partnership 50:50, with Co-Chairs.³
- Established through legislation.
- Process of appointments to Joint Committees timebound and linked to establishment and ongoing Resource management system requirements.
- Dispute Resolution mechanisms.

National Level – Te Mana o te Taiao Commission

- Appointed by Iwi Leaders Group, New Zealand Māori Council and Federation of Māori Authorities, peak National Māori bodies, including urban.
- Based on leadership, skills expertise, experience including Mātauranga Māori.
- Role and functions: Binding recommendations in particular circumstances; specific roles in relation to water allocation & pricing, system oversight, te Tiriti compliance; development of National Planning Framework with Crown; decision maker on monitoring regime for Te Oranga o te Taiao at national level.
- Established through legislation.

Treaty Settlement Arrangements

The reformed system should not assume that Post Governance Settlement Entities established for the purposes of settling historical claims hold customary and proprietary rights and interests, including those still to be determined. The recent Whakatohea decision in relation to the Marine and Coastal Area (Takutai Moana) Act 2011 is evidence of this point.

The Supreme Court decision in *Proprietors of Wakatū et al v Attorney-General* [2017] NZSC 17 is also relevant. In this case the Supreme Court recognised the standing of a kaumatua to advance a claim on behalf of the hapū who are the customary owners of Te Tau Ihu.

³ Material provided by Te Arawhiti shows there are at least 24 Co-governance and Co-governance structures currently in existence operating in the resource management space.

The appointers for Mana Whakahaere Committees should be required to have regard to existing Treaty Settlement arrangements in a region/catchment in making appointments.

Existing Treaty Settlements Resource Management responsibilities, powers, and benefits will need to transition appropriately into the new reformed Resource Management system.

Funding

Funding will be required to support the operation of Mana Whakahaere Committees, and the provision of technical advice, including mātauranga Māori.

It will also be important for iwi, hapū, ahi kā and Māori to be supported at the catchment and sub-catchment level to support their active participation, and build capability and capacity e.g., plan development, consent conditions, participation in monitoring.

The following principles should apply in relation to funding of iwi, hapū, ahi kā, Māori:

- An integral part of the new Resource Management system i.e., funding is “locked in”.
- Annual and ongoing, i.e., certainty of funding arrangements (e.g., to enable fulltime employees).
- Adequate resources to achieve the outcomes sought.
- Level of autonomy over budget spending, and decisions about building capability and capacity.

Approach to Limit Setting

Te Tai Kaha restate our concerns about the proposed approach to limit setting:

- There is a reliance on environmental bottom lines.
- Removal of regulatory power from outcome and socio-economic orientated attributes that are typically favoured by Māori.
- Scale at which limits must be maintained not clear and problematic.
- Matters requiring limits not clear: some attributes (biodiversity) some areas (estuaries).
- Limits-based system requires allocation or rights to contribute to reaching limits, but this is not identified.
- Fails to recognise that for many of the matters requiring limits, limits are already breached and does not reflect the need to reduce growth in some areas.

ILG / WMT and MfE Wānanga 26 Oct 2021

The who in the system and joint committee appointments

ILG	MfE
<ul style="list-style-type: none"> • Tina Porou • Dave Marshall • Billy Brough • Andrew Brown • Hana Maihi (?) 	<ul style="list-style-type: none"> • Hana Ihaka-McLeod • Dominic Groom • Taimania Clark • Will Collin • Erin Rangī Watt • Adriana Bird • Rebecca Partridge • Lucy Bolton • Kate Mitchell

Discussion	Actions
<p>MfE</p> <ul style="list-style-type: none"> • Working towards MI sub group 27 Nov • Looking to frame up the issue and frame how we will reach decisions • Lot of views to date • May need different roles at different parts of the system • Specific input to plan dev and consenting • Leading towards self determination approach and proving it will not necessarily be an inefficient approach. • Looking at how we can avoid delays in issues resulting from litigation / dispute resolution etc • Looking at how this will be different from Three Waters and other work underway. • Also planning a round of Rangatiratanga engagement towards the end of the year as well. To make sure we are engaging with the right people. • Opportunity to feed back to ministers before the sub-group • Opportunity to frame discussions in a helpful way. 	
<p>FILG</p> <ul style="list-style-type: none"> • We have provided our views – we just need to know what is different? 	
<p>MfE</p> <ul style="list-style-type: none"> • At this stage not seeking decisions as engagement running at same time. • Before end of year looking to frame the issue and put it formally to ministers. • Previous discussions have been quite broad. 	
<p>MfE</p> <ul style="list-style-type: none"> • We are looking to share our approach – not being too prescriptive in legislation, ability to exercise rangatiratanga 	
<p>MfE</p> <ul style="list-style-type: none"> • This intersects with the governance discussion – not the detail of the 50:50 but gets to the who those people should be. • Does the legislation need to specify who 	

Discussion	Actions
<p>FILG</p> <ul style="list-style-type: none"> • Don't want to open the door in legislation to non-treaty partners • Do not want to be in a process where you are creating an environment where we will be arguing with ourselves. • We have presented this to Ministers already and shown where Māori trusts and incorporations will have a place. • We want a group of decision-makers who can best represent Te Oranga o Te Taiao • Need to be clear on the role of the joint committee... • Ministers need to be clear on the how and the what rather than the who. • What is the role of JC • Will they oversee drafting of RSS and NBA Plans and direct a secretariat to draft them. • OR will they be a governance function? • It is difficult if you focus on the who rather than the what and the how... 	
<p>MfE</p> <ul style="list-style-type: none"> • What we are hoping to cover as well is more than just appointments • Want to set up a way of how to set up who can participate in the system eg, in consenting 	
<p>FILG</p> <ul style="list-style-type: none"> • We have already provided this • Would like to sit in a room with us. 	
<p>MfE</p> <ul style="list-style-type: none"> • We really value your views and input would welcome sitting together to work through this. • Governance mahi is still in early stages. 	
<p>FILG</p> <ul style="list-style-type: none"> • Wānanga on rights and interests – team not able to contribute need more of a discussion. 	
<p>MfE</p> <ul style="list-style-type: none"> • MfE hoping to get to some internal policy positions to share 	
<p>FILG</p> <ul style="list-style-type: none"> • That is not co-design – we need to be able to work together to integrate our views • Working on a without prejudice basis • Understand constraints – show and tell approach is frustrating. 	
<p>MfE</p> <ul style="list-style-type: none"> • Intent is to be able to share but Ministers office has asked certain information not to be shared. 	
<p>FILG</p> <ul style="list-style-type: none"> • See diagram (screenshot) • Need two secretariats • Trying to work out how to create the iwi / Māori practitioners in the system. • Diagram shows what this might look like in practice – at least a decade to achieve 	<p>Note: Overlaps with Funding MOG 15 / Model Plan</p>

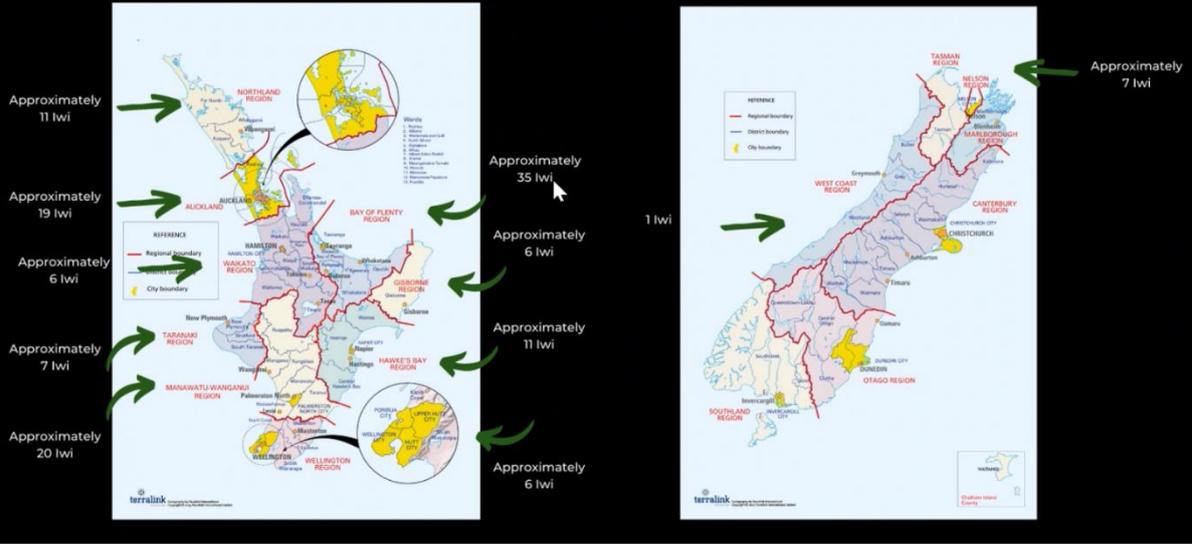
Discussion	Actions
<ul style="list-style-type: none"> • Need a transitional programme in place • Getting nowhere as focus is all about representation and numbers • RM system looks different for Māori incorporations and trusts vs Māori practitioners. • We are fighting to get to the table – whole system not taking responsibility for Te Oranga o Te Taiao. • Consenting model – provided to MOG 13 consenting – noted it was taken into account. • Challenge is that govt doesn't believe that there is an equitable system for Māori. Philosophically creates less protection because we are not there. 	
<p>MfE</p> <ul style="list-style-type: none"> • Next steps – how might we progress this 	
<p>MfE</p> <ul style="list-style-type: none"> • It is the blunt instrument to answer the questions that the ministers have. • Panel recommendation that defn of mana whenua to replace iwi authorities • How does local govt know who to talk to. • How do we make this easy to understand and put Ministers in a place to better understand the issue. • Need to be able to set up those decisions and be able to identify them at the different parts of the system. 	
<p>FILG</p> <ul style="list-style-type: none"> • Refer to Regional Governance Arrangements diagram (Provided to ministers already) • If we are looking for a political appointment to make a decision on a plan – or is it a technical group to draft plans – would need to be from a pool of whānau who have some background understanding / training. • Can't get to the who without the what or the how – could be taken out of context. • Hapū have mandated their iwi authorities to represent them. Legally they still have a representation that is voted every three years. • How iwi / hapū manage their own politics is not for the crown to determine. • MWaR included hapū – this was decided by the Crown. 	
<p>MfE</p> <ul style="list-style-type: none"> • For me hapū is the core – potential difficulty of focussing on iwi here. • In Waikato – six iwi (assume includes Pare Hauraki). There are cross-overs to Auckland. 	
<p>FILG</p> <ul style="list-style-type: none"> • Those are crown issues that iwi will resolve. • Need to keep it simple – leave it up to iwi / hapū to sort it out. 	

Discussion	Actions
<ul style="list-style-type: none"> • Ngāti Porou have 52 hapū – everyone wants to be a hapū on their own. Functionally it is too difficult everyone will want their own autonomy. • Will create a more inefficient system, not because hapū are involved, but because the crown are not ready – they cannot even work out how to work out with iwi. • What is proposed / how will this be done – leave up to iwi to resolve. 	
<p>MfE</p> <ul style="list-style-type: none"> • How do we give effect to Te Tino Rangatiratanga if the crown is requiring that it is iwi led? (see Tinas response above) 	
<p>FILG</p> <ul style="list-style-type: none"> • Original intention – looking to frame up decisions, and focus what ILG have said already in a distilled and focussed way. • We will need to cover all different parts of the system. Including sub-regional to national level. • There is not just one part of the system. 	
<p>MfE</p> <ul style="list-style-type: none"> • What do we need in the primary legislation and what can come later • What decisions do we need to be made in Feb to enable other decisions to happen later? • Can we look at who / what and how and make some assumptions so that what we are putting into primary legislation to help make informed decisions. • To strengthen any advice we give. May be perception of Minister that things may be inefficient – need to accompany it with the likely outcomes. 	
<p>FILG</p> <ul style="list-style-type: none"> • Functionally most regions already have co-governance at some level. (Will noted 30 examples have already been provided). • Having a snapshot around what is already there. Ministers think they are creating something new when it already exists in many places. • Mana Whakahono a Rohe agreements already enable us to have co-governance arrangements. It is in the legislation – functionally if the Ministers say no – there is still the ability to negotiate this through MWaR. 	
<p>MfE</p> <p>They did agree that those arrangements need to be upheld, both those through Treaty settlements and those from other means. Many of the existing arrangements are for particular areas within regions (e.g. a catchment) or topics (e.g. freshwater), whereas the joint committees would be region-wide across all topics. So, given Ministers have said they are committed to joint committees proposal, the question is then how to provide for both, bearing in mind that catchment areas and rohe are not always the same?</p>	
<p>FILG</p>	

Discussion	Actions
There is always overlap and we have historically worked those matters out ourselves internally	
<p>Next steps</p> <ul style="list-style-type: none"> • ILG would like to design the system that they want – we don't know when we will be asked what. • We would need your questions on what you need answered eg, if you have a regional plan – how would you self determine how iwi / hapū participate? • MfE can share our commissioning paper with ILG as well • MfE to provide detail on level of specificity. 	<p>Action</p> <p>MfE to provide commissioning paper and questions.</p> <p>Commissioning meeting is Weds 9:30am – MfE can add to databox after that.</p>

REGIONAL GOVERNANCE ARRANGEMENTS

Each region of Iwi would determine how they would nominate skill based representatives for decision making for plans.



DRAFT

Te Tai Kaha & Crown officials Hui on Freshwater Rights and Interests and Resource Management Reform

ANNOTATED VERSION

2.00 – 3.30 pm Thursday 28 October 2021

MS Teams

Invitees:

Te Tai Kaha: Matthew Smith, Richard Meade Anne Carter, Annette Sykes, Mahina-a-rangi Baker

Te Arawhiti: Benedict Taylor, John Grant

TPK: Tikitu Tutua-Nathan, Tata Lawton

MfE: Keita Kohere, William Collin, Lucy Bolton, Kate Sedgley, Adriana Bird, Erin Rangi-Watt, Taimania Clark, Rachel Ropiha, Ben Bunting, Claire Gregory, Terrena Kelly, Jacky Bartley, Dominic Groom,

Apologies:

Karakia Timatanga
Irrelevant
Technical Discussions
“Who in the system” and Joint Committee Appointments (45 mins)
<p>MfE</p> <p>Databox links to commissioning papers</p> <p>https://databox.datacomcloud.co.nz/shares/file/ER2A6YTspJs/</p>

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<https://databox.datacomcloud.co.nz/shares/file/zE0a1E8xGwv/>

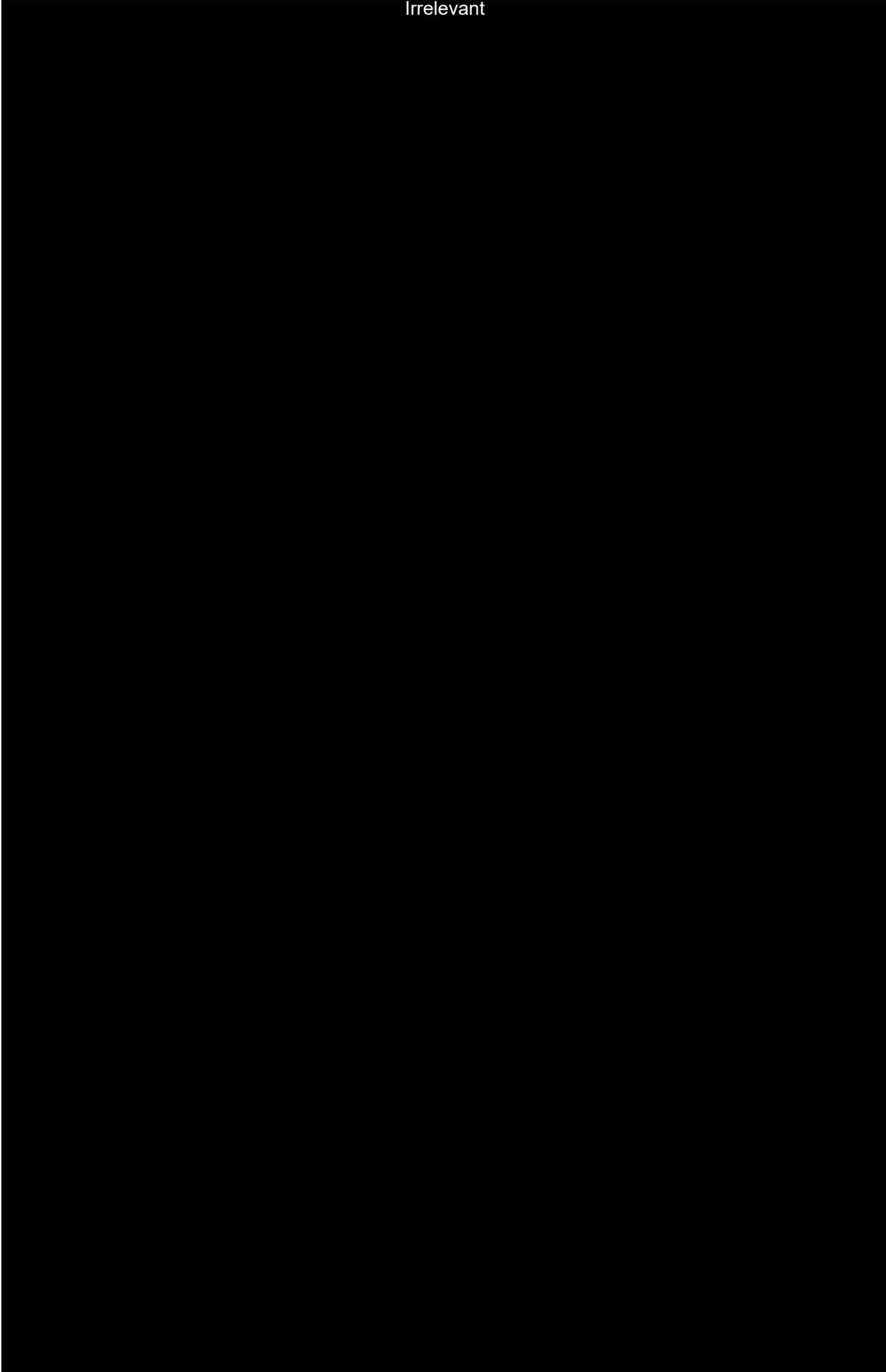
- Taken as read – a wānanga to follow
- MfE: Open to an inclusive ‘who’ conversation. Repurposed work in deciding the ‘who’ before the appointment question
- MfE: MfE starting to form a view on Governance – may be able to come to a meeting soon
- TTK: Have already answered a few of the questions within the Mana Whakahaere Report. Why have these principles not carried through – only referenced mana whakahaere once.
- MfE: Trying to focus ministers, have not even got into the high level principles yet. Will be developing those principles more. Fleshing these out through further engagement. Have room to development the principles more.
- The principles of inclusivity in mana whakahaere as opposed to the exclusive mana-whenua. Needs a principle of inclusion rather than exclusion which is tika. The 6 principles that make up te mana o te wai need to be considered in the RM reform
- MfE: Those guiding principles are great, need to navigate the differing views between the iwi tech groups
- FILG: Tino rangatiratanga is a principle of inclusion. Need to inclusivity like the Auckland Statutory Body
- MfE: Ministers need to be assured there is consistency.
- TTK: Māori can select who represents them, no a novel idea for groups to do this. In this space there is a role for Urban Māori.
- MfE: If the who was really open in the legislation would that promote the inclusivity and be tika?
- TTK: Call a hui, the determine the who is for that particular place. The Auckland Urban Authority does that now and other groups. Not limited to iwi, groups need to decide the tikanga of the appointment then can chose the who. Let the tikanga meet the needs of the ropu. Develop an appointment process that is aligned with tikanga for the ropu.
- TTK: As a litigator good not to have a term like mana-whenua that can be defined by the courts. It is appropriate and necessary that has timeframes for these decisions. As long as those timeframes do not undermine tikanga, needs to provide for fac-to-face. What happens if a decision was not made after the timeframe. Needs to have a check and balance – could be the Māori Land Court – qualified. Need a circuit breaker. Need to make sure the flexibility is not undermined.
- TTK: Need reasonable time limits – there are more mature hapū
- MfE: How do these appointments work with consenting
- TTK: The heavy lifting is done at the pre-application stage. Cant do through legislation just needs to be funded Need the territories at place to have . community building and relationship building through the legislation.

DRAFT

- Cant legislate for this, will vary through place to [lace set up incentives to build up these relationship that make these decisions a lot of this is already happening – need to learn from and speak to those currently using these processes
- MfE: Any concrete examples of what not to do in the legislation? How can we protect what is good now
- TTK: Picking winners of who has rights place. Making sure the Crown does not have this power – lots of risk. Can't not allow the Treaty Settlement processes to determine who has rights at place currently- does not allow for hapū etc.
- TTK: If you get things right in terms of tikanga at the beginning then it is efficient. By making sure you come with a blank slate. Not proscribing and coming in with flexibility.
- TTK: May well be that rights holder may give iwi the mandate, but the Crown can not proscribe this.
- Te Arawhiti: Need to be careful with Treaty Settlements in the new system to limit future grievances

Irrelevant

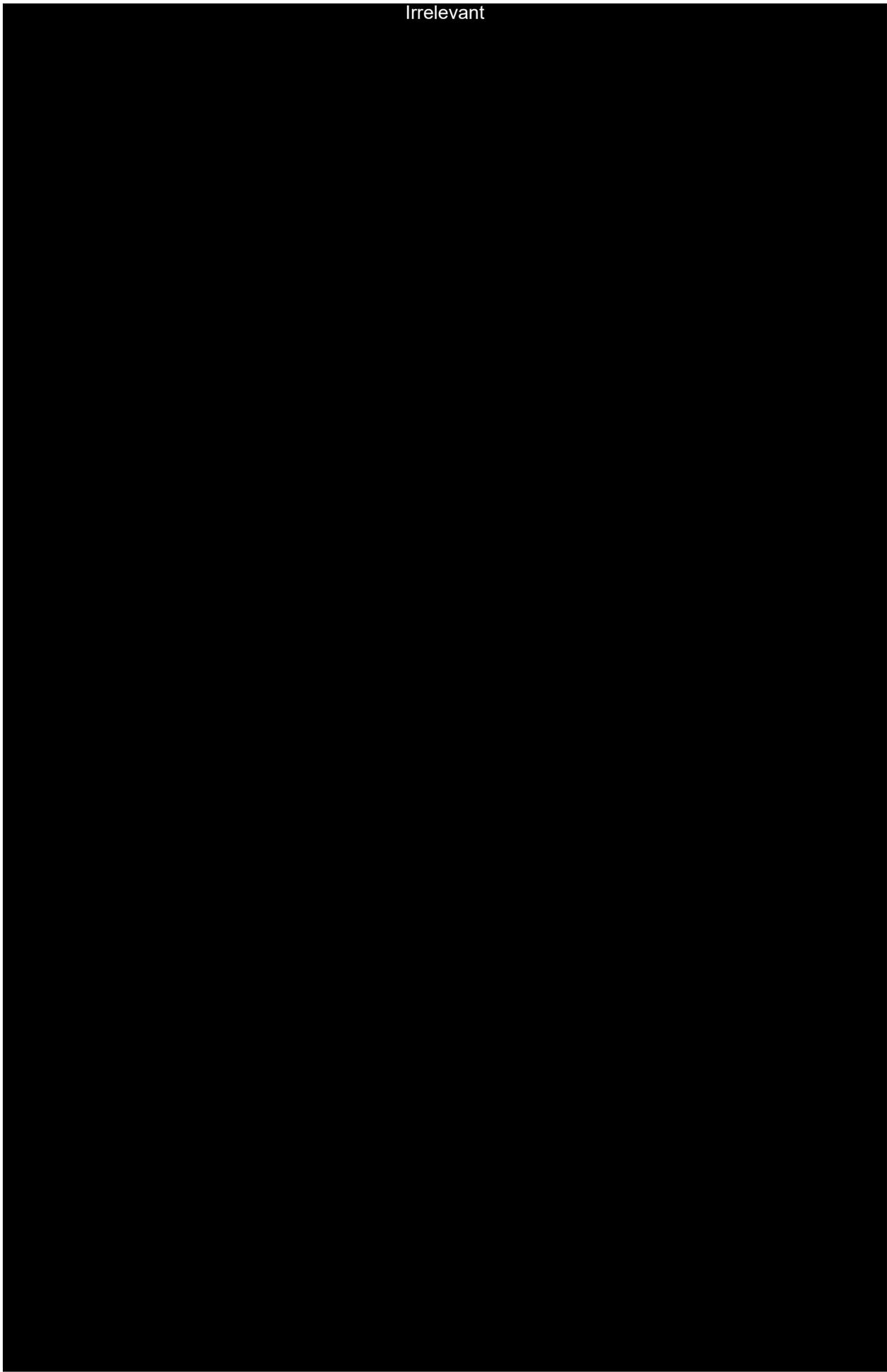
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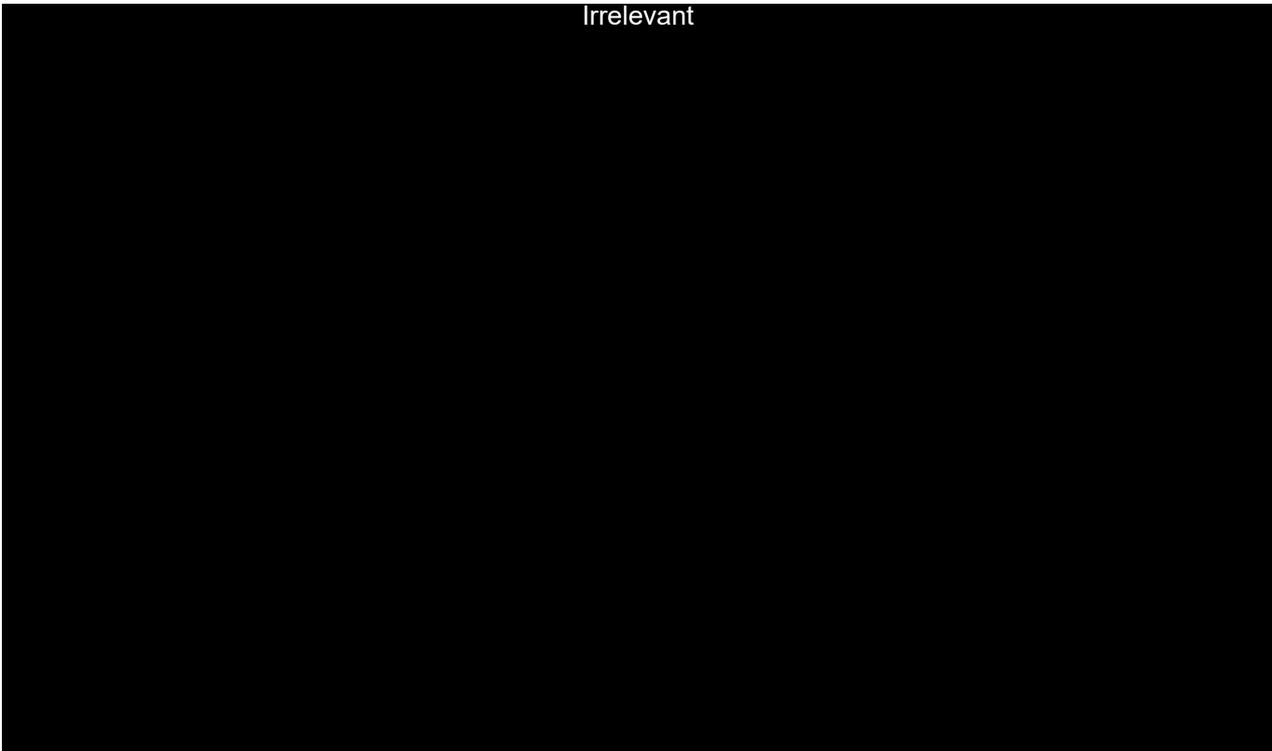
Irrelevant



Irrelevant



Irrelevant



Transforming Aotearoa New Zealand's resource management system

Our future resource management system

Materials for discussion

Te pūnaha whakahaere rauemi o anamata

Kaupapa kōrero

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Message from the Minister

He kōrero nā te Minita

Over the past year, the Government has been delivering on its promise to build a new resource management system for Aotearoa New Zealand: a system that provides better outcomes for our natural and built environments.

There is broad consensus that the Resource Management Act 1991 (RMA) is not working as was intended. It takes too long, and costs too much. It has not adequately protected the natural environment, nor enabled housing or infrastructure development where needed. There is an urgent need to address these issues and create a system that protects and provides for the wellbeing of current and future generations.

The Government is aiming to replace the RMA with a Natural and Built Environments Act (NBA) and a Strategic Planning Act (SPA) within this parliamentary term. A select committee inquiry recently reported its findings on an exposure draft of key parts of the Natural and Built Environments Bill. The Government is now considering the findings.

In the meantime, we would like to have a discussion with you about our thinking on parts of the system not included in the exposure draft. As our partners and stakeholders, we want to hear your views and ideas on how the reform is shaping up.

Building on the engagement that has already occurred, and recognising the constraints posed by the COVID-19 pandemic, we are holding a series of forums and hui where we will share with you work on the remaining policy details of the NBA and the SPA. This includes initial policy decisions that have been made around the key components of the system and the roles and responsibilities within it.

Your feedback on this document is welcome until 28 February 2022. It will help shape the NBA and SPA, for which Bills will be introduced into Parliament later in 2022.



Hon David Parker
Minister for the Environment
November 2021

Purpose of this document

Te kiko o tēnei tuhinga

In February 2021, the Government announced it would reform the resource management system by replacing the Resource Management Act 1991 (RMA) with three new Acts: the Natural and Built Environments Act (NBA), the Strategic Planning Act (SPA) and the Climate Adaptation Act (CAA). This process is referred to as the resource management system reform (RM reform) in this document.

In carrying out the RM reform objectives (see page 10), the Government aims to:

- move from an effects-based system to an outcomes-based one that avoids harmful cumulative effects
- simplify and standardise processes and make them less costly
- provide more effective and consistent national direction
- substantially reduce the number of local government resource management (RM) plans
- reduce the need for consenting while ensuring environmental safeguards are still in place.

The RM reform continues to progress, and the Government is providing another opportunity to engage on the current proposals for the NBA and SPA before they are developed into full Bills.

This document supports targeted engagement with hapū/iwi/Māori, local government and other stakeholders. It deals mainly with initial decisions made on reform detail since the exposure draft was prepared.

The objectives of the engagement are to:

- provide an update for Māori, local government and sector stakeholders on where the Government is up to in the reform of the resource management system and on next steps in the reform
- present a fuller view of the main components of the system designed to date, including the role of Māori and local government within the future resource management system, from the national to the local level
- respond to and build on feedback received to date
- provide a general overview of RM reform to audiences who have a limited understanding or limited engagement to date, and support preparation for submissions on the full Bill to a select committee in 2022.

Together with submissions provided to the Environment Committee's inquiry on an exposure draft of a Bill for the NBA, feedback received on proposals in this document will inform Ministerial decisions that shape the NBA and SPA legislation that will be introduced into Parliament in 2022.

This document does not cover the CAA. Public consultation on the CAA is expected to take place in early 2022 alongside consultation on the National Adaptation Plan under the Climate Change Response Act 2002.

Structure of this document

Part one of this document provides an overview of the reform process.

Part two sets out where the Government has got to so far in the design of the future system. We have developed a series of questions to seek your views on this proposed system.

Part one:

Resource management reform context

Wāhanga Tuatahi:
Te whakapapa kōrero o
te rauemi whakahaere



Resource management reform to date

There is broad consensus that the current resource management system introduced by the Resource Management Act 1991 (RMA) has not adequately protected the natural environment, nor enabled housing or infrastructure development where needed. It has also been unable to provide hapū/iwi/Māori with an effective enough role in the system.

Challenges in the current system include:

- cumulative environmental effects not being well managed
- local government resource management plans restricting housing and infrastructure growth needed in response to population growth
- hapū/iwi/Māori entities needing to have a more effective role in the system that recognises the relationships under Te Tiriti o Waitangi (the Treaty of Waitangi)
- needing to urgently reduce carbon emissions and adapt to climate change
- the lack of integration across the system, resulting in inefficiencies, delay and costs.

Resource Management Review Panel

In 2019, the Government set up the Resource Management Review Panel (Randerson Panel) to review Aotearoa New Zealand's resource management system. This was an expert panel led by retired Court of Appeal Judge Hon Tony Randerson QC.

The Randerson Panel's report, *New Directions for Resource Management in New Zealand*, identified similar issues to those found in previous reviews of the resource management system including by the Productivity Commission in 2017¹, the Environmental Defence Society in 2019² and the Waitangi Tribunal from 1993–2020³.

¹ Better urban planning: Final report.

² Reform of the Resource Management System, the next generation, the synthesis report.

³ Extracts from Waitangi Tribunal commentary, findings and recommendations on the Resource Management Act 1991, Ministry for the Environment.

Three new Acts

In February 2021, the Government announced it would repeal the RMA and – based on the recommendations of the Randerson Panel – replace it with three new Acts:

- Natural and Built Environments Act (NBA), to protect and restore the environment while better enabling development, as the primary replacement for the RMA
- Strategic Planning Act (SPA), to help coordinate and integrate decisions made under relevant legislation by requiring the development of long-term regional spatial strategies (RSSs)
- Climate Adaptation Act (CAA), to address complex issues associated with managed retreat and funding and financing adaptation.

Objectives for the reform

The Government set objectives for the future resource management system. These are to:

- protect and, where necessary, restore the natural environment, including its capacity to provide for the wellbeing of present and future generations
- better enable development within environmental biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure
- give effect to the principles of Te Tiriti o Waitangi to provide greater recognition of te ao Māori, including mātauranga Māori
- better prepare for adapting to climate change and risks from natural hazards as well as mitigating the emissions that contribute to climate change
- improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

Select committee inquiry

In July 2021, the Government referred an exposure draft of a Bill for the NBA to Parliament's Environment Committee. The inquiry conducted by this select committee allowed the public to get an early look at the main aspects of the proposed legislation. The Environment Committee provided its report to Parliament on 1 November 2021, and the Government is now considering it.

Many written and oral submissions were made on the exposure draft, with responses coming from hapū/iwi/Māori, local government, key stakeholders and the public.

The exposure draft provided for a range of environmental outcomes. In its report, the Select Committee summarised these as relating to the natural environment, cultural values, climate change and natural hazards, and well-functioning urban and rural areas.

The report also provided a list of ideas for making the resource management system efficient, proportionate, affordable and less complex.

Other engagement on the reform

Engagement on the reform began with the Randerson Panel, which conducted public consultation on issues and options for reform in 2019 and 2020. In 2021, the select committee inquiry considered public submissions. Other engagement is outlined below.

Engagement with hapū/iwi/Māori

The Ministry for the Environment has undertaken ongoing regular engagement with two Māori leadership groups, and their technical experts over the past year.

These two groups are:

- Freshwater Iwi Leaders Group and Te Wai Māori Trust
- New Zealand Māori Council, Federation of Māori Authorities (FOMA), and Kāhui Wai Māori (KWM), known as Te Tai Kaha (TTK)

The Minister for the Environment, Hon David Parker, and Associate Minister for the Environment, Hon Kiritapu Allan, have met regularly with these two groups.

MfE has engaged with Post Settlement Governance Entities (PSGEs) since March 2021, to discuss how their settlement arrangements will be carried over into the future system. This is a separate engagement process that will continue right through to the introduction of the legislation, while past feedback has informed the policy proposals.

Two rounds of regional hui with hapū/iwi/Māori, led by Minister Allan, were held in March–April and July 2021.

Local government

MfE's engagement with local government has included:

- regular engagement through a local government chief executives forum
- engagement with selected council technical experts to test policy options
- engagement with specific councils, including Auckland Council for its experience in developing the Auckland Unitary Plan and Auckland 2050 spatial plan
- meetings with Local Government New Zealand (LGNZ) sector groups (metropolitan, regional and rural and provincial groups)
- engagement with the newly established Local Government Steering Group.

The Minister for the Environment has also met with LGNZ sector groups and the Local Government Steering Group to provide updates on the RM reform and respond to questions.

How feedback will inform decision-making

A Ministerial Oversight Group has been delegated decision-making authority by Cabinet to work through the policy details needed to progress the legislation required to reform the system.⁴ The reforms are based on the recommendations of the Randerson Panel.

This document includes policy proposals where Ministers have made initial decisions on matters beyond the scope of the NBA exposure draft. It also provides further policy proposals for testing before advice is finalised. Feedback received through this engagement process will inform Ministerial decisions that shape the NBA and SPA legislation, while past feedback has informed the policy proposals.

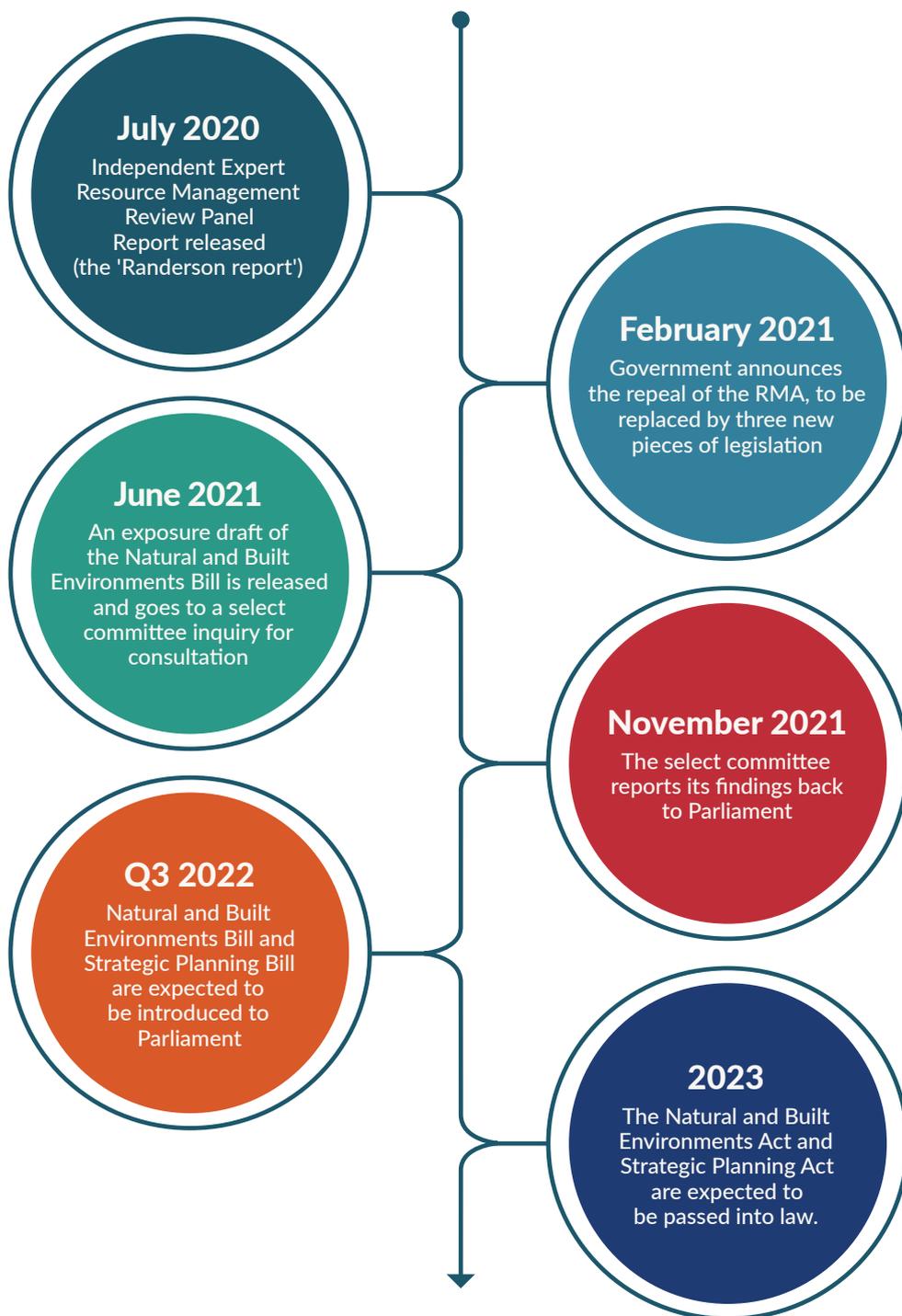
While past feedback has informed the policy proposals in this document, it should not be assumed that those engaged with necessarily agree with the proposals.

⁴ The Ministerial Oversight Group comprises the Ministers of and for Finance (Chair), Environment (Deputy Chair), Māori Crown Relations: Te Arawhiti, Housing, Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment and Associate Arts, Culture and Heritage Hon Kiritapu Allan, and Associate Environment Hon Phil Twyford, and Climate Change.

Timelines for introduction

Both the NBA and the SPA will be introduced to Parliament in 2022. A standard legislative and select committee process will follow, with the aim of the NBA and SPA being passed into law this parliamentary term. The CAA is expected to be introduced to Parliament in mid-2023.

More details on indicative timelines are provided below.



Upholding Te Tiriti settlements

Treaty settlements have led to many resource management arrangements that recognise the unique relationships between tangata whenua and te taiao (the environment).

The RMA interfaces with over 70 Treaty settlement arrangements. Engagement with settlement PSGEs will ensure that reform avoids unintended consequences for, and upholds the integrity of, Treaty settlements. As already noted, engagement with PSGEs on these matters has begun.

The Government is committed to carrying over existing Treaty settlement arrangements into the NBA and SPA. Doing this will protect the existing influence that PSGEs have on RM processes while ensuring the agreements providing for such influence are not themselves relitigated.

Engagement with relevant entities will also ensure the upholding of:

- natural resource arrangements agreed by hapū/iwi/Māori entities and local government under existing provisions of the RMA
- rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (takutai moana legislation).

Takutai moana rights

Takutai moana groups who have, or are seeking, recognition of customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 will be invited to engage in regional hui and other processes. In recognition of customary interests in the common marine and coastal area, takutai moana legislation includes significant resource management rights for hapū/iwi/Māori.

The Crown is committed to upholding these rights in the reform. There are nearly 600 applications for recognition of customary interests, which collectively cover the entire coastline of Aotearoa from the wet part of the beach out to 12 nautical miles (the edge of the territorial sea). Some of the applications have already been determined, with customary marine title or protected customary rights recognised by the Government.

The resource management rights of takutai moana groups include:

- the right to give or decline permission for certain resource consents
- the ability to prepare a planning document that influences regional planning
- the right to carry out protected customary activities without a resource consent (eg, tauranga waka, using wai for rongoā)
- the right to be notified of certain resource consent applications.

Engagement through regional hui with takutai moana applicants and rights holders will inform upcoming decisions on how the rights will be effectively transitioned to the future system.

Working with local government

Engagement with local government was enhanced in September 2021 with the establishment of the Local Government Steering Group to advise the Government on the RM reforms.

The Group comprises local government elected members and senior council executives.

MfE worked with LGNZ and Taituarā – Local Government Professionals Aotearoa to ensure the Group's members are reflective of the range of New Zealand's councils, including territorial, regional and unitary councils from metropolitan, provincial and rural areas.

Implementing the NBA and SPA

Ensuring an effective implementation of the future system, and smooth transition to it, is critical to achieving the objectives of the reform.

Transition pathways are being developed to identify options for how best to transition key components of the RMA (eg, national direction, plans and consents) into the future system. The transition pathways will need to recognise the capability and capacity of people to participate effectively in the delivery of the future system and achieve the objectives of the reform.

A 'model project' will be developed to support, test and demonstrate the implementation of the future system. The first phase of this project will be the testing of the new system through the development of plan prototypes. Following this, the Government intends to work with a selected region to prepare a model RSS and an NBA plan to test the implementation of the system and provide learnings to other regions. Expressions of interest will be sought from regions to participate in the model project.

A culture, capacity and capability work programme will promote, support and respond to the needs of the future system, identifying new skills and capabilities and the nature of system culture change required.

A digital transformation work programme recognises that technology is integral to the future system to improve efficiency and to enable hapū/iwi/Māori and others to participate more fully in the system. This work will explore the role central government

and/or regions could have in the provision and support of digital technologies.

How resource management reform relates to other Acts and government work

The RMA interacts with a range of other legislation, including the Local Government Act 2002, Land Transport Management Act 2003, Conservation Act 1987 and Building Act 2004.

Substantive changes to these Acts are not proposed as part of this reform. However, minor changes may be made to ensure they work with the NBA and SPA.

Freshwater Māori rights and interests

An objective of the RM reforms is to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.

The Government has committed to working to achieve efficient and fair allocation of freshwater resources, having regard to all interests, including Māori and existing and potential new users.

The Government provided an assurance that the exposure draft of the NBA would not preclude any potential options for addressing Māori freshwater rights and interests and their consideration as part of ongoing discussions with hapū/iwi/Māori. This will continue to be the case in the current engagement process.

Three Waters reform

The Three Waters reform is focused on improving the regulatory and service delivery arrangements for three waters infrastructure (drinking water, wastewater and stormwater). The new multiregional water service entities will need to operate within the resource management system.

Three Waters reform relates to the delivery of drinking water, wastewater and stormwater services. RM reform relates to protecting and restoring the environment while better enabling development.

Officials are working together to ensure the new water entities:

- give effect to existing and future environmental regulation to improve the environmental performance of three waters systems
- enable housing and urban development and support an integrated approach to land use and infrastructure planning, with the expectation that the entities will provide technical support for the development of the new long-term RSSs, which are discussed from page 24.

Both reform programmes are looking at how to address water as a taonga of particular significance and importance to Māori, and the Crown's duty to protect Māori rights and interests under Te Tiriti. Both recognise the intergenerational importance of health and wellbeing. The new water entities will be required to respond to Te Mana o Te Wai, as expressed in the National Policy Statement for Freshwater Management 2020, made under the RMA.

Review into the future for local government

Local government will play an important role in implementing the NBA and SPA. The role of local government in the future will therefore affect how the future resource management system will operate.

In April 2021, the Minister of Local Government established the Review into the Future for Local Government. The review provides local government with an opportunity to comment on how New Zealand's system of local democracy needs to evolve to improve the wellbeing of our communities and environment, actively embody Te Tiriti partnership, and be fit for the future.

The local government review will help to identify what local government does, how it does it, and how it pays for it. The review panel published its interim report in October 2021 (see appendix 5).

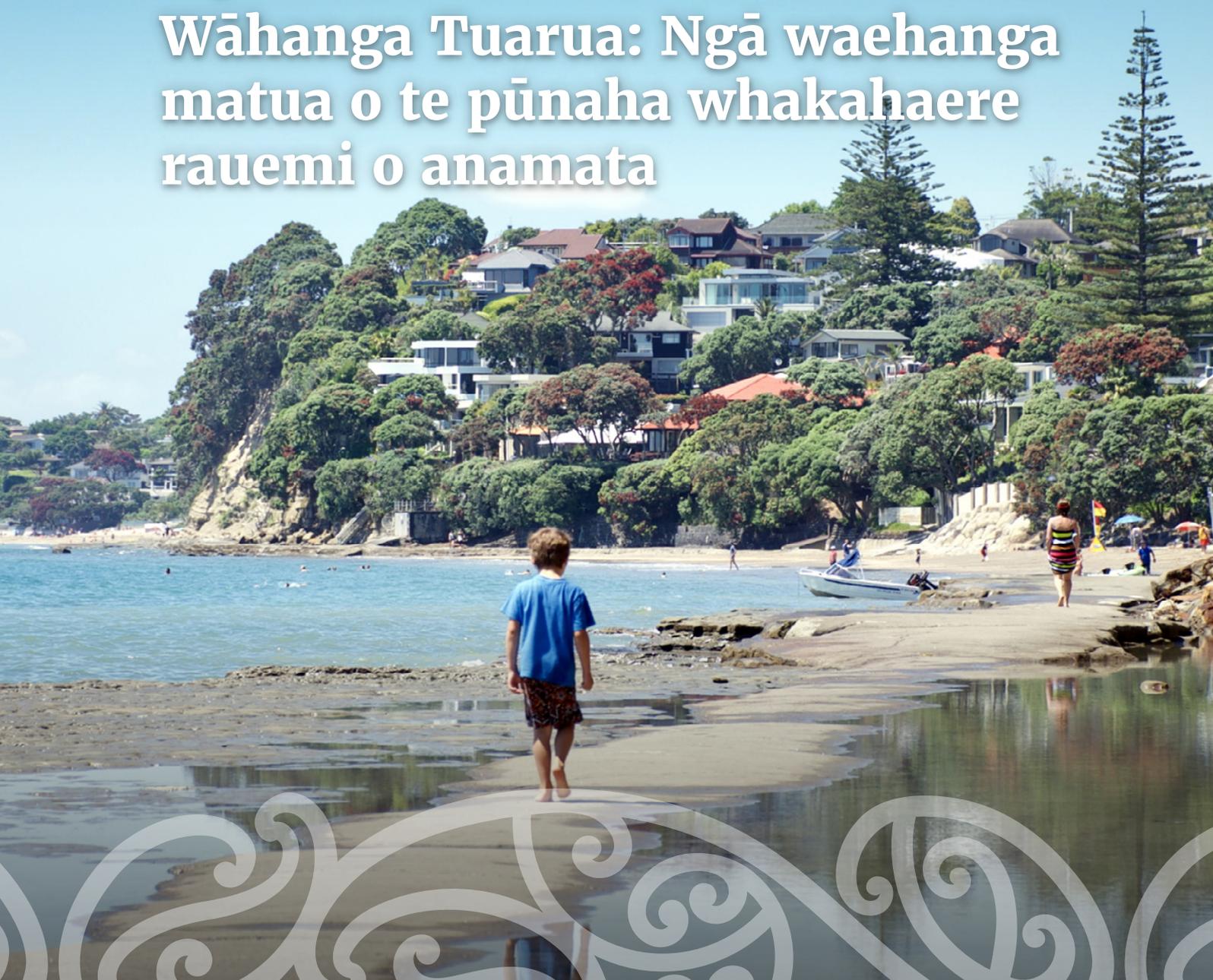
The prospective outcomes of RM reform are flexible enough to not limit the outcomes of the review.



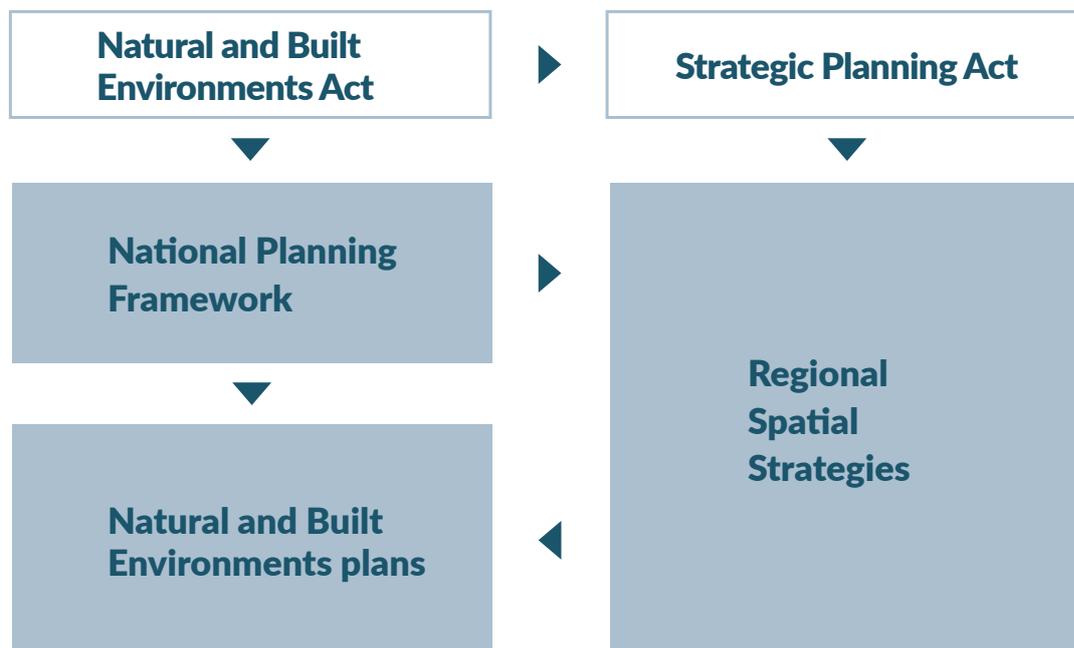
Part two:

Components of the future resource management system

Wāhanga Tuarua: Ngā wāhanga
matua o te pūnaha whakahaere
rauemi o anamata



How the future system will work



Strategic Planning Act

The SPA will integrate with the NBA and other legislation relevant to land, urban development, and the coastal marine area. The SPA will provide strategic direction by requiring the creation of long-term RSSs. These will identify areas that are:

- suitable for development
- need to be protected
- require infrastructure
- vulnerable to climate change effects and natural hazards.

RSSs will integrate with other relevant documents like NBA plans and the National Planning Framework (NPF).

One regional spatial strategy will be developed for each region, with flexibility to address issues within and across regions. The strategy will be prepared by a joint committee comprising representatives from hapū/iwi/Māori, local and central government. RSSs would integrate with other relevant documents like NBA plans and the NPF.

Other significant legislation that the SPA will integrate includes the Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002. These other Acts are important parts of the resource management system, and substantive changes to them are not proposed as part of this reform.

Natural and Built Environments Act

The NBA will be an integrated statute for land use and environmental protection that works in tandem with the SPA. As the primary replacement for the RMA, it will set out how the environment is to be protected and enhanced and will promote positive outcomes for natural and built environments.

Achieving positive outcomes and strengthening limits

A criticism of the RMA is that it focuses too much on managing adverse effects on the environment and not enough on promoting more positive outcomes across all aspects of wellbeing. The NBA will specify outcomes that decision-makers will be required to promote for natural and built environments. Outcomes will also guide RSSs under the SPA.

The NBA will include a mandatory requirement for the Minister for the Environment to set environmental limits for aspects of the natural environment, to protect its ecological integrity and human health.

These limits will be framed as a minimum acceptable state of an aspect of the environment, or a maximum amount of harm that can be caused to that state. Timing and transitional arrangements will be taken into account in setting limits.

Managing environmental effects

The NBA will carry over the RMA's requirement to 'avoid, remedy or mitigate' adverse effects of activities on the environment. This will ensure a management framework exists for all adverse effects, including those not covered by limits or outcomes.

The NBA will also ensure that measures to avoid, remedy or mitigate effects do not place unreasonable costs on development and resource use. Although the NBA will intentionally curtail subjective amenity values, this will not be at the expense of quality urban design, including appropriate urban tree cover.

Te Tiriti o Waitangi and te ao Māori in the system

The NBA will also improve recognition of te ao Māori and Te Tiriti o Waitangi.

This includes reference in the Act's purpose to Te Oranga o te Taiao, a concept intended to encapsulate the intergenerational importance of the health and wellbeing of the natural environment.

As set out in the exposure draft for the NBA, decision-makers would be required 'to give effect to' the principles of Te Tiriti, replacing the current RMA requirement to 'take into account' those principles.

Providing clear national direction

The NPF will provide strategic and regulatory direction from central government. The NPF will play a critical strategic role, setting limits and outcomes for natural and built environments, as well as ways to enhance the wellbeing of present and future generations.

NBA plans

As recommended by the Randerson Panel, one NBA plan will be developed for each region. The plan will be prepared by a joint committee comprising representatives from hapū/iwi/Māori, local government, and potentially a representative appointed by the Minister of Conservation.

NBA plans are intended to bring efficiencies into the system by providing consistency across a region and more effectively implementing the NPF.

The process for developing NBA plans is largely informed by the model used to develop the Auckland Unitary Plan and aims to incentivise all participants to engage early with the best information available. An independent hearings panel would hear submissions and make recommendations to the decision-makers.

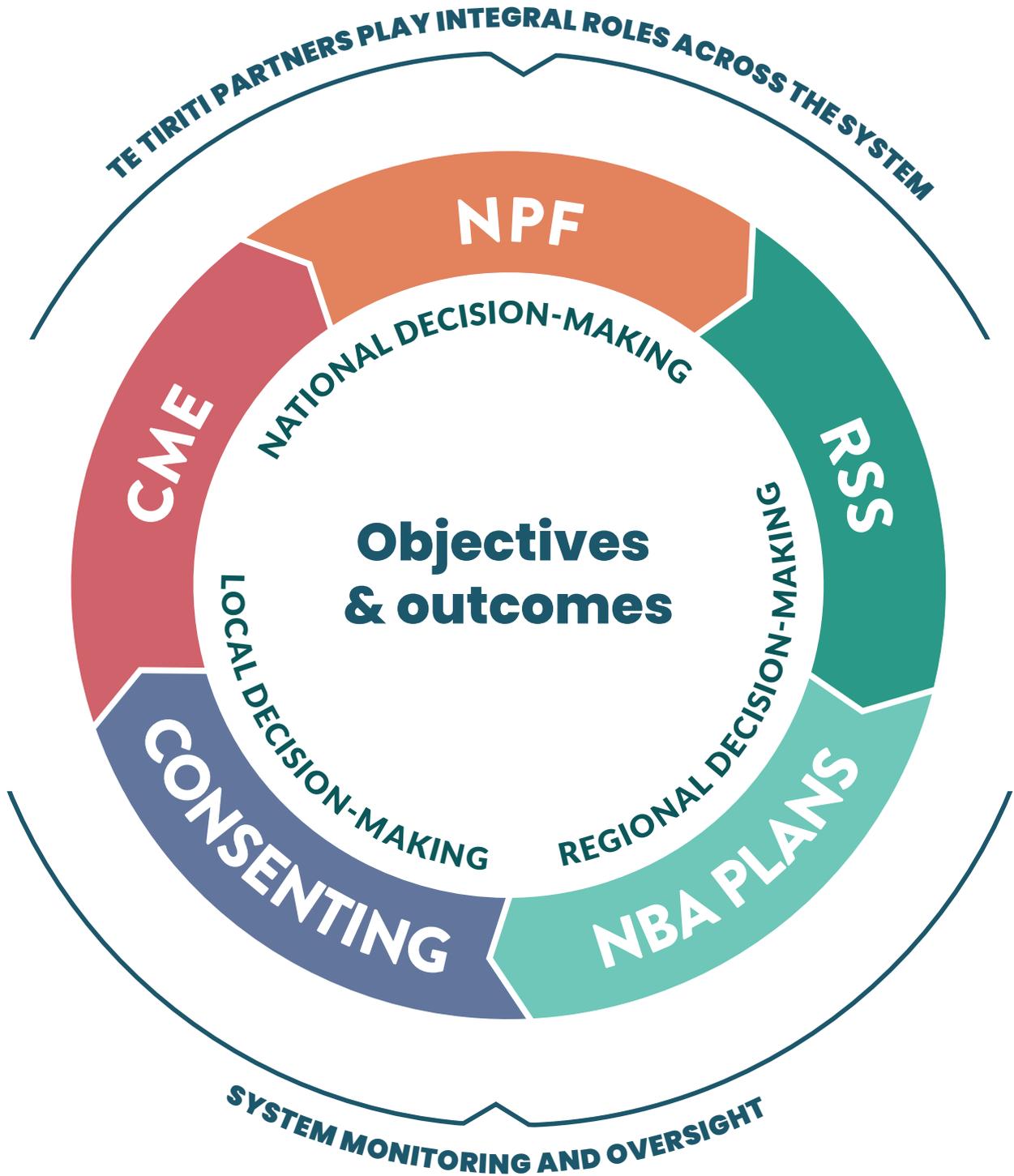
Consenting

Consent activity classes and notification rules will be standardised, with key requirements set out in NBA plans rather than assessed on a case-by-case basis. This will increase certainty and efficiency and drive a reduction in the volume of resource consents.

Compliance, monitoring and enforcement

A broader range of tools will be available to support effective compliance, monitoring and enforcement.

Main components of the future resource management system and how they fit together



NPF: National Planning Framework / **RSS:** Regional Spatial Strategies (RSS)
NBA: Natural and Built Environments plans / **CME:** Compliance Monitoring and Enforcement

National planning framework

Central government will issue an NPF under the NBA that provides a set of mandatory national policies and standards. These will include natural environmental outcomes, limits and targets.

The NPF will also provide direction on resource management matters that must be consistent throughout the system. This may include methods, standards and guidance to support regional spatial strategy development. The NPF will also consolidate existing national direction. It will play a role in resolving conflicts between outcomes in the system.

The NPF will provide strategic and regulatory direction from central government. The NPF is important for ensuring the future resource management system will be more efficient.

Detailed decisions on the process for developing the NPF are still to be made. The policy intent includes effective public consultation, a role for Māori that gives effect to the principles of Te Tiriti, and independent advice to inform decision-making.

Scope of the NPF

The exposure draft stated that the NPF must cover areas like air quality, freshwater, indigenous vegetation, greenhouse gasses, housing supply and infrastructure.

The NPF is expected to:

- contain environmental limits, targets and other provisions, such as methods and rules to direct and guide anyone exercising functions and powers under the Act
- help in resolving conflicts that are the most appropriate to resolve at the national level
- provide direction on resource management matters that benefit from consistency throughout the system
- provide direction on plan-making
- include standards for common construction and development activities (eg, erosion and sediment control and noise and vibration).

Development of NPF

The Randerson Panel recommended a board of inquiry process for the preparation and review of national direction, with an alternative process for less substantive changes.

The process to develop the NPF must be transparent and allow for flexibility, to ensure its development is proportionate to the scope of the direction. The process must allow for expertise, including mātauranga Māori, to inform decision-making.

The Randerson Panel also recommended that national direction should only be prepared by the Minister for the Environment (with the Minister of Conservation where currently involved under the RMA), to ensure the integrity and cohesion of national direction and the outcomes sought are not undermined. It is proposed that the Minister for the Environment would make final decisions (with the Minister for Conservation where appropriate).

Review of NPF

The Randerson Panel recommended that national direction should be reviewed at least every nine years. No decisions have yet been made on this matter.

WHAT DO YOU THINK?

What role does the national planning framework (NPF) need to play to resolve conflicts that currently play out through consenting?

How would we promote efficiency in the Board of Inquiry process while still ensuring its transparency and robustness?

How often should the NPF be reviewed, bearing in mind the relationships between the NPF, regional spatial strategies and Natural and Built Environments Act plans?

Regional spatial strategies

RSSs will require multiple groups to work together to identify how the region will grow over the next 30 years. The RSSs will provide firm direction on integrating decisions on land use, urban development, infrastructure, environmental protection and climate change.

The RSSs will not be operative; rather they will guide NBA plans and coordinate investment from the public and private sector.

Developing RSSs will ensure key decisions and trade-offs could be identified and resolved at the regional level, reducing the need for these issues to be relitigated in NBA plans and individual consents.

RSSs will also help groups to identify areas of mutual benefit and potential conflict earlier on. This will allow interactions between outcomes to be managed in a more strategic way, for example, by designating areas for development or for protection.

Scope of RSSs

RSSs will need to uphold relevant Te Tiriti settlements and customary rights, and will:

- set long-term objectives for urban growth and land-use change
- help ensure development and infrastructure is provided in the right places and in a coordinated way
- help identify areas to be protected from inappropriate development or change, such as areas with highly productive soils, or significant natural areas
- support development capacity and infrastructure provision, including by identifying indicative future infrastructure corridors, or areas to improve housing supply, affordability and choice
- support climate change mitigation and adaptation, and natural hazard risk reduction.

Boundaries for RSS will be based on regional and unitary council boundaries, with provision to address cross-boundary issues. The approach for Te Tau Ihu (top of the South Island) is still under consideration and subject to further advice.

Development of RSSs

One RSS will be developed for each region by RSS joint committees comprising representatives from hapū/iwi/Māori, local and central government.

The exact membership of these committees is still under consideration, as discussed below. Bodies represented on RSS committees will have statutory duties and obligations, with agencies and public and private infrastructure providers providing the committees with technical support.

It is currently proposed that RSSs will be reviewed every nine years with full public engagement.

Provision could also be made for full or partial reviews within cycles, if necessary. The SPA will not prescribe a single process for public engagement on RSS development, allowing each committee to devise a process that will work for their region. The SPA would, however, require certain engagement outcomes to be achieved through the processes devised by each committee.

Review of RSSs

It is currently proposed that RSSs will be reviewed every nine years with full public engagement.

Implementing RSSs

RSSs will identify where infrastructure investment is required. To coordinate investment, the Randerson Panel recommended that project and site-level detail should be provided through separate implementation agreements.

Implementation agreements would allow central and local government, hapū/iwi/Māori, infrastructure providers and stakeholders to agree to advance more detailed project planning for certain infrastructure or environmental remediation projects. It would also allow them to begin business case processes and apportion funding responsibility across central and local government.

The extent to which implementation agreements should bind the delivery partners is still under consideration. A spectrum of options is available, including:

- self-enforcing through mutual obligation, supported by incentives and good relationships
- contracts enforceable through the courts
- legally binding with sanctions for non-compliance in the SPA.

WHAT DO YOU THINK?

To what degree should regional spatial strategies (RSSs) and implementation agreements drive resource management change and commit partners to deliver investment?

How can appropriate local issues be included in RSSs?

With regional and unitary council boundaries proposed for RSSs, how should cross-boundary issues be addressed?

NBA plans

As recommended by the Randerson Panel, one NBA plan will be developed for each region. The plan will be prepared by a joint committee comprising representatives from hapū/iwi/Māori, local government, and potentially a representative appointed by the Minister of Conservation.

Initial consideration has been given to several sub-regional NBA plans being developed, then incorporated into a regional NBA plan. This could allow regions with different communities to take a more nuanced approach to regional planning.

This would consolidate over 100 existing policy statements and plans across the system into around 14 plans (subject to decisions for Nelson/Marlborough/Tasman – Te Tau Ihu), simplifying and improving integration of the system.

Having one plan per region that covers resource use, allocation and land-use management is expected to better bring efficiencies into the system by integrating plan provisions and implementing the NPF.

NBA plans are a significant change to the system. It is important to check in on how they will work in practice and examine the implications for those that will be responsible for preparing and implementing these plans.

Development of NBA plans

The process for developing NBA plans varies from the way existing regional and district plans are made. An NBA plan process may involve:

- facilitating early and better public participation during policy development, ensuring all types of feedback received have weight throughout the plan development process
- providing an early and sustained role for hapū/iwi/Māori entities in the plan development process
- drawing in diverse community feedback on plans, and requiring those preparing the plan to seek a wide range of views, including from communities that have traditionally been hard to connect with
- providing for local place-making in the plan-development process. This could be through local plans, such as those developed under the Local Government Act 2002 (eg, town centre plans, local community plans) and structure plans
- ensuring a robust plan through use of an independent hearings panel
- appeals based on the model used for the Auckland Unitary Plan process, that is, rehearing of any independent hearings panel recommendations not accepted by the joint committee
- allowing local government and hapū/iwi/Māori entities to participate in the submissions and hearings phases of plan development.

Review of NBA plans

Work is under way to consider how often NBA plans would be reviewed.

A range of plan change approaches would be available to enable the process to be proportionate to the plan change sought. Private plan changes would be possible but restricted in scope and as to when they may occur.

WHAT DO YOU THINK?

Do you agree with the Randerson Panel's recommendation to have one combined Natural and Built Environments Act (NBA) plan per region?

Would there be merit in enabling sub-regional NBA plans that would be incorporated into an NBA plan?

What should the role of local authorities and their communities be to support local place-making and understanding of local issues in NBA plans?

Will the proposed plan-making process be more efficient and effectively deliver planning outcomes?

How the NPF, RSS and NBA will work together

RSSs and NBA plans are designed to give effect to the provisions of the NPF.

If there are conflicts between different directions or outcomes shaping an RSS that cannot be resolved through the spatial strategy process, it is proposed that the NPF direction will take priority.

RSSs will have sufficient legal weight on NBA plans to ensure that any significant strategic decisions made through the strategy are not revisited or relitigated when preparing NBA plans.

Local authority long-term plans, annual plans, infrastructure strategies and land transport plans would be required to take active steps towards the RSS, while having flexibility to consider timing and sequencing, and matters outside the resource management system as required by their respective legislation.

RSS and NBA joint committees

The Randerson Panel recommended that joint committees be established to develop and make decisions on RSS and NBA plans.

Joint committee composition

There will be one joint committee for NBA plans and another for RSS.

RSS joint committees will have representation from local government, hapū/iwi/Māori and central government.

NBA joint committees will have representation from local government and hapū/iwi/Māori. Consideration is also being given to the Randerson Panel's proposal for a representative of the Minister of Conservation.

Proposals for joint committees

Proposals for RSS and NBA joint committees align with the objective to improve system efficiency and effectiveness and reduce complexity.

A challenge in working this through is how to retain local democratic input where final plan-making decisions are held by a joint committee.

Proposals being considered include:

- RSS and NBA joint committees not requiring common membership across both committees (but regions may wish to)
- structure and composition of committees being determined on a region-by-region basis
- a preference (not requirement) for representation of all local authorities in the region on the committees
- joint committees being provided with full autonomy on final decisions, supported by feedback from local authorities and hapū/iwi/Māori
- joint committees establishing sub-committees to give effect to local voice where it does not conflict with NPF, RSS or Treaty partnership obligations
- the establishment of a secretariat to support the committees (ie, to prepare the regional spatial strategy and NBA plan). This would include how committees could draw staff and resources from existing local authorities in the region, and how technical and mātauranga Māori expertise is provided for
- subject to agreement by PSGEs, existing governance arrangements to be provided for through Te Tiriti partnership entities to uphold Treaty settlements, takutai moana rights and existing voluntary arrangements in the future system.

WHAT DO YOU THINK?

How could a joint committee model balance effective representation with efficiency of processes and decision-making?

How could a joint committee provide for local democratic input?

How could a joint committee ensure adequate representation of all local authority views and interests if not all local authorities are directly represented?

Are sufficient accountabilities included in the proposed new integrated regional approach to ensure the strategies and plans can be owned and implemented by local authorities?

How should joint committees be established?

Consenting

Resource consents are still expected to be part of the future resource management system. The NPF and NBA plans will play an important role in consenting by:

- providing direction on where consents are needed and what activity definition (eg, controlled or discretionary) they will be
- providing direction on what level of notification will be required. This may include precluding involvement for some activities that have already been litigated through NBA plans
- permitting activities subject to conditions, to ensure environmental protections remain. Conditions could include development standards (eg, erosion and sediment control) and require third party approvals or certifications
- providing clear processes for decision-making on consents.

This is expected to create a more efficient consenting system, improve certainty for decision-makers, and reduce the number of consents required.

New activity definitions

The Randerson Panel recommended that the existing RMA resource consent types remain in the future system, that is, land use consent, subdivision consent, coastal permit, water permit and discharge permit. The Government agrees.

The Panel also recommended that the current list of activities categories remain, except for the non-complying category.

The Government is proposing to reduce the number of activities categories from six (in the RMA) to four (in the NBA). Although the terminology would be similar to that in the RMA, changes are proposed to the definitions of the categories and in associated legal requirements. The four categories are:

- **permitted:** activities where positive and adverse effects (including cumulative and those relevant to outcomes) are known. There will be a slight expansion in the scope of permitted activities⁵
- **controlled:** activities where potential positive and adverse effects (including cumulative and those relevant to outcomes) are generally known, but where tailored management of effects is required. There will be limited discretion to decline

⁵ A consent is not required if identified parties gave their written approval (similar to section 87BA of the RMA), or a suitable management plan is prepared by a suitably qualified person.

- **discretionary:** activities that are less appropriate, have effects that are less known (or go beyond boundaries), and activities that were unanticipated at the time of plan development. Councils will have a broad discretion to seek information and the ability to decline
- **prohibited:** activities do not meet outcomes and/or breach limits; no applications will be allowed.

Put simply, in terms of allowing a particular activity, these are yes (permitted), probably (controlled), maybe (discretionary) and no (prohibited).

Changes to the system could clarify and explicitly enable permitted activities to require a third-party certification, thus allowing a more proportional and efficient approach.

Potential examples are farm plans prepared by a suitably qualified professional, and a cultural values assessment prepared by an iwi within an area identified as having significant value to Māori.

WHAT DO YOU THINK?

Will the proposed future system be more certain and efficient for plan users and those requiring consents?

Compliance, monitoring and enforcement

The future resource management system must be supported by a robust and effective compliance, monitoring and enforcement (CME) regime.

Proposed changes to CME include:

- broadening the cost recovery provisions for CME in the NBA, allowing for costs to be recovered for compliance monitoring of permitted activities and investigations of non-compliant activities
- ensuring compliance and enforcement decision-making is independent and not subject to inappropriate influence or bias
- a substantial increase in financial penalties, broadening the range of offences subject to fines for commercial gain, and increasing the statute of limitations to 24 months
- prohibiting the use of insurance for prosecution and infringement fines
- allowing consent authorities to consider an applicant's compliance history in the consent process
- providing for alternative sanctions to traditional enforcement action and providing for new intervention tools, including enforceable undertakings and consent revocation.

Carrying out compliance, monitoring and enforcement

It is expected councils will continue to be responsible for the delivery of CME services, including decision-making about when to take enforcement action and what type of action to take.

The Randerson Panel recommended the establishment of CME regional hubs, which would be structurally separate to councils. Decisions on hubs and CME institutional arrangements are to be deferred for the time being.

WHAT DO YOU THINK?

Do you agree with the proposed changes to compliance, monitoring and enforcement provisions and tools?

How practical will the proposals be to implement?

Monitoring and system oversight

Monitoring and oversight is fundamental to the operation of the resource management system.

Monitoring

Monitoring provides information to help set environmental limits, track progress towards desired targets and outcomes, and let decision-makers know about the consequences of their actions.

The proposed approach to monitoring will include:

- a suite of tools in the NBA to direct monitoring
- consistent and regular local-level environmental monitoring and reporting
- enabling Māori to be involved in developing and undertaking monitoring and reporting activities
- clear connections between the NBA and national environmental reporting under the Environmental Reporting Act 2015
- stronger requirements for responsible bodies to investigate, evaluate and respond when this monitoring identifies problems that need to be addressed.

System oversight

System oversight ensures there is transparency and accountability for the performance of the system and the delivery of its objectives.

The following functions of system oversight are proposed to be reflected in the future system:

- stronger regulatory stewardship and operational oversight of the system by central government and other independent oversight bodies
- regular reporting to Parliament on the performance of the system, in relation to environmental limits, targets and outcomes of the NBA
- legislated requirements for central government to respond to national level reports on the state of the environment and system performance
- independent oversight of system and agency performance, to provide accountability and impartial analysis and advice
- mechanisms to monitor how the system gives effect to the principles of Te Tiriti
- a range of powers for ministers to intervene and direct the system.

Carrying out monitoring and oversight

It is expected councils will continue to be responsible for undertaking monitoring, with greater opportunities for Māori to be involved in monitoring activities.

Central government is expected to play a stronger role in providing oversight of the system alongside independent bodies such as the Parliamentary Commissioner for the Environment and the proposed national entity for enabling Māori involvement at the national level.

WHAT DO YOU THINK?

Will these proposals lead to more effective monitoring and oversight of the system?

Will the system be able to adequately respond and adapt to changing circumstances?

Roles and responsibilities

This section sets out the roles and responsibilities for the main decision-makers in the system:

- local government
- hapū/iwi/Māori
- central government.

Role of local government in the future system

Local authorities will have important roles in the future resource management system. We are seeking input from local government on ways to ensure community input and local voices in the system are preserved or improved, and on the type of relationship and interactions local authorities need with the RSS and NBA plan joint committees.

The proposed role of local government in the future system is outlined below. Note that this is subject to further decisions.

RSS and NBA plan development

Local authorities will:

- play an essential connecting role between local communities and RSS and NBA plan development. Local authorities will support effective community engagement processes to ensure RSS and NBA plans enable local place-making and will give effect to significant views through governance and decision-making arrangements
- contribute to RSS and NBA plan development, including through provision of information, resource and expertise. Involvement of councils through the secretariat will provide an avenue for council input into drafting
- provide local plans to inform strategy and plan development. Specifically, it is intended the NBA will provide for place-shaping documents, such as local plans, under the Local Government Act 2002 (eg, town centre plans, community plans)
- support engagement with local communities on strategies and plans, and collaborating with hapū/iwi/Māori, building off existing trusted relationships
- review and provide feedback on draft strategies and plans, potentially through timebound review stages.

Joint committees

Local authority appointments to RSS and NBA joint committees would be responsible for giving effect to local voice. It is expected other governance roles would be provided for local government through potential cross-regional and sub-regional sub-committees.

RSS and NBA plan implementation

Regional councils will retain responsibility for natural resource functions, and territorial authorities will retain their core land use and subdivision responsibilities.

Local authorities will implement RSSs through local authority plans and functions under the Local Government Act 2002 and through implementation agreements.

Compliance, monitoring, enforcement and oversight

Local authorities will continue to be responsible for the delivery of CME services, including decision-making on when to take enforcement action and what type of action to take.

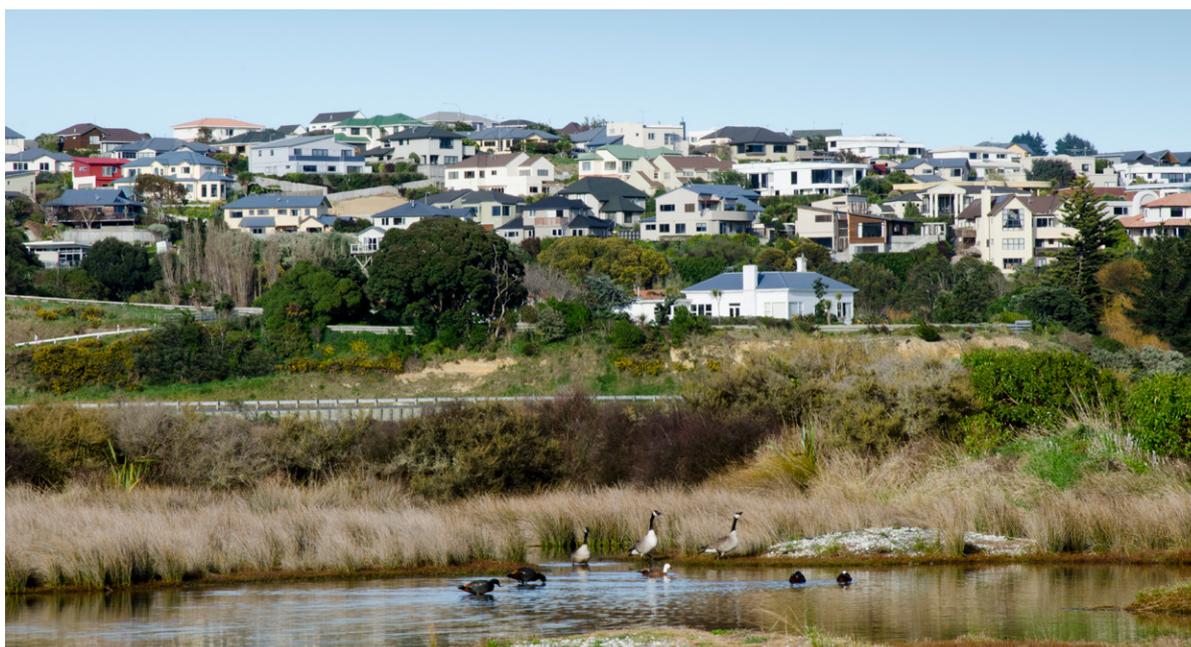
Local authorities may be required to provide consistent and regular local-level environmental reporting, and would likely have roles in monitoring the implementation of RSS and regulatory instruments under NBA plans.

WHAT DO YOU THINK?

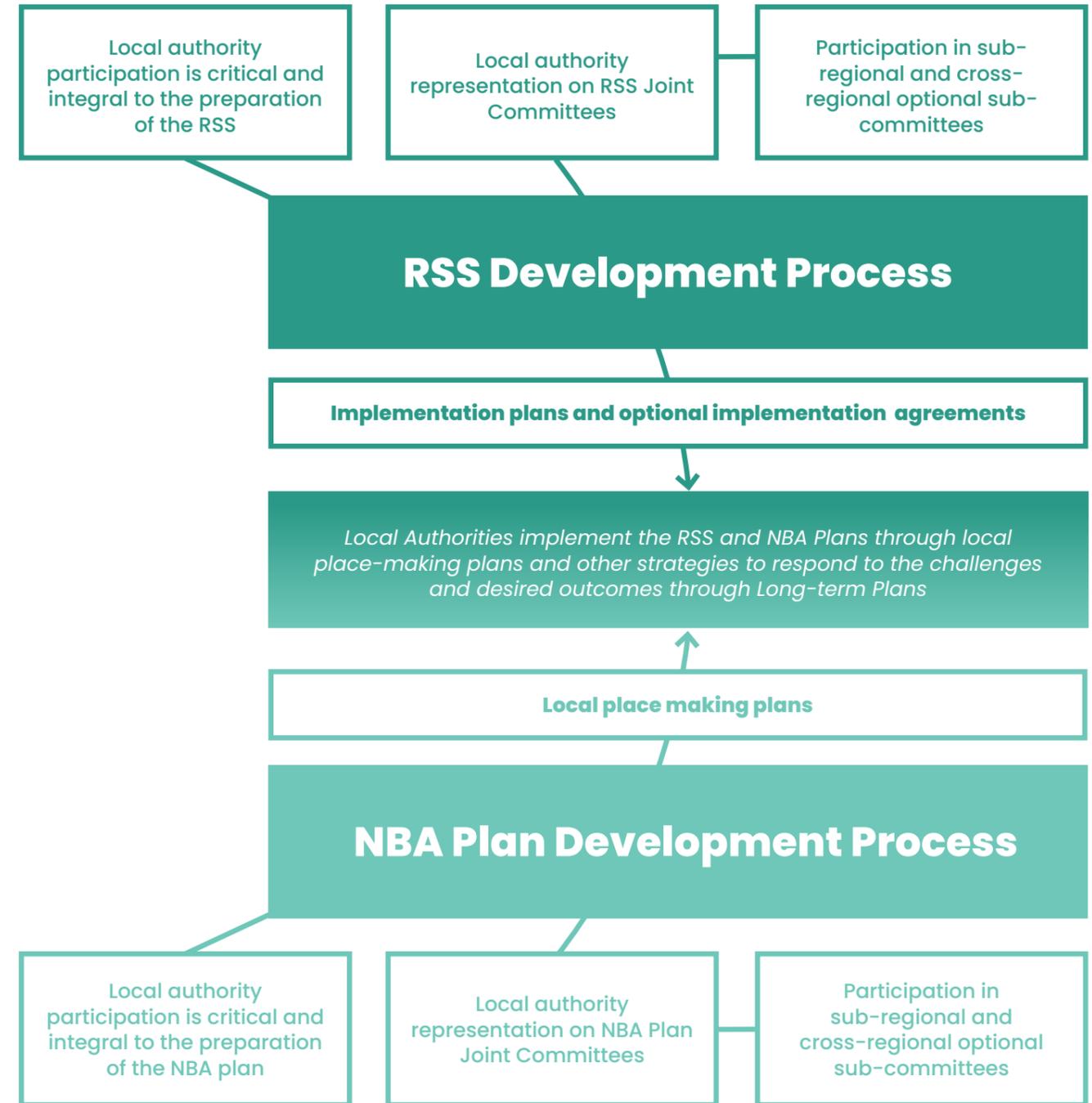
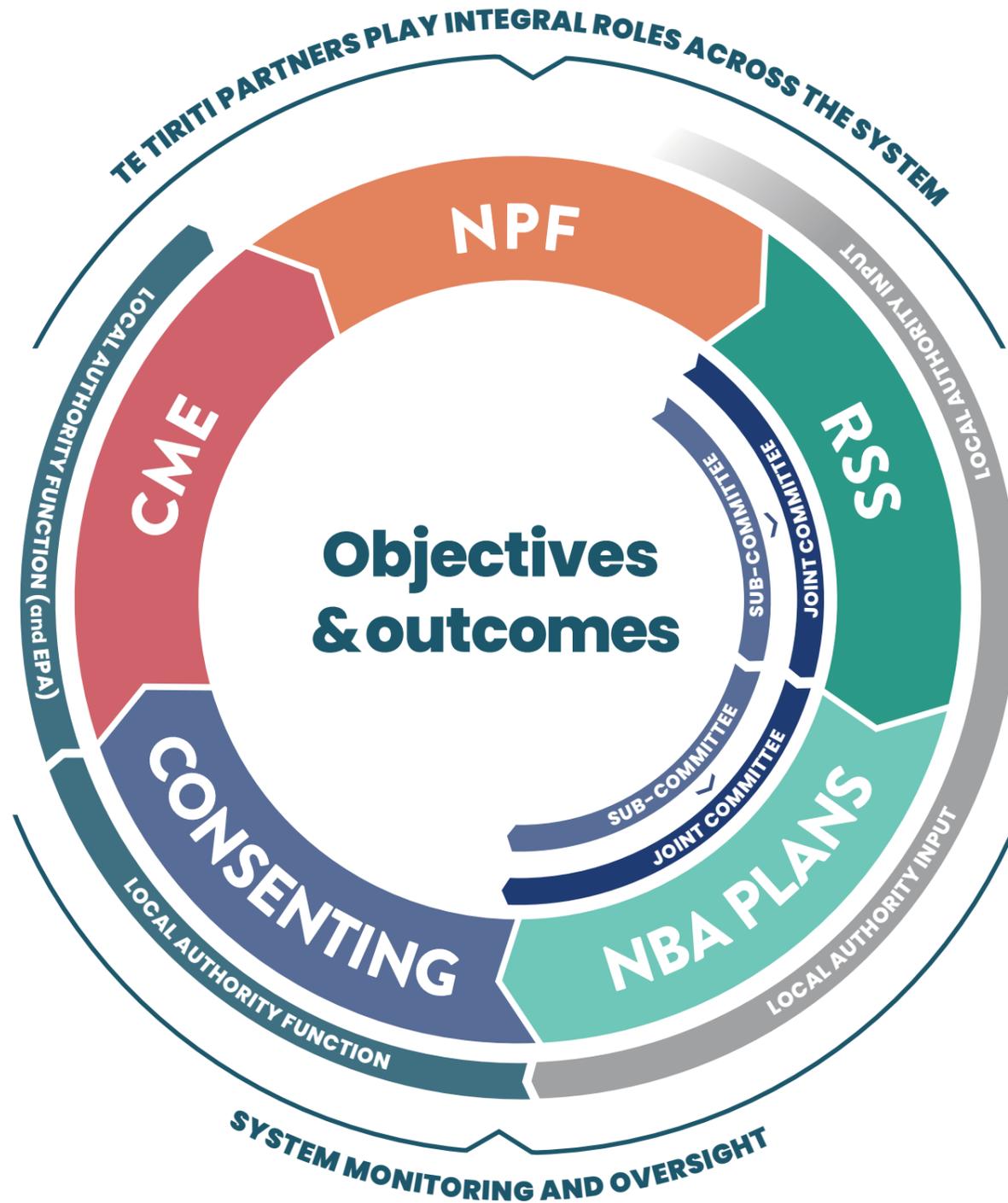
What does an effective relationship between local authorities and joint committees look like?

What other roles might be required to make the future resource management system effective and efficient?

What might be required to ensure the roles and responsibilities of local authorities can be effectively and efficiently delivered?



Local government role in the future system



NPF: National Planning Framework / **RSS:** Regional Spatial Strategies (RSS) / **NBA:** Natural and Built Environments plans / **CME:** Compliance Monitoring and Enforcement

Role of hapū/iwi/Māori in the future system

The proposed system provides more effective roles for hapū/iwi/Māori entities across the future system. New roles will be established for them in governance and decision-making on plans and strategies, and in developing and undertaking monitoring and reporting activities, as outlined below.

Decisions are yet to be finalised on who or what groups participate in the new system. Varied feedback from Māori has been received. Feedback is sought on this and on appropriate terminology that is inclusive of hapū/iwi/Māori.

National entity

- A national entity would be established to enable Māori as Treaty partners to participate in decision-making at a national level.
- Possible roles for the entity could include input into the development of the NPF, appointing Māori members to any board of inquiry process, and in system oversight and monitoring (including monitoring of Te Tiriti performance).

RSS and NBA plans

- Hapū/iwi/Māori appointments to RSS and NBA joint committees (alongside local government appointments) would be worked through region by region, but 50/50 governance is not proposed.
- Hapū/iwi/Māori would be involved in RSS and NBA plan development processes.
- Treaty settlements that have governance arrangements through PSGEs be fully transitioned into the new system as will takutai moana rights.
- The Mana Whakahono ā Rohe process⁶ would be enhanced by better enabling Māori participation in the system through an integrated partnerships process that would integrate with the existing RMA tools for transfers of powers and joint management agreements.
- Clearer signalling will be ensured through NBA plans of who in the regions (hapū/iwi/Māori) must be consulted or notified for consents.

⁶ A way for tangata whenua and local authorities to work together on environmental issues under the Resource Management Act 1991 (RMA)

Joint committees

- Appropriate weighting would be given to Māori technical inputs (including roles in the secretariat and through iwi management plans).

Compliance, monitoring, enforcement and oversight

- Opportunities would be made available to provide a more strategic role for Māori in the system and to strengthen the role of Māori in consenting and CME services.

WHAT DO YOU THINK?

National entity

- What functions should a national Māori entity have?
- What should the membership and appointments process be for the entity?

Joint committee composition

- Should parties in a region be able to determine their committee composition?
- What should be the selection and appointments processes for joint committee members?
- Are sub-committees needed to meet regional needs including Treaty settlements?
- How do we best provide for existing arrangements (eg, Treaty settlement or other resource management arrangements)?

Enhanced Mana Whakahono ā Rohe arrangements, integrated with transfers of powers and joint management agreements

- How could an enhanced Mana Whakahono ā Rohe process be enabled that is integrated with transfers of powers and joint management agreements?
- What should be covered in the scope of an enhanced Mana Whakahono ā Rohe and what should be mandatory matters?
- What are the barriers that need to be removed, or incentives added, to better enable transfers of powers and joint management agreements?

Objectives, outcomes, roles and options

Objectives and outcomes	
Te Oranga o te Taiao	Must uphold for the natural environment: its health, its intrinsic relationship with iwi and hapū, the interconnectedness of all its parts, and its capacity to sustain all life.
Intergenerational wellbeing	Use of the environment is enabled to support the wellbeing of current and future generations.
Principles of Te Tiriti	All people performing functions and duties under the Act must give effect to the principles of Te Tiriti.
Environmental limits	Minimal acceptable state of an aspect of the environment and maximum amount of harm to protect the ecological integrity of the natural environment and human health.
Environmental outcomes and targets	Outcomes for the benefit for the environment across: the natural and built environments (in both urban and rural areas); cultural values; and natural hazards climate change mitigation and adaptation. These can be achieved through setting targets.

Treaty partnership entities	Objectives and outcomes
An enabling mechanism to support committees established through Treaty settlements and through other means, and takutai moana rights, to be upheld. Could also enable new arrangements without having to rely on settlements.	<p>The Mana Whakahono ā Rohe process would be enhanced by better enabling Māori participation in the system through an integrated partnerships process that would integrate with the existing RMA tools for transfers of powers and joint management agreements.</p> <p>Enhanced Mana Whakahono ā Rohe arrangements can help to document how hapū/iwi/Māori participate in regional spatial strategy (RSS) and Natural and Built Environments Act (NBA) plan development, consenting and compliance, monitoring and enforcement (CME).</p> <p>Enhanced Mana Whakahono ā Rohe arrangements provide opportunities for a more strategic role for Māori in the system and to strengthen the role of Māori in consenting and CME services.</p>

National entity	
Proposed roles for the national entity	Options for who participates
<ul style="list-style-type: none"> • System oversight and monitoring, including monitoring of Tiriti performance. • Input into National Planning Framework (NPF) development. • Appointments of any Māori members to the NPF Board of Inquiry. • Not to usurp the mana of hapū/iwi/Māori at place. 	<ol style="list-style-type: none"> 1. The entity has both Māori and crown appointees, or is solely a Māori entity. 2. For Māori appointments: from national Māori organisations, an electoral college-type model or through a self-identification process.

Joint committees	
Māori participation in RSS and NBA plans	Options for who participates
<ul style="list-style-type: none"> • Details of governance and plan development worked through region by region, including mātauranga Māori input. • Upholding the integrity of existing arrangements (including Treaty settlements, takutai moana and other resource management and non-statutory arrangements). • Engagement with hapū/iwi/Māori at various stages of the RSS and NBA plan development process. 	<ol style="list-style-type: none"> 1. The composition of joint committees in regional governance is worked through region by region. 2. Appointment processes are set in legislation or through a self-identification process.

Hapū/iwi/Māori role in the future system



NPF: National Planning Framework / **RSS:** Regional Spatial Strategies (RSS)
NBA: Natural and Built Environments plans / **CME:** Compliance Monitoring and Enforcement

Role of central government in future system

Central government will have a strengthened role in the future system. This includes:

- the Minister for the Environment having responsibilities for the NPF, and central government having responsibilities to ensure the NPF is implemented through the RSSs and NBA plans
- central government making appointments to RSS committees and having responsibilities through RSS implementation agreements (if this tool is adopted)
- central government having key responsibilities in monitoring, reporting and responding to the performance of the system
- central government being expected to play a stronger role in providing oversight of the system alongside independent bodies such as the Parliamentary Commissioner for the Environment and the proposed national entity for enabling Māori involvement at the national level.

Funding in the future system

To work effectively, the future system requires appropriate funding mechanisms for its different roles and activities.

MfE is exploring what provisions and guidance can be provided in the future system, to set clear expectations regarding who should pay for what, and to support the availability and use of appropriate funding tools.

Proposals will use existing guidance on charging in the public sector and look at applying this to the context of the future resource management system.

WHAT DO YOU THINK?

How should funding be distributed across taxpayers, ratepayers and individuals?

How should Māori participation be supported at different levels of the system?

Next steps

MfE thanks you for engaging with this material which sets out the main components of the future resource management system and roles and responsibilities within it.

The feedback gathered will be collated by officials. It will then be analysed and used to inform the development of the legislation. We will provide participants with a report of their forum or hui with us.

Written feedback is also welcome until 28 February 2022. You can send this and any further questions you may have to MfE at RM.reform@mfe.govt.nz.



Appendix 1: List of resource management reform questions for discussion

National Planning Framework

What role does the National Planning Framework (NPF) need to play to resolve conflicts that currently play out through consenting?

How would we promote efficiency in the Board of Inquiry process while still ensuring its transparency and robustness?

How often should the NPF be reviewed, bearing in mind the relationships between the NPF, regional spatial strategies and Natural and Built Environments Act plans?

Regional spatial strategies

To what degree should regional spatial strategies (RSSs) and implementation agreements drive resource management change and commit partners to deliver investment?

How can appropriate local issues be included in RSSs?

With regional and unitary council boundaries proposed for RSSs, how should cross-boundary issues be addressed?

NBA plans

Do you agree with the Randerson Panel's recommendation to have one combined Natural and Built Environments Act (NBA) plan per region?

Would there be merit in enabling sub-regional NBA plans that would be incorporated into an NBA plan?

What should the role of local authorities and their communities be to support local place-making and understanding of local issues in NBA plans?

Will the proposed plan-making process be more efficient and effectively deliver planning outcomes?

RSS and NBA joint committees

How could a joint committee model balance effective representation with efficiency of processes and decision-making?

How could a joint committee provide for local democratic input?

How could a joint committee ensure adequate representation of all local authority views and interests if not all local authorities are directly represented?

Are sufficient accountabilities included in the proposed new integrated regional approach to ensure the strategies and plans can be owned and implemented by local authorities?

How should joint committees be established?

Consenting

Will the proposed future system be more certain and efficient for plan users and those requiring consents?

Compliance, monitoring and enforcement

Do you agree with the proposed changes to compliance, monitoring and enforcement provisions and tools?

How practical will the proposals be to implement?

Monitoring and system oversight

Will these proposals lead to more effective monitoring and oversight of the system?

Will the system be able to adequately respond and adapt to changing circumstances?

Role of local government in the future system

What does an effective relationship between local authorities and joint committees look like?

What other roles might be required to make the future resource management system effective and efficient?

What might be required to ensure the roles and responsibilities of local authorities can be effectively and efficiently delivered?

National Māori entity

What functions should a national Māori entity have?

What should the membership and appointments process be for the entity?

Joint committee composition

Should parties in a region be able to determine their committee composition?

What should be the selection and appointments processes for joint committee members?

Are sub-committees needed to meet regional needs including Treaty settlements?

How do we best provide for existing arrangements (eg, Treaty settlement or other resource management arrangements)?

Enhanced Mana Whakahono ā Rohe arrangements, integrated with transfers of powers and joint management agreements

How could an enhanced Mana Whakahono ā Rohe process be enabled that is integrated with transfers of powers and joint management agreements?

What should be covered in the scope of an enhanced Mana Whakahono ā Rohe and what should be mandatory matters?

What are the barriers that need to be removed, or incentives added, to better enable transfers of powers and joint management agreements?

Funding in the future system

How should funding be distributed across taxpayers, ratepayers and individuals?

How should Māori participation be supported at different levels of the system?

Appendix 2: Summary of hapū/iwi/Māori feedback

Feedback from regional engagement with Māori	Common themes	Feedback from hapū/iwi/Māori submissions on the Natural and Built Environments Bill exposure draft
<p>Te Oranga o te Taiao and Te Tiriti o Waitangi</p> <ul style="list-style-type: none"> • Support for Te Oranga o te Taiao but suggestions to include stronger wording to include intrinsic relationship with te taiao • Questions raised about how the Tiriti clause will be interpreted and monitoring of system performance in general • An interest in mana whenua and iwi involvement in the monitoring of Tiriti performance <p>Outcomes</p> <ul style="list-style-type: none"> • Interest in how the reform would practically deliver better outcomes for hapū and landowners • Concern that the future resource management system may not be strong enough to challenge council decisions • Some questions were raised about how iwi management plans will be included in Natural and Built Environments Act (NBA) plans <p>Governance and participation</p> <ul style="list-style-type: none"> • Mātāwaka and mana whenua roles should be defined but separate • Legislation may define functions and purpose for roles, but who fills those positions should be decided by iwi • Issues of conflict of interest for hapū with both election processes and kaitiaki performing multiple functions within the system • Support for elevating hapū/iwi environmental management plans but acknowledge that this will likely put pressure on capacity, capability and relationship with council 	<ul style="list-style-type: none"> • Strong interest in how the Tiriti clause will be interpreted and performance will be monitored • Suggestions offered to strengthen Tiriti clause, with some favouring giving effect to the articles of Te Tiriti rather than the principles • General support for inclusion of Te Oranga o te Taiao in the NBA Bill's purpose, but a desire for stronger language to require it to be upheld and reflect relationship between hapū/iwi/Māori and te taiao • Concerns about how tikanga Māori concepts and te reo Māori will be incorporated into legislation and how they may be interpreted, for example, Te Oranga o te Taiao, mana whenua, mātauranga • Support for incorporating existing hapū/iwi management plans in regional strategies but acknowledgement of potential issues, such as capacity, that may make this difficult • Due to multiple reforms occurring at the same time and capacity issues, an extended window to provide feedback would have been preferred • Allow for engagement and co-governance options with hapū as well as iwi 	<p>Te Oranga o te Taiao</p> <ul style="list-style-type: none"> • Support for Te Oranga o te Taiao; submitters stressed the importance of upholding it and using the term 'require' rather than 'enable' • Interpret all outcomes through the lens of Te Oranga o te Taiao; should act as korowai across system, including National Planning Framework (NPF) • Te Oranga o te Taiao should be reflected regionally, and integration throughout system will be important <p>Te Tiriti o Waitangi</p> <ul style="list-style-type: none"> • Widespread support for te Tiriti clause but noted further guidance and support needed to ensure Treaty obligations are clear, but consistency across Acts desired and concern about balance between principles and articles • Clarity of the role of local government in te Titiri partnerships desired and national guidance on how to give effect to the principles of te Tiriti <p>Outcomes and environmental limits</p> <ul style="list-style-type: none"> • Concern with lack of hierarchy of outcomes and potential for inappropriate trade-offs • Environmental limits must be set at regional level with iwi and hapū and using mātauranga Māori; national limits not flexible enough to deal with local application • A clear link is needed between limits and Te Oranga o te Taiao, in line with kaupapa Māori • Biophysical limits alone not consistent with tikanga Māori because they do not factor in holistic wellbeing of complex, interconnected systems

Feedback from regional engagement with Māori	Common themes	Feedback from hapū/iwi/Māori submissions on the Natural and Built Environments Bill exposure draft
<p>Use of te reo Māori</p> <ul style="list-style-type: none"> • Concern raised about the appropriateness and interpretation of incorporating te reo and mātauranga into the legislation, including mauri and mana whenua • Council's capability will be crucial in the success of the new system, especially the implementation of te ao Māori concepts <p>Capacity and engagement</p> <ul style="list-style-type: none"> • Concerns about ability to engage with multiple government reforms within short timeframes • Hapū, iwi and Post Settlement Governance Entities require stronger support, including funding, to engage so that they can adequately understand and respond to resource management reform • Requests to continue to engage at regional level, including directly with hapū 		<p>Governance and participation</p> <ul style="list-style-type: none"> • Support for single NBA plan per region, giving effect to hapū/iwi/Māori management plans, integrated management framework with provisions to resolve outcomes • Support for 50/50 partnership at national and regional levels, co-governance with iwi and hapū and support for mana whakahaere councils; includes reference to hapā mana motuhake • Support for national Māori entity for monitoring Tiriti performance, NPF and Tiriti policies • Co-development of NPF with hapū/iwi is critical • Expectation that bespoke arrangements will account for Treaty settlements <p>Use of te reo Māori</p> <ul style="list-style-type: none"> • Many submitters implored the Crown to take caution in implementing tikanga-based concepts and terms, to avoid diluting their meaning and/or status in tikanga Māori terms <p>Capacity and engagement</p> <ul style="list-style-type: none"> • A longer window for feedback would have been better because some submitters were not able to fully canvass the view of their own constituents • Funding in the current system for hapū/iwi/Māori participation has been inadequate, and areas that will need greater funding in the future include implementation, monitoring and enforcement • Increased funding needed for the development of hapū and iwi management plans, and funding to implement them in partnership with planning committees and councils

Appendix 3: Summary of local government feedback

This table is collated feedback from local government chief executive forum and steering group meetings in 2021. A prominent theme throughout this feedback is the lack of local government capacity to engage due to significant reforms: resource management and three waters, and the overarching review of local government.

Common themes	Feedback
Te Tiriti and strategic role for Māori	While supportive of a greater role for Māori in the RM system, more clarity is required about how this is to be achieved and supported (ie, resourcing, iwi capacity for engagement, increasing central and local government te ao Māori capability)
Relationship between central and local government	Need for a collaborative, long-term approach, especially in the transition phase. Local government will need to be well connected and well informed; an advisory group could be useful
Local views and placemaking	Concern that local views are not going to be reflected in plans and strategies. The effects on local communities (ie, reducing to 14 plans) also need to be understood
Governance and decision-making Joint committees	<p>Uncertainty of future form and function of local government and concerns around stronger regional council role</p> <p>Community and iwi representation is crucial in governance and decision-making</p> <p>Unsure how joint committees will be established</p> <p>Local representation is required, balancing technical expertise with elected members (who have democratic accountability)</p>
National direction	There is a need for a joined-up policy approach at the national level, with existing conflicts between pieces of national direction resolved
Transition to new system and implementation	There needs to be a clearer path and timeframes for transition, and it should be sequenced correctly with implementation. A transitional body could be useful for guidance through the transition to the new system, as well as a regional transitional manager for each region
The model project	Clarity is needed on the model project. The timeframes are unrealistic and the model project may drag out the process

Common themes	Feedback
Regional spatial strategies	<p>The Strategic Planning Act needs to be developed in an integrated way, with a clear vision.</p> <p>Clear direction is required on what the regional spatial strategies (RSSs) are trying to achieve. There is concern existing regional structures are not well suited to creating and implementing RSSs; there is support for retaining existing regional boundaries. RSSs should also have more weight in decision-making processes</p> <p>Joint committees will need an enduring presence</p>
Sub-regional plans	Sub-regional plans and growth strategies are needed in the resource management system
Implementation agreements	Implementation agreements are essential but there is uncertainty on how to bind all parties, also creates additional complexity
National Planning Framework (NPF)	Significant work is needed to deliver the NPF for providing sufficient guidance for Natural and Built Environments Act (NBA) plan process. Meaningful engagement with public and hapū/iwi/Māori is required
NBA plans	Uncertainty about how NBA plans differ from current plans. Need sub-regional plans and separate resource allocation plans for combined plans
NBA plan-making process	Develop RSS first to guide NBA plans and support engagement at beginning of process. There is uncertainty on how the new process will differ from existing process
Appeals	Need to restrict appeals to questions of law only. Resourcing for final decision-making bodies is needed so appeals are heard faster and to enable higher quality decision-making
Consenting	Activity categories need a clear intent and notification needs to be reviewed. Environment Court direct referral should be retained
Compliance, monitoring and enforcement (CME)	National oversight is needed to support local government in the CME space. There is concern regional CME hubs may take functions away from the local community. Councils also have a lack of capacity to provide CME services, and there is a general lack of detail of how CME will work in practice.
Monitoring and oversight	Suggested co-designed monitoring frameworks. There is uncertainty on whether monitoring will be a local or regional role, and how outcomes are monitored. Need to integrate existing and new data collection platforms
Funding	New funding tools are needed for effective delivery of plans
Infrastructure pathways	Infrastructure needs a strategic, long-term approach. Need to determine how infrastructure is defined and the relevant pathways for different infrastructure types

Appendix 4: Glossary of terms

Term	Definition
CAA	Climate Adaptation Act
CME	Compliance, monitoring and enforcement
FILG/TWMT	Freshwater Iwi Leaders Group/Te Wai Māori Trust
KWM	Kāhui Wai Māori
LGA	Local Government Act 2002
LGNZ	Local Government New Zealand
LTMA	Land Transport Management Act 2003
MACA	Marine and Coastal Area (Takutai Moana) Act 2011
MOG	Ministerial Oversight Group
exposure draft	Exposure draft of the Natural and Built Environments Bill
MfE	Ministry for the Environment
NBA	Natural and Built Environments Act
NES	National Environmental Standard
NPF	National Planning Framework
RMA	Resource Management Act 1991
RM reform	Resource management system reform
RSS	Regional spatial strategy
SPA	Strategic Planning Act
Te Tau Ihu	top of the South Island
Te Tiriti o Waitangi	the Treaty of Waitangi
TTK or FOMA/KWM/NZMC	Te Tai Kaha, which consists of the Federation of Māori Authorities, KWM, and the New Zealand Māori Council

Appendix 5: Resource management reform key documents

[New Zealand Productivity Commission. 2017. Better urban planning: Final report](#)

[Resource Management Review Panel. 2020. New Directions for Resource Management in New Zealand – Report of the Resource Management Panel Review](#)

[Environmental Defence Society. 2019. Reform of the Resource Management System: A model for the future. Synthesis report](#)

[Ministry for the Environment. 2021. Extracts from Waitangi Tribunal commentary, findings and recommendations on the Resource Management Act 1991](#)

[Cabinet paper: Reforming the resource management system 2020](#)

[Ministry for the Environment. 2021. Interim regulatory impact statement: Reforming the resource management system](#)

[Natural and Built Environments Bill – Parliamentary paper on the exposure draft](#)

[Ministry for the Environment. 2021. Departmental Report on the Natural and Built Environments Bill exposure draft 2021](#)

[Report of the Environment Committee. 2021. Inquiry on the Natural and Built Environments Bill: Parliamentary Paper](#)





BRF-937 RM Reform 91 – Final paper, agenda and talking points for MOG Māori interests subgroup meeting on 24 November 2021

Date Submitted:	18 November 2021	Tracking #: BRF-937	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	agree to circulate the final paper and agenda for the 24 November 2021 MOG Māori interests subgroup meeting to subgroup Ministers.	22 November 2021
To Hon Kiritapu Allan, Associate Minister for the Environment	note talking points for the subgroup meeting. note talking points for your meetings with Te Tai Kaha and Freshwater Iwi Leaders Group/Te Wai Māori Trust on 22 November 2021.	

Actions for Minister's Office Staff	<p>Circulate attachments 1 and 2 to the following Ministers' offices:</p> <p>Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti Hon Dr Megan Woods, Minister of Housing Hon Nanaia Mahuta, Minister of Local Government Hon Willie Jackson, Minister for Māori Development</p> <p>Return the signed report to MfE.</p>
Number of appendices and attachments 4	<p>Titles of attachments:</p> <ol style="list-style-type: none"> 1. Talking points for meeting with Te Tai Kaha, Monday 22 November 2. Talking points for meeting with Freshwater Iwi Leaders Group and Te Wai Māori Trust, Monday 22 November 3. Agenda for MOG Māori interests subgroup meeting on 24 November 4. Paper – Identifying who partners and participates in the Resource Management system from te ao Māori (inc paper appendices 1 and 2)

Ministry for the Environment contacts

Position	Name	Cell phone	1st contact
Principal Author	Dominic Groom		
Responsible Manager	Lucy Bolton		
Director	Keita Kohere	021 157 3336	✓

BRF-937 RM Reform 91 – Final paper, agenda and talking points for MOG Māori interests subgroup meeting on 24 November 2021

Purpose

1. This briefing provides:
 - a. the paper *Identifying who partners and participates in the Resource Management system from te ao Māori* (Attachment 1) and agenda for the 24 November 2021 MOG Māori interests subgroup meeting (Attachment 2) for circulation to subgroup Ministers
 - b. talking points for the subgroup meeting.
 - c. talking points (Attachments 3 and 4) for your meetings with Te Tai Kaha (TTK) and Freshwater Iwi Leaders Group/Te Wai Māori Trust (FILG/TWMT) on 22 November 2021 at 4:00pm and 4:45pm respectively.

Changes to the draft paper [and agenda]

2. We provided you a draft paper for your feedback on 12 November 2021. Key changes to the draft paper are highlighted below.

Iwi/Māori group views

3. TTK and FILG/TWMT views on who should partner and participate at different levels of the system were not included in the draft paper. The groups were provided a limited window to confirm how their views were to be presented, and they have both sought additional time.
4. TTK have provided a summary of their views on who partners and participates in the system which has been included in the body of the paper. They have also provided a table, titled Māori Rights and Responsibilities relevant to Resource Management (RM) reform (attached to the paper). It lists the sources of rights in a hierarchical order, starting with tikanga and descending to Māori/Crown policy and practice. The table illustrates TTK's view that rights are not held by iwi or only by post-settlement governance entities (PSGEs) but are held primarily by hapū. It also illustrates that the sources of rights overlap in practice. Finally, it shows that Māori rights are not dependent on the Crown or on the law for their existence.
5. FILG/TWMT have opted to provide their views on this matter directly to Ministers at the meeting on 22 November 2021.

Ministers' feedback

6. The draft paper was reviewed by Minister Allan who agreed to the paper without amendment.
7. Editorial changes have been made to the agenda and to the paper.



Talking points for subgroup meeting 24 November 2021

Introduction

1. The objective of this meeting is to confirm the direction of travel for detailed work on who partners and participates in the resource management system from te ao Māori
2. Developing a view on these matters is becoming critical to advancing policy decisions across the reform programme
3. It is not intended that detailed decisions will be made today
4. Decisions will be sought at MOGs #16 and/or #17 in the new year
5. We propose to focus on three key areas:
 - a. a guiding principle of self-determination;
 - b. key choices for how the legislation enables and supports self-determination; and
 - c. treatment of Māori land
6. While there are conflicting views within te ao Māori about who should participate, focusing on common ground should lead to broadly supported proposals

Topic 1: Guiding principle – self-determination: enabling tikanga processes to determine representation

7. Officials seek our feedback on a proposed guiding principle – self-determination: enabling tikanga processes to determine representation
8. The importance of self-determination and mana motuhake is an area of common ground in the feedback we have received from Māori
9. This approach broadly aligns with the Three Waters approach which provides for iwi/Māori to choose representatives through a “Kaupapa Māori process
10. Should we confirm our support for this guiding principle, officials will work with Te Tai Kaha and Iwi Leaders and Te Wai Māori Trust to explore how the principle could be applied to different parts of the system including:
 - a. roles in a national Māori or partnership entity
 - b. Māori representation on joint committees
 - c. Māori participation in plan-making, consenting, monitoring and enforcement.

Support for tikanga processes

11. An important lesson from the RMA is that enabling provisions without the right support for implementation leads to inefficient process and contested outcomes
12. Implementation support will be required for successful and workable self-determination processes

Topic 2: Overarching term in legislation

13. The Panel recommended the terms ‘iwi authority’ and ‘tangata whenua’ in the RMA be replaced by the term ‘mana whenua’ which would be redefined from its current RMA definition to be ‘an iwi, hapū or whānau that exercises customary authority in an identified area’
14. Neither Te Tai Kaha nor the Iwi Leaders Group and Te Wai Māori Trust support this proposal
15. At a previous Māori interests subgroup Ministers suggested the existing term of tangata whenua could be retained with a more inclusive definition

16. Officials consider there is no clear case for an overarching defined term in legislation for who participates (such as mana whenua, tangata whenua and mana whakahaere).
17. Officials propose that alternatives to an overarching term in the legislation could be explored, including:
 - a. an overarching principle or principles
 - b. an inclusive list of potential participants with more specificity about who partners and participates in different parts of the system
 - c. describing processes to determine representation and participation in the legislation or elsewhere.

Topic 3: Extent of prescription in legislation

18. Future decisions will include the extent of legislative prescription about who participates and how that is determined in different parts of the system.
19. Requirements should be included in the legislation such as statutory timeframes for appointment processes and circuit breakers for disputes.
20. To be consistent with the self-determination principle and to mitigate risk, any substantive provisions in the legislation about who can participate would need to be the subject of comprehensive engagement with Māori.

Topic 4: specifying who participates - options

21. Future decisions may be required about who from te ao Māori is enabled to participate in relation to specific roles and functions.
22. The paper provides a spectrum of options for relevant roles and functions.
23. The level of prescription and specificity are likely to be different for each role and function.

Irrelevant

Next steps

29. Decisions will be sought through the relevant policy papers at MOGs #16 and #17, for example recommendations related to 'who' in RSS and NBA plan governance will be included in the governance paper.
30. Any matters requiring decisions that are not covered by other policy papers will be included in a separate paper to MOG #17.
31. Officials will need to be able to work closely with Te Tai Kaha and Iwi Leaders and Te Wai Māori Trust to progress this work.



Recommendations

We recommend that you:

1. **agree** to circulate the paper *Identifying who partners and participates in the Resource Management system from te ao Māori* (Attachment 1) and agenda for the 24 November 2021 MOG Māori interests subgroup meeting (Attachment 2) to subgroup Ministers.
2. **note** the talking points for the subgroup meeting in this briefing.
3. **note** the talking points (Attachments 3 and 4) for your meetings with Te Tai Kaha and Freshwater Iwi Leaders Group/Te Wai Māori Trust on 22 November 2021 at 4:00pm and 4:45pm respectively.

Signature



Keita Kohere
Director, Māori Partnering and Policy RM Reform

Date 18/11/2021

Hon David Parker
Minister for the Environment

Date

Hon Kiritapu Allan
Associate Minister for the Environment

Date

Talking points for meeting with Te Tai Kaha, Monday 22 November 2021

Guiding principle and 'mana whakahaere'

- The paper proposes a guiding principle of “self-determination: enabling tikanga processes to determine representation” be applied to further work related to who from te ao Māori participates in different parts of the system
- We see this principle as being consistent with common feedback provided by yourselves, Iwi Leaders and Te Wai Māori Trust and hapū, iwi and Māori groups who have engaged in the RM programme
- While we would hesitate to specifically use ‘mana whakahaere’ as an agreed guiding principle for this work, due to differing views between yourselves and ILG/TWMT, we do see a level of consistency between what you propose, and the guiding principle set out in the paper

Overarching term

- Officials consider there is no clear case for an overarching defined term in legislation for who participates – such as mana whenua, mana whakahaere or tangata whenua
- An overarching principle or principles is one alternative to a defined term

Concern about focus on iwi and PSGEs as principal Treaty partner

- We acknowledge your concern that work to date suggests we see the Treaty partner as exclusively iwi and PSGEs
- We consider there are roles for many iwi, hapū and Māori groups in the RM system – Ministers do not have agreed views about where specifically those roles should be
- We agree it is primarily for Māori to decide who should represent them in decision-making and who from te ao Māori should exercise participatory rights in the system

Mana whakahaere committees

- We are interested to know more about how mana whakahaere committees would work in practice and will ask officials to work further with you on this proposal

Support for tikanga processes

- We acknowledge tikanga processes to determine representation will require resourcing and other support
- We expect officials to engage with you about what kind of resourcing and support will be required to ensure tikanga processes to determine representation are successful

Specification in the legislation

- We agree that the legislation needs to include timeframes and circuit breakers for processes to agree representation
- We have more work to do regarding what else may need to be set out in the legislation



Talking points for meeting with Freshwater Iwi Leaders Group and Te Wai Māori Trust, Monday 22 November 2021

Guiding principle

- The paper proposes a guiding principle of “self-determination: enabling tikanga processes to determine representation” be applied to further work related to who from te ao Māori participates in different parts of the system
- We see this principle as being consistent with feedback provided by yourselves, Te Tai Kaha and hapū, iwi and Māori groups who have engaged in the RM programme
- We acknowledge tikanga processes to determine representation will require resourcing and *other support*
- We expect officials to engage with you about what kind of resourcing and support will be required to ensure tikanga processes to determine representation are successful

Overarching term

- Officials consider there is no clear case for an overarching defined term in legislation for who participates – such as mana whenua, mana whakahaere or tangata whenua
- Alternatives to a defined term include:
 - An overarching principle or principles
 - Specifying who participates or how the who is determined in relation to specific functions

Upholding the rights and responsibilities of iwi and hapū

- We acknowledge your concern that providing for more inclusive participation in relation to decision-making rights will undermine the rights of iwi and hapū
- As you know, Te Tai Kaha holds a somewhat different view
- We consider the guiding principle of self-determination with support is consistent with common ground between the two groups but we acknowledge there is work to do in regards to how the principle should be applied
- We do want to do more work on whether there is a case for more specificity about who participates in certain parts of the system

Specification in the legislation

- We agree that the legislation needs to include timeframes and circuit breakers for processes to agree representation
- We have more work to do regarding what else may need to be set out in the legislation

Agenda for MOG Māori interests subgroup on 24 November 2021

Date: Wednesday 24 November 2021, 5.15 – 5.45 pm

Objective:

Paper: Identifying who partners and participates in the Resource Management system from te ao Māori (attached).

Agenda item	
<p>Topic 1: guiding principle of self-determination (para 15a and 15b)</p>	<p>Support for an overall principle of self-determination: enabling tikanga processes to determine representation.</p> <p>Implementation support is required for successful self-determination processes.</p>
<p>Topic 2: overarching terms in legislation (para 15c)</p>	<p>No clear case for an overarching defined term for who participates (such as mana whenua, tangata whenua and mana whakahaere).</p> <p>Preference to explore alternatives, which are not mutually exclusive, this could include:</p> <ul style="list-style-type: none"> i. describing a participation principle or principles in the legislation ii. using more specific terms in the legislation to identify who partners and participates at different levels/functions iii. describing processes to determine representation / participation in the legislation or elsewhere.
<p>Topic 3: Extent of prescription in legislation (para 15d and e)</p>	<p>The level of prescription in legislation will differ for different parts of the RM system.</p> <p>Timeframes and circuit breakers should be prescribed in the legislation for appointments processes, to provide certainty that entities are able to be established and in operation within reasonable timeframes.</p>
<p>Topic 4: specifying who participates - options (table in appendix 1)</p>	<p>A spectrum of options for relevant roles and functions is provided for discussion</p> <p>The level of prescription and specificity are likely to be different for each role and function</p>

Irrelevant

Paper: Identifying who partners and participates in the resource management system from te ao Māori

Key messages

Why this advice now

1. Developing a view on the following matters is becoming critical to advancing policy decisions across the Resource Management (RM) Reform programme:
 - a. how decisions are made about which hapū/iwi/Māori groups are enabled to partner and participate at different levels of the RM system (including appointments to national and regional governance bodies and participatory rights throughout the system);
 - b. which specific hapū/iwi/Māori groups should hold which decision-making and participatory rights in the RM system;
 - c. how to establish who speaks for groups on specific resource management matters; and
 - d. whether the decision-making and participatory rights of specific hapū/iwi/Māori groups should be prescribed in legislation.
2. This paper seeks Ministers' feedback on proposals for who participates in the RM system and sets out next steps including proposed engagement.

Problem definition

3. The existing approach under the RMA to describing who participates from te ao Māori, together with inconsistent Crown and local government support for tikanga processes and partnership and participation of hapū/iwi/Māori in the RM system, has contributed to:
 - a. inconsistent partnership between hapū/iwi/Māori and the Crown and local government in the RM system;
 - b. inappropriate partnership and/or participation opportunities for all hapū/iwi/Māori groups in accordance with tikanga;
 - c. adversarial processes where rights and interests may be contested between hapū/iwi/Māori groups.

Summary of the current approach

4. The RMA Part 1 Interpretation and application, contains the following broad terms that are relevant to identifying who participates from te ao Māori in RMA regulated resource management:
 - a. **iwi authority** means the authority which represents an iwi and which is recognised by that iwi as having authority to do so
 - b. **mana whenua** means customary authority exercised by an iwi or hapū in an identified area
 - c. **tangata whenua**, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area
5. The RMA also includes several other terms and references in relation to hapū/iwi/Māori groups some of which are defined in other sections, and some of which remain undefined. These include:
 - a. "Iwi" and "hapū"
 - b. Group that represents hapū
 - c. Māori

- d. Owners of Māori land
 - e. Customary marine title group
 - f. Protected customary rights group
 - g. Māori claimants (in relation to the Māori commercial aquaculture settlements)
 - h. Specific iwi and hapū groups / post-settlement governance entities are named in relation to settlement arrangements.
6. Except where specific rights and interests are provided for eg, rights of owners of Māori land and customary marine title groups in relation to consents, most active engagement requirements apply practically to iwi authorities.
7. The Panel report identifies several problems with the current approach:
- a. “engaging at the iwi or iwi authority level does not reflect the reality of kaitiakitanga, which may operate at the hapū or whānau level
 - b. current provisions constrain local authority engagement with hapū. Hapū often approach local authorities seeking to engage on resource management matters but the willingness of local authorities to do so at this level varies
 - c. local authorities should not be the body determining who represents an iwi for the purposes of the RMA
 - d. central government has not provided sufficient support to local authorities or mana whenua groups to help resolve these issues”¹.

Additional information on the status quo

8. As noted, most requirements on central and local government to engage with “tangata whenua” and/or iwi and hapū specify engagement with “iwi authorities”². Most iwi authorities are formally mandated entities. The RMA does not restrict tangata whenua groups from self-identifying as iwi authorities for the purposes of the RMA.
9. In a more limited number of cases, enabling provisions, but not requirements, provide for engagement with hapū. For example, through Mana Whakahono ā Rohe agreements (MWAR). The rights and interests of some hapū/iwi/Māori groups in relation to specific natural resources under the RMA are acknowledged and provided for through other legislation such as the Takutai Moana Act and Te Ture Whenua Māori Act.
10. The Crown is required to provide local authorities with information on iwi authorities and groups that represent hapū. The Crown addresses this requirement by providing Te Kāhui Māngai, a website administered by Te Puni Kōkiri (TPK). Te Kāhui Māngai is not a determinative tool nor the definitive source of information on who to speak to in an area.
11. Local authorities must also record their specific obligations in relation to iwi and hapū. However, local authorities and resource consent applicants continue to express difficulty in understanding who holds mana whenua and/or other relevant rights and interests in an area, and therefore which groups to engage with to fulfil their obligations under the RMA.
12. A range of Māori groups including post-settlement governance entities (PSGEs) and other iwi authorities, hapū, landowners and marae, have developed effective partnership and participation arrangements through settlements or other agreements. However, effective partnership and participation arrangements are not a consistent feature across all regions and districts.

¹ Chapter 3 Te Tiriti o Waitangi me te ao Māori, P 92, Paragraph 23

² “the authority which represents an iwi and which is recognised by that iwi as having authority to do so” Part 1 – Interpretation and Application

13. Except where rights and interests are specifically acknowledged and provided for, local authorities may decline to engage with any group other than an 'iwi authority', even where the appropriate group to engage with on a particular matter is hapū or whānau. In response some hapū have established their own iwi authorities for the purposes of the RMA.
14. Some iwi authorities may be faced with capacity and capability issues that may prevent them from engaging effectively with local government, consent applicants and hapū and whānau.

Initial direction of travel

15. We seek Ministers' feedback on the following proposals to guide further work on who participates:
 - a. support for an overall principle of self-determination: enabling tikanga processes to determine representation.
 - b. implementation support is required for successful self-determination processes, which may include:
 - i. funding for wānanga and facilitation
 - ii. direct provision of facilitators
 - iii. development of process options and guidance
 - iv. administrative support for processes.
 - c. no clear case for an overarching defined term for who participates (such as mana whenua, tangata whenua and mana whakahaere). We have a preference to explore alternatives, which are not mutually exclusive, this could include:
 - i. describing a participation principle or principles in the legislation
 - ii. using more specific terms in the legislation to identify who partners and participates at different levels/functions
 - iii. describing processes to determine representation / participation in the legislation or elsewhere.
 - d. the level of prescription in legislation will differ for different parts of the RM system.
 - e. timeframes and circuit breakers should be prescribed in the legislation for appointments processes, to provide certainty that entities are able to be established and in operation within reasonable timeframes.
 - f. partnering and participation guaranteed through Treaty settlements or under the Takutai Moana Act/Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act is not to be disrupted.
 - g. enable an inclusive approach to participation in plan development and consenting.
16. We also seek your agreement that further work will be undertaken to consider what is meant by Māori land and how it should be treated across the RM system, with a report back provided as part of MOG #17.

Next steps

17. Decisions on 'who' partners and participates are interdependent with decisions on 'what' functions in the RM system provide for partnership and participation and 'how' partnership and participation will be enabled at each level of the RM system. Further advice on who participates and how this will work in practice will be provided through a combination of recommendations and analysis in the relevant policy papers at MOGs #16 and #17 (final schedule to be confirmed) and a discrete paper at MOG #17 covering remaining decisions.
18. "Who participates" is an issue where strong views are held in te ao Māori, and any decisions will have a risk of challenge. Te Tiriti considerations including the principle of rangatiratanga reinforce the importance of co-development of options for who participates.

19. To mitigate this risk and deliver a robust and workable approach, we intend further engagement on this issue, including (but not limited to) Cabinet approved engagement with iwi/Māori, local government and sector stakeholders, regional hui with iwi Māori/hapū and PSGEs. We intend to develop the engagement programme with Freshwater Iwi Leaders Group/Te Wai Māori Trust and Te Tai Kaha.

Background

What the Panel recommended

20. The Panel proposed the terms ‘iwi authority’ and ‘tangata whenua’ be replaced with a definition for ‘mana whenua’. They defined mana whenua as “an iwi, hapū or whānau that exercises customary authority in an identified area”. This was intended to support more inclusive participation in resource management, particularly by hapū and whānau, and to provide clarity to councils that engagement expectations are broader than just iwi authorities.
21. The Panel generally envisaged a system where a stronger focus on effective planning would reduce the need for consents and accordingly proposed a more strategic role for “mana whenua” in the system focused more on planning than consenting processes.
22. The Panel proposed several specific mechanisms they expected to contribute to the effective participation of mana whenua groups at different points in the system. They argued that engagement should occur at a scale, within timeframes and with a degree of effort that is commensurate to the scale and potential impact of the decisions being made. The Panel envisaged:
- a. mana whenua groups self-identifying, with a transparent mechanism for identifying mandate to discuss resource management matters on behalf of their group, for example through an agreed and mandated iwi management plan.
 - b. Mana whenua membership on Regional Spatial Strategies (RSSs) and Natural and Built Environment Act (NBA) plan joint committees would support greater clarity at the planning stage regarding which mana whenua groups should be engaged with on particular resource management issues.
 - c. a National Māori Advisory Board would have an active duty to maintain records and assist local authorities and mana whenua groups to identify who to engage with on resource management.
 - d. an Integrated Partnerships Process, including the development or redevelopment of iwi management plans, would, set out agreement between mana whenua groups and councils in relation to engagement.
 - e. a graduated dispute resolution process for where rights and interests are contested between mana whenua groups, including a role for the National Māori Advisory Board and the ability of the Crown to appoint independent facilitators and make referrals to the Māori Land Court as the final arbiter if required.
23. The Panel also recommended support and funding to enable enhanced Māori participation in the new system.
24. We support the broad intent of the Panel’s recommendations but consider there may be more effective ways to address this intent.

Previous Ministerial Oversight Group decisions

25. MOG has already made some in principle decisions regarding who participates from Te Ao Māori. At MOG #12, Ministers agreed in principle that:
- a. a national entity be established to enable Māori participation at the national level.

- b. joint committee composition be worked through region-by-region.
 - c. the legislation will require iwi/Māori involvement in plan development through technical and mātauranga Māori input.
 - d. the legislation will provide for an enhanced Mana Whakahono ā Rohe process that is integrated with transfers of powers and Joint Management Arrangements (JMAs) and Integrated Partnerships Processes.
26. Ministers also noted that further advice will be provided on the matter of who participates in the RM system, including:
- a. identifying and recording who makes Māori appointments to joint committees
 - b. whether legislation should set appointments processes or whether to enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process).
27. MOG has also made some specific decisions about Māori participation at different points in the RM system. These are noted in the table at **Appendix 1**.

Policy objectives and criteria

28. We consider the following two broad reform objectives agreed by Cabinet in December 2020 are most relevant to developing approaches to who participates from te ao Māori:
- a. **Reform Objective 3:** Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.
 - b. **Reform Objective 5:** Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.
29. Giving effect to the principles of te Tiriti is a more strongly worded objective than the system efficiency objective. We aim as far as possible to achieve these objectives in addressing who participates at different levels of the system.
30. Any decisions made about who participates and the processes to decide who participates will also impact on other reform objectives. Further advice recommending options for who participates in each part of the system will consider all reform objectives.

Giving effect to the principles of Te Tiriti and giving greater recognition to Te Ao Māori

31. Consistent with Reform Objective 3 above, the exposure draft of the NBA included a general effect Treaty clause requiring those with powers and functions under the NBA to actively give effect to the principles of te Tiriti.
32. Applying Tiriti principles to the question of who participates is not straight forward and we have attempted to reflect the complexities in the potential policy criteria set out below. However, we expect to further refine those criteria through engagement with hapū/iwi/Māori.

Improving system efficiency

33. System efficiency must be considered in terms of system design and implementation. We understand system efficiency, as opposed to transactional efficiency, to be about the overall efficiency of any part of the system. The potential policy criteria therefore consider whether resource investments, including time, are being made at the most effective points to ensure system efficiency.
34. For example, prescription of who participates in legislation may be one way to try to achieve efficiency, but it may also create implementation challenges including litigation with consequent costs and delays. Conversely, prescribing or enabling processes for determining who participates may offer efficiencies by avoiding contested processes and litigation but may require significant implementation resources, including time, to reach agreement among hapū/iwi/Māori groups.

Potential policy criteria

35. Taking into account both desired outcomes, potential policy criteria for more detailed analysis of options when seeking final decisions could include:
- a. tikanga processes are enabled for hapū/iwi/Māori to select their own representatives / participants at different points in the system
 - b. clarity and certainty is provided for hapū/iwi/Māori and those entities that may have responsibilities to hapū/iwi/Māori
 - c. hapū/iwi/Māori capacity and capability to participate is supported and enabled
 - d. existing rights and responsibilities continue to be upheld
 - e. overall system efficiency is supported:
 - i. the option contributes to timely impact of the reformed system
 - ii. time and resourcing investments are made at effective points by the appropriate entities / groups.
36. We expect specific policy criteria and/or their application may be different in different parts of the system eg, for governance as compared to consenting.

Iwi/Māori views

37. We have engaged with Freshwater Iwi Leaders Group/Te Wai Māori Trust (FILG/TWMT) and Te Tai Kaha (TTK) and on the question of “who participates”. While there are significant differences between the groups’ positions, there is some common ground.

Freshwater Iwi Leaders Group/Te Wai Māori Trust

38. FILG/TWMT consider that the term ‘iwi and hapū’...should be retained and used throughout the Bill and subordinate instruments. FILG/TWMT technicians have said they see the Treaty partnership as being (at least primarily) between the Crown and iwi/hapū. This would be expressed with iwi and hapū having roles in governance and decision-making.
39. FILG/TWMT have opted to provide their views directly to Ministers on this matter.

Te Tai Kaha

40. TTK consider that the concept of ‘mana whakahaere’ should guide who participates “as it is a more expansive term in depicting a wider relationship with natural features / resources / environments”.
41. They consider that ‘mana whakahaere’ better reflects the full range of Māori rights, responsibilities, interests and obligations, and achieves a Te Tiriti compliant regulatory framework by ensuring that all kaitiaki can fulfil their kaitiakitanga responsibilities. They have provided a definition of ‘mana whakahaere’ that encompasses iwi (inclusive of PSGEs), hapū and ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource.
42. TTK are concerned that work to date suggests that the Treaty partners are seen principally if not exclusively to be iwi and PSGEs and that this is not backed up with any analysis of who holds rights and responsibilities in terms of tikanga, te Tiriti and the common law (including native title doctrine). They say that the narrow focus to date on iwi and PSGEs appears to be driven by Crown Te Tiriti Settlement Policy, which has focussed on the settlement of historical claims with iwi. The assumption that PSGEs are the principal voice of Māori for all purposes, is not correct; and nor has it been tested, or analysed, in any meaningful way. That was not the intention for PSGEs, and it would be contrary to tikanga and to Te Tiriti to confer on iwi or on PSGEs rights that are held primarily by hapū and ahi kā (Māori landowners). PSGEs are not the holders of tikanga-based rights, which are generally held at the hapū level, with ancillary rights

held by ahi kā / landowners (including trusts and incorporations) / individuals, whānau and hapū collectives / confederations. This can be seen in TTK’s table summarising rights relevant to RM Reform, at Appendix 2.

43. TTK consider the appointment process for all governance/decision-making bodies should be consistent with mana motuhake (self-determination), and the closely related guarantee in the UN Declaration on the Rights of Indigenous Peoples that indigenous people are entitled to choose their own representatives. TTK propose mana whakahaere committees should be established consistently with this, through tikanga-consistent processes.
44. TTK considers mana whakahaere committees should also be set up with guiding tikanga principles. Under the participant representation model there would need to be: requirements to regularly report to and consult with those who hold relevant rights, interests and responsibilities; as well as mechanisms to allow for mana whakahaere committee members to be held to account and replaced in defined circumstances.
45. Primary legislation should specify timeframes for when mana whakahaere representatives are chosen, the regions, the number of representatives to achieve 50:50 partnership, and backstop dispute resolution / determinator mechanisms if and to the extent that mana whakahaere representatives are not chosen within the time specified. Arrangements should also include appropriate mediation / appeal processes, which would also be time bound. TTK are of the view that this process achieves “certainty” and that its existence and operation will build enduring relationships over time.
46. TTK stress that funding to build the capacity and capability of hapū, ahi kā / landowners, whānau and hapū collectives / confederations to engage in the reformed system is required. There will also be a need to provide resourcing to support the process of selecting mana whakahaere representatives.
47. TTK have expressed concern that Ministers and Officials are focussed on PSGEs as the simple, uncomplicated solution. TTK note that it has taken more than 30 years to settle historical Treaty claims, and the process is not yet complete. Certainty means making sure the legitimate holders of rights, interests and responsibilities are able to participate as Te Tiriti partners in the reformed RM system. This approach should be able to completed within appropriate timeframes.
48. A Te Tiriti compliant reformed RM system requires an “inclusive process”, based on the principle of mana whakahaere. It is that pathway which TTK are promoting.
49. TTK have also provided a table, titled Māori Rights and Responsibilities relevant to RM reform (**Appendix 2**). It lists the sources of rights in a hierarchical order, starting with tikanga and descending to Māori/Crown policy and practice. The table illustrates TTK’s view that rights are not held by iwi or only by post-settlement governance entities (PSGEs) but are held primarily by hapū. It also illustrates that the sources of rights overlap in practice. Finally, it shows that Māori rights are not dependent on the Crown or on the law for their existence.

Feedback from other engagement

50. Feedback received through the Select Committee process and regional/PSGE engagement, particularly in relation to governance and decision-making, has been spread relatively evenly between an iwi/hapū focus (consistent with the FILG/TWMT position) and a more inclusive approach (consistent with the Te Tai Kaha position).
51. This feedback was not in response to specific questions asked by the Select Committee. More direct engagement on the matter may elicit more detailed feedback.
52. Common themes from earlier regional engagement in June 2021 included:
 - a. There were questions on what role mātāwaka will have within the system, emphasising that this should be separate to mana whenua
 - b. Māori should be left to define and elect who should fill the relevant roles in the system.

Common themes from feedback

53. While there are distinct views on who should participate, MfE has identified some common ground coming through all feedback to date:
- the importance of self-determination for Māori in terms of participation at different levels of the system
 - a greater role for hapū in the system – rather than just RMA iwi authorities (which is consistent with the Panel's view)
 - a range of Māori groups including urban Māori and Māori Land trusts/ahi kā should have a role (but different views on how their roles and influence should play out at different levels of the system)
 - whakapapa relationship to Te Taiao is significant and confers distinct rights (although there are different views on the extent of the distinct rights and who these fall to)
 - the importance of not losing what is working now in terms of representation and identifying who participates in different levels and processes (eg, Treaty settlements, takutai moana rights holders, non-statutory RM arrangements).
54. FILG/TWMT and TTK have also advised that providing for self-determined tikanga processes for iwi/Māori appointments and identifying who participates can be the most efficient approach as it would help avoid litigation with the Crown or between hapū/iwi/Māori groups (with attendant costs and delays). An effective self-determination approach will require support and resourcing.

Initial advice

Guiding principle – enabling tikanga processes to determine representation.

Enabling tikanga processes

55. Application of Te Tiriti principles and in particular the exercise of tino rangatiratanga in the context of resource management is not straight forward and there is more than one view within te ao Māori about how this should be enabled at different levels of the RM system. There is, however, consensus among hapū/iwi/Māori we have engaged with that hapū/iwi/Māori are able to determine who represents them on resource management matters.
56. We understand this approach broadly aligns with the Three Waters approach [see CAB-21-MIN-0228 and CAB-21-MIN-0269] which provides for iwi/Māori to choose representatives through a “Kaupapa Māori process” (although it does use mana whenua as key terminology), and with encouragement from the Waitangi Tribunal for the Crown to support tikanga-based processes in the WAI 2840 (Hauraki settlement) report.³
57. We consider further policy work should be undertaken to explore how a guiding principle of enabling tikanga processes to determine representation (which could be included in legislation) should be applied to the design of proposals that provide for partnership with and participation by hapū/iwi/Māori in the RM system.
58. We will investigate how proposals can be consistent with both existing legislation and legislation being concurrently developed, such as Three Waters legislation, in so far as those approaches are consistent with the RM reform objectives.

³ Other key examples are Te Whānau a Waipareira, the Kohanga Reo claim, and the stage one inquiry into Māori Health Services and Outcomes, where the Tribunal stated: ‘Partnership also recognises that Māori have the right as a Treaty partner to choose how they organise themselves, and how or through what organisations they express their tino rangatiratanga. This means that the Crown needs to be willing to work through the structures Māori prefer in the circumstances, whether through iwi, hapū, and whānau or any other organisation.’ (p. 28)

59. Where agreement can be reached by hapū/iwi/Māori in accordance with tikanga we expect this will contribute to:
- a. more effective, and efficient over the long-term, decision-making processes – through investing up front in processes that mean representation and decisions are less likely to be challenged later in any RM process
 - b. constructive relationships between hapū/iwi/Māori groups
 - c. more clarity and certainty for councils on ‘who’ to engage with on different matters
 - d. representation solutions that reflect regional circumstances
 - e. better Māori/Crown relationships.
60. Further work is also required on how the principle would be applied to different functions and roles in the RM system and whether there would be a case for limiting potential participants (eg, to iwi and hapū or iwi authorities in relation to certain roles or processes), while providing for self-determination of representation within and among those groups.
61. As there is no clear consensus among iwi/hapū/Māori regarding who specifically should be enabled to participate at any point of the system (in particular in decision-making roles), more engagement and policy work is required on this point.

Support

62. An important lesson from the RMA is that enabling provisions without the right support for the implementation of those provisions leads to limited use of those provisions or ineffective implementation. Enabling tikanga processes without providing adequate support for those processes carries significant risks including:
- a. creating division amongst hapū/iwi/Māori groups;
 - b. defaulting to the status quo, including entrenching a system based on existing hapū/iwi/Māori capacity; and
 - c. exacerbating existing capacity issues.
63. Further work is required on what the forms of support for such processes should take, and the appropriate role for local government, or other entities in providing such support. We see two streams to the support discussion:
- a. active support for tikanga-based processes which could include:
 - i. development of process options and guidance
 - ii. administrative support for processes
 - iii. funding for wānanga and facilitation
 - iv. direct provision of facilitators
 - b. statutory requirements and circuit breakers which could include:
 - i. statutory timeframes for completion of tikanga processes
 - ii. dispute resolution processes
64. Precedents from Treaty settlement claimant funding and Crown support for facilitating development of MWaR can inform this work.
65. How tikanga based processes to determine representation could be funded is actively being considered. A paper on funding the operation of the RM system will be provided to MOG #15. MfE is seeking funding through Budget 22 for the first RSS and NBA plans to enable them to be models. This will include funding for Māori participation in those planning processes.

Key choices

66. This section focuses on the usefulness of a defined term to guide identification of who participates in the system and the level of prescription in legislation for different levels of the RM system. We have identified each level in the RM system where there are participation opportunities and have addressed these individually in the **Appendix 1**.

Overarching term

67. The Panel's proposal that 'iwi authority' and 'tangata whenua' in the RMA be replaced with a more broadly defined term of 'mana whenua' was intended to support more inclusive participation in resource management, particularly by hapū and whānau, and to provide clarity to councils that engagement expectations are broader than just iwi authorities.

68. The iwi/Māori groups have provided their views on an appropriate approach for a defined term:

- a. TTK has expressed a preference for the term 'mana whakahaere' to reflect the full range of Māori rights, responsibilities, interests and obligations, and achieve a Te Tiriti compliant regulatory framework by ensuring that all kaitiaki can fulfil their kaitiakitanga responsibilities. TTK's proposals are not restricted to a definition in the legislation but also extend to how the principle of mana whakahaere should be applied in practice.
- b. FILG/TWMT has expressed a preference for the existing terms in the RMA to remain, with a view to retaining the primary rights of iwi and hapū to participate in decision-making within the system. They support other roles for other Māori groups within the system.

69. At the combined MOG #11/12 Ministers expressed an initial preference for retaining the existing term 'tangata whenua' but defining it more inclusively in the legislation. On the basis of this discussion, we understand Ministers are interested in the system providing for participation by more hapū/iwi/Māori groups than what is presently the case in the RMA.

70. The key question is whether an overarching term with an inclusive definition would usefully provide for more inclusive Māori participation across the RM system and more clarity and certainty for hapū/iwi/Māori and local government, or whether an alternative approach would better achieve this outcome. Alternatives, which are not mutually exclusive, could include:

- a. describing a participation principle or principles in the legislation
- b. using more specific terms in the legislation to identify who partners and participates at different levels/functions
- c. describing processes to determine representation / participation in the legislation or elsewhere.

71. Our initial thinking is that there is no benefit in using one overarching term. Such a term would require a clear purpose and we cannot determine what that purpose would be. Any term as broad as those considered above would leave much to be worked out at different stages of the system.

72. More work is required to understand whether a broadly inclusive approach to participation should be applied across all parts of the system or whether there is a case for more specificity in some areas. These may be areas where not prescribing who participates may undermine the Tiriti consistency of the system, have unreasonably high costs or undermine the reform objectives. We would also consider how the alternative approaches in paragraph 70 above could contribute to supporting the overall approach to who participates. We will provide this advice through the relevant policy papers at MOG #16 and #17.

Extent of prescription in the legislation

73. Enabling tikanga processes to determine representation could occur both in policy development/legislative design and in implementation and transition.
74. Where the 'who', or the process to agree the 'who' in relation to a function, can be agreed amongst hapū/iwi/Māori and developed into policy proposals in partnership with the Crown, we consider that prescription of that who in the legislation may be appropriate.
75. In general, more prescription (such as identifying specific groups who can participate at different parts of the system) could provide for clarity and certainty for hapū/iwi/Māori and other partners / participants. The balance of costs for more prescription would fall more to the policy development/legislative design phase.
76. However, getting the prescription of who participates "right" in legislation would require a significant investment of time and resource and may not result in a workable model, is likely to be inflexible and subject to challenge.
77. It would also reduce flexibility to accommodate changes in how hapū/iwi/Māori wish to organise themselves in the future and potentially close down space for tikanga processes, particularly where Māori participants may be best described according to interests other than whakapapa or Māori social organisation such as land-owner status, legal status or as citizens or as residents of a region.
78. Less prescription may better provide space for the ongoing application of tikanga to the determination of representation over the life of the reformed RM system. The less prescription and specificity about which hapū/iwi/Māori groups participate at each part of the RM system, the greater the reliance on process to determine the specific participants.
79. Even where groups are specifically described as partners and/or participants (for example, Te Runanga o Ngāi Tahu Act 1996 specifies that Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui), further processes may be required to appoint representatives from within those groups.
80. The balance of costs of a less prescribed approach would fall more to the implementation phase.

Initial view

81. Our initial view is that an overall principle of self-determination enabling tikanga process for determining representation (rather than the legislation prescribing who) may best occur within a framework that address specific functions in the RM system.
82. At least basic requirements such as timeframes and circuit breakers should be prescribed in the legislation for appointments, to deliver certainty those entities are able to be established and in operation within reasonable timeframes in accordance with the reform's efficiency objective.
83. There may also be secondary matters to consider such as whether:
 - a. detailed processes could or should be described in secondary legislation or elsewhere
 - b. a range of process options could or should be described in a schedule to the legislation or elsewhere
 - c. what other practical support might be required to ensure processes are effective.
84. The Panel recommended a graduated dispute resolution process for representation with the Māori Land Court as the final arbiter. Section 30 of Te Ture Whenua Māori Act 1993 (the 'Act') provides for the Māori Land Court's jurisdiction to advise on or determine representation of Māori groups. The section is designed to give that certainty on representation for Māori groups and others on particular matters of business (for example, resource management issues in relation to a site or area) that have not and cannot be settled outside of the Court through tikanga processes.

Irrelevant

Engagement

Agency

100. Agencies have been broadly supportive of the initial direction of travel. Agencies have specifically sought to highlight the requirements for support and resourcing (including through transition) to best enable tikanga processes to determine representation.
101. In general, agencies are interested in more detail on how to enable tikanga processes to determine representation in practice, including dispute resolution when agreement cannot be reached. DIA advised local government should be involved engaged on where they have obligations to hapū/iwi/Māori.

Local government

102. Local government have reiterated to effectively address who participates from iwi, hapū and/or Māori, mechanisms will be needed to provide clarity for local government and Māori on who participates in each role for Māori within the system.

Iwi/Māori groups

103. Feedback from iwi/Māori engagement has been covered above.

Next steps

104. "Who participates" is an issue where strong views are held in te ao Māori, and any decisions will have a risk of challenge. Te Tiriti considerations including the principle of rangatiratanga reinforce the importance of co-development of options for who participates.
105. To mitigate this risk and deliver a robust and workable approach, we intend further engagement on this issue, including (but not limited to) Cabinet approved engagement with iwi/Māori, local government and sector stakeholders, regional hui with iwi Māori/hapū and PSGEs. We intend to develop the engagement programme with FILG/TWMT and Te Tai Kaha.
106. Officials will provide further advice at MOG #17 seeking decisions on how who participates will be provided for and supported in legislation. This will likely be provided through a combination of a discrete paper and related recommendations and analysis in the advice covering:
 - a. establishment of and appointments to a national body
 - b. participation in development of the NPF
 - c. regional governance and appointments
 - d. participation in plan development
 - e. consenting, and
 - f. the Integrated Partnerships Process.
107. The final advice will also cover:
 - a. details of Treaty settlement transition and the implications for who participates at different levels of the system

- b. lessons from the approach for iwi/Māori input in the first NPF and development of Māori partnering and participation mechanisms in other frameworks (eg, Iwi-Māori Partnership Boards in the new health system)
 - c. how who participates in the system should be recorded (if at all).
108. We intend to undertake further work to consider what is meant by Māori land and how it should be treated across the RM system, with a report back provided as part of MOG #17.
109. We intend to provide a brief update on this work and the pathway to final decisions, including any feedback from the subgroup, for MOG #15 on 13 December 2022.

Paper 1: Recommendations

The MOG Māori interests subgroup is recommended to:

Background

1. **note** that developing a view on the who partners and participates from te ao Māori is becoming critical to advancing policy decisions across the RM reform programme
2. **note** that under the RMA, specifying engagement with “iwi authorities” has been a contributing factor in a lack of consistently effective partnerships between hapū/iwi/Māori and the Crown and local government in the RM system;
3. **note** that local authorities and resource consent applicants continue to express difficulty in understanding who holds mana whenua and/or other relevant rights and interests in an area, and therefore which groups to engage with to fulfil their obligations under the RMA.

Iwi/Māori group views

4. **note** that there are distinct views on who should participate
5. **note** that MfE have identified some common ground coming through all feedback from iwi/Māori to date:
 - a. the importance of self-determination for Māori in terms of participation at different levels of the system
 - b. a greater role for hapū in the system – rather than just RMA iwi authorities (which is consistent with the Panel’s view)
 - c. a range of Māori groups including urban Māori and Māori Land trusts/ahi kā should have a role (but different views on how their roles and influence should play out at different levels of the system)
 - d. whakapapa relationship to Te Taiao is significant and confers distinct rights (although there are different views on the extent of the distinct rights and who these fall to)
 - e. the importance of not losing what is working now in terms of representation and identifying who participates in different levels and processes (eg, Treaty settlements, takutai moana rights holders, non-statutory RM arrangements).
6. **note** that FILG/TWMT and TTK have also advised that providing for a supported and resourced self-determined iwi/Māori appointments and identifying who participates would achieve efficiencies by helping avoid litigation with the Crown or between hapū/iwi/Māori groups (with attendant costs and delays).

Initial direction of travel

7. **note** that we are seeking Ministers' feedback on the following initial direction of travel to guide further work on who participates:
- a. support for an overall principle of self-determination: enabling tikanga processes to determine representation.
 - b. implementation support is required for successful self-determination processes, which may include:
 - i. funding for wānanga and facilitation
 - ii. direct provision of facilitators
 - iii. development of process options and guidance
 - iv. administrative support for processes.
 - c. no clear case for an overarching defined term for who participates (such as mana whenua, tangata whenua and mana whakahaere). We have a preference to explore alternatives, which are not mutually exclusive, this could include:
 - i. describing a participation principle or principles in the legislation
 - ii. using more specific terms in the legislation to identify who partners and participates at different levels/functions
 - iii. describing processes to determine representation / participation in the legislation or elsewhere.
 - d. the level of prescription in legislation will differ for different parts of the RM system.
 - e. timeframes and circuit breakers should be prescribed in the legislation for appointments processes, to provide certainty that entities are able to be established and in operation within reasonable timeframes.
 - f. partnering and participation guaranteed through Treaty settlements or under the Takutai Moana Act/Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act is not to be disrupted.
 - g. enable an inclusive approach to participation in plan development and consenting.

Next steps

8. **note** that te Tiriti considerations including the principle of rangatiratanga reinforce the importance of co-development of options for who participates.
9. **note** intend further engagement on this issue, including (but not limited to) Cabinet approved engagement with iwi/Māori, local government and sector stakeholders, regional hui with iwi Māori/hapū and PSGEs.
10. **note** that officials will provide further advice at MOG# 17 seeking decisions on how who participates will be provided for and supported in legislation through a combination of a discrete paper and related recommendations and analysis in the advice covering:
 - a. establishment of and appointments to a national body
 - b. participation in development of the NPF
 - c. regional governance and appointments
 - d. participation in plan development
 - e. consenting, and
 - f. the Integrated Partnerships Process.

11. **note** that final advice will also cover:
 - a. details of Treaty settlement transition and the implications for who participates at different levels of the system
 - b. learnings from the approach for iwi/Māori input in the first NPF and development of Māori partnering and participation mechanisms in other frameworks (eg, Iwi-Māori Partnership Boards in the new health system)
 - c. how who participates in the system should be recorded (if at all).
12. **agree** that further work will be undertaken to consider what is meant by Māori land and how it should be treated across the RM system, with a report back provided as part of MOG #17.
13. **note** that we intend to provide a brief update on this work and the pathway to final decisions, including any feedback from the subgroup, for MOG #15 on 13 December 2022.

Appendix 1: Spectrum of options for who participates at different points of the system

Function/role	MOG decisions	Views from te ao Māori	Is prescription appropriate? - considerations	Spectrum of options for who participates		
<p>National Māori / Partnership entity with role in oversight and NPF development</p>	<p>Agreed that the national entity have functions in:</p> <ul style="list-style-type: none"> a. system oversight/monitoring b. input to National Planning Framework development c. appointments of any Māori representatives to National Planning Framework board. <p>Agreed that the national entity have a specified role in monitoring Tiriti performance across the Resource Management system.</p> <p>Agreed that the national entity should be set up independently to the Government of the day.</p> <p>Noted that the national entity will be established in a way as to not usurp the mana of hapū and iwi at place, or negatively impact Crown responsibilities provided through Treaty settlements and other agreements.</p> <p>Noted that subject to agreement, further work will be undertaken on the composition, scope and powers of the national entity including whether the national entity should have a role in dispute resolution for iwi, hapū and/or Māori appointments to joint committees or whether this should be a role for the Māori Land Court.</p>	<p>Divergent views from iwi/Māori groups. Ngāi Tahu seek as-of-right membership position.</p>	<ul style="list-style-type: none"> • May be better for reducing process burden – ie, if the design of regional representative models is to happen outside the policy development / legislative design process • First phase of the NPF likely to be done before the establishment of a national entity so there may be more time to work through the model outside the legislative process • While regional engagement is also required, more of the engagement may be able to happen with ILG/TWMT and TTK within the timeframes • Multiple national body representative processes already exist eg, Te Ohu Kaimoana and Te Mātāwai that could be utilised as a starting point for the legislation 	<p>Appointments by whakapapa-based clusters (likely to be iwi for practical reasons) (ILG position)</p>	<p>Appointments by both national entities and whakapapa-based clusters</p>	<p>Appointments by national Māori entities eg, Iwi Chairs, New Zealand Māori Council, Federation of Māori Authorities (TTK position)</p> <p><i>Other options include a self-determined process, and an electoral college process with clusters that go beyond whakapapa based groups, eg, regionally based clusters</i></p>
<p>Regional governance</p>	<p>Agreed that joint committee composition be worked through region-by-region.</p> <p>Noted that if you agree, officials will seek decisions on joint committee composition on a region-by-region basis and how this is provided for in legislation at a later MOG.</p> <p>Agreed that Treaty partnership committees are enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights, and existing voluntary Resource Management arrangements.</p>	<p>This is where the divergence in views between groups is most pronounced as discussed.</p>	<ul style="list-style-type: none"> • May provide for more certainty and clarity for hapū/iwi/Māori and councils • May be seen as the Crown ‘picking winners’ • May contribute to more efficient appointment processes and establishment of joint committees • The necessary regional engagement unlikely to be possible within the timeframes • Provides less flexibility for representation to evolve with regional circumstances 	<p>Appointments to joint committees by iwi and hapū (Consistent with ILG position)</p>	<p>Appointments to joint committees by iwi and hapū, some places set aside for other groups in some regions and/or iwi and hapū can invite other groups to participate</p>	<p>Inclusive approach to appointments by iwi, hapū and other Māori entities with rights and interests as agreed regionally among those groups (Consistent with TTK position)</p>

Function/role	MOG decisions	Views from te ao Māori	Is prescription appropriate? - considerations	Spectrum of options for who participates		
<p>Decision-making / governance for - specific resource management matters eg, delegated decision-making</p> <p>*Noting that existing Treaty settlement and other arrangements are to be upheld</p>	<p>Noted that the Māori Interests subgroup will consider matters which directly relate to hapū/iwi/Māori participation in existing uses processes and report back to MOG</p> <p>Agreed that Treaty partnership committees are enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights, and existing voluntary Resource Management arrangements.</p>	<p>This has not been discussed in detail. We expect there to be support for decision-making roles outside the joint committees for groups with specific rights and interests</p>	<ul style="list-style-type: none"> • May provide for more certainty and clarity for hapū/iwi/Māori and councils • May not be possible to anticipate all groups that may legitimately have an interest at this level • May be a difference in approach between potential Treaty partnership entities and sub-committees • May reduce costs of implementation 	<p>Opportunities for decision-making roles for iwi and hapū in relation to specific catchments, within their rohe boundaries, in specific locations or on specific planning topics</p>	<p>Opportunities for decision-making roles for iwi and hapū who may also invite other groups to participate</p>	<p>Opportunities for decision-making roles for any group with rights and interests eg, hapū in relation to a specific waterway and urban Māori in relation to urban development</p>
<p>Secretariats for RSS and NBA plans</p>	<p>Noted that further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including:</p> <ol style="list-style-type: none"> roles and participation for iwi/Māori in the plan making secretariat and process for their involvement 	<p>There is still some divergence regarding who might have a role on a secretariat or might appoint members of a secretariat (if that is an option). There is consensus that the technical skills of secretariat members are critically important</p>	<ul style="list-style-type: none"> • May be difference in approach between who appoints and who can be a member/employee • More emphasis on technical skill at this level rather than political representation which may reduce the importance of specification • Specification at the secretariat level and governance level should be considered together as a package • Too much specification may restrict the secretariat from having the best candidates available for the role 	<p>Secretariat members appointed by or sourced from iwi and hapū organisations</p>	<p>Secretariat members appointed by or sourced from a range of hapū/iwi/Māori organisations</p>	<p>Alternative processes eg, roles/skills agreed with hapū/iwi/Māori and appointments made by secretariat leadership</p>
<p>Plan development process</p>	<p>Noted the intent is to provide greater Māori participation in the plan development process (as discussed at MOG #11 and #12) by requiring Māori participation in plan development through technical and mātauranga input, and for plans to be more directive in information requirements, notification (including limited notified parties), and decisions</p> <p>Noted that further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including:</p> <ol style="list-style-type: none"> roles and participation for iwi/Māori in the plan making secretariat and process for their involvement what engagement should be undertaken with iwi/Māori at the various stages of the plan development process how enhanced iwi/Māori involvement in plan development is implemented and funded. <p>Agreed that appropriate weighting and consideration should be given to Māori technical inputs (eg, iwi management plans)</p>	<p>There is general agreement that the plan development process should be inclusive of all hapū/iwi/Māori groups as it will also be inclusive of the wider community</p>	<ul style="list-style-type: none"> • Specification of who must be engaged with at the pre-notification stage would be useful if we expect that public participation processes are unlikely to provide equitable participation for Māori or specific groups of hapū/iwi/Māori • Specification in this case is unlikely to restrict the participation of other groups 	<p>All groups able to participate, engagement requirements specified in relation to the role of iwi and hapū in the process</p>	<p>All groups able to participate, engagement requirements specified in relation to the role of iwi and hapū and some other groups eg, Māori land owners, urban Māori</p>	<p>All groups able to participate, engagement requirements apply broadly to hapū/iwi/Māori</p>

Function/role	MOG decisions	Views from te ao Māori	Is prescription appropriate? - considerations	Spectrum of options for who participates		
Permissions and protections	<p>Noted the new permissions system will need to:</p> <p>a) give effect to the principles of Te Tiriti and uphold Treaty settlement legislation; and</p> <p>b) reflect the 19 April decision of the Māori interests sub-group that iwi, hapū and Māori should participate in decision-making on permissions of major significance to Māori, including those relating to waterways and land owned by Māori</p> <p>Agreed that one of the purposes of the already agreed Māori participation in plan development is to ensure Māori can influence plan content including (but not limited to) how activities are categorised, notification status, where they may be identified an affected party and the information required for a consent</p> <p>Agreed that Māori can be identified as an ‘affected person’, have a role as a technical expert and be a submitter (on NBA plans and consents)</p> <p>Noted that officials from the Ministry for the Environment will continue to engage with the Freshwater Iwi Leaders Group and Te Tai Kaha on detailed policy development relating to Māori participation in planning and consenting processes</p>	<p>There is general agreement that consenting processes should be inclusive of all hapū/iwi/Māori groups as it will also be inclusive of the wider community</p>	<ul style="list-style-type: none"> We expect that criteria will be prescribed generally for who would be considered to be an affected party or otherwise able to participate in consent processes which would include hapū/iwi/Māori Further specification within that framework may be useful if we expect that groups who should be considered affected will be overlooked by councils 	<p>Iwi and hapū specified as interested parties in certain circumstances</p>	<p>Iwi and hapū and other Māori groups eg, Māori land owners and urban Māori groups specified as interested parties in certain circumstances</p>	<p>General criteria apply to all</p>
Compliance monitoring and enforcement	<p>Noted that officials will provide further advice on Māori participation in consenting, compliance monitoring and enforcement, environmental monitoring and funding to enable effective participation across the Resource Management system.</p> <p>Agreed that officials will continue to explore options to strengthen the role of Māori in CME services that are consistent with future MOG decisions Agreed that officials will continue to explore options to strengthen the role of Māori in CME services that are consistent with future MOG decisions</p>	<p>Has yet to be discussed in detail</p>	<ul style="list-style-type: none"> It may not be useful for compliance monitoring and enforcement to be carried out by multiple groups in the same area so some specification or priority may need to be applied 	<p>Iwi and hapū have specified role in CME</p>	<p>Iwi, hapū and other Māori groups eg, Māori land owners have specified roles in CME</p>	<p>Requirements regarding hapū/iwi/Māori involvement in CME are broad</p>
Integrated Partnerships process	<p>Noted that the Resource Management Review Panel’s recommended Integrated Partnerships Process was their name for an enhanced Mana Whakahono ā Rohe process that integrates with better transfers of power and joint management agreement (JMAs) provisions.</p> <p>Agreed that the legislation provides for an enhanced Mana Whakahono ā Rohe process that is integrated with transfers of powers and JMAs (an Integrated Partnerships Process)</p> <p>Agreed to recommend to the MOG that power sharing arrangements (transfers of power and JMAs) are better</p>	<p>Divergence in views consistent with views on decision making</p>	<ul style="list-style-type: none"> Specification more necessary if IPP process mandatory – if not, burden on councils may be unsustainable Lack of specification (even where not mandatory) may in some cases lead to high numbers of IPP being entered into and in others to councils interpreting the provisions overly conservatively 	<p>IPP is with iwi and hapū exclusively</p> <p>Other groups can engage with councils and joint committees via other means eg, MOUs</p>	<p>Iwi and hapū can invite other Māori groups to participate in IPP</p>	<p>IPP can be initiated by any Māori group that meets certain criteria</p>

Function/role	MOG decisions	Views from te ao Māori	Is prescription appropriate? - considerations	Spectrum of options for who participates
	<p>enabled through the Integrated Partnerships Process, with barriers removed.</p> <p>Noted that, subject to agreement, further work will be undertaken on the scope of Integrated Partnerships Processes and mandatory requirements for what must be covered.</p>			

Appendix 2: Te Tai Kaha table – Māori rights and responsibilities relevant to RM reform

This table sets out rights, interests and associated responsibilities (which are collectively referred to in the table below through the shorthand reference to “rights”) held by Māori that are relevant to reform of the Resource Management (RM) system, and from which responsibilities, obligations and duties also arise. The table lists claims that Māori have, which have special force and are capable of being affirmed under the law. The focus is on rights previously conferred, rather than on rights that Māori have simply by virtue of being citizens in Aotearoa or by virtue of being human. The sources of rights have been listed hierarchically, in te ao Māori terms, starting with Tikanga and descending to Māori/Crown policy and practice. The table illustrates, amongst other things, that rights are not held by iwi or only by post-settlement governance entities (PSGEs), but are held primarily by hapū. It also illustrates that the sources of rights overlap in practice. Finally, and importantly, it shows that Māori rights are not dependent on the Crown or on the law for their existence.

Source of rights/responsibilities	Relevant rights/responsibilities	Holder of rights/responsibilities
<p>1. Tikanga (also echoed in Article 2, and perhaps Article 4 of Te Tiriti)</p> <ul style="list-style-type: none"> Based in Māori laws, values and practices; expression of tino rangatiratanga Subsequently affirmed in Article 2 of Te Tiriti⁶ Recognised by Courts to be part of the development of the common law⁷ Referred to or affirmed in Aotearoa New Zealand’s constitution, legislation (eg, s 186 of the Fisheries Act 1996) and policy 	<ul style="list-style-type: none"> Customary title to bodies of freshwater Customary fishing rights Rights over wāhi tapu and all it embraces (taonga, kōrero tuku iho, koiwi) Mana whakahaere rights/kaitiakitanga responsibilities, including to past, present and future generations Use rights over natural resources⁸ With all relevant rights translating to the <i>practice</i> of whanaungatanga, mana, manaakitanga/kaitiakitanga, tapu/inoa/utu and rangatiratanga 	<ul style="list-style-type: none"> Primarily hapū But ancillary (relational) rights held by: <ul style="list-style-type: none"> Ahi kā/Landowners (including trusts and incorporations)/ Individuals Whānau Hapū collectives/confederations
<p>2. Articles of Te Tiriti o Waitangi</p> <ul style="list-style-type: none"> Recently reaffirmed by the Supreme Court as having “constitutional significance”,⁹ the articles of Te Tiriti protect interests beyond tikanga Māori and go beyond the principles of the Treaty in legislation Courts¹⁰ and Cabinet¹¹ have recognised direct applicability of Te Tiriti Legislation has recognised the applicability both of Te Tiriti (eg s 4(d) of the Education and Training Act 2020) and of Te Tiriti principles (eg s 8 of the RMA and s 9 of the State-Owned Enterprises Act 1986) 	<ul style="list-style-type: none"> Indirect applicability of Te Tiriti (ie, the obligation to act in accordance with Treaty principles) gives rise to a range of rights: <ul style="list-style-type: none"> Partnership, reciprocity and mutual benefit, including partnership in governance and decision-making active protection of Article 2 taonga, including through informed decisions Māori rights of development, including priority commercial opportunities principles of equity arising from disparities¹² principle of options¹³ right to redress for past wrongs, including compensation as appropriate Direct applicability of Te Tiriti may also give rise to a range of rights: <ul style="list-style-type: none"> rights grounded in “peace” and “good order” promised in Te Tiriti preamble¹⁴ rights grounded in the undertaking of Crown kāwanatanga (“government”) in Article 1 rights grounded in tino rangatiratanga or “unqualified exercise of ... chieftainship” or sovereignty under Article 2 rights grounded in equality under Article 3 rights grounded in the guarantee of religious freedom and customary rights through the oral protocol/Article 4¹⁵ 	<ul style="list-style-type: none"> Primarily hapū But ancillary (relational) rights held by: <ul style="list-style-type: none"> Ahi kā/Landowners/Individuals Whānau Hapū collectives/confederations

⁶ See, eg, *Paki v Attorney-General* [2012] NZSC 50, [2012] 3 NZLR 277 at [18]; *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [154] (*TTR*).

⁷ See, eg, *TTR* at [166]–[169].

⁸ As discussed in: Edward Taihakurei Durie, ‘Custom Law’, Discussion Paper, Waitangi Tribunal, 1994.

⁹ See *TTR* at [150] and [296].

¹⁰ See *TTR* at [154].

¹¹ See Cabinet Office Te Tiriti o Waitangi / Treaty of Waitangi Guidance (2019), online at <https://dpmc.govt.nz/publications/co-19-5-te-tiriti-o-waitangi-treaty-waitangi-guidance-html>; see [17]: “While the courts and previous guidance have developed and focussed on principles of the Treaty, this guidance takes the texts of the Treaty as its focus.” At [23] the guidance associates Article 1 with good government and good faith; at [47] it associates Article 2 with the need “to respect the right of Māori to control decisions in relation to their lands and the things of value to them”; at [67] the guidance links Article 3 to an “assurance that rights would be enjoyed equally by Māori with all New Zealanders”, noting that special measures to attain equal enjoyment of benefits are allowed by international law and also referring at [72] to other legal values such as natural justice, due process, fairness, and equity, as well as tikanga values (at [74]).

¹² This can require positive intervention to address disparities, so that there is equality of outcomes, rather than equality of access to services, treatment or care: Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 62; see also xxxiii.

¹³ This means that Māori can pursue a direction based on personal choice. The Tribunal has explained that Te Tiriti protected traditional Māori rights, and also gave Māori the rights of British subjects. As a result, Māori have the option to operate in one or other world, or to “walk in two worlds”: Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 195. The principle also assures Māori of the right to choose their own social and cultural path in accordance with tikanga Māori. In the context of health services, Māori have the right to access health services that provide traditional rongoā and/or are provided in a manner consistent with tikanga Māori that embraces Māori beliefs, tapu practices, and whānau support relevant to the care of Māori patients: Waitangi Tribunal, *Napier Hospital* (above n 7) at 65.

¹⁴ See Kawharu translation at <https://nzhistory.govt.nz/files/documents/treaty-kawharu-footnotes.pdf>.

¹⁵ As discussed in: Heather Came and Keith Tudor, ‘Bicultural Praxis: The Relevance of Te Tiriti o Waitangi to Health Promotion Internationally’ (2016) *International Journal of Health Promotion and Education* 1–9, online at <https://core.ac.uk/download/pdf/56365118.pdf> (see in particular p. 4 of online version).

	<ul style="list-style-type: none"> • Te Tiriti can provide the basis (via Article 2) for Māori-led institutions or distinctive Māori strategies, such as MAIHI Ka Ora/the National Māori Housing Strategy and the Māori Health Authority¹⁶ 	
<p>3. Property rights (also protected by Articles 1–3 of Te Tiriti)</p> <ul style="list-style-type: none"> • Recorded in present day Torrens title documents, with titles traceable back to customary ownership/rights (eg ahi kā/inalienability of customary rights in tikanga terms) that are reflected in common law native title • Includes some relevant incidental/riparian rights (eg rights to water for individuals’ reasonable domestic needs in RMA ss 14(3)(b) and (d)) • Also includes rights provided for in Te Ture Whenua Māori Act 1993 	<ul style="list-style-type: none"> • Customary title (eg where land does not yet have a registered (Torrens) title) • Various forms of registered (Torrens) titles, eg as General Land and Māori Freehold Land • (Registered) rights or interests of a usufructory nature (eg easements) 	<ul style="list-style-type: none"> • Hapū • Ahi kā/Landowners/Individuals • Māori representative bodies, including trusts, incorporations and Special Purpose Vehicles (eg, entities set up to own Treaty settlement assets, which are generally not PSGEs themselves)
<p>4. Statute (reflecting Article 1 of Te Tiriti, and informed by Articles 2 and/or 3)</p> <ul style="list-style-type: none"> • Contemporary Treaty settlement legislation, including the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Te Urewera Act 2014 and Te Awa Tupua (Whanganui River Claims Settlement Act) 2017 • Contemporary legislation enacted to protect Māori rights, eg the Māori Community Development Act 1962, the Treaty of Waitangi Act 1975, and the Marine and Coastal Area (Takutai Moana) Act 2011 • Rights incidental to the right to culture under s 20 of the NZ Bill of Rights Act 1990 (as affirmed in <i>Takamore</i>)¹⁷ • Rights conferred by or through the RMA, eg: <ul style="list-style-type: none"> ◦ water managed for cultural purposes (RMA, s 69 and Sch 3) ◦ geothermal water used tikanga consistently (RMA, s 14(3)(c)) ◦ the fundamental Te Mana o te Wai concept in NPS-FM 2020 ◦ Joint management agreements with local government¹⁸ • Rights to participate (also sourced in Te Tiriti), eg under cl 3(1)(d) of Sch 1 of the RMA, s 14(d) and s 81 of the Local Government Act 2002, and ss 18 and 45 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012¹⁹ 	<ul style="list-style-type: none"> • Co-management or co-governance of key natural resources, such as Te Urewera, Waikato River and Te Awa Tupua • Rights to participate in statutory and/or regulatory decision-making (processes) • Rights/responsibilities over the marine and coastal area • Independent Statutory Authorities over natural resources • Customary Bylaws for taonga e.g. Waikato River Tuna Bylaws 	<ul style="list-style-type: none"> • Particular iwi/PSGEs specified in legislation • Particular hapū specified in legislation • Māori representative bodies specified in legislation, eg the NZMC, Māori Committees under Māori Community Development Act 1962, FOMA, PSGEs • Ahi kā/Landowners/Individuals
<p>5. Judge made (common) law (reflecting aspects of Articles 1–3)</p> <ul style="list-style-type: none"> • Rights recognised through the common law doctrine of native title • Rights incidental to Crown fiduciary duties (as affirmed in <i>Wakatu</i>)²⁰ • Rights owed to Māori because of duties of care owed in particular circumstances, including by the Crown (as upheld in South Australia)²¹ • Rights incidental to international law (including United Nations Declaration on the Rights of Indigenous Peoples), capable of influencing interpretation of statutes and the development of policy and of law²² • Rights incidental to administrative law, eg flowing from the duty to consult people or groups who are specially affected by proposed decisions and/or to accommodate their rights and interests in decisions that are made • Other rights, eg flowing from executors’ duties (as in <i>Takamore</i>)²³ 	<ul style="list-style-type: none"> • Context-sensitive rights, such as rights where: <ul style="list-style-type: none"> ◦ People or groups are specially affected by proposed exercises of public power ◦ A fiduciary duty can be established (e.g. owed by the Crown to Māori) ◦ A duty of care can be established ◦ International law obligations apply 	<ul style="list-style-type: none"> • Hapū • Ahi kā/Landowners/Individuals • Māori representative bodies, eg the NZMC, FOMA
<p>6. Relationships and Crown practice and policy</p>		<ul style="list-style-type: none"> • Hapū • Ahi kā/Landowners/Individuals • PSGEs

¹⁶ See <https://www.hud.govt.nz/maihi-and-maori-housing/maihi-ka-ora/>.

¹⁷ *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733 at [12].

¹⁸ As discussed (critically) in: Natalie Coates, Joint-Management Agreements in New Zealand: Simply Empty Promises? (2009) 13 Journal of South Pacific Law 32, online at <http://www.paclii.org/journals/fjspl/vol13no1/pdf/coates.pdf>.

¹⁹ As discussed by Caren Fox and Chris Bretton, ‘Māori Participation, Rights and Interests’ (Resource Management Law Association of New Zealand Conference, 2016), online at <https://www.rmla.org.nz/wp-content/uploads/2016/09/carenfox.pdf>, at 15.

²⁰ *Proprietors of Wakatu v Attorney-General* [2017] NZSC 17, [2017] 1 NZLR 423 at [1].

²¹ *State of South Australia v Lampard-Trevorrow* [2010] SASC 56 at [348]–[409] in relation to the removal of Aboriginal children from the care of their parents.

²² The presumption that legislation should be read, so far as possible, as being consistent with New Zealand’s relevant international obligations is discussed in *Fitzgerald v R* [2021] NZSC 131 at [63] and [225].

²³ *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733.

<ul style="list-style-type: none"> • Whānau Ora policy and arrangements²⁴ • Crown relationships with eg the NZMC, FOMA, Iwi Chairs Forum • Ministerial/Crown expectations as to the disposal of land, eg the Protection Mechanism (OTS), Sites of Significance process (TPK), Landcorp Protocol 	<ul style="list-style-type: none"> • Duties (or at least expectations) to notify and consult • Legitimate expectations 	<ul style="list-style-type: none"> • Māori representative bodies, eg the NZMC, FOMA, ILG
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²⁴ <https://www.tpk.govt.nz/en/whakamahia/whanau-ora>.

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Taheke 8C

Engagement Hui Context Notes

10th December 2021

About

The Proprietors of Taheke 8C and Adjoining Blocks Incorporation (“Taheke”) was incorporated in 1954 by Order of Incorporation issued by the Māori Land Court in 1954.

Taheke is located approximately 20 minutes north east of Rotorua on State Highway 33. The area is known as Okere Falls and Incorporation’s lands lie adjacent to Te Awa Okere, also known as the Upper Catchment of the Kaituna River. The total land administered but Taheke is approximately 1214ha and the legal description is “The Proprietors of Taheke *C & Adjoining blocks Incorporation”.

There are currently 1328 shareholders holding 50,611 shares in total.

Taheke signed a project development agreement with geothermal developer Eastland Generation Limited and will be seeking to consent a geothermal power plant on Taheke land. Other activities are also being proposed, including vertical vegetable growth in hothouses, an eco-tourism venture and a wellness centre.

The Taheke 8C Development Plan, which was entered into the Rotorua Lakes District Council Plan, provides for specific activities Taheke will require to complete its development aspirations.

Focus for hui on Friday 9 Dec

Taheke 8C responded to the September 2021 issue of *Te Kōmiromiro* (MfE’s Māori stakeholders EDM pānui) inviting Māori to contact Erin Rangi-Watt if they were interested in participating in round three of RM reform engagement.

Taheke want to understand the policy rationale for restricting recognition of Māori interests in te taiao to “iwi and hapū”.

Key Points from Wai 3055 Claim

- A claim was made to the Waitangi Tribunal on behalf of Taheke 8C by Tawhiri Morehu on the NBA Bill. Mr Morehu claims the Crown has breached its Treaty duties to Taheke 8C by developing the NBA as it:
 - restricts recognition of Māori interests to those of “iwi and hapū” to the exclusion of all other relevant Māori, whānau, mana whenua and Māori landholding entities;
 - fails to protect actively Taheke 8C’s rights and interests in the Taheke 8C lands including the geothermal interests therein; and
 - is unreasonable.

- The shareholders of Taheke 8C are, or are likely to be, prejudicially affected by the Natural and Built Environments Bill.
- The Natural and Built Environments Bill is inconsistent with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi
- The draft Bill fails to recognise the rights and interests of mana whenua, whānau, and Māori land owners
- This failure is inconsistent with:
 - Articles 2 and 3 of the Treaty of Waitangi;
 - the Declaration;
 - Te Ture Whenua Māori Act 1993, the Preamble of which expressly recognises the importance of whenua to “owners, their whānau, and their hapū” – not “iwi and hapū”;
 - the Marine and Coastal Area (Takutai Moana) Act 2011, which expressly provides that “whānau”, as well as hapū and iwi, may seek recognition of interests in land; and
 - numerous other enactments that acknowledge Māori interests beyond those of “iwi and hapū”.

Taheke 8C claim that Bill is prejudicial to its shareholders because:

- The Bill fails to acknowledge and therefore protect the rights and interests of Māori, whānau and Māori landholding entities, such as Taheke 8C, in their lands.
- The Bill fails to acknowledge and therefore protect the relationship of Māori, whānau and Māori landholding entities, such as Taheke 8C, with te taiao.
- The Bill fails to require the promotion of outcomes that restore and protect the relationship that Māori, whānau, mana whenua and Māori landholding entities, such as Taheke 8C, have with their ancestral lands, water, wāhi tapu, and other taonga, including the right to develop those taonga for the economic benefit of their whānau, communities and, in the case of renewable energy, for the nation as a whole.
- The Bill does not require the recognition and provision for the authority and responsibility of Māori, whānau, mana whenua and Māori landholding entities, such as Taheke 8C, to protect and sustain the health

Summary of Feedback on the Exposure Draft

Reference to iwi and hapū

- Restricting acknowledgment of Māori interests to iwi and hapū must be rectified to include whānau and other groups with rights and interests protected by Articles Two and Three of Te Tiriti.
- This is also at odds with other legislation such as the Takutai Moana Act 2011.
- Support reference to mana whenua, but this should then be consistent throughout the bill
- Must include reference to protecting and restoring relationship between other Māori groups and their ancestral lands, water, wāhi tapu and other taonga

- The terms “tangata whenua”, “Māori”, and “mana whenua” should include Māori land-owning trusts

Māori right to develop and self-determine

- Lack of financial capacity and government legislation has made it difficult for Taheke to exercise meaningful self-determination in the past. It seeks to develop and move forward as mainstream organisations have without unreasonable restraint.
- Must avoid unintended consequences and barrier to projects on Māori land

Geothermal and Renewable Energy Generation

- Concern that inclusion of geothermal activity under natural hazards is too broad and risks restricting potential development of geothermal resources
- Geothermal water should not be subject to an “all waters are the same approach”
- Concern Crown will not provide meaningful support for geothermal energy
- Geothermal electricity generation should be acknowledged as necessary infrastructure for the purposes of the Bill

Other

- Concern that including Māori concepts in statute can expose them to misinterpretation and redefinition by those lacking expertise and appreciation of cultural context e.g. “te taiao”.

[Link to the full submission.](#)

Treaty Settlements and Claims

The Affiliate Te Arawa Iwi and Hapū Settlement was signed in 2008.

- [Summary](#)
- [Documents](#)

Taheke 8C Hui Notes

Location: Online

Date: 10 December 2021

Time: 11am

Director sign off

Name: Clare Maihi

Date: 16 December 2021

Attendees

Ingoa	Hapū / Iwi / Organsiation
Sandra Eru	General Manager for Taheke 8C, Ngāti Pikiao
Andrew Irwin	Lawyer of Taheke 8C
Loretta Lovell	Solicitor for Taheke 8C

Ministry for the Environment & Te Arawhiti officials

Ingoa	Position
Janine Smith	Deputy Secretary, Natural and Built System & Climate Mitigation
Clare Maihi	Director, Treaty Settlements and RM Reform, Tūmatākōkiri
Shadrach Rolleston	Principal Advisor, Te Ao Māori Policy & Partnering
Will Collin	Principal, RM Strategy, Te Ao Māori Policy & Partnering
Marire Kuka	Principal Advisor, Te Ao Māori Policy & Partnering
Moana Hamana	Senior Analyst, Future System Design
Hazel Farquhar-Love	Project Co-ordinator, Te Ao Māori Policy & Partnering
Liam Gillan-Taylor	Analyst (Note-taker), Te Ao Māori Policy & Partnering
Oliver Skinner	Te Arawhiti

Key Points

- Taheke 8C believe that the references only to iwi and hapū within the NBA exposure draft excludes them as landowners and therefore doesn't provide for their rights and interests as ahi kā and kaitiaki of their land.
- Taheke 8C believe there are more relationships between Māori with te taiao other than iwi and hapū – for this reason the term should be broadened to 'Māori'.
- Taheke 8C have identified a potential future legal risk and unintended consequence in only referring to hapū and iwi in the purpose of the Act, possibly constraining the Treaty clause to only the Treaty rights and interests of iwi and hapū.
- Taheke 8C believe regional entities including potential JCs should not have the right to speak on behalf of their whenua.

NB: Legal references and comments are from the legal team, historical context provided by Sandra Eru.

Specific Topic Discussion

<u>Key areas of discussion</u>	<u>Discussion</u>
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Purpose of the Natural and Built Environments Bill / Te Oranga o te Taiao

- Taheke 8C sees the purpose provision of the bill as a fundamental issue to discuss. In particular keen to discuss the reference to iwi and hapū and their intrinsic relationship with te taiao in the definition of Te Oranga o te Taiao. From Taheke 8C's perspective that underpins the further discussion around other matters like the National Entity and Joint Committees

Response

- The Resource Management Review Panel stressed the importance of having intergenerational tests within the purpose of the bill. The Panel recognised the need to bring in a te reo Māori statement, previously had drafted "Te Mana o te Taiao", through the conversations with iwi tech groups, Te Oranga o te Taiao was decided. Open to other suggestions. Panel recommended using mana whenua, defining that as iwi/hapū, whanau that have customary authority over a region. The 'who' in the system are still open policy questions. Heard different views from others (analyse that is on the Select Committees website) some supported using iwi/hapū others supported using mana whakahaere, ahi kā, Māori landowners etc.
- Taheke 8C, are heartened to hear that these are still open policy issues and asked if Ministers have made any form of decision that the bill will be as it was in the exposure regarding TootT i.e. only acknowledging the intrinsic relationship of iwi/hapū with te taiao?
- MfE: No. The govt has not taken any formal decisions yet off the back of the exposure draft.
- Taheke 8C, encouraging to hear. This issue is fundamental for T8C, everything follows from the purpose (clause 5) the way the Act will be interpreted. Needs to get it right in law as it is stating in legal terms what Māori interests in te taiao actually are. As it currently sits TootT excludes whānau, Māori land owning entities, doesn't cover the concepts of mana whenua and ahi kā. The system has to get this legally correct, there are more Māori relationships with te taiao than just iwi/hapū.
- The equivalent provision in the current RMA (section 6(e)) expressly refers to relationship of Māori and their culture and traditions with ancestral lands. Has a broad, inclusive definition of Māori interests, new system is more constrictive form. What is the policy rationale for making that shift? Yes iwi and hapū have relationships with te taiao but Taheke 8C believes you shouldn't restrict the section 6(e) equivalent to just iwi/hapū
- They aren't aware of any report that specifically drills into this subject and not aware of any report by the Waitangi Tribunal that says the correct language is iwi and hapū and nothing more.
- The Wai 262 report does not state that the only Māori relationships with te taiao are with iwi/hapū. Te Whanau o Waipareira Report Wai 141 also takes an inclusive view of Māori groups and implies that the guarantees of te Tiriti are to Māori as a whole, not just tribes.
- Sandra Eru gave an historical account of the Taheke 8C and stated they are the ahi kā of their lands, they survived through trials and tribulations of the 20th century and the legislation the Crown has imposed on them, and despite that, they have kept the land in whānau ownership. Whānau actually worked and lived for the purpose to keep the land warm.
- T8C see themselves and other whānau-based groups as the ahi ka of the whenua. Actual presence of whānau, which makes them both ahi kā and mana whenua, entitles them to kaitiakitanga, as a duty not a right, to maintain the land for the generations to come. Part of that duty is also to

	<p>derive a responsible economic benefit from the lands through potential geothermal power.</p> <ul style="list-style-type: none"> • The confinement of the relationships referred to in the exposure draft means their relationship with te taiao is not recognised and protected. The regime going forward should broaden the definition and protect Taheke 8C and their relationship with their environment. • Groups with ahi kā and mana whenua who sit outside the Māori structures of hapū/iwi should not be forgotten in this process. • MfE: Want to acknowledge the contribution and impact the exposure draft on Taheke 8C and how it would/would not work for Taheke 8C. We are in consideration mode so will use this korero in our work • MfE: Is there value making a distinction between mana whenua and mataawaka? Or should it be a broader use of Māori overall? • Taheke considers themselves as a mana whenua/ahi kā group. Part of the land and the land is part of us. Key point is whakapapa, can't be mana whenua or ahi kā if you do not have whakapapa back to the land. • Mana whenua is already in legislation and should be used. Will take more time to reflect on whether there should be a distinction between mana whenua and mātāwaka.
<p>Select Committee and Engagement</p>	<ul style="list-style-type: none"> • Since there has been a report back from the Select Committee with recommended changes, are the changes incorporated in the select committee report, or is there a revision of the bill, and is what being shared in the PowerPoint yet to be seen in the drafting of the bill? <p>Response</p> <ul style="list-style-type: none"> • Yes, the information in the slide pack for engagement is yet to be drafted into the bill. The exposure draft only covered a small portion of the matters that will be in the final NBA bill. Engagement and the select committee report will inform the fuller bill process which is intended to be introduced in the 3rd quarter of next year.
<p>Protection for Te Ao Māori concepts & te reo terms</p>	<ul style="list-style-type: none"> • What protection will be given to Māori concepts like iwi and hapū, have the committees turned their mind to that? Because currently the concepts in the RMA can be changed or tweaked by a simple majority in Parliament. The courts or the councils will make determinations on Māori terms, in a manner that would never be envisaged by either officials or Māori as a whole – seeing that with Te Mana o te Wai. Have to be careful when using these terms as they can be used in a way that is not reflected by the intent, lack of protection. Just need to look at the Landfill case in Auckland with Te Mana o te Wai. • If you are not careful with the wording of the bill, it will cause unintended consequences. • A Treaty provision will be interpreted in accordance with the purpose provisions, so if you have an exclusive definition of iwi/hapū in the purpose, it will follow on to the Treaty provision and throughout the legislation in terms of restricting considerations of the Tiriti rights and interests of groups other than iwi and hapū. • Haven't gone as far as to say do not use Māori words. But have suggested a more inclusive relationship from Māori and te taiao. • Unclear if PCO will or will not be providing a te reo Māori version of the bill. Assumption is that it will not be a dual language Bill. Whilst this would be intriguing, this may be problematic and MfE may want to turn its mind to that point.

	<p>Response</p> <ul style="list-style-type: none"> • MfE: The development of the bill itself, gives time and opportunity for all to work together and test if we have got it right. The select committee process of the entirety of the bill will be another opportunity.
National entity	<ul style="list-style-type: none"> • How does a National Planning Framework and a Regional framework actually work if we are building in a voice for mana whenua that is not iwi/hapū
Joint Committee Composition	<ul style="list-style-type: none"> • Taheke 8C believe regional entities including potential JCs should not have the right to speak on behalf of their whenua
Integrated Partnership Processes	<ul style="list-style-type: none"> • Taheke 8C does not support the MWaR agreements, because if you read some of the clauses within that agreement, Taheke 8C has to give their mana to the organisation/iwi/hapū that will be set up to speak for them. Taheke 8C have their own voice and will not be signing. Do not want to tie their descendants to the agreement. This a key issue as to why many others have not signed these agreements. • They need to be re-written if the govt want buy-in from other Māori groups
Plan Development	<ul style="list-style-type: none"> • PSGE's, iwi and hapū do not have the authority to make future plans for all mana whenua in the region. Ahi kā have been doing the mahi and should determine the direction they want their land to go in • There is genuine fear within those with mana whenua, that others outside the mana whenua groups within the iwi will make decisions that will restrict/determine issues for the mana whenua. People without the tikanga basis will be making decisions for them, that is not rangatiratanga. Might be through setting RSS, that may restrict the activities of Taheke 8C – wrong from a te ao/tikanga Māori perspective. • This fear in born out of process, Councils will look for the easy route to go down with iwi/hapū and will not consider the true ahi kā/mana whenua like Taheke 8C. By the nature of only using iwi/hapū councils will not engage with Taheke 8C and other Māori groups • Have an interest in terms of land and geothermal interests. How would that work through spatial plans?

Any other comments or whakaaro	<p><i>Iwi Leaders Group do not represent Taheke8C</i></p> <ul style="list-style-type: none"> • ILG is not mandated by Māoridom. Unelected people who are advising the govt. on what other Māori groups can do with their land. What authority from a tikanga or te ao Māori perspective do ILG and PSGEs have? • Taheke 8C were offended when they heard ILG’s submission on the exposure draft, saying Māori landowner participation may not be equal. Māori landowners have a right to participate
Actions	<ul style="list-style-type: none"> • Taheke 8C would like to continue this conversation and will come back to officials once they have discussed the contents of the hui. • Officials are invited at that stage to ask any further questions of Taheke8C arising from this initial hui.



DRAFT

Te Tai Kaha & Crown officials Hui on Freshwater Rights and Interests and Resource Management Reform

NOTES

2.15 – 4 pm Thursday 16 December 2021

MS Teams

Invitees:

Te Tai Kaha: Matthew Smith, Richard Meade Anne Carter, Annette Sykes, Mahina-a-rangi Baker

Te Arawhiti: Benedict Taylor, John Grant

TPK: Tikitu Tutua-Nathan, Tata Lawton

MfE: Keita Kohere, William Collin, Kate Sedgley, Adriana Bird, Erin Rangi-Watt, Jacky Bartley, Puti Wilson, Hana, Tai, Jaine Cronin, Jenna Scott, Zac Painting

Apologies: Lucy Bolton,

Karakia Timatanga
Irrelevant
Technical Discussions
Mana Whakahono a Rohe (30mins)
<ul style="list-style-type: none"> NOTE: this item has been moved forward based on official availability

DRAFT

<ul style="list-style-type: none"> • Databox materials: https://databox.datacomcloud.co.nz/shares/file/LJ4b2u2VqL0/ <p>TTK</p> <ul style="list-style-type: none"> ○ Current approach defaults to not actively addressing the relationship if iwi and hapu are determined by themselves to not have capacity to progress the relation. Accepted rather than addressed. ○ By making a requirement to enter into some form of partnership could force councils to address capacity issues ○ If the relationship doesn't involve people at the CEO level on the council end it can limit the progress. How do you require a CEO to have a relationship with iwi? Can be limiting if no relationship. ○ Noted by Annette: Mana whenua terminology is problematic. Need to start proposing the correct wording ○ Need clarity on "who" we are talking about when using terms in discussion ○ Terminology to be addressed in the "who" work ○ What is the process to give effect to and use mana whakahaere? ○ Bias in favour of iwi, and lesser role given to hapu, ○ "Who" question needs to be addressed first
NPF Development (30 mins)
<ul style="list-style-type: none"> • NOTE: materials have not been circulated yet. item will be postponed to 2022
"Who" in the System (30mins)
<ul style="list-style-type: none"> • Policy criteria testing – developing and assessing options at different parts of the system • Databox slides: https://databox.datacomcloud.co.nz/shares/file/ZPdjan1Ft0Q/ <p>TTK comments</p> <ul style="list-style-type: none"> ○ Would be helpful to know what the other groups comments are as we attempt to try converging ideas. ○ Reality of kaitakitanga needs more specificity on what we are addressing. ○ Either the rights interests and responsibilities that are impacted are held at a hapu and ahi ka level and needs to be addresses at that level. ○ Where iwi entities carry legitimate representation of hapu, there needs to be a tikanga process to uphold the mana of the hapu addressed.? ○ Understanding the right people: check that we are asking the right questions. What is the process? ○ Recognise that hapu representation is a dynamic thing and the system needs to provide for that flexibility. Legislation shouldn't be seeking to lock in the "who" but providing a process to enable those decision to be made ○ Getting this right gives more certainty and efficiency. ○ More equitable access to the resources required to engage. (linked to the funding to participate) ○ "Process to enable rather than seeking to determine the "who" ○ ILG, TTK and others need to be able to remove the Crown as the mediator and discuss these issues. <ul style="list-style-type: none"> ○ MfE: How do we make this happen? ○ Practitioners' hui – element of independence ○ Groups can opt in and out ○ Outcomes – word missing, concept of legitimacy that the outcomes of the who are legitimate (in terms of te ao māori and tikanga) <p>Next steps</p> <ul style="list-style-type: none"> ○ Digest and consider criteria. How it might be improved ○ Scenario testing / white boarding session next year

DRAFT

- Practitioners wānanga without the Crown

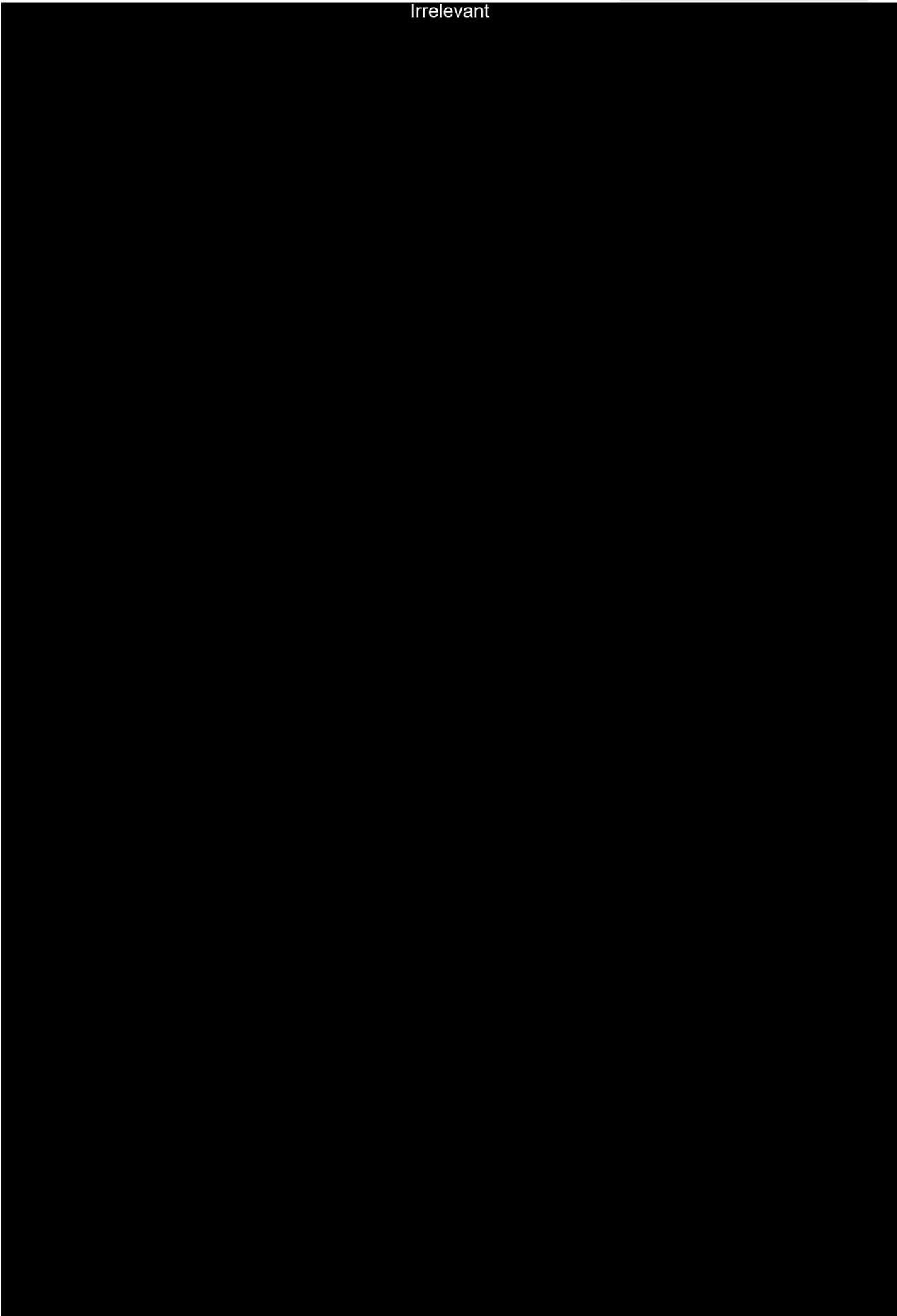
Next steps and actions (5 mins)

- Outstanding Actions

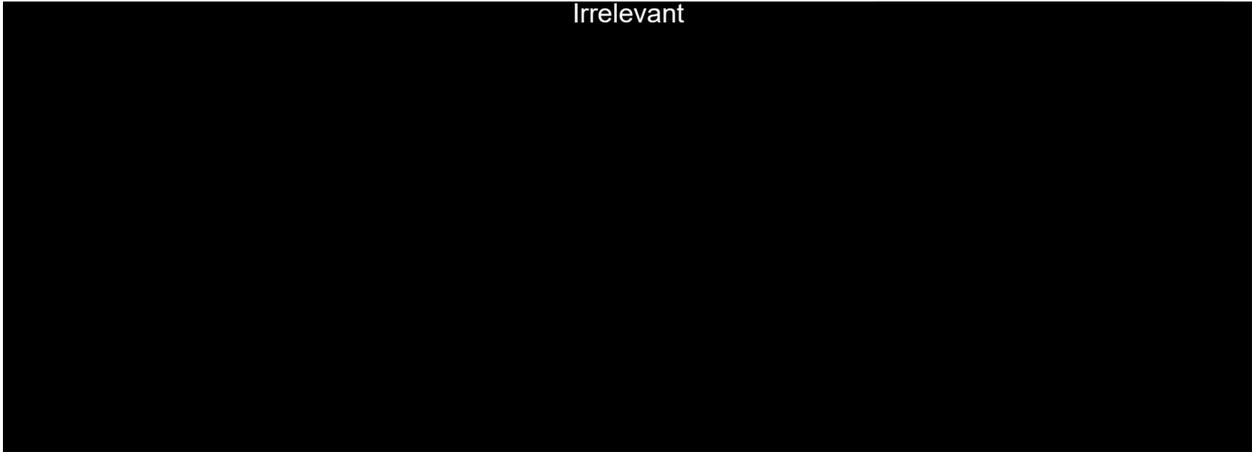
Karakia Whakamutunga

Irrelevant

Irrelevant



Irrelevant



ILG Workshop – 16 December 2021**Who in the system**

Plan to have 3 x hr sessions – scenario testing in three locations.

Information on different groups / interests within each rohe.

Facilitator: Taimania Clark

MfE:

- Hana Ihaka-McLeod
- Taimania Clark
- William Collin
- Dominic Groom
- Zac Painting
- Tikitū Nathan TPK
- Janie Cronin
- Herewini
- Carl Chenery Tumatakokiri
- Kate Mitchell (Legal)
- Jenna Scott
- Jacky Bartley
- John Grant (Te Arawhiti)

ILG

- Hana Maihi (NOW)
- Andrew Brown (NWO – Iwi Technical Group)
- Riki Ellison
- Tina Porou

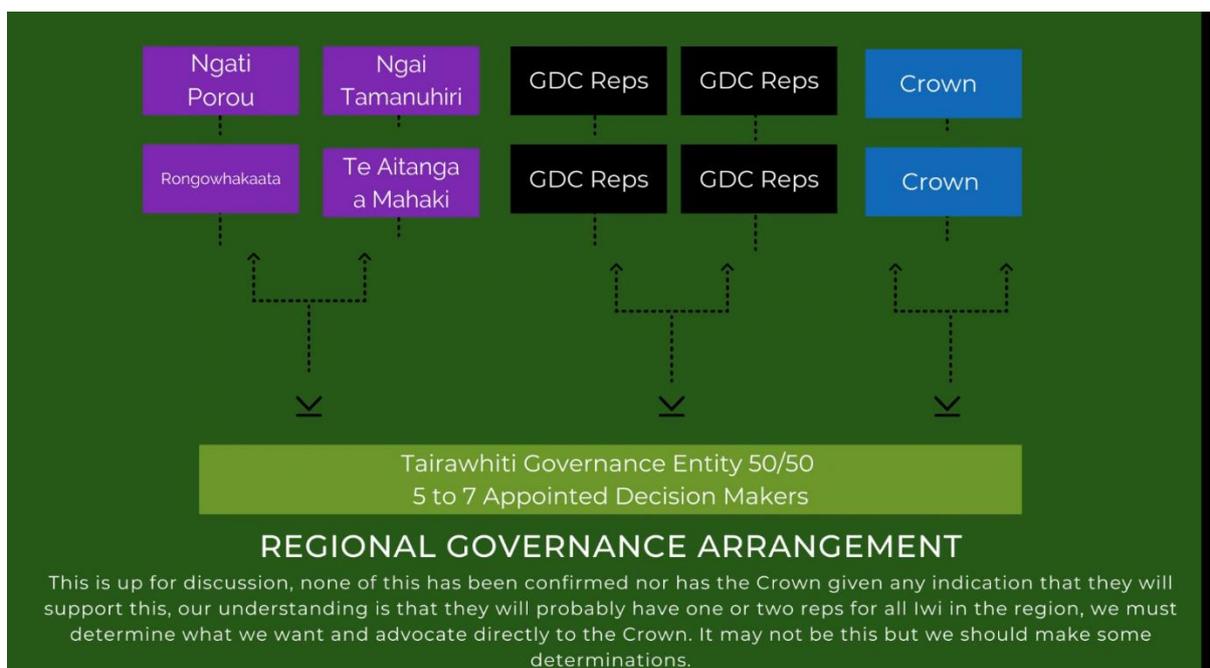
CASE STUDY #1 – Te Tairāwhiti

Slide 4 provides a breakdown of different interests – iwi authorities, PSGEs and runanga, Māori economic authorities.

Slide 5 provides summary of existing and proposed arrangements –

Slide 6 – Water entity C (Three Waters)

Slide 7 – Functions in the system – Who from Te Ao Māori participates.



Slides presented by FILG technician

Challenge is that the JMA already offers 50:50 decision making over the Waiapu Catchment from Te Tairawhiti.

Challenge is why do we have two?

Want Joint Decision making between GDC and individual iwi. GDC quite unique may not be a good example. Good model as we already work in the way that SPA / NBA is envisaged to work.

We could work really well on these decision making matters already.

Te Arawhiti

- In part of the Gisborne region to the north Te Whanau a Apanui – in the overlap areas across boundaries there are cross boundary issues to address becomes quite tricky for those areas where they don't align with rohe boundaries.

MfE

- Where there are existing arrangements – interested in looking at how that could feed into the treaty partnership entities feed in to provide for some of the more bespoke partnership arrangements within that rohe.

FILG

- The main issue is flexibility – we don't want to be forced into a model that is lesser than what they have now.
- In Tairāwhiti they will just stop participating if don't achieve bottom line.
- Need flexibility to allow for different arrangements to occur.
- Shouldn't be an issue about moving the existing JMA across but other groups don't have this and shouldn't be disadvantaged just because they don't have a JMA or MWAR.
- Want to have the opportunity to achieve 50:50 through having good relationships with councils.

MfE

- There will be a regional process that establishes those relationships – there is a risk of setting up something that is not idea.
- In Te Tairāwhiti do you think you could achieve what you need in the first generation plans.
-
-

FILG

- We are the majority within Te Tairāwhiti. Why should we defer to the minority.
- There is a culture already established that iwi are te tiriti partners.

MfE

- From a practical sense what would be needed to implement

FILG

- GDC have a very small planning team and unlikely to have the capacity / capability to set this up on top of their existing workload.
- On top of who writes the plans in Tairāwhiti – would expect that there would be a team of iwi practitioners who help to write the plans.
- Infrastructure would be required across all iwi / hapū to participate in plan development.
- Secretariat would need a very strong Māori planning team. Eg. Taupo DC – Māori Planning Manager is co-appointed by Tuwharetoa and council.
- None of this is different from what you do currently.
- In terms of representation – would just work this out amongst themselves, confirm TOR, accountability and expectations of how iwi / hapū involved.

Te Arawhiti

- There is a question – who should be consulted with that has an interest greater than the public at large.
- Trusts / Incorporations – is this a separate issue that needs to be addressed as part of the process. Providing participation in structure and process that is different to the public at large?

MfE

- Interested in how this would work within Tairāwhiti – what would be useful within the NBA to enable their own process?

FILG

- Resourcing – some sort of infrastructural support to enable iwi to engage with their iwi themselves – this is different from councils doing this. What happens if councils do this – council staff if they have no Māori planners interpret this for themselves. And do not always translate the pure views across.
- Need to have the equal administrative support to iwi reps to understand their communities. Cant just have political appointments without accountability back to the groups they represent.
- Te Arawa have an entity that is starting out as a Taiao for their collective entities. Will need some coordination for our iwi across the taiao space to enable them to form their positions to give to the representatives.
- 90% of land ownership is in Māori ownership. Want to make sure that hapū do not lose their voices. Similar issue with Entity C.
- Role for iwi secretariat to enable iwi participation and accountability back to the board.
- Each iwi and hapū / need to work this out for themselves. Some iwi don't have hapū. Legislation cant really help there. It can encourage resourcing to enable iwi to participate. If you set up representation on JCS you need to set up the secretariat function to support that.
- Iwi role in representation at a governance level. Role of hapū in codrafting / implementation / co-management.

MfE

- Situation where you have more groups than representation – you will be required to be accountable back to them.

FILG

- Relevant to Te Waiaki (sp? 44:50) where there will be a number of groups.
- Need a tikanga based application of mana whakahaere across these roles and responsibilities.
- We will self regulate and defer to each other.
- Where there are boundary issues it will get messy.
- Ngāti Oneone / Kaiti – cross boundary issues will be complex – but if we continue to align with Te Oranga o Te Taiao – functionally that is what we are trying to achieve. With our other hats as landowners there may be other commercial requirements / obligations in that space. Important to recognise their interest as greater than the community but different to role of iwi / hapū. Having industry making decisions on limit setting has the potential to create conflict.

- Limit setting example – Tina – JMA used for the first time for consent decision making. Multiple forestry interests – we want out consent to be approved by the council – there are gravel extraction applications (Fulton hogan) – hapū opposed it as no evidence to show it was appropriate.
- From forestry perspective we want the application to be approved to improve roads to get the trees out. Currently there are no limits within GDC. JMA set new limits – hapū in CMP said you cannot extract gravel faster than its recharge rate – unless its good for the river.
- Someone wearing a commercial hat from the iwi may disagree and have a different view from the hapū who have a Taiao view. As landowners with obligations to our shareholders to make money – that is why I challenge having someone with a commercial interest making decisions on limits. That is why it needs to sit with hapū. Noting that they have a balanced view.

Te Arawhiti

- Has observed this in a number of other scenarios.
- 1970's /80s judges made appointments to Trustees. In the last decade the driver has moved to who is most capable. In some places there is a dynamic on who leads in the commercial vs environmental space.
- Also may end up with landowners who may not live in the rohe to put pressure on the Trustees for not making economic decisions.

TPK

- As a landowner – we have observed these dynamics. To find the balance we go and talk to the parties to resolve this.
- Points you make with governance over land ownership it is different.

FILG

- We do wear multiple hats, but when you are speaking on behalf of the Hapū they prioritise the obligation for Te Taiao.
- PGF has exacerbated this – Māori land owners finally having capital to develop their lands, and need to fast track consents seeking to avoid need for CIAs – this caused real contention within the consents regime.
- Every rohe where there is Māori land there is a real tension – and there is a place but cannot be a role in setting environmental limits.
- These are issues created by the crown and councils. Asking us to fix issues created by the crown that are now entrenched. Crown needs to understand that there is no silver bullet to try and resolve relationship issues that have been created by the crown.

FILG

- Its not about inter iwi dynamics – its about MFE and The crown entertaining the idea of changing the status quo to expand the mandate to other parties.
- These groups that don't have a place to stand trying to use this place to have a say.
- As soon as you open the door to land owners – just looking at the numbers its going to be challenging for councils to know how to manage this and cross boundary issues.
- If there are cross boundary issues from a iwi / hapū perspective we will put te Taiao first and work it out amongst ourselves.
- We are overcomplicating the situation when this is not practical from any perspective.

- You cant be a landowner without being a member of an iwi / hapū – if you want a voice go via your iwi / hapū to provide your perspectives.
- They should have a say on what rules affect their land.
- If you want to talk about Allocation talk to Treaty Partners, not other groups like TTK.
- Seem to be determined to confuse things and adding complexity by introducing new parties to the process.
- Will make it really challenging for councils to implement as they wont know who is mandated.

FILG

- Keen to provide evidence – this is factual. What do you need from us to be able to effectively convince your Ministers that the problems they are trying to resolve do not exist.

MfE

- This discussion and real life examples
- Real numbers for each region is really helpful as well.

MfE

- When there is many – digging into some of the regions where it will look different. Practical examples of how it could be done.

Plan Process / Consenting – Role of different groups in that process.

FILG

- Consents – JMA – all consents in the Waiapu catchment go to JMCommittee. For consents this is clearly an area where you would not involve land owners.
- Jointly make decisions on the rules
- Where there are consents – assume only focussing on ones outside of TWOTW or TOTT. These ones must have 50% representation. Or a pool of independent commissioners where they have completed the Making Good Decisions training and have good understanding of Te Ao Maori and have been nominated by iwi.
- Don't want anything less than what is in MWaR and existing agreements such as Waiapu Catchment JMA. Don't want the legislation to undermine
- In Tairāwhiti – the pool of nominated commissioners would be nominated by the 4 iwi.
- Generally not enough Māori commissioners so likely to be the same ones nominated by groups.

FILG

- Outcomes – Landowners want consents to be granted and their share of allocation to be approved. Māori landowners competing for limited resource which creates conflicts.
- There should be a minimum allocation per hectare to Māori land owners to help resolve this.

Te Arawhiti

- Third issue – largely discussing participation in decision making – but also important to participate in “consenting processes”. In particular where a consent might affect my land

where it is not in a trust – the system isn't designed for the realities of the nature of Maro land ownership or tenure. Just because I had that type of tenure historically imposed by the crown – it prevents me being able to participate.

- Need to consider this for Māori land owners as well.

FILG

- If I own a holiday home in Turangi and live in Auckland
- If I live in Wellington and an owner of the Lake Taupo forestry trust I only get one vote but the forestry trust represent thousands of land owners – inequitable – broader systemic issue that disadvantages Māori land owners.
- Can use the Legislation to provide opportunity for specific engagement with Māori Land owners as a separate requirement.
- Councils ignore these situations – would like to see recognition of the Māori economy – particularly in how RSS are developed. These plans only go to iwi.
- Where we want to be as land owners will be relevant in Te Wairiki explanation.

FILG

- Different issue – talking about representation.

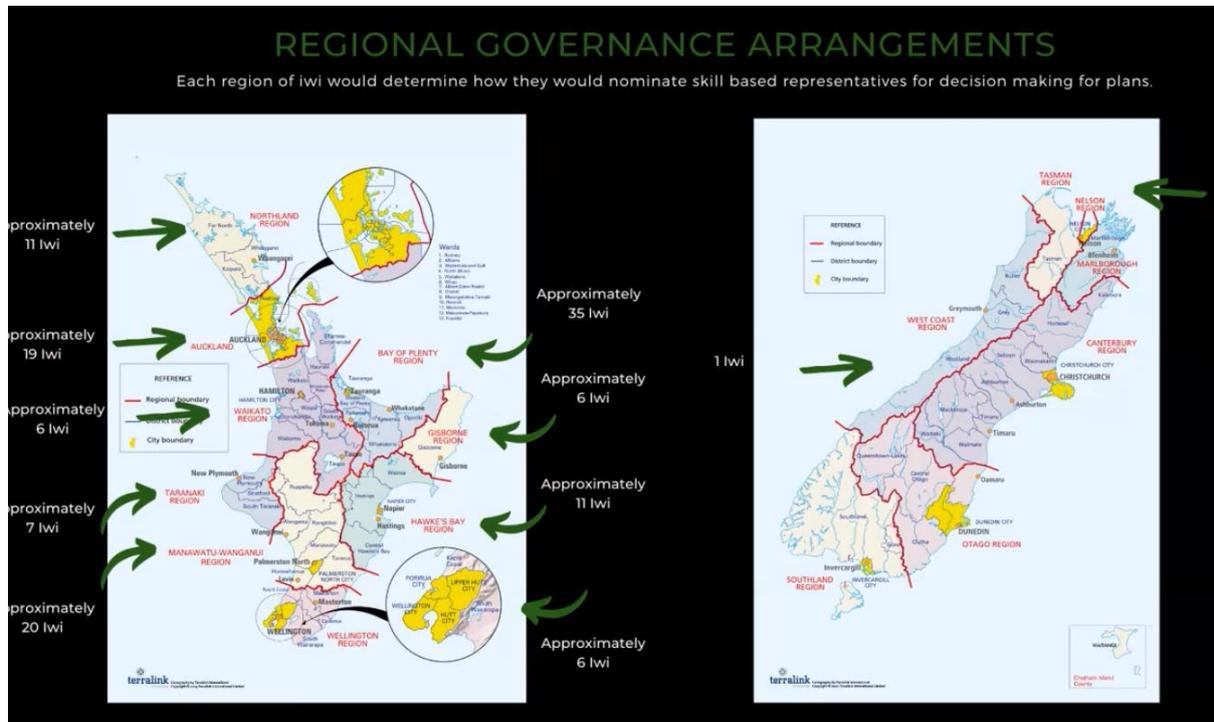
CASE STUDY 2 – WAIARIKI (Māori Land Court Boundary)

Te Arawhiti

- There will be some customary marine title holders as well

FILG

(refer to the Waikato and BOP Regions in map below) approx. 35 iwi in BOP and 6 in Waikato



For WRC the arrangements are highly connected and alignment with Waikato River settlement.

Across Waikato there is high alignment – most comes from whakapapa and tikanga connections. Not likely to struggle to come up with own arrangements.

Te Arawhiti

- Hauraki Piako arrangements could complicate things?

FILG

- Māori land has different set of expectations, obligations and legal requirements to non-Māori land. Needs to be specific considerations under...
- Has to be elevated for equity
- A lot of land owned by Māori that is not “Māori land”

Te Arawhiti

- Need to recognise the difference between Westernised land owner (individualised) vs Māori land values

FILG

- Example of considerations: sections dedicated across policy interventions (mainstream policy serves general land ownership)
- Specific focussed resourced engagement
- Challenge is how will the Secretariate do that? How do we enable collectives of Māori land owners to participate on behalf of other land blocks?

Can give clarity around how consent applications are considered complete. Guidelines that can help. (2.30mins)

MfE

Relationships with the land

Land owners relationship to the land (can we be broad at the front end of the act and more distinct later on?)

FILG

Stick with iwi and hapu but create clear opportunities across the whole system for land owners

Timing is insufficient to really understand the scope of the views of Māori land owners in this space. Direct conversation with land owners would give a more balanced view.

MfE

Got good info to build options with advice.

MWaR if we take a more enabling approach to including hapu in that, what will happen in a place like Waiariki?

FILG

- Crown included MWaR not us. Felt it would break the system. Personally transformative but unsure how councils would cope (takes time and money) Don't know if adding hapu would help. Not saying no but think obligations on councils will create really low mwar
- Don't want to spend money on agreements that do nothing
-

Case Study 3

Urban Māori

FILG

- Representation in joint committees and across the system
- Clear position: Urban maori have a turangawaewae.
- Maori should have no greater weight on their views if they choose to live on someone else's rohe.
- Especially in relation to specific rivers, streams, whenua.

FILG

- Talking about iwi and hapu whose land has been urbanised
- Crown structures can often pit iwi and hapu against each other. No distinction between traditional rohe before Auckland was urbanised
- How a mutually agreeable outcome for representation might be facilitated. Noted that the context in Auckland is unique and may require a different solution / a bespoke approach.

MfE

- Do you think that the R&I issues need to be clearly resolved before a solution can be reached or could there be a different relationship pathway?

FILG

If the focus stays on TooTT then common ground and interests appear and there may be less tension. Rather than focusing on governance arrangements

MfE

Who would appropriately facilitate that kind of conversation? (Crown would be inflammatory.)

MfE

Few ideas: ie. MOG have discussed composition will be worked through region by region.

FILG

Crown facilitation should be an opt in option for regions but not automatic.

If we can't sort it out then there is a process but not first point of call.

MfE mentioned disputes resolution process

FILG: do we have an opportunity to design something else?

Te Arawhiti:

When you intro 3rd parties it puts it in an adversarial space (language used etc) automatically

ie: "shared" vs "overlapping" issue – working together to find solutions vs convincing the third party who whose interest trumps who

Current processes of dispute resolution automatically channel people into an adversarial relationship

FILG

Discussion needs to step away from what parties want out of their interests to who can uphold the mauri more.

Crown process is about boundaries and takes away the overall purpose (makes it westernised and commercial instead of protection)

It's about being kaitiaki.

TOott is key in how we frame how these roles are. Purpose of these roles are different to treaty settlements. Joint committee is suppose to uphold TOott that improve the well bring of our taiao. How do we create a process when iwi can't agree, that is tikanga based?

supplies clear support not in crown agents

Crown prescription of mediation and dispute resolution prevents tikanga approach to resolution. Needs to be the following:

1. Iwi and hapu will work it out
2. If they cant, then will figure out a process
3. If cant beyond that will contact treaty partners

Moving at the speed of trust, in the absence of which, there needs to be resource and support to enable iwi and hapu to rebuild that trust.

FILG

Convinint to go with iwi. Current runanga structures are dysfunctional. We need to address this and help support iei and hapu to land on better structures and processes. Critical discussions and information sharing will play a part in rebuilding trust and relationships.

FILG

TooTT holds the key. Brings it away from historical distrust, brings something new that could help catalyse rebuilding of trust.

Round up table (Who from te ao Māori participates)

Enhance MWaR: iwi yes, hapu would be great but without adverse outcomes. (tina should be cofounded by crown and rates

RSS governance: iwi authorities and have own accountability mechanisms back to their hapu. Tina; accountability process must be required for representatives and those appointed

RSS Secretariate: iwi and hapu practioners (Tina experienced Maori taiao practitioners are a core team) Noted: Maori practitioners focus. Capacity and capavilty building

Spoeciually secretariate regionally for all of the iwi? Transparency and accountability of Joint committee rep of the iwi. Enabling voice, option for how that could work?

Plan dev process: Pathway for iwi and hapu and need for specialty pathway fpr maori land owners.

MfE: would need to discuss what difference there would be between NBA and RSS process\

FILG:

Have to improve on the current system. (not being engaged with early, no co design)

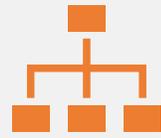
ILG Wānanga – who participates
from Te Ao Māori in regional and
local level RM functions

16 December 2021

Agenda

- **10:30** - Introductions/whakawhanaungatanga
- **10:40** - Scenario 1
- **11:40** - Scenario 2
- **12:40** - Break
- **12:50** - Scenario 3
- **1:50** - Wrap up/discuss next steps

Case study 1 – Te Tairāwhiti



4 Iwi (+ 1 collective with interests at the border of the region) with formal structures (Rūnanga, trusts etc..)



3 Post-settlement Governance Entities (PSGEs)



1404 formal management structures over Māori land

Iwi authorities (PSGEs and Rūnanga etc..)

Ngāti Porou (Te Rūnanganui o Ngāti Porou)	Settled	North-Gisborne (Pōtikirua ki Te toka a Taiau)	50 hapū, 48 marae	Settlement and other arrangements Waiapu JMA Nga rohe moana o nga hapū o Ngati Porou
Te Aitanga a Māhaki (Te Aitanga a Māhaki Trust)	No	Gisborne + Gisborne South	9 hapū, 14 marae	Local leadership board (note settlement aspect to this arrangement)
Rongowhakaata (Rongowhakaata Settlement Trust)	Settled	Manutuke + Gisborne	5 hapū, 5 marae	Local leadership board
Ngāi Tāmanuhiri (Tāmanuhiri Tutu Poroporo Trust)	Settled	Muriwai	5 hapū, 3 marae	Local leadership board
Tatau Tatau o te Wairoa Trust	Settled	Interests near the southern boundary of the region (as per TKM)	Collective of iwi and hapū – more investigation needed on specific hapū that may have interests in the region	

Collectives: Toitu Tairawhiti (4 iwi), Te Rūnanga o Tūrangānui a Kiwa (3 Tūranga iwi)

Māori Economic Authorities

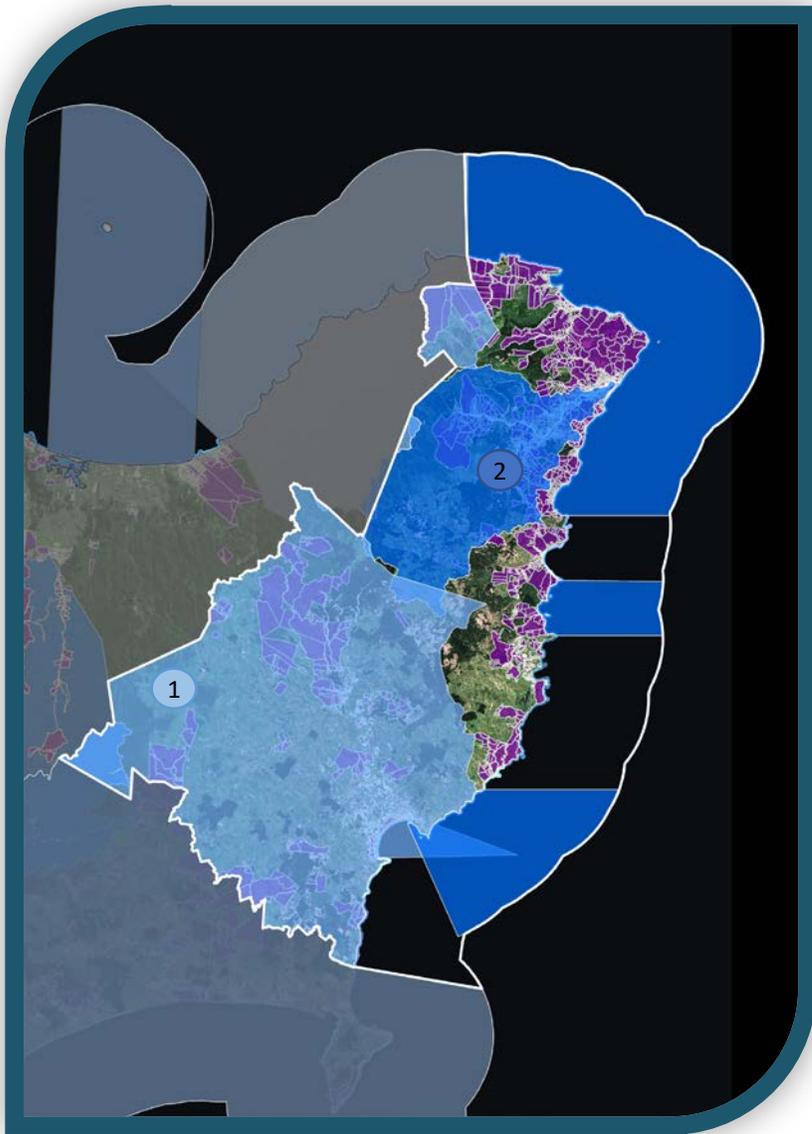
Structure	Total no.
Ahu Whenua Trusts	1035
Whenua Tōpū Trusts	5
Pūtea Trusts	0
Māori Incorporations	63
Māori Reservations	275
Other trusts	26

1404 formal management structures over Māori land (Ahu Whenua Trusts, Whenua Tōpū Trusts, Pūtea Trusts, Māori Incorporations and Māori Reservations).

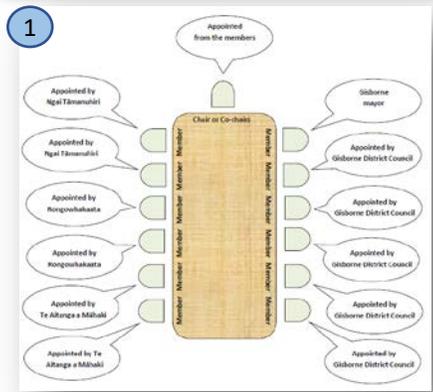
Some of the larger entities: Whangarā Farms, Mangatū Blocks Incorporated, Proprietors of Mahurangi, Proprietors of Arai Matawai, Proprietors of Anaura

Other groups that may express an interest: FOMA, National Urban Māori Authority (NUMA)

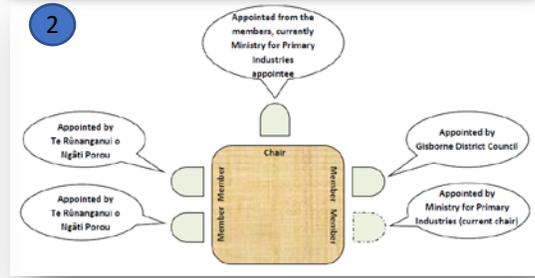
Regional view of existing and proposed SPA and NBA arrangements – Tairāwhiti / Gisborne



Ngā Tāmanuhiri Local Leadership Body



Waiapu Catchment Joint Governance Group



JMA

Māori land trust & Corporations

Regional Spatial committee

TBC

Joint NBA plan committee

TBC

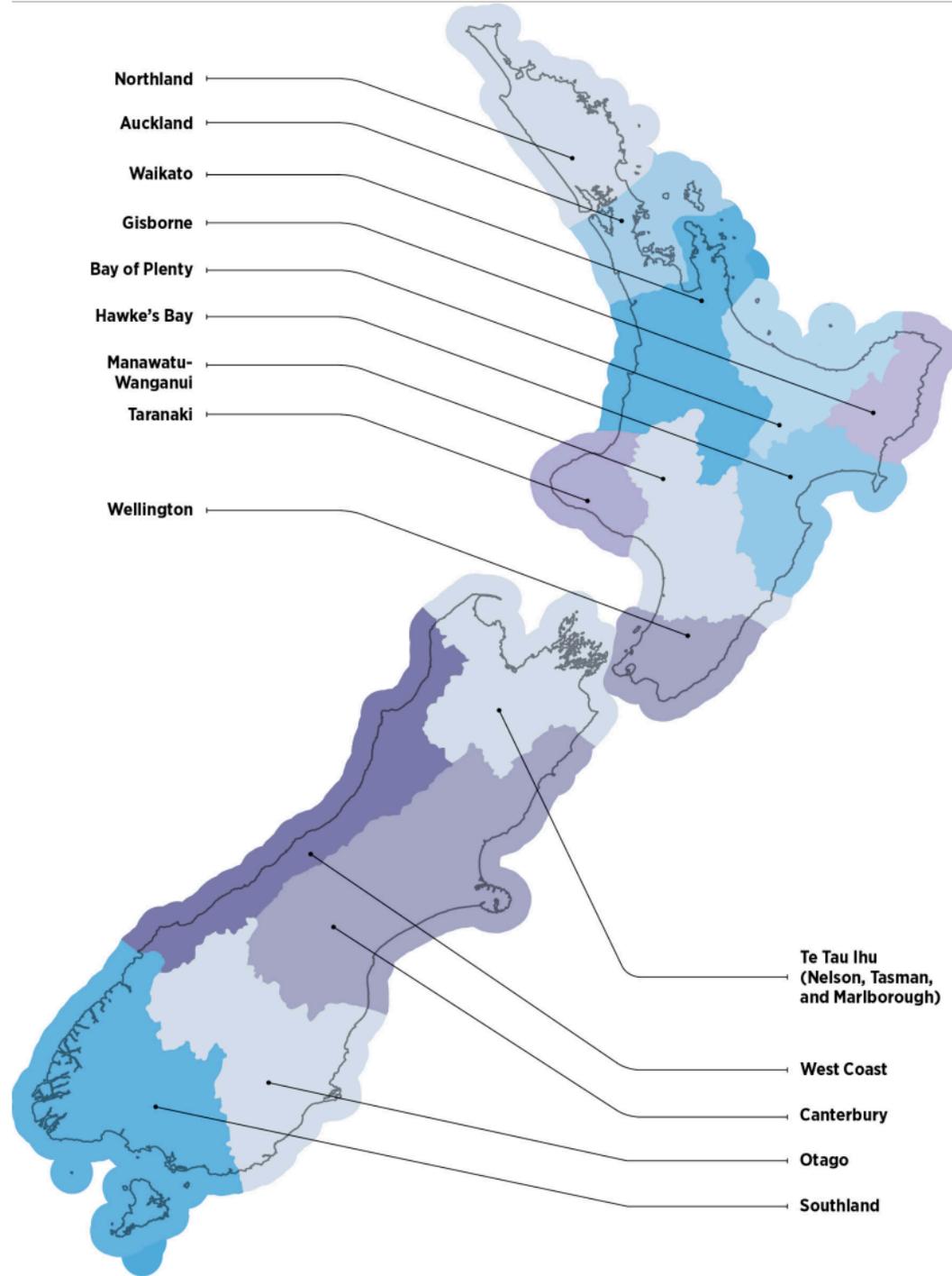
Council Information

Regional Councils & Territorial Authorities

- **Gisborne District Council**
(All 5 iwi have interests in council area)

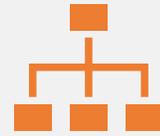
Water service entity: C

Map of regions for combined planning



	Functions	Who from te ao Māori participates	CB-244
Enhanced Mana Whakahono ā Rohe (IPP)	<p>An enhanced Mana Whakahono ā Rohe that is integrated with transfer of power and joint management agreement provisions, with barriers removed.</p> <p>Can help to document how iwi / Māori participate in RSS and NBA plan development, consenting and CME. Opportunities to provide a more strategic role for Māori in the system and to strengthen the role of Māori in consenting and CME services.</p>		
Regional Spatial Strategies (RSS)	<p>Regional spatial strategies must:</p> <ol style="list-style-type: none"> 1. identify a long term 30+ year vision for their region 2. translate the NPF into a regional context 3. support integration of functions under specified acts 4. coordinate infrastructure investment 5. provide strategic direction to NBA plans 6. uphold relevant Treaty settlements. 		
RSS Secretariat	Administrative and technical support for strategy drafting		
Natural and Built Environments Plans (NBA)	<p>NBA plans must further the purpose of the Act by providing a framework for the integrated management of the environment in the region that the plan relates to. Plans must:</p> <ol style="list-style-type: none"> 1. State the environmental limits that apply to the region 2. Give effect to the NPF 3. Promote environmental outcomes 4. Identify and provide for matters of significance to the region and each district within 5. Help to resolve conflicts 6. Anything else necessary for the plan to achieve its purpose 		
NBA Secretariat	<p>Draft discussion document, draft plan, undertake policy analysis, co-ordination of public engagement, commission expert advice, administration support to joint committee.</p> <p>IHP supported by own secretariat to provide independent technical and professional advice on plan.</p>		
Consenting	<p>Enabling permissions regime that provides for greater proportion of ‘permitted activities’</p> <p>Clear process for the approval or not of activities not enabled by a plan, in line with focus on limits and outcomes and direction from NPF</p> <p>Permissions system will need to give effect to the principles of Te Tiriti and uphold Treaty settlements.</p>		
Compliance, Monitoring & Enforcement	<p>Regional consolidation of CME services, aligned with joint plan boundaries, with strengthened role for Māori</p> <p>Polluter pays principle – CME costs charged to resource users</p>		MFE.002.2238

Case study 2 – Aotea



18 Iwi with formal structures
(Rūnanga & trusts etc...)



16 Post-settlement Governance
Entities (PSGEs)



1271 formal management
structures over Māori land

Iwi authorities (PSGEs and Rūnanga etc..)

Ngāti Tama (Te Rūnanga o Ngāti Tama)	Settled	North Taranaki
Ngāti Mutunga (Te Rūnanga o Ngāti Mutunga)	Settled	North Taranaki
Te Atiawa (Te Kotahitanga o Te Atiawa)	Settled	Central/North Taranaki
Taranaki iwi (Te Kāhui o Taranaki Trust)	Settled	Central/South Taranaki
Ngāti Maru (Te Rūnanga o Ngāti Maru & Te Kāhui o Maru Trust)	No	Central/ East Taranaki
Ngāruahine (Te Korowai o Ngāruahine Trust)	Settled	South Taranaki
Ngāti Ruanui (Te Rūnanga o Ngāti Ruanui Trust)	Settled	Central/South Taranaki
Ngā Rauru Kītahi (Te Kaahui o Rauru)	Settled	South Taranaki/North Whanganui
Whanganui Iwi/Te Ātihaunui a Pāpārangi (Ngā Tāngata Tiaki o Whanganui Trust)	Settled	Whanganui and central plateau
Ngāti Hauā (Ngāti Hauā Iwi Trust)	No	Upper Whanganui
Te Korowai o Wainuiārua (Uenuku Charitable Trust)	No	Central Whanganui
Whanganui Land Settlement Negotiation Trust	No	Lower Whanganui/ Manawatū
Ngāti Rangī (Te Tōtarahoe o Paerangi Trust)	No	Taihape/Central Plateau
Ngāti Tamakōpiri (Te Rūnanga o Ngāti Tamakōpiri & Mōkai Pātea Waitangi Claims Trust)	No	Waiouru/Taihape
Ngāti Whitikaupeka (Te Rūnanga o Ngāti Whitikaupeka & Mōkai Pātea Waitangi Claims Trust)	No	Moawhango/Central Plateau
Ngāti Ohuake (Te Rūnanga o Ngāi Te Ohuake)	No	Rangitikei
Ngāti Hauiti (Te Rūnanga o Ngāti Hauiti)	No	Rangitikei
Ngāti Apa (Ngā Wairiki-Ngāti Apa Charitable Trust)	Settled	Lower Whanganui/Manawatū

Māori Economic Authorities

CB-246

1271 total formal management structures (Ahu Whenua Trusts, Whenua Tōpū Trusts, Pūtea Trusts, Māori Incorporations and Māori Reservations).

Structure	Total no.
Ahu Whenua Trusts	840
Whenua Tōpū Trusts	11
Pūtea Trusts	0
Māori Incorporations	23
Māori Reservations	375
Other trusts	262

Some of the larger entities: Parininihi ki Waitōtara (PKW) & Ātihaunui Farms

Other groups that may hold an interest: FOMA, National Urban Māori Authority (NUMA)

MFE.002.2240

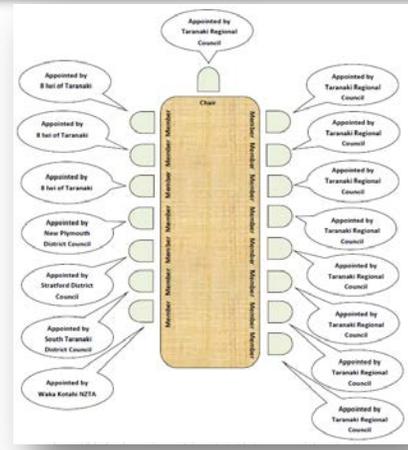
Settlement arrangements over specific natural resources - Aotea

- Taranaki Regional Council representation – iwi representatives
- Joint advisory committee for Whitecliffs conservation area and other specified sites (Taranaki)
- JMA - Ngāti Maru (Waitara river)
- Te Pā Auroa o te Awa Tupua, Te Pou Tupua, Te Kōpuka nā Te Awa Tupua
- Te Waiū o te Ika Framework, Ngā Wai Tōtā o Te Waiū (Whangaehu river)
- Manawatū River Advisory Group
- Te Roopū Ahi Kaa (Rangitīkei District Council)

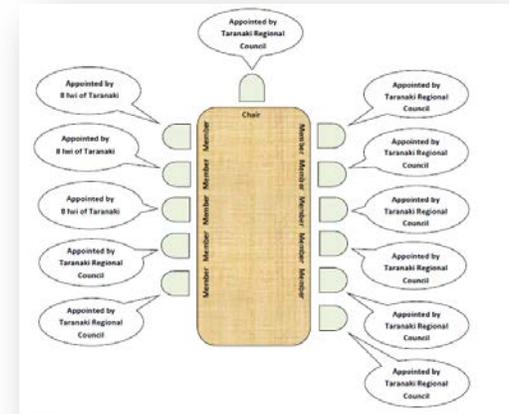
Regional view of existing and proposed SPA and NBA arrangements – Taranaki



Taranaki Standing Committees (policy and planning)



Taranaki Standing Committees (consents and regulatory)

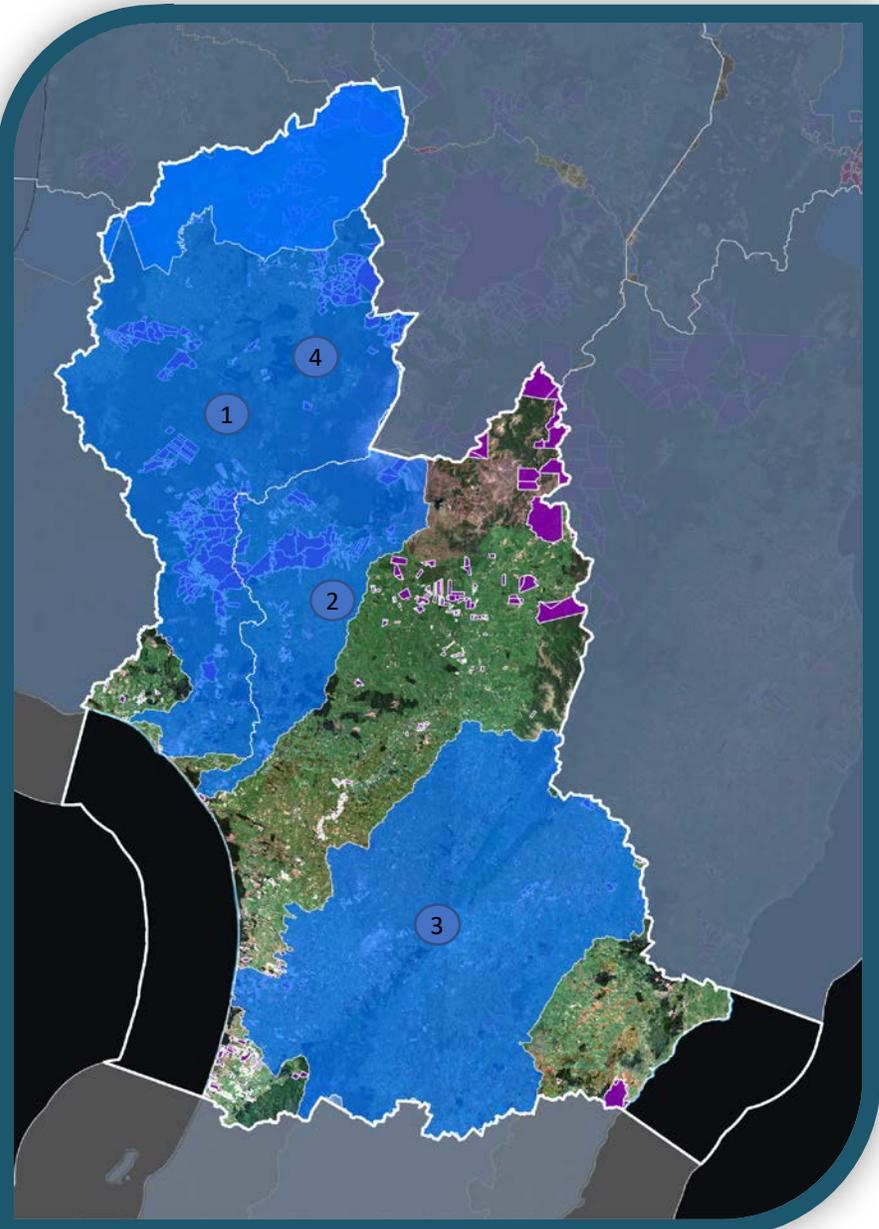


JMA Waitara River - Ngāti Maru (primarily monitoring)

Māori land trust & Corporations

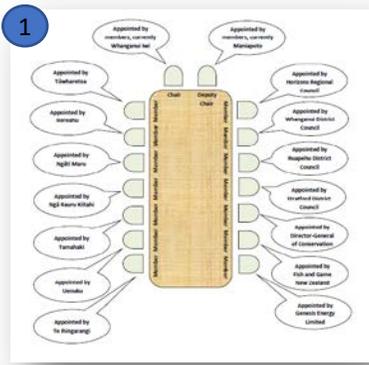
Regional Spatial committee
TBC

Joint NBA plan committee
TBC



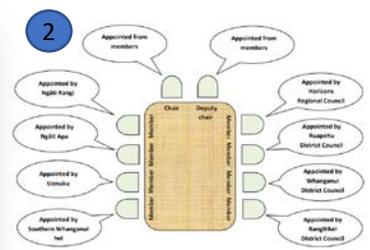
Te Pā Auroa o te Awa Tupua

Te Kōpuka nā Te Awa Tupua



Te Waiū o te Ika Framework

Ngā Wai Tōtā o Te Waiū

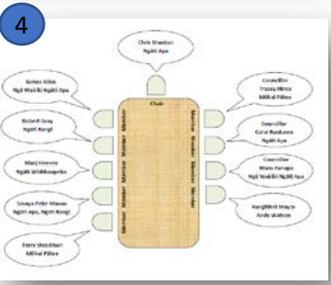


Manawatū River Advisory Board

3



Te Roopu Ahi Kaa (Rangitūkei District Council)



Māori land trust & Corporations



Council Information – Aotea iwi

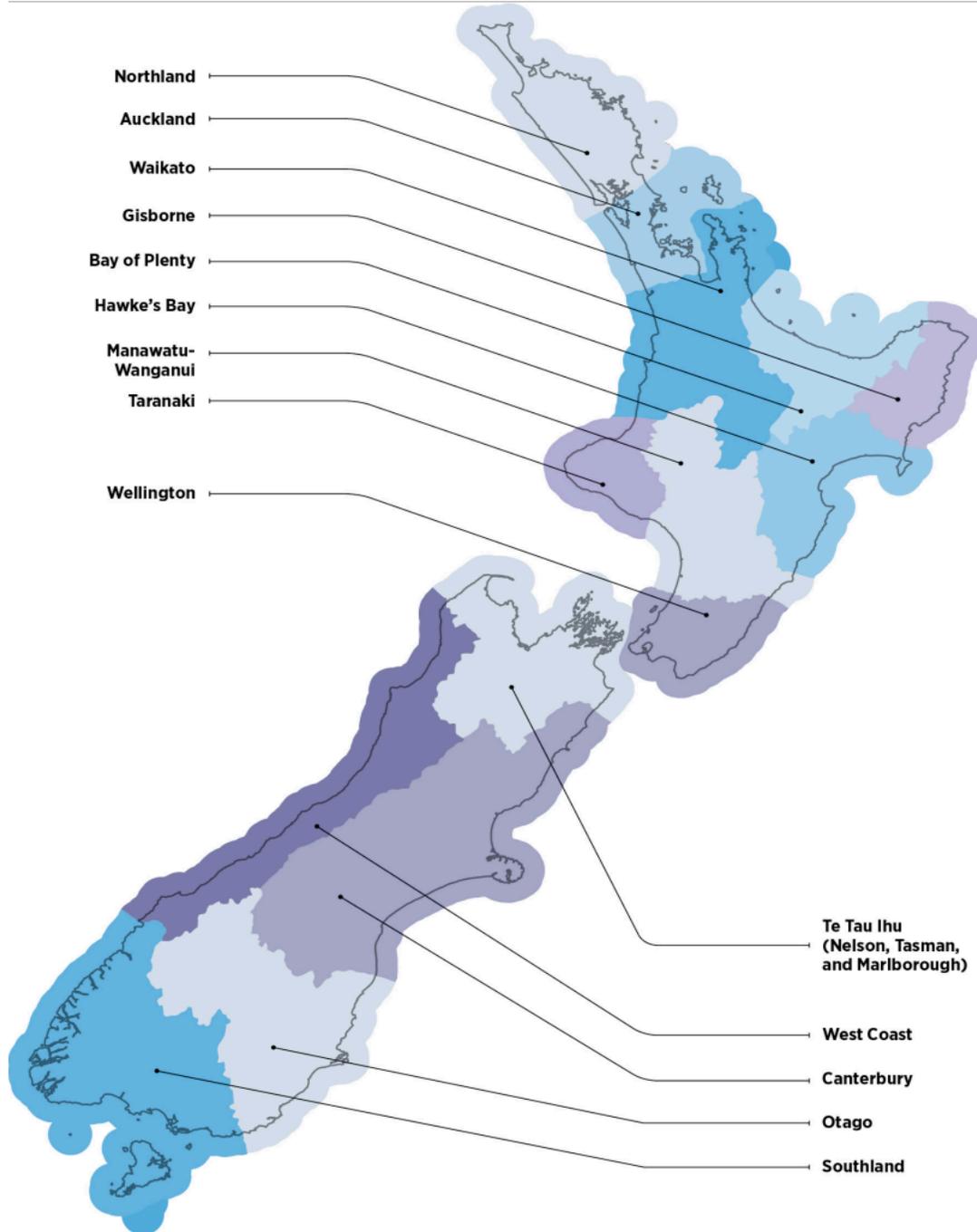
Regional Councils

- Taranaki
- Horizons

Territorial Authorities

- New Plymouth District Council
- Stratford District Council
- South Taranaki District Council
- Ruapehu District Council
- Whanganui District Council
- Rangitīkei District Council
- Taupō District Council
- Hastings District Council
- Manawatū District Council
- Horowhenua District Council

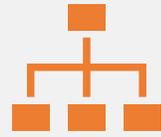
Water service entities: B & C



Map of regions for combined planning

	Functions	Who from te ao Māori participates	CB-252
Enhanced Mana Whakahono ā Rohe (IPP)	<p>An enhanced Mana Whakahono ā Rohe that is integrated with transfer of power and joint management agreement provisions, with barriers removed.</p> <p>Can help to document how iwi / Māori participate in RSS and NBA plan development, consenting and CME. Opportunities to provide a more strategic role for Māori in the system and to strengthen the role of Māori in consenting and CME services.</p>		
Regional Spatial Strategies (RSS)	<p>Regional spatial strategies must:</p> <ol style="list-style-type: none"> 1. identify a long term 30+ year vision for their region 2. translate the NPF into a regional context 3. support integration of functions under specified acts 4. coordinate infrastructure investment 5. provide strategic direction to NBA plans 6. uphold relevant Treaty settlements. 		
RSS Secretariat	Administrative and technical support for strategy drafting		
Natural and Built Environments Plans (NBA)	<p>NBA plans must further the purpose of the Act by providing a framework for the integrated management of the environment in the region that the plan relates to. Plans must:</p> <ol style="list-style-type: none"> 1. State the environmental limits that apply to the region 2. Give effect to the NPF 3. Promote environmental outcomes 4. Identify and provide for matters of significance to the region and each district within 5. Help to resolve conflicts 6. Anything else necessary for the plan to achieve its purpose 		
NBA Secretariat	<p>Draft discussion document, draft plan, undertake policy analysis, co-ordination of public engagement, commission expert advice, administration support to joint committee.</p> <p>IHP supported by own secretariat to provide independent technical and professional advice on plan.</p>		
Consenting	<p>Enabling permissions regime that provides for greater proportion of ‘permitted activities’</p> <p>Clear process for the approval or not of activities not enabled by a plan, in line with focus on limits and outcomes and direction from NPF</p> <p>Permissions system will need to give effect to the principles of Te Tiriti and uphold Treaty settlements.</p>		
Compliance, Monitoring & Enforcement	<p>Regional consolidation of CME services, aligned with joint plan boundaries, with strengthened role for Māori</p> <p>Polluter pays principle – CME costs charged to resource users</p>		MFE.002.2246

Case study 3 - Waiariki



28 (approx) Iwi with formal structures (Rūnanga & trusts etc...)



11 (approx) Post-settlement Governance Entities (PSGEs)



2202 (approx) formal management structures over Māori land

Iwi authorities (PSGEs and Rūnanga etc.)

Ngāti Awa (Te Rūnanga o Ngāti Awa)	Settled	Whakatāne
Ngāti Manawa (Te Rūnanga o Ngāti Manawa)	Settled	Murupara/Galatea/Te Whaiti
Ngāti Whare (Te Rūnanga o Ngāti Whare)	Settled	Murupara/Galatea/Te Whaiti
Ngāi Tai (Ngaitai Iwi Authority)	No	Torere
Whakatōhea (Whakatōhea Māori Trust Board, Whakatōhea Pre-Settlement Claims Trust and Te Upokorehe Iwi Resource Management Team)	No	Opōtiki and inland
Te Whānau a Apanui (Te Rūnanga o Te Whānau)	No	Te Kaha, East Cape
Tūhoe (Tūhoe - Te Uru Taumatua)	Settled	Te Urewera
Ngāti Ruapani ki Waikaremoana (Ngāti Ruapani mai Waikaremoana Negotiation Group)	No	Waikaremoana/Tuai.
Ngāti Tūwharetoa (Bay of Plenty) Settlement Trust	Settled	Taupō
Ngāti Mākino Iwi Authority	Settled	Maketū, Edgecumb
Ngāti Pīkiao Iwi Trust	Settled	Rotoiti
Te Pūmautanga o Te Arawa Trust (collective of 11 iwi - Post settlement governance entity to represent Affiliate Te Arawa Iwi and Hapu interests in the Central North Island Forests Land Collective Settlement 2008).	Settled	
Te Arawa Lakes Trust (collective of approx. 50 iwi)	Settled	
Ngāti Rangiteaorere Koromatua Council	Settled	Maketū/ Te Puke
Tapuika Iwi Authority Trust	Settled	Te Puke, Maketū and in-land.
Ngāti Tarāwhai Iwi Trust	Settled	Rotoiti
Tūhourangi Tribal Authority	Settled	Rotorua township/Tarawera
Te Komiti Nui o Ngāti Whakaue Trust	Settled	Rotorua township
Ngāti Uenukukōpako Iwi Trust	Settled	Rotorua township
Te Kapu o Waitaha Trust	Settled	Tauranga
Ngāti Tahu & Ngāti Whaoa	Settled	Reporoa
Ngāti Kea & Ngāti Tuarā	Settled	South-west Rotorua
Ngāti Rongomai	Settled	Rotoiti

Iwi authorities (PSGEs and Rūnanga etc..)

Ngāti Rangiwewehi (Te Tāhuhu o Tawakeheimoa Trust)	Settled	Rotorua township/Awahou
Te Mana o Ngāti Rangitahi Trust	No	Rotoma/Tarawera
Te Kotahitanga o Ngāti Tūwharetoa	Settled	Taupō
Ngāti Tūrangitukua Charitable Trust	Settled	Rotorua
Te Tāwharau o Ngāti Pūkenga	Settled	Tauranga
Ngāi Te Rangi Settlement Trust	Settled	Tauranga
Ngā Hapū o Ngāti Ranginui Settlement Trust	No	Tauranga

Settlement arrangements over specific natural resources - Waiariki

Te Maru o Kaituna/Kaituna River Authority

Rangitāiki river forum

Co-management of Waikato and Waipa rivers

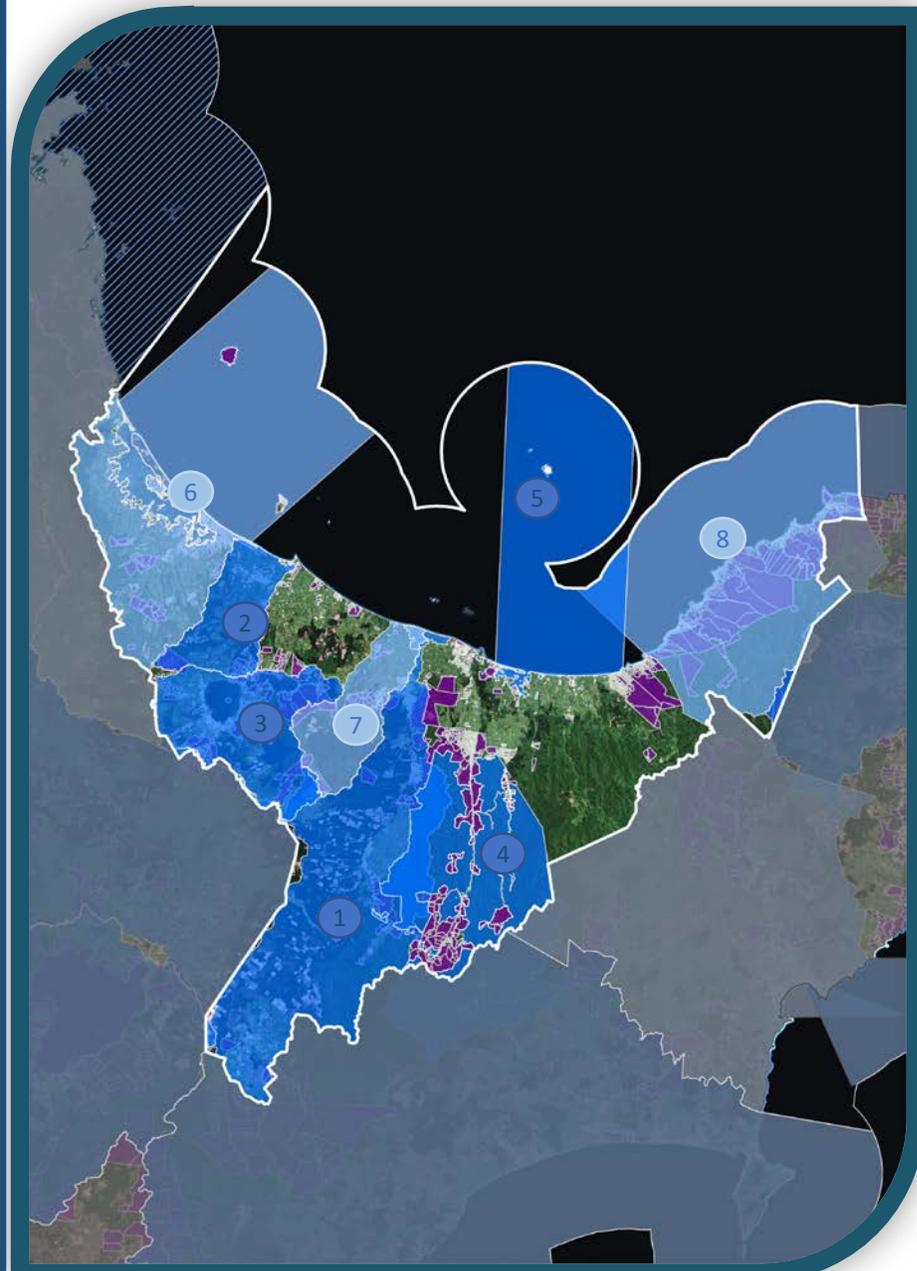
Te Urewera governance board

Rotorua (Te Arawa) Lakes Strategy Group

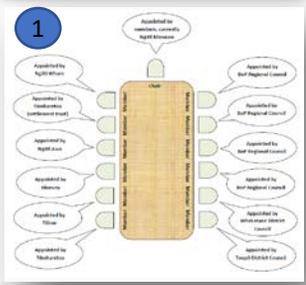
Te Arawa River Iwi Trust

Te Kōpua Kānapanapa

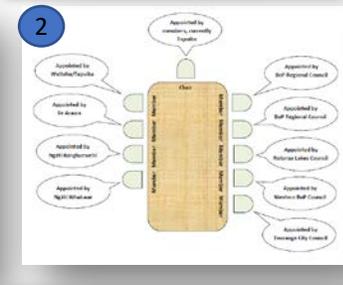
- Ngāti Tūwharetoa (Taupō) Settlement Act establishes Te Kōpua Kānapanapa as a joint committee of the Waikato Regional Council, Taupō District Council and iwi over Lake Taupō.



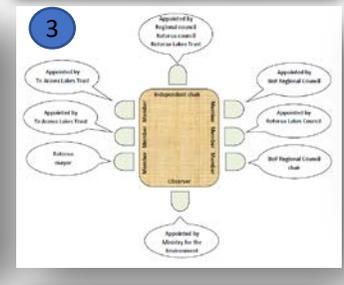
Rangitaiki River Forum



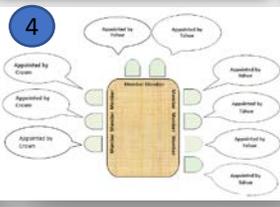
Te Maru o Kaituna/Kaituna River Authority



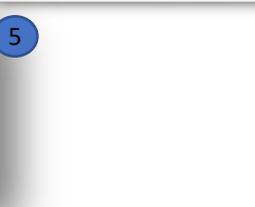
Rotorua Te Arawa Lakes Strategy Group



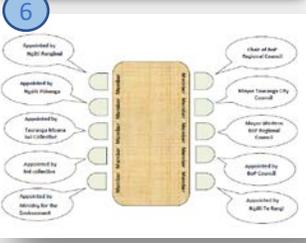
Te Urewera



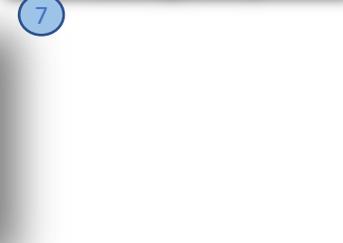
Whakatohea Customary Title



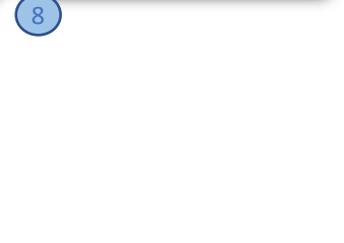
Tauranga Moana



Tarawera Awa Restoration Strategy Group

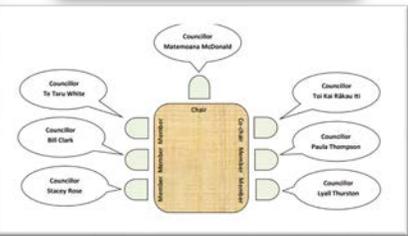


Te Whānau a Apanui



Māori land trust & Corporations

Komiti Māori

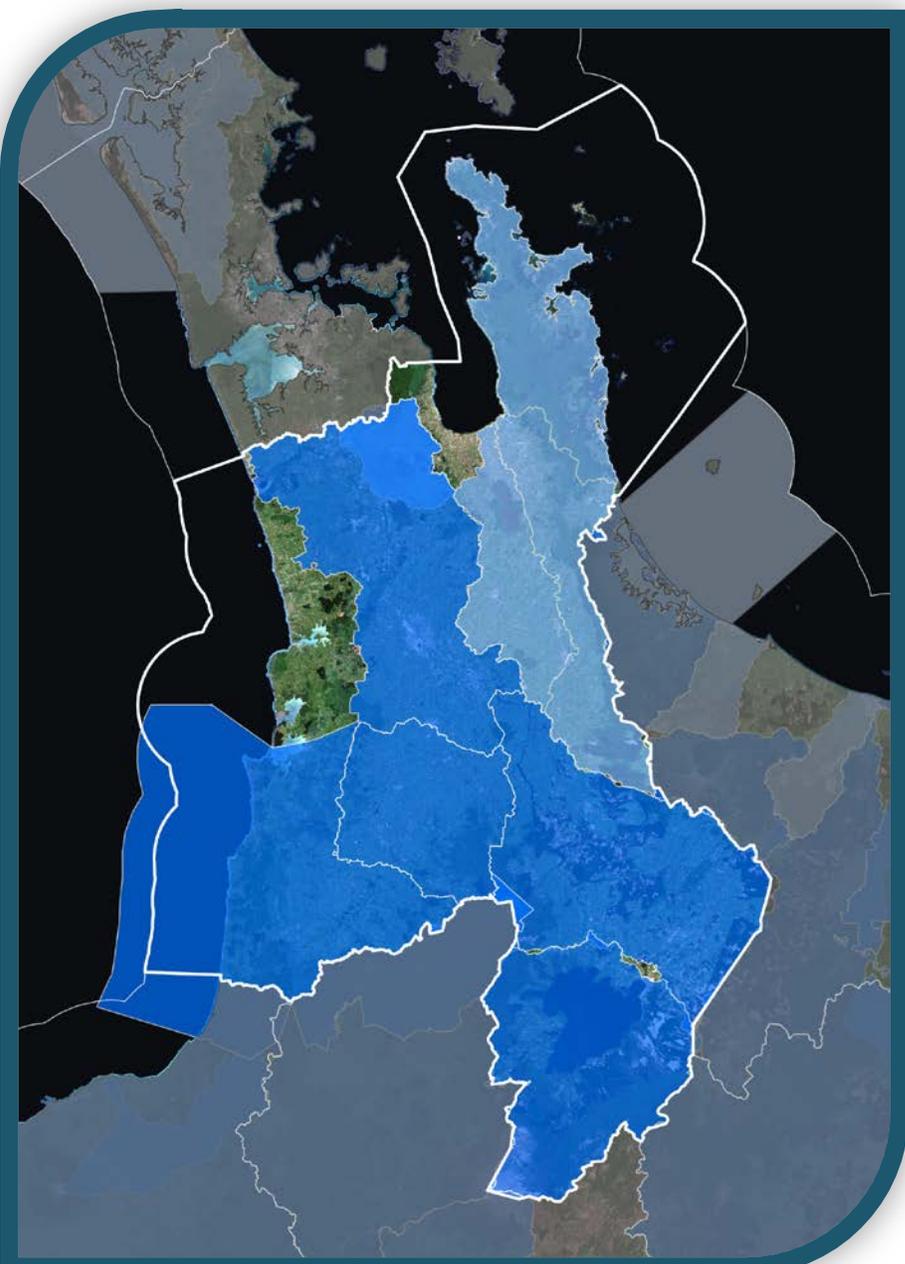


Regional Spatial committee

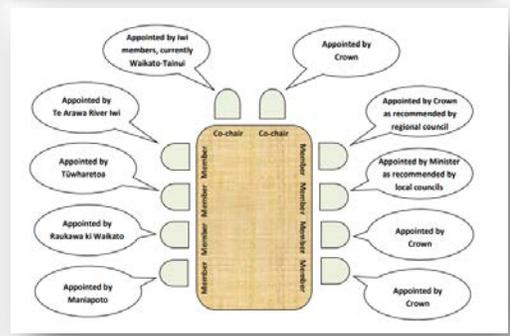


Joint NBA plan committee

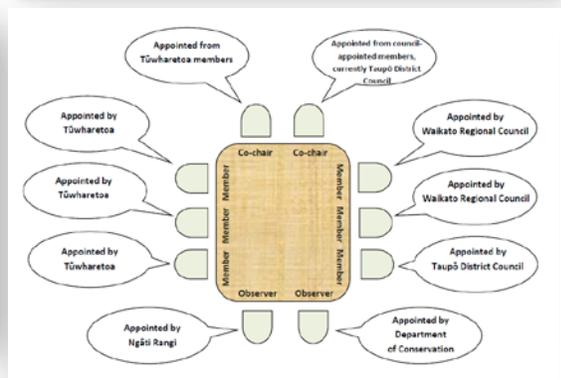




Waikato River Authority



Te Kōpua Kānapanapa



JMAs

Māori land trust & Corporations

Regional Spatial committee

Joint NBA plan committee

Māori Economic Authorities

Structure	Total no.
Ahu Whenua Trusts	1571
Whenua Tōpū Trusts	7
Pūtea Trusts	1
Māori Incorporations	28
Māori Reservations	549
Other trusts	46

2202 total formal management structures (Ahu Whenua Trusts, Whenua Tōpū Trusts, Pūtea Trusts, Māori Incorporations and Māori Reservations).

Some of the larger entities: Tūaropaki, Wairarapa Moana, Rotoiti, Te Paiaka, Tumunui.

Other groups that may hold an interest: FOMA, National Urban Māori Authority (NUMA).

Council Information – Waiariki iwi

Regional Councils

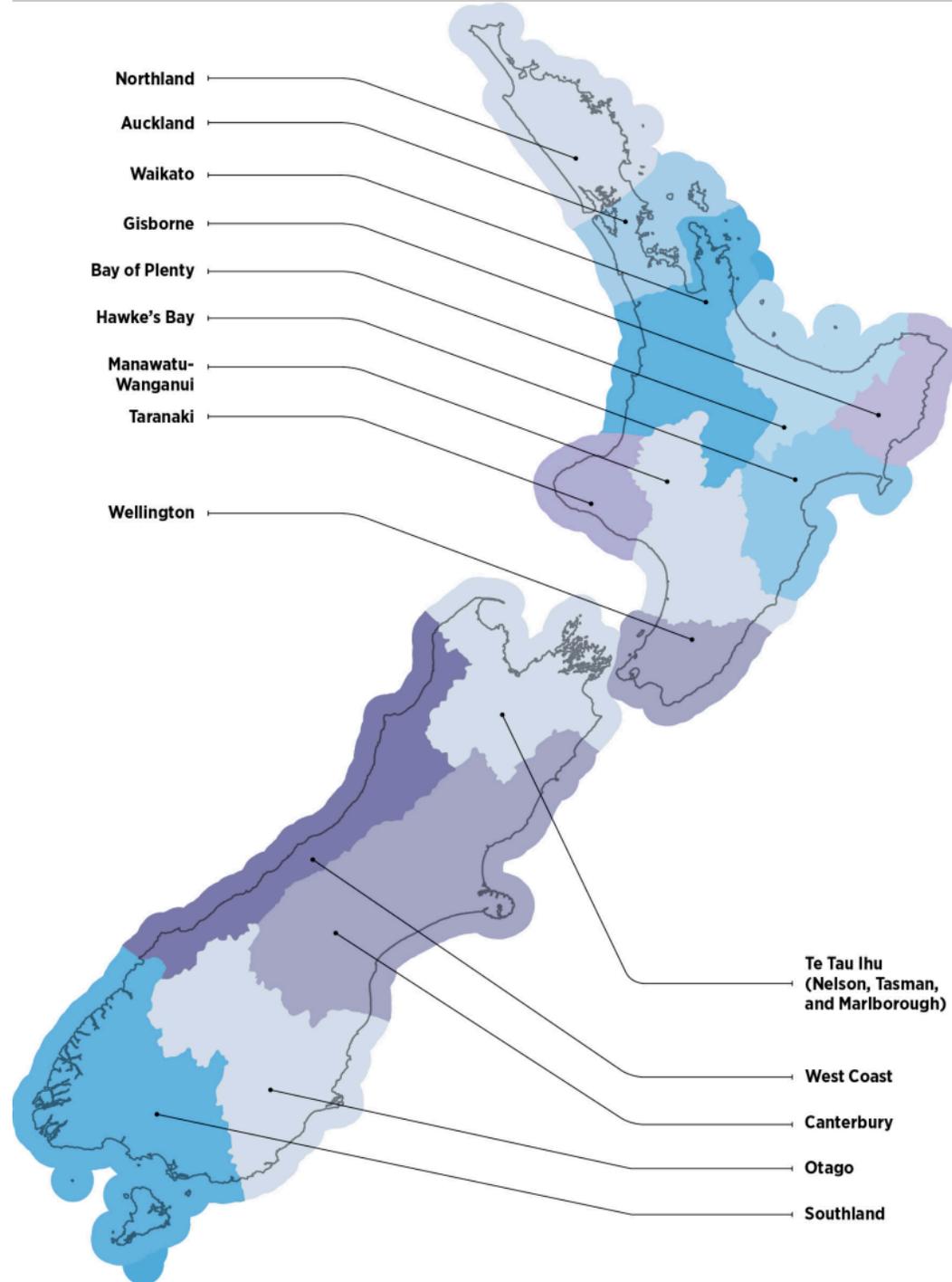
- Bay of plenty
- Horizons
- Waikato

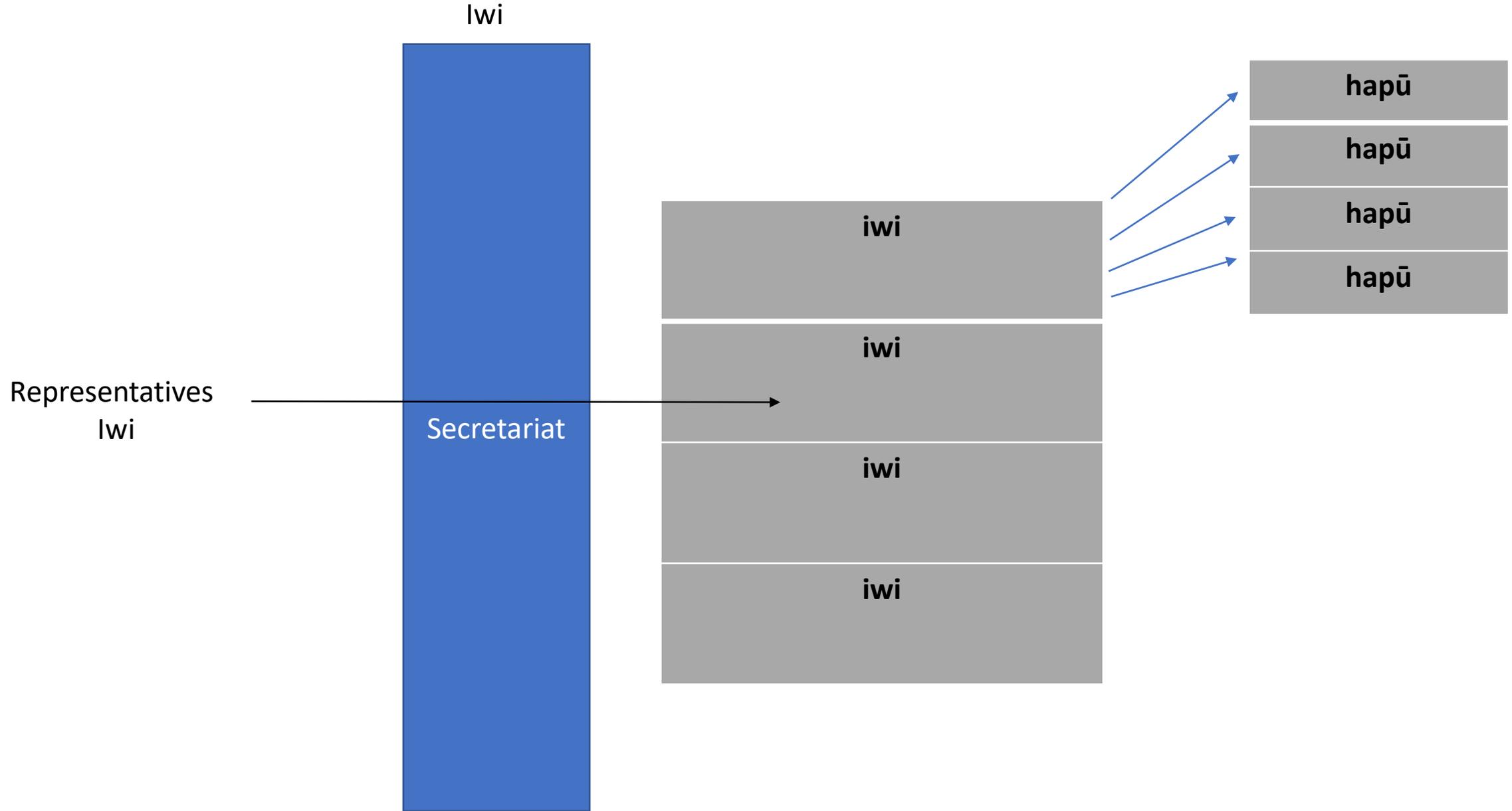
Territorial Authorities

- Rotorua District Council
- Kawerau District Council
- Whakatāne District Council
- Western Bay of Plenty District Council
- Tauranga City Council
- Taupō District Council
- South Waikato District Council
- Ruapehu District Council

Water service entities: B & C

Map of regions for combined planning





Developing Policy Criteria

Who partners and participates from Te Ao Māori in the Resource Management system - wānanga with Te Tai Kaha



Background

Purpose of the session

Discuss and refine outcomes and potential policy criteria for options development and assessment related to who participates in the RM system from te ao Māori

Context

- TTK have clearly articulated views on applying 'mana whakahaere' as a principle in relation to who participates in the RM system
- Views also expressed by other groups
- Agreeing outcomes and policy criteria useful for creating a path forward to assessing options, and eventually developing advice to MOG 17
- Who closely connected to 'what and how' in the system but also needs specific focus
- These are not positions – very open to exploring other criteria and approaches

DRAFT

Problem / opportunity

Matters for consideration

- Resolving issues with the current system:
 - engaging at the iwi or iwi authority level does not reflect the reality of kaitiakitanga
 - current provisions constrain local authority engagement with hapū
 - central government and local authorities should not be determining who represents hapū/iwi/Māori for the purposes of the RMA
 - lack of hapū/iwi/Māori participation at the strategic and planning levels
 - central government has not provided sufficient support [\[1\]](#).
- New entities and roles – who holds these roles?
 - Priorities:
 - National Māori / partnership entity
 - Joint committees
 - Secretariat
 - Aligned with RM reform objectives:
 - Reform Objective 3: Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.
 - Reform Objective 5: Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.
 - Integrated Partnerships Process/Enhanced Mana Whakahono ā Rohe
 - Roles in the plan and spatial strategy processes
- Ensure processes that work well in the current system are carried over.

[\[1\]](#) Chapter 3 Te Tiriti o Waitangi me te ao Māori, P 92, Paragraph 23

DRAFT

Outcomes

- The system provides a role for all hapū, iwi and Māori groups who have rights and interests in relation to resource management^[1]. This includes rights and interests derived from, based in, guaranteed through and/or provided for:
 - in tikanga
 - through Te Tiriti o Waitangi (all articles)
 - through the common law
 - through statute
 - through Māori Crown relationships and policy.
- The system provides for hapū/iwi/Māori (rather than the Crown or local government) to determine who represents hapū/iwi/Māori in the RM system and which hapū/iwi/Māori groups are enabled to partner and participate in relation to each function in the RM system
- Where disputes arise between hapū/iwi/Māori groups, the system supports timely and constructive resolution
- Where the many must be represented by the few (ie. joint committees and national entity), processes to determine representation result in clear decisions about:
 - which hapū/iwi/Māori groups will be enabled to make decisions about representation (ie appoint representatives)
 - who specifically will represent hapū/iwi/Māori and/or provide tikanga and te ao Māori expertise on the relevant bodies
- Hapū/iwi/Māori have the appropriate support and resources to determine their representatives and which hapū/iwi/Māori groups are enabled to participate in relation to each function in the RM system
- The system supports positive and constructive relationships between hapū/iwi/Māori groups. Processes that create conflict are not introduced.
- Engagement expectations for councils, joint committees, consent applicants and other relevant entities are clear (in relation to all relevant hapū/iwi/Māori groups and the extent of engagement).

Questions

- Are there any other outcomes that should be considered?
- Are these outcomes achievable in the context of RM reform
- Are any of the outcomes too ambiguous?
- Are any of the outcomes based on unfounded assumptions?

^[1] Note that some aspects of rights and interests in relation to fresh water may not be resolved through the current round of RM reform, where this is the case, the intermediate outcome should be that options to address rights and interests in freshwater are not foreclosed

DRAFT

Potential policy criteria

The table below sets out key topic areas / choices within the 'who' workstream and the criteria to assess policy options

Topic area	Overarching principle/s	Implementation support	Terms and definitions	Specifying who partners/participates at each level of the system (National entity, governance etc)	Process to determine who participates at each level of the system.
Required criteria					
Hapū/iwi/Māori determine their own representatives at the appropriate levels and times	Criterion should apply	Application as a determinative criteria. ie, how well does the implementation support option provide for hapū/iwi/Māori to determine representatives	N/A application of those terms and definitions as per the next column the critical factor	Criterion should apply Could be met through policy options that legislate for participation by specific groups provided those options are co-developed	Criterion should apply Could be met through policy options that legislate for participation by specific groups provided those options are co-developed
Upholds the integrity of existing Treaty settlement arrangements, Takutai moana arrangements and other arrangements under the RMA	Criterion should apply	N/A	N/A	Criterion should apply to relevant areas	Criterion should apply to relevant areas
Does not foreclose options to resolve rights and interests in freshwater	Criterion should apply	N/A	Criterion should apply	Criterion should apply	Criterion should apply

Questions

- Are these criteria appropriate as requirements?
- Are there other criteria that would be appropriate as requirements?
- Is it possible to meet these requirements in the RM context
- Are the criteria applied to the topic areas appropriately?

DRAFT

Potential policy criteria

The table below sets out key topic areas / choices within the 'who' workstream and the criteria to assess policy options

Criteria	Overarching principle/s	Implementation support	Terms and definitions	Specifying who participates at each level of the system	Process to determine who participates at each level of the system.
Supports hapū/iwi/Māori to make clear, robust decisions about representation and partnership and participation roles	Criterion should apply	Criterion should apply	N/A	Criterion should apply especially in relation to governance	Criterion should apply especially in relation to governance
Supports hapū/iwi/Māori to make timely/efficient decisions about representation and partnership and participation roles	Criterion should apply	Criterion should apply	N/A	Criterion should apply especially in relation to governance	Criterion should apply especially in relation to governance
Supports the ability of hapū/iwi/Māori groups to exercise their rights in accordance with tikanga, Te Tiriti o Waitangi etc.	Criterion should apply	Criterion should apply	Criterion should apply	Criterion should apply at all levels of the system	Criterion should apply
Supports positive and constructive relationships between hapū/iwi/Māori groups including the timely and constructive resolution of disputes	Criterion should apply	Criterion should apply	N/A	Criterion should apply at all levels of the system	Criterion should apply

Questions

- Are these criteria appropriate as determinative criteria?
- Are there other criteria that would be appropriate? e.g. specific criteria on accountability? Future proofing? Etc.
- How would you weight these criteria?
- Would applying these criteria enable preferred options to be identified?
- Are the criteria applied to the topic areas appropriately?

Potential policy criteria

The table below sets out key topic areas / choices within the 'who' workstream and the criteria to assess policy options

Criteria	Overarching principle/s	Implementation support	Terms and definitions	Specifying who participates at each level of the system	Process to determine who participates at each level of the system.
Supports the processes in the current system that are working well for hapū/iwi/Māori.	Criterion should apply	Criterion should apply	N/A	Criterion should apply especially in relation to governance	Criterion should apply especially in relation to governance
Provides certainty and clarity regarding engagement expectations: councils, joint committees, consent applicants and other relevant entities know which groups to engage with, on what matters and to what extent, and respect multiple and overlapping interests	Criterion should apply broadly	Criterion should apply	Criterion should apply	Criterion should apply at all levels of the system - note that engagement may be with a multiplicity of groups / interests	Criterion should apply
Supports RM reform objectives: overall system efficiency and effectiveness <ul style="list-style-type: none"> Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori. Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input. 	Criterion should apply	Criterion should apply	Criterion should apply	Criterion should apply	Criterion should apply

Questions

- Are these criteria appropriate as determinative criteria?
- Are there other criteria that would be appropriate? e.g. specific criteria on accountability? Future proofing? Etc.
- How would you weight these criteria?
- Would applying these criteria enable preferred options to be identified?
- Are the criteria applied to the topic areas appropriately?

Who participates system approach: mana whakahaere (based on material provided by and discussions with Te Tai Kaha, but not considered official views of Te Tai Kaha)

Natural and Built Environments Act

Strategic Planning Act

Climate Adaptation Act

Terms and principles: replacement of 'iwi authority' and 'tangata whenua' with 'mana whakahaere' - iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource.

System Stewardship and Oversight National level Māori Crown partnership entity appointed by ILG, NZMC, FOMA, peak National Māori bodies, including urban (transitional)

National Planning Framework *Central Government direction*

Governance and decision-making role for national level Māori Crown partnership entity appointed by ILG, NZMC, FOMA, peak National Māori bodies, including urban (transitional)

Membership of entity based on leadership, skills, expertise, experience including Mātauranga Māori

Regional Spatial Strategies *Long-term place-based strategy*

Governance and decision making

Joint Committee – collective of local Mana Whakahaere Councils (or regional level mana whakahaere council depending on what mana whakahaere groups agree in that region?) appoints members to joint committees based on skills, expertise, including Mātauranga Māori and interests e.g. urban Māori

Local mana whakahaere councils (e.g. catchment based, locality based etc.) have governance and decision-making role 'at place'

Plan development - secretariat

Appointed based on skills, expertise and experience. [Mana Whakahaere Councils could have a role in secretariat appointments.]

Plan development - process

Inclusive of all mana whakahaere groups. [Mana Whakahaere Councils could have a role in directing engagement and consideration of advice from mana whakahaere groups by the secretariat/JC]

Accountability of joint committees

[Accountability of appointed members to their appointing Mana Whakahaere Councils]

Mana whakahaere Councils

'Membership' determined by those that exercise Mana Whakahaere to a particular area, water source, space and resource at place, in accordance with tikanga. Inclusive of PSGEs and iwi, hapū, ahi kā (Māori land owners), marae, urban Māori.

Established through legislation

Timebound, linked to establishment and ongoing RM system requirements

Natural and Built Environments Plans *Local Government / iwi planning*

Governance and decision making

Joint Committee – collective of local Mana Whakahaere Councils (or regional level mana whakahaere council depending on what mana whakahaere groups agree in that region?) appoints members to joint committees based on skills, expertise, including Mātauranga Māori and interests e.g. urban Māori

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Accountability of joint committees

[Accountability of appointed members to their appointing Mana Whakahaere Councils]

RSSs to influence council funding plans

Enhanced Mana Whakahono a Rohe

Inclusive of all mana whakahaere groups

Mana Whakahaere plans

Inclusive of all mana whakahaere groups. Influence on plans

Consenting [Local Mana Whakahaere councils have a role in supporting consent process – notification etc. determined at planning stage]

Infrastructure Authorisations

Or any necessary permissions

CAA policy instruments (TBC)

Compliance, Monitoring and Enforcement

[local Mana Whakahaere councils have role in determining relevant mana whakahaere groups to undertake CME activities]

Monitoring and Reporting

[local Mana Whakahaere councils have role in determining relevant mana whakahaere groups to undertake monitoring and reporting activities]

Assumptions / values

- Principles:
 - Legitimacy
 - Acknowledge and recognise rights holders, in tikanga terms
 - Rangatiratanga
 - Equitable
 - Efficient
 - Provides certainty for all
 - Tika / rights at the local level

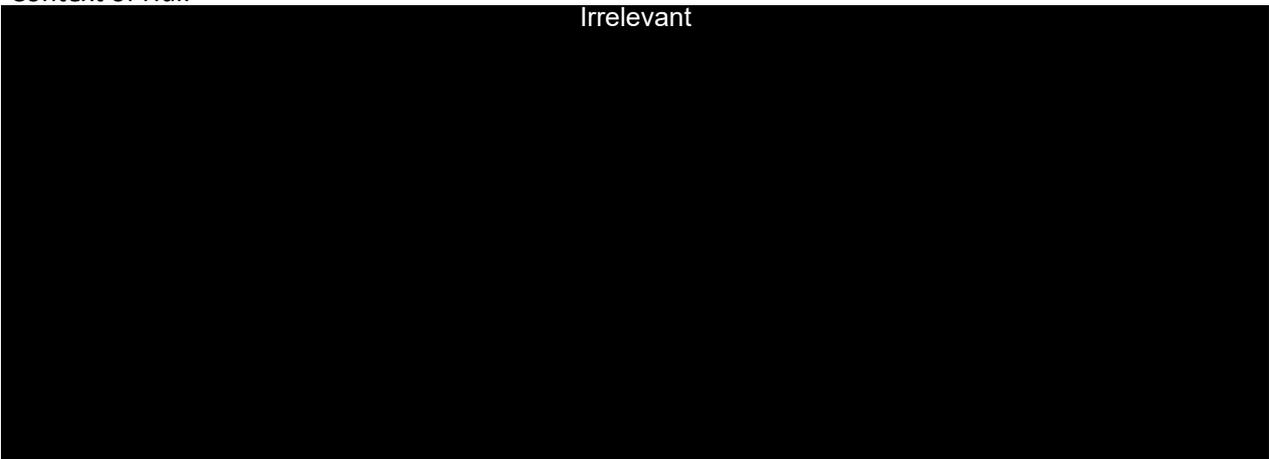
[Resource Management - Te Tai Kaha Briefing for Ministers 120921 \(Final\).pdf - Standard View \(sharepoint.com\)](#)

- That an approach to working out partners and participants at the regional level that includes all rights and interests holders is workable
- Timeframe for arrangements to be in place following NBA and SPA enactment:
 - Local level 18-24 mths
 - Regional level 18-24 mths
 - National level 6 mths
- RM rights and responsibilities primarily with hapū
- PSGEs have no general mandate to represent hapū
- Mana whakahaere councils will be resourced

ILG and MfE Wānanga – 02 March 2022

Context of Hui:

Irrelevant



Rough notes (not easy to take these while listening and contributing, so bear with):

Irrelevant



- FILG: appointments: iwi and hapu only, set skills requirements set by iwi and hapu, no Crown involvement, accountability to iwi and hapu. Work needed on infrastructure how we do that, don't want to be in a position where iwi reps are left in the wind, suddenly they're the super Maori who says this is what all of my iwi think, need report backs and accountability so it doesn't get captured. Flexibility: Māori trust incorns, M trusts will be able to participate in engagement, they're not on JCs
- FILG: methodology, framework, level of prescription around iwi hap`u appointment process into whatever part of the system - that process should be reasonably uniform. Need some

real efficiency and clarity around that process so there aren't three sets of processes and negotiations needed, need to simplify

- MfE: statutory timeframe so negotiations don't go on for years and years, and the arbiter - who gives the green light/rubber stamp that that JC has met requirements, go ahead and make regional plans
- FILG: also what are the right decision makers at the council level. Arbiter conversation has to be on whole representative bodies, not just M
- FILG: the new regime will have some fundamentally recast duties, including T0oTT, in that space where when people are sitting at the JC, their legal duties are to uphold those things, will require particular skill set. Concerned yesterday about description to say all technical skills will be at IHP than at JC. Need clarity around policy intent through system in that regard, debate in three waters informed by conversations on Waikato Awa, to pursue consensus decision making, decisions in good faith and to purpose of Te Ture Whaimana, these take the heat out of the politicisation
- FILG: Three waters which are much bigger regions than the RSSs, entity B, everyone in the region got together and said they'd sort this out. They would work out who their reps are. That won't be the case for everywhere, it's a highly whakapapa connected region. There may be 1-2 regions that will struggle, we will need to provide guidelines. Give high level skill sets required set by iwi. Don't need level of detail in fast-track consenting. Accountability that goes back to iwi in regions and appropriate access to dispute resolution in cost effective manner
- FILG: also need M Landowner voice as well, if they see all or nothing there, we will get schisms at appointment process. How to create disincentives for this
- MfE: need a definition about iwi and hapu, a backstop dispute resolution piece if that couldn't be determined within a timeframe, the system needs to show input elsewhere for M landowners etc. Resourcing. Timeframes.
- FILG: other places iwi and hapu will be more important have been less focused on as we've been focused on governance. Have to create a comms job which is to say yes X will sit on the JC for X iwi but you hapu will be able to determine your place to develop and deliver plan, you'll be able to co-design that. Comms job is explaining to Min Parker where things matter. Don't care who sits on JCs once officials put plans up to them
- FILG: are you considering a common set of terms of ref for the JCs. Real risk if you do get right composition, you get decisions that are gamed, need to avoid that
- Appointment process is it iwi and hapū (MfE question): FILG: functionally it's PSGEs that are required to engage directly with hapū. Iwi are led by their hapu but not everyone has those structures
- FILG: iwi are legally required to rep hapū, those roles do not usurp fundamental exercise and rights and responsibilities of individual hapu or marae, recognised as being different things,
- FILG: got to be a space for the iwi to participate together too, otherwise turn up to a room and rep turns up, still got other hats on, have to engage with each other, opportunity for iwi to connect collectively in a region to explore what they want, space and time. How do you get a group of people who see the primacy of the environment as their job T0oTT, leg: create terms of ref for all JCs that leads them to that outcome
- MfE: what other hooks do we need for when T0oTT isn't working
- FILG: keen to see how we can use the leg for behaviour change
- MfE checking in what might require for leg: need a definition about iwi and hapu at JCs reps (and trust it's up to them to sort their own processes), a backstop dispute resolution piece if that couldn't be determined within a timeframe, timeframes, resourcing to support, the system as a whole needs to show input elsewhere for M landowners etc. Upholding T0oTT required for JC decision making. Accountability structures (not required for leg).

- MfE: what might process between iwi hapū and local government to decide composition numbers

Memo

To: Te Tai Kaha

From: Sarah King, Manager RM Reform Governance

Date: 2 March 2022

Re: Governance, including joint committees

Purpose

1. The purpose of this overview paper is to support a discussion with Te Tai Kaha on 4 March 2022. The paper provides a summarised working policy position. This is not government policy and does not represent final policy recommendations. It has been provided as a way to support the discussion.

Key issues

2. The joint committee model will require several issues to be carefully balanced:
 - **legitimacy and efficiency** - ensuring high legitimacy has been central to our policy analysis – legitimacy at the front end of the system will deliver efficiencies down the line.
 - **autonomy and accountability** - members of the committees would have multiple accountabilities. Members will be primarily accountable to the duties and obligations set out in the SPA and NBA legislation. They will also be directly accountable to their appointing bodies (who can remove/replace them at any time).. We should expect that most representatives will be used to situations where they have to balance different interests or wear different 'hats'. The intent of the timebound review step is to support this.
 - **providing for local democratic input, Māori representation and representation of different communities** - the final composition of the committees will be agreed region by region to provide flexibility for regions to address their local circumstances. We are also seeking to get the balance right between what is in the primary legislation and what is done via secondary legislation.
 - **providing for Māori participation in the Secretariat** - The Director of the Secretariat will be a statutory role under the NBA and SPA and will be required to give effect to the principles of te Tiriti. We are considering a specific provision requiring the Director to bring mātauranga Māori/te ao Māori/Māori engagement expertise into the Secretariat. Beyond this, the law would not prescribe how the Secretariat is to be resourced, but will enable the regions to determine their own arrangements.

Working policy position for TTK discussion on joint committees – 4 March 2022		
<p>Blue indicates difference between RSS and NBA committees. Yellow indicates link to another MOG/delegated decisions paper. <i>Note that this document does not represent government policy or final policy recommendations. A number of these matters are currently being considered through the on-going engagement until the 28 Feb 2022.</i></p>		
	RSS joint committee	NBA plan joint committee
What would the committees be responsible for?	Regional Spatial Strategy development, engagement, decisions, and strategy reviews. Also responsible for agreeing implementation plans.	NBA Plan development, engagement, decisions, and plan reviews/plan changes. Also responsible for agreeing regional monitoring strategy.
What legal form would the committees take?	A committee of all local authorities in the region, hosted by a single council. The committee would be autonomous, not a subordinate decision-making structure to their constituent local authority. The matter of which council should be the host council will be for the region to determine and will not be prescribed.	A committee of all local authorities in the region, hosted by a single council. The committee would be autonomous, not a subordinate decision-making structure to their constituent local authority. The matter of which council should be the host council will be for the region to determine and will not be prescribed.
Will there be a maximum committee size?	The committees will have a maximum of 20 local government/Māori members and a minimum of six. The maximum of 20 members may be exceeded where a region has more than 9 local authorities, and in Auckland. The 1 central government representative is in addition to the maximum of 20.	The committees will have a maximum of 20 members and a minimum of six. The maximum of 20 members may be exceeded where a region has more than 9 local authorities, and in Auckland.
What will the composition of committees be?	Local authorities, iwi/hapū/Māori and central government representatives. The size of the committee and the balance of local government and Māori representation on the committees will be determined by regions within the parameters: <ul style="list-style-type: none"> - In determining the size and composition of the committees, the legislation would provide a number of principles that regions must consider when forming committees. - We are looking at how to provide protections for Māori representation in committees in legislation, including options for minimums, fixed proportions, or providing guiding principles. - There would be one central government representative. 	Local authorities and iwi/hapū/Māori membership. The size of the committee and the balance of local government and Māori representation on the committees will be determined by regions within the parameters: <ul style="list-style-type: none"> - In determining the size and composition of the committees, the legislation would provide a number of principles that regions must consider when forming committees. - We are looking at how to provide protections for Māori representation in committees in legislation, including options for minimums, fixed proportions, or providing guiding principles.

Would the local government members be elected council members or council officers/ technical experts?	The representatives will be appointed by the council(s). Allow for members to be elected council members or a trusted third party. (It is expected the majority of councils will appoint elected councillors due to the nature of the decisions, although this could vary between the RSS and NBA Plan committees.)	The representative will be appointed by council(s). Allow for members to be elected council members or a trusted third party. (It is expected the majority of councils will appoint elected councillors due to the nature of the decisions, although this could vary between the RSS and NBA Plan committees.)
Would committees be representative for local government?	The preference for all local authorities to be directly represented on the committees will need to be balanced with the other composition considerations. Representation for local authorities will be enabled through mechanisms such as the use of sub-committees. All committee members will have a duty to work in best interest of region.	The preference for all local authorities to be directly represented on the committees will need to be balanced with the other composition considerations. Representation for local authorities will be enabled through mechanisms such as the use of sub-committees. All committee members will have a duty to work in best interest of region.
How will iwi/hapū/māori representatives be appointed?	Who appoints iwi/hapū/Māori representative tbd – relates to MOG #17 paper on Māori representation. Will allow for tikanga-led process for appointments. Unlikely to prescribe process in legislation but may provide dispute resolution process if appointments cannot be agreed. Due to numbers of iwi/hapū groups, expectation is that in some regions there will need to be clustering to appoint to available seats and this is consistent with the Panel report.	Who appoints iwi/hapū/Māori representative tbd – relates to MOG #17 paper on Māori representation. Will allow for tikanga-led process for appointments. Unlikely to prescribe process in legislation but may provide dispute resolution process if appointments cannot be agreed. Due to numbers of iwi/hapū groups, expectation is that in some regions there will need to be clustering to appoint to available seats.
How would composition be formalised? And how long will it take?	Formalised by a ‘arbitrator’ through secondary legislation – proposal for this to be Local Government Commission (LGC), noting that we need to explore options for ensuring Māori voice in this process (eg, National Māori Entity temporary appointment to LGC) Initial proposals for legislative timeframes are: <ul style="list-style-type: none"> • Imposed deadline by which regions must agree composition (TBC) • 3 months for appointing bodies to appoint to allocated seats via notifying host council 	Formalised by a ‘arbitrator’ through secondary legislation – proposal for this to be Local Government Commission (LGC), noting that we need to explore options for ensuring Māori voice in this process (eg, National Māori Entity temporary appointment to LGC) Initial proposals for legislative timeframes are: <ul style="list-style-type: none"> • Imposed deadline by which regions must agree composition (TBC) • 3 months for appointing bodies to appoint to allocated seats via notifying host council

	All Local authorities will participate in composition negotiations. Who participates for iwi/hapū/Māori tbd – relates to MOG #17 paper on Māori representation.	All Local authorities will participate in composition negotiations. Who participates for iwi/hapū/Māori tbd – relates to MOG #17 paper on Māori representation.
Who would chair the committees?	Flexibility to determine their own chairing arrangements, allowing committees to select their own chair or co-chairs from within members, or appoint an independent chair.	Flexibility to determine their own chairing arrangements, allowing committees to select their own chair or co-chairs from within members, or appoint an independent chair.
Would there be Crown appointments on committees?	Yes, role and function will be agreed via MOG #16 paper.	No Crown representatives. [Pending delegated decisions, briefing on role of Minister of Conservation went over on 10 Dec].
Would the committees have autonomy to make final decisions?	Yes. The committees will be autonomous decision makers and will not require members to ratify decisions with their appointing bodies. However, the committee will be required to provide appointing bodies (local authorities, central government, and iwi/hapū/Māori) with 2 months to review the RSS before finalisation. The committee will be required to consider (but not agree/adopt) the recommendations made by appointing bodies through this review. (This is what we have meant by a 'time bound review step'.)	Yes. The committees will be autonomous, will not require members to ratify decisions with their constituent bodies. Committees will not be prevented from sharing draft material with appointing bodies at any stage. In addition committees will have discretion to seek the views of a specific appointing body before making final decisions on IHP recommendations, but there is no requirement to.
How would committees make decisions?	Propose legislation requires committee to aim for consensus decision-making. If consensus cannot be reached there would be an option for independent mediation, with a back-stop of a super majority vote. The committee will not be able to delegate their strategy-making powers to another body.	Propose legislation requires committee to aim for consensus decision-making. If consensus cannot be reached there would be an option for independent mediation, with a back-stop of a super majority vote. The committee will not be able to delegate their plan-making powers to another body.
What dispute resolution process will be followed if strategy/plan decisions cannot be reached?	If a super majority vote was unsuccessful at reaching a decision, disputes would be escalated to the Minister to appoint a commissioner to provide advice or make the decision (further work to determine what Ministerial powers will be required here). Escalation of disputes would be limited to specific decision-points in the process.	If a super majority vote was unsuccessful at reaching a decision, disputes would be escalated to the Minister to appoint a commissioner to provide advice or make the decision (further work to determine what Ministerial powers will be required here). Escalation of disputes would be limited to specific decision-points in the process.

Would the committees have enduring functions?	Expected to have enduring functions to oversee implementation of the strategy, specifically through implementation agreements	Local authorities will continue to be responsible for consents and delivery of CME (subject to decisions) and would own the plan provisions. Expected to be an enduring role for the committee to undertake plan changes, oversight, monitoring, implementation, and other functions
Would there be sub-committees?	Legislation to enable sub-committees to address cross-regional, sub-regional or topics-based issues. Final decisions retained by RSS committee.	Legislation to enable sub-committees to address cross-regional, sub-regional or topics-based issues. Final decisions retained by NBA plan committee.
Who would fund the committees?	Further work is underway on what will be required in legislation to support the setting and approving of a joint committee budget. Funding for Māori participation to be agreed via MOG #17 role of Māori paper. It is expected that the central government will fund central government involvement in the committees with the remaining costs met by councils.	Further work is underway on what will be required in legislation to support the setting and approving of a joint committee budget. Funding for Māori participation to be agreed via MOG #17 role of Māori paper. Expectation costs will be met by councils.
Who would support the committees to undertake their tasks?	<p>The legislation will allow for two separate secretariats be established regionally (to support the RSS and NBA plan), but resourcing could be shared across. The Director of a Secretariat will be a statutory position, accountable to the joint committee and required to uphold the principles/general duties in the legislation, including the Tiriti clause. Their responsibility will be to support the joint committee in performing their functions and duties – specific working arrangements in each region will remain flexible.</p> <p>The Director will be empowered to directly employ/contract staff as necessary, but the expectation is that most staff working on the RSS will remain employees of their council/central government department/iwi and work collaboratively, with activities coordinated by the Director. The Director of the Secretariat will be required to ensure that the Secretariat has</p>	<p>The legislation will allow for two separate secretariats be established regionally (to support the RSS and NBA plan), but resourcing could be shared across. The Director of a Secretariat will be a statutory position, accountable to the joint committee and required to uphold the principles/general duties in the legislation, including the Tiriti clause. Their responsibility will be to support the joint committee in performing their functions and duties – specific working arrangements in each region will remain flexible.</p> <p>The Director will be empowered to directly employ/contract staff as necessary, but the expectation is that most staff working on the RSS will remain employees of their council/ iwi and work collaboratively, with activities coordinated by the Director. The Director of the Secretariat will be required to ensure that the Secretariat has mātauranga Māori, te ao Māori, and Māori engagement expertise.</p>

	<p>mātauranga Māori, te ao Māori, and Māori engagement expertise.</p> <p>There will be a duty on councils to cooperate and work with the Director of the Secretariat to deliver the RSS, and a general duty for all bodies that are represented on the RSS Committee to provide technical support and information to the Committee where it is practical and reasonable to do so (as agreed at MOG #12).</p>	<p>There will be a duty on councils to cooperate and work with the Director of the Secretariat to deliver the NBA Plan.</p> <p>A separate secretariat will be established to support the Independent Hearings Panel.</p>
<p>Who will ensure the outputs of the committees align with the requirements under legislation?</p>	<p>RSS committee will be responsible for ensuring the RSS meets legislative requirements. Detail tbd in a delegated decisions paper on monitoring and oversight.</p>	<p>NBA committee will be responsible for ensuring the NBA Plans meets legislative requirements. NBA plans to be reviewed by MFE before they are agreed.</p>

Taking a system view of partnership and Māori participation

For discussion with TTK technicians

NOT GOVERNMENT POLICY - FOR DISCUSSION PURPOSES ONLY



Ministry for the
Environment
Manatū Mo Te Taiao



Making Aotearoa New Zealand
the most liveable place in the world
Aotearoa - he whenua mana kura mō te tangata

MFE.002.0144

Introduction

Purpose of this hui

- *Presenting a 'systems view' of potential options for Māori participation across all layers of the RM system*
- *Ensuring we have understood mana whakahaere proposals*
- *Update on our current direction of travel and options*
- *Discussing where we align and where there are differences*

Outcomes for today

Building on from previous discussion

- Previous discussion on problems, opportunities, outcomes and assessment criteria has informed refinement of criteria and thinking on options
- Current focus now on taking a system view: what could the whole system look like for hapū/iwi/Māori partnership and participation, including for different 'who' approaches?

In this session:

- Discuss how options for Māori participation are being assessed
- Discussion to form a better understanding of the application of mana whakahaere proposal to the whole system
- Identify where our thinking aligns, where there a differences and where we have questions or issues

How we are considering Māori participation through the system

- Problem definition
- Assessment criteria
- Current policy thinking
- Mana whakahaere proposals – alignment and question

Draft problem definition

Iwi, hapū and Māori are not able to effectively and efficiently participate, te ao Māori and Te Tiriti o Waitangi are not adequately recognised, and current participation structures create unnecessary complexity across the system.

Objectives

Intend to deliver on all reform objectives, particular focus on:

- Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori (RM Reform Objective 3)
- Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input (RM Reform Objective 5)

Criteria

- Give effect to the principles of te Tiriti
- Uphold the integrity of existing arrangements
- Efficiency
- Effectiveness
- Equity

Additional detail on next slide

Potential assessment criteria

We are assessing all options for Māori participation against a range of criteria

Cabinet has agreed a set of objectives for RMA reform that we are required to consider in all our analysis.

Draft assessment criteria:

- Does the option give effect to the principles of Te Tiriti o Waitangi, including:
 - active protection, participation and partnership
 - protecting the rights and interests of iwi, hapū and Māori at each level of the system
 - enabling iwi, hapū and Māori to exercise rangatiratanga and kaitiakitanga
- Does the option uphold Treaty settlements, Takutai Moana rights and interests and other existing arrangements
- Is the option efficient (objective 5), including:
 - balancing immediate timeliness with long-term, durable outcomes
 - time and cost
 - durability
- Is the option effective (objectives 3 and 5), including:
 - can it be implemented
 - will it help to address the problem and achieve objectives
 - is accountability clear
 - does it contribute to improved central and local government capability to effectively work with Māori
 - does it support constructive relationships, in accordance with tikanga, within te ao Māori
- Does the option provide certainty (including 'who' participates, and clear processes to resolve potential conflicts) (objectives 3 and 5) for:
 - iwi, hapū and Māori
 - decision-makers
 - system users
- Does the option promote equity

Current thinking on who participates – high level overview

- Roles for all hapū/iwi/Māori at all levels of the system, but not necessarily the same roles
- System should support self-determination
- Different levels of legislative prescription for different parts of the system
- Specific terms and principles for parts of the system (rather than overarching terms and principles)

Response to mana whakahaere proposals

*Multiple strengths with the proposal,
core areas where views are aligned*

- Priorities and aspirations of people at place incorporated into final plans
- Resolution of issues among hapū/iwi/Māori where possible before they reach joint committee
- Opportunities for accountability of those in decision-making roles back to communities



Response to mana whakahaere proposals

We have questions about how the proposal can be workable on the ground - to inform options analysis

Next slide – system map setting out our understanding of how mana whakahaere proposals might work at each level of the system

- How in practice would mana whakahaere councils be established?
- Are mana whakahaere arrangements the right mechanism to provide for rights and responsibility holders to participate at each level of the system?
- Do mana whakahaere councils need to be mandatory and exhaustive (ie, all must participate) to be effective?
- How might decisions be made about who has rights and interests 'at place' and what those rights and interests mean for participation?
- What if some established representative groups are unwilling to participate?
- Has the mana whakahaere council proposal been tested with PSGEs?
- What would the link be between mana whakahaere councils at place and joint committee composition at the regional level?

Who partners and participates from te ao Māori- system option: 'mana whakahaere'

CB-289

Where [], officials have assumed approach based on other proposals

Natural and Built Environments Act

Strategic Planning Act

Climate Adaptation Act

Terms and principles: replacement of 'iwi authority' and 'tangata whenua' with 'mana whakahaere' – "iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource".

System Stewardship and Oversight National level Māori Crown partnership entity appointed by ILG, NZMC, FOMA, peak National Māori bodies, including urban (transitional)

National Planning Framework *Central Government direction*

Governance and decision-making role for national level Māori Crown partnership entity appointed by ILG, NZMC, FOMA, peak National Māori bodies, including urban (transitional)

Membership of entity based on leadership, skills, expertise, experience including Mātauranga Māori

Regional Spatial Strategies *Long-term place-based strategy*

Governance and decision making

Joint Committee – collective of local MWCs (or regional level mana whakahaere council depending on what mana whakahaere groups agree in that region?) appoints members to joint committees based on skills, expertise, including Mātauranga Māori and interests e.g. urban Māori

Local MWCs (e.g. catchment based, locality based etc.) have governance and decision-making role 'at place'

Sub-committees and Treaty Partnership Entities may include any mana whakahaere groups

Plan development - secretariat

Appointed based on skills, expertise and experience. [MWCs have a role in advising on secretariat appointments. Ongoing engagement between MWCs and secretariat]

Plan development - process

Inclusive of all mana whakahaere groups. MWCs have a role in directing engagement and consideration of advice from mana whakahaere groups by the secretariat/JC

Accountability of joint committees

[Accountability of appointed members to their appointing MWCs]

Mana Whakahaere Councils (MWC)

'Membership' determined by those that exercise mana whakahaere to a particular area, water source, space and resource at place, in accordance with tikanga. Inclusive of PSGEs and iwi, hapū, ahi kā (Māori land owners), marae, urban Māori.

Established through legislation

Timebound, linked to establishment and ongoing RM system requirements

Natural and Built Environments Plans *Local Government / iwi planning*

Governance and decision making

Joint Committee – collective of local MWCs (or regional level mana whakahaere council depending on what mana whakahaere groups agree in that region?) appoints members to joint committees based on skills, expertise, including Mātauranga Māori and interests e.g. urban Māori

Local MWCs (e.g. catchment based, locality based etc.) have governance and decision-making role 'at place'

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Appointed based on skills, expertise and experience. [MWCs have a role in advising on secretariat appointments. Ongoing engagement between MWCs and secretariat]

Plan development - process

Inclusive of all mana whakahaere groups. MWCs have a role in directing engagement and consideration of advice from mana whakahaere groups by the secretariat/JC.

Accountability of joint committees

[Accountability of appointed members to their appointing MWCs]

RSSs to influence council funding plans

Enhanced Mana Whakahaere a Rohe
Inclusive of all mana whakahaere groups

Mana Whakahaere plans (current system IMPs)
Inclusive of all mana whakahaere groups.

Consenting [Local MWCs have a role in supporting consent process – notification etc. determined at planning stage]

Infrastructure Authorisations
Or any necessary permissions

CAA policy instruments (TBC)

Compliance, Monitoring and Enforcement [local MWCs have role in determining relevant mana whakahaere groups to undertake CME activities]

Monitoring and Reporting [local MWCs have role in determining relevant mana whakahaere groups to undertake monitoring and reporting activities]

Further information

- Mana Whakahaere model shaped by the following principles:
 - Legitimacy
 - Acknowledge and recognise rights holders, in tikanga terms
 - Rangatiratanga
 - Equitable
 - Efficient
 - Provides certainty for all
 - Tika / rights at the local level
- [Resource Management - Te Tai Kaha Briefing for Ministers 120921 \(Final\).pdf - Standard View \(sharepoint.com\)](#)
- Proposed timeframe in MW proposal for arrangements to be in place following NBA and SPA enactment:
 - Local level 18-24 mths
 - Regional level 18-24 mths
 - National level 6 mths
- RM rights and responsibilities primarily with hapū
- Based on assertion that PSGEs have no general mandate to represent hapū
- Mana whakahaere councils will be resourced

Current policy thinking on Māori participation across the system

- *The following slides set out a potential package of options for Māori participation across all levels of the system*
- *These are not final proposals but a representation of current thinking on options and how different options could work together as system*
- *Our advice on the matters contained in the following slides may change leading up to MOG as we continue to engage with Ministers*
- *There are still choices to be made within each level and across the overall strategic approach*
- *Any funding options are indicative and need consideration against funding principles*

Current Policy Thinking – alignment between previous TTK framework and current MfE policy thinking

Alignment:

- The principle that those with whakapapa relationships and responsibilities with/to te taiao need to be able to exercise their rangatiratanga and kaitiakitanga
- The idea that different tangata whenua groups, including ahi kā, hapū, iwi, landowners and Māori communities, hold different rights and responsibilities in relation to te taiao
- Decision-making must provide for the use and application of mātauranga Māori

Differences:

- The 'who' for some functions (e.g. governance on JCs), where this is iwi and hapū led
- Some of the roles for Māori in the system, in particular decision-making on the NPF and national level conflict resolution
- Those holding rangatiratanga needing to recover the costs for their role, with user charges being distributed in accordance with this principles.

The 'what' – roles/functions for Māori in the future RM system

Natural and Built Environments Act

Strategic Planning Act

Climate Adaptation Act

System Stewardship and Oversight

- Ability for system actors to seek the advice of the National Entity, with the National Entity having discretion for whether it chooses to provide this advice

National Planning Framework *Central Government direction*

- National entity inputs into NPF
- Appoints Māori members of the NPF Board of Inquiry
- NPF process includes broad engagement with hapū/iwi/Māori during policy development
- Mātauranga Māori input into setting national scale limits & targets

Regional Spatial Strategies *Long-term place-based strategy*

Treaty Partnership Entities (TPE)*

- For Treaty settlements, where mutually agreed by the Crown and PSGE, a TPE would be established to meet the intent of existing arrangements
- In all other cases a joint committee would be enabled to set up TPEs or other contributing committees for inter/intra regional RSS matters

Joint committee*

- Regional negotiations for committee composition and then appointments
- Governance roles on joint committees

Strategy development - secretariat

- Mātauranga, te ao Māori, and Māori engagement experts (NB: other expertise will also be required for effective secretariat)

Strategy development – process*

- Early and full participation in engagement processes

RSSs to influence council funding plans

Natural and Built Environments Plans *Local Government / iwi planning*

Treaty Partnership Entities (TPE)*

- For Treaty settlements, where mutually agreed by the Crown and PSGE, a TPE would be established to meet the intent of existing arrangements
- In all other cases a joint committee would be enabled to set up TPEs or other contributing committees for inter/intra regional RSS matters

Joint committee*

- Regional negotiations for committee composition and then appointments
- Governance roles on joint committees

Plan development - secretariat

- Secretariat required to include mātauranga, te ao Māori and Māori engagement expertise
- Mātauranga Māori input into setting regional/catchment scale limits/targets

Plan development – process*

- Early and full participation in engagement processes, facilitated through engagement agreements

Plan review process (MfE audit) - TBC

- MfE may seek input of the National Entity into plan audit, and the National Entity may choose whether or not to input

Treaty Settlement arrangements:

* Precise arrangements required to uphold Treaty settlement arrangements is subject to engagement with PSGEs

Roles across the system

Bespoke roles established through:

- roles provided for by Takutai Moana rights and through other existing tools
- enhanced mana whakahono ā rohe processes
- transfers of power
- joint management agreements

Iwi/hapū management plans

- Provide for articulation of iwi/hapū aspirations and must be had particular regard to in RSS and plan making

Consenting*

- Technical advice (e.g. cultural impact assessments)
- Pre-application engagement and participation as affected parties in appeals or ADR, with consent conditions able to identify additional roles/requirements
- Decision-making to the extent that provided under existing arrangements

Infrastructure Authorisations

Or any necessary permissions

Compliance, Monitoring and Enforcement

Monitoring and Reporting

- National Entity undertakes proactive and regular monitoring of Tiriti performance across the RM system

Objective: Give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.

Things to note about 'what' roles:

- Māori will have roles at all points in the system, and the level of prescription varies at different points in the system.
- Treaty settlements, Takutai Moana and other existing RM arrangements will be upheld.
- The National Entity will be independent of the government of the day.
- Still considering the status of the National Entity (ie, whether it is independent of the government of the day). This includes whether it will be more than an advisory body, how any recommendations will be responded to, and its scope for information gathering powers to support its monitoring functions

The 'who' – who will partner and participate from te ao Māori in the future RM system



System Stewardship and Oversight

National Planning Framework *Central Government direction*

- National entity
- Māori members on the NPF Board of Inquiry
- Hapū/iwi/Māori engaged with during policy development
- Mātauranga Māori experts inputting into setting national scale limits & targets

Regional Spatial Strategies *Long-term place-based strategy*

Treaty Partnership Entities (TPE) *

- For Treaty settlements, would be the 'who' as established via the settlement
- In all other cases, TPEs and other contributing committees can be established between 1 or more hapū/iwi/Māori groups only or also include 1 or more local authorities

Joint committee*

- Iwi and hapū would participate in the composition discussions, which would include agreement on who appoints
- An OIC would formalise the results of the composition discussions, including a list of appointers

Strategy development - secretariat

- Mātauranga, te ao Māori, and Māori engagement experts (NB: other expertise will also be required for effective secretariat)

Strategy development – process*

- Māori entities (inclusively defined, e.g. UDA definition) participation in engagement processes

RSSs to influence council funding plans

Natural and Built Environments Plans *Local Government / iwi planning*

Treaty Partnership Entities (TPE)*

- For Treaty settlements, would be the 'who' as established via the settlement
- In all other cases, TPEs and other contributing committees can be established between 1 or more hapū/iwi/Māori groups only or also include 1 or more local authorities

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Plan development – secretariat

- Mātauranga, te ao Māori, and Māori engagement experts
- Mātauranga Māori experts inputting into setting regional/catchment scale limits/targets

Plan development – process*

- Māori entities (inclusively defined, e.g. UDA definition) participation in engagement processes

Treaty Settlement arrangements:

- * Precise arrangements required to uphold Treaty settlement arrangements is subject to engagement with PSGEs

Roles across the system

- Enhanced mana whakahono ā rohe processes could be between iwi/hapū and decision makers (i.e. local authorities and joint committees depending on function)
- Transfers of power and joint management agreements would be with iwi/hapū
- The 'who' for Treaty settlements, Takutai Moana rights and other existing arrangements would be upheld

Iwi/hapū management plans

- Only iwi/hapū management plans would decision makers be required to have particular regard to

Consenting*

- Technical advice – experts and/or local knowledge holders
- Pre-application engagement – local affected parties and the iwi and hapū who hold mana whenua over the area (as determined in the plans)

Infrastructure Authorisations
Or any necessary permissions

Compliance, Monitoring and Enforcement

Monitoring and Reporting

Objective: Give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.

Things to note about the 'who':

- There is no one mandated national voice for iwi/hapū/Māori
- The 'who' for Treaty settlements, Takutai Moana and other existing RM arrangements will be upheld for those arrangements
- An overall principal of self-determination will apply
- Key choice is in how prescriptive is the legislation: strongly prescriptive provides certainty, clarity, efficiency; and less prescriptive allows for difference in regions based on current arrangements, Treaty settlements and allow system to evolve over time.
- Timeframes and 'circuit breakers' will be needed for appointment processes to provide certainty that entities will be established and operational without unduly delaying other processes

National Entity appointments process

- Electoral college process, using the regions as the basis for clusters along with a cluster for national representative Māori organisations
- Some prescription necessary, including timeframes and 'circuit breakers', but regions enabled to self-determination electoral college members and the electoral college enabled to self-determine the membership of the entity
- The electoral college would have criteria to assist it to appoint members with the right skills/expertise for the entities functions

MFE.002.0157

The 'how' – funding and support for Māori roles in the future RM system

CE-294

Note this slide does not include any funding or in-kind contributions from hapū/iwi/Māori which may be a feature of some roles (e.g. as a consent applicant)

Objective: Give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.

Natural and Built Environments Act

Strategic Planning Act

Climate Adaptation Act

System Stewardship and Oversight

National Planning Framework *Central Government direction*

- Establishment and ongoing costs of the National Entity, incl electoral college process, entity member compensation, staff salaries, professional service costs, and overheads
- Remuneration for Māori members of the NPF Board of Inquiry
- Potential areas (transitional at least) include costs of hapū/iwi/Māori participation during policy development (incl engagement cost) and professional service costs for mātauranga Māori input into setting national scale limits & targets

Regional Spatial Strategies *Long-term place-based strategy*

Possible mix of central & local roles:

- Training for joint committee members
- Treaty settlement and other existing arrangements would continue to be funded as agreed to via those arrangements
- Implementation agreements – funded as per the terms of those agreements

Possible local roles (as for current regional/local planning processes):

- Establishment costs for regional negotiations for committee composition and then appointments
- Member compensation (except central govt member)
- Secretariat staff salaries and overhead
- Engagement processes and professional services costs

RSSs to influence council funding plans

Natural and Built Environments Plans *Local Government / iwi planning*

Possible mix of central & local roles:

- Establishment costs for regional negotiations for committee composition and then appointments
- Training for joint committee members
- Treaty settlement and other existing arrangements would continue to be funded as agreed to via those arrangements
- Plan effectiveness monitoring (NMS component central govt)

Possible local roles (as for current regional/local planning processes):

- Member compensation (except DOC member if that occurs)
- Secretariat staff salaries and overhead
- Engagement processes and professional services costs (incl Mātauranga Māori input into setting regional/catchment scale limits/targets)
- Implementation of plans is primarily to be done through local govt funding, though may be a case for central govt funding to implement some NPF directives
- Membership and technical advice costs for the IHPs

Roles across the system

- Bespoke roles established through enhanced MWaR, transfers of powers, iwi/hapū management plans and JMAs, and other matters such as Māori land development, capacity/capability building initiatives and environmental projects are likely to be funded through multiple streams incl grants and contributions from both central and local govt.
- Agreements may include additional funding and support arrangements to be agreed on a case-by-case basis (likely with local govt)
- Roles provided for by Treaty settlements, Takutai Moana rights through other existing tools would continue to be funded as agreed to via those arrangements

Consenting

- Pre-application engagement and technical advice – costs covered by users but local govt may choose to subsidise some costs or bulk purchase services
- Participation as affected parties in appeals or ADR costs funded by a mix of local govt and user pays

Infrastructure Authorisations

Or any necessary permissions

Compliance, Monitoring and Enforcement

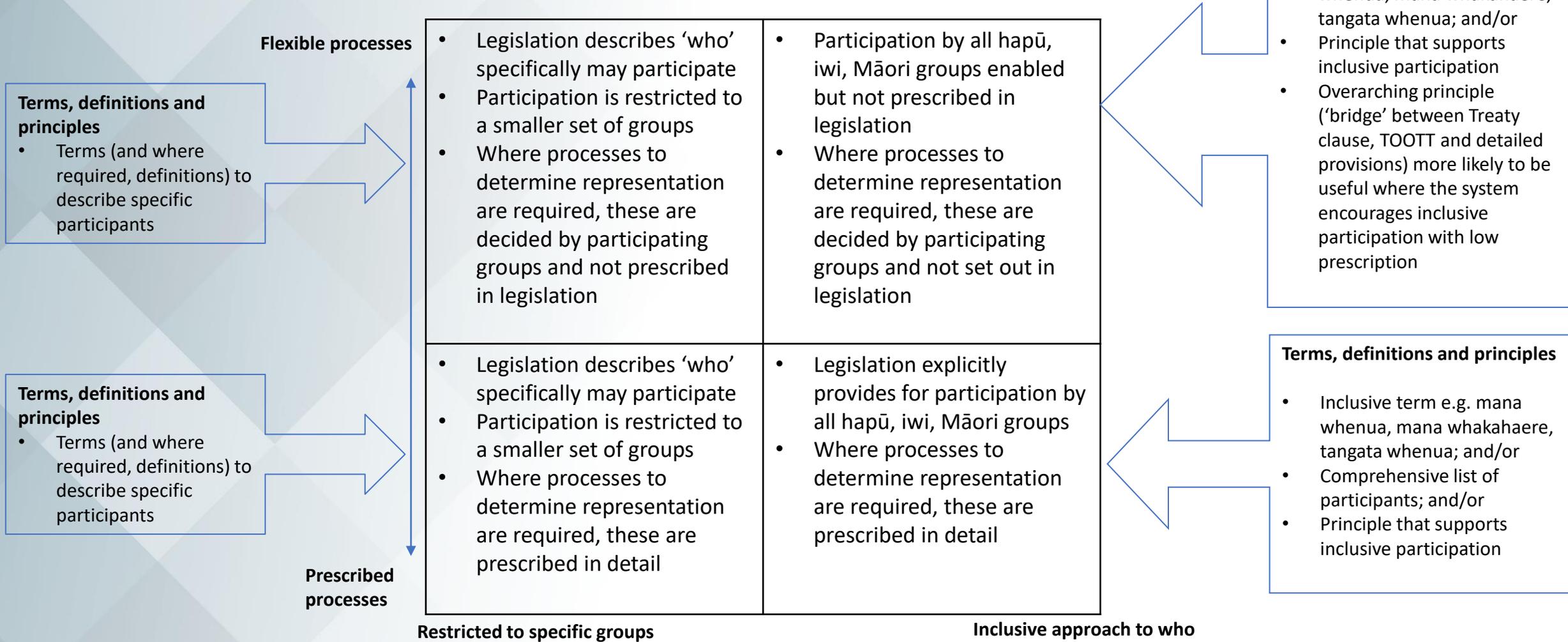
Monitoring and Reporting

Things to note about funding and support for roles:

- Funding for the new system is to be based on agreed principles.
- Generally, there is a greater case for Crown funding for Māori roles at a national level.
- Costs of establishing and transitioning are different to ongoing costs. There is generally a greater case for Crown funding contributions in regional matters for establishment and transition.

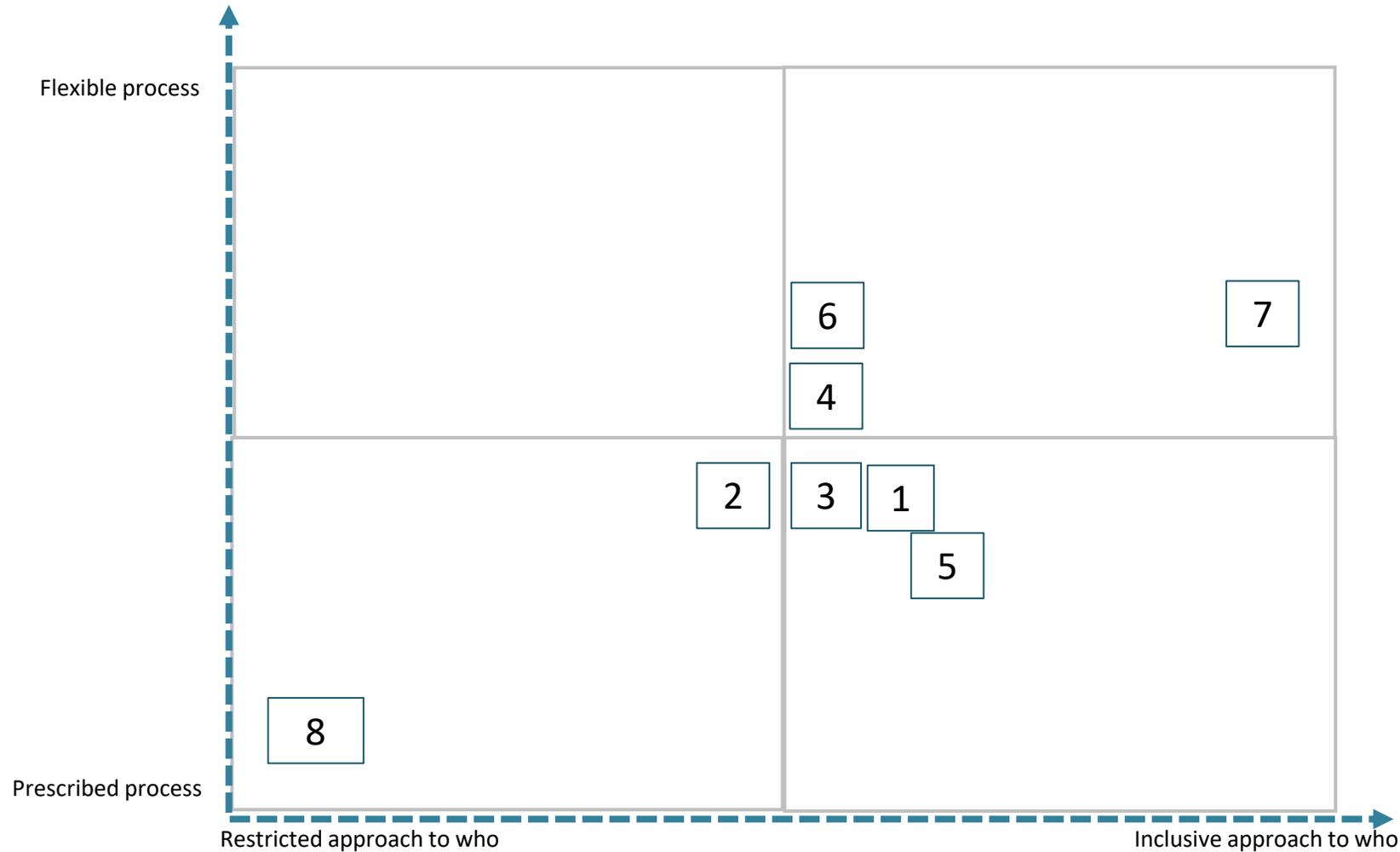
Key decision: who can participate at every level

Different parts of the system may be suited to different approaches



Direction of Travel: who can participate at every level

Potential approach for each level/participation mechanism in the matrix below



What	Key
National Māori Entity	1
Joint Committee	2
Treaty Partnership Entity	3
Mana Whakahono ā Rohe	4
Engagement Agreements	5
Joint Management Agreement /Transfers	6
Participation in Planning Processes	7
Treaty Settlement arrangements	8

For discussion

- *When creating new entities at the national and regional levels, how do we ensure we are not usurping the mana of iwi and hapū, and other rights and interests holders, at place?*
- *For Joint Committees, regarding the process to agree composition and identify appointing bodies:*
 - If we prescribe an iwi and hapū-led process, what other mechanisms need to be in place to protect other rights and interests at place?
 - If we do not prescribe who leads this process, how do we ensure successful iwi/hapū/Māori participation without creating additional conflict or complexity?
 - How does expanding participation beyond iwi and hapū impact on the Crown's active protection obligations to uphold existing rights and interests?

Additional Material

- Funding Principles
- RM Reform System overview

The following funding Principles will be used to guide funding decisions:

- *Principle 1 – users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers*
- *Principle 2 – where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs*
- *Principle 3 – where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do so*
- *Principle 4 – at all levels within the system, costs and charges should be proportionate with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity*

Reform objectives

Protect and where necessary restore the natural environment, including its capacity to provide for the well-being of present and future generations.

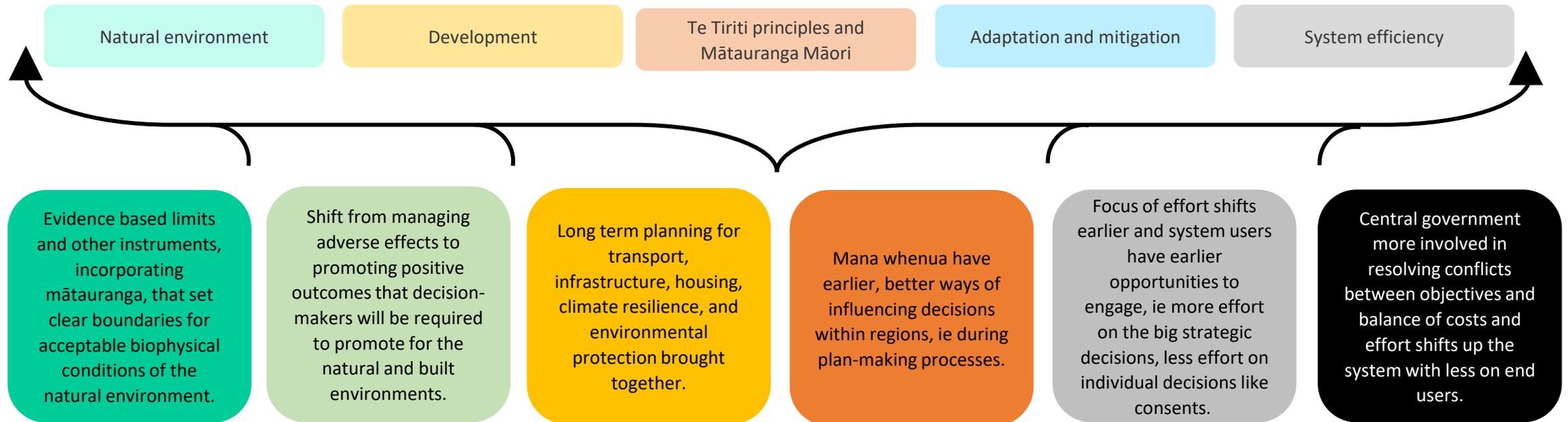
Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.

Give effect to the principles of Te Tiriti o Waitangi / the Treaty of Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.

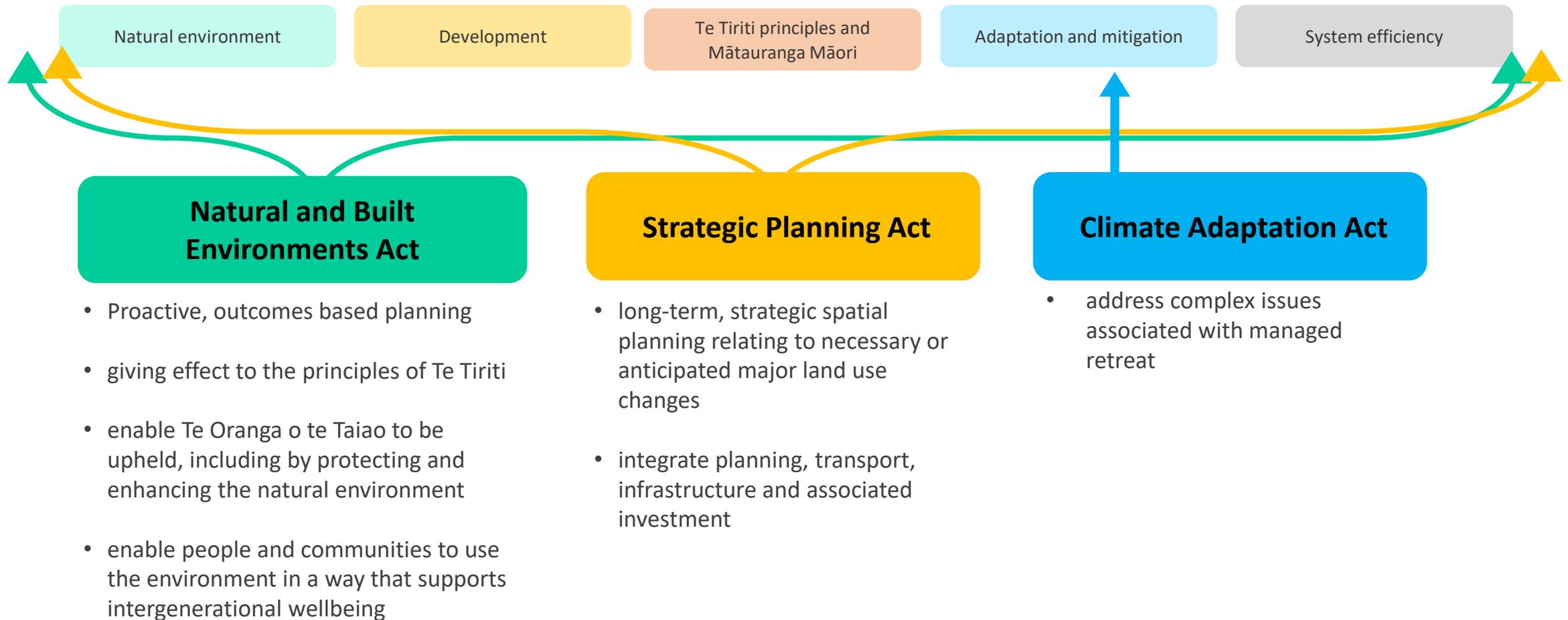
Better prepare for adapting to climate change and risks from natural hazards as well as mitigating the emissions which contribute to climate change.

Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.

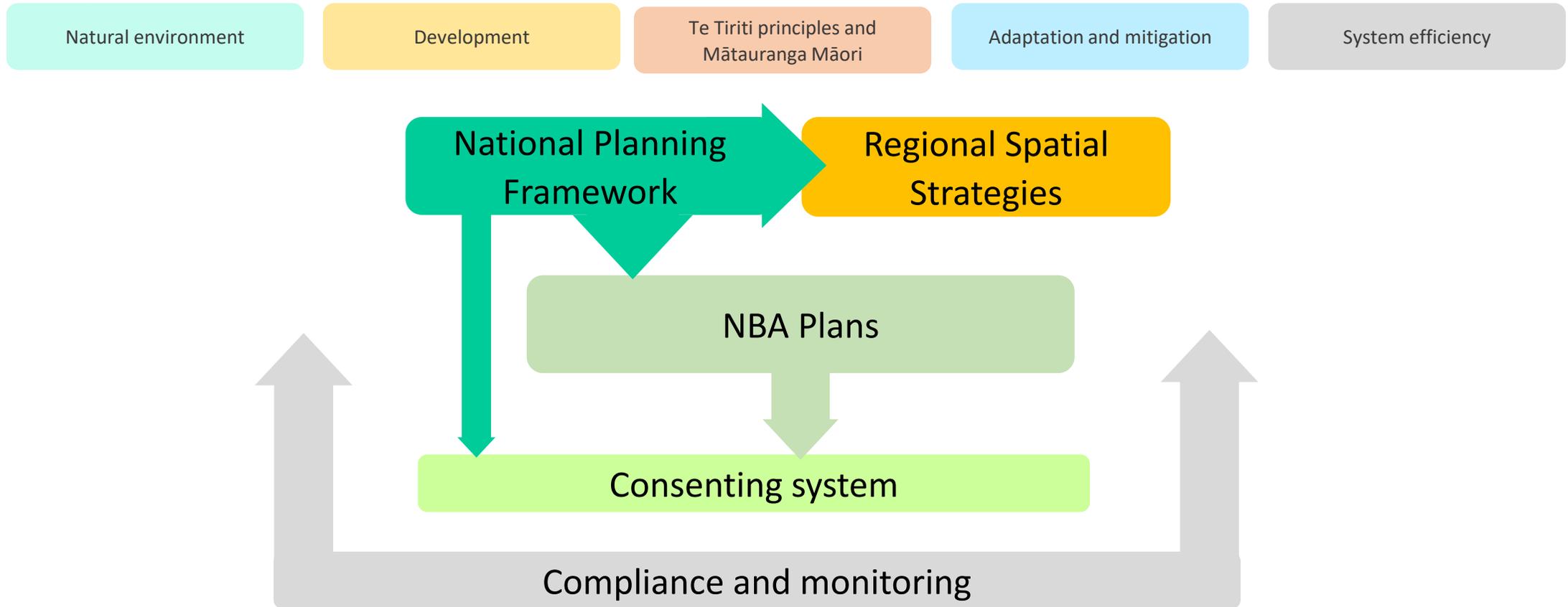
System changes to bring about these objectives



Three Acts

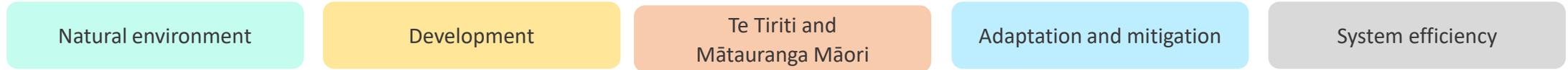


Ongoing operation/evolution of the integrated* system

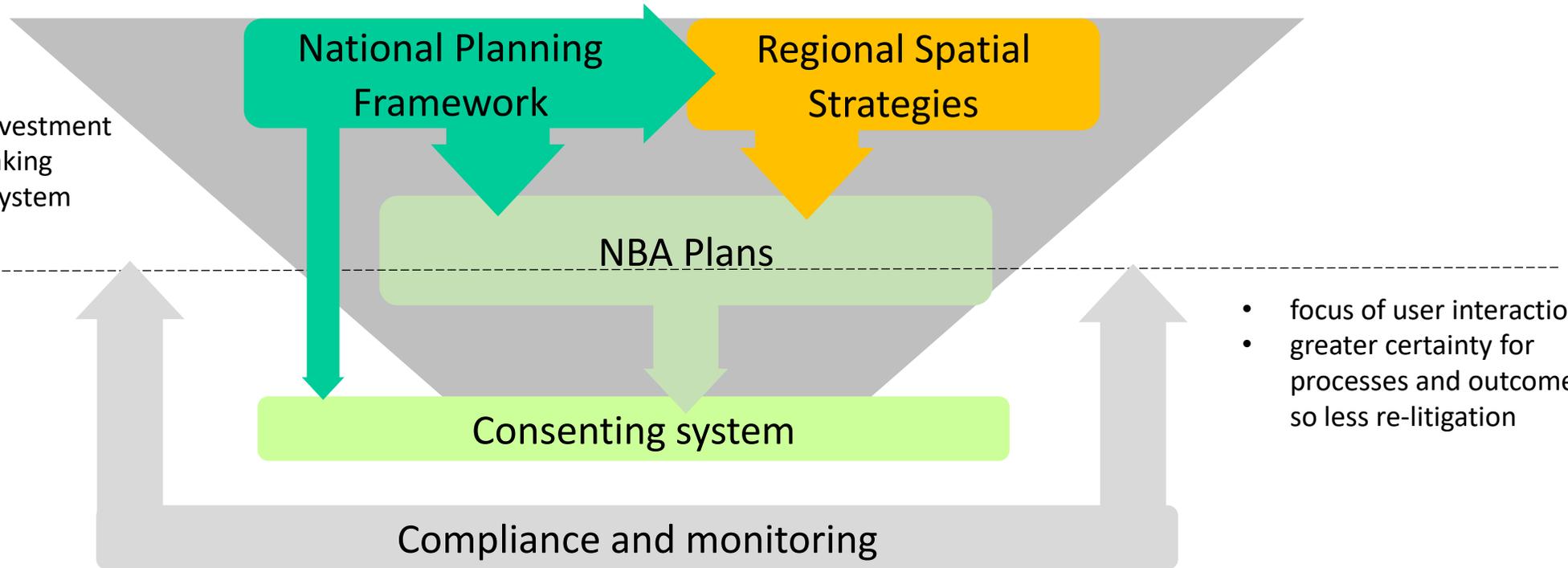


* Integrated planning and environmental protection

Ongoing operation/evolution of the System with feedback loops

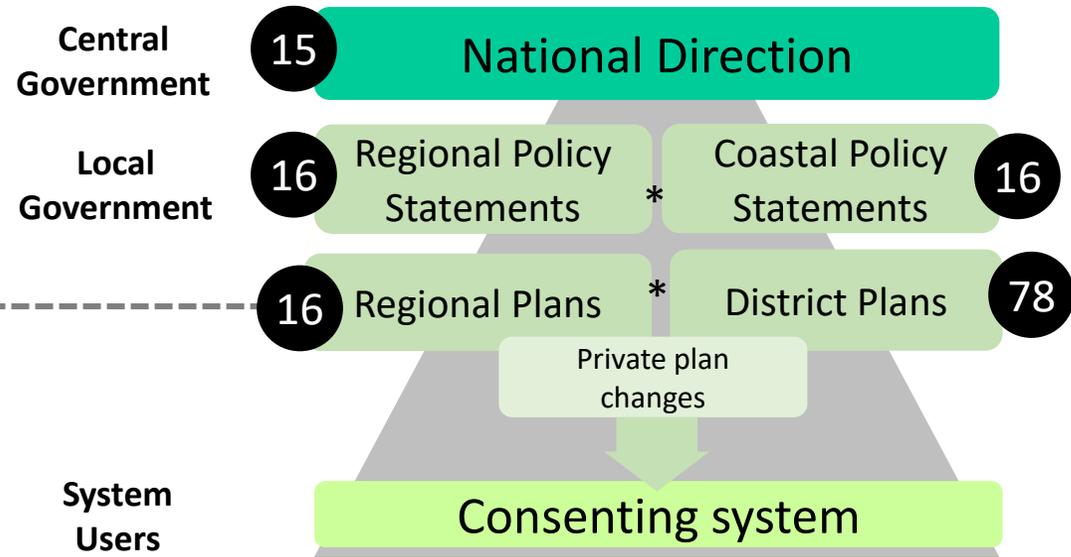


- central government involvement
- focus of additional investment
- strategic decision-making
- greatest input from system users

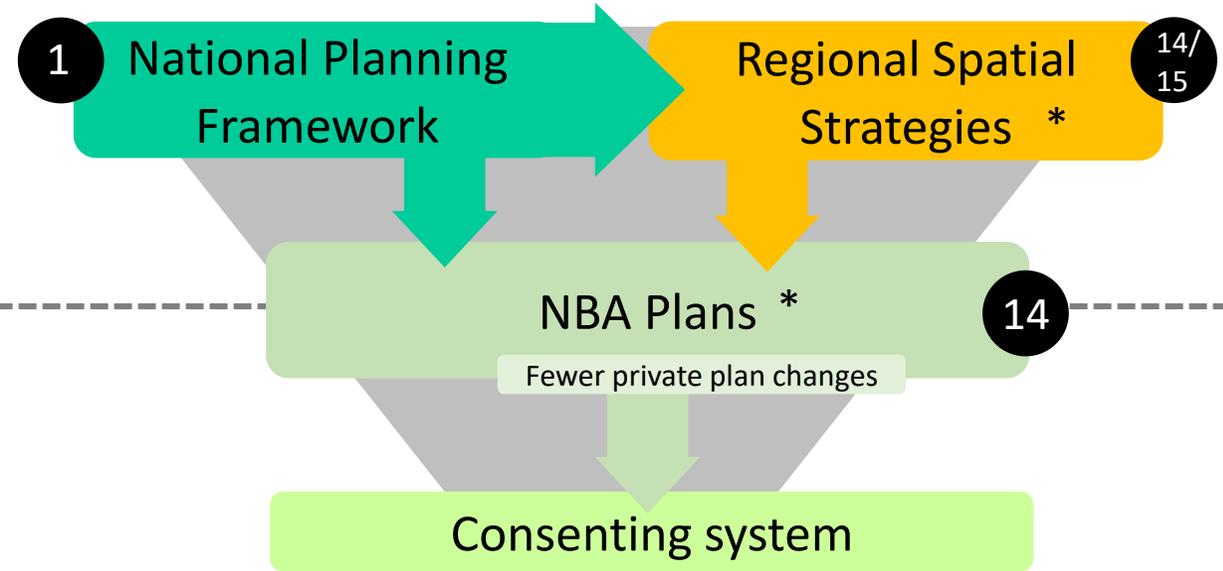


- focus of user interaction
- greater certainty for processes and outcomes, so less re-litigation

RMA System



Future System



- earlier, more strategic, more engaged planning
- fewer documents
- decisions at each level better supported from above
- greater number of permitted activities, reducing consent numbers (and costs for users)
- less relitigation of outcomes, and less involvement of the courts, in specific consenting decisions

* Reflecting iwi management plans and similar documents. Private plan changes will remain but in a smaller role.

MINUTE

RM Reform Ministerial Oversight Group Meeting #17

Date Tuesday 12 April, 5:00 to 6:00pm
Location Zoom
Chair Hon Grant Robertson, Minister of Finance
Deputy Chair Hon David Parker, Minister for the Environment
Attendees Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti
Hon Dr Megan Woods, Minister of Housing
Hon Nanaia Mahuta, Minister of Local Government
Hon Poto Williams, Minister of Building and Construction
Hon Damien O'Connor, Minister of Agriculture
Hon Willie Jackson, Minister for Māori Development
Hon Michael Wood, Minister of Transport
Hon Kiritapu Allan, Minister of Conservation, Associate Minister for Arts, Culture and Heritage, and Associate Minister for the Environment
Hon Phil Twyford, Associate Minister for the Environment
Hon James Shaw, Minister of Climate Change

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

1. **agree** to change the name of the proposed 'Strategic Planning Act' to the 'Spatial Planning Act' to better reflect the purpose of the new legislation
2. **agree** to establish joint committees (committees) under the Spatial Planning Act (SPA) for preparation of regional spatial strategies (RSSs) comprising local government, Māori, and central government members
3. **agree** to establish joint committees (committees) under the Natural and Built Environments Act (NBA) for preparation of the NBA plan comprising local government and Māori members
4. **agree** that the SPA committee and the NBA committee will be two separate committees with different functions, but that this does not preclude overlapping membership across the two committees
5. **note** that the primary function of the SPA committee will be to oversee the development of and approve an RSS for the region, and that previous MOG decisions have agreed detailed functions for the SPA committee
6. **note** that the primary function of the NBA committee will be to prepare and approve an NBA Plan for the region, and that previous MOG decisions have agreed detailed functions for the NBA committee
7. **agree** that the SPA and NBA committees will be standing committees and have on-going roles in the system including monitoring functions for plans
8. **agree** that the committee members will have a general duty to work collectively to achieve the purpose of the relevant Act across the region
9. **agree** that each committee will be established as a new statutory body under the SPA or NBA and are not subordinate decision-making structures to local authorities
10. **agree** that SPA and NBA committees will be hosted by one council, and that the host council will have no greater or lesser powers in relation to the committee than any other local authority in the region
11. **agree** that as part of composition discussions (as set out below), local authorities and iwi and hapū representative organisations will consider which local authority is best placed to be the host council, and that if unanimous agreement from the local authorities cannot be reached this role will default to the regional council
12. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to clarify the functions and powers of the SPA and NBA committees and local authorities, and operationalise the host council role, including the relationship with the director of the secretariat (as set out below)
13. **agree** that the SPA committee prepare an RSS covering every local authority, or part of a local authority, in the region, with local authorities retaining responsibility for implementing and administering them
14. **agree** the NBA committee prepare an NBA plan covering all local authorities, or part of a local authority, in the region, with local authorities retaining responsibility for implementing and administering them

[IN-CONFIDENCE]

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

15. **agree** that the existence of the SPA and NBA committees does not affect the member councils' statutory obligations
16. **agree** that the SPA and NBA committees are to have legal autonomy to initiate and defend legal actions in relation to the performance of their functions and duties

PART B: COMPOSITION AND APPOINTMENTS

17. **agree** that the composition and size of the SPA and NBA committees should support effective decision-making and efficient functioning, with a minimum of 6 members prescribed in the legislation
18. **agree** that all local authorities in a region will be entitled to appoint a member on the SPA and NBA committees, but can choose not to be directly represented
19. **note** that the regions vary in numbers of local authorities, ranging from 4 local authorities in the West Coast and Southland regions to 12 local authorities in the Waikato region
20. **agree** that the Ministerial Oversight Group will make decisions on joint committee composition via round robin. [note: these decisions are in Paper 1A]
21. **[recommendation deleted]**
22. **agree** that when determining composition of SPA and NBA committees, the following issues should be considered:
 - a. ensuring that urban, rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes
 - b. ensuring that the iwi, hapū, and Māori in the region are appropriately reflected in membership of the committee
23. **note** the above parameters could be supported by non-statutory guidance that could support establishment and appointment to committees
24. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the approach chosen for the composition of committees in recommendation 20 and on the parameters in recommendation 22
25. **agree** that SPA committees will have one central government representative appointed by the Minister/s responsible for administering the SPA
26. **note** that decisions on composition arrangements in regions are subject to on-going discussions with Post-Settlement Governance Entities (PSGEs) in relation to existing Treaty settlement commitments, and with the relevant entities in relation to existing natural resource arrangements under the Resource Management Act 1991 (RMA)
27. **note** that MOG #7 and #8 agreed that the future system will need to provide mechanisms to uphold the intent and integrity of arrangements established via Treaty settlements and natural resource arrangements under the RMA, and that decisions on these arrangements are delegated to a sub-set of Ministers

Irrelevant

[IN-CONFIDENCE]

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

29. **agree** that the legislation will provide for a process through which local authorities and iwi and hapū representative organisations¹ in the region seek to agree on a composition arrangement for the SPA joint committee, including:
- a. the host council
 - b. the number of members of the SPA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
30. **agree** that the legislation will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:
- a. the host council
 - b. the number of members of the NBA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
31. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans
32. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees
33. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:
- a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress
 - b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement
34. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC
35. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met
36. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:
- a. the host council
 - b. the number of members of the joint committee

¹ *Paper 1: Role, funding and participation of Māori in the RM system* explains what this term means and how Māori will be participate in composition and appointment processes.

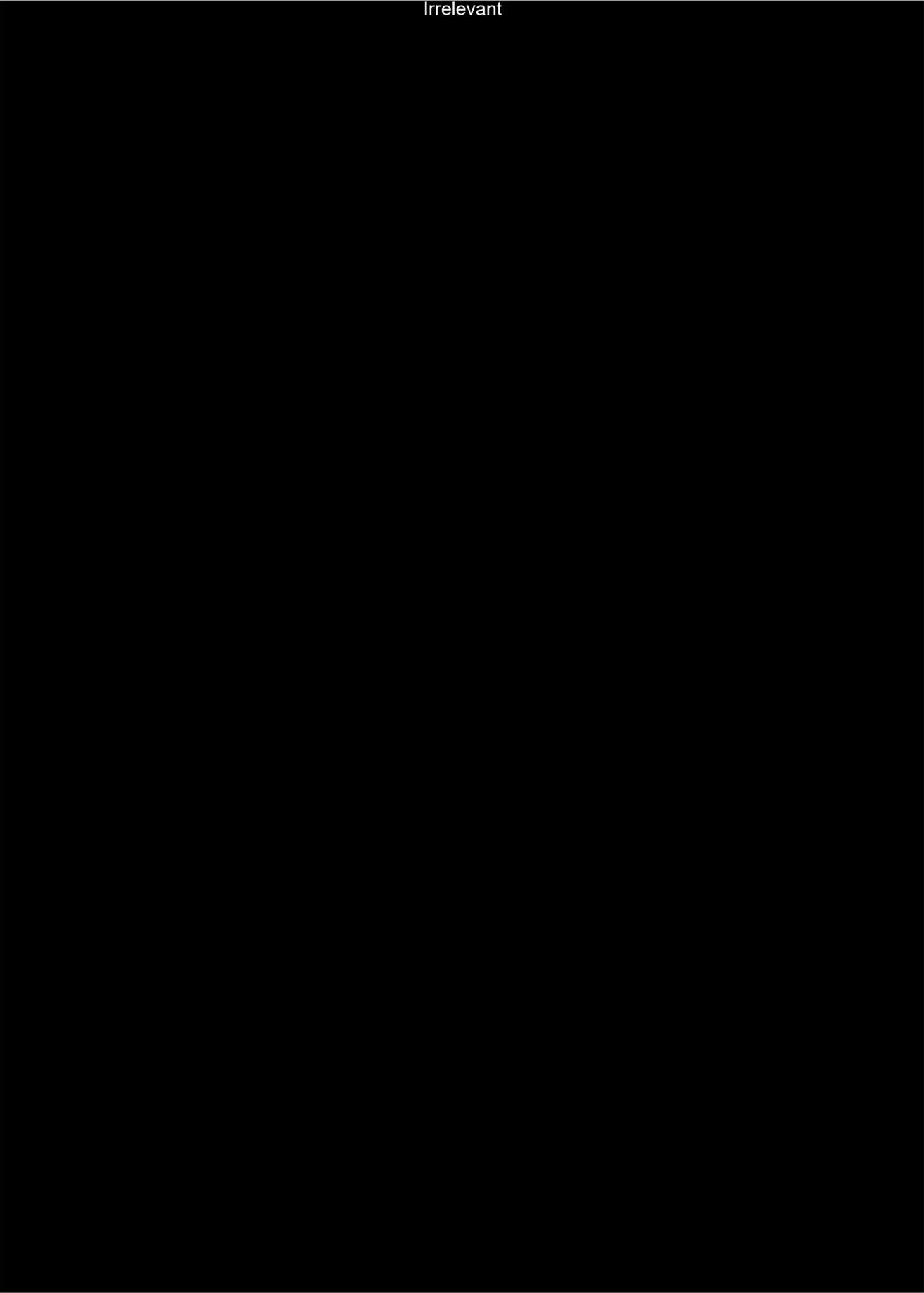
[IN-CONFIDENCE]

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

- c. the appointing bodies who can appoint the members (subject to delegated decisions in the *Role, funding and participation of Māori in the RM system* paper)
37. **agree** that the LGC will then publish its determination or decision on the committee composition
38. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions
39. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 34 above
40. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council
41. **agree** that the appointing bodies will be required to have an appointment process
42. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments
43. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees
44. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making
45. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)
46. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments
47. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

Irrelevant

Irrelevant



Paper 2: Role, funding and participation of Māori in the RM system

The Ministerial Oversight Group (MOG) is recommended to:

Context, analytical approach, who participates, Treaty impact analysis (see Annex A for supporting analysis)

Context and prior decisions

1. **note** that the Resource Management Review Panel (the Panel) identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and made a number of recommendations relating to more effective and strategic roles for Māori in the new system, and better consistency with the principles of Te Tiriti o Waitangi (Te Tiriti)
2. **note** that the proposals set out in the suite of accompanying papers (Annex 0 to E) broadly align with the Panel's recommendations (with one exception as set out in recommendation 6 below)
3. **note** that previous MOG decisions influence the framing for the recommendations in this paper, with significant ones relating to the role of the National Māori Entity, approach to "who" participates at different levels, and how Māori will be supported to participate in the system

Who from te ao Māori participates across the system

4. **note** that, in general, proposals aim to provide for iwi/hapū/Māori to self-identify who will represent them in resource management (RM) processes. However, the proposals also recognise that in some cases more specificity is required to ensure that:
 - a. there is clarity about which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
 - b. the Crown sets up processes that avoid or resolve conflict
 - c. the system is able to function effectively and efficiently and in accordance with its policy intent
 - d. Treaty settlements and other existing natural resource arrangements under the RMA are upheld
5. **note** that the proposals for 'who' from te ao Māori participates across the system provide for
 - a. roles for iwi and hapū, including in relation to composition and appointment processes for NBA and SPA committees
 - b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space and resource 'at place'⁶
 - c. roles for expert Māori practitioners
 - d. a role for national Māori organisations as part of the National Māori Entity nominations process

⁶ Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

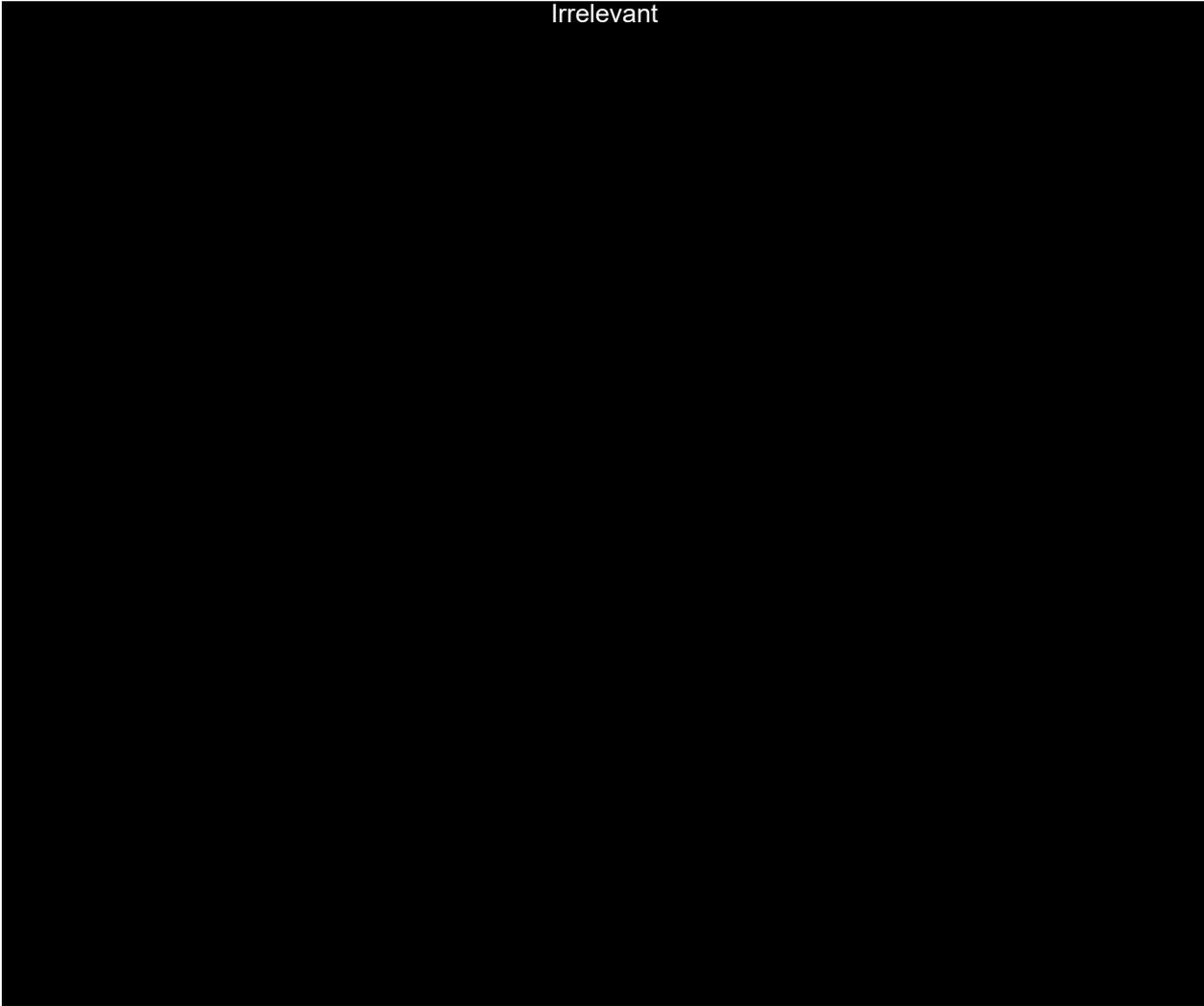
Paper 2: Role, funding and participation of Māori in the RM system

- e. participation opportunities for Māori as individuals through public participation processes

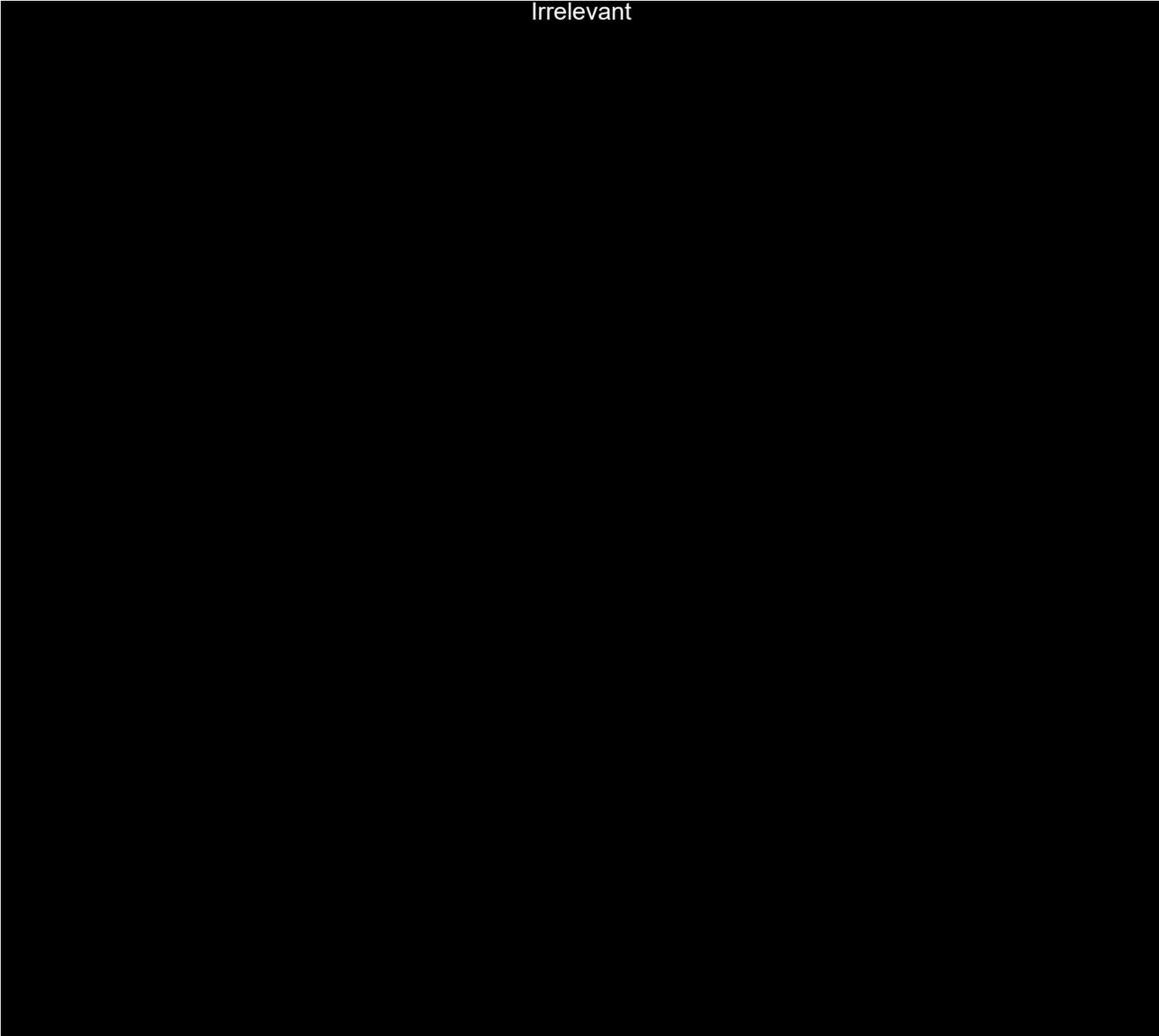
Terms and definitions

- 6. **note** that the Panel recommended the existing RMA terms ‘iwi authority’ and ‘tangata whenua’ be replaced by ‘mana whenua’ with a proposed definition of “an iwi, hapū or whānau that exercises customary authority in an identified area”, but our view – discussed at the Māori Interests subgroup on 24 November 2021 – is that there is no clear case for a single overarching term, and different terms should be used in different contexts
- 7. **note** that consistent terms and definitions will be developed to support specific proposals on “who participates from te ao Māori” at each layer and function in the new RM system, including for:
 - a. iwi and hapū representative organisations
 - b. Māori entities representing rights and interests in relation to a particular area, water source, space and resource ‘at place’ (similar to the approach taken under the Urban Development Act 2020)
- 8. **authorise** the Minister for the Environment, Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan) to make any further policy decisions required to draft definitions and agree the implementation approach in relation to who participates from te ao Māori at each layer and function in the new RM system

Irrelevant



Irrelevant



Regional Governance (see Annex C for supporting analysis)

Who participates in SPA and NBA committee composition and appointments processes

54. **note** that Paper 1: Regional Governance and decision-making in the new resource management system seeks agreement to a range of matters related to SPA and NBA committees, including composition and appointment processes
55. **note** that Te Tai Kaha and the Freshwater Iwi Leaders Group/Te Wai Māori Trust have differing views on 'who' from te ao Māori should be leading the composition and appointment process for Māori members on the SPA and NBA committees
56. **agree** the following approach to composition and appointment for Māori members on SPA and NBA Committees:
- a. iwi and hapū representative organisations are identified as the entities to be engaged with in discussions on composition of SPA and NBA committees
 - b. iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities⁸ representing rights and interests 'at-place'⁹ in agreeing composition and identifying appointing bodies

⁸ See recommendation 7.

⁹ Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

Paper 2: Role, funding and participation of Māori in the RM system

- c. there will be requirements to maintain a record of engagement on composition and appointment discussions and to make this record publicly available
 - d. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations, can also be appointing bodies
 - e. appointing bodies must be enduring and capable of developing and executing their own appointment and removal processes
57. **note** that this approach does not preclude the creation, outside of statute, of a regional forum or other mechanisms to support appointee accountability, help reach agreed positions, and resolve disagreements
58. **note** that once appointments are made, the Māori members on SPA and NBA committees (like local authority members) will be paid for their services by the committees
59. **authorise:**
- a. the Minister for the Environment and the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Local Government, the Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) to make any other decisions needed on the ongoing role and functions of appointing bodies, details of dispute resolution (including facilitation) and circuit-breaker processes for Māori appointments; and
 - b. the Minister of Finance (Hon Grant Robertson), in conjunction with the Ministers listed in 53 a, to make decisions where these policy decisions have financial implications

Secretariat

60. **note** that Paper 1: Regional Governance seeks agreement to the functions and responsibilities of the Secretariat Director and the Secretariat
61. **authorise** the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat, including any additional legislative and non-legislative measures that may be required to support the role for Māori in the secretariat

Upholding Treaty settlements, Takutai Moana rights and other existing arrangements

62. **note** that the Crown has committed to upholding Treaty settlements, Takutai Moana rights, rights under Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019 and other existing natural resource arrangements under the RMA, and that:
- a. some existing arrangements through Treaty settlements or the RMA enable or provide for joint development between iwi/hapū, PSGEs and local authorities of aspects of regional and district planning documents, or decision-making on the same
 - b. the future system will need to provide mechanisms to uphold the intent and integrity of those arrangements established via Treaty settlements and/or under the RMA (including co-governance, joint management, and arrangements for the development of regional planning documents)
 - c. decisions on composition arrangements in regions are also subject to on-going discussions with affected parties in relation to upholding existing commitments and may require further policy decisions to provide for additional direct representation of those parties on SPA and/or NBA joint committees or sub-committees
 - d. these matters will require further delegated decisions (refer to MOG #15 delegated decision making for Treaty settlements; RMA arrangements; Takutai Moana rights and Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019)

Describing iwi, hapū and Māori representative organisations

For discussion with Freshwater Iwi Leaders Group / Te Wai Māori Trust

Describing iwi, hapū and Māori representative organisations in the SPA and NBA: Context



High-level summary of decisions made at MOG 17

- The SPA and NBA will provide new and/or enhanced roles and participation opportunities for iwi, hapū and other Māori groups
- Significantly enhanced participation for hapū, generally via their representative organisations
- New participation opportunities for other Māori groups with relevant interests

Purpose of this discussion

Share thinking and seek your views on how iwi, hapū and Māori representative organisations to be described for the purposes of the SPA and NBA

Other context

Further related decisions (in other papers) also to come on:

- National Māori Entity appointments process
- SPA and NBA committee appointments process
- Circuit breakers and dispute resolution
- Mana Whakahono a Rohe, JMAs and Transfers of Power

Describing iwi, hapū and Māori representative organisations in the SPA and NBA: Summary of proposals 1



Current thinking	Key points
'Iwi' and 'hapū' are not defined in the SPA and NBA	<ul style="list-style-type: none"> • The approach continues the practice of the RMA and most other legislation. • No compelling, nor Tiriti consistent reason to define iwi and hapū in the SPA nor NBA.
<p>"Tangata whenua" retained for use in the SPA and NBA as appropriate</p> <p>"Mana whenua" retained to support the interpretation of "tangata whenua"</p>	<ul style="list-style-type: none"> • Instances where it will be necessary to specify that the relevant iwi and hapū (and by extension the relevant representative organisations) are those who exercise mana whenua in a certain area (as opposed to any iwi or hapū) • Maintains legislative continuity • Any further prescription by the Crown inappropriate
Broadly consistent definition of iwi and hapū representative organisations	<ul style="list-style-type: none"> • Reflects greater consistency in participation rights and engagement requirements between iwi and hapū • Likely outcome that 'iwi authority' and 'group that represents hapū' will be replaced as terms

Describing iwi, hapū and Māori representative organisations in the SPA and NBA: Summary of proposals 2



Current thinking	Key points
<p>A hapū representative organisation either:</p> <ul style="list-style-type: none"> • an entity which is authorised to speak for and act on behalf of a hapū or collective of hapū; or • the hapū members, providing an authorised view on a specific resource management matter through a hui or other process convened in accordance with their tikanga 	<ul style="list-style-type: none"> • Enhanced direct participation opportunities for hapū provides case for describing hapū representative organisations • ‘authorised view’ provides for instances where hapū don’t have formalised representative structures but want to provide a view on a specific matter • Reference to entity intended to cover the structures which iwi and hapū already employ for representative purposes or equivalent structures – but would not be specifically prescribed
<p>An iwi representative organisation an entity which is authorised to speak for and act on behalf of an iwi</p>	<ul style="list-style-type: none"> • Acknowledge the existing ‘iwi authority’ definition workable for iwi • Case for change about consistency and clarity but acknowledge practical change unlikely

Key questions

- We have been considering whether to specify that an iwi or hapū representative organisation should be authorised **for resource management purposes** – do you think that would be useful or not?
- Do you expect hapū would utilise the ‘authorised view’ approach?
- Is the authorised view approach useful, or does it create too much uncertainty/risk? Is there an alternative way to provide for hapū to directly share a view on specific resource management matters?

Describing iwi, hapū and Māori representative organisations in the SPA and NBA: Summary of proposals 3



Current thinking	Key points
<p>Where the SPA and NBA might describe other Māori groups with relevant interests, this should be a non-prescriptive, non-exhaustive description (unless specific rights are provided for under other legislation e.g. MACA or TTWM)</p>	<ul style="list-style-type: none"> • Interests in this context being considered broadly – covering tikanga Māori, te Tiriti, common law and statute • Provides for regional, local and functional flexibility – relevant interests will be different in different contexts • Clarity and support for decision makers and others who may have engagement requirements provided through non-legislative guidance
<p>Māori representative organisations (representing the groups described above) must be entities which are authorised to speak and act on behalf of the groups with relevant interests in relation to resource management</p> <p>A reference will be made to the UDA Māori entity definition as an example of entity types</p>	<ul style="list-style-type: none"> • Some cases where Māori representative organisations will have a specific role • Using the UDA Māori entity definition as an example (rather than replicating the approach) provides a level of guidance without over prescribing and excluding potentially appropriate entities from participating both now and in the future

Key questions

- Is non-legislative guidance a useful way to provide for clarity and support?
- Are you comfortable with the UDA Māori entity definition as an example?

ILG/MfE hui on appointment processes and circuit breaker mechanisms 01/06/2022

- ILG did not receive unredacted MOG papers until the evening of the 31st and are in the process of finalising their own paper on appointment processes- so appointment discussions will be deferred for a future hui.

Circuit breaker mechanisms- in general

- It was emphasised by ILG that their position remains that 50/50 seats on joint committees for LGA and Māori members is the most efficient way of achieving representation without conflict either for both the number of seats, and who appointing bodies would be.
- ILG further noted that in many instances, existing Treaty Settlements or Governance Arrangements may mandate a 50/50 split in representation on the joint committees eg, Ngai Tahu, Regional Planning Commission in Hawkes Bay.
- MfE clarified that they are currently developing statutory timeframes within which composition and appointing body decisions would need to be made- but that these are very much proposals at this stage, as follows:
 - a) There would be 6 months overall to determine composition
 - b) After 2 months the LGC would issue a draft determination on the split of seats
 - c) After 4 months, mediation would be offered if consensus could not be reached on a) the split of seats and b) who the appointing bodies should be.
- ILG noted that the success of all processes are reliant on appropriate funding, resourcing and time for iwi/hapū Māori at place to engage meaningfully.
- ILG stressed that processes should be led by Māori not MfE or the Crown, MfE noted that engagement on implementation will be forthcoming once decisions have been made, to enable work to happen 'at place'

Circuit breaker mechanism if appointing bodies cannot be determined

- MfE briefly outlined options for the circuit breaker mechanism for appointing bodies, noting that there is strong Ministerial support for the Māori Land Court (MLC) to decide. The proposed options currently being canvassed by MfE are:
 - a) A panel appointed by the Minister determines who appointing body/bodies will be
 - b) A panel appointed by a statutory standing body determines who the appointing body/bodies will be
 - c) A panel appointed by the Māori Land Court determines who the appointing body/bodies will be
 - d) The Māori Land Court decides who the appointing body/ bodies will be.
- ILG do not consider that the Māori Land Court is the appropriate body to make a determination on this
- ILG felt that this process was over-engineered and that iwi/hapū could sort out disagreements between themselves, but that there needed to be funding for iwi/hapū to engage in these processes to do so. As a last resort iwi could go to the Crown but it shouldn't be required.
- MfE also clarified that prior to a circuit breaker being triggered, an option was for 3 mediators to be appointed by the Māori Land Court.
- ILG again raised concerns over the use of the term 'hapū representative groups' and 'groups representing hapū'. They considered that the scope of potential groups captured in this terminology is what will resolve in representation disputes and create the need for a circuit

breaker. The message was that the legislation should use existing RMA language in order to provide simplicity and consistency for councils and iwi and hapū. MfE clarified that sticking with the existing RMA language is likely to be the approach taken.

- ILG suggested that in order to reduce the administrative and consultation fatigue on Māori, processes could be aligned with those proposed for 3 Waters as much as possible
- ILG questioned why there was not an option for iwi/hapū to determine a panel for appointing body circuit breaker- they asked if this was to do with statutory timeframes.
- ILG noted that they were not super concerned about iwi/hapū being able to determine their appointing bodies within the proposed draft timeframes and did not foresee that a circuit breaker would be required except in a few cases where multiple groups are being represented eg, Northland, Auckland and Hawkes Bay.

Circuit breaker mechanism if split of seats cannot be determined

- MfE clarified that there would be a circuit breaker mechanism, if LGC and Iwi/hapū could not agree on a split of seats on the joint committee. In this instance the LGC would make the determination.
- ILG strongly oppose the LGC as the circuit breaker in this instance, they expressed concern that there is not appropriate Māori membership on the LGC and that the LGC was unlikely to deliver best outcomes for Māori in making composition decisions.
- MfE confirmed that Ministers agreed to the LGC as the circuit breaker in this instance at MOG 17 but that Keita would check about whether there is scope to revisit this.
- MfE noted that there is work being undertaken to develop criteria that the LGC must consider when undertaking a circuit breaker decision. ILG noted that these would need to be very tight in order to ensure that decisions were not discriminatory against Māori.

Action points

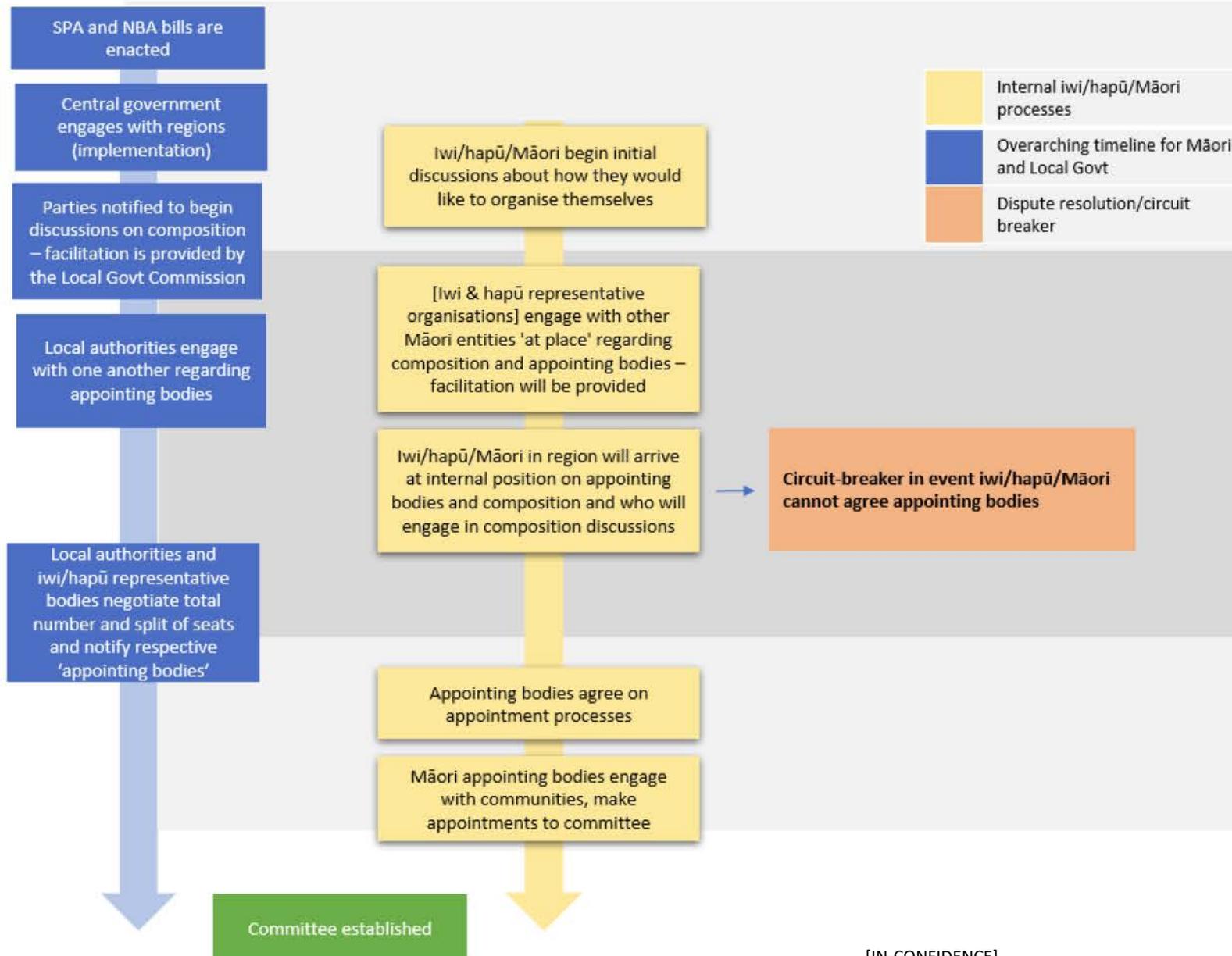
- Keita to follow up on the LGC circuit breaker and whether there is any scope to revisit this.
- Keita to follow up with Treaty Settlements team on initial thinking on upholding Treaty Settlements in appointment and composition discussions before the ILG/Ministers' meeting tomorrow.
- MfE to report back to ILG on what the 3 model regions will be following Minister Parker's decisions.

Appointing Māori members to SPA and NBA committees:

- *processes for appointment*
- *“circuit-breakers” to reach decisions when there is no agreement*

For discussion with Te Tai Kaha on Wednesday 1 June, 2022

Overview of proposed process for appointments



Appointing Māori members to SPA and NBA committees

NOT GOVERNMENT POLICY - FOR DISCUSSION PURPOSES ONLY



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What is required to support appointment processes grounded in self-determination?

- How could it be ensured that appointments are fair and effective?
- How much prescription would be required in legislation to achieve this?
- What are the key points in the appointment process where legislative provisions would be useful?
- How would it be assured that only appropriate and legitimate people are involved?
- What is required, in legislation or elsewhere, to ensure that processes are both inclusive and efficient?
- What, if any, legislative provisions are required to ensure appointing bodies and the members that they appoint are held accountable?

Appointing Māori members to SPA and NBA committees:

- ***“circuit-breakers” to reach decisions when there is no agreement***

Circuit breaker issues 1

- The objective is that all parties in the region (local authorities and Māori) will have a certain period of time to reach consensus on the composition of committees (number of seats and the split between LAs and Māori) and who the appointing bodies are, and this will be the “regional proposal”.
- A crucial element of this regional proposal is for [iwi and hapū representative organisations] to agree on the appointing bodies that will appoint Māori members to the SPA and NBA committees.
- If agreement is not reached in the allotted time or agreement is disputed, mediation will be an option (or may be compulsory).
- If agreement is not reached there needs to be a way to make a decision; that is a “circuit breaker”.

Circuit breaker issues 2

- Different circuit breakers apply depending on whether the issue is composition, or appointing bodies, and there would be a dedicated circuit breaker for Māori appointing bodies.
- If circuit breakers are needed for appointing bodies, difficult sequencing issues arise. Decisions on appointing bodies are difficult without knowing composition. Decisions on composition are difficult without knowing appointing bodies and the relevant interests they are to serve.
- Legislation may need to clearly define what agreement/consensus looks like. How should it do this?
- Circuit breaker processes for (especially for appointing bodies) are only used as a last resort to ensure Māori members are appointed to the committees.

What are the features of a successful circuit breaker?

- Minimal departure from the guiding principle of self-determination for establishing Māori appointing bodies
- Upholds Treaty settlements and other existing arrangements
- Decision makers have appropriate expertise and experience
- Efficient – balances timeliness with long-term, durable outcomes, time and cost, durability
- Effective – achieves objectives, clear roles and accountability, supports constructive relationships
- Provides certainty – for hapū, iwi, Māori, decision-makers, system users
- Promotes equity

Revised options for a circuit breaker

	Mediation	How is the circuit breaker process triggered?	Who appoints the decision-makers?	Who decides if the dispute has merit?	Final decision-maker
Revised Option 1: Minister appoints panel of experts	Yes	No consensus position is reached on appointing bodies by a specific date.	Minister appoints a panel of experts (eg, current and former Māori Land Court judges or Waitangi Tribunal members, or Panel members nominated by the groups party to the dispute).	The panel analyses relevant rights and interests, and reviews engagement records to decide if the dispute is meritorious.	The panel decides the appropriate appointing bodies.
Revised Option 2: At the enactment of the NBA the Minister appoints a group of experts	Yes	As above.	The Minister appoints a “group” of current or former Māori Land Court Judges and/or Waitangi Tribunal members. This group appoints a panel of experts.	As above.	As above.
Revised option 3: Māori Land Court appoints panel of experts	Yes	As above.	The Māori Land Court appoints a panel of experts made up of current or former Māori Land Court Judges and/or Waitangi Tribunal members.	As above.	As above.
Revised option 4: Māori Land Court presides	Yes	As above.	N/A	Māori Land Court acts in judicial capacity to analyse relevant rights and interests, and review engagement records to decide if the dispute is meritorious.	Māori Land Court decides the appropriate appointing bodies.

DRAFT

Te Tai Kaha & Crown officials Hui on Freshwater Rights and Interests and Resource Management Reform

NOTES

2pm – 4pm Thursday 02 June 2022

MS Teams

Invitees:

Te Tai Kaha: Matthew Smith, Richard Meade Anne Carter, Annette Sykes

Te Arawhiti: Benedict Taylor, John Grant, Heather McCaskill

TPK: Tikitu Tutua-Nathan, Tata Lawton

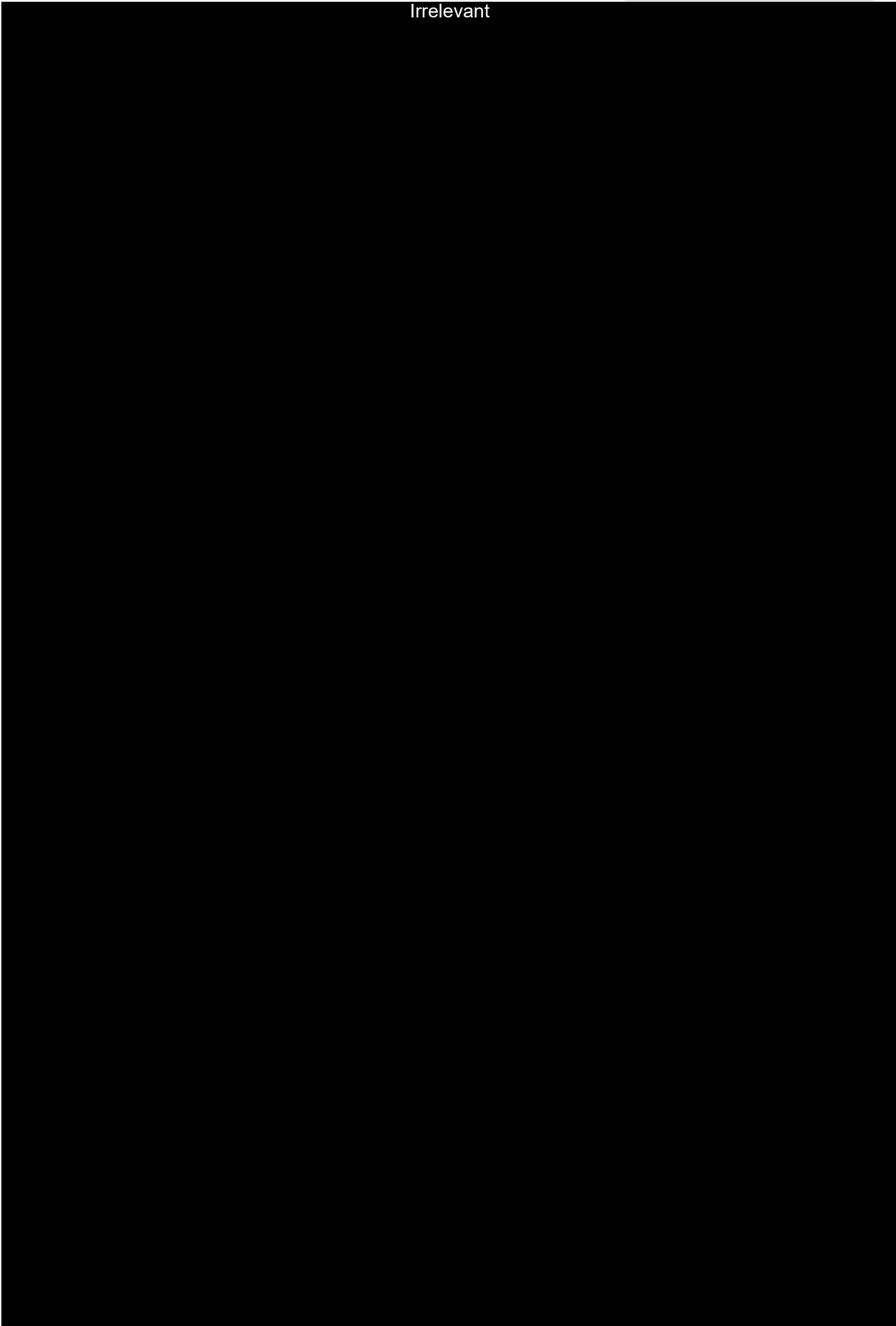
MfE: Keita Kohere , Adriana Bird, Erin Rangi-Watt, Lucy Bolton, Hana Ihaka-McLeod, Becky Prebble, Amy Prebble, Lesley Baddon, Sarah King, Fleur Rodway, Courtney Clyne, Zac Painting, Michael Cameron, Eleanor Rainford, Emily O'Connell, Sam Buckle, Alice Jacobs

Apologies: Mahina-a-rangi Baker

Karakia Timatanga

Irrelevant

Irrelevant



Irrelevant

Details about Māori Appointments (45mins)

- Delegated Decisions Paper #38
- Materials: <https://databox.datacomcloud.co.nz/shares/file/e8sph4X2HY2/>
- Key focus for Appointing Māori members to SPA and NBA committees:
 - exploring appointment processes
 - unpacking potential options for circuit breakers where agreement can't be reached on appointing bodies
- **NOTE:** Governance and the framework principles regarding composition will be woven into this discussion

NOTES

Appointments and circuit breakers

- Principles - process of authority at place, consistent with mana whakahaere at place as established via NPS-FM (exclusive authority not appropriate and consistent with tikanga)
- Definitional issues really important (broad and paralyze/undermine decisions at place)
- Treaty does not use iwi for representative institutions - excludes whanau (recognition in MACA) locality at place is of primary importance, no recognition of land-owners that hold ahi-ka (ahi-tere - back and forth from place, ahi-torutoru - reconnecting with place, ahi-ka - at place) - inclusive and those who have authority at place that are best placed to make decisions

DRAFT

- Contextualising points - what's the counterpart to 6e in the system (where this provides hook to ensure Māori communities in any setting that 6e protects)/ broad term compromises rights of those at place/ existing familiarity with mana whakahaere in resource management/ iwi hapu for opportunities at place - get into disputes via this prism, avoid problems of iwi and hapu and on more neutral ground to operate from/ whakapapa and kaupapa based iwi (urban maori authority see themselves and kaupapa based iwi)/ policy intent should be want communities exercising rights at place to have the opportunities - greater chance to get right groups represented
- Rights at place - both ILG and TTK want this but disagree how best to achieve this through terminology applied in legislation/ TTK starting to favour tangata whenua (which is at place)/ who has what mana whenua and to what degree of exclusivity (mana whenua runs increased exclusivity risk)

Other important things (alongside definitions)

- Good facilitation is essential + hui to add to diagram
- How to determine regions reached success on agreed appts
- Flexibility and nimbleness (not just seen as a dispute resolution mechanism - intermediate step key - have facilitators embedded and some meaningful intervention over time)
- Judge or Judgelike figures broader category of pukenga - Justice Palmer, decided not to appt a pukenga but would have been better to have one to make more informed determinations (interviewing pukenga involved in high court proceedings for lessons learnt to build quality appt process) insights and understandings from this would be valuable and is recommended for sitting behind support measures that sit alongside leg
- Legal personnel not best mediators and facilitators and these specialties are critical
- MfE, the too judicial and lengthy concerns are something that pukenga approach could resolve

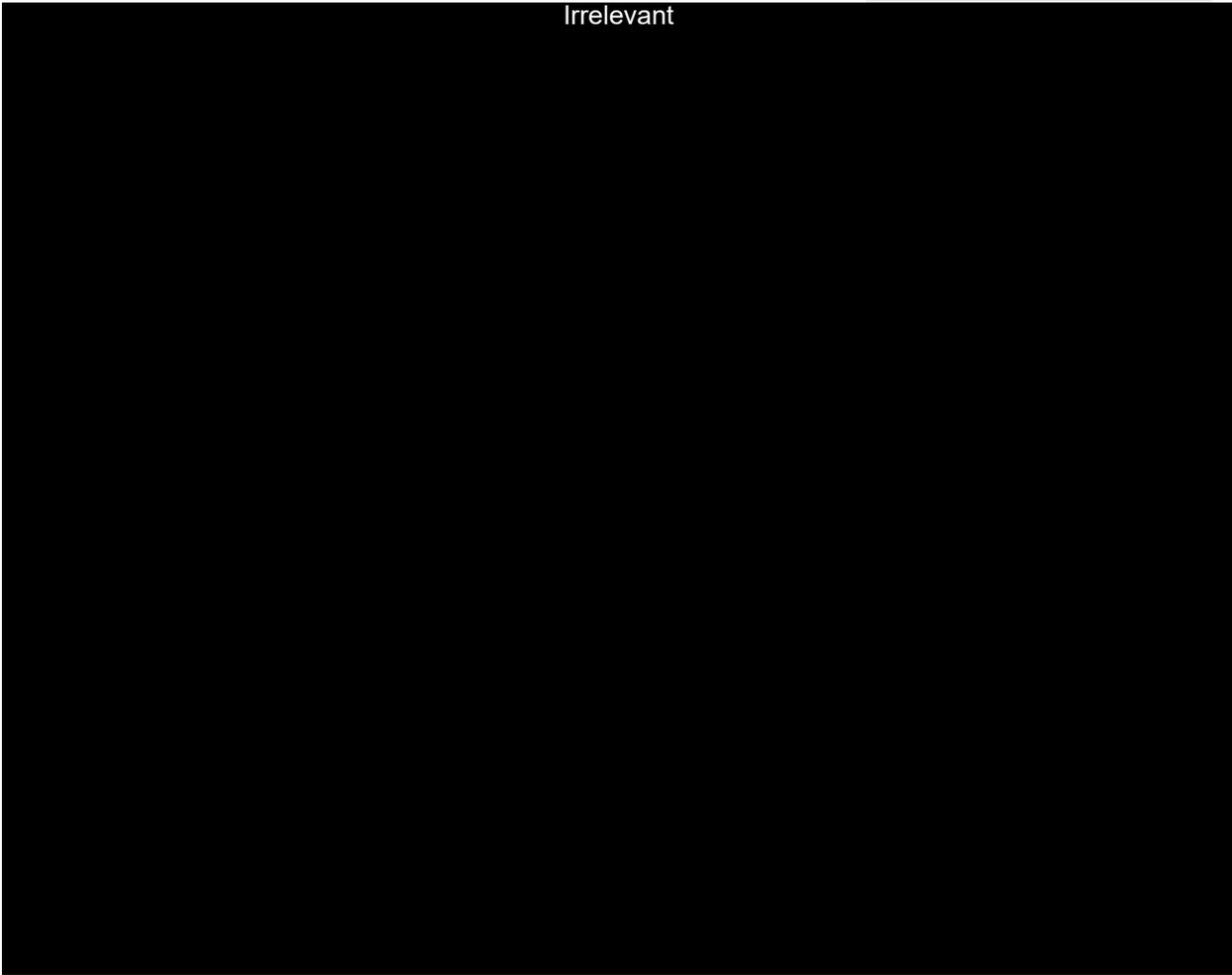
Q&A

- Q: Not clear in terms of relative proportion of representatives - could there or should there be 50/50 representation - A: design on the parameters do not preclude it so regions can work out what best works for the region. While there is a minimum - the assumption is there is appropriate representation, trying to clarify what is meant by appropriate
- Q: ambiguous - with all their local authorities said they don't want 50/50 would that be the decision or if Māori wanted equal representation and local govt did not what happens? A: in that scenario, it would then move to backstop process to work it out where parties present to LGC - work through positions and make determination.
- Q: LGC seems odd fit what's rationale A: experience with this problem-solving in their regions (provided for in their statute) court (time concern) and minister (inappropriate).
Q: rationale for time concern re court
- A: MLC advice, establishment phase different (and risks with these), how do we design a system that succeeds, looks like it will take a long time to get in place

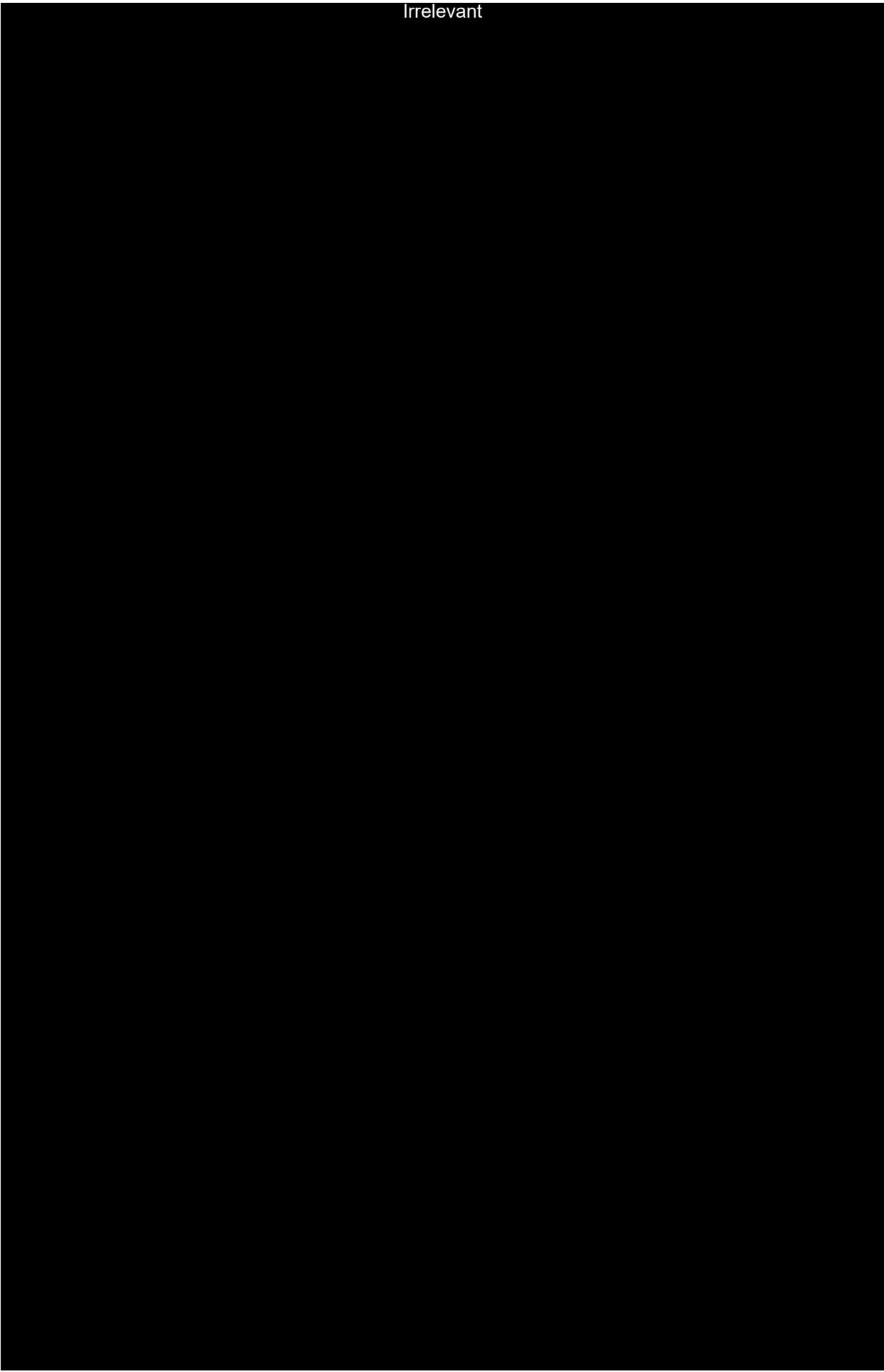
TTK's final comment: careful setting of incentives to avoid circuit breakers and appointment challenges more broadly - directly or indirectly LG cannot shape representation on regional committee

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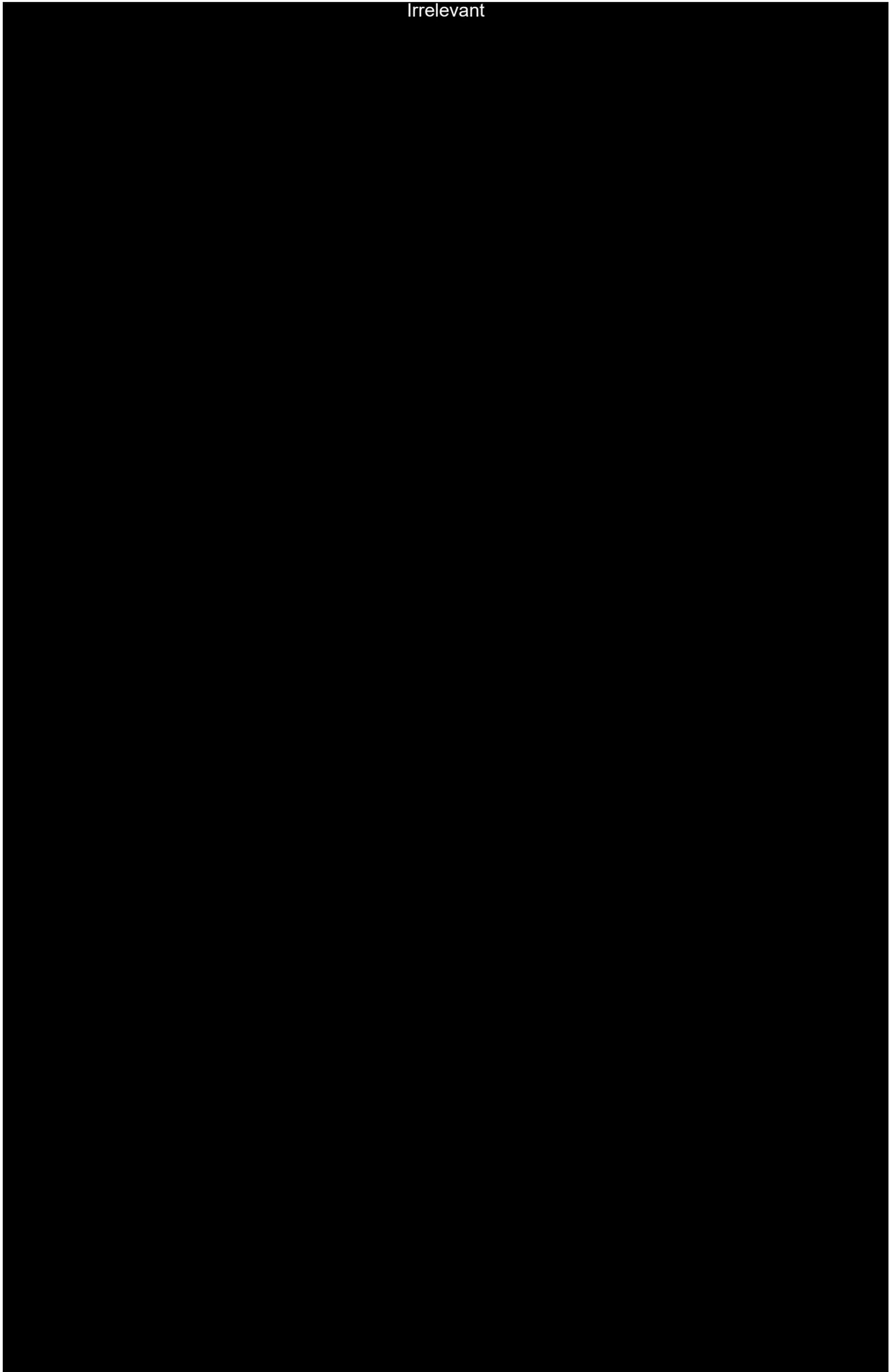
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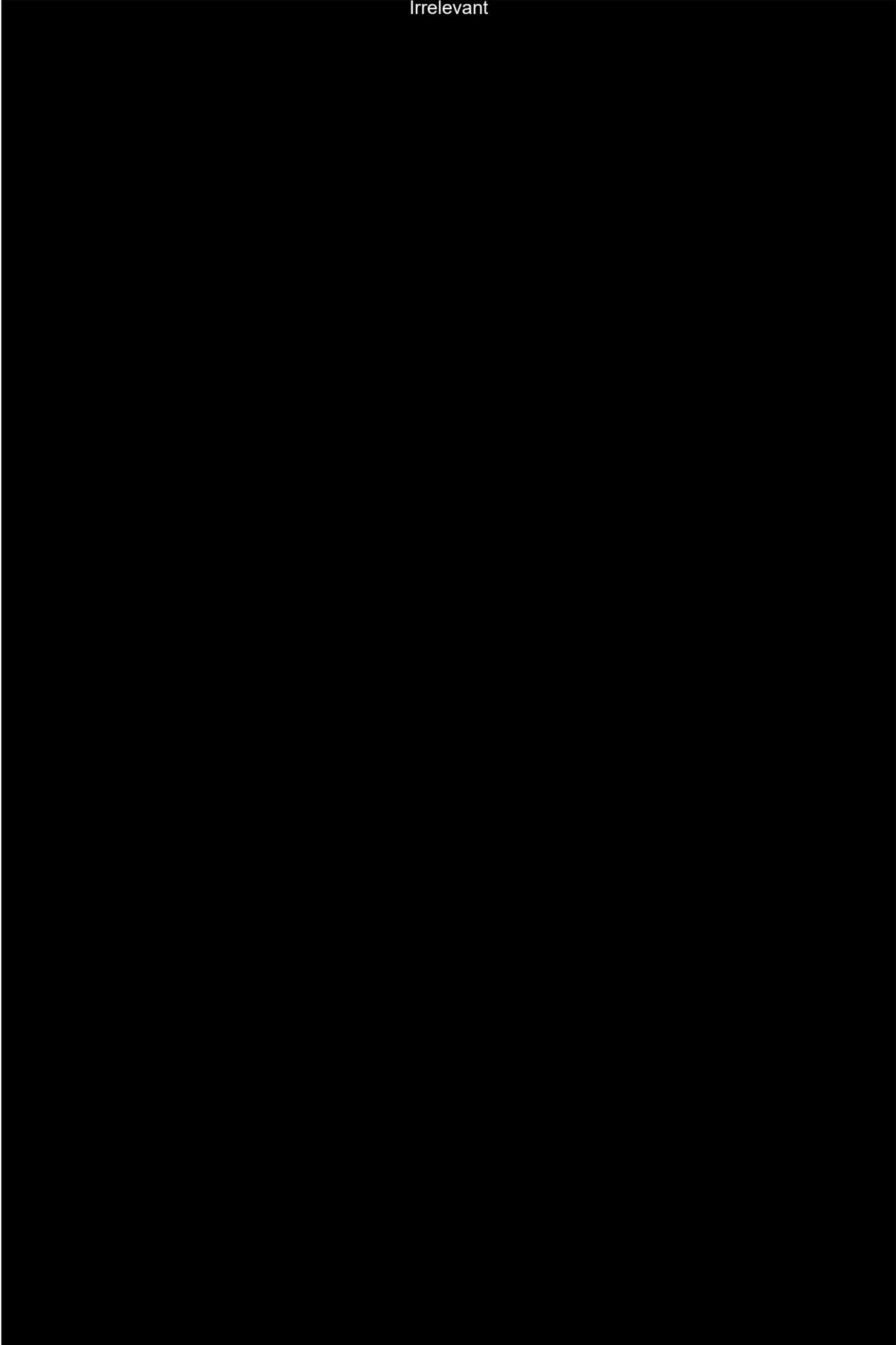
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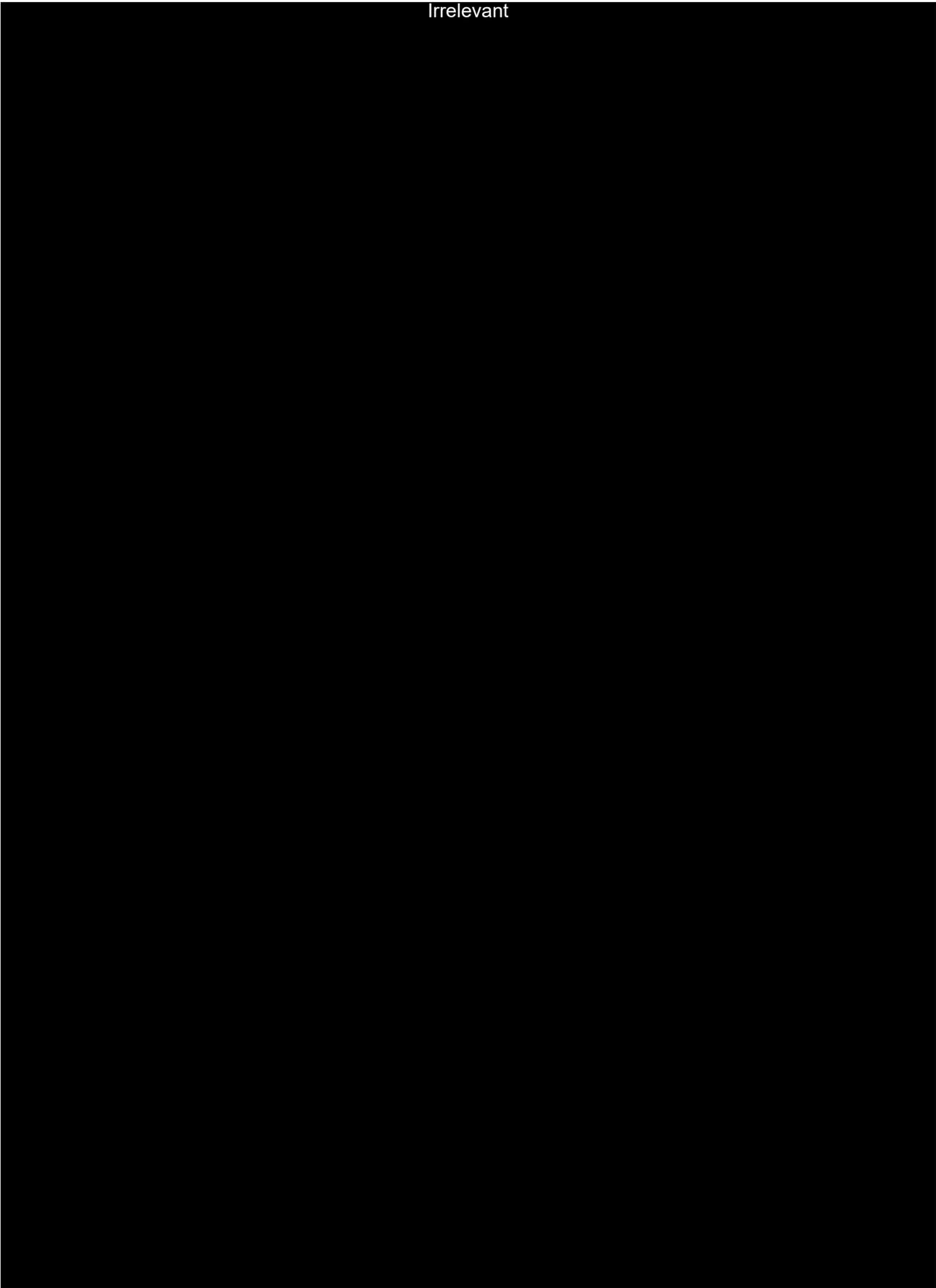
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BRF-1716 RM Reform 186 – Delegated decisions on regional governance and decision-making arrangements

Date Submitted:	14 June 2022 (resubmitted 23 June 2022)	Tracking #: BRF-1716	
Security Level	In-confidence	MfE Priority:	Urgent
		Action sought:	Response by:
To Hon David Parker Minister for the Environment		Agree to the recommendations in this briefing	28 June 2022
To Hon Nanaia Mahuta Minister of Local Government		For agreement	
To Hon Kiri Allan Associate Minister for the Environment		For agreement	
Actions for Minister's Office Staff	<i>Subject to Minister's approval forward to Hon Nanaia MAHUTA, Minister of Local Government, and Hon Kiri ALLAN, Associate Minister for the Environment, for a decision Return the signed report to MfE.</i>		
Actions for other Offices	Minister Mahuta's and Minister Allan's offices Provide to your Minister for a decision then return the signed Briefing to Minister Parker's office		
Number of appendices: 3	Titles of appendices: 1. delegated decisions on regional governance and decision-making arrangements 2. regionally led composition and appointment process 3. key features of the relationship between the host council and the committee		

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Authors	Niki Lomax Stephanie Gard'ner		
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Director, Urban and Infrastructure Policy	Lesley Baddon	021 738 357	✓
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Appendix 1: Delegated decisions on regional governance and decision-making arrangements

Topic	Proposal	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
Structure of committees					
<p>a. Establishing the SPA and NBA committee as a single committee</p> <p><i>MOG #17 agreed that the SPA committee and the NBA committee will be two separate committees</i></p>	<p>Establish the SPA and NBA committee as a single committee, to perform functions under both Acts with the central government member only joining for SPA matters.</p>	<p>At MOG #17 ministers agreed that the SPA committee and the NBA committee will be two separate committees, while allowing for shared membership. Following further detailed work on the operations of the committees – eg, the secretariat and host council arrangements – we consider that one committee should be established to undertake functions under both the SPA and NBA. We consider that this would simplify accountabilities at the secretariat level of the system and would better support integration across the SPA and NBA processes. It would also mean that the establishment of committees would only happen once in each region which is likely to be more efficient, simpler for implementation and save costs for the whole system.</p> <p>The advice provided at MOG #17 reflected the different skills required to produce an RSS and an NBA plan. However, those appointed to the committees will be performing a decision-making role and will be there as representatives of their appointing bodies rather than because of their technical expertise. This technical advice will be provided through the secretariat, mirroring the existing processes for the Auckland Spatial Plan and Auckland Unitary Plan – one unitary council making decisions, with different teams of staff providing advice.</p> <p>Consistent with previous MOG decisions, we are not proposing that the central government member would be a member of the committee when NBA plans were being considered or agreed. They would only join for the matters relating to the RSS.</p> <p>The LGSG strongly supports a one committee approach, noting that “a single joint committee and secretariat that sits across both the RSS and NBA plan for a region would help ensure integration, manage capacity, and assist to drive and embed culture change”.</p> <p>In our recent engagement with ILG and TTK, we have not had an opportunity to discuss this proposal. However, both have previously raised the importance of considering resourcing implications and the limited capacity of iwi and hapū. We expect that one committee with one secretariat will help manage capacity constraints, and the ability for appointing bodies to remove and replace members will allow different representatives to participate in the SPA and NBA processes where that is their preference.</p> <p>The Ministry of Transport had some questions in relation to capacity of decision-makers and how appeal rights would work in this model. As noted above, we think this approach is workable from a capacity perspective and has advantages for capacity across the system more broadly. On appeal rights, the</p>	<p>This revised approach does not undermine the previous advice provided at MOG #17 in relation to committee composition and Māori appointed members. It will make the role for members appointed to the committee a potentially large role, however the ability for appointing bodies to remove and replace members (agreed at MOG #17) will assist in managing capacity. A single round of composition negotiations can be expected to be less burdensome for iwi and hapū organisations (and local authorities) in the region.</p> <p>One committee would mean one set up phase, one round of composition negotiations, one host council, one director of the secretariat, one joint budgeting discussion for local authorities, one statement of intent, and one annual report. This is likely to be more efficient, simpler for implementation and save costs for the whole system.</p>	<ol style="list-style-type: none"> Note that MOG #17 agreed that the SPA committee and the NBA committee will be two separate committees. Agree in principle, subject to agreement from MOG, to rescind this MOG #17 decision and establish the SPA and NBA committees as a single committee responsible for undertaking functions under both the SPA and NBA. Agree in principle that for matters and decisions relating to the SPA, a member appointed by the Minister responsible for the SPA would join the committee, and note that, as agreed at MOG #16, that this member would not participate in NBA plan process or decision-making. Note that the subsequent recommendations in this paper are written assuming agreement to the above in principle recommendations. 	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>

Irrelevant

Irrelevant					
<p>c. Regionally led composition proposal process and statutory deadline</p> <p><i>MOG #17 agreed that the legislation would provide a process for local authorities and iwi/hapū representative organisations to agree committee composition</i></p> <p><i>MOG #17 agreed that the LGC would support regions to agree composition by confirming timelines, monitoring progress, and facilitating discussions</i></p> <p><i>MOG #17 agreed that the LGC would determine if a region's proposed composition arrangement met the legislative parameters</i></p> <p><i>MOG #17 agreed there would be a statutory timeframe for finalising composition arrangements, such</i></p>	<p>The LGC will be required to notify all parties (local authorities and iwi/hapū representative organisations) about the timeframes for composition to be agreed and committees to be established by, and this will act as a starting point for discussions if they have not already commenced.</p> <p>The deadline for local authorities and iwi and hapū representative organisations to agree their regional proposal (committee composition and appointing bodies), and the deadline for committees to be established by, will be set in secondary legislation. These deadlines will be linked to the notification deadline for draft strategies and plans. The regional council (or unitary council) is responsible for submitting the proposal to the LGC by the deadline.</p> <p>All parties and the LGC can request the Minister responsible for the Act/s to appoint a Crown facilitator to support notified parties to reach agreement on a composition proposal.</p> <p>A simple majority must be reached between local</p>	<p>To support the regionally led composition process, officials recommend that the legislation include some process steps to ensure the process is 'book-ended' with a clear beginning and end. Appendix 2 outlines the process for regional composition discussions and dispute resolution where required (including those steps that relate specifically to iwi and hapū which your agreement will be sought to in a different paper, BRF-1562 refers).</p> <p>Notification (beginning of the process)</p> <p>A requirement for the LGC to notify all parties (as agreed at MOG #17) ensures there is a fair and equitable opportunity for participation in composition discussions. The central government will not be notified as they are not participants in the regional discussions.</p> <p>The iwi and hapū representative organisations notified by the LGC will be able to participate in composition discussions and determine between themselves who the appointing body/bodies will be for Māori seats. Notification is a critical step, and ensuring all parties are notified reduces litigation and dispute resolution risk further on in the process.</p> <p>The success of notification relies heavily on the accuracy of the centrally held record of iwi and hapū groups (note advice provided in BRF-1692). In addition, it is proposed that local authorities be required to share relevant information they hold with the LGC. The LGC will also be able to access other sources of information, such as requesting hapū contact information from an iwi authority. Another protection proposed is to enable notified parties to request that the LGC notify other groups (within 1 month) if they consider they are eligible but were not notified.</p> <p>If the LGC has acted in good faith, non-notification (or late notification) of a party would be unlikely in and of itself to invalidate a regional process or determination made by the LGC if challenged through judicial review.</p>	<p>To give effect to the principles of the Treaty, all iwi/hapū groups must be provided the opportunity to fully participate in composition discussions. These proposals work together to ensure all groups are notified and have the opportunity to express their opposition to a proposal. This recognises that iwi and hapū groups do not have homogeneous views and need to be able to participate independently.</p> <p>There is a risk that providing the opportunity to participate in composition discussions is not sufficient to ensure effective participation, however officials consider that the legislation itself cannot go further than this. Non-statutory guidance and Crown support (funding/facilitation) will be provided to support implementation of the regionally led process.</p> <p>Reliance on the nationwide list of iwi/hapū representative organisations for notification will be an assurance that only the appropriate groups within a region participate in composition and appointing bodies discussions. However, to ensure that the system does not inappropriately exclude groups from discussions, (particularly hapū) implementation support will be required to be provided to iwi and hapū, to ensure that all appropriate 'iwi/hapū representative organisations' are on the list.</p> <p>The proposals for Crown facilitation recognise that in attempting to finely balance protections for minimum membership alongside regional flexibility, there will remain a burden on Māori to debate the number of seats. Facilitation is</p>	<p>10. Note that work will be undertaken through drafting to determine which of the following recommendations sit in the primary legislation, and which are recommendations to facilitate the initial committee composition arrangements, which would sit best in transition provisions.</p> <p>11. Note that the LGC will notify local authorities and iwi and hapū representative organisations of the timeframes for committee composition to be agreed and committee establishment as per statutory timeframes.</p> <p>12. Note that BRF-1692 provides advice on the nationwide record of iwi and hapū organisations as agreed at MOG #17. This list is necessary to support the notification process and reduce litigation risk.</p> <p>13. Agree that all local authorities are required to make available to the LGC relevant information on iwi and hapū representative organisations to support notification.</p> <p>14. Agree that a notified party can within 1 month request the LGC to formally notify an additional group to be added to the list of 'notified parties' if they meet the requirements.</p> <p>15. Note, as agreed at MOG #17, a regional proposal must include:</p> <ul style="list-style-type: none"> a. the host council b. the number of members of the committee (for local authorities and iwi/hapū/Māori) c. the appointing bodies d. any other arrangements as agreed. <p>16. Agree that the regional council (or unitary council) must write to the LGC by the deadline</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>

Topic	Proposal	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
<p>as a deadline prior to the statutory notification of draft RSS and NBA plans</p>	<p>authorities to agree the selection of the host council.</p>	<p>A requirement for broader public notification is not proposed as the parties participating can be defined, and notification more broadly may set expectations for the role other groups could have in composition discussions. Legislating public notification is also unlikely to mitigate risks of eligible groups being unaware of the process. While not prescribed, it is proposed that the legislation does not prevent wider notification if the LGC determines it is necessary.</p> <p>Confirming a region's proposal (end of the process)</p> <p>As agreed at MOG #17 the process regions follow to agree composition will not be prescribed, but clarity is needed around how a regional proposal is received by the LGC.</p> <p>It would not be practical or efficient for the LGC to seek direct confirmation of a region's proposal from all notified parties, especially in regions with a large number of iwi/hapū organisations – some of which may not choose to be directly involved in the composition decision process.</p> <p>Instead, officials propose that the regional council (or unitary council) is responsible for providing the regional proposal to the LGC along with listing any dissenting views by notified parties who participated in the discussions. If there are dissenting views the LGC cannot confirm that proposal. It is noted that this imposes a high bar for 'agreement' to a regional proposal. This is mitigated through the ability for a party to disagree but choose not to have their views listed as a dissenting view. This would accommodate where a party did not disagree strongly enough for the decision to then be taken off the region and given to the LGC. In addition, agreement would only be needed by the parties who have actively participated in the discussions.</p> <p>Statutory deadlines</p> <p>As agreed at MOG #17, regions will have a statutory deadline for when they need to agree their committee composition and appointing bodies by.</p> <p>It is proposed that the following deadlines are set in secondary legislation:</p> <ul style="list-style-type: none"> the deadline when a regional proposal must be submitted to the LGC by the regional council the deadline when a committee must be established by (appointments made). <p>The LGC will use these deadlines for notification of local authorities and iwi/hapū organisations.</p> <p>It is proposed these deadlines are set in relation to the notification deadlines for each region's draft RSS and NBA plans (to be set in secondary legislation) to accommodate the tranche model for implementation.</p>	<p>one way the Crown can support in good faith regionally led composition processes.</p> <p>Regionally led composition processes pose efficiency challenges for the system. While time invested up front will likely increase the legitimacy of committee decision-making, it will also reduce time available for committees to develop their strategies and plans.</p> <p>Imposing deadlines and backstop provisions where deadlines are not met, supports system efficiency by ensuring there is not undue delays to committees being established and meeting their notification requirements.</p> <p>Crown facilitation will also provide efficiencies through providing an avenue to support timely composition decisions, and likely reducing the need for decision-making by the LGC.</p>	<p>outlining the regional proposal, as above, and also confirming:</p> <ol style="list-style-type: none"> how the regional proposal meets the parameters and considerations for composition (recommendations 5-9 refer) confirmation that parties who chose to participate in discussions have agreed to the proposal or list the dissenting views. <p>17. Agree any of the notified parties and the LGC can request the Minister responsible for the Act/s appoint and fund a Crown facilitator for a period of 6 weeks to support notified parties to reach agreement on a composition proposal, in the absence of which the facilitator will prepare a report to assist the LGC in making a decision.</p> <p>18. Note that a separate work programme on upholding Treaty settlements may require direct appointments to a committee or subcommittee and further policy decisions may be sought on this.</p> <p>19. Agree that the Minister/s responsible for the Act, should have a regulation making power to provide for the following statutory deadlines, based on deadlines for notifying strategies and plans:</p> <ol style="list-style-type: none"> a deadline by when local authorities and iwi and hapū representative organisations will have to submit their regional proposal via the regional council to the LGC a deadline by when the committee must be established by (appointments made and committee operational). <p>20. Note separate decisions are sought on circuit breakers for disputes on iwi/hapū/Māori appointing bodies (BRF-1692 refers).</p> <p>21. Agree that a decision on the host council requires a simple majority (50% plus 1) from the councils in the region. As agreed at MOG #17, if there is no agreement then the host council will default to the regional council.</p> <p>22. Note that the full regional process and dispute resolution options may not be available for tranche 1 regions when establishing the first committees before the legislation has been passed. A bespoke process is likely to be required, and separate advice will be provided for this.</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>



BRF-1692 RM Reform 189 – Delegated decisions for describing Māori representative organisations and record keeping requirements

Date Submitted:	17 June 2022	Tracking #: BRF-1692	
Security Level	In-Confidence	MfE Priority:	High
		Action sought:	Response by:
To Hon David Parker Minister for the Environment		Indicate your agreement to the recommendations in the body of the paper and at appendices 2 and 3	26 June 2022
To Hon Kelvin Davis Minister for Māori Crown Relations			
To Hon Willie Jackson Minister for Māori Development			
To Hon Kiri Allan Associate Minister for the Environment			
Actions for Minister's Office Staff	Forward a copy of this paper to the Minister for Māori Crown Relations, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan)		
Number of appendices and attachments: 5	<ol style="list-style-type: none"> Detailed decisions for Māori representative organisations and detailed decisions for record keeping Impact analysis summary table Table: where groups may be described in relation to SPA and NBA functions Section 35A of the Resource Management Act 1991 – full text <p style="text-align: center;">Privilege</p>		

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BRF-1692 RM Reform 189 – Delegated decisions for describing Māori representative organisations and record keeping requirements

Purpose

1. This briefing seeks your detailed decisions in relation to:
 - a. how the following groups are to be described for the purposes of the Spatial Planning Act (SPA) and Natural and Built Environments Act (NBA):
 - i. iwi and hapū representative groups
 - ii. Māori entities representing groups with interests (including rights) ‘at place’ which are relevant to any role or function within the RM system
 - b. how the requirements on local and central government to keep records about iwi and hapū, currently under s35A of the Resource Management Act 1991 (RMA), are to be transitioned to and amended for the SPA and NBA.
2. This briefing also proposes next steps for work on the maintenance of nationwide records of iwi and hapū representative groups.
3. This paper is set out in two parts:
 - a. Māori representative organisations
 - b. Transitioning and amending the provisions of S35A of the RMA.

Part A – Māori representative organisations

Background

4. At the Ministerial Oversight Group (MOG) #17 meeting on 12 April 2022, the MOG noted that:
 - a. the Resource Management Review Panel (the ‘Panel’) recommended the existing RMA terms ‘iwi authority’ and ‘tangata whenua’ be replaced by ‘mana whenua’ with a proposed definition of “an iwi, hapū or whānau that exercises customary authority in an identified area”, but our view – discussed at the Māori Interests subgroup on 24 November 2021 – is that there is no clear case for a single overarching term, and different terms should be used in different contexts [Paper 2 – role, funding and participation of Māori in the Resource Management (RM) system (Paper 2), refer rec 6]
 - b. consistent terms and definitions will be developed to support specific proposals on “who participates from te ao Māori” at each layer and function in the new RM system, including for:
 - i. iwi and hapū representative organisations
 - ii. Māori entities representing rights and interests holders in relation to a particular area, water source, space and resource ‘at place’ (similar to the approach taken under the Urban Development Act 2020 (UDA)) [Paper 2, refer rec 7].

5. Also at MOG #17 you (the Minister for the Environment, Minister for Māori Crown Relations, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan)) were authorised to 'make any further policy decisions required to draft definitions and agree implementation approach' [Paper 2, refer rec 8].

Increased iwi and hapū participation under the SPA and RMA compared to the RMA

6. The RMA uses the terms '*iwi authority*', which is defined¹, and '*group that represents hapū*', which is not defined, to describe organisations and groups that represent iwi and hapū.
7. Under the RMA, most active engagement requirements and participation opportunities for tangata whenua² apply to iwi authorities. Groups that represent hapū may enter Mana Whakahono a Rohe agreements (MWAR) if invited by local authorities to do so and may also be party to joint management agreements (JMA).
8. Under the SPA and NBA, both iwi authorities and groups that represent hapū will be entitled to undertake specific roles on behalf of iwi and hapū. This is because:
 - a. hapū were, and in many places still are, the primary group in Māori society that holds customary rights and responsibilities and exercises rangatiratanga
 - b. as the Panel noted, "engaging at the iwi or iwi authority level does not reflect the reality of kaitiakitanga, which may operate at the hapū or whānau level" and "local authorities can refuse to engage with any group other than an 'iwi authority', even if the appropriate group to engage with on a particular matter is a hapū or whānau."
9. These specific roles for iwi and hapū some of which are subject to further delegated decisions, are set out at Appendix 3, row 2. Several of the roles are not provided for under the RMA. These increased participation opportunities, particularly in the case of hapū, raises the question around how iwi and hapū representative groups should be described in the new system.

New participation opportunities for Māori groups with relevant interests 'at place'

10. There will be some instances where it will be appropriate to specifically consider and provide for the interests of other Māori groups in addition to iwi and hapū. This is because there are a diverse range of ways in which Māori choose to organise themselves in modern society. A one-size fits all approach based only on iwi and hapū will not reflect Māori rights and interests at place. These groups may include but are not necessarily limited to:
 - a. whakapapa based groups (in addition to iwi and hapū) such as whānau, owners of Māori land and/or customary rights holders
 - b. owners of Māori land
 - c. holders of specific customary rights such as Customary Marine Title and Protected Customary Rights groups
 - d. mātāwaka and Māori community groups

¹ Iwi Authority is defined in section 2 of the RMA as follows – *Iwi Authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so*

² tangata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area; mana whenua means customary authority exercised by an iwi or hapū in an identified area (Section 2 of the RMA).

- e. groups, and natural taonga with legal personality who hold rights and interests deriving from the settlement of Treaty of Waitangi claims.
11. The SPA and NBA will provide new participation opportunities for Māori groups who hold relevant interests in relation to resource management, generally via their representative organisations. These opportunities are set out at Appendix 3, row 3.

Iwi/hapū/Māori will be able to self-identify who represents them

12. Part of the general policy intent of the approach to who participates from te ao Māori (which is set out in MOG #17 Annex A of Paper 2) is that as far as possible iwi/hapū/Māori should be able to determine for themselves who they are represented by, and who should be enabled to participate at all levels of the system in accordance with the exercise of rangatiratanga. This includes that certain iwi/hapū/Māori may choose to be represented by different entities for different purposes.
13. Providing for iwi/hapū/Māori to determine for themselves who represents them is intended to give effect to the Treaty. It will not override existing legislation where other arrangements may exist.
14. The risks associated with this broad approach to determining representation is that it may take some time for iwi/hapū/Māori to make determinations in an area. This approach may also extend the notification and response time if councils struggle to identify who to notify. In regard to NBA and SPA committees [BRF-1716 refers] there is risk that the broad definitions, especially as they relate to hapū, will mean there is debate about who should be notified to participate in committee composition and appointing bodies discussions. If groups are missed off this could lead to judicial review. BRF-1716 notes that the quality of the nationwide record of groups will be important to mitigate the risk. These risks are during the transition phase and once determinations have been worked through, should lead to efficiency in the system long term.
15. We recommend that these risks are mitigated by strong implementation support from central government, including funding for iwi and hapū bodies, to enable them to spend time deciding how they should be represented and by whom and the provision of information by central and local government.

Advice

Summary of proposals – iwi and hapū and their representative groups

16. This paper proposes that:
- a. where the terms ‘iwi’ and ‘hapū’ are used in the SPA and NBA they are not defined
 - b. the defined term ‘iwi authority’ in the RMA is retained for use in the SPA and NBA to describe iwi representative groups
 - c. The undefined term ‘group that represents hapū’ in the RMA is retained for use in the SPA and NBA to describe hapū representative groups
 - d. the same terms and definitions are used for both the SPA and NBA.
17. Detailed analysis of these proposals is set out at Appendix 1. Analysis to support these proposals is provided in Appendix 2.

Potential for continued use of “tangata whenua” and “mana whenua”

18. There will be instances in the SPA and NBA where it may be necessary to specify that the relevant iwi and hapū (and by extension the relevant representative groups) are those who exercise mana whenua in a certain area (as opposed to any iwi or hapū who may have an interest).
19. The defined term “tangata whenua”³ is used for this purpose in the RMA and the defined term “mana whenua”⁴ is used to support its interpretation. Where appropriate these terms may continue to be used across the SPA and NBA. A specific decision has not been sought in relation to this matter, but officials consider highlighting the matter is appropriate because:
 - a. of the potential interest in existing te ao Māori terms and definitions from iwi, hapū and other Māori groups
 - b. the specific application of these terms in te ao Māori settings.
20. Further detail on the potential impacts of carrying these terms forward, particularly ‘mana whenua’ is included in the Treaty Impact Analysis.

Summary of proposals – Māori groups with interests ‘at place’ in accordance with tikanga Māori, te Tiriti, common law and statute

21. It is proposed that:
 - a. where the SPA and NBA describes other Māori groups with relevant interests, this should be a non-prescriptive, non-exhaustive description (except where specific rights are provided for under other legislation, e.g. Customary Marine Title groups)
 - b. Māori representative organisations must be entities who are authorised to speak and act on behalf of Māori groups with relevant interests
 - c. the definition of Māori entity in the UDA is referenced in secondary legislation or informal guidelines as an example of relevant entities but is not included as an exhaustive list of entities.
22. It is expected that guidance be developed to support decision makers and others in fulfilling engagement responsibilities with Māori groups with interests ‘at place’.

Part B – Transitioning and amending the provisions of S35A of the RMA

Background

23. At MOG #17 you (the Minister for Māori Crown Relations, Minister for the Environment, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan)) were authorised to ‘make any further policy decisions required to draft definitions and agree implementation approach’ [Paper 2, refer rec 8].
24. The ‘implementation approach’ includes how the provisions of section 35A of the RMA ‘Duty to keep records about iwi and hapū’ are transitioned into and amended for the new resource management system, and how certain record keeping requirements are to be implemented.

³ **tangata whenua**, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area

⁴ **mana whenua** means customary authority exercised by an iwi or hapū in an identified area

25. These provisions are essential to the successful implementation of the proposals in Part A because they will enable groups within the system to simply and accurately identify groups who have a role within the system.
26. Appendix 4 sets out section 35A in full. Section 35A was added to the RMA in 2005 to give clarity to local authorities on mandated iwi and hapū groups in their areas.
27. Section 35A of the RMA requires or provides:
 - a. local authorities to keep and maintain records of contact details, planning documents, areas of interest and Mana Whakahono ā Rohe agreements (S35A(1))
 - b. central government to provide each local authority with information on who the iwi authorities and groups that represent hapū are in their regions (S35A(2))
 - c. for local authorities to maintain records of other information obtained from iwi authorities or groups representing hapū (S35A(3))
 - d. that information maintained on hapū under S35A(1) does not apply unless requested by the hapū (S35A(4))
 - e. that where the information recorded under S35A(1) conflicts with a provision of another enactment, the other legislation prevails (S35A(5))
 - f. additional requirements in relation to records kept (S35A(6) to S35A(7)).
28. Central government meets its requirements under S35A(2) through the public provision of Te Kāhui Māngai, a website which is administered by Te Puni Kōkiri. The general approach is that where iwi and hapū representative groups have a formal mandate (eg, through historical settlement or as a mandated iwi organisation under the Māori Fisheries Act 2004) or identify themselves as a representative organisation for the purposes of the RMA, they are included on Te Kāhui Māngai.
29. In developing proposals for transitioning and amending the provisions of S35A, the following changes to the RM system have been considered:
 - a. new Māori participation mechanisms across the system such as the National Māori Entity, Māori membership on SPA and NBA committees and engagement agreements for Regional Spatial Strategies and NBA plan processes
 - b. enhanced participation rights for hapū, which will be similar to those for iwi
 - c. enhanced participation opportunities for the holders of relevant rights and interests in accordance with tikanga Māori, te Tiriti, common law and statute.

Advice

Summary of proposals

30. This paper proposes that the general intent of S35A be carried over to the new RM system with specific amendments related to:
 - a. the ability of SPA and NBA committees to access relevant information
 - b. further record keeping requirements on local authorities to reflect changes to participation opportunities for hapū and other Māori groups between the RMA, and SPA and NBA.

31. Officials expect the information provided under s35A will be the primary source of guidance to decision-makers when they are required to notify or engage with iwi authorities, groups representing hapū and representatives of Māori groups with interests 'at place'.
32. Officials will work with the Parliamentary Counsel Office (PCO) to ensure the policy relating to record keeping will be split appropriately between primary and secondary legislation.
33. Detailed analysis of the proposals is set out at Appendix 1. Analysis to support the proposals is provided in Appendix 2.

Next steps for work on the maintenance of nationwide records of iwi and hapū representative groups

34. Further non-legislative work is required to implement MOG decisions in relation to record keeping. At MOG #17 it was:
 - a. agreed that there is a need for an up-to-date nationwide record identifying iwi and hapū representative groups (as recommended by the Panel)
 - b. noted that Te Puni Kokiri, Te Arawhiti, the Department of Internal Affairs, or the National Māori Entity could undertake this role
 - c. noted that officials do not consider the National Māori Entity to be the appropriate group for doing this and recommend the issue of a nationwide record be considered further.
35. The Minister for Environment, Minister of Local Government, Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) were authorised to make further decisions on the issue.
36. As discussed, it is intended that the Crown's responsibilities to provide certain information on iwi and hapū to local authorities, under S35A(2) of the RMA be carried over to the SPA and NBA. This provision provides a legislative basis for a nationwide record while not prescribing the manner in which that record must be kept, eg, via a website.
37. The new system will carry over s35A(5), i.e. that if the information recorded by local government is inconsistent with any other legislation, then that legislation prevails.

Irrelevant

39. Further decisions on the matters set out at para 34 are not required to draft the SPA and NBA. The central records will be critical (refer BRf-1716) for notifying parties to participate in decisions on SPA and NBA committee compositions because without accurate records there is a risk some groups may not be notified.
40. Officials from the Ministry for the Environment (MfE), Te Puni Kōkiri (TPK), Te Arawhiti and the Department of Internal Affairs (DIA) in consultation with officials from the Public Service Commission (PSC) and Land Information New Zealand (LINZ) (who currently maintains a marine and coastal area register under Takutai Moana legislation) will work together to agree next steps and report back to authorised Ministers in late 2022. The redevelopment of the information recorded under s35A is a prerequisite for the establishment of appointing bodies and is therefore a priority.

41. Officials recognise that Te Kāhui Māngai website is not currently a sufficient mechanism for central government record-keeping and that the planned interagency work will include identifying what further work is needed to ensure that the website, or its successor, is a suitable mechanism.

Primary versus secondary legislation

42. In line with the *Legislation Design and Advisory Committee Legislation Guidelines 2021 Edition* we have assessed which policy decisions sought through this briefing are likely to be reflected in primary legislation and which in secondary legislation.

Table 1: Anticipated split between primary and secondary legislation

Primary legislation	Why primary?	Secondary legislation
<u>Māori representative organisations</u> All terms and definitions set out in Appendix 2	These terms and definitions are key to interpreting numerous sections in the legislation.	Reference to the UDA list of Māori entities as examples as a guide to for identifying the type of Māori entities local authorities should be thinking about.
<u>Transitioning and amending the provisions of S35A of the RMA</u> Record keeping requirements set out in Appendix 3 as decided between officials and PCO	There may be technical legal reasons to keep parts of S35A in the primary legislation. Officials will work with PCO to determine the appropriate split between primary and secondary legislation.	Record keeping requirements set out in Appendix 3 as decided between officials and PCO.

Engagement

Local Government Steering Group

43. Two hui were held with the Local Government Steering Group (LGSG). LGSG acknowledged the complexities involved with defining groups, the risk of perceived mandate given to groups who were recorded on lists held by local and central government, and the lack of funding that is a barrier to iwi/hapū/Māori to participate in resource management systems. No alternative definitions or descriptions were provided by the LGSG.
44. The LGSG did not express any concern about the record keeping requirement proposals.

Te Tai Kaha (TTK), and Freshwater Iwi Leaders (FILG)/Te Wai Māori Trust (TWMT)

45. Official's initial policy thinking was to replace "iwi authority" and "groups that represent hapū" with new defined terms, "iwi representative groups" and "hapū representative groups" respectively. This approach is described in Appendix 4, as Part A option 2. However, both FILG and TTK expressed a preference for retaining the RMA terms "iwi authority" (as defined) and "groups that represent hapū" (undefined). Reasons given include:
- "iwi authority" has been used for 30 years and iwi, hapū and Māori have created workable systems with this term

- b. “hapū representative organisation” was a Crown construct that could have unintended consequences of enabling groups without legitimate mandate to establish over time
 - c. iwi, hapū and Māori could be distracted from the kaupapa of Te Oranga o te Taiao by focussing on who participates in the composition and appointment processes instead
 - d. existing barriers to participation and engagement for hapū and other appropriate Māori groups would not be solved by these new definitions.
46. FILG supported the retention of “tangata whenua” and “mana whenua” as definitions and stated that these terms should be understood by councillors. If these terms are not understood, then councils should be supported.
47. TTK does not support use of the term “mana whenua” as they consider it excludes groups like Māori land owners and whānau who are customary rights holders. They prefer the term “mana whakahaere”. Use of the terms “mana whenua” and “mana whakahaere” are discussed further in the Treaty Impact section of this briefing. TTK also suggested the term ‘tangata whenua’ instead of “mana whenua”. However, “tangata whenua” can also apply to all Māori as it doesn’t always specific iwi, hapū and whānau ‘at place’.
48. TTK supported the idea of a list of Māori entities, either formally in the regulations or informally as guidelines, rather than a non-exhaustive list in the legislation. They believe non-exhaustive lists can be interpreted to exclude Māori groups.

Impact of Advice on the Treaty and Māori/iwi

Māori representative organisations

General

49. There are risks to describing and defining te ao Māori concepts within a largely Crown prescribed legislative framework. These risks include defining concepts inappropriately and by doing so shaping an inappropriate interpretation of tikanga Māori through the law. Potential consequences of inappropriate interpretation of tikanga Māori include:
- a. unintentionally excluding some groups from participation or including others
 - b. causing or exacerbating conflict between iwi/hapū/Māori groups
 - c. over time, inappropriately influencing the application of tikanga Māori within te ao Māori.
50. Maintaining the existing terms and definitions for ‘iwi authority’, ‘group that represents hapū’, ‘tangata whenua’ and ‘mana whenua’ will maintain the status quo. Overall, officials consider the level of prescription in these terms is appropriately balanced in giving effect to te Tiriti principles. Further information on Treaty impacts for retaining existing terms is included in the detailed analysis at Appendix 1.
51. Describing Māori groups with relevant interests in accordance with tikanga Māori, te Tiriti, common law and statute is more complex, especially in relation to tikanga Māori. There is a risk that the Crown usurps rangatiratanga of Māori to self-determine and choose representative bodies.

52. The intention is that the legislation would, if required, broadly and non-exhaustively describe Māori groups with relevant interests rather than specifying or providing examples of who those groups might be and what interests they may hold.
53. This mitigates the risk of usurping rangatiratanga and provides for regional, local and functional flexibility, as relevant interests may be different region to region or for different resource management functions.
54. This does however mean that decision makers and others with engagement responsibilities may have to exercise judgement about the relevance of certain interests. It would be inappropriate for local authorities or SPA and NBA committees to determine the nature or relevance of Māori interests in most cases, particularly those interests based in tikanga Māori.
55. In addition to the general risks noted in para 49 above, including undefined terms (such as group that represents hapū) or including broad descriptions/definitions in the legislation (such as other Māori groups with interests) carries the risk that interpretation of the terms and definitions will develop over time and become out of step with the policy intent and tikanga Māori.
56. The development of non-legislative guidance and the provision of Crown support during the transition from the RMA to the SPA and NBA will be critical to ensure that the Crown meets its Tiriti responsibilities to actively protect rangatiratanga and to not create conflict between Māori groups and ensure the effective functioning of the system.
57. The Treaty impact analysis in MOG #17 Paper 2 discusses the rights and interests of different groups and where these may be relevant in the RM system.

‘Mana whenua’

58. The continued use of the term ‘mana whenua’ warrants consideration from a Treaty impacts perspective. The exercise of mana whenua is not always straight forward, as demonstrated by the High Court case⁵ brought by Ngāti Whātua Ōrākei to seek a determination of primary mana whenua in Tāmaki Makaurau.
59. The key issue is whether including a definition of mana whenua in legislation would add to the complexity, drawing the determination of mana whenua out of the tikanga space and into the courts, and otherwise creating or exacerbating conflict between iwi/hapū and Māori groups.
60. The inclusion of the definition is only one part of a broader issue with the interface between legislation and policy, and te ao Māori. The way the term is defined in the RMA is broad and could not be considered a determining factor in who may exercise mana whenua or in what manner.
61. The main issue arises when the Crown and local government recognition of certain groups within RMA processes is seen as recognition of that group as having authority to exercise mana whenua.
62. In the Ngāti Whātua Ōrākei case, the High Court found that it was not for the courts to determine who may have primary mana whenua. Our view is that it would also be inappropriate for the Crown to determine mana whenua status as this is a matter for tikanga.

⁵ Ngāti Whātua Ōrākei Trust V Attorney-General [2019] NZHC 2363 [19 September 2019]

This however leaves iwi and hapū who may disagree about mana whenua status in a particular area, without much recourse to a solution, especially as some tikanga which may have been used to solve such disputes in the past are no longer able to be practiced.

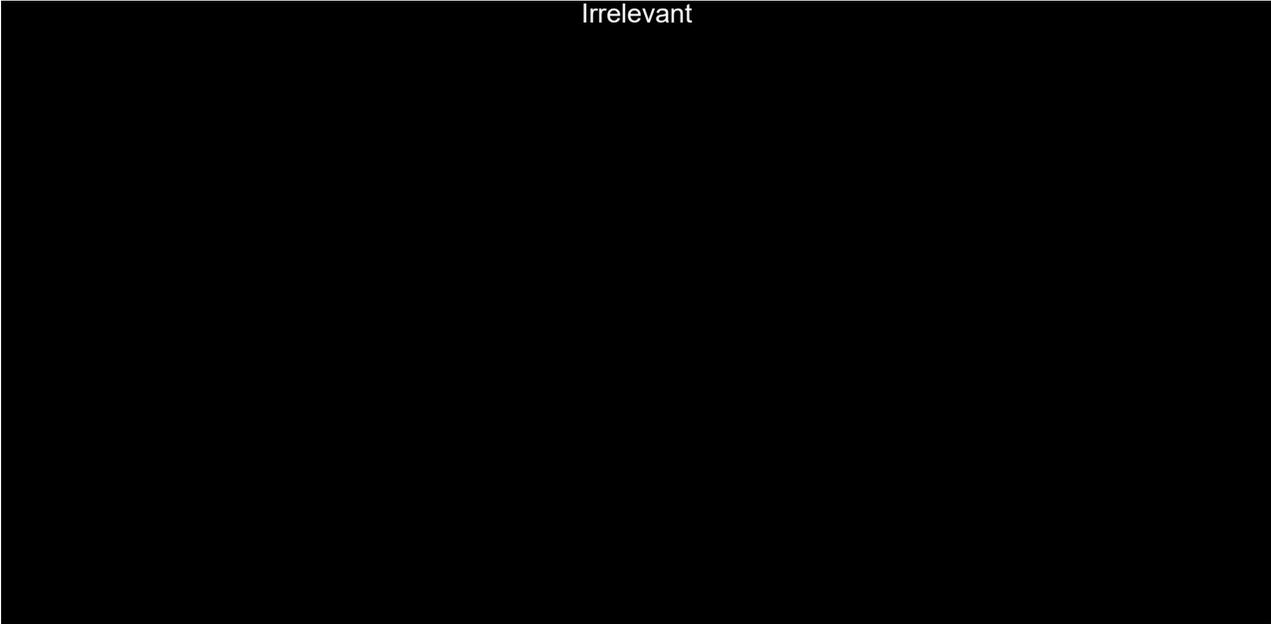
63. The High Court's decision in the Ngāti Whātua Ōrākei case not to uphold the concept of exclusive mana whenua is likely to discourage groups seeking to litigate mana whenua disputes. This reduces the risk of carrying the term into the new RM system. However, this decision is still subject to appeal.
64. This is a broader issue than resource management and seeking to solve such an issue via the RM reform process would be inappropriate. The new system is proposed however to include dispute resolution and circuit breakers at key points which are intended to support iwi/hapū/Māori to solve disputes regarding their interests and status.
65. Alternative terms/approaches such as 'mana whakahaere' or the exercise of kaitiakitanga at place, would be equally fraught and may open the door for additional conflict between iwi/hapū/Māori and may inappropriately influence the application of tikanga Māori. In this case, the risks that we understand are preferable to those we do not.
66. We consider the continued application of mana whenua as a concept across the SPA and NBA is the most appropriate approach but that support for iwi/hapū/Māori to practice their own tikanga and reach resolutions outside of court will be critical to ensuring the system gives effect to Tiriti principles.
67. Local authorities, SPA and NBA committees and others with engagement responsibilities will also require support in fulfilling their responsibilities to iwi and hapū who exercise mana whenua.

Impacts on Treaty settlements and other existing arrangements

68. Officials do not expect the proposals will have significant impacts on Treaty settlements or other existing arrangements.
69. Iwi and hapū may seek to be represented by organisations other than Post Settlement Governance Entities (PSGE) for certain purposes. This is also possible under the existing RMA terms and definitions for iwi authority and group that represents hapū.
70. All responsibilities and obligations between decisionmakers, other system users and PSGEs and other bodies established through settlement will be upheld, regardless of whether iwi and/or hapū nominate additional representative organisations for particular purposes. Potential impacts on Treaty settlements relating to the enhancement of hapū and other Māori groups' participation were covered in the accompanying Treaty Impacts Analysis for the MOG #17 paper *Role, funding and participation of Māori in the RM system*.
71. As noted in the paper, it is possible for an iwi or hapū, likely via their PSGE, to assign a representative responsibility for a particular purpose, for example, agreeing the relevant terms of an Engagement Agreement, to a body established under settlement such as a joint committee, provided that body can take on such a role under the settlement legislation and agrees to do so.
72. Practically, officials expect that where PSGEs are the existing primary representative for iwi and/or hapū for resource management purposes that this will continue in the new system with hapū representative groups potentially engaging directly on matters of specific interest

to them where appropriate. As discussed in the paper, it is not intended that one organisation must exclusively represent an iwi or hapū for all resource management purposes. Over time, any changes to how any iwi or hapū wishes to be represented for resource management purposes should be up to that iwi or hapū in the context of its own relationships within te ao Māori. It is not intended that the SPA nor NBA would restrict Māori, in accordance with tikanga Māori, from organising in any particular way in the future.

Irrelevant



Transitioning and amending the provisions of S35A of the RMA

General

76. It is not appropriate for the Crown nor local authorities to determine who among iwi, hapū and Māori have a mandate over resources in a particular area, water source, space and resource 'at place'. However, there is a small risk that publicly available Crown and local authority records might be perceived as an acknowledgement of mandate. This is not the intent. Officials will consider how to mitigate this risk during the implementation phase of the new system, including through communications, non-legislative guidance and active Crown support, such as facilitation, for key representative processes such as appointments.
77. Officials considered the principles of privacy and Māori data sovereignty during policy and Treaty impact analysis. Recorded information is not to be shared wider than the purpose for which it is given (S35A(6)) to protect data sovereignty.
78. The Treaty impact analysis on the central government mechanism for record keeping will be undertaken by the agencies involved during that collaboration.

Next steps

79. Officials from MfE, TPK, Te Arawhiti and DIA in consultation with officials from PSC and LINZ will report back to authorised Ministers in late 2022 on how and by whom a nationwide record of iwi and hapū representative groups will be kept and maintained.

Recommendations

Māori representative organisations

80. note that at MOG #17 you (the Minister for the Environment, Minister for Māori Crown Relations, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan)) were authorised to make any further policy decisions required to draft definitions for [Paper 2 – Role, funding and participation of Māori in the RM system, refer rec 8]:
- a. iwi and hapū representative organisations
 - b. Māori entities representing rights and interests in relation to a particular area, water source, space and resource 'at place' (similar to the approach taken under the Urban Development Act 2020).

Transition and amendment of the provisions of S35A of the RMA

81. **note** that at MOG #17, it was:
- a. agreed that there is a need for an up-to-date nationwide record identifying iwi and hapū representative groups (as recommended by the Panel)
 - b. noted that Te Puni Kokiri, Te Arawhiti, the Department of Internal Affairs, or the National Māori Entity could undertake this role
 - c. noted that Ministry for the Environment officials do not consider the National Māori Entity to be the appropriate group for doing this, and recommend the issue of a nationwide record be considered further.
82. **note** that at MOG #17 the Minister for Environment, Minister of Local Government, Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) were authorised to make further decisions on how and by whom a nationwide record will be kept and maintained.
83. **note** that officials from the Ministry for the Environment, Te Puni Kōkiri, Te Arawhiti and the Department of Internal Affairs, in consultation with officials from the Public Service Commission and Land Information New Zealand will report back to authorised Ministers in the fourth quarter of the 2022 calendar year on next steps on how and by whom a nationwide record will be kept and maintained.
84. **agree** to the specific recommendations in appendix 1, indicating your decisions in that appendix.
- Yes/No**
85. **note** the policy recommendations in this briefing are likely to be reflected in primary and secondary legislation in line with Table 1, subject to decisions of Parliamentary Counsel Office.

86. **Authorise** officials to instruct the Parliamentary Counsel Office to draft based on the matters set out at appendix 1.

Yes/No

Signature



Keita Kohere
Director, Natural and Built System
Ministry for the Environment

17 June 2022

Hon David Parker
Minister for the Environment

Date

Hon Kelvin Davis
Minister for Crown Relations

Date

Hon Willie Jackson
Minister for Māori Development

Date

Hon Kiri Allan
Associate Minister for the Environment

Date

Appendix 1: Detailed decisions for describing Māori representative organisations and record keeping requirements

Part A: Describing Māori representative organisations					
Topic	Proposal (includes initial thinking on preferred options – subject to further analysis, engagement and legal advice)	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
How iwi and hapū are described in the NBA and SPA	'Iwi' and 'hapū' are not defined in the SPA and NBA	The approach continues the practice of the RMA and most other legislation in which iwi and/or hapū are referred to. There is no compelling, nor te Tiriti consistent reason to define iwi and hapū in the SPA nor NBA.	No impact – maintains status quo which is appropriate	1. Agree that as per the status quo, the terms 'iwi' and 'hapū' will not be defined in the SPA and NBA	Yes/No
How iwi and hapū representative groups will be described in the NBA and SPA	Retain the existing defined term 'iwi authority' Retain the existing undefined term 'group that represents hapū'	Maintaining the existing terms and definitions for 'iwi authority' and 'group that represents hapū' will maintain the status quo. While 'iwi authority' is essentially a Crown construct, it is one that has now been in place for more than 30 years, around which a largely workable approach to iwi representation for resource management purposes has been developed. Changing the term, and/or its definition, would replace one Crown construct with another. The existing term 'group that represents hapū' is sufficiently flexible to ensure that the Crown is not determining the way in which hapū may organise for representative purposes. Further prescription/definition was considered and discarded because: <ul style="list-style-type: none"> it may raise the risk of the Crown overstepping in its kāwanatanga role and compelling hapū to create formal representative structures that may not otherwise exist further defining hapū organisations may provide a pathway for groups not recognised in tikanga settings to become recognised by claiming to meet the definition. This would potentially undermine the efficiency gains sought by a more prescriptive approach to describing hapū representative organisations. Continuing with the low prescription existing terms and definitions may mean that local authorities, joint committees and others with engagement responsibilities continue to have difficulty in identifying who to engage with. We consider this to be best addressed through specific provisions about relevant processes and implementation support (eg, active Crown support for new processes such as SPA and NBA appointments and consideration of non-legislative guidance), as well as through councils and joint committees committing to improving relationships with iwi, hapū and Māori groups in their regions.	Treaty and Māori/iwi We anticipate minimal impacts on iwi and hapū of retaining the existing terms and definitions. Although the current RMA has created barriers to Māori participation, redefining 'iwi authorities' and "group that represents hapū" does not address these barriers. System efficiency Without consideration of how local authorities, SPA and NBA committees and others with engagement responsibilities are able to meet those responsibilities, retaining the existing definitions will not provide efficiency gains for the system. However, coupled with effective provisions in relation to key processes and effective implementation support, we consider moderate efficiency gains will be achieved. The alternative of more prescribed definitions is unlikely to achieve efficiency gains because of the perverse outcomes they may generate such as hapū groups not recognised in tikanga attempting to use the definition to become recognised. Environmental protection, environmental limits and climate change adaptation No specific impact on these objectives.	2. Agree the defined term 'iwi authority' in the RMA and the undefined term 'group that represents hapū' in the RMA will be retained for use in the SPA and NBA to describe iwi and hapū representative groups.	Yes/No

<p>How Māori groups with rights and interests 'at place' will be described in the NBA and SPA</p>	<p>Māori groups with rights and interests 'at place' broadly and non-exhaustively described</p> <p>Non-legislative guidance explored to support decision-makers and others in fulfilling engagement responsibilities with Māori groups with rights and interests 'at place'</p>	<p>To give effect to the policy intent that all relevant iwi/hapū/Māori rights and interests are to be considered in relation to several SPA and NBA functions, Māori groups with relevant rights and interests may need to be described in the SPA and NBA.</p> <p>There are no current descriptions or guidance within the RMA that captures all rights and interests that may exist in a particular place in accordance with tikanga Māori, te Tiriti, common law and statute. Holders of these rights and interests include but may not be limited to:</p> <ul style="list-style-type: none"> • groups which hold rights and interests in accordance with whakapapa such as iwi and hapū, whānau which may or may not also be owners of Māori land and/or customary rights holders • Owners of Māori land • holders of specific customary rights such as Customary Marine Title and Protected Customary Rights groups • mātāwaka and Māori community groups • groups who hold rights and interests as a result of the settlement of Treaty of Waitangi claims, such as PSGEs or persons who are authorised to speak on behalf of natural taonga with legal personality. <p>Any description of the holders of rights and interests should be broad and non-exhaustive to avoid the Crown defining rights and interests and the nature of those rights and interests.</p> <p>There is a risk with this approach that decision makers and others with engagement responsibilities to interests holders will struggle to identify the right groups to engage with. Non-legislative guidance and/or engagement in the regions to seek to identify these groups may be effective tools to support decision-makers and others with engagement responsibilities.</p>	<p>Treaty and Māori/iwi</p> <p>Some of the specific policy decisions, for example the Māori appointments processes for the National Māori Entity and SPA and NBA committees, that would indicate a preferred approach are yet to be made and Treaty impacts of those decisions will be included in the relevant papers.</p> <p>A broad description would not exclude settlement-based rights and interests and ensures that groups with settlement-based rights who are not PSGEs, eg, persons who are authorised to speak on behalf of natural taonga with legal personality, joint committees established through settlement are also considered for engagement.</p> <p>In cases where an iwi or hapū may choose to be represented by a group other than a PSGE, specific inclusion of settlement-based rights and interests holders ensures the PSGE must also be considered for engagement.</p> <p>System efficiency</p> <p>The approach will require decision makers and others with engagement responsibilities to exercise judgement about the right groups to engage with. This may have negative impacts on efficiency where those decision makers and/or others do not have the relationships or capability to exercise such judgement. Non-legislative guidance or other implementation support will be required to mitigate these effects.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No specific impact on these objectives</p>	<p>3. Agree that where Māori groups with interests 'at place' are to be described in the SPA and NBA that the description is broad and non-exhaustive</p>	<p>Yes/No</p>
<p>How the representatives of Māori groups with interests 'at place' will be described in the NBA and SPA</p>	<p>Māori representative organisations must be entities which are authorised to speak and act on behalf of the holders of relevant interests in relation to resource management</p> <p>The UDA Māori entity definition is referenced as an example of relevant entities but is not included as an exhaustive list of entities</p>	<p>As is the case for iwi and hapū representative groups, there are some cases where representative organisations will have a specific role, for example, agreeing an Engagement Agreement with an SPA or NBA committee where the committee considers such an agreement appropriate.</p> <p>Like in the case of iwi and hapū representative groups, these representative organisations should be authorised to speak and act on behalf of the holders of relevant interests in relation to resource management or the specific resource management matter at hand.</p> <p>The Māori entity definition included in the UDA, with amendments to include groups that represent hapū, should provide full coverage of the types of entities which may be considered able to fulfil a representative role for a group at the present time, including for Māori land blocks that do not have a formal administration. However, it is possible that preferred representative entities may change over time.</p> <p>The UDA also covers a narrower set of matters than what the SPA and NBA will cover, meaning that specificity about entity</p>	<p>Treaty and Māori/iwi</p> <p>Officials consider the proposed list of entities would constitute virtually full coverage of the types of bodies which Māori groups may use for representative purposes and does not limit the consideration of any specific interests.</p> <p>The inclusion of a broad description of entities representing ownership interests in Māori land cover the key instances where administrative structures may be either inappropriate or difficult to establish.</p> <p>Treaty-settlement bodies are well covered by the list.</p> <p>It may be possible to have several authorised voices within the same hapū grouping or area.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No specific impact on these objectives</p>	<p>4. Agree that Māori representative organisations for the purposes of the SPA and NBA must be entities which are authorised to speak and act on behalf of the holders of relevant interests in relation to resource management</p> <p>5. Agree that the Urban Development Act 2020 'Māori entity' definition will be referenced in secondary legislation or guidance as an example of the types of entities which may be considered Māori representative organisations for the purposes of the SPA and NBA</p>	<p>Yes/No</p> <p>Yes/No</p>

		<p>types is more appropriate in that case than what it would be for the SPA and NBA.</p> <p>Utilising the UDA definition as a reference, rather than replicating the approach in the SPA and NBA, provides a level of guidance to Māori groups, iwi authorities, groups that represent hapū, and SPA and NBA decision makers who may be required to engage with those groups, without over prescribing and excluding potentially appropriate entities from participating.</p> <p>Specifying that entities must be authorised for resource management purposes should support the 'legitimacy' of representative entities that might operate in the SPA and NBA context.</p>			
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Part B: Transitioning and amending the provisions of S35A of the RMA

Topic	Proposal (includes initial thinking on preferred options – subject to further analysis, engagement and legal advice)	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
Transitioning the intent of S35A	Transition the general intent of S35A.	Records will continue to be a useful tool in maintaining and improving relationships between iwi/hapū/Māori, local authorities, SPA and NBA committees and central government, and the quality of engagement with iwi/hapū/Māori across the system. While local authorities are likely to keep the required records in any case, the requirements provide for clarity and consistency in record keeping across all local authorities.	<p>Treaty and Iwi/Māori</p> <p>We do not anticipate any negative impacts for Māori by transitioning the intent of S35A. There is however, an opportunity to refine and improve the section to have a positive impact by raising the status of hapū, including Māori representative groups (not covered by iwi and hapū).</p> <p>There is a slight risk in the perception that iwi, hapū and Māori recorded have a mandate when this is not the intent of this section. Such a perception could risk usurping the mana of iwi, hapū and Māori in their local area or region.</p> <p>System efficiency</p> <p>The intent of S35A is to provide clarity and certainty for local authorities and for iwi/hapū representatives of Māori groups with interests 'at place' about who to engage in particular areas and on particular kaupapa. Establishing certainty may take time in the beginning, however, long term we expect it will lead to greater efficiency.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No specific impact on these objectives</p>	<p>6. Agree the general intent of S35A of the RMA be carried forward to new resource management system requiring a comprehensive list (records kept) of iwi, hapū and Māori entities be held by central government</p> <p>6A. Note the list will not determine or presume the mandate or authority of a group</p> <p>7. Note that the list will be broad, inclusive and easy to register on, and iwi/hapū and Māori groups will be encouraged to be on the list for engagement purposes</p>	<p>Yes/No</p> <p>Yes/No</p>
Role for SPA and NBA committees in record keeping	<p>SPA and NBA committees are provided access to the relevant records held by local authorities.</p> <p>SPA and NBA committees not legislatively required to keep specific records on iwi and hapū representative groups nor other Māori groups under the</p>	<p>SPA and NBA committees will have similar information requirements to local authorities. The relevant records would include key contacts, areas of interests, iwi and hapū environmental management plans and Mana Whakahono a Rohe.</p> <p>It would be inefficient to require SPA and NBA committees to maintain separate records, although they may choose to do so.</p> <p>Engagement agreements and registrations to engage, which are managed by SPA and NBA committees will already be</p>	<p>Treaty and Iwi/Māori</p> <p>We do not anticipate any impact of this addition to S35A on iwi/hapū and Māori. The SPA and NBA committees are within local government, and the information is not being shared beyond its purpose (clause 6 of this section). It is therefore not putting Māori data sovereignty at risk.</p> <p>System efficiency</p>	<p>8. Agree the record keeping requirements stipulated under s35A for local government will not extend to SPA and NBA committees</p> <p>9. Agree that SPA and NBA committees be granted access, on request, to the relevant records held by local authorities</p>	<p>Yes/No</p> <p>Yes/No</p>

	equivalent S35A in the SPA and/or NBA.	subject to record keeping requirements as part of the planning process and will expire within the cycle of the planning process.	<p>Allowing NBA and SPA committees to have access to the records of local authorities should increase efficiency by avoiding duplication of effort.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No specific impact on these objectives</p>		
Proposed amendments to S35A	Local authorities be required to keep and maintain a record of any engagement with any Māori entity on SPA and NBA matters including the name and contact details (if provided) of the Māori entity and the subject of the engagement.	<p>Generally requiring local authorities and/or the Crown to maintain a record of the contact details and specific interests of all Māori entities which may represent rights and interests holders within a region or district, or other information regarding those rights and interests, would be difficult and unnecessarily onerous given the number of such entities that may exist.</p> <p>Specific requirements to keep a record of engagement with Māori entities will ensure relevant information is maintained on Māori entities beyond iwi and hapū representative groups.</p> <p>As the SPA and NBA committees would undertake engagement during the RSS and NBA plan process, this information would likely include engagement on matters like consenting, compliance monitoring and enforcement and environmental monitoring.</p>	<p>Treaty and Iwi/Māori</p> <p>We anticipate this will have a positive impact on rights and interest holders who are not iwi or hapū as their records will be kept and maintained, allowing those groups to have easier access to engage and local authorities to have greater clarity about who to engage with beyond iwi and hapū. We do not anticipate any impact on iwi and hapū.</p> <p>System efficiency</p> <p>Whilst maintaining a record of all Māori entities which may represent rights and interests holders within a region or district may seem onerous and less efficient in the short term, officials believe this requirement will boost efficiency in the long term.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No specific impact on these objectives</p>	10. Agree that a regulation power is enabled for local authorities to be required to record engagement with any Māori entity on SPA and NBA matters including the name and contact details (If provided) of the Māori entity and the subject of the engagement	Yes/No
	<p>Replace S35A(4) with requirements that:</p> <ul style="list-style-type: none"> • local authorities use best endeavours to keep and maintain a record of contact details and areas of interest for hapū representative groups • local authorities to keep and maintain records of: <ul style="list-style-type: none"> ○ planning documents that are recognised by each hapū representative organisation and lodged with the local authority ○ MwaR agreements to which hapū representative organisations are party ○ Joint Management Agreements with hapū representative organisations ○ Transfer of Powers to hapū representative organisations. 	These requirements reflect that hapū participation rights under the SPA and NBA are enhanced compared to the RMA, but that all hapū may not have formalised representative structures on which local authorities may be able to reasonably keep an accurate record, and that they may wish to be represented primarily by their iwi representative organisations.	<p>Treaty and Iwi/Māori</p> <p>We anticipate this will have a positive impact on hapū because it supports the policy intent to give hapū rights equivalent to iwi under the RMA. It is also designed to support hapū who may not have formal representative structures.</p> <p>System efficiency</p> <p>To mitigate this amendment being onerous on councils and having a negative impact on efficiency, we have framed the requirement as 'best endeavours'. We expect this change to deliver a positive impact overall through improved efficiency in the long term.</p> <p>Environmental protection, environmental limits and climate change adaptation</p> <p>No direct impact on these objectives. There may be an indirect positive impact where hapū are involved in these areas.</p>	<p>11. Agree that in addition to iwi and iwi authorities there is a duty to keep records on hapū and groups that represent hapū.</p> <p>11A Agree that the responsibility for maintaining a central record (list) of iwi/hapū and Māori entities is with central government.</p>	<p>Yes/No</p> <p>Yes/No</p>

	<ul style="list-style-type: none"> • Local authorities be required to share with the Crown: <ul style="list-style-type: none"> ○ the list they maintain of iwi authorities and groups that represent hapū in their regions or districts and any updates to that list ○ the respective areas of interest of those authorities and groups that represent hapū. 	<p>These requirements are intended to provide for increased transparency and consistency between the records held by local authorities and central government.</p>	<p>Treaty and Iwi/Māori</p> <p>This recommendation is likely to have an indirect positive impact on iwi/Māori as information held is transparent and consistent between local authorities and central government. There is a small risk to Māori data sovereignty, however, this should be mitigated because for the most part, the information required to be published is already publicly available in some way (e.g. on the iwi or hapū' website, Te Kāhui Māngai, Local Authority website or requested under the Official Information Act or Local Government Official Information and Meetings Act. Sensitive information such as wāhi tapu, or contact information is not intended to be published.</p> <p>System efficiency</p> <p>Consistency between the records of local authorities and central government should positively impact on system efficiency.</p> <p>Environmental protection, environmental limits and climate change adaption</p> <p>No specific impact on these objectives.</p>	<p>12. Agree that, whilst the obligation is on central government to maintain the list, local authorities be required to share with the Crown:</p> <ul style="list-style-type: none"> a. the list they maintain of iwi authorities and groups that represent hapū in their regions or districts and any updates to that list b. the respective areas of interest of those iwi authorities and groups that represent hapū. 	<p>Yes/No</p>
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Appendix 2: Impact analysis summary table

Assessment criteria		
<p>A common set of assessment criteria was applied across all Māori participation proposals considered by officials at MOG #17. These criteria have also been applied to the options for how Māori representative groups are to be defined and the options for record keeping requirements.</p> <ol style="list-style-type: none"> gives effect to the principles of te Tiriti is effective (ie, achieves the objectives) and implementable is efficient over the long-term (in terms of both time and cost efficiency) provides certainty to all parties involved promotes equity (for Māori when compared with non-Māori and between hapū/iwi/Māori groups as appropriate). <p>Part A: When assessing options for iwi, hapū and Māori representative organisations, the following detailed criteria have also been applied to implement the decisions on Māori participation made at MOG #17:</p> <ol style="list-style-type: none"> the definition of Māori representative groups should be as prescriptive as required for the effective functioning of the system, but not more so, to avoid defining tikanga Māori in Crown terms and to provide for the exercise of rangatiratanga the way Māori representative groups are defined should not inhibit the ability of iwi/hapū/Māori to participate in relation to the rights and interests which they consider relevant – where further specificity is required about which groups may participate, this should be provided for in the relevant provisions of the SPA or NBA, not anticipated in the generally applicable terms and definitions any changes to terms and definitions should not adversely impact the responsibilities of existing representative organisations nor necessitate the creation of new entities. <p>Part B: When assessing options for record keeping, the following detailed criteria have also been applied:</p> <ol style="list-style-type: none"> the onus should remain on local and central government to keep and maintain records, not on iwi, hapū and other Māori groups to provide that information the information held by local and central government should not be considered a de facto acknowledgement of the mandate of any specific organisation iwi, hapū and Māori groups should maintain control over how information which relates to them is used. 		
Problem or opportunity		
<p>Part A: Māori representative organisations</p> <ul style="list-style-type: none"> The new system creates new engagement requirements that may not be served by the current combination of terms, definitions and implementation support The nature of describing Māori groups in the RMA has meant that options for different types of groups need to be considered. <p>Part B: Record keeping</p> <p>The new system creates new engagement requirements that are not served by the provisions of S35A nor the implementation of those provisions.</p>		
Part A Options assessment: Māori representative organisations	Advantages/benefits	Disadvantages/Costs/Risks
<p>Option 1: 'Iwi' and 'hapū' are not defined in the SPA and NBA</p>	<ul style="list-style-type: none"> It is the status quo that these tikanga based terms are not defined in legislation. It is appropriate that these terms are not defined by the Crown. Appropriate level of prescription. 	<ul style="list-style-type: none"> The disadvantage is that without definitions local authorities may be required to determine who may represent iwi and hapū in certain situations. This is the status quo.
<p>Option 2 (not recommended): How iwi and hapū representative groups will be described in the NBA and SPA:</p> <ol style="list-style-type: none"> That an iwi representative organisation, for the purposes of the SPA and NBA, be an entity which is authorised to speak for and act on behalf of an iwi. 	<ul style="list-style-type: none"> Provides more direction than the existing terms and definitions without being overly prescriptive. Consistency in the two terms and their definitions reflects consistency in participation rights. 	<ul style="list-style-type: none"> Lower prescription means local authorities may not have clarity when undertaking their engagement responsibilities – non-legislative guidance will be critical in mitigating this risk. Risk that the Crown is compelling hapū to organise around a Crown construct.

<p>2. That a hapū representative organisation for the purposes of the SPA and NBA be either:</p> <ol style="list-style-type: none"> an entity which is authorised to speak for and act on behalf of a hapū the hapū members, providing an authorised view on a specific resource management matter through a hui or other process convened in accordance with their tikanga. 	<ul style="list-style-type: none"> Provides for hapū without representative structures in accordance with tikanga. Unlikely to impact the role of existing representative groups. Is flexible to allow preferred representative entities to change over time. 	<ul style="list-style-type: none"> Risk that the definitions are over prescribed and lead to unintended consequences such as excluding groups that should be included and providing a pathway for hapū groups not recognised in tikanga to be recognised through a Crown construct. May not provide any additional clarity and efficiency to the existing terms and definitions. This option is not supported by FILG and TTK.
<p>Option 3: How iwi and hapū representative organisations will be described in the NBA and SPA:</p> <ol style="list-style-type: none"> Retain the existing defined term 'iwi authority' Retain the existing undefined term 'group that represents hapū'. 	<ul style="list-style-type: none"> Retains a degree of continuity between the RMA and the new system. The impacts of the terms are already understood, perverse impacts not anticipated. Both definitions support self-identification. Crown not overly prescribing hapū organisation. Provides for hapū without representative structures in accordance with tikanga. Will not impact the role of existing representative organisations. 	<ul style="list-style-type: none"> May not provide clarity sought by local authorities around who to engage with. Definitions of the two terms are not consistent with each other, despite participation opportunities being similar for both groups. Risk that hapū are missed from the notification process and thereby are omitted from composition and appointment process discussions. Robust implementation support for the development of the list under s35A will mitigate this risk. This option is strongly preferred by FILG, and to a lesser extent, preferred by TTK.
<p>Option 4: How the representatives of Māori groups with interests 'at place' will be described in the NBA and SPA</p> <p>87. Māori representative organisations for the purposes of the SPA and NBA must be entities which are authorised to speak and act on behalf of groups with relevant rights and interests.</p> <p>88. That the Urban Development Act 'Māori entity' definition will be referenced in the legislation as an example of the types of entities which may be considered Māori representative organisations for the purposes of the SPA and NBA.</p>	<ul style="list-style-type: none"> Utilising the UDA definition as a reference, rather than replicating the approach in the SPA and NBA, provides a level of guidance to Māori groups and to iwi and hapū representative groups and SPA and NBA decision-makers who may be required to engage with those groups, without over prescribing and excluding potentially appropriate entities from participating. Supports the 'legitimacy' of representative entities that might operate in the SPA and NBA context. Inclusive of Treaty settlement bodies. 	<ul style="list-style-type: none"> Lower prescription means local authorities may not have clarity when undertaking their engagement responsibilities – non-legislative guidance will be critical in mitigating this risk.
<p>Option 5: Retain the terms "tangata whenua" and "mana whenua" as defined in the RMA.</p> <p>The use of these terms is somewhat contested. Key issues include:</p> <ul style="list-style-type: none"> the terms have been used broadly across the RMA when describing engagement requirements which has essentially restricted those requirements to iwi and hapū 'mana whenua' status is contested in some areas and in an RMA context in some cases – some argue there could be a more appropriate way to describe the 'at place' kaitiaki responsibilities. 	<ul style="list-style-type: none"> Officials are unlikely to be able to come up with anything better if the process is Crown led. Any alternatives will have risks and will not be supported by some Māori groups – eg, Iwi leaders and PSGEs have not shown much support for the "mana whakahaere" approach proposed by TTK. Councils and other decision makers are familiar with the terms. Provides consistency in the new system. 	<ul style="list-style-type: none"> Risk that 'mana whenua' is used to exclude groups that it is not intended to exclude.

Part B Options assessment: Transitioning and amending the provisions of S35A of the RMA	Advantages/benefits	Disadvantages/Costs/Risks
Option 1: Transition the general intent of S35A.	<ul style="list-style-type: none"> Keeping and maintaining records enables transparency and efficiency for local authorities and iwi, hapū and Māori. 	<ul style="list-style-type: none"> Publicly available records of iwi, hapū and Māori organisations held by central or local government might be seen as a mandate. Risk to Māori data sovereignty if sensitive information isn't protected.
Option 2: That the record keeping requirements for local government will not extend to SPA and NBA committees. The SPA and NBA committees will have access to the records.	<ul style="list-style-type: none"> Consistent information between SPA and NBA committees and local authorities without overburdening the committees. 	<ul style="list-style-type: none"> No risk identified given SPA and NBA committees have access to local government records.
<p>Option 3: Amend S35A in with the following:</p> <ol style="list-style-type: none"> Local authorities be required to keep and maintain a record of any engagement with any Māori entity on SPA and NBA matters including the name and contact details (if provided) of the Māori entity and the subject of the engagement. Replace S35A(4) with requirements that local authorities use best endeavours to keep and maintain a record of contact details and areas of interest of hapū. Local authorities be required to: <ol style="list-style-type: none"> publish a list of MWaR agreements, JMAs and Transfer of Powers which are either in development or completed, periodically publish a list of iwi and hapū representative groups in their region, to whom a transfer of power could be made share with the Crown: <ol style="list-style-type: none"> the list they maintain of iwi and hapū representative groups in their regions or districts and any updates to that list the respective areas of interest of those iwi and hapū representative groups. 	<ul style="list-style-type: none"> Better record keeping of hapū and Māori entities, including rights and interests holders. Better transparency and efficiency. Consistent records held between local government and central government. Giving primacy to settlement legislation in S35A subsections one is aligned with giving effect to te Tiriti. Publishing records of iwi and hapū representative organisations who can receive Transfer of Powers enables clear decision-making regarding who is on the list as of the publishing date. If there is significant issue with how the list is created, then the decision to publish the list can be judicially reviewed. 	<ul style="list-style-type: none"> Risk to Māori data sovereignty if sensitive information isn't protected. Risk of published lists being seen as a mandate beyond resource management. Risk that legislation not intended to prevail over S35A is given primacy, eg, local government legislation. Risk that 'best endeavours' is used to prioritise efficiency over the voice of Māori. Increased and possibly onerous workload on local authorities.
Conclusion		
<p>The options outlined above, with the exception of Part A option 2, have been selected because they:</p> <ul style="list-style-type: none"> provide consistency across the legislation are inclusive of iwi/hapū and Māori provide for long term efficiency and clarity for both iwi/hapū/Māori and local authorities provide balance between efficiency, guidance and clarity and not defining or prescribing Māori concepts and tikanga in the legislation are intended to prevent the Crown overstepping its kāwanatanga role. 		

Appendix 3: Roles for and references to iwi/hapū/Māori and their representative organisations across the SPA and NBA

	Group	Roles and references (subject to further decisions and drafting) – includes decisions already made by MOG and proposals for delegated decisions – MOG #17 references included
1.	Iwi and hapū (undefined)	<ul style="list-style-type: none"> Iwi and hapū referenced in Te Oranga o te Taiao. Iwi and hapū referenced in outcomes and implementation principles.
2.	Iwi authority and group that represents hapū	<ul style="list-style-type: none"> Iwi authorities and groups that represent hapū lead regional appointments process to electoral college / nominating panel for National Māori Entity [subject to further decision]. Requirement for iwi authorities and groups that represent hapū to be notified to participate in discussions and decisions on composition of SPA and NBA committees (if desired) [MOG #17 Paper 2, refer rec 56]. Iwi authorities and groups that represent hapū 'qualified' to identify appointing bodies [MOG #17 Paper 2, refer rec 56]. Iwi authorities and groups that represent hapū can act as appointing bodies for SPA and NBA committee appointments (while not exclusive) provided they meet the requirements for appointing bodies. SPA and NBA committees required to invite iwi authorities and groups that represent hapū to enter Engagement Agreements [MOG #17 Paper 2, refer recs 66 and 67]. Ability for iwi authorities and groups that represent hapū to agree engagement agreements for RSS and NBA plans pre-notification [MOG #17 Paper 2, refer recs 66 and 67]. Automatic registration of iwi authorities and groups that represent hapū to engage for RSS and NBA plan process. Ability for iwi authorities and groups that represent hapū to register to engage for RSS and NBA plan process post-notification. Ability for iwi authorities and groups that represent hapū to make nominations to the national pool for Independent Hearing Panel (IHP) members. Positive obligation on local authorities and SPA and NBA committees to consider opportunities to initiate Mana Whakahono a Rohe and investigate opportunities to use Joint Management Agreements and Transfer of Powers agreements with iwi authorities and groups that represent hapū [MOG #17 Paper 2, refer recs 83-85.] Obligation on local authorities and NBA/SPA committees to enter into discussion towards MWaR where requested by iwi authorities and groups that represent hapū, and ability for local authorities and joint committees to initiate MWaR with these groups [MOG #17 Paper 2, refer recs 83-85]. Ability for iwi authorities and groups that represent hapū to initiate MWaR [MOG #17 Paper 2, refer recs 83-85]. Ability for iwi authorities and groups that represent hapū to initiate discussions on JMAs and Transfer of Powers [MOG #17 Paper 2, refer recs 83-85]. Other roles such as engagement on resource consents, compliance, monitoring and enforcement and environmental monitoring may be agreed through MWaR and/or as part of the NBA plan process.
3.	Holders of relevant interests in accordance with tikanga Māori, te Tiriti, common law and statute (holders of rights and interests) and the Māori entities who represent them	<ul style="list-style-type: none"> Iwi and hapū representative groups must, within their regions, engage with their members and other Māori entities representing interests 'at-place' and maintain a record of engagement in relation to: <ul style="list-style-type: none"> appointments to selection panel of National Māori Entity [subject to further decision] composition of SPA and NBA committees identification of appointing bodies appointments to SPA and NBA committees. Māori entities (provided they meet other requirements) other than iwi and hapū representative groups, can also be appointing bodies. SPA and NBA committees will be required to initiate Engagement Agreements with iwi and hapū representative groups and CMT holders in the area covered by the regional spatial strategy (RSS) or NBA plan. Ability for CMT and PCR groups to agree Engagement Agreements for RSS and NBA plans pre-notification. Requirements on SPA and NBA committees to consider how they will ensure, within their regions, the views of holders of interests in accordance with tikanga Māori are included in the RSS and NBA plan development processes. Requirements on SPA and NBA committees to consider whether further Engagement Agreements are desirable with any Māori entities (representing holders of interests in accordance with tikanga Māori).

		<ul style="list-style-type: none">• Ability of Māori holders of relevant interests to register to engage.• Ability for Māori holders of interests to make nominations to the national pool for IHP members.• Rights and interests of specific groups, such as owners of Māori land and CMT and PCR groups, which are provided for under other legislation and referenced in the RMA, will continue to be provided for and referenced in the SPA and/or NBA.
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Appendix 4: Section 35A of the Resource Management Act 1991

1. For the purposes of this Act or regulations under this Act, a local authority must keep and maintain, for each iwi and hapū within its region or district, a record of—
 - a. the contact details of each iwi authority within the region or district and any groups within the region or district that represent hapū for the purposes of this Act or regulations under this Act; and
 - b. the planning documents that are recognised by each iwi authority and lodged with the local authority; and
 - c. any area of the region or district over which 1 or more iwi or hapū exercise kaitiakitanga; and
 - d. any Mana Whakahono a Rohe entered into under section 580
2. For the purposes of subsection (1)(a) and (c) -
 - a. the Crown must provide to each local authority information on –
 - (i) the iwi authorities within the region or district of that local authority and the areas over which 1 or more iwi exercise kaitiakitanga within that region or district; and
 - (ii) any groups that represent hapū for the purposes of this Act or regulations under this Act within the region or district of that local authority and the areas over which 1 or more hapū exercise kaitiakitanga within that region or district; and
 - (iii) the matters provided for in subparagraphs (i) and (ii) that the local authority has advised to the Crown; and
 - b. the local authority must include in its records all the information provided to it by the Crown under paragraph (a).
3. In addition to any information provided by a local authority under subsection (2)(a)(iii), the local authority may also keep a record of information relevant to its region or district, as the case may be,—
 - a. on iwi, obtained directly from the relevant iwi authority
 - b. on hapū, obtained directly from the relevant group representing the hapū for the purposes of this Act or regulations under this Act.
4. In this section, the requirement under subsection (1) to keep and maintain a record does not apply in relation to hapū unless a hapū, through the group that represents it for the purposes of this Act or regulations under this Act, requests the Crown or the relevant local authority (or both) to include the required information for that hapū in the record.
5. If information recorded under subsection (1) conflicts with a provision of another enactment, advice given under the other enactment, or a determination made under the other enactment, as the case may be,—
 - a. the provision of the other enactment prevails; or
 - b. the advice given under the other enactment prevails; or
 - c. the determination made under the other enactment prevails,
6. Information kept and maintained by a local authority under this section must not be used by the local authority except for the purposes of this Act or regulations under this Act
7. Information required to be provided under this section must be provided in accordance with any prescribed requirements

Irrelevant





1BRF-1562 RM Reform 192 – Delegated decisions on Māori appointment process to Natural and Built Environments and Spatial Planning Committees

Date Submitted:	14 July 2022	Tracking #: BRF-1562	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker Minister for the Environment	Agree to the recommendations in this briefing	15 July 2022
To Hon Kelvin Davis Minister for Māori Crown Relations	For agreement	
To Hon Nanaia Mahuta Minister of Local Government	For agreement	
To Hon Willie Jackson Minister for Māori Development	For agreement	
To Hon Kiri Allan Associate Minister for the Environment	For agreement	
CC Hon Aupito William Sio Minister for Courts	For consultation	

Actions for Minister's Office Staff	<p><i>Subject to Minister's approval forward to Hon Kelvin DAVIS, Minister for Māori Crown Relations: Te Arawhiti, Hon Nanaia MAHUTA, Minister of Local Government, Hon Willie JACKSON, Minister for Māori Development and Hon Kiritapu ALLAN, Associate Minister for the Environment for a decision.</i></p> <p><i>Subject to Minister Parker's approval, forward to Hon Aupito William Sio, Minister for Courts for consultation.</i></p> <p>Return the signed report to MfE.</p>
Actions for other Offices	<p>Offices of Minister Davis, Mahuta, Jackson's and Allan's offices: Provide to your Minister for a decision then return the signed briefing to Minister Parker's office.</p> <p>Offices of Minister Sio: Provide to your Minister then provide any feedback/comments to Minister Parker's office.</p>
Number of appendices and attachments: 4	<p>Titles of attachments</p> <ol style="list-style-type: none"> delegated decisions on Māori appointment process to Natural and Built Environments and Strategic Planning Committees, including dispute resolution and circuit-breaker processes impact analysis summary table process diagrams for potential committee formation processes other dispute resolution and circuit breaking processes relating to Māori participation.

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Ministry for the Environment contacts

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BRF-1562 RM Reform 192 – Delegated decisions on Māori appointment process to Natural and Built Environments and Spatial Planning Committees

Purpose

1. This paper relates to the establishment and operation of committees under the Natural and Built Environments Act (NBA) and the Spatial Planning Act (SPA), specifically addressing how Māori appointments to Planning committees will be made.¹
2. At Ministerial Oversight Group (MOG) #17, the MOG agreed that iwi and hapū representative organisations would be identified in legislation as the entities to be engaged in discussions on composition and that they must, within their regions, engage with their members and other Māori entities representing rights and interests 'at-place' in agreeing composition and identifying appointing bodies.
3. Appendix Three provides an overview of the composition and appointments process for the establishment of Planning committees. This provides the context for the following decisions on appointing bodies.²
4. This paper sets out detailed decisions about:
 - a. how iwi authorities and groups that represent hapū³ will identify appointing bodies for the Māori seats on Planning committees, including statutory requirements, and dispute resolution/circuit breaker procedures if agreement is not reached
 - b. requirements for appointing bodies themselves, once identified, including statutory requirements for making appointments to committees and accountability responsibilities to iwi/hapū/Māori in their region.
5. In general, the principle behind most of the paper's recommendations is that the legislation should include minimal prescription, and iwi/hapū/Māori at place should be empowered to determine their own processes. The one potential exception is in relation to dispute resolution and circuit breaker processes if iwi authorities and groups that represent hapū do not agree the identity of appointing bodies within the statutory timeframe.
6. In that case, officials have provided two proposals: either a prescriptive dispute resolution process that prioritises certainty at the end of a self-determined process (developed by the Ministry for the Environment - MfE), or a less prescriptive approach that prioritises self-determination throughout (Te Arawhiti option).

¹ Note that *BRF-1716 – RM Reform 186 – Delegated decisions on regional governance and decision-making amendments* recommends that the Planning Committees are established as a single committee responsible for undertaking functions under the both the SPA and NBA (recommendation 2). This is contrary to the agreement at MOG #17 that there would be two separate committees, and is therefore subject to MOG agreeing to rescind this decision.

² This paper sets out two alternative "circuit breaker" options in cases of disputes regarding appointing bodies, one developed by MfE and one developed by Te Arawhiti. Appendix Three includes only the MfE option.

³ "Iwi authorities and groups that represent hapū" is the terminology used in *BRF 1692 Delegated Decision paper on Describing Māori representative organisations and record keeping* which sets out how Māori groups will be described in the new system. This paper uses these terms unless directly referencing prior decisions that used different wording.

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7. The subject matter of this paper is linked to *BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements*, particularly that paper's recommendations about composition of SPA and NBA committees (including the role of the Local Government Commission) and general requirements for appointing bodies to committees (this paper's recommendations are specific to appointing bodies for Māori seats).

Background

8. At the MOG meeting #11/12 on 4 October 2021 the MOG noted:
- a. that further advice would be provided on the matter of who participates in the new RM system including:
 - i. identifying and recording who makes Māori appointments to joint committees
 - ii. whether legislation should set appointment processes or whether to enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process).
9. This further advice was provided to the MOG Māori Interests subgroup on 24 November 2021 and a proposed direction of travel on who from te ao Māori participates across the system was outlined, including:
- a. support for the Panel's proposal for self-identification, which would involve enabling tikanga processes to determine representation with 'circuit breakers' and timeframes prescribed in legislation as a backup
 - b. implementation support is required for successful self-identification processes
10. At MOG #17, the MOG agreed the following approach to composition and appointment for Māori members on Planning Committees:
- a. iwi and hapū representative organisations are identified as the entities to be engaged with in discussions on composition of Planning Committees
 - b. iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities representing rights and interests 'at-place' in agreeing composition and identifying appointing bodies
 - c. the greater role proposed for iwi/Māori will require sustainable levels of funding to ensure Māori have an effective role consistent with the principles of Te Tiriti
 - d. there will be requirements to maintain a record of engagement on composition and appointment discussions and to make this record publicly available
 - e. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations, can also be appointing bodies
 - f. appointing bodies must be enduring and capable of developing and executing their own appointment and removal processes.
11. In coming to this recommended approach, officials carefully considered proposals from FILG/TWMT and TTK, and feedback through wider engagement with Māori. Officials consider this proposal provides for inclusion and flexibility in how iwi, hapū and Māori are represented in composition discussions and appointment processes. It also provides an opportunity for a range of Māori entities to be involved in appointment processes and a clear starting point for composition discussions.

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13. MOG #17 also authorised you (as the Minister for the Environment); the Minister for Māori Crown Relations: Te Arawhiti (Hon Kelvin Davis); the Minister for Local Government (Hon Nanaia Mahuta); the Minister for Māori Development (Hon Willie Jackson); and the Associate Minister for the Environment (Hon Kiri Allan) to make any other decisions needed on the ongoing role and functions of appointing bodies, details of dispute resolution (including facilitation) and circuit-breaker processes for appointing Māori members to the NBA and SPA committees (see MOG #17 Paper 2: *Role, funding and participation of Māori in the RM system*, para 59a).
14. The Minister for Courts was not originally identified as a Minister to be consulted however, given the proposed involvement for the Māori Land Court in appointing mediators (and its potential involvement in circuit-breaking in some of the options officials originally considered) officials recommend that the Minister for Courts is consulted.

Further decisions related to who is involved in composition and appointing body decisions

15. In BRF-1692 Delegated decisions for describing Māori representative organisations and record keeping requirements, officials provided a non-exhaustive list of the kinds of groups that may be considered a “Māori group with interests ‘at place’,” This is because there are a diverse range of ways in which Māori choose to organise themselves in modern society. A one-size fits all approach based only on iwi and hapū will not reflect Māori interests at place.
16. These groups may include but are not necessarily limited to:
 - a) whakapapa based groups (in addition to iwi and hapū) such as whānau, owners of Māori land and/or customary rights holders
 - b) owners of Māori land
 - c) holders of specific customary rights such as Customary Marine Title and Protected Customary Rights groups
 - d) mātawaka⁴ and Māori community groups (e.g. urban Māori, the New Zealand Māori Council)
 - e) groups, and natural taonga with legal personality who hold rights and interests deriving from the settlement of Treaty of Waitangi claims.
17. As noted in paragraph 10 above, Ministers have agreed that iwi authorities and groups representing hapū would be legally obliged to engage with their members and other Māori entities representing rights and interests ‘at-place’ in the process of agreeing to a position on composition and appointing bodies. This paper provides further details on those legal obligations for drafting into primary legislation.

Advice

Key choices

18. Following decisions at MOG #17, there are a number of choices about the level of legislative detail required to support the appointment of Māori members to the Planning Committees. Broadly, there are two categories of decisions: (1) decisions about how iwi

⁴ Mātawāka has a specific interpretation in the Local Government (Auckland Council) Act 2009 to mean “Māori who live in Auckland and are not in a mana whenua group.” An extrapolation of this latter interpretation is what guides the usage for reform, which was expressed by the RM Review Panel as referring to whānau, hapū and iwi Māori living in an area where they are not mana whenua (paragraph 22).

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authorities and groups that represent hapū should identify appointing bodies, and (2) decisions about how appointing bodies should operate once established.

Choices about how iwi authorities and groups that represent hapū will identify appointing bodies

- a. who makes decisions about who the appointing bodies for Māori members are
- b. what criteria would individuals/entities need to meet to be an appointing body
- c. how dispute resolution, if disputes arise, will work to support iwi authorities and groups that represent hapū to agree appointing bodies
- d. how decisions will be made on appointing bodies if disputes are not resolved
- e. how appointing bodies can be changed.

Choices about how appointing bodies should operate once established

- f. process requirements for how appointing bodies appoint and remove members to committees
- g. how appointing bodies ensure accountability back to iwi authorities, groups that represent hapū, and other Māori groups with relevant interests at place (as defined in the NBA and SPA).

Detailed decisions

19. This section provides a high-level summary of the decisions required. Detailed decisions are set out in Appendix One.

Choices about how iwi authorities and groups that represent hapū will identify appointing bodies

Who decides the appointing bodies and how do we know whether a decision has been reached?

20. At MOG #17, the MOG agreed that iwi authorities and groups that represent hapū would be notified by the Local Government Commission to lead discussions on regional composition and in determining appointing bodies. The Local Government Commission will use the information provided through the equivalent of section 35A in the new system to identify these groups.
21. *BRF-1692- Delegated decisions for describing Māori representative organisations and record keeping requirements* recommends further detailed work is undertaken between agencies on the nationwide record of iwi authorities and groups that represent hapū. This work is necessary to support the notification process and reduce litigation risk – specifically, the risk that a body that should have been notified, is not. It would also help the process run more efficiently overall.
22. Officials recommend that there is no prescription provided in legislation about how iwi authorities, groups that represent hapū or other Māori groups with relevant interests at place organise to make decisions on appointing bodies or who they choose to make this decision, beyond what was already decided at MOG #17. Appointing bodies could be individuals, existing groups, or collectives brought together for the purpose.
23. The paper *BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements* proposes that:
 - a. the Local Government Commission (LGC) will notify local authorities and iwi and hapū representative organisations of the timeframes for committee composition to be agreed and committee establishment as per statutory timeframes (recommendation 11)

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- b. decisions on appointing bodies are made by notifying the relevant regional council who then notifies the Local Government Commission of the results of both composition and appointing body negotiations (recommendation 16)
 - c. the test for whether a region has successfully agreed a regional proposal with respect to composition will be that all the notified parties (local authorities, iwi authorities and groups that represent hapū) that participated in discussions either agree to the proposal or have not requested their dissenting views be listed as part of the regional proposal (recommendation 16(b)).
24. The proposed test for whether a region has successfully agreed Māori appointing bodies is if - before the deadline - the regional council receives (and forwards to the Local Government Commission) the list of Māori appointing bodies that notes agreement by notified iwi authorities and groups that represent hapū that participated. Officials do not recommend that the legislation prescribe what constitutes agreement, noting that this is something more appropriately left for iwi/hapū/Māori to determine themselves and approaches will likely vary between regions.

How extensive should engagement by iwi authorities, groups that represent hapū be?

25. It was agreed at MOG #17 that iwi and hapū representative organisations would be required to engage with Māori groups that hold relevant interests at place when making decisions about appointments and to keep a record of this engagement. This requirement will be set out in legislation. Officials do not recommend that the legislation include any more detailed engagement requirements beyond what was agreed at MOG #17.
26. While the legislation will not be prescriptive about process for engagement, the kinds of groups that may be considered a "Maori group with rights and interest 'at place' may include (as set out at paragraph 14 above):
- a) whakapapa based groups (in addition to iwi and hapū) such as whānau, owners of Māori land and/or customary rights holders
 - b) owners of Māori land
 - c) holders of specific customary rights such as Customary Marine Title and Protected Customary Rights groups
 - d) mātāwaka and Māori community groups (e.g. urban Māori, the New Zealand Māori Council)
 - e) groups, and natural taonga with legal personality who hold rights and interests deriving from the settlement of Treaty of Waitangi claims.
27. Not all of these kinds of groups will be relevant for every region, and in some regions involving groups not listed here may be appropriate.

What level of prescription is required for the process of determining appointing bodies?

28. Officials recommend that there is a legislative requirement for iwi authorities and groups that represent hapū to take into account some considerations when making decisions about appointing bodies, specifically:
- a. existing arrangements between iwi/hapū/Māori groups and arrangements with local government

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- b. providing for appropriate representation of Māori groups that hold relevant interests in the region⁵
 - c. ensuring they are satisfied that appointing bodies will be able to fulfil their ongoing roles and functions.
29. This approach balances the need for checks to ensure the system runs fairly and efficiently with the need to allow iwi/hapū/Māori to determine their own processes that are consistent with their tikanga. This approach places significant responsibility with iwi and hapū in regions to lead regional negotiations in a manner that recognises wider Māori interests, and there is a possibility the courts may become involved in situations where there is disagreement about what that looks like.

What criteria should apply to an appointing body?

30. At MOG #17, the MOG agreed that appointing bodies should be enduring. To provide clarity for iwi authorities and groups that represent hapū when they are determining appointing bodies, enduring means that those appointing bodies should be able to fulfil their ongoing functions over an extended period. These functions might include replacing committee members and reviewing Regional Spatial Strategies (RSS) as part of the timebound review agreed at MOG #17. Officials do not recommend further criteria for who can be an appointing body in legislation.

Dispute resolution and circuit breaking processes

31. The Māori appointment process aims to leave decision-making on appointments self-determined and avoid the need for dispute resolution or circuit-breaking processes. Officials recommend that iwi authorities and groups that represent hapū will be able to ask the Crown for hui to be run by an independent, Crown funded facilitator, to assist them in reaching an agreed position on the identity of appointing bodies within a region well before the deadline for agreeing Māori appointing bodies. This facilitator could be an individual selected by the parties.
32. Dispute resolution processes may be needed to reach a decision in case of an impasse. This is focused on matters in dispute that the process developed by iwi authorities and groups representing hapū in the region couldn't resolve.
33. The dispute resolution procedures for Māori appointing bodies developed by MfE are closely linked to the dispute resolution procedures for overall committee composition, as outlined in *BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements*. Across both sets of processes, a key design principle is the need for committees to have strong mandates, supporting the efficiency of the system overall. In general, committee mandates will be weaker in situations where a circuit-breaking decision has been imposed by an external party. However, the need for committees with strong mandates must be balanced against the need to establish these committees as soon as possible to support implementation of the new system.
34. More specifically, each region will have a deadline by which a regional proposal for Planning Committee composition and appointing bodies must be agreed, and a deadline by which a committee must be established. These deadlines will vary region-to-region

⁵ A definition will be provided in legislation. In *BRF-1692 RM Reform X – Delegated decisions for describing Māori representative organisations and record keeping requirements* officials recommend that where the SPA and NBA describes other Māori groups with relevant interests, this should be a non-prescriptive, non-exhaustive description (except where specific rights are provided for under other legislation, eg, Customary Marine Title groups). Māori representative organisations must be entities who are authorised to speak and act on behalf of Māori groups with relevant interests.

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and be set through secondary legislation based on deadlines to notify a region's strategy or plan.

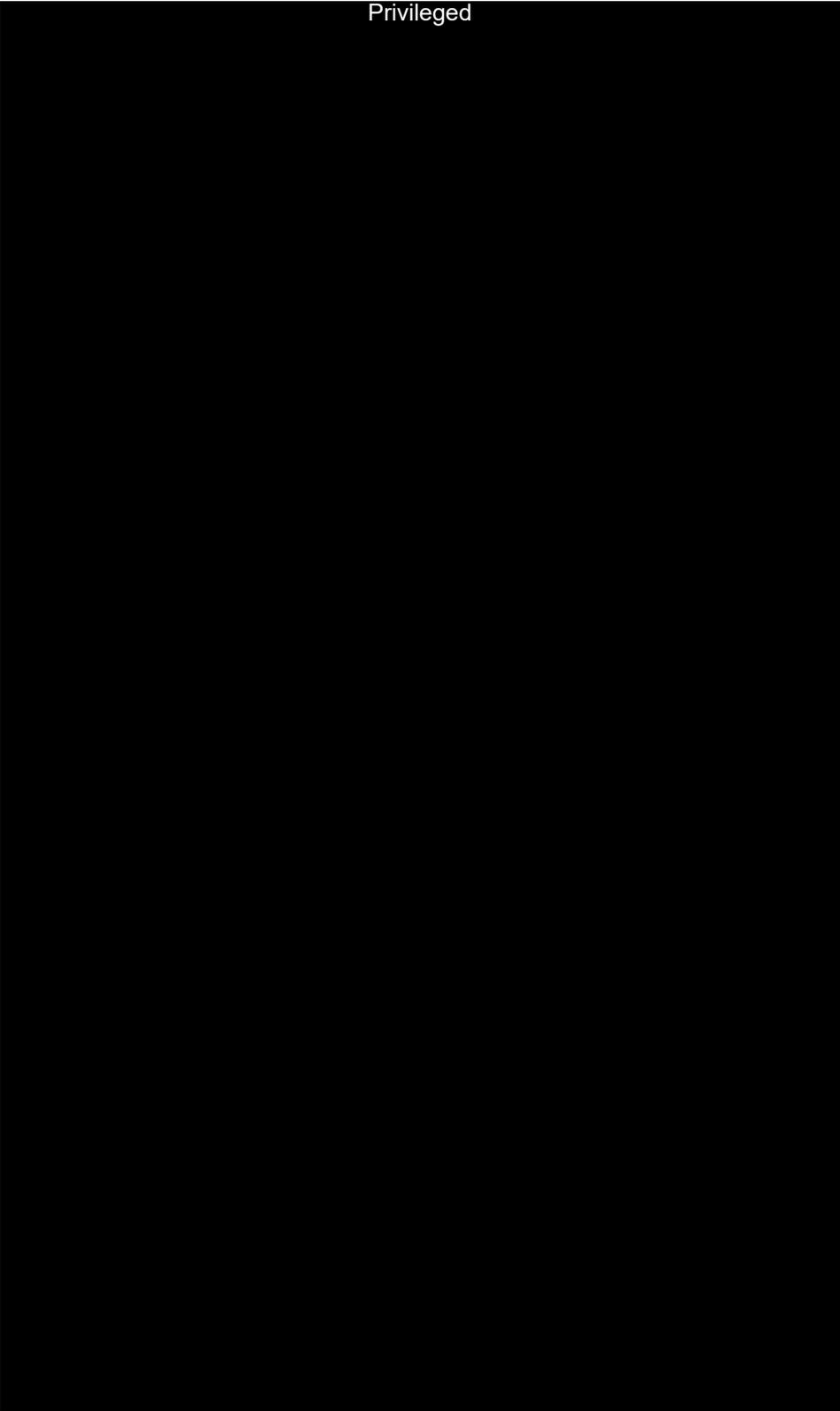
- a. if there is no agreed regional proposal as to Planning Committee composition by this date, or if there are dissenting views, or the proposal does not meet the criteria of the legislation, the paper *BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements* recommends that the Local Government Commission has four months to consult and impose a decision. It must release a draft determination within the first two months.
- b. If there is no agreed regional proposal as to appointing bodies for Māori seats, the dispute resolution and (as a last resort) circuit breaking processes for Māori appointing bodies are triggered. This circuit breaker process involves a panel of experts, who make a binding decision as to the appropriate appointing bodies. This panel is appointed by either:
 - i. A standing panel of experts jointly appointed by the Ministers for Environment and Māori-Crown Relations, after a formal mediation process (MfE option), or
 - ii. The iwi authorities and groups who represent hapū in the region who are engaged in the decision. (Te Arawhiti option)
- c. Alternatively, as a variation to the MfE option, the dispute could be decided by the Māori Land Court instead of an expert panel, though this is not officials' first choice for reasons set out in Appendices 1 and 2.

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Requirements for development of appointments process

46. As agreed at MOG #17, both Māori appointing bodies and local authority appointing bodies will be required to have an appointments process, but the legislation will not prescribe what this process should be, leaving it up to the discretion of the appointing bodies and the groups that they represent to determine a process that will best suit their circumstances.
47. However, some legislative parameters are necessary to support appointing bodies and the groups that they represent in the development and execution of appointing body processes, recognising that appointing bodies hold statutory functions.
48. Specifically, appointing bodies should be required to notify iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region of upcoming consultation and to consult with those groups in a manner that is appropriate and consistent with tikanga (noting that tikanga may vary between groups).

Irrelevant

⁶ Paper BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements recommended that committees may start operations in cases where appointing bodies have not yet made appointments, if the deadline for doing so has passed, but this recommendation is stronger and allows committees to start even if the appointing bodies themselves have not been identified, if the deadline for doing so has passed and, in the MfE option, appeal rights have been exhausted.

⁷ The Delegated decisions paper on regional governance and decision-making arrangements (BRF-1716, as amended) recommends that Crown funded facilitation in relation to negotiations around overall committee composition should be for a maximum of six weeks. In relation to facilitation for discussions about identifying appointing bodies, we have not recommended that any time limit apply as a period of longer than six weeks may be desirable and, if discussions are contentious, facilitation support reduces the risk of a dispute ultimately eventuating.

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Irrelevant

Requirements for removing and replacing Māori appointing body representatives on committees

51. It was agreed at MOG #17 that to uphold the intent of the committees as representative bodies, all appointing bodies would be able to remove and replace their representatives on a Planning Committee at any time.
52. Officials recommend that appointing bodies should be able to determine their own process for doing so as long as it meets legislative requirements for making appointments (see *BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements*).

How appointing bodies will ensure accountability of joint committee appointees

53. In a general sense, committee members have accountabilities to the appointing bodies that selected them, and appointing bodies have accountabilities back to iwi authorities, groups that represent hapū, and Māori groups that hold relevant interests at place. We do not recommend that the legislation codify any specific accountability requirements but note that the powers for appointing bodies to remove members of committees and for iwi authorities and groups that represent hapū to replace an appointing body, are themselves strong accountability incentives.
54. It is likely that many appointing bodies will adopt various transparency and accountability mechanisms, reflecting the needs of iwi, hapū and Māori interest holders in a region. Guidance on best practice accountability mechanisms may help appointing bodies develop approaches that are appropriate for their own needs and characteristics.

Support for the establishment and operation of appointing bodies

55. At MOG #17 Ministers agreed that the greater role proposed for iwi/hapū/Māori will require sustainable levels of funding to ensure Māori have an effective role consistent with the principles of Te Tiriti.
56. The success of the system in avoiding the need for dispute resolution and circuit-breaking processes will be highly dependent on adequate funding to support this establishment of appointing bodies and the provision of facilitation and/or mediation if required. This can be regarded as an upfront investment to create an effective and efficient system that minimises the prospect of disagreements and litigation further down the line. In relation to this, officials note Ministers' agreement that, when developing future budget bids, the Crown would take the approach of making provision for funding and capability during the transitional period.⁸
57. The success of these processes will also be related to the provision of quality information through s35A, which will be carried over into the new system. Providing lists of iwi authorities, groups that represent hapū, and Māori groups that hold relevant interests at place which are developed through a robust system and regularly updated will reduce disagreement between groups around who should be involved in decisions to create an appointing body. This topic is covered in more detail in *BRF-1692 Delegated decisions for describing Māori representative organisations and record keeping requirements*.

⁸ BRF – 1581 RM Reform 163 – Options for on-going and transitional Crown funding for Māori participation in the reformed system and amended recommendations on Local Government Accountability.

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Primary versus secondary legislation

58. In line with the *Legislation Design and Advisory Committee Legislation Guidelines 2021 Edition* officials have assessed which policy decisions sought through this briefing are likely to be reflected in primary legislation and which in secondary legislation.

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Table 1: Anticipated split between primary and secondary legislation

Primary legislation	Why primary?	Secondary legislation
<p>1. Provisions will be needed in the legislation to:</p> <ul style="list-style-type: none"> a. prescribe the test for agreement on Māori appointing bodies b. prescribe considerations for determining appointing bodies c. prescribe the mediation and circuit breaking processes, including the process to appoint the final decision-making panel and the panel that appoints that panel d. (for the Te Arawhiti dispute resolution option) provide for the power for iwi authorities and groups representing hapū to appoint members to an expert panel to resolve disputes e. prescribe the process to change appointing bodies f. require appointing bodies to represent views of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region generally, and consult and undertake processes to provide for equity g. require consultation before appointing bodies remove a member. 	<p>These are matters of significant policy (LDAC guidelines advise such matters should generally be included in primary legislation) and policy change from the previous approach</p>	<p>(for the Te Arawhiti dispute resolution option) procedural requirements for the operation of expert panels, to ensure transparency and provide for a binding arbitration-type process)</p>

Engagement

Freshwater Iwi Leaders Group and Te Tai Kaha

59. Freshwater Iwi Leaders Group (FILG) and Te Tai Kaha's (TTK) views on appointing body and circuit breaker processes were largely contingent on the definitions that specify who can participate. Both collectives were supportive of whakapapa affiliations to place/Māori with rights at place as the determining factor for who can participate in appointing body and circuit breaker processes. FILG noted that the need for an appointing bodies process is driven by not legislating for 50/50 representation. Both collectives reiterated their support for 50/50 representation. Both collectives were supportive of Māori-led processes and determinations for circuit breakers.
60. Both collectives emphasised the need for solid and enduring implementation support. FILG expressed support for Māori led implementation. TTK consider facilitation and hui support is necessary and articulating how to determine regions have reached success with regards to agreed appointments. Both FILG and TTK consider that intermediate steps would benefit any circuit breakers process. TTK noted that providing facilitators in processes and allowing for meaningful intervention overtime would support appointing bodies success.

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61. TTK also noted the following implementation support would be valuable:
- a. interviewing pūkenga involved in High Court proceedings for lessons learnt to build quality appointment process
 - b. tailor and use mediation and facilitation skills in both appointing body and circuit breaking processes (note legal personnel not preferred mediators and facilitators)
 - c. legal processes can influence timeframes for setting up new institutions and this is best captured for transition.
62. FILG also emphasised the need to resource suitable technicians and provide sufficient time for Māori-led processes.

Irrelevant

Privileged

Impact of Advice on the Treaty and Māori/iwi

68. An initial consideration of the impacts on Te Tiriti of the appointment processes to NBA and SPA committees was provided through Annex A of Paper 2 at MOG #17. Further consideration of the impact of detailed decisions on the overall regional governance arrangements relevant for these proposals can be found in *BRF-1716 RM Reform 186*

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– *Detailed decisions on regional governance and decision-making arrangements.* The focus of this analysis is on the detailed decisions included in this paper.

69. The appointing body and circuit breaker processes' consistency with Te Tiriti will be influenced by who (which groups) participates in the respective processes, how the groups participate, that the processes are supported via implementation and the extent to which the steps in the processes and outcomes reached are endorsed by iwi/hapū/Māori involved in them. Consistency with Te Tiriti also requires that the Crown allows sufficient time for iwi/hapū/Māori to work through representation questions internally, only resorting to circuit breaker mechanisms as a last resort.
70. In designing these proposals, a balance has been struck between providing for overall system efficiency and ensuring committees can be established while also upholding the rangatiratanga of iwi, hapū and Māori to determine their own representatives in accordance with their tikanga. This highlights the risk in this space that being overly prescriptive undermines rangatiratanga and does not allow for flexible arrangements, but not having enough prescription can result in inadequate Māori representation on NBA and SPA committees, or in a worst-case scenario, a length of time where there is no representation at all.
71. To ensure that appointments to the Planning Committees are effective and that the Crown meets its Treaty obligations to enable meaningful participation of iwi/hapū/Māori in the system, the Crown must provide support to iwi/hapū/Māori that communicates their roles and responsibilities at different stages of the appointment process. This will be achieved through implementation support and guidance. Providing flexible support on request is one way the Crown can help Māori navigate these new roles and responsibilities without undermining the rangatiratanga of iwi, hapū and Māori.
72. Sufficient and early funding for appointment processes is likely to contribute to effective decision-making and foster positive relationships between iwi/hapū/Māori groups. This has the potential to reduce the need for costly dispute resolution processes.
73. The proposals in this paper do not preclude any options to address Māori freshwater rights and interests.
74. While there has been some engagement on these proposals, the timeframes for this paper have not allowed for more meaningful engagement with Māori.

Recommendations

We recommend that you:

- a. **note** that MOG #15 and MOG #17 delegated decisions on this topic jointly to the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan)
- b. agree to forward this briefing to the Minister for Courts for feedback
Yes/No
- c. **agree** to the specific recommendations in Appendix One, indicating your decisions in that appendix
Yes/No

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Appendix 1: Delegated decisions on Māori appointment process to Natural and Built Environments and Strategic Planning Committees, including dispute resolution and circuit-breaker processes

TABLE 1: How iwi authorities and groups representing hapū representative bodies should identify appointing bodies

Topic	Proposal	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
<p>Who decides appointing bodies and how do we know when a decision has been made</p>	<p>Do not prescribe in legislation who from the notified iwi authorities and groups that represent hapū will make decisions on appointing bodies and allow these groups to decide in a manner that they choose.</p> <p>“Agreement” to appointing bodies will be when the regional council receives (and forwards to the Local Government Commission) the list of Māori appointing bodies that notes agreement by all notified iwi authorities and groups representing hapū groups that participated.</p> <p>Agreement will not be further defined in legislation, recognising that it is for iwi/hapū/Māori to determine what that means for themselves.</p>	<p>This proposal allows each region to organise in a way that suits the iwi authorities and groups that represent hapū. As signalled in Paper 2 at MOG #17 <i>Role, funding and participation of Māori in the RM system</i>, these groups may choose to create, outside of statute, a regional forum or selection body comprised of members from notified iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place. Requiring the formation of such a body in legislation is unnecessarily restrictive and overly prescriptive and does not allow Māori in each region to determine a process that aligns with their tikanga (noting that tikanga may vary between groups).</p> <p>Advice could be provided through Ministry guidance about how iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place might want to organise themselves to make decisions, if desired. This could include aligning this process with similar RM processes, such as regional selection bodies for the National Māori Entity. This could also result in the creation of a regional forum, which may provide a space for iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place to stay in touch with various decisions being made.</p> <p>The paper <i>BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements</i> includes the following recommendations regarding processes to agree committee composition and committee decision making:</p> <ul style="list-style-type: none"> • The Local Government Commission (LGC) notifies local authorities and iwi authorities and groups that represent hapū of the statutory deadlines for agreeing committee composition and committee establishment. Those notified iwi authorities and groups representing hapū organisations will be involved in discussions on committee composition and appointing bodies, and • Decisions on appointing bodies are made by notifying the relevant regional council who then notifies the LGC of the results of both composition and appointing body negotiations [recommendation 15]. • The test for whether a region has successfully agreed a regional proposal with respect to composition will be that all the notified parties (local authorities and iwi authorities and groups that represent hapū) that participated in discussions either agree to the proposal or list the dissenting views [recommendation 15b]. <p>It's proposed that the test for whether a region has successfully agreed to Māori appointing bodies will be that - before the deadline - the relevant council receives (and forwards to the LGC) the list of Māori appointing bodies that notes agreement by notified iwi authorities and groups representing hapū that participated.</p>	<p>The proposals support reform objective three to give effect to the principles of Te Tiriti by allowing Māori to determine their own processes to organise themselves as they wish.</p> <p>The low level of prescription enables iwi/hapū/Māori to exercise rangatiratanga as they determine their own processes for deciding appointing bodies. By having these considerations in legislation that must be given regard to, this proposal seeks to ensure equal treatment and promotes an inclusive approach to decision-making that aims to represent the Māori groups that hold relevant interests at place in the region.</p> <p>Too much prescription may raise a risk of undermining efficiency in the decision-making process. Implementation support may reduce this risk.</p> <p>Provision of Ministry guidance (if desired) on how iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place might want to organise is consistent with the Treaty principle of good faith by keeping the option to provide further implementation support for Māori.</p> <p>Not requiring confirmed unanimous agreement by all notified iwi and hapū also supports reform objective five, to promote system efficiency in the new system.</p>	<p>1. Note that at MOG #17, Ministers agreed that</p> <ol style="list-style-type: none"> iwi and hapū representative organisations would be the entities engaged in discussions on the composition of Planning Committees, iwi and hapū representative organisations must engage with their members and other Māori entities representing rights and interests 'at-place' in agreeing composition and identifying appointing bodies. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations can also be appointing bodies. And that these will be provided for in legislation <p>2. Note that BRF-1692 indicates that Māori entities with interests in a region should be broadly inclusive and officials advise that this may include but is not necessarily limited to:</p> <ol style="list-style-type: none"> whakapapa based groups (in addition to iwi and hapū) such as whānau, owners of Māori land and/or customary rights holders owners of Māori land holders of specific customary rights such as Customary Marine Title and Protected Customary Rights groups mātāwaka and Māori community groups (e.g. urban Māori, the New Zealand Māori Council) groups, and natural taonga with legal personality who hold rights and interests deriving from the settlement of Treaty of Waitangi claims. <p>3. Agree that the legislation will not prescribe who, from the notified iwi</p>	<p>Yes/No</p>

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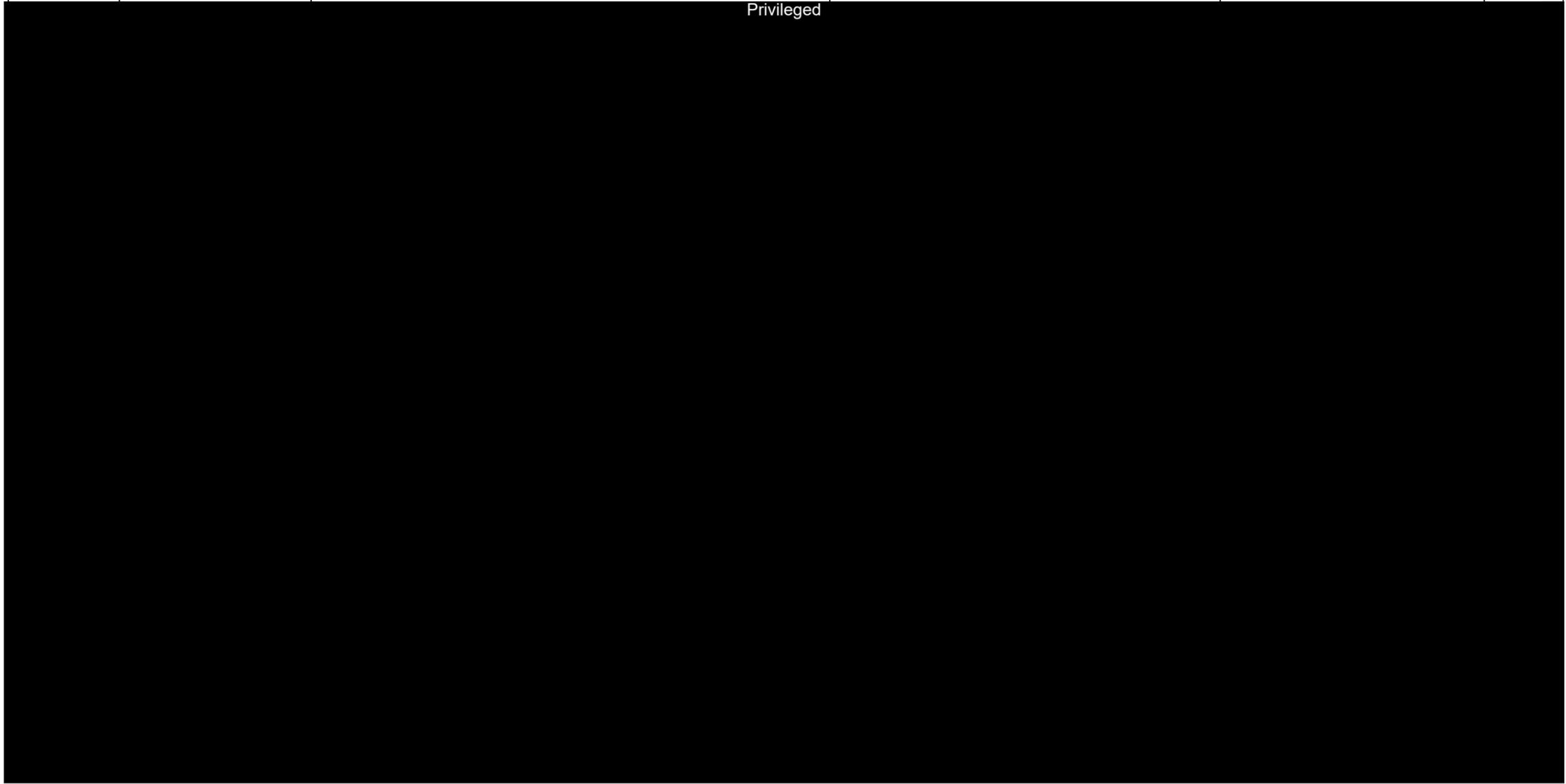
				<p>authorities and groups that represent hapū in the region, will make decisions on appointing bodies or how these organisations decide to organise themselves to make decisions on appointing bodies.</p> <p>4. Agree that the test for whether a region has successfully agreed to Māori appointing bodies will be that – before the deadline – the regional council receives (and forwards to the Local Government Commission) the list of Māori appointing bodies that notes agreement by notified iwi authorities and groups representing hapū that participated.</p>	<p>Yes/No</p>
<p>Level of prescription required for the process of determining appointing bodies</p>	<p>Require iwi authorities and groups that represent hapū to take into account certain considerations when determining Māori appointing bodies</p>	<p>Under this proposal iwi authorities and groups that represent hapū, when determining appointing bodies, must have regard to certain legislative considerations which include the matters listed in a to c in the recommendations column.</p> <p>This proposal balances the need for checks to ensure the system runs efficiently with the need to allow iwi/hapū/Māori to determine their own processes that are consistent with their tikanga (noting that tikanga may vary between groups). It would not be appropriate to set any processes in legislation, as this confines the scope and nature of ways that iwi/hapū/Māori can organise within their region to decide appointing bodies. However, requiring that iwi authorities and groups representing hapū have regard to these considerations should support timely and appropriate decisions. This aligns with the intent of considerations required for decisions on composition of committees [BRF-1716].</p> <p>In relation to how extensive engagement iwi authorities and groups that represent hapū must be, officials advise that no further requirements are added into the legislation beyond what was agreed at MOG #17 (that iwi authorities and groups representing hapū be required to undertake engagement in good faith to include the Māori groups that hold relevant interests at place). It is expected that iwi authorities and groups that represent hapū, when fulfilling their engagement obligations should make best endeavours to capture the views of those with interests in the region while balancing the need to have fair and efficient processes.</p> <p>Officials consider concerns that the level of engagement may be insufficient to capture the views of those Māori groups that hold relevant interests at place are mitigated by the requirement that iwi authorities and groups that represent hapū will be required to keep a record of engagement and to make this record public (as agreed at MOG #17). This measure will ensure accountability that the engagement process being undertaken is robust.</p>	<p>The proposals support reform objective three to give effect to the principle of rangatiratanga under Te Tiriti by enabling Māori to determine their own processes that are consistent with their own tikanga. This may vary from region to region.</p> <p>The principle of good faith by the Crown is met by ensuring the checks and balances (ie, the requirement for iwi authorities and groups that represent hapū to have regard to certain considerations in the legislation) is balanced against the principle of rangatiratanga by enabling sufficient flexibility and discretion for Māori.</p> <p>The legislation will provide considerations to help parties reach agreement on appointing bodies, which also supports reform objective five of system efficiency and effectiveness.</p>	<p>5. Agree that when determining appointing bodies, iwi authorities and groups that represent hapū in the region must take into account legislative considerations including:</p> <ul style="list-style-type: none"> a. existing arrangements between iwi/hapū/Māori groups and arrangements with local government b. providing for appropriate representation of Māori groups that hold relevant interests at place (as defined in the NBA and SPA) c. ensuring that appointing bodies will be able to fulfil their ongoing roles and functions 	<p>Yes/No</p>

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<p>Criteria that should apply to the appointing body itself</p>	<p>No further criteria related to who can be an appointing body proposed</p>	<p>At MOG #17 it was agreed that appointing bodies should be enduring. To provide clarity for iwi authorities and groups that represent hapū when they are determining appointing bodies, enduring means that those appointing bodies should be able to fulfil their ongoing functions over an extended period, such as replacing committee members and reviewing RSSs (under timebound review stage agreed at MOG #17).</p> <p>Officials do not recommend putting further criteria for who can be an appointing body in legislation as any further explicit criteria regarding the nature or capabilities of the appointing body are unlikely to be helpful or provide more clarity for iwi authorities and groups that represent hapū as they make their decisions. There is also a concern that more criteria might risk making the process more restrictive.</p>	<p>Further criteria beyond what was agreed to at MOG #17 would be unnecessarily restrictive and could be seen as the Crown dictating how Māori determine their own representatives which risks undermining the rangatiratanga of iwi/hapū/Māori.</p> <p>The proposal supports reform objective three to give effect to the principle of Te Tiriti (relating to rangatiratanga) by remaining silent on further criteria on who can be an appointing body.</p> <p>Adding additional criteria could be detrimental to reform objective five of system efficiency and effectiveness.</p>	<p>5. Note that it was agreed at MOG #17 that appointing bodies to committees should be enduring</p> <p>6. Agree that legislation does not require further criteria to be satisfied in order for an individual or organisation to be an appointing body</p>	<p>Yes/No</p>
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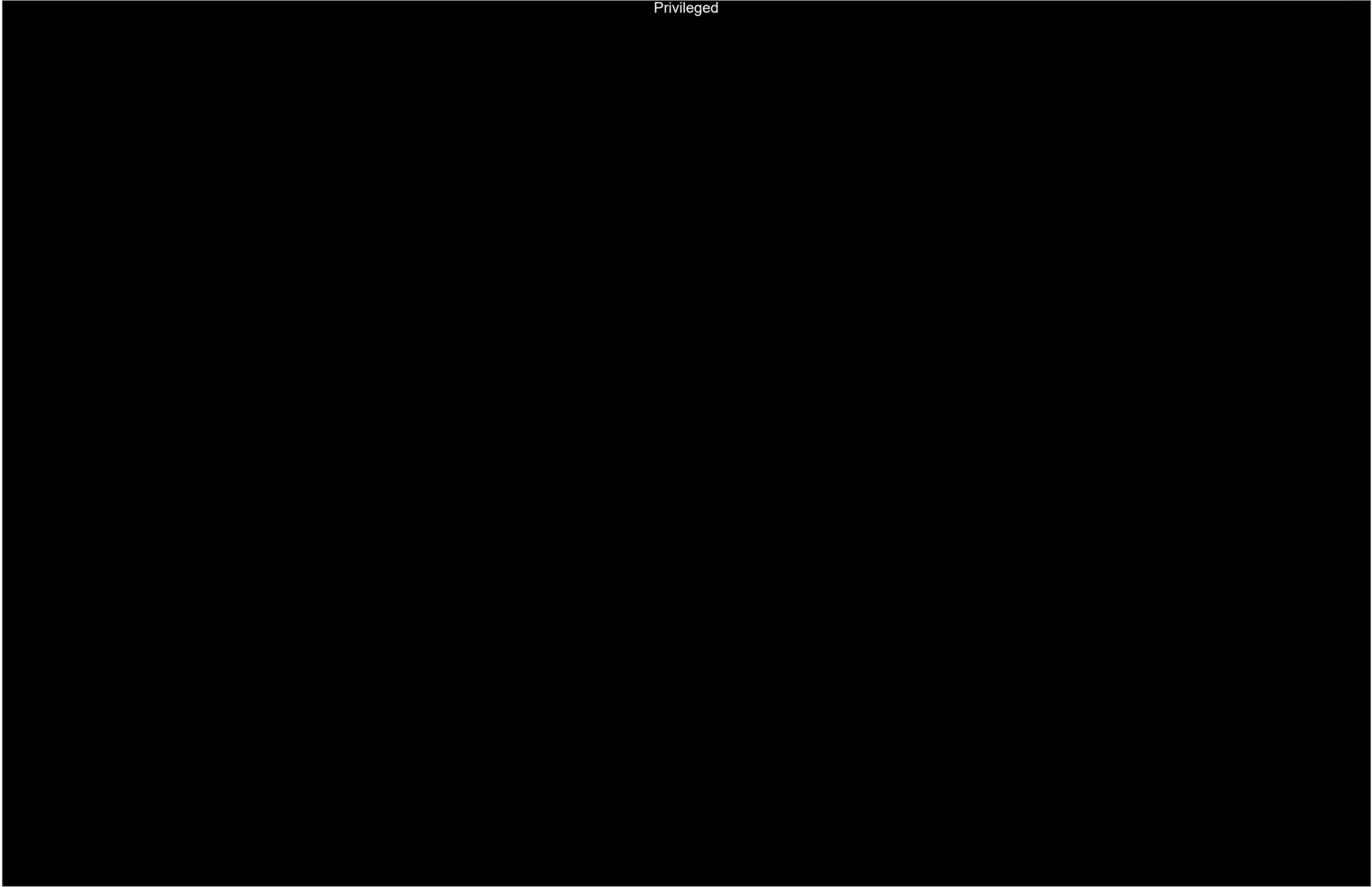
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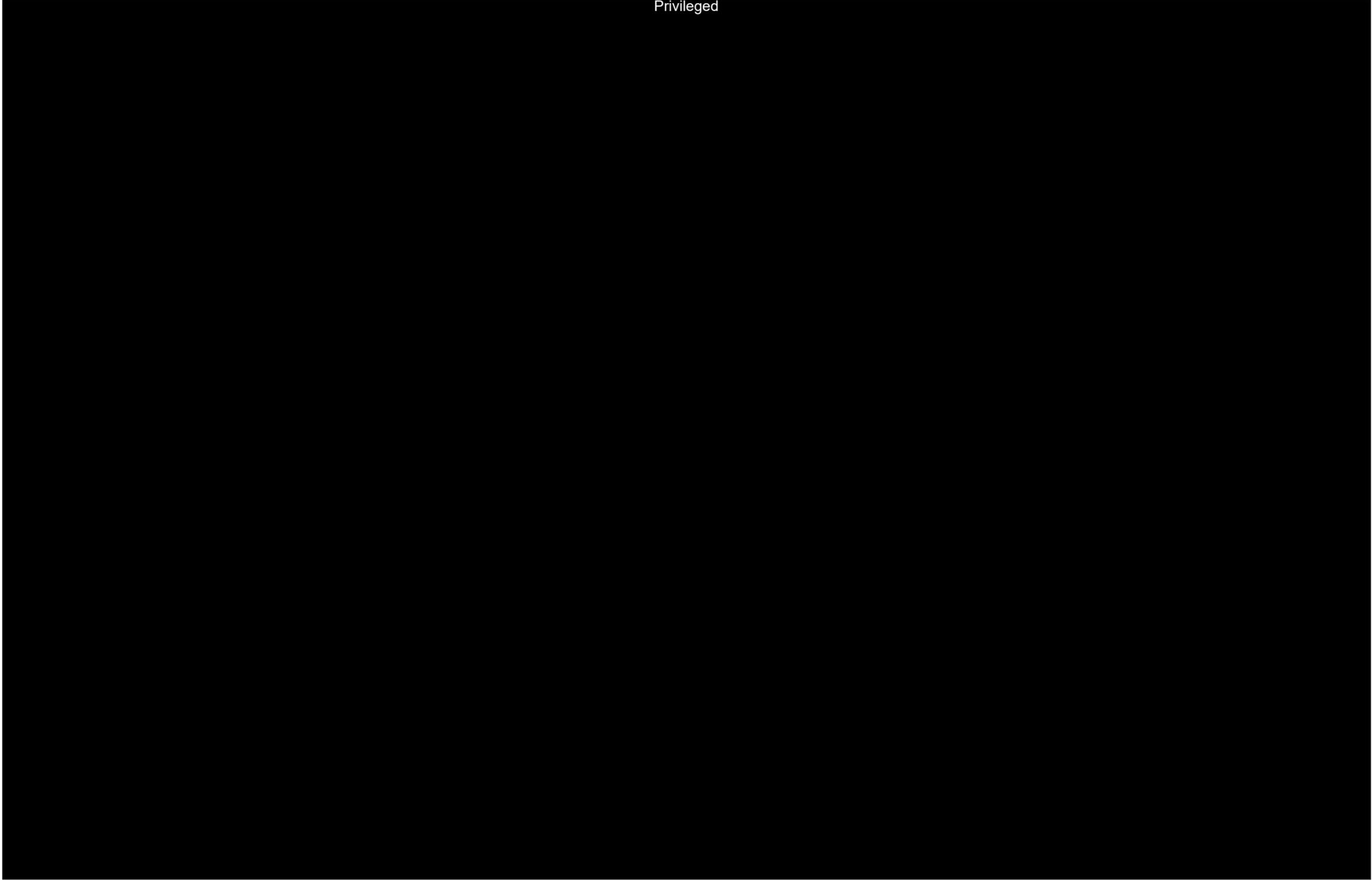
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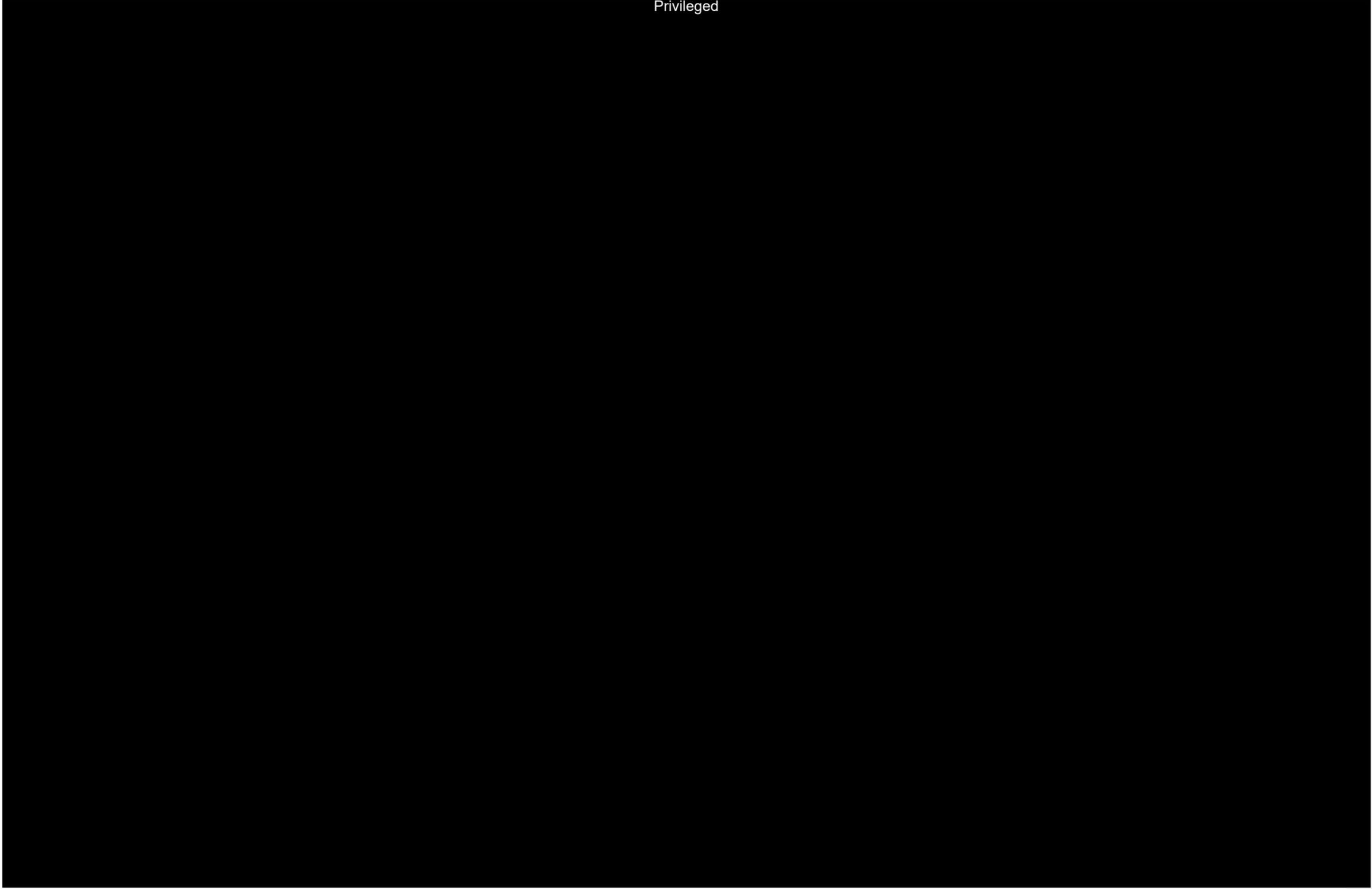
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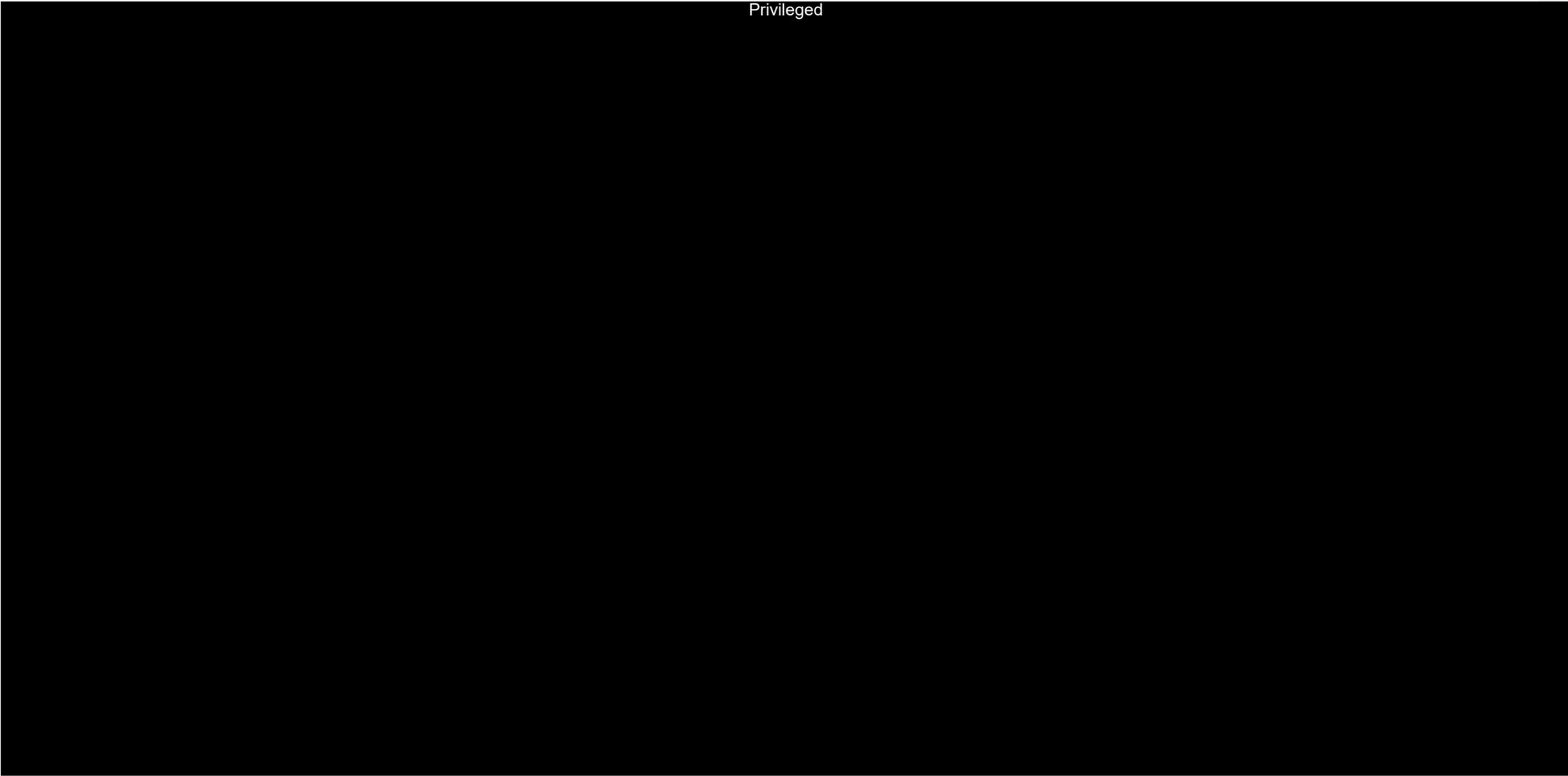
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<p>Changing appointing bodies</p>	<p>Specify in legislation the process for iwi authorities and groups that represent hapū to change appointing bodies</p>	<p>It is recommended that the legislation provides for iwi authorities and groups that represent hapū to be able to change the make-up of appointing bodies.</p> <p>If Māori appointing bodies have been determined via an agreed regional proposal (in which iwi authorities and groups that represent hapū that were notified by the LGC and who participated in discussions, agree to the appointing bodies) or by the panel of experts then a change to the appointing body can be made where at least one of these parties doesn't agree that the current appointing bodies are desirable.</p> <p>The body or bodies can be re-formed using the same process by which they were established. If agreement is reached, then a party must notify the LGC of the proposed new appointing body or bodies with confirmation of agreement by other parties. The LGC will then update the publicly listed appointing bodies.</p> <p>A change to the appointing body cannot be initiated until at least 12 months after it was created.</p> <p>If there is no such agreement then the mediation process as described above will apply, followed by the circuit-breaker process if necessary. The existing appointing bodies remain in place until this process results in different appointing bodies (or there is agreement to retaining existing arrangements).</p>	<p>This process adds a level of detail on top of the provision in BRF-1716 that appointing bodies can be changed at any time, and the different scenarios add a layer of complexity for iwi/hapū/Māori to navigate. The Crown has an obligation to provide support to ensure iwi authorities and groups that represent hapū can change appointing bodies when it is needed and understand how this will unfold.</p> <p>The proposals support reform objective three to give effect to the principles of Te Tiriti, including the Crown's duty of active protection by providing consistency and clarity in the legislation on how Māori may change appointing bodies, and reform objective five to improve system efficiency and effectiveness.</p>	<p>31. Agree that the legislation will provide for iwi authorities and groups representing hapū to change appointing bodies 12 months after appointing bodies have been determined by iwi authorities and groups that represent hapū or by the circuit breaker processes</p> <p>32. Agree that change can be initiated where one of the notified groups who participated in discussions indicates that the appointing bodies are not desirable.</p> <p>33. Agree that if this indication is accompanied or followed by a new agreement from these groups as to appointing bodies, then this establishes the new bodies</p> <p>34. Agree that if this is not accompanied or followed by a new agreement, then the mediation process will apply, followed by the circuit-breaker process if necessary [recommendations 8 to 22 or 24 to 31 above], and the existing appointing bodies remain in place until this is resolved.</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
<p>Addressing risks from non-participation in the appointments process</p>	<p>Enable a regional proposal to proceed to the committee establishment stage without all appointing bodies identified.</p> <p>(Note: this requires revisiting a MOG 17 decision that requires the appointing bodies to be included)</p>	<p>While the process for appointments has been designed to enable all parties in a region to work together on an agreeable regional proposal, there is a small risk that some parties refuse to participate in the process. This could be in response to a particular outcome (such as about the composition of the committee) or due to more general disagreement with the process.</p> <p>While not a specific feature of the proposal, this risk becomes most apparent when considering Te Arawhiti's proposal for an approach to dispute resolution on appointing bodies. It is also present to some extent in the process to identify Local Government appointing processes, and in the MfE proposal to address dispute resolutions. It isn't necessarily a result of a dispute over the appointing bodies, but that parties withdraw their participation in a way that makes decisions impossible to reach.</p> <p>To reduce the potential impact of non-participation in reaching a regional proposal, we recommend revisiting the MOG-agreed requirement that a regional proposal must include all of the appointing bodies, and instead allow seats for which no appointing body has been assigned to remain vacant until an appointing body is identified and that body appoints members to them.</p> <p>There is a risk that in some regions a dispute over composition that is decided by the LGC is appealed, which will delay the final decision. Changes to the composition of a Planning committee can have a profound impact on the approach taken by iwi authorities and groups representing hapū to appointing bodies. While their processes could consider different "scenarios" to prepare for multiple outcomes, we consider that these unforeseen changes should not disadvantage iwi authorities and groups representing hapū in the region by delaying their final decision on</p>	<p>This proposal supports iwi authorities and groups representing hapū in a region to engage in the appointments process in good faith of reaching a solution for the region's joint committee. It gives other parties confidence in a more self-determined process for appointments but also contains safeguards that protects Māori interests in the event that an appeal creates delays for their own decisions.</p> <p>Likewise, there will be less risk to iwi authorities and groups representing hapū in a region where a lack of local government participation in the appointments processes could stall the progress of committee formation.</p>	<p>35. Note the agreement at MOG #17 that a regional proposal must include:</p> <ul style="list-style-type: none"> a. The host council b. The number of members of the committee (for local authorities and iwi/hapū/Māori c. The appointing bodies d. Any other arrangements as agreed <p>36. Agree, in principle, subject to agreement from MOG, to partially rescind the MOG 17 decision, to eliminate the requirement that a regional proposal must include the appointing bodies</p> <p>37. Agree that joint committees may start in spite of some seats remaining vacant and/or some appointing bodies not being identified, in situations where relevant deadlines for making appointments/identifying appointing</p>	<p>Yes/No</p> <p>Yes/No</p>

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		appointments to the degree that they inadvertently run over their own dispute resolution timeframe. To mitigate this potential unintended consequence, officials recommend that iwi authorities and groups representing hapū have a further month to finalise their decision on appointing bodies, before the joint committees can begin.		bodies have passed, and any appeal rights have been exhausted. 38. Agree that in the event an appeal on a Local Government Commission decision on compositions changes the final composition, iwi and hapū have a further one month from the release of the decision to finalise their decision on appointing bodies.	Yes/No
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TABLE 2: How appointing bodies should operate once established

Topic	Proposal	Advice	Impact of advice on the Treaty and Māori/iwi, and significant impacts on Natural environment, Development, Adaptation and mitigation, and System efficiency	Recommendations	Decision
Overarching requirements for function of appointing bodies	Appointing bodies will be responsible for representing the views of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region generally, rather than just the views of their particular rōpū (where relevant).	<p>The Resource Management Review Panel (the 'Panel') highlighted the necessity to ensure that appointment bodies represent all the iwi, hapū and Māori rights and interest holders within a region that they represent, rather than pursuing the interests of their own group. This will be important to ensure equity between iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place, particularly where an appointing body represents the interests of more than one group.</p> <p>The policy intent behind iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region appointing to the SPA/NBA committees is to provide representation of the interests of those groups at the regional resource management decision making level. It is therefore appropriate that the legislation sets parameters to ensure that appointing bodies conduct appointment processes and make appointments in a manner that is equitable for all iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place who created the appointing body and that smaller or less resourced iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in the region are not marginalised or excluded from appointment processes.</p> <p>In the approach suggested by the Panel, inclusivity is ensured through the requirement to represent the views of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place. This requires consultation, and consideration of all views by appointing bodies in decision making. Officials have recommended this approach as it achieves the policy intent for inclusivity, without introducing complexities associated with requirements to uphold or give effect to the tikanga of all iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place represented. This is unlikely to be practicable due to the number of perspectives being represented by one appointing body in some areas and the broad scope of decision-making criteria.</p>	<p>Although the system itself does not ensure equal representation for all iwi, hapū and Māori rights and interest holders in a region, this requirement ensures that Te Tiriti principle of equity is met by recognising self-determination while ensuring that the lesser resourced or smaller groups have access to consultation and representation. This requirement ensures equal treatment of tangata whenua interests to those of the general public as they are akin to those for Local Government Act 2002 representatives, who have themselves been elected to represent broader interests with a region.</p> <p>The proposals support reform objective three to give effect to the principles of Te Tiriti, including the Crown's duty of active protection, by providing for Māori representation in the region and the legislative parameters ensuring that the appointments process is equitable and inclusive to all Māori regardless of size and resourcing.</p>	<p>39. Note that the intention of these policies is to ensure that appointing bodies actively protect the rights and interests of all Māori within a region.</p> <p>40. Agree that appointing bodies will be responsible for representing the views of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region generally, rather than just the views of their particular group</p> <p>41. Agree that the legislation needs to make explicit that appointing bodies must undertake processes in a manner that provides for fairness between the iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region.</p>	<p>Yes/No</p> <p>Yes/No</p>
Determination of appointment processes	Require that Māori appointing bodies consult with iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region that they represent, when determining appointment processes.	<p>It is expected that appointing bodies will consider the perspectives of all the iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent in making decisions on appointment processes and appointments. This is expected to be achieved through consultation with those groups in the determination of appointment processes and appointments.</p> <p>Officials do not propose outlining any parameters for consultation in the legislation eg, requirement for consensus, as officials consider that it is best left to the rangatiratanga of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place to determine processes for decision making that are consistent with their tikanga.</p> <p>Consistent with decisions made at MOG #17, appointing bodies will have the final discretion to decide on processes and appointments. This will be essential to prevent protracted disputes between the range of groups that an appointing body may represent.</p>	<p>This ensures that Te Tiriti principles of equity and equal treatment are met by requiring that all appropriate iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place are able to engage in appointment discussions in an equitable manner and in line with their tikanga, which may vary between groups.</p> <p>Placing overly prescriptive requirements for appointment processes in legislation would undermine the rangatiratanga of iwi, hapū and Māori. Instead, it is more appropriate that these processes are determined in a manner consistent with their tikanga.</p> <p>The proposals support reform objective three to give effect to the principles of Te Tiriti (relating to equity and equal treatment) by enabling Māori to determine their processes, while canvassing the widest range of views in the region, and reform objective five to improve system efficiency and effectiveness by remaining silent on the consultation processes.</p> <p>Extensive engagement on the appointment process might undermine system efficiency, and there may be limited time</p>	<p>42. Agree that in determining appointment processes and appointments, appointing bodies must consult with the iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent.</p> <p>43. Agree that appointing bodies must notify iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent of upcoming consultation no less than a week before consultation is due to occur and in a manner that is appropriate and consistent with tikanga (noting that this may vary between groups).</p>	<p>Yes/No</p> <p>Yes/No</p>

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			for this consultation to inform appointment processes within the overall statutory timelines.		
Support for the development of appointment processes	Appointment processes for Māori members will not be specified in legislation, but implementation guidance on designing appointment processes should be provided, but Crown facilitation should be available if requested	<p>There are a number of other processes and procedures that Māori appointing bodies might find it useful to have or do, for example dispute resolution arrangements, meeting procedures, and rules about who may be appointed to committee seats. Officials do not recommend that the legislation set out detail on these and other similar points, instead the determination of appointment processes should be left up to appointing bodies and the iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent.</p> <p>Māori appointing bodies may be in a position of appointing a small number of representatives on behalf of a large number of groups. To support them in this task, Crown funded facilitation by an independent facilitator should be available to help the appointing body make this decision by request of any one of their member individuals or groups.</p> <p>More generally, the Crown must ensure that adequate support and guidance is available outside of the legislation. At a minimum this is likely to need to involve the Ministry for the Environment providing guidance on structuring appointment processes, and could in some cases involve Crown officials being available to help design an appointment process, if requested.</p>	<p>By leaving the determination of appointment processes up to appointing bodies in consultation with the iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent, the Crown has enabled groups to exercise rangatiratanga in the determination of their representation, consistent with its obligations under Article one of the Treaty of Waitangi.</p> <p>However, the Crown also has kāwanatanga responsibilities under Article one and the responsibility to ensure that iwi/hapū/Māori are provided with the resources to participate effectively in consultation on appointment processes and appointments.</p> <p>The availability of Crown support for developing processes is consistent with the Treaty principles of reciprocity and partnership and will assist in mitigating the risk of disagreements in appointment discussions as required.</p> <p>Ministry guidance will also support reform objective five: to improve system efficiency and effectiveness.</p> <p><i>MOG #17 Paper – Role, Funding, and Participation of Māori in the RM System</i> set out more detail on the Crown's obligations to support Māori participation.</p>	<p>44. Agree to not set out appointment process options in legislation and rely on Ministry implementation guidance.</p> <p>45. Agree that Crown funded facilitation by an independent facilitator will be available during the transition period to help appointing bodies make decisions on appointments, if requested.</p> <p>46. Agree to review the overall approach to developing appointment processes (including the approach to composition and selecting appointing bodies) after one or more model regions have tested it.</p>	<p>Yes/No</p> <p>Yes/No</p> <p>Yes/No</p>
Consultation on removals and re-appointments	Appointment bodies be required to consult with iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place that they represent, before making the decision to remove or replace a member.	A requirement for consultation ensures transparency and accountability back to communities and reduces the risk of disagreements over the removal and/or replacement of members.	<p>This approach will assist in mitigating disputes which could be associated with a lack of transparency around the removal of persons chosen to represent group interests. It also protects the self-determination of iwi/hapū/Māori by ensuring that there are ongoing opportunities for them to participate in discussions about how they will be represented in regional resource management decision making.</p> <p>The proposals for appointment bodies to consult with the groups they represent support reform objective three to give effect to the principles of Te Tiriti – including the Crown's duty of active protection. This ensures Māori participation at the resource management decision making level.</p>	<p>47. Agree that an appointing body can suspend, remove or replace a member. In removing or replacing a member the appointing body must consult with the groups that they represent before making the decision.</p> <p>48. Agree that appointing bodies must notify the groups that they represent of upcoming consultation no less than a week before consultation is due to occur and in a manner that is appropriate and consistent with tikanga.</p>	<p>Yes/No</p> <p>Yes/No</p>
Change of appointment processes for replacement appointments	Appointing bodies are able to change the original appointment process used when making replacement appointments but must fulfil consultation and notification requirements.	<p>Enabling appointment bodies to change their appointment processes provides for rangatiratanga in decision making and may result in more effective appointments where processes are changed to better reflect the circumstances, preferences or tikanga of groups that the member is to represent.</p> <p>It is also appropriate that in order to retain transparency of function for appointments to public office that the appointment body be required to notify the chair of committee of the process followed in making replacement appointments so that this information can be made publicly available.</p>	<p>This will ensure that iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region continue to be able to make their own decisions about how to decide who will represent them and ensures that they are able to meaningfully participate at the regional resource management decision making level by determining processes that best suit their needs and are aligned with their tikanga - which will likely lead to more enduring and effective representation on the joint committees.</p> <p>This proposal is consistent with reform objective two, to uphold Te Tiriti principle of rangatiratanga by enabling Māori to determine their own replacements processes consistent with their tikanga.</p>	49. Agree that appointing bodies should be able to change the original process when making replacement appointments, but they must publish the changed process.	Yes/No

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<p>How appointment bodies will ensure accountability of joint committee appointees back to the groups they represent</p>	<p>No specific accountability provisions for Māori appointing bodies in legislation.</p>	<p>Officials do not recommend that processes for sharing information back to Māori through appointing bodies be set out in legislation, this is consistent with the Te Tiriti principle of rangatiratanga recognising that Māori have the right to exercise their own discretion in how they manage their relationships with Māori and determine the direction of their decision making.</p> <p>The reporting requirements must be consistent with <i>BRF-1716 RM Reform 186 – Detailed decisions on regional governance and decision-making arrangements</i> which sets out NBA and SPA committee members must share meeting minutes and undertake reporting requirements.</p> <p>How Māori joint members report back to the groups they represent will be determined by tikanga and local requirements.</p>	<p>The legislation should enable Māori to exercise control over their own interests in a matter that they deem appropriate.</p> <p>Requiring how Māori inform and consult with their own communities is inconsistent with their right to self-determination under Te Tiriti and is consistent with reform objective two to uphold Te Tiriti.</p> <p>The reporting requirements must be reasonable, practical and not overly onerous on Māori joint committee members.</p> <p>The proposals relating to reporting requirements for the appointing body to report back Māori support reform objective five to improve system efficiency and effectiveness by not prescribing how the appointing body report to Māori in the legislation.</p>	<p>50. Agree that the legislation will contain no specific accountability provisions for either Māori appointing bodies or those holding Māori seats.</p>	<p>Yes/No</p>
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Appendix 2: Impact analysis summary table

1. This table sets out summary impact analysis across the two proposals in this paper around which there are significant choices and options, namely:
 - h. How will support be provided to appointing bodies to ensure that the appointment processes they determine are effective, enduring and fair, and
 - i. Appropriate circuit breaker and dispute resolution processes if iwi authorities and groups that represent hapū are unable to agree the identities of appointing bodies.

Assessment criteria

2. The recommendations in this paper have been assessed using the same policy assessment criteria as was applied to the recommendations provided in MOG #17 Paper 2. These criteria test, as compared to the status quo, to what extent options contribute to a system that:
 - gives effect to the principles of Te Tiriti o Waitangi (Te Tiriti)
 - is effective and implementable
 - is efficient over the long-term (in terms of both time and cost efficiency)
 - provides certainty to all parties involved
 - promotes equity (for Māori when compared with non-Māori and between hapū/iwi/Māori groups as appropriate).
3. Officials have also considered the responsibilities that must be upheld by the Crown in developing appointment processes for Māori representatives to the Planning Committees. These are broadly aligned with the considerations for coming to a recommended approach for Māori representation in the system, set out in Annex C of MOG #17 Paper 2.⁹ In developing the recommendations in this paper, officials have considered:
 - a. the Crown’s obligations under Article two of Te Tiriti, in how rangatiratanga is appropriately provided for and consideration of kaitiaki relationships with taonga, and the Crown’s broader kāwanatanga obligations
 - b. the Crown’s duty of active protection where this is needed
 - c. how processes can be enabled that avoid and/or resolve conflict.
4. As well as these overall considerations, in relation to the specific proposals in this paper a guiding principle has been that appointing bodies and iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place should determine their own appointment and removals processes in accordance with tikanga Māori. It is anticipated that there may be significant regional variation in overall processes and the types of entities that will ultimately be appointing bodies. The proposals in this paper seek to recognise the variety of potential appointing bodies for Māori representatives by clearly enabling appointing bodies to be determined in accordance with tikanga Māori.

TABLE 1: Criteria for appointing bodies

Problem or opportunity - status quo
<p>How will support be provided to appointing bodies to ensure that the appointment processes they determine are effective, enduring and fair:</p> <ul style="list-style-type: none"> • appointment processes will be the key component in determining who will represent iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region • appointment processes will determine the effectiveness of representation of iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region at the regional resource management decision making level and the effectiveness of the contribution that Māori members make on the joint committees • from both a Local Government and iwi/hapū/Māori perspective there is a necessity to provide certainty that appointment processes will support effective, enduring and representative functions of the joint committees • under the current system of local government Māori involvement has tended to be in the later stages of resource management processes rather than at the strategic end, it has also primarily involved iwi authorities in decision making, often to the exclusion of hapū. Under the new system, the intent is to enable strategic involvement in decision making at the regional level earlier in the process and enable participation of all iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region in the determination of who represents them at the regional resource management decision making level with determinations being led by appointing bodies (consisting of appropriate iwi authorities and groups representing hapū, and, where considered appropriate by those groups Māori groups that hold relevant interests at place).

⁹ MOG #17, Paper 2, Annex C p

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Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
<p>Option one: Prescribe appointment processes to choose from in legislation, either:</p> <ul style="list-style-type: none"> • Self-nomination and democratic election • Nomination by iwi/hapū/Māori in a region of appointees and democratic election • Nomination by iwi/hapū/Māori in a region and determination by appointing bodies • Nomination by appointing bodies and democratic election 	<ul style="list-style-type: none"> • Provides clarity of processes to be followed to determine representation • Enables input of all iwi authorities, groups that represent hapū and Māori groups that hold relevant interests at place in a region in appointments • Allows for the exercise of rangatiratanga in determination of process and specifics of processes • May result in more effective and enduring appointments than if no process is prescribed • More transparency for the public over how persons exercising public functions will be determined • May lessen the risk of disagreement over appointment processes and appointments 	<ul style="list-style-type: none"> • Limits opportunities for iwi/hapū/Māori to determine how they will be represented in regional resource management decision making • May prevent established tikanga processes for identification of representation being followed • Nomination processes may require prescription in legislation and further complicate processes • May increase risk of disagreements about who should be nominated and why • In areas that there are multiple interests being represented by one appointing body, may unfairly advantage larger iwi/hapū groups • Does not enable sufficient scope for processes to be tailored to the circumstances of the iwi, hapū and Māori rights and interest holders in a region being represented. • May result in disagreements over which approach to select
<p>Option two: Set out key appointing body responsibilities and appointment criteria in legislation and provide the above processes in guidance as options that may be followed</p>	<ul style="list-style-type: none"> • Provides clarity on key parts of the process that must be met in order to achieve policy objectives • Enables appointing bodies and iwi/hapū/Māori in a region to develop appointment processes that will suit their circumstances and tikanga • Provides guidance if required without pre-empting what a process must be • May better achieve representation of iwi/hapū/Māori in a region than if groups are required to follow prescribed processes • Allows for the exercise of rangatiratanga in determination of process and specifics of processes 	<ul style="list-style-type: none"> • Guidance will not be specific to appointing bodies/regions and their circumstance and therefore may not be that useful • May still result in disagreements, eg, whether to follow the approach prescribed in guidance or a tikanga based approach • Will not be useful where groups are reckoning with how to incorporate their tikanga into a suggested model • May result in established tikanga processes for representation not being followed • Some prescribed options may create further process questions and compromise policy intent ie, how to ensure election is free and fair • Less publicly transparent than a prescribed approach
<p>Conclusion</p>		
<p>Option two is the recommended option, due to being more overall consistent with the approach of, as far as possible, allowing iwi/hapū/Māori to determine their own processes.</p>		

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TABLE 2: Identity of final circuit breaker in MfE option

Problem or opportunity - status quo		
<p>MOG #17 Paper 2 noted that four options for circuit-breaker processes were being considered:</p> <ul style="list-style-type: none"> Option one: facilitation only - no additional circuit-breaker outside of the process proposed through <i>Paper 1: Regional Governance</i> (ie, circuit breaking by the Local Government Commission) Option two: facilitation, moving to decision by a panel of experts in matters of Māori representation (eg, current, and former Māori Land Court judges or Waitangi Tribunal members or panel members nominated by the groups party to the dispute) Option three: facilitation, moving to a decision by a Minister or Ministers (eg, Minister for Crown-Māori relations and the Minister for Māori Development) Option four: facilitation, with the Māori Land Court serving as the arbiter for resolving disputes (noting this would likely require amendment to Te Ture Whenua Māori Act 1993). <p>The proposed circuit-breaking options for the appointing bodies for Māori members commence if regional council is not in a position to submit an agreed regional proposal with respect to these members by the deadline.</p> <p>It is proposed that all these options would initially involve the offer of mediation to be organised by the Māori Land Court to assist in reaching this consensus. If the offer of mediation is accepted, the Māori Land Court would appoint a panel of three qualified persons (which could include Māori Land Court judges) to conduct a formal mediation process. In cases where there is also a dispute as to composition, this mediation process would be informed by the Local Government Commission draft determination on composition (this would enable the parties to have an indication as to the number of Māori seats for which appointing bodies are required).</p> <p>If Ministers agree to a period of four months for the Local Government Commission to make a determination as to composition, then there would be four months for mediation (which, in cases where there was disagreement about composition as well as appointing bodies, would run from the date of the draft composition determination to the date of the final determination) for the mediation process to reach an agreed position as to appointing bodies (the same timeframe that applies for the Local Government Commission to make a final composition decision). In cases where there is no dispute as to composition the mediation period would still be four months but would commence two months earlier because there is no need to wait for the draft composition determination. If an agreed position is reached but there is a Local Government Commission final composition decision with respect to the number of Māori members that is different to the draft determination, there would be a further one week of mediation if necessary to assess the extent to which the agreement needs to be adjusted to reflect the different number of Māori members.</p> <p>If the offer for mediation is not accepted or does not result in an agreed position on the appointing bodies for Māori members by the end of the mediation period (plus one week if the draft determination on composition is not confirmed) then – as a last resort – the final stage of the circuit-breaking process will apply to impose a decision as to appointing bodies.</p> <p>Of the four options described above that provide for this final stage, officials recommend that option one (circuit-breaking by the Local Government Commission) and option three (circuit-breaking by a Minister or Ministers) are discarded. They both involve the Local Government Commission or Ministers making judgements as to relevant interests and authorisation to speak for iwi authorities, groups that represent hapū and other Māori entities. This may not be a task for which they are ideally suited, and it does not sit well with the Te Tiriti principle of partnership.</p> <p>The remaining two options (two and four) have been expanded so that there is an alternate option (a) and (b) for each.</p>		
Options assessment	Advantages/benefits	Disadvantages/Costs/Risks
<p>Option 2a: Ministers will appoint a panel of experts in matters of Māori representation (eg, current and former Māori Land Court judges or Waitangi Tribunal members, or panel members nominated by the groups party to the dispute). The panel will analyse relevant rights and interests, the authorisation of the parties to speak and act on those interests, and the records of engagement to date. The panel will decide as to the appropriate appointing bodies, within three months.</p>	<ul style="list-style-type: none"> This is the simplest option, involves one less step compared to option 2b, and – as a result - may be easier to implement and more cost effective in terms of both time and cost efficiency. This advantage is stronger when compared to options 4a (and 4b to a lesser extent) Less pressure on judicial resources, compared to option 2a (and 2b to a lesser extent) Compared to option 4a, would not require legislation to expand jurisdiction of the Māori Land Court Compared to option 4a, it may be more time efficient and put less pressure on timeframes for finalising plans 	<ul style="list-style-type: none"> Involves Ministers of the Crown more closely than may be desirable Not as consistent with the Te Tiriti principle of partnership
<p>Option 2b: This is like option 2a, except that the panel of experts will be appointed by a body constituted for the purpose of appointing such a panel when the need arises in any region. This body will be appointed by Ministers when the NBA and SPA come into force. The NBA will set out that only current or former Māori Land Court judges or Waitangi Tribunal members could be appointed to the body.</p>	<ul style="list-style-type: none"> Allows Ministers to maintain more of an arm's length connection to the panel that makes the decision May be more cost effective (in terms of both time and cost efficiency) when compared to option 4a (and 4b to a lesser extent) More consistent with the Te Tiriti principle of partnership Less pressure on judicial resources, compared to options 4a (and 4b to a lesser extent) Compared to option 4a, would not require legislation to expand jurisdiction of the Māori Land Court Compared to option 4a, it may be more time efficient and put less pressure on timeframes for finalising plans 	<ul style="list-style-type: none"> Has one more step compared to Option 2a Requires a body to be established but potentially not do anything

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<p>Option 4a: The Māori Land Court will decide on the appropriate appointing bodies where these matters are in dispute. The timeframe would be up to the Court, but it would be requested to decide urgently.</p>	<ul style="list-style-type: none"> • Uses the Māori Land Court in a more traditional capacity • More consistent with the Te Tiriti principle of partnership (compared to option 2a) 	<ul style="list-style-type: none"> • May be less effective in promoting equity due to the imposition of greater burden on parties in terms of needing to participate in litigation • Using a court process is less efficient in terms of both time and cost efficiency • May take longer to reach a decision than the other options, which could put pressure on meeting timeframes for finalising plans • More pressure on judicial resources, compared to all other options • Would likely require legislation to expand the current jurisdiction of the Māori Land Court, potentially adding to overall implementation timeframes • The MLC having a decision-making role is not favoured by many iwi/hapū/Māori in a number of regions
<p>Option 4b: The Māori Land Court will appoint a panel of experts that will perform the same role as described in option 2a.</p>	<ul style="list-style-type: none"> • More consistent with the Te Tiriti principle of partnership • Compared to 4a: <ol style="list-style-type: none"> a. less pressure on judicial resources b. may impose less burden on parties in terms of having to participate in litigation c. may be more efficient in terms both time and cost efficiency d. Assuming it is more time efficient, this will put less pressure on timeframes for finalising plans. • Would not require legislation to expand the current jurisdiction of the Māori Land Court (compared to option 4a) • Less direct role in the decision for the MLC, which may partially mitigate concerns expressed by iwi/hapū/Māori 	<ul style="list-style-type: none"> • Uses the Māori Land Court in a less traditional capacity • Compared to options 2a and 2b, more pressure on judicial resources • May not fully mitigate concerns expressed by iwi/hapū/Māori

Conclusion

Option 2b is our preferred option, for the following reasons:

- The panel process allows for quick resolution and a flexible process that can respond to circumstances as presented
- Panel members with appropriate mana and respect within te ao Māori can be chosen, making it more likely that the decision will be considered acceptable
- The panel-to-appoint-a-panel approach introduces a degree of removal from the Crown, giving both the appearance and fact of limited possibilities for political influence

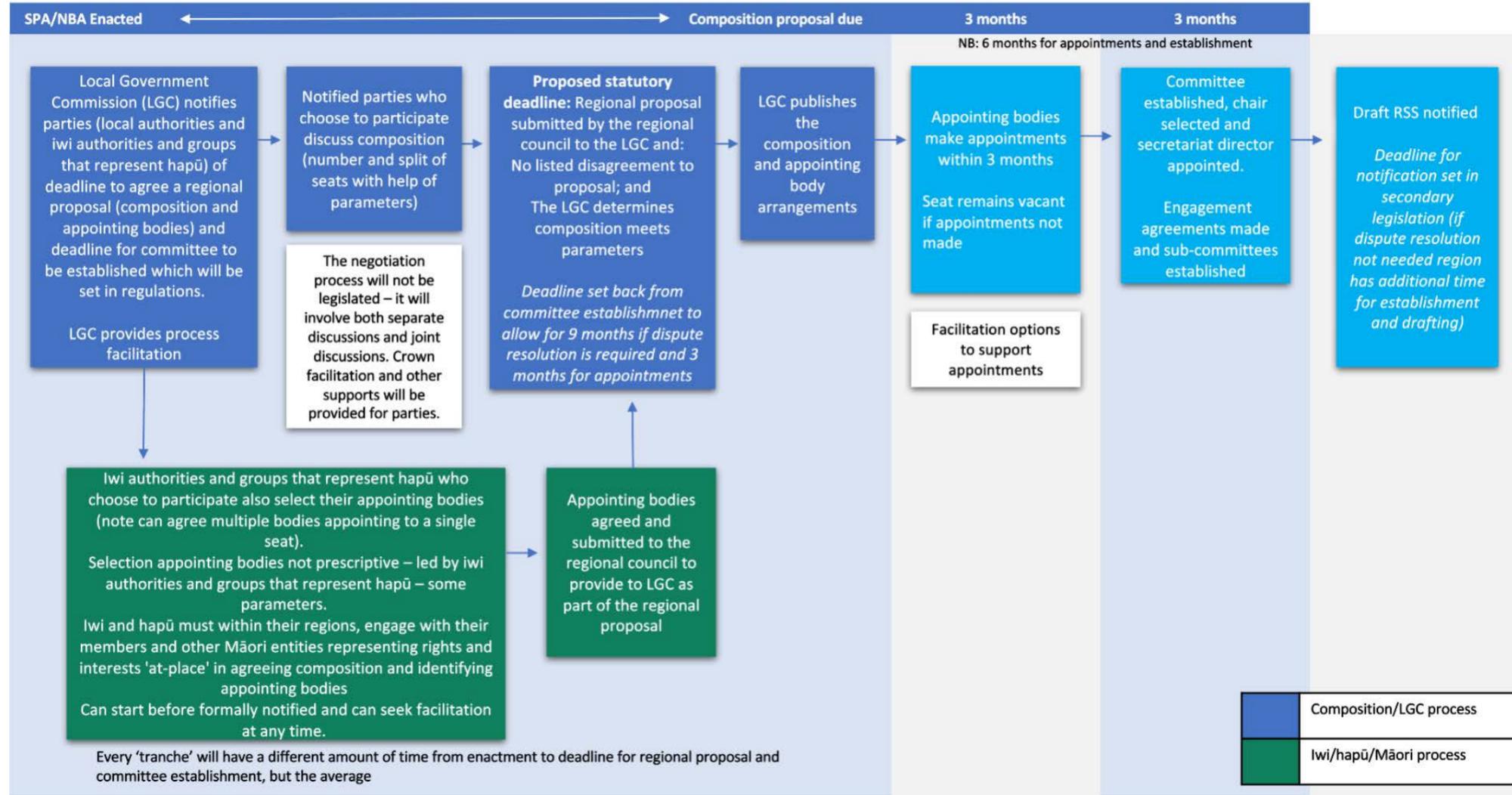
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Appendix 3: Process diagrams for potential committee formation processes

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Composition and appointment process flow chart – scenario 1: parties in the region successfully reach agreement

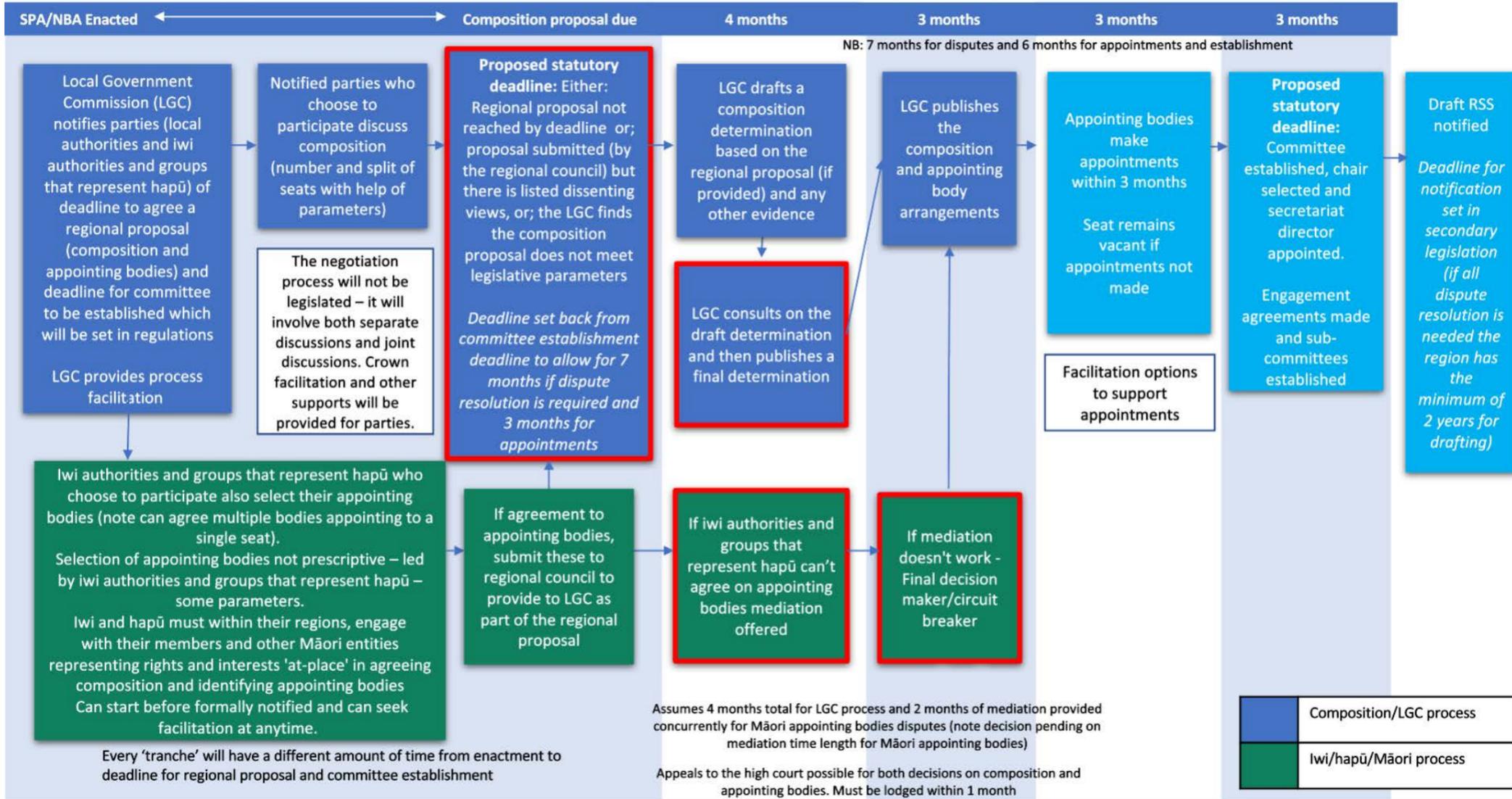


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Composition and appointment process flow chart – scenario 2: parties cannot reach agreement, circuit breakers required (MfE Option)



Please note: This diagram does not illustrate the alternative option 2 circuit breaker (Māori Land Court decides) or the Te Arawhiti option (completely self-directed expert panel).

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Appendix 4: Other dispute resolution and circuit breaking processes relating to Māori participation

1. This paper recommends dispute resolution and circuit-breaking processes that would apply to ensure that Māori appointing bodies are established, which will in turn make it more likely that Māori members are appointed to Natural and Built Environments and Spatial Planning Committees.
2. Dispute resolution and circuit-breaking processes for disputes between iwi, hapū and Māori groups are also required in relation to other aspects of Māori participation in the Resource Management system, specifically:
 - a. the National Māori Entity, where disputes may arise during the appointment of members to the National Māori Entity
 - b. Mana Whakahono ā Rohe, where disputes may arise in relation to iwi and hapū representative organisations who do not wish to work together in an area of overlapping interest, and this would impact on the exercise of RMA functions.
3. Consideration has been given to aligning these processes as much as possible. The general approach across all three areas involves:
 - a. firstly, hui facilitated by an independent facilitator, then
 - b. if the dispute is still not resolved, an independent panel would be appointed by the Chief Māori Land Court (MLC) Judge or their delegate to provide formal mediation.

Irrelevant

5. For Mana Whakahono ā Rohe, there is an additional stage that applies if there is still an unresolved dispute following mediation. The Māori Land Court judicial process would provide an avenue for making a final determination on the matter.¹¹
6. For the Appointment of Māori members to Planning committees, the mediation only applies if the parties accept an offer of mediation. Furthermore, there is an additional stage that applies if there is still no agreement following mediation as to the appointing bodies for these members (or if the offer of mediation is not accepted). An expert panel (appointed by a standing body appointing by the Minister for the purpose of appointing such panels if and when required) will make a final decision. However, this additional stage does not apply if an appointing body is unable to make an appointment (but the option of seeking funding from the Crown for independent facilitation will be available). Ministers are also considering an alternative whereby the Māori Land Court would decide in their judicial capacity.
 - a) The alternative proposed by Te Arawhiti would leave dispute resolution to iwi authorities and groups representing hapū in the region, but empower them to create their own expert panel to act as a circuit breaker. They would have the full time provided for mediation and panel decisions (7 months past the deadline) to deliver a

¹⁰ BRF-1608 RM Reform 185 – Delegated decisions on further details about the National Māori Entity

¹¹ BRF-1635 RM Reform 184 – Delegated decisions on the design of Mana Whakahono ā Rohe, Joint Management Agreements and Transfer of Powers tools

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decision on appointing bodies. After that, appointments and establishment of the committee could commence whether all appointing bodies have been identified or not.

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Update on targeted engagement on RM Reform – our future resource management system

Purpose

1. This paper provides an overview of submissions received in the latest round of targeted engagement on Resource Management (RM) Reform. It summarises key themes and concerns raised by submitters and provides an overview of what was heard at targeted engagement fora and hui undertaken from November 2021 through to early March 2022.

Context

2. Cabinet agreed to repeal the Resource Management Act 1991 (RMA) and reform the resource management system at the December 2020 Cabinet meeting. (CAB-20-MIN-0522 refers). Since then, MfE has undertaken targeted engagement with Treaty partners, iwi and hapū, central and local government and other sector stakeholders as part of the policy development process.
3. In that meeting Cabinet agreed the main platform for engagement would be a dual select committee process with the National and Built Environments Bill (NBA) exposure draft submitted to a Select Committee Inquiry in July 2021. This would be followed by a select committee process for the NBA and Spatial Planning Act (SPA) bills following introduction into Parliament in third quarter of 2022.
4. Feedback received through the Exposure Draft and other channels provided a strong mandate to broaden the previous targeted approach to engagement. For example, the Select Committee Inquiry received over 35% of its submissions from sector stakeholders, indicating a high level of interest in the reforms. A number of these sector submissions also called for more fulsome engagement.
5. There was strong expectation from local government and sector stakeholders for more concrete details on reform proposals, and for engagement on these proposals before they are finalised.
6. Cabinet agreed in November 2021 (CAB-21-MIN-0469 refers) to a programme of targeted engagement on the architecture and decision-making roles proposed for the new resource management system.
7. In November 2021, the Ministry released an engagement document titled Te Pūnaha whakahaere rauemi o anamata: Kaupapa kōrero - "Our future resource management system: Materials for discussion." The purpose of this document was to support targeted engagement with hapū/iwi and Māori groups, local government, and sector stakeholders. This document was published on the Ministry for the Environment website.
8. Over the period of 1 November 2021 to 3 March 2022, Ministry officials undertook 61 separate engagements with partners and key stakeholders. At these hui and fora officials facilitated discussion around the engagement material and sought feedback by 28 February 2022 (with limited extensions granted). In response to the engagement material, 151 written submissions were received.
9. At the same time, 11 online information sessions were held for the wider local government and sector communities, reaching approximately 1,800 people. This is part of the campaign to bring stakeholders and the public along on the Resource Management (RM) Reform journey.
10. A summary of the targeted engagement programme breakdown is as follows:

Local Government	<p>3 - Local government RM Reform Steering Group meetings</p> <p>15 – Mayoral Forums</p> <p>5 – Local Government New Zealand (LGNZ) Sector Forums</p> <p>7 - Local Government meetings (Resource Managers Group (RMG), Consenting Managers Group (CMG), Planning committees)</p>
Hapū/Iwi/Māori	<p>Ongoing meetings with Freshwater Iwi Leaders Group (FILG)/ Te Tai Kaha (TTK) Māori Collective</p> <p>22 - Hui for hapū/iwi/Māori</p>
Sector	<p>4 - RM Reform Group (Employers & Manufacturers Association (EMA), Infrastructure NZ, Business NZ, Property Council) forums</p> <p>2 - Environmental non-governmental organisation (ENGO) Leaders Group forums/meetings</p> <p>2 - Food and Fibre Forum Leaders Forums</p> <p>1 - New Zealand Planning Institute (NZPI) Advisory Group meeting (ongoing)</p>
Information Sessions (webinars)	<p>3 - Local Government</p> <p>2 – RM Reform Sector</p> <p>1 – Primary sector</p> <p>1 - Environment Groups</p> <p>2 – New Zealand Planning Institute (NZPI)</p> <p>1 – Resource Management Law Association (RMLA)</p> <p>1 - Engineering NZ</p>

11. The key themes from those engagements and written submissions are provided in Appendix 1 (pages 3 -11). Note that this is a summary of the information heard only and does not indicate a policy position. A breakdown of engagement activities and submissions received is provided in Appendix 2 (pages 12 - 21).
12. Feedback from engagement will be used to inform ongoing policy development and detailed decisions as part of the RM reform programme.

Appendix 1: Key themes from targeted engagement

Key themes from submissions and engagement with local government

Local voice and localism

1. Local government stakeholders emphasised the need to ensure local issues and public participation remain in the new system and are balanced with a more centralised regional approach to plans.
2. Submissions proposed local voice could be maintained or enhanced through local representation on joint committees, and guidance and mechanisms to promote and encourage public participation.

Relationship with other Acts and government work

3. Local authorities noted the need to ensure the RM reform is aligned and coordinated with the Three Waters Reform Programme and the Future for Local Government Review. They also noted that there is a sense of pressure arising from concurrent reforms.

Transition to the new system

4. Local authorities are seeking guidance around transitioning existing plans into the new system. There is concern of potential sunk costs and duplication of resources incurring if plan reviews and changes need to be repeated when developing RSSs and NBA plans.
5. Training, guidelines, and clear expectations would support local authorities through the transition and implementation stages of the reform. It is envisaged that additional roles will be required to facilitate the transition phase, as well as upskilling and training across government.
6. Staff shortage is a critical issue. Local authorities are experiencing existing capacity, capability and resourcing issues and there are concerns that they will not have the capacity to deliver and support the transition to the new system efficiently and effectively.
7. Clarity is sought on the future role of the Environment Court and existing case law in the new system, and how this will be transitioned.

Digital and technological transformation

8. Local authorities see that digital technologies and tools could provide multiple efficiencies in the new system. Examples include a standardised and centralised consenting and monitoring database to avoid having councils invest separately. Digital tools could support systematic, coordinated, and consistent real-time monitoring, assist laypeople with understanding processes, and contribute to efficiency gains for reporting.

Resolving conflicts

9. Local authorities see that the NBA and NPF should provide clear direction on how conflicts will be managed.
10. It will be essential to provide clear prioritisation between the built and natural environment and provide clarification on any intended hierarchy of components.
11. Local authorities also asked that there is a process for conflict resolution.

National Planning Framework

12. Local authorities see opportunity for the NPF to provide guidance on matters such as giving effect to Te Tiriti, prioritisation of outcomes, environmental protection and climate change, as well as providing robust guidelines around development practices.
13. There is general support for limits and the application of an evidence-based and precautionary approach when setting environmental limits.

Regional Spatial Strategies

14. Local authorities are supportive of RSSs and a coordinated approach to regional planning, as long as RSSs and RSS processes can account and plan for localised issues.
15. There were a number of recommendations for a New Zealand Spatial Plan or Spatial Strategy to guide the development of RSSs.

Joint committees and representation

16. Local authorities are asking for clarity around process and a strong lead from central government to ensure an effective and efficient working model for joint committees. Clarity is sought for areas such as roles and responsibilities and high-level direction on how these committees should be funded.
17. Joint committees should comprise of a cross-section of representation and expertise to reflect diversity of regions. A small number of local authorities suggested a split between elected and appointed members, 50:50 iwi and council membership, and co-chair responsibilities with mana whenua. Of the local authorities that commented on joint committees, most raised broad concerns with them.

Consenting, compliance, monitoring, enforcement (CME) and oversight

18. Local authorities see that effective monitoring will be essential for understanding how well RSSs and NBA plans are achieving their purpose, as well as for informing limit setting and ensuring adequate inbuilt feedback loops for decision-making and accountability.
19. Local authorities are supportive of consenting and CME proposals. They have questions about how enforcement will work for permitted activities and enabling third party certification with the increased number of permitted activities.
20. Increased monitoring for consenting (permitted activities), CME and system oversight will result in increased costs and require more resourcing.

Role of local government

21. Local authorities see that they must play an essential role at all levels of the new system as they are the holders of local knowledge and those responsible for implementing the system.

Role of hapū, iwi and Māori

22. Local authorities are strongly supportive of an increased role for hapū, iwi and Māori in the system and for the Act to give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori.
23. They recommended that hapū, iwi and Māori are provided with funding and resourcing to enable them to fully participate in the system.
24. In giving effect to the principles of Te Tiriti and providing for greater recognition of te ao Māori, mātauranga Māori should be recognised as technical evidence.

Engagement

25. Local authorities are seeking ongoing engagement throughout the reform process and involvement in drafting of provisions.

Key themes from submissions and engagement with iwi, hapū and Māori

Overwhelming demands of engagement

1. The magnitude and pace of the various reforms, and the information which Māori are expected to digest, along with the stresses of COVID-19 and timing of engagement both at the end and start of the year, has been overwhelming for participants.
2. Attendees have indicated that further hui are required with smaller groupings once the new information has been processed.
3. Despite these challenges, there has been strong interest in this kaupapa as reflected by the number of written submissions received.

Funding

4. In order for iwi, hapū and Māori to take advantage of the tools to support Māori participation in the new system, significant investment in building their capability and capacity is crucial.
5. Funding is an essential component required in the transition and implementation period as hapū, iwi and Māori navigate being active participants and partnering with councils in the future system. This includes support to position themselves effectively to influence Regional Spatial Strategies (RSS) and Natural and Built Environments Act (NBA) Plans, and to support the implementation of Iwi Management Plans where these are created.
6. Mana whenua and mana whakahaere groups need to be adequately resourced for their specialist knowledge and mātauranga Māori in the same way that non-Māori specialists and consultants would.

Māori rights and interests in freshwater

7. Submissions expressed that Māori rights and interests, particularly in freshwater, need to be addressed as part of the reforms. In their view, not addressing Māori rights and interests is a breach of the Treaty.
8. The NBA bill does not address title ownership of the water itself. Attendees have spoken at length about the disappointment of promises made in the establishment of the Resource Management Act 1991 (RMA) regarding how freshwater rights and interests would be resolved, and that the RMA is now being repealed without that resolution.

Efficiencies

9. The new system needs to be more efficient and less complex than the current process, and implementation is key in ensuring this.
10. At this stage it is difficult to determine if the system will be more certain and efficient for plan users. If sub-regional plans are introduced, this will create an additional layer of process to go through – which could defeat the fundamental principles of why the reform has been undertaken.

Definitions

11. Te Oranga o te Taiao and the principles of Te Tiriti need to be clearly defined at the forefront of the legislation. Some submitters are of the view that this should be led by iwi and kaitiaki to ensure Te Tiriti is defined in the view of tangata whenua.
12. There are mixed views on the use of mana whenua, tangata whenua and mana whakahaere. Some are strongly opposed to the introduction of the term mana whakahaere to broaden Māori participation and view it as a misappropriation of tikanga, and suggest that the current RMA definitions should be applied. Others support the inclusion of the term mana whakahaere as an inclusive concept, which explicitly includes marae, hapū, iwi, ahi kā, and urban Māori.
13. Submitters defined mana whakahaere as iwi, hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource.

Joint committees

14. Attendees have maintained throughout hui that joint committees need to reflect Treaty partnership as 50/50 representation.
15. Composition of joint committees should be developed region by region, with representation that includes hapū, iwi and Māori. Of those who commented on joint committees, a desire for 50/50 representation was reiterated in the hui.
16. Upholding and protecting Treaty settlement arrangements, as they are inalienable, is a legal requirement.

Role of whanau, hapū, iwi and Māori in the new system

17. Submitters raised concerns that the voices of smaller whānau, komiti, hapū and Māori groups might be lost, particularly those not represented by Post Settlement Governance Entity (PSGE)s.

Regional Spatial Strategies and NBA plans

Giving effect to Iwi and Hapū Management Plans

18. There is a desire to see RSSs being influenced by or giving effect to Iwi/hapū Management Plans (IMPs). There is a need for guidance outside of legislation around how to develop IMPs that effectively influence RSSs and NBA Plans.
19. IMPs must be understood by the system actors and the system must be understood by those drafting the IMPs; it will take time for the necessary capability to be built.
20. Better protection for IMPs with regards to monitoring how councils will implement and reflect IMPs in other plans, and how local government will support the relationship with iwi and hapū, is fundamental. This will demonstrate a commitment to 'giving effect to' Te Tiriti.
21. A holistic approach should be taken by hapū and iwi in planning and growth strategies within a Secretariat role to influence regional plans. The intergenerational aspirations of hapū, iwi and Māori should be reflected in planning documents.

Mana Whakahono ā Rohe (MWaR)

22. There has been support for retaining the obligation for Councils having to respond to mana whenua initiating a MWaR.
23. Feedback was that funding and capacity have also been barriers to success, and there needs to be a requirement for Councils to invest and build capacity for iwi/hapū.

Rohe boundaries and overlapping interests

24. There is concern over the use of existing regional boundaries. Some submitters advocate for the use of rohe boundaries instead, alongside subcommittees designed to deal with cross boundary issues.
25. Participants felt strongly that the conversation about the boundaries for plans in the region should be taken up with Rangatira in each rohe.

Plan development process

26. Feedback strongly supported the need for Māori participation in the secretariat, and for those participants to be resourced appropriately and appointed regionally.
27. Many voiced the need for Māori to 'hold the pen' and engage with their communities on all parts of the plan, not just the Māori aspects.
28. Feedback was that funding and capacity for iwi and hapū needs to be provided directly from government in order to participate on the secretariat.

National entity

29. There were mixed opinions among hapū, iwi and Māori on the proposal for a National Entity.
30. A self-identification process should be employed for composition and take into consideration the urban make-up of rohe like Tāmaki Makaurau.
31. Decision-making powers should ultimately remain with the mana of the whenua at place, whether that be whānau, landowners, hapū and/or iwi – a centralised approach/framework is not preferred and may usurp the mana whenua.
32. Participants see benefit of having a dispute resolution body at a national level for consistency.
33. Models such as Te Awa Tupua have national oversight, and provide for governance, strategic and mana whakahaere input.
34. The National Entity should allow for the significant interest hapū, iwi and Māori communities have within the allocation tools and functions.
35. There is support among some submitters for the establishment of a Te Mana o te Taiao Commission within a Te Tiriti framework in place of the proposed National Entity. These submissions propose that the Te Mana o te Taiao Commission would be an independent national entity with 50% Māori membership, that works in partnership with the Crown. It is proposed that the Commission should have a wide range of roles and functions, including monitoring Te Tiriti performance, providing oversight on how Māori gain representation onto regional joint committees, and appointing Māori members to any board of inquiry process. The Commission would also be responsible for setting national environmental standards and limits in the National Planning Framework (NPF).

Relationship with local government

36. Many attendees stated that there needs to be an attitude shift within Councils in order for effective partnerships with Māori and Mana Whakahono ā Rohe agreements to be successful. At present they require willingness by local government, and there is a lack of incentive to work collaboratively with iwi, hapū and Māori.
37. A key concern from Māori landowners is the tendency for Councils to engage with iwi and hapū authorities as a more efficient practice in their view, therefore excluding representation from the ahi kā/mana whenua groups.

38. Feedback was that funding for Māori involvement in consenting processes should come from local government in a user pays system.

Recognition of ahi kā, mana whenua and Māori landowner groups

39. The role of Māori landowners and ahi kā in the new system is an aspect that attendees wish to understand further.

40. Feedback on this topic included the need for whakapapa to determine ahi kā first and foremost.

Key themes from submissions and engagement with sector stakeholders

Definitions

41. Sector stakeholders voiced broad support for Te Oranga o te Taiao, although there is concern about this being undefined, and open to interpretation and therefore litigation.

42. Infrastructure providers specifically request consultation over definitions that relate to them, such as infrastructure and ancillary structures.

National direction and local voice

43. National direction has an important role in ensuring consistent implementation of the RM system across jurisdictions. It will be important that direction also provides flexibility for regional variations in community expectations, environment, and development needs. Careful balance needs to be struck between the NPF providing direction on nationally important issues, and resource consents providing flexibility to adapt conditions of consents to local conditions and specific circumstances.

Timing

44. There is a need for integration of strategic and national direction in a timely manner. The timing of the development, transition, and implementation of the different pieces of legislation will influence the success of the reform programme.

Digital and technological transformation

45. It was noted that the reform has not provided specific proposals for the use of technology to support the new system. Sector stakeholders are of the view that technology could innovate and disrupt current practices and lead to greater efficiencies, increased value and speed.

46. Centralising data from the diverse and disconnected processes under the current RM system should be a priority in the new system. By collecting and connecting this data, the information could be made available to operate the system adequately and make informed decisions on any amendments or adjustments to the system for better results.

Participation and representation

47. There are opportunities for a broader range of stakeholders to be involved in the resource management system at an earlier stage.

48. Infrastructure providers should be involved in the development of the system through the development of more collaborative processes. This is particularly pertinent in the case of nationally significant infrastructure.

49. Infrastructure and private sector representation on the joint committees could provide insights into market realities, efficiency of processes and decision-making, and to provide knowledge on the practical implementation of policy proposals.

Freshwater allocation

50. It is noted that the proposals do not include options for freshwater allocation mechanisms and approaches, leaving it for future planning decisions to provide solutions. Sector stakeholders are of the view that the omission of freshwater allocation policies raise concerns over decision-making certainty for investors, and a continuation of uncertainty for businesses.

Weighting between natural and built environments and provision of infrastructure

51. The removal of the references to the built environment from the original draft of the legislation is a concern to some sector stakeholders. While the reform may deliver improved outcomes for the natural environment and tangata whenua, there is concern that it could continue to deliver poor outcomes for infrastructure.

National Planning Framework

52. Strong support for integrated direction at a national level through the NPF. National direction through the NPF could increase clarity and certainty, and reduce compliance activity and the number of hearings required.
53. Sector stakeholders are of the view that resolving conflicts at a high level will lead to greater efficiencies for regional and district planning and consenting matters. To be successful at this, the NPF will need to clearly identify where conflict exists between outcomes and limits. Specifically, where the conflict is involving lifeline utilities, or critical infrastructure pertinent for the health and wellbeing of communities, then that outcome should prevail over an environmental limit.
54. There is the view that the issues with current consenting and approval processes is due to the implementation of these policies. Resolving conflicts at a cross-partisan national level may help to remedy these concerns and enable a more consistent approach to implementation.

Regional spatial strategies

55. Sector stakeholders support the development of RSSs and see that they will enable strategic and coordinated infrastructure and development.
56. While strategic planning is essential for linear infrastructure projects, there also needs to be an operative function and not simply another layer of planning. It will also need to be responsive to changes in both a real-world and policy sense.
57. Assurances are needed to ensure that RSS processes aren't driven by particular sectors or sector interests, while also providing for a robust public process and the inclusion of local voice.
58. Infrastructure providers should be involved in development of RSSs.

NBA Plans

59. There is sector support for a single NBA plan per region as this would ensure efficiencies and save costs.
60. Infrastructure sector experience is that there can be widely varying and inconsistent planning constraints on networks as a whole and/or on a particular part of a network as it passes through different zones, overlays, or jurisdictional boundaries. Fewer plans and integrated decision-making are preferred to counter this issue.
61. If sub-regional plans are to be used, there will need to be a clearly defined criteria to enable these plans to avoid the current problem of multiple plans within a region. Sub-regional

plans should only be used for issues that are distinct to the locality or require a different management response from the rest of the country.

Monitoring and system oversight

62. Support for greater system oversight through monitoring data and stronger requirements for responsible bodies to investigate, evaluate and respond to signs of degradation.
63. There is often a very poor basis of evidence to review the effectiveness of plan provisions.

Funding

64. In cases where national and strategic values are prioritised and to the extent that central government is to play a greater role in the new system, tax-payer contribution to the costs is warranted.

Key themes from submissions and engagement with ENGOs

Prioritising the environment

65. There is a need to clearly define provisions for staying within biophysical limits, to enable the recovery of native ecosystems and biodiversity.

Compensation and offsetting

66. Environmental compensation should not be available as a means of meeting limits or complying with rules, whether in the NPF or NBA plans. Biodiversity offsetting should also not be available for meeting limits, given the uncertainties associated with that approach to dealing with adverse effects.

Clarity in the NPF and NBA

67. Clear drafting will be required regarding the role of the NPF in achieving the purpose of the Act, including the relationship between the NPF and NBA plans.
68. Clarity will also assist with resolving conflicts at a high level (ie, prior to consenting).
69. There is concern from ENGOs that there are too many factors or elements that the NPF might or must include. Careful consideration needs to go into determining if this will increase efficiency and reduce conflict.

Regional Spatial Strategies

70. Submitters question whether the RSS planning process will be able to incorporate the detailed level of information required to ensure important biodiversity areas are protected.
71. As well as the setting of long-term objectives, which could help with certainty and efficiency, RSSs must include protection of biophysical systems and native biodiversity.
72. Need to have feedback mechanisms built into RSSs to be sufficiently agile and responsive. There is a risk that strategies could become too rigid to provide adaptability to changing knowledge and conditions.

Public participation / expert involvement

73. ENGOs consider that it is essential for public participation to be a cornerstone of the RSS and NBA plan processes. There also needs to be expertise amongst the appointees to joint committees.

Monitoring

74. Expert advice will be needed to ensure that monitoring is carefully designed and conducted in order to ensure that concentrated effects are measured, and effects are accurately known.
75. There will need to be a clear link between monitoring limits and outcomes and a requirement in the NPF or NBA plan limits, to effectively respond to monitoring when necessary.
76. Responsibility, funding, and capacity will be required of local government to fulfil monitoring functions. Local government should be provided with resources and funds to enable adequate monitoring and proper processes.

Appendix 2: Engagement activities and submissions received

Engagement with local government

1. The following engagement fora were completed during November 2021 to February 2022.
2. MfE ran three local government information sessions primarily for officials and those managing planning, consenting and Consenting, compliance, monitoring, enforcement (CME) functions in councils. Over 1000 people attended.
3. Officials attended the Policy Special Interest Group (regional and unitary councils), Resource Managers Group (RMG), Consenting Managers Group (CMG), Canterbury Planning Managers meeting, Wellington Planning Managers meeting, Waikato Combined Planning Forum and Taranaki Planning Managers forum.
4. Officials attended 15 Mayoral Forums which covered all parts of the country. In some fora iwi/hapū attended where they had formal partnerships with councils.
5. Minister Parker attended the Local Government New Zealand (LGNZ) Regional Sector meeting on 26 November and the Rural and Provincial Sector meeting on 25 November. He also attended a special meeting to launch the engagement.
6. Officials attended the LGNZ Metro Sector meeting on 5 November and the National Council meeting on 3 December.
7. Ongoing engagement with the Local Government Resource Management Steering Group continued with the group meeting 4 times between November 2021 and February 2022.

Mayoral Forum	Number of non MfE attendees	Groups represented
Northland	33	Northland Regional Council, Far North District Council (DC), Whangārei DC, Kaipara DC
Auckland	30	Auckland Council and local boards
Waikato	15	Waikato Tainui, Ruakawa Settlement Trust, Hauraki Collective, Waikato Regional Council, Waikato DC, Hamilton DC, Matamata – Piako DC, Waitomo DC, Hauraki DC, Taupō DC, Thames Coromandel DC, Otorohanga DC
Bay of Plenty	21	Whakatōhea Māori Trust Board, Ngāti Rongomai Iwi Trust, Te Rūnanga o Ngāti Awa, Te Rūnanga o Ngāti Rangī, Bay of Plenty Regional Council, Opotiki DC, Taupō DC, Thames Coromandel DC, Otorohanga DC
Gisborne	15	Ngāti Porou, Ngā Ariki Kaipūtahi, Gisborne DC
Hawkes Bay	25	Tātau Tātau o Te Wairoa Trust, Ngāti Pāhauwera Development Trust, Heretaunga Settlement Trust, Rakaipaaka, , Te Taiwhenua o Tamatea, Ngāti Kahungunu, Hawke's Bay Regional Planning Committee, Napier DC, Wairoa DC, Hasting DC, Central Hawkes Bay DC.
Manawatū – Whanganui	14	Horizons Regional Council, Palmerston North DC, Manawatū DC, Rangitikei DC, Horowhenua DC, Taranua DC, Ruapehu DC
Taranaki	4	New Plymouth DC, Stratford DC, South Taranaki DC
Te Tau Ihu	10	Ngāti Koata, Marlborough DC, Nelson DC, Tasman DC
West Coast	9	West Coast Regional Council, Buller DC, Grey DC, Westland DC
Canterbury	11	Environment Canterbury, Christchurch DC, Selwyn DC, Kaikōura DC, Waimakariri DC, Waimate DC, Timaru DC, Ashburton DC, Waitaki DC, MacKenzie DC, Hurunui DC, Ngāi Tahu as observers
Otago	24	Otago Regional Council, Dunedin DC, Queenstown Lakes DC, Clutha DC, Waitaki DC, Central Otago DC, DIA
Southland	11	Environment Southland, Invercargill DC, Gore DC, Southland DC, The Property Group.
Wellington	15	Upper Hutt CC, Greater Wellington RC, Carterton DC, South Wairarapa DC, Porirua CC, Kapiti DC, Wellington CC, Masterton DC

Regional engagement hui with iwi, hapū and Māori groups

8. A total of 22 engagement hui have taken place. The following hui were completed during November 2021 through to March 2022.
9. Of the 22 regional hui, 4 of those were held with technicians and regional sector specialists: Papa Pounamu sessions 1, 2 and 3 and the hui with Ngā Kairapu.
10. Outside of regional engagement, officials continue to engage with members of Māori representative groups, Te Tai Kaha and Freshwater Iwi Leaders Group/Te Wai Māori Trust, in a series of technical wānanga to inform draft policy on the reform of the resource management system.
11. Officials continue to engage with Post Settlement Governance Entity (PSGE)s to transition Treaty Settlements into the new system.

Region	No. of attendees	Groups Represented
Tāmaki Makaurau Mana Whenua Kaitiaki Forum	12	Te Ākitai Waihoua, Ngātiwai, Ngāti Maru, Ngāti Whanaunga, Ngāti Te Ata, Te Patukirikiri, Te Ahiwaru Waiohua
Taranaki	3	Te Korowai o Ngāruahine Trust, Te Ātiawa o Te Waka-a-Māui
Maniapoto	5	Maniapoto Trust Board
Te Tau Ihu	11	Te Rūnanga o Ngāti Toa Rangatira, Te Rūnanga o Ngāti Kuia, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Ngāti Rārua, Ngāti Tama ki Te Waipounamu Trust, Tasman District Council, Marlborough District Council
Tairāwhiti	7	Whāngārā Farms, Ngāti Poro, Te Whānau-ā-Ruataupare, Te Whānau-ā-Apanui, Waikaremoana Māori Trust Board
Manawatū	3	Uenuku Charitable Trust, Uri o Ngaa Rauru
Tāmaki Makaurau	25	Ngā Kaitiaki o Ngā Wai Māori, Papa Pounamu Māori Planning Network, Ngāti Rehua-Ngātiwai Ki Aotea, Waikato-Tainui, Ngāti Tamaoho, Ngāti Whātua, Auckland Council, Whangārei District Council, Northland District Council, Far North District Council, Aotearoa Pacific Practitioners Special Interest Group, Iron Sand Consulting Limited, Landcult Ltd, Wikaira Consulting, Matakahe Architecture and Urbanism, Lifescapes, Kāinga Ora
Te Whanganui-ā-Tara	7	Iwi Leaders Group, Kāhui Wai Māori, Te Rūnanga o Toa Rangatira, Rangitāne Tū Mai Rā Trust
Te Matau ā Maui	4	Te Taiwhenua o Te Whanganui-a-Orotū, Iwi Chairs Forum,

Region	No. of attendees	Groups Represented
Te Papa Ahurewa, Te Arawa Lakes Trust (continued)	12	Tūhourangi Tribal Authority, Te Papa Ahurewa, Ngāti Rangitahi
Taheke 8C - The Proprietors of Taheke 8C and Adjoining Blocks (Inc)	3	Taheke 8C, Ngāti Pikiāo
Ngāti Whanaunga	2	Ngāti Whanaunga
Waikato-Tainui	32	Waikato-Tainui, Marokopa Pā, Ngāti Tara Tokanui Trust, Ngāti Tamaoho, Maniapoto Māori Trust Board, Ngā Muka, Development Trust, Mangaiti Trust, Patutuna Trust, Te Taniwha o Waikato, Te Whakakitenga o Waikato, Hokioi builders, Whetū Consultancy Group, Buddle Findlay, Waikato Endowed Colleges, Bell Gully, Te Huia Consultants Ltd, Kāhui Legal, Hauāuru ki Uta Regional Management Committee
Papa Pounamu session 1	50	Bay of Plenty Regional Council, Auckland Council, Clutha District Council, Tasman District Council, Palmerston North District Council, New Plymouth District Council, Te Mana o Ngāti Rangitahi Trust, Taranaki Iwi Trust, Rongowhakaata Iwi Trust, Te Whānau ā Apanui, Ngāti Tahu, Ngāti Whaoa, Te Runanga o Ngāti Rārua, Tātau Tātau o Te Wairoa, Ngāi Te Rangi, Ngāti Toa, Ngāti Raukawa, Ngāti Hine, Ngāti Porou, Te Whānau ā Apanui, Te Wairoa, PSGE, Kete Planning Consultancy, Conroy Donald Consultants, Whetu Consultancy Group, Manaaki Whenua - Landcare Research, Lincoln University, Independent Māori Statutory Board, Whakatane / Kaikoura Associations, Papa Pounamu
Papa Pounamu session 2	55	Bay of Plenty Regional Council, Hutt City Council, New Plymouth District Council, Tasman District Council, Auckland Council, Te Mana o Ngāti Rangitahi, Te Arawhiti, Ngā Rauru, Ngāti Porou, Te Whānau ā Apanui, Te Ātiawa Manawhenua Ki Te Tau Ihu Trust, Rongowhakaata Iwi Trust, Ngāti Ranginui, Ngāi Te Rangi, Te Rūnanga o Ngāti Rārua, Te Arawa, Tainui, Te Whānau ā Apanui, Ngāti Porou, Maniapoto Māori Trust Board, Ngāitai Iwi Authority, Ngāti Rangitahi, Te Runanga o Ngā Wairiki Ngāti Apa, Te Parawhau Resource Management Group, World Wildlife Fund NZ, Lincoln University, Victoria University of Wellington, Kāhu Environmental, Kauati Ltd, Papa

Region	No. of attendees	Groups Represented
		Pounamu, Ministry of Housing and Urban Development, Department of Internal Affairs
Papa Pounamu session 3	35	Palmerston North District Council, Bay of Plenty Regional Council, Auckland Council, Ngāi Tahu, Te Uri o Hau, Rongowhakaata Iwi Trust, Ngāti Whātua, Ngāti Ranginui, Ngāti Te Rangi, Papa Pounamu, Kauati Ltd, Tangata Whenua Consultancy, Tauranga Moana Biosecurity Forum, Kete Planning Consultancy, Smart Growth
Ngāi Tahu	19	Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ngāi Tahu, Te Runanga o Kaikoura, Ngāti Waewae, Kāti Huirapa Rūnaka ki Puketeraki, Wairewa Runanga, Megen McKay Consulting Limited, Te Ao Marama Inc, Te Rūnanga o Ōtākou/Aukaha (1997) Ltd, Te Rūnanga o Waihao, Te Puna o Mata-au, Ōnuku Rūnanga, Te Ao Marama Inc, Hokonui Rūnanga - Kaupapa Taiao
Te Taitokerau	29	Ngā Kaitiaki o Ngā Wai Māori, Ngāti Awa, Ngāpuhi, Te Oti George and Haara Kingi Whānau Trust, Te Pouwhenua o Tiakiriri Trust, Te Rae Ahuwhenua Trust, Ngāti Rangi, Patuharakeke Te Iwi Trust, Te Rae Ahu Whenua Trust, Waipapa, Opahi, Whangaroa Papa Hapū, Ngā Tīrairaka o Ngāti Hine, Ngāti Kopaki, Te Puna Tōpū o Hokianga Trust, Landform Consulting Limited, Te Puni Kōkiri, Kahukuraariki Trust, Matauri X Incorporation, Ruapekapeka Māori incorporation, Oromahoe 18R2B2B2 Trust, Waitangi water catchment group – Northland Regional Council, Tapaetahi Incorporation, ART Consultancy, Landform Consulting Ltd, Te Uri o Hau Incorporation
Raukawa	13	Raukawa Charitable Trust, Ngāti Huia, Raukawa, Waikarakia 6B2B Trustees, Ngāti Huri nō Raukawa, Ministry of Primary Industries
NZMC hui 1	28	Ngāraratunua Kamo Māori Committee, Puhipuhi Waotu Māori Committee, Te Paatu ki Kauhanga Trust Board, Tiaki Taiao o Muriwhenua and Te Paatu ki Kauhanga Trust, Whatitiri Māori Reserves Trust & Whatitiri, Resource Management Unit for hapū Te Uriroroi, Te Parawhau, Te Mahurehure ki Whatitiri & Maungarongo Marae, Maungataniwha ki Rangaunu Trust Kaitaia, Māori Disability, Te Orewai Ngāti Hine, Ngā Kaitiaki o Ngā Wai Māori, collective of 7 hapū from the Wairoa catchment, Pakanae Combined Māori Committee from Omapere/Opononi, Akerama Marae, Ngāti Hau

Region	No. of attendees	Groups Represented
NZMC hui 2	36	New Zealand Māori Council, Tāmaki ki te Tonga, Mangatangi Māori Kōmiti, Tāmaki Makaurau DMC, Hauraki DMC
Ngā Kairapu	16	Bay of Plenty Regional Council, Greater Wellington Regional Council, Environment Canterbury, Otago Regional Council, Taranaki Regional, Waikato Regional Council, Gisborne District Council

Engagement with sector stakeholders (including environmental non-government organisations)

12. The following engagement fora were completed during November and December 2021.
13. MfE ran three information sessions for groups, with one covering the wider sector. Officials also presented at information sessions hosted by the New Zealand Planning Institute and the Resource Management Law Association (RMLA) for their members. Over 1100 people attended.
14. Officials attended the sector CE's forum and the Resource Reform Group and agreed to follow up in February with more targeted engagement for the primary sector and ENGOs.

Meeting	Number of non MfE attendees	Groups represented
Sector Information Sessions (2)	524	Infrastructure, and engineering companies, primary sector, ENGO (environmental non-government organisations). Some local government participation.
RMLA (Resource Management Law Association) Information Session	250	RMLA members
NZPI (New Zealand Planning Institute) Information Session	364	NZPI members
Sector CE's Forum	21	Infrastructure NZ, Business NZ, The Property Council NZ, EMA, Resource Management Law Association, NZ Planning Institute, NZ Infrastructure Commission, Environmental Defence Society, Forest and Bird, Fish and Game, Transpower, Federated Farmers, HortNZ, Straterra, Engineering NZ, Network Utilities Forum, Electricity Sector Environment Group, NZ Rock Lobster Council, NZ Airport Association, Food and Fibre Leaders Forum and Water NZ Engineering Leadership Forum

Resource Reform Group (Property Council, EMA, Infrastructure NZ)	6	Infrastructure NZ, Property Council NZ and Employers and Manufacturers Association
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Submissions received

15. Below is a breakdown of submissions received by submitter type:

Submitter Type	Number received
Local government	36
Hapū, iwi, Māori	93
Infrastructure	6
Primary sector	4
Industry professional organisation	7
ENGO	3
Business	2
Total	151

Agenda – RM Reform Ministerial Oversight Group Meeting #17

Date: Tuesday 12 April 2022, 5pm-6pm

Location: Zoom

Chair: Hon Grant Robertson, Minister of Finance

Deputy Chair: Hon David Parker, Minister for the Environment

Attendees: Hon Kelvin Davis, Minister for Māori Crown Relations: Te Arawhiti

Hon Dr Megan Woods, Minister of Housing

Hon Nanaia Mahuta, Minister of Local Government

Hon Poto Williams, Minister for Building and Construction

Hon Damien O'Connor, Minister of Agriculture

Hon Willie Jackson, Minister for Māori Development

Hon Michael Wood, Minister of Transport

Hon Kiritapu Allan, Minister of Conservation, Associate Minister for the Environment and Associate Minister of Culture and Heritage

Hon Phil Twyford, Associate Minister for the Environment

Hon James Shaw, Minister of Climate Change

Time	Agenda item	Lead speaker	Relevant paper
5.00pm-5.20pm	1. Regional governance and decision-making	Minister for the Environment	Regional governance and decision-making for plans in the reformed resource management system
5.20pm - 5.40pm	2. Role of Māori in the system	Minister for the Environment	Role, funding and participation of Māori in the RM system
5.40pm - 6pm	3. NBA decision-making framework, including Environmental Limits	Minister for the Environment	NBA decision-making framework, including environmental limits and targets

MOG #17 overview

Purpose

1. This paper introduces the decisions sought at the seventeenth meeting of the Ministerial Oversight Group (MOG) on regional governance and decision-making, the role of Māori in the system and the decision-making framework for the Natural and Built Environments Act (NBA), including environmental limits and targets.

Key messages

2. At MOG #15b officials provided an overview of decisions made to date, illustrated how the system would work using the diagram in Figure 1, and outlined the anchor point decisions remaining for the MOG.

Figure 1 Diagram of new RM system.



3. MOG #17 seeks agreement on the remaining policy proposals related to the anchor points. Figure 2 below shows how the three MOG #17 papers relate to those anchor points.

Figure 2 Anchor points agreed at MOG #15b

<p>Effective Māori participation across the system, including:</p> <ul style="list-style-type: none"> • <u>membership</u> of Māori on regional joint committees • <u>incorporation</u> of mātauranga Māori in environmental limits • <u>ensuring</u> the system: <ul style="list-style-type: none"> - upholds Treaty settlements and RMA arrangements - preserves options for rights and interests in allocation in freshwater 	<p>The planning system will be:</p> <ul style="list-style-type: none"> • <u>centrally</u> supported and directed through the National Planning Framework • <u>regionally</u> determined by autonomous joint committees at the regional level • <u>locally</u> informed by community voice 	<p>System efficiency:</p> <ul style="list-style-type: none"> • earlier more <u>strategic planning</u>, and greater use of standards, reduces uncertainty, volume of consenting, and costs on end users • <u>performance metrics</u> are developed and tracked, with effective accountability 	<p>Moving from reactive effects-based to strategic outcome-based planning built around:</p> <ul style="list-style-type: none"> • <u>environmental limits</u> set wherever necessary, built into the system and achieved • <u>development within those limits</u> made more certain and decisions made more efficiently • <u>maintaining progress</u> on existing policies (eg, freshwater, housing, aquaculture, climate)
<p>Paper 1: Regional governance and decision-making</p>		<p>Paper 2: Role of Māori in the system</p>	
		<p>Paper 3: NBA decision-making framework</p>	

4. MOG #16 progressed landing these anchor points. In particular:
 - a. **Planning system:** central government was confirmed as a participant in making Regional Spatial Strategies (RSSs) under the Strategic Planning Act (SPA)
 - b. **Effective Māori participation across the system:** the approach to preserving options for addressing Māori rights and interests in freshwater allocation was agreed
 - c. **Moving from reactive effects-based to strategic outcome-based planning:** the overall framework for environmental limits and targets was agreed
 - d. **System efficiency:** the principles for transitional provisions were agreed including that they shall provide certainty, clarity and clear instruction for system implementers and users, and that where practicable the transition should enable the outcomes of the new system to be realised rapidly.
5. The objectives set by Cabinet¹ for resource management (RM) reform aim to improve outcomes for the natural environment; urban development and infrastructure; the recognition of Māori and giving effect to the principals of Te Tiriti o Waitangi (Te Tiriti); climate change and natural hazards; and improving system efficiencies. MOG #17 seeks decisions on foundational aspects of the new RM system that will support achieving these objectives and the remaining components of the anchor points.
6. **Paragraphs 13 to 33** below set out the detailed decisions sought by each paper at MOG #17, but at a high level, and in reference to the anchor points above:
 - a. **Planning system and effective Māori participation across the system:** we need to decide how Māori will participate at different points in the system. This includes how Māori will be part of the significant strategic decisions within the system both nationally and regionally, as well as supporting Māori to participate in planning processes such as consenting, compliance and monitoring.
 - b. **Moving from reactive effects-based to strategic outcome-based planning:** we need to provide more clarity to decision-makers, to support them in the shift to an outcomes-based system. This clarity is provided through refining the purpose of the NBA, including Te Oranga o te Taiao, providing guidance on the application of Te Tiriti clause, clarifying the role of limits and targets, refining the outcomes and providing tools to support resolving conflicts between them – including principles to guide decision-making.
 - c. **System efficiency:** we need to clarify that decision-making in the new RM system should enable decision-making processes at each level of the system be more efficient, by removing ambiguity that currently exists in the system.

MOG #17 Decisions

7. MOG #17 seeks decisions on:
 - a. regional governance and decision-making for plans in the new resource management system, including the composition of SPA and NBA committees
 - b. the role of Māori in the system including the membership, appointment, funding, roles for Māori participation at a national level (through the National Planning Framework (NPF))
 - c. the NBA decision-making framework, including environmental limits and targets.

8. Recommendations relating to the role of Māori and the composition of SPA and NBA committees should be considered in the context of the range of mechanisms that will be in the new legislation such as:
 - a. a Treaty clause which requires those exercising powers or performing functions and duties under the SPA and/or NBA to give effect to the principles of te Tiriti o Waitangi
 - b. the inclusion of te Oranga o te Taiao in the purpose of the Acts to better recognise te ao Māori
 - c. inclusion of mātauranga Māori at all levels of the new RM system
 - d. a commitment to uphold the integrity of relevant Treaty settlements and agreements under the Resource Management Act 1991 (RMA) between councils and Māori.
9. Through the RMA, its predecessor statutes and the new SPA and NBA, central government (through Parliament) delegates to local authorities the power to make planning laws – subject to the direction of the law and the NPF.
10. In doing so central government is delegating Te Tiriti o Waitangi (Te Tiriti) Article 1 rights. Planning has significant impacts on the allocation of scarce resources (eg the use of forests, fisheries, water, flora, fauna and taonga) and clearly engages Te Tiriti Article 2 interests for Māori. It also engages Article 3 issues for Māori and non-Māori, with rights of all being represented via democratically elected councils and, for the SPA committees, central government.
11. The reform of the RM system is a good opportunity (as identified in the Resource Management Review Panel's (the Panel) report) to provide for a RM system that gives effect to the principles of the Te Tiriti.
12. In considering how to do that, we have been mindful of the need to consider kāwanatanga rights and responsibilities, as well as rangatiratanga rights and responsibilities; together with the rights of all New Zealanders.

Paper 1: Regional governance and decision-making for plans

13. Regional collaboration as the basis for making decisions on plans and strategies will be a key new feature of the new RM system. The proposed joint committee model brings together local government, iwi/hapū/Māori, and central government (for regional spatial strategies) as joint decision-makers.
14. This paper seeks decisions on the proposed joint committee memberships for the RSS and NBA committees established as statutory bodies under the SPA and NBA with autonomous decision-making powers.
15. This paper also recommends that the 'Strategic Planning Act' should instead be named the 'Spatial Planning Act' to better reflect the purpose of the legislation.
16. The Panel recommended that NBA plans should be prepared by regional committees, with members of local government, mana whenua, and for RSS committees also the addition of central government representation. The Panel recommended that the joint committee model would enable a greater strategic role for Māori in the new system.
17. It is recommended that the membership of SPA and NBA committees is determined by regionally led process, as each regions have different circumstances.
18. As decision-making for RSS and NBA plans will move away from local authorities, it is recommended that roles and accountability must be clear in the legislation. It is

proposed that the legislation will provide pathways for local authorities and Māori to work collaboratively at a local level, however its success will rely on good will.

19. It is recommended that the committees will also be serviced by a secretariat who will be responsible for supporting the SPA and NBA committee and bringing staff from local authorities, Māori and central government (for SPA only) to draft the SPA strategies and NBA plans.

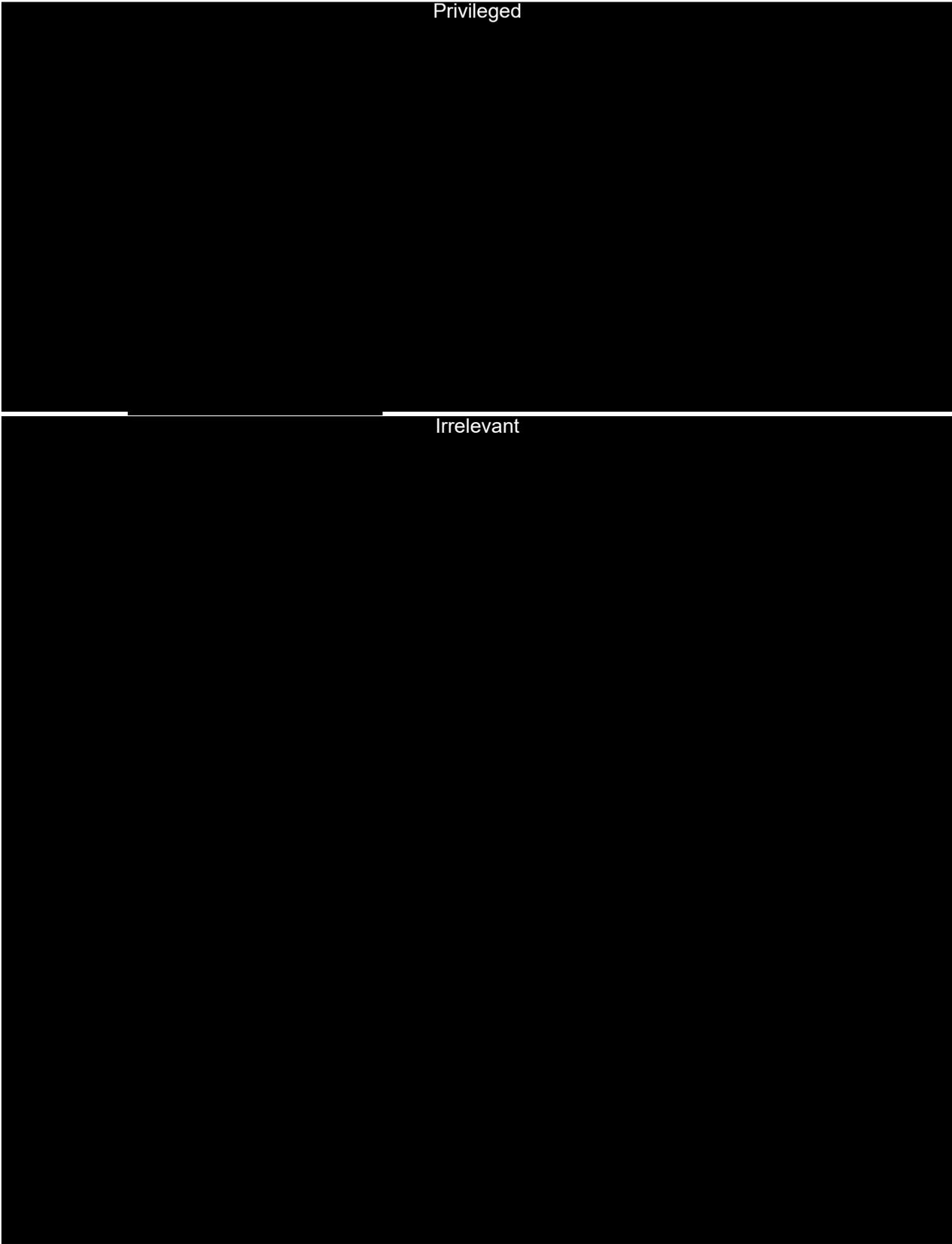
Irrelevant

Paper 2: Role of Māori in the system

21. This paper seeks decisions on Māori participation at the national, regional, and local levels of the new RM system, with a focus on what roles for Māori should be provided, who should participate and collaborate, and funding for Māori participation.
22. The Panel made several recommendations to strengthen the Te Tiriti o Waitangi clause, such as enhancing existing mechanisms, creating new mechanisms, and enhancing financial support for Māori participation.
23. At the national level, it is recommended that a national Māori entity is established to fulfil a range of functions, including to:
- e. monitor Te Tiriti performance
 - f. have input in to the NPF
 - g. make nominations for appointments to the NPF Board of Inquiry.
24. There are also proposed to be opportunities for Māori to participate in the development of the NPF through engagement with iwi/hapū/Māori and the input of mātauranga Māori experts to inform national scale limits and targets.
25. At a regional level, it is recommended that Māori will have roles and functions in SPA and NBA committees to oversee the preparation of, and approve, RSSs and NBA plans. This paper recommends the process for appointing Māori members to the SPA and NBA committees.
26. At a local level, it is proposed that Māori will continue to play a role making cultural impact assessments, participation as affected parties and in resource consenting where agreed in an NBA plan. Māori will also have specified roles through Treaty settlements and processes such as enhanced Mana Whakahono ā Rohe and Joint Management Agreements.

Irrelevant

Privileged



Irrelevant

MOG #17 Recommendations

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

1. **agree** to change the name of the proposed 'Strategic Planning Act' to the 'Spatial Planning Act' to better reflect the purpose of the new legislation
2. **agree** to establish joint committees (committees) under the Spatial Planning Act (SPA) for preparation of regional spatial strategies (RSSs) comprising local government, Māori, and central government members
3. **agree** to establish joint committees (committees) under the Natural and Built Environments Act (NBA) for preparation of the NBA plan comprising local government and Māori members
4. **agree** that the SPA committee and the NBA committee will be two separate committees with different functions, but that this does not preclude overlapping membership across the two committees
5. **note** that the primary function of the SPA committee will be to oversee the development of and approve an RSS for the region, and that previous MOG decisions have agreed detailed functions for the SPA committee
6. **note** that the primary function of the NBA committee will be to prepare and approve an NBA Plan for the region, and that previous MOG decisions have agreed detailed functions for the NBA committee
7. **agree** that the SPA and NBA committees will be standing committees and have on-going roles in the system including monitoring functions for plans
8. **agree** that the committee members will have a general duty to work collectively to achieve the purpose of the relevant Act across the region
9. **agree** that each committee will be established as a new statutory body under the SPA or NBA and are not subordinate decision-making structures to local authorities
10. **agree** that in practice SPA and NBA committees will operate as committees of all the local authorities in the region, hosted by one council, and that the host council will have no greater or lesser powers in relation to the committee than any other local authority in the region
11. **agree** that as part of composition discussions (as set out below), local authorities and iwi and hapū representative organisations will consider which local authority is best placed to be the host council, and that if unanimous agreement from the local authorities cannot be reached this role will default to the regional council
12. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to clarify the functions and powers of the SPA and NBA committees and local authorities, and operationalise the host council role, including the relationship with the director of the secretariat (as set out below)
13. **agree** that the SPA committee prepare an RSS covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them

14. **agree** the NBA committee prepare an NBA plan covering all local authorities in the region, with local authorities retaining responsibility for implementing and administering them
15. **agree** that the existence of the SPA and NBA committees does not affect the member councils' statutory obligations
16. **agree** that the SPA and NBA committees are to have legal autonomy to initiate and defend legal actions in relation to the performance of their functions and duties
17. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to ensure the policy intent is also delivered in the context of unitary authorities (including Auckland Council)

PART B: COMPOSITION AND APPOINTMENTS

18. **agree** that the composition and size of the SPA and NBA committees should support effective decision-making and efficient functioning, with a minimum of 6 members prescribed in the legislation
19. **agree** that all local authorities in a region will be entitled to appoint a member on the SPA and NBA committees, but can choose not to be directly represented
20. **note** that the regions vary in numbers of local authorities, ranging from 4 local authorities in the West Coast and Southland regions to 12 local authorities in the Waikato region
21. **agree** that
EITHER
 - a. the SPA and NBA committees must have a minimum of 2 seats appointed by Māori;
 OR
 - b. the SPA and NBA committees must have a minimum proportion of seats appointed by Māori
22. **note** that if Ministers' preference is for option b under recommendation 21 above, then further decisions will be required to confirm the proportion to be specified in the legislation
23. **agree** that when determining composition of SPA and NBA committees, the following issues should be considered:
 - a. ensuring that urban, rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes
 - b. ensuring that the iwi, hapū, and Māori in the region are appropriately reflected in membership of the committee
24. **note** the above parameters could be supported by non-statutory guidance that could support establishment and appointment to committees
25. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the composition of committees in recommendation 21 and on the parameters in recommendation 23
26. **agree** that SPA committees will have one central government representative appointed by the Minister/s responsible for administering the SPA
27. **note** that decisions on composition arrangements in regions are subject to on-going discussions with Post-Settlement Governance Entities (PSGEs) in relation to existing

Treaty settlement commitments, and with the relevant entities in relation to existing natural resource arrangements under the Resource Management Act 1991 (RMA)

28. **note** that MOG #7 and #8 agreed that the future system will need to provide mechanisms to uphold the intent and integrity of arrangements established via Treaty settlements and natural resource arrangements under the RMA, and that decisions on these arrangements are delegated to a sub-set of Ministers
29. **note** that any cost implications of mechanisms to uphold Treaty settlements and natural resource arrangements under the RMA have not been provided for in the Budget 22 process and would need to be considered as part of policy decisions, in discussion with the Minister of Finance and the Minister of Māori Crown Relations
30. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations¹ in the region seek to agree on a composition arrangement for the SPA joint committee, including:
 - a. the host council
 - b. the number of members of the SPA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
31. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:
 - a. the host council
 - b. the number of members of the NBA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
32. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans
33. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees
34. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:
 - a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress, and
 - b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement
35. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC

¹ *Paper 1: Role, funding and participation of Māori in the RM system* explains what this term means and how Māori will be participate in composition and appointment processes.

36. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met
37. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:
 - a. the host council
 - b. the number of members of the joint committee
 - c. the appointing bodies who can appoint the members
38. **agree** that the LGC will then publish its determination or decision on the committee composition
39. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions
40. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 35 above
41. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council
42. **agree** that the appointing bodies will be required to have an appointment process, but the legislation will not specify what this appointment process will be for local government and Māori seats
43. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments
44. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees
45. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making
46. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)
47. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments
48. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

Irrelevant

additional provisions required and any other matters relating to interactions with or consequential amendments to the LGA or where the decision relates to the role of the LGC or local authorities.

Paper 2: Role of Māori in the system

The Ministerial Oversight Group (MOG) is recommended to:

Context, analytical approach, who participates, Treaty impact analysis (see Annex A for supporting analysis)

Context and prior decisions

1. **note** that the Resource Management Review Panel (the Panel) identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and made a number of recommendations relating to more effective and strategic roles for Māori in the new system, and better consistency with the principles of Te Tiriti o Waitangi (Te Tiriti)
2. **note** that the proposals set out in the suite of accompanying papers (Annex 0 to E) broadly align with the Panel's recommendations (with one exception as set out in recommendation 6 below)
3. **note** that previous MOG decisions influence the framing for the recommendations in this paper, with significant ones relating to the role of the National Māori Entity, approach to "who" participates at different levels, and how Māori will be supported to participate in the system

Who from te ao Māori participates across the system

4. **note** that, in general, proposals aim to provide for iwi/hapū/Māori to self-identify who will represent them in resource management (RM) processes. However, the proposals also recognise that in some cases more specificity is required to ensure that:
 - a. there is clarity about which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
 - b. the Crown sets up processes that avoid or resolve conflict
 - c. the system is able to function effectively and efficiently and in accordance with its policy intent
 - d. Treaty settlements and other existing natural resource arrangements under the RMA are upheld
5. **note** that the proposals for 'who' from te ao Māori participates across the system provide for
 - a. roles for iwi and hapū, including in relation to composition and appointment processes for NBA and SPA committees
 - b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space and resource 'at place'⁶

⁶ Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

- b. iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities⁸ representing rights and interests ‘at-place’⁹ in agreeing composition and identifying appointing bodies
 - c. there will be requirements to maintain a record of engagement on composition and appointment discussions and to make this record publicly available
 - d. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations, can also be appointing bodies
 - e. appointing bodies must be enduring and capable of developing and executing their own appointment and removal processes
57. **note** that this approach does not preclude the creation, outside of statute, of a regional forum or other mechanisms to support appointee accountability, help reach agreed positions, and resolve disagreements
58. **note** that once appointments are made, the Māori members on SPA and NBA committees (like local authority members) will be paid for their services by the committees
59. **authorise**:
- a. the Minister for the Environment and the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) to make any other decisions needed on the ongoing role and functions of appointing bodies, details of dispute resolution (including facilitation) and circuit-breaker processes for Māori appointments; and
 - b. the Minister of Finance (Hon Grant Robertson), in conjunction with the Ministers listed in 53 a, to make decisions where these policy decisions have financial implications

Secretariat

60. **note** that Paper 1: Regional Governance seeks agreement to the functions and responsibilities of the Secretariat Director and the Secretariat
61. **authorise** the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat, including any additional legislative and non-legislative measures that may be required to support the role for Māori in the secretariat

Upholding Treaty settlements, Takutai Moana rights and other existing arrangements

62. **note** that the Crown has committed to upholding Treaty settlements, Takutai Moana rights, rights under Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019 and other existing natural resource arrangements under the RMA, and that:
- a. some existing arrangements through Treaty settlements or the RMA enable or provide for joint development between iwi/hapū, PSGEs and local authorities of aspects of regional and district planning documents, or decision-making on the same

⁸ See recommendation 7.

⁹ Note ‘at place’ is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term ‘at place’ will be used in the legislation.

- b. the future system will need to provide mechanisms to uphold the intent and integrity of those arrangements established via Treaty settlements and/or under the RMA (including co-governance, joint management, and arrangements for the development of regional planning documents)
- c. decisions on composition arrangements in regions are also subject to on-going discussions with affected parties in relation to upholding existing commitments and may require further policy decisions to provide for additional direct representation of those parties on SPA and/or NBA joint committees or sub-committees
- d. these matters will require further delegated decisions (refer to MOG #15 delegated decision making for Treaty settlements; RMA arrangements; Takutai Moana rights and Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019)

Treaty Partnership Entities

- 63. **agree** to rescind the decision at MOG #11/12 that “Treaty Partnership Entities will be enabled to support SPA and NBA committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements”
- 64. **note** that no further action be taken at this time in relation to providing for Treaty Partnership Entities¹⁰ as a mechanism to provide for iwi/hapū/Māori at a local level to have input into plan development
- 65. **note** that, to support upholding existing Treaty settlement arrangements and natural resource arrangements under the RMA, where the existing arrangement relates to a specific entity and a local authority working together to produce a plan or strategy that is akin to a plan or strategy prepared by NBA/SPA committee (or part thereof), that arrangement may be transferred from the local authority to the NBA/SPA committee

Local decision-making and existing mechanisms to support the incorporation of the views of Māori at place (see Annex D for supporting analysis)

Māori participation in plan-making and resource consenting – Engagement Agreements

- 66. **agree** that the SPA and NBA legislation provide for “Engagement Agreements”, which:
 - a. can be formed between iwi and hapū representative organisations, Coastal Marine Title (CMT) holders (as well as other Māori entities where relevant), and SPA and/or NBA committees (or a combination thereof)
 - b. will include agreement between the relevant groups on:
 - i. how engagement will be undertaken
 - ii. funding for the iwi, hapū or Māori entity to undertake engagement

¹⁰ Note ‘Treaty partnership entities’ refers to a proposal put to Ministers at MOG #11/12 for arrangements that would “be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements” by enabling a new, or continuing an existing, contributing or sub-committee structure that relates to RSS or NBA plan making and linking to this to the SPA and/or NBA committee instead of to local authorities (where a number of existing arrangements link to).

Agenda item 1:

Regional governance and decision-making for plans in the reformed resource management system

Summary slides

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Background information

The introduction of regional spatial plans under the SPA and the regionalisation of planning under the NBA requires new regional governance and decision-making arrangements.

- The Resource Management Review Panel (the Panel) proposed regional plan-making for the reformed resource management (RM) system, recommending a joint committee model bringing together local government, Māori, and central government (for Regional Spatial Strategies (RSSs)) as joint decision-makers on plans.
- At MOG #8 Ministers agreed that officials would use the joint committee model as the framework for option development.
- Regionalising plan-making is an essential part of the reforms. As noted at MOG #11/12 it is critical that the arrangements are viewed as legitimate to support successful implementation of the reforms. On a population basis, the new combined units for regional plan-making will still be relatively small compared to many overseas jurisdictions.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Balancing various objectives

The paper recommends a package of proposals for the establishment and operation of joint committees under the SPA and NBA.

The package is designed to take account of a number of different objectives and should be considered as a whole

- The overarching objective of these proposals is to ensure the governance arrangements support effective decision-making.
- The joint committees and their decisions must be seen as legitimate to support efficiency throughout the entire system.
- Legitimacy is enhanced by:
 - Flexibility to accommodate New Zealand's diverse regions
 - Effective local democratic input and accountability
 - Effective role for Māori in decision-making
 - Workable arrangements that support effective³ decision-making and system efficiency

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Accommodating regional diversity

Key choice: How prescriptive should the legislation be and what should be left to the regions to determine for themselves?

- Enabling regions to determine arrangements that best reflect their circumstances will enhance legitimacy of the joint committees.
- However, pushing all the toughest calls to the regions risks protracted debates, which could undermine legitimacy, risk relationships with Treaty partners, and prolong transition and implementation. Treaty settlement obligations also need to be addressed.
- It is recommended that the legislation provides parameters on matters such as composition of joint committees but remains flexible enough to allow for the different circumstances across New Zealand's regions.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Ensuring local democratic input & accountability

Key choice: What should the legislation prescribe for representation of local authorities on the joint committees?

- Local authorities will be principally accountable for funding the development of the plans, and for implementing them. The joint committees will be exercising delegated public power to write law through planning rules in NBA plans. It is appropriate that lines of electoral accountability are maintained.
- To support local democratic input, it is recommended that the design of the joint committees allow for direct representation for all local authorities in a region. Local authorities can agree to have a shared appointee but don't have to.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Ensuring an effective role for Māori

Key choice: What should the legislation prescribe to provide for joint committee composition, particularly for Māori members on the committees?

Māori participation is core to the joint committee proposals and the design of the committees is important for delivering the reform objective of giving effect to the principles of te Tiriti o Waitangi.

- An effective role for Māori in decision-making is important to giving effect to the principles of the Treaty and therefore:
 - The statutory parameters for determining composition should provide a minimum level of Māori membership (but not maximum) on the joint committees.
 - The decision-making process of the joint committees should support consensus and partnership.
 - The joint committees should not be able to delegate decisions on plans, with some exceptions including to uphold treaty settlements.
 - The joint committees should have autonomy in decision-making.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Workability and system efficiency

Key judgement: Devolving decisions to the regions about composition and size of committees (supported by parameters), will support legitimacy of the committees and their decisions, which is important for the efficiency of the overall system.

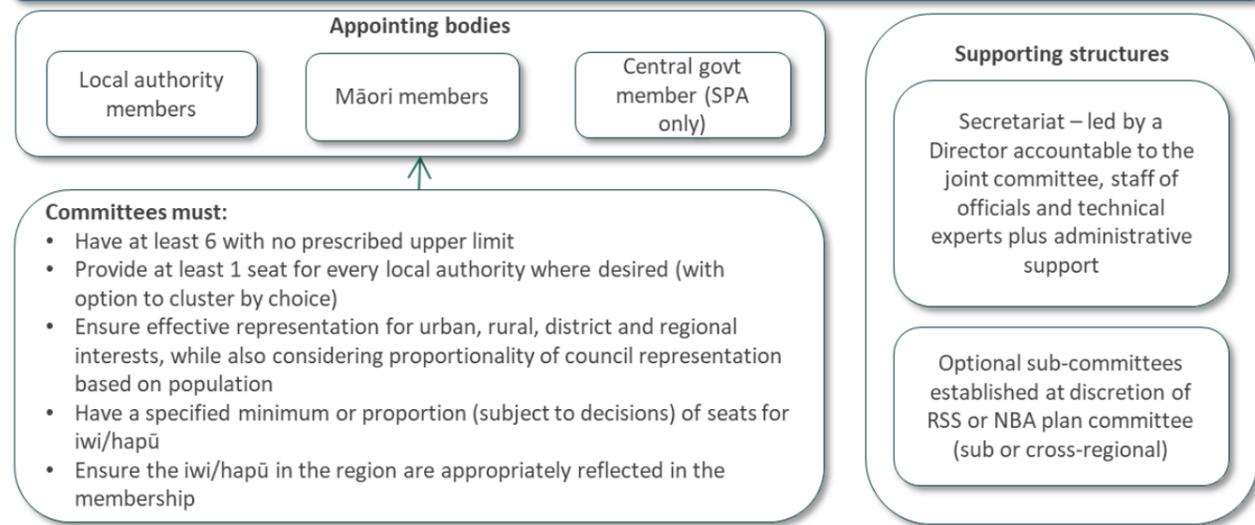
- The arrangements must be workable and support effective and efficient decision-making, but efficiency must avoid shifting the time and cost elsewhere.
- There is a risk of delay through allowing regions to determine their own joint committee composition. However, officials judge that this will support decisions with high legitimacy which is important for overall system efficiency.
- To manage this risk, the proposals include statutory timeframes and dispute resolution pathways.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Summary of proposals

SPA and NBA committees

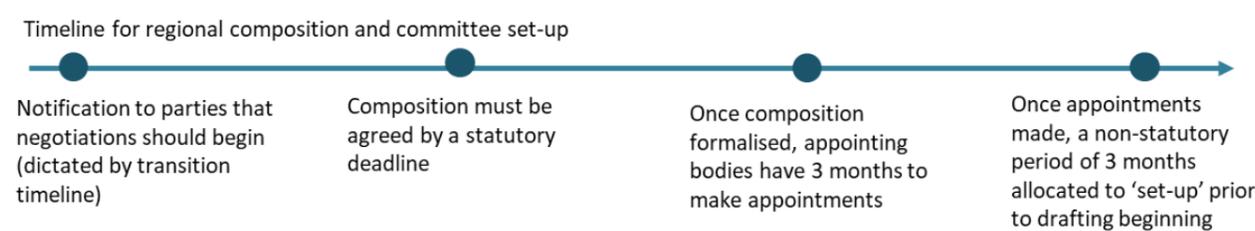
Statutory bodies formed under the SPA and NBA as committees of all councils, hosted by a single local authority



Summary of recommendations (MOG#17)

	SPA committees	NBA committees
Function and form	Committee with local government, Māori and central government representatives – to prepare and approve a Regional Spatial Strategy (RSS)	Committee with local government and Māori representatives – to prepare and approve a NBA plan
Composition and appointments	Local authorities and iwi and hapū representative organisations to agree composition of their SPA committee by a statutory deadline. Composition formalised by the Local Government Commission before appointments made (including central government appointment)	Local authorities and iwi and hapū representative organisations to agree composition of their NBA committee by a statutory deadline. Composition formalised by the Local Government Commission before appointments made.
Decision-making	Committee makes final (autonomous) decisions on strategies and can establish sub-committees to provide advice. Committee must strive for consensus, with voting backstop. If disputes, committee to use mediation before referral to the responsible Minister to make the decision or appoint independent commissioner.	Committee makes final (autonomous) decisions on plans and can establish sub-committees to provide advice. Committee must strive for consensus, with voting backstop. If disputes, committee to use mediation before referral to the responsible Minister to appoint independent commissioner (Minister cannot make the decision themselves).
Resourcing the committee	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.

Regionally driven process to establish committees



Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Challenges and risks

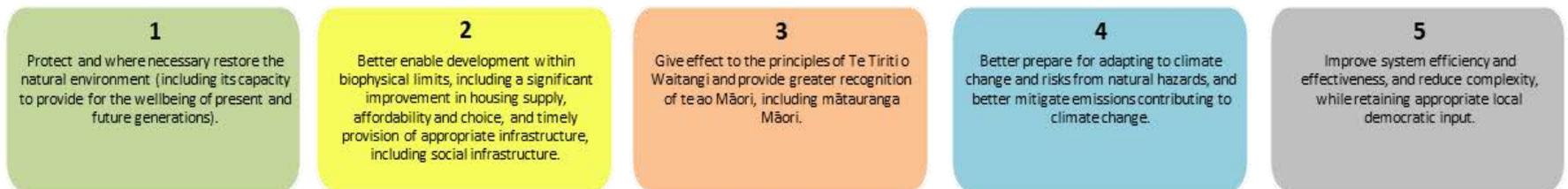
This package of recommendations will support good governance and effective decision-making. However, the proposals are not without risk.

- These arrangements will require strong relationships between local authorities and Māori. The legislation will include provisions to support this and provide pathways for dispute resolution, but success will rely on implementation and goodwill.
- In shifting final decision-making on plans to joint committees, it is important that roles and accountabilities of local authorities are clear.
- The Local Government Steering Group has proposed Statements of Community Outcomes from each council could guide joint committees to meet local needs. Joint committees will need to consider many different factors in making their decisions, and their Chairs will have an important role to play in making the committees work well and reach decisions.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Reform objectives and outcomes

Reform objectives agreed by Cabinet



- Effective governance and decision-making is important for delivering all reform objectives.
- The proposed arrangements give effect to the principles of Te Tiriti by establishing an effective role in decision-making for Māori and local authorities, in both strategic and regulatory matters across the regions.
- The arrangements seek to improve system efficiency and effectiveness by ensuring that plans have a high degree of legitimacy, ensuring that local democratic input remains central to the process.

Agenda item 1: Regional governance and decision-making for plans in the reformed resource management system

Discussion points

- How prescriptive should the legislation be? What should be left to the regions to determine for themselves?
- What should the legislation prescribe to provide for committee composition, particularly for Māori membership on the committees?
- What should the legislation prescribe for local authorities' membership on the committees?
- Is there agreement that devolving decisions to the regions about composition and size of committees (supported by parameters), will support legitimacy of the committees and their decisions, which is important for the efficiency of the overall system?
- It is proposed that committees will be required to make every effort to reach consensus – but what is an appropriate backstop voting rule for when consensus fails?
- Do the proposed secretariat arrangements strike the right balance between providing flexibility for the regions, and ensuring that the right expertise is available to the committees to support strategy and plan making?

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

Key messages

- Regional collaboration as the basis for making decisions on plans will be a key new feature of the reformed Resource Management (RM) system. This paper seeks decisions on the proposed joint committee (the committees) model that brings together local government, iwi, hapū and Māori, and central government (for regional spatial plans) as joint decision-makers under the Strategic Planning Act (SPA) (proposed in this paper to be renamed the Spatial Planning Act) and the Natural and Built Environments Act (NBA).
- In the current system decisions on Resource Management Act 1991 (RMA) plans are made by councils, with no requirements for collaboration across the region for district plans, and varying degrees of decision-making by iwi/Māori, limited mainly to regional planning.
- The design of SPA and NBA committees must take account of various factors to ensure that the committees and their decisions have legitimacy. This includes providing for effective local democratic input, accountability, and an effective role for Māori in decision-making, supporting the efficient functioning of committees, and upholding the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori.
- The paper proposes that committees will be established as statutory bodies under the SPA and NBA with autonomous decision-making powers. The function of the committees will be to prepare the plans covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them.
- The composition of the committees will be agreed following a regionally-led process, allowing the committee composition to reflect a region's specific circumstances. This process will be supported by parameters in the legislation that set guidelines and requirements for committee membership that aim to be both flexible and prescriptive.
- All local authorities in the region will have direct representation where that is their preference and Māori will have a minimum number of seats or proportion of members (subject to decisions), with the region able to agree additional members above the minimum. Committees will not have an upper size limit. Some bespoke arrangements may be required through the legislation to uphold existing Treaty settlement arrangements.
- The joint committees will be required to aim for consensus decision-making, with the legislation providing backstop majority voting roles where consensus cannot be reached.
- A SPA or NBA committee will appoint a director of their secretariat who will be responsible for providing support and bringing together staff to draft these plans, including from local authorities, iwi and hapū, Māori and central government.

Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

PART A: FUNCTIONS AND FORM

1. **agree** to change the name of the proposed 'Strategic Planning Act' to the 'Spatial Planning Act' to better reflect the purpose of the new legislation
2. **agree** to establish joint committees (committees) under the Spatial Planning Act (SPA) for preparation of regional spatial strategies (RSSs) comprising local government, Māori, and central government members
3. **agree** to establish joint committees (committees) under the Natural and Built Environments Act (NBA) for preparation of the NBA plan comprising local government and Māori members
4. **agree** that the SPA committee and the NBA committee will be two separate committees with different functions, but that this does not preclude overlapping membership across the two committees
5. **note** that the primary function of the SPA committee will be to oversee the development of and approve an RSS for the region, and that previous MOG decisions have agreed detailed functions for the SPA committee
6. **note** that the primary function of the NBA committee will be to prepare and approve an NBA Plan for the region, and that previous MOG decisions have agreed detailed functions for the NBA committee
7. **agree** that the SPA and NBA committees will be standing committees and have on-going roles in the system including monitoring functions for plans
8. **agree** that the committee members will have a general duty to work collectively to achieve the purpose of the relevant Act across the region
9. **agree** that each committee will be established as a new statutory body under the SPA or NBA and are not subordinate decision-making structures to local authorities
10. **agree** that in practice SPA and NBA committees will operate as committees of all the local authorities in the region, hosted by one council, and that the host council will have no greater or lesser powers in relation to the committee than any other local authority in the region
11. **agree** that as part of composition discussions (as set out below), local authorities and iwi and hapū representative organisations will consider which local authority is best placed to be the host council, and that if unanimous agreement from the local authorities cannot be reached this role will default to the regional council
12. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to clarify the functions and powers of the SPA and NBA committees and local authorities, and operationalise the host council role, including the relationship with the director of the secretariat (as set out below)
13. **agree** that the SPA committee prepare an RSS covering every local authority in the region, with local authorities retaining responsibility for implementing and administering them

14. **agree** the NBA committee prepare an NBA plan covering all local authorities in the region, with local authorities retaining responsibility for implementing and administering them
15. **agree** that the existence of the SPA and NBA committees does not affect the member councils' statutory obligations
16. **agree** that the SPA and NBA committees are to have legal autonomy to initiate and defend legal actions in relation to the performance of their functions and duties
17. **authorise** the Minister for the Environment and the Minister for Local Government to make further decisions required to ensure the policy intent is also delivered in the context of unitary authorities (including Auckland Council)

PART B: COMPOSITION AND APPOINTMENTS

18. **agree** that the composition and size of the SPA and NBA committees should support effective decision-making and efficient functioning, with a minimum of 6 members prescribed in the legislation
19. **agree** that all local authorities in a region will be entitled to appoint a member on the SPA and NBA committees, but can choose not to be directly represented
20. **note** that the regions vary in numbers of local authorities, ranging from 4 local authorities in the West Coast and Southland regions to 12 local authorities in the Waikato region
21. **agree** that
EITHER
 - a. the SPA and NBA committees must have a minimum of 2 seats appointed by Māori;
 OR
 - b. the SPA and NBA committees must have a minimum proportion of seats appointed by Māori
22. **note** that if Ministers' preference is for option b under recommendation 21 above, then further decisions will be required to confirm the proportion to be specified in the legislation
23. **agree** that when determining composition of SPA and NBA committees, the following issues should be considered:
 - a. ensuring that urban, rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes
 - b. ensuring that the iwi, hapū, and Māori in the region are appropriately reflected in membership of the committee
24. **note** the above parameters could be supported by non-statutory guidance that could support establishment and appointment to committees
25. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions relating to the composition of committees in recommendation 21 and on the parameters in recommendation 23

26. **agree** that SPA committees will have one central government representative appointed by the Minister/s responsible for administering the SPA
27. **note** that decisions on composition arrangements in regions are subject to on-going discussions with Post-Settlement Governance Entities (PSGEs) in relation to existing Treaty settlement commitments, and with the relevant entities in relation to existing natural resource arrangements under the Resource Management Act 1991 (RMA)
28. **note** that MOG #7 and #8 agreed that the future system will need to provide mechanisms to uphold the intent and integrity of arrangements established via Treaty settlements and natural resource arrangements under the RMA, and that decisions on these arrangements are delegated to a sub-set of Ministers
29. **note** that any cost implications of mechanisms to uphold Treaty settlements and natural resource arrangements under the RMA have not been provided for in the Budget 22 process and would need to be considered as part of policy decisions, in discussion with the Minister of Finance and the Minister of Māori Crown Relations
30. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations¹ in the region seek to agree on a composition arrangement for the SPA joint committee, including:
 - a. the host council
 - b. the number of members of the SPA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
31. **agree** that the SPA or NBA will provide for a process through which local authorities and iwi and hapū representative organisations in the region seek to agree on a composition arrangement for the NBA joint committee, including:
 - a. the host council
 - b. the number of members of the NBA joint committee
 - c. the appointing bodies who can appoint the members
 - d. any other arrangements as agreed by all parties
32. **agree** that the SPA or NBA will include statutory timeframes within which composition arrangements must be finalised, such as a specific period prior to the statutory notification of draft RSS and NBA plans
33. **agree** that the legislation should not prevent composition arrangements and appointments being made ahead of the statutory deadlines, which would enable local authorities and iwi and hapū representative organisations to choose to run this as a combined process for both the SPA and NBA committees
34. **agree** that the Local Government Commission (LGC) will support the composition arrangement process, specifically through:
 - a. confirming the timeframe within which composition arrangements must be agreed and monitoring progress, and

¹ *Paper 1: Role, funding and participation of Māori in the RM system* explains what this term means and how Māori will be participate in composition and appointment processes.

- b. facilitating discussions where appropriate, to ensure regions are on track to come to an agreement
35. **authorise** the Minister for the Environment, the Minister for Local Government, and Associate Minister for the Environment (Hon Kiri Allan) to make further decisions on the composition process, including the role of the LGC
 36. **agree** that the LGC will determine whether a composition arrangement in relation to a SPA joint committee or NBA joint committee has been agreed in a region and that the legislative parameters are met
 37. **agree** that where agreement on composition cannot be reached in a region, the LGC will decide the committee composition, including:
 - a. the host council
 - b. the number of members of the joint committee
 - c. the appointing bodies who can appoint the members
 38. **agree** that the LGC will then publish its determination or decision on the committee composition
 39. **note** that in making determinations and decisions the LGC will be able to seek advice and utilise existing powers under the Local Government Act (LGA) to request that a temporary appointment be made to the LGC for the purpose of composition decisions
 40. **note** that officials will provide further advice on how the LGC will make determinations and decisions on composition arrangements, including how additional expertise can be accessed if required (eg relating to Māori in a particular region), and detailed decisions will be sought under the delegation in recommendation 35 above
 41. **agree** that following composition arrangements being published, appointing bodies will have three months to make appointments by notifying the host council
 42. **agree** that the appointing bodies will be required to have an appointment process, but the legislation will not specify what this appointment process will be for local government and Māori seats
 43. **agree** that central government members on SPA committees will be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments
 44. **agree** that the legislation will not set out training or skills-based requirements for appointees to committees
 45. **note** that as part of building capability and capacity in the reformed system, updated training will be provided to support quality decision-making
 46. **agree** that if local authorities do not make their appointments within the above timeframe, the committee will be established with the relevant seat(s) vacant until an appointment is made (subject to a quorum being reached, the processes of the committee will still be valid)
 47. **note** the *Role, funding and participation of Māori in the RM system* paper seeks agreement to a delegated decision on dispute resolution for Māori appointments
 48. **agree** that to uphold the intent of the committees as representative bodies, all appointing bodies will be able to remove and replace their representative/s at any time

Paper 1: Regional governance and decision-making for plans in the reformed resource management system

Purpose

1. This paper seeks agreement to the key features of regional governance and decision-making by joint committees (committees) for the:
 - a. regional spatial strategies (RSS) under the Strategic Planning Act (SPA) (proposed to be renamed the Spatial Planning Act), and
 - b. plans under the Natural and Built Environments Act (NBA).
2. The paper provides advice on implementing the recommendations of the Resource Management Review Panel (the Panel) for regional decision making, focussing on the matters to be provided for in legislation. Further policy development will be required to support transition and implementation.
3. The paper is split into the following parts:
 - a. Part A: Functions and form
 - b. Part B: Composition and appointments
 - c. Part C: Decision-making
 - d. Part D: Resourcing the committees
 - e. Part E: Cross-cutting issues and other matters
4. This paper is closely linked with *Paper 2: Role, funding, and participation of Māori in the RM system* which seeks decisions on who should participate in the process to agree composition and appointment to SPA and NBA committees.
5. It is proposed that iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities representing rights and interests 'at-place' in agreeing composition and identifying appointing bodies.
6. It is recommended that the name of the proposed 'Strategic Planning Act' should be changed to the 'Spatial Planning Act' to better reflect the purpose of the legislation.
7. This paper seeks agreement to delegate further decisions on SPA and NBA committee arrangements to the Minister for the Environment and:
 - a. the Minister for Local Government, where the decision relates to the Local Government Act 2002 (LGA), the role of the Local Government Commission (LGC) LGC or local authorities, and
 - b. the Associated Minister for the Environment (Hon Kiri Allan), in some instances.

Status quo

8. In the current resource management system (RM system) all decisions on RMA plans are taken by councils, sometimes on advice of advisory bodies and hearings panels. There are currently no requirements for collaboration within regions for district plans, but regions can develop combined plans. For example, following recommendations from the LGC, a combined plan is currently being prepared for the West Coast.

9. In some instances, Treaty settlements have resulted in structures which provide iwi/Māori some decision-making powers over the plan-making process, such as through establishing governance bodies, or appointments to council planning committees. These arrangements mainly have influence over regional plans, with some arrangements also providing for district plans.

Panel's recommendations

10. The Panel recommended that RSSs under the SPA and plans under the NBA should be prepared by regional committees, comprising representatives from local government, mana whenua; and for the SPA committee, central government. The Panel considered that a joint committee model would create greater requirements of partnership and enable a more effective strategic role for Māori in the system. The Panel did not go into detail of how committees would be established or work in practice.
11. The features of SPA and NBA committees set out in this paper broadly align with and elaborate on the Panel's recommendations. Where the recommendations depart from the Panel's proposals, this is described.

Previous Ministerial Oversight Group decisions

12. MOG #8 noted that the governance arrangements across the resource management system should be consistent with the purposes and supporting provisions of the NBA and SPA and the following principles:

- a. Ensure that roles and responsibilities are clearly identified and that when and how decisions are made are clearly defined.
- b. Ensure that decision-making is informed by robust information and evidence, including mātauranga Māori, with proportionate opportunities for public participation.
- c. Provide for effective representation of differing interests whilst recognising that this does not mean direct representation for every constituent body.
- d. Give effect to the principles of te Tiriti o Waitangi and uphold the integrity of relevant Treaty settlements and agreements under the RMA between councils and Māori. In regard to Treaty settlements:
 - i. Uphold all undertakings in negotiated Treaty settlements.
 - ii. Uphold all agreements in current Treaty negotiations being undertaken.
 - iii. Ensure that any future Treaty settlement negotiations will be undertaken on the same equitable basis as all Treaty settlements undertaken prior to the development of the NBA and SPA.
- e. Ensure appropriate accountability and transparency for decision-making, with conflicts of interest properly identified and managed.
- f. Be efficient, cost-effective, and workable, and encourage the wise stewardship of resources.
- g. Ensure integrated decision-making wherever possible within regions, whilst allowing for variation to reflect the different circumstances of communities.
- h. Able to be adapted over time to fit with the changing needs of communities and the environment.

13. MOG #8 also agreed that the broad framework officials would use for option development is:
 - a. regional decision making is the preferred option for planning and planning documents, and
 - b. RSSs are to be decided by a custom-made group representing central government, local government and iwi/hapū/Māori.
14. At MOG #11/12 Ministers agreed that that joint committee composition be worked through region-by-region.
15. Ministers also agreed at MOG #11/12 that the SPA would provide a process for collaboration on cross-boundary issues by way of cross-regional committees (which is discussed further in paragraph 148-151 of this paper).
16. Further discussion at MOG #11/12 noted:
 - a. the importance of strategies and plans being viewed as legitimate to support successful implementation,
 - b. ensuring that the legislation would be sufficiently flexible to accommodate the diversity of New Zealand's regions, and
 - c. the role of the secretariat in providing both administrative support and technical input into the strategies and plans.
17. Ministers agreed at MOG #16 that the central government will have a member on the SPA committees, as decision-makers with voting powers. Ministers also agreed in-principle, subject to the recommendations in this paper, that the central government member would be a Ministerial appointee.

Balancing various objectives

18. The package of recommendations for the establishment and operation of SPA and NBA committees presented in this paper has been designed to take account of several different objectives and align with the principles for governance agreed at MOG #8. The package should be considered as a whole as changing one element has flow on implications for other elements – in particular, composition and decision-making are closely linked.
19. The overarching objective of these proposals is to ensure the governance arrangements support effective decision making. As discussed at MOG #11/12, it is critical that the arrangements are viewed as legitimate to support successful implementation of the reforms and efficiency throughout the entire system.
20. For the SPA and NBA committees, legitimacy means that the outcomes of decisions are accepted, even if the decision is one people disagree with. It means the committees have a mandate to make these decisions and there is respect for the process and decisions that are made.

Legitimacy is enhanced by flexibility.

21. A key design choice for SPA and NBA committees is how prescriptive or flexible the legislation should be particularly in relation to composition. A flexible approach enables those in regions to determine arrangements that best reflect circumstances (such as number of local authorities, hapū and iwi interests, and existing Treaty settlement arrangements) and is likely to enhance the legitimacy of the committees.

22. However, in the absence of clear statutory guidance on composition matters, the regions may face protracted debate and potentially legal challenges which risk undermining legitimacy, damaging relationships with Treaty partners, and prolonging transition and implementation of the reforms. There would be a higher reliance on dispute resolution processes, which would impact on who an ultimate decision-maker is.
23. The recommendations in this paper aim to reach a balance between flexibility and prescription, to provide legislative parameters that support timely implementation and allow for regional variation.

Legitimacy is enhanced by local democratic input and accountability.

24. Local authorities will be principally accountable for funding the development of the plans⁶, and for implementing them. In strategy and plan-making, the SPA and NBA committees will be exercising delegated public decision-making powers and it is appropriate that lines of electoral accountability are maintained. To ensure direct representation, all committees will be required to provide for at least one seat for all local authorities where desired.

Legitimacy is enhanced by effective Māori membership.

25. The design of SPA and NBA committees is important for delivering the reform objective to give effect to the principles of te Tiriti o Waitangi. The recommendations seek to provide for decision-making between the members appointed by local authorities and those appointed by Māori.
26. It is recommended that this be provided for through legislative protections for Māori membership on committees, and decision-making rules that support consensus. The autonomy of the committee to take decisions and inability to delegate strategy and plan making powers is also important to upholding joint decision-making in the committee arrangements⁷.

Legitimacy is enhanced by workable arrangements that support effective decision making and system efficiency.

27. Officials have also considered how to balance legitimacy and efficiency. The arrangements must be workable and support effective decision making. However, efficiency must be considered across the whole system. Focusing on the efficient operation of the committees runs the risk of shifting time and cost elsewhere in the system. For example, plans that are not perceived to be legitimate could result in more time spent at appeals stage. Also, smaller, less representative committees could require additional structures and processes for enabling local democratic input and meeting te Tiriti obligations.
28. It is recommended that the legislation should allow for broad representation of local authorities and iwi, hapū and Māori on the committees, that the regions should be empowered to determine committee composition for their region, and that the committees should strive for consensus in decision-making. These features risk slowing down decision-making but will result in decisions with high legitimacy.

⁶ Noting that for regional spatial strategies the central government will fund the central government member on the SPA committee and may provide staff to assist the secretariat prepare the strategy.

⁷ Exceptions to autonomy include previous MOG agreement to cross-regional spatial planning committees, and where delegated decision-making is required to uphold treaty settlements or other arrangements

This package of recommendations strikes a good balance between the reform objectives, but is not without risk.

29. As with any collaborative arrangement, these proposals will rely on good relationships between the parties. There are already areas of the country with positive working relationships between local authorities and iwi, hapū and Māori and there many examples of local authorities working effectively together across the region. The legislation will include provisions to support good working relationships, such as clear protocols for resolving disputes, but success will rely on effective implementation and goodwill.
30. Regionalising governance whilst maintaining the existing local authority structures risks leaving the role and accountabilities of local authorities unclear. The LGSG noted that, “in the absence of reorganisation of the functions of the existing units of local government it will be essential to ensure that there is clarity of responsibility and accountability for the delivery of investment in the RSSs and for the policies and rules set out in NBA plans”⁸. Officials agree and the recommendations in this paper seek address to this.
31. It is also important to note when considering these proposals that the context is rapidly evolving. Recent legislation has made it easier for local authorities to establish Māori wards and further legislation will be introduced this year to better enable Māori wards generally, specifically in Auckland. At the 2022 local elections 35 local authorities will have Māori wards. The Future for Local Government Review is ongoing and due to deliver a final report in April 2023. These arrangements for the RM system need be flexible enough to evolve in the future in response, such as ensuring committee arrangements can be changed without legislative change.

Summary of recommendations

32. The table overleaf provides a summary of the recommended approach to governance and decision-making in the new system. Differences between the committees are underlined.
33. Official note that regional arrangements are subject to going discussions with the relevant entities in relation to existing natural resource arrangements under the RMA and Treaty Settlements, outlined further in paragraphs 80-89.

⁸ Local Government Steering Group Report, *Enabling local voice and accountability in the future resource management system*, page 19.

	SPA committees	NBA committees
A: Function and form (pages 28-31)	A committee established under the SPA comprising representatives from local government, Māori, <u>and central government</u> will be established to prepare and approve a <u>regional spatial strategy (RSS)</u> for their region.	A committee established under the NBA comprising representatives from local government and Māori, will be established to prepare and approve an <u>NBA plan</u> for their region.
B: Composition and appointments (pages 31-41)	<p>Local authorities and iwi and hapū representative organisations to agree composition of their SPA committee by a statutory deadline. The committee must:</p> <ul style="list-style-type: none"> • have a minimum of 6 members • enable all local authorities to be directly represented on the committees where that is their preference • [in guidance] consider where additional local government representation is needed to provide for different interests • have (subject to Ministers' decisions) either a minimum of 2 members or a minimum proportion appointed by iwi/Māori • ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee <p>Composition formalised by the LGC. Appointments by appointing bodies must be made within 3 months.</p> <p><u>An central government representative also appointed.</u></p>	<p>Local authorities and iwi and hapū representative organisations to agree the composition of their NBA committee by a statutory deadline. The committee must:</p> <ul style="list-style-type: none"> • have a minimum of 6 members • enable all local authorities to be directly represented on the committees where that is their preference • [in guidance] consider where additional local government representation is needed to provide for different interests • have (subject to Ministers' decisions) either a minimum of 2 members or a minimum proportion appointed by iwi/Māori • ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee <p>Composition formalised by the LGC. Appointments by appointing bodies must be made within 3 months.</p>
C: Decision-making (pages 40-49)	Committee makes final decisions on RSS but can establish subcommittees to provide advice. Committees must strive for consensus, with back stop. Committee to use mediation before disputes are referred to the responsible Minister <u>to make the decision</u> or appoint independent commissioner to do so.	Committee makes final decisions on NBA plans but can establish subcommittees to provide advice. Committees must strive for consensus, with back stop. Committee to use mediation before disputes are referred to responsible Minister to appoint independent commissioner to do so (<u>Minister can't make decision</u>).
D: Resourcing the committee (pages 49-52)	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director to ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.	The committee will appoint a secretariat director (statutory position) The director will employ/ contract/ coordinate secretariat staff. There will be a duty for the director to ensure advice is informed by mātauranga Māori and te ao Māori perspectives. There will be a duty on bodies represented on committee to provide technical support and information to the committee.

PART A: FUNCTIONS AND FORM

Structure of the regional committees

34. The Panel recommended that plans should be prepared at a regional level by 'joint committees' comprising representatives from local government, mana whenua and central government for RSSs, and local government and mana whenua for NBA plans.⁹
35. These committees would be a new governance arrangement in the resource management system, replacing and regionalising the plan-making functions of local authorities. For RSSs they provide joint decision-making functions for a new strategic layer in the system between central government, local government, and iwi, hapū, and Māori. For NBA plans, the committees replace existing RMA plan decision-making functions of councils and provide for joint decision-making between local government and iwi, hapū and Māori. Councils will retain regulatory responsibilities under NBA plans.
36. Officials recommend that the committees are established as two separate committees under the NBA and the SPA, reflecting the different purposes and roles of the committee. This also has the benefit of allowing the committees to vary in both size and composition, if considered appropriate by iwi and hapū representative organisations and local authorities in a region, and allows appointing bodies to consider the mix of skills and knowledge best suited to each committee.¹⁰
37. However, as raised by the Local Government Steering Group (LGSG), there may be advantages to shared membership across the committees "to support integration of the RSS and NBA plans, to better reflect the current capacity of the resource management system and to help drive and embed the cultural change that will be needed across the new system".¹¹ Establishing two committees also has some inefficiencies in that it could result in regions running two composition and appointment processes.
38. Officials recommend that the legislation should not require the committees to have shared membership, but that it should remain flexible and not preclude shared membership. Allowing regions to determine the arrangements that best suit their circumstances will enhance the legitimacy of the committees and the decision-making process.

Functions of the SPA and NBA committees

39. The SPA and NBA committees will be governing bodies, tasked with preparing plans covering every local authority. The functions of the committees are summarised below. Further detail is provided in the previous or forthcoming papers referenced. The committees would have enduring functions, with the level of support for the work of the committees fluctuating as necessary over time.
40. The primary function of the SPA committee will be to oversee the development of and approve an RSS for their region in accordance with the SPA. The committee will also have an enduring role to monitor and support the implementation of the RSS and identify

⁹ Ministers should note that decisions are yet to be taken the role of the Minister for Conservation in NBA committees [BRF-961 refers].

¹⁰ The composition of committees is discussed further in Part B of this paper (from page 31).

¹¹ Local Government Steering Group Report, *Enabling local voice and accountability in the future resource management system*, page 16.

circumstances which require early amendment to or replacement of an RSS. This includes:

- a. determining and undertaking a public engagement process for the RSS (as agreed at MOG #11/12)
 - b. preparing and agreeing the RSS
 - c. determining and undertaking a process to review the RSS when a significant change occurs and review the whole RSS every 9 years (as agreed at MOG #11/12).
41. In addition, as agreed in principle at MOG #14 and subject to further decisions¹², SPA committees may have a role in developing implementation agreements and approving these in consultation with other delivery partners. Further decisions are also required on the role of the SPA committee in monitoring the effectiveness of the RSS once approved.¹³
42. The primary function of the NBA committee will be to prepare and approve an NBA plan for their region in accordance with the NBA. In summary, this includes:
- a. preparing an NBA plan and notifying it for submissions (as agreed at MOG #11/12)
 - b. accepting or rejecting recommendations from the Independent Hearings Panel (as agreed at MOG #11/12)
 - c. making the plan operative
 - d. preparing an integrated regional monitoring and reporting strategy (as agreed at the Environmental Sub-Group, 28 October 2021).
 - e. preparing a programme of work to review the NBA plan (as agreed at MOG #11/12, with further detail agreed under delegation, BRF-946 RM Reform).
 - f. receiving three-yearly reports from local authorities in the monitoring/implementation of NBA plans (as agreed at MOG #11/12).
43. The role of the NBA committee will also be on-going as a standing committee. This is due to a range of functions already agreed, such as reviewing the NBA and undertaking monitoring responsibilities. Separate advice will seek decisions on the role of the NBA committees in plan changes.
44. Establishing both the SPA and NBA committee as bodies with on-going roles will ensure iwi, hapū and Māori have an enduring place in governance activities outlined above. Officials recommend that the legislation should provide both committees with the powers necessary to carry out their functions.

Duties of the SPA and NBA committees

45. The SPA and NBA respectively will outline how the committees will carry out their functions. Some aspects of this have been previously agreed; specifically, the Treaty

¹² These decisions have been delegated to the Minister of Finance, Minister of Housing, Minister for the Environment, Minister of Local Government, Minister of Transport, Minister of Conservation, Associate Minister for the Environment (Hon Kiri Allan), and Associate Minister for Arts, Culture and Heritage (Hon Kiri Allan).

¹³ Decisions on monitoring and oversight of the SPA have been delegated to the Minister of Housing, the Minister for the Environment, the Minister for Local Government, the Minister of Conservation, and the Associate Minister for the Environment (Hon Shaw).

clause in both Acts will require both committees to give effect to the principles of te Tiriti o Waitangi when performing their functions and duties. It is proposed through *Paper 2: Role, funding and participation of Māori in the RM system* that the National Entity be responsible for monitoring committees' performance against these duties. The Acts will also require plans to align with the principles and purpose of the Acts, including for example, upholding te Oranga o te Taiao.

46. The requirements for public participation have also been agreed for the RSS and NBA plan preparation processes (at MOG #11/12), and the committees will be responsible for ensuring that these processes are followed.
47. In addition, it is recommended that the committee members should have a general duty to work collectively to achieve the purposes of the Act across the region when taking decisions.
48. Alongside this, committee members will have individual duties to uphold in respect of their roles they may hold as elected local representatives, members of iwi and hapū and other Māori entities, or Ministerial appointees (for SPA committees). For example, elected councillors on the committees will also have a duty under the Local Government Act 2002 (the LGA) to exercise their powers and perform their duties in the best interests of the region or district they were elected to represent. Officials consider that it is reasonable to expect all members will be used to situations where they have to balance different interests or hold multiple roles. The implications for accountability are discussed further in paragraphs 203-209.

Legal status and host council arrangements

49. The Panel did not discuss options on the legal status of joint committees, beyond describing the recommended approach for a fully autonomous joint committee as distinct from an 'LGA type joint committee'. These are subordinate decision-making structures to local authorities where members remain beholden to their constituent councils.¹⁴ Officials agree that the SPA and NBA committees should not be established under the LGA as subordinate decision-making structures to local authorities.¹⁵
50. It is important that the committees are a partnership of all local authorities in the region with Māori and central government – not subordinate to a single or multiple councils. To support this, it is recommended that each committee would be established as a new statutory body under the SPA or NBA. In practice, the committees would operate as a committee of all local authorities in the region, hosted by a single council. The committees would produce the plans on behalf of all the local authorities in the region, but the local authorities will retain responsibility for implementing and administering them.
51. The host council would provide the administrative systems necessary to enable a committee to function – for example, equipment, ICT and human resources support, office space and meeting rooms, financial transactions, and reporting. Hosting a joint committee would neither constrain the committee in its actions, nor constrain the host council in its participation in committee processes. The host council would have no greater and no lesser powers in relation to a committee than any other local authority in

¹⁴ The autonomy of committees is discussed further in paragraphs 133-140.

¹⁵ Local Government Act 2002 (Sch 7, pt 1, cl 30-30A).

the region. The host council would have the same appeal rights as all other local authorities for NBA plans.

52. It is recommended that local authorities in the region, in consultation with iwi, hapū and Māori, should determine themselves which local authority is best placed to be the host council and that this be considered alongside the composition process and be formalised by the LGC. Host council responsibility would default to the regional council in the event unanimous agreement on the host council from local authorities cannot be reached.
53. While the Panel considered the need for autonomy of committees to achieve efficient plan and strategy making outcomes, officials consider the legislation will need to extend legal autonomy to other matters. These include initiation of and defence of legal actions involving the committee's performance of its functions and duties; employment of staff; and management of its approved budget.¹⁶ Legislation will also need to be clear that the existence of the committee does not affect the member councils' statutory obligations. Further decisions are required on mechanisms for transparency, in particular to provide for the application of the Local Government Official Information and Meeting Act 1987, and other accountability mechanisms for the committees.
54. The Panel's recommendations focused predominately on regions with multiple local authorities, with limited views on how to provide for unitary authorities in the future system. Delegated decisions will be required on the legal structure of committees in unitary authorities.

PART B: COMPOSITION AND APPOINTMENTS

Composition of committees

55. There are numerous decision-making and advisory committees in the existing resource management system (either established under the Local Government Act 2002 or various Treaty Settlement Acts) that provide shared responsibilities between local authorities and iwi and hapū. A wide range of existing composition arrangements and decision-making frameworks have informed our analysis.
56. There are substantial differences between existing committee arrangements¹⁷ and what the Panel has proposed for committees under the RSS and NBA. Specifically:
 - a. SPA and NBA committees will be fully autonomous, with consensus decision-making rules designed to balance the decision-making power of all members. Nearly all of the existing committee arrangements are sub-ordinate decision-making structures that default, at least in part, to decisions by local authorities.
 - b. SPA and NBA committees provide a model that applies to all regions and all resource management matters. Most existing arrangements have been created at

¹⁶ Refer to paragraphs 182-202 for further detail on the secretariat and budget and funding arrangements for the committees.

¹⁷ The Hawke's Bay Regional Planning Committee is one example of an existing arrangement, established through a Treaty Settlement. This provides for iwi appointments, is not fully autonomous and only relates to planning functions of the regional council. The Te Tai Poutini Committee, responsible for the West Coast combined plan is the closest example of the form and function of the SPA and NBA plan committees. It is established through an Order in Council, has iwi representatives appointed, is fully autonomous, and addresses both regional council and territorial authority planning functions.

- the discretion of a region or sub-region, and very few cover all resource management matters in a region (eg, many focus on regional council responsibilities and not those of territorial authorities).
57. The Panel did not specify how committee composition would be agreed or how committees would be formed. The Panel recognised that due to the variety in numbers of local authorities and mana whenua groups that groups may need to cluster to appoint to committees. The Panel also noted that committee size would need to be managed to ensure it does not impede the ability of committees to undertake their tasks.
 58. The composition of the committees is critical for legitimacy and there are a number of considerations that must be finely balanced, including:
 - a. providing for local democratic representation and effective Māori membership, while maintaining a manageable committee size.
 - b. empowering regions to determine their own composition arrangements, while providing parameters to support efficient processes to reach agreement and provide protected minimums.
 59. A range of options for composition were considered, from a highly prescriptive approach that set proportion of seats for each type of representative on the committees, through to a fully flexible model with no fixed proportions. A summary of the analysis and the costs/benefits of these options are contained in Appendix 2. It should be noted that bespoke arrangements may be necessary for unitary authorities and to uphold Treaty settlements.
 60. On balance, officials recommend that the following composition parameters should apply to both SPA and NBA committees:
 - a. that the composition and size of the committee supports effective decision-making and efficient functioning, with a minimum of six members prescribed in the legislation
 - b. for local government members:
 - i. a requirement that all local authorities should be directly represented on the committees where that is their preference¹⁸
 - ii. guidance on when to consider additional representatives, to ensure that urban and rural, district and regional interests are effectively represented on the committees, while also considering proportionality of council representation based on their relative population sizes
 - c. for Māori members:
 - i. (subject to Ministers' decisions) either a minimum of two or a minimum proportion of seats
 - ii. the composition should ensure the iwi, hapū and Māori in the region are appropriately reflected in membership of the committee.
 61. No weighting is proposed for these parameters. Officials will consider what additional non-statutory guidance is required to support decision-making.

¹⁸ For example, a council that sits across multiple regions may prefer to have direct membership on one or some of the relevant joint committees, and cluster with other councils on others. This is the case for the district councils of Rangitikei, Rotorua, Stratford, Tararua, Taupō, Waitaki, and Waitomo.

Size of committees

62. It is recommended that SPA and NBA committees be required to have a minimum of six members but that no maximum should be set in legislation. This ensures regional flexibility to determine the size and shape of their committees.
63. A committee size of six is the smallest size that would allow these regions to have both direct representation of all four of local authorities and meet the minimum requirements for Māori membership (assuming 2, noting this is subject to decisions).
64. Research on optimal committee sizes found there is no one number or exact range to enable a diverse range of perspectives while still being a manageable committee to operate.
65. All RSS committees will have one central government representative. With appropriate cross-agency support (via an interdepartmental executive board, being considered in MOG#17 Institutional arrangements for central government), we consider that one member is sufficient to represent all of central government in each region and helps manage committee size. This would not preclude central government agencies from providing input directly to the committees, for example on technical matters.
66. Unitary authorities provide a challenge to the joint committee model with only one council present to agree composition. To ensure that the geographic representation and local input provided for in multi-council regions is upheld in unitary authority areas, it is recommended that unitary authorities should not be prevented from having all councillors on the committee. This could result in a large committee in Auckland, with 21 members on Auckland Council (and the possibility of this increasing in the future), however we think the flexibility is appropriate to ensure adequate representation for a significant proportion of New Zealand's population¹⁹.
67. Officials propose to seek separate decisions on how unitary authorities are provided for under the legislation, in particular Auckland including the role of the Independent Māori Statutory Board in committee arrangements.

All local authorities are provided direct representation where that's their preference

68. It is proposed that all local authorities be provided at least one seat to require local democratic input into the system and democratic accountability of the committees through direct representation. This is crucial given the implementation responsibilities of local authorities and to uphold the electoral accountability of the committees.

Committees must have a minimum of two or a minimum proportion of members appointed by iwi and hapū representative organisations

69. The legislation will provide regional flexibility to determine the exact composition of SPA and NBA committees but include protections for minimum membership for Māori. Officials provide two options (number or portion) below.
70. A statutory minimum ensures that no single member is expected to speak on behalf of all Māori interests in a region, or would feel isolated on the committee. In regions with a smaller committee size, two members may be appropriate, but in regions with larger

¹⁹ We note that Auckland is unique in that its local board structure is not currently utilised by other Unitary Authorities. These will have an important role in influencing the committees, which may mean Auckland chooses not to have all councillors represented.

committees, a greater number of seats may be appropriate, and could be agreed through the composition process.

71. This paper seeks agreement from Ministers to one of two options:
 - a. a minimum of two seats appointed by Māori
 - b. a minimum proportion of seats appointed by Māori.
72. On large committees where more than two Māori members may be appropriate, a required minimum proportion could cut through debate on what the number of Māori members should be. It is assumed the proportion would be set high enough to provide confidence that Māori members would be able to effectively participate in decision-making irrespective of committee size.
73. However, a minimum proportion may be seen as undemocratic and disproportionate to the voter base in local democracies. A discussion about proportion would also likely lead to a focus on whether this should be linked to Māori population by region, rather than the preferred approach of letting regions work through composition in their own circumstances.
74. There is a risk that setting a minimum number of Māori seats effectively becomes the starting position where regional debate will begin from. A statutory minimum could put Māori in the position of having to argue for and justify why a greater number of seats is needed for Māori, especially in regions with many local authorities. This could lead to uncertainty, conflict (both with local authorities and between iwi and hapū), a need for dispute resolution, potential litigation, and drawing out of the appointment process.
75. While the ambition for committees to strive for consensus outlined later in this paper aims to ensure Māori can participate fully in decision-making, it may not fully mitigate these risks in practice.

Positions provided on composition

76. The Strategic Planning Reform Board has discussed the governance proposals and provided the following comment:

“There is agreement on many aspects of the governance proposals, including that joint committees should be autonomous decision-making bodies and decision making should be by consensus.

With respect to the composition of joint committees, there is agreement that composition should be determined regionally with some guidance in legislation. Officials agree there should be a prescribed minimum membership of iwi/hapū/Māori members. Specifying this number as a proportion rather than a number would likely better support effective Māori participation in decision-making and giving effect to the principles of te Tiriti. Most agencies also agree that all local authorities in the region (regional councils and territorial authorities) should be directly represented where that was their preference. However, it will also be important that committees are of a manageable size to ensure committees can make decisions efficiently.

The choices on composition are at the intersect of Cabinet goals to retain local democratic input and giving effect to the principles of te Tiriti.”

77. The LGSG is supportive of flexibility for regions to determine composition (including size and membership), noting that provisions will be required to ensure an adequate role for

Māori. The LGSG also supports all local authorities having the option to be directly represented on committees, while recognising that some may wish to group together.

78. Te Tai Kaha (TTK), the Freshwater Iwi Leaders Group (ILG) and other Māori groups, including those who submitted on the NBA exposure draft, have called for 50/50 iwi/hapū and government appointments as a default to provide for partnership under te Tiriti.
79. Officials are not recommending a default of 50/50 as it would not provide flexibility to agree composition arrangements that work best for each region; or take account of a range of other supporting mechanisms that would uphold the principles of Te Tiriti. The role on SPA and NBA committees is only one element in the system that provides for partnership. Assessments of Treaty consistency require consideration of the reform proposals as a whole.

Upholding existing Treaty settlement arrangements

80. A number of arrangements established via settlements provide for the preparation of specific statutory planning documents, or a role for Post-Settlement Governance Entities (PSGEs) in the preparation of local authority planning documents. There will need to be provision in the new system to uphold the intent and integrity of these obligations.
81. One aspect of the design of some settlements was to provide for joint representation of PSGEs and elected local authority members in a statutory entity or body, with a focus and certain decision making powers in respect of a particular area or natural resource (an example is the Rangitaiki River Forum in respect of the Rangitaiki River catchment).
82. Treaty settlement legislation also provides for these entities or bodies to prepare a statutory document (eg, the Rangitaiki River document) which has statutory effect on RMA policy statements and plans. The statutory effect of these types of statutory documents will need to be upheld in the new RM system.
83. The presence of the local authority members in these entities or bodies was an important part of the design process, in part because those elected members were also part of the local authority which was the decision-maker on the relevant planning document(s).
84. There is a change of decision-maker on planning documents in the new system to SPA and NBA committees. To ensure that the Crown upholds the statutory intention of these settlement arrangements, officials are exploring a number of policy solutions (mechanisms) with agencies and in discussion with PSGEs.
85. In particular, there are regions where settlements have established arrangements (or appointments to committees) for the development of planning documents under the RMA. Where existing Treaty settlement mechanisms enable or provide for joint development of regional and district planning documents, specific arrangements will have to be provided for in that particular place.
86. Upholding settlement commitments in the new decision-making framework presents some challenges, as the process for developing planning documents under the NBA and SPA is proposed to be very different to under the RMA. In particular, the new decision-making framework has roles for joint committees, secretariats and IHPs. Decision-making on plans is centralised to joint committees with responsibility for the region as a whole.
87. As part of upholding settlements, consideration has to be given to whether upholding the nature and scope of the settlement governance arrangements (mostly focussed on specific catchments within a region) can be achieved solely by agreed refinements to

those arrangements or whether the new decision-making framework will require bespoke features in a limited number of regions.

88. This includes settlements, such as the Waikato Tainui Waikato River Settlement, which provides a number of connections to RMA statutory processes that must be upheld. Within each region there is generally more than one Treaty settlement, and so the intersection between these settlements also needs to be considered.
89. There is a separate process underway looking at options on how to uphold Treaty settlements in the future system; and decisions on this have been delegated to a subset of Ministers. There will need to be an analysis of any financial implications associated with upholding Treaty settlements in the new system. This process will likely result in amendments to Treaty settlement legislation.

Committee formation process

Diagram 1: SPA and NBA committee formation process



90. The legislation needs to set out a clear process for regionally-driven committee composition decisions (the number of seats and who can appoint to which seats). This process will need to be supported by non-legislative guidance and facilitation (where requested) to support decision-making.
91. As proposed in *Paper 2: Role, funding and participation of Māori in the RM system*, it is recommended that iwi and hapū representative organisations lead Māori involvement in the composition discussions with all local authorities in a region. Officials do not recommend prescribing how composition discussions are undertaken, to enable parties to run a process that supports a legitimate local decision being made.
92. Further decisions are required on what the legislation will prescribe including when and how the process to agree composition will commence, and who will be responsible for ensuring all local authorities and iwi and hapū organisations in the region are informed.
93. As noted earlier (paragraph 52 refers), the process to agree composition will also need to consider which local authority would be the host council, and local authorities would be expected to consider iwi and hapū views in this discussion. Where there was not unanimous agreement from local authorities on the host council, it would default to the regional council.

Statutory timeframes

94. It is proposed to set a statutory timeframe for when a committee's composition must be agreed and published by. Officials recommend that the RSS/NBA Plan must be notified no later than 2 years after the SPA/NBA committee is appointed, chair/s selected, and director of secretariat appointed. Setting a notification date is one option to inform the statutory deadline for composition decisions, eg they would need to be published two and a half years before the statutory notification of the draft RSS and NBA plan.
95. Officials expect there would be efficiencies for regions conducting one composition process for both committees, such as if a region was to agree their NBA committee composition at the same time as their RSS committee. The legislation should enable this by not preventing committee composition and appointments being made ahead of the statutory deadlines. Officials note that a different approach for committee composition will likely be needed for the 'model regions' where composition decisions will be required shortly after enactment.

Supporting regional composition decisions: role of the Local Government Commission (LGC)

96. Officials propose that to support the regionally-led process to agree composition there needs to be:
 - a. a body or person to act as an independent facilitator supporting the composition formation process,
 - b. a body or person to determine and publish composition when agreed by the region, and
 - c. a body or person to act as an ultimate decision-maker to make a composition decision for a region if the proposal does not meet the legislative parameters or if discussions break down and regional agreement cannot be achieved.
97. Officials (including the Department of Internal Affairs) consider that the LGC is well positioned to take on these functions in the future system.
98. The LGC is a statutory entity established under the Local Government Act 2002. It has three members appointed by the Minister of Local Government and at least one member must have knowledge of tikanga Māori and be appointed on consultation with the Minister for Māori Development (refer section 33, Local Government Act 2002).
99. The LGC currently provides arbitration and decision-making functions for local authority representation reviews, local government reorganisation, and other appeals and disputes including disputes around Māori wards. These processes involve the LGC working closely in regions on local government matters, and require the members appointed to the LGC to have the necessary skills to help facilitate a regionally-led process. In addition, as they are a step removed from government, this will support the legitimacy of the process.²⁰

Facilitation of composition discussions

100. It is proposed the facilitation functions provided by the LGC will include confirming the deadline for decisions to be made (see paragraph 94-95 for statutory timeframes),

²⁰ Although it is generally an independent body, the Minister of Local Government can direct its priorities with regards to activities under schedule 3 of the Local Government Act 2002. Additionally, Commissioners can be removed for any reason the Minister thinks fit.

monitoring progress, and facilitating discussions where appropriate, to ensure regions are on track to come to an agreement.

101. Further advice will be provided for any requirements for formal notification for the regional process to begin, and how to ensure all iwi and hapū representative organisations²¹ can participate in discussions where desired.
102. While the LGC will provide some support, further non-statutory measures will be needed to enable all parties to successfully engage in composition discussions. The level of prescription in legislation on composition will directly impact the extent and difficulty of the regional process. It is expected that the first round of composition and appointment processes will be the most difficult and contentious, and therefore it is expected that local authorities and iwi and hapū representative organisations will require implementation support for this process.
103. It is also proposed that all parties will be able to seek mediation support for disputes during composition discussions. *Paper 2: Role, funding and participation of Māori in the RM system* and subsequent delegated decisions will seek agreement to appropriate dispute resolution processes to support decisions on Māori membership.

Determining and publishing regional composition proposals

104. It is intended that the legislative parameters, the facilitation provided by the LGC and implementation support will enable local authorities and iwi/hapū to agree composition arrangements for SPA and NBA committees.
105. Once agreement is reached, officials propose that the LGC ensures legislative parameters are met through a determination, and then formalises the composition arrangements to ensure it is recorded and publicly available.
106. Specifically, the LGC will be required to publish for each SPA and NBA committee:
 - a. the host council
 - b. the number of members Māori and local authorities can appoint
 - c. the appointing bodies who can appoint those members
 - d. other arrangements as agreed by all parties.
107. If the LGC is not satisfied that the legislative parameters are met, then it can initiate the process outlined below for composition disputes.

Process for composition decisions when regional agreement not reached

108. If the iwi and hapū representative organisations and local authorities in a region cannot agree to a committee composition arrangement, an ultimate decision-maker is required to ensure the committee can be established and not hold up the RSS/NBA drafting processes.
109. There needs to be a single decision point on composition of committees, as the number of seats for one group will likely require consideration of seats for the other as well as the make-up of the committee as whole. In addition there may also be disputes relating

21 *Paper 1: Roles, funding and participation of Māori in the new RM system* seeks decision on Māori participation in the composition and appointments process.

to appointing bodies (which groups can appoint to which seats). If required an ultimate decision on these matters may also need to be provided.

110. While the LGC is well positioned to make composition decisions for local authorities, it may need to engage additional expertise to make decisions as they relate to iwi, hapū and Māori in a particular region alone.
111. The LGC will be enabled to seek advice to inform any composition decisions. In addition, under the LGA (schedule 4) the LGC can request from the Minister for Local Government that a temporary member be appointed at any time. It is proposed that these powers be enabled for the LGC when undertaking functions under the SPA and NBA.
112. There is a risk that the LGC will not be viewed as a legitimate decision-maker for composition as it relates to iwi, hapū, and Māori, and that leaving it to the LGC to seek additional expertise may not provide the needed assurance. It is expected that the LGC will be provided guidance on when to seek advice or a temporary appointment.
113. It is also the intent is that this is a decision of last resort, when other levers such as facilitation or mediation are unsuccessful in helping the region come to their own decision.
114. Additional decisions will be required on whether the Minister for Local Government should consult with additional Ministers when making any temporary appointments at the request of the LGC. In addition, further decisions are needed on a trigger point for when the LGC needs to take a composition decision, the timeframe for this decision and how this decision will be taken including what information is used.
115. Officials note that for the LGC (or anybody) to be able to make a decision on behalf of a region the legislation needs to give them clear parameters to work within. If Ministers preferred a less prescriptive approach to what's proposed for composition, its likely Ministerial decision-making powers would be required.
116. Appendix 3 summarises the end-to-end process for committees.

Process to make committee appointments

117. Officials propose that appointing bodies would have three months from the date composition is formalised (published) to make their appointments. Officials recommend that appointing bodies are required to have an appointment process and appointments should be made by notification to the host council.
118. While this timeframe appears short, it is expected that during the composition discussions all parties will agree their relevant appointment processes (eg, nomination processes) to ensure the deadline can be achieved.
119. It is proposed that the legislation will not prescribe how local government and Māori appointments are made, who the appointments are or any skills, competency, or accreditation requirements in the legislation for these appointments. This upholds the policy intent that committees are representative bodies making political decisions, and appointing bodies should be able to appoint whomever they see fit. It is expected that appointing bodies will consider the mix of skills and knowledge best suited to each committee when making appointments.
120. While the Panel did not specify how appointments should be made, it did propose that local authorities should be represented by officials on SPA committees. As above, officials propose that the legislation does not prescribe this. Instead, local authorities could appoint an elected council member, or a trusted expert which could be appropriate

such as where multiple councils may cluster to make an appointment. The LGSG has expressed a strong preference for elected councillors to sit on SPA and NBA committees, noting that “political membership on the [committee] is recommended as the most appropriate way to address the issue of local ownership, legitimacy and accountability for planning decisions and implementation.”²²

121. As agreed in the paper on *Role of central government in the new system* at MOG #16, central government will appoint one member to the SPA committee. It was agreed in-principle that that the central government SPA committee members will be ministerial appointees, subject to the SPA committee being established as an autonomous decision-making body, which this paper seeks agreement to.
122. Therefore, officials recommend that the central government member of the SPA committees should be appointed by the Minister responsible for administering the SPA through the usual process agreed by Cabinet for ministerial appointments.
123. Officials note there is a separate work programme considering the accreditation system in the future for environmental commissioners, which is currently the Making Good Decisions Programme under the RMA. While there will not be accreditation requirements for committee members²³, consideration is being given to the decision-making training needs in the future system²⁴.
124. Officials also propose that appointing bodies can remove and replace their representative at any time. This provides a key element of accountability for appointments back to their appointing bodies.

Process for when appointments cannot be made within timeframes

125. If local authorities do not make their appointments within the three-month timeframe, the committee will still be established with the relevant seat(s) remaining vacant until appointments can be made (subject to a quorum being established). Local authorities have a range of dispute process that can be utilised to enable a decision to be made.
126. Separate decisions will be sought on additional dispute processes for Māori appointments.

Set-up process

127. From when appointments are made, the committee will need to:
 - a. agree chairing arrangements (see paragraphs 152-155)
 - b. agree a terms of reference and any committee procedures (over and above those in the statute)
 - c. appoint the director of the secretariat (refer to paragraphs 186-193 below), who will then need to establish the supporting working arrangements.

²² Local Government Steering Group, *Enabling local voice and accountability in the future RM system*, page 16.

²³ Members of Independent Hearings Panels will be required to be accredited, as is currently the requirement under the RMA.

²⁴ The specifics of this will be considered following a review of the Making Good Decisions programme, and the future training needs across the system.

222. Specifically, the following policy recommendations work as a package to give effect to the principles of te Tiriti:
- a. autonomous decision-making by committees (with some exceptions to uphold Treaty settlements and other arrangements), ensuring decisions do not default to local authorities
 - b. provisions for a minimum number or proportion of Māori members on committees, and a framework to enable regions to agree membership above the minimums, supported by parameters that must be met
 - c. the ability for the LGC to seek additional expertise (including through requesting temporary appointments are made) for the purpose of making composition decisions where a region cannot agree
 - d. committees striving for consensus decision-making
 - e. provision for co-chair arrangements on committees if desired by regions
 - f. requirements on the director of the secretariat to ensure the secretariat's advice includes mātauranga Māori and te ao Māori perspectives
 - g. ability for committees to establish sub-committees for topics which could include cultural landscapes or content on specific waterways or other taonga.
223. This package is supported by provisions outside the scope of governance, including the Treaty clause requirements in the legislation for all decision-makers to “give effect to the principles of te Tiriti” and to uphold te Oranga o te Taiao. The *role, funding and participation of Māori in the RM system* MOG #17 paper provides a broader assessment of how Māori participation in the system is provided for.
224. While governance provides a significant opportunity to give effect to the principles of te tiriti, this paper has identified there are risks associated with providing a minimum of two Māori members (if decided on), particularly if this were to be seen as all that might be required. In addition there is a risk that the LGC making the final decision on composition if a region is unable to agree may not be viewed as legitimate by iwi/hapū/Māori. This is mitigated by recognising the LGC have the ability to request additional expertise including temporary appointments to support reaching a determination.
225. In addition, with the majority voting rule there is a risk that minority voices could be outvoted, and subject to composition arrangements this could have a greater impact on Māori members than local authorities. This is balanced by ensuring the focus is on committees coming to consensus decisions, supported by graduated dispute resolution steps.
226. We understand that the Freshwater Iwi Leaders Group (FILG), Te Tai Kaha (TTK) and other Māori groups are seeking co-management or 50/50 involvement in SPA and NBA committees. Support for this can be found in Tribunal statements that co-management is the Treaty standard for freshwater taonga and the general thrust of Tribunal findings and recommendations from Wai 2358 on how to increase participation or autonomy for Māori.
227. In considering governance options the Crown must act reasonably and in good faith to seek to provide for Māori interests, while also providing for any other interests that its kāwanatanga responsibilities necessitate be addressed. Treaty consistency must also be assessed with consideration of the system as a whole of which governance is one component. The reform of the resource management system does not aim to

fundamentally alter the long standing roles/spheres of authority of local and central government. This means the governance options must be calibrated to work within the current framework of local democracy and legitimate public expectations of democratic accountability in local and regional management of the environment.

228. While providing for greater Māori participation is an objective of the reform, governance structures also need to enable participation by, and representation of, other New Zealanders and particular interest groups in relation to specific resources. There are also practical and efficiency benefits in aligning NBA and SPA committees with regional boundaries and allowing local authorities direct representation on the committees which are reasonable considerations for the Crown to take into account when deciding between options in good faith.

Irrelevant

230. The Crown also has a responsibility to ensure reasonable participation, taking into account the objectives and purposes of the committee (and other relevant considerations this might require). It also needs to ensure that the processes for selecting members do not create fresh grievances.
231. In addition to composition, feedback from Māori groups has recognised the importance of the secretariat in enabling Māori planners and technicians to work alongside local authority planners in the development and drafting of RSS's and plans. Although costs of committee membership and roles and responsibilities in the secretariat will be fully funded by the committee, there are wider resourcing implications for Māori from these proposals elaborated on in the role, funding and participation of Māori in the RM system MOG #17 paper.
232. A full summary of the analysis of the Treaty impacts of the recommendations of this paper are contained in Appendix 1. Irrelevant

Engagement

Agency

233. As noted in the comments from the Strategic Planning Reform Board (paragraph 76 above), there is agreement across agencies on most aspects of the governance proposals, while some differing views as to how to express the minimum for Māori appointments to committees in the legislation.

234. Other feedback on composition has included support for regionally-led decisions, but concerns that the limited parameters may lead to difficult regional debate. Many agencies have also expressed support for direct representation of local authorities on committees.
235. There is support for accountability requirements for all members of the committee, and general support for consensus decision-making. Many agencies note the link between the appropriate back-stop voting provisions and the composition of committees, with many wanting decision-making parameters to support a proportion of Māori membership.
236. Other feedback provided included testing the right intervention points for Ministers where committees have disputes, and desire for clarity on the responsibilities for the director of the secretariat.

Local government

237. Local government submitters to the NBA exposure draft were concerned about the role of local democracy and place-making at the regional and local level. Specifically, there were concerns over fair and adequate representation on planning committees and the potential loss of local input into NBA plans through a shift to regional planning committees. They also supported mana whenua membership on planning committees but had concerns about how this would be resourced and achieved in practice.
238. The Local Government Steering Group (LGSG) is made up of elected members and council senior leaders and provides advice to the Secretary for the Environment, the RM Reform CE Board and Ministers. LGSG have produced a paper setting out a proposal '*Enabling local voice and accountability in the future resource management system*'. Officials have provided a draft summary of the reports findings below, noting further and more detailed advice will be provided to the Minister for the Environment.
239. The paper proposes two key additions to the new system:
- a. a National Spatial Strategy to sit alongside the NPF to require central government to provide a coherent view on the outcomes it seeks for a region into the joint committees.
 - b. Statements of Community Outcomes (SCO) setting out a district or city's long-term vision and place-based aspirations, alongside Statements of Regional Environmental Outcomes (SREO) from regional or unitary councils that set out content relating to regional and coastal management plans. These would be given effect to by the joint committees.
240. Officials agree with the LGSG that it will be important for central government to provide co-ordinated input into the joint committees on the strategic issues. It was agreed at MOG #16 that one of central government's functions in the new system would be to provide strategic direction and further decisions will be sought through previously agreed delegations. Officials will continue to work with LGSG on this.
241. Officials also agree that it will be important that the system enables local voice and place-based inputs to inform plan development and joint committees. Detailed decisions (already delegated) will recommend that local place-based plans that have been through a thorough consultation process with communities must be considered in the development of NBA plans. Officials do not recommend requiring the SCO or SREO as mandatory but note that these could be a good way for regions to provide consistent input into joint committees.

242. The LGSG also made a number of recommendations specifically relating to the governance proposals, including a recommendation there should be one joint committee for both RSS and NBA plans, that elected members should sit on the joint committees to represent local authorities, and a time-bound feedback loop with local authorities prior to notification of plans. Officials note that under the proposals in this paper regions would be able to have shared membership across both SPA and NBA committees if that was their preference, and local authorities would be able to appoint elected members to committees. This paper has already given some consideration to the time-bound feedback loop. The LGSG have raised some concerns with the secretariat proposals, and the importance of getting this right. Officials will continue to work with LGSG on the secretariat proposals as these are developed for delegated decisions.

Iwi/Māori groups

243. Iwi/Māori submitters to the NBA exposure draft stated the composition of planning committees should be designed to reflect Treaty of Waitangi settlement arrangements; iwi and hapū rohe; iwi, hapū, and whānau structures; and the Treaty of Waitangi partnership. Iwi/Māori also sought clarification on impacts of existing Treaty settlement arrangements.

244. Officials have consulted with FILG and TTK on some of the proposals in this paper. Officials have summarised our interpretation of their positions below.

245. FILG positions:

- SPA/NBA committees should be 50/50 to provide for partnership
- Appointments to committees should be representative and skills based
- Supportive of consensus decision-making and co-chairing or independent chairing arrangements for committees
- Emphasised the critical role for iwi/Māori in strategy and plan development through the secretariat, specifically through role for iwi planners and through specific supports for the Māori committee members.

246. TTK positions include:

- SPA/NBA committees should be 50/50 to provide for partnership, and Māori appointments should be made through mana whakahaere councils
- Appointments to committees should be representative and skills based
- Supportive of consensus decision-making and co-chairing arrangements for committees
- Emphasised the critical role for iwi/Māori in strategy and plan development through the secretariat, specifically through role for Māori planners and through specific supports for the Māori committee members.
- Not supportive of Minister being final decision maker on disputes on RSS's and plans.

247. A more detailed summary of the submissions received through the recent targeted engagement period are summarised in appendix 4.

Appendix 1: Treaty Analysis

<p>Status Quo</p>	<p>It is recognised that the RMA has failed to deliver on the opportunities for Māori in the system. Specifically, the Panel report identified the following issues that relate to governance:</p> <ul style="list-style-type: none"> • Māori involvement in the resource management system has tended to be at the later stages of resource management processes, and there is an opportunity in a new system to provide for a strategic role for Māori • limited use of the mechanisms for mana whenua involvement in the RMA • Capacity and capability issues for both government (central, regional and local) and Māori to engage on resource management issues, and lack of funding and support to address these issues.
<p>Summary analysis</p>	
<p>The proposals for SPA and NBA committees recognise the important relationship between Māori, the environment and the customary rights and cultural values within regions. The overall policy intent is to provide iwi, hapū and Māori with a decision-making role alongside local government on resource management matters in the new system.</p> <p>The new RMA system, and the decision-makers exercising functions, needs to give effect to the principles of te Tiriti which is a much higher weighting than the current system. Iwi, hapū and Māori appointments to committees support the objective for Māori as Treaty partners to be involved in all parts of the system including decision-making and upholds principles of good governance, active participation and rangatiratanga. Appointments to the new joint committee decision-making bodies provide an enhanced role for Māori to influence decisions across all resource management matters. Currently the role for Māori in plan-making decisions is limited, with many decisions defaulting to local authorities alone.</p> <p>In addition, the governance responsibilities for RSSs (and the implementation agreements) provide Māori a new role in long-term spatial planning which does not exist in the current system. Māori are also provided, through SPA and NBA committees, clear roles and responsibilities for monitoring functions across the new system (out of scope for this paper).</p>	

The SPA and NBA plan committees are one of many avenues for Māori participation in the system. Decision-making on RSS's and plans will provide for Māori participation up front in the system.

Gives effect to the principles of Te Tiriti o Waitangi

SPA and NBA committees will be required give effect to the principles of Te Tiriti and to take into account Te Oranga o te Taiao in their decision-making. In addition to this significant statutory obligation on committees, the following proposals seek to give effect to the principles:

Autonomy of committees

Committees are autonomous, with no requirement for RSS's or plans to be ratified by local authorities. Apart from some exceptions (such as to uphold Treaty settlements or other arrangements) committees will not be able to delegate decisions on RSS and NBA plans – ensuring decision-making cannot default to councils alone.

Composition and appointments

- Māori appointments on joint committees will ensure Māori are able to influence decisions on RSS's and plans. This includes process decisions which ensure Māori are involved effectively in all aspects of the development of SPA and NBA plans and their monitoring. Specific provisions include:
 - providing flexibility for joint committee's to be established on a region-by-region approach to allow for regional and local variation across the country, balanced with providing a framework for discussions and agreement to occur within
 - overall composition parameters, including setting a clear minimum within the legislation to provide some prescription to the process for establishing and forming committees and to give assurance that there will be Māori membership on committees – with the ability to agree a number above this to ensure appropriate membership is achieved for various committee sizes
 - ensuring the LGC can seek additional Māori expertise (including through requesting a temporary member be added to the LGC) when making composition decisions where a region cannot come to agreement
 - providing self-identification for iwi hapū and Māori to dictate their own appointment processes to committees.

Decision-making parameters

- Decision-making powers are balanced through consensus decision-making, with backstop voting rules.

Supporting mechanism

- Co-chairing arrangements are enabled where desired by the regions
- It is intended that the secretariat be provide for collaboration between local authorities and Māori (and central government for RSS). Māori involvement through the secretariat is ensured through a requirement on the director of the secretariat to include mātauranga Māori and te ao Māori perspectives through the drafting of RSS's and plans. Further detailed decisions will be sought in relation to the secretariat.
- Ability for committees to establish sub-committees for topics which could include cultural landscapes or content on specific waterways or other taonga.

Outside of the scope of governance, Māori participation in the system is provided for in a number of ways, including:

- a role for the National Entity in monitoring the performance of committees to give effect to the principles of te Tiriti
- Māori engagement requirements through plan development processes, specifically engagement plans identifying how joint committees will engage 'at place' with iwi, hapū and Māori
- roles and responsibilities of joint committees in monitoring RSS's and plans
- enhanced Mana Whakahono ā Rohe
- Role for local voice in the system, and weighting provided for iwi management plans requiring decision-makers to give active consideration to them in strategy and plan making.

Comment on composition:

The establishment of a regional layer of decision-making, contains inherent tensions with providing for the exercise of rangatiratanga, including rights and interests at place. There will also be challenges, such as the number of seats allocated through composition discussions which will not always neatly fit with the number of Māori entities (including iwi and hapū representative organisations) in the region. Furthermore, regional boundaries rarely match iwi and hapū rohe which adds further complexity to the way the new system will require Māori to work.

We note that Māori groups including ILG and TTK have strongly stated their position that 50/50 membership of committees is required to reflect true partnership under te Tiriti. It is not proposed for 50/50 membership as a default to be prescribed in the legislation. Treaty analysis does not dictate particular outcomes and the courts have confirmed that the Crown can choose from a range of Treaty consistent options. The policy position is that a minimum for the number or proportion of Māori members is provided but that the focus is on supporting regions to make their own composition

determinations. To uphold the intent of a regionally-led process we must provide flexibility, and Māori appointments must be balanced with local authority representation.

Wai 262 considers a sliding scale for how Māori should be involved in the management of natural resources. Not requiring 50/50 on committees is based on the view that not all natural resources in a region or territory are of particular significance to Māori (or are considered taonga by Māori). While Wai 2358 found that the standard for the management of individual or specific freshwater resources that are taonga is co-governance, regional governance covers a much broader span of natural resources and does not need to achieve a 50/50 standard as the start point of governance. However, by setting a framework in the NBA and SPA that allows for 50/50 to be agreed ensures where this is desirable by all parties it can happen.

The treaty partnership principle requires a context-specific balance to be struck between the Crown's exercise of kāwanatanga (right to govern) and the exercise of rangatiratanga (reasonable degree of control and authority) by Māori. This means the Crown must balance other objectives as part of its exercise of kāwanatanga in deciding the legislative framework for the composition of committees. The system shift towards regional governance may be seen as moving some decision-making away from local communities. While there are benefits of regional RM governance, including strengthening the Treaty relationship, this move might potentially weaken regional accountability to democratically appointed local authorities. Other considerations include the interests of other New Zealanders or particular interest groups and practical workability and the need for expertise for certain decisions.

Officials have assessed that there would likely be few instances at the joint committee level that would meet the Waitangi Tribunal's test for Māori control over decisions about a specific taonga (at least in relation to determining the composition of the committee). Officials also consider that control or partnership approaches balanced toward the kaitiaki rather than the general public interest could still be provided for where appropriate should SPA and NBA committees choose to establish and defer to the advice of hapū/iwi/Māori led sub-committees or seek advice directly by hapū/iwi/Māori groups.

There are other areas in the system where control could also be provided for to some degree, most likely via transfers of power, for example through consenting related powers such as the existing veto rights over certain consents provided to CMT holders under MACA and recognised in the RMA) or environmental monitoring in a specific location. Officials consider it appropriate that such matters be explored region by region and in relationships between iwi/hapū/Māori and regional decision-makers, rather than dictated through the legislation. Control is also provided for over the development of te ao Māori content such as iwi and hapū management plans.

Risks identified:

This paper acknowledges there is a risk with setting a low minimum for Māori membership. For example in a region with a large number of local authorities, there could be a committee of 15 with only 2 Māori members (depending on options selected by Ministers). This is not the policy intent and is unlikely to

be acceptable to iwi, hapū and Māori. Officials intend that the parameters in the legislation will prevent this from occurring, as firstly the regions and secondly the LGC will need to balance iwi, hapū and Māori interests with effective local democratic input.

We note that the parameters may not necessarily result in an increase of Māori membership depending on how they are interpreted and applied by the courts when challenged fully address the issue and acknowledge there is a risk that setting a low minimum in legislation effectively becomes the default position where discussions begin from. This could adversely impact on the relationship between iwi and hapū representative organisations and local government, and result to more composition decisions being required to be taken by the LGC. The Canterbury Regional Council (Ngāi Tahu Representative) Local Bill currently at select committee proposes to provide for Te Rūnanga o Ngāi Tahu (TRoNT) to appoint 2 members to the Council of 14 existing councillors after the 2022 local election. This bill follows from the Environment Canterbury (Transitional Governance Arrangements) Act 2016 where 2 council members were appointed by Ministers on the recommendation of TRoNT. This example indicates that 2 in some regions may be an appropriate number.

It's noted that depending on what composition is agreed that the simple majority voting rules will mean that Māori could be outvoted on committees. This risk is mitigated through efforts to support committees to work to consensus decision-making.

An additional risk is that if a region does not make a decision, the LGC will be the final decision-maker. While they can seek additional expertise, including requesting an additional temporary appointment is made, this body is unlikely to be viewed as legitimate by all iwi/hapū/Māori in a region. This further supports the emphasis to be on the Crown support regions to come to their own agreement on composition.

Costs and benefits for Māori

There are significant benefits for Māori through these proposals, specifically through being able to directly influence decision-making via SPA and NBA committees for all resource management matters in a region. This is a significant achievement of the new system and will have positive flow on implications through to implementation and consenting.

Costs associated with Māori membership and involvement through the secretariat will be funded by the committee via local rating. This paper does not touch on wider costs for Māori, but we appreciate that involvement in composition discussions and appointments will be a resource burden for Māori groups.

Protecting and transitioning Treaty settlements

Advice on composition arrangements in regions is subject to on-going discussions with PSGEs which may require that bespoke arrangements are developed, including in relation to the nature and proportion of Māori membership on committees.

Further detailed consideration will be given to transitioning arrangements and/or relationships between settlement co-governance, co-management and advisory entities to uphold the integrity of settlements.

Irrelevant

Waitangi Tribunal Recommendations

There are a number of Waitangi tribunal recommendations utilised in this analysis:

- Wai 262 recommendations have been considered in developing our policy position for composition of committees. It provides that a Treaty-compliant environmental management regime is one that is capable of delivering the following outcomes, by means of a process that balances the kaitiaki interest alongside other legitimate interests:
 - 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; and
 - effective influence and appropriate priority to the kaitiaki interests in all areas of environmental management when the decisions are made by others.
- Wai 2358 – poses that co-governance is the default for specific freshwater taonga and expressed concern at how the RMA balances out Māori and Treaty interests, noting the Treaty guarantees tino rangatiratanga.
- Wai 2575 notes that principle of partnership requires the Crown and Māori to work in partnership in governance

- Wai 894 found that “for the Crown to have protected the tino rangatiratanga or mana motuhaka of the peoples of Te Urewera, it had to provide for them to participate fully in the governance and management of the park’ (2362)
- Wai 272 noted there is no standard template for how environmental decision-making privileges one set of interests over other, but found “the kaitiaki interest is important, and protections for it must be more than token, but it is not a trump card”. It notes that interests must be assessed on a case-by-case basis.
- Wai 1130 “the only way that the Crown can guarantee Treaty-compliant outcomes is by ensuring that all key decision-making processes involve Māori participation of a kind that is appropriate to the decisions being made”.

Irrelevant

Māori Crown relationship risks and opportunities

While this is a significant opportunity to give effect to the principles of te Tiriti, there remains risks for the relationship between the Crown and Treaty Partners, specifically:

- there have been consistent calls from ILG/TTK and other Māori groups that to provide for partnership composition of committees should be 50/50 membership by default.

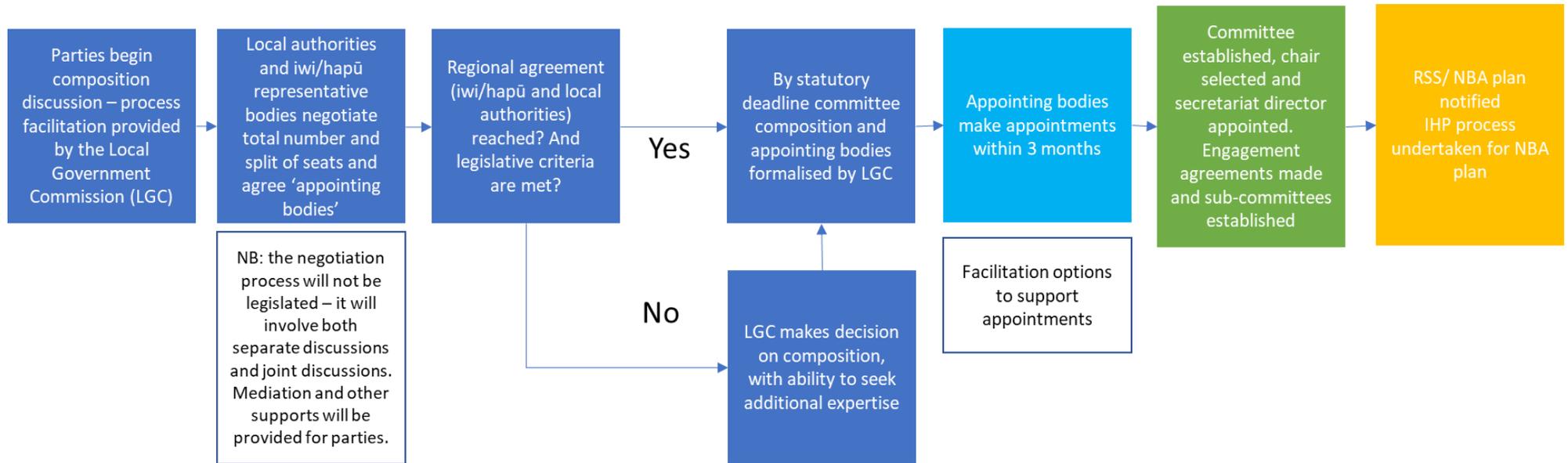
- in attempting to finely balance providing for protections for membership and allowing regional flexibility, there will remain a burden on Māori to debate the number of seats. This may be particularly difficult if the minimum and starting point is low (subject to decisions). Support must be provided in good faith for regionally-led composition processes.
- there is a risk that the voting rule for committees could mean Māori voices are outvoted. This is balanced by ensuring the focus is on committees coming to consensus decisions.
- Although costs of membership and roles and responsibilities in the secretariat will be fully funded by the committee, there are wider resourcing implications for Māori from these proposals.
- Policy work has been undertaken concurrently with discussions with PSGEs.

Irrelevant

Limitations of this assessment

- Tight timeframes have limited the extent of the treaty analysis
- Completing this analysis while discussions with PSGEs are underway
- Dependencies on the Role, funding and participation of Māori in the RM system MOG #17 paper decisions and Treaty settlement analysis.

Appendix 3: Committee formation and decision-making process flow chart



Appendix 4: Summary of feedback on submissions

As part of the recent targeted engagement, several submissions were received on regional governance and decision-making in the reformed resource management system for the regional spatial strategies under the SPA and plans under the NBA. Key points raised in the targeted submissions are summarised below:

Functions and form

- Strong support that the RM reform programme presents an opportunity for the Government and Māori to co-design resource management programmes and policy, and to make decisions together. Submissions noted that representation and composition of subsequent local governance entities should be a matter of consultation between mana whenua and local authorities.
- Some submissions raised the importance of having private sector involvement on committees, submitting that it is critical to the success of the future resource management system especially in developing NBA plans and RSSs and supporting implementation.
- Several submissions raised concern regarding the need for integration between the reforms of three waters, local government, and the RM system, submitting that they need to be designed in tandem and in an integrated way to ensure a coherent and workable system.

Composition and appointments

- Several submissions supported joint committees consisting of equal number of iwi and local authority membership but noted that there should be some flexibility for each region to determine the makeup of its committee(s).
- Submissions noted that the size of committees need to be carefully considered and reflective of the region and its local authorities and iwi.
- Some submitters suggested that representation on planning committees could be improved by providing for alternative methods to determine representation of local authorities on the planning committee, particularly for regional council representation and Tier 1 local authorities which face challenges in providing for housing and urban development.
- Support across the submissions for elected members on committees and the need for representation from all local government. Submissions also recognised that there will be challenges for each region in establishing a joint committee including local government election cycles, ensuring appropriate representation, having consistent levels of experience and expertise to operate at the level required, as well as the degree of technical support across regions with many different resource management pressures.

Decision-making

- A preference for majority decision-making (as opposed to consensus) for joint committees.
- Several submissions supported subcommittees and the development of sub-regional plans, particularly to reflect the different issues of interest across a region especially the bigger regions. Some submissions though also raised a need for clear timeframes in order for regional NBA plans to meet their deadlines and ensure that they did not create complexity when developing a regional plan, as it would result in increased risk of conflicts developing at the later stage. Submissions

also noted that the weight of sub-regional NBA plans would have to be carefully considered and should not proceed the importance of NBA plans nor the RSS.

- Other submissions supported combined NBA plans at a regional level to better integrate resource management at a regional scale, noting that providing explicitly for sub-regional plans, led by sub-committees had limited merit and could risk the integrity and coherence of planning, adding unnecessary complexity, time, and frustration.

Resourcing the committees

- It was recognised in several submissions that local authorities have a key role to play in advocating for the needs and aspirations of their communities at the regional table, working with their communities to engage them in the regional plan making process and to identify needs for localised planning content. But submissions also noted that there is a significant amount of technical and relationship work that goes on behind the scenes to operate effectively across regions.
- Submissions identified the shift from managing adverse effects to complying with environmental limits, noting that promoting outcomes for the benefit of the environment will require a change in culture, and that resourcing of capability building within local government will be needed.
- Several submissions raised that local authorities and iwi/hapū/Māori will require significant support from central government, including funding, training and guidelines, for both transition to and implementation of the new system. Iwi in particular have limited capacity at present to engage in resource management processes in the way the new system will require.
- Submissions generally agreed that capacity and resourcing for iwi/Māori is essential to engage in the reform process and to participate effectively in the new system. With several noting the funding should come from local and central government, rather than from iwi and hapū.
- Some submissions noted that having a well-resourced secretariat while also ensuring local authorities retain some internal capacity and capability was essential. Submissions however also noted the potential for a fundamental change in functions if the secretariat was carved out, combining existing local government administrative planning functions and becoming a new independent regional organisation which employs staff directly.

Cross-cutting issues and other matters

- Several submissions raised local community input into plan development as crucial in maintaining local democratic processes. While the mechanism to achieve this was varied, it was agreed that councils are key in placemaking.
- Some submissions raised concern that condensing multiple plans into one unitary plan under the joint committee structures would result in the loss of local democratic input, fair representation of local authorities and iwi authorities.
- Other submissions raised that planning at a regional scale will not detract from the ability to address local issues. Submissions noted that they can be more detailed where needed, for example in some local areas where pressures and conflicts are most acute. In effect, more detailed local spatial strategies could be incorporated in the framework of a regional spatial strategy.

- Several submissions raised the importance of iwi/hapū voice as being strong sitting alongside the council planners when writing the plan. Some submissions also noted that the joint committee wouldn't write the plan they sign it off, so the iwi/hapū input into the plan development is more critical than governance.

[IN-CONFIDENCE]

Agenda item 2:

Role, funding and participation of Māori in the RM system

Summary slides

[IN-CONFIDENCE]

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Agenda item 2: Role, funding and participation of Māori in the RM system

Background information

The RM Review Panel (The Panel) identified that the RMA has failed to deliver on the opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.

- The Panel recommendations included strengthening the Te Tiriti o Waitangi clause, enhancing existing mechanisms, creating new mechanisms, and enhancing financial support.
- The MOG has already agreed to several high-level matters relating to Māori participation in the new system.
- This paper seeks agreement to more detailed decisions on Māori participation at the national, regional, and local levels of the new RM system, with a focus on:
 - what roles for Māori should be provided
 - who should partner and participate
 - how Māori participation should be funded.

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Agenda item 2: Role, funding and participation of Māori in the RM system

Options

This paper sets out options for 'who' from te ao Māori can participate and partner at each layer of the system

This paper also considers the appropriate functions for the new mechanisms being introduced the system

There are options for how the roles for Māori are funded

- **Functions:** How do we enable the various functions to have appropriate influence, while not compromising the mana of iwi, hapū and Māori.
- **'Who' in the system:** High-prescription vs low-prescription and how does the approach vary throughout the different layers of the system

Irrelevant

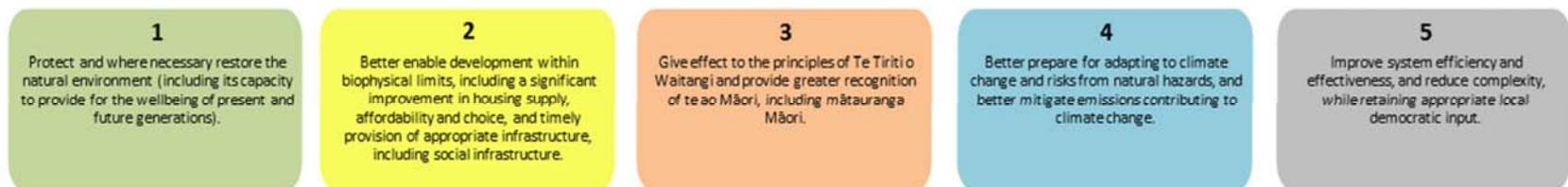
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Agenda item 2: Role, funding and participation of Māori in the RM system

Reform objectives and outcomes

Reform objectives
agreed by Cabinet



- The paper is primarily focussed on giving effect to the principles of Te Tiriti o Waitangi (objective 3) and improving system efficiency and effectiveness (objective 5).
- Both reform objectives have been used to frame the assessment criteria used to develop the preferred options.
- The proposals in this paper provide tools to help decision-makers to understand the actions required to give effect to the principles of Te Tiriti o Waitangi.
- While some of the mechanisms do increase short-term complexity, the status quo is not a viable option because it does not readily give effect to the principles of Te Tiriti.
- On balance, officials consider that the proposals in this paper will provide efficiency and effectiveness by increasing certainty, whilst enabling sufficient flexibility to recognise regional variation, for decision-makers and system users.

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Agenda item 2: Role, funding and participation of Māori in the RM system

Discussion points

- At the national level the key decision for the role of Māori is how to ensure Māori have genuine opportunities to participate in and influence the direction and strategic decisions that will be made by central government
- At the regional level there are two key decisions for the role of Māori:
 - how Māori members will be appointed to SPA and NBA committees
 - how central government can meet its Te Tiriti o Waitangi obligations to ensure that necessary funding is in place.
- At the local level the key decision for the role of Māori is how to ensure that the tools to enable and facilitate Māori participation ‘at place’ are necessary, integrated and fit for their various purposes.

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Paper 2: Role, funding and participation of Māori in the RM system

Key messages

Narrative

1. The purpose of this paper is to provide the Ministerial Oversight Group (MOG) with information and recommendations on the roles, funding and participation of Māori in the resource management (RM) system.
2. Through the Resource Management Act 1991 (RMA), its predecessor statutes, and the new Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA), central government (through Parliament) delegates to local authorities the power to make planning laws – subject to the direction of the law and the National Planning Framework (NPF).
3. In doing so central government is delegating Te Tiriti o Waitangi (Te Tiriti) Article 1 rights. Planning has significant impacts on the allocation of scarce resources (eg, the use of forests, fisheries, water, flora, fauna and taonga) and clearly engages Te Tiriti Article 2 interests for Māori. It also engages Article 3 issues for Māori and non-Māori, with rights of all being represented via democratically elected councils and, for the SPA committees, central government.
4. The reform of the RM system is a good opportunity (as identified in the RM Review Panel's (the Panel) report) to provide for a RM system that gives effect to the principles of the Te Tiriti.
5. In considering how to do that, we have been mindful of the need to consider kāwanatanga rights and responsibilities, as well as rangatiratanga rights and responsibilities; together with the rights of all New Zealanders.
6. The package as a whole, including the prominence of giving effect to the principles of Te Tiriti in the Treaty clause as well as providing enhanced roles of Māori in the reformed system, will be significant in this regard. In taking this approach we have considered recent analysis from Dame Anne Salmond regarding Te Tiriti.¹
7. The proposed SPA and NBA joint committee model brings together all councils in a region (as well as central government for regional spatial strategies) and iwi/hapū/Māori members, as decision-makers.
8. It is important that joint committees reflect democratic principles and reflect Te Tiriti. The design of the committees needs to support effective decision-making; provide for

¹ See Dame Anne Salmond, *Te Tiriti and democracy*, 13 September 2021 <https://www.newsroom.co.nz/ideasroom/anne-salmond-te-tiriti-and-democracy>. As Dame Anne Salmond has described, the articles of Te Tiriti o Waitangi (Te Tiriti) say that:

- a. in Article 1, “the rangatira of the various hapū give to the Queen absolutely and forever the Kawanatanga katoa o o ratou Wenua (all the Governorship of their lands), defining the scope of kāwanatanga as stretching across their territories”
- b. in Article 2, “the Queen accepts and agrees to te tino rangatiratanga (full chiefly authority) of nga Rangatira, nga Hapu, nga tangata katoa o Nu Tirani (the chiefs, the kin groups, and all the inhabitants of New Zealand) over their lands, dwelling places and all of their taonga”
- c. in Article 3, “[i]n exchange for their agreement to her Kawanatanga (Governorship), the Queen promises to care for nga tangata maori o Nu Tirani (the ordinary inhabitants of New Zealand), and to give to them nga tikanga katoa rite tahi ki ana mea, ki nga tangata o Ingarani (all the tikanga [just and proper ways of living] absolutely equal to those of her subjects, the inhabitants of England)”.

effective local democratic input and accountability and an effective role for Māori in decision-making; support the efficient functioning of committees; and uphold the integrity of relevant Treaty settlements, and agreements under the Resource Management Act 1991 (RMA) between councils and Māori.

Privileged

12. Engagement is underway with Post Settlement Governance Entities (PSGEs) to consider how Treaty settlements can be upheld in the new system.
13. The recommendations in this paper propose Māori involvement at the national, regional and local levels as set out below.

Who participates and Treaty impact analysis (Annex A – pages 6 to 40)

14. The proposals set out in this paper broadly align with the Panel’s recommendations, with the notable exception being the Panel’s recommendation to replace ‘iwi authority’ and ‘tangata whenua’ with a new definition for ‘mana whenua’. However, there is no clear case for a single overarching term, and different terms should be used in different contexts.
15. The system will provide significantly enhanced direct rights of participation for hapū and participation opportunities for Māori groups with rights and interests ‘at place’, alongside other New Zealanders, which is a significant improvement on the status quo.
16. The overall package of Māori participation mechanisms will contribute to a system that gives effect to the principles of Te Tiriti and provides for greater recognition of te ao Māori, including mātauranga Māori. Māori will have the following roles/functions across all levels of the new system:

Irrelevant

Recommendations

The Ministerial Oversight Group (MOG) is recommended to:

Context, analytical approach, who participates, Treaty impact analysis (see Annex A for supporting analysis)

Context and prior decisions

1. **note** that the Resource Management Review Panel (the Panel) identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and made a number of recommendations relating to more effective and strategic roles for Māori in the new system, and better consistency with the principles of Te Tiriti o Waitangi (Te Tiriti)
2. **note** that the proposals set out in the suite of accompanying papers (Annex 0 to E) broadly align with the Panel's recommendations (with one exception as set out in recommendation 6 below)
3. **note** that previous MOG decisions influence the framing for the recommendations in this paper, with significant ones relating to the role of the National Māori Entity, approach to "who" participates at different levels, and how Māori will be supported to participate in the system

Who from te ao Māori participates across the system

4. **note** that, in general, proposals aim to provide for iwi/hapū/Māori to self-identify who will represent them in resource management (RM) processes. However, the proposals also recognise that in some cases more specificity is required to ensure that:
 - a. there is clarity about which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
 - b. the Crown sets up processes that avoid or resolve conflict
 - c. the system is able to function effectively and efficiently and in accordance with its policy intent
 - d. Treaty settlements and other existing natural resource arrangements under the RMA are upheld
5. **note** that the proposals for 'who' from te ao Māori participates across the system provide for
 - a. roles for iwi and hapū, including in relation to composition and appointment processes for NBA and SPA committees
 - b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space and resource 'at place'⁴
 - c. roles for expert Māori practitioners
 - d. a role for national Māori organisations as part of the National Māori Entity nominations process

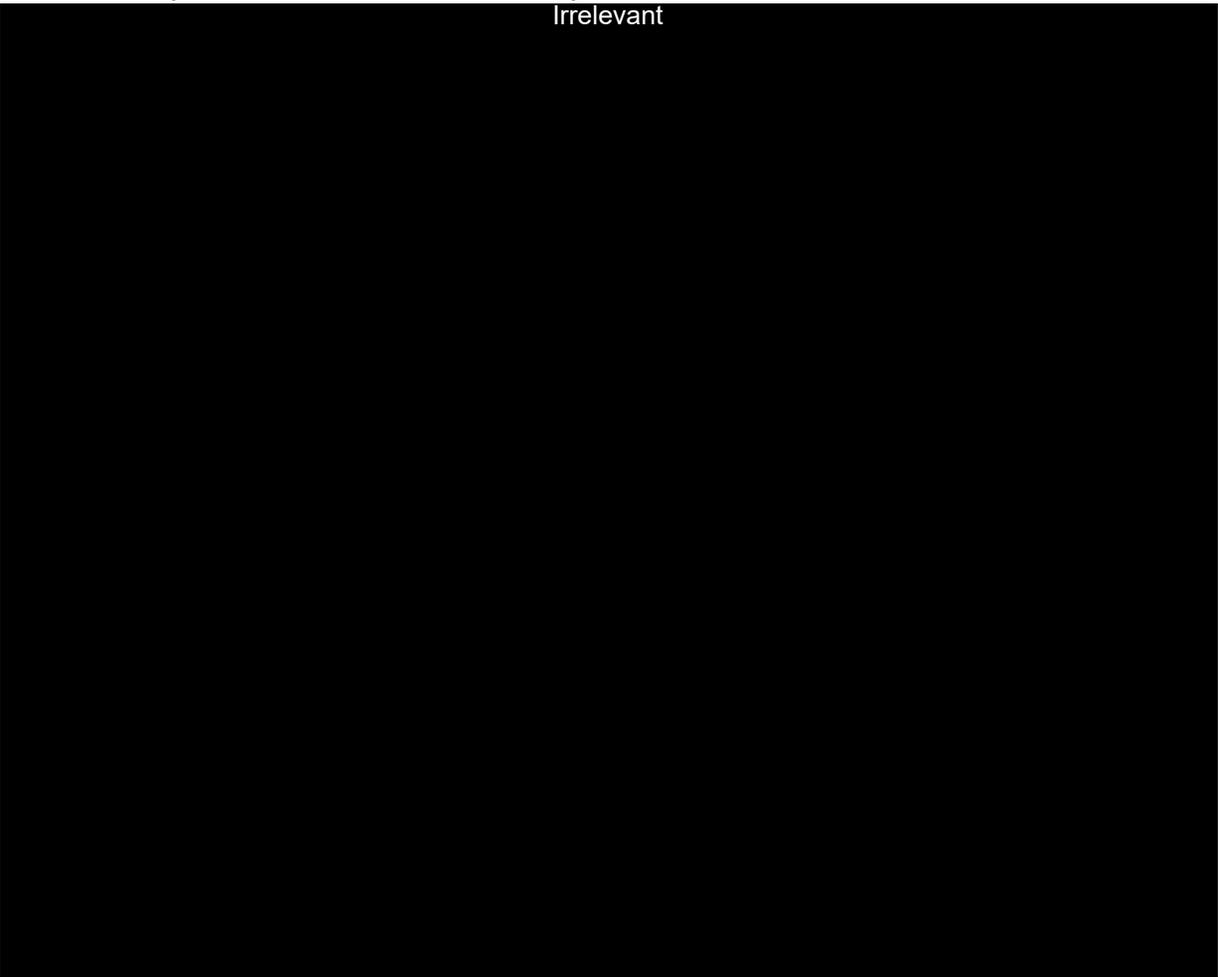
⁴ Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

- e. participation opportunities for Māori as individuals through public participation processes

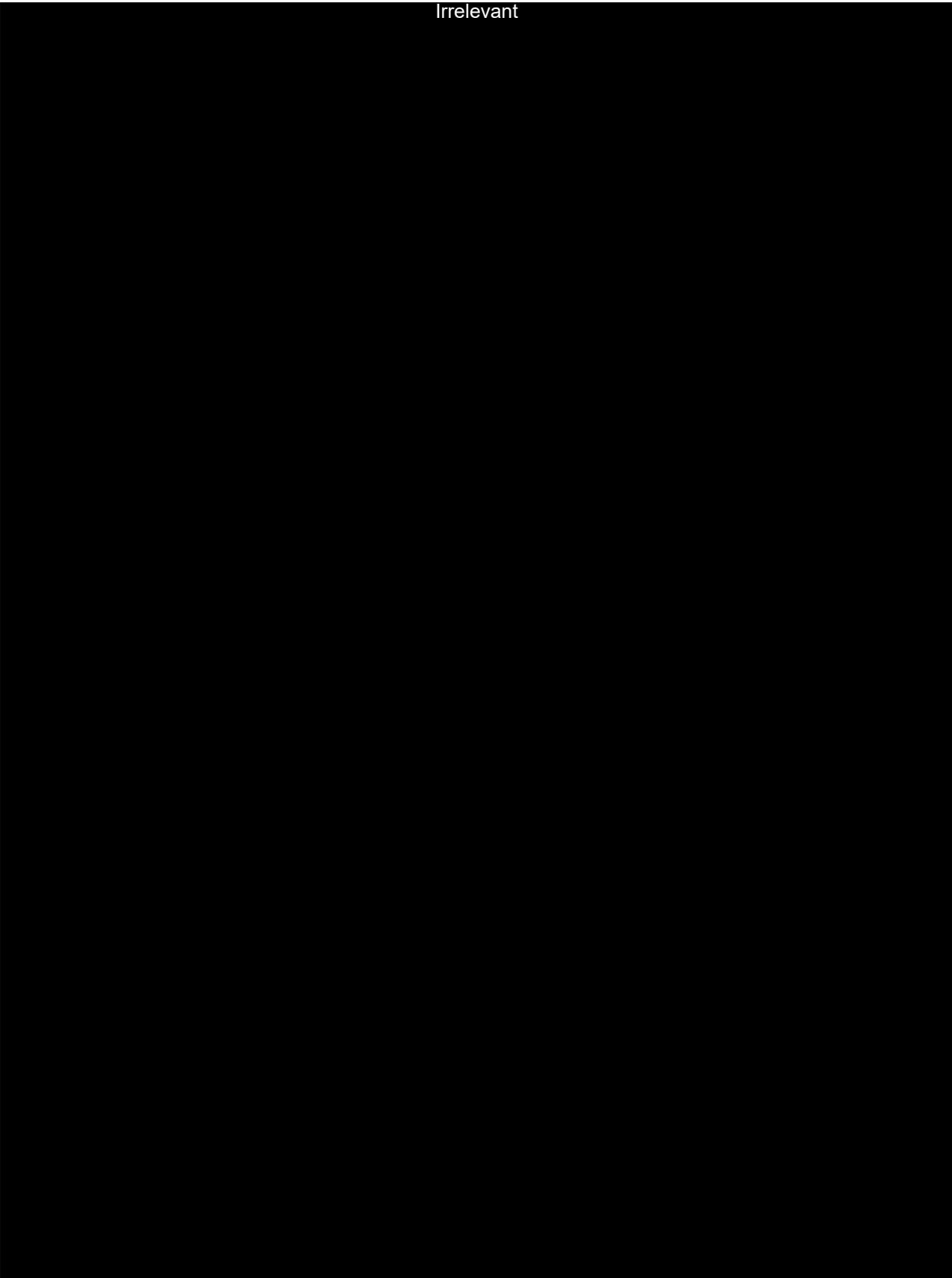
Terms and definitions

- 6. **note** that the Panel recommended the existing RMA terms 'iwi authority' and 'tangata whenua' be replaced by 'mana whenua' with a proposed definition of "an iwi, hapū or whānau that exercises customary authority in an identified area", but our view – discussed at the Māori Interests subgroup on 24 November 2021 – is that there is no clear case for a single overarching term, and different terms should be used in different contexts
- 7. **note** that consistent terms and definitions will be developed to support specific proposals on "who participates from te ao Māori" at each layer and function in the new RM system, including for:
 - a. iwi and hapū representative organisations; and
 - b. Māori entities representing rights and interests in relation to a particular area, water source, space and resource 'at place' (similar to the approach taken under the Urban Development Act 2020)
- 8. **authorise** the Minister for the Environment, Minister for Māori Crown Relations: Te Arawhiti, Minister for Māori Development and Associate Minister for the Environment (Hon Kiri Allan) to make any further policy decisions required to draft definitions and agree the implementation approach in relation to who participates from te ao Māori at each layer and function in the new RM system

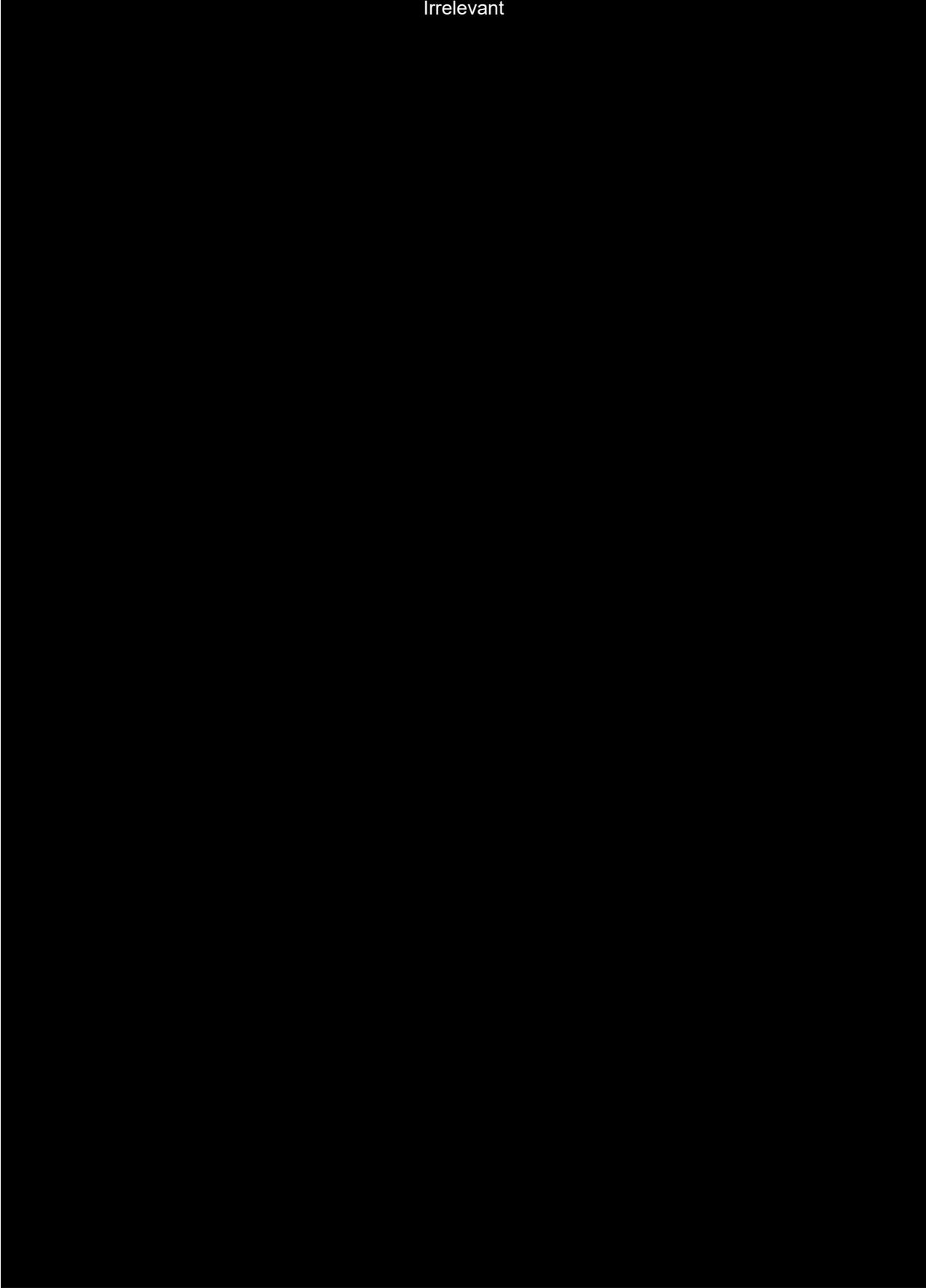
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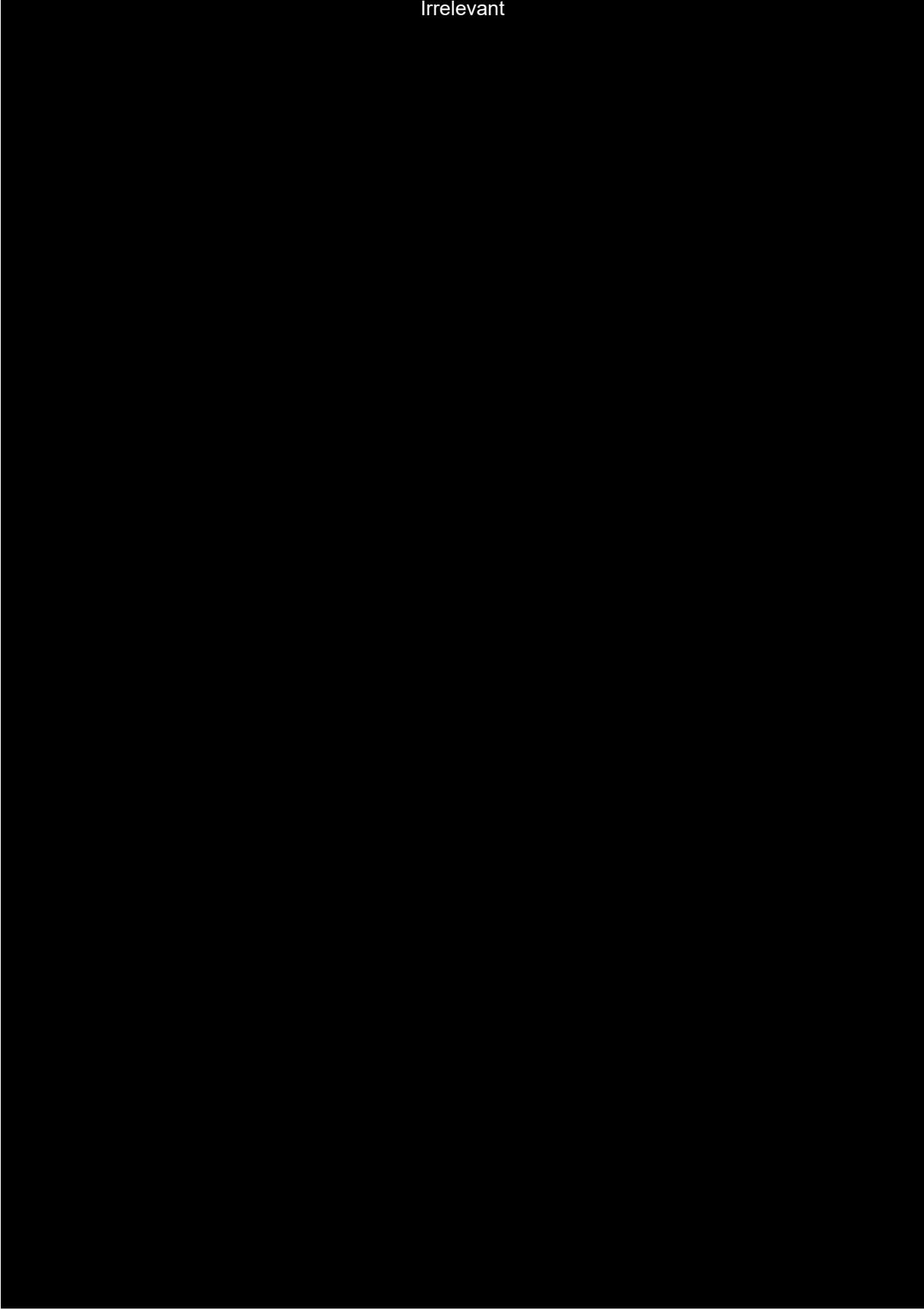
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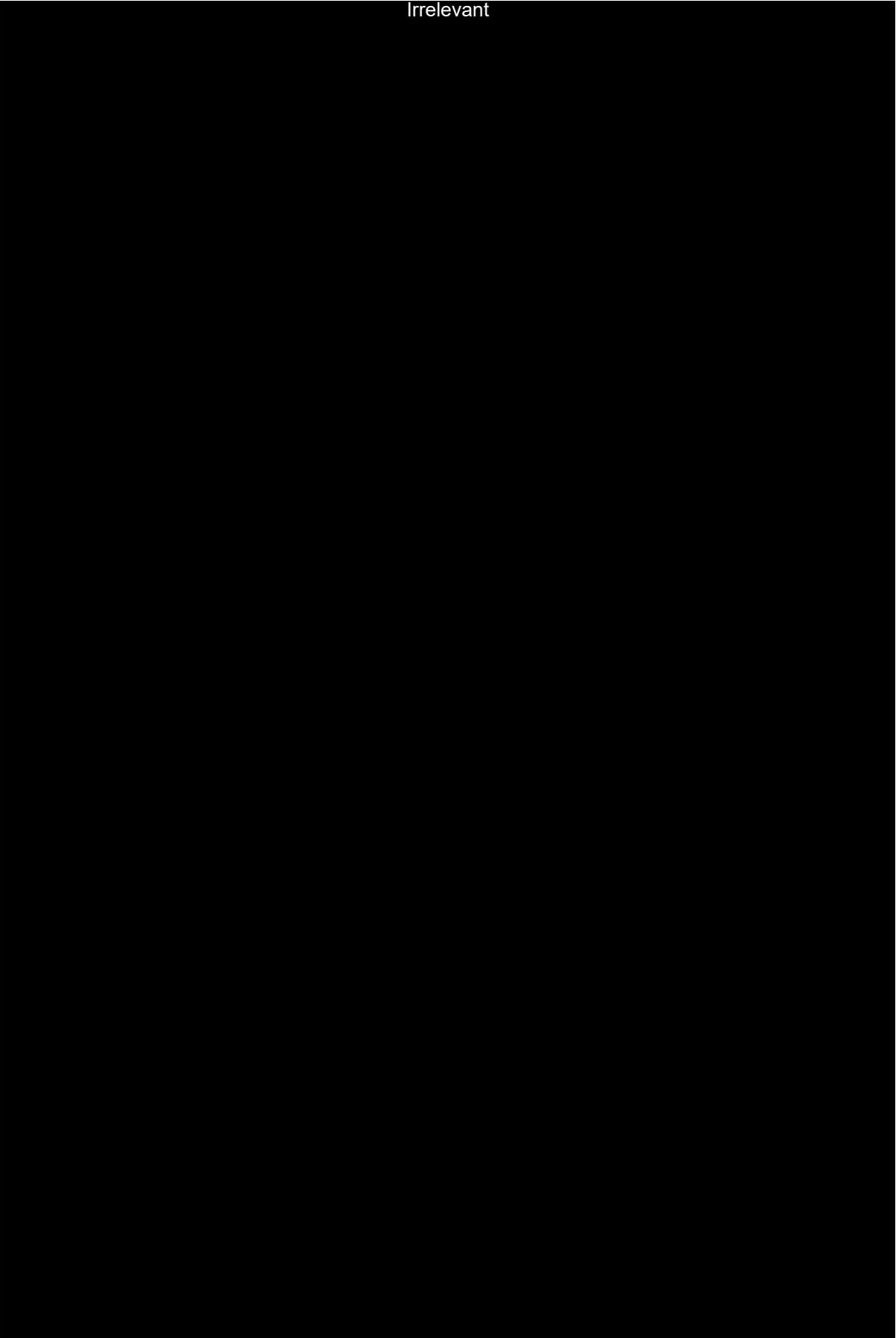
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Regional Governance (see Annex C for supporting analysis)

Who participates in SPA and NBA committee composition and appointments processes

54. **note** that Paper 1: Regional Governance and decision-making in the new resource management system seeks agreement to a range of matters related to SPA and NBA committees, including composition and appointment processes
55. **note** that Te Tai Kaha and the Freshwater Iwi Leaders Group/Te Wai Māori Trust have differing views on 'who' from te ao Māori should be leading the composition and appointment process for Māori members on the SPA and NBA committees
56. **agree** the following approach to composition and appointment for Māori members on SPA and NBA Committees:
 - a. iwi and hapū representative organisations are identified as the entities to be engaged with in discussions on composition of SPA and NBA committees
 - b. iwi and hapū representative organisations must, within their regions, engage with their members and other Māori entities⁶ representing rights and interests 'at-place'⁷ in agreeing composition and identifying appointing bodies

⁶ See recommendation 7.

⁷ Note 'at place' is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term 'at place' will be used in the legislation.

- c. there will be requirements to maintain a record of engagement on composition and appointment discussions and to make this record publicly available
 - d. for the avoidance of doubt, Māori entities, other than iwi and hapū representative organisations, can also be appointing bodies
 - e. appointing bodies must be enduring and capable of developing and executing their own appointment and removal processes
57. **note** that this approach does not preclude the creation, outside of statute, of a regional forum or other mechanisms to support appointee accountability, help reach agreed positions, and resolve disagreements
58. **note** that once appointments are made, the Māori members on SPA and NBA committees (like local authority members) will be paid for their services by the committees
59. **authorise:**
- a. the Minister for the Environment and the Minister for Māori Crown Relations: Te Arawhiti, the Minister for Māori Development, and the Associate Minister for the Environment (Hon Kiri Allan) to make any other decisions needed on the ongoing role and functions of appointing bodies, details of dispute resolution (including facilitation) and circuit-breaker processes for Māori appointments; and
 - b. the Minister of Finance (Hon Grant Robertson), in conjunction with the Ministers listed in 53 a, to make decisions where these policy decisions have financial implications

Secretariat

60. **note** that Paper 1: Regional Governance seeks agreement to the functions and responsibilities of the Secretariat Director and the Secretariat
61. **authorise** the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan) to make decisions on further details on the secretariat, including any additional legislative and non-legislative measures that may be required to support the role for Māori in the secretariat

Upholding Treaty settlements, Takutai Moana rights and other existing arrangements

62. **note** that the Crown has committed to upholding Treaty settlements, Takutai Moana rights, rights under Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019 and other existing natural resource arrangements under the RMA, and that:
- a. some existing arrangements through Treaty settlements or the RMA enable or provide for joint development between iwi/hapū, PSGEs and local authorities of aspects of regional and district planning documents, or decision-making on the same
 - b. the future system will need to provide mechanisms to uphold the intent and integrity of those arrangements established via Treaty settlements and/or under the RMA (including co-governance, joint management, and arrangements for the development of regional planning documents)
 - c. decisions on composition arrangements in regions are also subject to on-going discussions with affected parties in relation to upholding existing commitments and may require further policy decisions to provide for additional direct representation of those parties on SPA and/or NBA joint committees or sub-committees
 - d. these matters will require further delegated decisions (refer to MOG #15 delegated decision making for Treaty settlements; RMA arrangements; Takutai Moana rights and Ngā Rohe o Ngā Hapū o Ngāti Porou Act 2019)

Treaty Partnership Entities

63. **agree** to rescind the decision at MOG #11/12 that “Treaty Partnership Entities will be enabled to support SPA and NBA committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements”
64. **note** that no further action be taken at this time in relation to providing for Treaty Partnership Entities⁸ as a mechanism to provide for iwi/hapū/Māori at a local level to have input into plan development
65. **note** that, to support upholding existing Treaty settlement arrangements and natural resource arrangements under the RMA, where the existing arrangement relates to a specific entity and a local authority working together to produce a plan or strategy that is akin to a plan or strategy prepared by NBA/SPA committee (or part thereof), that arrangement may be transferred from the local authority to the NBA/SPA committee

Local decision-making and existing mechanisms to support the incorporation of the views of Māori at place (see Annex D for supporting analysis)

Māori participation in plan-making and resource consenting – Engagement Agreements

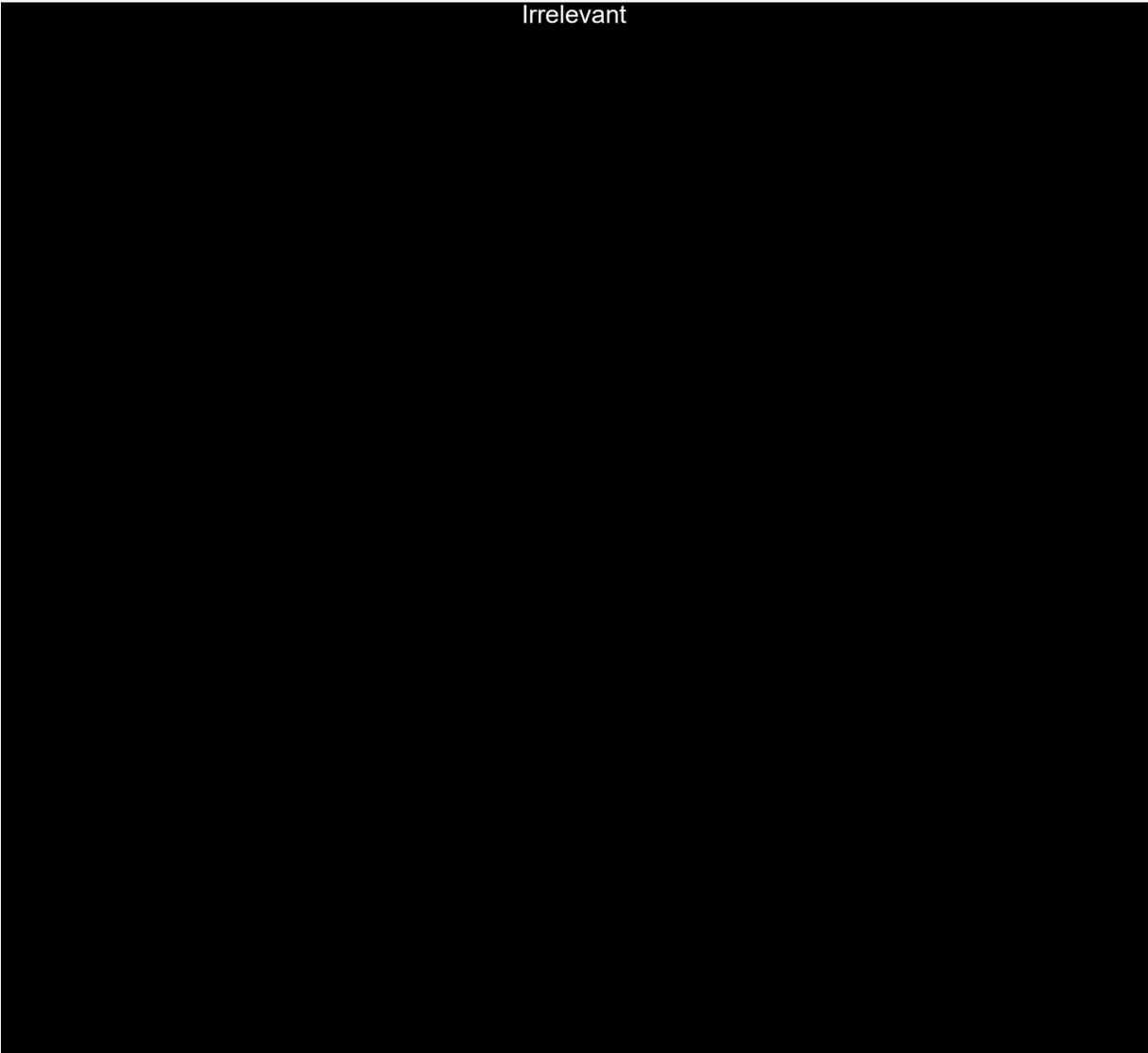
66. **agree** that the SPA and NBA legislation provide for “Engagement Agreements”, which:
- a. can be formed between iwi and hapū representative organisations, Coastal Marine Title (CMT) holders (as well as other Māori entities where relevant), and SPA and/or NBA committees (or a combination thereof)
 - b. will include agreement between the relevant groups on:
 - i. how engagement will be undertaken
 - ii. funding for the iwi, hapū or Māori entity to undertake engagement
67. **agree** that SPA and NBA committees will be required to initiate Engagement Agreements with iwi and hapū representative organisations and CMT holders in the area covered by the regional spatial strategy (RSS) or NBA plan
68. **agree** that iwi and hapū representative organisations and CMT holders will not be required to respond to an invitation
69. **note** that the timeframes for developing Engagement Agreements will be agreed through a delegated decision paper
70. **agree** that there will be an obligation on SPA and NBA committees to consider:
- a. how they will ensure, within their regions, the views of broader Māori entities representing rights and interests ‘at place’ are included in the RSS and NBA plan development processes
 - b. whether further Engagement Agreements are desirable with any Māori representative entities or groups of entities to achieve this
71. **agree** that the SPA or NBA committee must negotiate the content of an Engagement Agreement in good faith and in a way that will meet the objective of ensuring iwi and

⁸ Note ‘Treaty partnership entities’ refers to a proposal put to Ministers at MOG #11/12 for arrangements that would “be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements” by enabling a new, or continuing an existing, contributing or sub-committee structure that relates to RSS or NBA plan making and linking to this to the SPA and/or NBA committee instead of to local authorities (where a number of existing arrangements link to).

hapū, and where relevant other Māori entities, can meaningfully participate in RSS and NBA plan development

72. **agree** there will be no formal dispute resolution process specified if agreement cannot be reached on the content of an Engagement Agreement. If parties cannot agree then the process will default to the general NBA or SPA consultation and engagement provisions
73. **agree** that participants with an Engagement Agreement will be resourced by the NBA or SPA committee to undertake the engagement specified in that agreement
74. **agree** that Engagement Agreements are for the purpose of engagement during the consultation phase of plan development and cannot contain provisions and associated funding for participation during the hearing or appeals stage of plan
75. **note** that the relevant part of a Mana Whakahono ā Rohe arrangement could function as an Engagement Agreement
76. **note** the NBA will not include any specific requirement for consultation with any specified parties on a resource consent. Where consultation requirements for consents are appropriate, these can be included in an NBA plan

Irrelevant



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Annex 0: Purpose, structure and summary

Purpose and structure of this paper

1. The purpose of this paper and annexes is to provide the Ministerial Oversight Group (MOG) with information and recommendations on the roles, funding and participation of Māori in the resource management (RM) system.
2. This paper contains a summary of the most crucial information Ministers need to make decisions, as well as the full detailed recommendations necessary to proceed to drafting instructions or enable delegated decisions where required.
3. To support these recommendations, a suite of annexes with supporting analysis is attached to this paper. These annexes cover:
 - a. **Annex A – Context:** problem definition, Resource Management Review Panel (the Panel) recommendations, relevant MOG decisions, a system view of 'who' partners and participates from te ao Māori, Treaty impact analysis and impacts on addressing Māori freshwater rights and interests
 - b. **Annex B – Roles for Māori at the national level:** National Māori Entity and National Planning Framework
 - c. **Annex C – Roles for Māori at the regional level:** 'who' participates from te ao Māori in Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committee matters (governance, secretariat) and Treaty partnership entities
 - d. **Annex D – Roles for Māori at the local level:** plan development, consenting and existing mechanisms to enable and facilitate Māori participation at-place
 - e. **Annex E – Funding and support for roles for Māori in the RM system.**

Paper summary

4. The Panel identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.
5. A key challenge is to ensure the new RM system as a whole delivers on the five Cabinet agreed reform objectives. In doing so it will be essential to uphold existing Treaty settlement arrangements, Takutai Moana rights and existing natural resource arrangements under the RMA.
6. MOG has already made a number of decisions related to the roles, funding and participation of Māori in the RM system. This paper and the suite of annexes, set out the next level of decisions required and include proposals about how the legislation and funding will work together to deliver the objectives of the reforms, including giving effect to the principles of Te Tiriti o Waitangi (Te Tiriti) and a more efficient and effective system.
7. This paper's recommendations relate to Māori participation at the national, regional, and local levels of the new RM system, with a focus on:
 - a. **what** roles should be provided for Māori at different levels in the new system
 - b. **who** should participate from te ao Māori in the various roles/functions of the system

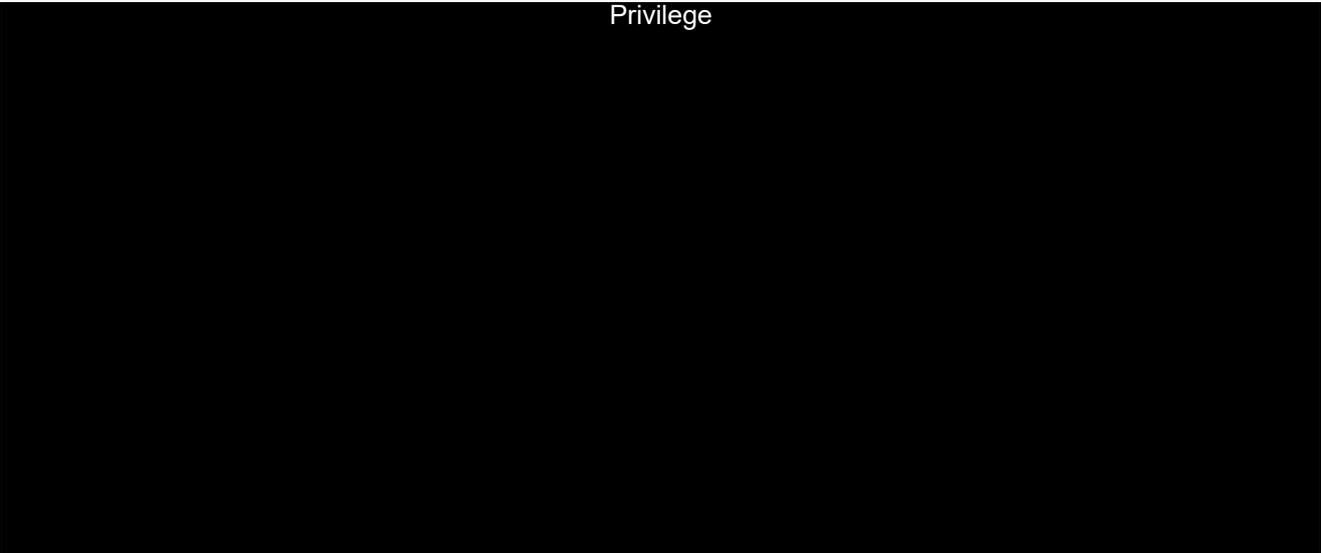
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- c. **how** Māori participation in the new system should be funded.

Māori participation in the future RM system

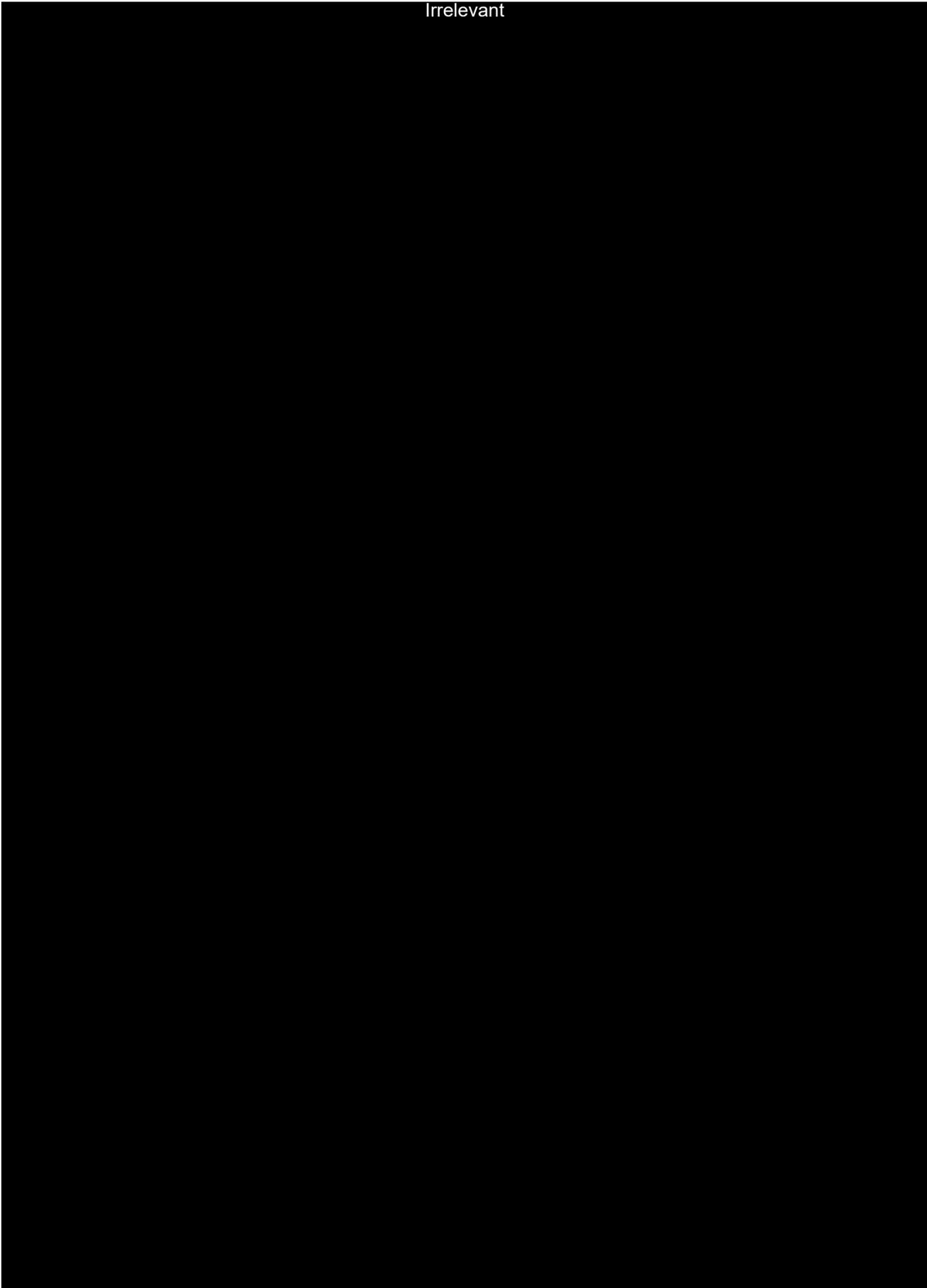
8. Māori will have participatory and, in some cases, decision-making roles at all levels and key components of the future RM system.
9. There will be differences in who participates in various roles and functions, as well as differences in levels of prescription required in legislation to balance the ability for iwi/hapū/Māori to self-identify who they wish to participate, with the need for certainty, clarity and efficiency for all parties.
10. It is expected that representative organisations, eg, iwi authorities and groups representing hapū under the RMA or Māori entities described under the Urban Development Act 2020 (UDA), will engage in key processes on behalf of their members. Where decision-makers are required to proactively contact iwi, hapū or other Māori groups, it is expected they will contact representative organisations.
11. Funding for the new system is to be based on the principles agreed at MOG #15:
 - a. users/polluters whose actions or inactions give rise to the need for environmental management functions, duties, and powers should pay the costs associated with funding those functions, duties, and powers
 - b. where it is not administratively efficient to charge users/polluters for such costs, it is normally equitable that ratepayers (or a relevant subset of them) meet the costs
 - c. where it is not administratively efficient and/or equitable for ratepayers to meet such costs, taxpayers should do
 - d. at all levels within the system, costs and charges should be proportionate with mechanisms to identify and control inefficiencies or excesses; so as not to create incentives that drive unnecessary costs and complexity.
12. Decisions at MOG #15 indicated that generally there is a greater case for Crown funding for Māori roles at the national level, and for Crown contributions to establishment and transition costs, rather than roles at the regional/local level or ongoing costs.

Privilege



[IN-CONFIDENCE]

Irrelevant



[IN-CONFIDENCE]

Irrelevant

Regional level

21. At the regional level, Māori will have roles and functions in regional spatial strategies (RSS) and NBA plan processes, including:
 - a. membership of SPA and NBA committees, and support to carry out those functions funded by local government, (NB: may include defined role for some Post Settlement Governance Entities (PSGEs) to uphold specific Treaty settlement arrangements) which would entail:
 - i. iwi and hapū led regional discussions on SPA and NBA committee composition, including agreement on who makes appointments, which would be formalised via an Order in Council
 - ii. appointing bodies would undertake an appointments process for the Māori members on SPA and NBA committee SPA and NBA committees.
 - b. secretariats, funded by local government, which would be required to include (amongst other expertise) mātauranga, te ao Māori and Māori engagement expertise
 - c. mātauranga Māori experts (either contracted as a professional service or employed by the secretariat) inputting into the setting of regional scale limits and targets
 - d. early and full participation by Māori entities (inclusively defined) in engagement processes funded in part by local government, through Engagement Agreements either directly with the SPA and NBA committee or facilitated through iwi and hapū representative organisations
22. As noted earlier, upholding existing arrangements established through Treaty settlements, Takutai Moana rights and other existing natural resource arrangements under the RMA will be an essential component.

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Local level

23. At the local level, Māori will have the following roles and functions:
- a. Involvement in pre-application/pre-notification engagement where this is required by Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, or otherwise enabled through a plan or voluntarily via council or applicant best practice (noting the NBA Bill will not include any specific requirement for consultation with any specified parties on a resource consent)
 - b. providing technical advice (eg, cultural impact assessments) from experts and/or local knowledge holders, with costs covered by users (though local government may choose to subsidise some costs)
 - c. participation as affected parties in appeals or alternative dispute resolution, funded by a mix of local government and user pays, with consent conditions able to identify additional roles and requirements.
24. This paper also proposes that some elements of the current system that provide for the roles that Māori have “at place”¹ be brought through to the new system. In particular:
- a. roles and functions, funded through multiple streams including grants and central and local government contributions, established through:
 - i. Treaty settlements, Takutai Moana rights and existing natural resource arrangements under the RMA. These would continue to involve the same ‘who’ participates and funding arrangements as established via those agreements
 - ii. Mana Whakahono ā Rohe processes for iwi and hapū
 - iii. Transfers of Power for iwi and hapū
 - iv. Joint Management Agreements for iwi and hapū.
 - b. iwi/hapū management plans providing for the articulation of iwi/hapū aspirations and requiring decision-makers to have “particular regard” to these plans in RSS and NBA plan making².
25. Work is also underway to assess any specific provisions that should be made for Māori land. This includes whether Māori landowners, as defined in the Te Ture Whenua Māori Act 1993, should also be enabled to have powers of transfer. This paper seeks authorisation to delegate decisions on matters pertaining to Māori land.

¹ Note ‘at place’ is shorthand for describing iwi and hapū representative organisations and Māori entities representing rights and interests related to a particular area, water source, space and resource. It is not intended that the specific term ‘at place’ will be used in the legislation.

² Note decisions on this matter are being sought through BRF1356 Delegated Decisions on plan content relationship with other documents and financial contributions.

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Annex A: Context, analytical approach, who participates, Treaty impact analysis

Purpose

1. This Annex sets out core considerations and context that apply across all the decisions sought in this paper and across the more detailed analysis contained in Annexes B-E. This Annex does not itself seek decisions but asks Ministers to note a number of core contextual points that apply across all the decisions in the wider paper.
2. This Annex is set out in four parts:
 - a. Part 1: overarching context about roles for Māori in the new Resource Management (RM) system across the suite of papers on the roles for Māori including:
 - i. The Resource Management Review Panel (the Panel) recommendations and Ministerial Oversight Group (MOG) decisions to date – this provides context for the entire suite of papers on the roles for Māori
 - ii. an overview of the analytical approach applied to options development and assessment across this suite of papers on the role of Māori in the system
 - b. Part 2: an assessment of the overall approach to who from te ao Māori participates across the new RM system
 - c. Part 3: proposals for the use of terms and definitions related to who from te ao Māori participates across the new RM system
 - d. Part 4: Treaty impact assessment for the package of proposals presented in this suite of papers on the role of Māori in the system (including impacts on freshwater rights and interests).
3. This annex should be read in conjunction with Paper 2: Regional governance and decision making in the new resource management system (Paper 2: Regional Governance) which seeks decisions on the design of regional governance arrangements. Paper 2: Regional Governance proposes that composition of Strategic Planning Act (SPA) and Natural and Built Environments Act (NBA) committees is determined by local government and hapū/iwi/Māori in each region. This suite of papers seeks decisions on who participates from hapū/iwi/Māori in the composition discussions.

PART 1: OVERARCHING CONTEXT ABOUT ROLES FOR MĀORI IN THE SYSTEM

Context

Panel recommendations

4. The Panel identified that the Resource Management Act 1991 (RMA) has failed to deliver on opportunities for Māori and that more effective and strategic roles are required in the future system to better enable Māori participation.
5. The Panel made 11 key recommendations on Te Tiriti o Waitangi (Te Tiriti) me te ao Māori. These ranged from strengthening the Te Tiriti clause, enhancing existing mechanisms, creating new mechanisms, and enhancing financial support. The full set of recommendations is included for context in Appendix 1.

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6. Overall, the proposals set out in this suite of papers broadly align with the Panel's recommendations, with the notable exception being the Panel's recommendation to replace 'iwi authority' and 'tangata whenua' with a new definition for 'mana whenua'.
7. The Panel's recommendations were mostly made at a conceptual level, leaving space for further consideration of implementation. The proposals in this suite of papers set out how the relevant recommendations are intended to be implemented.

An overview of relevant MOG decisions to date

8. MOG has made a series of decisions on which of the core components will be incorporated into the new RM system. Relevant decisions for the matters covered in this paper are:

Who from te ao Māori participates in the new RM system

MOG #11/12

- a. noted that further advice would be provided on the matter of who participates in the new RM system including:
 - i. identifying and recording who makes Māori appointments to joint committees (see para 17 on SPA and NBA committees)
 - ii. whether legislation should set appointments processes or whether to enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process)

MOG Māori interests sub-group (24 November)

- b. noted a proposed direction of travel for further advice on who from te ao Māori participates across the system including:
 - i. support for self-identification-enabling tikanga processes to determine representation with 'circuit breakers' and timeframes prescribed in the legislation
 - ii. implementation support is required for successful self-identification processes
 - iii. no clear case for a single overarching defined term for who participates (alternatives should be explored)
 - iv. the level of prescription in legislation will differ for different parts of the RM system (but inclusive approach to participation in plan development and consenting enabled).

National Māori Entity

MOG #11/12

- a. agreed in-principle to establish a National Māori Entity to enable Māori participation at the national level
- b. agreed that the Entity would have functions in:
 - i. system oversight/monitoring (with a specified role in monitoring Tiriti performance across the RM system)
 - ii. input to the National Planning Framework (NPF) development
 - iii. appointments of any Māori representatives to the NPF Board of Inquiry
- c. agreed that the Entity should be set up independently of the government of the day.

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Treaty Partnership Entities

MOG #11/12

- a. agreed that “Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements”.

Plan development process

MOG #11/12

- a. noted that further advice will be provided on the plan development process, including on the plan making secretariat engagement processes, including roles and participation for iwi/Māori in the plan making secretariat and process for their involvement
- b. agreed the proposed plan-making framework including the need for an efficient and certain approach to mana whenua involvement through engagement agreements in the NBA

MOG #13

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

Mana Whakahono a Rohe, joint management agreements and Transfers of Power

MOG #11/12

- a. agreed that the legislation provides for an enhanced Mana Whakahono a Rohe (MWAR) process that is integrated with transfers of powers and Joint Management Agreements (JMAs) (an Integrated Partnerships Process)
- b. agreed to recommend to the MOG that power sharing arrangements (transfers of power and JMAs) are better enabled through the Integrated Partnerships Process, with barriers removed.

Funding

MOG #2

- a. agreed that Cabinet’s resource management reform objective to “give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori” should result in the following outcomes:
 - i. Māori have the opportunity and are sufficiently resourced to participate as Treaty partners across the resource management system, including in national and regional strategic decisions

MOG #15

- a. directed officials to report back to MOG on the current cost of local government funding for Māori participation in plan making and the expected cost of such participation in the future system, and options for central government funding to support local government and iwi/Māori to participate in the new RM system, as well as ways iwi/Māori groups could potentially recover their costs in some circumstances

Irrelevant

[IN-CONFIDENCE]

An overview of the analytical approach applied to options development and assessment

Problem/opportunity development

9. Specific issues identified by the Panel include:
 - a. Māori interest being ‘balanced out’ in the purpose and principles of the RMA (previous papers on Te Tiriti clause and Te Oranga o te Taiao)
 - b. limited uptake of mechanisms for mana whenua involvement (Annex D)
 - c. a lack of strategic roles for mana whenua (Annex B and C)
 - d. local authorities and applicants for resource consents can find it difficult to know which mana whenua groups to engage with (Annex A)
 - e. limited oversight and monitoring of Tiriti performance (Annex B)
 - f. lack of funding and support to build te ao Māori capacity and capability (Annex E).
10. More specific examples of each of these issues are identified in relation to each policy topic set out in the relevant annexes.
11. Many of the root causes of the issues are broader than just the RM system, and beyond the scope of what RM system reform can deliver on its own. For example, the Panel noted that “a major barrier to better aligning the resource management system with te ao Māori is the difficulty of embedding Māori concepts, such as tikanga, mātauranga and te reo, into a primarily ‘Western’ framework”¹.
12. Each role, function or specific issue within the system may also have more specific problem/opportunity definitions. These are included in the relevant Annex.

Objectives

13. The key RM reform objectives and sub-objectives that relate to all proposals in this paper are:
 - a. give effect to the principles of Te Tiriti and provide greater recognition of te ao Māori, including mātauranga Māori (RM Reform Objective 3). To achieve this objective the future system needs to:
 - i. consistently give effect to the principles of Te Tiriti and fully recognise and provide for te ao Māori across all layers of the system
 - ii. provide for more effective strategic roles for Māori at every level of the system, consistent with the different rights and interests that Māori have at national, regional and local levels
 - iii. uphold Treaty settlements, Takutai Moana rights and other existing natural resource arrangements under the RMA
 - iv. improve the capability and capacity of system actors (including cultural capability)
 - b. improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input (RM Reform Objective 5). To achieve this objective the future system needs to:
 - i. ensure adequate resourcing is provided for Māori roles and responsibilities
 - ii. build in accountability into the system – including system monitoring

¹ Pg. 92, Resource Management Review Panel. 2020. *New Directions for Resource Management in New Zealand: Report of the Resource management Review Panel.*

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- iii. provide for the long-term effectiveness and efficiency of systems and processes by actively supporting implementation.
14. In addition to these objectives that are broadly applicable to all proposals, each key topic may also include specific objectives which are set out in the relevant annex.

Policy assessment criteria

15. There are some criteria that are used for options assessment for all proposals in this suite of papers. These criteria test, as compared to the status quo, to what extent options contribute to a system that:
- a. gives effect to the principles of Te Tiriti
 - b. is effective (ie, achieves the objectives) and implementable
 - c. is efficient over the long-term (in terms of both time and cost efficiency)
 - d. provides certainty to all parties involved
 - e. promotes equity (for Māori when compared with non-Māori and between hapū/iwi/Māori groups as appropriate).
16. Some key topics also include additional criteria specific to those topics, which are set out in the relevant annex.

PART 2: ASSESSMENT OF 'WHO' PARTICIPATES FROM TE AO MĀORI ACROSS THE NEW RM SYSTEM

17. There are three key parts to Part 2: Assessment of 'Who' Participates from te ao Māori:
 - a. taking a system view of who partners and participates from te ao Māori across the new RM system
 - b. implications for the use of terms and definitions in the legislation
 - c. implementation support.
18. This part applies to all proposals related to 'who' partners and participates from te ao Māori across the system.

Taking a system view of 'who' partners and participates from te ao Māori

Status quo under the current system

Participation and engagement requirements in the RMA

19. Under the RMA, most active engagement requirements and participation opportunities for tangata whenua² apply to iwi authorities³. For example:
 - a. requirements to notify iwi authorities of proposed new national direction and provide adequate time for iwi authorities to make submissions⁴
 - b. the ability of local authorities to transfer powers to iwi authorities⁵
 - c. the ability of iwi authorities to initiate Mana Whakahono ā Rohe (MWAR) agreements⁶.
 - d. The consultation requirements set out for iwi authorities in the Schedule 1 plan making process.
20. Some provision is made for hapū participation in the RM system, such as the ability to enter MWaR agreements and requirements to consult with tangata whenua (which includes hapū) on appointments to Independent Hearing Panels. However, such participation is generally limited. For example, hapū based MWaR must be initiated by councils and requirements to consult with tangata whenua are "through iwi authorities"⁷.
21. The RMA also links to other pieces of legislation that relate to rights and interests, for example:
 - a. the rights of customary marine title and protected customary rights groups under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA)
 - b. the rights of owners of Māori Land under te Ture Whenua Māori Act 1993 (TTWM)
 - c. the rights of post-settlement governance entities (PSGEs) under Treaty settlement legislation.

² tangata whenua, in relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area; mana whenua means customary authority exercised by an iwi or hapū in an identified area (Section 2 of the RMA).

³ iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so (Section 2 of the RMA).

⁴ S46A(4)(b)

⁵ S33(2)(b)

⁶ S58O

⁷ S58P and S96(2)

22. The RMA does not explicitly provide for the specific rights and interests of non-whakapapa-based Māori groupings such as urban Māori and national Māori entities.

Key issues in the current system

23. Key issues identified in the current system⁸ which specifically relate to 'who' partners and participates include:
- a. Some hapū and other Māori groups who have rights and interests in relation to a particular area, water source, space, and resource 'at place' (eg, marae and Māori landowners) continue to be excluded or have participation inappropriately limited.
 - b. Some groups who do not have mana whenua according to tikanga have claimed status as tangata whenua exercising mana whenua, causing uncertainty, and creating significant costs for iwi, hapū and councils⁹.
 - c. Government departments struggle to strike an effective balance between providing for effective engagement on national level issues while respecting the mana of iwi and hapū in their rohe.
 - d. Local authorities also struggle to strike an effective balance between providing for effective engagement on regional level issues while respecting the mana of iwi and hapū in their rohe.
 - e. Central and local government funding arrangements to support Māori participation are varied, but generally insufficient, which affects the ability of all hapū/iwi/Māori groups to participate, especially those without the ability to self-fund participation.
24. Identified causes are interconnected and include that:
- a. Current RMA provisions allow central government, local authorities, and consent applicants to restrict engagement to iwi authorities even where other groups, such as hapū, should be involved
 - b. Central government guidance to local authorities is limited. Formal guidance about where direct engagement with hapū may be appropriate has only been provided in relation to MWaR¹⁰
 - c. The RMA terms and definitions for iwi authority, tangata whenua and groups that represent hapū do not provide sufficient clarity for decision makers
 - d. There are no clear/consistent mechanisms for effective national level input that respect the mana of iwi and hapū at place
 - e. The system does not support effective dispute resolution mechanisms prior to the courts where iwi/hapū/Māori groups disagree in relation to their rights and interests
 - f. The RMA does not include statutory obligations to fund Māori participation, nor the means to recover relevant costs from system users (see funding paper at Annex E).
25. While this part of the paper does not specifically cover dispute resolution processes (see Annex C) nor funding related matters (see Annex E), it is acknowledged that both funding and dispute resolution are critical to the success of proposals regarding who from te ao Māori participates.

⁹ Including by iwi/hapū/Māori through engagement, the Panel, the Waitangi Tribunal, other courts, and government departments

⁹ see High Court decision — POUTAMA KAITIAKI CHARITABLE TRUST AND D & T PASCOE v TARANAKI REGIONAL COUNCIL [2020] NZHC 3159 [1 December 2020]

¹⁰ *Mana Whakahono a Rohe Guidance* (2018). [mana-whakahono-guide_0.pdf](https://environment.govt.nz/mana-whakahono-guide_0.pdf) (environment.govt.nz).

Who partners and participates – what is the opportunity for the new RM system?

26. The reform process provides three key opportunities in relation to who participates from te ao Māori, to:
- a. expand clear participation and collaboration opportunities beyond just iwi authorities
 - b. support iwi/hapū/Māori to self-identify who represents them, and who should be enabled to participate at all levels of the system
 - c. provide greater clarification where required about the participatory rights of specific groups in each part of the system and/or the process to decide which groups participate and/or partner in each part of the system.

Objectives

27. In addition to the reform objectives and sub-objectives that apply to all proposals in this suite of papers, the collective who proposals specifically aim to:
- a. give effect to the principles of Te Tiriti and ensure system users understand their obligations under the new legislation
 - b. ensure the new RM system is implemented as intended and enhance uptake of Māori participation mechanisms
 - c. support system efficiency and effectiveness by:
 - i. supporting self-identification processes prior to the commencement of regional planning processes
 - ii. removing some of the ambiguity in the system
 - d. ensure existing issues are not entrenched through application of the current approach, to new mechanisms.

Taking a system approach to who participates

Self-identification as a guiding principle

28. As far as possible, proposals aim to provide for iwi/hapū/Māori to self-identify who represents them, and who should be enabled to participate at all levels of the system in accordance with the exercise of rangatiratanga. This is aligned with advice provided to the MOG Māori interests sub-group in November 2021.
29. It has become apparent that it is not appropriate to have an approach to self-identification where the legislation provides little or no guidance about which groups should participate and collaborate in each part of the system, and in what capacity. This is because it would lead to significant difficulties in implementing the system and the Crown must consider its Te Tiriti obligations, including kāwanatanga responsibilities. Respect for rangatiratanga does not mean that it is necessarily appropriate for the Crown to play a passive role in determining representation. A level of specificity in key parts of the system is required to ensure that:
- a. the system recognises and provides for rights and interests derived under all three articles of Te Tiriti and that whakapapa-based relationships with te Taiao are recognised and provided for in alignment with Te Oranga o te Taiao
 - b. the Crown meets its responsibility to consider which groups should be represented in decision-making, in terms of where that interest lies and to ensure the overall objective of the decision-making body is met
 - c. the Crown sets up processes that avoids or resolves conflict

- d. the system is able to function effectively and efficiently and in accordance with its policy intent
 - e. Treaty settlement and other existing natural resource arrangements under the RMA are upheld.
30. Such specificity limits the application of the self-identification principle to a degree. However, self-identification is still intended to be enabled within groupings, for example iwi and hapū should be able to choose which of their representative organisations represents them in any process. Furthermore, care has been taken to ensure that where specific groups (most often iwi and hapū representative organisations) are responsible for leading certain processes that this has been balanced by setting an expectation of wider engagement and not prescribing precise outcomes.

System overview

31. The table below provides a system view of the proposed approach to who will participate in each function/role in the system. Note that the detail of each role or function is included in Annexes B-D. As discussed, a level of specificity regarding which Māori groups participate, and in what capacity, in relation to each role/function is proposed. The table provides high-level commentary on why a particular approach has been chosen. The rationale for the key choices about 'who from te ao Māori' that have been made across the system is covered in more detail following the table.
32. All options were assessed against the consistent criteria set out in Part 1 of this Annex.
33. Preferred options for each part of the system were selected based on both the outcome of the assessment for that part of the system and how the option contributed to the system as a whole. Discussion on specific options for each role/function in the system and detailed options assessment tables are included in the relevant annexes.

Role / function and approach to prescription and specificity	Who	Process and further engagement requirements	Why this approach
National Māori Entity Annex B	Regional clusters of Māori groups/entities and a national entities cluster appoint members via a nominating panel process. Details of who specifically will be included in clusters will be agreed through delegated decisions	Clusters determine their own detailed appointments process	Accountability to iwi, hapū and other Māori groupings with rights and interests in each region
Composition of RSS and NBA plan committees and identification of appointing bodies Annex C	Iwi and hapū representative organisations will lead composition discussions for iwi/hapū/Māori Iwi and hapū representative organisations are responsible for identifying appointing bodies	Iwi and hapū representative organisations required to demonstrate wider engagement with iwi and hapū members, and relevant Māori entities representing rights and interests 'at place'	Provides certainty and transparency about who will lead the process Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for input by others

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		Specific solutions may be required to uphold Treaty settlements	Supports efficient and effective process
Appointments to RSS and NBA plan committees Annex C	Any Māori entity or collective of Māori entities may be an appointing body Appointing bodies make appointments	To determine appointing bodies, iwi and hapū representative organisations are required to demonstrate wider consultation with iwi and hapū members, and relevant Māori entities representing rights and interests 'at place' Specific solutions may be required to uphold Treaty settlements including direct representation of PSGEs (see para x Annex c)	Provides certainty and transparency about who will lead the process to identify appointing bodies Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for input by others Supports efficient and effective process Does not pre-determine the outcome
SPA and NBA sub-committees	Sub-committees may be established to provide for collaborative planning processes with Māori for specific NBA plan or RSS content. There is proposed to be no limitation on who the SPA and NBA committees can appoint to sub-committees. However, final decision-making sits with the relevant SPA/NBA committee	Processes may be required to appoint Māori members to sub-committees. It is not intended that such processes would be prescribed as is at discretion of SPA/NBA committees Specific solutions may be required to uphold Treaty settlements	Provides flexibility for the establishment of sub-committees as required in each region Provides scope for some plan content development to be led by iwi/hapū/Māori 'at place'

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<p>Secretariat for SPA and NBA committees</p> <p>Annex C</p>	<p>Persons with relevant expertise in planning, tikanga and matauranga Māori</p>	<p>Secretariat director required to acquire tikanga and matauranga Māori expertise Director will consult with SPA/NBA committee on a resourcing plan to consider the expertise and skills available across the groups represented on the SPA or NBA committee</p> <p>Specific solutions may be required to uphold Treaty settlements</p>	<p>Ensures necessary technical expertise.</p> <p>Annex C recommends that that further policy work be undertaken to ensure that there is an appropriate role for Māori on the secretariates</p>
<p>Engagement agreements with SPA and NBA committees for RSS development and NBA plan process (pre-notification)</p> <p>Annex D</p>	<p>SPA and NBA committees must enter engagement agreements with iwi and hapū, through representative organisations if desired by those iwi and hapū</p> <p>Other Māori entities with rights and interests 'at place' may be invited to enter engagement agreements after consideration by SPA or NBA committee</p>	<p>SPA and NBA committees must consider how to ensure 'at place' Māori views included in RSS and NBA plan development process and what further Engagement Agreements are needed to achieve this</p>	<p>Recognises rights of iwi and hapū as kaitiaki</p> <p>Ensures the views of kaitiaki and relevant Māori entities 'at place' are included</p> <p>Ensures number of engagement agreements is manageable and responds to the regional context</p>
<p>General participation in RSS¹¹ development and NBA planning processes</p> <p>Annex D</p>	<p>Pre-notification - all-inclusive. Iwi and hapū through representative organisations and Customary Marine Title (CMT) and PCT groups automatically registered to engage</p>	<p>Pre-notification: groups without engagement agreements must register to engage</p> <p>Groups who are party to engagement agreements may also register to engage individually</p>	<p>Recognises rights of iwi and hapū as kaitiaki</p> <p>Ensures opportunities for all iwi/hapū/Māori to engage in plan development process</p>

¹¹ The processes to develop RSSs and NBA plans do differ, due to their differing legal status. Decisions on RSS development process were made at MOG #11/12; and key decisions on NBA plan development process have been made through MOG #11/12 and delegated paper BRP 946. Despite different processes, it is important to keep the opportunities for iwi/hapū/Māori participation consistent between the two processes to ensure the RSSs and NBA plans integrate well together.

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	Post-notification - all-inclusive through public participation process		
<i>Mechanisms identified from this point down are tools that exist under the RMA</i>			
Role / function and approach to prescription and specificity	Who	Process and further engagement requirements	Why this approach
Mana Whakahono a rohe (MWAR) Annex D	Iwi and hapū through representative organisations	Both iwi and hapū may initiate Mana Whakahono a Rohe Positive obligation on decision-makers to initiate Iwi and hapū may enter collective agreements with one or more decision-maker	Recognises rights of iwi and hapū as kaitiaki Supports quality and effectiveness of agreements
Joint management agreements and Transfers of Power Annex D	Iwi and hapū through representative organisations	JMAs and transfers of power must be discussed as part of Mana Whakahono a Rohe negotiations	Recognises rights of iwi and hapū as kaitiaki Reflects the scope of possible JMAs and transfers
Iwi/hapū management plans Annex D	Iwi and hapū through representative organisations	Iwi and hapū have full control over development of content Plans may be lodged with decision makers by representative organisations	Recognises rights of iwi and hapū as kaitiaki Supports quality of agreements
Consenting, CME and environmental monitoring and reporting Annex D	Iwi, hapū and other Māori groups with rights and interests 'at place' (eg, Marae)	Specific 'who' and their roles and responsibilities agreed through planning process, MWaR, JMAs and transfers of power.	Recognises rights of iwi and hapū as kaitiaki Ensures opportunities for all iwi/hapū/Māori to engage as appropriate

Description of system approach

34. The collective “who” proposals across the system provide for:
- a. specific participation and partnership roles for iwi and hapū, for example iwi and hapū representative organisations have been identified as the starting point for SPA and NBA committee composition discussions, and may also initiate engagement agreements and MWaR
 - b. participation opportunities for other Māori groups with rights and interests related to a particular area, water source, space, and resource ‘at place’, for example: requirements on iwi and hapū representative organisations to actively engage with their members and other Māori groups during discussions on composition and appointing bodies for SPA and NBA committees; and the ability to request an engagement agreement for an NBA plan process. These groups may include marae-based groups, Māori landowners, whānau, mātāwaka groups or other communities of interest
 - c. roles for expert Māori practitioners, for example as employees or contributors to SPA and NBA committee secretariats, or as facilitators in dispute resolution processes
 - d. a role for national Māori organisations as part of the National Māori Entity appointments process
 - e. participation opportunities for Māori as individuals through public participation processes.
35. It is expected that representative organisations, for example iwi authorities and groups representing hapū under the RMA or Māori entities described under the Urban Development Act 2020 (UDA) will engage in key processes on behalf of their members. Where decision-makers are required to proactively contact iwi, hapū or other Māori groups, it is expected they will contact representative organisations.
36. The relevant rights of PSGEs provided for through settlements, CMT and PCR groups under MACA will continue to be upheld in the new RM system. Existing natural resource arrangements under the RMA will also be upheld. Solutions outside the generic policies are likely to be required to uphold Treaty settlements and existing natural resources arrangements under the RMA. These are discussed in more detail in Annex C and Paper 2: Regional governance.

Rationale for key choices

37. The proposed package of ‘who participates from te ao Māori’ provides an appropriate overall balance between the assessment criteria including enabling the exercise of self-identification by iwi/hapū/Māori groups in choosing who will represent them in RM processes and providing sufficient certainty and efficiency for the new RM system.
38. If MOG makes alternative decisions on who participates from te ao Māori to those recommended in any part of the system, there may be impacts on the ability of the overall package to deliver on the reform outcomes.
39. A critical point is that the system will provide significantly enhanced direct rights of participation for hapū. While it can be expected that many hapū will continue to choose to be represented through their iwi organisations, particularly on region wide or national level matters, the system will now provide clear pathways for participation where hapū (rather than local government or other decision makers) deem it to be appropriate. There is broad consensus among iwi/hapū/Māori groups, which has also been expressed by the Tribunal, that this is the key gap in the RM system participation and partnership approach.
40. Proposals for participation opportunities for Māori groups with rights and interests at place are also a significant improvement on the status quo. There are several reasons

however, why those opportunities are proposed to be different from roles provided for iwi and hapū, including that:

- a. most strategic resource management engagements are undertaken by iwi and hapū on behalf of their members. The increased emphasis on hapū participation and partnership bridges the key gap in Māori participation in the system
- b. the relationship between iwi and hapū and te taiao is specifically provided for through Te Oranga o Te Taiao
- c. the interests of Māori 'at place' are likely to be more geographically confined than the interests of iwi and hapū as collectives and many of the structures are set at a regional level
- d. the number of groups that would be entitled to participate in representative and engagement processes 'by right' may have significant impacts on the efficiency and effectiveness of the system¹²
- e. the Crown has made clear commitments to iwi and hapū clusters through Treaty settlements which must be upheld.

Risks and other considerations

41. Hapū rather than iwi is the terminology used Te Tiriti. As the Waitangi Tribunal has noted, "It was the whānau and hapū that were the effective and autonomous units of Māori social and political organisation. These provided a person's primary source of security and identity, because members lived and acted together as a community. Rangatira signed the Treaty on behalf of hapū, not 'iwi'"¹³. Therefore, it could be argued that primary participation rights should sit primarily with hapū.
42. Nonetheless, Crown practice through both Treaty settlements and other policy, including the RMA, has compelled iwi representative organisations to hold primary relationships with the Crown and its agents. Any decision to limit iwi participation in key roles would undermine the Crown's ability to uphold existing natural resource arrangements including Treaty settlements. The overall approach aims to provide for hapū and iwi to determine for themselves how they wish to organise, partner, and participate in the resource management system into the future.
43. Provision for the exercise of rangatiratanga by other whakapapa-based or mātāwaka groups is more limited than provision for iwi and hapū. These groups may continue to view their participation as inappropriately limited.
44. Relationships and the legitimacy of decision-making may also be undermined where members of specific iwi, hapū or other Māori entities must represent diverging interests of other iwi, hapū or Māori entities, especially in decision-making processes.
45. Each of the risks described above carry both litigation and relationship risk. Besides the specific accountability and engagement mechanisms which will be provided for in the legislation, proactive Crown transition and implementation support during key processes can also help to mitigate these risks.
46. Mana whenua status may continue to be contested in RM processes or through the courts. This risk is not confined to the RM system but may hinder the progress of RM processes such as the identification of appointing bodies for SPA and NBA committees. In response to this risk, officials propose to explore the development of dispute resolution procedures and circuit breakers to support the resolution of disputes on Māori representation.

¹² For example, the relatively 'small' Gisborne region has four main iwi groupings, over 70 hapū and marae and 1404 formal management structures over Māori land.

¹³ pg.17, Waitangi Tribunal, 1998. *Te Whanau o Waipareira Report* (Wai 414).

47. Hapū and other groups of Māori with rights and interests at place who do not have representative organisations may be excluded from participation in some processes. This is particularly the case for Māori land blocks without administrative structures. A proposed mitigation is that further policy work on the proposed Māori entity definition considers a range of options to establish the authority of a group or person to speak on behalf of certain interests, for example processes under Te Ture Whenua Māori Act 1993 (TTWM) to call for a meeting of owners where there is no representative body or establishing Crown facilitated forums for groups with similar interests.
48. Finally, the expansion of participatory rights for hapū and other Māori groups in the system will significantly increase the engagement burden on decision makers. This means short-term efficiency for some processes may be impacted, for example, where high numbers of engagement agreements delay plan drafting. This risk may be mitigated in part through transitional and ongoing resourcing (see Annex E on funding) and through proactive Crown implementation support mentioned previously. However, requiring decision-makers to give effect to the principles of Te Tiriti o Waitangi means that removal of these specific participatory requirements would not eliminate the need for these Māori groups to participate. Removal of the specific requirements would simply increase uncertainty on what giving effect to the principles of Te Tiriti means.
49. Officials note that many of these or similar risks would still be present if different choices about which iwi/hapū/Māori groups partner and participate in different parts of the system were taken.

Implications and proposals for terms and definitions

Status quo

50. Section 2 of the RMA provides definitions for iwi authority, mana whenua and tangata whenua. It also includes other terms in reference to iwi/hapū/Māori groups which are undefined or have a definition which only applies to certain sections of the Act (while the term is used more widely)¹⁴.
51. The RMA also includes two terms that are defined under Section 9(1) of the MACA. These are:
 - a. customary marine title group
 - b. protected customary rights group.

Panel recommendation and MOG consideration

52. As noted, the Panel recommended that the existing terms 'iwi authority' and 'tangata whenua' be replaced with 'mana whenua' with the intent of setting expectations for more inclusive Māori participation, and in particular, enhanced hapū participation 'at place'.
53. Ministers noted at the MOG Māori interests sub-group (24 November 2021) that there was no clear case for a single overarching term and that alternatives should be explored.

Options – terms and definitions

54. Options considered for an overall approach to terms and definitions include:
 - a. Option one: Including a single overarching term such as 'mana whenua', or an alternative, and using that term where iwi authority or tangata whenua might otherwise be used (Panel's proposal)

¹⁴ Terms include iwi, hapū, group that represents hapū, Māori, owners of Māori land, Māori claimants.

- b. Option two: Including an overarching Māori participation principle or set of principles to set expectations for Māori participation across the system, in accordance with the Tiriti clause and Te Oranga o te Taiao
 - c. Option three: Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.
55. There is no clear case for a single overarching term. While the Panel's intent to provide for more inclusive participation should be carried through, the use of an overarching term to describe the primary group of Māori participants in the RM system is not the most effective way to achieve this, nor would it support greater legislative clarity. As discussed, the combination of Māori participation proposals themselves does provide for enhanced participation beyond 'iwi authorities', and significantly so for hapū.
 56. There is also no clear case for an overarching Māori participation principle or principles. The combination of Te Oranga o te Taiao, Te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system will set sufficiently clear expectations. At worst, further principles may create unnecessary complexity.
 57. The use of a single overarching term or a set of overarching participation principles is not well aligned with the proposed overall approach to who participates, which establishes two primary engagement pathways.
 58. More detailed options analysis is set out at Appendix 2.

Proposals

59. Developing terms and definitions to support specific proposals at each layer of the system and the overall approach is recommended. This does not mean each role or function within the system will define Māori groups in different ways, but rather that appropriate and specific terms will be utilised for each layer of the system. It is intended that definitions will be consistent across the system.

Specific terms and definitions requirements

60. The use of specific terms and definitions are not considered policy choices in themselves, but are legislative design tools, intended to support policy intent being given effect to in relation to 'who' choices throughout the system. However, due to the inherent risks of describing and defining te ao Māori concepts within a largely Crown controlled legislative framework, it is appropriate that terms and definitions in this context receive specific MOG consideration.
61. A consistent term or terms to describe iwi and hapū representative organisations will be required for several parts of the system, including:
 - a. SPA and NBA committee composition discussions and appointment processes
 - b. engagement agreements for NBA plans
 - c. MWaR, JMAs and Transfers of Power and iwi/hapū management plans.
62. The best way to precisely describe and define these representative organisations will be developed and tested through the drafting process. For example, the existing term 'iwi authority' could be retained with the same or amended definition or replaced by a new term. Note that any changes to the definition of iwi authority may impact on other legislation. The existing undefined term 'group that represents hapū' could also be retained or replaced. A definition may be developed to provide further clarity.
63. The terms 'iwi' and 'hapū' will continue to be used undefined throughout the legislation where appropriate, for example, when establishing accountability and engagement expectations between representative organisations and the groups they represent, or when referring to relationships between iwi and hapū and te taiao.

64. Where participation is intended to include all relevant Māori groups with rights and interests, it is recommended that a 'Māori entity' definition akin to that used in the Urban Development Act 2002¹⁵ is utilised. The groups currently included under the definition of Māori entity includes the groups that MOG #12 agreed would need to be included in the engagement process for the development of RSSs.
65. Detailed work is needed to determine the best way to broadly describe "Māori with rights and interests in relation to related to a particular area, water source, space and resource at place" in the legislation. The particular phrasing used in this paper is based on material provided to officials and Ministers by Te Tai Kaha (TTK) in setting out their proposals for applying mana whakahaere as a principle across the system. The policy intent in this context is to describe a wide range of Māori interests, such as those that arise from rights under all three articles of Te Tiriti. Such a broad description would be utilised when establishing accountability and engagement expectations between representative organisations and the groups they represent or when referring to relationships between Māori 'at place' and te taiao. For clarity, it is not intended that the specific term 'at place' be used in the legislation.
66. Existing references to specific groups with rights defined through other legislation, such as TTWM and MACA will be retained.
67. Officials will work closely with TTK and Freshwater Iwi Leaders Group (FILG) on the further development of terms and definitions.
68. It is recommended that any further policy decisions required to draft definitions be delegated to the Minister for the Environment, the Minister for Māori Crown Relations, the Minister for Māori Development and the Associate Minister for the Environment (Hon Kiri Allan).

Implementation support

Status quo

69. Under the RMA local authorities are required to keep and maintain records of contact details of iwi and hapū, planning documents, areas of interest and Mana Whakahono a Rohe agreements (S35A(1)).
70. The Crown is required to provide each local authority with information on who the iwi authorities and groups that represent hapū are in their regions (S35A(2)).
71. The Crown currently fulfils this role through Te Kāhui Māngai, a website which is administered by Te Puni Kōkiri. The general approach is that where iwi and hapū representative organisations have a formal mandate or identify themselves as a

¹⁵ **Māori entity** means any of the following persons or entities: (see footer of next page)

- (a) a post-settlement governance entity:
- (b) an iwi authority:
- (c) a hapū:
- (d) an urban Māori authority:
- (e) a Māori Trust Board:
- (f) a Māori association:
- (g) the Māori Trustee:
- (h) a board, committee, authority, or other body, incorporated or unincorporated, recognised in, or established under, iwi participation legislation:
- (i) a body corporate, the trustees of a trust, or any other entity or persons who have an ownership interest in Māori land:
- (j) a body corporate or the trustees of a trust appointed to administer a Māori reservation:
- (k) a customary marine title group or protected customary rights group:
- (l) the entity that is authorised to act for a natural resource with legal personhood.

representative organisation for the purposes of the RMA, they are included on Te Kāhui Māngai.

Panel proposal

72. The Panel noted that “local authorities and applicants for resource consents can sometimes find it difficult to know which mana whenua groups to engage with on resource management issues” and recommended that relevant Crown responsibilities under the RMA be undertaken by the National Māori Entity in the new RM system.

Initial proposals for further exploration

73. Despite changes to Māori participation and collaboration mechanisms in the new RM system, including clarification of where hapū and other Māori entities must be engaged with, local government, SPA and NBA committees, the Local Government Commission and other people or groups with engagement responsibilities may continue to have difficulty identifying which specific organisations to engage with.
74. While it is expected that all decision-makers and other groups with engagement responsibilities will take a proactive approach to improving relationships with iwi/hapū/Māori and improving engagement practice as per their responsibilities to give effect to the principles of Te Tiriti, support is proposed to mitigate the risk.
75. It is intended that requirements on local authorities to maintain records will be continued. The specific requirements will be considered alongside further work on terms and definitions, regional governance and MWaR, JMAs and transfers of power which will be the subject of delegated decisions.
76. Firstly, it is intended that the Crown retain its responsibilities to provide information to regional and local decision-makers on representative organisations. It is not recommended however that these responsibilities be undertaken by the National Māori Entity.
77. Instead, officials recommend that providing additional support to a government agency to maintain an audited website with nationwide records of iwi and hapū representative organisations (however defined) which incorporates determinations made by the Māori Land Court when or if required, is explored. The analysis in relation to this recommendation is set out in Annex B. Officials have not yet completed analysis on which government agency is most appropriate to fulfil this function.
78. As discussed, clear terms and definitions to describe iwi and hapū representative organisations and other Māori entities are intended to be included in the legislation. Other proposals for further exploration also include:
- a. providing formal guidance on engagement to decision-makers and others with engagement responsibilities
 - b. making available practical Crown support, such as facilitation, to assist with appointment and composition processes for first generation RSSs and NBA plans.

Treaty impact analysis

79. A full Treaty impact analysis, including specific analysis of the collective ‘who’ proposals is included in the next section of this Annex.
80. The Treaty impact analysis does not include an assessment of who should hold responsibility for the nationwide records of iwi and hapū representative organisations, as this was originally proposed to be considered through delegated decisions.

Engagement

Local government

81. Local government have reiterated that mechanisms will be needed to provide clarity for local government and Māori on who participates in each role.

Iwi/Māori groups

82. Note the following are officials' summaries of TTK and ILG views.
83. TTK consider that the concept of 'mana whakahaere' should guide who participates across the whole system. According to TTK, mana whakahaere groups include "iwi/hapū, ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space, and resource". TTK have proposed Mana Whakahaere Councils as a mechanism that could contribute to giving effect to the concept of mana whakahaere regionally and locally. These Councils would have roles in composition of and appointments to SPA and NBA committees and may also have roles in other parts of the system.
84. TTK do not support the Panel's proposal for a 'mana whenua' definition, preferring instead that 'mana whakahaere' guides who participates as they consider this is "a more expansive term in depicting a wider relationship with natural features / resources / environments".
85. FILG/ Te Wai Māori Trust (TWMT) technicians have said they see the Treaty partnership as being (at least primarily) between the Crown and iwi/hapū. This would be expressed with iwi and hapū having roles in governance and decision-making. They agree that other Māori groups, in particular Māori landowners, should have enhanced roles (compared to the status quo) in other parts of the system.
86. FILG/TWMT consider that the terms 'iwi and hapū should be retained and used throughout the legislation and subordinate instruments.
87. FILG/TWMT and TTK have also advised that providing for self-determined tikanga processes for iwi/Māori appointments and identifying who participates can be the most efficient approach as it would help avoid litigation with the Crown or between iwi/hapū/Māori groups (with attendant costs and delays). An effective self-identification approach will require support and resourcing].
88. Feedback received through the Select Committee process and regional/PSGE engagement, particularly in relation to governance and decision-making, has been spread relatively evenly between an iwi/hapū focus (consistent with the FILG/TWMT position) and a more inclusive approach (consistent with the Te Tai Kaha position). While there are distinct views on who should participate, MfE has identified some common ground coming through all feedback to date:
- a. the importance of self-identification for Māori in terms of participation at different levels of the system
 - b. a greater role for hapū in the system – rather than just iwi authorities as is the approach for most the RMA (which is consistent with the Panel's view)
 - c. a range of Māori groups including urban Māori and Māori Land trusts/ahi kā should have a role (but different views on how their roles and influence should play out at different levels of the system)
 - d. whakapapa relationship to Te Taiao is significant and confers distinct rights (although there are different views on the extent of the distinct rights and who have these)

- e. the importance of not losing what is working now in terms of representation and identifying who participates in different levels and processes (eg, Treaty settlements, takutai moana rights holders, non-statutory RM arrangements).
- f. the importance of funding. Significant investment is required to build capability and capacity for Māori participation in the system, particularly in the transition and implementation phase. Funding includes resourcing iwi/hapū/Māori with specialist knowledge and mātauranga Māori
- g. disappointment that Māori rights and interests in Freshwater is not being resolved
- h. greater guidance for developing Iwi/hapū Management Plans (IMPs) that effectively influence the RSS's and NBA plans and provide better protection regarding monitoring how councils will give effect to the plans and their relationship with iwi/hapū
- i. retention of the obligation for councils to respond to mana whenua initiating Mana Whakahono ā Rohe
- j. use of subcommittees to deal with boundary issues caused by regional boundaries not aligning to rohe boundaries, with the process being led by Rangatira in each rohe being preferred
- k. concern at the lack of willingness in some Councils to work collaboratively with iwi/hapū/Māori.

Treaty impact analysis

- 89. The following analysis is intended to cover the entirety of proposals set out in this paper (including the suite of Annexes). This analysis excludes all delegated decisions, including the consideration of who should hold responsibility for the nationwide records of iwi and hapū representative which, at the time of finalising this paper, is proposed to be a delegated decision. Specific Treaty impact issues are highlighted where required in each Annex. Analysis for giving effect to the principles of Te Tiriti throughout the components of the RM system is contained in the MOG #17 paper *NBA Decision-making Framework*. While this analysis refers to proposals in other MOG #17 papers and proposals agreed through previous MOGs, the analysis does not specifically cover the Treaty impacts of those proposals.
- 90. The overall Treaty consistency of the system depends on the package of tools/mechanisms/provisions that provide for partnership with and participation by Māori in system oversight, national level policy development, plan governance, plan development, plan approval, consenting, compliance monitoring and enforcement and environmental monitoring and reporting. This paper deals with a sub-set of these tools/mechanisms/provisions. The reform process must also balance the need to provide for local representation through democratic processes, and other considerations, against a greater, more direct role for iwi/hapū/Māori. It is important that, at the appropriate time (such as when detailed delegated decisions are being resolved), a further treaty assessment is carried out that considers the total proposed package for the NBA and SPA and the provision for Māori and treaty considerations within the package.
- 91. Because of the focus of the proposals in this paper, the analysis generally covers the matters expected to be considered in a Treaty impacts assessment. This assessment provides more detail on key issues and summary assessment.
- 92. Information on engagement is included in each specific section, rather than in this analysis. This assessment is limited in that not all preferred proposals have undergone thorough engagement with TTK, FILG/TWMT, PSGEs and iwi/hapū/Māori in the regions.

Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori: Reform objectives and outcomes

93. All proposals covered in this analysis intend to deliver on this objective and its underlying outcomes, alongside all reform objectives. In most cases all objectives can be effectively delivered without significant trade-offs.
94. Subject to a further Treaty assessment of the overall package, officials consider that the proposals covered in MOG 17 will assist to contribute to a system that gives effect to the principles of Te Tiriti o Waitangi and provides for greater recognition of te ao Māori, including mātauranga Māori

Overall approach to 'who' participates

95. The preferred who options in all parts of the system collectively provide for a medium – high level of consistency with the reform objectives noted above. Key points of the overall assessment against these objectives are set out below.
96. Across the preferred proposals there is generally strong provision for the exercise of rangatiratanga derived through whakapapa relationships with te Taiao at iwi and hapū level. The primacy given to whakapapa-based relationships is consistent with the current drafting of Te Oranga o te Taiao (TOOTT), included in the exposure draft of the NBA and is, in the opinion of officials, broadly consistent with tikanga as it relates to resource management.
97. The system does not provide for the specific rights of whakapapa-based groups at the sub iwi/hapū level to the same degree as for iwi and hapū. For example, it is iwi and hapū who are proposed to lead regional governance processes, enter into MWaR, JMAs and Transfers of Power, and have the ability to initiate engagement agreements with SPA and NBA committees. While this is considered necessary to ensure the effective functioning of the system, risks include:
 - a. potential legal challenge from groups who consider that the proposals do not provide for their rights and interests
 - b. potential impacts on Māori-Crown and Māori-local government relationships
 - c. potential impacts on relationships between Māori groups, particularly between iwi and hapū and other Māori entities
 - d. non-iwi and hapū groups will continue to be excluded from some RM processes.
98. It is worth noting that there would also be many of these same risks (particularly a, b, and c) if different options for 'who' participates were chosen.
99. These risks are largely mitigated by positive engagement obligations on both iwi and hapū as leads and decision-makers in relation to relevant rights and interests' holders 'at place', who may include marae, Māori landowners and other whakapapa-based communities of interest.
100. There are roles for all rights and interests' holders in the system but not the same nor equal roles. Distribution of roles generally reflects Crown's existing approach to recognition of tikanga and rights and interests with an increased emphasis on the ability of hapū to exercise rangatiratanga and kaitiakitanga through the RM system.
101. This analysis acknowledges that, despite the word 'iwi' not appearing in the articles of Te Tiriti, Crown actions, largely through Treaty settlements, have promoted an iwi-based organisation of te ao Māori in its primary interactions with the Crown and its agents in the RM system which may not be fully consistent with tikanga. The proposals do aim to enhance the ability of hapū to exercise rangatiratanga and kaitiakitanga, as they were at the time Te Tiriti was signed (and in some cases remain) the primary political grouping

in Māori society. Hence the word 'hapū' was used as well as 'the rangatira of hapū' in the articles of Te Tiriti.

102. However, the proposals do not propose to 'reduce' the role of iwi representative organisations. The risks to settlement durability, existing natural resource arrangements under the RMA and potentially to Māori-Crown relations more generally are too high for the Crown to significantly shift from the position it has established in relation to the role of iwi authorities.
103. There is less provision for the exercise of rangatiratanga and kaitiakitanga derived through more contemporary organisation of Māori communities/interests (eg, where Māori have organised in urban settings¹⁶). This too is consistent with the current drafting of TOOTT, and broadly consistent with the Crown's understanding of tikanga related to resource management. The proposals do however make provision for the exercise of such rights and interests through the positive obligations on iwi and hapū and decision-makers and enable iwi and hapū to involve other Māori entities (such as urban Māori authorities) in certain processes.
104. Officials consider that the active protection of recognised interests is well enabled. This includes that 'who' options do not undermine the ability of Treaty settlements to be effectively transitioned and upheld in the new RM system, nor do they impact on the rights of customary marine title and protected customary rights holders. Further information is provided in the section on protecting and transitioning Treaty settlements.

Who in relation to governance – composition and appointments

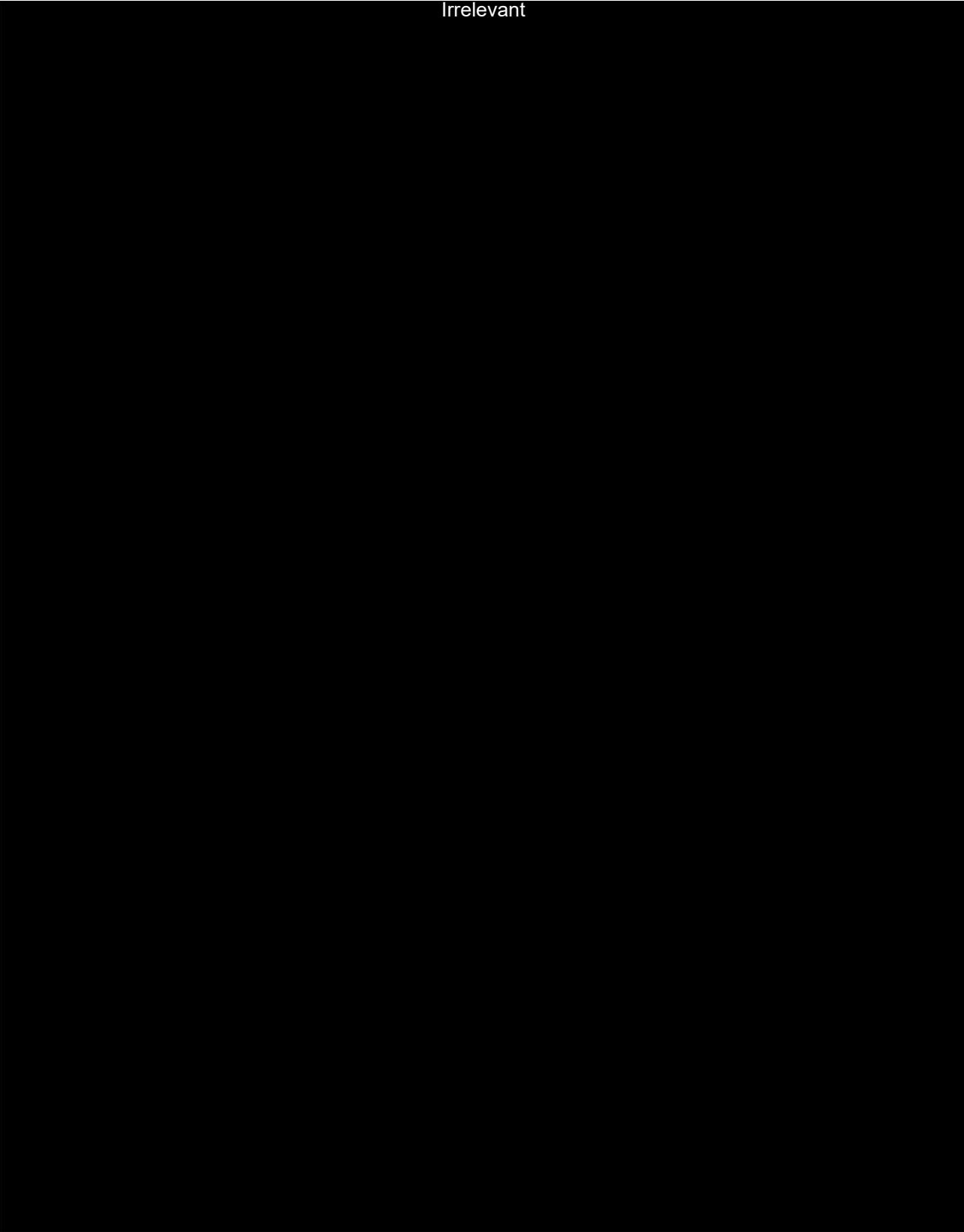
105. The matters set out above are directly relevant to the proposals for 'who' participates in SPA and NBA committee composition and governance.
106. In addition, the establishment of a regional layer of decision-making, where the many must be represented by the few, contains inherent tensions with providing for the exercise of rangatiratanga, including rights and interests at place. There will also be challenges, such as the number of seats allocated through composition discussions which will not always neatly fit with the number of Māori entities (including iwi and hapū representative organisations) in the region. Furthermore, regional boundaries rarely match iwi and hapū rohe which adds further complexity to the way the new RM system will require Māori to work. Finally, there is a need for the overall package to account for wider local representation through democratic processes in councils, and other considerations
107. Delegated decisions are being sought on a range of matters related to composition and appointments processes, including terms and definitions for who leads and participates in composition discussions, details of facilitation and support to ensure local composition discussions have the highest chance of success, dispute resolution and circuit-breaker processes for Māori appointments and implementation support. Delegated decision papers will include Treaty impact analysis of proposals.
108. Part of the reason for seeking delegated decisions is to enable extra time to engage with FILG/TWMT and TTK technicians on this important matter.
109. Recommending this option strengthens the case for proactive Crown transition and implementation support prior to formal composition processes being initiated to reduce the risk that circuit breakers will be required later in the process.
110. This proposal does not directly impact the ability for alternative circuit breakers to be used in the case of disputes among iwi/hapū/Māori groups.
111. Paper 2: Regional Governance includes a proposal that the arbiter for disputes about local government and iwi/hapū/Māori composition on SPA and NBA. The delegated

¹⁶ See Waitangi Tribunal, 1998. *Te Whānau o Waipareira report*. Wai 414 for findings on this matter.

[IN-CONFIDENCE]

decisions sought through this paper will provide an appropriate mechanism to resolve disputes about Māori representation structures and membership, not disputes about composition of SPA and NBA committees. As part of this work officials will also consider when Māori representation dispute resolution procedures can be initiated. This because, in some circumstances, it may be helpful for these procedures to be able to be initiated before decisions on composition and appointing bodies are made.

Irrelevant



[IN-CONFIDENCE]

139. The overall approach to 'who' across the system provides for significantly enhanced participation of hapū and of kaitiaki 'at place', which responds to Waitangi Tribunal findings and recommendations in Wai 262 and Wai 2358 regarding the exercise of kaitiakitanga by hapū.
140. The continued provision for iwi leadership where appropriate is also consistent with agreements by the Crown, FILG and claimants in Wai 2358 that in some circumstances it makes sense for iwi to lead processes for practical reasons.
141. This paper makes proposals which provide a response to the Tribunal's criticisms of Crown funding and abdication of responsibility for this to local authorities. These proposals include provision in the SPA and NBA to require:
- a. the use of a variety of mechanisms to support appropriate funding for Māori participation at the local level: and
 - b. central government to collect information on the costs associated with Māori participation, the drivers of these costs and the funding provided to meet these costs; and monitor funding issues in regions where Māori participation is not occurring due to low rating base, disproportionately large costs, or other reasons. [Annex E refers]
142. These, and other provisions, work together to recognise that Crown's Te Tiriti duties remain and must be fulfilled, and the Crown must make statutory delegates accountable for fulfilling them too.
143. However, some key risks remain. The system as a whole may fall short of the Tribunal's expectations in relation to the scale of partnership it set out in the likes of Wai 2358 in relation to freshwater. Decisions on the key proposals in relation to regional governance [Paper 2: Regional Governance refers] will play a key part in whether the system meets these expectations. Specific Treaty impacts analysis is provided in that paper.
144. Given the importance of the subject matter, it is likely that in the future the Tribunal will inquire into the new RM system. The Tribunal may well consider that elements of the new RM system should sit higher in the scale it has discussed in the likes of Wai 2358, including potentially control.
145. Officials consider there would likely be few instances that would meet the test for control in planning, due to significant public interest in all aspects of resource management and the interconnectedness of all parts of te taiao. For example, a particular water source in which Māori have the priority interest will be impacted by upstream activities and will have impacts downstream. Officials also consider that control or partnership approaches balanced toward the kaitiaki, rather than public interest, could still be provided for where appropriate (if SPA and NBA committees choose to accept the advice of iwi/hapū/Māori led sub-committees or advice provided directly by iwi/hapū/Māori groups).
146. There are other areas in the system where control could also be provided for to some degree, most likely via Transfers of Power, for example through consenting related powers such as the existing veto rights over certain consents provided to CMT holders under MACA and recognised in the RMA) or environmental monitoring in a specific location. Officials consider it appropriate that such matters be explored region by region and in relationships between iwi/hapū/Māori and regional decision-makers, rather than dictated through the legislation. Control is also provided for over the development of te ao Māori content such as iwi and hapū management plans.
147. Provision for the exercise of rangatiratanga by non-whakapapa-based groups is more limited than provision for iwi and hapū. These groups may continue to view their participation as inappropriately limited. Although in a different context, the Tribunal found in Te Whanau o Waipareira Report (Wai 414) that "non-tribal Māori groups may be entitled to special consideration in terms of the Treaty; that is to say it should not be assumed that they should be treated simply as another interest group under the Treaty's

Appendix 1: Panel recommendations

Panel Recommendation	Summary of approach
The concept of 'Te Mana o te Taiao', should be introduced into the purpose of the Natural and Built Environments Act to recognise our shared environmental ethic.	Not addressed in this paper
Specific outcomes should be provided for 'tikanga Māori', including for the relationships of mana whenua with cultural landscapes.	Not addressed in this paper
The current Treaty clause should be changed so that decision-makers under the Act are required to 'give effect to' the principles of Te Tiriti o Waitangi.	Not addressed in this paper
A more effective strategic role for Māori in the system should be provided for, including representation of mana whenua on regional spatial planning and joint planning committees.	Not addressed in this paper
A National Māori Advisory Board should be established to monitor the performance of central and local government in giving effect to Te Tiriti and other functions identified in the report.	Addressed in this paper Proposals generally aligned with the recommendation
The current Mana Whakahono ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues.	Addressed in this paper Proposals generally aligned with the recommendation
The current legislative barriers to using the transfer of power provisions and joint management agreements should be removed and there should be a positive obligation on local authorities to investigate opportunities for their use.	Addressed in this paper Proposals generally aligned with the recommendation
The current definitions of the terms 'iwi authority' and 'tangata whenua' should be replaced with a new definition for 'mana whenua'.	Addressed in this paper Proposals not aligned with the recommendation
Provision should be made for payment of reasonable costs where Māori are undertaking resource management duties and functions in the public interest.	Addressed in this paper Proposals generally aligned with the recommendation
A national policy statement should be required on how the principles of Te Tiriti will be given effect through functions and powers exercised under the Act.	Not addressed in this paper
The funding and support options recommended in this chapter should be implemented.	Addressed in this paper Proposals generally aligned with the recommendation

Options analysis – approach to terms and definitions

Mechanism:	Terms and definitions – overall approach						
	Functions:	Describe iwi/hapū/Māori participants (and their participatory rights) across the system					
	Expected impact of Māori Participation	a. support Māori participation provisions to be interpreted in accordance with the policy intent b. clear expectations for central government, local government, and others c. clarity and certainty for iwi/hapū/Māori.					
OPTIONS – see the working document for more explanation of how to frame up the options							
	ASSESSMENT CRITERIA						
	Give effect to the principles of Te Tiriti o Waitangiⁱ	Uphold existing arrangementsⁱⁱⁱⁱⁱ	Efficient^{iv}	Effective^v	Certainty^{vi}	Equity	Summary Comment
Option 1 Including a single overarching term such as ‘mana whenua’, or an alternative, and using that term where iwi authority or tangata whenua might otherwise be used (Panel’s proposal)	May not be sufficient to protect specific rights and interests (but would depend on the specific definition and where that definition is used) – panel definition may provide for enhanced participation by hapū and other groups. Terms and definitions alone cannot give effect to the principles of te Tiriti 3/5	Existing Takutai Moana rights; Treaty settlement arrangements and natural resource arrangements under the RMA will require separate decisions to ensure they are upheld, and this will be addressed through separate policy proposals in discussion with those parties. N/A	Does not improve efficiency as does not significantly improve clarity for decision-makers, nor does is the approach likely to reduce conflict regarding the exercise of mana whenua within the RM system 1/5	An overarching (and inclusive) term is not the most effective way to provide for that Panel’s intent of more inclusive participation. Nor will it provide clearer expectations for decision-makers except that participation should not be limited to iwi authorities 1/5	Unlikely to provide more clarity than the status quo 1/5	May promote equity in that groups whose participation is currently limited may be enhanced – however this largely depends on how the term is employed 3/5	Little benefit beyond the status quo. Terms and definitions should not be considered policy choices in their own stead, but rather support the system to give effect to the policy intent of participation proposals. Not well aligned with proposed overall approach which establishes two primary engagement pathways.
Option 2 Including an overarching Māori participation principle or set of principles to set expectations for Māori participation across the system, in accordance with the Tiriti clause and Te Oranga o te Taiao	Principles (although dependent on what those principles are) could support the system to better give effect to the principles of te Tiriti 4/5 (note this is a ‘best-case scenario score)	If a principle regarding settlement commitments was included, this could contribute to settlements being effectively upheld but it is considered it would not be sufficient on its own. 4/5 (note this is a best-case scenario score)	May hinder efficiency through extra layer of consideration for decision-makers - not specific to a particular role or function. However, may promote efficiency if principles improve decision-maker’s understanding of responsibilities. Unlikely to provide more benefit than what will be achieved through the combination of TOOTT the Tiriti clause and specific provisions or guidance 3/5	The combination of Te Oranga o te Taiao, te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system, will set sufficiently clear expectations. Principles are unlikely to add much to what is already provided. At worst, further principles may create unnecessary complexity. 2/5	Principles may improve certainty for those with participation rights or engagement responsibilities (dependent on what those principles are), however combination of TOOTT, te Tiriti clause and specific Māori participation provisions should provide certainty without the need for principles 2/5	If a principle specifically related to equity was included this could promote equity 4/5 (note this is a best-case scenario score)	No clear case for an overarching Māori participation principle or principles. The combination of Te Oranga o te Taiao, te Tiriti clause and specific Māori participation provisions for each relevant role and function within the system, will set sufficiently clear expectations. At best, principles could support outcomes to be met, at worst, further principles may create unnecessary complexity.
Option 3 Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.	Use of specific terms more likely to support the recognition of specific rights and interests Again, the terms are only as useful as the provisions in which they will be applied 3/5 – 5/5 (depending on provisions)	Existing Takutai Moana rights; Treaty settlement arrangements and natural resource arrangements under the RMA will require separate decisions to ensure they are upheld, and this will be addressed through separate policy proposals in discussion with those parties. N/A	Use of most useful term for a situation likely to be an efficient approach Use of consistent terms where possible will also contribute to efficiency 4/5	Terms designed in response to specific proposals likely to be effective in supporting accurate interpretation of those provisions, setting clear expectations, and providing clarity and certainty 5/5	Specific terms likely to provide for highest degree of certainty among these options. Degree of certainty will also depend on how specific a term or definition is (which will be dictated by the policy intent) 4/5	May promote equity through specifying rights and interest holders in the legislation where they have rights. Again, will be dictated by the policy intent. 3/5	Best meets the criteria. Best fits with good legislative drafting principles - the use of specific terms and definitions are not considered policy choices in themselves, but rather legislative design tools, intended to support policy intent being given effect to in relation to ‘who’ choices throughout the system.
Recommendation: Option 3 Developing terms, including broad terms (such as Māori entity), definitions, and where appropriate, principles, to support the overall who approach and specific who proposals at each layer of the system.							

Mechanism:	Terms and definitions – overall approach						
	Functions:	Describe iwi/hapū/Māori participants (and their participatory rights) across the system					
	Expected impact of Māori Participation	a. support Māori participation provisions to be interpreted in accordance with the policy intent b. clear expectations for central government, local government, and others c. clarity and certainty for iwi/hapū/Māori.					
OPTIONS – see the working document for more explanation of how to frame up the options	ASSESSMENT CRITERIA						
	Give effect to the principles of Te Tiriti o Waitangiⁱ	Uphold existing arrangementsⁱⁱⁱ	Efficient^{iv}	Effective^v	Certainty^{vi}	Equity	Summary Comment
Caveats/Dependencies to call out: - the ability of all options to meet the criteria is largely directed by the underlying policy proposals to which they would be applied - None of the options will uphold settlement commitments in themselves, because they are generic policy solutions and do not specifically provide for PSGEs or Treaty settlement commitments							

ⁱ Does the option give effect to the principles of Te Tiriti o Waitangi, including:

- active protection, participation, and partnership
- protecting the rights and interests of iwi, hapū and Māori at each level of the system
- enabling iwi, hapū and Māori to exercise rangatiratanga and kaitiakitanga

ⁱⁱⁱ Does the option uphold Treaty settlements, Takutai Moana rights and interests and other existing natural resource arrangements under the RMA

^{iv} Is the option efficient (objective 5), including:

- balancing immediate timeliness with long-term, durable outcomes
- time and cost
- durability

^v Is the option effective (objectives 3 and 5), including:

- can it be implemented
- will it help to address the problem and achieve objectives
- is accountability clear
- does it contribute to improved central and local government capability to effectively work with Māori
- does it support constructive relationships, in accordance with tikanga, within te ao Māori

^{vi} Does the option provide certainty (including ‘who’ participates, and clear processes to resolve potential conflicts) (objectives 3 and 5) for:

- iwi, hapū and Māori
- decision-makers
- system users

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Annex C: Roles for Māori at the regional governance level

Purpose

1. This Annex must be read after Paper 1: Regional Governance and decision-making in the new resource management system (Paper 1: Regional Governance) which seeks decisions on the design of Regional Governance arrangements. The recommendations of this paper are contingent on the recommendations of Paper Y: Regional Governance being agreed.
2. This paper provides advice on:
 - a. Part 1: Māori roles in regional governance
 - b. Part 2: Treaty Partnership Entities and recommends these are not pursued further.
 Both aspects of this paper link to recommendations in Annex A, Annex E and (Paper 1: Regional Governance).

Context

Status quo under the current system

3. Under the Resource Management Act 1991, Māori involvement has tended to be in the later stages of RM processes (consenting), rather than at the strategic end (plan development and approval). Where they have been involved, this has mainly been through Treaty settlement arrangements.

Resource Management Review Panel (the Panel)'s recommendations

4. In addition to the Panel's recommendations described in Annex A, The Panel proposed mana whenua membership on Regional Spatial Strategies (RSSs) and Natural and Built Environment Act (NBA) plan committees.
5. The Panel did not make recommendations on how mana whenua representatives should be appointed to NBA and Strategic Planning Act (SPA) committees. They did however say selection processes should not unduly delay the development of spatial strategies and plans. They suggested fixed timeframes and 'circuit breakers' embedded into the process could be one method for ensuring this does not occur.
6. The Panel did not propose a specific mechanism for Māori participation in the plan-development process, outside of inclusion of mana whenua in NBA and SPA committees. They did highlight a lack of clear 'strategic' level engagement and a need to bring engagement up to the plan-development level.

Previous Ministerial Oversight Group decisions

7. Ministers have noted that further advice will be provided on the matter of who participates in the RM system, including:
 - a. identifying and recording who makes Māori appointments to SPA and NBA committees
 - b. whether legislation should set appointments processes or enable bespoke processes (eg, through enabling a tikanga or Kaupapa Māori appointments process).
8. At MOG #12 Ministers agreed that "Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements". At that time only limited

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analysis had been undertaken on the proposal and feedback had not yet been sought from iwi/hapū/Māori.

9. Ministers were also provided brief advice at MOG #12 on the potential for Treaty Partnership Entities (committees) to be used to enable iwi/hapū/Māori who exercise rangatiratanga and kaitiakitanga over resources at the local level to influence the content of plans and regional spatial strategies. No direction was sought from Ministers on that matter at MOG #12.

PART 1: ROLES FOR MĀORI IN GOVERNANCE

10. Under the new RM system, SPA and NBA committees are proposed to be established to oversee the development of and approve the NBA plans and RSSs for the region. These committees will include Māori members to represent the interests of iwi, hapū and Māori.
11. Another MOG #17 paper, Paper 1: Regional Governance, seeks agreement to the key features of regional governance and decision-making by committees for the regional spatial strategies under the SPA, and plans under the NBA. That paper provides advice on:
 - a. functions and form
 - b. composition and appointments
 - c. decision-making
 - d. resourcing the committees
 - e. cross-cutting issues and other matters.
12. This annex assumes that the recommendations in Paper 1: Regional Governance have been agreed. This annex and provides additional detail who will be proactively contacted at certain points in the process, other opportunities for Māori to be part of the decisions on regional governance arrangements and what is required to make the proposals successful.
13. The establishment of a regional layer of decision-making, where the many must be represented by the few, contains inherent tensions with providing for the exercise of rangatiratanga, including rights and interests at place. There will also be challenges, such as the number of seats allocated through composition discussions which will not always neatly fit with the number of Māori entities (including iwi and hapū representative organisations) in the region. Furthermore, regional boundaries rarely match iwi and hapū rohe which adds further complexity to the way the new system will require Māori to work.

Options considered

Who participates in composition processes and how

14. Officials have considered the following options in relation to who represents Māori on SPA and NBA committees and how they will be appointed:
 - a. **Option 1 (recommended):** Iwi and hapū representative organisations are identified in legislation as the entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies. Iwi and hapū representative organisations and appointing bodies have a requirement to demonstrate wider engagement with groups at place.

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- b. **Option 2:** Requirement to form Mana Whakahaere Councils which will be identified in legislation as entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies (although the intention is for the Mana Whakahaere Councils to also be appointing bodies).

This option is inspired by the proposal from Te Tai Kaha (TTK). Mana whakahaere councils would include “iwi/hapū (inclusive of Post Settlement Governance Entity (PSGEs)), ahi kā (Māori landowners) who exercise mana whakahaere (authority) and other obligations (kaitiakitanga and manaakitanga) to a particular area, water source, space and resource”. The mana whakahaere council would run its own processes for composition discussions and appointments. The committee would provide a forum for appointee accountability. It would also have a number of other functions in the system relating to who participates, including in plan development, consenting, and monitoring.

- c. **Option 3:** Iwi and hapū representative organisations are identified in legislation as entities to be engaged in discussions on composition. These entities will be responsible for discussions with local government on SPA and NBA committee composition and identifying appointing bodies.
- d. **Option 4:** Open tikanga-based processes used to determine who engages in discussions on composition and who identifies appointing bodies. Iwi/hapū/Māori will decide who participates in these discussions with minimal statutory prescription.

15. Analysis of these options is provided at Appendix 1 of this Annex.

Proposals

Māori participation in composition and appointment processes to SPA and NBA committees

16. This paper’s proposal is based on Option 1, and is described as follows:
- a. Iwi and hapū representative organisations are identified in legislation as the entities to be engaged to commence discussions on composition
 - b. Iwi and hapū representative entities must engage with their members and other Māori entities representing rights and interests at place¹ to agree composition and identify appointing bodies
 - c. appointing bodies that make appointments of Māori members to SPA and NBA committees must engage with people at place in making appointments
 - d. officials do not anticipate the need to create a new entity where iwi and hapū act together to make appointments. An existing Māori entity could be recorded as the appointing body, noting that it will work together with other entities using processes agreed outside the NBA/SPA framework to make appointments and removals.
 - e. while appointing bodies need to be a legal entity of some form, appointing bodies may also be collectives of iwi/hapū representative organisations or other representative organisations without the requirement for them to form a new entity as a vehicle for making appointments.

¹ The term ‘at place’ is first used and discussed in Annex A: Māori entities representing rights and interests may include marae-based groups, Māori landowners, whānau, mātāwaka groups or other communities of interest. Decisions on how to define this will be sought through delegate decisions.

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17. In coming to a recommended approach, the Crown has a responsibility to consider which groups should be represented in terms of where the relevant interest lies and needs to:
 - a. consider its obligations under Article II of te Tiriti in how rangatiratanga is appropriately provided for and consideration of kaitiaki relationships with taonga, and also that the Crown consider its broader kawanatanga obligations
 - b. recognise its duty of active protection where this is needed and considers its obligations under existing Treaty settlements
 - c. provide clear processes and certainty for all parties
 - d. set up processes that avoids and/or resolves conflict.
18. Officials consider this proposal provides for inclusion and flexibility in how Māori are represented in composition discussions and appointment processes, while also providing transparency around how the formal legislative process will be initiated. It also provides an opportunity for a range of Māori entities to be involved in appointment processes and a clear starting point for composition discussions.
19. It also seeks to recognise the variety of potential appointing bodies by clearly enabling other Māori entities to be the appointing bodies if that is what the relevant iwi, hapū and Māori think is the best way.
20. Officials consider this proposed approach strikes an appropriate balance that provides for iwi and hapū representative organisations (including PSGEs) to lead the conversations about composition and appointment processes, while also clarifying:
 - a. iwi and hapū representative organisations are not the default appointing bodies, and
 - b. genuine engagement with their members and other Māori entities is expected to occur before a decision on composition and appoints are reached.

It is also important to consider the other roles for Māori in the system as set out across the suite of annexes attached to this paper, and in particular Annex A.

The decisions in this paper and Paper 1: Governance have implications for some Treaty settlements that are being worked through

21. The new system will change the decision-maker on planning documents from local authorities to NBA and SPA committees. Where existing Treaty settlement mechanisms, or mechanisms for natural resource arrangements under the RMA, enable or provide for joint development of regional and district planning documents, specific arrangements will need to be provided for in that particular place.
22. To ensure this, MFE officials (supported by Te Arawhiti) are exploring a number of policy solutions (mechanisms) in discussion with PSGEs and affected entities. These may include options for direct representation of those parties on NBA or SPA committees or for direct input into the decision-making processes of those committees.
23. These discussions are being undertaken as part of a separate process looking at options on how to uphold Treaty settlements and existing natural resource arrangements under the RMA in the future system; and decisions on this have been delegated to a sub-set of Ministers [refer to MOG 15, Paper 2 (Critical Issues and Delegated Decisions), Rec 52].
24. The policy proposals in this Paper have not assessed or provided solutions for how these obligations will be upheld. This process will take place separately and is likely to result in amendments to Treaty settlements and legislation and may require separate statutory provisions for existing arrangements.

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25. It is possible some further decisions may also be required in respect of the NBA and SPA to ensure these obligations can be provided for. It may also mean that in particular regions there are additional policy proposals in relation to plan making processes and NBA or SPA committees, which will be sought through delegated decisions, and which will complement and add to the policy proposals in this paper.

The approach recommended in this paper is different to the approach proposed by Te Tai Kaha

26. Despite the flexibility of the proposed approach, officials recognise that this approach is different to the mana whakahaere proposal presented by Te Tai Kaha (similar to the approach outlined in Option 3) and is not as open as they would like. Officials consider that the lack of certainty around who will lead the process and the potential for the approach to undermine Treaty settlement arrangements, and other arrangements established under the RMA, are key risks to the mana whakahaere approach.
27. The risk to Treaty settlements and other existing arrangements under the RMA under the mana whakahaere approach is that iwi and hapū representative organisations (including PSGEs) will not be leading the discussions on composition and appointment processes. This means there is a chance that their arrangements will not be appropriately factored in during the early phases of discussions on composition and appointing bodies. Furthermore, in regions where there are multiple PSGEs with arrangements, it should be ensured that all PSGEs are clearly brought into the discussions and their participation is not inappropriately limited by other Māori groups.
28. However, officials agree with Te Tai Kaha that it will be important for all Māori in the region to have to opportunity to understand and explore:
- a. the new system
 - b. the role for Māori in NBA and SPA committees; and
 - c. how the process will work in their region.
29. Therefore, as part of the mitigations, officials propose that the Crown communicate the changes to the system widely to Māori as part of its transition and implementation planning. This approach will be in addition to the legislated requirement for iwi and hapū representative organisations to consult with other Māori entities on the composition and appointment process.
30. Iwi and hapū representative organisations will be required to maintain a record of engagement and make this record publicly available. This will help provide transparency about robust engagement and involvement in appointment processes.

Technical requirements

31. The NBA and SPA will provide for appointed member accountability through appointment and removal by appointing bodies. While not required in the legislation, the proposal does not preclude the creation of regional fora to support appointee accountability, help reach agreed positions, and resolve disagreements.
32. Officials propose that the legislation would not prescribe appointment processes but would include the requirement for appointing bodies to be enduring and capable of developing and executing their own appointment and removal processes in line with their own rules.

Funding and implementation support is a key dependency for this proposal to work

33. Funding and support for iwi and hapū representative organisations will be required for them to effectively lead processes to determine composition and appointing bodies. Funding and support are particularly important for the initial establishment of the SPA

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and NBA committees in each region because it will require new ways of working within te ao Māori and with local authorities. This means that new processes and relationships are being developed and if this phase goes well, it sets the region up positively for the ongoing implementation of the reforms. If the transition and implementation phase is not appropriately supported, it increases the risk that the SPA and NBA committees will not be considered legitimate decision-making bodies.

34. It is vital that central government provides funding to ensure these processes are efficient and provide iwi and hapū access to resourcing that ensures all groups across the motu have the same opportunity to organise and participate to:
 - a. agree the composition and appointment processes for Māori members on SPA and NBA committees and
 - b. run those appointment processes as agreed.
35. As noted above, officials propose that central government take proactive steps to engage with iwi, hapū and Māori in the regions before composition and appointment discussions begin to ensure iwi, hapū and Māori understand their role in these processes and have sufficient time to decide how they will organise in each region and the processes they will use to determine their representatives. This engagement could take the form of regional hui and would also include explaining the obligation of iwi and hapū organisations to engage with other Māori entities.
36. Once appointments are made, the Māori members on SPA and NBA committees will require ongoing funding and resources to support them in their role on the committee and to ensure that they maintain their accountability back to the people they represent. This is particularly important when many iwi and hapū are being represented by a few Māori members. Without this support and resources these Māori members will not be able to effectively maintain their role on the SPA and NBA committees, undermining the legitimacy of the committee. This funding recognises that the local government and central government (for the SPA only) representatives will have funding and infrastructure to support them to meet their obligations and ensure they are accountable while the Māori members will not.
37. Annex E: Funding Māori participation provides advice on the options on how to fund Māori participation. That annex includes specific advice on the Crown's obligations under Te Tiriti o Waitangi. Decisions will be sought on transitional and ongoing support once the details of composition and appointment process are confirmed.

Dispute resolution and circuit-breakers

38. With good implementation and transition support, officials consider that many regions will successfully establish their SPA and NBA committees. However, there may be cases where additional dispute resolution procedures are required.
39. Paper 1: Regional Governance sets out dispute resolution procedures and circuit-breakers to be used if there are disputes in relation to composition of SPA and NBA committees.
40. However, there is a strong case for additional dispute resolution and circuit breaker processes to support iwi, hapū and Māori to determine their regional representation structures that will become appointing bodies to SPA/NBA committees.
41. Work is underway to determine the best approach and design of these dispute resolution and circuit breaker processes. However, initial analysis suggests that use of alternative dispute resolution methods, such as facilitation, are essential components of any circuit breaker process.

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42. Officials continue to explore the legislative requirements of the dispute resolution methods and whether these would be supported by formal circuit-breaker/decision-making mechanisms to resolve disputes.
43. Options for circuit-breakers that are being considered are:
- a. **Option 1:** facilitation only – no additional circuit-breaker outside of the process proposed through Paper 1: Regional Governance
 - b. **Option 2:** facilitation, moving to decision by a Panel of experts in matters of Māori representation (eg, current and former Māori Land Court judges or Waitangi Tribunal members or Panel members nominated by the groups party to the dispute)
 - c. **Option 3:** facilitation, moving to a decision by a Minister or Ministers (eg, Minister for Crown-Māori relations and the Minister for Māori Development)
 - d. **Option 4:** facilitation, with the Māori Land Court serving as the arbiter for resolving disputes (noting this would likely require amendment to Te Ture Whenua Māori Act 1993).
44. Officials are also considering whether it is appropriate to use the circuit breakers in other areas where Māori representation disputes may arise, such as in relation to appointments to the National Māori Entity.
45. This paper seeks agreement to delegate decisions on dispute resolution processes (including facilitation) and circuit breakers to the Minister for the Environment, Minister for Māori Development, Associate Minister for the Environment (Hon Kiri Allan), and Minister for Māori Crown Relations.

Secretariat

46. Paper 1: Regional Governance contains the key recommendations and content related to the SPA and NBA secretariats. The SPA and NBA secretariat would be responsible for RSS and NBA plan drafting and ensuring the joint committee has administrative support. In summary, the key proposals are that:
- a. the SPA and NBA committees will appoint a Secretariat director (statutory position)
 - b. the director will consult with the SPA/NBA committee on a resourcing plan for the secretariat to consider the expertise and skills available across the groups represented on the SPA or NBA committee
 - c. The director will employ/contract/second/coordinate secretariat staff (including secondments from Māori entities)
 - d. there will be a duty for the director to ensure advice is informed by mātauranga Māori, te ao Māori, and Māori engagement expertise.
47. The approach set out above does not provide specific direct appointments to the secretariat by Māori members on SPA/NBA committees or Māori appointing bodies, which is something that some Treaty partners indicated as their preference during our engagement with them. This preference for direct appointments is due to the significant role that the drafting processes play in the design and tone of the eventual plan or strategy.
48. Options for direct appointments, for Māori and local authorities, have not been pursued as it would imply the secretariat was a separate legal entity with statutory appointment processes (which is not the intent). It is important that the director has clear responsibility for resourcing the secretariat, delivering the draft strategies and plans and can also exercise responsibilities as an employer. However, specific arrangements may need to

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be provided for as part of the secretariat resourcing or drafting processes where it is necessary to uphold a Treaty settlement in a region.

49. The intention of the proposals agreed through Paper 1: Regional Governance is that there will be te ao Māori expertise on the secretariats through the combination of the provisions describe at paragraph 46 above.
50. There is more work to do to ensure that the proposals in Paper 1: Regional Governance will adequately provide for Māori expertise on the secretariat and whether additional tools may be required to achieve the desired outcomes
51. Agreement is sought to delegate decisions on further details on the secretariat, including legislative and non-legislative measures to support the role for Māori in the secretariat, to the Minister for the Environment, the Minister for Local Government and the Associate Minister for the Environment (Hon Kiri Allan)

PART 2: TREATY PARTNERSHIP ENTITIES

52. At MOG #11/12 Ministers agreed that “Treaty Partnership Entities will be enabled to support joint committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements”. At that time only limited analysis had been undertaken on the proposal and feedback had not yet been sought from iwi/hapū/Māori. However, the broad concept was a contributing or sub-committee structure that fed directly into Joint Committees as a means of upholding existing arrangements and Treaty settlements.
53. Ministers were also provided brief advice at MOG #11/12 on the potential for Treaty Partnership Entities to be used to enable iwi/hapū/Māori who exercise rangatiratanga and kaitiakitanga over resources at the local level to influence the content of plans and regional spatial strategies. No direction was sought from Ministers on that matter at MOG #12.

Options considered

54. The following options were considered in the preparation of advice:
 - a. Pursue Treaty Partnership Entities as proposed at MOG #11/12
 - b. Do not progress the concept of Treaty Partnership Entities for inclusion in the SPA and NBA.

Proposal

55. Officials do not propose to pursue Treaty partnership entities for inclusion in the SPA and NBA Bills.

Treaty Partnership Entities will not provide meaningful help to transition Treaty settlements and other existing arrangements

56. Further analysis has demonstrated Treaty partnership entities are likely to have little utility in upholding Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements. The mechanism is not equivalent to any of those arrangements. It has caused confusion with PSGEs and others who are seeing it as being pitched as the solution to carrying over the participation arrangements. Officials consider, at best, the mechanism might offer a pathway to carry over some aspects of some settlements, but it would also likely require additional legislative provisions to bring legitimacy to this approach.
57. In addition, some iwi have signalled they do not see a Treaty Partnership Entity as forming any part of a package of measures to carry over their Treaty settlement arrangements. Waikato-Tainui, for example, have clearly stated their opposition to the

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establishment of a Treaty Partnership Entity in relation to transitioning the Waikato River arrangements.

58. Officials recommend that Treaty Partnership Entities are no longer pursued as a mechanism to support SPA and NBA committees to uphold Treaty settlement arrangements, Takutai Moana rights and existing voluntary resource management arrangements.
59. Notwithstanding that recommendation, officials note that upholding some Treaty settlement arrangements and natural resource arrangements under the RMA may require a direct relationship between the relevant entity and the SPA and NBA committees.

Enabling iwi/hapū/Māori at local level to have input into plan preparation

60. Officials have explored the potential to provide for Treaty partnership entities as a mechanism to enable iwi/hapū/Māori input into plan preparation and have concluded they are unnecessary.
61. The MOG have been asked to agree through Paper 1: Regional Governance that the SPA and NBA committees can, at their discretion, appoint sub-committees to assist the committees to develop plan content relating to inter-regional and sub-regional matters. That paper notes that sub-committees could also be established to provide for collaborative planning processes with Māori for specific plan or RSS content such as the inclusion of cultural landscapes or content on specific waterways. There is proposed to be no limitation on who the SPA and NBA committees can appoint to sub-committees.
62. Further, there is the potential through other mechanisms described in this suite of Annexes, including Engagement Agreements and enhanced Mana Whakahono ā Rohe arrangements, for iwi/hapū/Māori at the local level to request direct relationships with relevant SPA and NBA committees.

Treaty impact analysis

63. A full summary of the analysis of the Treaty impacts of the recommendations of the MOG #17 Roles for Māori paper are contained at Annex A. This is because the approach taken in this annex is impacted by the approach taken through the other parts of the system.
64. Many existing natural resource arrangements under the RMA, or through Treaty settlements have links to, or direct roles in plan-making under the RMA. If the policy approaches in relation to the composition of NBA and SPA committees, as proposed in this paper, were adopted without allowing for particular solutions for those arrangements to be determined, there is a risk they would not be upheld. In particular, it could have the unintended effect of undermining those arrangements and the Crown's Treaty commitments and settlement redress agreed with those groups.
65. To address this, as discussed above at paragraphs 21 to 25 , a separate process is underway, working with PSGEs and entities with existing natural resource arrangements under the RMA, for how these arrangements will be upheld in the new system. These matters are subject to separate delegated decisions which may require for specific arrangements in particular places, which are intended to sit alongside, and complement, the policy proposals in this paper.

Engagement

Local government

66. The Local Government Steering Group discussed the detail of the proposals regarding the role of Māori in the new system on 11 March 2022. The Local Government Steering Group (LGSG) has made general comments through their meetings:

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- LGSG supports an enhanced role for Māori in the new RM system.
- The LGSG has concerns about capacity/capability and funding for Māori and also for local government to fulfil the new requirements
- The LGSG is concerned that mechanisms for funding beyond the LGA are needed to ensure funding is ongoing and secure

Iwi/Māori groups

67. Key themes from regional engagement and the Select Committee process include:
 - a. continued support for 50/50 representation on SPA and NBA committees
 - b. preference for composition to be worked through region-by-region
 - c. need to ensure that hapū voices are represented
 - d. direct appointments from Māori onto the secretariats supporting the SPA and NBA committees
 - e. Māori are adequately resourced to participate in SPA and NBA committees
 - f. upholding and protecting Treaty settlement arrangements is a legal requirement.
68. TTK proposed mana whakahaere committees should be established to make appointments for SPA and NBA committees.
69. Freshwater Iwi Leaders Group/ Te Wai Māori Trust (FILG/TWMT) technicians have said they see the Treaty partnership as being (at least primarily) between the Crown and iwi/hapū. This would be expressed with iwi and hapū holding governance and decision-making roles.
70. Feedback received through the Select Committee process and regional/PSGE engagement, particularly in relation to governance and decision-making, has been spread relatively evenly between an iwi/hapū focus (consistent with the FILG/TWMT position) and a more inclusive approach (consistent with the Te Tai Kaha position).
71. Both groups considered that statutory timeframes and effective circuit breakers would support effective composition and appointment processes.
72. FILG/TWMT, Ngāi Tahu and Waikato Tainui have all expressed concern with the proposed Treaty Partnership Entity. Officials have not yet tested the proposal to remove this concept from the new system.

Appendix 1 – Options Analysis: Appointments to SPA and NBA Committees

Mechanism:	Appointments to SPA and NBA Committees						
	Functions:	<ul style="list-style-type: none"> Regional discussions for committee composition and then appointments Governance roles on SPA and NBA committees 					
	Expected impact of Māori Participation	Provides Māori a decision-making role at the strategic level					
ASSESSMENT CRITERIA							
	Give effect to the principles of Te Tiriti o Waitangi	Uphold existing arrangements	Efficient	Effective	Certainty	Equity	Summary Comment
<p>Option 1</p> <p>Iwi and hapū representative organisations are identified in legislation as entities be engaged in discussions on composition</p> <p>These entities will be responsible for:</p> <ul style="list-style-type: none"> discussions with local government on SPA and NBA committee composition Identifying appointing bodies, noting that who can be an appointing body is not prescribed <p>Iwi and hapū representative organisations and appointing bodies have obligations to engage with their members and other Māori rights and interests' holders as part of the process.</p>	<p>Allows a range of groups with rights and interests, including hapū and other Māori entities, to partner and participate in appointments process</p> <p>Does not presume that iwi and hapū representative organisations will become the appointing bodies.</p> <p>Risk of conflict arising from other groups may feel excluded from appointments process, or want a greater role than being engaged with or having views considered</p>	<p>Providing a leading role to iwi and hapū representative organisations (including PSGEs) makes it highly likely that arrangements won't be ignored during the composition and appointment discussions. Although further specific consideration and discussions with PSGEs will be needed to determine how individual settlements be upheld.</p> <p>Obligation to engage and work with other Māori groups will likely capture and uphold other existing arrangements.</p>	<p>Strikes reasonable balance between short term efficiency – getting discussions underway – while promoting inclusivity.</p> <p>Risk of delays as iwi and hapū and Māori decide how to organise in the region, and legal challenges from groups. However, the level prescription is set at a level where this risk may be lower than some of the other options (eg, option 2).</p>	<p>Recognizes the mana of hapū and iwi at place.</p> <p>Obligations to work with groups could encourage and enhance relationships between iwi/hapū/Māori groups.</p> <p>SPA/NBA committee members accountable to appointing body.</p> <p>Sufficient funding to enable Māori to participate in these processes is vital to ensuring their effectiveness.</p>	<p>Provides certainty about who from te ao Māori will be contacted by the LGC to initiate the process and their obligations to other groups.</p> <p>It will be clear which groups iwi and hapū have obligations to.</p> <p>Provides certainty for local government to know who to engage with.</p> <p>Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.</p>	<p>Ultimate decision-making power rests with iwi and hapū organisations – other groups involvement is dependent on the level to which obligations are met. Power imbalance present but potentially mitigated by obligations of wider engagement.</p>	<p>Provides initial certainty to get process started, but also allows for inclusion and flexibility in composition and appointments processes.</p> <p>Of these options, this strikes the best balance between achieving initial efficiency, providing safeguards to uphold existing Treaty settlements and other arrangements, while also being inclusive. This has the potential to enable ongoing efficiency through perceived legitimacy in the arrangement.</p>

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<p>Option 2 Requirement to form Mana Whakahaere Councils and those to be identified in legislation as entities be engaged in discussions on composition.</p> <p>Likely to also be appointing bodies.</p>	<p>Enables range of groups with rights and interests to participate in governance decisions.</p> <p>Being too flexible could open the process up to numerous legal challenges that could undermine the principle of partnership. Some have suggested that such an open approach is setting up the system to fail.</p> <p>Provides Māori with options regarding how they will organise.</p>	<p>The wide inclusion of groups should capture all groups with existing arrangements, and the interests of those arrangements.</p> <p><i>However,</i> It carries a risk of undermining existing agreements and Treaty settlement arrangements that iwi and hapū representative organisations (including PSGEs) may have in resource management because their participation will be on an equal basis with other Māori entities. May increase risk for smaller PSGEs that they will not maintain their ability to be engaged in the discussions throughout the process.</p>	<p>Potential for lengthy processes for self-identification, nominations and appointments, and the risk of failing to meet deadlines.</p> <p>ILG and TTK have noted self-determined processes could be less costly due to less litigation.</p> <p>Risk of multiple groups raising legal challenges.</p> <p>If successful, a truly open and self-determined approach is likely to result in durable arrangement via perceived legitimacy in process.</p>	<p>Potentially encourages and promotes relationships between groups in a non-hierarchical manner – although there is a chance that some groups will dominate discussions.</p> <p>Clear accountability of SPA and NBA committee members back to people through mana whakahaere councils.</p> <p>Appears to ignore existing structures and mechanism that could be leveraged.</p>	<p>Provides some clarity and certainty about who from te ao Māori will participate and then lead the process and their obligations to other groups, however it assumes the establishment of a suite of new arrangements before discussions on composition can be initiated, regardless of the structures already in place which could cause confusion.</p> <p>There may be some initial uncertainty as mana whakahaere councils are being formed in regions, but once they are established local authorities and other agencies will know who to engage with.</p> <p>Time will provide certainty for local government to know who to engage with but would be unlikely to replace requirement to consult and engage with individual iwi and hapū etc as well.</p> <p>Officials assume that groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.</p>	<p>Mana whakahaere councils are likely to result in more equitable outcomes as groups must work together.</p> <p>Low level of prescription carries the risk of regional discussion being dominated by certain groups, reducing or preventing equity</p>	<p>Allows for high level of self-determination and tikanga processes. Risk of delays in process of setting up mana whakahaere councils. Appears to undermine or potentially disregard existing arrangements and ways that rangatiratanga is expressed currently. It is likely that more details would be needed about parts of the process to better determine its viability as an option if sought to progress further?</p>
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<p>Option 3</p> <p>Iwi and hapū representative organisations are identified in legislation as entities are engaged with for discussions on composition.</p> <p>These entities will be responsible for:</p> <ul style="list-style-type: none"> discussions with local government on SPA and NBA committee composition identifying appointing bodies. <p>Appointing bodies process for appointment described in detail.</p> <p>No requirement for wider consultation.</p>	<p>Being too prescriptive risks excluding holders of relevant rights, who aren't iwi or hapū from decision-making in the region.</p> <p>Undermines Rangatiratanga -</p> <p>Doesn't take into account different ways groups in the region can organize themselves.</p>	<p>The inclusion of iwi and hapū representative organisations (including PSGEs) in discussions roles about regional governance arrangements that won't be ignored during the composition and appointment discussions. Although further specific consideration and discussions with PSGEs will be needed to determine how individual settlements be upheld.</p> <p>Potential exceptions with collectives or urban Māori in Auckland?</p>	<p>Initial process of organising within region likely to be efficient as fewer groups involved, no obligations.</p> <p>High chance of meeting process deadlines.</p> <p>Risk that durability of arrangements could be hampered by litigation, unless other groups are content with roles at other levels of system.</p>	<p>May not support constructive relationships between Māori groups as there is no requirement for iwi authorities to involve other groups – there is risk of relationship breakdown.</p> <p>Will work well in regions that already have well-established relationships between iwi, hapū and other groups</p> <p>Risk that this would be perceived as failing to create a more inclusive system.</p>	<p>Provides certainty about who participates.</p> <p>Provides certainty for Local Government Commission to know who to engage with.</p> <p>Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.</p>	<p>Low equity – the process reinforces rights of existing entities with few opportunities for other groups to participate.</p>	<p>While this option is likely the most efficient in the short-term, the lack of inclusivity would likely create problems that reduce its effectiveness overtime. Also undermines rangatiratanga and essentially results in the Crown articulating how rangatiratanga will be recognised in the new system.</p> <p>The lack of inclusivity in the appointments process can be mitigated by highlighting roles for other groups at other levels of the system.</p>
<p>Option 4</p> <p>Open tikanga-based processes used to determine who is engaged in discussions on composition and who identifies appointing bodies.</p>	<p>Enables those with rights and interests to participate in governance decisions.</p> <p>Low prescription could open the process up to numerous legal challenges that could undermine the process.</p> <p>Insufficient direction could mean the Crown risks being remiss in its duties to enable participation.</p> <p>Provides Māori with options regarding how they will organise.</p>	<p>The wide inclusion of groups should mean that all groups with existing arrangements should be able to participate.</p> <p><i>However,</i> it carries a risk of undermining existing agreements iwi and hapū may have developed through Treaty settlements in resource management under the RMA because they are not explicitly identified as being central to the processes.</p>	<p>ILG and TTK have noted self-determined process could be less costly due to less litigation.</p> <p>Potentially resource intensive to assist all interested groups to participate.</p> <p>Risk of introducing conflict eg, multiple small groups with mana whenua claims raising legal challenges.</p>	<p>Potentially encourages and promotes relationships between groups in non-hierarchical manner – although there is a chance that some groups will dominate discussions.</p> <p>There is also a chance that relationships could break down over disagreements over who holds certain roles and functions.</p> <p>SPA/NBA committee members are</p>	<p>Does not provide certainty about who will participate from te ao Māori or lead the process from within te ao Māori.</p> <p>There could be high variation between regions of composition of Māori appointing bodies, resulting in uncertainty for others about who to engage with</p> <p>Groups involved will understand the dispute resolution process and circuit-breakers if agreement cannot be reached.</p>	<p>Approach seems equitable as iwi/hapū/Māori groups will need to work together and agree collectively to arrangements.</p> <p>However, low level of prescription carries the risk of regional discussion being dominated by certain groups.</p>	<p>This option allows for a high level of flexibility and self-determination for Māori to decide on their own processes to make appointments, however the lack of prescription and certainty carries a high risk of delays.</p>

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				accountable to the appointing body.			
<p>Recommendation: Officials recommend Option 1, that iwi and hapū representative entities are primary participants in composition discussions and determining appointing bodies, with obligations to seek and include views of other Māori rights and interest holders. This option provides initial certainty to get process started as it provides clarity about who from te ao Māori is leading the process. It is an inclusive approach and is likely to involve the relevant holders of rights and interests in regions.</p>							
<p>Caveats/Dependencies: Regardless of the option chosen:</p> <ul style="list-style-type: none"> • Central government will need to facilitate hui to explain the new system and the key decisions that iwi, hapū and Māori need to make to transition and establish the new system. • Even if appointing bodies are existing entities, the way that the new system will operate will require new accountability mechanisms that will need to be funded and the Māori SPA and NBA Committee members will need additional administrative and technical support to reasonably carry out their functions with legitimacy. • Circuit-breakers and dispute resolution processes, which are being worked through separately, will support Māori in reaching decisions in a timely manner. <p>Caveats and dependencies specific to this option:</p> <ul style="list-style-type: none"> • There may be a concern that there is no guarantee all Māori groups will be able to participate in the composition and appointments process, and therefore it is failing to uphold the principles of Te Tiriti. It should be noted that there will be other roles for Māori groups at other levels of the system, and the obligation to include others is designed to mitigate that concern. • Iwi and hapū representative organisations will need to keep thorough and detailed records of engagement with other groups, and monitoring of them meeting this obligation will be required. • Appointing bodies must be enduring entities with the capacity to make appointments and removals in a timely manner. • Appointing bodies will have powers and functions in legislation and informal mechanisms to hold SPA and NBA committee members to account. • Sufficient resourcing to enable Māori to participate is required for any of these arrangements to be effective. 							