

# Interim regulatory impact statement: Reforming the resource management system

## Coversheet

Purpose	
Decision sought:	<i>Analysis produced for the purpose of informing Cabinet decisions</i>
Advising agency:	<i>Ministry for the Environment (MfE)</i>
Proposing Minister:	<i>Minister for the Environment</i>
Date:	<i>15 June 2021</i>
Problem definition	
<p>Aotearoa New Zealand’s resource management (RM) system is not enabling development of the scale, type and location that we need to provide for wellbeing of communities while simultaneously failing to adequately protect the natural environment, respond to climate change and provide an effective role for Māori. The underlying causes of these problems include a focus on effects instead of positive outcomes, suboptimal resource allocation, inadequate integration and strategic planning, regulatory complexity and poor implementation of the current system.</p>	
Executive summary	
<p><b>Why is government intervention required?</b></p> <p>The Resource Management Act 1991 (RMA) is New Zealand’s primary environmental and planning law, covering environmental protection, natural resource management and urban planning. Decisions on the use, development and protection of natural and physical resources affect all New Zealanders. Despite recent improvements to how the current RM system is being implemented, the problems identified above are likely to continue under the status quo. The RM system needs to adapt to face the challenges of climate change and New Zealand’s economic recovery from the impacts of COVID-19. A long history of incremental change to the RM system – while poor outcomes persist – has shown that its problems are interrelated and of such a scale that comprehensive reform should now be considered.</p> <p><b>This interim regulatory impact statement (interim RIS) assesses key policy areas of a proposed Natural and Built Environments Act (NBA)</b></p> <p>On 14 December 2020, Cabinet agreed to progress with resource management reform (reform) [CAB-20-MIN-0522 refers]. This involves introducing three new Acts:</p> <ul style="list-style-type: none"> <li>• A Natural and Built Environments Act (NBA) to replace the Resource Management Act 1991 (RMA)</li> </ul>	

- A Strategic Planning Act (SPA) to provide a framework for regional spatial planning throughout New Zealand
- A Climate Adaptation Act (CAA) to address powers and funding for managed retreat.

The scope of this interim RIS is limited to providing a description of broad overall options for reform, with more detailed analysis of four specific policy areas relating to the NBA, as indicated in **bold**, in **Table 1**. Cabinet agreed [CAB-20-MIN-0522] that an exposure draft of key sections of the Natural and Built Environments Bill ('the Bill') and supporting consultation material be referred to a select committee for the purpose of an inquiry, following Cabinet decisions in May 2021. A Ministerial Oversight Group (MOG) was established to work through the policy details needed to progress the NBA, its exposure draft, and the supporting consultation material. It has delegated decision-making authority on these matters, and for associated matters relating to the SPA and CAA. MfE have been unable to provide the interim RIS to MOG to support these in-principle policy decisions as the interim RIS was not completed at the time in-principle decisions were taken. The MOG has been provided with papers which include officials' advice on options for the policy areas covered in the exposure draft.

A final RIS for the NBA will be prepared prior to the complete Bill being introduced to Parliament, with updated analysis that incorporates the results of further consultation and provides an assessment of policy areas not detailed in the exposure draft. Separate RISs will be prepared for the SPA and CAA, respectively. Interdependencies between the proposals will be discussed within each final RIS.

**Cover sheet Table 1: Which pieces of the RM reform legislative architecture are the focus of this interim RIS?**

Reforming the resource management system		
<b>1. Legislative architecture</b>		
<b>Natural and Built Environments Act</b>	<i>Focus of Exposure Draft</i>	<u>Strategic Planning Act</u>
<b>2. Purpose and principles</b>		Spatial Planning
<b>3. National direction</b>		<u>Climate Adaptation Act</u>
<b>4. Regulatory plans</b>		Powers and funding for managed retreat
5. Consents, designations, orders and economic instruments		<i>This policy work is being progressed by the Minister of Climate Change</i>
6. System oversight and compliance, monitoring and enforcement		
7. Te Tiriti o Waitangi me te ao Māori*		
8. Institutional roles*		
<i>*These are discussed within this interim RIS but do not have dedicated sections.</i>		

**What are the options?**

The current RM system emphasises effects-based planning<sup>1</sup>, with conflict resolution at a site-level through local plans and consents. These are primarily decided on by New Zealand's 78 local authorities, using a multi-layered set of tools with bespoke content. This interim RIS describes two overall options for system reform, which differ from the current system, as summarised in **Table 2**.

<sup>1</sup> Effects-based planning focuses on managing the effects of an activity (ie, on the environment) as opposed to managing the activity itself.

Option A: adopt the Panel’s recommendations (“Panel’s Approach”). In 2019, following consultation, Cabinet decided to establish an independent Resource Management Review Panel (‘the Panel’) to review the RM system [CAB-19-MIN-0585.01 refers]. The Panel recommended moving to planning for positive outcomes, resolving conflicts at a strategic level in national direction and spatial strategies, with joint committees and independent hearings panels sharing the responsibility for preparing 14 combined local plans.

Option B: adopt the Panel’s recommendations with refinements (“Panel Plus”). This option provides further detail and alternatives designed to add value to the legislative reform recommended by the Panel. **It is MfE’s preferred option.**

**Cover sheet Table 2: Summary of two options that are within the scope of this interim RIS**

<b>Overall option</b>		<b>Option A. Panel’s Approach</b> <i>The Panel recommended moving to planning for positive outcomes, resolving conflicts at a strategic level in national direction and spatial strategies, with joint committees and independent hearings panels sharing the responsibility for preparing 14 combined region-wide plans.</i>	<b>Option B. Panel Plus (MfE’s preferred option)</b> <i>Officials have further developed the Panel’s Approach, recommending that it focus more on enabling development within limits, that central government direction is more integrated and that more flexibility is provided to ensure processes are proportionate and robust.</i>
<b>Policy areas covered by the NBA exposure draft. (and this interim RIS)</b>	<b>Policy area 1. Legislative architecture</b>	<b>Option 1A:</b> Replace the RMA with the NBA and create new legislation for regional spatial planning and managed retreat, respectively.	Adopt the Panel’s Approach (same as <b>Option 1A</b> ).
	<b>Policy area 2. NBA Purpose and supporting provisions</b>	<b>Option 2A:</b> A statutory purpose to enhance the quality of the environment, supported by directive frameworks for limits and outcomes. It would also incorporate stronger Te Tiriti provisions and the concept of Te Mana o te Taiao.	<b>Option 2B:</b> A statutory purpose of enabling use and development provided it is within natural environment limits. The Panel’s proposed system of limits would be adopted with some refinements. The outcomes would be streamlined and it would also incorporate stronger Te Tiriti provisions and Te Oranga o te Taiao <sup>2</sup> .
	<b>Policy area 3. NBA National Planning Framework (NPF)</b>	<b>Option 3A:</b> National direction is still released as separate statutory documents, though there would be a more robust development process through a board of inquiry and greater mandatory national direction.	<b>Option 3B:</b> Establish a National Planning Framework, which explicitly incorporates strategic direction, is delivered through one statutory document and provides flexibility to design a robust process.
	<b>Policy area 4. NBA plans</b>	<b>Option 4A:</b> The Regional Policy Statement and all the resource management plans of a region would be combined into one single plan, for land, freshwater and the coastal marine area. These plans would be outcomes focused and give effect to the principles of Te Tiriti.	Adopt the Panel’s Approach (same as <b>Option 4A</b> ).

### What is the impact of the preferred option?

This interim RIS includes a high-level overall assessment of the marginal costs and benefits of moving from the status quo to a system broadly similar to Option B: Panel Plus. Additional policy work will inform a more detailed assessment for the final NBA RIS.

<sup>2</sup> Te Oranga o te Taiao is an alternative that builds upon the intent of the Panel’s proposed inclusion of Te Mana o te Taiao in order to better reflect matauranga Māori in the system.

### **An increased investment in the RM system from central and local government would decrease costs of compliance to users**

Central government and local government costs would increase under the proposed system. These costs would be borne by taxpayers and ratepayers, respectively. There would be a saving for users engaging with the proposed system, estimated at around 19 per cent. This includes assumptions about faster, fewer consents. The increased investment from government would be a shift in 'who pays' for the RM system, from private users to the public sector.

### **There are potential benefits to the natural and built environments, social and cultural wellbeing**

Our initial assessment indicates that reform of the RM system that is sufficiently funded and implemented has the potential to deliver significant benefits to the quality of the natural and built environments, housing supply and affordability and social and cultural wellbeing, including:

- the introduction of environmental limits and a positive, outcomes-based approach is likely to improve environment quality over time versus the status quo
- increased land supply through spatial planning can better enable the market to respond to housing demand
- early identification of areas for development and infrastructure needs and less site-by-site decision-making through consents could provide improved housing supply and affordability
- efficient, sequenced development could reduce infrastructure costs, which could decrease development costs at the margin
- likely increased control for Iwi/Māori over resource use decision-making, and greater recognition and provision for outcomes relating to their role as kaitiaki, their development aspirations and their access to resources.

To progress a final RIS, additional analysis will be undertaken on the potential benefits of RM reform to housing supply, affordability and choice, the natural environment, benefits for Māori and the wider benefits of strategic planning.

### **Overall assessment of the impact of the preferred option**

Within the context of the limitations and constraints set out in the following section, our interim assessment is that the benefits of moving to the preferred option are likely to be large and outweigh the costs of the proposed reform (see costs and benefits section 2.3). However, this is subject to significant uncertainty, given that policy design for important components of the system is yet to be finalised and work to develop an evidence base for the wider costs and benefits of the proposals has not been completed.

### **What do we know about stakeholders' views?**

Decisions on the use, development and protection of natural and physical resources affect all of the Crown's Treaty Partners, numerous stakeholder groups and the wider public. Through its consultation, the Panel found that submitters generally agreed with the problems and causes it

had identified in the RM system. However, submitters expressed significantly different views on the proposed solutions to these problems, especially whether the environment and development should have more or less weight in decision-making. The policy process has not progressed far enough to accurately reflect Māori, local government and stakeholder support for the RM reform proposals within this interim RIS. Cabinet has recommended [CAB-20-MIN-0522] that the select committee processes will be the primary method of engagement for stakeholders and the public in the next stage of the reform.

### Limitations or constraints on this interim RIS analysis

#### Were there any constraints or limitations imposed by Ministers' commissioning?

This interim RIS is subject to several significant limitations and constraints due to previous decisions and timeframes for delivering the exposure draft.

- This interim RIS is constrained to considering additional detail to, and amendments of the Panel's recommendations, rather than alternatives for RM system reform.
- This interim RIS only covers some components of the proposed new system. These components have significant interdependencies with other parts of the RM system, which limits the analysis.
- The decisions within the scope of this interim RIS are not final. The associated Cabinet paper signals the Government's intention to consider the findings of the select committee inquiry, including any public submissions, and amend the proposals (described herein) if necessary.
- The success or effectiveness of the options discussed within this interim RIS will be largely determined by how they are implemented. MfE is undertaking work on how to manage this transition to a new system. However, this process will only become clearer once the broader reform package is progressed.

*This interim RIS is constrained to considering additional detail to, and amendments of the Panel's recommendations, rather than alternatives for RM system reform.*

In July 2019, the Panel was appointed to comprehensively review the resource management system. The Panel completed its work in June 2020, concluding that the RM system should be completely reformed due to fundamental problems, including with how it manages the natural environment and urban development. The Panel provided extensive recommendations for how a new system could be designed in its final report 'New Directions for Resource Management in New Zealand'. The recommendations within this report are intended to address key issues within the current system to ensure it can deliver better outcomes for New Zealanders.

In December 2020, Cabinet agreed to "*proceed with resource management reform on the basis of the Panel's recommendations, although further work and refinement is needed in some areas*" [CAB-20-MIN-0522]. For the policy process, this means that officials are not providing advice on *whether* to proceed with the Panel's recommendations for system reform or alternatives to system reform. Instead, officials are providing advice on how best to design a new system based

on the Panel's proposals. Therefore, this interim RIS is constrained to considering additional detail to, and amendments of the Panel's recommendations.

*This interim RIS only covers key components of the proposed new system. These components have significant interdependencies with other parts of the RM system, which limits the analysis.*

At the same time as deciding to proceed with RM reform in late 2020, the Government agreed that an exposure draft of the NBA be prepared so that it could be the subject of a select committee inquiry. The purpose of this interim RIS is to support Cabinet's decision on whether to release this exposure draft. The exposure draft only covers key components of the proposed NBA: the purpose and supporting provisions of the NBA, the National Planning Framework (NPF) and NBA plans. Each of these policy areas have significant interdependencies with other parts of the RM system – including areas within the proposed NBA such as consenting; compliance, monitoring and enforcement (CME) and system oversight; and areas beyond this, across the proposed SPA and CAA.

Decisions in areas that are beyond the scope of this interim RIS will affect the impacts and effectiveness of the proposals assessed here. The analysis in this interim RIS was therefore undertaken with an incomplete picture of the overall system. However, to support Cabinet's decision early in the policy process, officials have provided an interim assessment of the policy proposals included in the exposure draft (**see section 2b**). Officials have broadly identified these proposals' potential impacts to give Ministers a wide-ranging picture of their possible outcomes, while ensuring that each policy area explicitly identifies interdependencies and constraints that affect the certainty of the assessment.

Content on NBA plan governance has been added to the exposure draft. This resulted from a decision by the Ministerial Oversight Group (MOG) to include the Panel's model for plan governance in the exposure draft so that it could be subject to the select committee inquiry. This decision was not based on MfE advice, as MfE has not developed a view on the preferred governance arrangements at this stage of the policy process. The interim RIS is therefore not able to provide supporting analysis for this decision. The governance model presented in the exposure draft will be accompanied by explanatory material that provides further detail of the proposed model. This is to support consideration of the governance provisions and possible alternatives by submitters. NBA plan governance will be addressed in the final RIS.

*The decisions within the scope of this interim RIS are not final. The associated Cabinet paper signals the Government's intention to consider the findings of the select committee inquiry, including any public submissions, and amend the proposals if necessary.*

Exposure drafts are typically used after policy decisions have been finalised, to give stakeholders a chance to provide technical feedback on whether the draft legislation is consistent with the agreed policy intent. However, this exposure draft is different, in that final policy decisions have not been made by Cabinet. The associated Cabinet paper signals the Government's intention to consider the findings of the select committee inquiry, including any public submissions, and amend these proposals if necessary. Therefore, this analysis will be updated following consultation on the exposure draft (as well as after further targeted engagement with iwi/Māori and system partners). This may change the preferred option or lead to the development of new

options to reflect stakeholder and iwi/Māori feedback. These changes will be reflected in the final RIS.

**Were the problem definition or the options considered limited by other factors, eg, by prior legislative or policy decisions?**

Officials have identified, but not evaluated, significant alternative options that have been effectively ruled out of scope by Government decisions about content and timeframes. These include:

- retaining the RMA and all the current features of the planning system with a significant increase in funding to implement it. This option is ruled out of scope because Ministers have already decided to replace the RMA and introduce new legislation, including new purpose and principles, new national direction and combined plans.
- major reforms of other legislation – for example, the structure, purpose and functions of local authorities under the Local Government Act.
- significant non-legislative reform, such as to infrastructure funding and financing arrangements.

The last two options were effectively ruled out of scope in the Terms of Reference for the Panel's review of the RM system. The Government could still pursue these options, but this would be in a separate, complementary reform programme, rather than as an alternative to RM reform.

**What are the assumptions underpinning the impact analysis?**

This interim RIS assumes that the RM reform package is implemented as recommended by the Panel, with some refinement. Full implementation would include all three proposed Acts being passed into law, and sufficient investment in the establishment, transition and ongoing operation of the proposed system.

**What is the quality of the data and evidence used in developing this proposal?**

Precise assessment of the costs and benefits of the RM system is difficult due to the scope and complexity of the RM system; difficulties in monetising environmental, social and cultural values and the impact activities have on the environment; and the principles-based and high-level nature of the Panel's recommendations and absence of detailed regulatory design, which is currently being developed. To progress a final NBA RIS, officials will analyse the benefits of RM reform to the natural environment, housing supply, affordability and choice, benefits to iwi/Māori and the wider benefits of strategic planning.

**Were there any limitations on consultation, testing, and stakeholder engagement?**

Following engagement on the Panel's 'Issues and Options' paper, there has been broad stakeholder support for the Panel's final recommendations. MfE has continued to engage on RM reform with Māori and local government (this has been on a targeted basis, due to timeframes). The select committee processes will provide further opportunities for consultation, testing and

engagement with Māori, system partners (local government and other government agencies), and the broader public.

**What additional analysis of distributional impacts on certain population groups would you have liked to include given sufficient time/resources?**

The final RISs for the NBA and the SPA will include further analysis of the benefits of this reform for Māori. This will include direct benefits, where iwi, hapū, ahi kā or other Māori groups are remunerated for participating in the RM system (where they are not remunerated, under the status quo) and wider benefits, for example the extent to which improvements in housing supply, affordability and choice could be distributed to iwi/Māori households (who are currently disproportionately affected by housing inequity). It will also look at the distribution of these impacts on different regions and communities, including specific analysis for rural communities.

**Responsible manager(s) (completed by relevant manager)**

*Lesley Baddon*

*Director, RM Reform*

*Natural and Built Systems*

*Ministry for the Environment*

*15/06/2021*

**Quality assurance (completed by QA panel)**

Reviewing agency/agencies:

Cross agency panel chaired by Treasury's Regulatory Quality Team

Panel assessment and comment:

A cross-agency panel chaired by Treasury's Regulatory Impact Analysis Team with members from the Ministry for the Environment, Department of Internal Affairs and Ministry of Business, Innovation and Employment has reviewed the Interim RIS and provided the following statement.

The panel considers that the interim RIS partially meets the quality assurance criteria as set out in the Cabinet Office Circular (CO(20) 2) and the broad approach to the interim RIS agreed by Cabinet in December 2020.<sup>3</sup>

Initial "in-principle" policy decisions were taken by Cabinet in December. At that time, Cabinet agreed that an Interim RIS would be provided to the Ministerial Oversight Group. Due to timing constraints,

<sup>3</sup> CAB-20-MIN-0522 refers.



decisions made by the Ministerial Oversight Group to date have been taken without the Interim RIS. The panel has not been able to conduct a comprehensive regulatory quality assessment as the Interim RIS does not cover the full range of decisions.

The interim RIS is well written and effectively outlines the complex relationships and dependencies between the proposals and other aspects of the proposed resource management system. However, the panel considers that the case for the preferred options is not convincing. This is because the context in which the Interim RIS has been developed has significantly limited the analysis. This is clearly outlined in the Limitations and Constraints section of the document, and in relation to each assessment.

There is a high level of uncertainty in the assessments of the options because key components of the proposed new system have significant interdependencies with other elements of the resource management system for which policy analysis and development has yet to be undertaken. In particular, the estimated costings appear understated, especially in relation to the costs of transitioning existing consents and allocation rights into the new planning system with new outcomes, environmental limits and national and regional priorities.

The alternative options assessed in the interim RIS are confined to different variations on the Resource Management Review Panel's recommendations agreed "in principle" by Cabinet in December. If feasible alternatives to the proposals in the exposure draft emerge during the consultation process, we would expect those options to also be assessed in the final RIS (as indicated in the interim RIS).

The panel notes that the final RIS should include:

- More detailed analysis and evidence of how the proposals will address a number of identified shortcomings in the current system.
- More robust costings.
- Significant further work on resource allocation and consent rights, and other transition challenges which may be of sufficient scale to be material to the selection of design options.
- Further analysis of the significant shift in the cost of the resource system from "users" of the system to the public sector, particularly Local Government, which is yet to be adequately quantified or justified.

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## Glossary of terms

BOI – Board of Inquiry

CAA – Proposed Climate Adaptation Act

CCRA - Climate Change Response Act 2002

CME - Compliance, monitoring and enforcement

IT – Information Technology

LGA - Local Government Act 2002

LTMA - Land Transport Management Act 2003

MOG – Ministerial Oversight Group

MfE – Ministry for the Environment

NBA – Proposed Natural and Built Environments Act

NPF – Proposed National Planning Framework

PCO – Parliamentary Counsel Office

PSGE - post-settlement governance entities

PV – Present value

Reform – resource management system reform

RIS – Regulatory Impact Statement

RMA – Resource Management Act 1991

RM – resource management (eg, RM reform; RM system)

RM system – used here to refer to the RMA and how it interacts with the LGA, LTMA and CCRA

RSS – Regional Spatial Strategy under the proposed Strategic Planning Act

SPA – Proposed Strategic Planning Act

The Panel – The independent Resource Management Review Panel

## Section 1: Outlining the problem behind RM reform

### 1.1 Context and background

#### **This interim RIS covers key policy areas of a proposed Natural and Built Environments Act**

On 14 December 2020, Cabinet agreed to progress with resource management reform [CAB-20-MIN-0522 refers]. This involves introducing three new Acts:

- a Natural and Built Environments Act (NBA) to replace the Resource Management Act 1991
- a Strategic Planning Act (SPA) to provide a framework for regional spatial planning throughout New Zealand
- a Climate Change Adaptation Act (CAA) to address powers and funding for managed retreat.

This interim RIS mainly relates to the first stage of the development of the NBA. It will support Cabinet's consideration of an exposure draft of key areas within the NBA. If Cabinet agrees to release the exposure draft, then it will be the subject of a select committee inquiry. Following the select committee inquiry, all submissions will be made public, and officials will be able to incorporate submitters' wider feedback and that of the committee into the development of the full NBA. This will complement a broader engagement process with iwi/Māori and stakeholders that is being progressed by Ministry for the Environment (MfE).

#### **The RMA is New Zealand's primary environmental and planning law, covering environmental protection, natural resource management and urban planning**

The purpose of the RMA is to promote the sustainable management of New Zealand's natural and physical resources. To achieve this purpose, the RMA gives different roles and responsibilities to central and local government, requiring authorities and the Minister for the Environment. Central government has responsibility for administering the RMA, providing central government direction and responding to national priorities relating to the management of the environment. Most of the everyday decision-making under the RMA is devolved to territorial, regional and unitary councils.<sup>4</sup> Local government is effectively the 'primary regulator', responsible for setting rules about how natural resources can or cannot be used through regulatory plans. Appendix a provides a more detailed diagram overview of the key components of the current RM system.

Several Acts and regulations govern how New Zealand's natural and physical resources can or cannot be used – these are all part of the RM system. For the purposes of this interim RIS, the term 'RM system' refers to the RMA, and its interactions with the Local Government Act 2002 (LGA), the Land Transport Management Act 2003 (LTMA) and the Climate Change Response Act 2002 (CCRA).

#### **The RM system plays a role in supporting New Zealanders' wellbeing**

The RMA regulates trade-offs arising from the use of resources that have effects on the environment and consequentially on the wellbeing of all New Zealanders. Further, iwi/Māori identify as tangata whenua, people of the land, and link themselves to the natural environment through whakapapa

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<sup>4</sup> Requiring authorities also have specific powers with respect to public works.

(genealogy); the natural environment and how iwi/Māori relate to it is crucial to their identity, culture and ability to maintain tikanga, mahinga kai practices and carry out their role as kaitiaki.

### **Users incur the majority of process costs under the current RM system**

The RM system imposes costs on certain groups based on how roles and responsibilities are assigned. Greater central government direction and focus on local government planning would reduce the proportion of the system's costs that fall on users through resource consents. However, under the current system, it is estimated that users<sup>5</sup> incur 65 per cent of process costs (around \$800 million per year), reflecting the system's reliance on consenting, while local government incurs 34 per cent (\$400 million per year) and central government 1 per cent (\$17 million per year) (Castalia, 2021).

### **The context has changed since 1991**

How we interact with our environment and manage its natural and physical resources is changing. Increasing demands and challenges have arisen since the current RM system was introduced by the RMA in 1991. Many of these challenges are wide ranging, affecting more than just the RM system. However, they are important for understanding the context in which the system operates.

- *The natural environment is under pressure:* compared to 1991, New Zealand now faces new environmental pressures. A growing body of evidence highlights the challenges in ensuring future generations can enjoy the same benefits from the natural environment as we have done. Decline of our natural environment (eg, loss of biodiversity and habitats) risks reducing ecosystems' resilience to system shocks (eg, climate change) that can radically alter the flow of ecosystem services, affecting associated livelihoods and the wellbeing of people and societies.
- *Urban areas are struggling to keep pace with population changes and public infrastructure providers face increasing demands:* New Zealand is highly urbanised, with 99 per cent of all population growth occurring in urban areas (PWC, 2019). Between 2008 and 2018 our population increased by 15 per cent (Stats NZ, 2020a). Such concentration of people provides benefits (including more efficient use of the land, energy and transport as well as potential benefits from enhanced social connectivity and productivity), but at the same time leads to more impacts on the local environment and those who live there. To realise these benefits and minimise negative impacts, urban growth must be supported by appropriate public infrastructure, both by providing new infrastructure to support growth and by maintaining and enhancing service levels provided by existing infrastructure to meet people's changing needs and expectations.
- *Our local government is financially stretched:* many councils face difficulties to fund the delivery of priorities, such as supplying sufficient infrastructure to support urban growth, adapting to climate change and undertaking the increased responsibilities given to them by central government (eg, Panel Report, p 175). These financial pressures can be made worse

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<sup>5</sup>Within this interim RIS, 'users' is used to refer to those people that directly interact with the RM system in a way that incurs process costs.

for some councils by existing debt and revenue levels and, more recently, the economic impact of COVID-19.<sup>6</sup>

- *The impacts of climate change are being experienced across New Zealand:* our climate is changing with higher land and sea temperatures, sea-level rise, ocean acidification, more sunshine and melting glaciers (Stats NZ and MfE, 2020). Climate change is affecting where people live and how we use our environment (eg, what food crops we grow). New Zealand has a high exposure to natural hazard risks and much of our built environment is in vulnerable coastal and lowland locations. Continued climate change impacts will put large areas of coastal infrastructure at risk.
- *New Zealand has faced several big shocks that require a quick planning response for economic recovery:* the existing system has struggled to respond, which has meant the fast tracking of other legislation has been necessary, such as the legislation for the Christchurch earthquakes and the COVID-19 pandemic. These pieces of emergency legislation have directly enabled infrastructure projects that would otherwise not of occurred through the standard RMA process. Resource management and planning will play an important role in New Zealand’s long-term recovery from COVID-19, by enabling the creation of infrastructure and jobs.

Treaty of Waitangi Settlements have also changed the nature of environmental governance under the RMA. Iwi/Māori have increasingly relied upon Treaty settlements to recognise their rangatiratanga over natural and cultural resources in their rohe (iwi territory or boundaries). Now including 67 pieces of settlement legislation with 73 groups (comprising a mix of iwi, hapū and various collectives), iwi/Māori Crown relationship is different to what it was in 1991. There are cases where kawa (protocols) and tikanga (customs) have been recognised in legislation, such as Te Awa Tupua, Te Urewera and Whangaehu River<sup>7</sup> or where policy aims to ‘protect and restore’ environmental quality, as is the case for the Waikato-Waipā rivers Te Ture Whaimana (Vision and Strategy).

### **The RM System has many connections to other Government work programmes**

Major work programmes that RM reform (‘the reform’) connects with include the Government’s urban work programme, the Three Waters Review, existing national direction under the RMA and its forward work programme, the Community Resilience programme, freshwater allocation and governance, Environmental Monitoring and Reporting System reform, marine protection reforms, Treaty settlements currently under development, Te Pae Tawhiti, the ongoing Wai 2750 housing policy and services inquiry, the whole of government response to the Wai 262 report and the Strengthening Heritage Protection project.

Additionally, on 23 April 2021, the Minister of Local Government established a ‘Review into the Future for Local Government’. The review is to consider, report and make recommendations on this matter to the Minister, including around local government roles, functions and partnerships; representation and governance; and funding and financing. The timing of this review is as follows:

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<sup>6</sup> For example, some councils’ revenues have reduced from sources such as parking, public transport, dividends and regulatory fees.

<sup>7</sup> And soon to be recognised for Taranaki Maunga.

- 30 September 2021: an interim report presented to the Minister signalling the probable direction of the review and key next steps
- 30 September 2022: draft report and recommendations to be issued for public consultation
- 30 April 2023: review presents final report to the Minister and Local Government New Zealand.

If available, any initial findings from the interim report will be considered in the final NBA RIS.

## 1.2 The RM reform policy problem and opportunity

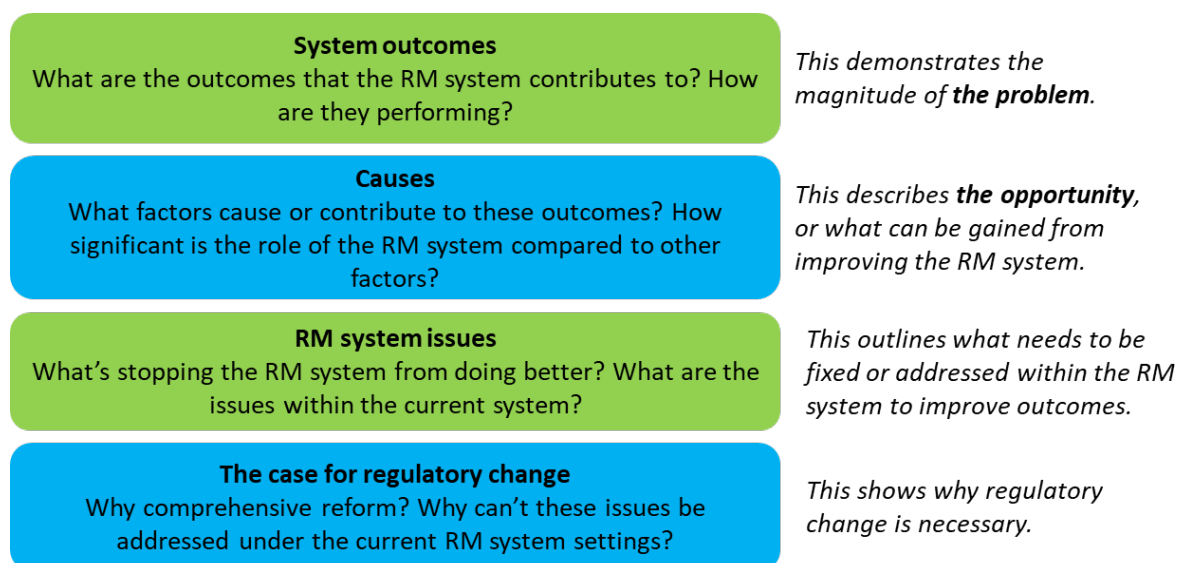
### The RM system is not delivering the outcomes New Zealand needs

This section describes how the RM system is not delivering the outcomes New Zealand needs (see **Figure 1**). This focuses on outcomes in five areas:

- the natural environment
- urban development
- Iwi/Māori and Te Tiriti
- resilience to climate change and natural hazards
- cost and complexity.

It then explains how the RM system contributes to these outcomes, and the problems that are behind this. The independent Resource Management Review Panel’s report discusses these problems and related causes in more detail.

**Figure 1: How this section is structured**



## The RM system has not protected the natural environment

Some indicators of natural environmental outcomes are stable. However, many are getting worse. In cases where they are already poor, little to no progress is being made to improve or restore them.

**Table 1** summarises issues identified across five environmental reporting domains, based on MfE and Statistics New Zealand's environmental reporting series (2017-2020).

**Table 1: Recent indicators of the state of New Zealand's environment**

<p><u>Freshwater</u>: native freshwater species and ecosystems are under threat; water is polluted in urban, farming and forestry areas; and a significant proportion of catchments are fully allocated (ie, any more water use would exceed environmental limits). Key indicators of freshwater quality have not improved over the past 10 years. This affects the mauri (life force or essence) of the water, human health and our ability to swim and enjoy our water for recreation.</p>
<p><u>Land</u>: there is continued loss of indigenous land cover; coastal and lowland ecosystems that were once widespread (including wetlands) continue to decline in size; and many species of indigenous land-based vertebrates are either threatened or at risk of extinction.<sup>8</sup> Most native birds are dependent on conservation management. The quantity and quality of soils are affected by erosion and intensifying agriculture. A large proportion of sites have soil phosphorus levels that are too high. Excess phosphorous can travel into waterways through erosion, affecting water quality.</p>
<p><u>Atmosphere and Climate</u>: New Zealand's average temperatures continue to increase as well as becoming more variable, for example with more observed 'heatwave' days. The warmer atmosphere and changed rainfall is already translating into impacts on other parts of the physical environment, such as soils, oceans and glaciers. The volume of ice in our glaciers has decreased and changes to wildfire risk have been observed in some places. New Zealand's gross carbon dioxide emissions were 7.7 tonnes per person in 2017 – the 17th highest out of 32 Organisation for Economic Co-operation and Development (OECD) countries. Road transport was the largest source of carbon dioxide emissions in 2018 (at 43 per cent). Emissions from road transport increased by 22 per cent from 2009 to 2018. Agriculture contributed 48 per cent of our gross greenhouse gas emissions.</p>
<p><u>Air</u>: air quality in New Zealand is generally good. However, some of our activities such as traffic and wood burners are putting our air quality under pressure in parts of the country.</p>
<p><u>Marine Environment</u>: coastal water quality is variable. Our native marine species and habitats are under threat, for example from activities on land that are polluting our marine environment. Of species assessed, 90 per cent of seabirds, 80 per cent of shorebirds, and 26 per cent of indigenous marine mammals are classified as threatened with or at risk of extinction.</p>

<sup>8</sup> Almost 4,000 New Zealand native species are threatened with or at risk of extinction. In our marine environment, 90 per cent of seabirds, 80 per cent of shorebirds and 26 per cent of indigenous marine mammals are classified as threatened with or at risk of extinction.



## **The RM system is not supporting outcomes for the natural environment that meet the aspirations of New Zealanders**

There is public concern for the state of our environment (Stats NZ, 2019). Recent reviews, including by Environmental Defence Society (2019), the Productivity Commission (2017) and Infrastructure New Zealand (2019), have highlighted the RM system's poor environmental performance, not only in terms of the poor outcomes outlined above, but also because it is not delivering positive outcomes beyond the bare minimum, such as those for the natural environment, urban areas, Te Tiriti, climate and risk, and system cost and complexity.

### **Poor environmental outcomes have flow-on effects for social, cultural and economic wellbeing**

Our environment is essential to the wellbeing of New Zealanders. Poor environmental outcomes compromise ecosystem services and threaten the economy and human health. Research shows the importance of New Zealand's range of ecosystem services and how they affect wellbeing. Studies have calculated the value of ecosystem services and some have estimated their benefits at a national level. For example, one study estimated that in 2012 New Zealand's land-based ecosystem services contributed \$57 billion to human welfare (Patterson and Cole, 2013).

For Māori, it is accepted that the wellbeing of the environment and the wellbeing of people are intrinsically connected. When natural environmental outcomes are poor, the ability of iwi/Māori to maintain tikanga, mahinga kai practices and carry out their role as kaitiaki is compromised.

Poor environmental outcomes also compromise the performance of the New Zealand economy. The value of New Zealand's clean green image to exporters has been estimated as worth billions in export earnings (MfE, 2001). A thriving, inclusive and sustainable economy cannot be detached from the environment that supports it; continued economic growth is only sustainable within environmental limits. This is especially relevant in the New Zealand context, where primary industries account for around seven per cent of the economy, and tourism made up 20 per cent of export earnings prior to COVID-19 (Stats NZ, 2020b).

### **Critical urban outcomes are poor – especially housing**

New Zealand's population is growing, increasing the pressures on our major urban areas and affecting some urban outcomes. This is most evident in the decline of urban housing affordability, which has a range of negative effects, including increasing inequality, reduced intensification benefits and increased traffic congestion.

Home ownership rates are the lowest in 60 years, with incomes rising far slower than house prices (Johnson et al, 2018). New Zealand has among the least affordable housing in the OECD (OECD, 2019). In the 2018 census, 41,644 people were identified as severely housing deprived (Stats NZ, 2020a).

The provision of infrastructure and core public services is struggling to keep pace with the growth of our main urban areas. Congestion is worsening in Auckland (MoT, 2018) costing an estimated \$1.3 billion in lost productivity each year (NZIER, 2017); and the provision and quality of drinking water, stormwater and wastewater infrastructure is mixed.

These outcomes are influenced by many factors, some of which are outside the scope of the RM system. However, the RM system plays a major role on the supply side of the housing market, as it

affects the amount of land available for development and restricts how land can be developed (eg, through minimum lot sizes). Recent reviews of the system, informed by consultation with stakeholders, have highlighted concerns that it is failing to respond to these major urban issues.

### **There are opportunity costs from insufficient or ineffective development of urban areas**

There are negative impacts on wellbeing caused by poor urban outcomes such as overcrowding, congestion and, where housing unaffordability worsens, inequality, poverty and homelessness (MSD, 2018). There are also opportunity costs where development, which would have a net benefit, does not take place. There are benefits from better enabling urban development, for example, this can improve:

- *economic wellbeing*, by supporting housing affordability through adequate land supply and increasing productivity through the ‘clustering’ of economic activity, lowering transport costs and connecting workers to workplaces (MRCagney, 2019)
- *social wellbeing*, especially for children and disadvantaged groups, by facilitating social connections, increasing access to public services such as schools and hospitals and improving health outcomes, for example by promoting transport options such as cycling and walking (MRCagney, 2019)
- *cultural wellbeing*, by enabling cultural and sporting infrastructure and allowing more people access to it, by supporting the connections of iwi/Māori with their cultural heritage such as marae and historic sites and by promoting the contribution that historic heritage makes to people’s sense of place, connectedness, and identity
- *environmental wellbeing*, by mitigating the environmental effects of population growth, reducing per-capita greenhouse-gas emissions and ecological footprints (Ewing et al, 2009).

It is difficult to estimate these forgone benefits. Conservative estimates prepared for the National Policy Statement – Urban Development (NPS-UD) suggested a net benefit of between \$6.3 billion and \$7.9 billion in costed benefits alone (which was only in major centres), plus \$25.2 billion in wealth transfers (from existing homeowners to those who do not currently own houses) as a result of improved housing affordability (PWC 2020).

### **There is inadequate recognition, participation, resourcing and engagement for iwi/Māori in the current resource management system**

The RM system has largely not delivered positive outcomes for Māori, both in terms of whether it is consistent with the principles of Te Tiriti and how it has been implemented in practice. The RMA was intended to recognise Te Tiriti and contains provisions that aim to enable iwi/Māori participation in the system. However, these provisions have had “extremely limited uptake,” with a lack of resourcing for iwi/Māori to participate and partner in the system being a major barrier and limited scope to utilise mātauranga iwi/Māori in decision-making. Iwi/Māori involvement in the system has tended to be at the later stages (eg, consenting processes) rather than earlier, strategic decision-making stages. The Waitangi Tribunal (2011) stated, “the legislation has delivered iwi/Māori scarcely a shadow of its original promise.” The current RM system is not enough to provide an effective role for iwi/Māori and to deliver better outcomes for Māori.

There are also issues with how statutory decisions are made under the RMA. The Waitangi Tribunal has found that the RMA is not compliant with Te Tiriti in over 16 reports, including most recently in the Waitangi Tribunal's stage 2 report, Wai 2358 *The Freshwater and Geothermal Resources Inquiry*. It notes "section 8 of the RMA is entirely inadequate for the degree of recognition and protection of iwi/Māori interests that is required by the Treaty." This has meant iwi/Māori interests tend to be 'balanced out' in the hierarchy of matters that decision-makers must consider in sections 6-8 of the RMA.

### **This affects both the iwi/Māori Crown relationship and outcomes for Māori**

Inadequate recognition, participation, resourcing, and engagement for iwi/Māori in the RM system has implications for both the Māori Crown relationship and outcomes for Māori. The decline of freshwater is one example where the extent of pollution and use continues to have consequences for iwi/Māori and their cultural relationship to that water, as well as their ability to use, enjoy and identify with it. Decisions which 'balance out' iwi/Māori interests can jeopardise cultural heritage, affecting relationships to taonga, traditional practices such as mahinga kai, and the rangatiratanga of an iwi within their rohe.

### **Increasing risks, especially from climate change, are affecting the resilience and wellbeing of communities**

Per person greenhouse gas emissions are high and the impacts of climate change are already being felt across New Zealand. There is also a consensus among experts that the current system does not deal well with climate impacts, neither in supporting emission reductions nor in adaptation. The harm caused by this will largely fall on future generations. However, community wellbeing is already being affected. For example, the contribution of climate change to floods and droughts is estimated to have cost New Zealanders \$840 million in insured damages and economic losses between 2007 and 2017 (Stats NZ and MfE, 2020a).

### **Finally, the RMA places a high regulatory burden on many users and has resulted in inefficient allocation of resources**

The RMA has been criticised for being too costly, too slow and overly complex. The current system places a high regulatory burden on many users, especially because of consenting fees, plan-making and frequent litigation. The time involved in completing RMA plan-making and approval processes reduces the RM system's ability to respond to changing needs. Users express frustration with regulatory requirements, such as consents that must be obtained for activities with minor impacts, especially where these requirements are perceived as burdensome and users do not see clear benefits.

There is a high volume of consents that are almost always approved<sup>9</sup>, which suggests processes could be streamlined. In 2018/19 there were around 35,000 consents granted, with few conditions of significance. Consent fees have been rising and processing timeframes are getting longer. Over five years, median consenting fees roughly doubled with a non-notified consent increasing from \$1,280 to \$2,128, and a notified consent increasing from \$8,220 to \$18,414.

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<sup>9</sup> 105 were declined in 2018/19.

These application fees are only part of the costs to applicants. A 2007 study found that council application fees made up between 6.6 and 45 per cent of the median total cost to applicants, depending on consent type. Other costs include applicant administration, third-party consultants and expert advice, and unforeseen consent conditions. Applicants also have wider costs from the consenting process such as holding costs, opportunity costs from diverting business resources into non-productive uses and the impacts of stress on an applicant's health (Castalia, 2021).

Plan-making under the RMA has been slow, partly due to the multiple ways that decisions can be challenged. A high proportion of plan changes are appealed, with 10 of 37 plan changes completed in 2018/19 appealed. It is also common for complex plan changes to be appealed, with 91 per cent of plan changes with 40 or more submissions being appealed. Plan changes that are appealed generally take two years longer than those that are not appealed which can lead to lost opportunity costs, as described above (MfE, 2020).

There are inefficiencies and opportunity costs arising from how resources are currently allocated under the RMA. For example, a report prepared for the Iwi Advisors Group by Sapere Research Group (Murray et al, 2014) found that New Zealand's allocation systems could be improved. Focusing specifically on freshwater, it estimated a benefit of \$370 million if just five per cent of unused water allocations were re-allocated to higher value uses.

### **A reformed RM system will improve these outcomes, but there are limitations**

The RM system influences some of these outcomes more than others. This is because the functions and regulatory tools that make up the system primarily enable or restrict behaviours (ie, through plan rules and consents). However, the system has limited tools to *incentivise* specific behaviours. In practice, this means that the RM system plays a greater role in outcomes that are influenced by the non-use, or restricted use of resources (such as protecting the natural environment) and less of a role in generating positive outcomes (ie, going beyond just meeting regulatory requirements). For example, the RM system can enable increased land supply through more permissive zoning, but plays a limited role in the actual uptake of the development opportunities that it enables (or incentivising uptake). Other factors are more influential, such as other regulatory systems, social and cultural values or norms, global environmental pressures and domestic and international markets.

**Table 2** briefly describes the role and significance of the RM system in relation to each of the outcomes identified above. It also lists key external factors that affect the outcomes.

**Table 2: The role of the RM system and key external factors for each RM outcome**

Outcome	Role and significance of the RM system	Other key external factors
Natural environment	<i>High contribution</i> The RM system directly affects natural environment outcomes as it is New Zealand's primary system for regulating the use or non-use of natural resources.	<ul style="list-style-type: none"> <li>• Other regulatory systems or Treaty settlements – for example, the Crown Minerals Act 1991 regime and Treaty settlements that affect the governance of natural resources</li> <li>• Social attitudes towards environmental management – for example, firms can moderate how they use natural resources to reflect the values of their customers</li> <li>• Global environmental trends such as climate change</li> <li>• Domestic and international markets – for example, global commodity prices can affect how firms want to use natural resources in New Zealand</li> </ul>
Urban	<i>Moderate contribution</i> The RM system indirectly affects or enables positive	<ul style="list-style-type: none"> <li>• Demand-side factors, such as incomes, access to finance, interest rates, population change and immigration</li> </ul>

	urban outcomes (both in terms of housing supply and how urban areas grow and change).	<ul style="list-style-type: none"> <li>• Supply-side factors, such as infrastructure funding and the capacity and capability of the construction sector</li> <li>• Social attitudes towards urban areas – for example, a shift in social attitudes towards apartment living can incentivise higher-density developments</li> </ul>
Te Tiriti	<i>High contribution</i> The RM system directly affects both how the Crown intends to exercise its kawanatanga role, as well as the exercise of rangatiratanga and kaitiakitanga by iwi/Māori throughout the motu and within the rohe/takiwā of iwi and hapū.	<ul style="list-style-type: none"> <li>• The broader Māori Crown relationship</li> <li>• Relationships between local government and Māori</li> <li>• Treaty settlements that affect the governance of natural resources</li> </ul>
Climate and risk	<i>Moderate contribution</i> The RM system provides key tools for adapting to climate change and natural hazards. It is not the primary system for regulating emissions.	<ul style="list-style-type: none"> <li>• Other regulatory systems, especially the Climate Change Response Act, the Civil Defence Emergency Management Act, the Building Act and the Local Government Act</li> <li>• Available information on climate change impacts and how this is used by individuals in their decision-making</li> <li>• Signalling from the insurance and finance sectors</li> </ul>
Cost and complexity	<i>High contribution</i> This is primarily set through RM legislation and regulation	<ul style="list-style-type: none"> <li>• Other regulatory systems - for example if there are overlapping regulatory requirements</li> <li>• Applicant capability – for example, the quality of a consent application may affect the time and cost to process it</li> </ul>

The Panel’s proposed reform aims to address the problems within the system and improve outcomes in several broad ways:

- **Planning for positive outcomes and managing adverse effects to achieve these outcomes:** re-orientates decision-making from principally managing ‘adverse effects’ towards achieving specified positive outcomes across natural and built environments, to support intergenerational wellbeing. This must occur within environmental limits, but still also manage adverse effects. Outcomes are provided for in decision-making, plans and consents.
- **A more effective role for iwi/Māori and improved recognition of Te Tiriti o Waitangi:** strengthens recognition of Te Tiriti and iwi/Māori interests, provides new roles for iwi/Māori in decision-making on plans and provides for monitoring of Tiriti performance via a National Māori Advisory Board (NMAB).
- **More integrated and strategic long-term planning:** provides for strategic planning about land use, infrastructure and environmental protection by central and local government and Māori.
- **Moving to equitable and efficient resource allocation within limits:** develops a more explicit framework for recognising the allocative impacts of decision-making about land use and environmental protection and provides tools to improve how resource access is allocated.
- **Effective partnering between central and local government and iwi/Māori in planning and delivery:** focuses decision-making about land use and the environment on a series of regional partnerships between central and local government and Māori.

- **Improved evidence, monitoring, feedback and oversight:** strengthens system monitoring, reporting and oversight provisions to improve transparency, accountability and delivery of outcomes.

The second overall option assessed within this interim RIS builds on the Panel’s intervention logic, though the details and mechanisms may differ.

### **The underlying issues within the RM system that contribute to these poor outcomes are complex but well understood**

It is clear that the RM system could be performing better. The underlying issues that are contributing to poor outcomes and limiting the system’s ability to improve outcomes have been identified through years of analysis and engagement, most recently by the Panel. The causes of problems that sit within the RM system are briefly described below.

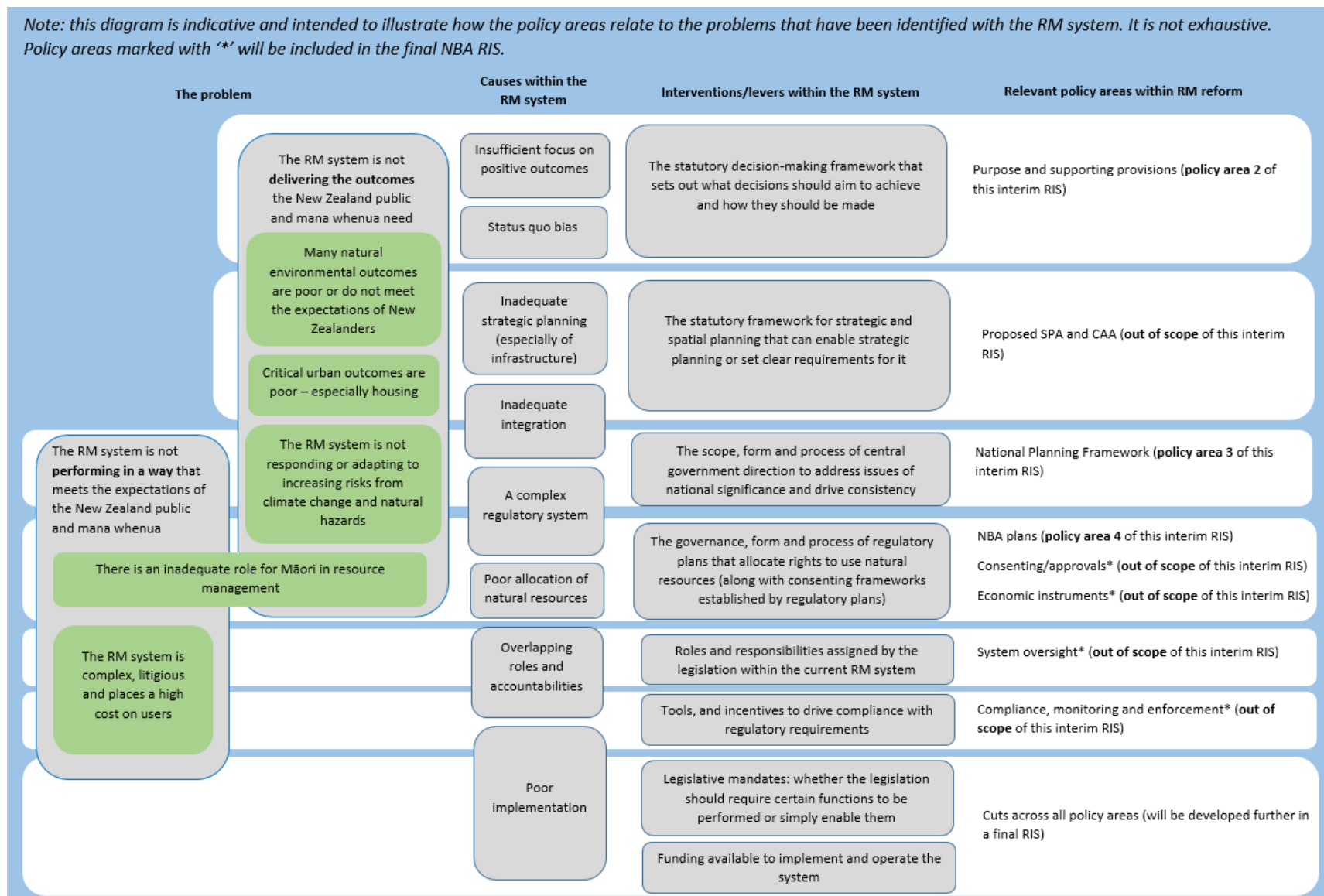
- **Insufficient focus on positive outcomes:** the RM system focuses on managing adverse effects, but does not sufficiently recognise the benefits associated with an activity, such as improvements in the state of the natural environment or for economic, social or cultural wellbeing. The RMA’s purpose does not address enhancing, restoring or regenerating the environment. Rather, resources must be “sustained”, life-supporting capacity “safeguarded” and adverse effects “avoided, remedied and mitigated”.
- **Status quo bias:** there is a lack of future focus and a bias towards the status quo. This does not recognise that our society, including how and where we live, is dynamic and constantly evolving or the need to adapt to the effects of climate change. This is because of an emphasis on avoiding or remedying adverse “effects”, the protection of existing use rights, a focus on preserving amenity for current landowners and processes that favour the well-resourced (eg, adversarial hearings and legal appeals).
- **Inadequate integration and strategic planning:** plans and decision-making under the RMA, LGA and LTMA all affect one another. However, co-ordination across these Acts is difficult. Strategic, long-term planning is also underutilised – planning for the system to anticipate and respond to future changes and long-term challenges such as population growth and climate change. This is worsened because funding mechanisms, which span both central and local government, are poorly aligned with land use and infrastructure plans.
- **A complex regulatory system:** the RMA’s legislation and its processes have become increasingly complex through successive legislative amendments. This complexity makes it difficult for users to anticipate how the law will apply to them and how to participate. It is also more difficult for central government to exercise effective stewardship over the system and for local authorities to prioritise and carry out their responsibilities. Furthermore, multiple plans and processes can make it difficult for the public and iwi/Māori to participate effectively.
- **Poor allocation of resources:** the default ‘first in first served’ approach to allocation under the RMA has put potential users of common resources, particularly Māori, at a disadvantage. It has proven insufficiently flexible to respond to pressure on the environment and has yet to adequately address iwi/Māori rights and interests.

- **Overlapping roles and accountabilities:** RMA decision-makers operate in a complex environment that involves functions under other Acts that deal with funding, infrastructure provision and land use. Many of these functions are out of scope of this interim RIS, but have a significant impact on the performance of the RM system. This is because decision-makers often operate in silos, with the poor alignment of funding, roles and objectives across national, regional and local levels. This can result in distorted incentives within the system, inefficiencies and duplication. Lines of accountability can also lead to conflicts of interest, for example if councils involve politicians in compliance, monitoring and enforcement (CME) decisions.
- **Poor implementation:** the system has been poorly implemented, though improvements have been made in recent times. Prior to 2013, national direction was slow to be developed, with some significant gaps remaining. Central and local government often lack the capability and capacity to fulfil the roles expected of them (such as CME). Further, existing tools within the system have been underutilised, such as economic instruments and tools to partner with iwi/Māori. Finally, there is not enough quality data on system performance.

**Figure 2** provides an overview of how these causes relate to the ‘system-level’ outcomes described above, as well as to the policy areas within RM reform. These links are discussed in more detail in each policy area (details in section 2b, below).

**Figure 2: How features of the RM system relate to the problems and their causes**

Note: this diagram is indicative and intended to illustrate how the policy areas relate to the problems that have been identified with the RM system. It is not exhaustive. Policy areas marked with '\*' will be included in the final NBA RIS.





### **There is consensus around these poor outcomes and their causes within the RM system**

Decisions on the use, development and protection of natural and physical resources affect all New Zealanders. The groups most directly affected by RM reform are as follows.

- Māori, where RM reform directly affects the exercise of rangatiratanga and kaitiakitanga by iwi/Māori throughout the motu and within the rohe/takiwā of iwi and hapū. Impacted groups include iwi, hapū, post-settlement governance groups and authorities, iwi/Māori advisory groups and councils and Māori that are unaffiliated with an iwi or hapū. Māori groups also interact with the RM system as ‘resource users’ such as iwi/hapū commercial entities or as Māori land trusts and incorporations that may require resource consents or have their resource use affected by planning rules.
- Local government, where RM reform will change the way local authorities perform their resource management functions, including through plan-making, consenting and CME under the RMA. Local authorities include regional (11), territorial (city or district; 61) and unitary (6) authorities. Local government can also require resource consents.

RM reform also affects users and regulated parties.

- System users include those who require resource consents or have their resource use affected by planning rules. For example, landowners (including the general public), network utility operators, the primary sector, the infrastructure sector, the water sector, electricity companies, property developers, the construction sector, the transport sector and the education and health sectors.
- Resource management sector groups, who help to operate the RM system include, for example, the Resource Management Law Association, New Zealand Planning Institute, legal firms, planning consultants, engineers and ecologists.

It also affects groups with a broader interest in the system, such as industry or advocacy groups, communities and the general public.

Through its consultation, the Panel found that submitters generally agreed with the problems and causes it had identified. However, submitters expressed different views on the proposed solutions to these problems, especially whether the environment and development should have more or less weight in decision-making. MfE is also currently undertaking targeted engagement with iwi/Māori (see section 2.4) and local government that will be reflected in a final RIS. Key themes arising from engagement and consultation so far is included in appendix b.

### **Comprehensive reform should be considered, because potential for improvement under the current system settings is limited**

Poor implementation has played a role in the problems with the RM system. This raises the question of whether the current system could be better implemented to address the issues described above. Despite recent improvements to how the system is being implemented, the problems with the RM system are likely to continue under the status quo. There are several reasons for this.

- The complexity of the system limits its implementation. Reducing complexity requires streamlining regulatory processes, clarifying legislation and clarifying roles and

responsibilities – these require regulatory intervention. However, due to the nature of the trade-offs within the system, some complexity is unavoidable.

- The discretion within the system affects its implementation. Mandating specific functions signals which parts of a regulatory system are critical to its success. The current RM system provides broad discretion around implementation, meaning critical functions are not given the priority they need.
- The context has changed since the system was introduced. The system needs to adapt to face the challenges of climate change and New Zealand’s economic recovery from COVID-19, to reflect the changing aspirations of New Zealanders for their environment and urban areas, and to better reflect the Māori Crown relationship.

This does not mean that *only* regulatory interventions are required. They should be considered along with complementary non-regulatory interventions (eg, improving non-statutory guidance and operational improvements within central and local government). Non-regulatory interventions are beyond the scope of this interim RIS but are discussed as interdependencies where they affect a policy proposal.

**The effectiveness of reform will depend on the capacity and capability of central government, local government, system partners (including Māori) and users**

Funding is another factor that determines how well the system is implemented. Historically, there has been underinvestment in the RM system, which has impeded its operation. This interim RIS identifies the likely costs of these proposals compared to the status quo and how costs could affect implementation.

## 1.3 Objectives for responding to the RM reform policy problem and opportunity

### Cabinet has set five reform objectives

Cabinet has agreed to five RM reform objectives that apply to the programme as a whole. They are targeted at addressing the problems described above to ensure the reformed RM system delivers better outcomes. The objectives for reform are listed below and section 2.4 explains how they have been used to assess each option in this interim RIS.

Reform objective	
Natural environment	Protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations
Development	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
Te Tiriti	Give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
Climate and risk	Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
System performance	Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input

In most cases, the objectives are mutually reinforcing. However, there are inherent tensions within a system that regulates the protection of the environment whilst enabling development.

### The Ministerial Oversight Group has provided further detail on how to meet these objectives

After setting these reform objectives, the Ministerial Oversight Group (MOG) has clarified the more detailed outcomes that the RM system should be achieving 'on the ground' to meet these overarching reform objectives.

Reform objective	Intended outcomes from reform objectives
<b>Natural environment</b>	<ul style="list-style-type: none"> <li>the natural environment is protected and restored, and the health of New Zealand's fresh water, coastal water, air, soil, ecosystems and their ability to sustain life are maintained in line with Te Mana o te Taiao</li> <li>nationally and regionally significant landscapes, natural features, habitats for indigenous species, native biodiversity and the natural character of the coast, river and lakes are maintained or where appropriate enhanced</li> <li>important indigenous species and their ecosystems are protected and where necessary restored</li> </ul>
<b>Development</b>	<ul style="list-style-type: none"> <li>more flexibility for people to use resources and for places to change, while looking after the natural environment</li> <li>the right infrastructure, in the right place at the right time, that provides adequate access to economic and social opportunities and enables people to maximise their wellbeing</li> <li>housing supply is responsive to demand, with competitive land markets enabling more efficient land use and responsive development, which helps improve housing supply, affordability and better meets a range of housing needs (by type, size, location and price point)</li> </ul>
<b>Te Tiriti</b>	<ul style="list-style-type: none"> <li>process and substance of the National Planning Framework (NPF) and plan-making decisions give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori</li> <li>iwi/Māori have the opportunity to participate as Treaty partners across the RM system, including in national and regional strategic decisions, and are sufficiently resourced for duties or functions that are in the public interest</li> <li>Māori customary rights, cultural values and Treaty settlements are protected, and equitable access to resources for iwi/Māori is ensured</li> <li>improved central and local government capability to effectively work with iwi/Māori</li> </ul>
<b>Climate and risk</b>	<ul style="list-style-type: none"> <li>costs, disruption and distress due to the impacts of climate change and natural hazards are minimised in the long term for society as a whole</li> <li>long-term and predictable arrangements for risk sharing, and funding and financing of risk reduction and adaptation action are in place</li> <li>new development and communities are located and designed to be resilient to and reduce the risks from natural hazards and long-term climate impacts</li> <li>existing development and communities are proactively and equitably transitioned to reduce unacceptable risks from natural hazards and long-term climate impacts</li> <li>the RM system supports national instruments and programmes to contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels</li> </ul>
<b>System performance</b>	<ul style="list-style-type: none"> <li>unnecessary costs are removed and net benefits maximised</li> <li>greater certainty, consistency, fewer plans, consents and appeals, faster plan preparation and faster approvals</li> <li>external costs fall where they should and the burden of system processes shifts towards the public sector</li> <li>decisions and decision-making provides reasonable opportunities for public participation, including by communities currently under-represented in the system, and better reflects communities of interest</li> <li>greater public input into strategic decisions and less direct input into site-specific appeals, with the input of communities proportionate to the issues at stake.</li> </ul>

### The reform outcomes have implications for system design

These reform outcomes provide direction on several key policy questions.

- **Who should pay?** A general principle is that those who benefit should pay. However, this can be complicated in the case of the RM system, which provides both public and private benefits. As discussed in **section 1.1**, the current system relies heavily on consenting, which means that users incur a significant proportion of the total costs. However, more investment in planning, when done well, can reduce the amount of consents that are required, shifting the costs from users to central and local government (and ultimately to the broader public). There is a risk that this shift reduces the ability of the system to deal with detailed, site-level issues. The reform outcomes clarify that one intention of the reform is that ‘the burden of system processes shifts towards the public sector’ and that there are fewer consents. This essentially recognises the ‘public benefits’ that an increased focus on strategic planning can deliver.
- **How should the public be involved?** The reform outcomes clarify that public input should be focused more on strategic decisions and less on site-specific decisions. It should also better provide for communities that are under-represented in the system. By implication, this will prioritise regulatory changes that improve public involvement in national direction and plan-making, as opposed to consenting. Note that ‘public involvement’ is distinct from policy choices around the role of iwi/Māori in the RM system.
- **How should appeals be provided for?** The reform outcomes clarify that there should be fewer appeals, though this does not mean that regulatory changes should be prioritised that remove avenues to appeal decisions. It is important to consider whether the current avenues remain appropriate, keeping in mind that it remains a general principle of legislative design that ‘where a public body or agency makes a decision affecting a person’s rights or interests, that person should generally be able to have the decision reviewed in some way’.<sup>10</sup> Other ways that a regulatory change could reduce appeals is where it improves the quality of decisions, reducing ambiguity and the likelihood of appeals or where it provides other, less costly avenues to contest decisions, such as through arbitration.

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<sup>10</sup> LDAC Legislation Guidelines 2018

## Section 2a: Assessment scope and options for RM reform

### 2.1 Assessment scope

#### Process for impact analysis

MfE has developed a process in consultation with the Treasury’s Regulatory Quality Team to ensure that RM reform is supported by appropriate impact analysis [CAB-20-MIN-0522 refers]. Cabinet will be provided with this interim RIS to support its consideration of whether to release an exposure draft covering key policy areas of the proposed NBA. This interim RIS explains the regulatory interventions within the exposure draft alongside presenting alternatives and interim impact analysis to support consultation. Initial in-principle policy decisions to inform the exposure draft have been delegated to the MOG. MfE have been unable to provide the interim RIS to MOG to support these in-principle policy decisions as the interim RIS was not completed at the time decisions were taken. The MOG has been provided with papers which include officials’ advice on options for the policy areas covered in the exposure draft.

#### This interim RIS does not cover all of the proposed resource management reform

The proposed RM reform is broad, covering a replacement for the RMA (the NBA) along with two new Acts (the SPA and CAA). The scope of this interim RIS is limited to providing an initial description of overall options for reform and more detailed analysis of specific policy areas relating to the NBA exposure draft (indicated in **bold** below). A final RIS for the NBA will be prepared later in 2021, with updated analysis that incorporates the results of further consultation and provides an assessment of policy areas not detailed here. Separate RISs will be prepared for the SPA and CAA at the time decisions are sought on these. Interdependencies between the proposals will be discussed within each final RIS.

Reforming the resource management system		
<b>1. Legislative architecture</b>		
<b>Natural and Built Environments Act</b>	<i>Focus of Exposure Draft</i>	<u>Strategic Planning Act</u> Spatial Planning
<b>2. Purpose and principles</b>		<u>Climate Adaptation Act</u> Powers and funding for managed retreat
<b>3. National direction</b>		<i>This policy work is being progressed by the Minister of Climate Change</i>
<b>4. Regulatory plans</b>		
5. Consents, designations, orders and economic instruments		
6. System oversight and compliance, monitoring and enforcement		
7. Te Tiriti o Waitangi me te ao Māori*		
8. Institutional roles*		
<i>*These are discussed within this interim RIS but do not have dedicated sections.</i>		

#### The options that can be assessed within the scope of this interim RIS have been constrained by previous Government decisions

The scope of feasible options has been limited by Ministers’ decisions about the content of RM reform and the process and timeframe for progressing it. In 2019, Cabinet decided to establish an independent Panel to review the Resource Management System. The Terms of Reference for this review specified:

- the aim to both improve environmental outcomes and better enable urban and other development within environmental limits
- a focus on the RMA and its interactions with the LGA, LTMA and CCRA
- a focus on high-level matters, with the detail to be progressed later by officials
- a range of out-of-scope matters, including issues with other legislation, reform of local government, and iwi/Māori rights and interests in freshwater.

The Panel developed and consulted on an ‘Issues and Options’ paper within these terms of reference, including international experience on some matters. It then made over 150 recommendations for RM reform.

In December 2020, Cabinet [CAB-20-MIN-0522] decided 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 decision was informed by the Issues and Options consultation, which indicated there was general stakeholder support for the Panel’s Approach.

Cabinet also agreed [CAB-20-MIN-0522]:

- to a set of reform objectives (these have been used as the basis to assess options within this interim RIS)
- 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 Minister for the Environment is responsible for the first two acts, while the Minister of Climate Change is progressing the CAA.
- to pass this legislation in the current term of government (with the intention of introducing the NBA to Parliament by the end of 2021)
- that an exposure draft of key sections the Natural and Built Environments Bill and supporting consultation material be referred to a select committee for the purpose of an inquiry, following Cabinet decisions in May 2021
- that the NBA exposure draft will contain its structure and indicative headings, with some aspects fully drafted to reflect:
  - policy decisions made in principle by the December Cabinet paper
  - subsequent decisions delegated to a Ministerial Oversight Group to be made by April and referred to Cabinet in May 2021
- to in-principle policy decisions for the NBA, on:
  - the purpose and supporting provisions
  - the proposal to establish a mandatory set of national policies and standards (ie, the NPF) to support the establishment of the environment biophysical limits, outcomes and targets specified in the NBA

- requiring a single regulatory plan for each region (NBA plans)
- that the NBA exposure draft consultation material will also signal the policy direction of the SPA and CAA
- that select committee processes will be the primary methods of engagement for stakeholders and the general public in the next stage of the reform.

As a result of this, the options considered within this interim RIS are primarily legislative. This interim RIS discusses non-legislative reform where this is supplementary to legislative options.

This interim RIS also focuses on considering additional detail to, and amendments of the Panel's recommendations, rather than significant alternatives, which are unable to be evaluated in the timeframes Ministers have set for making decisions on reform.

## 2.2 Describing the overall options for reform

This interim RIS compares two overall options for system reform to the status quo (see **Table 3**).

- **Option A: adopt the Panel's recommendations ('Panel's Approach').**
- **Option B: adopt the Panel's recommendations with refinements ('Panel Plus').** This option provides further detail and alternatives designed to add value to the legislative reforms recommended by the Panel. It is the result of analysis of specific policy areas and is the 'working' preferred option.

**Table 3: Description of the overall options for system reform**

Overall option		NBA exposure draft (this interim RIS)				Out of scope						
		Policy area 1. Legislative architecture	Policy area 2. Purpose and supporting provisions	Policy area 3. National Planning Framework	Policy area 4. Plans	NBA next tranche Remainder of NPF and NBA plans policy areas, consents, designations, orders, economic instruments, system oversight and compliance, monitoring and enforcement.  SPA Regional spatial planning  CAA Powers and funding for managed retreat and climate change adaptation						
<b>The status quo</b>	<i>The current RM system emphasises effects-based planning, with conflict resolution at a site-level through local plans and consents that are primarily decided on by local authorities, using a multi-layered set of plans with bespoke content.</i>	The RMA incorporates land use planning, environmental protection and climate change adaptation.	A statutory purpose to promote sustainable management, which is primarily delivered through managing effects.  The current Te Tiriti clause has limited statutory weight.  The RMA enables limits and outcomes but does not provide direction on their use.	A national direction system that is largely ad hoc and discretionary*, where instruments are generally prepared without a board of inquiry (BOI).	Both local and regional planning through a suite of planning documents (Regional Policy Statements, Regional Plans and District Plans). Local authorities may voluntarily combine their planning documents.							
<b>Option A. Panel's Approach</b>	<i>The Panel recommended moving to planning for positive outcomes, resolving conflicts at a strategic level in national direction and spatial strategies, with joint committees and independent hearings panels sharing the responsibility for preparing 14 combined region-wide plans.</i>	<b>Option 1A:</b> Replace the RMA with the NBA and create new legislation for regional spatial planning and managed retreat, respectively.	<b>Option 2A:</b> A statutory purpose to enhance the quality of the environment, supported by directive frameworks for limits and outcomes.  It would also incorporate stronger Te Tiriti provisions and the concept of Te Mana o te Taiao.	<b>Option 3A:</b> National direction is still released as separate statutory documents, though there would be a more robust development process through a BOI and greater mandatory national direction.	<b>Option 4A:</b> The Regional Policy Statement and all the resource management plans of a region would be combined into one single plan, for land, freshwater and the coastal marine area.  These plans would be outcomes-focused and give effect to the principles of Te Tiriti.							
<b>Option B. Panel Plus</b>	<i>Officials have further developed the Panel's Approach, recommending that it focus more on enabling development within limits, central government direction is more integrated and more flexibility is provided to ensure processes are proportionate and robust.</i>	Adopt the Panel's Approach ( <b>Option 1A</b> ).	<b>Option 2B:</b> A statutory purpose of enabling use and development provided it is within natural environment limits.  The Panel's proposed system of limits would be adopted with some refinements and the outcomes would be streamlined.  It would also incorporate stronger Te Tiriti provisions and Te Oranga o te Taiao.	<b>Option 3B:</b> Establish a National Planning Framework, which explicitly incorporates strategic direction, is delivered through one statutory document and provides flexibility to design a robust process.	Adopt the Panel's Approach ( <b>Option 4A</b> ).	<b>Key:</b> Cell colour indicates the shift from the current system: <table border="1" style="margin-left: 20px;"> <tr> <td style="background-color: #cccccc;"></td> <td><i>Status quo</i></td> </tr> <tr> <td style="background-color: #e0e0e0;"></td> <td><i>Similar to status quo</i></td> </tr> <tr> <td style="background-color: #a0c0ff;"></td> <td><i>Significantly different to status quo</i></td> </tr> </table> *An exception is the New Zealand Coastal Policy Statement, which is the only compulsory national direction that provides integrated policy across a range of topics and across domains for the coastal marine area and coastal environment.		<i>Status quo</i>		<i>Similar to status quo</i>		<i>Significantly different to status quo</i>
	<i>Status quo</i>											
	<i>Similar to status quo</i>											
	<i>Significantly different to status quo</i>											
<b>Key Differences (between Options A and B)</b>		NA	Panel's Approach (Option 2A) focuses on enhancing the quality of the environment (this includes natural and built environments) while the Panel Plus approach (Option B) focuses on enabling use and development within natural environment limits.  Panel's Approach (Option 2A) requires mandatory targets to be released through central government direction.	Panel's Approach (Option 3A) relies on a rigorous BOI process for developing central government direction; while the Panel Plus approach (Option 3B) provides flexibility to design robust and proportionate processes to develop the NPF.  Panel's Approach (Option 3A) relies on individual statutory documents for central government to provide direction, while the Panel Plus approach (Option 3B) introduces a NPF where central government direction is delivered through a single statutory document.	NA							



Within the scope of this interim RIS, there are several key shifts that both Option A and Option B seek to deliver, compared to the current system:

- introducing a mandatory suite of natural environment limits to protect the natural environment's life supporting capacity
- a stronger Te Tiriti clause and better recognition of te ao Māori and mātauranga Māori within the legislation
- an increased focus on planning for positive outcomes, in addition to managing effects
- more mandatory direction from central government to assist local government to fulfil its functions including to represent the interests of communities
- moving to region-wide combined plans (NBA plans).

These overall options are not mutually exclusive. Each retains features of the status quo, and the Panel Plus option incorporates several features of the Panel's Approach. Component parts of the reform within each overall option are interdependent – interdependencies are discussed in each relevant policy area.

Policy work is still underway, so the detail of these overall options is still being worked through. As the overall options are intended to operate as a package, they will be assessed against the reform objectives when policy design is complete and a final RIS is prepared. The primary purpose of this interim RIS is to provide advice on the following policy areas that are components of the overall options. Each policy area notes where policy issues beyond the scope of this interim RIS affect the interim assessment. For example, the interim assessment against the development objective is subject to significant uncertainty, due to key policy decisions that have yet to be made and are beyond the scope of this interim RIS. These include decisions on designations, which will affect how infrastructure (including social infrastructure) is enabled; the detailed application of natural environment limits; and the general duty to avoid, remedy or mitigate adverse effects (currently covered in section 17 of the RMA).

#### **Policy areas covered in this interim RIS (each detailed in section 2b)**

<b>Policy area 1: Legislative architecture</b>	<i>What legislation is needed?</i>
<b>Policy area 2: NBA purpose and principles</b>	<i>What should the system be achieving?</i>
<b>Policy area 3: NBA national direction</b>	<i>What is the role and process for central government in the system?</i>
<b>Policy area 4: NBA plans</b>	<i>How should local government planning support this?</i>

### **Out of scope options**

Officials have also identified, but not evaluated, alternatives to these overall options that have been effectively ruled out of scope by Government decisions about reform content and timeframes. These include:

- retaining the RMA and all the current features of the planning system with a large increase in funding to implement it. This option is ruled out of scope because Ministers have already decided to replace the RMA and introduce new legislation with a new purpose and

supporting provisions, a new system for central government direction and a requirement for combined plans. Major reforms of other legislation – for example, reforming the structure, purpose and functions of local authorities in the LGA could affect how they implement the RMA. As noted earlier, the ‘Review into the Future for Local Government’ was announced in April 2021 with a final report due in 2023.

- alternative non-legislative reform, such as to infrastructure funding and financing arrangements.

The last two options were effectively ruled out of scope in the Terms of Reference for the Panel’s review of the RM system. The Government could still pursue these options, but this would be in a separate and complementary reform programme rather than as an alternative to RM reform.

## 2.3 The costs and benefits of system reform

This interim RIS includes a high-level overall assessment of the marginal costs and benefits of moving from the status quo to a system broadly similar to the Panel’s recommendations. **The costs are initial estimates for the entire reform programme, including the NBA and SPA.** They are largely based on the recommendations in the Panel’s report except where officials have progressed further policy work. We have taken this approach because policy decisions on the final system design have not been completed, and the Panel’s recommendations provide the best available information for a cost benefit assessment at this time. A more detailed cost benefit assessment within the final RIS will incorporate additional analysis of the costs and benefits of moving to the preferred option.

MfE considers that reform of the RM system, which is sufficiently funded and implemented, has the potential to deliver net benefits to the quality of natural and built environments, housing supply and affordability and social and cultural wellbeing. This view is informed by an initial assessment of the marginal process costs undertaken in 2020 by an independent consultancy firm, Castalia, as well as initial work by MfE on the wider benefits of system reform. Further work is underway on quantifying the wider costs and benefits of moving to Option B: Panel Plus, and this will be included in the final RIS.

Precise assessment of the costs and benefits of reforming the RM system is difficult due to:

- the scope and complexity of the RM system
- the multiple levels of decision-making; difficulties in monetising environmental, social and cultural values and the impact activities have on the environment
- the principles-based and high-level nature of the Panel’s recommendations, noting that detailed regulatory design is still being developed.

This section summarises what we know about the costs and benefits of a proposed system reform, compared to the status quo. The section is structured as follows:

- process costs: for the current system, and how these would change under the proposed system. This includes establishment costs and ongoing costs and savings. Costs are estimated for central government, local government, RM system users and Māori

- wider costs: indirect costs not included in the process cost estimate are discussed qualitatively
- sensitivity analysis: tests the sensitivity of the process cost estimates against changes in key assumptions
- benefits: a qualitative discussion of the benefits of moving to the proposed system, including environmental wellbeing, economic wellbeing, housing and urban development, social wellbeing and cultural wellbeing
- summary: the costs and benefits of the preferred option and discussion of assumptions, evidence quality and further work.

## Process costs

All regulatory systems incur process costs in the form of direct administrative and direct compliance costs. RM process costs come in two forms: the administrative costs to those running the regulatory system (central and local government) and compliance costs for RM system users. As system partners, iwi/Māori also have particular roles in the RM system, for example where they have input into consenting decisions (ie, administrative costs) or where they require consents (ie, compliance costs).

Castalia has assessed the estimated process cost change under the proposed new RM system by carrying out the following analysis:

- quantifying the current administrative and compliance costs of the RM system in net present value terms from publicly available information
- identifying RM system process changes proposed by the Panel
- identify which of these process changes are material, categorising the process costs, identifying the parties affected by process costs and the timing of the process costs
- quantifying the process costs of the proposed system in net present value terms and comparing these to the process costs of the current system.

MfE has adjusted Castalia's assessment of the process costs to reflect Option B - Panel Plus, as closely as possible. These will be modified for the final RIS once detailed regulatory design for the preferred option is complete. The costs presented here are for Option B.

To calculate the present value (PV) of the process costs, a discount rate of 5 per cent has been used. This is consistent with the Treasury's *Guide to Social Cost Benefit Analysis*.<sup>11</sup> A period of 30 years is assumed for the ongoing costs, which is also consistent with the Treasury Guide and is similar to the lifespan of the current RM system (introduced in 1991). In addition to PV, process costs have been expressed as an average cost per year, which is not discounted. For the proposed system, we have presented process costs as an average additional cost per year, along with the PV in the "summary of

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<sup>11</sup> Updated discount rate and other key assumptions published on the Treasury's website in December 2020: <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/plan-investment-choices/cost-benefit-analysis-including-public-sector-discount-rates/treasurys-cbax-tool>

costs and benefits of preferred option” table at the end of this section. Note that column totals may not match the sum of individual figures, due to rounding.

### The process costs of the current RM system are around \$1.2 billion per year

The costs of the current RM system are incurred by central government, local government and users. Costs to iwi/Māori are discussed separately later in this section. Users incur the largest share of costs (around 65 per cent) overall, followed by local government (around 34 per cent). Central government incurs around 1 per cent of total costs. The process costs of the current RM system are summarised in **Table 4**.

**Table 4: Process costs of the current RM system**

RM system function	Party affected	Cost category	Average annual cost (\$m)	Present value (\$m 2021)
Objective-setting: RMA amendments and national direction	Central government	Administrative	\$9	\$149
	Local government	Administrative	\$23	\$375
	Users	Compliance	\$1	\$11
		<b>Subtotal</b>	<b>\$33</b>	<b>\$535</b>
Institutional and rule-setting: regional and local plan-making and changes	Central government	Administrative	\$0	\$0
	Local government	Administrative	\$112	\$1,789
	Users	Compliance	\$18	\$292
		<b>Subtotal</b>	<b>\$130</b>	<b>\$2,081</b>
Resource allocation: consenting system and dispute resolution system	Central government	Administrative	\$9	\$136
	Local government	Administrative	\$144	\$2,306
	Users	Compliance	\$545	\$8,709
		<b>Subtotal</b>	<b>\$698</b>	<b>\$11,151</b>
Regulatory support: monitoring and oversight	Central government	Administrative <sup>12</sup>	\$0	\$0
	Local government	Administrative	\$122	\$1,946
	Users	Compliance	\$236	\$3,768
		<b>Subtotal</b>	<b>\$358</b>	<b>\$5,714</b>
<b>Total process costs</b>			<b>\$1,219</b>	<b>\$19,479</b>

<sup>12</sup> Central government – through institutions such as the Parliamentary Commissioner for the Environment and MfE – also incurs regulatory support function costs through monitoring environmental data and other RM system oversight functions. However, due to a lack available data, these costs have not been included.

Source: Adapted from Castalia, 2021.

The components of these costs are:

- **Objective setting function:** this involves the ongoing cost of amending the RMA and continuously developing national direction. The highest of these costs are associated with developing and implementing national direction.
- **Institutional and rule-setting function:** local government costs in developing, implementing and then reviewing regional and local plans are the largest drivers in this cost category. Advocacy efforts of firms, interest groups and individuals to influence the planning system are also a source of process costs to users.
- **Resource allocation function:** user compliance costs of applying for resource consents (which include application fees, consultant and specialist advice fees and applicants' own time) is the single largest cost category across the entire RM system, at over \$500 million per year. The local government cost of processing consents is another major cost at \$144 million per year. Local government cost represents only a third of users' total resource consent costs. This difference is driven by the 'cost recovered' nature of the consenting system. Application fees paid by users meet some of local government's processing costs.
- **Regulatory support function:** the monitoring and enforcement system accounts for most of the regulatory support costs. User costs of responding to government monitoring requirements constitute the largest single cost category at \$198.0 million per year. Local government cost of monitoring and enforcement is half that again, at \$90.3 million per year. Comparatively, the cost of prosecuting non-compliance is smaller – although on an individual basis, respondent's prosecution costs are considerable. Local government prosecution costs are \$31.5 million per year, compared to users' costs of \$37.8 million per year.

**Moving to the proposed RM system will have an upfront establishment cost, but lower ongoing process costs by around 7 per cent overall, and by around 19 per cent for users**

The proposed system would decrease the overall process costs of the RM system by around 7 per cent (see **Table 5**). This assumes that all changes are implemented as recommended, based on MfE estimates, current reported RM system costs and reported staffing levels. The 7 per cent decrease is for the costs of operating the system once it has been established and so it excludes the one-off, upfront establishment costs. Central government and local government costs would increase when compared to the current system, by 112 per cent and 11 per cent respectively. Costs to users would decrease by around 19 per cent or around \$149 million less per year.

**Table 5: Comparison of current system and proposed system process costs**

Average annual cost (\$millions)	Current system process costs	Proposed system total process costs	Per cent change from current system
Central government	\$17	\$36	112%
Local government	\$401	\$444	11%
Users	\$799	\$650	-19%
<b>Total</b>	<b>\$1,218</b>	<b>\$1,133</b>	<b>-7%</b>

## The proposed RM system will have one-off establishment process costs of around \$650 million over a ten-year period

**Table 6** sets out estimates of the establishment costs for the proposed system. These are marginal to the current system and occur in the first ten years after the proposed system is approved. Most of the establishment costs result from the new NBA plans and Regional Spatial Strategies (RSS). These costs are mainly incurred by central and local government. There are some additional costs to RM system users of submitting on new plans. The largest cost categories are described below.

**Table 6: Proposed system establishment costs (estimate)**

One off cost	Proposed system establishment costs (\$millions, present value)
Central government	\$262
Local government	\$368
Users	\$22
<b>Total</b>	<b>\$653</b>

The main establishment costs incurred by central government are for developing and supporting the NBEA, SPA and CAA through the policy and legislative process, around \$20 million and developing and implementing new national direction as part of the NPF, around \$63 million. Developing RSS for 14 regions is estimated to cost central government \$50 million and central government assistance with NBA plans for 14 regions is estimated at \$21 million.

For local government, the largest establishment costs are implementing new national direction through the NPF, estimated at \$115 million, inputting into RSS, at \$58 million, and developing NBA plans, at \$97 million.

There are also large capital cost estimates for investment in Information Technology (IT) infrastructure to support environmental monitoring, at around \$100 million, which is evenly divided between central and local government. This figure is an indicative estimate, as additional work in this area will be progressed through a separate business case process. Including these estimates in the overall process cost analysis acknowledges the importance of IT infrastructure investment to support improved environmental monitoring.

There are some establishment costs to RM system users, due to additional time and costs of submitting on the new legislation, new national direction, RSSs and NBA plans. This is not the total cost of submissions, as this activity also occurs under the current system. This is estimated at around \$22 million in marginal costs versus the current system, during the proposed system's establishment phase.

## The proposed RM system will have lower ongoing process costs, saving around \$85 million overall each year

The ongoing process costs are summarised in **Table 7** as an average annual cost. The components of cost for central government, local government and system users are discussed below.

**Table 7: Current system vs. proposed system process costs (estimate), average annual costs (\$millions)**

Average annual cost (\$millions)	Current system process costs	Proposed system <u>additional</u> process costs	Proposed system: cost savings	Proposed system: net cost change
Central government	\$17	\$21*	-\$2	\$19
Local government	\$401	\$102	-\$59	\$43
Users	\$799	\$61	-\$210	-\$149
<b>Total</b>	<b>\$1,218</b>	<b>\$185</b>	<b>-\$270</b>	<b>-\$85</b>
*Costs to central government may increase further if full system monitoring and oversight functions are approved. This would add around \$30 million per year to central government's ongoing costs. This will be confirmed for the final NBA RIS.				

### **Costs to central government will increase by between \$19 million per year and \$49 million per year**

There will be an additional \$21 million in ongoing costs to central government. The largest single cost component is an assumption that central government would provide direct support to help iwi and hapū organisations participate in RM processes, at around \$5 million per year. This is an indicative figure only, as policy work in this area is still under development. The second largest cost is an assumption that MfE would require around 30 additional staff to undertake ongoing monitoring of targets and environmental limits, costing around \$4.5 million per year. There will also be some ongoing cost savings for central government. It is assumed that strengthened national direction through a NPF and NBA plans will reduce plan-making appeals, use of Commissioners and litigation over resource consenting decisions. This is estimated by applying a 20 per cent cost saving to Environment Court running costs, saving \$1.7 million per year.

### **Costs to local government will increase by around \$43 million per year**

There will be additional ongoing costs to local government. All costs estimated here are total costs spread across regional, territorial and unitary councils. The distribution of costs to each council has not been estimated at this stage. The largest of these is from local government developing and monitoring new economic instruments. This is estimated to cost \$27 million per year across all local government, noting that this is an indicative figure, as policy work in this area is still under development. The increase in monitoring and enforcement activity by local authorities is assumed to add 20 per cent to existing local government monitoring and enforcement costs. This is around \$18 million per year. There are costs associated with reviewing additional national direction under the NPF, estimated at 25 per cent of the implementation cost for national direction. This is an additional \$15 million per year on top of reviews under the status quo.

There are also cost savings for local government in the proposed system. Increased national direction and strategic planning is assumed to reduce private plan changes, appeals, need for Commissioners and litigation over resource consenting decisions. This would deliver an administrative cost saving to local government, estimated at \$30 million per year.

Moving to an open portal for consent applications would also reduce consent processing costs to local government by an estimated \$29 million per year. The open portal will make one local authority responsible for administering the portal in a region, which should help facilitate joint processes between relevant consenting authorities and ensure that inter-dependencies within applications are understood. This is an indicative figure as policy work in this area is under development. The cost of

establishing and operating an open portal for consent applications is included in the additional ongoing costs to local government.

### **System users will save around \$150 million per year**

The largest cost savings in the proposed system are for system users. In the current system, uncertainty in plans generates more consents, because some applicants will be willing to submit contentious consents based on a perceived chance of success that exists due to plan uncertainty. As plans become more certain, users can better judge which activities are likely to receive consent. This in turn reduces the number of 'chance'-based applications. It is assumed there would be a 20 per cent reduction in consent volume (compared to the status quo) resulting from plan certainty. This delivers savings to users who save the costs of time and specialist services in preparing consents, along with a reduction in private plan change applications, valued at around \$110 million per year.

Process costs will also reduce due to improved IT and web-based tools. The Panel proposes an online 'open portal' to simplify the user experience and enable the move towards considering applications holistically, rather than the current system which breaks applications up into components with effects to be assessed individually, sometimes by different authorities. The open portal should reduce applicants' efforts preparing applications given the ease of use of a single online portal, and the ability to bundle related applications. This improves the current system where single applicants often must submit multiple consents to various authorities for a single related activity. This is assumed to save 20 per cent of applicant's time and resources, valued at around \$100 million per year.

There are some changes under the proposed system that may increase costs for RM users. For example, if permit terms are shortened in a new allocation regime, permit holders would need to make more applications over a set period, estimated at costing users around \$48 million per year. This is an indicative figure as policy work in this area is still under development.

### **This analysis of process costs shows that an increased investment in the RM system, from central and local government, would deliver decreased costs of compliance to users**

Central government and local government costs would increase under the proposed system, with the largest absolute increase in cost falling on local government. These costs would be borne by tax and ratepayers respectively. The extent to which local government's share of costs may be subsidised by central government has not been determined and will be included in the final RIS. There is potential for users engaging with the proposed system to save around \$150 million each year, if fewer, faster consents can be delivered.

The increased investment from government would be a shift in 'who pays' for the RM system from private users to the public sector. Such a shift may be appropriate, given the public good benefits generated by a well-functioning RM system (see 'benefits' below), which accrue to all New Zealanders, including future generations. This fits with the intended outcome from the reform objective for system performance, that "external costs fall where they should and the burden of system processes shifts towards the public sector" (see section 1.3). Additional work will be undertaken on the type and scale of these benefits for the final RIS.



## Costs to Māori

The RM system has particular costs to Māori, for example, where iwi or hapū groups input into resource consent processes. These costs are not included in the process costs set out above, due to high levels of uncertainty about the size of the costs. MfE is commissioning further work to better understand the costs and benefits of the proposed reform for iwi/Māori. Some initial analysis set out here summarises what the main costs of the current and proposed system may be to iwi/Māori. This excludes where iwi/Māori act as RM users in the system, for example by applying for resource consents, as these costs are captured in the RM users group above.

**Table 8: Estimated current system costs to Māori, average annual costs (\$millions)**

Costs to Māori	Current system (average annual cost \$millions)
Submitting on national direction	\$0.12
Submitting on RMA / other legislation	\$0.04
Regional and local plan-making input	\$1.91
Participating in consent processes	\$12.48
<b>Total</b>	<b>\$14.54</b>

The process costs analysis included some estimation of costs to iwi/Māori in the current system (**Table 8**). These are likely to be an underestimation, given limited data in this area. There are large costs to iwi and hapū from inputting to the resource consent process, estimated here at around \$12.5 million per year.

**Table 9: Proposed system costs to Māori, establishment costs only (\$millions, PV)**

Costs to Māori	Proposed system (establishment cost \$millions, PV)
Submissions and consultation on new legislation	\$0.72
Participating in and submitting on NPF / new national direction	\$0.98
Participating in RSS design	\$19.76
Participating in NBA plan design	\$35.08
Input to model plan development	\$1.12
<b>Total</b>	<b>\$57.65</b>

The establishment of the proposed system has direct costs for Māori. These are set out in **Table 9** and are one-off rather than annual costs. There is likely to be a large cost for iwi/Māori to participate in the design of new regional spatial strategies and combined NBA plans. These costs are preliminary only, as policy work is being progressed in this area. While the Panel indicated resourcing would be needed to support the expanded role of iwi/Māori in the proposed system, the degree to which these costs would be funded has not been determined. In the process cost assumptions, it is estimated that central government would provide direct support to help iwi and hapū organisations participate in RM processes, at around \$5 million per year. However, this an indicative figure, as policy work will be progressed in this area for the final RIS.

### **There are wider costs to users in the current system, which are large but difficult to quantify accurately**

Castalia took a conservative approach when assessing costs to users of complying with the current system, by not including some types of indirect costs, which are difficult to quantify. Therefore, the process cost estimate does not include opportunity costs from foregone development or the costs of RMA regulations on housing and other development types (except for direct consenting fees and holding costs). It also excludes wider costs to the environment, economy and society.

Work completed by NZIER in September 2020, based on existing material from previous studies, calculated the total cost of the RMA at \$3 billion per year, with \$2.2 billion attributable to user compliance costs and the balance to administrative costs. In addition to resource consenting requirements, costs are imposed by the system where development has to comply with rules under regional and local plans. These rules have been estimated at “typically” adding between \$32,500 and \$60,000 to the cost of a new house in a subdivision and between \$65,000 and \$110,000 to the cost of a new apartment. Using the lower costs for each dwelling type and applying these to the 3,000 new apartments and 28,000 houses built in 2019, this gives a total cost of \$2 billion per year (in \$2020). If we assume 20 per cent of this is ‘excess’ regulatory cost and 80 per cent is necessary regulation of land and housing development, then the ‘excess’ is around \$420 million per year. The cost of regulation on alterations and commercial and institutional construction has not been estimated.

There are costs to other industries from complying with regional and local plans, beyond land development and building. In 2008, Federated Farmers estimated \$81 million a year spent by farmers on RMA compliance, which is \$101.0 million per year in \$2020. These are not all “excess costs” imposed by the RMA, as there would be some regulation of development in any RM system.

Other wider costs, to the environment, economy and society, are not quantified here but are reflected in the benefits assessment when analysing the marginal benefits of shifting from the status quo to the proposed new RM system.

### **Sensitivity analysis of process costs and savings**

Sensitivity testing has been used to identify the key drivers of cost changes in the proposed system and where variations in these affect the overall process cost analysis.

Sensitivity to the discount rate for the Net Present Value (NPV) calculations, which is set at 5 per cent, has not been undertaken. This is because once the costs of implementation occur, the ongoing costs of the system are relatively stable over time. Therefore, the NPV is not very sensitive to the discount rate. **Table 10** sets out the key variables that have been tested.

Establishment costs: the three largest establishment cost drivers are local government’s cost of implementing national direction, and developing regional spatial plans and NBA plans. Using the assumptions applied by Castalia, these three costs total \$269 million. Sensitivity testing showed this total could range from between \$215 million given low-cost assumptions (ie, ‘Optimistic’ - assuming a 20 per cent reduction in these three costs) and \$323 million given high-cost assumptions (ie, ‘Conservative’ - assuming a 20 per cent increase in these three costs).

Ongoing costs: the four biggest drivers of additional ongoing costs in the proposed system are for implementing and monitoring economic instruments, expanded monitoring and enforcement

activity, new powers to modify consents and shorter permit durations. Using the 'as assessed' assumptions, these four costs total \$86 million per year. These are all costs to local government. Sensitivity testing showed this total could range from between \$69 million given low-cost assumptions ('Optimistic' - assuming a 20 per cent reduction in these four costs), and \$104 million given high-cost assumptions ('Conservative' - assuming a 20 per cent increase in these four costs).

**Cost savings:** the two major drivers of cost savings from the Panel's proposed RM system changes are related to the reduction in consenting activity because of stronger national direction and regional planning reducing the need for site specific consents and improved efficiency in gaining consent through an online open portal. These are both savings to system users. Using the 'as assessed' assumptions, these savings total \$210 million per year. Sensitivity testing showed this total could range from between \$314 million given high-saving assumptions ('Optimistic' - assuming a 10 per cent increase in these cost savings) and \$105 million given low-savings assumptions ('Conservative' - assuming a 10 per cent decrease in these cost savings).

Conservative sensitivity analysis reduces net savings by around \$176 million per year. This has a PV of \$2,880m over 30 years. Optimistic analysis increases net savings by the same margin, which is to be expected as the assumptions vary by the same percentage. Overall, the sensitivity testing demonstrates that the costs savings to users are the biggest driver of the process cost model. Further policy work in each of the areas set out here will enable the costs and savings to be refined. This will be presented in the final RIS.

**Table 10 Sensitivity Analysis, key cost categories of cost changes under the proposed new RM system (\$millions)**

Sensitivity Analysis (\$millions)	Party affected	Optimistic	As Assessed	Conservative
<i>Establishment costs (one-off cost)</i>				
Implementing new national direction	Local government	\$91.38	\$114.23	\$137.08
Developing RSS	Local government	\$77.36	\$96.70	\$116.04
Developing new NBA plans	Local government	\$47.04	\$58.81	\$70.57
<i>Total (one-off)</i>		<i>\$215.79</i>	<i>\$269.73</i>	<i>\$323.68</i>
<i>Ongoing costs (average annual cost)</i>				
Implementing and monitoring economic instruments	Local government	\$21.44	\$26.80	\$32.16
Expanded monitoring and enforcement activity	RM Users	\$7.92	\$9.90	\$11.88
Responding to consent modification under new allocation regimes	RM Users	\$19.89	\$24.86	\$29.83
Shorter permit durations	RM Users	\$19.89	\$24.86	\$29.83
<i>Total (average annual)</i>		<i>\$69.14</i>	<i>\$86.42</i>	<i>\$103.70</i>
<i>Cost savings (average annual cost saving)</i>				
Cost saving due to improved planning system, fewer consents	RM Users	-\$165.06	-\$110.04	-\$55.02
Open portal for consent applications saving time	RM Users	-\$149.16	-\$99.44	-\$49.72
<i>Total (average annual)</i>		<i>-\$314.22</i>	<i>-\$209.48</i>	<i>-\$104.74</i>
<b>Variation from As Assessed costs</b>		<b>-\$175.97</b>	<b>\$0.00</b>	<b>\$175.97</b>
<b>Present value of variation</b>		<b>-\$2,880</b>		<b>\$2,880</b>

## Benefits

MfE has undertaken an initial qualitative assessment of the types of wider benefits that may be delivered by the reform. These are summarised below. Additional analysis of the wider benefits of the reform is being progressed and will be completed once we have further detail about the system design. This will inform the final RIS.

The initial qualitative assessment indicates that reform of the RM system that is sufficiently funded and implemented has the potential to deliver wider benefits to the quality of natural and built environments, housing supply and affordability, and social and cultural wellbeing. However, there is limited evidence to support this qualitative assessment. The assessment therefore has a high level of uncertainty, which will be addressed where possible with the additional analysis in support of the final NBA RIS.

### Environmental wellbeing

The introduction of environmental limits and a positive-outcomes based approach is likely to improve environment quality over time versus the status quo. While we are not able to assess the magnitude of this improvement, the natural environment has a high total economic value. The overall value range for New Zealand's marine and land-based ecosystems is between \$520 billion (\$458 billion for marine and \$62 billion for land based) and \$1.8 trillion NZD (\$NZD 2020). Taking the conservative value of \$520 billion, this represents around 1.6 times New Zealand's gross domestic profit (GDP) (\$308 billion in June 2020, Stats NZ 2020b). Therefore, even a small marginal improvement in the quality of the environment would deliver large economic benefits. For example, a 1 per cent improvement in land-based ecosystem services would have a total economic value of \$620 million, using the most conservative valuation available. Including marine based ecosystem services would increase this to \$5.2 billion.

Other areas of the reform have the potential to deliver additional environmental benefits. These include a reduction in transport carbon emissions versus the status quo from more efficient land use patterns, through improved spatial planning. In cases of over-allocation, reduced access to resources overall through reallocation would deliver additional improvements to environmental quality.

Additional work will be undertaken for the final RIS to estimate what level of improvement may be delivered to ecosystem services from a system of limits and targets and the potential monetary value of this improvement.

### Economic wellbeing, housing and urban development

Spatial planning at a regional level would have the potential to deliver more efficient, contiguous development, which could reduce development costs at the margin. There is potential for improved housing supply and affordability through the early identification of areas for development and infrastructure needs and less site-by-site decision-making through consents.

Efficient, sequenced development could reduce infrastructure costs, through more coordinated supply of new infrastructure. This would lower average infrastructure costs per household, reducing both new housing costs and the rates and taxation imposed on all households. There is also potential for cost savings for central and local government and other infrastructure providers by avoiding infrastructure investment in inappropriate locations (eg, areas vulnerable to coastal inundation or natural hazards). There is also opportunity for greater efficiencies in capital infrastructure spending

for local and central government, due to integrated decision-making through the spatial planning process.

In addition to a reduction in transport emissions from more efficient land use patterns, reduced travel cost and time delivers economic benefits. The magnitude of these savings depends on assumptions about how much spatial planning would increase transport efficiency.

Spatial planning that increases land use intensification would have direct economic productivity benefits. Benefits from more intensive land use have been estimated to increase GDP by \$100 million per year, for Auckland alone (MR Cagney 2020, p 93). This depends on assumptions about how much improved spatial planning processes increase land use intensity.

There are direct economic wellbeing benefits where iwi/Māori participation in the RM system is funded. Iwi/Māori would have increased control over resource use decision-making, and there would be greater recognition and provision for iwi/Māori outcomes relating to their role as kaitiaki, their development aspirations and their access to resources.

Additional work will be undertaken for the final RIS to estimate how much of a material difference RM reform could have on housing supply, affordability and choice. This will be marginal to the existing policy settings in this area, such as the NPS Urban Development, which form part of the status quo. This will include a distributional component, which assesses which households and groups would benefit the most.

### **Social wellbeing**

We anticipate the economic, urban and housing benefits set out above would also deliver social benefits. There are social wellbeing benefits from efficient land use, including travel time reductions (which deliver social benefits by freeing up time for other activities), improved housing supply, affordability and quality improvements. Previous analysis of the benefits of reallocating urban space to allow intensification have estimated benefits at \$9 billion over 24 years, accruing to current renters, new homebuyers and future generations (PWC 2020). This would represent a shift towards more equitable housing market outcomes.

Planning the results in timely investment towards climate change mitigation and adaptation has potential social benefits for the public and affected landowners. Some climate adaptation and mitigation is captured under the economic wellbeing category – this recognises there is also a social wellbeing element.

The final RIS will include the results of further analysis on the potential social benefits of regional spatial strategic planning, including travel-time savings and responsive climate change adaptation.

### **Cultural wellbeing**

Cultural benefits would be delivered through restoration and protection of the whakapapa and relationships of iwi/Māori with cultural landscapes, and through the restoration of the environment in a way that supports cultural practices such as mahinga kai. There are also cultural benefits from the protection of significant historic heritage. Further, natural environmental benefits could generate cultural wellbeing improvements for New Zealanders who value the health of the natural environment as part of their identity.

## Wellbeing across all domains

The proposed reform has the potential to improve Tiriti partnerships in resource management compared to the status quo. This would potentially deliver benefits through stronger Tiriti partner relationships and increased opportunities to exercise rangatiratanga and kaitiakitanga. For example, there are direct benefits from increased opportunities to exercise rangatiratanga and kaitiakitanga in system monitoring, reporting and oversight. These benefits are difficult to quantify but are likely to be a positive shift from the status quo.

## Summary of costs and benefits of preferred option

The costs and benefits of the preferred option (Panel Plus) are summarised in **Table 11**. This will be refined in the final RIS, once additional policy design and impact assessment has been undertaken.

**Table 11: Summary of costs and benefits of the preferred 'Panel Plus' RM reform option**

Affected parties	Comment	Impact(\$million) <sup>13</sup>	Evidence certainty <sup>14</sup>
<b>Additional costs of proposed approach compared to taking no action</b>			
Regulated parties: RM system users	Establishment costs: one-off cost over 10 years	\$22m (one-off over 10 years)	Medium
	Ongoing additional process costs: average annual cost over 30 years, and Present value (PV)	Average annual cost \$61m PV \$1,005m	Medium
Regulators: central government	Establishment costs: one-off cost over 10 years	\$262m (one-off over 10 years)	High
	Ongoing additional process costs: average annual cost over 30 years, and Present value (PV)	Average annual cost \$21m PV \$330m	Medium
Regulators: local government	Establishment costs: one-off cost over 10 years	\$368m (one-off over 10 years)	Medium
	Ongoing additional process costs: average annual cost over 30 years, and Present value (PV)	Average annual cost \$102m PV \$1,635m	Medium
System partners: Māori	Establishment costs: one-off cost over 10 years	\$57m (one-off over 10 years)	Low
<b>Total monetised cost</b>	Establishment costs: one-off cost over 10 years (PV)	\$652m excluding cost to iwi/Māori (due to low certainty of costs to Māori) \$709m including cost to iwi/Māori (one-off)	Medium

<sup>13</sup> Note that column total may not match sum of individual figures due to rounding.

<sup>14</sup> "Evidence certainty" refers to our assessment of the evidence base for the magnitude of each impact category. The certainty rating is expected to improve from low to medium in the final NBA and SPA RIS once additional analysis on the benefits to the natural environment, housing supply, affordability and choice, benefits to Māori and the wider benefits of strategic planning is complete.

	Ongoing additional process costs: average annual cost over 30 years, and Present value (PV)	Average annual cost \$185m PV \$2,971m	Medium
	<b>Total monetised cost (PV)</b>	<b>\$3,680m</b>	<b>Medium</b>
<b>Non-monetised costs</b>	We have not identified major un-monetised costs, which are marginal to the status quo. These may be identified when additional work is undertaken for the final RIS.		

Expected benefits of proposed approach compared to taking no action			
<b>Monetised benefits</b>			
Regulated parties: RM system users	Ongoing reduction in process costs: average annual benefit over 30 years, and Present value (PV)	Average annual benefit \$210m PV \$3,235m	Medium
Regulators: central government	Ongoing reduction in process costs: average annual benefit over 30 years, and Present value (PV)	Average annual benefit \$2m PV \$28m	High
Regulators: local government	Ongoing reduction in process costs: average annual benefit over 30 years, and Present value (PV)	Average annual benefit \$59m PV \$904m	Medium
<b>Total monetised benefit</b>	Ongoing reduction in process costs: average annual benefit over 30 years, and Present value (PV)	Average annual benefit \$270m PV \$4,167m	Medium
<b>Non-monetised benefits</b>			
Natural environment (accruing to all New Zealanders, including future generations)	The introduction of environmental limits and a positive, outcomes-based approach is likely to improve environment quality over time versus the status quo	High	Low
Households, in particular those who are not currently homeowners	Spatial planning at a regional level is likely to provide more efficient, contiguous development, reducing development costs at the margin. Early identification of areas for development and infrastructure needs and less site-by-site decision-making through consents would provide improved housing supply and affordability	Medium	Low
System partners: Māori	Iwi/Māori would have increased control over resource use decision-making and greater recognition and provision for iwi/Māori outcomes relating to their role as kaitiaki, their development aspirations and their access to resources	Medium	Low
	There is potential for iwi/Māori participation in the RM system to be resourced	Medium	Medium
<b>Total Non-monetised benefits</b>		Medium	High

## Further comments

### Overall assessment of marginal process costs

The assessment of additional process costs for the proposed system has a PV of \$2,971 million over 30 years, or around \$185 million per year. Process cost savings have a PV of \$4,167 million, or \$270 million per year. This has an overall Net Present Value (NPV) of \$1,196 million in savings over the 30-year assessment period. If establishment costs, including costs to Māori, are added this net saving reduces to a **PV of \$487 million**.

Conservative sensitivity analysis reduces net savings by around -\$176 million per year. This has a PV of -\$2,880 million. If all conservative assumptions are applied, this would make the marginal process cost NPV negative, by -\$2,393 million. This would require the wider benefits to have an NPV more than \$2,393 million to give an overall positive net benefit.

Optimistic sensitivity analysis increases net savings by around \$176 million per year. This has a PV of \$2,880 million. If all optimistic assumptions are applied, this would make the marginal process cost NPV \$3,367 million in positive savings over the 30-year assessment period.

Most process cost categories have a medium level of certainty. Additional work will be undertaken for the final RIS, including refinement of the process costs and further analysis of wider benefits. This will provide a more robust assessment of the overall net benefit (or cost) of the proposed system.

### What are the assumptions underpinning the impact analysis?

This interim RIS assumes that all the proposed changes are implemented and funded. Full implementation would include all three proposed Acts being passed into law, and sufficient investment in the establishment, transition and ongoing operation of the proposed system. Additional analysis of the wider benefits of the reform will be included once we have further detail of the system design. This will inform a final NBA RIS.

### What is the quality of the data and evidence used in developing this proposal?

Precise assessment of the costs and benefits of the RM system is difficult due to the scope and complexity of the RM system; difficulties in monetising environmental, social and cultural values, and the impact activities have on the environment; and the principles-based and high-level nature of the Panel's recommendations and absence of detailed regulatory design, which is now under development. The evidence base used to assess the process costs has relied on published analysis, the National Monitoring System dataset, which MfE uses to collect data from councils on the implementation of the RMA, MfE's Budget Bid process for the proposed reform and work commissioned from Castalia and NZIER in 2020. To progress a final RIS, additional analysis will be undertaken on the potential benefits of RM reform to housing supply, affordability and choice, the natural environment, benefits to Māori and the wider benefits of strategic planning.

### What additional analysis of distributional impacts on certain population groups would you have liked to include given sufficient time/resources?

The final RIS for the NBA and SPA will include analysis of the benefits of reform for Māori. This will include direct benefits, where iwi/Māori are resourced for participating in the RM system (where they are not under the status quo), and wider benefits, for example the extent to which



improvements in housing supply, affordability and choice could be distributed to iwi/Māori households.

The final RIS will also look at the distribution of these impacts on different regions and communities, including specific analysis for rural communities.<sup>15</sup>

## 2.4 Approach to Treaty Impact Assessment

### Process

MfE is undertaking analysis of how the RM reform proposals will affect iwi/Māori and support Treaty partnerships. This analysis looks at the proposals’:

- alignment with the reform objective ‘to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori’
- costs and benefits to Māori
- interaction with existing Treaty settlements
- alignment with relevant Waitangi tribunal recommendations
- risks and opportunities for the Māori Crown relationship.

### Engagement with Māori

Engagement with iwi/Māori is critical to the success of RM Reform. Cabinet noted, in relation to a partnership approach with iwi/Māori, that further engagement with iwi/Māori about reform is necessary to meet the Crown’s Treaty obligations [CAB-20-MIN-0522 refers]. The Panel undertook engagement with iwi/Māori during the development of its final report and MfE is undertaking further engagement.

Any Treaty impact assessment heavily relies on engagement with iwi/Māori to ensure it appropriately incorporates iwi/Māori views and interests. There are three key aspects of the engagement process to date.

- **Engagement with iwi/Māori groups:** MfE has been engaging with several national iwi/Māori entities on RM reform and iwi/Māori rights and interests in freshwater. These are the National Iwi Chairs Forum (through its Freshwater Iwi Leaders Group), New Zealand Māori Council, Te Wai Māori Trust, Kāhui Wai Māori and the Federation of Māori Authorities. Advisors and technicians from these groups are providing input into the policy and MOG process.
- **Engagement with post-settlement governance entities (PSGEs):** MfE has begun engagement with PSGEs where their settlements are affected by changes to the RMA. The RMA interfaces with over 70 pieces of Treaty of Waitangi settlement legislation as well as deeds of settlement and relationship agreements. Our initial assessment identified a smaller number

<sup>15</sup> ‘Rural proofing’ is an analytical tool that aims to take into account the particular challenges faced by the rural sector when designing and implementing Government policy.

of settlements with more complex interactions with the RMA. These settlements have been the focus of PSGE engagement so far.

- **Hui with iwi/hapū:** it is important to connect with iwi/Māori communities at all levels about the proposed changes to the system. MfE began this in March 2021 by facilitating eight in-person and online hui with iwi, and hapū and other Māori groups in a regional setting. In-person and online conversations are continuing following the initial regional engagements.

### *Treaty settlements*

When setting the scope for the Panel's review, Cabinet noted that Treaty settlements that include provision for iwi engagement in aspects of the RM system will be carried over into a new system [CAB-19-MIN-0337 refers].

Engagement with Iwi/Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of:

- natural resource arrangements agreed by iwi/Māori and the Crown
- those subject to current Treaty settlement negotiations
- 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 iwi/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 RMA section 58O.

Work is being done to ensure these commitments are honoured in the new system. This work will be outlined in the final RIS.

## **Constraints**

Engagement is ongoing alongside development of the full reform package. MfE has received feedback that the short period leading to an exposure draft of the NBA compromises the ability of iwi/Māori to engage fully and provide fully informed and constructive input into the policy process to develop the exposure draft. Noting this, this section presents MfE's initial Treaty impact assessment, informed by engagement so far. A further assessment will be included in a final RIS that will reflect the results of more engagement with iwi/Māori undertaken throughout the year.

## **Initial overview**

This section provides an overview of how the policy issues MfE is currently working through could impact iwi/Māori and Treaty partnerships. Any conclusions are preliminary, however, work so far has indicated that RM reform has the potential to better align the RM system with Te Tiriti principles and better support iwi/Māori Crown relationships. This assessment is based on:

- previous engagement with iwi/Māori on resource management matters, including engagement undertaken by the Panel in developing their recommendations

- findings and recommendations of the Waitangi Tribunal
- initial feedback from iwi/Māori groups.

### The proposed statutory purpose

Developing proposals for Tiriti-consistent purpose and supporting provisions of the NBA presents an important opportunity to improve outcomes for Māori from the RM system. Previous feedback suggests iwi/hapū and other Māori groups are likely to generally support a system that aligns with the overall policy intent of the proposed NBA - that the use of natural and built environments is enabled within 'natural environment limits' and in a way that provides for the wellbeing of current and future generations.

Initial feedback from iwi/Māori groups on the statutory purpose has covered:

- the purpose of the NBA
- the definition and status of Te Mana o Te Taiao and the alternative Te Oranga o te Taiao
- the obligation to give effect to the principles of Te Tiriti o Waitangi
- the definition of "environment"
- the importance of mātauranga Māori and the whakapapa relationship between iwi/hapū and the environment
- the importance of relating outcomes to tikanga Māori and Te Ao Māori

This feedback has been considered in the policy development so far and will continue to inform further work.

### The proposed NPF

The MOG has agreed to the policy intent that:

the process to develop the NPF, including limits and targets, should ensure a role for iwi/Māori that gives effect to the principles of Te Tiriti.

How this occurs in practice will depend on further policy design. The proposed NPF provides significant opportunities to give effect to the principles of Te Tiriti. Joint work with iwi/Māori groups during the next phase of detailed policy development will be essential to realising these. There are several relevant policy matters that will require further consideration. These include:

- Iwi/Māori roles in the design of the NPF, including the role of a National Māori Advisory Board if such a Board is established
- Iwi/Māori roles in the development of NPF content, including setting natural environment limits
- the use of mātauranga Māori in setting natural environment limits

- Iwi/Māori roles in making recommendations on the NPF content, including iwi/Māori representation in any BOI, hearing panel or alternative process
- how the NPF will account for iwi, hapū and whānau interests at a local level
- how existing national direction will be transitioned to the NPF, in particular those pieces of national direction on which iwi/Māori have had significant influence such as the National Policy Statement for Freshwater Management

### *Treaty settlements*

Several Treaty settlement arrangements interact with the current national direction framework, either through specific provisions regarding national direction or through broader responsibilities placed on the Government in relation to policy development. For example:

- some Treaty settlement arrangements provide for PSGE input specifically into the development of national direction
- some Treaty settlements have established new frameworks for the management of specific natural taonga, for example Te Pā Auroa nā Te Awa Tupua – Te Awa Tupua Framework and the Waikato and Waipā Rivers co-governance arrangements, including legislative provisions and strategy documents that are equal to or take precedence over national direction in the existing RMA planning hierarchy. The iwi involved are likely to want assurance that any limit-setting regime is consistent with the tikanga and kawa of those frameworks.

### **Proposed NBA plans**

The MOG has agreed that any new plan decision-making model should provide a strategic role for iwi/Māori to ensure NBA plans include mātauranga Māori, reflect iwi/Māori interests and give effect to the principles of Te Tiriti o Waitangi. The proposals relating to planning within this interim RIS are high-level and primarily focus on whether to shift to a system of region-wide planning. MfE's initial assessment is that the high-level proposals for the planning system are likely to have a positive impact on the Treaty relationship by involving iwi/Māori early and more comprehensively in planning where it matters most to them.

Further policy work on NBA plans will need to carefully consider how the system can support Treaty partnerships. It is clear that Waitangi Tribunal commentary and recommendations<sup>16</sup> regard partnership between iwi/Māori and government as essential for environmental management. Not every provision of an NBA plan will be of equal interest to Māori, but kaitiaki interests will stretch into many planning topics at the regional and district levels, including (but not limited to) freshwater management, biodiversity, coastal activities, earthworks, heritage, wahi tapu and many land-use activities that have the potential to affect their taonga or, for example, the management of activities on Trust land. Matters that will require further consideration in relation to NBA plan-making include how Māori will be represented on planning committees and the process for appointments, and how Māori will be involved in the development of NBA plans.

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<sup>16</sup> These have been compiled by MfE and proactively released as *Extracts from Waitangi Tribunal commentary, findings and recommendations on the Resource Management Act 1991*:  
[https://www.mfe.govt.nz/sites/default/files/media/RMA/19-D-02140b\\_0.pdf](https://www.mfe.govt.nz/sites/default/files/media/RMA/19-D-02140b_0.pdf)

### *Treaty settlements*

There are several Treaty settlement commitments and mechanisms that interact with planning provisions in the RMA, both recorded in settlement legislation and in relationship agreements. These range from statutory acknowledgements to unique legal identities like Te Awa Tupua.

Further policy work will need to consider how plan governance, decision-making and content affect these commitments. The proposal for an NBA plan committee that includes Māori could complement some existing natural resource arrangements established through settlement legislation in a region. However, the relationship between NBA plan committees and existing co-governance bodies will be different region to region and within each region, depending on the specific taonga and the composition, purpose and functions of existing bodies.

There are other settlement mechanisms that relate to the process for plan-making (like the power to nominate commissioners) and mandatory plan content (like Tupua te Kawa and the Waikato River Authority Vision and Strategy). These will need to be provided for in a reformed system.

A key issue is how arrangements will relate to NBA plan committees. Specific Treaty settlements and arrangements will need to be worked through on a case-by-case basis to ensure that arrangements are carried over as appropriate into the new system.

Some settlements will intersect significantly with the RM system, making it clear that a customised approach will be needed.

## Section 2b: Interim analysis of specific RM policy areas

### Methodology for assessing specific policy areas

#### Structure

This interim RIS assesses components (described as ‘policy areas’) of the overall options to ensure that system reform will deliver the wider benefits identified in section 2.3 and achieve the Government’s reform objectives. **Table 3** in section 2.2 (above) shows the link between the overall options and the specific policy areas. Advice on each policy area is structured to include:

- the context, including what decisions have already been made and how this policy area interacts with other policy areas
- the options that have been considered by officials, including those options that officials consider out of scope or unfeasible
- interim options analysis
- the preferred option based on this interim analysis.

#### Methodology

The interim option analysis for each policy area has three components:

1. impact certainty assessment
2. cost-benefit summary
3. assessment against the reform objectives.

##### 1. Impact certainty assessment

Options are evaluated against how likely impacts are to occur based on several factors, including the quality of the available evidence, timeframes, the likelihood of implementing the option and interdependencies.

The following scale has then been used for this assessment.

High certainty that the identified impacts will arise	HIGH
Medium certainty that the identified impacts will arise	MEDIUM
Low certainty that the identified impacts will arise	LOW

##### 2. Cost-benefit summary

The costs and benefits compared to the status quo are discussed at a system level in section 2.3. Each policy area sets out how it affects the overall process costs that have already been identified, as well as the potential wider costs and benefits, noting that detailed analysis of the wider costs and benefits is yet to be completed. Any likely differences between the options within each policy area are also identified. The cost and benefit assessment will be refined following the release of the

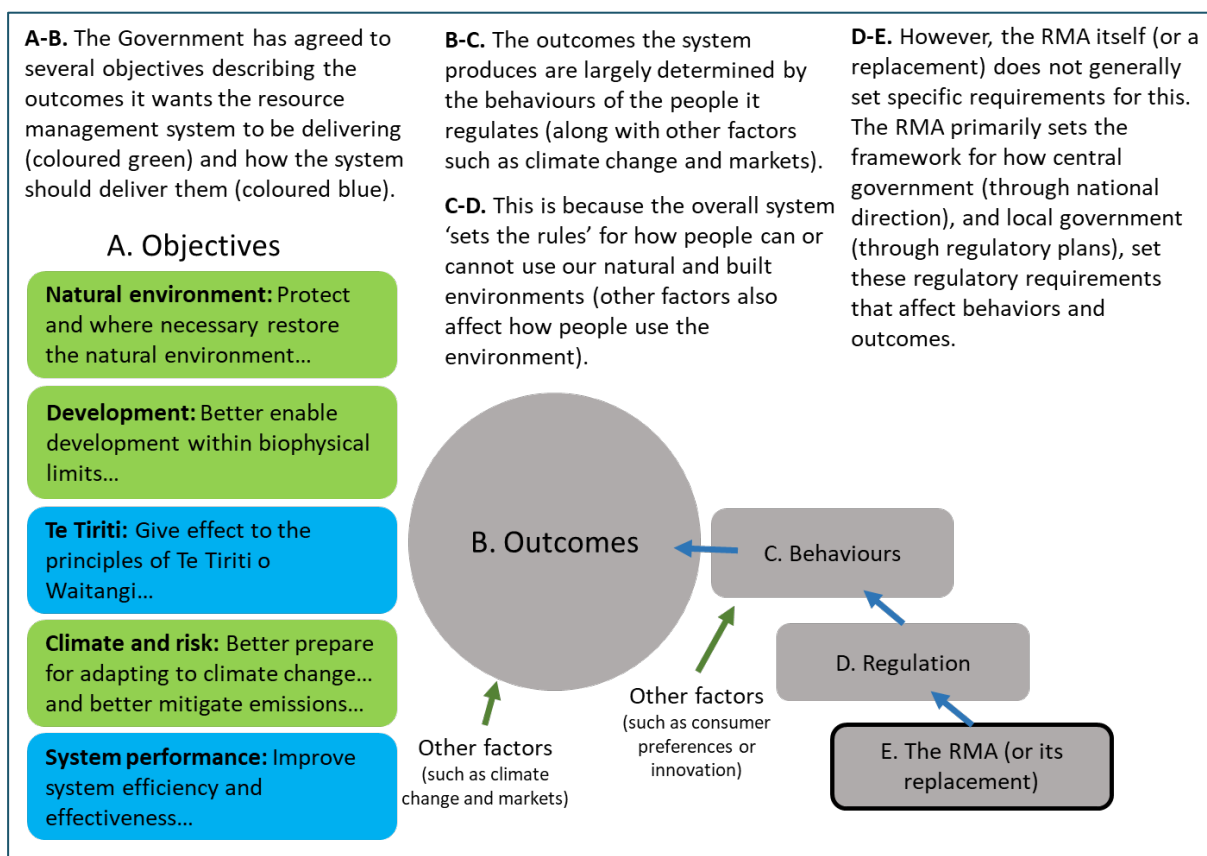
exposure draft to reflect the outcomes of the inquiry and subsequent policy decisions and included in a final RIS.

### 3. Assessment against the reform objectives

Options are evaluated for their ability to achieve the reform objectives compared to the status quo. Because the RMA is ‘framework’ legislation that guides lower-order regulation, such as the content of national direction and regulatory plans, this has implications for how the options are assessed.

Figure 3 explains this relationship.

Figure 3: The RMA as ‘framework’ legislation



To help with this assessment, the section for each policy area explains how the policy area relates to the problem definition and sets out the key elements of a ‘successful option’ – ie, an option that will successfully improve the system’s ability to achieve the reform objectives.

The following scale has then been used for the multi-criteria impact assessment.

Significant improvement on the status quo	++
Minor-moderate improvement on the status quo	+
Status quo / little different to the status quo	0
Minor-moderately worse than the status quo	-
Significantly worse than the status quo	--
Not applicable – this criterion is not relevant to this option	NA

## Policy area 1: Legislative architecture

### Context

#### What is this policy area?

This section covers the high-level choices for how the legislation should be packaged. The existing RMA covers a broad range of functions and powers, including those relating to how land can be used, how we protect the environment and how we respond to climate change. These functions and powers can be grouped in several ways, for example through separate legislative frameworks.

Analysis in this policy area does not assess the content of the different pieces of legislation. It focuses on the impacts of the legislative architecture itself, such as the ways similar functions and powers can be grouped to improve transparency and legislative clarity versus fragmented decision-making where regulated parties must meet the requirements of different pieces of legislation.

→ <b>Policy area 1: Legislative architecture</b>	<i>What legislation is needed?</i>
<b>Policy area 2: Purpose and supporting provisions</b>	<i>What should the system be achieving?</i>
<b>Policy area 3: National Planning Framework</b>	<i>What is the role and process for central government in the system?</i>
<b>Policy area 4: Regulatory plans</b>	<i>How should local government planning support this?</i>

#### What decisions have already been made?

Cabinet has made the in-principle decision 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 Panel explored legislative architecture in some detail. They summarised the main arguments for separating statutory provision for land use planning and environmental protection as:

- potentially providing greater strategic focus and coordination of decision-making on land use and infrastructure
- a distinct purpose and tailored principles are required to guide decision-making about land use planning (or built environment) and environmental protection
- greater clarity, transparency and accountability in public administration could be achieved through separate systems and processes.

The main arguments against separating statutory provision for land use planning and environmental protection were summarised as:

- integration of frameworks for land use and environmental protection is not the cause of poor outcomes
- land use and environmental protection, and the built and natural environments, are inherently interconnected and should be approached through integrated decision-making
- separate frameworks would be inconsistent with te ao Māori
- developing separate legislative frameworks is likely to result in further complexity and cost.

As set out in Option 1A, the Panel recommended this second approach - integrated natural and built environment legislation, along with two additional Acts.



## Constraints and interdependencies - how will decisions in other policy areas affect this area?

This policy area will not be affected by the other policy areas. The primary effect of these decisions on legislative architecture is to influence the scope of subsequent policy areas.

## Consultation and engagement so far

The Panel consulted on legislative architecture through its Issues and Options paper. This found:

- the vast majority of submitters thought an integrated act should be retained, including all iwi/Māori submitters.
- of the submitters who commented on legislative architecture for spatial planning, most supported a new act.

## Options identification

### What are the options?

This analysis assesses three options for the legislative architecture compared to the status quo. The options are grouped around three primary considerations.

- Should the legislation retain an integrated approach to environmental protection and land use regulation or should there be separate legislative frameworks for each?
- Should there be separate legislation for mandatory regional spatial planning, should spatial planning be incorporated within a reformed RMA, or should this not be legislated for at all?
- Should there be separate legislation for managed retreat and adaptation or should this be addressed within a reformed RMA?

**Table 12: Features of options for legislative structure**

Option	<i>Integrated environmental and land use legislation?</i>	<i>Separate legislation for mandatory regional spatial planning?</i>	<i>Separate legislation for managed retreat and adaptation?</i>
<b>The status quo</b> The current RMA incorporates land use planning, environmental protection and some aspects of climate change adaptation.	Yes	No	No
<b>Option 1A. Panel's Approach (the preferred option)</b> Adopt the Panel's recommendations for legislative architecture that replaces the RMA with the NBA and creates new legislation for regional spatial planning and managed retreat, respectively.	Yes	Yes (would integrate resource management across multiple Acts)	Yes
<b>Option 1B. Spatial planning in NBA</b> Replace the RMA with a NBA and CAA, but incorporate spatial planning within the NBA (as opposed to creating a separate SPA).	Yes	No (incorporated within the NBA)	Yes
<b>Option 1C. Remove integration</b> Replace the RMA with separate legislation for land use and environmental regulation.	No	Yes	Yes

## What options have been discarded or are out of scope?

This analysis has not considered repealing the RMA and not having a system for planning or environmental protection. The Panel also considered developing separate legislation for the built environment, which was raised through consultation on their Issues and Options paper – this has not been assessed separately as part of this interim RIS due to its overlap with other options (the Panel considered both these options under the umbrella of removing integration (Option 1C)).

## Interim options analysis

**Table 13: Summary table for legislative structure options**

		The status quo	Option 1A – Panel’s Approach	Option 1B –Spatial planning in NBA	Option 1C – Remove integration
<b>Cost benefit summary</b>	<i>Process costs</i>	0	Similar	Similar	Similar
	<i>Wider costs and benefits</i>	0	NA	NA	NA
<b>Assessment against the reform objectives</b>	<i>Natural environment</i>	0	++	+	-
	<i>Development</i>	0	++	+	+
	<i>Te Tiriti</i>	0	NOT YET ASSESSED	NOT YET ASSESSED	NOT YET ASSESSED
	<i>Climate and risk</i>	0	++	++	++
	<i>System performance</i>	0	+	+	0
	<b>Overall objective assessment</b>	0	++	+	0
<b>Impact certainty assessment</b>		NA	LOW	LOW	LOW

### Impact certainty assessment

There is low certainty for the assessment of all options as the benefits from legislative architecture are indirect, largely depending on decisions in other policy areas and how the system is implemented (eg, through non-statutory guidance and education). The policy content of the legislation (regardless of the final legislative architecture) will have the core impact.

### Cost benefit summary

Developing and supporting the NBA, SPA and CAA through the policy and legislative process will cost central government around \$20 million. It is likely that this cost would be similar for each of the options as they all represent comparable levels of complexity. There may be some cost savings from including spatial planning in the NBA (Option 1B), as there will be some fixed costs for each piece of legislation. However, these cost savings are likely to be relatively minor.

### ANALYSIS – Option 1A. Panel’s Approach

*Adopt the Panel’s recommendations for legislative architecture that replaces the RMA with the NBA and creates new legislation for regional spatial planning and managed retreat, respectively.*

### Overall assessment and certainty

Overall assessment	++
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This option is likely to be beneficial compared to the status quo, especially for achieving the Government’s objectives for the environment, development and climate. It could also help and improve certainty for regulated parties.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>Increased legislative clarity</li> <li>Increased integration across Acts</li> <li>Increased certainty for regulated parties</li> </ul>	

Table 14 explains this assessment in more detail against each reform objective.

**Table 14: Assessment of Option 1A against the reform objectives compared to the status quo**

Assessment against the reform objectives	
<b>Natural environment</b>	++
Separate legislation for regional spatial planning could improve integration across various Acts within the RM system, compared to containing regional spatial planning within a reformed RMA. This could improve the ability of the system to achieve both natural environment and development objectives that require long-term strategic planning.	
<b>Development</b>	++
As above.	
<b>Te Tiriti</b>	NOT YET ASSESSED
Not applicable as the <i>content</i> of the legislation primarily affects this consideration as opposed to the overarching architecture. Refer to Policy area 2: NBA Policy and supporting provisions for a discussion of the content of the NBA.	
<b>Climate and risk</b>	++
This option would improve the ability of the system to adapt to climate change and natural hazards by consolidating these functions into their own legislation, providing greater legislative clarity on managed retreat.	
<b>System performance</b>	+
This option may improve efficiency if the grouping of functions and powers leads to increased certainty for regulated parties (ie, if they are better able to understand statutory requirements placed upon them). This could potentially result in less litigation than under the status quo.	

### ANALYSIS – Option 1B. Spatial planning in the NBA

*Replace the RMA with a NBA and CAA, but incorporate spatial planning within the NBA (as opposed to creating a separate SPA).*

### Overall assessment and certainty

Overall assessment	+
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This option is likely to provide net advantages compared to the status quo, however, it could see a ‘scaling back’ of the benefits likely to be delivered by Option 1A.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>Increased legislative clarity</li> <li>Increased integration across Acts</li> <li>Increased certainty for regulated parties</li> </ul>	

Table 15 explains this assessment in more detail against each reform objective.

**Table 15: Assessment of Option 1B against the reform objectives compared to the status quo**

Assessment against the reform objectives	
<b>Natural environment</b>	+
This option would have the same impacts as those set out in Option 1A, though regional spatial planning may be less effective at integrating functions across multiple Acts (eg, infrastructure funding decisions and land use decisions) within the RM system because it is situated within a reformed RMA. This would reduce the advantages of this approach to the natural environment and development.	
<b>Development</b>	+
As above.	
<b>Te Tiriti</b>	NOT YET ASSESSED
Not applicable as the <i>content</i> of the legislation primarily affects this consideration as opposed to the overarching architecture.	
<b>Climate and risk</b>	++
This option could have the same impacts as those set out in Option 1A regarding adaptation to climate change.	
<b>System performance</b>	+
This option could have the same impacts as those set out in Option 1A regarding system performance.	

### ANALYSIS – Option 1C. Remove integration

*Replace the RMA with separate legislation for land use and environmental regulation.*

#### Overall assessment and certainty

<b>Overall assessment</b>	0
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There is no clear net advantage of this approach compared to the status quo. However, the disadvantages identified could be mitigated through policy decisions on the substance of the Acts.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>Increased clarity for land use regulation in urban areas</li> <li>Potentially increased certainty for regulated parties if land use regulation is clearer</li> <li>Clearer accountability for system failures</li> </ul>	<ul style="list-style-type: none"> <li>Land use decisions may not adequately account for the environment</li> <li>Regulated parties may require more approvals under separate Acts</li> </ul>

**Table 16** explains this assessment in more detail against each reform objective.

**Table 16: Assessment of Option 1C against the reform objectives compared to the status quo**

Assessment against the reform objectives	
<b>Natural environment</b>	-
This option may reduce the ability of the system to achieve environmental objectives as it could lead to decisions on land use that don't adequately account for the environment as they are considered under separate legislative frameworks.	
<b>Development</b>	+
This approach may improve the ability of the system to achieve development objectives by allowing for a distinct set of principles and management techniques for urban areas (noting that distinct management principles for urban areas could also be achieved within an integrated Act).	
<b>Te Tiriti</b>	NOT YET ASSESSED
Not applicable as the <i>content</i> of the legislation primarily affects this consideration as opposed to the overarching architecture.	

<b>Climate and risk</b>	++
This option could have the same impacts as those set out in Option 1A regarding adaptation to climate change.	
<b>System performance</b>	0
This option may reduce efficiency for some regulated parties if they require more approvals because they have to meet requirements under two Acts instead of one. Conversely, separate Acts could allow for clearer regulations with fewer competing priorities, reducing the risk of significant litigation within the system and improving certainty and efficiency. It may also make it easier to assign responsibility for system failures, as it would be clearer which part of the system is at fault, improving the quality of local democratic input. On balance, this approach is unlikely to improve system performance compared to the status quo.	

### The preferred option based on interim analysis

*Option 1A. Adopt the Panel's Approach that replaces the RMA with the NBA and creates new legislation for regional spatial planning and managed retreat, respectively.*

This analysis shows that the Panel's Approach to legislative architecture has advantages when compared to the status quo or moving away from integrated management. It is also broadly supported by stakeholders. However, there is significant uncertainty surrounding these benefits due to their abstract nature and their reliance on other policy decisions regarding the content of the legislation.

## Policy area 2: NBA Purpose and supporting provisions

### Context

#### What is this policy area?

This section covers the NBA purpose and supporting provisions, which is where the legislation sets out why it exists, what the system should be achieving and, at a high level, how this should be done. The purpose and supporting provisions of the Act are fundamental to how decisions are made and how the system operates. It also provides the basis for how Te Tiriti is recognised within the system and is the first instance where the concept of Te Mana o te Taiao or the alternative Te Oranga o te Taiao is expressed.

<b>Policy area 1: Legislative architecture</b>	<i>What legislation is needed?</i>
<b>Policy area 2: Purpose and supporting provisions</b>	<i>What should the system be achieving?</i>
<b>Policy area 3: National Planning Framework</b>	<i>What is the role and process for central government in the system?</i>
<b>Policy area 4: Regulatory plans</b>	<i>How should local government planning support this?</i>

The supporting provisions include direction on the use of two key regulatory tools that are critical to this analysis:

- **A system of natural environment limits**, which is a regulatory tool intended to provide clarity around what aspects of the natural environment need to be protected from a prescribed level of adverse effects that are unacceptable and/or compromise the ability of the environment to support life. For example, a decision-maker could not approve an activity that would exceed the limit that is designed to ensure there is a sufficient volume of water to support life in a given area. Limit-setting will be highly contextual and will need to be able to respond to changing contexts (eg, from the effects of climate change) and emerging scientific information.
- **A system of outcomes**, supported by targets:
  - **outcomes** set out the overall, aspirational vision of what decision-makers are to aim for in terms of a future environmental state.
  - **targets** are intended to be measurable, achievable environmental states, indicators or objectives, which need to be met if progress is to be made towards improving the environment (in line with the vision set out through the outcomes).

In line with the hierarchy of instruments approach taken in the *King Salmon* Supreme Court case,<sup>17</sup> the proposed system of limits, outcomes and targets is intended to apply to the content and decision-making associated with the development of the NPF and NBA plans.

#### What decisions have already been made?

In December 2020, Cabinet made several in-principle decisions that affect the purpose and supporting provisions, noting that these could be refined after subsequent policy work and engagement.

<sup>17</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38

- The purpose and supporting provisions of the NBA should closely reflect the Panel's indicative drafting.
- 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 or an alternative.
- A system of outcomes and natural environment limits will be introduced in addition to effects management.
- The proposed NBA should require decision-makers to 'give effect' to the principles of Te Tiriti.
- The proposed NBA will reflect the hierarchy described in *King Salmon* whereby the RMA Part 2 equivalent (ie, purpose and principles) is implemented through national direction and regulatory plans then give effect to national direction.

On 15 February 2021, the MOG made further decisions around the purpose and supporting provisions of the NBA.

- That the purpose of the NBA reflects the overall policy intention that: use of the natural and built environment is to be enabled within natural environment limits and in a way that provides for the wellbeing of current and future generations.
- The purpose and supporting provisions will also clarify:
  - natural environment limits are to be set to protect life-supporting capacity of the natural environment and human health
  - beneficial outcomes are to be promoted for natural and built environments overall
  - in addition to meeting limits or promoting outcomes, activities must be carried out in a way that ensures any other adverse effects of activities on the environment are avoided, remedied or mitigated.

### **Constraints and interdependencies - how will decisions in other policy areas affect this area?**

It is not possible to accurately identify all the impacts of the options within this policy area at this stage because:

- there are interdependencies with other parts of the NBA system that have still yet to be designed
- the purpose of the NBA and its supporting provisions are implemented through regulatory instruments whose content is, as yet, largely unknown and will often be determined by priorities, trade-offs and decisions taken at lower levels of the system (eg, through NBA plans at the regional level).

A final RIS to support decisions on the final Bill will contain updated analysis once:

- the select committee has reported back on the exposure draft inquiry in late 2021

- impact analysis is completed for the interdependencies identified in **Table 17** (where these are within the scope of RM reform)
- further cost benefit assessment is completed that provides more information on the wider benefits and costs of reform as well as the process costs.

**Table 17: Interdependencies between the purpose and supporting provisions and other policy areas**

Purpose and supporting provisions interdependencies	
<i>Within the scope of this interim RIS</i>	As this policy area sets out what the system should achieve, decisions in other policy areas will affect the ability of the system to deliver on the purpose and supporting provisions. Conversely, decisions in this policy area will significantly impact the content of other policy areas. For example, a decision to shift the system to focus on outcomes will have to be reflected in national direction (Policy area 3) and regulatory plans (Policy area 4).
<i>Beyond the scope of this interim RIS (but within the scope of RM reform)</i>	This policy area interacts with several areas beyond the scope of this interim RIS such as with consenting, system oversight, CME and the proposed SPA. Impact analysis for these policy areas will be completed at a later date, which affects the certainty of the assessment within this interim RIS. The most significant interaction is with the proposed SPA. How the NBA and SPA interact in practice, including sequencing, is not addressed within this interim RIS.
<i>Beyond the scope of RM reform</i>	Much of the effectiveness of the changes to the purpose and supporting provisions depend on the capacity and capability of central and local government to implement them throughout the RM system. Section 3 on implementation discusses how to support the capability of central and local government to implement the changes.

### Consultation and engagement so far

Appendix b provides a summary of feedback received from iwi/Māori groups and local government so far. This raised several design issues with the Panel's Approach to the purpose and supporting provisions (Option 3A), which have been incorporated into the design of the alternative (Option 3B).

Te Oranga o te Taiao (described below within Option 3B) is an alternative that builds upon the intent of the Panel's proposed inclusion of Te Mana o te Taiao in order to better reflect mātauranga Māori in the system. Officials have worked alongside the Freshwater Iwi Leaders Group (FILG) and Te Wai Māori Trust (TWMT) technicians to refine their proposal for Te Oranga o te Taiao in a manner that is consistent with previous MOG decisions whilst also upholding the integrity of their original proposal. This has resulted in the Te Oranga o te Taiao proposal reflected in the exposure draft.

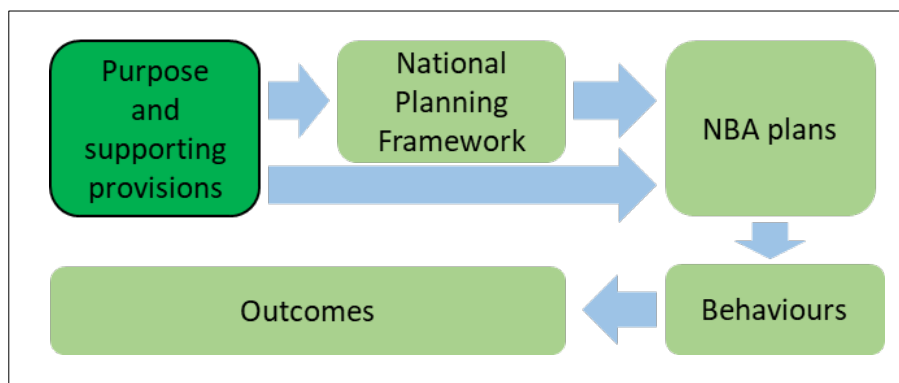
### The role of this policy area in improving the RM system

#### How does this policy area relate back to the problem definition in section 1.2?

As shown in **Figure 4**, the purpose and supporting provisions affect the content of regulatory plans both directly and through national direction. These regulatory plans, in turn, affect the behaviours of regulated parties, by specifying how natural and built environments can or cannot be used. This use or non-use then affects outcomes. The purpose and supporting provisions will also influence decision-making under the proposed SPA, though this is out of scope of this interim RIS.



**Figure 4: How the NBA Purpose and supporting provisions policy area relates to outcomes**



### What are the key elements of a successful option?

There are several broad ways that the purpose and supporting provisions can address the issues identified in section 1.2 to improve outcomes and ensure the system achieves the reform objectives in the most appropriate way. **Table 18** lists these as the elements of a successful option. These elements are considered throughout the interim analysis within this policy area.

**Table 18: The key elements of a successful option for the purpose and supporting provisions**

Element	Relevant reform objective(s)
<b>Aligning decision-making with the reform objectives:</b> ensuring the statutory decision-making framework aligns with the reform objectives (ie, that they are seeking to achieve the same outcomes).	<ul style="list-style-type: none"> <li>All</li> </ul>
<b>Considering benefits:</b> ensuring the benefits of a proposed activity are factored into decisions will encourage decisions with positive impacts on the outcomes. <i>Note that under both options this would be achieved by specifying positive outcomes under the NBA that decision-makers should achieve, where these cover the natural environment, development, iwi/Māori interests and climate.</i>	<ul style="list-style-type: none"> <li>Natural environment</li> <li>Development</li> <li>Climate and risk</li> </ul>
<b>Reducing status quo bias:</b> ensuring decision-making does not unreasonably protect the status quo will allow for dynamic, changing urban areas.	<ul style="list-style-type: none"> <li>Development</li> </ul>
<b>Providing the authorisation for regulatory tools:</b> ensuring decision-makers are provided with the appropriate authorisation for the tools they need to effectively undertake planning that improves outcomes.	<ul style="list-style-type: none"> <li>Natural environment</li> <li>Development</li> <li>Climate and risk</li> </ul>
<b>Providing a clear direction for decision-makers:</b> ensuring the direction that decision-makers are to follow, when preparing the NPF and NBA plans, is clear for decision-makers in both central and local government (and easily understood by regulated parties) will increase certainty and efficiency as well as reducing litigation.	<ul style="list-style-type: none"> <li>All (especially system performance)</li> </ul>
<b>Giving effect to the principles of Te Tiriti:</b> ensuring the purpose reflects the Treaty partnership will ensure the RM system includes iwi/Māori and appropriately reflects their interests.	<ul style="list-style-type: none"> <li>All (especially Te Tiriti)</li> </ul>

## Options identification

### What are the options?

This interim RIS assesses two options for the purpose and supporting provisions against the status quo:

- The status quo (RMA approach):** the purpose of the current system is to promote sustainable management, which is primarily delivered through managing effects. The current

Te Tiriti clause has limited statutory weight.<sup>18</sup> The RMA enables limits and outcomes as regulatory tools, but does not provide direction on their use. However, it does set out matters of national importance and other matters to guide decision-making.<sup>19</sup>

- **Option 2A. Panel's Approach:** adopt the Panel's Approach, which includes a statutory purpose to enhance the quality of the environment, supported by directive frameworks for limits and positive outcomes. It would also incorporate stronger Te Tiriti provisions (ie, give effect to) than under the status quo.
- **Option 2B. Alternative Approach:** adopt an alternative purpose to the Panel's, focusing on upholding Te Oranga o te Taiao while enabling use and development, provided it is within natural environment limits, and it promotes beneficial outcomes which contribute to wellbeing. The Panel's proposed system of limits, outcomes and targets would largely be adopted with some refinements. The system of outcomes would be streamlined and made more flexible. It would also incorporate **stronger Te Tiriti provisions than under the status quo.**

**Table 19** describes the key characteristics of each of these options compared to the status quo. These cover:

- **statutory purpose** - what should the purpose of the Act be? This clarifies what the legislation and the regulatory tools it provides should be achieving
- **Te Tiriti** - how should Te Tiriti and te ao Māori be reflected in the purpose of the Act?
- **limits** - how should the Act provide for a system of limits to protect the life-supporting capacity of the natural environment?
- **Outcomes** - how should the Act provide for a system of positive outcomes and targets to guide planning?

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<sup>18</sup> Section 8 of the RMA requires those exercising functions and powers under the RMA to 'take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)'.

<sup>19</sup> Section 6 of the RMA sets out matters of national importance that decision-makers should recognise and provide for. Section 7 sets out other matters that they should have particular regard to.

**Table 19: Key characteristics of the options for national direction**

	Status quo	Option 2A: Panel's Approach	Option 2B: enabling use within limits
Purpose	A sustainable management purpose, that aims to ensure natural resources can be managed to provide for wellbeing, as long as certain bottom lines for the natural environment are met.	The new purpose would reflect the policy intent of enhancing the quality of the environment to support the wellbeing of present and future generations.	The new purpose would reflect the policy intent regarding Te Oranga o te Taiao (see below) as well as enabling the use of natural and built environments within 'natural environment limits' to support the wellbeing of present and future generations.
Te Tiriti	A Te Tiriti clause where decision-makers are required to "take into account" the principles of the Treaty of Waitangi.	The new Act would include a stronger Te Tiriti clause, requiring decision-makers to give effect to the principles of Te Tiriti o Waitangi. The concept of Te Mana o te Taiao would also be incorporated into the purpose.	The new Act would include a stronger Treaty clause to ensure decisions reflect the Treaty partnership. Te Oranga o te Taiao would also be incorporated into the purpose with a stronger weighting and refined definition informed by further targeted engagement with FILG and TWMT.
Limits	No mandatory system of limits, though there is scope to set these through national direction and regulatory plans.	A mandatory system of limits would be introduced (see section 8 of appendix 1 of the Panel's report). The Minister would be required to set these limits through national direction at a level that provides for a 'margin of safety' above significant or irreversible harm.	A mandatory system of limits would be introduced as recommended by the Panel, however, with some refinements to terminology and more flexibility surrounding their application/methodology. Limits would be set using a precautionary approach but would not explicitly be required to provide a margin of safety.
Outcomes	No mandatory system of outcomes and targets, though there is scope to set these through national direction and regulatory plans.	A system of outcomes would be introduced to support the new purpose (see section 7 of appendix 1 of the Panel's report). The Minister would be required to set targets through national direction to ensure progress is made towards improving outcomes.	A system of outcomes would be introduced. However, they would be significantly streamlined to avoid added complexity and the Minister could choose whether to set targets for the outcomes through national direction.
<b>Key:</b> cell colour indicates the shift from the current system			
<span style="background-color: #cccccc; display: inline-block; width: 100px; height: 1em; vertical-align: middle;"></span> <i>Status quo</i> → <span style="background-color: #e0e0e0; display: inline-block; width: 100px; height: 1em; vertical-align: middle;"></span> <i>Similar to status quo</i> → <span style="background-color: #a0c0ff; display: inline-block; width: 100px; height: 1em; vertical-align: middle;"></span> <i>Significantly different to status quo</i>			

This interim RIS does not cover legislative definitions. These will be finalised by the Parliamentary Counsel Office (PCO) to ensure the policy intent is accurately captured in the draft legislation.

#### *The proposed inclusion of Te Oranga o te Taiao within the purpose*

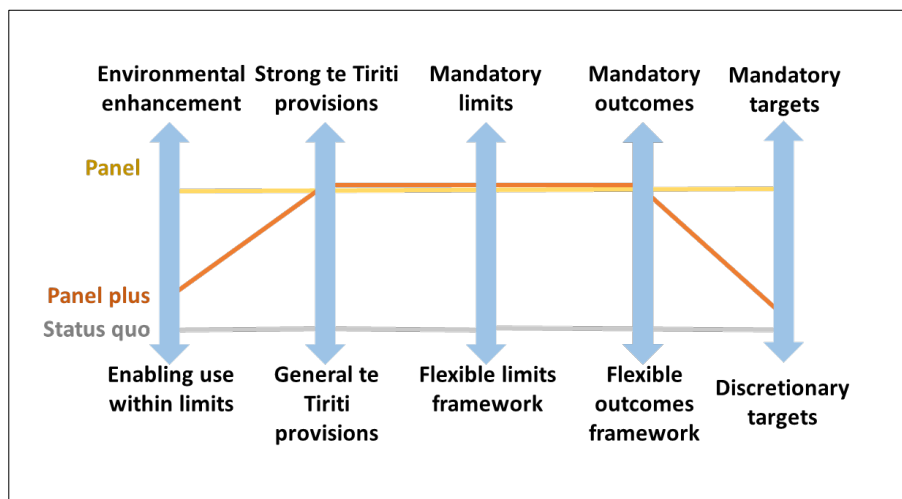
The policy intent of Te Oranga o te Taiao is to "encapsulate the intergenerational importance of the health and wellbeing of the natural environment"<sup>20</sup>. The concept is intended to be a common environmental ethic for Aotearoa/New Zealand at the heart of the new resource management system.

Te Oranga o te Taiao is intended to be equal with the other key aspects of the purpose (ie, enabling the protection and use of natural and physical resources). The only primacy to environmental protection from the concept is in relation to limits protecting the ecological integrity of the natural environment and human health. Above environmental limits, trade-offs can be made between well-beings.

<sup>20</sup> FILG/TWMT paper on Te Oranga o te Taiao

**Figure 5** shows how the different options compare to one another, with the Panel's Approach (Option 2A) having a stronger focus on enhancing the environment and making use of more mandatory provisions, while Option 2B focuses more on enabling use and provides more flexibility.

**Figure 5: Key differences between the NBA purpose and supporting provisions options**



Important context to this analysis is that the Panel's Approach to the statutory purpose reflected its Terms of Reference, where the aim of the review was 'to improve environmental outcomes and better enable urban and other development within environmental limits'.<sup>21</sup> Once the review was completed, Cabinet agreed to the five reform objectives and MOG agreed the detailed reform outcomes set out in section 1.3. These focus more on enabling development within limits and aim to 'protect and where necessary restore the natural environment'.

#### *Further information*

Appendix 1 of the Panel's report and the exposure draft set out the two approaches to the range of topics proposed under each option for limits and outcomes.

#### **What options have been discarded or are out of scope?**

Two additional options have been considered by officials during policy development but are not assessed within this interim RIS.

- The Parliamentary Commissioner for the Environment (PCE) examined the Panel's proposal and released separate recommendations for how a purpose could be structured.<sup>22</sup> This is not assessed as a separate option within this interim RIS, as many of the considerations and concerns raised by the PCE have been incorporated into the development of the alternative option (Option 2B). For example, the PCE raised concerns that the Panel's recommended purpose included an overly broad definition of the environment and would lead to 'an overall broad judgment approach' that would erode the effectiveness of natural environment limits (discussed below).

<sup>21</sup> See the Panel's terms of reference: [https://www.mfe.govt.nz/sites/default/files/media/RMA/rm-review-final-terms-of-reference\\_0.pdf](https://www.mfe.govt.nz/sites/default/files/media/RMA/rm-review-final-terms-of-reference_0.pdf)

<sup>22</sup> See: <https://www.pce.parliament.nz/publications/salmon-lecture-2020-rma-reform-coming-full-circle>

- The Cabinet paper 'Reforming the Resource Management System' also included potential drafting for the purpose and supporting provisions. This has not been assessed separately as it was the basis for the alternative option (Option 2B).

The content of the purpose and supporting provisions are closely linked to the reform objectives, which has constrained the range of options that have been considered (ie, options that overtly conflict with the reform objectives are not considered).

## Interim options analysis

**Table 20: Summary table for purpose and provisions options**

		The status quo	Option 2A – Panel's Approach	Option 2B – Alternative purpose
Cost benefit summary	Process costs	0	+	+
	Wider costs and benefits	0	NOT YET ASSESSED	NOT YET ASSESSED
Assessment against the reform objectives	Natural environment	0	++	+
	Development	0	0	+
	Te Tiriti	0	+	++
	Climate and risk	0	+	+
	System performance	0	-	+
	Overall objective assessment	0	+	++
Impact certainty assessment		NA	LOW	MEDIUM

### Impact certainty assessment

Option	2A	2B
Certainty	LOW	MEDIUM

Further evidence is required to better understand the impacts across both Options 2A and 2B. MfE has had time to complete an initial assessment of the process costs, but not the wider benefits. There has only been targeted consultation and engagement on these potential impacts. Further, the reliance on secondary and tertiary instruments to implement the purpose and supporting provisions means certainty around overall implementation and compliance costs is low.

There are also significant interdependent policy issues that need to be addressed to better understand these impacts and their likelihood of occurring (see **Table 15** and the assessment against the development objective in **Table 22**).

In spite of this, the impacts identified for the Panel Plus approach (Option 2B) have higher certainty than the impacts for the Panel's Approach (Option 2A). This is because of two factors.

- The complexity to implement the option:** for the Panel's Approach (Option 2A), reliance on mandatory regulation tools without a means to prioritise could be difficult to implement and

restricts the system's ability to provide consistent, clear direction and certainty for administrators and users. The Panel Plus approach (Option 2B) relies less on mandatory tools, which enables better prioritisation, because tools can be used more flexibly where they will have the most impact.

- **Timeframes:** implementation will significantly affect when these impacts arise. Changes within this policy area will need to be incorporated into national direction, RSS under the SPA and NBA plans before they will fully affect how regulated parties use natural and built environments. The significant volume of national direction required under the Panel's Approach (Option 2A), known data limitations and the level of resourcing required and available, all pose a significant risk to how long it will take before these benefits arise. Implementation timeframes are expected to be shorter for the Panel Plus approach (Option 2B) because it relies less on national direction.

### Cost benefit summary

This sub-section provides key points specific to the purpose and supporting provisions from section 2.3 of this interim RIS - "The Costs and Benefits of System Reform".

- **Process costs:** both of these options would likely support a net decrease in process costs when compared to the status quo, by providing clear direction at a high level, to improve the certainty of the NPF and NBA plans for users. The cost benefit summary within policy areas 3 and 4 provides more detail on this and on how the system would require an increased investment from both central and local government to achieve this cost reduction.
- **Wider costs and benefits:** section 2.3 sets out MfE's initial assessment of the potential wider benefits of RM reform. This is subject to significant uncertainty until further policy work is undertaken and economic analysis on the wider costs and benefits is completed. Some likely differences between the options within this policy area, that may affect the wider benefits, are set out below:
  - *Environmental benefits:* each option is likely to result in greater natural environment benefits compared to the status quo. The Panel's approach (Option 2A) focuses on 'enhancing the quality of the environment' and a much wider range of national direction including mandatory targets, while the alternative (Option 2B) focuses on ensuring use within limits (ie, maintaining or restoring the natural environment) and does not require mandatory targets. As such, the Panel's Approach may result in decisions with more environmental benefits.
  - *Urban benefits:* the alternative approach (Option 2B) is likely to provide greater urban benefits than under the status quo, due to its focus on enabling use and on stronger urban and infrastructure-related outcomes. Conversely, there is a risk that the Panel's Approach (Option 2A) of 'enhancing the quality of the environment' could exacerbate issues with the current system that prioritise the status quo, have a strong protection focus and thereby inhibit development and infrastructure provision (see assessment below).

### ANALYSIS – Option 2A. Panel's Approach of planning to enhance the quality of the environment

*Adopt the Panel’s Approach, which includes a statutory purpose to enhance the quality of the environment, supported by directive frameworks for limits, outcomes and targets. It would also incorporate stronger Te Tiriti provisions than under the status quo.*

**Assessment against the reform objectives**

Overall assessment	+
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This approach would be better than the status quo and would deliver an RM system that is more effective at improving outcomes for the natural environment, but could exacerbate some of the issues in the current system relating to urban outcomes.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>• More closely aligns decision-making with reform objectives (except for development)</li> <li>• Ensures consideration of benefits</li> <li>• More regulatory tools (limits, outcomes, and targets) than the status quo</li> <li>• Strong Te Tiriti clause and better recognition of Te Ao Māori</li> </ul>	<ul style="list-style-type: none"> <li>• May retain status quo bias</li> <li>• May not clarify decision-making – particularly as there are 21 unweighted outcomes</li> <li>• Inadvertently reverts back to a ‘broad overall judgement’ approach whereby the four wellbeings are played off against each other</li> </ul>

**Table 21** explains this assessment in more detail against each reform objective.

**Table 21: Assessment of Option 2A against the reform objectives compared to the status quo**

Reform objective	Assessment		
<table border="1" style="width: 100%;"> <tr> <td style="background-color: #ADD8E6;"><b>Natural environment</b></td> <td style="background-color: #90EE90; text-align: center;"><b>++</b></td> </tr> </table> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<b>Natural environment</b>	<b>++</b>	<p><u>Advantages</u></p> <p><b>Aligning decision-making with the reform objectives:</b> this option better aligns with the reform objective of ensuring development takes place within environmental limits compared to the status quo, however, the focus on enhancing the environment goes beyond the reform objectives that aim to protect, and where necessary restore, the natural environment. As a result, this could work against the objectives associated with better enabling development, including infrastructure.</p> <p><b>Considering benefits:</b> because the purpose is being achieved by ‘positive outcomes for the environment being identified and promoted’ and a system of specific outcomes are to be provided, this option will ensure decisions on national direction and regulatory plans account for both benefits and effects of activities.</p> <p><b>Providing the authorisation for regulatory tools:</b> mandatory systems of limits and outcomes will provide an effective framework for decision-makers to improve outcomes.</p> <p><i>Note that the introduction of the concept of Te Mana o te Taiao also has the potential to ensure decisions improve environmental outcomes (the definition and application of this concept is still being worked through, informed by engagement with Māori).</i></p> <p><u>Disadvantages</u></p> <p><b>Providing a clear direction for decision-makers:</b> this option is unlikely to clarify decision-making compared to the status quo. The focus on the subjective term ‘quality of the environment’ may enable a return to the ‘overall broad judgement approach’ (noting that this has recently been clarified under the current system in the <i>King Salmon</i> case). It also relies on a complex list of 21 outcomes. These rely heavily on secondary instruments to give meaning to the proposed NBA, and for national direction to provide for descriptions of various features and characteristics that contribute to the quality of natural and built environments.</p> <p>The approach is also reliant on a system of three interlinked definitions of environment, which scenario-testing has found difficult to apply without gaps, overlaps or unintended consequences.</p>
<b>Natural environment</b>	<b>++</b>		
<table border="1" style="width: 100%;"> <tr> <td style="background-color: #ADD8E6;"><b>Development</b></td> <td style="text-align: center;"><b>0</b></td> </tr> </table>	<b>Development</b>	<b>0</b>	<p><u>Advantages</u></p>
<b>Development</b>	<b>0</b>		

<p>This option is unlikely to perform better than the status quo in meeting this reform objective.</p>	<p>See <b>aligning decision-making with the reform objectives and considering benefits under the natural environment assessment above.</b></p> <p><u>Disadvantages</u></p> <p><b>Reducing status quo bias:</b> there is a risk that this option does not reduce status quo bias compared to the current system. The focus on ‘enhancing the quality of the environment’ (which includes the built environment) may have the unintended consequence of encouraging the preservation of the built environment in its current form, preventing development and infrastructure provision. Some of the outcomes (eg, enhancement of the features and characteristics of the built environment) also have the potential to be miss-used and could reinforce a status quo bias. The infrastructure outcome does little to acknowledge the benefits of infrastructure or suggest its provision is to be encouraged or enabled (‘strategic integration’ is neutral and refers to the process of planning its location and timing only).</p>
<p><b>Te Tiriti</b> +</p> <p>This option is likely to perform significantly better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Giving effect to the principles of Te Tiriti:</b> provisions include a requirement to “give effect to the principles of Te Tiriti”. The incorporation of “Te Mana o te Taiao” or an alternative into the purpose would strengthen the te ao Māori framing in the Act. Providing for kaitiakitanga, tikanga Māori and the use of mātauranga Māori is included as an implementation principle. However, there is some potential for the strength of these provisions to be undermined if the proposed national direction on Te Tiriti is weak (eg, around <i>how</i> the principles of Te Tiriti are given effect to).</p> <p><i>note that this objective is also discussed in Section 2.4.</i></p>
<p><b>Climate and risk</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>aligning decision-making with the reform objectives, providing the authorisation for regulatory tools, and considering benefits under the natural environment assessment.</b> <i>Note that there would be stronger and more numerous outcomes relating to differing aspects of climate change mitigation and adaptation.</i></p>
<p><b>System performance</b> -</p> <p>This option is likely to perform worse than the status quo in meeting this reform objective.</p>	<p><u>Disadvantages</u></p> <p>See <b>aligning decision-making</b> under the natural environment assessment. <i>note that process costs are discussed in the cost benefit summary section of this policy area and section 2.3</i></p>

## ANALYSIS – Option 2B. Alternative approach of planning to enable use within natural environment limits

*Adopt an alternative purpose to the Panel’s that is closer to the status quo, focusing on enabling use and development, provided it is within natural environment limits; and promote beneficial outcomes. The Panel’s proposed system of limits, outcomes and targets would largely be adopted, with some refinements (but the number of outcomes would be streamlined and align better with reform objectives). It would also incorporate stronger Te Tiriti provisions than under the status quo.*

### Assessment against the reform objectives

**Overall assessment** ++

This approach would be significantly better than the status quo and would be highly effective at achieving all of the reform objectives. This is primarily due to several refinements to the Panel’s Approach that minimise risks of perverse outcomes – especially in relation to enabling development and infrastructure.




ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>• Closely aligns decision-making with reform objectives</li> <li>• Ensures consideration of benefits</li> <li>• Outcomes expressed to move away from status quo bias, except where protection is warranted</li> <li>• More regulatory tools (limits, outcomes, and targets) than the status quo</li> <li>• Minimises risk of status quo bias</li> <li>• Clarifies decision-making</li> <li>• Strong Te Tiriti clause and better recognition of Te Ao Māori</li> </ul>	

Table 22 explains this assessment in more detail against each reform objective.

Table 22: Assessment of Option 2B against the reform objectives compared to the status quo

Reform objective	Assessment
<p><b>Natural environment</b> +</p> <p>This option is likely to perform significantly better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Aligning decision-making with the reform objectives:</b> this option closely aligns with the reform objectives to enable development within environmental limits compared to the status quo.</p> <p><b>Considering benefits:</b> this option’s purpose seeks beneficial outcomes and sets specified outcomes, ensuring decisions on national direction and regulatory plans account for the benefits of activities in addition to their effects.</p> <p><b>Providing the authorisation for regulatory tools:</b> systems of limits and outcomes will provide an effective framework for decision-makers to improve outcomes.</p> <p><b>Providing a clear direction for decision-makers:</b> this option is likely to clarify decision-making through its consolidated list of outcomes and clearer purpose statement.</p> <p><i>Note: the introduction of Te Oranga o te Taiao also has the potential to ensure decisions improve environmental outcomes (the definition and application of this concept is still being worked through, informed by engagement with Māori).</i></p>
<p><b>Development</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><i>Note: this option has been assessed as likely to perform better than the status quo against the development objective. However, this is subject to significant uncertainty due to key policy decisions that have yet to be made and are beyond the scope of this interim RIS. These include decisions on designations, which will affect how infrastructure (including social infrastructure) is enabled; the detailed application of natural environment limits; and the general duty to avoid, remedy or mitigate adverse effects (ie, section 17 of the RMA). These policy issues will be addressed in a final RIS.</i></p> <p><u>Advantages</u></p> <p>See <b>aligning decision-making with the reform objectives</b> and <b>considering benefits</b> under the natural environment assessment.</p> <p><b>Reducing status quo bias:</b> the refined outcomes and purpose statement, which clarifies that use should be enabled, benefits should be recognised and development and use is to be responsive to growth and change, will minimise the risk that decisions will prioritise the status quo (or non-use) that prevents development and infrastructure provision.</p>
<p><b>Te Tiriti</b> ++</p> <p>This option is likely to perform significantly better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Giving effect to the principles of Te Tiriti:</b> provisions include a strengthened Treaty clause. The incorporation of “Te Oranga o te Taiao” into the purpose strengthens the incorporation of te ao Māori in the Act and along with implementation principles and relevant outcomes will ensure that the content of the NPF and NBA plans provide greater recognition of te ao Māori, including mātauranga Māori.</p> <p><i>note that this objective is also discussed in section 2.4.</i></p>
<p><b>Climate and risk</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>aligning decision-making with the reform objectives</b>, <b>providing the authorisation for regulatory tools</b>, and <b>considering benefits</b> under the natural environment assessment above.</p> <p><i>Note that there would be stronger and more numerous outcomes relating to differing aspects of climate change mitigation and adaptation.</i></p>

<b>System performance</b>		<u>Advantages</u> See <b>clarifying decision-making</b> under the natural environment assessment. <i>note that process costs are discussed in the cost benefit summary section of this policy area and section 2.3</i>
This option is likely to perform better than the status quo in meeting this reform objective.		

### The preferred option based on interim analysis

#### *Option 2B: Alternative approach of planning to enable use within natural environment limits*

This interim analysis shows that a set of purpose and supporting provisions that seek to enable use within natural environment limits (Option 2B):

- would align better with the reform objectives than both the status quo and the Panel's Approach (Option 2A)
- would likely contribute to a net decrease in process costs compared to the status quo (see section 2.3)
- could result in more urban benefits than under the status quo or under the Panel's Approach (Option 2A), noting this is subject to significant uncertainty until further economic analysis is completed
- could result in more environmental benefits than under the status quo, though potentially less than under the Panel's Approach (Option 2A), noting this is subject to significant uncertainty until further economic analysis is completed
- would be more workable to implement than the Panel's Approach (Option 2A). However, it could still result in some conflicts, or confusion of priorities until the NPF is fully implemented (as the outcomes have equal weighting)
- addresses several of the issues raised by local government and stakeholders with the Panel's Approach
- is likely to be seen by iwi/Māori as an improvement upon the status quo, but potentially seen as not going far enough (eg, in terms of Te Tiriti clause).

This analysis may be updated within a final RIS, following a select committee inquiry on the exposure draft. This may change the preferred option or lead to the development of new options to reflect feedback from Māori, local government and stakeholders.

**Table 23** outlines several minor and technical changes associated with the preferred option, including proposals intended, broadly, to carry over existing characteristics of the current system, like retaining the principles set out by the *King Salmon* decision and retaining effects management as a regulatory tool.

**Table 23: Minor and technical changes relating to the preferred purpose and supporting provisions option**

Description	Rationale for being a minor or technical change
Retain a general duty to 'avoid, remedy or mitigate' adverse effects on the environment (or similar wording) as part of the purpose statement.	This change is effectively carrying over the RMA status quo to the new RM system. However, officials are undertaking further policy work to ensure the 'avoid, remedy, mitigate' framework for managing environmental effects and other relevant system settings does not result in potential unintended consequences. There is also a question as to whether the phrase should explicitly include 'offset or compensate' or whether legislation should provide for these as options as part of a menu of mitigation approaches.
The new Act should echo the hierarchy described in the King Salmon decision of the Supreme Court whereby the RMA Part 2 equivalent (ie, purpose and principles) is implemented through national direction, and plans, in turn, give effect to national direction - as opposed to councils being required to interpret the original purpose and supporting provisions in respect of every consent decision.	This change is effectively carrying over the status quo to the new RM system. Both the Panel and Officials' approaches incorporate this implicitly, but later provisions in the NBA may need to make this more explicit.
Natural environment limits are set in a way that is flexible enough to accommodate different levels of environmental quality in different circumstances and locations, if provided for in the NPF. Section 3 of this interim RIS, covering implementation, provides guidance on the timing of this.	This is a detailed design issue to ensure unintended consequences do not detract from the policy intent behind natural environment limits. The Panel's Approach assumed limits would be absolute, but allowance needs to be made for things such as emergency works where damage to the environment will be inevitable if life or property is to be saved.
Adopt only the more general requirement for a 'precautionary approach' when setting limits, rather than also including a 'margin of safety' requirement – due to the overlap between the two concepts. Note that this is an amendment to ensure legislative clarity as opposed to an amendment to change the intended 'stringency' of limits.	This is a detailed design issue to ensure unintended consequences do not detract from the policy intent behind natural environment limits.

Not government policy.

## Policy area 3: NBA National Planning Framework

### Note to RQT Panel:

- Updated to align with progressed NPF policy
- Updated to incorporate finalised Castalia advice on process costs
- Inserted new section titled 'The role of this policy area in improving the RM system' explaining how this policy area interacts with the system-level problem definition and providing the intermediate analysis to explain how the policy area can improve outcomes/achieve the objectives.

### Context

#### What is this policy area?

This section covers the National Planning Framework (NPF). The NPF will be the tool under the NBA for central government direction (often referred to as 'national direction') to be provided on the use, protection and management of natural and built environments in the interests of all New Zealanders. It will be a key mechanism for central government to intervene in the future system and influence the content and outcomes sought by regional spatial strategies and NBA plans. RSSs will be discussed in the SPA RIS.

<b>Policy area 1: Legislative architecture</b>	<i>What legislation is needed?</i>
<b>Policy area 2: NBA Purpose and supporting provisions</b>	<i>What should the system be achieving?</i>
<b>Policy area 3: NBA National Planning Framework</b>	<i>What is the role and process for central government in the system?</i>
<b>Policy area 4: NBA plans</b>	<i>How should local government planning support this?</i>

#### What decisions have already been made?

In December 2020, Cabinet made several in-principle decisions that affect national direction [CAB-20-MIN-0522].

- The existing powers and functions for national direction under the current RMA will be combined into one tool, provisionally called the National Planning Framework (NPF).
- The purpose of the NPF will be to address matters of national significance or matters where national consistency would be desirable.
- Cabinet noted that further work is needed on establishing the process to develop and amend central government direction; its relationship to plans, consents and activities; the role of the Minister of Conservation; and the process for developing and implementing targets and limits.

On 8 March 2021, the MOG, acting under delegated authority, made further decisions around the purpose and supporting provisions of the NBA.

- That the role of the NPF is to take a strategic approach; give effect to the principles of Te Tiriti and reflect te ao Māori; support the implementation of limits and outcomes; and enable consistency.

Not government policy.

- That the NPF should provide an integrated and cohesive set of direction to guide the implementation of the NBA and support decision-makers in reconciling competing matters across the system.
- That the NBA identify a list of mandatory topics for which the responsible Minister must issue central government direction as a priority (see the exposure draft for specific topics).

The MOG also agreed to the policy intent behind a future NPF development process, noting that this is still being designed and is not within the scope of this interim RIS.

### Constraints and interdependencies - how will decisions in other policy areas affect this area?

It is not possible to accurately identify all the impacts of the options within this policy area at this stage. A final RIS to support decisions on the final Bill will contain updated analysis once:

- the select committee has reported back on the exposure draft inquiry
- impact analysis is completed for the interdependencies identified in **Table 24** below (where these are within the scope of RM reform)
- further cost benefit assessment is completed that provides more information on the wider benefits and costs of reform as well as the process costs.

**Table 24: Interdependencies between the National Planning Framework (NPF) and other policy areas**

National Planning Framework interdependencies	
<i>Within the scope of this interim RIS</i>	The decisions in Policy area 2 relating to limits, outcomes and hierarchy will guide the likely content of the NPF. There are also certain ‘system design’ issues that cut across both the NPF (Policy area 3) and regulatory plans (Policy area 4), such as governance (TBC), and public participation (TBC).
<i>Beyond the scope of this interim RIS (but within the scope of RM reform)</i>	This policy area interacts with several areas of RM Reform beyond the scope of this interim RIS. The key interdependencies include: <ul style="list-style-type: none"> <li>• the relationship between the NPF and the SPA; particularly the role and content of the national priorities statement and the legal relationship with RSSs.</li> <li>• how the effectiveness of the NPF is monitored and reviewed and the tools available to the Minister for the Environment to ensure the NPF is implemented within RSSs and NBA plans.</li> <li>• the relationship between the NPF and consents, existing uses and activities, designations and water conservation orders.</li> </ul>
<i>Beyond the scope of RM reform legislative changes</i>	Much of the effectiveness of the NPF will depend on the capacity and capability of central and local government to implement it (discussed in section 3).

### Consultation and engagement so far

Appendix b summarises feedback received from iwi/Māori groups and local government so far. This has shown general support for moving to a more integrated system for central government direction, however, feedback from iwi/Māori groups and local government has demonstrated that ultimately support will depend on the more detailed design of the process, which is beyond the scope of this interim RIS.

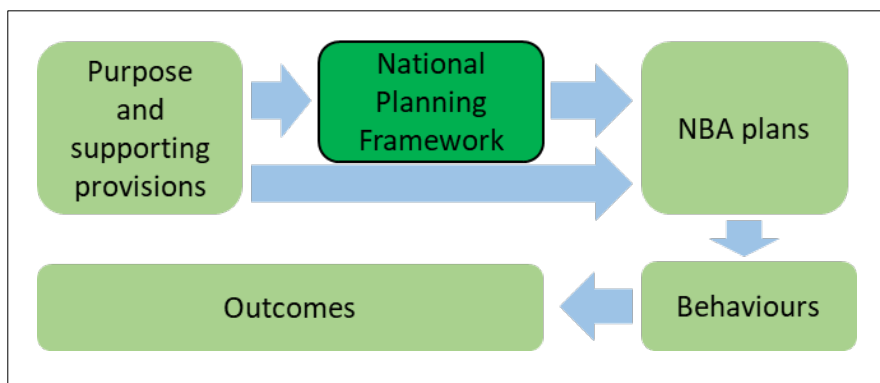
Not government policy.

### The role of this policy area in improving the RM system

#### How does this policy area relate back to the problem definition in section 1.2?

As shown in **Figure 6**, the NPF is the critical step between the purpose and supporting provisions and regulatory plans, providing clear, practical and measurable direction for local authorities and communities to implement. The intent is for direction to be provided on nationally significant issues and when consistency is desirable. In the first instance, this is likely to be derived from the purpose of the proposed NBA, natural environment limits and outcomes.

**Figure 6: How the NBA National Planning Framework policy area relates to outcomes**



#### What are the key elements of a successful option?

There are several ways that changes to national direction can address the issues identified in section 1.2 to improve outcomes and ensure the system achieves the reform objectives. **Table 25** lists these as the elements of a successful option. These elements are considered throughout the interim analysis within this policy area.

**Table 25: The key elements of a successful option for the National Planning Framework (NPF)**

Element	Relevant reform objective(s)
<b>Greater integration:</b> ensuring the NPF is integrated will improve efficiencies and reduce complexity. It will also better support reconciliation of competing outcomes and priorities on the ground through RSSs (to be discussed in SPA RIS) and NBA plans.	<ul style="list-style-type: none"> <li>All (especially system performance)</li> </ul>
<b>Effective public input:</b> ensuring effective opportunities for public participation that enhances public input into strategic decisions will ensure it has the most wide-ranging impact and can reduce the system’s reliance on site-specific appeals and litigation.	<ul style="list-style-type: none"> <li>System performance</li> </ul>
<b>Robust development process:</b> ensuring the NBA provides a robust process for the development of the NPF that can be designed proportionately to the scale of what is being proposed. A robust process will improve the quality of the NPF; however this must be balanced with flexibility and efficiency of process.	<ul style="list-style-type: none"> <li>All (especially system performance)</li> </ul>
<b>Giving effect to the principles of Te Tiriti:</b> ensuring the process and substance of the NPF give effect to the principles of Te Tiriti and reflect te ao Māori, including mātauranga Māori.	<ul style="list-style-type: none"> <li>Te Tiriti</li> </ul>

### Options identification

#### What are the options?

This interim RIS assesses two options for national direction against the status quo.

Not government policy.

- **The status quo (RMA approach):** the status quo is comprised of national direction, which is released as separate statutory instruments, is largely ad hoc and discretionary (except for the New Zealand Coastal Policy Statement), and where instruments are generally prepared without a BOI.
- **Option 3A. Panel's Approach:** adopt the Panel's Approach to national direction where national direction is still released as separate statutory documents, though there would be a more robust development process through a BOI and greater mandatory national direction.
- **Option 3B. National Planning Framework:** adopt an alternative to the Panel's Approach and establish a NPF that explicitly incorporates strategic direction, is delivered through one statutory document and provides flexibility to design a robust process.

**Table 26** describes the key characteristics of each of these options compared to the status quo. These cover:

- **purpose and role** - what should national direction do? What tools should it provide to enable central government to influence or direct the content and development of regulatory plans?
- **Form** - what should national direction look like? For example, should it be released as separate statutory documents or should all national direction be incorporated into one statutory document?
- **process and safeguards** - how should national direction be developed, amended and approved? Should a detailed process like a BOI be used or should the legislation provide more flexibility?
- **mandatory direction** - what topics should be specified in the legislation and should they be mandatory or discretionary? Note that mandatory direction must be developed and discretionary direction *may* be developed.

Not government policy.

**Table 26: Key characteristics of the options for national direction**

	The status quo	Option 3A: Panel’s Approach	Option 3B: National Planning Framework
Purpose and role	The current types of national direction instruments <sup>23</sup> enable central government to address national issues by providing policy direction, ensuring standardisation and prescribing regulatory plan content such as through rules.	The purpose of national direction (National Policy Statements [NPS] and National Environmental Standards [NES]) would be to provide direction on matters of national significance to give effect to the purpose of the NBA and resolve any conflicts between those matters.	The purpose would be to provide direction on matters of national significance or matters where consistency is desired. The role would be explicitly broadened to take a strategic approach and to give effect to the principles of Te Tiriti.
Form and function	Current national direction instruments are issued separately. Best practice is to consider how they align with the existing suite of national direction when preparing a new national direction instrument.	Central government direction would still be issued as individual statutory documents, however NPS and NES could be issued in a single instrument. Instruments should be brought together and read in one place.	Central government direction would be delivered through a single comprehensive national direction document. This would incorporate all the powers of most (if not all) national direction instruments.
Process and safeguards	Current practice is for national direction to be prepared through the ‘alternative process’. This enables the Minister to design a process that allows for adequate consultation with the public and iwi authorities. The RMA does provide for a BOI process though it is rarely used. <sup>24</sup>	Central government direction would be prepared using boards of inquiry chaired by current or retired Environment Court judges. Only minor changes could use an alternative, streamlined process.	The NBA would set out different process tracks to provide flexibility for the process to be designed proportionately to the scale and impact of the proposals. The BOI process would be retained as one of the process tracks.
Mandatory direction	Only the New Zealand Coastal Policy Statement is <i>required</i> under the RMA.	The legislation would specify topics of both mandatory and discretionary central government direction. More central government direction would be mandatory (see appendix 1 of the Panel’s report).	The legislation would specify topics of both mandatory and discretionary central government direction. More central government direction would be mandatory (see the exposure draft).
<p><b>Key:</b> cell colour indicates the shift from the current system  <i>Status quo</i> → <i>Similar to status quo</i> → <i>Significantly different to status quo</i></p>			

Figure 7 shows how the different options compare to one another, with the Panel’s Approach (Option 3A) having a stronger focus on a robust process and mandatory topics, while Option 2B focuses more on combining national direction instruments, while still providing some flexibility in how the NPF is developed.

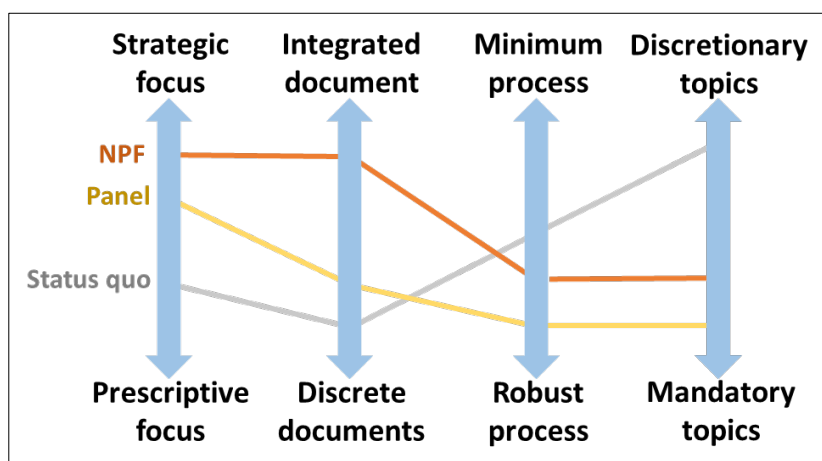
<sup>23</sup> These are national policy statements (NPSs), national environmental standards (NESs), regulations and planning standards. The scope of these instruments often overlaps.

<sup>24</sup> The RMA in 1991 required national policy statements be developed via a board of inquiry process. This was amended in 2005, as the process was considered too complex and time-consuming for some issues.



Not government policy.

Figure 7: Key differences between the national direction options



### Supporting proposals not directly included in the assessment

The Panel proposed several non-statutory measures to support these regulatory measures, such as establishing a pool of experts in mātauranga Māori to assist with national direction development; providing GIS layers where provisions are spatially defined; providing non-regulatory guidance to assist the public in understanding national direction; and maintaining national direction in a single repository on a publicly available website.

The Panel also assessed the transition to the NBA including the development of mandatory direction. Detailed transitional provisions were not developed; however the Panel did recognise that the recent progress made on national direction should not be wasted.

These proposals are not included within the description of the options within this interim RIS; however, non-statutory proposals are discussed in section 3, as they will affect the implementation of the options within this policy area.

### Assessment against Te Tiriti objective

One of the objectives of reform is to “give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori”. We have included some analysis of this in the section below, on the basis that the decisions taken preserve opportunities for iwi/Māori in the future system. However, it is noted that further decisions are needed to reflect Te Oranga o te Taiao in the NBA and further work is needed with iwi/Māori groups to determine the role for iwi/Māori in the process and substance of the NPF. This assessment will need to be updated as this work progresses.

### What options have been discarded or are out of scope?

The option of removing national direction (ie, devolving the implementation of the NBA entirely to local authorities) has been discarded as officials do not consider this is a feasible option. There is a

Not government policy.

clear role for secondary legislation to provide technical and detailed provisions to support the implementation of the NBA and ensure the legislation is fit for purpose over its lifetime.

### Interim options analysis

**Table 27: Summary table for NPF options**

		The status quo	Option 3A – Panel’s Approach	Option 3B – National Planning Framework
Cost benefit summary	Process costs	0	+	+
	Wider costs and benefits	0	NOT YET ASSESSED	NOT YET ASSESSED
Assessment against the reform objectives	Natural environment	0	+	++
	Development	0	+	++
	Te Tiriti	0	NOT YET ASSESSED	NOT YET ASSESSED
	Climate and risk	0	+	++
	System performance	0	-	+
	Overall objective assessment	0	+	++
Impact certainty assessment		NA	LOW	MEDIUM

### Impact certainty assessment

Option	3A	3B
Certainty	LOW	MEDIUM

Further evidence is required to better understand the impacts across both Options 3A and 3B. MfE has had time to complete an initial assessment of the process costs, but not the wider benefits. There has only been targeted consultation and engagement on these potential impacts. Further, the reliance on NBA plans to implement the NPF means certainty around overall implementation and compliance costs is low.

There are also significant interdependent policy issues that need to be addressed to better understand these impacts and their likelihood of occurring (see **Table 24**).

Nevertheless, it is more likely that the impacts identified for the Panel Plus approach (Option 3B) will arise than under the Panel’s Approach (Option 3A). This is because the requirement under the Panel’s Approach (Option 3A) to follow a BOI process with a large suite of mandatory national direction could be difficult to implement. The BOI process would restrict the system’s ability to respond to changing contexts and new information. However, it is likely to be more straight-forward to transition existing instruments, as individual instruments are retained in the future system. The Panel Plus approach (Option 3B) relies less on mandatory processes, which enables prioritisation and

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bespoke solutions. This ensures the system can respond to changing contexts and new information as it arises.

### Cost benefit summary

This sub-section provides key findings specific to the NPF, from section 2.3.

- **Process costs:** initial cost benefit assessment shows that the NPF would contribute to a RM system that costs less to operate overall when compared to the status quo (the figures provided below are the largest process cost changes and are not exhaustive).
  - *Establishment costs:* the NPF would require investment from central and local government to implement. There would be one-off establishment costs to develop and implement new central government direction as part of the NPF. These include \$63 million to central government and \$115 million to local government.
  - *Ongoing cost savings:* the NPF (along with NBA plans) would contribute to ongoing cost savings through reduced litigation over consenting decisions, resulting in savings of \$1.7 million per year to central government and \$30 million per year to local government. The NPF would also contribute to more certain plans, resulting in fewer consent applications. This delivers significant savings to users of around \$110 million per year. It would also reduce the need for each council to develop bespoke policy on the matters specified in national direction and result in fewer costs for entities operating across council boundaries and dealing with differing policies.
  - *Ongoing cost increases:* local government would face the majority of cost increases due to the NPF, estimated at an additional \$15 million per year to implement ongoing central government direction. Central government would also incur additional ongoing costs to monitor targets and environmental limits of \$4.5 million per year.
- **Wider costs and benefits:** section 2.3 sets out MfE’s initial assessment of the potential wider benefits of RM reform. The proposals within this policy area affect the magnitude of wider benefits, primarily by improving the likelihood that decisions made throughout the system achieve the proposed NBA’s purpose.

### ANALYSIS – Option 3A. Panel’s Approach

*Adopt the Panel’s Approach to national direction, where national direction is still released as separate statutory documents, though there would be a more robust development process through a BOI and greater mandatory national direction.*

### Assessment against the reform objectives

Overall assessment

+

This option would be somewhat better than retaining the status quo. It would enhance the effectiveness of the systems of limits and outcomes, increasing the likelihood that the wider benefits identified in section 2.3 would arise. However, the proposal’s reliance on mandatory national direction and a BOI may be significantly less flexible, and therefore inefficient. It would also not

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adequately address key issues with the current system, such as a reliance on separate statutory documents, to improve integration.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>• Rigorous development process</li> <li>• Likely to be more straight-forward to transition existing instruments</li> </ul>	<ul style="list-style-type: none"> <li>• Unlikely to noticeably improve integration</li> <li>• Board of inquiry processes are time-consuming and inflexible</li> </ul>

Table 28 explains this assessment in more detail against each reform objective.

Table 28: Assessment of Option 3A against the reform objectives when compared to the status quo

Reform objective	Assessment
<p><b>Natural environment</b> +</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u>  <b>Robust development process:</b> the mandatory BOI process could improve the rigour of central government direction development, improving the quality of national direction instruments and their effectiveness.</p> <p><u>Disadvantages</u>  <b>Greater integration:</b> the duty proposed by the Panel to resolve conflicts between national direction instruments may encourage integration, however, it is unlikely to be a significant improvement compared to the status quo. This is because retaining individual instruments does not address one of the core issues with the current system, which allows central government to make national direction but sidesteps the difficult trade-offs and defers these to councils through regulatory plans or consents.</p>
<p><b>Development</b> +</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u>            See <b>robust development process</b> under the natural environment assessment.</p> <p><u>Disadvantages</u>            See <b>greater integration</b> under the natural environment assessment.</p>
<p><b>Te Tiriti</b> NOT YET ASSESSED</p> <p>This assessment will be completed after further engagement and policy work.</p>	<p><b>Giving effect to the principles of Te Tiriti:</b> this option could better reflect the principles of Te Tiriti than under the status quo, by requiring the development of an NPS for Te Tiriti. This could increase the likelihood that the system (especially regulatory plans) would incorporate mātauranga Māori, provide greater participation for iwi/Māori in decision-making and the protection of taonga. However, this is subject to significant uncertainty and would depend on detailed design informed by further engagement with Māori.</p> <p>See <b>robust development process</b> under the natural environment assessment.  <i>note that this objective is also discussed in section 2.4.</i></p>
<p><b>Climate and risk</b> +</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u>            See <b>robust development process</b> under the natural environment assessment.</p> <p><u>Disadvantages</u>            See <b>greater integration</b> under the natural environment assessment.</p>
<p><b>System performance</b> -</p> <p>This option is likely to perform worse than the status quo in meeting this reform objective.</p>	<p><u>Disadvantages</u>  <b>Effective public input:</b> a rigorous BOI process could enhance public involvement. However, it also restricts the use of bespoke engagement processes and would not be able to realise the associated efficiency benefits. On balance, this would perform worse compared to the status quo, which provides for both avenues (bespoke and BOI processes).</p> <p><b>Cost of development:</b> the mandatory BOI process is likely to negatively affect system performance, as it reduces the flexibility (and subsequently efficiency) provided under the status quo to tailor a development process to a particular issue. It may also reduce the responsiveness of the system as central government direction may need to be set in a timely manner to protect the natural environment.</p> <p><i>note that process costs are discussed in the cost benefit summary section of this policy area and section 2.3</i></p>

Not government policy.

## ANALYSIS – Option 3B. National Planning Framework

*Adopt an alternative to the Panel’s Approach and establish a National Planning Framework, which explicitly incorporates strategic direction, is delivered through one statutory document and provides flexibility to design a robust process.*

### Assessment against the reform objectives

Overall assessment

++

This option would be significantly better than retaining the status quo. It would likely significantly enhance the effectiveness of the new system of limits, outcomes and targets within the NBA, while retaining a degree of flexibility to respond to new and emerging issues. It would also tailor the process to more effectively involve iwi/Māori and the public at the strategic level.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>Improved integration</li> <li>Improved public input</li> </ul>	<ul style="list-style-type: none"> <li>Likely higher initial upfront costs to transition and create a cohesive document</li> </ul>

Table 29 explains this assessment in more detail against each reform objective.

Table 29: Assessment of Option 3B against the reform objectives when compared to the status quo

Reform objective	Assessment
<p><b>Natural environment</b> ++</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Greater integration:</b> the requirement to prepare the NPF as one statutory document will provide a strong directive for integration and reduce complexity for local authorities and users. It will also improve the ability of the RM system to deliver on the NBA outcomes and ensure the requirements for natural environment limits are met.</p>
<p><b>Development</b> ++</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>greater integration</b> under the natural environment assessment.</p>
<p><b>Te Tiriti</b> NOT YET ASSESSED</p> <p>This assessment will be completed after further engagement and policy work.</p>	<p><b>Giving effect to the principles of Te Tiriti:</b> this approach preserves opportunities for iwi/Māori in the future system and as a preliminary assessment is likely to be an improvement compared to the status quo. However, the performance of the NPF against this objective cannot be assessed at this stage, because it depends on how Te Oranga o te Taiao is incorporated in the NBA (which will affect the NPF) and the role for iwi/Māori in the process and substance of the NPF. These decisions will be made after further policy development and engagement with Māori.</p> <p>See <b>greater integration</b> under the natural environment assessment. <i>note that this objective is also discussed in section 2.4.</i></p>
<p><b>Climate and risk</b> ++</p> <p>On balance, this option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>greater integration</b> under the natural environment assessment.</p>
<p><b>System performance</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Effective public input:</b> explicit strategic direction and a combined suite of central government direction would enhance accessibility (ie, material would all be in one cohesive document) so that the public are better able to input at the strategic level.</p>

Not government policy.

	<p><b>Flexible development process:</b> a flexible process, that provides for both a BOI and an alternative process where appropriate, would help increase efficiency and enable central government to respond quickly to emerging environmental issues.</p> <p><u>Disadvantages</u></p> <p><b>Cost of development:</b> this approach will likely require a significant investment from central and local government to create and implement the NPF. <i>note that process costs are discussed in the cost benefit summary section of this policy area and section 2.3</i></p>
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**Robust development process:** this has not been discussed in this assessment of Option 3B as it is not clear from the current level of detail how the proposed NPF development process will differ from the status quo. This will become clearer as policy is progressed.

### The preferred option based on interim analysis

#### *Option 3B: Introduce a National Planning Framework*

This interim analysis shows that introducing a NPF into the proposed NBA (Option 3B):

- would align better with the reform objectives than both the status quo and the Panel's Approach (Option 3A)
- would likely contribute to a net decrease in process costs compared to the status quo (see section 2.3)
- would likely have greater upfront costs for transition and developing the first combined document than the Panel's Approach (Option 2A), however the benefits will be greater over time as integrated management is more likely to be achieved
- is likely to be generally supported by stakeholders, though this support will depend on more detailed design.

The support of iwi/Māori for this approach will depend on more detailed policy design on the decision-making and development process for the NPF.

This analysis may be updated within a final RIS following the select committee inquiry on the exposure draft. This may change the preferred option or lead to the development of new options to reflect feedback from Māori, local government and stakeholders.

Not government policy.

## Policy area 4: NBA Plans

### Context

#### What is this policy area?

This section covers high-level policy decisions for whether there should be one regulatory plan per region. Regulatory plans (or NBA plans in the context of a proposed NBA) publicly establish the policy and planning framework to manage the allocation and use of resources locally and regionally. Under the current RMA, this is achieved through Regional Policy Statements, regional plans and district plans.

Policy area 1: Legislative architecture	<i>What legislation is needed?</i>
Policy area 2: NBA Purpose and supporting provisions	<i>What should the system be achieving?</i>
Policy area 3: NBA National Planning Framework	<i>What is the role and process for central government in the system?</i>
→ Policy area 4: NBA plans	<i>How should local government planning support this?</i>

Critical to this analysis is the concept of outcomes-focused planning, which is a way to ensure the benefits of activities are appropriately considered. In the context of regulatory plans, an outcomes-based approach works for both enabling activities (eg, growth) and the protection of resources (eg, biodiversity) and responds directly to the needs of communities in each region.

- *Enabling activities:* to meet a specific regional target for housing growth, an identified plan outcome might be “to accommodate X additional housing capacity within 500m of key public transport nodes”. A corresponding policy might then specify that a certain level of increased housing density is required. The rule framework would then enable housing to achieve that density, subject to appropriate standards being met. Importantly, in achieving the outcome of higher density housing, effects can still be managed (eg, stormwater run-off and transport congestion).
- *Protection of resources:* a plan would indicate which resources need managing, protecting or restoring. Outcomes would specify the desired outcome and policies would indicate what needs to be considered to ensure that outcomes are achieved through the resource consent process. Rules and other processes (eg, compliance or monitoring) can be used to prevent or manage activities and effects, to ensure the desired outcome is achieved.

#### What decisions have already been made?

In December 2020, Cabinet made several in-principle decisions that affect NBA plans.

- Each region will have a single NBA plan.
- NBA plans will implement the NPF.
- NBA plans will give effect to the principles of Te Tiriti o Waitangi.
- NBA plans will focus on outcomes.

Not government policy.

Cabinet also noted 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.

**Constraints and interdependencies - how will decisions in other policy areas affect this area?**

It is not possible to accurately identify all the impacts of the options within this policy area at this stage. A final RIS to support decisions on the final Bill will contain updated analysis once:

- the select committee has reported back on the exposure draft inquiry
- impact analysis is completed for the interdependencies identified in **Table 30** below (where these are within the scope of RM reform)
- further cost benefit assessment is completed, that provides more information on the wider benefits and costs of reform as well as the process costs.

**Table 30: Interdependencies between NBA plans and other policy areas**

Purpose and supporting provisions interdependencies	
<i>Within the scope of this interim RIS</i>	Much of the mandatory content in NBA plans will be determined by decisions in Policy areas 2 and 3. For example, decisions on limits and outcomes (Policy area 2) will be reflected in national direction (Policy area 3) and subsequently in the content of regulatory plans.
<i>Beyond the scope of this interim RIS (but within the scope of RM reform)</i>	Specific to NBA plans, further work is required on plan content (including where it relates to consenting), decision-making (including the role of Māori), residual functions of local authorities, Ministerial oversight of plans and the planning system and the role of merits-based appeals. Further work is also being undertaken on how region-wide plans would affect unitary authorities and offshore islands.  This policy area interacts with several other policy areas beyond the scope of this interim RIS, such as with consenting, system oversight, CME and the proposed SPA, which will affect plan content. NBA plans will also have a relationship with the proposed CAA, such as how and where existing uses are managed and there may be a need for specific processes, roles and responsibilities for managed retreat and climate change adaptation. ‘Low’, ‘medium’ and ‘high’ options for central government intervention will be developed for the CAA.
<i>Beyond the scope of RM reform</i>	A change to outcomes-focused planning would require a significant shift in culture and capability and planning at the regional level will require increased cooperation between local authorities, as well as with iwi/Māori (discussed in section 3). It will also depend on whether these new functions are appropriately resourced.

**Consultation and engagement so far**

Appendix b provides a summary of feedback received from iwi/Māori groups and local government so far. This has shown general support for moving to region-wide plans, however, feedback from iwi/Māori groups and local government has demonstrated that ultimately support will depend on the more detailed design of the process and governance, which is beyond the scope of this interim RIS.

**The role of this policy area in improving the RM system**

**How does this policy area relate back to the problem definition in section 1.2?**

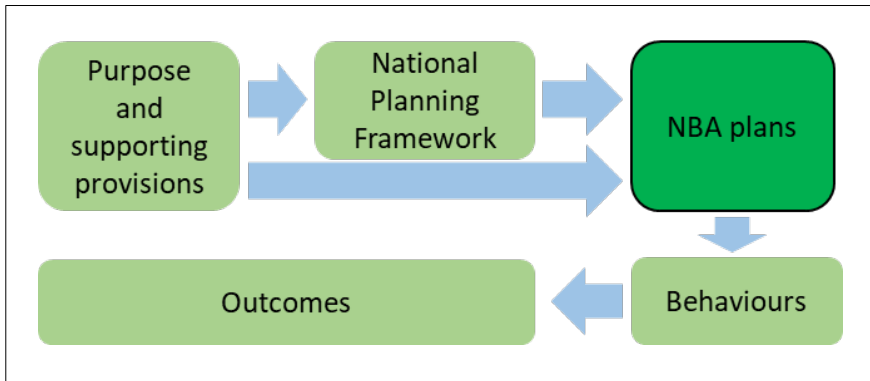
NBA plans are the core vehicle of regulation within the RM system. As shown in **Figure 8**, they translate the purpose and supporting provisions and national direction to the regional and local level, setting out how people can or cannot use natural and built environments. Strong and cohesive national direction is critical for NBA plans to be effective. How effective regulatory plans are in



Not government policy.

practice will depend on their content and development process. This section focuses on how moving to one regulatory plan per region could address some of the issues identified in section 1.2 and better align with the reform objectives.

**Figure 8: How the NBA plan policy area relates to outcomes**



**What are the key elements of a successful option?**

There are several ways that changes to the coverage of plans can address the issues identified in section 1.2 to improve outcomes and ensure the system achieves the reform objectives – **Table 31** lists these as the elements of a successful option. These elements are considered throughout the interim analysis within this policy area.

**Table 31: The key elements of a successful option for NBA plans**

Element	Relevant reform objective(s)
<b>Greater integration:</b> ensuring NBA plans are integrated across regional and district functions (ie, manage resources in a comprehensive and connected way) will reduce complexity and reduce the risks of unacceptable cumulative effects that lead to poor environmental outcomes.	<ul style="list-style-type: none"> <li>All (especially natural environment and system performance)</li> </ul>
<b>Considering benefits:</b> ensuring the benefits of a proposed activity are factored into decisions will encourage decisions on NBA plan content with positive impacts on the NBA outcomes.	<ul style="list-style-type: none"> <li>Natural environment</li> <li>Development</li> <li>Climate and risk</li> </ul>
<b>Clarifying plan content:</b> ensuring that NBA plans are accessible to users and that decisions (and the plan content) are clear will provide certainty to regulated parties and improve the efficiency of the planning system.	<ul style="list-style-type: none"> <li>System performance</li> </ul>
<b>Giving effect to the principles of Te Tiriti:</b> ensuring the role for iwi/Māori in the process to develop and make decisions on NBA plans and their content gives effect to the principles of Te Tiriti. This will ensure NBA plans appropriately reflect iwi/Māori interests.	<ul style="list-style-type: none"> <li>Te Tiriti</li> </ul>

**Options identification**

**What are the options?**

This interim RIS assesses one high-level option for regulatory plans against the status quo.

- The status quo (RMA approach):** the current RMA provides for both local and regional planning through a suite of planning documents (Regional Policy Statements, Regional Plans and District Plans). Local authorities may voluntarily combine their planning documents.

Not government policy.

- **Option 4A. NBA plans:** the Regional Policy Statement and all the resource management plans of a region would be combined into one single plan per region, for land, freshwater and the coastal marine area. These plans would be outcomes focused and give effect to the principles of Te Tiriti. The details of how this would be achieved in practice is out of scope of this interim RIS and will be considered by Ministers at a later date. This option aligns with the previous decisions made by Cabinet and the Panel’s Approach (ie, officials are not currently recommending any refinements or alternatives at this high level).

### Assessment against Te Tiriti objective

One of the objectives of reform is to give effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori. We have included some analysis of this in the section below on the basis that the decisions taken preserve opportunities for iwi/Māori in the future system. However, it is noted that further decisions are needed to reflect Te Oranga o te Taiao in the NPF and NBA plans and further work is needed with iwi/Māori groups to determine the role for iwi/Māori in the process and substance of the NBA plans. This assessment will need to be updated as this work progresses.

### What options have been discarded or are out of scope?

Officials have not had time to consider in sufficient detail the option of delivering region-wide planning through local government reorganisation. This option is not within the scope of the RM system and was not considered by the Panel, as it was explicitly ruled out of scope by their Terms of Reference. As noted earlier, the ‘Review into the Future for Local Government’ will provide a final report in April 2023.

## Interim options analysis

Table 32: Summary table for NBA plan options

		The status quo	Option 4A – NBA plans
Cost benefit summary	Process costs	0	+
	Wider costs and benefits	0	NOT YET ASSESSED
Assessment against the reform objectives	Natural environment	0	+
	Development	0	+
	Te Tiriti	0	NOT YET ASSESSED
	Climate and risk	0	+
	System performance	0	+
	Overall objective assessment	0	+
Impact certainty assessment		NA	LOW

### Impact certainty assessment

Certainty	LOW
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Not government policy.

There is a low level of certainty that the identified impacts will arise because of several factors.

- **The quality of evidence:** MfE has had time to complete an initial assessment of the process costs, but not the wider benefits. There has only been targeted consultation and engagement on these potential impacts.
- **The complexity to implement the option:** a region-wide plan is a significant shift from the status quo and could be complex to implement.
- **Timeframes:** implementation will significantly affect when these impacts arise. Changes within this policy area will only be fully implemented after the NPF and RSSs under the proposed SPA are completed.
- **Interdependencies:** see **Table 26**.

### Cost benefit summary

This sub-section provides key findings specific to the NPF from section 2.3.

- **Process costs:** initial cost benefit assessment shows that region-wide NBA plans would contribute to a RM system that costs less to operate overall, compared to the status quo (the figures provided below are the significant process cost changes and are not exhaustive).
  - *Establishment costs:* moving to region-wide NBA plans would require a significant one-off investment from local government to develop their first plans of around \$97 million. This estimate is based on existing information about plan-making costs for local government and could vary. It will be revised in the final RIS should additional information be made available.
  - *Ongoing cost savings:* NBA plans would contribute to the cost savings described in Policy area 3 (NPF) by helping to reduce litigation and consent volumes.
  - *Ongoing cost increases:* NBA plans would contribute to the cost increases described in Policy area 3 (NPF).
- **Wider costs and benefits:** section 2.3 sets out MfE's initial assessment of the potential wider benefits of RM reform. The proposals within this policy area affect the magnitude of wider benefits, primarily by enhancing the likelihood that decisions made throughout the system achieve the proposed NBA's purpose.

### ANALYSIS – Option 4A. NBA plans

*The Regional Policy Statement and all the resource management plans of a region would be combined into one single plan per region, for land, freshwater and the coastal marine area. These plans would be outcomes-focused and give effect to the principles of Te Tiriti.*

#### **Assessment against the reform objectives**

Overall assessment

+

This option would be somewhat better than retaining the status quo. A region-wide plan that is outcomes focused will be more integrated and accessible to regulated parties than plans under the

Not government policy.

status quo. The key disadvantage is that this option is a significant shift from the status quo, which may be resource intensive to implement.

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> <li>Improved integration</li> <li>Ensures consideration of benefits</li> </ul>	<ul style="list-style-type: none"> <li>Significant shift from the status quo may be resource intensive to implement</li> </ul>

**Table 33** below explains this assessment in more detail against each reform objective.

**Table 33: Assessment of Option 4A against the reform objectives when compared to the status quo**

Reform objective	Assessment
<p><b>Natural environment</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Greater integration:</b> one plan per region that covers both resource use, allocation and land use management will allow plan provisions to be integrated, contributing to more cohesive management of the natural and built environment, and reducing complexity.</p> <p><b>Considering benefits:</b> shifting focus to positive outcomes enables the benefits of an activity to be measured and evaluated alongside the effects of an activity and enables plans to be more responsive to the needs of communities and more able to achieve the NBA outcomes.</p>
<p><b>Development</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>greater integration and considering benefits</b> under the natural environment assessment.</p>
<p><b>Te Tiriti</b> NOT YET ASSESSED</p> <p>This assessment will be completed after further engagement and policy work.</p>	<p><u>Advantages</u></p> <p><b>Giving effect to the principles of Te Tiriti:</b> as a preliminary assessment, this option is likely to perform better than the status quo. The requirement that NBA plans give effect to Te Tiriti should mean iwi/Māori are involved early and more comprehensively in planning, where it matters most to them. However, more detailed design of the plan-making process and decision-making, as well as engagement with iwi/Māori is required before making this assessment.</p> <p><i>note that this objective is also discussed in section 2.4.</i></p>
<p><b>Climate and risk</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p>See <b>greater integration and considering benefits</b> under the natural environment assessment.</p>
<p><b>System performance</b> +</p> <p>This option is likely to perform better than the status quo in meeting this reform objective.</p>	<p><u>Advantages</u></p> <p><b>Clarified plan content:</b> Clearly identifying desired outcomes and stating limits will make it clearer which activities or developments are ‘allowed’ or ‘not allowed’ (to achieve development or environmental protection outcomes). Clarifications of the conditions they need to meet improves certainty for both communities and development sectors. This will make requirements on regulated parties clearer, reducing ambiguity, complexity and the risk of litigation.</p> <p><i>note that process costs are discussed in the cost benefit summary section of this policy area and section 2.3</i></p>

### The preferred option based on interim analysis

*Option 4A. NBA plans that are region-wide, outcomes focused and give effect to the principles of Te Tiriti.*

This interim analysis shows that introducing NBA plans (Option 4A):

- would align better with the reform objectives than the status quo
- would likely contribute to a net decrease in ongoing process costs than the status quo (see section 2.3), once the large establishment costs have been met

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- is likely to be generally supported by users (noting that support would ultimately depend on more detailed design).

However, Option 4A could be difficult to implement in practice due to it being a significant shift from the status quo.

Consultation and engagement so far has shown that support for this option from local government and iwi/Māori will depend on more detailed design of the governance and decision-making processes.

This analysis may be updated within a final RIS, following a select committee inquiry on the exposure draft. This may change the preferred option or lead to the development of new options to reflect feedback from Māori, local government and stakeholders.

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## Section 3: Implementing the preferred option

This is an interim implementation section that will be updated for the final RIS. This is because the interim RIS only covers some parts of a reformed RM system – further policy work will be completed before the preferred option for system reform, and how it would be implemented, is finalised. This section discusses how to implement the entire package of RM reform, noting that this RIS only covers certain aspects of the broader reform and further policy design is underway.

### 3.1 How will reform be implemented?

This section discusses what we currently know about:

- who would have responsibility for operating and enforcing the new arrangements
- when the new arrangements would come into effect
- implementation risks.

#### **Responsibility for operating and enforcing the new arrangements**

The same parties would be responsible for operating and enforcing a reformed RM system as under the status quo. However, their roles and responsibilities would be changed by system reform. The key changes to system roles that can be attributed to the proposals within this interim RIS are that:

- central government will have an increased role, to deliver the NPF to implement a system of limits and other mandatory topics. It would also need to provide non-statutory guidance to local authorities to support the implementation of RM reform
- local government would have an increased role to collaborate on regulatory plans, shift to outcomes focused planning and implement the NPF
- Iwi/Māori would have an increased role in the NPF and regulatory plans.

Whether the benefits of system reform arise will depend on the capability and capacity of these parties to effectively undertake these amended roles. The likely resourcing implications of these role changes are discussed in section 2.3.

Another core area of local government responsibility in the RM system is compliance, monitoring and enforcement. This covers matters such as monitoring resource consent applications, breaches of plan rules and policies and plans. Most CME activity in the RM system is undertaken by regional councils and territorial authorities, with the Environmental Protection Authority having a defined role to support local government on compliance, monitoring and enforcement. Local authorities have a high degree of discretion about the scope and nature of CME activities they undertake. The amount of CME activity varies depending on an areas number of consents, size of the rating base and local priorities. In addition to their regulatory role, local authorities also *hold* consents and need to comply with their own rules. The Panel has proposed several changes to CME under the RMA to provide more appropriate enforcement tools in these situations as well as clarifying the responsibilities and

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duties of local authorities – these will be addressed in the next tranche of NBA policy work and reflected in an updated implementation section of the final RIS.

### When the arrangements would come into effect

Implementation timeframes will become clearer as policy work for the SPA, the CAA and the remainder of the NBA is completed. However, system reform will take considerable time to implement, with the Panel anticipating that the overall transition to a new system would be completed within ten years. The reason for these timeframes is primarily due to sequencing and developing the new arrangements. A fully implemented system will see each region having produced an NBA plan that incorporates central government direction provided through the new NPF and a new RSS. It may be the case that to speed up the transition, first generation regulatory plans are approved prior to an RSS being prepared and the NPF being finalised. The diagram below provides an example of how and when system reform may be implemented. A more comprehensive implementation plan will be included in a final RIS. Decisions are yet to be made on how the existing suite of RMA national direction will be aligned with the new system – this will impact transition timeframes.

**Table 34: Proposed indicative timeframes for RM system reform implementation**

Implementation Step	Timeframe
<i>Note: Proposed steps for CAA not included</i>	
Policy and targeted engagement on NBA and SPA	2021
Policy and engagement on mandatory national direction	2021-2022
Natural and Built Environments and Strategic Planning Bills - select committee inquiry	Early-mid 2022
NBA and SPA enacted	Late 2022
Model RSS	2021-2023
Mandatory components of the NPF notified in stages	2022-2025
Model NBA Plan	2023-2025
RSS (can be started in 2023 if based on an existing spatial strategy), other RSS sequencing determined by Minister	2023-2026
Early RSS reviewed for NPF consistency	2025
All NBA plans complete (appeals resolved) by 2032	2025-2032
NPF due for review (the Panel proposed that this would be nine years after it is made)	2033

### Implementation risks

The opportunity presented by system reform is significant. However, reforming the RMA addresses the framework for making regulatory decisions – substantive change will depend on how the new framework is implemented by central government, local authorities, iwi/Māori and users. The legislation will specify the purpose of the NPF, RSSs, and NBA plans, but the actual content of these instruments will be developed later by a range of parties. That content will depend on the quality of information that decision-makers have, as well as their incentives, capability and capacity.

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This section sets out MfE's initial assessment of implementation risks that may prevent system reform from delivering the benefits identified within this interim RIS. It also introduces initial thinking on how these risks may be mitigated. These risks cut across the entire system. More specific implementation risks and interdependencies are also discussed in each policy area in section 2.

### Capacity/funding

- **Implementation risk:** the most significant risk with system reform is that central government, local authorities and iwi/Māori may lack the capacity and necessary funding to establish and operate the new system. The Castalia analysis of process costs has indicated that this reform has large financial implications, especially for local authorities (see section 2.3).
- **Potential mitigation:** central government can partially mitigate this risk by providing clear direction, including limits and methodologies, through the NPF and particular supported initiatives, such as prototype spatial strategies and regulatory plans, and non-statutory guidance to minimise the burden of interpreting and implementing the new legislation. However, this will not address the ongoing increased costs to local authorities to operate the new system. Funding to iwi/Māori to fulfil roles in the new system will also mitigate this risk.

### Implementation timeframes

- **Implementation risk:** as noted earlier in this section, implementation of a new and quite different system may take considerable time. There is a risk that the longer it takes for the system to be implemented, the longer benefits from a fully operational reformed system will be delayed.
- **Potential mitigation:** there are several non-regulatory measures that government can take to speed up the implementation process. For example, MfE is considering how phasing of the preparation of new plans in some regions could be done with central government support, to create a model NBA plan, which could reduce timeframes overall.

### Capability/culture

- **Implementation risk:** there is a risk that it is hard to change away from existing institutional norms and culture and that the capability to develop the new NPF and regionalised strategies and plans may not develop quickly enough to deliver the reforms. The proposals could also affect existing relationships and ways of working that are beneficial, for example existing arrangements between iwi/hapū and councils.
- **Potential mitigation:** MfE can support a change in culture to align with the reformed system by working closely with local government to develop skills and training. This could focus on the areas needed to ensure the policy intent of reform is reflected in spatial strategies and regulatory plans.



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### Interactions with other regulatory systems or policy work

- **Implementation risk:** the RM system is one of many systems and initiatives that affect the outcomes identified in section 1.2. The effectiveness of system reform will be greatly affected by these interrelated decisions and programmes. There is a risk that if these initiatives do not line up and coherently address issues, this may further complicate the system and reduce its effectiveness.
- **Potential mitigation:** central government will need to continue coordinating and finding complementary ways for achieving a fair and reasonable regulatory system across all sectors.

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## 3.2 Monitoring, evaluation and review

This is an interim section that will be updated for a final NBA RIS. A final RIS will set out how the new arrangements will be reviewed along with an approach to monitoring the performance of the reformed system to ensure it is meeting its new purpose and the Government's objectives. This interim RIS provides MfE's initial approach to ensuring that system performance monitoring is fit-for-purpose for a reformed RM system.

These new arrangements, once confirmed, will be integrated into MfE's regulatory stewardship obligations. MfE's existing regulatory stewardship strategy can be found here: <https://www.mfe.govt.nz/publications/rma/our-regulatory-stewardship-strategy-2018>. This sets out how MfE monitors the performance of its regulatory systems, including the information it gathers on system performance through Environmental Reporting and the National Monitoring System.

The Panel proposed several changes to how RM system performance is monitored that will be considered in policy work prior to the final NBA RIS. These proposals included:

- MfE should establish - in consultation with other agencies - a comprehensive, nationally coordinated environmental monitoring system
- the Minister for the Environment should provide national direction on how the system should be implemented, including national direction developed with Iwi/Māori on how to incorporate Iwi/Māori perspectives and mātauranga Māori into the system
- MfE should be responsible for implementing the system and monitoring performance of the system at a national level
- local authorities should continue to have primary responsibility for the collection of data and the monitoring of system performance at local government level
- NBA plans should provide for monitoring and reporting.

### **A potential adaptive management approach to monitoring, evaluation and review**

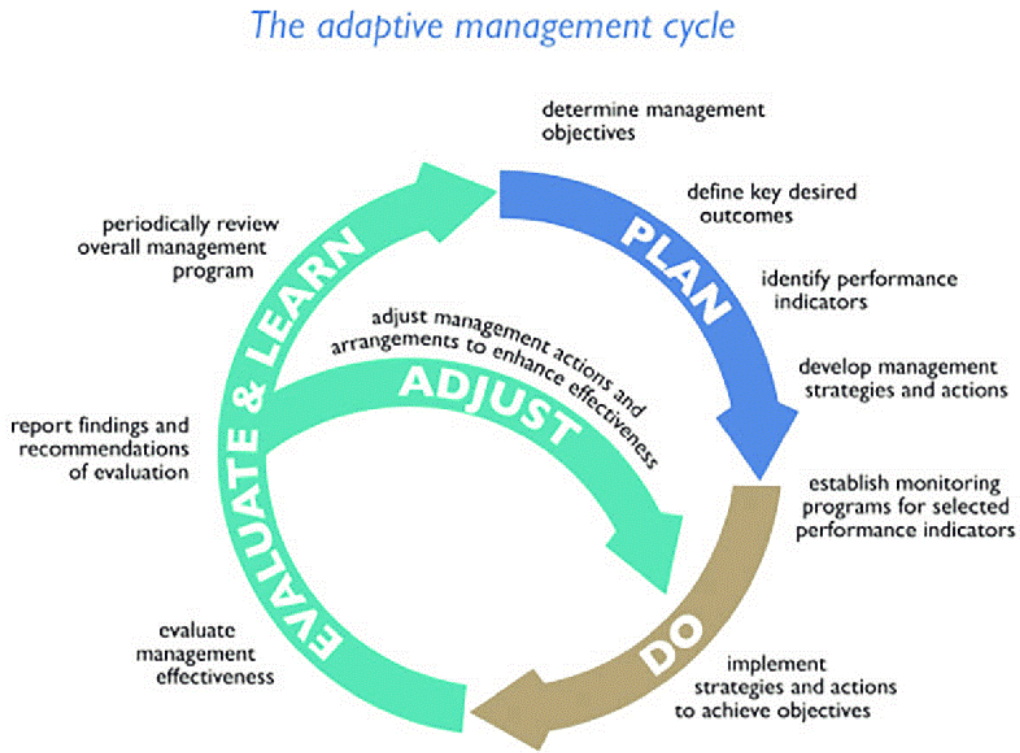
Before preparing a final RIS, MfE will investigate whether an adaptive management approach would be appropriate for implementing the reform. Adaptive management is the approach of being flexible, working iteratively and collaboratively to ensure outcomes are achieved in the most effective and efficient ways possible. This requires feedback loops, so that the implementation approach can be adjusted where problems arise. This approach is outlined in more detail in the Healthy Waterways RIS<sup>25</sup> and summarised in Figure 9.

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<sup>25</sup> <https://www.mfe.govt.nz/regulatory-impact-statements/action-for-healthy-waterways-part-11>

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Figure 9: The adaptive management cycle



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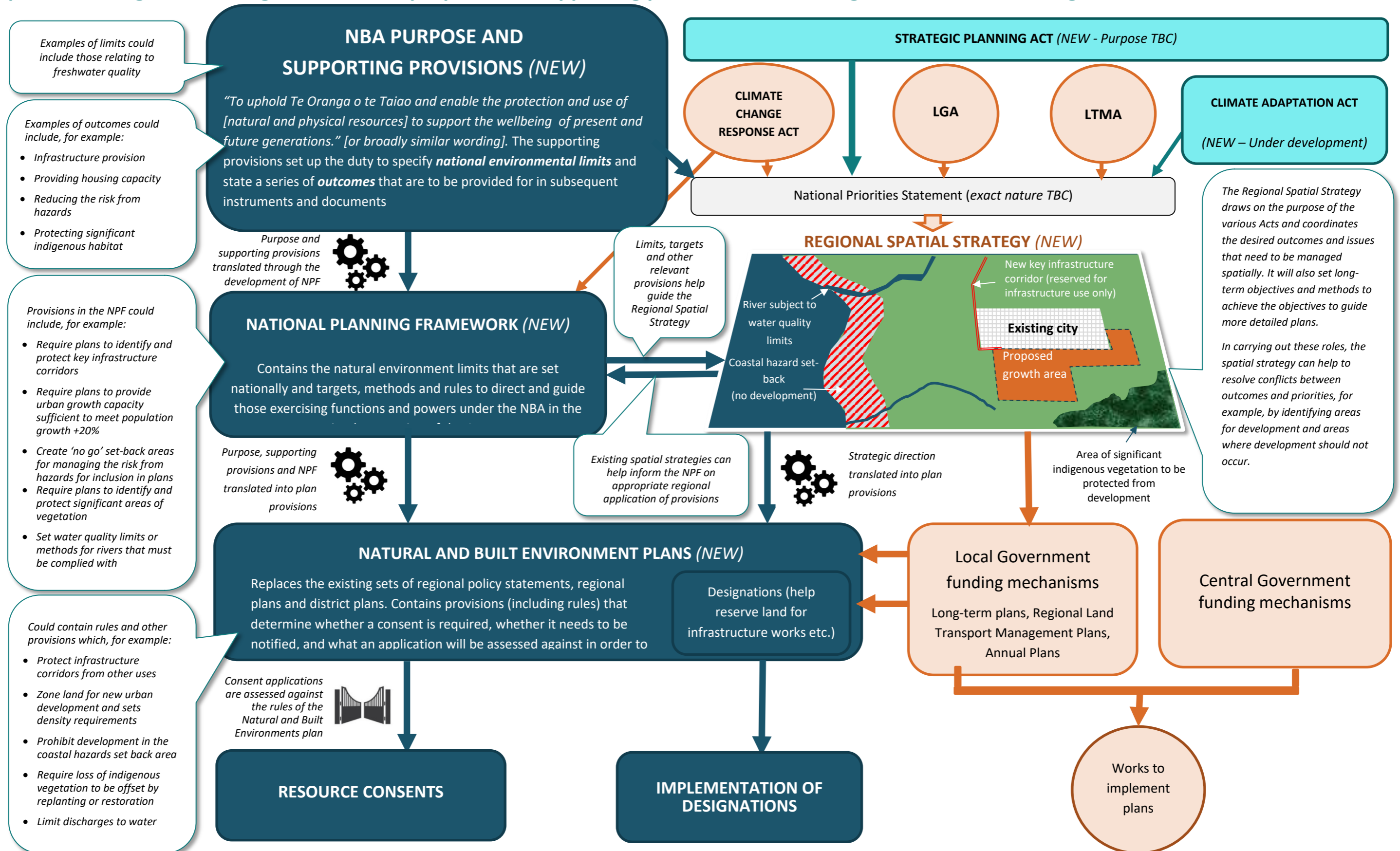
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## Appendices

## Appendix a: Diagram showing how the NBA purpose and supporting provisions flow through to consent and designation decisions





## Appendix b: Summary of Panel review and RM reform consultation and engagement so far

During the development of these proposals, there has been targeted consultation throughout various stages:

- the Resource Management Review Panel (the Panel) undertook targeted public consultation and engaged with iwi/Māori on an Issues and Options paper
- MfE engaged with iwi/Māori groups during the development of the exposure draft (section 2.4 details the process)
- MfE received feedback from local government technical experts and Local Government New Zealand (LGNZ). MfE, supported by DIA, continues to work with LGNZ and the local government sector to ensure a spread of council types and geographical locations are able to provide input into resource management (RM) reform.

The policy process has not progressed far enough to accurately understand Māori, local government and stakeholder support for the RM reform proposals within this interim Regulatory Impact Statement – engagement is more advanced on the Panel’s Approach (Option A) than the ‘Panel Plus’ approach (Option B). Policy proposals will be subject to further consultation once an exposure draft is released for public comment via a select committee enquiry.

Table of key themes from consultation and engagement so far

	From Panel consultation on its Issues and Options paper	From MfE engagement with iwi/Māori groups	From MfE engagement with local government
<b>Policy area 2: NBA Purpose and supporting provisions</b>	<ul style="list-style-type: none"> <li>• Most submitters agreed the Resource Management Act 1991 (RMA) should be reoriented to focus on positive ‘outcomes’ in addition to managing adverse ‘effects’.</li> <li>• Some submitters supported a new focus in the purpose and principles of the RMA on ‘enhancing’ the environment, including all iwi/Māori submitters. However, other submitters considered that the purpose should not ‘unfairly’ elevate environmental protection over development issues.</li> <li>• Iwi/Māori groups considered greater weight should be given to Te Tiriti.</li> </ul>	<ul style="list-style-type: none"> <li>• Te Tiriti clause should not be undermined by other provisions in the NBA and should give effect to Te Tiriti o Waitangi itself.</li> <li>• In order to reflect Te Ao Māori concepts of environmental management, the purpose should refer to the sustainability of the environment for its own sake (as opposed to solely to support the needs of present and future generations).</li> <li>• The compartmentalisation of the environment into ‘natural environment’ and ‘built environment’ was inconsistent with Te Ao Māori and did not sufficiently recognise the interconnectedness between human and non-human aspects of the environment.</li> </ul>	<ul style="list-style-type: none"> <li>• The phrase ‘quality of the environment’ is vague and likely to be difficult to implement.</li> <li>• The Purpose should ensure resources are sustained for future generations while recognising the role of resource use in people’s wellbeing.</li> <li>• There is an over-reliance on national direction which, given experiences under the RMA, is a risk to implementation.</li> <li>• 21 outcomes is too many and is likely to result in confusion and conflicting priorities.</li> <li>• Need to recognise there are inherent issues in the system that will be difficult to resolve.</li> </ul>
<b>Policy area 3: NBA National Planning Framework</b>	<ul style="list-style-type: none"> <li>• There was broad support for a single combined instrument, though some submitters raised concerns that it would result in a high-level document that would lose its purpose and value.</li> <li>• Submitters also raised concerns with the robustness of the alternative process for creating national direction.</li> </ul>	<ul style="list-style-type: none"> <li>• The subject matter and decision-making process for central government direction through the NPF is critical to iwi/Māori (noting that the decision-making process is not within scope of this interim RIS).</li> <li>• Iwi/Māori should be involved in setting limits and targets.</li> </ul>	<ul style="list-style-type: none"> <li>• National issues require national policy guidance. However, where additional responsibilities are assigned to local government from central government, these should be funded appropriately.</li> <li>• Central government needs to resolve conflicts between different pieces of national direction – eg, conflicts between highly productive land and urban development, or between forestry and freshwater.</li> <li>• National direction needs to be consistent, but also take account of regional differences.</li> </ul>
<b>Policy area 4: NBA plans (specifically regarding moving to a region-wide plan)</b>	<ul style="list-style-type: none"> <li>• Several submitters supported the concept of combined plans (NBA plans are combined plans).</li> </ul>	<ul style="list-style-type: none"> <li>• A strong interest is in plan decision-making and its process (this is beyond the scope of this interim RIS). These areas of NBA plans are currently undergoing further policy development and engagement. Important considerations in designing decision-making arrangements include ensuring the principles of Te Tiriti o Waitangi are given effect to, deciding what partnership looks like for plan-making and who is accountable for plans.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a question about the role of territorial authorities in the new system, as more functions are shifted to a regional level.</li> <li>• Those that are accountable for policies and their implementation need to have a meaningful role in the development and approval of those policies.</li> <li>• Some questioned the benefits of a combined region-wide NBA plan - although the value of a Regional Spatial Strategy was generally more recognised.</li> <li>• Planning should be local, done by communities, data-driven and meet national and regional priorities without being top-down.</li> </ul>