

Enabling local voice and accountability in the future resource management system

Proposal for consideration
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Local Government Resource Management Reform
Steering Group

Prepared by
FrankAdvice
better decisions

Enabling local voice and accountability in the future resource management system: a proposal for consideration

Executive Summary

Reform objectives for the future of the resource management system include improving system efficiency and effectiveness and reducing complexity, while also retaining local democratic input. There is an opportunity at the current stage of the reform programme for local government to provide some thinking and advice to inform how the latter objective can be meaningfully achieved. The Local Government Resource Management Reform Steering Group (SG) established a sub-committee to develop advice for consideration by the Ministry for the Environment (MfE) to specifically address how local democratic input, accountability and legitimacy can be built into the reform proposals and plan-making processes. The SG anticipates that this advice could be drawn on by MfE as community engagement aspects of the proposed plan-making process are further developed.

This paper presents two key additions to the proposed design of the new planning system – a bottom-up mechanism established in the Natural and Built Environments Act (NBA) for local communities to be able to have their voice heard in development of natural and built environments plans (NBA plans) and regional spatial strategies (RSSs) (developed under the Strategic Planning Act); and a top-down National Spatial Strategy to sit alongside the National Planning Framework.

The proposed bottom-up mechanism is statutorily required Statements of Community and Regional Environmental Outcomes (SCO/SREOs). These would be developed by councils with local communities and iwi/hapū, to be submitted to joint committees for consideration. The proposal also provides for iwi/hapū to create their own Statements of Outcomes.

The intention of these statements is to provide for local voice and enhance community participation in the new planning system – to ensure that communities continue to play a role in shaping the vision and strategy for their areas (given the reform's intended shift from managing effects to achieving outcomes). There is an opportunity for territorial authorities and iwi to fulfil key aspects of community engagement already envisaged by MfE for the plan-making process through the production of these statements. This would ensure that all territorial authorities and iwi are able to contribute meaningfully to the new plan-making process, and that the close links they have to their communities are retained.

The proposed top-down mechanism of a National Spatial Strategy would provide national guidance to inform the development of RSSs and NBA plans. Its function would be to provide a coherent, spatial view on the Government's priorities, particularly in relation to Crown investment, and ensure that RSSs and NBA Plans deliver intended outcomes.

The finer details of these mechanisms (for example, the content of the proposed Statements of Outcomes) would need to be worked through once there is greater clarity about the intended scope, content and structure of the NBA and RSS instruments. The SG also anticipates discussing the proposals with the various iwi/hapū groups that MfE is engaging with to get their feedback.

The SG is also supportive of:

- a single joint committee that sits across both the RSS and NBA plan for a region (subject to satisfactory supplementary mechanisms existing for ensuring local voice is heard and decision-makers are accountable for plan delivery)
- elected members sitting on the joint committee
- timebound feedback loops for council review before RSSs and NBA plans are notified
- the development of a planning and consenting workforce plan, to ensure regional plan-making will be effectively resourced without leaving small and/or remote councils stripped of staff.
- strengthening the by-law mechanisms under the Local Government Act 2002 so that more minor and locally specific regulatory matters can be managed outside of the regional planning process. This is intended to support the reform's efficiency goals by ensuring that very local issues can be dealt with more appropriately via by-laws rather than clogging up plan-making, as can occur under the current system¹ (and is likely to become more of a concern in the context of the shift to consolidated regional plans).

The SG has sought to identify mechanisms for providing local voice in the new system that will work within the constraints of the recommendations of the Resource Management Review Panel and decisions already taken by the Government. However, SG members remain concerned about breaking the lines of democratic accountability for plan-making and implementation by the existing units of local government, in the absence of local government reform and prior to recommendations being made by the Future for Local Government Review Panel and considered by the Government. We note that the RM Reform proposals don't easily align with current local government structures and would welcome further discussion with Ministers and officials on how to better align the two reform agendas, to achieve whole-of-system goals.

The SG also recognises the opportunities presented by the implementation phase of RM reform, particularly to create a shift in local democratic practice. The SG posits that the process to arrive at the SCO/SREOs may be as useful as the statements themselves – in promoting collaboration and working together at a local level. This could be supported by community and iwi/hapū capacity and capability building (including for elected members) to have skilful and well supported community engagement on the future challenges we face, how we want to navigate them and what sort of communities we want to be. Support from the centre would be essential, not only through funding, but also engagement infrastructure such as media channels, data and research.

Should the proposals set out in this paper be agreed to in principle, we anticipate further policy work would be needed to:

- Engage with iwi and hapū on the proposals.
- Consider how local voice and accountability provisions for input into plan-making should be reflected in primary legislation to clearly signal the policy intent, noting the balance to be struck between consistency of approach and allowing local adaptation.
- Clarify the scope and/or *de minimus* thresholds for NBA plans and RSSs, to resolve the issue of the degree to which locally specific issues are intended to be regulated through these instruments. This could be considered through MfE and local government officers jointly working through what regional and local content would look like within an outcomes-based, regional plan.
- Flowing from the above, explore and confirm the intended content for SCO/SROs and the process for developing these (including intersection with requirements under the LGA and the content that it is envisaged be included in NBA plans and RSSs).

¹ We note that by-law provisions are in scope for the Future of Local Government reform programme currently underway by the Department of Internal Affairs, however this issue is also included here as one that has relevance for both reform programmes.

- Consider options to recognise both elected members and mana whenua on the joint committee to reflect Te Tiriti partnership.
- Further explore the by-law proposal with respect to the Future of Local Government Review policy programme.
- Develop a community and iwi/hapū capacity and capability building plan.
- Develop a planning and consenting workforce plan.

Finally, while not able to be fully explored within the scope of this paper, there is more discussion required to ensure both these proposals and the wider reform programme give effect to rights and responsibilities under Te Tiriti o Waitangi. The goal should be a step-change in how the principles of partnership, active protection and redress are given meaning and application at all levels in the new statutory framework. This requires clear mechanisms that bring the partnership to life (including but not limited to via participation on joint committees) as well as appropriate resourcing to support these mechanisms.

Context

The Government is currently consulting on future changes to the resource management (RM) system. As part of the reform of the RM system, the Government is proposing to introduce a Natural and Built Environments Act (NBA) and Strategic Planning Act (SPA). Key aspects of the proposals include:

- Requiring local government and mana whenua to form joint, regional planning committees to develop one natural and built environments plan (NBA plan) for each region. These plans will replace existing regional policy statements, regional plans, and district plans.
- Requiring local government, mana whenua and central government agencies to form joint committees to develop one long-term Regional Spatial Strategy (RSS) for each region. These will identify areas that are suitable for development; need to be protected; require infrastructure; and/or are vulnerable to climate change effects and natural hazards.
- RSSs are intended to inform and integrate with NBA plans.

The contents of NBA plans, RSSs, and the makeup of joint committees (including governance and accountability arrangements) are still being worked through by the Ministry for the Environment (MfE).

A Local Government Resource Management Reform Steering Group (SG) made up of elected members and council senior leaders has been established to provide a strategic advisory role across all aspects of the RM reform programme. The SG provides constructive, free, and frank advice to the Secretary for Environment, interagency RM Reform CE Board and Ministers. Local Government New Zealand (LGNZ) and Taituarā are engaging in, and supporting, the SG's work.

Purpose

Reform objectives for the future of the resource management system include improving system efficiency and effectiveness and reducing complexity, while also retaining local democratic input. Proposals setting out the shape of the reform have to date provided limited specificity on how local democratic input can be protected and retained through a region-wide approach to planning. This has been reflected by submissions made by local government to the NBA exposure draft, many of which strongly argue for enabling public participation so that communities feel they have ownership.

The current stage of the reform programme presents a timely opportunity to design 'local voice and accountability' mechanisms to ensure both the political legitimacy and sustainability of the new resource management system, as well as designing a framework that is enabling, flexible and responsive at a sub-regional scale for both the natural and built environments.

The SG has commissioned **FrankAdvice** to assist in developing initial advice for consideration by Ministers and MfE officials, aimed at strengthening the input of local voice in the reformed plan-making process. The process for developing this advice is set out in Appendix One.

This draft paper proposes a conceptual model for ensuring local voice can be fed into the new plan-making structures envisaged by the RM reform. It is recommended that this process would be led by territorial authorities and iwi. It also provides:

- some considerations for how this could be operationalised in practice, noting the finer details will need to be worked through once there is greater clarity about the intended content and structure of the NBA and RSS instruments
- some thinking about the makeup of the proposed joint committees and their secretariats

- more general considerations relating to implications arising from the SG's conceptual model, and the RM reform more generally, which may be best considered through the Review into the Future for Local Government.

In developing this advice we have tried to maximise the amount of plan development undertaken by the existing units of local government in the areas they are currently functionally responsible for, and within the constraints of the decisions already taken by the Government. The SG anticipates that this advice could be drawn on by MfE as community engagement aspects of the proposed plan-making process are further developed.

Why does this matter?

Resource management planning and decision making can have profound impacts on the wellbeing of local communities and the ways that members of local communities live, work and play. The concept of 'local voice' means that people have a way to articulate the aspirations, priorities and concerns that are important to them as a community at a local level. Representing local voice is a key function of local government and fundamental to the democratic governance of matters affecting communities. In the context of the RM reform, what matters is having these aspirations, priorities and concerns reflected and enabled within plans across larger geographical areas.

While many of the RM reform proposals to date are concerned with efficiency, the SG contends that the retention of local voice is not at odds with that goal. Indeed, local input will be key to a stable and sustainable system that has legitimacy in the eyes of those most affected and that must implement the system, and which in turn delivers efficiency. Rather, it is a case of streamlining the processes through which local voice can be considered in regional plan-making, while also ensuring that hyper-local issues can be dealt with through more appropriate regulatory channels instead of resulting in protracted disputes and appeals.

Principles

The following principles have been drawn on to shape the proposals in this paper. The principles (developed by the SG sub-committee) have been derived by referring to:

- LGNZ's principles for RM Reform
- Central government objectives for RM reform.

	Principle	Great would look like...	Poor would look like...
1	Inclusion of sub-regional diversity of communities/issues	All significant issues and perspectives considered	Major issues missed or not understood
2	Regional coherence of plan objectives, policies, and rules	Region is planned in a manner that optimises outcomes Natural, economic, cultural and social values are captured in planning decisions	Inconsistent approaches, leading to increasing costs and uncertainty
3	Subsidiarity – decisions are made as close as possible to those affected by, and who have to implement, decisions	National and regional interventions are not used to address local issues	Local choices imposing regional/national costs and vice versa
4	Consistency and efficient approaches for similar issues	Consistent regional objectives, policies, rules where appropriate – unnecessary variation removed from the system	Different objectives, policies or rules for similar issues – unnecessary difference remains in the system
5	Legitimacy of decision-making processes for those affected	The process is fair and accessible, and decisions are broadly supported by the communities affected	The process is arbitrary and unfair, and decisions are widely opposed
6	Accountability of decision makers for the plan's success/outcomes	Everyone feels their input has been considered and the decision-maker is accountable Trade-offs and externalities of policy decisions are made explicit	The plan is not supported by the people who have to live under it or implement it and there is no mechanism for the community to express its dissatisfaction
7	Implementation is funded and adhered to	Plans can be implemented and are not undermined or ignored	Plan is not delivered on by councils (or central government agencies where relevant)

Proposal

The proposals for the new planning system that are currently being developed by MfE officials effectively comprise three phases:

1. plan development
2. consider, hear, decide (e.g., by joint committees, Independent Hearings Panels)
3. implementation.

Within this construct, this paper proposes two key additions to the proposed design of the new planning process:

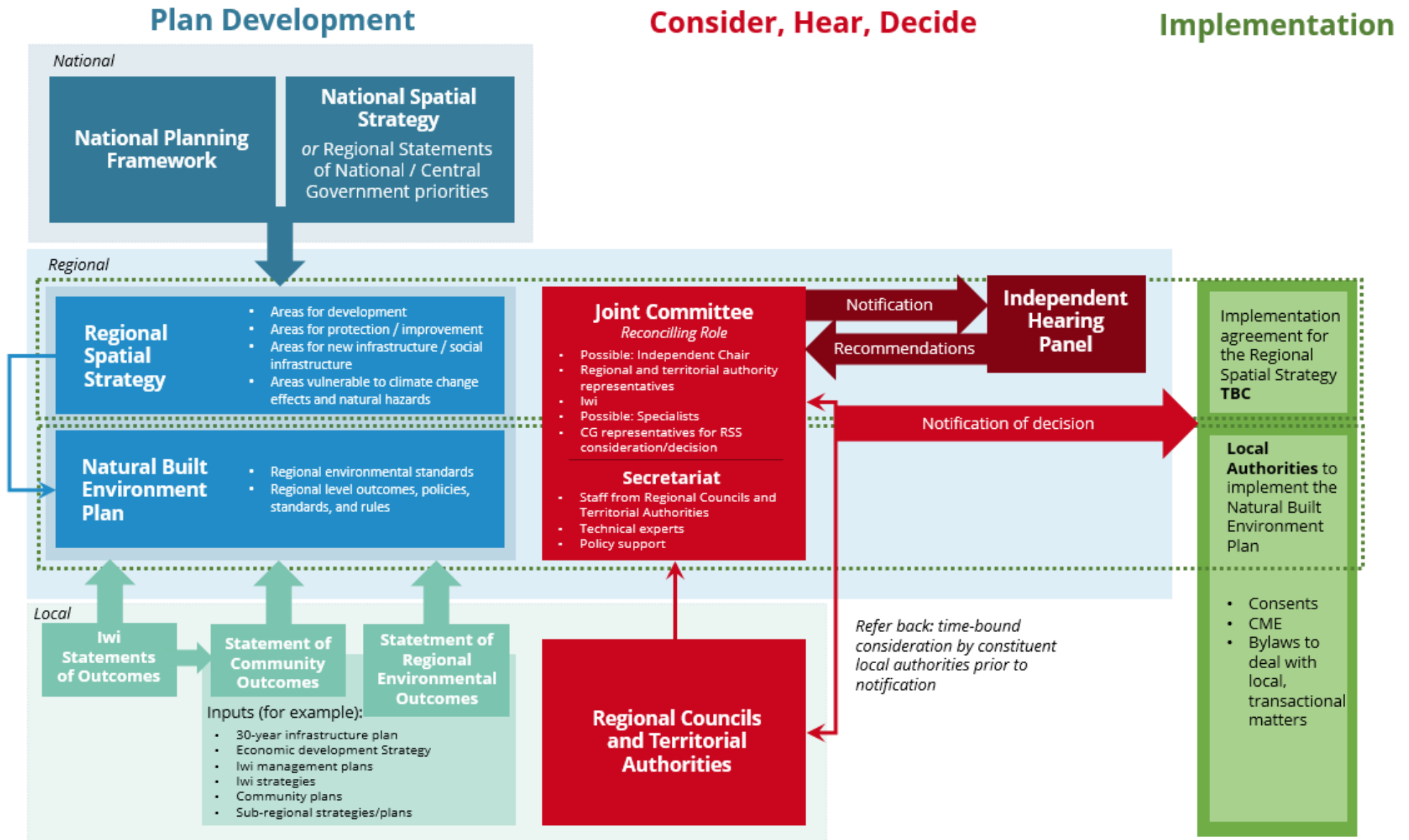
1. **Bottom-up:** A layer of local voice input into regional plan-making, consisting of two parts:
 - a. Statements of Community Outcomes (SCOs), which set out a district or city's vision and aspirations. They could outline strategic directions/objectives, and local placemaking and community wellbeing priorities and objectives, and could cover a 30-year time period (which would align with Long-Term Plan Infrastructure Strategy timeframes).
 - b. Statements of Regional Environmental Outcomes (SREOs). These would effectively replace the existing regional resource management and coastal environment management plans, for which regional councils have functional responsibility currently, and would include the proposed limits required by the NBA where these are to be determined at the regional level.
2. **Top-down:** A National Spatial Strategy (or Regional Statements of Central Government priorities) to provide national guidance to inform the development of the RSS and NBA plans. This would sit alongside the National Planning Framework (NPF) but would provide regionally and spatially specific information to the joint committee on central government's investment priorities within the region.

The relationship between these proposed additions and the existing proposed design is set out in the diagram overleaf. The specific content and level of detail of each of these two proposed elements would ultimately depend on the specifics of what is intended to be contained in the RSSs and NBA plans, and the NPF. An example would be whether NBA plans would include local chapters containing policies and rules on key local matters that were only relevant to particular local communities.

We note that MfE has indicated that a 'model project' will be developed to support, test and demonstrate the implementation of the future system². We consider that this presents a good opportunity to test the additional aspects proposed here, with a view to perfecting the approach and developing relevant guidance.

² Ministry for the Environment. 2021. *Transforming Aotearoa New Zealand's resource management system: Our future resource management system – Material for Discussion*. Wellington: Ministry for the Environment.

Figure 1 Proposed model to reflect local voice and accountability



While more work is needed to flesh out the details of this proposal, the following section sets out some key assumptions and considerations in relation to the model's three phases – Plan development; Consider, hear, decide; and Implementation:

Plan development

Statements of Community Outcomes

The key intent here is to provide a vehicle for local vision, objectives and aspirations to be articulated and for these to be represented in higher order planning documents, in such a way as to meet the twin reform objectives of increased efficiency and retention of local democratic input and accountability. They are deliberately pitched as 'statements of outcomes' because of the imperative in the reforms to reduce the number of plans and shift from managing effects to managing for outcomes. The SCOs would be visionary and strategic documents providing councils with broad scope to articulate the place-based aspirations of their communities³ and influence planning and investment decisions. There is an opportunity to link SCOs to the requirement under the Local Government Act 2002 (LGA) for councils to promote the social, cultural, economic and environmental wellbeing of communities.

We propose one SCO per local authority, developed by each authority within a region in a timebound manner simultaneously. The SG has also noted that in some cases SCOs prepared on a larger scale, (i.e. for cross-boundary aspirations and objectives) could be appropriate.

Overall, we believe that the SCOs would be a more efficient and effective way to fulfil MfE's intended community engagement component of the plan-making process, rather than have community engagement led by the joint committee and secretariat, which will be more removed from and less accountable to communities. Indeed, the SCOs could be seen as providing communities with an opportunity to state how they propose to give effect to matters of national direction.

SCO content

The SCOs will need to strike a balance between the ability to be aspirational, visionary and place-based documents that align with councils' obligations to promote community wellbeing, alongside the purpose of the SPA and the outcomes in the NBA. A key consideration will be their usability by the joint committees and their secretariats, for the purpose of developing RSSs and NBA plans that address key outcomes for the natural and built environments.

There are options here for how broadly or narrowly scoped the SCOs are, and further policy work is needed to arrive at a firm position.

One option would be for the SCO to set out a broad vision about what may be particularly important to a community (e.g., a particular type of economic development, a distinctive heritage culture, or a passion for the arts) so that it informs what is important in the local (and potentially regional) context of the RSS and NBAs. Under this option, the SCO would be a resource management document that helps shape important trade-offs that might have a spatial context. For example, a strong heritage focus might result in councils willingly forgoing development densities to protect a certain heritage character, or a desire to support an emerging film industry might lead to different rules around use of amenity spaces, or the development of temporary studios.

³ Note that 'communities' is intended here in a broad sense and may cover a range of interested parties, including (but not limited to) the general public, business, iwi/hapū and special interest groups. However, this is not intended to preclude the status of mana whenua as Treaty partners (see section Recognising mana whenua).

Alternatively, SCOs could be more closely linked to the core purposes of RSSs, which to date we understand are identifying areas suitable for development; areas that should be protected; areas that require infrastructure; and areas that are vulnerable to climate change effects and natural hazards, and outcomes for the natural and built environments set out in the NBA.

There are advantages and disadvantages for each approach. Ultimately, the content of the SCO would need to be guided by the policy intent for the scope of NBA plans and RSSs. We recommend that consideration be given to setting out of *de minimus* thresholds for these planning instruments, and relatedly, whether local chapters will or will not be included in NBA plans (as suggested previously by SG members). If NBA plans are to include local chapters, there may be a place for SCOs to include specific rules and policies (so affected communities have the ability to influence decisions by joint committees on those), in addition to more aspirational and visionary outcomes.

SCO development process

We propose that councils have the freedom to determine:

- their own process for developing SCOs
- which existing local and community plans inform the SCO (e.g., these could be drawn from the non-exhaustive list of inputs indicated in the diagram).

This autonomy would need to be balanced against timeliness and efficiency objectives. We consider that guidance may be needed to support councils in this balancing act. We also consider that, in order to support efficiencies, reduce duplication and ensure consistency, councils would need to design a development process that took into account their existing LGA planning and community engagement activities.

The SG supports the need for the process for developing SCOs to be timebound. Specific details can be worked through when there is more clarity around the timeframes for the other component parts of the new system (though 9 – 12 months for developing SCOs may be an appropriate timeframe). The SG is of the view it would be necessary for SCOs to come together at the same time across a region to help form RSSs and NBA plans.

The SG did consider whether existing planning documents (such as those contained in the non-exhaustive list of inputs indicated in the diagram) could be provided directly to the joint committee and secretariat. However, from an efficiency point of view, and to make the joint committee and secretariats' reconciling roles manageable, the SG decided it would be preferable for councils to create a consolidated SCO which draws on those other planning documents as is deemed appropriate.

The SG understands MfE is concerned at the potential for the proposed SCOs to duplicate existing local government documents. However, the suggestion that SCOs link to NBA and SPA outcomes and the intended content of NBA plans and RSSs would help to reduce unnecessary duplication and ensure that existing local government documents are better linked to resource management outcomes than they are currently.

Statements of Regional Environmental Outcomes

The intention for the Statement of Regional Environmental Outcomes (SREO) is to have a mechanism that broadly replaces the existing regional resource management and coastal environment plans. It is anticipated that regional councils would be best placed to draft these, with appropriate input from territorial authorities. Thought was given to whether the matters addressed in regional resource management and coastal environment plans could be dealt with through adequate representation of regional councils on the joint committee. However, pending the outcomes of the review into the Future for Local Government, it seems appropriate for

regional councils to take responsibility for developing a SREO, with input from the territorial authorities in the region. This recognises the experience and expertise regional councils have in addressing the matters it is envisaged the SREO would cover, relative to territorial authorities, and the accountability of regional councils for implementing plan provisions that relate to their functions.

Ultimately the content that is contained in SCOs and the SREOs will need to be worked out in detail once there is more clarity around MfE's intentions with respect to the content and structure of RSSs and NBA plans. However, it is proposed that the SREO would be the mechanism by which a regional council proposes how it will give effect to national direction on natural resource management, including limit setting where this is required at the regional level.

The comments made above in relation to timeframes for preparing SCOs, and guidance to support the preparation of them, are relevant to the preparation of SREOs too.

Recognising mana whenua

While the model envisages that councils would lead the development of SCOs and SREOs, we are not proposing that councils would determine iwi and hapū involvement in the creation of these, particularly as iwi/ hapū boundaries are not contiguous with those of local government. However, a high level of participation is anticipated, consistent with the Treaty obligations set out in the Local Government Act and proposed for the NBA and SPA, as well as a range of existing Treaty Settlement based arrangements.

In order to further give effect to Te Tiriti o Waitangi, SCOs and SREOs should take iwi management plans and/or strategic plans into account from the outset. Councils would strive to work in partnership with mana whenua to develop SCOs and SREOs where possible/appropriate, so that SCOs and SREOs would not be inconsistent with mana whenua expressions regarding outcomes and objectives. However, iwi/hapū should have the autonomy (and support from Government) to develop their own Statements of Outcomes if they wish. Alternatively, Iwi Management Plans and/or iwi strategies could potentially fulfil this role directly.

The SG would like to discuss these options in further detail with the iwi/hapū partners that MfE is engaging with to understand how they see iwi/hapū fitting into this proposed model.

Legislative mandate

While we note MfE's preference for primary legislation to not be overly prescriptive at the local level, the SG recommends that the policy intent for the inclusion of local voice in regional plan-making be set out in the NBA and SPA.

The expectation would be that the local layer of input is legislated for, and that the RSS and NBA plan would either:

1. 'Give effect to (subject to matters stated below)'

OR

2. 'Have regard to'

the Statements, depending on preferences of how binding the legislative framework should be.

Any legislative mandate for inclusion of local input would need to be balanced against requirements for the RSSs and NBA plans to be consistent with the outcomes set out in the NBA and SPA, the NPF and the proposed National Spatial Strategy.

We recognise the potential for the joint committees to have a difficult role in reconciling (giving effect to or having regard to) local input with the NBA, SPA, NPF and the proposed National Spatial Strategy. To this end, it is important that the detail of what gets included in SCOs and SREOs is worked through carefully, while ensuring that communities retain the ability to be aspirational and visionary.

National Spatial Strategy/ Regional Statements of Central Government priorities

The SG is broadly supportive of the proposal to introduce spatial planning into the new resource management system, and for central government agencies to participate in decision-making on RSSs. However, SG members have raised concerns with MfE officials that central government agency priorities for regions are often misaligned and the need to avoid a situation where central government agency participants on joint committees fail to come to the table with a coherent central government view on the outcomes it seeks to achieve for a region (or multiple regions).

While we are aware that the future system is not envisaged to preclude the National Planning Framework signalling national spatial direction, neither does it commit to providing it. To address this, the SG proposes that the SPA require the Government to produce a National Spatial Strategy (NSS). This would integrate with the National Planning Framework, and provide a spatial framework for the achievement of Government's strategic outcomes and objectives, and Crown investment priorities, including, for example:

- the location of major infrastructure and investment, from rapid transit networks and ports to facilities to achieve the circular economy
- inter-regional economic development opportunities
- a just transition to net zero
- biodiversity enhancement
- climate adaptation.

The SG considers that an NSS would:

- provide a coherent spatial view on the Government's priorities and ensure that RSSs and NBA plans deliver intended outcomes
- enable balanced and sustainable regional development and inter-regional co-ordination and co-operation
- inform the decisions of the joint committee, and in particular the work of the secretariats to reconcile local input with national level direction.

Alternatively, the Government could produce Regional Statements of National/Central Government priorities to be provided to the joint committees and secretariats. These statements could apply to single regions, or where appropriate could apply across multiple regions. An example might be where the Government has outcomes it seeks to achieve in respect of major infrastructure projects or transport networks that would cut across regional boundaries.

Consider, hear, decide

Role and makeup of the joint committee

To support the maintenance of local voice in regional plan-making we concur with the way the future system envisages the role of the Joint Committees (JC), which is to effectively govern the process to develop RSSs and NBA plans, including responsibility for making decisions. This advice proposes that JCs would also consider SCOs and SREOs as an input to their decision-making. In order to fulfil this role, the JCs will need to make value judgements and reconcile, with the support of the secretariat, potentially conflicting outcomes for the benefit of the whole region.

The SG is aware that MfE officials are still working through the issue of whether there will be separate JCs for RSSs and NBA plans. The SG's preference is for a single JC that sits across both the RSS and NBA plan for a region (with central government representatives brought in for matters relating to the RSS).

A single JC will help to:

- ensure the RSS and NBA plan are integrated
- better reflect the current capacity of the resource management system
- help to drive and embed the culture change that will be needed across the new RM system.

The SG's strong preference is for elected members to sit on the JC alongside mana whenua representatives. Political membership on the JC is recommended as the most appropriate way to address the issue of local ownership, legitimacy and accountability for planning decisions and implementation (although is not a perfect solution to address principles 5 and 6). However, SG

members recognise that there is a risk of intra-council conflicts at the JC level, and this may undermine the Government's dual objectives of efficiency and ensuring local democratic input. An independent chair could be one way to mitigate that risk.

The SG discussed the possible involvement of specialists/experts on JCs as another way to reduce the potential for intra-council conflicts. While this aspect could be explored further, it is recognised that strong specialist/technical expertise within secretariats will be critical, and that the secretariats will play a major role in plan development, so may address this concern.

Key decisions on the number of elected members and how they should be appointed to the JC remain unresolved. Overall, it is considered that, if a strong role for local voice is provided for, as per the proposals in this paper, the (political) need for each constituent local authority to be represented on the JC may be reduced. This would result in a smaller committee, which would likely provide efficiency and cost gains.

Should the Government prefer a smaller committee, there would still need to be a mix of representation from metropolitan and rural and provincial councils, along with the regional council. Preference could also be given to elected members who have appropriate planning or relevant technical qualifications. There are many possible approaches for selecting members, and the SG recognises that the process will likely need to be different for different regions (depending on size, existing relationships etc). One possible selection process could be all local authorities coming together to jointly elect their representatives (though there would likely need to be guaranteed representation of the regional council), with the view to choosing the best people to do the best job on behalf of the region, though we anticipate these considerations would need further discussion with MfE officials.

While not within scope for this paper, consideration must also be given to ensuring full participation of mana whenua as Te Tiriti partners on the JC.

Refer-back loop

In addition to stronger local voice input through SCOs and SREOs, we propose that the JC refer the draft RSS and NBA plan back to constituent local authorities for a time-bound period of consideration and feedback, prior to notification to independent hearing panels. This would ensure councils retain the ability to sense-check whether the plans appropriately reflect local aspirations, priorities and concerns, particularly if they are not represented on the JC. Putting a clear timeframe around this process would limit the risk of protracted engagement. The SG is of the view that around two to three months for analysis and feedback would be appropriate. This is because the content should largely be unsurprising, but recognising the need for the response back to the JC to be taken through formal council processes.

Independent Hearings Panels (IHP)

We did consider, for efficiency, whether the IHP as proposed would be necessary, particularly if the JC had an independent chair and/or specialists included in the membership.

However, on balance, we prefer to retain the proposed IHP, and process of it making recommendations back to the JC for decision. This strengthens legitimacy and confidence in the process, supports continuity through electoral cycles and enables planning conflicts to be reconciled.

In relation to appeals, the SG supports:

- appeals on points of law only for RSSs
- appeals on points of law only where IHP recommendations on NBA plans are accepted by the JC
- appeals on merits where IHP recommendations on NBA plans are rejected by the JC.

The assumption is that given constituent local authorities will have the ability to appeal JC decisions on plans, there would not be any need for JCs to refer back to constituent local authorities their proposed decisions in respect of accepting or rejecting recommendations made by the IHP. However, the SG considers that the JC should, at its discretion, be able to seek advice from affected local authorities on any decision to accept or reject an IHP recommendation.

The assumption is that providing opportunities for communities to have 'upfront' input into plan making, through the development of SCOs and SREOs (informed by community consultation), and the proposed refer-back process would help reduce the potential for challenge later in the process. We note recent MfE feedback that rights of appeal on decisions made on plans would be available to constituent local authorities.

Secretariat

JCs and IHPs will need to be supported by robust a secretariat, which would also act as a liaison with each constituent council in the preparation of SCOs and SREOs. Secretariats should include representation from all local authorities in a region, and central government as well. It will be critical to get people with the right skillsets involved in secretariats, including planning, policy analysis, mātauranga Māori, technical and environmental management expertise. The SG would like a further discussion with the iwi/hapū groups MfE is already engaging with about the extent of mana whenua involvement with the secretariats.

Given the interrelated but distinct nature of the RSS and the NBA plans, we considered whether different secretariats could be warranted for each planning instrument. We discarded this in favour of a single secretariat across both, to maximise existing staffing resources, to ensure plans are well integrated and to help deliver the culture change that will be needed across the new RM system.

Staffing and resourcing challenges

The SG notes that resourcing regional plan-making (including secretariat staff) is likely to centralise planning staff away from local councils towards regional main centres. Over time, this risks leaving local councils with only minimal planning and consenting staff, exacerbating existing staffing challenges already faced by small and/or remote councils. The SG recommends that consideration be given to developing a workforce plan, to identify the long-term resourcing and skill needs, and help support implementation.

Implementation

Local accountability and implementation of regional plans

We note that a regional system of planning but local implementation of plans through consenting and other processes may create a structural mismatch and raise concerns in respect of ownership and accountability. One potential solution could be regionalisation of some council functions (e.g., consenting and compliance, monitoring and enforcement) to better reflect the fact that planning decisions will be made at a regional level. Options for this would need to be considered as part of the broader Future for Local Government (FfLG) Review, and in further conversation with the local government sector.

In the absence of reorganisation of the functions of the existing units of local government it will be essential to ensure that there is clarity of responsibility and accountability for the delivery of investment in the RSSs and for the policies and rules set out in NBA plans. It is proposed that the RSSs and NBA plans clearly state which unit of local government in each region is responsible for administering each and every aspect of the plan, which in some cases may be

multiple authorities. It is worth considering that rather than trying to determine this for every scenario via the primary legislation, this could instead be a matter for the planning process to determine and could enable flexibility where there is agreement between councils to transfer or consolidate functions.

Efficiencies through stronger exercise of local by-laws

We consider that to support principles 2, 3 and 7 the by-law mechanisms under the LGA should be strengthened so that more minor and locally specific regulatory matters (such as signage, fence heights and setbacks) can be managed outside of the regional planning process. This would include needing to look at the purposes for which by-laws can be made under the LGA and introducing provisions that enable councils to issue infringements for breaches of by-laws. Local government has raised concerns about the lack of ability to issue infringements for breaches of by-laws for a number of years now with successive Governments.

The intention of this proposal is not for by-laws to become a de facto policy and rule framework for land use matters. Rather, it is suggested to support the reform's efficiency goals by ensuring that very local issues can be dealt with more appropriately via by-laws rather than clogging up plan-making, as can occur under the current system, and which would be consistent with the desire to shift to more consolidated regional-level plans. Clarity about the *de minimus* planning thresholds (as noted earlier) would help mitigate the risk of moving inefficiencies from one part of the planning system to another.

While we acknowledge this is not directly within the purview of RM reform (and may be in scope for the FfLG Review) we consider that there would be merit in the Department of Internal Affairs considering this as part of their more immediate programme of work on Local Government System Stewardship. We recommend that, as part of further policy development, the concept be stress-tested against a range of real life 'local issue scenarios' to ensure that the overall efficiency goal could still be met.

Next steps

We welcome feedback on this initial advice, including whether the conceptual proposals presented here warrant further detail and discussion. Send feedback to the Local Government Steering Group by 15 March 2022 to LocalGovtSteeringGroup@mfe.govt.nz

MfE officials and the Steering Group have agreed that this advice will soon be shared and tested with the wider local government sector. We will ensure that feedback from the sector is shared with MfE officials.

Should the proposals set out in this paper be agreed to in principle, we anticipate further policy work would be needed to:

- Engage with iwi and hapū on the proposals.
- Consider how local voice and accountability provisions for input into plan-making should be reflected in primary legislation to clearly signal the policy intent, noting the balance to be struck between consistency of approach and allowing local adaptation
- Clarify the scope and/or *de minimus* thresholds for NBA plans and RSSs, to resolve the issue of the degree to which locally specific issues are intended to be regulated through these instruments. This could be considered through MfE and local government officers jointly working through what regional and local content would look like within an outcomes-based, regional plan.

- Flowing from the above, explore and confirm the intended content for SCO/SREOs and the process for developing these (including intersection with requirements under the LGA).
- Consider options to recognise both elected members and mana whenua on the JC to reflect Te Tiriti partnership.
- Further explore the by-law proposal with respect to the Future for Local Government Review.
- Develop a community and iwi/hapū capacity and capability building plan.
- Develop a planning and consenting workforce plan.

Appendix One

This advice was developing through the following:

1. a scope brief for SG advice developed by LGNZ and MfE and endorsed by the SG
2. review of local government submissions to the Natural and Built Environment Bill exposure draft
3. a two-day policy development workshop facilitated by **FrankAdvice** on 6 and 7 December 2021, attended by a sub-committee of the SG and others (attendees listed below)
4. initial outcomes from the workshop signalled to wider SG/MfE officials/Minister Parker on 7 December
5. draft conceptual model and key assumptions circulated to SG members who met via Zoom to provide feedback on 14 December
6. draft advice paper circulated for feedback by SG members
7. paper provided to MfE for consideration and feedback on 23 December.

Workshop Attendees:

- Toby Adams, Mayor, Hauraki District
- Aileen Lawrie, Chief Executive, Ōpōtiki District Council
- Mike Theelen, Chief Executive, Queenstown Lakes District Council
- Shaun Clarke ONZM, Chief Executive, Far North District Council
- James Palmer, Chief Executive, Hawke's Bay Regional Council
- Grace Hall, Policy Manager, LGNZ
- Jason Krupp, (former) Deputy Chief Executive, LGNZ
- Kath Ross, GM Strategy and Reform, Taituarā.