



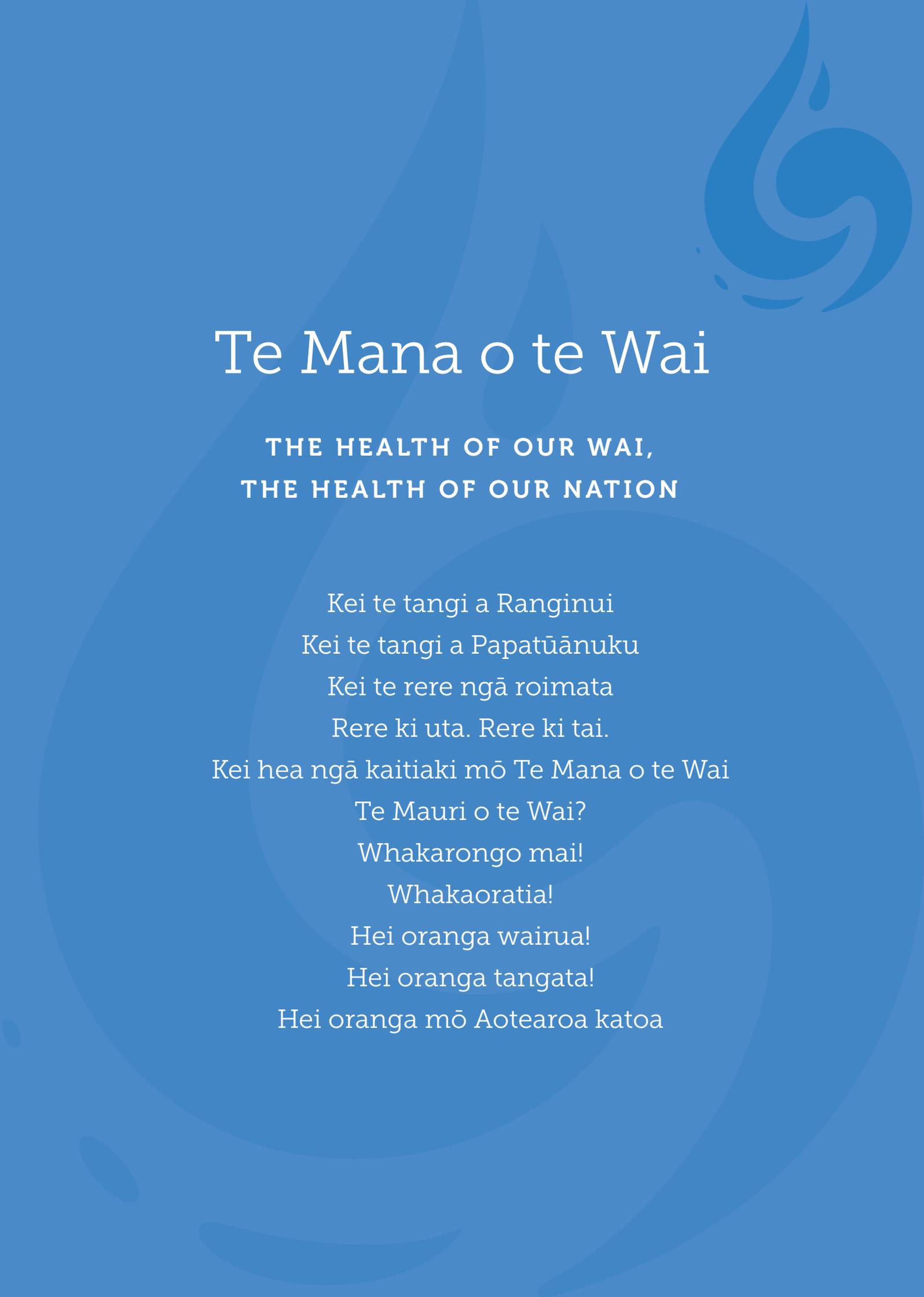
# Te Mana o te Wai

THE HEALTH OF OUR WAI,  
THE HEALTH OF OUR NATION

Kāhui Wai Māori Report to Hon Minister David Parker  
April 2019

## KAHUI WAI MĀORI MEMBERS

Kingi Smiler (Chair)  
Hon. Dover Samuels  
Millan Ruka  
Professor Jacinta Ruru  
Annette Sykes  
Mahina-a-rangi Baker  
Dr James Melville Ataria  
Dr Tanira Kingi  
Traci Houpapa  
Paul Morgan  
Riki Ellison



# Te Mana o te Wai

THE HEALTH OF OUR WAI,  
THE HEALTH OF OUR NATION

Kei te tangi a Ranginui  
Kei te tangi a Papatūānuku  
Kei te rere ngā roimata  
Rere ki uta. Rere ki tai.

Kei hea ngā kaitiaki mō Te Mana o te Wai

Te Mauri o te Wai?

Whakarongo mai!

Whakaoratia!

Hei oranga wairua!

Hei oranga tangata!

Hei oranga mō Aotearoa katoa

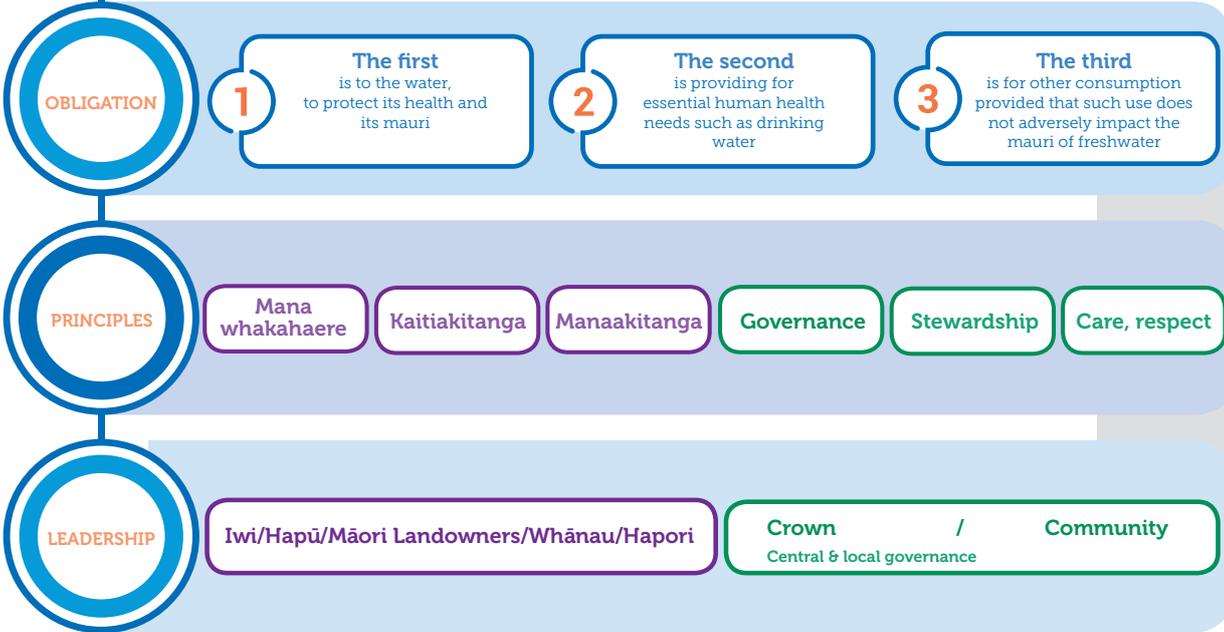


Mana Atua – Mana Tangata – Mana Whenua

# Te Mana o te Wai

The health of our Wai: The health of our Nation

Incorporated into Policy



**NGĀ RITENGA**  
 Te Tiriti o Waitangi  
 te tāhuhu o te  
 Kaupapa o te wai  
 .....  
 Te Mana o te wai  
 – Te Mauri o te wai  
 .....  
 Te Mana Motuhake  
 o ia wai o ia iwi o ia  
 hapū ki te wai  
 .....  
 Te Kaitiakitanga o  
 ngā hapū me ngā  
 iwi ki te wai  
 .....  
 Te Mana  
 Whakahaere o ngā  
 hapū me  
 ngā iwi ki te wai  
 .....

1. Aotearoa New Zealand’s current resource management system is broken. It is failing to achieve its purpose and has become complex, dysfunctional and inaccessible.
2. Our waters are sick. We must heed the cry to make our waters well again.
3. Diverse communities all over Aotearoa New Zealand are hearing these cries.
4. Te Mana o te Wai is the korowai that should frame and inform structural and system reform.
5. We set out a programme of action for our nation to journey together in implementing a managed transition to a new system of care and respect for water.
6. It is time for a new system.



This report is provided to Hon Minister Parker by Te Kāhui Wai Māori.

## TE KĀHUI WAI RECOMMENDATIONS TO RESTORE THE HEALTH OF OUR WAI

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1. Embed Te Mana o te Wai principles and obligations to guide all activities.
2. Recognise and resolve iwi/hapū customary title and rights in water within the next 3 years, including the implications in practice of this recognition.
3. Declare a moratorium on additional discharges and water-related consents for 10 years.
4. Reform the RMA in line with the directive of this paper.
5. Consider enacting a stand-alone complementary Water Act to reinforce the significance of water as a taonga for the nation.
6. Establish an independent national regulatory Te Mana o te Wai Commission.
7. Develop new accountability and partnership requirements for local government.
8. Develop mandatory Māori measures of wellbeing in the National Policy Statement for Freshwater Management National Objectives Framework.
9. Design and implement a national funding system that emphasises water user pays. Options for use of funds include an ongoing clean-up fund for at-risk catchments.
10. Implement a Te Mana o te Wai Capacity and Capability Strategy to guide the investment in, and development and empowerment of, the leaders of Te Mana o te Wai to enable this structural and system reform.
11. Implement a National Freshwater Science Strategy, that extends beyond biophysical factors and includes Māori measures of health, to underpin Te Mana o te Wai.
12. A new water allocation system must conform with Te Mana o te Wai and iwi/hapū rights and obligations, including the recognition of the long held exercise of ahi kā by Māori landowners. No allocation based on grandparenting and no perpetual rights.

## THE PRINCIPLES AND OBLIGATIONS TO GUIDE ALL ACTIVITY

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13. Te Mana o te Wai is the national korowai that frames and informs the trajectory for immediate and future policy development, and regional freshwater planning. It is a concept that encompasses the integrated and holistic health and well-being of waters as a continuum from the mountains to the sea.
14. Te Mana o te Wai is not just about strengthening Māori cultural values tagged to discrete issues like mahinga kai; it is not just about addressing barriers to the development and use of underdeveloped Māori land.
15. Te Mana o te Wai is about a hierarchy of obligations:
  - a. the first obligation is to protect the health and mauri of the water;
  - b. the second obligation is to provide for essential human health needs, such as drinking water;
  - c. the third obligation is to enable other consumptive use, provided that such use does not adversely impact the mauri of freshwater.
16. Te Tiriti o Waitangi is the foundation for the enduring relationship between the Crown and Māori and is important for all New Zealanders. Te Tiriti upholds Te Mana o te Wai.

17. Te Mana o te Wai prioritises these principles:
  - a. the dual roles of iwi/hapū and the Crown to develop and maintain decision-making processes for water, including mana whakahaere;
  - b. kaitiakitanga and stewardship practices to sustain water; and
  - c. manaakitanga and care and respect in providing for the health of our nation.
18. When Te Mana o te Wai is provided for the mauri of the wai is sustained and the cultural, social, and economic relationship of iwi/hapū and all New Zealanders with the wai is maintained.

## **STRUCTURAL AND SYSTEM REFORM IS REQUIRED**

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19. The present regulatory framework does not go far enough to protect Te Mana o te Wai.
20. A new system is required that is values-based and upholds the integrated values of water from the mountains to the sea.
21. The involvement of Māori in the delivery of Te Mana o te Wai needs to occur systematically, where leadership is working towards achieving the obligations and principles inherent in Te Mana o te Wai.
22. A managed transition to a new system requires significant structural reform because:
  - a. the accumulation of further use rights will be problematic to achieving effective short- and medium-term water quality and quantity improvements;
  - b. weaknesses in the 'engine room' provisions in the RMA are contributing to water problems evident across New Zealand today;
  - c. there is not a sufficient and sustainable source of funding for all water governance activities, including funding to support the investments that are increasingly needed to provide for initiatives for the restoration, care and protection of degraded water bodies;
  - d. local governments are unwilling and/or unable to monitor compliance with existing water use rules and requirements, and to take appropriate enforcement action where those rules and requirements are not being met;
  - e. there are failings in the water quality policies and standards that have been set, both at the national level and at the regional/catchment level; and
  - f. there is a lack of coordination and integration of industry, government, and community initiatives, including insufficient resourcing for the leaders of Te Mana o te Wai to co-design freshwater policy.
23. In order to embed Te Mana o te Wai and achieve the outcomes for freshwater that the nation wishes to see, change needs to occur across the whole system; at both the national and regional level.
24. Our proposals for structural and system change are not presented as a menu of single options that can be implemented individually. Our recommendations need to be implemented simultaneously and in their entirety to achieve the necessary outcome for Te Mana o te Wai.

## RECOGNISE IWI AND HAPŪ RIGHTS

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25. System reform must begin with the Government giving effect to iwi/hapū retained customary dominion (ownership) of freshwater in this country. The courts have held that the inherited English doctrine of native title “is entitled to be respected” and have warned against contrary presumptions that no-one owns water because “the common law of New Zealand is different”. There exists no statutory clear and plain extinguishment of Māori title to water to extinguish Māori continuing customary ownership from pre-1840 on.
26. We do not provide a view on options for resolution of customary title here, but do recommend an urgent process be agreed between iwi/hapū and the Crown to enable the ownership issues to be discussed and implemented over a 3-year period. We are clear that any allocation of additional discharges and water access must be time bound while the ownership issue is resolved (see our moratorium recommendation).
27. Extensive work on this topic exists in Waitangi Tribunal Reports and the courts. Māori are ready to resolve this now.

## DECLARE A MORATORIUM

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28. Declaring an immediate moratorium on further water takes, and any further intensification of land use that will increase discharges to water, is an essential action to commence our journey as a nation to heed the cries of our waters. Urgent action is required to address the current crisis.
29. No additional new resource consents for consumptive takes and discharges should be issued for the next 10 years.
30. A 10-year moratorium is required because it will take time to design and implement the new structural and system change.
31. A moratorium will prevent further:
  - a. degradation of water bodies through additional extraction and/or discharges;
  - b. alienation of iwi/hapū rights, interests and obligations, until this issue can be addressed by Parliament; and
  - c. accumulation of use rights that could fetter the development of the new structural system for caring for water.
32. Details will need to be worked out. For example, holders of existing resource consents that expire within the 10 year moratorium may be permitted to apply for a new consent for up to a restricted time period (e.g., 5-10 years) so as to ensure they are quickly brought within any new subsequent system.
33. A moratorium can be actioned by inserting a new Part into the RMA, perhaps as Part 6B.

## REFORM LEGISLATION AND POLICY

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34. We agree with the Government and others, for example the Environmental Defence Society, that we need to reform the Resource Management Act 1991. From a Māori perspective, the RMA and its associated policy is not working.
35. We support wholesale reform of the RMA (and support further consideration for a complementary stand-alone Water Act).
36. In the meantime, we recommend immediate amendments to the RMA.
37. In practice, the existing requirements in the RMA do not provide for Māori rights, interests and obligations in water to be adequately identified and accommodated in RMA processes, including adoption of, and changes to, national and regional rules and decisions on water takes and discharges. This must change. To help this change, we recommend:
  - a. the insertion of a new sub-paragraph 5(2)(aa) to read: “recognising and respecting the kawa, tikanga, and kaitiakitanga of marae, whānau, hapū, and iwi of natural and physical resources (excluding minerals); and”;
  - b. section 8 be amended to read “In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall conform with the principles of Te Tiriti o Waitangi / the Treaty of Waitangi”; and
  - c. the insertion of a new section to detail the importance of Te Mana o te Wai, including the hierarchy of obligations and the principles for the sustainable management of water, by embracing kaitiakitanga (stewardship/guardianship); manaakitanga (care/respect); and mana whakahaere (partnered governance).
38. The RMA does not currently provide mechanisms to recover the full costs associated with the governance of water, including the costs of undertaking effective compliance, monitoring and enforcement work at the regional/ catchment level. This has caused, or at least contributed to, significant water degradation and the inability of Māori to access water for a range of reasons.
39. We recommend amending section 36 of the RMA to enable local authorities to fix charges payable on consumptive water uses, for the purpose of creating and sustaining regional / catchment level clean-up funds for investments into initiatives for the care and protection of water bodies, consistent with Te Mana o te Wai. Such mechanisms must be accessible to iwi/hapū and the wider community, to meet regional or catchment goals for enhancing and restoring the wai.
40. Te Mana o te Wai must continue to be the overriding purpose of the National Policy Statement for Freshwater Management.
41. To further reinforce this, we recommend a new compulsory Māori value be inserted in the National Policy Statement to provide for Māori measures of freshwater system health to be developed and implemented. This new clause should provide a step-by-step for councils to support iwi/hapū to develop mātauranga Māori based tools/frameworks. Resourcing iwi/hapū to develop their own monitoring and assessment databases would improve their ability to inform decision-making and regulation, and would also further support the capacity of Māori land owners and managers to engage at the technical level with wider catchment groups.

## **ESTABLISH TE MANA O TE WAI COMMISSION**

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42. Structural reform must begin with the establishment of a new independent national body that we name Te Mana o te Wai Commission.
43. The Commission should be independent of the government and should not be subsumed into the Environmental Protection Authority.
44. The Commission should be sustainably resourced to design and implement the Te Mana o te Wai Structure and System Reform that includes: setting national direction that promotes Te Mana o te Wai; calling-in applications at the local catchment level where appropriate; auditing water-related local government and catchment level processes and decisions; and bringing, and participating in, proceedings relating to local government and catchment level processes and decisions.
45. At least 50 per cent of the appointed Commissioners should be Māori. This appointment process requires considered thought because they will critically influence the effectiveness and workability of the Commission. All persons appointed must have the mana, skills, knowledge, and experience to achieve the purpose and perform the functions of the Commission.
46. If a new Water Act is enacted, it ought to encompass the functions and powers of the Commission. In the meantime, to enable the swift establishment of the Commission, we recommend that a new Part 4B is inserted into the RMA to detail the Commission's powers.

## **IMPROVE ACCOUNTABILITY AND PARTNERSHIP OF LOCAL GOVERNMENT**

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47. Local government has failed to responsibly and effectively discharge its responsibilities and obligations to sustainably manage freshwater.
48. Significant structural and system change is critical at the local government level to improve water governance, decision-making and planning, including service delivery of the expected Three Waters programme.
49. Details will need to be worked out.
50. A commitment to Te Mana o te Wai requires this change.
51. For example, genuine partnership is currently not reflected in water governance and planning because Māori input is usually limited to very specific points of input, and iwi/hapū are not adequately resourced to participate.
52. Te Mana o te Wai requires that partnership is reflected across the water care system and iwi/hapū are enabled to work at various levels including infrastructure, governance and management; planning and policy; environmental regulation; compliance, monitoring and enforcement; and land and water restoration and management.
53. Iwi/hapū are best placed to ensure that strategic planning for, for example, Regional Plans, Long Term Plans, and Asset Management Plans, reflect Te Mana o te Wai principles and obligations.

## DEVELOP TE MANA O TE WAI CAPABILITY AND BEST PRACTICE STRATEGIES

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54. Better knowledge, data and technical capability is critical to the success of a new system for water care that is driven by Te Mana o te Wai obligations and principles.
55. There currently exist a range of informal, ad hoc arrangements between iwi, hapū, other Māori entities and local government to participate in water care. This includes involvement in the assessment of resource consents and participation in compliance monitoring. Best practice approaches must be identified to strengthen and further formalise these arrangements throughout the country.
56. With few exceptions, iwi/hapū have not been supported or resourced to develop their knowledge sets and capacity to partner with local government and various catchment groups that inform the policy and planning for water. Supporting and resourcing this partnership, including iwi/hapū resource management planning, must also occur.
57. Iwi Management/Kaitiakitanga Plans must be resourced and highly valued in informing all the various aspects of the water care and resource management system, including planning and monitoring.
58. There are currently a plethora of farm-level environment plans and land use change models that do not incorporate tikanga or mātauranga Māori approaches to planning and modelling change. This needs to be resourced to change.
59. Three key scientific capability needs include:
  - a. Valuing and supporting mātauranga Māori and social science research to augment the current narrow biophysical view of water quality. This is consistent with a broad values-based approach that is promoted by Te Mana o te Wai.
  - b. A national science and research strategy around freshwater that is underpinned by Te Mana o te Wai and aligned with Vision Mātauranga policy, is required to coordinate funding provision; guide research priority setting; and build technical capability needs.
  - c. An extension of education programmes in land and water care and management that supports the ability of government, industry, community and kaitiaki to meet the new standards and expectations of the new system.
60. Central and local government agencies, including the Department of Conservation, are responsible for a significant portion of land and water management in Aotearoa New Zealand. Many iwi/hapū have aspirations to see their own people working on the ground, connected to their land and waterways as kaitiaki. Local and central government could establish schemes that devolve or provide first rights of refusal to contracted land and water management, such as restoration and maintenance work. Resourcing should also be considered to empower kaitiaki to be active wardens on the water.
61. Aotearoa New Zealand's primary sector industry organisations have developed a number of land use change and freshwater mitigation extension programmes in recent years. While admirable, many are not coordinated, resulting in duplication and gaps. A well-resourced and coordinated extension and communication programme needs to be developed to ensure that information produced by both industry and government

initiatives are consistent and effective. Underpinning this coordinated effort is the need for the Freshwater Science Research Strategy to produce the science outputs needed to encourage and drive the necessary change within catchments that are prioritised by a system of at-risk assessments.

62. Central and local government need to prioritise increasing their capacity and capability to be effective partners with iwi/hapū.

## ALLOCATION SYSTEM

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63. In a reformed water allocation system, Te Mana o te Wai will provide the guiding framework.
64. Te Mana o te Wai first prioritises obligations 1 and 2. Only once appropriate water levels have been set to meet obligations 1 and 2, can the system consider an allocation process for consumptive uses of water.
65. It will take time to design this new allocation system. This is why we have recommended a temporary moratorium on new consents for consumptive water use (takes and discharges).
66. Certainty creates enduring solutions and incentivises investment. Solutions must be enduring and fit for purpose. Urgent attention is required to resolve iwi/hapū customary title, rights, interests and obligations, including to an equitable share of allocable quantum, before an allocation system can be detailed.
67. The new allocation system should:
  - a. Ensure true costs and implications of consumptive water takes and discharges are borne primarily by the consumptive water user.
  - b. Respect that each iwi/hapū or Māori landowner maintains their own mana over their waterways.
  - c. Ensure that the first consumptive takes and discharges provided for are to iwi/hapū, who have a customary right to access an equitable share of the allocable quantum in their area.
  - d. A certain percentage of the catchment based developmental allocation of water and discharge capacity should be distributed exclusively for iwi/hapū/Māori landowners.
  - e. All consumptive users of water are responsible for protecting water for future generations and not just for short-term or individual profit. The principles of Te Mana o te Wai, including kaitiakitanga and manaakitanga, require that sustainability and environmental protection is valued.
  - f. All water users (including consumptive water users, human health water users and customary title and rights water users) must prove, as part of the resource consenting process, that they have the systems and infrastructure in place to care for wai responsibly.
  - g. The new allocation system will not provide for either any grandparenting or perpetual use rights.

## HE KUPU WHAKAKAPI

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68. For more than 100 years, iwi, hapū, whānau, along with Māori landowners throughout the country, have been strongly articulating to central and local government, and the courts, the urgent need for reform of water-related law and policy.
69. We acknowledge and endorse all this work, including the more recent work of the New Zealand Māori Council and National Iwi Chairs Forum, in striving for a better system of care and respect for water in this country.
70. The time is now to make the change to a new system.



Kei te tangi a Ranginui  
Kei te tangi a Papatūānuku  
Kei te rere ngā roimata  
Rere ki uta. Rere ki tai.  
Kei hea ngā Kaitiaki mō Te Mana o te Wai  
Te Mauri o te Wai?  
Whakarongo mai!  
Whakaoratia!  
Hei oranga wairua!  
Hei oranga tangata!  
Hei oranga mō Aotearoa katoa

Our primordial Sky Father weeps  
As our Earth Mother mourns  
Their tears flowing forth  
Manifest in the mountain waters that percolate down to the sea.  
Where-art the earthly protectors of the water's authority?  
The guardians of its essence?  
Pay heed to the abuses of our time and reinvigorate the water's power of life  
As sustenance for our spirit  
As wellbeing for our person  
And as health and prosperity for a vibrant New Zealand for all





## APPENDIX OF TE KĀHUI WAI MĀORI RESPONSES TO ESSENTIAL FRESHWATER POLICY

Since delivering our 15 April 2019 Te Mana o te Wai Report, Te Kāhui Wai Māori has provided the following additional responses to policy arising from the Essential Freshwater Work Programme.



**1. 30 April 2019**

Comments on four MfE Briefing Papers received at 29 April hui



**2. 21 May 2019**

Comments on MfE's NPS-FM Briefing to Minister Parker



**3. 23 May 2019**

Comments on MfE's 'Fair Allocation' (Nitrogen) Discussion Document



**4. 10 June 2019**

Letter to MfE regarding Essential Freshwater – Latest Developments



**5. 26 June 2019**

Response to Draft 'National Direction for Water' Discussion Document (21 June 2019, 5pm Version)



**6. 29 August 2019**

Letter to Minister Parker – Te Kāhui Wai Māori position on key Essential Freshwater policies



## 30 APRIL 2019 TE KĀHUI WAI MĀORI COMMENTS ON MfE PAPERS RECEIVED AT 29 APRIL 2019 HUI

*On 15 April 2019 Te Kāhui Wai Māori provided Hon Minister David Parker with its recommendations to restore the health of our wai (the **Te Mana o te Wai Report**). At our meeting of 29 April we were provided with four papers by Ministry for the Environment (**MfE**) officials, to be presented to the Minister on 30 April 2019. This document sets out our comments in respect of those papers.*

*We note, for completeness, that the MfE papers do not appear to have fully grappled with the recommendations provided in the Te Mana o te Wai Report. Operationalising Te Mana o te Wai lies at the heart of our report. Our proposals for structural and system change are not presented as a menu from which only some recommendations might be chosen. Our recommendations need to be implemented in their entirety to achieve the necessary outcome for Te Mana o te Wai. Our comments on these papers should be received in that context.*

### OVERARCHING COMMENTS

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We have three overarching observations which apply to all of the papers that we received, and which frame our more detailed comments below.

1. We have evaluated these papers against the recommendations that we set out in our report to you on 15 April 2019. Overall, there is little alignment between these papers and our recommendations.
2. There is an inconsistent understanding of Te Mana o te Wai across all of these papers, and a lack of strategic understanding of how to apply the framework that we have recommended. The only paper which comes close to a full understanding is 'Document C'.
3. Receiving papers in a piecemeal way has required us to deliver a piecemeal response. This paper is our attempt to weave together our response in a holistic and all-of-package fashion.

## DOCUMENT A: ESSENTIAL FRESHWATER 40 – ASSISTING COUNCILS TO IMPLEMENT THE NPS-FM

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**Key statement:** The proposed Freshwater Hearings Panel does not meet the Essential Freshwater Policy objective of stopping further degradation and loss to make improvements within five years, when proposed without any commitment to introducing accountability measures on local government for the implementation of regional plans in relation to the NPS-FM.

### Comments

- Our level of confidence in councils to implement the NPS-FM is very low. This position is well supported by the current state of freshwater.
- The critical issue regarding the implementation of the NPS-FM is that councils are not effectively implementing plans and the NPS-FM provisions even when they are operative.
- One of the key recommendations in the Te Mana o te Wai Report is:
  - **Recommendation 7: Develop new accountability and partnership requirements for local governments.**
- The priority for Te Kāhui Wai Maori is to ensure that there are new and effective accountability measures on local government to confirm that councils are actually implementing their plans.
- If this option is to be introduced, it must be hand in hand with addressing the more fundamental issue of a lack of requirements for ensuring that council plans are implemented.
- Another recommendation in the Te Mana o te Wai Report:
  - **Recommendation 10: Implement a Te Mana o te Wai Capacity and Capability Strategy to guide the investment in, and development and empowerment of, the leaders of Te Mana o te Wai to enable structural and system reform.**
- The proposal to utilise hearing commissioners (i.e persons accredited through the RMA Making Good Decisions Programme) is particularly concerning from a Māori perspective, given a serious void of capability regarding Te Mana o te Wai and Māori values and knowledge across hearing commissioners. The RMA Making Good Decisions Programme lacks delivery of any meaningful content to support the consideration of Māori values in freshwater decision-making.
- MfE’s paper ‘*Essential Freshwater 44: Seeking agreement to national direction proposals*’ sets out five underpinning elements of Te Mana o te Wai (paragraph 24).<sup>1</sup> Te Kāhui Wai Māori can see there would be more benefit in ensuring that hearing processes were

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<sup>1</sup> These were developed in collaboration with Te Kāhui Wai Māori, and build on prior work of the Iwi Leaders’ Group.

better give effect to Te Mana o te Wai as the lead objective of the NPS-FM, for example through enabling mātauranga Māori to inform freshwater care, protecting the needs of the water first, and recognising Te Tiriti o Waitangi as the appropriate foundation of Te Mana o te Wai (three of the five elements).

- Currently there is a total absence of analysis as to how the proposed Freshwater Hearing Panel will provide for Te Mana o te Wai. Māori concerns and considerations are essentially invisible in what is proposed.
- Finally, from Te Kāhui Wai Māori's perspective, the following recommendation is most likely to achieve the Essential Freshwater Policy objective of stopping further degradation and loss to make improvements within five years:
  - **Recommendation 3: Declare a moratorium on additional discharges and water-related consents for 10 years.**

## RECOMMENDATION

Regarding the intention of the proposed Freshwater Hearings Panel, Te Kāhui Wai Māori recommends adoption of recommendations 3, 7 and 10 of the Te Mana o te Wai Report, concurrent with introduction of the current proposal.

## DOCUMENT B: ESSENTIAL FRESHWATER 45 – DECISIONS ON NATIONAL DIRECTION FOR RURAL LAND USE

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**Key statement:** Te Kāhui Wai Māori support, in principle, the proposals put forward under the ‘national direction for rural land-use’ package as useful *interim* steps to support aspirations to halt the decline and improve water quality.

### Comments

#### *Stock Exclusion*

- There is widespread support across Aotearoa New Zealand for enacting stock exclusion rules. Te Kāhui Wai Māori support the proposal as it will provide immediate and sustained benefits for water quality.
- While we support the integration with Farm Environment Plans, care needs to be taken in enabling any exceptions through Farm Environment Plans (or otherwise), that these do not undermine the intent of these proposals. Compliance, monitoring and enforcement will also be critical to the success of the proposal.

#### *Nitrogen Cap*

- Te Kāhui Wai Māori support establishing and implementing a ‘Nitrogen Cap’ to reduce excessively high nitrogen leaching in principle, but as with all of these proposals, the detail of how the proposal will be implemented and enforced will be critical.
- We also agree a Nitrogen Cap can only be considered an interim step towards a more sustainable long-term solution, including the establishment and enforcement of Nitrogen limits at a sustainable level for every waterbody.
- The threshold for the Nitrogen Cap in each Freshwater Management Unit/catchment should be established relative to the scale of the over-allocation being addressed, e.g. in a catchment where Nitrogen discharges are 500% over sustainable limits, setting the threshold at the 75th percentile may not be sufficient.
- Nitrogen is also only one of a range of contaminants that affect water quality and additional measures for sediment and phosphate, for example, also need to be considered.

#### *Land use intensification rules*

- While the proposed interim rules for managing rural land use intensification are similar to the moratorium on intensification proposed by Te Kāhui Wai Māori, we do not believe that they will be as effective as a moratorium. Wai Māori is in crisis and we need to be bold and courageous in responding to this predicament head on.

- Placing a moratorium on any new water takes and discharges will not address the underlying failures of our current freshwater management system. However, it will prevent further cumulative detrimental effects while the necessary steps are put in place to restore Te Mana o te Wai and create a more sustainable freshwater management regime.

#### ***High Risk Land Use Activities***

- We also support taking a more active approach to managing high risk land use activities due to the potential of these activities to have a detrimental impact on water quality.

#### ***Farm Environment Plans***

- Farm Environment Plans are a useful tool to support improvements in farming practice and operations. Farm Environment Plans, particularly in conjunction with the other proposed tools, are likely to have a positive impact on our water resources, at the very least by slowing the degradation of this taonga.
- Care is required, however, in implementing FEP (and all of these interim tools) that this does not create any expectation regarding the long-term viability of any particular activity.
- While FEPs and the other proposed tools may reduce environmental harm, in the long term there is a reasonable chance that this will still not be sufficient to be sustainable.
- Regulators need to be upfront with land owners and communities regarding the potential scale of over-allocation within catchments, including how much contaminants may need to be reduced to provide for Te Mana o te Wai.
- We also recommend that catchment reduction targets are established for the implementation of FEPs (e.g. those farms that are not at best practice should be required to achieve a 10% reduction in discharges over a 3-year period).

#### ***Creation of head-room for under-developed Māori land***

- Provision also needs to be made for the development of under-utilised Māori land. There are a wide range of historical reasons why Māori land may not have been fully utilised or developed. In fully or over allocated catchments, ensuring this can occur without causing further environmental degradation and within the confines of the moratorium will require the creation of headroom by reallocating discharge capacity (and water allocation) from existing users to the owners of under-utilised Māori land.
- Enabling the development of under-utilised Māori land is a subset of addressing the full range of iwi rights, interests and responsibilities in water.

## DOCUMENT C: ESSENTIAL FRESHWATER 42 – SEEKING AGREEMENT TO NATIONAL PROPOSALS

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**Key statement:** With regard to the Document C National Direction proposals, Te Kāhui Wai Māori considers that there are two fundamental requirements to their success:

- Directing regional councils to implement Te Mana o te Wai; and
- Developing a compulsory value that is consistent with Te Mana o te Wai, and of relevance to Māori, as part of the National Objectives Framework

### Comments

- The fundamental concept of Te Mana o te Wai that is critical for all New Zealanders is that the health of our nation, across all well-beings, is connected to the health of freshwater.
- Implementing Te Mana o te Wai will ensure that New Zealanders can connect with water again; that they can swim in rivers, source and consume food from freshwater, and will no longer have their health and safety at risk from contact with water.
- As is consistent with the functions of National Policy Statements in providing further interpretation and direction of environmental legislation such as the RMA, implementing Te Mana o te Wai through regional plans will also provide for more clarity and certainty as to how councils and communities operating under regional plans can ensure that they uphold their RMA obligations, including those under section 6(e) and section 7(a). This provides a clear framework to guide councils at the outset, on how the Māori relationship to water, and kaitiakitanga of water, can be taken account of and considered through freshwater policy development and freshwater management.
- Currently, there is a significant policy gap as to how section 6(e) and section 7(a) matters should be addressed through the development of regional plans, and specifically through the objectives and limit setting process.
- Te Kāhui Wai Māori strongly considers that the only option for generating the change that Māori and other New Zealanders wish to see in freshwater quality, and in achieving more consistency and clearer direction on how Māori values in water inform limit setting, is to adopt Option 3 in Essential Freshwater 44 (to direct regional councils to implement Te Mana o te Wai).
- Te Kāhui Wai Māori is conscious that Te Mana o te Wai has been in the NPS-FM since 2014, yet there are no genuine examples of Te Mana o te Wai being implemented. Councils will not implement Te Mana o te Wai unless they are required to.
- Te Kāhui Wai Māori also has a strong view that there is a need to establish a compulsory value that is consistent with Te Mana o te Wai as part of the NOF framework.
- Rather than the alternative where matters are addressed through litigation, setting requirements for councils to establish a Māori compulsory value will provide for councils

and iwi/hapū to determine together at the outset:

- what attributes they can identify that are appropriate to reflect Te Mana o te Wai locally;
  - how these attributes can be measured; and
  - what could be monitored to provide data to support the management of this value, and to inform decision-making and consent processes.
- Te Kāhui Wai Māori are aware of many examples of this work being initiated, albeit in an ad hoc way. Creating a policy framework for this to occur will ensure that best practice methods can be shared and developed across the country.

## DOCUMENT D: ESSENTIAL FRESHWATER 44 - SEEKING AGREEMENT TO NATIONAL PROPOSALS

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**Key statement:** With regard to the Document D National Direction proposals, the critical issues for Te Kāhui Wai Māori are:

- The need for investment in developing a more appropriate methodology for setting catchment limits (Overseer is not sufficiently comprehensive to be solely relied upon).
- Renewable energy generation infrastructure must not be:
  - prioritised such that it shall be established and provided for no matter what the effects;
  - given primacy over other matters in sections 6, 7 and 8.

### Comments

- Document D identifies that, for the purpose of supporting limit setting, Budget 2018 committed \$5m over the next four years to improve Overseer and the Our Land and Water science challenge currently has \$96.9m allocated over ten years (paragraph 28a).
- Te Kāhui Wai Māori note that investment in Overseer, alone will not provide a comprehensive approach to setting limits.
- There is a critical need to invest in developing a more appropriate methodology for setting catchment limits.
- Te Kāhui Wai Māori are also strongly opposed to the policy proposals in paragraphs 52 to 61 of Document D, which favour renewable energy generation infrastructure in the NPS-FM.
- Renewable energy generation infrastructure is responsible for significant water degradation as a consequence of its operation. This industry needs to contribute appropriately with the rest of the community to address its contribution to fresh water decline.
- The Environment Court has:
  - Confirmed that the National Policy Statement for Renewable Energy Generation (**NPS-REG**) does not state that renewable energy generation is prioritised such that it must be established and provided for no matter what the effects.<sup>2</sup>
  - Concluded that the NPS-REG does not give primacy to renewable energy generation over other matters in section 6 or section 7.<sup>3</sup> To this we add section 8.
- The policy proposal, which proposes to remove NPS-FM Appendix 3 and enable regional councils to maintain water quality below a national bottom line if necessary to retain the benefits provided by existing renewable electricity generation infrastructure, would result in these very outcomes.

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<sup>2</sup> *Day v Manawatu-Wanganui Regional Council [2012] NZEnvC 182 at [2]-[21].*

<sup>3</sup> *Blueskin Energy Limited v Dunedin City Council [2017] NZEnvC 150.*





21 MAY 2019

TE KĀHUI WAI MĀORI

COMMENTS ON OFFICIALS' NPS-FM

(TE MANA O TE WAI, MĀORI FRESHWATER

VALUES AND MEASURES, AND MĀTAURANGA

MĀORI) BRIEFING TO MINISTER PARKER

*On 15 April 2019 Te Kāhui Wai Māori provided Hon Minister David Parker with its recommendations to restore the health of our wai (the **Te Mana o te Wai Report**). On 30 April Te Kāhui Wai Māori provided the Minister with a second report (the **30 April Report**), responding to four papers presented to us by Ministry for the Environment (**MfE**) officials at the 29 April 2019 Te Kāhui Wai Māori meeting.*

*This document responds to MfE officials' NPS-FM (Te Mana o Te Wai, Māori freshwater values and measures, and Mātauranga Māori) briefing to Minister Parker (the **NPS-FM Briefing**).*

*Te Kāhui Wai Māori has previously raised concerns about the lack of adequate time to understand, review and comment on the documents provided by MfE officials for feedback. This NPS-FM Briefing is no exception. Select Te Kāhui Wai Māori Members<sup>4</sup> were provided with a first draft version of the NPS-FM Briefing on Saturday 11 May and second draft version of the NPS-FM Briefing on Monday 13 May. They were asked for feedback by Wednesday 15 May. On the morning of Wednesday 15 May they were advised that a Te Kāhui Wai Māori response was not required until Friday 17 May or the morning of Monday 20 May. On Friday 17 May they received a revised version of the NPS-FM Briefing which, after review from the MfE Legal Team, had changes including the removal of the proposal to "give effect to" or "recognise and provide for" Te Mana o Te Wai. They were told that they could provide feedback by the morning of 21 May.*

*Te Kāhui Wai Māori requests that:*

- the NPS-FM Briefing states up front that Te Kāhui Wai Māori has not had adequate time to review the NPS-FM Briefing document, and that any comments provided by Te Kāhui Wai Māori are therefore preliminary; and*
- all other references to Te Kāhui Wai Māori "review" be removed.*

*Operationalising Te Mana o Te Wai in its totality lies at the heart of the Te Mana o te Wai Report. Te Kāhui Wai Māori proposals for structural and system change are not presented as a menu from which only some recommendations might be chosen. The recommendations need to be implemented in their entirety to achieve the necessary outcomes for Te Mana o te Wai.*

<sup>4</sup> These Members were asked by Te Kāhui Wai Māori to review the material on behalf of the group given the quick turn-around.

- In the 30 April Report Te Kāhui Wai Māori noted that there are two fundamental requirements to the success of the NPS-FM Briefing proposals:
  - a. Directing regional councils to implement Te Mana o te Wai; and
  - b. Developing a compulsory value that is consistent with Te Mana o te Wai and of relevance to Māori as part of the NPS-FM National Objectives Framework.
- The NPS-FM Briefing appears to have taken on board comments from previous Te Kāhui Wai Māori reports, particularly the 30 April Report with respect to the decision to recommend Option C (directing regional councils to implement Te Mana o te Wai) to the Minister.
- Te Kāhui Wai Māori endorses some of the stronger and more directive proposals in the NPS-FM Briefing Paper, particularly the process-driven recommendations at B1 and B2.
- Te Kāhui Wai Māori makes the following specific comments.

#### **Removal of proposal to “give effect to” or “recognise and provide for” Te Mana o te Wai**

- The paper that preceded the NPS-FM Briefing, *‘2019-B-05475 – Essential Freshwater, Seeking agreement to national direction proposals’* included, as part of the recommendation to direct regional councils to implement Te Mana o te Wai, a proposal to insert language directing that councils “give effect to” or “provide for” Te Mana o Te Wai.
- MfE officials have shared with Te Kāhui Wai Māori (by email dated 17 May 2019) that it is not possible to determine or assess that the NPS-FM is fully giving effect to Te Mana o te Wai, or directing councils to give effect to it, without a clear assessment or direction about what ‘giving effect to’ Te Mana o te Wai would look like. They say that directing regional councils to ‘implement’, ‘give effect to’ or ‘provide for’ Te Mana o te Wai would need to be very specific as to what that would mean, and they are concerned that defining Te Mana o te Wai in that way may undermine the concept itself, and its ability to be locally applied.
- Te Kāhui Wai Māori disagrees. Without this language the opportunity to embed Te Mana o te Wai at a local council level is completely lost, and any notion that Option C indeed involves “directing regional councils to implement Te Mana o te Wai” is in fact illusory and does not carry the necessary agency to achieve the desired outcome.
- Further, Te Kāhui Wai Māori is becoming increasingly frustrated that the matters raised by MfE officials, including this proposal to remove necessary language, demonstrate a continued lack of understanding of Te Mana o te Wai and how it can be given effect to in policy.
- Embedding Te Mana o te Wai as the framework for freshwater care in Aotearoa will involve an approach that is about empowering tangata whenua and communities to; a) inform decision-making; and b) see their values reflected in its outcomes. This will require localised dialogue with tangata whenua and the wider community on their values for fresh water, to ensure that values that are reflective of New Zealand as a whole are identified and cared for.

- The NPS-FM engenders Te Mana o te Wai by directing councils to give effect to it at a local level. How Te Mana o te Wai is manifest on the ground will be nuanced and influenced by location.
- This is not an impediment to use of the above language; it simply requires considered drafting.
- The last version of the draft NPS-FM Briefing (received Monday 13 May) included the language of “recognise and provide for” or “give effect to”. Te Kāhui Wai Māori considers that without this wording, the NPS-FM does not provide the necessary authority and agency to recognise the intent.
- Te Kāhui Wai Māori is adamant, and therefore recommends, that the wording “give effect to” (not “recognise and provide for”) is reinstated.

### **Providing stronger and more specific direction on how to uphold Te Mana o te Wai**

- Recommendation B includes four proposals regarding direction to Te Mana o te Wai (at paragraph 29). Te Kāhui Wai Māori recommends:
  - a. Strengthening paragraph 29c (‘Direct regional councils to put the needs of the water first in the planning process.’). This paragraph needs to be re-drafted to make explicit that the needs of the water extend beyond biophysical parameters and must include intrinsic and essential values for the sole needs of the water. Excluding these values will confine this direction to a narrow ‘biophysical environmental flow’ target.
  - b. Deleting paragraph 29d (‘Direct regional councils to consider the needs of the people once provisions to protect the essential value of the water have been set.’) Te Kāhui Wai Māori considers this direction is implicit in the three-tiered hierarchy. Having it as a specific direction could be interpreted as elevating the needs of people to such a level as to permit encroaching on the prior needs of the wai as identified in paragraph 29c.

### **Mandatory Māori measures of wellbeing in the NPS-FM**

- In the Te Mana o te Wai Report there is a recommendation to develop mandatory Māori measures of wellbeing in the NPS-FM National Objectives Framework. In the 30 April report it was confirmed that this was fundamental to the success of any revised NPS-FM proposal.
- MfE officials have asked you to “agree to officials exploring the possibility of introducing mandatory Māori measures of wellbeing in the NPS-FM with Te Kāhui Wai Māori.”
- Te Kāhui Wai Māori does not endorse seeking only agreement to explore the possibility of mandatory Māori measures.
- Te Kāhui Wai Māori recommends that the Minister agrees to progress the recommended amendments to the NPS-FM concerning development of mandatory Māori measures of wellbeing in the NPS-FM National Objectives Framework.





23 MAY 2019

## TE KĀHUI WAI MĀORI

# COMMENTS TO MINISTER PARKER ON MINISTRY FOR THE ENVIRONMENT OFFICIALS' 'FAIR ALLOCATION' (NITROGEN) DISCUSSION DOCUMENT

### INTRODUCTION

Te Kāhui Wai Māori has provided the following written reports to Hon Minister David Parker:<sup>5</sup>

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28 February 2019	Te Kāhui Wai Māori: The Health of our Wai; the Health of our Nation written report tabled at meeting with Minister Parker.
15 April 2019	Te Kāhui Wai Māori recommendations to restore the health of our wai (the <b>Te Mana o te Wai Report</b> ).
30 April 2019	A report compiling Te Kāhui Wai Māori responses to four papers presented to the Kāhui by Ministry for the Environment ( <b>MfE</b> ) officials at the 29 April Te Kāhui Wai Māori meeting.
21 May 2019	Te Kāhui Wai Māori comments on MfE officials' NPS-FM (Te Mana o Te Wai, Māori freshwater values and measures, and Mātauranga Māori) briefing to Minister Parker.

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### Response

This report is the Te Kāhui Wai Māori response to the 'Fair Allocation' (Nitrogen) Discussion Document (the **Discussion Document**).

### Timing for response

Te Kāhui Wai Māori has previously raised concerns about the lack of adequate time to review, understand and comment on the documents provided by officials for feedback. This Discussion Document is no exception.

Te Kāhui Wai Māori requests that:

1. Any briefing accompanying the Discussion Document states up front that Te Kāhui Wai Māori has not had adequate time to review the Discussion Document, and any comments provided by Te Kāhui Wai Māori are therefore preliminary;

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<sup>5</sup> This is in addition to numerous responses to MfE and other agency officials, including in Te Kāhui Wai Māori monthly meetings and via select Te Kāhui Wai Māori member engagement on various aspects of the Essential Freshwater Work Programme and associated reforms.

2. This report is appended to the Discussion Document Briefing to Ministers; and
3. Other than messages expressing that Te Kāhui Wai Māori **does not support** the Discussion Document in its current form, no references to Te Kāhui Wai Māori involvement or review in the production of this Discussion Document are made in the final Discussion Document release.

Operationalising Te Mana o te Wai and addressing Māori rights and interests in freshwater lie at the heart of our Te Mana o te Wai Report. Our proposals for structural and system change identified in the Te Mana o te Wai Report, and reiterated in our later responses, are not presented as a menu from which only some recommendations might be chosen. Our recommendations need to be implemented in their entirety to achieve the necessary outcome for Te Mana o te Wai and address Māori rights, interests and obligations in freshwater.

## GENERAL COMMENTS

4. Te Kāhui Wai Māori is not comfortable being associated with the Discussion Document in its current form.
5. We have two fundamental concerns. The Discussion Document:
  - a. **Does not** move the discussion on nitrogen allocation, or allocation more generally, anywhere near where Aotearoa New Zealand needs to be by now.
  - b. **Does not** address Māori rights, interests and obligations in allocation.
6. With respect to foundational allocation issues, the Discussion Document lacks basic analysis:
  - a. The problem is not clearly articulated and there is little robust analysis of options or solutions relating to the challenges of nitrogen allocation.
  - b. The Discussion Document conflates management tools with allocation.
  - c. The Discussion Document fails to provide any indication of how to deal with transition (the hardest part of any change) in any meaningful way, other than to continually refer to the need for transition.
  - d. Despite stating that “no grandparenting” is a principle, the Discussion Document continues to promote options that are based on, or require, grandparenting.
7. In relation to Māori rights, interests and obligations:
  - a. The proposed arrangements presume greater degree of residual control and ownership rights by the Government than is appropriate given the Government’s acknowledgement of both Māori Treaty partner and asserted customary, rights, interests and obligations.
  - b. This relegates Māori to playing only a kaitiaki role in any new allocation framework; to our values looking after the water from which others receive the benefit.

- c. Greater governance must be provided for. Co-governance is implied under Treaty principles. In fact, this level of Māori governance is required as a minimum given Crown-acknowledged Māori rights, interests and obligations in water.<sup>6</sup> The Crown presuming ultimate control of water-related reform, as it does in the Discussion Document, is not consistent with either position. Before any water-related reform proposals can proceed, proper provision for Māori co-governance of any reform process, and even a greater role as and when Māori rights, interests and obligations are resolved, must be provided for.
  - d. Rights, interests and obligations of Māori must be provided for. Multiple precedents exist for mechanisms which can protect Māori rights, interests and obligations while facilitating water quality and efficiency enhancing reforms. The Crown forest licensed land regime is just one example. Such mechanisms (i.e. improved versions thereof, informed by their experience) must be put in place ahead of any nitrogen or other water-related allocation reforms. Once in place, reforms can proceed while rights, interests and obligations are being resolved. The sooner this is addressed the sooner that certainty can be provided to everyone.
8. There is also little sense to the layout/structure of the document, making it hard to read and follow.
  9. There is much more rich and useful advice in the reports of the Land and Water Forum; the evidence of the Wai 2358: National Fresh Water and Geothermal Resources Inquiry; and other work emerging from those parties that participated, including the New Zealand Māori Council and Iwi Leaders Group.

## Recommendation

10. The Kāhui Wai Māori recommends that:
  - a. the Discussion Document is withdrawn;
  - b. officials develop and resource a work programme for engaging with Te Kāhui Wai Māori to re-design an allocation Discussion Document that addresses the matters raised above, beginning with items 7(c) and 7(d).
11. Te Kāhui Wai Māori make this recommendation on the basis that the analysis in the Discussion Document is too undeveloped to be of any value in a national conversation, and may actually present a risk to positively advancing the conversation.

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<sup>6</sup>We refer to the Crown's acknowledgement at paragraph 49 of the Discussion Document, also mentioned below.

## SPECIFIC COMMENTS ON MĀORI ASPECTS TO THIS DISCUSSION DOCUMENT

12. These specific comments supplement the general comments above.
13. They are not an exhaustive commentary on the Māori aspects of the Discussion Document.
14. For clarity, the headings used below do not reflect how Te Kāhui Wai Māori sees these issues. (As we have noted, there is little sense to the layout and structure of the report. This results in many related sections being disjointed.) Accordingly, the headings below reflect that part of the document to which this report is responding.

### Principles to guide the Government's decisions

15. Paragraph 16 of the Discussion Document makes the following statement (which we have separated into bullets a and b for emphasis, but which are part of a single paragraph in the document):<sup>7</sup>
  - a. "No nitrogen allocation system can be developed without simultaneously considering how the rights and interests of Iwi in freshwater will be addressed."
  - b. "The widespread view of Māori is that Te Mana o te Wai must be the guiding framework on which a future allocation system is based."
16. Putting aside the diluted reference to addressing rights and interests in 15(a) above (Māori rights and interests must be **addressed**), considered separately, these two statements (in their proper and true form) reflect statements made in the Te Mana o te Wai Report.
17. However, it is the combination of these two statements together which shows that the Discussion Document needs work to correctly reflect:
  - a. the influence of 'Te Mana o te Wai' in the context of allocation; and, **as a separate matter**;
  - b. addressing Māori rights, interests and obligations in allocation.
18. Te Mana o te Wai is about overarching water management and governance. Te Mana o te Wai has implications for allocation, which is that allocation must give effect to Te Mana o te Wai.
19. However, the allocation issues specific to Māori rights, interests and obligations are about ensuring Māori rights, interests and obligations are recognised and provided for, and that allocation is fair and equitable. This is a separate issue that needs to be provided for in the broader context of Te Mana o te Wai. For example, where any rights to discharge nitrogen<sup>8</sup> are allocated to Māori, those Māori right holders must still give effect to Te Mana o te Wai (they must still comply with the three tiered hierarchy of obligations).
20. If this distinction is misunderstood there is a real risk that addressing Māori rights, interests and obligations in allocation will be equated solely with giving effect to Te Mana o te Wai.

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<sup>7</sup> Paragraph 16.

<sup>8</sup> The matter to which the Discussion Document relates.

21. Such an approach does not address Māori rights, interests and obligations, and instead relegates Māori to playing only a kaitiaki role in any new allocation framework; to our values looking after the water from which others receive the benefit.
22. This circumstance will **not** address Māori rights, interests and obligations in allocation.

### Addressing Māori rights, interests and obligations

23. The Discussion Document states that:
  - a. “any future allocation system needs to **consider how** the rights and interests of Māori in freshwater will be addressed”;<sup>9</sup> and
  - b. “this issue cannot be progressed **without substantive discussion** with Māori about their rights and interests in freshwater under the Treaty of Waitangi.”<sup>10</sup>
24. This approach is fundamentally flawed.
25. Māori have been engaging in substantive discussion with the Government on this issue for decades.
26. The matter needs to be attended to so that New Zealanders can all move forward as a nation. The future allocation system needs to **address** Māori rights, interests and obligations in freshwater.
27. This is not a controversial statement. Indeed, it is consistent with then Deputy Prime Minister, Hon Bill English’s, undertaking on behalf of the Crown in 2012. This undertaking is referred to in the Discussion Document at paragraph 49.
28. Addressing Māori rights, interests and obligations is a bottom-line consideration for Te Kāhui Wai Māori, which was set out clearly in paragraphs 12 and 66 of the Te Mana o te Wai Report.
29. What will address Māori rights, interests and obligations in allocation is providing an allocation to Māori.
30. In the interim, in order for reforms to proceed in good faith, the following is required:
  - a. Proper provision for Māori co-governance of any reform process, and even a greater role as and when Māori rights, interests and obligations are resolved.
  - b. A mechanism to protect Māori rights, interests and obligations while facilitating water quality and efficiency enhancing reforms. The Crown forest licensed land regime is just one example. Such mechanisms (i.e. improved versions thereof, informed by their experience) must be put in place ahead of any nitrogen or other water-related allocation reforms. Once in place, reforms can proceed while rights, interests and obligations are being resolved. The sooner this is addressed the sooner that certainty can be provided to everyone.

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<sup>9</sup> Paragraph 48.

<sup>10</sup> Paragraph 52.





# LETTER TO MFE REGARDING ESSENTIAL FRESHWATER – LATEST DEVELOPMENTS

10 June 2019

Ministry for the Environment  
PO Box 10362  
WELLINGTON 6143

Attention: Cheryl Barnes (cheryl.barnes@mfe.govt.nz)

Tēnā koe Cheryl,

## ESSENTIAL FRESHWATER POLICY – LATEST DEVELOPMENTS

We refer to the developments in the Essential Freshwater Work Programme over the last two weeks, which have led to additional policy initiatives. This letter responds to those developments and initiatives.

### Written response to Te Kāhui Wai Māori Reports

Te Kāhui Wai Māori has provided the following written reports to Hon Minister David Parker:<sup>11</sup>

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<b>28 February 2019</b>	Te Kāhui Wai Māori: The Health of our Wai; the Health of our Nation written report tabled at meeting with Minister Parker.
<b>15 April 2019</b>	Te Kāhui Wai Māori recommendations to restore the health of our wai.
<b>30 April 2019</b>	A report compiling Te Kāhui Wai Māori responses to four papers presented to the Kāhui by Ministry for the Environment ( <b>MfE</b> ) officials at the 29 April Te Kāhui Wai Māori meeting.
<b>21 May 2019</b>	Te Kāhui Wai Māori comments on MfE officials' NPS-FM (Te Mana o te Wai, Māori freshwater values and measures, and Mātauranga Māori) briefing to Minister Parker.
<b>23 May 2019</b>	Te Kāhui Wai Māori response to the 'Fair Allocation' (Nitrogen) Discussion Document

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<sup>11</sup> This is in addition to numerous responses to Ministry and other agency officials, including in Te Kāhui Wai Māori monthly meetings and via select Te Kāhui Wai Māori member engagement on various aspects of the Essential Freshwater Work Programme and associated reforms.

Te Kāhui Wai Māori has repeatedly requested a written response to our policy recommendation reports. No response has been forthcoming and the policy that has been developed to date continues to inadequately reflect (if at all) the Te Kāhui Wai Māori recommendations. We again ask that MfE confirm that a written response is forthcoming, and when Te Kāhui Wai Māori can expect to receive it.

We appreciate that some policy matters remain in development, and decisions are yet to be made. In order to facilitate a timely response, we ask that the response be provided in parts. Can you please provide a response now that covers those matters for which decisions have been made (an **Initial Response**), followed by later responses on matters that remain undecided (as decisions are made). We would appreciate MfE providing us with a date by which we can expect to receive the Initial Response.

### Integration Group

The 5 June 2019 joint advisory group hui resulted in a proposal to convene a small Integration Group with membership from across the four advisory groups.

Te Kāhui Wai Māori does not consider the Integration Group necessary in order for MfE to adopt the policy proposals that have been advanced by our Members since April 2019. Nor is Te Kāhui Wai Māori satisfied with the process that led to the decision to form the Integration Group. However, Te Kāhui Wai Māori Members shall attend in order to stay engaged with this process and hold the outcomes that emerge to account in accordance with our policy views.

Te Kāhui Wai Māori shall not limit its attendance to 2 – 3 members. Those Te Kāhui Wai Māori Members that are available shall attend the hui as appropriate. The 14 June 2019 hui shall be attended by Annette Sykes, Hon Dover Samuels, Millan Ruka and our Technical Advisor Maia Wikaira. If other Te Kāhui Wai Māori members become available, and can attend, they shall also join the hui. At this stage those Te Kāhui Wai Māori Members and advisors who can attend the following week are Millan Ruka, Hon Dover Samuels, Riki Ellison and Maia Wikaira.

With respect to the scope of the matters to be considered by this group, Te Kāhui Wai Māori has no interest in participating in any group that cuts across, and attempts to become a substitute for, the considered policy emerging from our work plan and direct engagement with MfE on the Essential Freshwater Work Programme. The policy initiatives emerging from our reports are non-negotiable.

Our discussion today with Ministry officials has confirmed that the Integration Group will primarily deal with the Rural Package, and that the policy topics to be discussed by the group include:

- a Nitrogen attribute;
- the mandatory mahinga kai proposal put forward by the FLG, which shall be advanced within the context of the compulsory Māori value policy work being completed by Te Kāhui Wai Māori and MfE officials (see below);
- the agricultural package; and
- a low flows regime.

Outside of the Integration Group, we shall continue to engage directly with MfE on other Essential Freshwater Work Programme and Te Kāhui Wai Māori work plan matters. We expect those matters to be accorded the necessary priority to meet any decision-making deadlines.

### **Compulsory Māori Value**

An example of the direct policy engagement between Te Kāhui Wai Māori and MfE officials that shall continue outside of the Integration Group is the development of mandatory Māori measures of wellbeing in the NPS-FM National Objectives Framework (the **Compulsory Māori Value**).

Te Kāhui Wai Māori remains resolute about the need to advance this policy as a priority, to ensure it is ready to be presented to Hon Minister David Parker within the revised timetable for receiving Essential Freshwater Work Programme policy initiatives. We ask that MfE officials maintain ongoing communication with Te Kāhui Wai Māori Member, Mahina-a-rangi Baker, about development of the policy advice. In particular, we ask that officials notify her early and often about likely review and engagement milestones, to ensure that she has sufficient notice to dedicate time to engage with officials as required.

### **Iwi/hapū rights, interests and obligations**

In his 8 June 2019 interview on Newshub Nation, Hon Minister David Parker stated that he undertook to put a paper addressing royalties on water bottling to Cabinet within the month. This was the first time that Te Kāhui Wai Māori learned about development of policy in this area.

As we outlined in our 23 May paper responding to the Fair Allocation (Nitrogen) Discussion Document,<sup>12</sup> the issue of royalties triggers the need to commit to a process to resolve Māori rights, interests and obligations in water.

We again provide our 23 May paper to you. We ask that this paper is provided to Hon Ministers Parker, Davis and Mahuta, and confirmation of the same be provided to me, copying Maia Wikaira.

I roto i ngā mihi,



Kingi Smiler  
Chairperson  
Te Kāhui Wai Māori

Copy to:	Martin Workman	<a href="mailto:martin.workman@mfe.govt.nz">martin.workman@mfe.govt.nz</a>
	Bryan Smith	<a href="mailto:bryan.smith@mfe.govt.nz">bryan.smith@mfe.govt.nz</a>
	Lucy Bolton	<a href="mailto:lucy.bolton@mfe.govt.nz">lucy.bolton@mfe.govt.nz</a>
	Matthew Cunningham	<a href="mailto:matthew.cunningham@mfe.govt.nz">matthew.cunningham@mfe.govt.nz</a>

<sup>12</sup> Which we understand Minister Parker has decided to defer for a few months.





26 JUNE 2019

TE KĀHUI WAI MĀORI

## RESPONSE TO DRAFT 'NATIONAL DIRECTION FOR WATER' DRAFT DISCUSSION DOCUMENT (21 JUNE 2019, 5PM VERSION)

### INTRODUCTION

1. Te Kāhui Wai Māori was set up to collaboratively develop and analyse freshwater reform policy options to restore the health of our wai and address Māori rights, interests and obligations, through the Ministry for the Environment's (MfE) Essential Freshwater Reform Programme.
2. On 15 April 2019 Te Kāhui Wai Māori provided Hon Minister David Parker with its keystone recommendations (the **Te Mana o te Wai Report**). Te Kāhui Wai Māori has provided a range of additional policy responses dated 30 April, 21 and 23 May and 10 June. We acknowledge receipt of Minister Parker's 19 June 2019 response to the Te Mana o te Wai Report.
3. We understand that the Minister is proposing to release a 'National Direction for Water' Discussion Document for consultation in the coming months, covering some of the matters in the Essential Freshwater Work Programme. This is the high-level Te Kāhui Wai Māori response to the 21 June 2019 (5pm version) **Draft Discussion Document**, which was developed following engagement on 17 – 20 June 2019 with an Integration Group comprising members of all four advisory groups.
4. This response is supported by the following documents:
  - (a) our tracked changes version of the Draft Discussion Document;<sup>1</sup> and
  - (b) our response to the table emerging from the Integration Group engagement.

<sup>1</sup> We appreciate that providing a tracked-changed version of an ever-evolving document is not the most efficient way to offer feedback, particularly when we note our preference for the layout and presentation of information is not reflected in the design of this document. However, we offer our revised drafting on the basis that we have not previously been satisfied with the reflection of our comments in official documents. In this way, our words cannot be mistaken.

## GENERAL COMMENTS

### Te Kāhui Wai Māori recommendations not adopted

5. Te Kāhui Wai Māori has repeatedly identified that our proposals for structural and system change are not presented as a menu of single options that can be implemented individually. Our recommendations need to be implemented simultaneously and in their entirety to achieve the necessary outcome for Te Mana o te Wai.
6. We are aware that our recommendations reach beyond the package of regulation identified in the Draft Discussion Document.<sup>2</sup> However, the recommendations in the Te Mana o te Wai Report are necessary to restore the health of our wai and address Māori rights, interests and obligations. Successive governments have repeatedly deferred resolving these issues head-on, on the basis that more time, discussion and analysis is required. That message, which sits against the background of years of engagement, discussion and analysis on these issues, remains in response to our recommendations today. It is a message that Te Kāhui Wai Māori does not accept.
7. The report of the Freshwater Leaders Group (**FLG**) makes clear that non-Māori voices from our community are calling for significant and rapid change to return waterways to the state that all New Zealanders want, and resolving any differences between the Crown and Māori regarding the governance of, and Māori rights, interests and obligations in, water is important to achieve the goals of freshwater reform.<sup>3</sup>
8. We encourage the Crown to be bold, buoyed by the reality that New Zealanders' expectations have changed. Our communities want demonstrable improvements in the health of our wai; and they want certainty for affected water users. Meaningful engagement with the recommendations in the Te Mana o Te Wai Report will achieve these outcomes.
9. We expect the balance of our recommendations to be provided for in future reforms.

### Māori rights, interests and obligations

10. Specific mention must be made of addressing Māori rights, interests and obligations in freshwater which, together with operationalising Te Mana o te Wai, lies at the heart of our Te Mana o te Wai Report.
11. Addressing Māori rights, interests and obligations is a bottom-line consideration for Te Kāhui Wai Māori.<sup>4</sup>
12. We need to see the Government commit to, and co-design with Māori, a plan of action to address Māori rights, interests and obligations, and implement managed transition to a new system of care and respect.

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<sup>2</sup> Specific reference is made to the following Te Mana o te Wai Report recommendations: reform of the RMA, consideration of a stand-alone Water Act, new requirements for local government, a national funding system that emphasises water user pays, a strategy to develop Te Mana o te Wai capacity and capability, a science strategy that includes Māori measures of health, and a new water allocation system that must conform with Te Mana o te Wai and iwi/hapū rights, interests and obligations.

<sup>3</sup> FLG April 2019 Report, paragraphs 5 and 14.

<sup>4</sup> This is set out clearly in paragraphs 12 and 66 of the Te Mana o te Wai Report.

## DRAFT DISCUSSION DOCUMENT

13. This section provides our views on key aspects of the Draft Discussion Document.

### Te Mana o te Wai

#### *What is Te Mana o te Wai?*

14. 'Te Mana o Te Wai' means 'the mana of the water' or the fundamental existential value and concept that protects New Zealander's special connection with freshwater, while simultaneously sustaining its ability to provide for the future wellbeing of people and our unique ecosystems.
15. Te Mana o te Wai is conveyed here as a national framework to understand water, that can be applied to inform how decision-making connected to the care and use of water should occur. It is a concept that encompasses the integrated and holistic health and well-being of waters as a continuum from the mountains to the sea.
16. Te Mana o te Wai is inherently connected to other Māori world-view concepts and frameworks and informs the trajectory for immediate and future policy development, and regional freshwater planning.
17. The Te Mana o te Wai framework informs decision-making connected to water, by establishing a three-tiered hierarchy of obligations which requires that certain uses for water must be prioritised over others (Figure 1).
18. In order to give effect to the hierarchy of obligations, the Te Mana o te Wai framework provides Aotearoa New Zealand's freshwater leaders with a bicultural principled way to govern, care and respect freshwater. Three of the six principles provide an explicit place for tangata whenua water leadership:
  - Mana whakahaere:** the rights and obligations of mana whenua inherited through whakapapa to the land and water, when exercising their authority, ability and freedom to implement their values and realise their aspirations as guaranteed by Te Tiriti o Waitangi/Treaty of Waitangi.
  - Kaitiakitanga:** the rights and obligations to care for and enhance the environment, for the benefit of all now and into the future, that involves the care and protection of all of nature, and the oversight and response to the outcomes of human interaction with nature – therefore the rights of mana whakahaere create the obligations to practice kaitiakitanga.
  - Manaakitanga:** the responsibilities and obligations to provide for and share with others, including all tangata Tiriti – that in turn is heavily influenced by the health of the environment.
19. The Te Mana o te Wai framework expects iwi, hapū, Māori landowners, whānau, and hāpori (communities) to be able to effectively contribute to giving effect to Te Mana o te Wai, along with all others in Aotearoa New Zealand including central and local government.

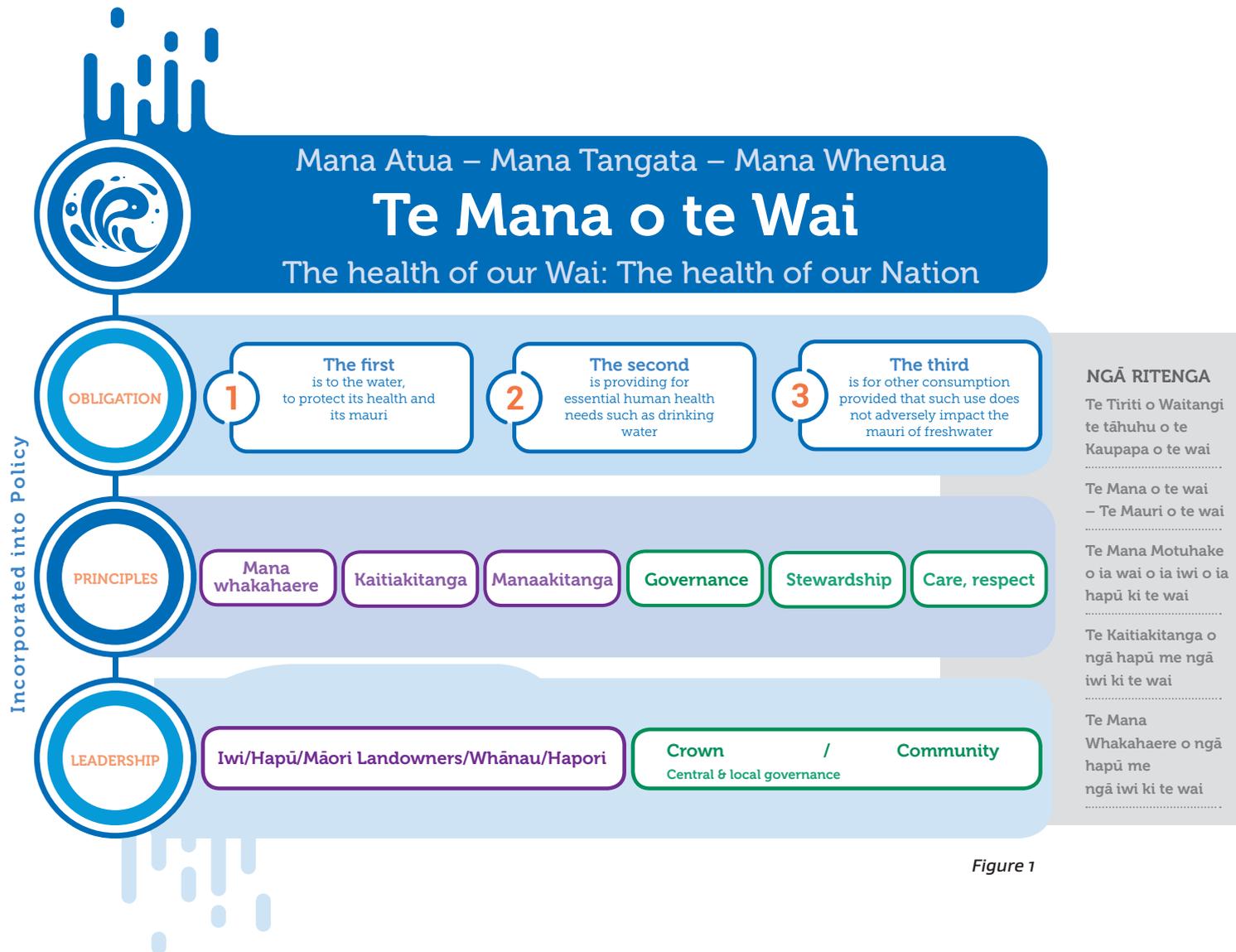


Figure 1

### Retention of core principles

20. Te Mana o te Wai does not stand without its six core principles. The application of Te Mana o te Wai in the current policy proposals has omitted key aspects of it. Specifically, mana whakahaere has not been acknowledged or provided for.
21. The use of Te Mana o te Wai in this way cannot be supported by Te Kāhui Wai Māori. All six core principles of Te Mana o te Wai identified above must be addressed when seeking to implement it through policy.

### A framework for managing water resources

22. The Te Mana o te Wai Report recommended Te Mana o te Wai be “the national korowai” that frames and informs the trajectory for immediate and future policy development, and regional freshwater planning.”<sup>5</sup> All advisory groups support the concept of Te Mana o te Wai as the overall framework for managing water resources.
23. The policy proposals around Te Mana o te Wai to date have limited its application to the National Policy Statement for Freshwater Management (**NPS-FM**) only. We are concerned that MfE is, on the one hand framing it as a core concept that underpins the overall framework for managing fresh water resources, but on the other, limiting its application to a concept reflected only in the NPS-FM.

<sup>5</sup> Te Mana o Te Wai Report, paragraph 13.

24. This narrow application is not reflective of the broad scale adoption of Te Mana o te Wai by freshwater leaders, freshwater science experts and the regional sector.
25. To that end, we support strengthening Te Mana o te Wai within the NPS-FM, but on the basis that much more work is required to see Te Mana o te Wai reflected throughout the freshwater management framework.

#### ***Proposed NPS-FM amendments***

26. Proposed NPS-FM Amendment 2 in the Draft Discussion Document is to direct regional councils to, together with tangata whenua, determine a local understanding of, and aspirations for, Te Mana o te Wai.
27. Consistent with our 30 April and 21 May 2019 responses, we have identified the detail of this proposal as reflected in two key policies (both of which are necessary to achieve Amendment 2):
  - (a) directing regional councils to 'give effect to' Te Mana o te Wai; and
  - (b) developing a compulsory mahinga kai value for the National Objectives Framework (NOF) of the NPS-FM (set out below).

#### ***Te Mana o te Wai Commission not accepted***

28. A key recommendation of the Te Mana o te Wai Report was the Te Mana o te Wai Commission.<sup>6</sup> The FLG also supports the establishment of a new, independent national body to oversee freshwater management.
29. We understand that Ministry officials have not yet provided a formal recommendation on this kaupapa, but have agreed that a stronger central agent will be needed.<sup>7</sup>
30. Nonetheless, the Draft Discussion Document contains five recommendations that seek to incorporate Te Mana o te Wai, four of which provide direction to regional councils, ignoring our recommendation to develop new accountability and partnership requirements for local government.
31. Te Kāhui Wai Māori continues to endorse the need for a Te Mana o Te Wai Commission.

#### ***New mahinga kai compulsory value***

32. In addition to the existing compulsory values for human health and ecosystem health, Te Kāhui Wai Māori recommends that a third compulsory value for mahinga kai be incorporated into the NOF to strengthen the implementation of Te Mana o te Wai in the NPS-FM, and enhance the application of human and ecosystem health compulsory values. We have provided a briefing paper to Minister Parker with drafting to support the recommendation, as well as commentary in the Draft Discussion Document.

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<sup>6</sup>To design and implement the Te Mana o te Wai Structure and Systems Reform that includes: setting national directions that promote Te Mana o te Wai; calling-in applications at the local catchment level where appropriate; auditing water-related local government and catchment level processes and decisions; and bringing and participating in proceedings relating to local government and catchment level processes and decisions: Te Mana o te Wai Report, paragraphs 42 to 46.

<sup>7</sup>Integration Group Table, MfE Governance/Decision-Making.

### ***Moratorium***

33. The Te Mana o Te Wai Report recommended a temporary (10 year) moratorium on intensification of land use (discharges) and consumptive water takes to prevent further degradation of water bodies; alienation of iwi/hapū rights, interests and obligations until this issue can be addressed by Parliament; and accumulation of use rights that could fetter the development of the new structural system for caring for water.<sup>8</sup>
34. The Draft Discussion Document proposal to restrict intensification in rural land use is not as wide-reaching. It relates only to high-risk land use changes. Specifically:
  - (a) increases in the area of land in irrigated pastoral, arable or horticultural production above a minimum threshold;
  - (b) increases in forage cropping over and above certain thresholds;
  - (c) certain high-risk land-use changes (above a minimum threshold); and
  - (d) any land-use change to commercial vegetable growing that would increase the applicant's net area of commercial vegetable growing in the sub-catchment (above their highest extent in 2013-2018).
35. Te Kāhui Wai Māori maintains that our temporary moratorium is necessary, but also supports the more limited application to high risk land use activities through a prohibited activity status.<sup>9</sup>

### ***Rural package***

36. In principle, Te Kāhui Wai Māori supports stock exclusion, winter grazing regulations, and introducing nitrogen loss thresholds in specified catchments (the nitrogen cap). We do not support the detail of the proposals in the Discussion Document, but support the details proposed by the Integration Group.
37. We reiterate our 30 April 2019 recommendation that those under the threshold are also required to do their part, by being subject to a cap at the threshold and a catchment-based nitrogen reduction target of 10%. Without this commensurate reduction we understand that there is no limit on nitrogen discharges from those farmers below the 75th percentile, such that the benefits of the reductions achieved by those farmers over the 75th percentile could be eroded, or even undermined.

### ***Farm Environment Plans***

38. We support independently audited mandatory Farm Environment Plans (**FEPs**), but not as the sole or central tool underpinning the Rural Package. FEPs are a useful tool, as part of a suite of outcomes, to support improvements in farming practice and operations. However, they are not a license for business as usual, and should not have regulatory effect.
39. The Government needs to be upfront with land owners and communities regarding the potential scale of over-allocation within catchments, including the scale of contaminant reduction that may be required to provide for Te Mana o te Wai.

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<sup>8</sup> Te Mana o Te Wai Report, paragraphs 22 to 33.

<sup>9</sup> This proposal is supported by some FLG members; others seek to control high risk land use through non-complying activity status.

40. Experience also shows that FEPs that incentivise the building of capacity and skills, and which are supported by industry, are better received by farmers. Regulation that does not incentivise and support good farming practice is likely to be unsuccessful.

#### ***Draft STAG Recommendations***

41. Te Kāhui Wai Māori supports the Science and Technical Advisory Group (STAG) recommendations in their 21 June 2019 Draft Report and 25 June Update, particularly their recognition that 'it is essential that more work is done to bring mātauranga Māori into the freshwater management framework.'<sup>10</sup>
42. Additionally, we consider that the recognition in the report of 'the importance of taking a much more integrated and holistic view of the things we need to measure and manage to protect and enhance our shared values for water', directly supports the Te Kāhui Wai Māori recommendation that a compulsory Māori value is included in the NPS, to ensure that integrated values connected to freshwater are better managed.<sup>11</sup>
43. We endorse all additional ecosystem metrics and attributes. In particular, we acknowledge STAG agreement on a proposed nitrate indicator of <1mgN/L, which is between 6 and 11 times lower than the current levels in many catchments around the country that are in a limit setting process. This is a positive step forward.

#### ***Major hydro scheme exemptions***

44. Te Kāhui Wai Māori remains strongly opposed to the exemptions for major hydro schemes to support renewable energy targets,<sup>12</sup> and also endorses the Regional Sector Water Subgroup opposition to the proposal. We understand that the proposal was not discussed with FLG or STAG by MfE officials.
45. This proposal is a serious risk to our major rivers and completely undermines the Essential Freshwater objective to stop further degradation and loss. Major hydro schemes are responsible for significant water degradation as a consequence of their operation. Furthermore, many major hydro schemes are non-compliant with safe fish passage. They should not be:
- (a) prioritised such that major hydro schemes are provided for, regardless of the effects;
  - (b) given primacy over other matters in sections 6, 7 or 8 of the RMA.
46. Major hydro schemes need to contribute appropriately to address their contribution to fresh water decline.

#### ***Monitoring and enforcement***

47. The Draft Discussion Document details a proposal to amend the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 to mandate telemetry (direct electronic transmission).
48. This improved monitoring approach allows assessment of compliance, but enforcement will be crucial to ensure water users are doing what is required of them. Without robust enforcement practice, plan rules and consent conditions are too often ignored. Failure to enforce compliance can significantly undermine investment in good planning, policy-making, and resource consenting processes.

<sup>10</sup> This is included in the 21 June 2019 Draft Report.

<sup>11</sup> Ibid.

<sup>12</sup> We first opposed this issue in our 30 April Response.

49. We have not had time to offer marked-up suggestions in the Draft Discussion Document as to national direction on enforcement, but seek to work with MfE officials to develop appropriate proposals.

### ***Forestry***

50. The sustainable management of forests has a key role to play in protecting Aotearoa New Zealand's water resources. Forests play a significant role in providing freshwater resources and ecosystem services, such as water quality, water yield, recreation and biodiversity. We understand that the National Environmental Standard for Plantation Forestry (**NES-PF**) regulates the way that some plantation forestry activities may be carried out. Conditions and restrictions in the NES-PF manage the environmental effects of these forestry activities, which can include effects on water quality. We understand that the NES-PF is administered by the Ministry for Primary Industries (**MPI**). We would like to see strong coordination between MPI and MfE to ensure that forestry policies interact and are developed in a manner consistent with, the Essential Freshwater Work Programme.

### ***New planning process for freshwater***

51. We understand that to enable better, faster, more nationally consistent water management, you propose a new bespoke planning process. It will require councils to have new plans in place no later than 2025 that fully give effect to the new NPS-FM 2020.

52. Government-appointed Freshwater Hearing Panels shall consider, hear, and make recommendations on these plans. There shall be restricted avenues for appeal, balanced by this robust, independent hearing process.

53. We consider the following appointment criteria appropriate for the Freshwater Hearing Panels:

- (a) Chaired by a retired or current Environment Court judge, or Māori Land Court judge with a warrant to sit as an alternate Environment Court judge.
- (b) Across each hearing panel the commissioners will have the following expertise:
  - (i) all Commissioners must understand the principles and application of Te Mana o te Wai as the framework for managing water resources;
  - (ii) proven understanding of tikanga and mātauranga Māori;
  - (iii) experience and knowledge of local community values;
  - (iv) experience in judicial processes and cross-examination;
  - (v) experience in freshwater planning processes;
  - (vi) expertise in freshwater quality, quantity and ecology;
  - (vii) expertise in land (use) effects on water;
  - (viii) knowledge of the RMA.

54. We would also add that Te Mana o te Wai must provide the framework for freshwater management decision-making in this planning process.

55. We support the new planning process for freshwater to expedite plans, in the form outlined above.





# LETTER TO MINISTER PARKER TE KĀHUI WAI MĀORI POSITION ON KEY ESSENTIAL FRESHWATER POLICIES

29 August 2019

Honourable Minister David Parker  
Parliament Buildings  
Private Bag 18041  
WELLINGTON 6160

Tēnā koe e te Minita,

## ESSENTIAL FRESHWATER PACKAGE

1. Thank you for your letter of 22 August 2019 in respect of key elements of the Essential Freshwater reform package for Te Kāhui Wai Māori, namely:
  - (a) the mahinga kai compulsory value;
  - (b) Te Mana o te Wai in the National Policy Statement for Freshwater Management (**NPS-FM**); and
  - (c) addressing Māori rights, interests and obligations.
2. As you know, since our last exchange of correspondence the Waitangi Tribunal's Wai 2358 Stage 2 Report on the National Freshwater and Geothermal Resources Claim has been released (the **Wai 2358 Report**). We fully endorse the Wai 2358 Report's recommendations and are encouraged that they echo a number of the recommendations made by Te Kāhui Wai Māori in its April 2019 Report (**Te Mana o te Wai Report**).
3. The members of Te Kāhui Wai Māori have carefully considered your position and the final documents for public consultation. We have done so against the recommendations in our Te Mana o te Wai Report and the recommendations of the Wai 2358 Report, in order to inform our decision on whether we can continue our role beyond the initial one-year term of Te Kāhui Wai Māori. This letter sets out our views on those matters.

## Mahinga kai compulsory value

4. The Waitangi Tribunal has recommended that Te Mana o te Wai should be made a compulsory national value in the National Objectives Framework (**NOF**) with national bottom lines, and that cultural indicators should also be added to the NOF.
5. The Kāhui Wai Māori supports the Tribunal's recommendation, and sees the mahinga kai value, as proposed by the Kāhui, as a significant first-step in responding to it. Mahinga kai was deliberately chosen as a compulsory value by Te Kāhui Wai Maori because it is comprised of multi-faceted and integrated indicators that address both kai being safe to harvest and eat, and ensuring the mauri of the wai is intact.

6. Te Kāhui Wai Māori supports the reference to the mahinga kai compulsory value in the Discussion Document. Our engagement with officials focused only on the Discussion Document proposal. How the mahinga kai compulsory value is to be reflected in the NPS-FM requires confirmation as part of the work still requiring completion.
7. The Discussion Document refers to enabling and supporting *tangata whenua* locally to develop attributes that represent the specific mahinga kai values in their local catchments. This aspect of the process for determining the mahinga kai compulsory value is critical. Only *tangata whenua* can identify and develop attributes that represent the specific mahinga kai values in their local catchments. The NPS-FM needs to reflect this to give clear direction to councils.
8. Te Kāhui Wai Māori is committed to completing this work through the consultation process, and seeing the work through to completion.

### Te Mana o te Wai in the NPS-FM

9. The version of the NPS-FM set for public release (which was circulated on 22 August 2019) is a substantially different document to the version on which we directed previous comments to you.
10. We welcome the proposal to “give effect to” Te Mana o te Wai and acknowledge the significant advancement this represents, with respect to national policy direction to councils about the centrality of Te Mana o te Wai.
11. We raise the following points with Te Mana o te Wai in the NPS-FM, which can and must be addressed through further policy engagement by Te Kāhui Wai Māori with officials. They relate to:
  - (a) *The descriptor of Te Mana o te Wai* – Embedding Te Mana o te Wai in the NPS-FM will be meaningless if its description is incorrect. The current description of Te Mana o te Wai in the NPS-FM was not drafted by Te Kāhui Wai Māori and requires significant further refinement to capture the essence of Te Mana o te Wai.
  - (b) *Mana whakahaere / governance* – The square brackets around *mana whakahaere / governance* suggest that this is an aspect of Te Mana o te Wai that is not valued and may be removed through the consultation process. We cannot support this. The square brackets need to be removed and *mana whakahaere / governance* given effect as a key aspect of Te Mana o te Wai.
  - (c) *Tangata whenua roles and interests* – Section 3.3 represents a carrying over of Section D of the current NPS-FM to the new proposals. The Wai 2358 Report has found that Section D, which the Crown has confirmed does no more or less than what was already provided for in the RMA, is not Treaty compliant. We agree with the Tribunal. The new Section 3.3 needs to specify a direct, co-governance level of involvement in freshwater decision-making to satisfy Treaty standards and the *mana whakahaere / governance* intent of Te Mana o te Wai.
12. Te Kāhui Wai Māori is committed to completing this work through the consultation process, and seeing the work through to completion.

## Māori rights, interests and obligations

13. Te Kāhui Wai Māori has always maintained that Māori have proprietary and co-governance rights, interests and obligations that are yet to be resolved by the Government. The Wai 2358 Report has made a number of recommendations to address Māori rights and interests, including the provision of 'proprietary redress' and developing a new allocation regime in partnership with Māori.
14. As you state, one of the principles underpinning the Essential Freshwater work programme is to address "the rights and interests of Māori in freshwater and the development aspirations of owners of Māori freehold land, consistent with the Crown's Treaty obligations."
15. We note that your proposed next step is to canvas with Māoridom the options for addressing allocation issues, which is one aspect relevant to resolving Māori rights, interests and obligations. At this stage, we maintain that a public commitment by the Government to a plan and a timeframe for resolution with Māori of rights, interests and obligations is required. In our Te Mana o Te Wai Report we suggested a timeframe of three years. In the context of allocation, the Wai 2358 Report has now recommended that development of a new allocation regime must happen urgently.

## Te Kāhui Wai Māori role beyond initial one-year term

16. Te Kāhui Wai Māori has repeatedly indicated that our proposals for structural and system change are not a menu of options from which only some recommendations might be chosen. The recommendations need to be implemented in their entirety to achieve the necessary outcomes for Te Mana o te Wai.
17. Members consider that the package does not represent the significant step-change that we were promised in October 2018 with the launch of the Essential Freshwater Reforms. Accordingly, at this stage we can only commit to continuing our role through the consultation process, and for so long as is necessary to see the Māori compulsory value and Te Mana o te Wai in the NPS-FM work through to completion

## Next steps

18. As always we are happy to work with officials on this process, and would support the continuity of Te Kāhui Wai Māori if a significant step-change is made by yourself and officials in the near future. .

I roto i ngā mihi,

**Te Kāhui Wai Māori**



Kingi Smiler  
**Chairperson**



