

Interim Treaty Impact Analysis for the Freshwater Package

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Section 1: Introduction

1.1 Purpose

1. This Treaty impact analysis covers the potential impacts of options for, public consultation, on the Freshwater Package of the National Direction Programme. These options relate to the National Policy Statement for Freshwater Management 2020 (NPS-FM) and the *Resource Management (National Environmental Standards for Freshwater) Regulations 2020* (NES-F).
2. This analysis also covers the potential impacts of the option in relation to the *Resource Management (Stock Exclusion) Regulations 2020* (Stock Exclusion Regulations). This option was subject to the same pre-public consultation engagement as the options in the Freshwater Package but is now being progressed as part of the Primary Sector Package.
3. On 7 May 2025, Cabinet noted that the Minister for Resource Management Act Reform has established a two-stage consultation process on the Freshwater Package [ECO-25-MIN-0059]. The first public consultation stage, which will begin in late May 2025, is on the options assessed in this document. This is an interim pre-public consultation analysis of the options, which will continue to be developed post-consultation.
4. Feedback on these options will inform decisions on an exposure draft of proposed amendments. The second stage of public consultation will be undertaken on this exposure draft later in the year.
5. Sections 1-3 of this document apply to the Freshwater Package as a whole and provide the relevant context for analysis. Section 4 provides analysis of the extent to which the specific policy options could impact Māori rights and interests, and the extent to which the policy options uphold the Crown's Treaty of Waitangi obligations. Section 5 discusses whether the policy development process to date has upheld Treaty settlement commitments and the extent to which the options in the Freshwater Package could interact with the provisions of relevant Treaty settlements and other arrangements.
6. This is a Ministry for the Environment and Ministry for Primary Industries document prepared to assist ministers in considering various options. It:
 - does not reflect Government policy, and
 - should not be read as an exhaustive representation of the Māori rights and interests relevant to this policy process, or as a definitive representation of the views of Māori on the policy options.
7. Although this document is being released publicly, it has not been drafted as a consultation document.

1.2 Navigating this document

8. This document has been structured so that it can either be read as a whole, or by specific policy area, alongside the relevant regulatory impact statement (RIS).
9. If this analysis is being read by specific policy area, we recommend also reading Section 2: Relevant Māori rights and interests and Section 3: Applying the Treaty, as these provide the context for analysis.
10. Analysis within Section 4 is structured by first identifying the potential impacts of options on Māori rights and interests to which Article 2 of the Treaty is relevant. The balance of Articles 1, 2 and 3 are then considered in the subsequent "Applying the Treaty" sections.

11. Section 5 assesses the Freshwater Package in the context of upholding specific Treaty Settlement commitments. It assesses first (at Section 5.1) the extent to which the policy development process to date has upheld Treaty Settlement commitments, before assessing the extent to which options in the Freshwater Package could impact relevant Treaty Settlement commitments (at Section 5.2). We recommend that Section 5 be read alongside **Appendix 2**.

1.3 Limitations

12. This analysis is based on the individual impact of options on the Crown's obligations under the Treaty in the context of the *Resource Management Act 1991* (RMA) as it currently stands. The impact of the options may change if the system changes, as the Government is currently making decisions in the context of replacing the RMA.
13. At this stage, the impacts of options have been assessed individually against the status quo. As such, there is minimal cumulative assessment of options and minimal assessment of how different options across the Freshwater Package would interact with one another. An assessment of the Freshwater Package as a whole, and how the different policy options interact with one another, will form part of the final Treaty impact analysis intended to inform final decisions.
14. At this stage, this document has been informed by what officials have heard during pre-public consultation engagement, and in consultation on previous freshwater policy processes. It is a snapshot of analysis as at May 2025. There are likely to be other matters and perspectives raised during and after public consultation in respect of Māori rights and interests, the Crown's obligations under the Treaty of Waitangi, and Treaty settlements and other arrangements.
15. This document will continue to be updated through-out the two stages of public consultation (May – July 2025 and late 2025) and will form part of the package to Ministers when they take final decisions.
16. There are several important caveats on the analysis in Section 4 and 5 of this document:
 - i. At this stage Policy 5¹ and 3.4² of the NPS-FM. are proposed to be continued and are therefore referenced throughout this analysis.
 - ii. 3.1(2)(a) of the NPS-FM, regulation 6(1) of the NES-F and regulation 19 of the Stock Exclusion Regulations currently enable a freshwater/regional plan rule to take a more stringent approach to managing activities than what is provided for in that national direction. These provisions are referenced throughout this analysis where relevant. However, at this stage officials have not received direction from Ministers about whether these provisions will be carried over into new national direction.
17. If the policies and regulations set out in paragraph 16(i) and (ii) are changed or removed, then this will affect the analysis within this document. If any changes to these are made as

¹ Policy 5 of the NPS-FM reads: Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

² 3.4 of the NPS-FM is that: Every local authority must actively involve tangata whenua (to the extent that they wish to be involved) in freshwater planning (including decision making processes) including:

(a) identifying the local approach to giving effect to TMotW

(b) making or changing regional policy statements and regional and district plans so far as they relate to freshwater management

(c) implementing the NOF

(d) developing and implementing mātauranga Māori and other monitoring.

part of this policy development process, then these changes and their impacts will be reflected in the final Treaty impact analysis.

18. Freshwater allocation is out of scope of the current policy process and is a matter being considered as part of the wider process to replace the RMA. As such, allocation interests are not specifically addressed or assessed in this document.
19. This document also does not address Māori claims to extant property rights in freshwater.

1.4 Background

20. The Government's coalition agreements include commitments to replace the NPS-FM and NES-F and make changes to related national direction. These are being progressed through the Freshwater Package.
21. In June 2024, Cabinet Economic Policy Committee (ECO) agreed that targeted engagement with key stakeholders and Māori should be undertaken ahead of final Cabinet decisions on proposals to be included in the National Direction Programme [ECO-24-MIN-0112].
22. On 29 October 2024, Cabinet agreed to the scope of freshwater policy proposals. It also agreed to:
 - a collaborative engagement approach with Māori across relevant reforms, noting that some may be able to be progressed in the short term, while others may be more challenging and take longer,
 - the following underpinning parameters for this engagement, which are informed by and align with previous governments' approaches with updated elements to reflect the current context:
 - i. commitment to uphold the Crown acknowledgement regarding Māori rights and interests in freshwater and geothermal resources as recorded in the Supreme Court in 2013³
 - ii. commitment to good faith, and an open and transparent process with Māori in upholding this acknowledgment
 - iii. the Crown position that no-one owns freshwater, including the Crown
 - iv. all New Zealanders share an interest in freshwater and how it is accessed and managed
 - v. there will be no national settlement of Māori claims to freshwater, although national-level tools may be useful
 - vi. acknowledging that existing users also have interests that must be considered
 - vii. acknowledging that, in finding solutions to some dimensions of rights and interests, the bigger questions (such as governance and allocation) will take time. [CAB-24-MIN-0413.01].

³ In *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, the Deputy Prime Minister and the Attorney-General gave assurances in the Supreme Court that:

- (i) Māori have rights and interests in water and geothermal resources
- (ii) the government is committed to recognising those rights and interests in appropriate ways, and
- (iii) such issues were to be addressed through Tribunal processes and future regulatory and administrative reforms, including reform of the RMA.

1.5 Options for public consultation on the Freshwater Package

23. The Government is publicly consulting on the following options that comprise the Freshwater Package, briefly summarised below (interim regulatory impact statements (RIS') prepared for each of these policy areas provide detail of options):

- **Replacing the single objective in the NPS-FM 2020 with multiple objectives –** Includes objectives related to providing for the health of the environment, people, social, cultural and economic wellbeing; considering the cost pace and cost of change and who bears the cost; and maintaining and improving freshwater quality. This forms part of the options to rebalance Te Mana o te Wai alongside the below.
- **Rebalancing Te Mana o te Wai (TMotW) –** In addition to the above, either:
 - i. remove the hierarchy of obligations and clarify that TMotW does not apply to consenting decisions and that progressive improvement over time is allowed, and retain clear process steps for councils to apply TMotW
 - ii. reinstate the TMotW provisions from the NPS-FM 2017, or
 - iii. remove TMotW and relevant provisions.
- **National Objectives Framework (NOF) process –** Options on whether or not to retain some elements of the NOF and make it more flexible to implement. Sub-options within this include consulting on:
 - i. which values should be compulsory to provide for, and which should be optional
 - ii. which attributes and national bottom lines are critical for councils to manage nationally, and
 - iii. whether to give councils flexibility to deviate from nationally defined thresholds (including bottom lines) that guide where the environmental limits are set and/or deviate from the methods for monitoring attributes (guided by specific criteria).
- **Enabling commercial vegetable growing –**
 - i. a new objective in the NPS-FM to direct councils to provide for the continued domestic supply of fresh vegetables, and in doing so, provide for crop rotation, and/or
 - ii. Developing new national standards that permit commercial vegetable growing.
- **Water security and water storage –**
 - i. a new objective or policy in the NPS-FM to address the broader issue of water security as part of climate change resilience, and/or
 - ii. developing standards to permit the construction of off-stream water storage which could be progressed either as a NES under the existing system, or the new system.
- **Simplifying the wetland provisions –** A package of options to simplify the wetland definition and provisions in the NPS-FM and NES-F including:
 - i. a clearer and more workable definition of wetland
 - ii. clearer and more appropriate provision for farming activities
 - iii. clearer and more appropriate provision for wetland construction, and
 - iv. removing requirements to map natural inland wetlands.

- **Simplifying the fish passage regulations** – Consulting on whether to retain or simplify fish passage regulations in the NES-F including:
 - i. simplifying the information requirements for fish passage and amending the permitted activity conditions for culverts in the NES-F to reflect updated practice and provide for boxed culverts, and
 - ii. allowing councils to be less stringent than the permitted activity conditions for temporary structures, or
 - iii. adding temporary structures to the permitted activity pathway for culverts with associated permitted activity conditions.
- **Farmer facing regulations: Stock Exclusion Regulations** – An exception from regulation 17 of the Stock Exclusion Regulations, which requires the exclusion of all stock from wetlands supporting a population of threatened species, for non-intensively grazed beef cattle and deer.
- **Farmer facing regulations: Nitrogen fertiliser** –
 - i. repeal the requirement in the NES-F for dairy farms to provide the receipts for synthetic nitrogen fertiliser purchased and align the reporting date in the NES-F with the farming calendar, and/or
 - ii. repeal the requirement for farmers to use less than 190 kilograms of nitrogen per hectare, on the grazed area of their farms (nitrogen fertiliser cap).
- **Include mapping requirements for drinking water** – Introduce Source Water Risk Management Area (SWRMA) mapping requirements and associated policy elements in the NPS-FM.

1.6 Consultation on the Freshwater Package

24. On 7 May 2025, Cabinet noted that the Minister for RMA Reform has established a two-stage consultation process on Freshwater proposals [ECO-25-MIN-0059]. The first public consultation stage, which will begin in late May 2025 is on the options assessed in this document. Feedback on these options will inform the decisions on an exposure draft of proposed amendments, which will be publicly consulted on later in the year.
25. Prior to the first public consultation stage, officials have undertaken two rounds of pre-public-consultation engagement⁴ with PSGEs, Ngā Hapū o Ngāti Porou, yet to settle groups, and pan-Māori groups⁵ (from now on referred to as PSGEs and other relevant Māori groups) on the Freshwater Package. However, Ministers subsequently directed that further options be considered, the following options were therefore not subject to the two rounds of pre-public consultation engagement:
 - removing Te Mana o te Wai in its entirety and consider changing its name (see section 4.2)
 - whether to go back to two compulsory values (as per the 2017 NPS-FM) (see section 4.3)
 - what attributes are critical to monitor and manage, and which attributes (if any) should have national bottom lines set for them (see section 4.3)

⁴ In late 2024 and early 2025.

⁵ Pou Taiao (National Iwi Chairs environment pou) and Te Tai Kaha.

[THIS IS NOT GOVERNMENT POLICY]

- options to provide councils with flexibility to vary attribute thresholds (including national bottom lines) and monitoring methods “where achieving national bottom lines has a high social, cultural or economic cost” (see section 4.3), and
 - the option to remove the nitrogen fertiliser cap (see section 4.9).
26. Following public consultation on the options set out in this document, officials will prepare a report of recommendations and summary of submissions prior to Ministers’ taking decisions on the options. Following this, an exposure draft of the proposed amendments to the NPS-FM/NES-F will be publicly consulted on to meet s46A RMA requirements prior to final Cabinet decisions and gazettal [ECO-25-MIN-0059].
27. Note there will be no exposure draft of proposed amendments to the Stock Exclusion Regulations (assessed in Section 4.8) as the Primary Sector Package is following a different single phase consultation process.
28. A list of PSGEs and other relevant Māori groups engaged with on the Freshwater Package to date is at **Appendix 1**.

Section 2: Relevant Māori rights and interests

29. In Article Two of the Treaty the Crown promised Māori the right to make decisions over resources and taonga that they wished to retain. However, in applying the Treaty, this promise must be balanced in the context of the Crown's other commitments under the Treaty of Waitangi (including the Crown's right to make laws under Article 1). This is discussed further in Section 3.
30. The phrase "rights and interests" is used to encompass a broad range of policy matters, aspirations for economic and cultural development, and a range of issues regarding connection to and care for taonga waterways. It also includes Māori claims to extant customary property rights (although these are not addressed or assessed in this document). The ways in which (or the extent to which) Māori rights and interests should be specified, recognised or expressed in the resource management system has been a matter of ongoing consideration across successive governments.
31. The Crown acknowledged that Māori have rights and interests in freshwater and geothermal resources in the Supreme Court proceedings in 2012-2013.⁶ The Crown position in these proceedings, included that any recognition must "involve mechanisms that relate to the on-going use of those resources, and may include decision-making roles in relation to care, protection, use, access and allocation, and/or charges or rentals for use."⁷
32. The Crown position that no one owns freshwater, including the Crown, remains unchanged.
33. The RMA, under which the NPS-FM, NES-F and Stock Exclusion Regulations sit, contains specific provision for the recognition of Māori rights and interests where persons are exercising functions under the Act. These include that:
 - the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, be recognised and provided for as a matter of national importance;⁸ and
 - in achieving the purpose of the Act, all persons exercising functions and powers in relation to managing the use, development, and protection of natural and physical resources shall have particular regard to kaitiakitanga.⁹
34. There are a range of ways that Māori aspirations with respect to freshwater are articulated. The Freshwater Iwi Leaders Group (FILG) developed a framework that summarised what it heard during more than 100 hui across New Zealand throughout 2014-15. These aspirations included: improving water quality and the health of ecosystems and waterways, governance/management/decision-making, recognition of relationships with particular freshwater bodies, and economic development.¹⁰
35. Drawing on the FILG developed Māori aspirations for freshwater (as outlined in the paragraph above), and feedback from Māori on previous freshwater consultations, officials have identified six high-level Māori rights and interests relevant to the Freshwater Package:
 - health and well-being of freshwater

⁶ The proceedings related to the Crown's policy to sell up to 49 percent of shares in four state-owned power companies.

⁷ *New Zealand Māori Council v Attorney General* [2013] 3 NZLR 31 at [145]. The proceedings related to the Crown's policy to sell up to 49 percent of shares in four state-owned power companies.

⁸ Resource Management Act 1991, s 6(e).

⁹ Resource Management Act 1991, s 7(a).

¹⁰ Referenced, for example, in *Shared Interests in Freshwater: A New Approach to the Crown/Māori Relationship for Freshwater*. Wellington: Ministry for the Environment and Māori Crown Relations Unit.

- customary relationships
 - governance and management
 - mahinga kai and māra kai, and
 - economic and development interests.
36. We note that this list is not exhaustive, and that there may be additional rights and interests that require consideration as part of policy development on the final Freshwater Package.
37. The potential impacts of the specific policy options in the Freshwater Package on these rights and interests, and the extent to which these interests are protected and provided for, are assessed in the “Impact of this option on Māori rights and interests” sections of this document.

2.1 Health and well-being of freshwater

38. The health and wellbeing of freshwater is consistently identified by Māori with whom we engage as the most important matter. Many of the rights and interests set out below (at Sections 2.2, 2.3, 2.4. and 2.5) are dependent on healthy freshwater and ecosystems – as is the health and well-being of Māori generally.
39. This policy development process involves the replacement of the key pieces of national direction under which freshwater is managed and protected in New Zealand.
40. The NPS-FM aims to embed long term change through regional plans, including through Policy 5, which requires that freshwater is managed (including through a NOF) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other waterbodies and freshwater ecosystems is maintained and (if communities choose) improved. The NES-F regulates activities to protect freshwater whilst ensuring that appropriate land and freshwater use is provided for.

2.2 Customary relationships

41. Māori hold a customary relationship with wai Māori (water) in general, as the basis for all life and a holder of mauri (spiritual life force). Wai Māori is a taonga for Māori. The customary relationship between Māori and freshwater is therefore relevant to all decisions related to freshwater management.
42. Māori also hold customary relationships with specific waterbodies to which they whakapapa (link genealogically to), these waterbodies are intrinsically linked to Māori identity and are tīpuna/tūpuna (ancestors). The health of these waterbodies is important to the health and well-being of the Māori that whakapapa to them – as evidenced in the whakatauki (Māori proverb): *Ko au te Awa, ko te Awa ko au (I am the River, the River is me)*. Some customary relationships have been given express provision through Treaty settlements and other arrangements eg, Te Ture Whaimana, Te Awa Tupua, and Te Mana Tupua o Te Waiaū-o-Te-Ika.
43. Other types of customary relationships are with wāhi tapu and wai tapu sites. Wāhi tapu are sacred sites of special spiritual, cultural and historical significance to Māori. These sites may abut a waterbody or contain waterbodies within them. Wai tapu are the freshwater equivalent, where a waterbody or part of a waterbody is of special significance to Māori, or where rituals and ceremonies are performed including tohi (baptism), karakia (prayer), waerea (protective incantation), whakatapu (placing of rāhui), whakanoa (removal of rāhui), and tuku iho (gifting of knowledge and resources to future generations).

44. Customary relationships endure regardless of government direction, policy, or legislation. However, mechanisms within policy and legislation can provide for the expression of these relationships in freshwater planning.
45. Under the RMA, the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, must be recognised and provided for as a matter of national importance.¹¹ Wai tapu is currently a value that must be considered in freshwater planning under the NPS-FM.

2.3 Governance and management

46. Māori want to be involved in freshwater decision making, and to have the capacity, capability, and resources to do so effectively, consistent with their claimed rights and interests.
47. Governance and management are also directly related to the ability of Māori to exercise rangatiratanga (right to exercise authority) and kaitiakitanga (guardianship, stewardship and responsibility of care) in respect of freshwater within their rohe (area of interest). These roles and responsibilities (alongside others) are important components of Te Ao Māori (the Māori worldview), of Māori identity, and of respecting the interconnections between nature and people.
48. The RMA requires that in achieving the purpose of the Act, all persons exercising functions and powers in relation to managing the use, development, and protection of natural and physical resources shall have particular regard to kaitiakitanga.¹² Rangatiratanga is provided for less explicitly, through mechanisms for Māori participation in local decision-making.
49. Both rangatiratanga and kaitiakitanga are provided for in the NPS-FM through the 6 principles of TMotW (at 1.3(4) of the NPS-FM). “Rangatiratanga” is not listed in the principles, but is provided for through the other principles, in particular the definition of mana whakahaere.¹³
50. The NPS-FM also provides for rangatiratanga and kaitiakitanga through the requirement at 3.4 for tāngata whenua to be actively involved in freshwater planning.¹⁴

2.4 Mahinga kai and māra kai

51. Mahinga kai refers to the traditional practice, in accordance with tikanga, of the gathering and production of kai (food) and the protection and preservation of these resources and the ecosystems and habitats that they are found in.
52. Māra kai refers to the traditional practice, in accordance with tikanga, of growing kai.
53. The continuity and viability of mahinga kai and māra kai practices is central to Māori identity as a way of connecting to tīpuna/tūpuna and community through the continuation of traditional practices. It is also relevant to the mana (prestige, authority, control, power,

¹¹ Resource Management Act 1991, s 6(e).

¹² Resource Management Act 1991, s 7(a).

¹³ Defined in the NPS-FM as the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater.

¹⁴ 3.4 of the NPS-FM is that: Every local authority must actively involve tangata whenua (to the extent that they wish to be involved) in freshwater planning (including decision making processes) including:

(a) identifying the local approach to giving effect to TMotW

(b) making or changing regional policy statements and regional and district plans so far as they relate to freshwater management

(c) implementing the NOF

(d) developing and implementing mātauranga Māori and other monitoring.

influence, status and/or charisma) of iwi and hapū through association with their capacity for manaakitanga (hospitality) through the offering of kai from their whenua (land).

54. The gathering and cultivation of kai is intrinsically linked to the management of freshwater. Many resources are gathered from freshwater ecosystems or are dependent on freshwater for their cultivation or preparation.
55. Mahinga kai is a compulsory value in the NPS-FM.

2.5 Economic and development interests

56. Māori want to be able to use and access water resources to realise and express their economic and development interests. Outside of an allocation context (as allocation is out of scope of the current policy process) these interests relate to the management of freshwater so that Māori communities, businesses, and other practices can be economically sustainable and to develop within appropriate bounds eg, through land-use and development.
57. Freshwater management may require land-use controls on activities in and around freshwater. Such controls may impact on Māori economic and development interests.

Section 3: Applying the Treaty of Waitangi

59. Section 8 of the RMA applies to the preparation of national environmental standards and national policy statements. It provides:

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 take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

60. In undertaking this analysis, officials have considered the Treaty principles more broadly, including as discussed in the Supreme Court's approach in *New Zealand Māori Council v Attorney-General (Mighty River Power)*.¹⁵
61. This document outlines how the individual options within the Freshwater Package balance obligations under the Articles of the Treaty of Waitangi and relevant Treaty Principles, through the following assessment criteria:
- balance between kāwanatanga (right to govern and make laws) and Māori rangatiratanga (autonomy or authority)
 - mechanisms for Māori participation, and
 - equitable outcomes for Māori.
62. This section provides explanation and context for the use of these criteria. Application of these criteria to the individual policy components of the Freshwater Package follows the rights and interests' analysis for each policy area in Section 4 and is intended to provide an overview of how the intended policy options balance the Crown's Treaty obligations.

3.1 Balance between kāwanatanga and Māori rangatiratanga

63. Under Article One of the Treaty, the Crown has the right to govern and make laws. This criterion assesses whether the options in the Freshwater Package appropriately balance this right with the right of Māori to retain authority over certain things – as provided for under Article Two which provided Māori with the right to make decisions over their resources and taonga.
64. The principle of partnership is relevant here; the duty for the Crown and Māori to act towards each other in a reasonable manner and “with the utmost good faith”, was articulated by the Court of Appeal in the *Lands* case in 1987.¹⁶

3.2 Mechanisms for Māori participation

65. Key to ensuring that the balance is met between the commitments under Article One and Article Two in the resource management context, is ensuring that Māori can engage with decision making processes in respect of if/how and where, their taonga and resources are managed.

¹⁵ *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31.

¹⁶ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 and affirmed by the Privy Council *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513.

66. In the Wai 2358 Stage 2 Report, the Waitangi Tribunal identified the ability for Māori to participate in resource management decision making as a matter of “crucial importance” in ensuring a Treaty compliant freshwater management system.¹⁷
67. Across the Freshwater Package, the NPS-FM mechanisms for Māori participation in freshwater decision making in regional freshwater planning (as at 3.4 of the NPS-FM) are, at this stage, proposed to be retained.

3.3 Equitable outcomes for Māori

68. In Article Three of the Treaty the Crown promised Māori equal treatment to that of other New Zealand citizens.
69. Equitable outcomes in this context includes whether the:
 - benefits of land use decisions are felt by both Māori and non-Māori New Zealanders.
 - adverse effects do not apply disproportionately to Māori.
70. The extent to which options in the Freshwater Package would result in equitable outcomes for Māori will be largely dependent on how the options are implemented in freshwater planning.

¹⁷ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 7.4.

Section 4: Option specific assessments

71. The following sections assess the extent to which the policy specific options that make up the Freshwater Package will impact Māori rights and interests, and the extent to which they provide for the Crown's obligations under the Treaty of Waitangi.
72. The below assessments may change following the two scheduled stages of public consultation and further engagement with PSGEs and other Māori groups. Any changes to these assessments will be reflected in the final Treaty impact analysis for the Freshwater Package to inform final decisions.
73. Note that the caveats listed at paragraph 16 of this document apply to the analysis in this section.

4.1 Replacing the single objective in the NPS-FM with multiple objectives

Option for public consultation - Includes objectives related to providing for the health of the environment, people, social, cultural and economic wellbeing, considering the pace and cost of change and who bears the cost; and maintaining and improving freshwater quality.

74. Note, this option is part of the option to rebalance TMotW alongside the options in Section 4.2 – Rebalancing Te Mana o te Wai.

4.1.1 Impact of this option on Māori rights and interests

75. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Replacing the National Policy Statement for Freshwater Management.

Health and well-being of freshwater

76. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being. Regardless of what options are pursued, local authorities and tāngata whenua may still choose to improve freshwater health and well-being.
77. The NPS-FM is guided by the single objective of TMotW, which prioritises first, the health and well-being of waterbodies and freshwater ecosystems, second, the health needs of people, and third, the ability of people and communities to provide for their social, economic and cultural well-being, now and into the future.
78. This option would replace the single objective of TMotW with multiple objectives and therefore introduce a different set of matters to be taken into consideration in freshwater planning and resource consent decision making.
79. The Waitangi Tribunal in Wai 2358 Stage 2, found that the addition of economic well-being objectives in 2017 did not necessarily increase the already high weighting given to economic, as opposed to environmental, matters in freshwater management.¹⁸ This finding is relevant to this option, where the requirement to balance economic and environmental matters is continued.

¹⁸ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 5.8.

80. Policy 5 is, at this stage, proposed to be retained and is intended to ensure that freshwater continues to be managed to maintain and (if communities choose to, improve) water quality, despite the inclusion of additional objectives.

Customary relationships

81. The single objective of TMotW in the NPS-FM recognises the customary relationship that Māori have with freshwater at the national level. It places the health and well-being of waterways as a matter of principle importance which aligns with the Te Aō Māori worldview of water as the basis for all life and a holder of mauri (spiritual life force).
82. While the introduction of other objectives would not remove the recognition of the importance of the health and well-being of freshwater it would introduce other considerations to be balanced with this perspective.
83. Section 3.4 of the NPS-FM is proposed to be retained at this stage and requires the involvement of tāngata whenua in freshwater planning, including applying the NOF process and identifying Māori freshwater values.
84. This option would achieve some of the Government's aspirations in respect of rebalancing TMotW to better reflect the interests of all water users, however there are further options for rebalancing TMotW proposed as part of the Freshwater Package. The potential impact of those options on the Māori customary relationship with freshwater are assessed in Section 4.2 - Rebalancing TMotW.

Governance and management

85. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, governance and management.

Mahinga kai and māra kai

86. The health and well-being of freshwater resources and the ability to access and use them sustainably across generations is central to the value of mahinga kai. Ultimately the provision for mahinga kai and māra kai interests would be determined at the local level through freshwater planning in partnership with tāngata whenua (which at this stage is proposed to continue under 3.4 of the NPS-FM).
87. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, māra kai rights and interests.

Economic and development interests

88. This option would require local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained) to give greater consideration, than under the status quo, to economic opportunities when making decisions about freshwater management as part of the freshwater planning process and implementing the NPS-FM.
89. This could result in more opportunities for all New Zealanders (including Māori) to realise and express their economic and development interests – though ultimately this would be determined at the local level through freshwater planning in partnership with tāngata whenua (provided that 3.4 of the NPS-FM is retained) and through resource consent decision making (undertaken by the local authority).

4.1.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

90. Providing more objectives for freshwater planning would broaden the scope of interests required to be considered in freshwater planning processes. This option could therefore

enable freshwater planning to be appropriately guided by the balance of interests within regions. For example, in some circumstances certain land uses could be prioritised where a community is economically, socially and culturally reliant on them.

91. However, Policy 5 (if retained) would continue to require freshwater planning to maintain or improve freshwater health and well-being.

Mechanisms for Māori participation

92. This option would retain existing mechanisms for Māori participation in regional freshwater planning (provided that 3.4 of the NPS-FM is retained).

Equitable outcomes for Māori

93. Additional objectives could enable local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained) to develop freshwater plans that take local interests and circumstances into account and appropriately balance the protection of freshwater and ecosystem health with land and resource use.
94. Whether the benefits of this option provide equitably for Māori and non-Māori New Zealanders will depend on local circumstances. At this stage, 3.4 of the NPS-FM is proposed to be retained and will continue to provide for Māori participation in freshwater planning. We consider that freshwater planning at the regional level will determine the appropriate balance of benefits and adverse effects of activities, and the impacts of these on the interests of the community (including Māori).
95. The fundamental importance of freshwater would continue to be provided for and bolstered through Policy 5 (if retained), while allowing for consideration of other appropriate interests and outcomes (including Māori interests and outcomes sought by Māori).

4.2 Rebalancing Te Mana o te Wai (TMotW)

Options for public consultation -

Option 1: Remove the hierarchy of obligations and clarify that TMotW does not apply to consenting decisions and that progressive improvement over time is allowed and retain clear process steps for councils to apply TMotW.

Option 2: Reinstate the TMotW provisions from the NPS-FM 2017.

Option 3: Remove TMotW and relevant provisions.

4.2.1 Impacts of these options on Māori rights and interests

96. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Replacing the National Policy Statement for Freshwater Management.

Health and well-being of freshwater

97. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being. Regardless of what options are pursued, local authorities and tāngata whenua may still choose to improve freshwater health and well-being.
98. Option 1 retains the concept¹⁹ and 6 principles of TMotW.²⁰ However, without the hierarchy of obligations, the imperative to prioritise the health of fresh waterbodies is potentially less explicit. This option would remove the specific obligation to “give effect” to TMotW; local authorities would be required to consider TMotW as part of implementing the NPS-FM as a whole.
99. Option 2 would re-introduce the statement of national significance from the NPS-FM 2017, which is less explicit in its imperative than the hierarchy of obligations under the status quo. It requires that freshwater decision makers provide for the health of the environment, people and waterbodies, rather than prioritising the health of the waterbody.
100. Option 2 also places a lesser obligation on local authorities than the status quo. Under option 2, local authorities would be required to “consider and recognise” TMotW, rather than to “give effect to” TMotW. The Waitangi Tribunal found in the Wai 2358 Stage 2 report, that this legal weighting was not great enough, and that the requirement should have been for TMotW to be recognised and provided for.²¹
101. The impacts of option 3 are difficult to assess at this stage, in the absence of more detail about what, if any, policy or objective would replace TMotW.

¹⁹ As at 1.3(1) of the NPS-FM: TMotW is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. TMotW is about restoring and preserving the balance between the water, the wider environment, and the community.

²⁰ The TMotW principles, as set out at 1.3(4) of the NPS-FM 2020 are mana whakahaere, kaitiakitanga, manaakitanga, governance, stewardship and care and respect.

²¹ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 4.6.7.

102. Under all three options other key RMA requirements (eg, matters of national importance) would continue to apply and to drive freshwater management to achieve positive outcomes for the health and well-being of freshwater.

Customary relationships

103. Under option 1, TMotW (including the 6 principles, but excluding the hierarchy of obligations) would be retained at the plan making level, as would the requirement for it to drive plan content. This means that the onus would be on local authorities, in partnership with tāngata whenua, to develop plan content to provide for the TMotW principle of mana whakahaere²² to be achieved at the local level.
104. However, we note that the removal of the explicit obligation in respect of TMotW under option 1 could reduce the recognition of the customary relationship that Māori have with freshwater in general. It could result in the 6 principles not being given the same weighting in freshwater planning as they are under the status quo.
105. Under option 2, the 6 principles of TMotW would no longer apply. The requirement to actively involve tāngata whenua (under 3.4 of the NPS-FM) in freshwater planning is, at this stage, proposed to be retained. However, the requirement for implementation of the NPS-FM to be informed by mana whakahaere, kaitiakitanga and manaakitanga would no longer be explicitly required. The lower legal weighting of recognise and provide for (as opposed to give effect to) TMotW, and the lack of principles to guide how TMotW should be expressed in implementation of the NPS-FM, could result in less provision for customary relationships than under the status quo.
106. For both options 1 and 2, the recognition of customary relationships will be dependent on how TMotW is implemented through freshwater planning (provided that 3.4 of the NPS-FM is retained). In circumstances where there is a strong working relationship between tāngata whenua and local authorities, both options could result in place-based freshwater planning that recognises and provides for customary relationships with freshwater bodies.
107. Under the status quo, the hierarchy of obligations functions as a backstop to protect the health and well-being of waterbodies and subsequently, the relationship of Māori to them. The removal of the hierarchy of obligations could result in reduced recognition of the significance of freshwater to Māori where there is not a strong working relationship between local authorities and tāngata whenua.
108. Option 3 would remove, at a national level, the recognition of the customary relationship that Māori have with freshwater provided through TMotW. This would remove requirements in the NPS-FM, for local authorities to take this customary relationship and more specific customary relationships, into account in freshwater planning. The ability for Māori to advocate for recognition of customary relationships could continue through freshwater planning in accordance with 3.4 of the NPS-FM (which is at this stage proposed to be retained), but there would be significantly less explicit requirement and national level guidance on how to provide for such relationships.

Governance and management

109. In 2020, pan-Māori groups including National Iwi Chairs Forum, Te Tai Kaha (TTK) and New Zealand Māori Council came together to engage with the Government on Māori rights and interests in freshwater and resource management reform. They agreed that progress had been made toward greater recognition of these rights and interests through the expression of TMotW in the NPS-FM.

²² The definition of mana whakahaere in the NPS-FM at 4(a) is: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of and their relationship with, freshwater.

110. During engagement in early 2024 on changes to TMotW, the Ministry for the Environment and Ministry for Primary Industries heard from most of the PSGEs, and other relevant Māori groups engaged with, that they opposed changes, in particular the removal of the hierarchy of obligations. Many highlighted the work and knowledge contributed by iwi/Māori over many years that went into the development of TMotW as it is provided for in the NPS-FM.
111. While iwi/Māori generally agree that TMotW is a positive step toward the recognition of Māori rights and interests in freshwater two PSGEs indicated to officials during pre-public consultation engagement that the way that it is intended to be implemented could be clearer:
- One PSGE told officials that the recent versions of TMotW add layers of complexity that can make it challenging to implement. They expressed a desire for TMotW to not be too prescriptive in order to allow iwi to set their own directives and values for waterbodies and catchments.
 - Another PSGE questioned what TMotW meant in a real sense, both in law and through the resource consenting process, and noted that TMotW's meaning had been "amorphous" in the Courts.
112. In the Wai 2358 Stage 2 report, the Waitangi Tribunal found that the 2017 iteration of TMotW "clearly provided a platform for Māori values to be identified and reflected in freshwater planning".²³ However, the Tribunal did find that the absence of a co-governance and co-management approach to identifying Māori values and setting freshwater objectives was a weakness of the 2017 iteration of TMotW.²⁴ This was subsequently addressed in the NPS-FM through the 6 TMotW principles and through the requirements for tāngata whenua involvement at 3.4 of the NPS-FM.
113. Option 1 would retain the 6 TMotW principles. However, the removal of any explicit obligations in respect of TMotW, and the expectation that it be implemented as part of implementing the NPS-FM, could impact the extent to which these principles influence freshwater planning.
114. Option 2 would retain the requirements for tāngata whenua involvement, but the 6 TMotW principles would be removed. This would remove express requirements to provide for mana whakahaere, kaitiakitanga and manaakitanga in the implementation of the NPS-FM.
115. Option 3 would see the removal of TMotW in its entirety. This is likely to be perceived negatively by many iwi/hapū/Māori who have seen TMotW as positive steps in recognising, and providing for, Māori rights and interests in freshwater. While option 3 would, at this stage, retain the requirement for tāngata whenua involvement, as at 3.4 of the NPS-FM, it would remove the recognition of the fundamental importance of freshwater to Māori, some of the parameters for recognising Māori governance and management interests (ie, the 6 TMotW principles), and any corresponding weighting to this importance in freshwater planning.
116. We note that under all options TMotW would not be a relevant consideration in resource consenting. The Tribunal found in the Wai 2358 Stage 2 report that restricting TMotW to

²³ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 4.6.7.

²⁴ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 4.6.7.

freshwater plan making was not sufficient to provide for tino rangatiratanga and kaitiakitanga in freshwater management.²⁵

Mahinga kai and māra kai

117. We consider that the impacts of all options on mahinga kai rights and interests would be similar to those set out in the impacts on the health and well-being of freshwater section of this assessment, as the health an abundance of mahinga kai and the ability to safely harvest, prepare, and consume it, are closely inter-related.
118. The requirement for tāngata whenua to be involved in freshwater planning, including applying the NOF process and identifying Māori freshwater values (including mahinga kai) under 3.4 of the NPS-FM is at this stage, proposed to continue under this option.
119. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognising, and providing for, māra kai and mahinga kai interests.

Economic and development interests

120. These options would require local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained) to give greater consideration than they may do under the status quo, to economic opportunities as part of the freshwater planning process and implementation of the NPS-FM.
121. This could result in greater opportunities for all New Zealanders (including Māori), to realise and express their economic and development interests – though ultimately this would be determined at the local level through freshwater planning in partnership with tāngata whenua (provided that 3.4 of the NPS-FM is retained) and through resource consent decision making (undertaken by the local authority).

4.2.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

122. We consider that all three options would enable the balance of interests within regions to direct freshwater planning (provided that 3.4 of the NPS-FM is retained) rather than applying the currently prescriptive approach which requires (under the hierarchy of obligations) that the health and wellbeing of the water be prioritised first.
123. If the option to introduce additional objectives (as discussed at Section 4.1) is introduced, then we consider that options 1 and 2 could provide for a balance of interests in freshwater planning.
124. The 6 principles of TMotW (at 1.3(4) of the NPS-FM) provide scope for the recognition of the Māori relationship to the management of freshwater (through the principles of mana whakahaere, kaitiakitanga and manaakitanga) and for recognition of other New Zealanders' relationship to the management of freshwater (through the principles of governance, stewardship and care and respect). These would be retained under option 1.
125. The statement of national significance²⁶ (under the NPS-FM 2017) aligns with the Te Ao Māori worldview in respect of freshwater management. However, there is no framework under the 2017 iteration of TMotW for the recognition of the relationships that Māori and other New Zealanders have with freshwater. The starting point for the recognition of

²⁵ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 4.7.1.

²⁶ In using water, you must also provide for Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people).

customary relationships in freshwater planning discussions (provided that 3.4 of the NPS-FM is retained) would therefore be less explicit under option 2 than it is under the status quo.

126. The Crown has consistently heard from the Waitangi Tribunal, local authorities, and Māori that TMotW is an important step toward the recognition of Māori rights and interests in freshwater. At this stage, there is no proposed policy or objective to replace the recognition of Māori rights and interests at the national level if TMotW were to be removed (as proposed under option 3).

Mechanisms for Māori participation

127. At this stage, all options would retain the requirement for tāngata whenua participation in freshwater planning (as at 3.4 of the NPS-FM). However, the starting point for these planning discussions would likely differ under each of the three options due to the varying degree of prescription as to how Māori rights and interests in freshwater should be recognised.

Equitable outcomes for Māori

128. The level of direction at the national level about how to provide for Māori rights and interests in freshwater management would vary depending on what option was progressed. However, how Māori rights and interests are provided for could be determined at the local level, through freshwater planning processes in accordance with 3.4 of the NPS-FM (provided that it is retained).

4.3 National Objectives Framework (NOF) process

Option for public consultation - Options on whether or not to retain some elements of the NOF and make it more flexible to implement. Sub-options within this include consulting on:

- which values should be compulsory to provide for, and which should be optional
- which attributes and national bottom lines are critical for councils to manage nationally, and
- whether to give councils flexibility to deviate from nationally defined thresholds (including bottom lines) that guide where the environmental limits are set and/or deviate from the methods for monitoring attributes (guided by specific criteria).

4.3.1 Impacts of these options on Māori rights and interests

129. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Replacing the National Policy Statement for Freshwater Management.

Health and well-being of freshwater

130. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or improve freshwater health and well-being. Regardless of what options are pursued, local authorities and tāngata whenua may still choose to improve freshwater health and well-being.

131. Some of the sub-options under this option eg, fewer compulsory values, attributes and bottom lines, would provide less certainty for local authorities, Māori and stakeholders as to how Policy 5 (if retained) should be met through implementing the NOF process.

Customary relationships

132. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, customary relationships.

Governance and management

133. This option would provide more flexibility for local authorities to determine what attributes need to be managed and would allow for local variability in attribute thresholds and monitoring methods. At this stage, as 3.4 of the NPS-FM is proposed to be retained, this would need to be achieved with active involvement of tāngata whenua (to the extent that they wish to be involved).

134. We note, TTK's position, as stated in a letter to Minister Bishop dated 24 February 2025, that the current compulsory values are working well and should not be changed.

Mahinga kai and māra kai

135. The sub-option to consult on what values (if any) should be compulsory, may be perceived as a move to undo recognition given to the importance of mahinga kai, which was included as a compulsory value in the NPS-FM.

136. However, provided that 3.4 of the NPS-FM is retained and continues to require the involvement of tāngata whenua in freshwater planning (to the extent that they wish to be involved), including in applying the NOF process, mahinga kai could continue to be included as a freshwater value where identified in these processes.

137. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, māra kai interests.

Economic and development interests

138. This option would require local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained) to give greater consideration than they may do under the status quo, to economic opportunities as part of the freshwater planning process and implementation of the NPS-FM.
139. This could result in greater opportunities for all New Zealanders (including Māori), to realise and express their economic and development interests – though ultimately this would be determined at the local level through freshwater planning in partnership with tāngata whenua (provided that 3.4 of the NPS-FM is retained) and through resource consent decision making (undertaken by the local authority).

4.3.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

140. At this stage, we consider that this option and its sub options would retain the existing balance between kāwanatanga and rangatiratanga, as Policy 5 and the requirements for tāngata whenua involvement at 3.4 of the NPS-FM are proposed to be retained. These would continue to provide for the recognition of Māori rights and interests in freshwater planning and implementation of the NOF, through active involvement from tāngata whenua (under 3.4) and the requirement to undertake freshwater planning to maintain or improve freshwater health and well-being (Policy 5).

Mechanisms for Māori participation

141. We consider that this option and its sub options would retain the existing mechanisms for Māori participation.

Equitable outcomes for Māori

142. Under this option and its sub-options freshwater planning processes would remain the primary means of determining how the NOF applies within particular regions.
143. The requirement for tāngata whenua to be involved in freshwater planning (under 3.4 of the NPS-FM) is, at this stage, proposed to continue. Through freshwater planning Māori freshwater values could continue to be identified and protected as part of implementing the NOF (regardless of whether Māori freshwater values ie, mahinga kai, are compulsory or not).
144. Policy 5 (if retained) would continue to require that freshwater is managed to ensure that the health and well-being of waterbodies and freshwater ecosystems is maintained and (if communities choose) improved.

4.4 Enabling commercial vegetable growing (CVG)

Options for public consultation –

Option 1: A new objective in the NPS-FM to direct councils to provide for the continued domestic supply of fresh vegetables, and in doing so, provide for crop rotation, and/or

Option 2: Developing new national standards that permit commercial vegetable growing (including crop rotation), which could be progressed either as a NES under the existing system, or as part of RM reform.

4.4.1 Impacts of these options on Māori rights and interests

145. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Commercial vegetable growing.

Health and well-being of freshwater

146. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being.

147. Under both options, providing for CVG would require local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained), through freshwater planning, to balance the effects of land use for CVG with the effects of land-use for other purposes, within the parameters of meeting Policy 5 (if retained).

148. Permitting CVG, under option 2, without conditions that require improvement over time in degraded catchments will be opposed by some Māori groups in CVG areas.

149. For example, the NPS-FM enabled local authorities in the Horowhenua and Pukekohe to, under certain circumstances, set targets for nitrogen-related attributes below the national bottom lines in “specified vegetable growing areas”. This was the subject of an appeal brought by Muaūpoko Tribal Authority Incorporated and Te Rūnanga o Raukawa and the provisions were quashed by the Court of Appeal.²⁷

150. The Court of Appeal decision emphasised the history and context of longstanding water quality issues in Lake Horowhenua and particularly criticised the Minister’s engagement with iwi on these issues during development of the contested provisions.²⁸

151. Option 2 could result in similar impacts to the “specified vegetable growing area” exception in terms of water quality and ecosystem health in CVG areas – depending on the conditions attached to the permitted activity. The level of impact that this would have outside of key growing areas is uncertain because the expansion of vegetable growing areas is constrained by environmental considerations (soil, climate etc).

Customary relationships

152. Both options could have impacts on the recognition of the customary relationship that iwi/hapū Māori have with waterbodies of key significance in their region.

153. The potential impacts of CVG expansion and intensification on the ability for iwi/hapū Māori to exercise kaitiakitanga and rangatiratanga over these areas are exemplified by continued

²⁷ *Muaūpoko Tribal Authority Incorporated v Minister for the Environment* [2023] NZCA 641.

²⁸ *Muaūpoko Tribal Authority Incorporated v Minister for the Environment* [2023] NZCA 641.

tensions in respect of the impacts of CVG on Lake Horowhenua and the inability of local iwi to protect the lake from cumulative and ongoing adverse impacts caused by land-uses.

154. The impacts of these options on the Waikato River Iwi and other Iwi who have statutory recognition for waterways of customary significance are discussed in Section 5.2.

155. However, provided that they are retained, existing mechanisms under the RMA and NPS-FM, including the requirements to involve tāngata whenua in freshwater planning under 3.4 of the NPS-FM, and the ability for local authorities to have more stringent plan provisions than those set out in the NES-F (as at regulation 6(1) of the NES-F), would continue to provide a framework for recognising customary interests in CVG areas through regional planning.

Governance and management

156. At this stage we have not identified any material changes under option 1 from what is provided under the status quo in terms of governance and management (provided that 3.4 of the NPS-FM is retained). Māori participation in the planning process would be unaffected by option 1.

157. Under option 2, Māori involvement in the planning process would remain the same as under the status quo (provided that 3.4 of the NPS-FM is retained). However, creating permitted activity regulations means that there would be no opportunity for participation from Māori (or anyone) in the resource consenting stage.

158. If regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained, local authorities with tāngata whenua, could develop regional freshwater plan rules that are more stringent than the NES-F standards proposed under option 2. For example, where considered necessary to protect mahinga kai sites. This would provide opportunities for Māori to participate in freshwater planning in respect of CVG.

Mahinga kai and māra kai

159. The impacts of these options on mahinga kai are likely to be similar to those set out in respect of the health and well-being of freshwater, as ecosystem health and the health of waterways are intrinsically linked.

160. The impacts of both options on mahinga kai values would be dependent on how local authorities manage permitting CVG within the parameters of meeting Policy 5 (if retained). If adverse impacts are not managed appropriately, they could impact the sustainability and safety of mahinga kai, for example, excess nitrate and phosphate can facilitate the growth of toxic algae, which can contaminate mahinga kai, making it unsafe for human consumption.

161. Both options could provide further opportunities for māra kai, as they would better enable growing practices. However, as these options would apply only to activities for commercial purposes, the benefits to non-commercial Māori growers would be limited.

Economic and development interests

162. Primary industries are a significant component of the Māori economy. Provisions that support primary industries would be likely to benefit Māori producers and provide further opportunities for, and improvement in, economic assets for this group. However, these benefits would not extend beyond those for growers in general.

163. Option 2 would benefit Māori producers and would also have the potential to improve consumers' access to fresh vegetables at a reasonable price. Māori consumers, like other consumers, are affected by the high cost of vegetables due to a low supply chain. However, again these benefits are not specific to Māori economic interests.

164. Under both options, local authorities would be required to meet Policy 5 (if retained) and relevant objectives from the NOF. If CVG were to be prioritised (under option 1) or permitted (under option 2), then freshwater plan provisions (determined at the regional level) could constrain or more stringently control other land-use activities eg, dairy farming, to continue to meet these requirements. However, again, these impacts apply generally and are not specific to Māori.

4.4.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

165. Option 1 would provide for the interests of both producers and consumers. Providing for CVG would be balanced against other objectives in freshwater planning processes by local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained).
166. We consider that appropriate conditions on permitting CVG (option 2), set at either the national or regional level, could achieve the balance between enabling land use to appropriately occur while providing for the requirements of section 8²⁹, section 6 (e)³⁰ and section 7(a)³¹ of the RMA.
167. We note that in some instances, local authorities and tāngata whenua may determine it necessary for a more stringent approach to managing CVG to be developed during freshwater planning (provided that 6(1) of the NES-F and 3.4 of the NPS-FM are retained), to ensure that significant waterbodies or waterbodies in over-allocated catchments are sufficiently protected.

Mechanisms for Māori participation

168. At this stage we have not identified any material change from what is provided for under the status quo in terms of mechanisms for Māori participation under option 1 (provided that 3.4 of the NPS-FM is retained).
169. Under option 2, freshwater planning could provide an opportunity for local authorities and tāngata whenua to develop more stringent plan rules than those in the proposed permitted activity standard if they considered it necessary to protect Māori freshwater values, rights or interests (provided that regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained).

Equitable outcomes for Māori

170. If directing councils to provide for CVG (as proposed under option 1) or permitting CVG (as proposed under option 2), resulted in stable prices for fresh produce, this would benefit all New Zealanders, including Māori.
171. Under both options, ensuring that outcomes are equitable for all New Zealanders would be dependent on how local authorities and tāngata whenua (provided that 3.4 of the NPS-FM is retained) manage increased permissibility of CVG through freshwater planning.

²⁹ 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 take into account the principles of the Treaty of Waitangi.

³⁰ 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 recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, Water, sites, waahi tapu and other taonga.

³¹ 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 have particular regard to kaitiakitanga.

4.5 Water security and water storage

Options for public consultation –

Option 1: A new objective or policy in the NPS-FM to address the broader issue of water security as part of climate change resilience, and/or

Option 2: Developing standards to permit the construction of off-stream water storage which could be progressed either as a NES under the existing system, or as part of RM reform.

4.5.1 Impacts of these options on Māori rights and interests

172. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Water security and water storage.

Health and well-being of freshwater

173. The environmental benefits of water storage include reduced pressure on natural water bodies, opportunities for groundwater recharge (and nutrient dilution), and the provision of backup water supplies in emergencies.
174. Permitting off-stream water storage could also reduce the need for ongoing water takes from freshwater bodies in the long-term.
175. At this stage, beyond the general benefits outlined in the paragraphs above, we have not identified any material change from the status quo in terms of providing for the health and wellbeing of freshwater under option 1.
176. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being.
177. Option 2 would require local authorities to permit the construction of off-stream water storage and to manage any (likely temporary) adverse effects on freshwater or ecosystem health eg, due to earthworks or water takes, to meet the requirements of Policy 5 (if retained).

Customary relationships

178. At this stage we have not identified any material changes from what is provided for under the status quo in terms of the recognition of, and provision for, customary relationships under either option.

Governance and management

179. The inclusion of an objective in the NPS-FM requiring local authorities to consider the broader issue of water security (including climate change adaptation), as proposed under option 1, could provide further opportunities for Māori to participate in freshwater planning of this nature (provided that 3.4 of the NPS-FM is retained).
180. Under option 2, Māori involvement in the planning process would remain the same as under the status quo (provided that 3.4 of the NPS-FM is retained). However, creating permitted activity regulations means that there would be no opportunity for participation from Māori (or anyone) in the resource consenting stage.
181. If regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained, local authorities with tāngata whenua, could develop regional freshwater plan rules that were more stringent than the NES-F standards proposed under option 2. For example, where considered necessary to

protect mahinga kai sites. This would provide opportunities for Māori to participate in freshwater planning in respect of the construction of off-stream water storage.

182. Permitting off-stream water storage (as proposed under option 2) could provide for greater connection to place eg, reduction in the need to relocate due to water shortages, by providing a nationally consistent process for Māori communities to construct, use and manage rural water supplies.

Mahinga kai and māra kai

183. We consider that both options could lead to beneficial impacts on mahinga kai and māra kai rights and interests.
184. Option 1 would likely entail a slower pace of change, but the issue of water security is important to the intergenerational practice of sourcing, growing and preparing kai, and to this end is an important matter for consideration in the context of mahinga kai and māra kai interests. Greater water security would be likely to lead to greater food security and the ability of Māori to exercise manaakitanga through the provision of kai from their whenua in a safe and sustainable way.
185. Option 2 could lead to a faster pace of change through a nationally consistent approach to enabling Māori communities (and other New Zealanders) to construct off-stream water storage. This could assist in providing for the water needs required to continue undertake mahinga kai and māra kai activities in a sustainable way.

Economic and development interests

186. The benefits in respect of water security and water storage generally, include consistent water supply, cost savings (through reduced water bills), and increased property value.
187. Both options could improve, or make economic development more viable, than under the status quo for all land and resource users (including Māori). For example, access to freshwater is critical for improving the use of under-developed Māori owned land (eg, transitions of some areas from forestry and low productivity pastoral land uses to higher value uses).

4.5.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

188. Water security is key to enabling rangatiratanga as the accessibility and health of water is essential to both Māori identity and to customary relationships and practices. We therefore consider that at this stage both options constitute an appropriate balancing of interests between providing for land-use activities and protecting freshwater rights and interests.
189. Appropriate conditions on permitted activities for constructing off-stream water storage (as proposed under option 2), set at either the national or regional level, could enable appropriate land use to occur while still providing for the requirements of section 8³², section 6 (e)³³ and section 7(a)³⁴ of the RMA.

³² 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 take into account the principles of the Treaty of Waitangi.

³³ 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 recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, Water, sites, waahi tapu and other taonga.

³⁴ 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 have particular regard to kaitiakitanga.

Mechanisms for Māori participation

190. At this stage, we do not consider that option 1 would introduce any new impacts on mechanisms for Māori participation.
191. Under option 2, freshwater planning could provide an opportunity for local authorities and tāngata whenua to develop more stringent plan rules than those in the proposed standards, if they considered it necessary to protect Māori freshwater values, rights or interests (provided that regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained).

Equitable outcomes for Māori

192. At this stage, we consider that both option 1 and option 2 would better enable all New Zealanders to harness water storage as a means of providing security for water use into the future. This could be particularly beneficial to Māori as marae, papakāinga and urupā are often situated in remote areas where water scarcity is an issue.

4.6 Simplifying the wetland provisions

Options for public consultation - Options seek to assist implementation and reduce cost through simplifying the wetland definition and provisions in the NPS-FM and NES-F including:

- a clearer and more workable definition of wetland
- clearer and more appropriate provision for farming activities
- clearer and more appropriate provision for wetland construction, and
- removing requirements to map natural inland wetlands.

4.6.1 Impacts of these options on Māori rights and interests

194. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Simplifying the wetland provisions.
195. At this stage we have not identified any material impacts on Māori rights and interests associated with the option to remove the requirement for local authorities to map natural inland wetlands. The general impacts of this change are identified in the relevant RIS but are not discussed further here.

Health and well-being of freshwater

196. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being.
197. The options for simplifying the wetland provisions would increase protection for wetlands in pasture through removal of the pasture exclusion³⁵ and reduce protection for induced wetlands³⁶ by excluding them from the wetland definition except where they are identified as regionally significant in regional/freshwater plans.
198. Many iwi/hapū have previously submitted in opposition to the pasture exclusion from the wetland definition because they considered it a carve out weighted toward economic interests rather than improving water quality and the health of ecosystems and waterways.
199. The farming activities pathway under this option would act as a counterweight to the removal of the pasture exclusion so that agricultural land-use that is unlikely to have adverse effects on a wetland could continue without the requirement to obtain a resource consent.
200. Excluding induced wetlands from the definition would likely have negative impacts on their water quality and ecosystem health. However, where identified as regionally significant they would continue to be included in the wetland definition and therefore protected under the wetland provisions.
201. Permitting wetland construction is designed to incentivise wetland construction to achieve beneficial outcomes for wetland extent and broader freshwater health.

³⁵ The NPS-FM “natural inland wetland” definition currently excludes (under part (e)) a wetland that:

- (i) is within an area of pasture used for grazing; and
- (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply.
- (iii)

³⁶ Wetlands that have developed unintentionally as an outcome of human activity for purposes other than creating a wetland.

Customary relationships

202. We note, that in general, exclusions from the wetland definition (and therefore the wetland provisions) based on type of wetland are not particularly compatible with the Māori preference for holistic management of wai Māori. However, this same distinction exists under the status quo.
203. We consider that customary relationships with induced wetlands could continue to be provided for through the ability for them to be identified as regionally significant in freshwater planning processes and included in the definition (provided that 3.4 of the NPS-FM is retained).
204. At this stage, we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, customary relationships under the options to permit farming activities and wetland construction.

Governance and management

205. Where farming activities and wetland construction are proposed to be permitted there would be no opportunity for participation from Māori (or anyone) in resource consent decision-making.
206. However, if regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained, local authorities with tāngata whenua, could develop regional freshwater plan rules that were more stringent than the NES-F standards for farming activities and wetland construction. For example, where considered necessary to protect mahinga kai sites. This would provide opportunities for Māori to participate in freshwater planning in respect of these activities.
207. Removing the pasture exclusion from the wetland definition would result in a greater number of wetlands being subject to freshwater planning processes. We consider that on balance, removing the pasture exclusion and providing a permitted activity pathway for farming activities would provide similar opportunities for Māori participation in freshwater planning than under the status quo (provided that 3.4 of the NPS-FM is retained).
208. Freshwater planning would provide the mechanisms through which tāngata whenua could identify an induced wetland as significant, and advocate for its continued protection under the wetland provisions (provided that 3.4 of the NPS-FM is retained).

Mahinga kai and māra kai

209. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognising and providing for mahinga kai and māra kai interests.

Economic and development interests

210. As the pasture exclusion in the wetland definition often requires costly ecological assessments to determine whether or not it applies, removing it would likely reduce costs for farmers and land-users, including Māori farmers and land-users. It may also improve provision for economic and development interests due to the removal of costly resource consenting processes.
211. Permitting farming activities would likely benefit economic and development interests for all farmers, including Māori farmers. We consider it unlikely that the benefits to Māori farmers would materially differ from the benefits for other farmers.
212. Permitting wetland construction could also have a positive impact on Māori economic and development interests where constructed wetlands form part of their land-development, for example the construction of wetlands by Te Rarawa in Te Hiku o Te Ika, Northland and by Ngāti Toa Rangatira in Cannons Creek, Porirua.

4.6.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

213. We consider that removing the pasture exclusion from the wetland definition could provide for a better balance of interests. The current exclusion is determined by scientific assessment with the intent to enable agricultural land use to occur in modified wetland landscapes. This setting has provided no explicit scope for rangatiratanga in the management of these wetland areas.
214. The permitted activity pathway for farming activities would function as a counterweight to removing the pasture exclusion and could constitute a reasonable balancing of interests. Appropriate conditions on permitted activities for wetland construction and farming activities, set at either the national or regional level, could enable appropriate land use to occur while still providing for the requirements of section 8³⁷, section 6 (e)³⁸ and section 7(a)³⁹ of the RMA.
215. We consider that excluding induced wetlands from the wetland definition, but providing for their inclusion where regionally significant, would enable tāngata whenua to advocate for the protection of wetlands of customary significance in freshwater planning (providing that 3.4 of the NPS-FM is retained). Given the known implementation issues associated with the inclusion of induced wetlands in the definition, we consider that excluding those that are not identified as significant would be reasonable.

Mechanisms for Māori participation

216. Removing the pasture exclusion from the wetland definition could provide more opportunities for Māori to participate in the management of these waterbodies than under the status quo.
217. The proposal for induced wetlands to be excluded from the regulations except where identified as regionally significant, would enable tāngata whenua to identify induced wetlands of significance in freshwater planning (provided that 3.4 of the NPS-FM is retained).
218. Freshwater planning could provide an opportunity for local authorities with tāngata whenua, to develop more stringent plan rules than the proposed permitted activity standards for farming activities and wetland construction, if they considered it necessary to protect Māori freshwater values, rights or interests (provided that regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained).

Equitable outcomes for Māori

219. We consider that the proposed approach to balance the removal of the pasture exclusion with a permitted activity pathway for farming activities (where they are unlikely to have adverse impacts) would provide protection of Māori rights and interests in wetlands whilst enabling farming activities to be undertaken as permitted activities where appropriate.
220. The exclusion of induced wetlands from the wetland definition would likely provide more development and land-use opportunities for all New Zealanders (especially in respect of maintaining or expanding existing buildings or infrastructure).

³⁷ 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 take into account the principles of the Treaty of Waitangi.

³⁸ 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 recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, Water, sites, waahi tapu and other taonga.

³⁹ 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 have particular regard to kaitiakitanga.

221. The ability for induced wetlands to be identified as regionally significant through freshwater planning and therefore protected by the wetland provisions provides for these wetlands to be included in the definition where necessary to protect Māori freshwater values (provided that 3.4 of the NPS-FM is retained).
222. Providing for wetland construction as a permitted activity would enable all New Zealanders to construct wetlands and harness their ecosystem services or amenity values without the requirement to obtain a resource consent. We consider that the benefits of providing for wetland construction would apply equally to all New Zealanders.

4.7 Simplifying the fish passage regulations

Options for public consultation –

Option 1: Simplify the information requirements for fish passage and amend the permitted activity conditions for culverts in the NES-F to reflect updated practice and provide for boxed culverts, and either:

Option 2: Allow councils to be less stringent than the permitted activity conditions for temporary structures; or

Option 3: Add temporary structures to the permitted activity pathway for culverts in the NES-F with associated permitted activity conditions.

4.7.1 Impacts of these options on Māori rights and interests

223. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Simplifying the fish passage regulations.

224. At this stage we have not identified any material impacts on Māori rights and interests associated with option 1. The general impacts of this change are identified in the RIS linked above but are not discussed further here.

Health and well-being of freshwater

225. Under all options, Policy 5 and 3.4 of the NPS-FM (if retained) would continue to require local authorities, in partnership with tāngata whenua (to the extent that they wish to be involved), to undertake freshwater planning to maintain or (if communities choose to) improve freshwater health and well-being.

226. At this stage we have not identified any material changes from what is provided for under the status quo in terms of providing for the health and well-being of freshwater under option 2 or 3.

Customary relationships

227. Allowing local authorities to be less stringent than the permitted activity conditions of the NES-F, as proposed under option 2, could provide more scope for recognition of local circumstances, including customary relationships. For example, temporary culverts could be less stringently controlled where in river reaches that are not home to taonga species.

228. At this stage, we have not identified any material changes under option 3, from what is provided for under the status quo in terms of the recognition of, and provision for, customary relationships.

Governance and management

229. Provided that 3.4 of the NPS-FM is retained, option 2 would enable local authorities, in consultation with tāngata whenua, to develop conditions that are less stringent than the permitted activity conditions in the NES-F. This could provide more scope for freshwater planning to be informed by mātauranga Māori and Māori freshwater values at the local level.

230. As with other options to permit activities, under option 3 there would be no opportunity for participation from Māori (or anyone) in resource consent decision-making.

231. However, if regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained, local authorities with tāngata whenua, could develop regional freshwater plan rules that were more stringent than the NES-F standards proposed under option 3. For example, where

considered necessary to protect mahinga kai sites. This would provide opportunities for Māori to participate in freshwater planning in respect of permitting the construction of temporary structures.

Mahinga kai and māra kai

232. Many endemic and freshwater species are taonga for Māori and there is a risk that both options could be perceived as a reduction of the current protections in the fish passage regulations.

233. However, both options 2 and 3 would continue to require that the structures provide for fish passage. As such, we consider it unlikely that the impacts of these options would materially differ from the status quo in terms of providing for mahinga kai interests.

234. At this stage we have not identified any material changes from what is provided for under the status quo in terms of recognition of, and provision for, māra kai interests.

Economic and development interests

235. Both options could result in reduced costs for people aiming to undertake the construction of temporary structures (due to the removal of the requirement to obtain a resource consent). However, we would not expect the impacts on Māori economic and development interests to differ from those for other landowners/land users.

4.7.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

236. We consider that under option 1 the balance of interests would remain the same as under the status quo.

237. We consider that under option 2, where decisions about being more permissible than the standard are determined at the local level as part of freshwater planning (provided that 3.4 of the NPS-FM is retained) there could be more opportunities Māori to exercise rangatiratanga in these processes.

238. We consider that the proposed permitted activity conditions under option 3 are quite comprehensive. However, regulation 6(1) of the NES-F and 3.4 of the NPS-FM (if retained) would enable local authorities with tāngata whenua, to develop more stringent permitted activity conditions on temporary structures in regional freshwater plans, where they considered it necessary to protect Māori freshwater rights and interests.

Mechanisms for Māori participation

239. Options 1 and 2 would retain the existing mechanisms for Māori participation (provided that 3.4 of the NPS-FM is retained).

240. Under option 3, freshwater planning could provide an opportunity for local authorities and tāngata whenua to develop more stringent plan rules than those proposed in the permitted activity conditions, if they considered it necessary to protect Māori freshwater values, rights or interests (provided that regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained).

Equitable outcomes for Māori

241. We consider that as the requirement for tāngata whenua to be involved in freshwater planning (under 3.4 of the NPS-FM) is proposed to be retained at this stage, it will provide for the continued protection of Māori interests if freshwater plans provide for a less stringent approach than the permitted activity conditions (as proposed under option 2).

242. At this stage, we consider that the permitted activity conditions proposed on option 3 would likely be sufficient to ensure that any potential adverse effects are avoided or mitigated. However, if local authorities with tāngata whenua, considered it necessary to develop additional permitted activity conditions to protect Māori freshwater rights and interests then they could do so through freshwater planning (provided that regulation 6(1) of the NES-F and 3.4 of the NPS-FM are retained).

4.8 Farmer facing regulations: Stock Exclusion

Option for public consultation - An exception from regulation 17 of the *Resource Management (Stock Exclusion) Regulations* 2020 (Stock Exclusion Regulations) which requires the exclusion of all stock from wetlands supporting a population of threatened species, for non-intensively grazed beef cattle and deer.

4.8.1 Impacts of these options on Māori rights and interests

243. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Option to amend regulations for farming activities.

Health and well-being of freshwater

244. The Stock Exclusion Regulations currently protect the health of ecosystems and waterways through the requirement that all stock be excluded from wetlands that support a population of threatened species (Regulation 17). This option would remove this requirement for low intensity beef cattle and deer farms.

245. Weed control from light grazing may be beneficial in some wetland areas, especially those that are large in area and ephemeral in nature eg, the Taieri Scroll Plains. However, stock grazing may still adversely impact the health of ecosystems and waterways.

246. In the Wai 2358 Stage 2 report, the Tribunal noted that stock exclusion from waterways was a significant matter for the claimants and interested parties.⁴⁰ An exception to regulation 17 would likely be perceived as a reduction in the Stock Exclusion Regulations current protection for wetlands and a step backwards in terms of addressing the Waitangi Tribunal's recommendations in respect of stock exclusion.

247. As set out in the Stock Exclusion Regulations RIS, the area of farmland that would be covered by this exception is unknown, but likely to be large. If this option was progressed it would mean that a wider number of wetlands that would have been protected by the requirement to exclude Stock from 1 July 2025, would be at risk from the impacts of stock entering wetlands.

Customary relationships

248. Enabling stock to enter wetlands is not likely to be considered consistent with upholding the mauri of freshwater in these areas or recognising the customary significance of freshwater.

249. As this exclusion would be based on the nature of the farming activity occurring (low intensity) rather than the significance of the wetland, there is potential for this option to result in stock being able to enter wetlands that Māori have customary relationships with.

250. However, regulation 16 of the Stock Exclusion Regulations requires that stock be excluded from any natural wetland that is identified in a regional or district plan or a regional policy statement that was operative on the commencement date (2020). This would continue to provide protection for some significant wetlands but would be unlikely to comprehensively protect customary relationships where criteria for determining significance differ. For example, where taonga species were previously protected under regulation 17 there may not have been the imperative for the wetland itself to be identified as significant in the regional plan and/or where plans do not yet adequately identify wetlands of significance.

⁴⁰ Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 5.2.1.2.

Governance and management

251. An exception to regulation 17 would not preclude local authorities and tāngata whenua (provided that 3.4 of the NPS-FM and regulation 19 of the Stock Exclusion regulations⁴¹ are retained) from developing freshwater policies and rules to manage stock access to wetlands on low intensity farms through regional freshwater plans. This would provide opportunities for Māori to participate in freshwater planning in respect of stock exclusion from these wetlands.

Mahinga kai and māra kai

252. Some of the potential adverse impacts of stock access to waterways would also impact the ability for Māori to safely gather and use mahinga kai from the wetlands in question eg, higher *E. coli* or nutrient levels.
253. At this stage we have not identified any material changes from what is provided for under the status quo in terms of the recognition of, and provision for, māra kai interests.

Economic and development interests

254. There may be wetland areas where the cost of excluding stock does not match the benefits, or where allowing light grazing of wetlands may be beneficial. Where there are large numbers of small wetlands captured by regulation 17 (eg, high country pastoral leases), this may come at a significant cost to farmers.
255. This option could therefore provide economic benefits to farmers (including Māori farmers) by removing the necessity to fence wetlands where they are low intensity farming cattle and deer.

4.8.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

256. Claimants in the Wai 2358 Stage 2 inquiry held that the failure of the Crown to issue stock exclusion regulations in 2017 had contributed to the degradation of waterbodies. While these regulations were issued in 2020, this option would remove requirements in respect of some wetlands.
257. The policy rationale for this option is that the Ministry for the Environment and Ministry for Primary Industries have heard that it is economically unviable to fence these wetlands where farms are large and wetland numbers numerous, and that wetlands on low intensity farms are not as at risk from the adverse effects of stock access to waterways due to the lower numbers of stock over a larger area.
258. However, this exclusion would allow beef-cattle and deer on low-intensity farms, to access wetlands supporting a population of threatened species – some of those species have a high likelihood of being taonga to Māori.
259. Given the strong emphasis placed on the necessity for stock exclusion during the Wai 2358 proceedings, and ongoing feedback from PSGEs about the importance of stock exclusion, especially from significant sites (such as those that are home to taonga species), there could be strong opposition from Māori in respect of this option.
260. However, regulation 17 is inflexible and is unable to be adapted to individual circumstances, meaning in some areas (eg, along the West Coast and the South Island High Country) there is the potential that the benefits of excluding stock from these wetlands is disproportionate to the cost.

⁴¹ Regulation 19 allows for a more stringent regional rule to prevail over the provision of the Stock Exclusion Regulations.

261. As issues have consistently been raised by stakeholders about the unworkability of regulation 17 (especially on large hill country farms) we consider that this option may constitute a reasonable approach. Where necessary to protect Māori freshwater values, local authorities and tāngata whenua could work together in the freshwater planning process (provided that 3.4 of the NPS-FM and regulation 19 of the Stock Exclusion regulations are retained) to develop freshwater plan rules to manage stock exclusion from these waterbodies at the local level.

Mechanisms for Māori participation

262. The mechanisms for Māori participation are the same under this option as they are under the status quo (provided that 3.4 of the NPS-FM is retained).

263. We note that freshwater planning could provide an opportunity for local authorities and tāngata whenua to develop regional freshwater plan rules to manage stock exclusion on low intensity beef-cattle and deer farms, if they considered it necessary to protect Māori freshwater values, rights or interests (provided that 3.4 of the NPS-FM and regulation 19 of the Stock Exclusion Regulations are retained).

Equitable outcomes for Māori

264. We consider that the benefits of this option would apply equally to Māori and non-Māori farmers.

265. At the regional level, if local authorities and tāngata whenua identify a potentially disproportionate adverse effect of this option on a Māori freshwater right or interest eg, the gathering or harvest of mahinga kai, then they could develop additional plan rules through freshwater planning to protect these interests (provided that 3.4 of the NPS-FM and regulation 19 of the Stock Exclusion Regulations are retained).

4.9 Farmer facing regulations: Nitrogen fertiliser

Options for public consultation –

Option 1: Repeal the requirement in the NES-F for dairy farms to provide the receipts for synthetic nitrogen fertiliser purchased and align the reporting date in the NES-F with the farming calendar, and/or

Option 2: Repeal the requirement for farmers to use less than 190 kilograms of nitrogen per hectare, per year, on the grazed area of their farms (nitrogen fertiliser cap).

4.9.1 Impact of these options on Māori rights and interests

266. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Option to amend regulations for farming activities.

Health and well-being of freshwater

267. Nitrogen is an essential nutrient for plant growth. However, high nitrogen levels are associated with adverse effects on both the toxicity and ecological health of waterways. Excessive nitrogen can impact all freshwater ecosystems.

268. Currently, to apply synthetic nitrogen fertiliser as a permitted activity, pastoral land-users must comply with a default condition in the NES-F that the application of nitrogen (as a component of the fertiliser) must not exceed 190 kg/ha/year (nitrogen cap).

269. Option 1 is a reporting process change, and we consider that its impacts on improving water quality, and the health of ecosystems and waterways would be unlikely to differ from under the status quo.

270. Under option 2 the nitrogen fertiliser cap (as described at paragraph 269) would be removed and it would be up to local authorities with tāngata whenua (provided that 3.4 of the NPS-FM is retained), to determine through freshwater planning, how nitrogen fertiliser use should be managed within the parameters of continuing to meet the requirements of Policy 5 (if retained).

271. Applying rates above the cap are seldom able to be justified economically, as the pasture response curve flattens out beyond 200 kg, we therefore consider that any adverse impacts of option 2 would be minor and/or localised to particular areas.

Customary relationships

272. At this stage we have not identified any material changes under option 1, from what is provided for under the status quo in terms of the recognition of, and provision for, customary relationships.

273. Option 2 could introduce circumstances where waterbodies of significance to Māori become subject to higher nitrogen loads than under the status quo. Local authorities with tāngata whenua (provided that 3.4 of the NPS-FM is retained), could determine through freshwater planning, how to manage these effects eg, through managing other land-uses, or through plan rules for nitrogen fertiliser use.

Governance and management

274. At this stage we have not identified any material changes under option 1, from what is provided for under the status quo in terms of governance and management (provided that 3.4 of the NPS-FM is retained).

275. As nitrogen fertiliser use within the parameters on the nitrogen cap is already a permitted activity there is no scope for Māori (or anyone) to participate in resource consent decision making on nitrogen fertiliser use within the nitrogen cap range. Option 2 would remove the nitrogen cap and leave it to freshwater planning to determine how nitrogen fertiliser should be managed.
276. Provided that 3.4 of the NPS-FM is retained, local authorities with tāngata whenua, could develop freshwater plan rules to manage nitrogen fertiliser use. This would provide opportunities for Māori to participate in freshwater planning in respect of nitrogen fertiliser use.

Mahinga kai and māra kai

277. At this stage we have not identified any material changes under option 1, from what is provided for under the status quo in terms of recognition of, and provision for, mahinga kai and māra kai rights and interests.
278. If option 2 led to higher nitrogen loading in waterbodies or catchments where nitrogen fertiliser use is high (eg, high intensity dairy farming catchments) then freshwater ecosystems and species could be adversely impacted eg, fish populations could decrease due to ill health.
279. However, as discussed at paragraph 271, any potential adverse impacts of option 2 could be addressed through freshwater planning at the regional level.
280. At this stage we have not identified any material changes under option 2, from what is provided for under the status quo in terms of recognition of, and provision for, māra kai interests.

Economic and development interests

281. Option 1 could provide economic benefit to Māori (and non-Māori) dairy farmers by removing the reporting requirement, reducing regulatory burden.
282. We do not consider that option 2 would introduce any new impacts on Māori economic and development interests at this stage, as applying nitrogen fertiliser in exceedance of the existing nitrogen cap is seldom economically viable.

4.9.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

283. We consider that option 1 is a reporting level change and does not materially affect the balance of interests under the status quo.
284. During the Wai 2358 Stage 2 proceedings, both the Crown and claimants accepted that the lack of controls on nitrogen as a nutrient was a serious issue with the NPS-FM 2014.⁴² This was rectified to an extent in the NPS-FM with the nitrogen cap for pastoral land users.
285. While removing the nitrogen cap would result in a more equitable arrangement than under the status quo, in terms of nitrogen discharge rights, it could possibly result in adverse effects on freshwater health and taonga species.
286. The risk of adverse impacts is mitigated, to an extent, by the economic unviability of applying fertiliser in exceedance of the cap. However, local authorities, with tāngata whenua (provided that 3.4 of the NPS-FM is retained), are likely to need to develop freshwater plan rules that

⁴² Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019) at 5.6.4.4.

manage nitrogen fertiliser use in order to manage freshwater to meet the requirements of Policy 5 (if retained).

Mechanisms for Māori participation

287. At this stage we have not identified any material changes under option 1, from what is provided for under the status quo in terms of mechanisms for Māori participation (provided that 3.4 of the NPS-FM is retained).

288. Nitrogen fertiliser application within the parameters of the nitrogen cap is a permitted activity under the status quo. Mechanisms for Māori participation in respect of the nitrogen cap are therefore limited to freshwater planning (provided that 3.4 of the NPS-FM is retained).

289. Under option 2, freshwater planning would provide an opportunity for local authorities and tāngata whenua to develop plan rules to manage nitrogen fertiliser use in general.

Equitable outcomes for Māori

290. At this stage, we consider that option 1 would provide equitable outcomes for Māori as it does not materially change the settings under the status quo.

291. Option 2 could result in a system that regulates nitrogen fertiliser use more equitably across industries – as under the status quo the nitrogen cap only applies to pastoral land use.

292. We consider that the ability for local authorities and tāngata whenua to develop plan provisions to manage nitrogen fertiliser use (provided that 3.4 of the NPS-FM is retained) will allow for place-based decision making and enable the development of regionally appropriate rules that can consider the circumstances of local land use and water bodies.

4.10 Include mapping requirements for drinking water in the NPS-FM

Option for public consultation - Introduce Source Water Risk Management Area (SWRMA) mapping requirements and associated policy elements

4.10.1 Impact of these options on Māori rights and interests

293. These assessments are of impacts on Māori rights and interests in freshwater. For discussion of the general impacts of this option please see the Interim RIS – Amending human drinking water source protection policies.

Health and well-being of freshwater

294. This option would likely improve source water protection, resulting in positive health outcomes. It would also be likely to have positive impacts on freshwater ecosystem health because many contaminants of concern for human health also impact freshwater ecosystems.

Customary relationships

295. We consider that both the mapping and policy aspects of this option could impact customary relationships if wai tapu or wāhi tapu sites are captured by the mapping exercise or if customary activities eg, tōhi, rāhui and the harvesting of mahinga kai, are affected by subsequent policies and land-use controls.

296. However, we consider that any adverse effects of these impacts can be mitigated by engagement and consultation with tāngata whenua in mapping, policy development and implementation. This could include providing for the protection and continuity of customary activities.

Governance and management

297. Many local authorities already have spatial areas and policies for managing drinking water supplies, however the development of these has been subject to ad-hoc and inconsistent engagement with tāngata whenua across the country.

298. Many hapū and iwi throughout the country have historic and ongoing grievances associated with the loss of land and resources, and the development of land of cultural and spiritual significance, following government mapping eg, the seizure of land for development and/or public works under the *Town and Country Planning Act 1977* and *Public Works Act 1981*.

299. Successive Waitangi Tribunal reports have found that many local authorities lack understanding of tikanga and mātauranga Māori, tribal boundaries, and significant sites for Māori within their regions.⁴³ It would therefore be important that local authorities work with tāngata whenua and Māori landowners to map SWRMAs.

300. Provided that 3.4 of the NPS-FM is retained, we consider that there will be opportunities for Māori to participate in the mapping of SWRMAs in freshwater planning.

Mahinga kai and māra kai

301. As with the assessment of impacts on the health and well-being of freshwater, we consider that this option would be likely to have beneficial impacts on freshwater ecosystems and on mahinga kai rights and interests.

⁴³ For example, see: Waitangi Tribunal, *Wairarapa ki Tararua Report* (Wai 863, 2010) and *Tauranga Moana 1886-2006-Report on the Post-Raupatu Claims Volume 2* (Wai 215, 2010).

302. We also consider that better identification, provision and protection for clean source water would be beneficial for the preparation of both mahinga kai and māra kai, better enabling the exercise of manaakitanga for Māori communities, especially in rural areas.

Economic and development interests

303. Long-term mapping and appropriately managing SWRMAs could result in positive outcomes for Māori economic interests and development. Improved source water quality could decrease the necessity for Māori to relocate or stall development where water quality is inadequate for drinking and other activities eg, preparing kai and bathing.

4.10.2 Applying the Treaty of Waitangi

Balance between kāwanatanga and rangatiratanga

304. The intent of this option, to identify and provide better protection for source water areas, would protect the access of all New Zealanders to clean source water.
305. It would be important for local authorities to work with Māori landowners and PSGEs to map SWRMAs where these occur on Māori land so that this exercise does not revive historic grievances in respect of mapping exercises (as discussed at paragraph 299).
306. We consider that policy settings should be developed in consultation with Māori. This would be especially important where policies and land-use controls could affect sites (ie, wai tapu or wāhi tapu) or practices (eg, tōhi (Māori baptisms), rāhui and the gathering and preparation of mahinga kai) that are of customary significance to Māori.

Mechanisms for Māori participation

307. Nothing in this option would preclude Māori participation. We consider that mechanisms for Māori participation exist under the current settings for freshwater planning (provided that 3.4 of the NPS-FM is retained).

Equitable outcomes for Māori

308. The benefits of mapping and developing associated policies to protect SWRMAs would apply to all New Zealanders. We consider that this option could result in better ongoing provision of clean source water to rural areas, including those where Māori papkāinga, marae and urupā are situated.
309. This option would require councils to map SWRMAs, which would include Māori-owned land. Based on a national desktop assessment, we estimate that 12.5ha of whenua Māori (0.0009% of total whenua Māori) would be covered by SWRMA 1, 85,094ha (6.3% of total whenua Māori) would be covered by SWRMA 2 and 404,059ha (29% of total whenua Māori) would be covered by SWRMA 3. This will be an underestimate as it only includes whenua Māori in the Māori Land Court Spatial Dataset and does not include land that is owned by iwi/PSGEs such as land transferred via Treaty settlements or land that is privately owned by Māori.
310. Based on the assessment above, we consider that while SWRMA mapping and associated policies will impact whenua Māori, we do not consider, at this stage, that it will do so disproportionately.

Section 5: Upholding Treaty settlements and other arrangements

311. The Crown has specific obligations under certain Treaty settlements when exercising functions under the RMA, including amending or replacing national direction. These commitments are particularly significant to the relevant PSGEs when it comes to freshwater. They include both substantive obligations to give particular weighting to certain matters, and separate obligations to engage on relevant policy and legislative changes.
312. The Crown also has several relevant arrangements with PSGEs and other relevant Māori groups, in respect of or related to freshwater and commitments under the *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019*.
313. A table of Treaty settlement commitments and other arrangements relevant to the Freshwater Package can be found at **Appendix 2**.
314. This Section assesses:
- the extent to which the policy development process to date has upheld Treaty settlement commitments and other arrangements (at Section 5.1)
 - the potential impacts of policy options on the Crown's ability to uphold Treaty settlement commitments and other arrangements (at Section 5.2).

5.1 The extent to which the policy development process to date has upheld Treaty settlement commitments and other arrangements

315. Most Treaty settlements include an apology and promise by the Crown to enter into a new relationship based on Treaty principles. The Treaty principle of partnership will require engagement with Māori on an issue as important to iwi and hapū as freshwater.
316. Many PSGEs hold relationship agreements with the Ministry for the Environment and the Ministry for Primary Industries that require early engagement on freshwater matters (see **Appendix 2** for a full list). For example, the Kiingitanga Accord between the Crown and Waikato Tainui includes principles of co-management and requires early and effective engagement on matters that may affect the health and wellbeing of the Waikato River.⁴⁴
317. Two rounds of engagement with PSGEs and other relevant Māori groups have been undertaken to inform the policy development process to date. Some of the options⁴⁵ in this document were not subject to early engagement with Māori as they were added to the package after engagement (see footnote for a list of these options).
318. However, there will be further opportunities for engagement with Māori on all options in the Freshwater Package, during and after public consultation on options (scheduled to occur

⁴⁴ *Kiingitanga Accord*, 22 August 2008, at 2.5(b)(ii).

⁴⁵ These are:

- Option 3 in Section 4.2 – remove TMotW and relevant provisions.
- Sub Options in Section 4.3 including –
 - whether to go back to two compulsory values
 - what attributes are critical to monitor and manage
 - which attributes (if any) should have national bottom lines set for them, and
 - options to provide councils with flexibility to vary attribute thresholds (including national bottom lines) and monitoring methods “where achieving national bottom lines has a high social, cultural or economic cost”.
- Option 2 in Section 4.9 – repeal the requirement for farmers to use less than 190 kgs of nitrogen per hectare, per year, on the grazed area of their farms (the nitrogen fertiliser cap).

from May-June 2025), and prior to, and during public consultation on an exposure draft of proposed amendments (scheduled to occur in late 2025).

319. A list of the PSGEs and other relevant Māori groups engaged with to date is set out in **Appendix 1**.

320. At this stage, some groups have indicated that they have found engagement insufficient, due to the pace and volume of ongoing policy development across government. We note that this policy process is still in the early stages and that engagement with Treaty Partners will continue throughout the year.

321. Meeting Treaty settlement commitments and upholding other arrangements is, in some cases, an iterative process. Engagement throughout policy development will be ongoing in acknowledgement of these commitments.

5.2 The potential impacts of options on the Crown's ability to uphold Treaty settlement commitments and other arrangements

322. The analysis below outlines Treaty settlement commitments and other arrangements that are relevant to the Freshwater Package and assesses the potential impacts of the options in the Freshwater Package on these commitments and arrangements.

323. This analysis applies to the options in their current iteration and may change if the options change post-consultation. If any material amendments are made to the RMA, then the nature of the impacts on the below settlement commitments is likely to change substantially.

324. Note that the caveats listed at paragraph 16 of this document apply to the analysis in this section.

325. Treaty settlements do not guarantee that there will be no regulatory change in the future. Care will be needed in considering the scale and character of how any proposed reforms may impact settlements.

5.2.1 Statutory acknowledgements

326. As set out at **Appendix 2** of this analysis, most Treaty settlements include a statutory acknowledgement by the Crown of a claimant group's particular cultural, spiritual, historical, and traditional association with specified areas.

327. Among other things, statutory acknowledgements provide for more specific relationships in decision-making at the resource consenting level in two ways:

- the relevant consent authority must provide the trustees of the PSGE with copies of any resource consent application within, adjacent to or directly affecting a statutory area, and
- in considering a resource consent application, the relevant consent authority must have regard to the statutory acknowledgement in deciding whether the trustees of the PSGE would be affected by an activity within, adjacent to or directly affecting the statutory area.

328. These requirements are intended to create transparency in the resource consenting process so that PSGEs and the iwi/hapū/Māori that they represent have the information to participate meaningfully in resource consenting processes for activities in their areas of statutory recognition.

329. They also empower iwi to quote the statutory acknowledgement as evidence of their association with a statutory area in consent decision-making processes.
330. Options in the Freshwater Package that would permit activities (off-stream water storage, commercial vegetable growing and pathways for farming activities and wetland construction in the wetland provisions) could have an impact on the operation of statutory acknowledgements, as the above requirements do not apply to permitted activities.
331. The scale and scope of these impacts on existing statutory acknowledgements would depend on the scale and scope of activities. Further consultation on the Freshwater Package will provide clarity on the extent to which PSGEs consider that additional permitted activities would impact the current effectiveness of their statutory acknowledgements.

5.2.2 Deeds of recognition

332. As set out at **Appendix 2** of this analysis, most Treaty settlements include a deed of recognition.
333. Deeds of recognition may follow on from a statutory acknowledgement. They apply to Public Conservation Land and place obligations on the landholding agency (either Department of Conservation (DoC) or Land Information New Zealand (LINZ)) to:
- recognise the historical, cultural, spiritual, or traditional relationship of the settled group with these areas; and
 - require that DOC or LINZ consult with the settled group and have particular regard to their views in relation to the management of these areas.
334. Deeds of recognition relate to land where the Crown remains the owner, the decisions over land use and management rest with DoC or LINZ, or a person or entity to whom they have delegated responsibility. At this stage we do not consider that the options in the Freshwater Package would impact on deeds of recognition as the relevant agencies should continue to manage and consult on land-use in these areas in accordance with the relevant deed of recognition.

5.2.3 Joint Management Arrangements (JMAs)

335. Some settlements provide for JMAs between a local authority (or authorities) and the relevant PSGE over some or all natural resources within the settled group's takiwā (area of interest). JMAs can also be entered into outside of Treaty settlements through the process set out at 36b of the RMA. A list of all JMAs between local authorities and PSGEs and other Māori groups, that are relevant to freshwater, is included at **Appendix 2**.
336. The extent to which the options assessed in this document will impact JMAs depends on the specifics of the arrangements of each JMA.
337. The option to include additional objectives in the NPS-FM eg, in relation to cost and pace of change, could complicate co-management, where there had previously been an agreed focus on the singular objective of TMotW set out in national direction.
338. Furthermore, options to permit activities could affect the level of oversight that one or both parties have over the impacts of these activities on the freshwater resource over which the JMA exists. They could also create further tension between protecting these freshwater resources (eg, through more stringent plan provisions) and balancing other land-uses and interests at the local level.

339. We do not consider at this stage that any of the options in the Freshwater Package would directly affect JMAs. However, some of the options may increase pressures on one or both parties to manage freshwater resources and their catchments differently. The extent of impacts on JMAs will therefore be dependent on how parties to these agreements work together to continue co-management of these resources.

5.2.4 Environment plans and strategy documents

340. Some settlements provide for PSGEs to lodge environment plans with a relevant local authority and/or Government department. The specifics within the deed of settlement, accord or settlement legislation set out the weighting that must be given to these documents in freshwater planning and resource consent decision making.

341. Both in consultation and implementation, it is imperative that appropriate weighting is given to the details of relevant environment plans and strategy documents. This will need to be ongoing throughout post consultation options development.

5.2.5 Te Ture Whaimana – Waikato-Tainui, Ngāti Maniapoto, Ngāti Raukawa, Te Arawa and Ngāti Tūwharetoa

342. In the context of these commitments the relevant PSGEs are:

- Te Whakakitenga o Waikato Inc.
- Te Nehenehenui
- Tūwharetoa Māori Trust Board
- Raukawa Settlement Trust, and
- Te Arawa River Iwi Trust.

Relevant settlement commitments

343. Te Ture Whaimana – the vision and strategy for the Waikato River, is a creature of the *Waikato-Raupatu Claims (Waikato River) Settlement Act 2010*. The vision and strategy prevail over any inconsistent provision in the NPS-FM.⁴⁶ A rule included in a regional or district plan for the purpose of giving effect to the vision and strategy also prevails over an NES-F if it is more stringent.⁴⁷ Persons carrying out functions under the RMA which relate to the Waikato River must have particular regard to Te Ture Whaimana.⁴⁸

344. *Ngāti Tūwharetoa, Raukawa and Te Arawa River Act 2010*, requires that any person carrying out functions or exercising powers under the RMA, in relation to the Waikato River, or activities in its catchment must have particular regard to Te Ture Whaimana.⁴⁹

345. *Ngā Wai o Maniapoto (Waipā River) Act 2012* applies the above requirements to the upper Waipā River.⁵⁰

⁴⁶ *Waikato-Raupatu Claims (Waikato River) Settlement Act (2010)* at s 12(1)(a).

⁴⁷ *Waikato-Raupatu Claims (Waikato River) Settlement Act 2010* at s 12(4).

⁴⁸ *Waikato-Raupatu Claims (Waikato River) Settlement Act (2010)* at s 17.

⁴⁹ *Ngāti Tūwharetoa, Raukawa and Te Arawa River Iwi Waikato River Act (2010)*, at s18.

⁵⁰ *Nga Wai o Maniapoto (Waipā River) Act (2012)*, at s8.

Analysis

346. In accordance with the Waikato and Waipā River settlements, Te Ture Whaimana remains the primary decision-making document for the Waikato River and its catchment. Where the NPS-FM is inconsistent with Te Ture Whaimana, the latter prevails.
347. As a rule included in a regional or district plan for the purpose of giving effect to the vision and strategy prevails over an NES-F if it is more stringent, some of the options to permit activities may be constrained by the need to remain consistent with Te Ture Whaimana.
348. The options to prioritise or permit CVG (as at Section 4.4 of this document) are likely to be of particular interest to Waikato Iwi given the prevalence of CVG in the Waikato Region and pending planning decisions about the management of CVG in the Waikato catchment in the context of Te Ture Whaimana.
349. CVG is currently a permitted activity in the Waikato area if fertiliser application is under 60kg per hectare per year, or managed by a nutrient management plan, provided that the use complies with the permitted activity conditions. Where it does not comply with these conditions, it is a discretionary activity.⁵¹
350. However, in 2020, the board of Iwi Co-Governors (Waikato Raupatu River Trust, Maniapoto Māori Trust Board, Raukawa Charitable Trust, Te Arawa River Iwi Trust, and Tūwharetoa Māori Trust Board) opposed Waikato Regional Plan Change 1 proposals to enable vegetable growing expansion on the basis that these would undermine Te Ture Whaimana.⁵² This is currently the subject of an appeal to the Environment Court.
351. Given the statutory priority of Te Ture Whaimana, other aspects of the NPS-FM including aspects of TMotW, could also continue to apply in freshwater planning and resource consent decisions within the Waikato and Waipā River catchments. This will be dependent on the specific steps taken by the relevant decision-makers (including Waikato Iwi).
352. At this stage we consider that the policy options in the Freshwater Package may not have material impacts on the relevant settlement commitments in respect of freshwater, given the statutory priority of Te Ture Whaimana. However ongoing engagement with Te Whakakitenga o Waikato Inc, Te Nehenehenui, Tūwharetoa Māori Trust Board, Raukawa Settlement Trust, Te Arawa River Iwi Trust and where requested, other individuals or groups from Waikato Iwi, will be necessary to ensure that this assessment is accurate and that Treaty settlement commitments are upheld.

5.2.6 Te Mana Tupua o Te Waiaū-o-Te-Ika – Ngāti Rangi

353. In the context of these commitments the relevant PSGE is Te Tōtarahoe o Paerangi Trust.

Relevant settlement commitments

354. The *Ngāti Rangi Claims Settlement Act* 2019 recognises Te Mana Tupua o Te Waiū-o-Te-Ika (the Whangaehu River) as a living and indivisible whole.⁵³
355. Under the provisions of the Act, decision makers must recognise and provide for Te Mana Tupua and intrinsic values (Ngā Toka Tupua) in relation to preparing, varying, changing, or approving a regional policy statement, regional plan, or district plan, where it relates to the

⁵¹ Waikato Regional Plan, 2007, Chapter 3 'Water Module' at 3.4.9.11.

⁵² Waikato Regional Council, Proposed Waikato Regional Plan Change 1: Waikato and Waipā River Catchments; The Hearing Panel's Recommendation Report, Volume 1, March 2020, at 1205.

⁵³ *Ngāti Rangi Claims Settlement Act* (2019) at Part 3, s 107(2).

Whangaehu River, or activities within the Te Waiū-o-Te-Ika catchment that will affect the Whangaehu River.⁵⁴

356. When exercising other functions under the RMA at both the national level (in preparing, reviewing national direction) and at the regional or district level (in resource consent decision making), the decision maker must have particular regard to Te Mana Tupua and Ngā Toka Tupua.⁵⁵ When undertaking these functions, the decision makers are permitted to consider Te Mana Tupua and Ngā Toka Tupua as determining factors when exercising or performing a function, power, or duty under the RMA, but the exercise of discretion is not removed.⁵⁶

Analysis

357. The NES-F currently enables district rules, regional rules, and resource consents to be more stringent than the regulations (under regulation 6(1)). Likewise, a local authority can take more stringent measures than those set out in the NPS-FM (under 3.1(2)(a) of the NPS-FM).
358. This means that (provided that regulation 6(1) of the NES-F and 3.1(2)(a) of the NPS-FM are retained), options to remove protection (eg, for induced wetlands or stock exclusion) or to make some activities more permissive (eg, off-stream water storage, commercial vegetable growing, wetland construction, and farming activities around wetlands) would be subject to local decision making and freshwater planning which may be driven by recognising and providing for Te Mana Tupua and Ngā Toka Tupuna.
359. However, if some of the options to change the NES-F are progressed, there is likely to be a time-lag between these taking effect and local authorities making or amending their freshwater/regional plans. This could have short term impacts on a local authority's ability to recognise and provide for Te Mana Tupua and Ngā Toka Tupuna.
360. If options to change TMotW are progressed, local authorities may still be able to reflect aspects of the 2020 iteration – particularly in relation to Te Mana Tupua and Ngā Toka Tupuna - in resource consenting and freshwater planning decision making within the Whangaehu catchment. However, because local authorities have the ability to exercise discretion, the options to introduce new NPS-FM objectives (see Section 4.1) and options to rebalance TMotW (see Section 4.2) could influence the extent to which Te Mana Tupua and Ngā Toka Tupuna are given weight in freshwater decision making.
361. If the options discussed in the paragraphs above are progressed, then local authorities will need to work alongside Ngāti Rangi to fulfil their obligation to recognise and provide for Te Mana Tupua and Ngā Toka Tupuna in council policies and plans when amending plan rules under the RMA, as required by section 109(2) of the settlement legislation.
362. Ongoing engagement with Te Tōtarahoe o Paerangi Trust and where requested, other individuals and groups from Ngāti Rangi, is required to ensure that the above assessments are accurate, and to ensure that Treaty settlement commitments are upheld.
363. The final Treaty impact analysis for the Freshwater Package will report how particular regard has been given to Te Mana Tupua and Ngā Toka Tupuna.

5.2.7 Te Awa Tupua – Whanganui Iwi

364. In the context of these commitments the relevant PSGE is Ngā Tāngata Tiaki o Whanganui Trust.

⁵⁴ *Ngāti Rangi Claims Settlement Act* (2019) at 109(2).

⁵⁵ *Ngāti Rangi Claims Settlement Act* (2019) at 109(4).

⁵⁶ *Ngāti Rangi Claims Settlement Act* (2019) at 109.

Relevant settlement commitments

365. The *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* gives legal person status to the Whanganui River.⁵⁷

366. Under the provisions of the Act, decision makers must recognise and provide for Te Awa Tupua and intrinsic values (Tupua te Kawa) in relation to preparing, varying, changing, or approving a regional policy statement, regional plan, or district plan, where it relates to the Whanganui River or activities within the Whanganui River catchment that will affect the River or Tupua te Kawa.⁵⁸

367. When exercising other functions under the RMA at both the national level (in preparing, reviewing national direction) and at the regional or district level (in resource consent decision making), the decision maker must have particular regard to Te Awa Tupua and Tupua te Kawa.⁵⁹ When undertaking these functions, the decision makers are permitted to consider Te Awa Tupua and Tupua te Kawa as determining factors when exercising or performing a function, power, or duty under the RMA, but the exercise of discretion is not removed.⁶⁰

Analysis

368. The NES-F currently enables district rules, regional rules, and resource consents to be more stringent than the regulations (under regulation 6(1)). Likewise, a local authority can take more stringent measures than those set out in the NPS-FM (under 3.1(2)(a) of the NPS-FM).

369. This means that (provided that regulation 6(1) of the NES-F and 3.1(2)(a) of the NPS-FM are retained), options to remove protection (eg, for induced wetlands or stock exclusion) or to make some activities more permissive (eg, off-stream water storage, commercial vegetable growing, wetland construction, and farming activities around wetlands) would be subject to local decision making and freshwater planning which may be driven by recognising and providing for Te Awa Tupua and Tupua te Kawa.

370. However, if some of the options to change the NES-F are progressed, there is likely to be a time-lag between these taking effect and local authorities making or amending their freshwater/regional plans. This could have short term impacts on a local authority's ability to recognise and provide for Te Awa Tupua and Tupua te Kawa.

371. If options to change TMotW are progressed, local authorities may still be able to reflect aspects of the 2020 iteration – particularly in relation to Te Awa Tupua and Tupua te Kawa – in resource consenting and freshwater planning decision making within the Whanganui catchment. However, because local authorities have the ability to exercise discretion, the options to introduce new NPS-FM objectives (see Section 4.1) and options to rebalance TMotW (see Section 4.2) could influence the extent to which Te Awa Tupua and Tupua te Kawa are given weight in freshwater decision making.

372. If the options discussed in the paragraphs above are progressed, then local authorities will need to work alongside Whanganui Iwi to fulfil their obligation to recognise and provide for Te Awa Tupua and Tupua te Kawa in council policies and plans when amending plan rules under the RMA, as required by section 15(2) of the settlement legislation.

373. Ongoing engagement with Ngā Tangata Tiaki o Whanganui and where requested, other individuals and groups from Whanganui Iwi, is required to ensure that the above assessments are accurate, and to ensure that Treaty settlement commitments are upheld.

⁵⁷ *Te Awa Tupua (Whanganui River Claims Settlement) Act (2017)*, Subpart 2, at 14.

⁵⁸ *Te Awa Tupua (Whanganui River Claims Settlement) Act (2017)*, Subpart 2, at 15(2).

⁵⁹ *Te Awa Tupua (Whanganui River Claims Settlement) Act (2017)*, Subpart 2, at 15(3).

⁶⁰ *Te Awa Tupua (Whanganui River Claims Settlement) Act (2017)*, Subpart 2, at 15(5).

374. The final Treaty impact analysis for the Freshwater Package will report how particular regard has been given to Te Awa Tupua and Tupua te Kawa.

5.2.8 Rangitāiki River Recognition of tuna habitat arrangements – Ngāti Manawa and Ngāti Whare

375. In the context of these commitments the relevant PSGEs are:

- Te Rūnanga o Ngāti Manawa, and
- Te Rūnanga o Ngāti Whare.

Relevant settlement commitments

376. Both the *Ngāti Manawa Claims Settlement Act 2012* and the *Ngāti Whare Claims Settlement Act 2012* require that all persons exercising functions and powers under the RMA that affect the Rangitāiki River have particular regard to the habitat of tuna (eels) in that river.⁶¹

Analysis

377. Some of the options in the Freshwater Package could lead to increased impacts on the habitats of tuna. However, if regulation 6(1) of the NES-F and 3.1(2)(a) of the NPS-FM are retained, then where appropriate, more stringent regional freshwater plan rules could be developed in order to have particular regard to the habitat of tuna in the Rangitāiki River catchment.

378. Ongoing engagement with Te Rūnanga o Ngāti Manawa and Te Rūnanga o Ngāti Whare and where requested, other individuals or groups from Ngāti Manawa and Ngāti Whare, is necessary to understanding the scale of any potential impacts on the habitat of tuna and to ensure that Treaty settlement commitments are upheld.

5.2.9 Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019

Relevant commitment

379. The *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019* requires that the Minister for the Environment must consider the environmental covenant when preparing a proposed national environmental standard that directly affects ngā rohe moana.⁶² It also requires that a report and recommendations for a proposed national policy statement that directly affects ngā rohe moana must consider the environmental covenant.⁶³

380. An environmental covenant has not yet been completed.

381. The *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019* also provides legal recognition of protected customary activities and customary marine title in ngā rohe moana.

Analysis

382. Although the NPS-FM manages freshwater and therefore does not directly affect management of the coastal marine area (CMA) (of which ngā rohe moana is a part), it does require that freshwater be managed in an integrated way, on a whole of catchment basis that considers effects on receiving environments (including the CMA).⁶⁴

⁶¹ *Ngāti Manawa Claims Settlement Act (2012)* at 125 and *Ngāti Whare Claims Settlement Act (2012)* at 129.

⁶² *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (2019)* at 31(1).

⁶³ *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act (2019)* at 31(2).

⁶⁴ *National Policy Statement for Freshwater Management 2020*, Policy 3 at 2.2.

383. The RMA also requires that the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga be considered as a matter of national importance and be recognised and provided for.⁶⁵
384. We therefore consider that a best practice freshwater policy development process should consider impacts on ngā rohe moana, in particular, on the protected customary activities of Ngā Hapū o Ngāti Porou.
385. Any options that could lead to a degradation in water quality are likely to negatively impact protected customary activities. Coastal areas receive large volumes of freshwater from rivers, and these can affect the marine environment, including coastal water quality and the health, plentifulness and diversity of mahinga kai.
386. Engagement with Ngā Hapū o Ngāti Porou should be ongoing to recognise and uphold the protected customary activities and customary marine title of Ngā Hapū o Ngāti Porou as set out in the *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019*.

⁶⁵ *Resource Management Act* (1991) at s 6(e).

Appendix 1 – List of Post Settlement Governance Entities (PSGEs), Ngā Hapū o Ngāti Porou, yet to settle groups and pan-Māori groups engaged with to date on the Freshwater Package.

*Denotes non-settled group

| Pan-Māori groups |
|---|
| <ul style="list-style-type: none"> • Pou Taiao (National Iwi Chairs Forum environment pou) • Te Tai Kaha (TTK) |
| Regional hui |
| <ul style="list-style-type: none"> • Tairāwhiti iwi: <ul style="list-style-type: none"> ○ Te Rūnanganui o Ngāti Porou ○ Ngā Hapū o Ngāti Porou ○ Rongowhakaata Iwi Trust ○ Tāmanuhiri Tūtū Poroporo Trust ○ Te Whānau a Kai ○ Te Aitanga a Māhaki • Te Matau-a-Māui iwi: <ul style="list-style-type: none"> ○ Ngāti Pāhauwera Tiaki Trust ○ Maungaharuru-Tangitū Trust ○ Hineuru Iwi Trust ○ Tamatea Pōkai Whenua ○ Tātau Tātau o Te Wairoa Trust ○ Mana Ahuriri Trust ○ Ngāti Ruapani mai Waikaremoana Negotiation Group • Taranaki iwi: <ul style="list-style-type: none"> ○ Te Kotahitanga o Te Atiawa ○ Te Kāhui Maru Trust ○ Te Kāhui o Taranaki |
| Individual PSGEs and yet to settle groups |
| <ul style="list-style-type: none"> • Te Rūnanga o Ngāti Ruanui • Ngā Pōtiki A Tamapahore Trust* • Ngā Tāngata Tiaki o Whanganui • Raukawa Settlement Trust • Te Tāwharau o Te Whakatōhea • Te Whānau ā Apanui* • Te Rūnanga o Toa Rangatira • Taumatawiwi Trust (Ngāti Koroki Kahukura) • Te Nehehehenui (previously Maniapoto Māori Trust Board) • Te Tōtarahoe o Paerangi Trust • Moriori Imi Settlement Trust • Te Whakakitenga o Waikato Inc • Rangitāne Tū Mai Rā Trust • Te Rūnanga o Ngāi Tahu • Hineuru Iwi Trust • Pouakani Trust • Ngātiwai Trust Board* • Muaūpoko Tribal Authority* |

Appendix 2 – Treaty settlement commitments and other arrangements relevant to the Freshwater Package.

[THIS IS NOT GOVERNMENT POLICY]

Freshwater specific Treaty settlement arrangements and Crown commitments

Engagement Commitments – Relevant to policy development processes

| Type of commitment – To engage early | |
|---|---|
| These commitments require the Crown to engage early on matters of interest to the PSGE or establish principles of early engagement through a relationship agreement, protocol or accord or relevant provision within their Treaty settlement. | |
| Early engagement on matters that affect the Waikato and Waipā Rivers | Te Whakakitenga o Waikato Inc. Te Nehenehenui Raukawa Settlement Trust Te Arawa River Iwi Trust Tūwharetoa Māori Trust Board Taumatawiwi Trust |
| Explicit early engagement requirements on policy or legislation | Te Nehenehenui Trust Ngā Hapū o Ngāti Porou Te Kāhui Maru (Ngāti Maru) Raukawa Settlement Trust Te Arawa Lakes Trust Te Arawa River Iwi (as per above category) Te Kotahitanga o Ngāti Tūwharetoa Te Whakakitenga o Waikato Inc. |
| Implicit engagement on matters of mutual interest and ‘no surprises’ approach | Ngā Tāngata Tiaki o Whanganui Trust Te Kotahitanga o Ngāti Tūwharetoa (general) Te Runanganui o Ngāti Porou Te Totarahoe o Paerangi (Ngāti Rangi) Parihaka Papakainga Trust Te Korowai o Ngāruahine Trust Te Kōpere o te iwi o Hineuru Trust Ngāti Tamaoho Settlement Trust Rangitāne Tū Mai Rā Trust Te Kāhui o Taranaki Trust Tātau Tātau o Te Wairoa Trust Mana Ahuriri Trust Maungaharuru-Tangitū Trust Te Kotahitanga o Te Atiawa Trust Rongowhakaata Settlement Trust Tāmanuhiri Tutu Poroporo Trust Te Whakatōhea Te Rūnanga o Ngāi Tahu Te Rūnanga o Ngāti Manawa Te Rūnanga o Ngāti Whare Iwi Trust Port Nicholson Block Settlement Trust Ngāti Kahungunu ki Wairarapa Ngā Hapū o Ngāti Porou Management Arrangements Moriōri Imi Settlement Trust Ngāti Rangitihī Trust Ngāti Rehua – Ngātiwai ki Aotea Settlement Trust |
| PSGEs to whom specified input into policy development commitments apply | |
| These commitments provide for specified discussions on environmental matters and policy/legislation development through annual or biennial relationship meetings including Ministerial meetings. | |

[THIS IS NOT GOVERNMENT POLICY]

Te Nehenehenui Trust
Moriōri Imi Trust
Te Korowai o Ngaruahine
Te Pūawaitanga o Ngāti Hinerangi Iwi Trust
Ngāti Kahungunu ki Wairarapa Tāmaki-nui-a-Rua
Te Kāhui Maru (Ngāti Maru Taranaki)
Te Totarahoe o Paerangi (Ngāti Rangi)
Ngāti Rangitihi Trust
Ngāti Rehua Ngātiwai ki Aotea
Rongowhakaata Settlement Trust
Taranaki Iwi
Te Ākitai Waiohua
Te Kotahitanga o Te Ātiawa
Te Whakakitenga o Waikato Inc.
Te Runanganui o Ngāti Porou
Te Totarahoe o Paerangi (Ngāti Rangi)
Ngāti Tamaoho Settlement Trust
Rangitāne Tu Mai Rā Trust
Ngāti Hinerangi
Taranaki Whānui ki Te Upoko o Te Ika
Te Kōtahitanga o Tūwharetoa
Tātau Tātau o Te Wairoa Trust
Te Kōpere o te iwi o Hineuru Trust
Mana Ahuriri Trust
Maungaharuru-Tangitū Trust
Te Rūnanga o Ngāti Manawa
Ngā Hapū o Ngāti Porou Management Arrangements

[THIS IS NOT GOVERNMENT POLICY]

Treaty Settlement commitments relevant to both policy development and impacts of policy

Type of commitment – Statutory acknowledgement.

Most settlements contain statutory acknowledgements.

Statutory acknowledgements recognise the cultural, spiritual, historical, and traditional association of the settling iwi with particular freshwater bodies.

Statutory acknowledgements are relevant particularly in the resource consenting context.

A Statutory Acknowledgement provides more specific relationships for decision making under RMA Part 2 and is intended to enhance the claimant group's ability to participate in specified RMA processes.

Type of commitment – Deed of recognition

Most settlements include deeds of recognition.

These may follow from a statutory acknowledgement and are applied to public conservation land. The Minister responsible for managing the land subject to a statutory acknowledgment acknowledges a statement of the claimant group's associations and agrees to consult and have regard to the claimant group's views on specified matters.

Type of commitment – Environment plan/Strategy document

Waikato Environment Plans

- Waikato-Tainui environmental plan
- Maniapoto Iwi Environmental Management Plan
- Tūwharetoa, Raukawa and Te Arawa Environmental Management Plan

Integrated Management Plans

- Integrated river management plan for Waikato River
- Upper Waipa River integrated management plan
- Upper Waikato River integrated management plan

Kaitiaki/Poutiaki Plans

- Ngāti Toa Rangatira Poutiaki Plan
- Te Korowai o Ngāruahine Kaitiaki Plan
- Maru Taiao Plan (Ngāti Maru - Taranaki)
- Te Ātiawa o te Waka-a-Māui Kaitiaki Plan
- Te Korowai o Wainuiārua Kaitiaki Plan

Plans developed by Treaty settlement joint entities

- Te Muriwai o Te Whanga Plan (Ahuriri Hapū)
- Waihou, Piako and Coromandel Plan (Pare Hauraki)

Beach Management Plans (which may include upstream or riparian management strategies)

- Ngāti Kuri
- Ngāi Takoto
- Te Aupouri
- Te Rarawa

Type of commitment – redress for specific freshwater body

These are set out in full and assessed in detail in the main body of the Treaty Impact analysis document, but apply to the following PSGEs:

- Te Whakakitenga o Waikato Inc.
- Te Nehenehenui
- Tūwharetoa Māori Trust Board

[THIS IS NOT GOVERNMENT POLICY]

- Raukawa Settlement Trust
- Te Arawa River Iwi Trust
- Te Tōtarahoe o Paerangi Trust
- Ngā Tāngata Tiaki o Whanganui Trust
- Te Rūnanga o Ngāti Manawa
- Te Rūnanga o Ngāti Whare

Type of commitment - Joint Management Arrangements (not necessarily Treaty settlement driven)

Joint management arrangements provide for co-management in respect of some or all natural resources, at the regional and district level, the specific parameters of which are determined by the arrangements themselves.

Established under RMA:

- Te Rūnanga o Ngāti Porou and Gisborne District Council
- Tūwharetoa Maori Trust Board and Taupō District Council

Established under Treaty settlement legislation:

- Raukawa Settlement Trust - Waikato Regional Council, Taupō District Council, South Waikato District Council, Waipa District Council, Ōtorohanga District Council and Rotorua District Council
- Te Arawa River Trust - Waikato Regional Council, South Waikato District Council, Taupō District Council and Rotorua District Council
- Maniapoto Māori Trust Board (Te Nehenehenui) - Waikato District Council, Waikato Regional Council, Waitomo District Council, Waipa District Council, Ōtorohanga District Council
- Waikato Raupatu River Trust (Waikato-Tainui) - Waikato Regional Council, Waikato District Council, Hamilton City Council, Waipa District Council
- Tūwharetoa Māori Trust board - Waikato Regional Council and Taupō District Council
- Whakatōhea (enacted but yet to be developed) - Bay of Plenty Regional Council and Ōpōtiki District Council
- Te Rūnanga o Ngāti Maru (enacted but yet to be developed) - Taranaki Regional Council

Provided for in Treaty settlement legislation, but yet to be enacted:

- Ngāti Manawa – Bay of Plenty Regional Council and Whakatane District Council
- Ngāti Whare - Bay of Plenty Regional Council and Whakatane District Council
- Ngāti Koroī Kahukura (under Waikato-Tainui Act) - South Waikato District Council
- Ngāti Hauā (under Waikato-Tainui Act) - South Waikato District Council
- Tauranga Moana Iwi (not settled) - Tauranga City Council
- Pare Hauraki Collective (not settled) – Waikato Regional Council and Waikato District Council