

21 August 2019

19-D-01552

s 9(2)(a)

Dear s 9(2)(a)

Thank you for your email of 24 July 2019 requesting the following under the Official Information Act 1982 (the Act):

"...As per the provisions of the OIA, please provide all papers that Kahui Wai Māori has drafted for the Ministry / the Minister in 2019.

We have interpreted your request for "papers" to include reports, memos and letters that Kāhui Wai Māori have drafted and sent to the Minister for the Environment and the Ministry for the Environment in 2019.

The Kahui has sent 11 papers within the scope of your request. These papers are detailed in Appendix One.

I am refusing your request for s x of the papers under section 18(d) of the Act, as they will be publicly available in early September. I have asked that you be sent a link to the papers when they are released.

I am releasing the remaining five papers in full.

You have the right to seek an investigation and review by the Office of the Ombudsman of my response in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work, the Ministry for the Environment publishes responses to requests for official information on our website on our OIA responses page shortly after the response has been sent.

If you have any queries about this, please feel free to contact our Executive Relations team.

Yours sincerely



Martin Workman
Director, Water

Appendix One: Papers in scope

No.	Date	Content	Decision	OIA Section/s applied
1	28 Feb 2019	Taking points for meeting with Minister Parker	Released in full	
2	29 Mar 2019	Case study on Poroti Springs	Released in full	
3	14 Apr 2019	Te Mana o te Wai report	Refused	s18(d)
4	30 Apr 2019	Response to four MfE briefings	Refused	s18(d)
5	21 May 2019	Response to briefing concerning Te Mana o te Wai and mandatory Māori measures of freshwater system health in the NPSFM	Refused	s18(d)
6	23 May 2019	Response to draft allocation discussion document	Refused	s18(d)
7	10 Jun 2019	Letter to MfE concerning latest developments	Refused	s18(d)
8	4 Jun 2019	Letter to MfE concerning various proposals accompanying report by Dr Richard Meade	Released in full	
9	21 Jun 2019	Briefing on compulsory Māori values of freshwater health	Released in full	
10	21 Jun 2019	Response to draft discussion document	Refused	s18(d)
11	18 Jul 2019	NPSFM drafting instructions	Released in full	

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KĀHUI WAI MĀORI: MEETING WITH MINISTER PARKER - 28 FEBRUARY 2019

TE MANA O TE WAI

THE HEALTH OF OUR WAI; THE HEALTH OF OUR NATION

Current Approach to Reform Agenda – Not Meeting Expectations

1. The Terms of Reference of Te Kāhui Wai Māori recognise that we are part of a long journey for the recognition of Te Mana o Te Wai, and iwi/hapū freshwater rights and obligations.¹
2. The health of NZ water bodies is suffering at the hands of the current environmental legislation, including the RMA. A more targeted approach to protecting the health of our water bodies is needed.
3. Our goals are to change the governance model for freshwater management and establish a partnership model with Māori that recognises iwi/hapū rights and obligations in water.
4. The starting point of Te Kāhui Wai for solutions is the undertaking that the Government gave to the High Court in 2012 in the context of the mixed ownership model litigation.²
5. The freshwater reform agenda is disconnected from those undertakings.
6. Te Kāhui Wai believes that the short-term focus of the Crown has deliberately deferred addressing iwi and hapū rights and obligations. This creates two potential problems:
 - (a) a risk of Court action; and
 - (b) a risk of proceeding on a wrong assumption that creates greater prejudice for Māori.
7. These short-term options, that meet various reform agendas, are disjunctive, diluted and piecemeal.
8. Te Kāhui Wai remains concerned with the apparent correlation between addressing iwi and hapū rights in freshwater and underutilised Māori land.³ Iwi/hapū rights and obligations are not contingent on landholdings; they are separate and distinct. Our rights and obligations to water for iwi/hapū are based on Te Tiriti o Waitangi partnership, and affirmation of our whakapapa relationships to water.
9. Te Mana o Te Wai and Ngā Mātāpono ki te Wai (an articulation of a holistic approach for re-design of freshwater law and policy) provide a much more integrated framework to solve our freshwater management challenges.

Rangatiratanga / Kawanatanga Framework: Changing the governance model for Freshwater

10. Te Tiriti o Waitangi is the underlying foundation of the iwi/hapū-Crown relationship regarding freshwater.
11. Te Kāhui Wai is developing a partnership model that is a holistic framework that respects the rangatiratanga obligations of Māori, and acknowledges the kawanatanga of the Crown in freshwater management.

¹ Te Mana o te Wai and Ngā Mātāpono ki te Wai were developed through a series of regional hui convened by the Freshwater ILG. Ngā Mātāpono ki te Wai was endorsed by the full Iwi Chairs Forum at Hopuhopu in 2012.

² See Appendix One.

³ Cabinet Business Committee Minute: CBC-18-MIN-0062 at paragraph 2.8.

12. A suite of reform mechanisms has emerged which, taken together, are building blocks that cement a partnership between iwi/hapū and the Crown.
13. The rangatiratanga / kawanatanga framework is an essential pre-requisite of durable and sustainable freshwater reforms.

Te Mana o Te Wai

14. Freshwater does not exist in a microcosm. Freshwater comprises integrated values that support life, balance, economies, identity and social wellbeing. Any reform package needs to address all of the various components of the freshwater ecosystem, from sustaining the mauri of the wai itself, to its management, to those that are involved in its management, and to its ultimate use.
15. At the heart of the rangatiratanga / kawanatanga framework is embedding Te Mana o Te Wai, already a feature of the National Policy Statement for Freshwater Management, within the broader freshwater reforms.
16. Te Mana o Te Wai is not just about strengthening Māori cultural values tagged to discrete issues like mahinga kai; it's not just about addressing land development barriers.
17. Te Mana o Te Wai is about a hierarchy of rights and obligations:
 - (a) the first right is to the water, to protect its health, its mauri
 - (b) the second right is to human health and wellbeing for all the peoples of Aotearoa, including for Māori customary uses and purposes;
 - (c) the third right is for consumptive uses, provided that such use does not impact the mauri of the freshwater body.
18. The present regulatory framework does not give effect to this hierarchy, and the problem is systemic in its failings to provide for the mauri of the wai and for Māori involvement at a decision-making level. These failings are directly related.
19. The involvement of Māori in the delivery of Te Mana o te Wai needs to occur systemically, at all levels of care, governance and management of water.
20. In order to implement the Te Mana o te Wai hierarchy, the present effects-based regulatory framework of the RMA needs to be reformed to a values-based approach that works to uphold the integrated values of water.
21. When Te Mana o Te Wai is provided for, the mauri of the wai is sustained, and the cultural, social, and economic relationship of iwi/hapū and all New Zealanders with the wai is maintained.

Concluding Remarks

22. We know that this is an important issue to you personally, as it is to all of us. If we are to succeed we must not be distracted by the arguments that this is too difficult.
23. For example, we know the challenges associated with water and assimilative capacity allocation, and its impact on all interests.
24. The flip side is that the system continues to deliver sub-par outcomes for everyone and leaks massive amounts of value across all interests, including the environment. Until we overhaul the system it will continue to do so.
25. In overhauling the system, in a manner which will add value for all interests, Māori rights and obligations must be at the forefront of the solutions we develop together.
26. Our work plan will address this.

27. We need your assurances that the reforms will have the capacity to receive and implement our recommendations.

Pathway Forward

28. The pathway forward is:
- (a) To develop an agreed process to resolve, with iwi/hapū, Māori rights and obligations in freshwater with the Crown.
 - (b) To immediately establish a partnership model with Māori to provide governance over freshwater management. This is likely to require both central and regional components. The central mechanisms will be about achieving performance consistency and accountability. This will also require an overhaul of the RMA.
 - (c) To build capability within the Ministry for the Environment to ensure that Te Mana o Te Wai is both understood and implemented within the freshwater management system. Te Kāhui Wai is prepared to provide this capability in the short-term with sufficient resourcing.
 - (d) Actions need to be taken now to prevent further degradation of waterways. The rules being developed to address nitrogen, sediment, e-coli and phosphorous are a starting point to be applied as part of the national direction, while more robust rules are developed for the regional scale. However, while the current technical advice informing these rules is sound, it is very limited in focus to freshwater ecology. There is a need to gain broader technical advice on the solutions that sit in other fields, including social science and economics.
 - (e) The roll out of the separate Three Waters Review programme must be paused, and the programme must be integrated with the Essential Freshwater Reform, in which Te Kāhui Wai are involved, that is working to resolve Māori rights and obligations.

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APPENDIX ONE

New Zealand Government's Undertaking

Extract from Affidavit of Simon William English dated 7 November 2012 (filed in Pouakani Claims Trust v Attorney-General, CIV-2012-485-2185).

29. ... The recognition of rights and interests in freshwater and geothermal resources must, by definition, involve mechanisms that relate to the ongoing 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 ...
30. As Deputy Prime Minister, I have been charged by the Prime Minister with overseeing engagement between the government and iwi on these issues. In this role, I am responsible for ensuring that the government is on track with its obligations and fulfils any undertakings it has made in this area ...
- ...
38. At the outset of discussions between Ministers and the Iwi Leaders Group, it was agreed that there would be no disposition or creation of property rights or interests in water without prior engagement with iwi and that iwi would have direct involvement in phase 2 of the Resource Management Act review. That review, being led by the Minister for the Environment, consists of two phases. Phase one is complete and involved simplifying and streamlining the Act, changes to aquaculture management, and the establishment of the Environmental Protection Authority. Phase two is underway and is on a longer track, it deals with complex and multi-faceted issues related to planning and decision-making in the wider resource management system, as well as ongoing reform of New Zealand's freshwater management. These are important and difficult issues that need to be addressed in a measured, consultative and balanced way: it would be counter-productive to rush this process as that would increase the risk of inappropriate outcomes, and would imperil the broad support that is needed for sustainable change in this field.
- ...
78. Ministers have carefully considered the views of the Wai 2357/2358 claimants, the Waitangi Tribunal's interim report, and the views expressed in the course of the consultation processes that have been carried out in relation to the MOM programme generally, and the "shares plus" concept. Ministers have taken advice from officials, and tested that advice through consultation with Maori interests. Taking all of this into account, Ministers are firmly of the view that, however Maori rights and interests in water are defined, the sale of minority shareholdings in the MOM companies:
- 78.1 will not compromise the Crown's ability to recognise those rights and interests;
- 78.2 will not compromise the Crown's ability to respond to and findings and recommendations that the Waitangi Tribunal may make in relation to those rights and interests; and

78.3 will not affect in any way the Crown's commitment to provide redress in respect of past actions that are inconsistent with those rights and interests.

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Poroti Springs a Case Study for Kahui Wai Maori
 by Millan Ruka, for my hapu Te Uriroroi, Te Parawhau, Te Mahurehure 29.03.2019

*Ko Whatitiri te maunga
 E tu nei i te ao i te po
 Ko Waipao te awa i rukuhia,
 i inumia e oku matua tupuna
 Ko Maungarongo te marae
 Hei tangi ki te hunga mate
 Hei mihi ki te hunga o a
 Ko Te Uriroroi
 Ko Te Parawhau
 Ko Te Mahurehure ki Whatitiri nga hapu
 Ko Ngapuhi-Nui-Tonu te iwi*

*Whatitiri is the mountain which stands by night and day
 Waipao is the babbling brook where my ancestors dived and drank
 Maungarongo is the Marae lamenting the dead, greeting the living
 Te Uriroroi, Te Parawhau and Te Mahurehure ki Whatitiri are the hapu
 The people of Ngapuhi are the people*

This case study of Poroti Springs is aptly described by the opening statement of Waitangi Researcher David Alexander 187 page report – *“Prior to the 1973 bore rights, none of any conflicts/demands on the resources and/or complexities existed. The springs were held and treasured in their original and traditional form. A spring of celebration, then a spring of conflict since 1973”.*

Waitangi Researcher Paul Hamer’s 451 page report Poroti Springs and the RMA Act 1991 to 2015 - he wrote – *“The relationship of Porotī Māori with the springs is regarded as one of the best examples in the country of a Māori proprietary right to water, and the Waitangi Tribunal has upheld the basis of Māori claims to the ownership of freshwater. The consent authorities, however, have steadfastly refused to be influenced by such considerations”.*

1. The Poroti Springs Claims within Treaty of Waitangi legal teams representing Claimants is said to be the most compelling case for justification that Maori are denied our entitlement to water rights in Aotearoa. During the National Government era, the Crown and Local Government agencies have driven the notion that “no one owns the water”. Over the past three year and more so in the term of the current Labour led coalition Government, New Zealanders have made it clear that our waterways must be cleaned up and that our water resources belong to New Zealanders. The New Zealand public voted in this current coalition Government with water issues being a high priority to resolve.

2. In 1895 to 1897 our tribal lands of 22,543.4 acres (Block13-Plan 6650) were subject to a compulsory Government Survey that led to our losing more than 90% of our whenua to settlers within 15 to 20 years. This is well documented and evidenced with Gazette Notice's within our treaty claims presented to the Waitangi Tribunal. Our evidence shows most all of our whenua was procured by the Crown to pay for survey fees that were charged for the survey and partitioning from whanau hau kaianga whom in those times lived in a largely cashless society. We were left with eight hapu reserves, one being Whatitiri 13z4 Poroti Springs Reserve and the other seven being wahi tapu reserves. We are still the sole owners of these reserves today, including Poroti Springs Reserve 13z4.
3. Poroti Springs 13z4 reserve of less than four acres and has two springs, Tahi and Rua that emit from within its boundaries. Our Maungarongo Marae is located within 200 metres distance *ref to Map #002. The springs are nourished by our ancestral maunga "Whatitiri" and its aquifer within. Our springs are the headwaters of the Waipao Stream that flows on for some 7 klm to join the Wairua River. The Waipao Stream is subject to many water-take consents and also by permitted activities ie water for cattle consumption, land irrigation, District Council public water supply and water bottling operations
4. Within our Treaty Claims, Block 13 (22,543.4 acres) is a claim due to our 1895 loss of most all of this land that surrounds our Poroti Springs Maori Reserve 13z4. This claim is a "historic" claim.
5. However, the conflicts of Poroti Springs started in 1973 to current when the New Zealand Government and Local Government agencies decided to extract water from across the road in three bores they drilled just 90 metres from our Springs Reserve. Despite our objections, they dried our springs in 1983 and again in 1987 until the Northland Regional Council (NRC) - "1989 Special Tribunal" ordered the decommissioning of the bore site by 2004. This was agreed to by the Whangarei District Council (WDC) and other Consent holders. But later in 2004 the WDC sold the bore site for \$40,000 as a going concern to Zodiac Holdings Ltd and both the WDC and NRC facilitated and accommodated for Zodiac to re-open the bores for an export water bottling plant. The WDC had previously spent more than \$1.1 mil to procure and develop this site
6. This re-opened the conflict and a further consistent compounding of breaches of the RMA that have continued right through to this present day. So, the Poroti Springs saga is also a "contemporary claim" registered with the Waitangi Tribunal by our Whatitiri Maori Reserves Trust (WMRT). We do not have high expectation of satisfactory resolution for a fair outcome that compensates our hapu nor that the Crown considers that we have an entitlement of economic benefit to derive from our customary waterway, Poroti Springs and the Waipao Stream. Our hapu are resolute to pursue our entitlement to water rights to water that emits from our whenua.
7. We have always considered, expressed and practiced, that our water from Poroti Springs and its aquifer be available to nourish the peoples of Whangarei. However, as the insatiable quest by commercial and Local Government interests for our water resource progress unabated, they have banded together and clearly deliver in all their collective actions that Poroti Maori have no customary or proprietary rights to our water resource that emits from our lands.

8. We have presented a "Share Plan" for Poroti Springs waters to prior Government Minister Finlayson and he referred us to Minister Smith who in turn referred us to the Whangarei District Council (WDC). We designed our "share plan" to fit with the RMA and to gain unused water allocation from Maungatapere Water Company and Whangarei District Council takes. We designed our share plan to ensure there was no tangible water-take loss to the three consent holders. In fact, it offered WDC more security of supply and increase in m3 water as we offered them our share in partnership. A "win win" we thought. The WDC rejected our plan on the grounds that it a matter for the Waitangi Tribunal to sort.
9. Our current Government have taken a bold step forward to purchase the Zodiac Holdings Ltd bottling and bore site for \$7.5 mil and it now sits in the Office Treaty Settlements coffers. Zodiac never exercised their water-take consent in their 27 year of holding a consent to extract from Poroti waters. The land value for the bore and bottling site has an approx. value of \$500,000 max. This leaves the purchase of the un-exercised consent paper to be purchased for \$7 mil. The same consent cost \$896.50 inc gst today.
10. We have no desire to take water from these bores, nor to apply for a consent to pay for our own water. We do want to secure the whenua so that we can put to rest any further exploitation of the aquifer lines that supply to our springs. We are now in a position where Iwi and hapu feel we are already benefitting from this Crown acquisition. In fact the Crown has not passed the acquisition to us and we still have to contest that it is our whenua while already Iwi have expressed that it should go into commercial settlement. We are again left to fight for our rights of ownership to our water resources and whenua.
11. The decision by Office Treaty Settlements to purchase the Zodiac interests was not made lightly. We have recently gained 640 pages through the OIA process on the Crown's actions and reasons to take this unprecedented move to make this purchase. It has involved the sign-off and input from several Ministries and Crown officials including - Ministry of Justice, Dept of PM and Cabinet, Ministry for Environment and Dept of Internal Affairs. Our hapu claims team are working through the documents as part of our research to contemplate litigation against the Crown. We have absolutely no financial resources for legal advice or services and push on regardless as those that have passed before us have done.
12. It is timely to pay tribute to our rangatira and kuia who since passed and who fought this long injustice and to those that are here today whom have dedicated many years of their lives on this journey for our taonga Poroti Springs. Those now at the coalface are Taipari Munro, Meryl Carter, Lorraine Norris, Dihna Paul, Hona Edwards and Millan Ruka. We also thank our Counsel Donna Hall for all her diligence to point and guide us in the right direction. This is our time and we will settle this in our favour and we will not leave it to our mokopuna to inherit.
13. We consider that Justice Department researcher Paul Hamer has great insight into the complexities of the Poroti Springs case. He has the in-depth and academic knowledge to articulate all the twists and turns that have played out over the years. Certainly, the Crown well understood from his report that the many breaches of the RMA and liberties given were a great injustice that led them, the Crown, to purchase the problem. Mr Hamer could better present a summery to the Crown than my experience affords. Mr Hamer is not so well acquainted with events happening after completing his report in late 2015 and then presenting it to the Tribunal mid next year in 2016. It would be a benefit to KWM for Mr

Hamer to be engaged to bring himself up to date with the proceedings and to better present this Case Study on our behalf to the Ministry for Environment.

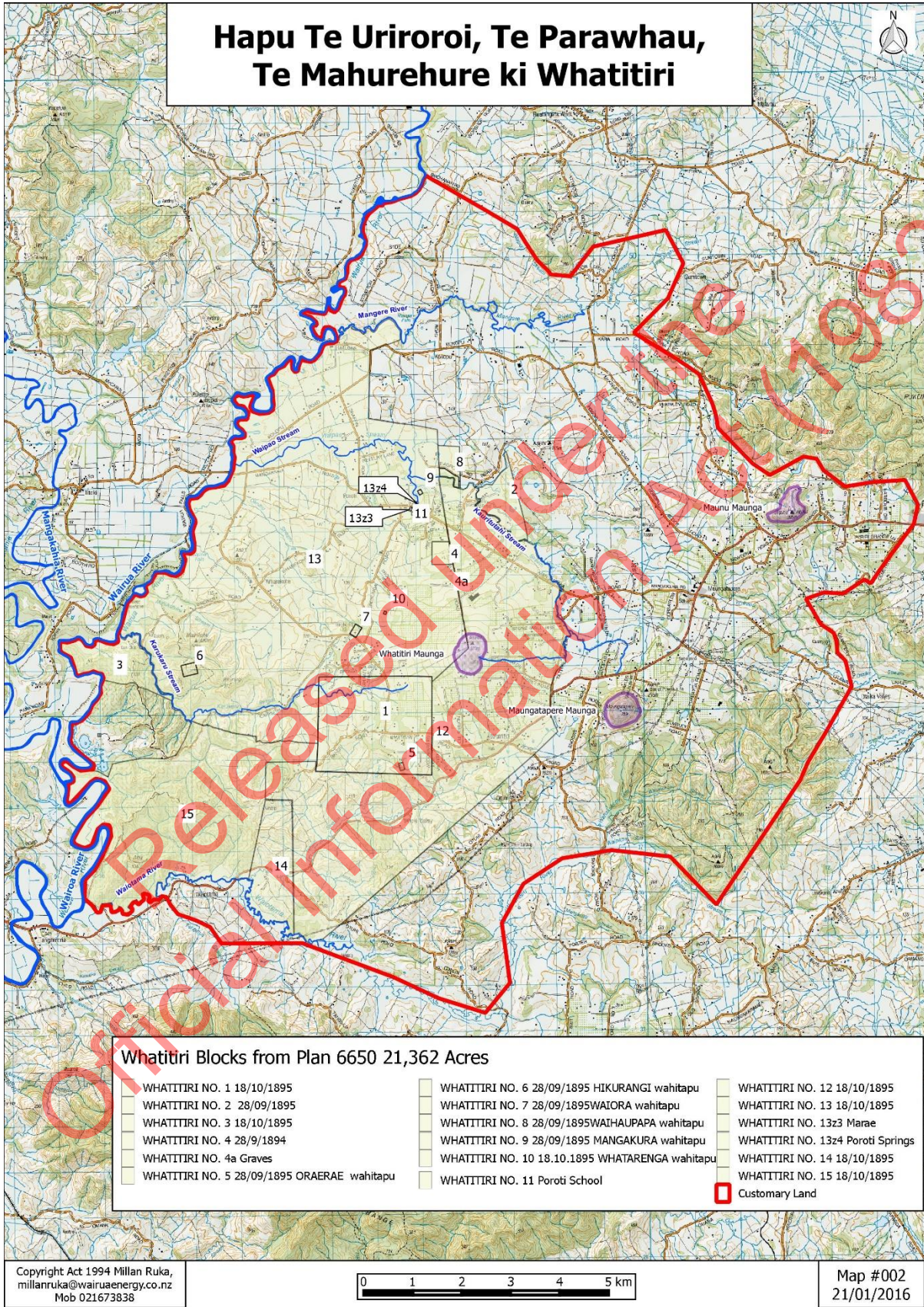
14. Copy past RNZ link - <https://www.radionz.co.nz/news/national/339198/a-burning-sense-of-injustice-at-poroti-springs-parker>

15. Copy past RNZ link - <https://www.radionz.co.nz/news/national/339198/a-burning-sense-of-injustice-at-poroti-springs-parker>

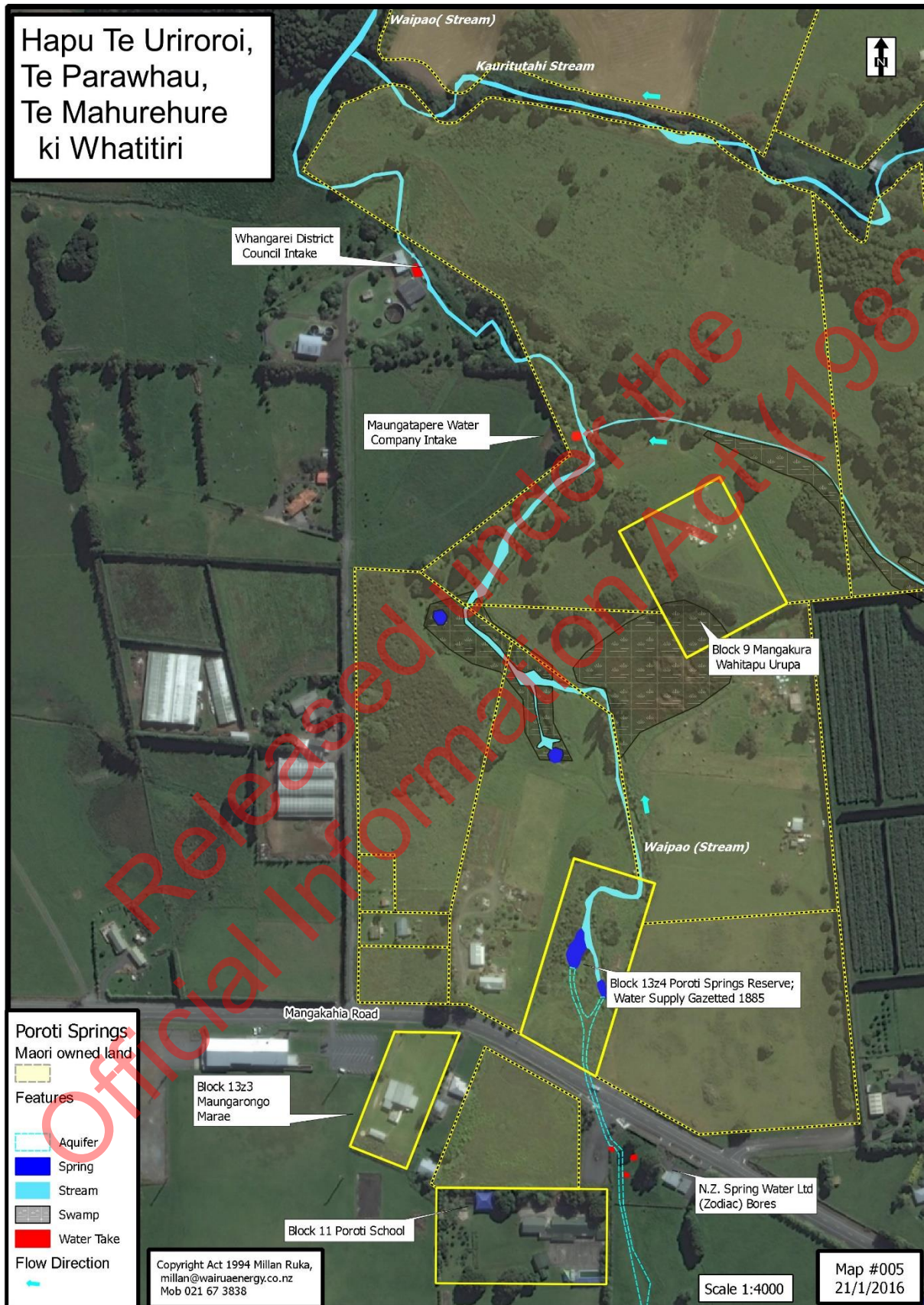
16. **The photo below** 2017– hapu Millan Ruka, Labour Mr David Parker, Labour Mr Tony Savage hapu Hona Edwards. Mr Parker visited our Maungarongo Marae and Poroti Springs. They are in very low flow at this time yet Zodiac Holdings Ltd had consent to extract up to 2,500 cubic metres of water a day from bores just 90 metres across the road from this emission points of “Tahi and Rua” spring out-lets where we are standing.



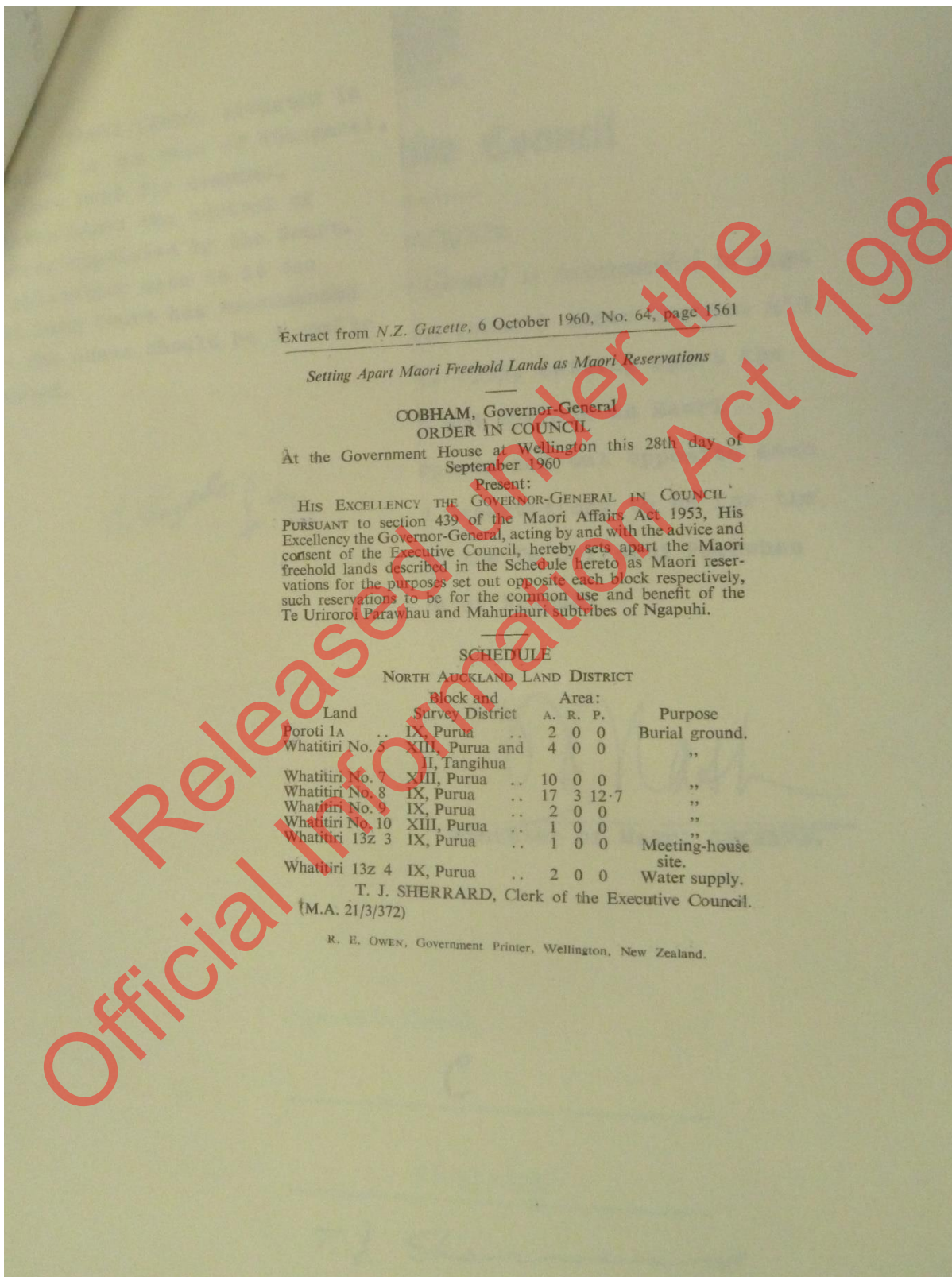
Map photo #002 below show Poroti Springs Reserve 13z4 – it is located near centre of the map.



Map photo #005 below – Note NZ Spring Water Zodiac Bores are located at the bottom of the map. This is the whenua that the Crown purchased on 10.05.2018.



1960 Gazette Notice reaffirming our Poroti Springs Reserve 13z4 IX Purua "Water Supply". Disregarded by Northland Regional Council and Whangarei District Council under the guise of the Water & Soil Conservation Act and later the RMA. They both considered several times to ensure we were "non-notified" in several consents issued just 90 metres across the road to Zodiac Holdings Ltd water bottling bore site



2004 Whangarei District Council sold the Bore Site as a “going concern” for \$40,000 to Zodiac Holdings Ltd with both WDC and NRC assisting them to re-start the extraction of water from this site. WDC had previously spent more than \$1 mil to research and develop the Bore Site. WDC were given instruction by the 1989 NRC Special Tribunal to de-commission the Bores and infrastructure by end 1994.



Sales history

Property details	
Street address	671 Mangakahia Road, Poroti
Valuation reference	350/31002
Property ID (QPID)	2403254
Territorial authority	Whangarei District (2)
Owner/occupier	Not available
Outstanding activity	No
Nature of improvements	Other Buildings Other Improvements
Category	Lifestyle-Vacant

Sales history			
Vendor/Purchaser	Date of agreement	Date of settlement	Gross sale price
	14/09/2004	16/11/2004	\$40,000



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The following are documents, emails, maps and photos that provide insight to this case study. They are just part of it and many more are not included. This document dated 28.03.2019 shall be named as **Email Part One**, and follow on to “Email Part Two” etc. They may not be in necessary order of timeline of events - - -

17. Email Part Two –

01.04.2016 - POROTI SPRINGS AND THE RESOURCE MANAGEMENT ACT, 1991-2015 a 451 Wai 1040 - 451x page report by Paul Hamer.

18. Email Part Three –

01.09.2016 – a 17x page “Summary” on Poroti Springs and the RMA report by Paul Hamer

5.07.2016 – a 187x page report by Davis Alexander on

POROTI SPRINGS: “A SPRING OF CELEBRATION, THEN A SPRING OF CONFLICT SINCE 1973”

19. Email Part Four –

30.10.1989 NRC Special Tribunal Report 722 of Wai 2358, D002(a)

29.08.2018 Martyn Craven (Telfer Young) Valuer – Wai 2358 valuation on National Freshwater & Geothermal Resources Enquiry.

20. Email Part Five –

30.06.2017 Wai 2024 Poroti Springs WMRT Submission 30th June 2017 3.3.334.
 01.02.2016 Letter to Minister Finlayson from WMRT proposed “Water Share Plan”.
 02.03.2016 Minister Finlayson reply to proposed WMRT “Water Share Plan”.

21. Email Part Six –

28.10.2016 Letter to Minister Nick Smith proposed WMRT “Water Share Plan”
 23.03.2017 Reply from Minister Nick Smith to WMRT “Water Share Plan”
 22. 06. 2017 Follow to our 1st WDC meeting with Mayor and CEO 12 06 2017 WMRT proposed
 “Water Share Plan”.
 25.09.2017 WDC Rejection of WMRT proposed “Water Share Plan”.

22. Email Part Seven -

13.02.2018 - WRMU letter to Min Nanaia Mahuta Te Puni Kokiri re: our presentation.
 27.03.2018 Request to NRC to set up WRMU hapu file.
 02.02.2017 NRC CEO Malcolm Nicholson decision on Duty to Keep Records – refused.
 26.03.2019 Ombudsman Reply WRMU seeking hapu file be established at Northland Regional
 Council

23. Email Part Eight –

03.10.2018 Request to OIA re OTS purchase of Zodiac interests for \$7.5 mil
 21.12.2018 OTS Response letter re Purchase Zodiac \$7.5 mil
 21.12.2018 OIA table of 640pages of OTS docs on Crown purchase of Zodiac \$7.5 mil * We note
 OTS has not provided several Ministries reasoning for purchase – we will request further
 information.

Throughout our research to assist locating documents and emails by OIA request for the Paul Hamer 451-page Report, our hapu team read correspondence that we never knew existed. Many events of deceit and collusion took place by WDC, NRC, Zodiac and other related parties. Some correspondence had comments that crossed the line to be offensive and at times, tears were shed from our hapu team members.

We are only one third through reading and collating the past four years of 640 pages between OTS and Zodiac and again we find similar instances of the same practice. The Crown appears to have held back information that gave cause to affect the purchase of the Zodiac interests in their “time-line” of correspondence. Clearly the reasoning for the purchase by the Crown Ministries’ is paramount to the outcomes of our OIA request if we are to achieve a baseline to move forward with our Treaty of Waitangi claims or the forum of the New Zealand Court system.

He waka eke noa

A canoe which we are all in with no exception. We are all in this together

Millan Ruka

Environment River Patrol – Aotearoa

Postal – PO Box 98, Whangarei

New Zealand

Poroti Springs – Coordinator for WMRT
 and Resource Management Unit – hapu rep,
 Te Uriroro, Te Parawhau, Te Mahurehure.

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High-Level Review of Ministry for the Environment's Nitrogen Allocation Discussion Paper, Version 6

Commissioned by
Kāhui Wai Māori

Prepared by
Dr Richard Meade
Cognitus Advisory Services Limited
www.cognitus.co.nz

4 June 2019

Released under the
Official Information Act (1982)

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Notice

In preparing this report the author has relied upon public information and other information provided by third parties, the accuracy or completeness of which has not been verified. This report has been prepared for the sole and exclusive benefit of Kāhui Wai Māori. No warranty or indemnity, express or implied, is given by the author or his related institutions, to any party other than Kāhui Wai Māori, as to the accuracy or completeness of this report, and no liability is accepted by the author or his related institutions for any losses or damages incurred by any party other than Kāhui Wai Māori relying on this report. The views expressed in this report are the author's alone, and should not be taken to represent those of the institutions to which the author is affiliated, or of any clients for whom he has acted, or is currently acting that may have an interest in any of the matters addressed in this report.

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1. Introduction

1. Kāhui Wai Māori has asked Cognitus Economic Insight (Cognitus) to provide a high-level commentary (the Commentary) on version six of a draft discussion document prepared by Ministry for the Environment on the allocation of nitrogen emission rights (the Draft):
 - 1.1. The Commentary is prepared in light of Kāhui Wai Māori's objectives as set out in its April 2019 report *Te Mana o te Wai: The Health of our Wai, The Health of Our Nation* (the Report).
2. Cognitus is pleased to provide the Commentary, and structures it as follows:
 - 2.1. Section 2 – provides high-level summaries of the Report and the Draft;
 - 2.2. Section 3 – discusses elements of the Draft which may align well with Kāhui Wai Māori's objectives and are likely to address the Draft's stated aims;
 - 2.3. Section 4 – highlights issues which the Draft addresses but which may not align well with Kāhui Wai Māori's objectives or may be likely not to address the Draft's stated aims;
 - 2.4. Section 5 – identifies key questions which the Draft has not addressed; and
 - 2.5. Section 6 – summarises and concludes.
3. This Commentary was prepared with very little time, so is necessarily high-level, and should be understood in this light:
 - 3.1. It seeks to address key issues at a high level, without attempting to be exhaustive.

2. High-Level Summaries of *Te Mana o te Wai* and the Nitrogen Allocation Discussion Draft

2.1 Summary of *Te Mana o te Wai*

4. *Te Mana o te Wai* sets out principles and priorities for restoring the health of New Zealand's freshwater resources, and better reflecting Māori interests in the governance, allocation, use and ownership of those resources.
5. It sets out a hierarchy of obligations for freshwater management and use:
 - 5.1. With protecting the health and mauri of water as the senior obligation;
 - 5.2. Providing for essential human needs as the next priority; and
 - 5.3. Subject to the first obligation, allowing for consumptive freshwater uses, with priority consumptive allocations to iwi/hapū with customary rights in their area.
6. The Report emphasises Kāhui Wai Māori's desire that Māori customary rights and interests in water be resolved and recognised within three years. It further proposes co-governance of freshwater resources, independent of Government, and with at least 50% Maori governors, in the form of a new national body called Te Mana o te Wai Commission.

2.2 Summary of the Nitrogen Allocation Discussion Draft

7. The Draft has three parts:
 - 7.1. Part A – discusses why nitrogen discharges are a problem for New Zealand freshwater resources that requires changes in the way such discharges are currently managed;
 - 7.2. Part B – spells out New Zealand's freshwater management framework, Government's priorities for addressing nitrogen discharge issues, and pros and cons of some alternatives for addressing those issues; and
 - 7.3. Part C – discusses key implementation issues.
8. The Draft sets out Government's intentions for reform of nitrogen management, and options for public discussion. Key elements are:

- 8.1. Nitrogen management remaining the responsibility of Regional Councils under the Resource Management Act (RMA), but with greater direction by central government to achieve more consistent and more urgent management measures, while also recognising different circumstances in each region;
- 8.2. Moving towards tradable nitrogen discharge rights (i.e. a form of output-based cap and trade scheme) in priority catchments, with input-based regulatory measures playing a complementary role during the transition to new arrangements, and perhaps remaining the main approach for lower-priority catchments (i.e. for which nitrogen discharge issues are not as pronounced); and
- 8.3. Providing for efficient and equitable initial allocations of any new tradable discharge rights, and reallocations of such rights over time.

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3. Areas of Likely Alignment

3.1 Broad Aims

9. Subject to the qualification below, the following quote from para 52 of the Draft seems to align well with *Te Mana o te Wai*:

“There is a significant opportunity to achieve better economic, environmental, cultural, and social outcomes by working to achieve efficient and fair allocation of freshwater and nutrient discharges, having regard to all interests including Māori, and existing and potential new users. This issue cannot be progressed without substantive discussion with Māori about their rights and interests in freshwater under the Treaty of Waitangi.”

10. The main qualification is that Kāhui Wai Māori would likely not limit Māori rights and interests in freshwater to simply those under Treaty of Waitangi:

10.1. The Treaty does not itself spell out nature and extent of any customary rights and interests – it merely promises under Article II to preserve those rights for so long as Māori wish to retain them.

3.2 Principles-Based Approach

11. Similarly, Kāhui Wai Māori would likely support the Government consulting on the proposed reforms on a principled basis (cf paras 55-56). However, Kāhui Wai Māori would likely also:

11.1. Challenge the Government's asserted role as guardian of interests of all New Zealanders in “our” water resources (para 55);

11.2. This presupposes that water is commonly or publicly owned, let alone not owned by Māori;

11.3. Kāhui Wai Māori might likewise challenge the Government's presumption that it should necessarily be the party leading changes in Regional Councils' approach (para 64).

3.3 Need for Confidence

12. Kāhui Wai Māori might applaud the Draft's proposal to have measures that create “confidence”:

- 12.1. However, this should also include provision for “commitment devices” that reduce scope for future Governments to arbitrarily change nitrogen regime rules, such as independent governance of the regime (see Section 4);
- 12.2. Important questions remain regarding how to navigate conflicts between achieving certainty/commitment on the one hand, and the need for the system to be “adaptive”;¹
- 12.3. Relatedly, need to define “wellbeing”, or at least specify how it will be defined (and evolve in response to changing imperatives, norms and preferences);
- 12.4. Furthermore, is the objective to maximise long-term well-being or the present value of well-being over time? The Draft is ambiguous on this point.

3.4 Balancing Scale Economies and Need for Fit-for-Purpose Solutions

13. Likewise, Kāhui Wai Māori might applaud the Draft’s intent not to impose one-size-fits-all solutions:
 - 13.1. However, it is also important to recognise that there are considerable economies of scale in institutional and market design (cf para 61);
 - 13.2. Such scale economies can affect the balance of convenience between tailored and more uniform solutions.

3.5 Balancing Equity and Efficiency

14. Finally, Kāhui Wai Māori would likely applaud the recognition that both equity and efficiency need to be addressed, and over time:
 - 14.1. The obvious difficulty is defining what that means, and how best to achieve the inevitable trade-offs between often-competing interests.

¹ I address such questions at length in my discussion of “efficiently-dynamic regulation” in Section 8 of *Preparing Electricity Regulation for Disruptive Technologies, Business Models and Players – In the Long-Term Interests of Consumers*, an independent White Paper commissioned by the Electricity Retailers' Association of New Zealand (ERANZ), August 2018.

3.6 Balancing Static and Dynamic Efficiency

15. Static efficiency refers to providing most efficient outcomes *at a point in time*:
- 15.1. By contrast, dynamic efficiency refers to providing most efficient outcomes *over time*, taking into account matters such as efficient incentives for long-term investments (which can affect outcomes over multiple periods).
16. The Draft (at paras 76-90) sets out four broad models for initial allocations. They are, with associated efficiency implications, as follows:
- 16.1. *Allocations based on current or previous use* – “dynamic economic efficiency based allocation” – attempting to account for how rule changes affect long-term investment incentives and hence dynamic economic efficiency, and/or “fairness”/“legitimate expectation”;
- 16.2. *Allocations by auction* – “static economic efficiency-based allocation” – prioritising short-term efficiency over dynamic economic efficiency (unless perpetual or sufficiently long-term rights are auctioned with sufficient security), and also over “fairness”/“legitimate expectation”;
- 16.3. *Allocations based on land characteristics* – “technical efficiency-based allocation” – prioritising neither static nor dynamic economic efficiency, instead focusing just on environmental impacts, and in principle such technical efficiency should be a component of statically or dynamically economic efficiency (which take into account technical but also economic considerations); and
- 16.4. *Administrative allocation* – e.g. first-come-first-served or multi-criteria approaches, “the least worst allocation when all superior allocation models are infeasible due to technology or other reasons”.
17. The administrative allocation is superficially attractive due to its ability to accommodate multiple criteria. However, that could be said to reflect the current RMS-based model, which the parties would most likely agree has not served New Zealand well:
- 17.1. Like the model basing allocations on land characteristics, it is likely to be the least efficient of all four alternatives, therefore creating the fewest gains from reform.

18. Instead, focus is rightly on some balance between grand-parenting (allocation based on current or previous – but not future – use), and auctioning:

18.1. The latter should maximise static efficiency, which is to be preferred if there are no significant dynamic considerations to take into account (e.g. long-term investment incentives);

18.2. However, where preserving long-term investment incentives remains important – which both Māori and the Crown should wish to account for – the former plays an important role.

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4. Areas of Possible Misalignment

4.1 Inadequate Recognition of Māori Governance Interests

19. The Draft's proposals are predicated on an assumed level of control rights and effective ownership rights being held by Government (including rights to control the application of any auction proceeds, resource rentals, or royalties, from permit allocations), in the context of:

19.1. Māori, as Treaty partner, expecting substantive involvement in the design of any new arrangements for freshwater management and use; and

19.2. Māori having potential proprietary or other customary rights and interests in freshwater which may be tested, described and affirmed over the course of any transition to new arrangements.

20. This means the governance arrangements for any structural reforms, including provisions for allocations of discharge rights, should either:

20.1. Recognise Māori interests in freshwater management and use to a greater degree than proposed, from the outset; or

20.2. Provide for increased such recognition as and when Māori customary rights and interests become better defined, while still enabling progress to be made on establishing the nitrogen regime in the interim.

4.2 Possible Trespassing on Other Māori Freshwater Interests

21. Relatedly, since nitrogen discharge rights affect the use of water (i.e. its use to absorb excess nitrogen), the creation of a nitrogen discharges regime trespasses to a degree on any subsequent creation of other water use allocations and any associated ownership rights:

21.1. It will therefore be important to ensure that proper subsidiarity is established between a nitrogen regime and any subsequent water use regime, so that establishment of the former does not unduly constrain development of the latter.

22. Another related question is whether the case has properly been made for focusing on nitrogen discharge management ahead of managing other types of discharge, and other types of water trading:

22.1. If there are significant synergies between nitrogen trading and these other activities, then there may be little cost in starting with nitrogen trading;

22.2. However, if there are conflicts between nitrogen trading and these other activities, starting with nitrogen trading could compromise the achievement of these other activities.²

23. Provided there are adequate protection mechanisms in place for wider Māori freshwater interests (e.g. see clawback mechanisms and precedents for other protection mechanisms as discussed below below), these sequencing risks might be sufficiently managed.

4.3 Possibly Undue Sacrifice of Efficiency to Achieve Equity Objectives

24. Both *Te Mana o te Wai* and the Draft oppose grand-parenting of long-term or perpetual rights to holders of existing discharge rights for fear doing so will unfairly entrench emitters, and preclude entry by others (including Māori):

24.1. This unduly conflates equity considerations with design of appropriate property rights for trading in a nitrogen cap and trade scheme;

24.2. Greater consideration needs to be made of the best form – or forms – of tradable discharge rights, to ensure efficiency gains are maximised; and

24.3. Separate provision should be made for reallocating rights over time, including to resolve discharge right over-allocations, and to Māori as and when their customary rights and interests become better defined.

25. Maximising efficiency gains from any new regime is important to:

25.1. Make it worthwhile to move to any such regime, given the costs (including business disruption costs) and risks involved; and

² Both the Report and Draft focus on consumptive water uses, and how these relate to nitrogen discharge management. It should also be noted that non-consumptive water uses (e.g. hydro generation) will also affect nitrogen impacts on water quality, so should also be considered.

- 25.2. To maximise the gains that can be shared between “winners” and “losers” from regime change, which helps to reduce opposition to change.
26. Well-defined property rights are an essential feature of any cap and trade scheme. Key dimensions include having rights:³
- 26.1. Of sufficient length that their holders can make investments with sufficient surety (e.g. which can be used as security for raising loans);⁴ and
- 26.2. Allowing short-term trading without prejudicing long-term discharge right security; and
- 26.3. Appropriately sharing risks between rights holders, regime designers and administrators, and others.
27. As to the latter, key risks include:
- 27.1. Climate risks – affecting water health and nitrogen impacts;
- 27.2. Technology risks – e.g. for monitoring and/or estimating discharges;
- 27.3. Institutional risks – e.g. how future freshwater management regimes might affect a nitrogen discharge regime; and
- 27.4. Ownership risks – e.g. if Māori customary rights and interests in freshwater are (not) confirmed.
28. It is important to consider defining tradable rights that efficiently address such uncertainties, with options including:⁵

³ It would be useful for the Draft to also consider opportunities for “win-win” branding opportunities under an improved regime for managing water pollution – e.g. “clean water” certification for compliant emitters to use to enhance the perceived value of their products.

⁴ Para 98 of the Draft recognises that insecure and/or short-term discharge rights affect banks’ willingness to lend and hence undermine investments in improved practices. Such insecure and/or short-term rights undermine investments more generally, e.g. due to risk that long-term investments are “held up” through a future inability to secure necessary discharge rights.

⁵ Para 139 of the Draft simply records the government’s intention that traded rights be “temporary” with no presumption of rollover.

- 28.1. Creating a mix of long-term and short-term discharge rights, some of which might be absolute rights, while others might only be proportional and/or otherwise subject to clawback in light of changing circumstances;⁶
- 28.2. Any clawback mechanisms not only providing for resolving over-allocations and changes in discharge measurement or caps, but also for increasing allocations to efficient new entrants,⁷ and Māori as required.
29. Creating property rights with adequate security, and protection against unforeseen rights changes, is critical for achieving efficient investments that rely on access to discharge rights:
- 29.1. This implies a necessary trade-off between equity and static efficiency on the one hand, and honouring reasonable expectations and historical good-faith investments on the other;
- 29.2. With suitably nuanced property rights definitions, including clawback mechanisms – including suitable compensation arrangements – it should be possible to maximise efficiency while also balancing other objectives:
- 29.2.1. This could, for example, involve grand-parenting of only certain tiers of rights, and enabling parties with different preferences for discharge right security or tenure to self select (including at a price) into their preferred form of right.⁸
30. Additionally, both Māori and the Crown might wish to consider whether prioritising sanitation rights creates undue efficiency trade-offs:

⁶ Para 107 of the Draft notes that some Regional Councils already use proportional rather than absolute discharge permits. The Draft also notes that short-term rights are sometimes issued to ease transition to new arrangements (though that is likely to create efficiency costs if the nature of that transition is not clearly and credibly pre-signalled).

⁷ The Draft makes no mention of the likely outcome that parties seeking secure long-term access to discharge rights will use ownership (e.g. vertical integration) and/or contracting mechanisms to do so. This could lead to vertical foreclosure by incumbents of new entrants, although in many cases such foreclosure is not inefficient because vertical integration (or contracting) can efficiently resolve vertical coordination issues. In any case, general Commerce Act provisions exist to protect against such abuses, even if reform is needed to ensure such provisions are effective.

⁸ Any grand-parenting should be based on historical base-lines, to avoid “gold rushes” that arise when future base-lines are used.

- 30.1. Giving such priority has natural appeal on equity grounds, but also blunts incentives for innovation and other efficiencies in sanitation services.

4.4 Precedents for Recognising/Protecting Māori Interests in Context of Wider Reforms

31. As to the latter, precedents exist for how New Zealand has provided for possible increases in Māori resource interests while enabling reform of ownership and management of those interests, e.g.:

31.1. Shares of radio spectrum, fishing quota, and commercial aquaculture space;

31.2. Contingent interests (i.e. subject to Waitangi Tribunal recommendations) in State owned Enterprise land, and Crown forest land, under the Treaty of Waitangi State Enterprises Act and Crown Forest Assets Act respectively:

31.2.1. Including the creation of entities such as Crown Forestry Rental Trust (to hold Crown forest land rentals pending resolution of Treaty claims to that land) and Te Ohu Kai Moana (to hold fishing quota pending resolution of allocation models);⁹ and

31.3. The Māori Reserved Lands Amendment Act, including Crown compensation for leaseholders whose rights were curtailed in order to more properly reflect Māori landowners' proprietary interests in leasehold land subject to uneconomic long-term leases.¹⁰

32. These precedents could usefully provide models to adapt to the question of protecting possible Māori freshwater rights and interests while enabling otherwise long-term discharge rights to be created and allocated to third parties:

32.1. They are likely to be key in addressing questions about how any permit auction proceeds, resource rents or royalties – all of which “belong” to the resource “owner(s)” – should be allocated pending resolution of iwi/hapū claims to customary rights and interests in freshwater resources;

⁹ Most commentators would probably agree that greater clarity around allocation principles from the outset would have avoided years of inevitable dispute over quota allocation.

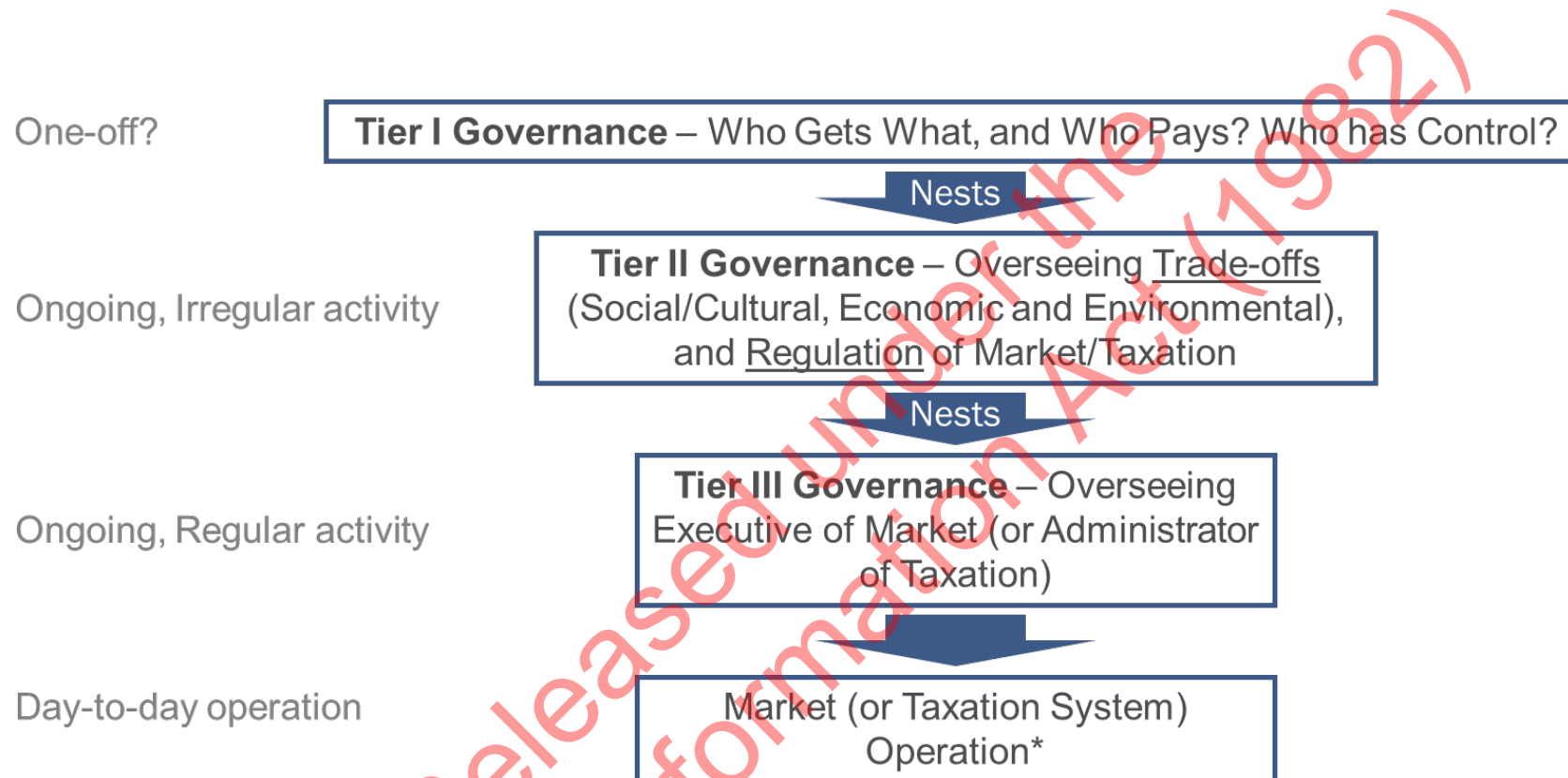
¹⁰ Separate conversations may be required with the Crown regarding whether Māori should be compensated for having been denied either their customary rights and interests in water, or equitable access to water rights enjoyed by others under schemes governed by the Crown.

- 32.2. The Draft seems to be predicated on the Crown having the decision rights over such funding allocations, when the Crown itself does not assert it has ownership of the underlying resource, and it acknowledges Māori governance rights (at the least) in freshwater resources.

4.5 Multiple Governance Tiers to be Separately Considered

33. In addition to designing efficient property rights and clawback mechanisms, designing efficient governance institutions is also key for regime success, especially in light of the types of uncertainties highlighted above. As shown in Figure 1, there are three main tiers of governance to consider:
- 33.1. At the highest level (Tier I), governance of long-term issues such as principles and decisions regarding who should ultimately own and control the relevant resources;
- 33.2. At the next level down (Tier II), governance of medium-term issues such as how to balance trade-offs between competing interests as circumstances change over time, given the overall framework for resource management; and
- 33.3. At the lowest level (Tier III), day-to-day governance of any regime (e.g. mechanisms for trading allocations under any cap and trade scheme), taking the higher governance levels as given.
34. Tier I governance relates to the “just transition” the government rightly wishes to achieve:
- 34.1. As discussed above, the question is how such arrangements appropriately recognise both recognised Māori interests, and customary rights and interests that might be better defined in the future?
- 34.2. This could, for example, include provision for a specialist tribunal (not the Waitangi Tribunal) to efficiently resolve the nature and extent of customary rights and interests, as agreed by the Crown and Māori.
35. Tier II governance also raises potentially-thorny questions of achieving the right balance between social, cultural, economic, environmental and technical objectives as circumstances and priorities/preferences change:
- 35.1. This too raises important questions about how to properly recognise existing or latent Māori interests.
36. Tier III governance relates to likely less-thorny questions, albeit appropriate Māori representation will remain a relevant matter to resolve.

Figure 1 – Three Governance Tiers to consider



* Ownership possibilities – Companies (investor- or user-owned), iwi, not-for-profit, community/trust, local or central government, etc.

Source: *Political Economy of New Zealand Water Reform*, presentation at the New Zealand Initiative members' annual retreat, Auckland, March 2019.

4.6 Ownership Models for Resolving Compliance Issues

37. Related to the above governance questions is the matter of ensuring compliance with any new nitrates discharge regime. The Draft rightly identifies that monitoring and enforcement will be key features of any new regime:

37.1. However, it presumes that monitoring and enforcement will be achieved through regulatory approaches such as augmented RMA-based approaches;

37.2. It does so acknowledging that there needs to be “community” buy-in to any new regime.

38. Greater consideration could be given to alternative monitoring and compliance approaches, such as through devolving these activities to self-regulating “user groups” (e.g. cooperatives) which rely on mutual monitoring and shared interests to ensure members act in collective interest at a more decentralised level than Regional Councils:

38.1. This does not dispense with the need for oversight (e.g. audits to ensure compliance, and to detect collusion to defeat regulation);

38.2. However, it makes greater use of private information and incentives to address regulatory concerns which may prove more effective than any one-size-fits-all regulatory model:

38.2.1. It also empowers communities of users – including Māori – to take greater responsibility for achieving regulatory aims.

4.7 Allowing for Technology Innovations

39. Relatedly, the Draft sensibly gives priority to upgrading OVERSEER as a useful tool for implementing a cap and trade nitrogen scheme, given currently high costs of directly monitoring nitrogen discharges at user-level:

39.1. However, it would be desirable to avoid “hard-wiring” this if technology costs fall, and better tools could be deployed (e.g. satellite-based monitoring);

39.2. Possible solutions include sunset or review clauses on the use of OVERSEER, or pre-signalling that OVERSEER is the main solution unless and until a more effective solution emerges and can feasibly be implemented.

40. Likewise, an implicit but often-neglected element of any cap and trade scheme is arrangements for trading discharge rights, over and above any auction mechanisms for initial allocations or periodic re-allocations:¹¹

40.1. Without such arrangements, trading costs can be prohibitive, which undermines the efficiency of cap and trade schemes.

41. A related issue is the design of mechanisms for vetting the nitrogen discharge implications of proposed trades of emissions rights. At present discharge permits can, in effect, be traded, even if that requires trade of the underlying land to which the rights are attached:

41.1. Not only does such “bundling” of land and discharge rights raise transaction costs, so too do administrative processes for approving such trades.

42. An efficient trading mechanism for discharge rights should include a codified (and ideally “coded”) mechanism for assessing the nitrogen discharge implications of proposed trades:

42.1. A standard cap and trade scheme says nothing about how to achieve this;

42.2. By contrast, “smart markets” represent a possible, sophisticated approach for not just making the required assessments, but also for setting prices to properly reflect the impact of proposed trades on environmental constraints (such as those set out in the *Te Mana o te Wai* hierarchy of objectives):

42.2.1. That way the hierarchy is treated as a “constraint” which any trade must satisfy, and trade prices are set after taking such constraints into account.¹²

4.8 Inadvertent Entry Barriers

43. In principle any cap and trade scheme allows for entry by efficient parties:

43.1. If they are more efficient than incumbent emitters, then they can afford to pay a higher price for discharge rights than the incumbents are prepared to accept, and hence efficiency-enhancing trade can emerge (provided transaction costs are low);

¹¹ Para 96 of the Draft eludes to the issues discussed here.

¹² The New Zealand wholesale electricity market implements just such a “smart market”, with the relevant constraints relating to the physics of electricity transmission, which constraints must always be respected for any electricity trade.

- 43.2. However, this ignores questions of ability to pay, and also equity rationales for ensuring less-efficient emitters (e.g. Māori owners of less-developed land) secure discharge rights.
44. This provides a rationale for enabling re-allocations outside of the trading environment, and also aside from any auctions (unless such auctions provide quotas for certain target groups of emitters).
45. However, it is important to recognise that other aspects of the Draft might also create entry barriers, e.g.:
- 45.1. Farm management plans are to be mandatory by 2030 (para 122) – this will raise costs and entry barriers to smaller and/or less-experienced entrants; and
- 45.2. More generally, forcing water users to prove they have systems and infrastructure to responsibly manage nitrogen discharges will create entry barriers and favour larger users.

4.9 Needlessly Limiting Emissions Reductions

46. User pays proposals (i.e. that emitters pay the costs of reducing discharges, as in Table 1 on pp 14-15 of the Draft) apparently meet fairness criteria, but also limit opportunities for possible gains.
47. Specifically, if large social benefits are created by an emitter reducing discharges, then there is reason to consider sharing some of those benefits with emitters to support them reducing their emissions:
- 47.1. Relying just on emitters' own resources and incentives to achieve such reductions could unnecessarily limit their realisation.

5. Key Questions Not Addressed

5.1 Setting of Nitrogen Caps

48. In any cap and trade scheme the setting of the relevant nitrogen cap – at whatever level of granularity – is obviously key:

48.1. So too are the criteria for, and governance of, any future cap changes – see the Tier II governance discussion in Section 4.5.

49. The Draft is oddly silent on these matters, and greater clarity is required:

49.1. Including how Māori will be represented in the associated governance institutions, and how Māori preferences will be reflected in resolving the associated trade-offs.

50. Credible and robust institutions are required to ensure the cap setting process, and re-setting process, is well-signalled and understood by all parties making long-term investments and other commitments:

50.1. Absent such institutions emitters will lack signals for making efficient investments.

51. Likewise, the Draft does not adequately address the relative merits of nitrogen caps being differentiated by source, since not all discharges have the same impact on water quality:

51.1. This will require an assessment of whether the added complexity of a differentiated scheme is warranted, relative to a scheme which treats discharges more uniformly.

5.2 Defining Interests of Future Generations

52. Balancing the interests of existing stakeholders, whose preferences can be determined with some degree of precision, is not an easy matter.

53. The Draft gives priority to also addressing future generations' interests, when those interests are inherently unknown. All that can be said with any certainty is that:

53.1. Future generations are likely to have access to better technologies for addressing nitrogen discharge problems; and

53.2. They are also likely to be much richer than current generations, so will not place as high a value on future gains as current generations.

54. This too is an important consideration which the Draft does not explore in any depth despite its obvious importance:

54.1. Absent such clarity, this is yet another question relegated to residual discretions made by regime governance mechanisms, and for which appropriate Māori representation will be key.

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6. Summary and Conclusions

55. In summary, the key findings and recommendations of this Commentary are:

55.1. The Draft makes sensible recommendations for establishing a cap and trade scheme for nitrogen discharges, on a targeted and phased basis, with a focus on balancing competing current interests in a fair and efficient way, and also balancing current and future interests:

55.1.1. How this interfaces with, and possibly constrains, other freshwater initiatives needs to be carefully considered.

55.2. Many details remain to be developed (e.g. cap setting), the governance of which development process will be key:

55.2.1. Multiple tiers of governance need to be provided for as described earlier.

55.3. The proposed arrangements presume greater degree of residual control and ownership rights by the Government than would seem appropriate given the Government's acknowledgement of both Māori Treaty partner interests, and asserted customary rights and interests (which may prove to materialise):

55.3.1. Hence greater governance, and contingent ownership rights, of Māori ought to be provided for;

55.3.2. Precedents exist for mechanisms which can protect contingent Māori interests while facilitating efficiency-enhancing reforms, and such mechanisms (or better versions thereof) are well-worth exploring in the case of nitrogen discharge reforms.

55.4. Certain policy directions – mainly regarding property right definition and grand-parenting, but also other questions – deserve more critical consideration, to ensure efficiency gains are maximised, while also achieving fairness, and achieving other objectives (including greater allocations for Māori); and

55.5. Important institutional details, such as how to achieve credible well-signalled policy directions in the face of considerable uncertainties, must also be developed.

* * *

Options to provide for compulsory Māori values of freshwater health

Introduction

1. Te Kāhui Wai Māori (KWM), in our report of April 2019, has recommended that the Ministry for the Environment (the Ministry) develop a mandatory measure of freshwater health for inclusion in the National Objectives Framework (NOF) of the National Policy Statement for Freshwater Management (NPSFM).
2. This recommendation is supported by the Freshwater Leaders Group.¹
3. We understand that the Ministry also agrees with this recommendation. This paper identifies KWM's proposal to give effect to the recommendation.
4. We recommend the following amendment to the NPSFM in order to require regional councils to incorporate Māori values of freshwater health more effectively into regional planning processes:
 - (a) Creating a compulsory mahinga kai value in the NOF of the NPSFM.
5. We understand that Ministry officials are recommending you consult publicly on this proposal as part of the Essential Freshwater package, noting that you can then make a decision on your preferred approach following public feedback, and consideration by the Independent Advisory Panel. The Officials' have further identified that consultation will provide an opportunity to receive feedback from Māori to expand on these proposals, or to indicate support or not. KWM welcomes feedback from Māori about these proposals.
6. For the avoidance of doubt, these proposals are necessary to give effect to Māori rights and obligations, and make workable existing policy in Part D of the NPSFM. To that end, KWM does not consider that any feedback from the public at large that might oppose the inclusion of a compulsory mahinga kai value should have any bearing on your decision.

Advice

Context

7. New Zealand's overarching resource management legislative framework recognises the role of tangata whenua as the Treaty partner, and as kaitiaki over their taonga (including freshwater). The Resource Management Act requires anyone exercising functions and powers, in order to achieve the purpose of the Act, to:
 - (a) Section 6(e) - recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;
 - (b) Section 6(g) - recognise and provide for the protection of protected customary rights;
 - (c) Section 7(a) - have particular regard to kaitiakitanga; and
 - (d) Section 8 - take into account the principles of the Treaty of Waitangi (such as partnership and active protection).

¹ See the 31 May 2019 further advice from the Freshwater Leaders Group.

8. It is the role of the NPSFM to provide national policy direction on how the above provisions can be given effect through plans. The current NPSFM does not, however, compel regional councils to give effect to these values. Part D simply directs councils to 'take reasonable steps' to 'provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water'.
9. The NOF sets out a framework for identifying specific, measurable and achievable freshwater objectives that are used in the management of water, including setting limits to achieve those values. There are two compulsory values in the NOF (ecosystem health and human health) and these values apply in all Freshwater Management Units (FMUs). The NOF refers to mahinga kai, wai tapu and tauranga waka in the 'other national values' category, which are values that may be identified if relevant within an FMU.
10. You have agreed to recommendations to clarify and strengthen Te Mana o te Wai in the NPSFM (2019-B-05597 refers). Te Mana o te Wai is the integrated and holistic well-being of a freshwater body.² Currently, the NOF does not provide a comprehensive and nationally applicable mechanism for upholding the full integrated and essential values of the waterbody (values pertaining to the water itself), which is required by Te Mana o te Wai.

Problem

11. Overall, Māori values and attributes of health are not being adequately identified, reflected or incorporated by regional councils in regional freshwater planning processes, despite the context outlined above. In the absence of specific provision for Māori values of fresh water health in planning processes, these values are not being managed appropriately in accordance with Māori rights and obligations under the RMA. The freshwater management system also loses the benefit of having inherently holistic and integrated approaches incorporated into regional freshwater management processes.
12. This problem relates to the general issue that the NOF does not currently require regional councils to set objectives and limits to provide for values that uphold the full integrated and essential values of the waterbody as required by Te Mana o te Wai.
13. The existing compulsory values prioritise certain biophysical attributes of freshwater health (for example nutrients). These specific attributes alone do not fully reflect Māori values or all of the values that comprise Te Mana o te Wai. Māori values need to be elevated within the NOF to ensure that Māori have the ability to express their freshwater values and to ensure they are managed for. There are additional biophysical attributes and other social attributes that must be considered in order for freshwater objective-setting processes to be reflective of Te Mana o te Wai.
14. The identification of ecosystem health and human health, as defined in the NPSFM, has triggered significant investment by both regional councils and the wider research sector into tools, frameworks and methods to identify, give effect to and measure these compulsory values. Not providing the same compulsory status to Māori values of freshwater health creates significant inequity in terms of the legal weighting and

² NPS-FM, page 7.

associated resources and status that they attract in the regulatory system. This must be remedied.

15. This problem is demonstrated and caused by:

- (a) Poor regional council implementation practice in some circumstances, and an ad-hoc approach to involving Māori in freshwater management.
- (b) Regional councils not making provision in their Long Term Plans for resourcing of freshwater management to be inclusive of Māori values and measures.
- (c) The absence of strong centralised direction and regulation obligating regional councils to involve and finance hapū and iwi to participate in regional planning processes, and to understand and implement Māori-desired outcomes for freshwater management.
- (d) Variability in Māori resourcing. Some iwi and hapū have extremely scarce resources and there is inconsistency in opportunities to obtain funding to support the development. Without compulsion, Councils are not obligated to dedicate resources to support Māori in implementing the NPSFM. The costs to iwi and hapū can be high, creating barriers to participation.

Opportunity

16. There is an opportunity to provide a clearer and more direct avenue for Māori participation in freshwater management, and to provide mechanisms in the NOF that ensure the integrated values that comprise Te Mana o te Wai are given effect. Clarity and direction will provide councils with certainty about their obligations.
17. There is also an opportunity to address the significant lack of investment into Māori measures of freshwater health, by sending clear signals to regional councils, and more broadly the research community, that the development and application of Māori tools, frameworks and methods of identifying, giving effect to and measuring freshwater health are a central aspect of implementing the NPSFM.
18. Noting that Māori measures of freshwater health tend to focus on the health of connections between the environment, water and humans, including social measures, there is an opportunity for freshwater management to better address social values and issues in connection to freshwater that are relevant to all New Zealanders.

Proposal

19. This option involves making the existing mahinga kai values in the NOF a consolidated third compulsory value in narrative form as follows:

COMPULSORY NATIONAL VALUES
<p>Mahinga kai</p> <p><i>Kai are safe to harvest and eat</i> – This generally refers to indigenous freshwater species that have traditionally been used as food, tools, or other resources. It also refers to the places those species are found and to the act of catching them. Mahinga kai provide food for the people of the rohe and these sites give an indication of the overall health of the water. For this value, kai would be safe to harvest and eat. Transfer of knowledge would occur about the preparation, storage and cooking of kai. In freshwater management units that are used for providing mahinga kai, the desired species are plentiful enough for long-term harvest and the range of desired species is present across all life stages.</p> <p><i>Kei te ora te mauri – the mauri of the place is intact</i> – For this value, freshwater resources would be available and able to be used for customary use. In freshwater management units that are valued for providing mahinga kai, resources would be available for use, customary practices able to be exercised to the extent desired, and tikanga and preferred methods are able to be practised.</p>

20. We do not recommend the national identification of pre-determined attributes and bands. Instead, this proposal requires regional councils to resource iwi and hapū locally to develop attributes, and fulfil the other requirements of the NOF (See the case study at Appendix One).
21. The implementation of mahinga kai as a compulsory national value will ensure the ability of regional councils and tangata whenua to uphold Te Mana o te Wai through regional planning. The NPSFM sets out that to uphold Te Mana o te Wai you must 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). Mahinga kai, as defined in the NPSFM, reflects the integration of these different aspects of health.
22. This will ensure the aspirations and unique values of iwi and hapū based on whakapapa, history, tikanga and mātauranga are met.

Analysis

23. A compulsory value provides the level of compulsion needed to ensure that regional councils incorporate Māori values of freshwater health into regional freshwater planning processes.
24. This proposal ensures that the NOF incorporates a holistic and integrated value in order to give effect to Te Mana o te Wai, the fundamental objective of the NPSFM, and supports improving outcomes for freshwater.
25. This proposal also provides certainty. The single value that is to be identified and incorporated is mahinga kai.
26. Due to its existing inclusion in the 'other national values', mahinga kai is already a familiar value to regional councils, and many hapū/iwi have already identified mahinga kai values and attributes through iwi management plans and kaupapa Māori assessment frameworks. These are ripe for incorporation into regional freshwater planning

processes, making it straightforward to implement the compulsory value across the country by 2025.

27. For those regional councils that are yet to engage with iwi and hapū to identify mahinga kai values, a report³ by Hannah Rainforth and Garth Harmsworth is available which summarises a range of iwi and hapū tools, frameworks and methods that are available. These resources provide a good starting point for Councils to resource iwi and hapū to develop their own metrics for freshwater mahinga kai wellbeing and to feed into the NOF and regional freshwater planning.
28. Improving council capacity and capability, and resourcing iwi and hapū involvement, is critical to enable effective implementation of this option, and to improve outcomes for freshwater.
29. In **Appendix One** we provide a case study as an example of the types of attribute that iwi or hapū may identify for a compulsory Māori value of freshwater health, the monitoring methods they may utilise to monitor these attributes, and the types of objectives they then may seek to be set for those attributes.
30. We provide the following responses to potential impacts raised by officials in their Briefing note:
 - (a) Mahinga kai represents a value that can be supported in all FMUs.
 - (b) There is no risk that this proposal could be perceived as an imposition on iwi and hapū from central government. Mahinga kai is a universal concept for iwi and hapū throughout Aotearoa and central to maintenance of tikanga and mātauranga.
 - (c) The proposal does not obstruct iwi and hapū autonomy to adapt the NOF to reflect their values. By not pre-determining national attributes, bands or bottom lines, it expressly provides for that.
 - (d) The notion that a compulsory value could result in requiring iwi and hapū to engage when they are not ready to, or choose not to, is fundamentally flawed. Iwi and hapū are already engaged in freshwater planning processes even with limited resources. The key difference is here is, just as Councils engage experts to determine ecosystem and human health attributes in FMUs, Councils would be required to resource iwi and hapū involvement.
 - (e) The notion that a compulsory mahinga kai value could result in a situation where regional councils are compelled to develop attributes for a compulsory Māori value without tangata whenua involvement is illusory. Policy D1 of Part D of the NPSFM, which is well known to regional councils, signals tangata whenua involvement in tangata whenua fresh water value identification processes. The compulsory value simply makes it mandatory.

³ Rainforth, H. J. & Harmsworth, G. R. (2019). Kaupapa Māori Freshwater Assessments: A summary of iwi and hapū-based tools, frameworks and methods for assessing freshwater environments. Perception Planning Ltd. 115 pp.

No support for proposed Option B

31. Through engagement with Te Kāhui Wai Māori, officials have proposed a 'tangata whenua' value category in the NOF to sit alongside the 'compulsory value' and 'other national value' categories. Any values identified by tangata whenua as relevant for the local catchment would become compulsory, and therefore subject to current NPSFM Policy CA2b)i.
32. We have considered this proposal carefully and advise that it is not appropriate for the following reasons:
- (a) This option does not achieve the purpose of the proposal, which is to vest Māori values with equivalent power to the compulsory values.
 - (b) This option creates the burden for Māori that they must initiate and resource the trigger to have Māori values included, when instead the NPSFM should ensure that councils take responsibility for this occurring.
 - (c) This option is open-ended, providing less certainty to regional councils to appropriately resource Māori value implementation.
 - (d) This option creates a new 'tangata whenua' value category that appears to be a hybrid of the 'compulsory' and 'other national value' categories. It is likely to be confusing and open to interpretation and debate.

Recommendation

33. We recommend that you:
- (a) **Agree** with officials continuing to develop a compulsory mahinga kai value in the draft NPSFM with Te Kāhui Wai Māori
 - (b) **Agree** to consult publicly on the compulsory mahinga kai value proposal as part of the Essential Freshwater package.

Appendix One: Case study of implementing a Māori value of freshwater health

1. This case study comes from the iwi Te Ātiawa ki Whakarongotai (TAKW) on the Kāpiti Coast, who have recently completed a process of developing catchment attributes and objectives for both a catchment planning process, and in anticipation of the NOF process in their rohe.
2. Different iwi and hapū will identify different attributes that are relevant to their particular physical and socio-political context. This case study merely provides an example of what may be the types of attributes that iwi or hapū may identify for a compulsory Māori value of freshwater health, the monitoring methods they may utilise to monitor these attributes, and the types of objectives they then may seek to be set for those attributes.
3. In this case study, TAKW identified a range of attributes that comprise the overall health of freshwater. As they were conscious of the broader NPS-FM regulatory framework, these attributes were deliberately identified as comprising both the values of mahinga kai and Te Mana o te Wai, as defined with narratives within the NPS-FM, and can be utilised as attributes of either if they are identified as compulsory values within the NPS-FM.
4. The types of attributes identified and therefore the monitoring methods required to monitor them are mostly already familiar to both Māori and regional councils, but to date are applied in an ad hoc way, perhaps as conditions of specific consents or as part of a local research or restoration project, rather than within a cohesive management and monitoring regime. The vast majority of examples of this in practice currently are not published in academic literature. However, where possible, monitoring methods identified below have been footnoted with examples from the academic literature.
5. The iwi has identified attributes and objectives of two catchments so far, one a River in a residential area the second a Stream that runs through a mixture of commercial, industrial and residential land use. Almost all the attributes for both catchments were identical for both waterways; the only divergence was the method for measuring the attribute 'quality of mahinga kai' in each catchment, which was dependent on the type of traditional food that was sought in that catchment and therefore the type of monitoring that was relevant.
6. This suite of attributes identifies that there are several social attributes of catchment health that can all be monitored through the same method, and in the case of this iwi this is undertaken in a way that is efficient, where data that is relevant to several catchments is gathered through one survey iteration at the same time.
7. The iwi undertook a rigorous scientific method to identify attributes and monitoring methods, pilot monitoring methods, and undertake quantitative modelling to assist in identifying catchment objectives. This has been funded through a combination of small research projects, resource provided in connection to consent conditions of large consented projects, and small pieces of intermittent regional council funding. However, they only have three years of funding left to continue this monitoring, and as with many other case studies like this, this will cease to be implemented without a perpetual compulsory requirement on regional councils to share the resource to implement this aspect of the NPS-FM.

TAKW Attributes of Mahinga Kai

Value: Mahinga kai			
Attributes	Attribute Unit	Monitoring method	Objective
Water temperature	°C	Pre-existing regional council temperature monitoring	Water temperature remains $\leq 20^{\circ}\text{C}$
Quality of mahinga kai – Waikanae River	Abundance	Standard eel survey monitoring ⁴	Catch 4 eating tuna at one site when using standard mahinga kai fyke net setting method.
Quality of mahinga kai - Wharemauku Stream	mg contaminant/kg plant material	Watercress sampling ⁵	Mahinga kai species are safe for human consumption in accordance with the Australia New Zealand Food Standards Code
Intergenerational knowledge transfer	Likert scale	Social survey ⁶	An average score of 4 'Te Rea: I am learning and practising this knowledge' across all knowledge types.
Iwi are part of water governance	Likert scale	Annual partnership audit ⁷	Achieve 'Tika' score: Decision-making is informed by mana whenua knowledge. Mana whenua have authority over natural resource management to the extent that they are part of its governance, can determine decision-making and are resourced to do so.
Environmental distress	Likert scale	Social survey ⁸	An average score of below 3 for severity of distress.
Connection of people to waterways	Likert scale	Social survey ⁹	An average score of 3 or above for connection to waterways.

Appendix 2 NOF Attribute Table Format

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Water temperature

⁴ Rainforth, H. J. & Harmsworth, G. R. (2019). Kaupapa Māori Freshwater Assessments: A summary of iwi and hapū-based tools, frameworks and methods for assessing freshwater environments. Perception Planning Ltd, p.24

⁵ Ibid.

Edmonds, C., & Hawke, R. (2004). Microbiological and metal contamination of watercress in the Wellington region, New Zealand--2000 survey. Australian and New Zealand Journal of Public Health (1), 20.

⁶ Ibid 1. pp. 39-34

⁷ Independent Māori Statutory Board. (2018). Te Tiriti o Waitangi Audit Report 2018. Auckland: Independent Māori Statutory Board.

⁸ Higginbotham, N., Freeman, S., Connor, L., Albrecht, G., & Agho, K. (2006). Validation of an environmental distress scale. EcoHealth, 3(4), 245-254

⁹ Ibid. 3.

Larson, L. R., Whiting, J. W., & Green, G. T. (2011). Exploring the influence of outdoor recreation participation on pro-environmental behaviour in a demographically diverse population. *Local Environment*, 16(1), 67-86.

Attribute Unit	°C
Objective state	Water temperature remains ≤20°C
Monitoring method	Pre-existing regional council temperature monitoring

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Quality of mahinga kai
Attribute Unit	Abundance
Objective state	Catch 4 eating tuna at one site when using standard mahinga kai fyke net setting method.
Monitoring method	Standard eel survey monitoring ¹⁰

Value	Mahinga kai
Freshwater Body Type	Streams
Attribute	Quality of mahinga kai
Attribute Unit	mg contaminant/kg plant material
Objective state	Mahinga kai species are safe for human consumption in accordance with the Australia New Zealand Food Standards Code
Monitoring method	Watercress sampling ¹¹

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Intergenerational knowledge transfer
Attribute Unit	Likert scale
Objective state	An average score of 4 'Te Rea: I am learning and practising this knowledge' across all knowledge types.
Monitoring method	Social survey ¹²

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Iwi are part of water governance
Attribute Unit	Likert scale
Objective state	Achieve 'Tika' score: Decision-making is informed by mana whenua knowledge. Mana whenua have authority over natural resource management to the extent that they are part of its governance, can determine decision-making and are resourced to do so.
Monitoring method	Annual partnership audit ¹³

¹⁰ Rainforth, H. J. & Harmsworth, G. R. (2019). Kaupapa Māori Freshwater Assessments: A summary of iwi and hapū-based tools, frameworks and methods for assessing freshwater environments. Perception Planning Ltd, p.24.

¹¹ Ibid.

Edmonds, C., & Hawke, R. (2004). Microbiological and metal contamination of watercress in the Wellington region, New Zealand--2000 survey. Australian and New Zealand Journal of Public Health(1), 20.

¹² Ibid 1. pp. 39-34

¹³ Independent Māori Statutory Board. (2018). Te Tiriti o Waitangi Audit Report 2018. Auckland: Independent Māori Statutory Board.

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Environmental distress
Attribute Unit	Likert scale
Objective state	An average score of below 3 for severity of distress.
Monitoring method	Social survey ¹⁴

Value	Mahinga kai
Freshwater Body Type	Rivers
Attribute	Connection of people to waterways
Attribute Unit	Likert scale
Objective state	An average score of 3 or above for connection to waterways.
Monitoring method	Social survey ¹⁵

¹⁴ Higginbotham, N., Freeman, S., Connor, L., Albrecht, G., & Agho, K. (2006). Validation of an environmental distress scale. *EcoHealth*, 3(4), 245-254

¹⁵ Ibid. 3.

Larson, L. R., Whiting, J. W., & Green, G. T. (2011). Exploring the influence of outdoor recreation participation on pro-environmental behaviour in a demographically diverse population. *Local Environment*, 16(1), 67-86.

Policy Intent	Issues	Existing NPSFM Location	Proposed approach / recommendation
<p>Clarity for those engaging with the NPS that TMOTW that it is not preambular.</p>	<p>The history of the development of TMOTW is important in informing the appropriate drafting approach to TMOTW in the NPSFM Re-draft V5:</p> <ul style="list-style-type: none"> • the 2014 version of the NPSFM (NPSFM 2014) included reference to TMOTW in the preamble only, despite the Freshwater ILG pushing for its inclusion in the operative NPS. • after engagement with the Freshwater ILG about making the NPS-FM, the current 2017 version of the NPSFM 2014 (NPSFM 2017) also included TMOTW in the operative sections of the NPS: <ul style="list-style-type: none"> ○ through a description of the national significance of fresh water and TMOTW; ○ in Objective AA1; and ○ in Policy AA1. <p>There is a material risk that, with a title like “Preliminaries”, those reading Chapter 1 will see TMOTW as preambular in nature.</p>	<p>Chapter 1: Preliminaries (pg 3)</p>	<ol style="list-style-type: none"> 1. Amend “Preliminaries” to an alternate title e.g. <ul style="list-style-type: none"> • Fundamentals • General • Interpretation • Interpretation and Application 2. Our preference is Chapter 1: [Insert after discussion with KWM].
<p>Clarity that TMOTW is the national framework for freshwater management, and the primary objective in the NPS-FM.</p>	<p>In the current 2017 version of the NPSFM 2014 (the NPSFM 2017) the TMOTW definition is entitled ‘National significance of freshwater and TMOTW.’ Further, that section commences, “the matter of national significance to which the national policy statement applies is the management of fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management.”</p> <p>As currently drafted in NPSFM re-draft V5 TMOTW is written as a “Core concept”. We have been told that the Core Concept is intended to be a narrative definition of TMOTW outside the Interpretation section. While we understand that the policy intent is to strengthen TMOTW in, and make it central to, the NPS, our view from years of engagement with Councils and whānau, hapū/iwi, Māori landowners, hāpori Māori (Māori communities) is that calling TMOTW a ‘core concept’ carries the following risks:</p> <ul style="list-style-type: none"> • <i>Councils</i> - detract from Councils actually implementing TMOTW because there is a strong chance that Councils will consider it a high level concept only. • <i>whānau, hapū and iwi</i> – the status of TMOTW in the NPSFM 2017 (particularly regarding its role in the national significance of fresh water) will be seen as having been weakened. 	<p>Core concept (pg 3-4)</p>	<ol style="list-style-type: none"> 3. Suggest removing the ‘core concept’ from Chapter 1 and including a new Primary Objective in Chapter 2. 4. See proposed amendment.

KWM DRAFTING INSTRUCTIONS FOR NPSFM

RECEIVED 18 JULY 2019

Policy Intent	Issues	Existing NPSFM Location	Proposed approach / recommendation
Clarify and strengthen the narrative description of TMOTW.	The narrative description of TMOTW in the NPS does not reflect what KWM consider it to mean. KWM have worked hard to provide a stronger, clearer narrative description.	Core concept (pg 3-4)	5. Suggest revising the narrative description of TMOTW. 6. See proposed amendment.
Three-tiered TMOTW hierarchy is intended to be the basis of the objective.	We were told by officials that the intention is for Objective 1 to reflect the three-tiered TMOTW hierarchy.	Objective 1	7. Suggest revising the objective to have three sub-points to reflect the hierarchy.
<ul style="list-style-type: none"> • Avoid directing councils to include an objective in their plan that they have not actually actioned. • Direct councils to undertake immediate actions to implement TMOTW. 	<p>Current NPSFM Re-draft V5 has two problems:</p> <ul style="list-style-type: none"> • Policy 1.1 it is worded in a way that, where councils include the proposed objective in their plans as directed, could be read as suggesting they have given effect to TMOTW. This is the case even where they have not taken any further action beyond the inclusion of that objective in their plan. This is not the intention. • We also discussed how, as currently drafted, use of the term “gives expression to” followed by the list at Policy 1.2 potentially creates a situation where Councils have a finite list of things they can do which give effect to TMOTW. This is also not the intention. 	Part 1 Policy 1	<p>8. See proposed amendments.</p> <ul style="list-style-type: none"> • For Policy 1.1 we use the more future focused (yet mandatory) phrase “shall be”. • For Policy 1.2, we make the proposals in the list immediate actions only, thereby not precluding TMOTW being given effect to in other parts of the document.
Strengthen, and use familiar, the statutory language.	For policies P1 and P5, the statutory language of “give expression to” and “identify and reflect” is not as strong or familiar as the RMA language “give effect to” and “recognise and provide for”.	Chapter 2, Policies	9. Suggest amending the policies to reflect stronger and more familiar language. 10. See proposed amendment.
Reinstate mātauranga provisions.	Officials have confirmed that the mātauranga provisions, which we were included in earlier versions of the NPSFM Re-draft, unintentionally omitted.	Chapter 3, Part 2	11. Suggest re-instating the mātauranga provisions. 12. See proposed amendment.