

20-D-00460

s 9(2)(a)

[Redacted]

Tēnā koe s 9(2)

Thank you for your letter dated 26 March 2020 on behalf of Tapa Tahī requesting the following under the Official Information Act 1982 (the Act):

*(a) briefings, and any other advice (in any form including emails), to any Minister and Chief Executive from the Ministry for the Environment (Manatū mō te Taiao) officials on:*

*(i) the Waitangi Tribunal's Wai 262 report after 29 August 2019;*

*(ii) the Te Pae Tawhiti whole-of-government approach to responding to Wai 262 after 29 August 2019;*

*(iii) a whole-of-government approach to responding to Wai 262 between 1 January 2018 - 29 August 2019;*

*(b) directions and instructions from Ministers to officials in relation to the Wai 262 report between 1 January 2018 – present day; and*

*(c) any documentation (including, but not limited to, emails) relating to Wai 262 after 29 August 2019 on the Te Pae Tawhiti whole-of-government approach.*

On 22 April we advised that we were extending the time in which we were going to respond to your request.

The Ministry for the Environment (the Ministry) has identified 59 documents (45 documents/emails with 14 attachments) in scope of your request as outlined in the attached table. The Ministry has released the majority of documents in full that fall within the scope of the request.

The documents released highlight the involvement the Ministry has placed on participating in the Te Pae Tawhiti whole-of-government approach in response to Wai 262 and the significance overall for MfE to improving the Māori/Crown relationship.

Some information within these documents has been withheld as out of scope of your request. Other information has been released in the form of excerpts from wider documents under the following section of the Act:

16(1)(e) by giving an excerpt or summary of the contents

Some information has been withheld under the following section of the Act:

9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: [www.ombudsman.parliament.nz](http://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 [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: [ministerials@mfe.govt.nz](mailto:ministerials@mfe.govt.nz).

Naku noa, nā

A handwritten signature in blue ink, appearing to read 'Lorena Stephen', is positioned above the printed name.

Lorena Stephen  
**Director, Partnerships**

### Document schedule

No.	Date	Content	Decision	OIA section/s applied (if withholding information)
1	12 November 2018	Weekly Report – Minister Parker	Relevant information released as an excerpt.	16(1)(e)
2	28 January 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
3	25 February 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
4	4 March 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
5	11 March 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
6	18 March 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
7	25 March 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
8	1 April 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
9	8 April 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
10	8 April 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
11	10 April 2019	Email – email re WAI 262 update	Released in part Note, out of scope information has been redacted	
12	15 April 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
13	15 April 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
14	29 April 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
15	21 June 2019	Paper to Minister Parker - Essential Freshwater): Maori values and measures of freshwater health: Seeking agreement to consult on options	Released in entirety	

No.	Date	Content	Decision	OIA section/s applied (if withholding information)
16	15 July 2019	Weekly Report – Minister Mahuta	Relevant information released as an excerpt	16(1)(e)
17	7 August 2019	Paper to Minister Parker - Next steps for progressing the comprehensive review of the resource management system	Relevant information released as an excerpt	16(1)(e)
18	12 August 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
19	27 August 2019	Paper to Minister Parker – Essential Freshwater 74: Seeking agreement on the future of the Kahui Wai Maori	Relevant information released as an excerpt	16(1)(e)
20	28 August 2019	Paper to Minister Parker – Summary of the Wai 2358 stage two report and associated talking points	Released in its entirety	
21	29 August 2019	Internal email regarding WAI 262 response	Released in its entirety	9(2)(f)(iv)
21.1	29 August 2019	Attachment – Briefing seeking agreement on the future of Kāhui `wai Māori	Released in its entirety	9(2)(f)(iv)
22	2 September 2019	Weekly Report – Minister Parker	Relevant information released as an excerpt	16(1)(e)
23	4 September 2019	Email – internal email requesting information to support MfE participation in a WAI 262 meeting (plus attachments)	Released in its entirety	
23.1	4 September 2019	Attachment to #23 Email dated 28 August 2019: The Waitangi Tribunal's Wai 262 inquiry	Released in its entirety	
23.2	4 September 2019	Attachment to # 23 Summary of WAI 262	Released in its entirety	
23.3	4 September 2019	Attachment to # 23 WAI 262 A3	Publicly available ( <a href="#">available on website</a> )	
24	5 September 2019	Email response to email dated 4 September.	Released in its entirety	

No.	Date	Content	Decision	OIA section/s applied (if withholding information)
25	9 September 2019	Email –internal update on work around WAI 262	Released in its entirety	
26	11 September 2019	Email – Internal MfE email requesting information regarding response to WAI 262	Released in its entirety	
27	12 September 2019	Email – further to email dated 9 September (plus attachment)	Released in its entirety	
27.1	12 September 2019	Attachment to #27 MfE Wai 262 Reference Group – Terms of Reference	Released in its entirety	
28	17 September 2019	Email – providing an update to TPK on relevant work streams	Released in its entirety	
29	17 September 2019	Email – update to TPK	Released in its entirety	
30	20 September 2019	Email – Response to an email from MBIE	Released in its entirety	
31	2 October 2019	Email – Meeting pack for DCE (plus attachments)	Released in its entirety	
31.1	2 October 2019	Attachment to #31 Terms of Reference Cover Note	Released in its entirety	
31.2	2 October 2019	Attachment to #31 Cover Notes	Released in its entirety	
31.3	2 October 2019	Attachment to #31 Roadmap to respond to Wai 262	Released in its entirety	
31.4	2 October 2019	Attachment to #31 Agenda for Meeting re Wai 262 – 3 October 2019	Released in its entirety	
31.5	2 October 2019	Attachment to #31 A3 – Response to Wai 262	Released in its entirety	
31.6	2 October 2019	Attachment to #31 Memo to the DCE – Response to Wai 262	Released in its entirety	
32	8 November 2019	Email – Response to 4 November email	Released in its entirety	
33	11 November 2019	Email – draft response to a request from TPK (plus attachment)	Release in its entirety	

No.	Date	Content	Decision	OIA section/s applied (if withholding information)
33.1	11 November 2019	Attachment to #33 MfE report back re response to WAI 262	Released in its entirety	
34	20 November 2019	Paper - RM Review 6 – draft working paper on te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system	Released in its entirety	
35	25 November 2019	Email – Internal email updates on key work streams	Released in part Note, out of scope information has been redacted	
36	27 November 2019	Email – Internal email updating progress	Released in part Note, out of scope information has been redacted	
37	29 November 2019	Email – response to email dated 27 November 2019	Released in its entirety	
38	19 December 2019	Email – internal update regarding WAI 262 work in response to email dated 19 December	Released in its entirety	
		Draft Cabinet paper	Withheld	
	5 February 2020	Update: Wai 262 – Te Pae Tawhiti Kete “How NPSIB is meeting obligations”	Released in its entirety	
39	13 February 2020	Email – Update from a Ministerial update	Released in part Note, out of scope information has been redacted	
40	13 February 2020	Email – Update to TPK regarding work streams (plus attachments)	Released in its entirety	
40.1	13 February 2020	Attachment to # 40 Update on response to WAI 262	Released in full	
41	18 February 2020	Internal emails further to an email from TPK	Released in its entirety	
42	26 February 2020	Email – Internal updates on various work streams including WAI 262	Released in part Note, out of scope information has been redacted	
43	18 March 2020	Email – Internal email providing handover	Released in part	

No.	Date	Content	Decision	OIA section/s applied (if withholding information)
		notes including on work around WAI 262. Plus attachment	Note, out of scope information has been redacted	
43.1	18 March 2020	Handover notes re WAI 262	Released in part Note, out of scope information has been redacted	
44	20 March 2020	Email – Internal email providing handover notes including on work around WAI 262.	Released in part Note, out of scope information has been redacted	
44.1	20 March 2020	Handover notes re WAI 262	Released in part Note, out of scope information has been redacted	

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**Weekly Update – Hon David Parker, Minister for the Environment  
For the week starting 12 November 2018**

**Cabinet  
material we  
have been  
consulted on**

**Agency**

**Committee and  
timeframe**

**Our advice on the paper**

**Paper name**

Updating the Crown  
approach on Wai262

Te Puni Kōkiri

Due to (C MR) Cabinet  
Māori Crown Relations  
Committee: 22 November

Proposed actions will  
require Ministers/officials  
to more deliberately  
consider WAI262 in the  
forward work/policy  
programme.

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## **Weekly Update – Hon Nanaia Mahuta, Associate Minister for the Environment**

### **For the week starting 28 January 2019**

#### **Regional hui on biodiversity**

There have been four hui to date on biodiversity with Treaty Partners in Northland and Manawatu, covering the New Zealand Biodiversity Strategy (NZBS), the National Policy Statement Indigenous Biodiversity (NPSIB) and two other Department of Conservation programmes. A memo was sent to Minister Sage on 20 December about what has been raised to date on the NZBS, which will be forwarded to you shortly (DOC GS ref: 18–B–1453).

On the NPSIB, the key themes arising from hui in Whangarei, Kaitiaki, and the Bay of Islands are as follows:

- There were concerns that the criteria for Significant Natural Areas (SNAs) would inequitably disadvantage Māori landowners, given the high proportion of indigenous forest that has been protected or not been cleared by Māori landowners.
- There is a need to incorporate climate change, including that a changing climate removes options for development on some land. There is also a risk that the SNA identification and management further prevents future development of land, and managed retreat from hazards related to climate change.
- There was a request for cultural as well as ecological criteria for SNA identification, a desire to incorporate the findings of the Wai262 claim, and to investigate the interface between NPSIB, New Zealand Coastal Policy Statement and foreshore seabed claims.
- There was support for measures to accompany SNAs, to incentivise and value biodiversity protection and concerns about the provision for papakainga/marae in areas identified as SNAs.

Some of these issues are addressed through the Biodiversity Collaborative Group's (BCG) draft NPSIB. For example, the BCG recommended in policies 10 and 7, respectively, that councils should provide for opportunities to develop Māori land, and that there be flexibility regarding the policy to avoid adverse effects to biodiversity for the provision of papakāinga, marae, and customary activities on Māori land. There is also policy 13, whereby councils shall work with tangata whenua to identify taonga and manage effects to them.

Further hui with Treaty Partners are still being confirmed in a number of locations across the country. Those that we have confirmed are:

- Whanganui, 30 January
- Motueka and Blenheim, 7 and 8 February 2019
- Wairarapa/Dannevirke, 11 February 2019
- Taupo and Rotorua, 25 and 26 February
- Lyttelton, 27 February.
- Other hui that are yet to be confirmed for January and February include:
  - Rangitane o Manawatu, Ngaati Apa and others – week of 21 January
  - Auckland (4 hui) - week of 11 February
  - Ngāi Tahu (4 hui) - week of 18 February
  - Hui for other North Island iwi (including Hauraki Gulf, East Coast, Hawkes Bay) – February.

The key themes that arise relating to the NPSIB will inform our analysis of the BCG's draft NPSIB, before we advise you on preferred options in March/April 2019. We will also keep you informed of themes emerging as the hui take place.

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## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 25 February 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

- i. **Focus Area 1: Taonga works and mātauranga Māori** – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori
- ii. **Focus Area 2: Taonga species and mātauranga Māori** – Portfolios with strong links to taonga species, the environment and mātauranga Māori
- iii. **Focus Area 3: International indigenous matters** – Portfolios with strong links to international indigenous matters.

As Minister for the Environment, you would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

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## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 4 March 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

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## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 11 March 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

- i. **Focus Area 1: Taonga works and mātauranga Māori** – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori
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As Minister for the Environment, you would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any

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## **Weekly Update – Hon Nanaia Mahuta, Associate Minister for the Environment**

### **For the week starting 18 March 2019**

#### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

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The Minister for the Environment would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

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## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 25 March 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

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As Minister for the Environment, you would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

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## **Weekly Update – Hon Nanaia Mahuta, Associate Minister for the Environment**

### **For the week starting 1 April 2019**

#### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

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The Minister for the Environment would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.



The following information has been provided as an excerpt under section 16(1)(e).

## **Weekly Update – Hon Nanaia Mahuta, Associate Minister for the Environment**

### **For the week starting 8 April 2019**

#### **Updates for noting**

##### **National Policy Statement for Indigenous Biodiversity (NPSIB)**

A calendar of the upcoming environmental papers and meetings for April – June 2019, and a summary of the NPSIB interactions with other national direction tools will be provided to your office ahead of the meeting.

##### **Cabinet material on which we have been consulted**

Developing a Whole-Of-Government Strategy For Wai 262

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## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 8 April 2019**

### **Cabinet material on which we have been consulted**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

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## Document 11

**From:** [Perrine Gilkison](#)  
**To:** [Vicky Robertson](#)  
**Subject:** Fwd: Wai 262 Cabinet paper lodged for consideration at 2 April MCR  
**Date:** Wednesday, 10 April 2019 2:52:48 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[CAB-19-MIN-0138.01 Minute Developing a Whole of Government Strategy for Wai 262.pdf](#)  
[MCR-19-MIN-0008 Minute Developing a Whole-of-Government Strategy for WAI 262.pdf](#)  
[image001.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

Kia ora ano,

I haven't put Wai 262 on your list of updates for the hui today, but in case it comes up, please see below for public information if you do wish to discuss Wai 262.

Hope your flight is all good.

OIA  
2( )

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Dominic Kebbell <kebbd@tpk.govt.nz>  
**Date:** 10/04/2019 14:41 (GMT+12:00)  
**To:** Anne\_O'Brien@moh.govt.nz, Ana\_Bidois@moh.govt.nz, Mihiata.Pirini@crownlaw.govt.nz, Hugh.Karena@dia.govt.nz, polly.martin@dia.govt.nz, ndeans@doc.govt.nz, tlawton@doc.govt.nz, pbruere@doc.govt.nz, Peter.Douglas@dpmc.govt.nz, erica.gregory@epa.govt.nz, 'Doug Jones' <Doug.Jones@epa.govt.nz>, 'Ema Hao'uli' <Ema.Haouli@mbie.govt.nz>, 'Marcus Smith' <Marcus.Smith@mbie.govt.nz>, 'Vicki Compton' <Vicki.Compton@mbie.govt.nz>, 'Stephanie Zhang' <Stephanie.Zhang@mbie.govt.nz>, 'Lois Searle' <Lois.Searle@mch.govt.nz>, angela.hall@mch.govt.nz, "KEELAN, Ngawini (MPU)" <ngawini.keelan@mfat.govt.nz>, "RILEY, John (TND)" <John.Riley@mfat.govt.nz>, Daniel.Waipoi@mfat.govt.nz, "REVELL, Alice (LGL/ERL)" <Alice.Revell@mfat.govt.nz>, Megan.Addis@mfat.govt.nz, Jemma.Lala@mfat.govt.nz, "WIKAIRA, Martin (MPU)" <Martin.Wikaira@mfat.govt.nz>, James.Churchill@mfat.govt.nz, Lorena Stephen <Lorena.Stephen@mfe.govt.nz>, Tania.Gerrard@mfe.govt.nz, Kelly Palmer <Kelly.Palmer@mfe.govt.nz>, Tipene.Chrisp@education.govt.nz, Karepa.Wall@education.govt.nz, wayne.ngata@education.govt.nz, Anna-Lee\_Annett@moh.govt.nz, "Warbrick, Tia" <Tia.Warbrick@justice.govt.nz>, "Houlbrooke, Rachel" <Rachel.Houlbrooke@justice.govt.nz>, Roger.Falloon@justice.govt.nz, maia.warren@mpi.govt.nz, Nadia Ward <wardn@tpk.govt.nz>, Sharmaine Nolan <nolas@tpk.govt.nz>, Eli Waata-Amai <waate@tpk.govt.nz>, Tracey Peters <petet@tpk.govt.nz>, Karen Southon <soutk@tpk.govt.nz>, "LENNOX-MARWICK, Alex (LGL)" <Alexandra.Lennox-Marwick@mfat.govt.nz>, Amber.Aranui@mch.govt.nz, Jodi.Anderson@mfat.govt.nz, Perrine Gilkison <Perrine.Gilkison@mfe.govt.nz>, ttaiepa@doc.govt.nz, clyde\_smith@moh.govt.nz, Roberta Anetipa <antir@tpk.govt.nz>, Ines Gilbert <gilbi@tpk.govt.nz>, Paul.Diamond@dia.govt.nz, 'Mary McCulloch' <Mary.McCulloch@mbie.govt.nz>, "Tikitu Tu-Nathan (TPK)" <natht@tpk.govt.nz>, Trevor Himona <Trevor.Himona@dia.govt.nz>, "PODMORE, Michelle (LGL)" <Michelle.Podmore@mfat.govt.nz>, aroha.dawson@dia.govt.nz, Anne.Melkiau@mfat.govt.nz, Mere-Heni.Simcock-Reweti@justice.govt.nz, Michelle\_Love-Edmonds@moh.govt.nz, kkingdonbebb@doc.govt.nz  
**Cc:** Erin Keenan <keene@tpk.govt.nz>, Jaelyn Williams <willj@tpk.govt.nz>, Tamati Olsen <olset@tpk.govt.nz>, Marie Winitana <winim@tpk.govt.nz>, Sheridan Smith <smits@tpk.govt.nz>  
**Subject:** RE: Wai 262 Cabinet paper lodged for consideration at 2 April MCR

Tena koutou katoa

Cabinet has now approved Minister Mahuta's proposed approach on Wai 262 (see attached Cabinet minutes).

Our next steps follow:

1. **Hui between Min Mahuta and Wai 262 claimant groups.** Min Mahuta is overseas later this month, so

are aiming for **early May** to hold that meeting.

2. **Press release and proactive release of Cabinet paper:** We attach a copy of the Cabinet paper and its appendices. At this stage, we do not intend to redact any of it. Accordingly, **please let us know by 17 April:**

- o whether there are any parts of the Cabinet paper that you consider should be redacted (for example, the parts relating to your work programmes)
- o the reasons for the suggested redaction (i.e., in terms of OIA grounds)
- o whether your request to withhold those parts is time bound (e.g., withhold until a public announcement has been made about one of your work programmes).

In the meantime, we will consult with other teams in Te Puni Kokiri and our Minister's office on whether they consider anything should be redacted.

As set out in the Cabinet paper, our intention is to issue the press release and proactively release the Cabinet paper after the Minister Mahuta meets with claimant groups. **We therefore ask that you hold off from making public statements** about the Cabinet decisions until then. Please contact us if you would like to discuss how to approach issues in the interim – for example, if you have a public engagement coming up and anticipate questions about Wai 262.

3. **Comms materials:** We are preparing a comms package with key messages, lines for Min Mahuta, lines for other Wai 262 ministers, the press release, Q&A etc. If you need to provide an update to external groups in the meantime, please use something along the following lines:
- The Government is currently considering how the Government will approach the issues raised in the Wai 262 claim. The Minister of Maori Development is leading this work.
  - We understand that Minister Mahuta will make a public statement about the Government's proposed approach to Wai 262 in the coming weeks.

We will be in touch shortly proposing interagency meetings to begin work on developing the targeted engagement plan and the Proposed Plans of Action.

Nga mihi,  
Dominic

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**From:** Dominic Kebbell

**Sent:** Ramere, 29 Poutu-te-rangi, 2019 3:40 p.m.

**To:** Anne\_O'Brien@moh.govt.nz; Ana\_Bidois@moh.govt.nz; Mihiata.Pirini@crownlaw.govt.nz; Hugh.Karena@dia.govt.nz; polly.martin@dia.govt.nz; ndeans@doc.govt.nz; tlawton@doc.govt.nz; pbruer@doc.govt.nz; Peter.Douglas@dpmc.govt.nz; erica.gregory@epa.govt.nz; 'Doug Jones' <Doug.Jones@epa.govt.nz>; 'Ema Hao'uli' <Ema.Haouli@mbie.govt.nz>; 'Marcus Smith' <Marcus.Smith@mbie.govt.nz>; 'Vicki Compton' <Vicki.Compton@mbie.govt.nz>; 'Stephanie Zhang' <Stephanie.Zhang@mbie.govt.nz>; 'Lois Searle' <Lois.Searle@mch.govt.nz>; angela.hall@mch.govt.nz; 'KEELAN, Ngawini (MPU)' <ngawini.keelan@mfat.govt.nz>; 'RILEY, John (TND)' <John.Riley@mfat.govt.nz>; Daniel.Waipoi@mfat.govt.nz; 'REVELL, Alice (LGL/ERL)' <Alice.Revell@mfat.govt.nz>; Megan.Addis@mfat.govt.nz; Jemma.Lala@mfat.govt.nz; 'WIKAIRA, Martin (MPU)' <Martin.Wikaira@mfat.govt.nz>; James.Churchill@mfat.govt.nz; Lorena.Stephen@mfe.govt.nz; Tania.Gerrard@mfe.govt.nz; 'Kelly Palmer' <Kelly.Palmer@mfe.govt.nz>; Tipene.Chrisp@education.govt.nz; Karepa.Wall@education.govt.nz; wayne.ngata@education.govt.nz; Anna-Lee\_Annett@moh.govt.nz; 'Warbrick, Tia' <Tia.Warbrick@justice.govt.nz>; 'Houlbrooke, Rachel' <Rachel.Houlbrooke@justice.govt.nz>; Roger.Falloon@justice.govt.nz; maia.warren@mpi.govt.nz; Nadia Ward <wardn@tpk.govt.nz>; Sharmaine Nolan <nolas@tpk.govt.nz>; Eli Waata-Amai <waate@tpk.govt.nz>; Tracey Peters <petet@tpk.govt.nz>; Karen Southon <soutk@tpk.govt.nz>; 'LENNOX-MARWICK, Alex (LGL)' <Alexandra.Lennox-Marwick@mfat.govt.nz>; Amber.Aranui@mch.govt.nz; Jodi.Anderson@mfat.govt.nz; Perrine.Gilkison@mfe.govt.nz; ttaiepa@doc.govt.nz; clyde\_smith@moh.govt.nz; Roberta Anetipa <antir@tpk.govt.nz>; Ines Gilbert <gilbi@tpk.govt.nz>; Paul.Diamond@dia.govt.nz; 'Mary McCulloch' <Mary.McCulloch@mbie.govt.nz>; Tikitu Tutua-Nathan <natht@tpk.govt.nz>; Trevor Himona <Trevor.Himona@dia.govt.nz>; PODMORE, Michelle (LGL)

<Michelle.Podmore@mfat.govt.nz>; 'aroha.dawson@dia.govt.nz' <aroha.dawson@dia.govt.nz>;  
'Anne.Melkiau@mfat.govt.nz' <Anne.Melkiau@mfat.govt.nz>; 'Mere-Heni.Simcock-Reweti@justice.govt.nz'  
<Mere-Heni.Simcock-Reweti@justice.govt.nz>; 'Michelle\_Love-Edmonds@moh.govt.nz' <Michelle\_Love-Edmonds@moh.govt.nz>; 'kkingdonbebb@doc.govt.nz' <kkingdonbebb@doc.govt.nz>  
**Cc:** Erin Keenan <keene@tpk.govt.nz>; Jaclyn Williams <willj@tpk.govt.nz>; Tamati Olsen <olset@tpk.govt.nz>;  
Marie Winitana <winim@tpk.govt.nz>; Sheridan Smith <smits@tpk.govt.nz>  
**Subject:** Wai 262 Cabinet paper lodged for consideration at 2 April MCR

Tena koutou

The Minister for Maori Development yesterday lodged the attached Cabinet paper on Wai 262 for consideration at MCR on 2 April.

Nga mihi nui ki a koutou katoa. We really appreciate the assistance you have provided on this kaupapa so far.

We will be in touch shortly on next steps if Cabinet approves the paper.

Have a good weekend everybody.

Nga mihi,

OIA  
2( )

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**From:** Andrew Rewi <rewia@tpk.govt.nz>  
**Sent:** Rapare, 28 Hui-tanguru, 2019 2:06 p.m.  
**To:** Dominic Kebell <kebbd@tpk.govt.nz>; Anne\_O'Brien@moh.govt.nz; Ana\_Bidois@moh.govt.nz; Mihia.Pirini@crownlaw.govt.nz; Hugh.Karena@dia.govt.nz; polly.martin@dia.govt.nz; ndeans@doc.govt.nz; tlawton@doc.govt.nz; pbruer@doc.govt.nz; Peter.Douglas@dpmc.govt.nz; erica.gregory@epa.govt.nz; 'Doug Jones' <Doug.Jones@epa.govt.nz>; 'Ema Hao'uli' <Ema.Haouli@mbie.govt.nz>; 'Marcus Smith' <Marcus.Smith@mbie.govt.nz>; 'Vicki Compton' <Vicki.Compton@mbie.govt.nz>; 'Stephanie Zhang' <Stephanie.Zhang@mbie.govt.nz>; 'Lois Searle' <Lois.Searle@mch.govt.nz>; angela.hall@mch.govt.nz; 'KEELAN, Ngawini (MPU)' <ngawini.keelan@mfat.govt.nz>; 'RILEY, John (TND)' <John.Riley@mfat.govt.nz>; Daniel.Waipoi@mfat.govt.nz; 'REVELL, Alice (LGL/ERL)' <Alice.Revell@mfat.govt.nz>; Megan.Addis@mfat.govt.nz; Jemma.Lala@mfat.govt.nz; 'WIKAIRA, Martin (MPU)' <Martin.Wikaira@mfat.govt.nz>; James.Churchill@mfat.govt.nz; Lorena.Stephen@mfe.govt.nz; Tania.Gerrard@mfe.govt.nz; 'Kelly Palmer' <Kelly.Palmer@mfe.govt.nz>; Tipene.Chrisp@education.govt.nz; Karepa.Wall@education.govt.nz; wayne.ngata@education.govt.nz; Anna-Lee\_Annett@moh.govt.nz; 'Warbrick, Tia' <Tia.Warbrick@justice.govt.nz>; 'Saunders, Tim' <Tim.Saunders@justice.govt.nz>; 'Houlbrooke, Rachel' <Rachel.Houlbrooke@justice.govt.nz>; Roger.Falloon@justice.govt.nz; maia.warren@mpi.govt.nz; Nadia Ward <wardn@tpk.govt.nz>; Sharmaine Nolan <nolas@tpk.govt.nz>; Eli Waata-Amai <waate@tpk.govt.nz>; Tracey Peters <petet@tpk.govt.nz>; Karen Southon <soutk@tpk.govt.nz>; 'LENNOX-MARWICK, Alex (LGL)' <Alexandra.Lennox-Marwick@mfat.govt.nz>; Amber.Aranui@mch.govt.nz; Jodi.Anderson@mfat.govt.nz; Perrine.Gilkison@mfe.govt.nz; ttaiepa@doc.govt.nz; clyde\_smith@moh.govt.nz; Roberta Anetipa <antir@tpk.govt.nz>; Ines Gilbert <gilbi@tpk.govt.nz>; Paul.Diamond@dia.govt.nz; 'Mary McCulloch' <Mary.McCulloch@mbie.govt.nz>; Tikitu Tutua-Nathan <natht@tpk.govt.nz>; Trevor Himona <Trevor.Himona@dia.govt.nz>; PODMORE, Michelle (LGL) <Michelle.Podmore@mfat.govt.nz>  
**Cc:** Erin Keenan <keene@tpk.govt.nz>; Jaclyn Williams <willj@tpk.govt.nz>; Tamati Olsen <olset@tpk.govt.nz>; Marie Winitana <winim@tpk.govt.nz>; Sheridan Smith <smits@tpk.govt.nz>  
**Subject:** RE: Draft Cabinet paper: Developing a Whole-of-Government Strategy for Wai 262

Kia ora tatou

Thank you very much to those agencies that provided comments on this paper. We understand the timeframe was short, and appreciate the effort in commenting in that time.


Min Mahuta has **decided to delay the paper until the MCR meeting on Tues 2 April 2019**, and intends discussing the paper with a number of Ministers in the interim.

We will work at incorporating the comments we've received into the paper. We're happy to take any further agency comments at this time, and to discuss the paper with agencies should you wish (please let us know).

We will keep you advised of any further decisions regarding this paper, including whether or when a further version might be circulated for comment ahead of the April MCR meeting.

Heoi ano ra  
Andrew

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<p><b>Andrew Rewi</b> Principal Analyst - Policy Head office</p> <div style="border: 1px dashed gray; width: 150px; height: 30px; margin: 10px auto; text-align: center;">?</div>	<p><i>Tauwaea DDI</i> : +64 4 819 9258   <i>Waea Pukoro M</i> : 027 504 6102 <i>Waea Whakaahua F</i> : +64 4 819 6299</p> <hr/> <p><b>Te Puni Kokiri</b>, 143 Lambton Quay, Wellington 6011 PO Box 3943, Wellington 6140</p> <hr/> <p> <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a></p>
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**From:** Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>  
**Sent:** Rapare, 21 Hui-tanguru, 2019 11:03 a.m.  
**To:** Anne\_O'Brien@moh.govt.nz; Ana\_Bidois@moh.govt.nz; Mihiata.Pirini@crownlaw.govt.nz; Hugh.Karena@dia.govt.nz; polly.martin@dia.govt.nz; ndeans@doc.govt.nz; tlawton@doc.govt.nz; pbruere@doc.govt.nz; Peter.Douglas@dpmc.govt.nz; erica.gregory@epa.govt.nz; 'Doug Jones' <[Doug.Jones@epa.govt.nz](mailto:Doug.Jones@epa.govt.nz)>; 'Ema Hao'uli' <[Ema.Haouli@mbie.govt.nz](mailto:Ema.Haouli@mbie.govt.nz)>; 'Marcus Smith' <[Marcus.Smith@mbie.govt.nz](mailto:Marcus.Smith@mbie.govt.nz)>; 'Vicki Compton' <[Vicki.Compton@mbie.govt.nz](mailto:Vicki.Compton@mbie.govt.nz)>; 'Stephanie Zhang' <[Stephanie.Zhang@mbie.govt.nz](mailto:Stephanie.Zhang@mbie.govt.nz)>; 'Lois Searle' <[Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz)>; angela.hall@mch.govt.nz; 'KEELAN, Ngawini (MPU)' <[ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz)>; 'RILEY, John (TND)' <[John.Riley@mfat.govt.nz](mailto:John.Riley@mfat.govt.nz)>; Daniel.Waipoi@mfat.govt.nz; 'REVELL, Alice (LGL/ERL)' <[Alice.Revell@mfat.govt.nz](mailto:Alice.Revell@mfat.govt.nz)>; Megan.Addis@mfat.govt.nz; Jemma.Lala@mfat.govt.nz; 'WIKAIRA, Martin (MPU)' <[Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz)>; James.Churchill@mfat.govt.nz; Lorena.Stephen@mfe.govt.nz; Tania.Gerrard@mfe.govt.nz; 'Kelly Palmer' <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Tipene.Chrisp@education.govt.nz; Karepa.Wall@education.govt.nz; wayne.ngata@education.govt.nz; Anna-Lee.Annett@moh.govt.nz; 'Warbrick, Tia' <[Tia.Warbrick@justice.govt.nz](mailto:Tia.Warbrick@justice.govt.nz)>; 'Saunders, Tim' <[Tim.Saunders@justice.govt.nz](mailto:Tim.Saunders@justice.govt.nz)>; 'Houlbrooke, Rachel' <[Rachel.Houlbrooke@justice.govt.nz](mailto:Rachel.Houlbrooke@justice.govt.nz)>; Roger.Falloon@justice.govt.nz; maja.warren@mpi.govt.nz; Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Sharmaine Nolan <[nolaj@tpk.govt.nz](mailto:nolaj@tpk.govt.nz)>; Eli Waata-Amai <[waate@tpk.govt.nz](mailto:waate@tpk.govt.nz)>; Tracey Peters <[petet@tpk.govt.nz](mailto:petet@tpk.govt.nz)>; Karen Southon <[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; 'LENNOX-MARWICK, Alex (LGL)' <[Alexandra.Lennox-Marwick@mfat.govt.nz](mailto:Alexandra.Lennox-Marwick@mfat.govt.nz)>; Amber.Aranui@mch.govt.nz; Jodi.Anderson@mfat.govt.nz; Perrine.Gilkison@mfe.govt.nz; ttaiepa@doc.govt.nz; clyde\_smith@moh.govt.nz; Roberta Anetipa <[antir@tpk.govt.nz](mailto:antir@tpk.govt.nz)>; Ines Gilbert <[gilbi@tpk.govt.nz](mailto:gilbi@tpk.govt.nz)>; Paul.Diamond@dia.govt.nz; 'Mary McCulloch' <[Mary.McCulloch@mbie.govt.nz](mailto:Mary.McCulloch@mbie.govt.nz)>; Tikitu Tutua-Nathan <[natht@tpk.govt.nz](mailto:natht@tpk.govt.nz)>; Andrew Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Trevor Himona <[Trevor.Himona@dia.govt.nz](mailto:Trevor.Himona@dia.govt.nz)>; PODMORE, Michelle (LGL) <[Michelle.Podmore@mfat.govt.nz](mailto:Michelle.Podmore@mfat.govt.nz)>  
**Cc:** Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Andrew Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Jaclyn Williams <[willj@tpk.govt.nz](mailto:willj@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Marie Winitana <[winitim@tpk.govt.nz](mailto:winitim@tpk.govt.nz)>; Sheridan Smith <[smits@tpk.govt.nz](mailto:smits@tpk.govt.nz)>  
**Subject:** RE: Ministerial consultation on draft Cabinet paper: Developing a Whole-of-Government Strategy for Wai 262

Tena koutou katoa

We have been informed by our Minister's office that Ministerial consultation ends 3pm on **26 February rather than tomorrow**. Apologies for the confusion.

We would therefore be grateful for any agency comments by the same time. Comments before that are of course welcome.

Dominic

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**From:** Dominic Kebbell

**Sent:** Ratu, 19 Hui-tanguru, 2019 5:50 p.m.

**To:** 'Anne\_O'Brien@moh.govt.nz' <Anne\_O'Brien@moh.govt.nz>; 'Ana\_Bidois@moh.govt.nz' <Ana\_Bidois@moh.govt.nz>; 'Mihia.Pirini@crownlaw.govt.nz' <Mihia.Pirini@crownlaw.govt.nz>; 'Hugh.Karena@dia.govt.nz' <Hugh.Karena@dia.govt.nz>; 'polly.martin@dia.govt.nz' <polly.martin@dia.govt.nz>; 'ndeans@doc.govt.nz' <ndeans@doc.govt.nz>; 'tlawton@doc.govt.nz' <tlawton@doc.govt.nz>; 'pbruere@doc.govt.nz' <pbruere@doc.govt.nz>; 'Peter.Douglas@dpmc.govt.nz' <Peter.Douglas@dpmc.govt.nz>; 'erica.gregory@epa.govt.nz' <erica.gregory@epa.govt.nz>; 'Doug Jones' <Doug.Jones@epa.govt.nz>; 'Ema Hao'uli' <Ema.Haouli@mbie.govt.nz>; 'Marcus Smith' <Marcus.Smith@mbie.govt.nz>; 'Vicki Compton' <Vicki.Compton@mbie.govt.nz>; 'Stephanie Zhang' <Stephanie.Zhang@mbie.govt.nz>; 'Lois Searle' <Lois.Searle@mch.govt.nz>; 'angela.hall@mch.govt.nz' <angela.hall@mch.govt.nz>; 'KEELAN, Ngawini (MPU)' <ngawini.keelan@mfat.govt.nz>; 'RILEY, John (TND)' <John.Riley@mfat.govt.nz>; 'Daniel.Waipoi@mfat.govt.nz' <Daniel.Waipoi@mfat.govt.nz>; 'REVELL, Alice (LGL/ERL)' <Alice.Revell@mfat.govt.nz>; 'Megan.Addis@mfat.govt.nz' <Megan.Addis@mfat.govt.nz>; 'Jemma.Lala@mfat.govt.nz' <Jemma.Lala@mfat.govt.nz>; 'WIKAIRA, Martin (MPU)' <Martin.Wikaira@mfat.govt.nz>; 'James.Churchill@mfat.govt.nz' <James.Churchill@mfat.govt.nz>; 'Lorena.Stephen@mfe.govt.nz' <Lorena.Stephen@mfe.govt.nz>; 'Tania.Gerrard@mfe.govt.nz' <Tania.Gerrard@mfe.govt.nz>; 'Kelly Palmer' <Kelly.Palmer@mfe.govt.nz>; 'Tipene.Chrisp@education.govt.nz' <Tipene.Chrisp@education.govt.nz>; 'Karepa.Wall@education.govt.nz' <Karepa.Wall@education.govt.nz>; 'wayne.ngata@education.govt.nz' <wayne.ngata@education.govt.nz>; 'Anna-Lee Annett@moh.govt.nz' <Anna-Lee Annett@moh.govt.nz>; 'Warbrick, Tia' <Tia.Warbrick@justice.govt.nz>; 'Saunders, Tim' <Tim.Saunders@justice.govt.nz>; 'Houlbrooke, Rachel' <Rachel.Houlbrooke@justice.govt.nz>; 'Roger.Falloon@justice.govt.nz' <Roger.Falloon@justice.govt.nz>; 'maia.warren@mpi.govt.nz' <maia.warren@mpi.govt.nz>; 'Nadia Ward' <wardn@tpk.govt.nz>; 'Sharmaine Nolan' <nolas@tpk.govt.nz>; 'Eli Waata-Amai' <waate@tpk.govt.nz>; 'Tracey Peters' <petet@tpk.govt.nz>; 'Karen Southon' <soutk@tpk.govt.nz>; 'LENNOX-MARWICK, Alex (LGL)' <Alexandra.Lennox-Marwick@mfat.govt.nz>; 'Amber.Aranui@mch.govt.nz' <Amber.Aranui@mch.govt.nz>; 'Jodi.Anderson@mfat.govt.nz' <Jodi.Anderson@mfat.govt.nz>; 'Perrine.Gilkison@mfe.govt.nz' <Perrine.Gilkison@mfe.govt.nz>; 'ttaiepa@doc.govt.nz' <ttaiepa@doc.govt.nz>; 'clyde\_smith@moh.govt.nz' <clyde\_smith@moh.govt.nz>; 'Roberta Anetipa' <antir@tpk.govt.nz>; 'Ines Gilbert' <gilbi@tpk.govt.nz>; 'Paul.Diamond@dia.govt.nz' <Paul.Diamond@dia.govt.nz>; 'Mary McCulloch' <Mary.McCulloch@mbie.govt.nz>; 'Tikitu Tutua-Nathan' <natht@tpk.govt.nz>; 'Andrew Rewi' <rewia@tpk.govt.nz>; 'Trevor Himona' <Trevor.Himona@dia.govt.nz>  
**Cc:** Erin Keenan <keene@tpk.govt.nz>; Andrew Rewi <rewia@tpk.govt.nz>; Jaclyn Williams <willj@tpk.govt.nz>; Tamati Olsen <olset@tpk.govt.nz>; Marie Winitana <winim@tpk.govt.nz>; Sheridan Smith <smits@tpk.govt.nz>  
**Subject:** Ministerial consultation on draft Cabinet paper: Developing a Whole-of-Government Strategy for Wai 262

Kia ora koutou

Minister Mahuta is circulating the attached draft Cabinet paper for Ministerial consultation today. The Cabinet Paper is entitled 'Developing a Whole-of-Government Strategy for Wai 262'.

The paper is the latest version of the draft Cabinet paper you provided input into in 2018, following further discussions with our Minister's office. It proposes that we develop a whole-of-government strategy to address the issues raised in the Wai 262 report.

The paper seeks agreement in-principle to develop a proposal for a whole-of-government approach to Wai 262, with a report back to Cabinet in October 2019. In particular, the paper seeks:

- agreement in-principle to establish:
  - Ministerial groups in three focus areas (Taonga Works and Mataranga Maori, Taonga Species and Mataranga Maori, and International Indigenous Matters)
  - a Ministerial oversight group to oversee the government's high-level response across Wai 262 and

to oversee the overall approach to Maori Crown relationships on Wai 262

- agreement to:
  - convene discussions with portfolio Ministers to determine potential priorities and work programmes for the focus areas
  - conduct targeted consultation with key Wai 262 Maori groups and individuals.

The main changes from the earlier drafts of the paper are:

- The proposed in-principle decision to establish Ministerial groups to consider how to approach each of the above three focus areas. Note that the Ministerial groups would not be formally established until they are formally confirmed in the October 2019 report back (if that is the approach that is still recommended after the targeted consultation). The Ministers in each group would, however, receive at least two briefings before the October 2019 report back:
  - a briefing before the targeted consultations with Maori
  - a briefing updating them on the outcome of the targeted consultations.
- The proposed in-principle decision to establish a Ministerial oversight group referred to above.
- The idea that, because of the potential scope of the strategy, the Crown needs to take time to organise itself before it formally engages with Maori on some of the key underlying themes of Wai 262. This will need to be balanced with the need to make progress on key workstreams within each focus area while the wider Wai 262 strategy is being developed.

The Minister of Maori Development intends to lodge this paper to be considered by the Maori Crown Relations Cabinet Committee on **5 March 2019**. She is therefore seeking Ministerial comment on this paper by **5pm this Friday, 22 February**.

If you have any final agency comments, we would be grateful if you would provide these to us directly by **5pm on Friday** as well.

Please contact Andrew Rewi on 027 504 6102 or me on 021 029 35315 if you have any questions.

Nga mihi  
Dominic

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**From:** Erin Keenan

**Sent:** Ratu, 04 Hakihea, 2018 11:12 a.m.

**To:** 'Anne\_O'Brien@moh.govt.nz' <Anne\_O'Brien@moh.govt.nz>; 'Ana\_Bidois@moh.govt.nz' <Ana\_Bidois@moh.govt.nz>; 'Mihia.Pirini@crownlaw.govt.nz' <Mihia.Pirini@crownlaw.govt.nz>; 'Hugh.Karena@dia.govt.nz' <Hugh.Karena@dia.govt.nz>; 'polly.martin@dia.govt.nz' <polly.martin@dia.govt.nz>; 'ndeans@doc.govt.nz' <ndeans@doc.govt.nz>; 'tlawton@doc.govt.nz' <tlawton@doc.govt.nz>; 'pbruere@doc.govt.nz' <pbruere@doc.govt.nz>; 'Peter.Douglas@dpmc.govt.nz' <Peter.Douglas@dpmc.govt.nz>; 'erica.gregory@epa.govt.nz' <erica.gregory@epa.govt.nz>; 'Doug Jones' <Doug.Jones@epa.govt.nz>; 'Ema Hao'uli' <Ema.Haouli@mbie.govt.nz>; 'Marcus Smith' <Marcus.Smith@mbie.govt.nz>; 'Vicki Compton' <Vicki.Compton@mbie.govt.nz>; 'Stephanie Zhang' <Stephanie.Zhang@mbie.govt.nz>; 'Lois Searle' <Lois.Searle@mch.govt.nz>; 'angela.hall@mch.govt.nz' <angela.hall@mch.govt.nz>; 'KEELAN, Ngawini (MPU)' <ngawini.keelan@mfat.govt.nz>; 'RILEY, John (TND)' <John.Riley@mfat.govt.nz>; 'Daniel.Waipoi@mfat.govt.nz' <Daniel.Waipoi@mfat.govt.nz>; 'REVELL, Alice (LGL/ERL)' <Alice.Revell@mfat.govt.nz>; 'Megan.Addis@mfat.govt.nz' <Megan.Addis@mfat.govt.nz>; 'Jemma.Lala@mfat.govt.nz' <Jemma.Lala@mfat.govt.nz>; 'WIKAIRA, Martin (MPU)' <Martin.Wikaira@mfat.govt.nz>; 'James.Churchill@mfat.govt.nz' <James.Churchill@mfat.govt.nz>; 'Lorena.Stephen@mfe.govt.nz' <Lorena.Stephen@mfe.govt.nz>; 'Tania.Gerrard@mfe.govt.nz' <Tania.Gerrard@mfe.govt.nz>; 'Kelly Palmer' <Kelly.Palmer@mfe.govt.nz>; 'Tipene.Chrisp@education.govt.nz' <Tipene.Chrisp@education.govt.nz>; 'Karepa.Wall@education.govt.nz' <Karepa.Wall@education.govt.nz>; 'wayne.ngata@education.govt.nz' <wayne.ngata@education.govt.nz>; 'Anna-Lee\_Annett@moh.govt.nz' <Anna-Lee\_Annett@moh.govt.nz>; 'Warbrick, Tia' <Tia.Warbrick@justice.govt.nz>; 'Saunders, Tim' <Tim.Saunders@justice.govt.nz>; 'Houlbrooke, Rachel' <Rachel.Houlbrooke@justice.govt.nz>; 'Roger.Falloon@justice.govt.nz' <Roger.Falloon@justice.govt.nz>; 'maia.warren@mpi.govt.nz' <maia.warren@mpi.govt.nz>; 'Nadia Ward' <wardn@tpk.govt.nz>; 'Sharmaine Nolan' <nolas@tpk.govt.nz>; 'Eli Waata-Amai' <waata@tpk.govt.nz>; 'Tracey Peters' <petet@tpk.govt.nz>; 'Karen Southon'



<[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; 'LENNOX-MARWICK, Alex (LGL)' <[Alexandra.Lennox-Marwick@mfat.govt.nz](mailto:Alexandra.Lennox-Marwick@mfat.govt.nz)>;  
'Amber.Aranui@mch.govt.nz' <[Amber.Aranui@mch.govt.nz](mailto:Amber.Aranui@mch.govt.nz)>; 'Jodi.Anderson@mfat.govt.nz'  
<[Jodi.Anderson@mfat.govt.nz](mailto:Jodi.Anderson@mfat.govt.nz)>; 'Perrine.Gilkison@mfe.govt.nz' <[Perrine.Gilkison@mfe.govt.nz](mailto:Perrine.Gilkison@mfe.govt.nz)>;  
'ttaiepa@doc.govt.nz' <[ttaiepa@doc.govt.nz](mailto:ttaiepa@doc.govt.nz)>; 'clyde\_smith@moh.govt.nz' <[clyde\\_smith@moh.govt.nz](mailto:clyde_smith@moh.govt.nz)>;  
Roberta Anetipa <[antir@tpk.govt.nz](mailto:antir@tpk.govt.nz)>; Ines Gilbert <[gilbi@tpk.govt.nz](mailto:gilbi@tpk.govt.nz)>; 'Paul.Diamond@dia.govt.nz'  
<[Paul.Diamond@dia.govt.nz](mailto:Paul.Diamond@dia.govt.nz)>; 'Mary McCulloch' <[Mary.McCulloch@mbie.govt.nz](mailto:Mary.McCulloch@mbie.govt.nz)>; Tikitu Tutua-Nathan  
<[natht@tpk.govt.nz](mailto:natht@tpk.govt.nz)>; Andrew Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Trevor Himona <[Trevor.Himona@dia.govt.nz](mailto:Trevor.Himona@dia.govt.nz)>  
**Cc:** Naomi Solomon <[solon@tpk.govt.nz](mailto:solon@tpk.govt.nz)>; Jaclyn Williams <[willj@tpk.govt.nz](mailto:willj@tpk.govt.nz)>; Tamati Olsen  
<[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Marie Winitana <[winim@tpk.govt.nz](mailto:winim@tpk.govt.nz)>; Sheridan Smith <[smits@tpk.govt.nz](mailto:smits@tpk.govt.nz)>  
**Subject:** RE: Updating the Crown Approach on Wai 262: draft Cabinet paper for comment

Kia ora koutou

Thanks again to all who have contributed to the section 81 process and discussions around next steps on Wai 262. The Minister for Maori Development now intends to table the section 81 report on Tuesday 11 December and take an oral item on Wai 262 to the Social Wellbeing Committee meeting on Wednesday 12 December.

The draft Cabinet paper on *Updating the Crown's approach to Wai 262*, attached, provides an indication of the discussion the Minister intends to have at the meeting. The Minister will then decide whether to submit the Cabinet paper, with amendments where required, to Cabinet early next year. If this is the case, we will be in touch again about timeframes and opportunities for additional agency input into that paper.

Thank you all too for your comments on the paper. We made a number of changes to it on the basis of your comments, and our Minister has made a number of additional changes in her feedback to us.

The paper now recommends that Cabinet agree:

- to develop a deliberate, clear, coordinated and holistic approach to Wai 262 that aligns with the Government's priorities
- that the Minister for Maori Development convene a group of Ministers to coordinate, and report back to Cabinet in May 2019 on, a whole-of-government approach to Wai 262
- that the Ministerial group consist of:
  - o the Minister for Maori Development and Associate Minister for the Environment (Chair);
  - o the Minister of Foreign Affairs;
  - o the Minister for Maori Crown Relations: Te Arawhiti;
  - o the Minister of Energy and Resources and Minister of Research, Science and Innovation;
  - o the Minister of State Services;
  - o the Minister for Treaty of Waitangi Negotiations;
  - o the Minister of Health;
  - o the Attorney-General, Minister for the Environment, Minister for Trade and Export Growth and Minister for Economic Development;
  - o the Minister of Internal Affairs;
  - o the Minister of Commerce and Consumer Affairs;
  - o the Minister of Statistics;
  - o the Minister of Conservation
- that the Crown make a high-level announcement about this kaupapa at Waitangi Day in 2019.

Nga mihi  
Erin

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**Erin Keenan, PhD**

Kaitatari Kaupapa Here Tomua

Senior Policy Analyst

Karauna-Iwi, Hapu, Whanau Maori

**Te Puni Kokiri, Policy Partnerships**

**Tauwaea DDI** : +64 4 819 6076 | **Waea Pukoro M** : +64 27 243 4628

**Waea Whakaahua F** : +64 4 819 6299 | **Paetukutuku W** : [www.tpk.govt.nz](http://www.tpk.govt.nz)

**Te Puni Kokiri**, 143 Lambton Quay

Wellington 6011

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**From:** Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>

**Sent:** Raapa, 07 Whiringa-a-rangi, 2018 11:38 a.m.

**To:** 'Anne\_O'Brien@moh.govt.nz' <[Anne\\_O'Brien@moh.govt.nz](mailto:Anne_O'Brien@moh.govt.nz)>; 'Ana\_Bidois@moh.govt.nz' <[Ana\\_Bidois@moh.govt.nz](mailto:Ana_Bidois@moh.govt.nz)>; 'Mihia.Pirini@crownlaw.govt.nz' <[Mihia.Pirini@crownlaw.govt.nz](mailto:Mihia.Pirini@crownlaw.govt.nz)>; 'Hugh.Karena@dia.govt.nz' <[Hugh.Karena@dia.govt.nz](mailto:Hugh.Karena@dia.govt.nz)>; 'aroha.dawson@dia.govt.nz' <[aroha.dawson@dia.govt.nz](mailto:aroha.dawson@dia.govt.nz)>; 'polly.martin@dia.govt.nz' <[polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz)>; 'ndeans@doc.govt.nz' <[ndeans@doc.govt.nz](mailto:ndeans@doc.govt.nz)>; 'tlawton@doc.govt.nz' <[tlawton@doc.govt.nz](mailto:tlawton@doc.govt.nz)>; 'pbruere@doc.govt.nz' <[pbruere@doc.govt.nz](mailto:pbruere@doc.govt.nz)>; 'Peter.Douglas@dpmc.govt.nz' <[Peter.Douglas@dpmc.govt.nz](mailto:Peter.Douglas@dpmc.govt.nz)>; 'erica.gregory@epa.govt.nz' <[erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz)>; 'Doug Jones' <[Doug.Jones@epa.govt.nz](mailto:Doug.Jones@epa.govt.nz)>; 'Ema Hao'uli' <[Ema.Haouli@mbie.govt.nz](mailto:Ema.Haouli@mbie.govt.nz)>; 'Marcus Smith' <[Marcus.Smith@mbie.govt.nz](mailto:Marcus.Smith@mbie.govt.nz)>; 'Vicki Compton' <[Vicki.Compton@mbie.govt.nz](mailto:Vicki.Compton@mbie.govt.nz)>; 'Stephanie Zhang' <[Stephanie.Zhang@mbie.govt.nz](mailto:Stephanie.Zhang@mbie.govt.nz)>; 'Lois Searle' <[Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz)>; 'angela.hall@mch.govt.nz' <[angela.hall@mch.govt.nz](mailto:angela.hall@mch.govt.nz)>; 'KEELAN, Ngawini (MPU)' <[ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz)>; 'RILEY, John (TND)' <[John.Riley@mfat.govt.nz](mailto:John.Riley@mfat.govt.nz)>; 'Daniel.Waipoi@mfat.govt.nz' <[Daniel.Waipoi@mfat.govt.nz](mailto:Daniel.Waipoi@mfat.govt.nz)>; 'REVELL, Alice (LGL/ERL)' <[Alice.Revell@mfat.govt.nz](mailto:Alice.Revell@mfat.govt.nz)>; 'Megan.Addis@mfat.govt.nz' <[Megan.Addis@mfat.govt.nz](mailto:Megan.Addis@mfat.govt.nz)>; 'Jemma.Lala@mfat.govt.nz' <[Jemma.Lala@mfat.govt.nz](mailto:Jemma.Lala@mfat.govt.nz)>; 'WIKAIRA, Martin (MPU)' <[Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz)>; 'James.Churchill@mfat.govt.nz' <[James.Churchill@mfat.govt.nz](mailto:James.Churchill@mfat.govt.nz)>; 'Lorena.Stephen@mfe.govt.nz' <[Lorena.Stephen@mfe.govt.nz](mailto:Lorena.Stephen@mfe.govt.nz)>; 'Tania.Gerrard@mfe.govt.nz' <[Tania.Gerrard@mfe.govt.nz](mailto:Tania.Gerrard@mfe.govt.nz)>; 'Kelly Palmer' <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; 'Tipene.Chrisp@education.govt.nz' <[Tipene.Chrisp@education.govt.nz](mailto:Tipene.Chrisp@education.govt.nz)>; 'Karepa.Wall@education.govt.nz' <[Karepa.Wall@education.govt.nz](mailto:Karepa.Wall@education.govt.nz)>; 'wayne.ngata@education.govt.nz' <[wayne.ngata@education.govt.nz](mailto:wayne.ngata@education.govt.nz)>; 'Anna-Lee\_Annett@moh.govt.nz' <[Anna-Lee\\_Annett@moh.govt.nz](mailto:Anna-Lee_Annett@moh.govt.nz)>; 'Warbrick, Tia' <[Tia.Warbrick@justice.govt.nz](mailto:Tia.Warbrick@justice.govt.nz)>; 'Saunders, Tim' <[Tim.Saunders@justice.govt.nz](mailto:Tim.Saunders@justice.govt.nz)>; 'Houlbrooke, Rachel' <[Rachel.Houlbrooke@justice.govt.nz](mailto:Rachel.Houlbrooke@justice.govt.nz)>; 'Roger.Falloon@justice.govt.nz' <[Roger.Falloon@justice.govt.nz](mailto:Roger.Falloon@justice.govt.nz)>; 'maia.warren@mpi.govt.nz' <[maia.warren@mpi.govt.nz](mailto:maia.warren@mpi.govt.nz)>; 'Nadia Ward' <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; 'Sharmaine Nolan' <[nolas@tpk.govt.nz](mailto:nolas@tpk.govt.nz)>; 'Eli Waata-Amai' <[waate@tpk.govt.nz](mailto:waate@tpk.govt.nz)>; 'Tracey Peters' <[petet@tpk.govt.nz](mailto:petet@tpk.govt.nz)>; 'Karen Southon' <[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; 'LENNOX-MARWICK, Alex (LGL)' <[Alexandra.Lennox-Marwick@mfat.govt.nz](mailto:Alexandra.Lennox-Marwick@mfat.govt.nz)>; 'Amber.Aranui@mch.govt.nz' <[Amber.Aranui@mch.govt.nz](mailto:Amber.Aranui@mch.govt.nz)>; 'Jodi.Anderson@mfat.govt.nz' <[Jodi.Anderson@mfat.govt.nz](mailto:Jodi.Anderson@mfat.govt.nz)>; 'Perrine.Gilkison@mfe.govt.nz' <[Perrine.Gilkison@mfe.govt.nz](mailto:Perrine.Gilkison@mfe.govt.nz)>; 'gchamberlain@doc.govt.nz' <[gchamberlain@doc.govt.nz](mailto:gchamberlain@doc.govt.nz)>; 'ttaiepa@doc.govt.nz' <[ttaiepa@doc.govt.nz](mailto:ttaiepa@doc.govt.nz)>; 'clyde\_smith@moh.govt.nz' <[clyde\\_smith@moh.govt.nz](mailto:clyde_smith@moh.govt.nz)>; 'Roberta Anetipa' <[antir@tpk.govt.nz](mailto:antir@tpk.govt.nz)>; 'Ines Gilbert' <[gilbi@tpk.govt.nz](mailto:gilbi@tpk.govt.nz)>; 'Paul.Diamond@dia.govt.nz' <[Paul.Diamond@dia.govt.nz](mailto:Paul.Diamond@dia.govt.nz)>; 'Mary McCulloch' <[Mary.McCulloch@mbie.govt.nz](mailto:Mary.McCulloch@mbie.govt.nz)>

**Cc:** Naomi Solomon <[solon@tpk.govt.nz](mailto:solon@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Jaclyn Williams <[willj@tpk.govt.nz](mailto:willj@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Marie Winitana <[winim@tpk.govt.nz](mailto:winim@tpk.govt.nz)>

**Subject:** RE: Updating the Crown Approach on Wai 262: draft Cabinet paper for comment

Kia ora ano

We attach the latest draft of the section 8I report. We would be grateful if you would provide comments on this draft by **next Wednesday, 14 November**.

As mentioned when we circulated the draft Cabinet paper on Wai 262 last week, we intend to include the Wai 262 update in the section 8I report as Annex 2 of the Cabinet paper. We have marked in red comment boxes the part of the attached draft section 8I report that we intend to include as Annex 2.

We also look forward to receiving comments from you **today** on the draft Cabinet paper we circulated last week (see the below email).

Nga mihi

Dominic

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**From:** Dominic Kebbell

**Sent:** Raapa, 31 Whiringa-a-nuku, 2018 10:42 p.m.

**To:** [Anne\\_O'Brien@moh.govt.nz](mailto:Anne_O'Brien@moh.govt.nz); [Ana\\_Bidois@moh.govt.nz](mailto:Ana_Bidois@moh.govt.nz); [Mihaiata.Pirini@crownlaw.govt.nz](mailto:Mihaiata.Pirini@crownlaw.govt.nz); [Hugh.Karena@dia.govt.nz](mailto:Hugh.Karena@dia.govt.nz); [aroah.dawson@dia.govt.nz](mailto:aroah.dawson@dia.govt.nz); [polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz); [ndeans@doc.govt.nz](mailto:ndeans@doc.govt.nz); [tlawton@doc.govt.nz](mailto:tlawton@doc.govt.nz); [pbruere@doc.govt.nz](mailto:pbruere@doc.govt.nz); [Peter.Douglas@dpmc.govt.nz](mailto:Peter.Douglas@dpmc.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); 'Doug Jones' <[Doug.Jones@epa.govt.nz](mailto:Doug.Jones@epa.govt.nz)>; Ema Hao'uli <[Ema.Haouli@mbie.govt.nz](mailto:Ema.Haouli@mbie.govt.nz)>; Marcus Smith <[Marcus.Smith@mbie.govt.nz](mailto:Marcus.Smith@mbie.govt.nz)>; 'Vicki Compton' <[Vicki.Compton@mbie.govt.nz](mailto:Vicki.Compton@mbie.govt.nz)>; Stephanie Zhang <[Stephanie.Zhang@mbie.govt.nz](mailto:Stephanie.Zhang@mbie.govt.nz)>; Lois Searle <[Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz)>; [angela.hall@mch.govt.nz](mailto:angela.hall@mch.govt.nz); KEELAN, Ngawini (MPU) <[ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz)>; RILEY, John (TND) <[John.Riley@mfat.govt.nz](mailto:John.Riley@mfat.govt.nz)>; [Daniel.Waipoi@mfat.govt.nz](mailto:Daniel.Waipoi@mfat.govt.nz); REVELL, Alice (LGL/ERL) <[Alice.Revell@mfat.govt.nz](mailto:Alice.Revell@mfat.govt.nz)>; [Megan.Addis@mfat.govt.nz](mailto:Megan.Addis@mfat.govt.nz); [Jemma.Lala@mfat.govt.nz](mailto:Jemma.Lala@mfat.govt.nz); WIKAIRA, Martin (MPU) <[Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz)>; [James.Churchill@mfat.govt.nz](mailto:James.Churchill@mfat.govt.nz); [Lorena.Stephen@mfe.govt.nz](mailto:Lorena.Stephen@mfe.govt.nz); [Tania.Gerrard@mfe.govt.nz](mailto:Tania.Gerrard@mfe.govt.nz); 'Kelly Palmer' <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; [Tipene.Chrisp@education.govt.nz](mailto:Tipene.Chrisp@education.govt.nz); [Karepa.Wall@education.govt.nz](mailto:Karepa.Wall@education.govt.nz); [wayne.ngata@education.govt.nz](mailto:wayne.ngata@education.govt.nz); [Anna-Lee\\_Annett@moh.govt.nz](mailto:Anna-Lee_Annett@moh.govt.nz); Warbrick, Tia <[Tia.Warbrick@justice.govt.nz](mailto:Tia.Warbrick@justice.govt.nz)>; Saunders, Tim <[Tim.Saunders@justice.govt.nz](mailto:Tim.Saunders@justice.govt.nz)>; Houlbrooke, Rachel <[Rachel.Houlbrooke@justice.govt.nz](mailto:Rachel.Houlbrooke@justice.govt.nz)>; [Roger.Falloon@justice.govt.nz](mailto:Roger.Falloon@justice.govt.nz); [maia.warren@mpi.govt.nz](mailto:maia.warren@mpi.govt.nz); Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Sharmaine Nolan <[nolas@tpk.govt.nz](mailto:nolas@tpk.govt.nz)>; Eli Waata-Amal <[waate@tpk.govt.nz](mailto:waate@tpk.govt.nz)>; Tracey Peters <[petet@tpk.govt.nz](mailto:petet@tpk.govt.nz)>; Karen Southon <[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; LENNOX-MARWICK, Alex (LGL) <[Alexandra.Lennox-Marwick@mfat.govt.nz](mailto:Alexandra.Lennox-Marwick@mfat.govt.nz)>; [Amber.Aranui@mch.govt.nz](mailto:Amber.Aranui@mch.govt.nz); 'Jodi Anderson@mfat.govt.nz' <[Jodi.Anderson@mfat.govt.nz](mailto:Jodi.Anderson@mfat.govt.nz)>; [Perrine.Gilkison@mfe.govt.nz](mailto:Perrine.Gilkison@mfe.govt.nz); [gchamberlain@doc.govt.nz](mailto:gchamberlain@doc.govt.nz); [ttaiepa@doc.govt.nz](mailto:ttaiepa@doc.govt.nz); [clyde\\_smith@moh.govt.nz](mailto:clyde_smith@moh.govt.nz); Roberta Anetipa <[antir@tpk.govt.nz](mailto:antir@tpk.govt.nz)>; Ines Gilbert <[gilbi@tpk.govt.nz](mailto:gilbi@tpk.govt.nz)>; [Paul.Diamond@dia.govt.nz](mailto:Paul.Diamond@dia.govt.nz); Mary McCulloch <[Mary.McCulloch@mbie.govt.nz](mailto:Mary.McCulloch@mbie.govt.nz)>  
**Cc:** Naomi Solomon <[solon@tpk.govt.nz](mailto:solon@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Jaclyn Williams <[willj@tpk.govt.nz](mailto:willj@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Marie Winitana <[winim@tpk.govt.nz](mailto:winim@tpk.govt.nz)>  
**Subject:** Updating the Crown Approach on Wai 262: draft Cabinet paper for comment

Tena koutou

Thank you again to those of you who have participated in our interagency 262 discussions. They were very useful to help us develop our thinking on potential ways the Crown could approach Wai 262.

We have now drafted a Cabinet paper and attach it paper for your consideration. We are aiming to lodge this paper to the Cabinet Maori Crown Relations Committee meeting on 22 November, for its consideration on 29 November. We would therefore be grateful if you would provide us with comments on it by next **Wednesday, 7 November**. This is to enable our Minister to circulate the paper for Ministerial consultation from next **Friday, 9 November – Friday, 16 November**.

The draft Cabinet paper seeks to update the Crown's approach to Wai 262. It recommends that Cabinet:

- Agree that Ministers and officials should not wait for a formal Crown response to Wai 262 before putting forward recommendations that have a connection to Wai 262.
- Note the obligation of Ministers and officials to take account of the findings and recommendations of the Wai 262 report and other Waitangi Tribunal reports when developing relevant policy.
- Invite the Minister for Maori Development to convene a group of Wai 262 portfolio Ministers to:
  - coordinate the Government's work and public engagement on existing Wai 262 work streams (Phase 1 work)
  - report to Cabinet in 2019 to update Cabinet on progress with the Phase 1 work and recommend next steps on Wai 262 (Phase 2 work).
- Invite the Minister for Maori Development, together with the Minister for Maori Crown Relations: Te Arawhiti and the Attorney-General, to engage with Maori (or to direct officials to engage on their behalf as appropriate) on the Crown's approach to Wai 262.
- Agree that the Crown make a high-level announcement about this kaupapa at Waitangi Day in 2019.

There are a number of areas of the paper that we would be grateful for your input on. We have flagged these in comment boxes. In particular, we would like you to indicate whether you consider that your work streams relevant to Wai 262 should go into Phase 1 or Phase 2. We recommend that you include work in Phase 1 if there is a reasonable likelihood that you will progress the work in 2019 and see coordination, strategic or other benefits of including this work alongside the other Phase 1 work streams. Please let us know if you have any

other workstreams that are not included, whether for Phase 1 or on a slower timeframe.

We have not yet included Annex 2 in the draft Cabinet paper. Annex 2 provides a summary of the Crown's progress in responding to the Wai 262 recommendations as included in this year's section 8I report. We are still working on that and aim to provide you with a copy of it later this week.

Please contact me or Naomi if you would like to discuss anything in relation to this kaupapa.

Nga mihi

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<p><b>Dominic Kebbell</b> <i>Contractor</i> <b>National Office</b></p> <div style="border: 1px dashed gray; width: 200px; height: 30px; margin: 10px auto; text-align: center;">?</div>	<p><i>Tauwaea DDI</i> : +64 4 819 6000   <i>Waea Pukoro M</i> : 021 029 35315 <i>Waea Whakaahua F</i> : 0800 875 329</p> <hr/> <p><b>Te Puni Kokiri</b>, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand PO Box 3943, Wellington 6140, New Zealand</p> <hr/> <p> <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a></p>
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The following information has been provided as an excerpt under section 16(1)(e).

## **Weekly Update – Hon Nanaia Mahuta, Associate Minister for the Environment**

### **For the week starting 15 April 2019**

#### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

- i. **Focus Area 1: Taonga works and mātauranga Māori** – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori
- ii. **Focus Area 2: Taonga species and mātauranga Māori** – Portfolios with strong links to taonga species, the environment and mātauranga Māori
- iii. **Focus Area 3: International indigenous matters** – Portfolios with strong links to international indigenous matters.

The Minister for the Environment would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

The following information has been provided as an excerpt under section 16(1)(e).

## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 15 April 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

- i. **Focus Area 1: Taonga works and mātauranga Māori** – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori
- ii. **Focus Area 2: Taonga species and mātauranga Māori** – Portfolios with strong links to taonga species, the environment and mātauranga Māori
- iii. **Focus Area 3: International indigenous matters** – Portfolios with strong links to international indigenous matters.

As Minister for the Environment, you would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

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The following information has been provided as an excerpt under section 16(1)(e).

## **Weekly Update – Hon David Parker, Minister for the Environment For the week starting 29 April 2019**

### **Cabinet material we have been consulted on**

Developing a Whole-Of-Government Strategy For Wai 262

This paper proposes the development of a new approach to address Wai 262 that aligns with the Government's priorities, and seeks to provide advice on the approach in October (subject to Cabinet agreement). This follows Te Puni Kōkiri's December 2018 report on the progress made in the implementation of Waitangi Tribunal recommendations, which featured in Wai 262. The report highlighted that while some progress on Wai 262 has been made, the Crown has not addressed key issues underlying the Wai 262 claims.

There is a large group of Ministers with a portfolio interest in Wai 262. The new approach proposed in the paper establishes sub-groups of Wai 262 portfolio Ministers on the basis of the following focus areas:

- i. Focus Area 1: Taonga works and mātauranga Māori – Portfolios with strong links to taonga works, te reo Māori or mātauranga Māori
- ii. Focus Area 2: Taonga species and mātauranga Māori – Portfolios with strong links to taonga species, the environment and mātauranga Māori
- iii. Focus Area 3: International indigenous matters – Portfolios with strong links to international indigenous matters.

As Minister for the Environment, you would be part of Focus Area 2. Each sub-group would develop and implement an integrated work programme on Wai 262 issues within their focus area, and across focus areas where appropriate. The Ministry would work with Te Puni Kōkiri and other agencies on any development of advice on the new approach.

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## Essential Freshwater 02: Māori values and measures of freshwater health: Seeking agreement to consult on options

Date Submitted:	21 June 2019	Tracking #: 2019-B-05719	
Security Level	In confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	<b>Agree</b> to include the two options identified in this briefing as part of the Essential Freshwater package	24 June 2019
CC Hon Kelvin Davis, Minister for Crown/Māori Relations	Note this briefing	
CC Hon Nanaia Mahuta, Minister of Local Government	Note this briefing	
CC Hon Damien O'Connor, Minister of Agriculture	Note this briefing	

Actions for Minister's Office Staff	<b>Forward</b> this report to Hon Kelvin Davis, Hon Nanaia Mahuta and Hon Damien O'Connor <b>Return</b> the signed report to MfE
Number of appendices and attachments: 3	Appendix 1: Kāhui Wai Māori's advice Appendix 2: Summary of the legislative framework for Māori involvement in freshwater management Appendix 3: Description of the mahinga kai value from the existing NOF under 'other national values'
Note any feedback on the quality of the report	

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Jade Newton		
Responsible Manager	Lucy Bolton	0274664634	✓
Director	Martin Workman	0225173268	



## Essential Freshwater 62: Māori values and measures of freshwater health: Seeking agreement to consult on options

### Key Messages

1. This briefing note provides you with analysis of two options that respond to the Kāhui Wai Māori's (KWM) recommendation to develop mandatory Māori measures of freshwater health for inclusion in the National Objectives Framework (NOF) in the National Policy Statement for Freshwater Management (NPSFM).
2. These options are:
  - A. Making mahinga kai a new compulsory value in the NOF
  - B. Creating a new 'tangata whenua' value category in the NOF to sit alongside the 'compulsory value' and 'other national value' categories. This option will become mandatory when tangata whenua identify values and attributes through established engagement processes in the NPSFM.
3. KWM only support Option A, which differs from official's preferred approach. We have attached KWM's advice in Appendix 1. As neither option has been impacts-tested, we recommend that you consult on both options as part of the Essential Freshwater package.

### Recommendations

4. We recommend that you:
  - a. **Agree** that officials continue to develop these options in the draft NPSFM with Kāhui Wai Māori Yes/No
  - b. **Agree** to include both options in the Essential Freshwater package that will go to Cabinet to be approved for public consultation. Yes/No

### Signature



Martin Workman  
Director, Freshwater Directorate:

Hon David Parker  
Minister for the Environment

Date

# Essential Freshwater 62: Māori values and measures of freshwater health: Seeking agreement to consult on options

## Supporting material

### Purpose

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5. In their report of April 2019 KWM recommended the Ministry for the Environment (the Ministry) develop a mandatory measure of freshwater health for inclusion in the NOF within the NPSFM. In your response letter to KWM, you agreed to explore this recommendation and have asked officials to provide you with further advice on how this recommendation could be achieved.
6. We provide you with two options to amend the NPSFM in order to do this:
  - A. Making mahinga kai a new compulsory value in the NOF
  - B. Creating a new 'tangata whenua' value category in the NOF to sit alongside the 'compulsory value' and 'other national value' categories.
7. These options will require regional councils to incorporate Māori values and measures of freshwater health more effectively into regional freshwater planning processes.
8. We only began the detailed development of these options following the Kahui's report, and have not been able to fully impact test them. We have also not been able to talk with councils or hapū/iwi to test the practicalities fully. We consider that consulting on both options, as part of the Essential Freshwater package, will enable this testing to happen, through targeted conversations with councils and hapū/iwi.

### Kāhui Wai Māori's preferred approach

9. KWM have advised officials that they only support Option A (with attributes determined locally with tangata whenua and not pre-determined nationally). We have attached their advice to this briefing note in Appendix 1 which provides analysis supporting this approach.
10. The Ministry's preferred approach diverges from KWMs. Officials recommend that you publicly consult on both options outlined in this briefing as neither option has been fully impact tested. This will also allow for hapū/iwi and regional councils to provide you with feedback on both options to allow for further development, resulting in a more robustly tested policy intervention.

### Analysis and Advice

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11. You have an opportunity to provide a clearer and more direct avenue for Māori participation in freshwater management, and to provide mechanisms in the NOF that are holistic and integrated in order to give effect to Te Mana o te Wai. Clarity and direction will provide councils with certainty about their obligations.

### ***Māori values and attributes of freshwater health are not being included in regional freshwater planning processes***

12. Overall Māori values and attributes of freshwater health are not being adequately identified, reflected or incorporated by regional councils in regional freshwater planning processes. If

Māori values or attributes of freshwater health are not being identified then they are not being monitored or managed.

13. You have agreed to our recommendations to clarify and strengthen Te Mana o te Wai in the NPSFM (2019-B-05597 refers). Currently, the NOF does not provide a comprehensive and nationally applicable mechanism for representing the full holistic and essential values of the waterbody (values pertaining to the water itself), as required by Te Mana o te Wai.
14. The existing compulsory values prioritise certain biophysical attributes of freshwater health (for example nutrients). These specific attributes do not fully reflect Māori values or all of the values that comprise Te Mana o te Wai.
15. 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. To fully reflect Te Mana o te Wai, additional biophysical attributes and other social narrative attributes must be considered in the freshwater objective-setting processes.
16. The lack of incorporation of Māori values and attributes of freshwater health are demonstrated and caused by:
  - A. The absence of strong centralised direction and regulation obligating regional councils to involve Māori in freshwater management
  - B. Poor regional council implementation practice in some circumstances, and an ad-hoc approach to involving Māori in freshwater management, leads to Māori values and measures being excluded from regional freshwater planning processes
  - C. A significant gap in council capacity and capability to involve and support hapū/iwi to participate in regional planning processes, and to understand and implement Māori outcomes for freshwater management
  - D. The costs and low capacity faced by hapū/iwi can be high, creating barriers to participation. There is also inconsistency in opportunities to obtain funding for participation.
17. Placing clearer and stronger requirements on regional councils, and improving the resourcing for regional councils and hapū/iwi is critical to enable effective implementation of these options, to ensure part 2 of the RMA (see Appendix 2) is delivered and to improve outcomes for freshwater.
18. This problem is regionally variable and complex. The current lack of clarity and compulsion on regional councils is a limiting factor contributing to the problem, but this is coupled with the practical reality that many hapū/iwi and regional councils are not resourced to engage fully on freshwater. This impacts their ability to implement the NPSFM. Further work is being undertaken to understand the causes, impacts and solutions to this resourcing issue.

### **Options analysis**

#### ***Option A: A new compulsory mahinga kai value in the National Objectives Framework***

19. This option would involve creating a new nationally-specified mahinga kai compulsory value in the NOF, equivalent to ecosystem health and human health for recreation. The difference with Option B is that a compulsory mahinga kai value would need to apply in all Freshwater Management Units (FMU), not just when determined to be relevant by hapū/iwi or regional councils.

20. This option provides greater clarity by identifying a single value for implementation, and places strong requirements on regional councils to ensure this value and attributes are incorporated into regional freshwater planning processes.
21. Mahinga kai is already established under the 'other national values' category of the NOF (the existing definition is provided in Appendix 3), and is a widely applicable value across the country. The Freshwater Leaders Group (FLG) have also recommended that mahinga kai is turned into a compulsory value.
22. For context on the existing NOF, the NPSFM supplies two compulsory values (Ecosystem Health and Human Health for recreation). These compulsory values apply everywhere in New Zealand, all of the time. To assist councils to uphold these values the NPS supplies attributes (e.g, periphyton, total nitrogen etc) that councils must monitor, and use to set a number in the plan that acts as a baseline measure (freshwater objective). These attributes also apply everywhere. To achieve the freshwater objective, councils put in place limits through rules which stipulate what can and cannot be done with water use, land use and discharges. The NPSFM also provides other values which councils and communities can use as, and where, they apply e.g fishing or food production etc. Where these other values are chosen then councils must also develop attributes to go with them.
23. We advise that within the context of the existing NPS, attributes would need to be established for mahinga kai to provide certainty for regional councils to be able to nationally implement the compulsory value. Attributes for mahinga kai have not been developed yet, and are not ready for inclusion in a draft NPSFM to consult on. We seek to develop our thinking on this further, in discussion with the Freshwater Advisory Groups, and to consult on what possible attributes might look like.
24. There are risks with adopting this approach as it is considered inappropriate to set national-level attributes for a compulsory Māori value because different hapū/iwi will articulate their measures of freshwater health differently.
25. The new planning process will require regional councils to notify their plans by the end of 2023 so it will be difficult for them to identify attributes within these timeframes. Therefore, we suggest that you consult on this option, particularly so that you receive a wide range of views from Māori, and regional councils on the practicalities of this approach.

**Option B: Create a new 'tangata whenua' value category in the NOF**

26. The intent of this option is to provide the scope to identify a range of Māori values and to support hapū/iwi when they are ready and able to engage. The difference with Option A is that Option B will apply only when agreed by tangata whenua in relevant FMUs. Including a new category of value in the NOF introduces 2 steps
  - A. tangata whenua values and attributes are identified through the engagement processes required by Part D of the NPSFM and Te Mana o te Wai
  - B. regional councils must incorporate provisions to provide for these values into planning documents, in consultation with tangata whenua.
27. This option clarifies and builds on existing requirements under Part D of the NPSFM and makes them mandatory. This makes it clear to regional councils that Māori values need to be prioritised, and is intended to show regional councils how to bring Māori values into freshwater planning processes by integrating the values into the NOF.
28. It provides hapū/iwi with flexibility in how they engage with regional councils, and places stronger obligations on councils to incorporate the outcome than is currently required in

Part D. This option is not intended to place the responsibility on hapū/iwi to initiate the engagement, this remains a regional council responsibility.

29. Any values in the NOF may apply to tangata whenua. For greater clarity, a suite of existing NOF values such as mahinga kai, wai tapu, tauranga waka could be grouped under the tangata whenua value category, whilst also specifying that any value may be identified (Appendix 1 of the NPSFM). Attributes would need to be determined locally by hapū/iwi to ensure their aspirations and unique values based on whakapapa, history, tikanga and mātauranga are met.
30. To support this recommendation, a guidance package will be produced to assist hapū/iwi with support from regional councils to develop attributes and to navigate other NOF processes. Guidance could provide exemplars of attributes that could be applicable, or methods for how to identify attributes. This will ensure hapū/iwi are able to retain their autonomy in deciding how to measure their values, with assistance to develop attributes. The Ministry has undertaken work with hapū/iwi in the past to develop such approaches.
31. For option B to be workable for regional councils there needs to be certainty. Officials are still considering further aspects to provide certainty including the process for determining attributes, any thresholds for values and attributes, and timeframes.
32. Many hapū/iwi have already identified values and attributes through iwi management plans and kaupapa Māori assessment frameworks. A range of methods, frameworks and tools for hapū/iwi are summarised in a report<sup>1</sup> by Hannah Rainforth and Garth Harmsworth. This report was commissioned by regional councils in 2018 to assist regional councils with implementation of the NPSFM. These resources provide a good starting point for hapū/iwi to develop their own attributes for freshwater health and to feed into the NOF and regional freshwater planning.
33. We consider that consultation on this option will allow testing of the proposed process and to understand from council and iwi the resource requirements needed.

### **Consultation and Collaboration**

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34. KWM may raise discuss their preferred approach with you when you meet with them on 25<sup>th</sup> June 2019. Talking points (2019-B-05707 refers) have been provided separately to support you in that conversation.
35. Feedback from Essential Freshwater Taskforce officials from Te Arawhiti, Te Puni Kokiri and the Ministry of Primary Industries has been incorporated into this briefing note.

### **Risks and mitigations**

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36. There is a relationship risk that if we do not take steps to develop mandatory Māori values and measures as recommended by the KWM in their report we appear to be acting in bad faith. Consulting on multiple options, and continuing to develop options with the KWM will mitigate this risk without any decisions needing to be made at this point.
37. Option A presents the risk that central government is pre-determining the Māori values and attributes that apply in each FMU, undermining the role of hapū/iwi to determine this for themselves. This could create a perception risk that further undermines the trust between

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<sup>1</sup> 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.

the Crown and Māori. This risk could be mitigated through consulting openly in order to understand Māori views in support or not of this option, and by consulting with multiple options.

38. Option B includes the risk that providing for a wider scope of values that are not explicitly defined could create uncertainty for regional councils. To mitigate this risk substantial guidance will be provided to support a range of values, building on the work produced by iwi science experts during the establishment of the NOF.

#### **Next Steps**

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39. We seek your approval to include the two options identified in the Essential Freshwater Package to go to Cabinet. If you agree, you will receive further detail of the impacts in the draft Regulatory Impact Statement accompanying the Cabinet paper as part of the wider package on 4 July.
40. This topic will be on the agenda when you meet with officials on 24 June.

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## Attachment 1: Kāhui Wai Māori's advice

### TE KĀHUI WAI MĀORI BRIEFING TO HON. MINISTER PARKER – 21 JUNE 2016 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.<sup>2</sup>
3. We understand that the Ministry also agrees with this recommendation. Officials are proposing two options to give effect to the recommendation, Options A and B.
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. Option A: Creating a compulsory mahinga kai value in the NOF of the NPSFM.
5. KWM does not support Option B proposed in the Officials' Briefing (see our comments below).
6. We understand that Ministry officials are recommending you consult publicly on both options 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.
7. 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*

8. 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:

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<sup>2</sup> See the 31 May 2019 further advice from the Freshwater Leaders Group.

- 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).
9. 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'.
10. 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.
11. 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.<sup>3</sup> 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*

12. 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.
13. 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.
14. 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

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<sup>3</sup> NPS-FM, page 7.



and other social attributes that must be considered in order for freshwater objective-setting processes to be reflective of Te Mana o te Wai.

15. 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 associated resources and status that they attract in the regulatory system. This must be remedied.
16. 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*

17. 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.
18. 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.
19. 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: Accept Option A**

20. Option A involves making the existing mahinga kai values in the NOF a consolidated third compulsory value in narrative form as follows:

<b>COMPULSORY NATIONAL VALUES</b>
<p><b>Mahinga kai</b></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>

21. 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)
22. 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.
23. This will ensure the aspirations and unique values of iwi and hapū based on whakapapa, history, tikanga and mātauranga are met.

**Analysis**

24. 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.
25. 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.

26. This proposal also provides certainty. The single value that is to be identified and incorporated is mahinga kai.
27. 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.
28. For those regional councils that are yet to engage with iwi and hapū to identify mahinga kai values, a report<sup>4</sup> 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.
29. 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.
30. In **Appendix One** we provide a case study as an example of 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.
31. 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.

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<sup>4</sup> 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.

- 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.

### No support for proposed Option B

- 32. 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.
- 33. We have considered Option B 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

- 34. 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 Option A only 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 <sup>5</sup>	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 <sup>6</sup>	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 <sup>7</sup>	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 <sup>8</sup>	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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> Ibid 1. pp. 39-34

<sup>8</sup> Independent Māori Statutory Board. (2018). Te Tiriti o Waitangi Audit Report 2018. Auckland: Independent Māori Statutory Board.

Environmental distress	Likert scale	Social survey <sup>9</sup>	An average score of below 3 for severity of distress.
Connection of people to waterways	Likert scale	Social survey <sup>10</sup>	An average score of 3 or above for connection to waterways.

## Appendix 2 NOF Attribute Table Format

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Water temperature
<b>Attribute Unit</b>	°C
<b>Objective state</b>	Water temperature remains ≤20°C
<b>Monitoring method</b>	Pre-existing regional council temperature monitoring

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Quality of mahinga kai
<b>Attribute Unit</b>	Abundance
<b>Objective state</b>	Catch 4 eating tuna at one site when using standard mahinga kai fyke net setting method.
<b>Monitoring method</b>	Standard eel survey monitoring <sup>11</sup>

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Streams

<sup>9</sup> Higginbotham, N., Freeman, S., Connor, L., Albrecht, G., & Agho, K. (2006). Validation of an environmental distress scale. *EcoHealth*, 3(4), 245-254

<sup>10</sup> 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.

<sup>11</sup> 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.

<b>Attribute</b>	Quality of mahinga kai
<b>Attribute Unit</b>	mg contaminant/kg plant material
<b>Objective state</b>	Mahinga kai species are safe for human consumption in accordance with the Australia New Zealand Food Standards Code
<b>Monitoring method</b>	Watercress sampling <sup>12</sup>

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Intergenerational knowledge transfer
<b>Attribute Unit</b>	Likert scale
<b>Objective state</b>	An average score of 4 'Te Rea: I am learning and practising this knowledge' across all knowledge types.
<b>Monitoring method</b>	Social survey <sup>13</sup>

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Iwi are part of water governance
<b>Attribute Unit</b>	Likert scale
<b>Objective state</b>	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.
<b>Monitoring method</b>	Annual partnership audit <sup>14</sup>

<sup>12</sup> 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.

<sup>13</sup> Ibid 1. pp. 39-34

<sup>14</sup> Independent Māori Statutory Board. (2018). *Te Tiriti o Waitangi Audit Report 2018*. Auckland: Independent Māori Statutory Board.



<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Environmental distress
<b>Attribute Unit</b>	Likert scale
<b>Objective state</b>	An average score of below 3 for severity of distress.
<b>Monitoring method</b>	Social survey <sup>15</sup>

<b>Value</b>	Mahinga kai
<b>Freshwater Body Type</b>	Rivers
<b>Attribute</b>	Connection of people to waterways
<b>Attribute Unit</b>	Likert scale
<b>Objective state</b>	An average score of 3 or above for connection to waterways.
<b>Monitoring method</b>	Social survey <sup>16</sup>

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<sup>15</sup> Higginbotham, N., Freeman, S., Connor, L., Albrecht, G., & Agho, K. (2006). Validation of an environmental distress scale. *EcoHealth*, 3(4), 245-254

<sup>16</sup> 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.

## Attachment 2: Summary of the legislative framework for Māori involvement in freshwater management

1. The Resource Management Act (RMA) recognises the role of tangata whenua as the Crown's Treaty partner, and as kaitiaki over their freshwater taonga. The RMA creates a strong mandate for Māori involvement in resource management. The RMA specifically places obligations on those exercising functions and powers under the Act to recognise and provide for Māori relationships with the environment, have particular regard to kaitiakitanga, and take into account the principles of the Treaty of Waitangi. To do so requires that the freshwater management system can provide for a sufficient level of Māori involvement to recognise their role as a Treaty partner and as kaitiaki.
2. Part D of the NPSFM aligns with Part 2 of the RMA by requiring regional councils to provide for the involvement of iwi and hapū, and to identify and reflect tangata whenua values in the management of freshwater, and decision-making regarding freshwater planning. This includes on how all other objectives in the NPSFM are given effect to.
3. Note that Māori have consistently argued that the government need to strengthen Māori involvement in freshwater management in WAI 2358 (The National Freshwater and Geothermal Resources Inquiry). This matter was also raised in WAI 262 (A report of claims concerning New Zealand law and policy affecting Māori culture and identity). A whole of government approach is being proposed to address the WAI 262 inquiry, of which the Ministry considers water is a key work-stream.
4. The NPSFM was originally developed, in part, to address the issue that regional plans contained narrative objectives about protecting water quality and healthy ecosystems etc, but had no clear provisions stating how this would be achieved. To address this, the NPSFM put in place an architecture that requires councils to apply a Values-Attributes-Limits sequence. Each subsequent component supports the one before it to ensure objectives for protecting water quality and healthy ecosystems are achieved. Using a house analogy, objectives are described through a 'roof of Values', supported by 'walls of Attributes', which in turn are supported by 'Limits which form the floor'.
5. In the NOF there are two compulsory values (ecosystem health and human health) and these values apply in all Freshwater Management Units (FMU). The NOF sets out a framework for identifying specific, measurable and achievable freshwater objectives to support values. In terms of values, Appendix 1 includes mahinga kai, wai tapu and tauranga waka in the 'other national values' category. These are values that may be identified if relevant within an FMU.

**Attachment 3: Description of the mahinga kai value from the existing NOF under 'other national values'**

**Mahinga kai** – Kai are safe to harvest and eat. Mahinga kai 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.

**Mahinga kai** – Kei te ora te mauri (the mauri of the place is intact). 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.

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The following information has been provided as an excerpt under section 16(1)(e).

**Weekly Update**  
**Hon Nanaia Mahuta**  
**Acting Minister for the Environment**  
**Associate Minister for the Environment**  
**For the week starting 15 July 2019**

**Strategic priorities**

**System reform**

We are currently planning an event for Minister Parker to announce the Government's intention to review the Resource Management Act 1991 (RMA), as well as the appointment of Hon Tony Randerson QC as Chair of the Resource Management Review Panel to be established to support the review. We expect this will take place on Wednesday 24 July from 9.30-10.30am.

Launch invitees will receive an embargoed copy of the Cabinet paper and draft Terms of Reference 24 hours before the event. These documents will also be proactively released on our website, following the launch.

Invitees will include all groups named in the Cabinet paper who are to be engaged on the review scope (Phase 1 engagement). The following table lists these groups.

<b>Group type</b>	<b>Group</b>
Pan Māori groups	Iwi Leaders Group, Kāhui Wai Māori, New Zealand Māori Council, Federation of Māori Authorities, Te Tumu Paeroa
Professional and advocacy bodies	Resource Reform New Zealand, Environmental Defence Society, Local Government New Zealand, Resource Management Law Association, New Zealand Planning Institute, Ngā Aho, Papa Pounamu (through the New Zealand Planning Institute), Environment and Conservation Organisations of NZ, Forest & Bird, Fish & Game, New Zealand Law Society, Interim Climate Change Committee, Sustainability Council, Farming Leaders Group, Council of Trade Unions

Minister Parker has also agreed to send a letter to iwi authorities signalling his intention to undertake the review and his aspirations for engagement with iwi during the process. The letter will be sent at the same time as the invitations for the review go out to invitees.

*Possible connections with Wai 262 response*

We are currently considering the possible overlaps in scope and process between the comprehensive review of the resource management system with the ongoing work on a whole-of-government response to the Waitangi Tribunal's report on Wai 262 (*Ko Aotearoa Tenei*).

Several chapters of the *Ko Aotearoa Tenei* report directly concern the Resource Management Act 1991 (RMA). We will shortly be talking to external stakeholders as part of both our Phase 1 engagement and upcoming regional hui and will work with Te Puni Kōkiri to align timing and messaging where appropriate.

The following information has been provided as an excerpt under section 16(1)(e).

## **2019-B-05821 Next steps for progressing the comprehensive review of the resource management system**

7 August 2019

This briefing provides advice and seeks your direction on three procedural matters for the comprehensive review of the resource management system (the review):

Maori-Crown Relations:

Te Arawhiti Maori roles in resource management will be a key component of the RMA review

Maori Development

RMA policy statements and plans can remove some administrative barriers to Maori development, including on Maori land.

### **Treaty of Waitangi Settlements are changing the nature of environmental governance in parts of New Zealand**

With now 67 pieces of settlement legislation with 73 groups (comprising a mix of iwi, hapū and various collectives) the iwi/Māori and Crown relationship is at a different place to where it was in 1991.<sup>2</sup> Some of the larger and bespoke settlements represent ways that *lead* other legislation in the recognition of Te Ao Māori (a Māori world-view). These are instances where kawa has been recognised in legislation in its own right eg, Te Awa Tupua, Te Urewera (and soon to be recognised for Taranaki Maunga, Whangaehu River) or where policy aims to ‘protect and restore’ environmental quality, as is the case for the Waikato-Waipā rivers Te Ture Whaimana (Vision and Strategy).

There has also been an absence of clear direction to establish how iwi/Māori interests should be provided for. The Waitangi Tribunal has found in over 16 reports that the RMA is not compliant with the Treaty – in particular that the wording in the RMA that the Treaty “must be taken into account” is “fatally flawed”. The tribunal has recommended that all persons acting under it shall act in a manner that “is consistent with” the principles of the Treaty.

### **Problems with implementation – functions and tools**

#### **Insufficient and inconsistent weight given to the Treaty of Waitangi**

The RMA was designed to provide for better recognition and protection of Māori rights, interests and values than legislation that had come before it. However, in practice Treaty settlements have been more successful in in setting up co-governance and joint management agreements (JMA)’s and in providing for management and operations in accordance with tikanga Māori (for example recognition by the Crown of the legal personhood of Te Awa Tupua (Whanganui River) and Te Urewera).

Many iwi/Māori consider that the RMA has not fulfilled its promise. More often than not, Māori have found themselves largely as objectors rather than as true partners in decisionmaking. The approach and capacity of councils across the country has been inconsistent. The Productivity Commission (2017), put this down to three key factors:

□ constraints on the capability and capacity of some councils and some iwi authorities to

engage with one another;

- lack of clarity about how to implement legislative requirements for Māori participation in planning; and
- varying expectations about the nature of council–Māori relationships.

## Existing tools to partner with iwi/Māori are not well used

Wai 262 noted ‘it is disappointing that the RMA has almost completely failed to deliver partnership outcomes in the ordinary course of business when the mechanisms to do so have long existed’. To date, there have still been no section 33 delegation of powers or functions to iwi, there are only two non-Treaty settlement joint management agreements, with one only over multiply owned Māori land and no hapū or iwi as Heritage Protection Authorities.

**Fairness:** The system promotes fair distribution of costs and benefits across generations, communities and iwi/Māori.

Many choices made in the resource management system are inherently about the **allocation** of our built or natural environment (between communities, generations, private or public interests). The current system favours certain users over others. However, determining what is “fair” is difficult – there are always going to be costs. This principle is about making sure choices in the system are reasonable, underpinned by a strong evidence base, and recognise Māori interests.

**Stewardship and kaitiakitanga:** The system is focused on achieving longterm benefits for communities and future generations, including for health, wellbeing and prosperity.

This principle is about the long term stewardship of the environment for intergenerational equity. It recognises the interconnected nature of the environment, society, culture and economy, and is based on kaitiakitanga (i.e. along with the privileges the environment provides, come the responsibility to care for it and maintain it for future generations)

**Treaty of Waitangi:** The principles of the Treaty of Waitangi and the relationship between the Crown and Māori is given due recognition with sufficient specificity.

The Treaty of Waitangi provides the foundation for policy development in relating to iwi/Māori participation in resource management. It recognises the important role of Māori as Kaitiaki.

**Open and inclusive processes:** People are made aware of, and have opportunities to participate in decisions that affect them. This principle is about those who are affected by a decision having a right to be involved in the decision-making process. The principle recognises that decisions should be made based on an understanding of how different groups will be affected – including different communities, levels of government, industry, iwi/Māori or other interest groups.

## Objective 4: A system that provides greater recognition of the Treaty of Waitangi and te ao Māori throughout

### Key outcomes to enable

- Māori values incorporated in decision-making
- More effective iwi partnerships
- Iwi/hapū empowered to protect the environment & improve outcomes for people

Ensuring that Māori have a stronger and more consistent role in the resource management system recognises and provides for rangatiratanga and their role as kaitiaki. It also:

- Provides early opportunity for iwi/Māori to influence decisions that affect them upfront
- Protects Treaty settlement arrangements
- Actively protects resources and areas of cultural significance to Māori.

Some important questions in relation to this objective are outlined in table below.

Objectives and alignment	How can the purpose and principles of the system give due recognition to the Treaty of Waitangi?
Functions and processes	What is the role of spatial planning in including more upfront and effective partnerships between central, local government and Māori/iwi? What is the potential role of national direction in clarifying how Māori values, rights and interests should be provided for?
Institutions	How to improve capacity and capability of central and local government in tikanga, Te Tiriti o Waitangi, and te reo Māori How to invest in iwi/hapu to develop and implement the solutions (i.e. provide for their role as kaitiaki) How to provide for the diverse (and changing) range and nature of iwi/Māori interests, including urban Māori or those who don't affiliate with a marae

### Early Waitangi Tribunal findings

The RMA was enacted within a legislative environment that sought to give greater recognition to responsibilities under the Treaty of Waitangi. Prior to the RMA, the only recognition of a specific Māori interest in resource management legislation was section 3(l)(g) of the Town and Country Planning Act 1977. A growing number of Waitangi Tribunal reports were critical of this.

### Te ao Māori and the Treaty of Waitangi relationship

Te ao Māori – the Māori world – conceptualises the connection between people and the environment in a different way and provides a useful lens through which to reconsider resource management in New Zealand. The environment is not seen as a collection of resources to exploit for human benefit, nor as a separate entity to protect; rather, people and the environment are thought of as part of a cosmological system based on kinship, respect and reciprocity. The environment is family. One example is this whakatauki referring to Te Awa Tupua/Whanganui River: "Rere kau mai Te Awa Nui nei, mai i Te Kāhui Maunga ki Tangaroa. Kō au Te Awa; ko Te Awa ko au." This great river flows from the mountains of the national park to the sea. I am the river; the river is me. While a te ao Māori understanding of the interconnection between people and the environment shares some similarities with recent thinking in western science about "social-ecological" systems, Māori resource management approaches rely on distinctly Māori concepts. There are many of these, but tikanga is one of the most central. <sup>70</sup> Tikanga is, broadly, "values, principles, ethics or norms that determine appropriate conduct, the Māori way of doing things, and ways of doing and thinking held by Māori to be just and correct". Tikanga is often regarded by lawyers as customary law, but has also been described as an essential part of mātauranga (knowledge).

Dr Robert Joseph has pointed out that traditional tikanga is neither static nor unchanging. Rather, it provides principles and values that are interpreted and applied in different contexts.<sup>71</sup> Taking this approach, he suggests tikanga might "correlate harmoniously" with western frameworks for managing impacts on eco-systems by focusing on what they aim to achieve and involving Māori in developing the approach. To this end, the Treaty of Waitangi provides the foundation for policy development regarding the roles and responsibilities of Māori in resource management, and in particular the exercise of rangatiratanga over natural resources.

Four important examples are the Treaty of Waitangi settlements relating to Te Urewera and Te Awa Tupua/Whanganui River, and the soon to be legislated settlements for Taranaki Maunga and Whaengaehu River. Each of these create legal personhood for the environment in those places, with corresponding rights, duties, and responsibilities.<sup>72</sup> This understanding of the environment is reflected in a management approach that incorporates joint representation by the Crown and iwi in development of a management plan.

The Ministry for the Environment has also worked together with the Iwi Leaders Group and Kahui Wai Māori in recent years to incorporate a te ao Māori conceptual framework for managing freshwater resources into law - te mana o te wai. In response to the Waitangi Tribunal findings in 2007, the Freshwater Iwi Leaders Group developed 'Ngā Matapono ki te Wai' of which Te Mana o te Wai is a key element. This framework establishes a hierarchy of management obligations based on a Māori world view:

1. The first obligation is to protect the health and mauri of nature.

<sup>70</sup>Some closely related concepts are tapu (being set apart); mana (prestige); noa (neutrality, free from tapu or any other restriction); manaakitanga (hospitality); take (cause); utu (reciprocity between people and with nature); and ea (satisfaction), whanaungatanga (maintaining kin relationships with humans and the natural world); koha (gift exchange); aroha (charity and generosity); mauri (recognition of the life-force of persons and objects); and hau (respect for the vital essence of a person, place or object).

<sup>71</sup>Joseph, Dr Robert, *The Treaty, tikanga Māori, ecosystem-based management, the RMA and power sharing for environmental prosperity in Aotearoa New Zealand – possible ways forward*, in Environmental Defence Society, *Reform of the Resource Management System: Working Paper 3*, 2018.

<sup>72</sup>Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s. 12-14.

Not government policy

27

2. The second obligation is to ensure that the essential needs of people are met. This includes ensuring safe access to drinking water, and allowing for customary uses.

3. The third obligation is to enable other consumptive use, provided such use does not adversely impact the mauri of nature.

This establishes a clear hierarchy between the value of ecosystems and resource use. A review of the purpose and principles of the RMA will need to decide the extent to which a future system incorporates ideas like these from te ao Māori and tikanga.

## Implications for the RMA purpose and principles

The table below summarises the implications of these frameworks for the purpose and principles of the RMA.

Te ao Māori and Treaty of Waitangi	Relationship People and nature are intertwined and our first obligation is to provide for biological diversity and the life supporting capacity of ecosystems. The Treaty of Waitangi provides the foundation for policy development regarding roles and responsibilities in resource management.
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## Option 1: Balancing environmental protection and development objectives

Te ao Māori

A weaker sustainability approach is less compatible with te ao Māori; an integrated approach to land use and environmental protection is more compatible with te ao Māori. Other te ao Māori concepts could be advanced through this option

Te ao Māori

Stronger sustainability and integrated management are more compatible with te ao Māori. Other te ao Māori concepts could be advanced through this option.

## Option 3: Separate provision for land use planning for development and environmental protection

Te ao Māori

Stronger sustainability is compatible with te ao Māori, less integrated management is less compatible with te ao Māori. Other te ao Māori concepts could be advanced through this option.



## Option 4: Separate provision for strategic planning to integrate land use and infrastructure planning and environmental protection

Te ao Māori

Compatibility with te ao Māori will depend on how spatial planning is integrated into an environmental protection framework.

Other te ao Māori concepts could be advanced through this option

### How to better recognise te ao Māori resource management concepts

Justice Joe Williams has pointed out that current provision for Māori interests in the RMA was hard won by a wave of Māori activism in the 1970s and 1980s. That said, “the natural fit between Māori environmental perspectives and the growth of a broader based national identity that values environmental sustainability” may enable better recognition of Māori interests in the future.<sup>86</sup>

A broad range of options are available to better recognise a te ao Māori approach to resource management. These include both the underpinning philosophy of the Act itself, the particular use of Māori concepts, and the role for Māori in decision making processes.

Recent progress in recognition of Māori interests in resource management has largely been driven through Treaty settlement processes, and the resulting arrangements are a useful starting point for consideration of options for reform. An important judgement for the review is its level of ambition in this regard.

<sup>86</sup> Williams, Joe, ‘The future of Māori resource management’, in *Beyond the RMA: an in-depth exploration of the Resource Management Act* (pp. 83–104). Auckland: Environmental Defence Society, 2007.

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The following information has been provided as an excerpt under section 16(1)(e).

**Weekly Update**  
**Hon David Parker, Minister for the Environment**  
**For the week starting 12 August 2019**

**Updates for noting**

**Wai 262**

In April this year, Cabinet approved the Minister for Māori Development's proposal to develop a whole-of-government response to the Waitangi Tribunal's report on Māori culture and identity (the Wai 262 report).

Minister Mahuta is meeting with the Iwi Chairs forum on 24-26 August. At that time, Te Puni Kōkiri will issue a public announcement regarding Cabinet's decision and the proposed structure for the whole-of-government response. As a result, we expect to receive inquiries from the public regarding the Ministry's position on the report.

We understand there are implications for our work programmes, particularly the Resource Management review, and Essential Freshwater package. We have a work programme to consider those implications.

Of particular focus are recommendations concerning: building iwi capacity to engage with resource management processes – this is being addressed through internal projects, and a joined-up project with Internal Affairs; and improving the Resource Management Act to reach its full potential where Māori interests are concerned – this can be addressed in the Resource Management review.



Document 19

## Essential Freshwater 74: Seeking agreement on the future of the Kāhui Wai Māori

Date Submitted:	27 August 2019	Tracking #: 2019-B-05926	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	<b>Agree</b> to extend Te Kāhui Wai Māori (KWM) for a further twelve months (Oct 2019 – Sep 2020) <b>Agree</b> to send letters to the existing KWM members and the Chair inviting them to continue in their roles for an additional twelve months <b>Approve</b> us exploring an indicative work programme with KWM for this additional twelve-month period	30 August 2019
To Hon Nanaia Mahuta, Minister for Māori Development		
To Hon Kelvin Davis, Minister for Māori/Crown Relations: Te Arawhiti		

Actions for Minister's Office Staff	<b>Forward</b> this briefing to Hon Kelvin Davis, Minister for Māori/Crown Relations: Te Arawhiti and Hon Nanaia Mahuta, Minister for Māori Development <b>Return</b> the signed briefing to the Ministry for the Environment (MfE)
Number of appendices and attachments 1	<b>Out of scope</b> <div style="background-color: black; height: 15px; width: 100%;"></div>

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Matthew Cunningham		
Responsible Manager	Lucy Bolton	027 466 4634	✓
Director	Katherine Meerman		

# Seeking agreement on the future of the Kāhui Wai Māori

## Purpose

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1. This briefing:
  - a. Updates you on the work streams that we intend to discuss with KWM for the remainder of its initial term (end of September 2019)
  - b. Outlines our recommended process for reappointing the existing members for a further twelve months (from October 2019 to September 2020), and for appointing additional members if required
  - c. Sets out an indicative forward work programme that we would like to discuss with KWM.

## Work streams for the remainder of current term (until the end of September 2019)

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### *Work streams*

2. There are several work streams that we intend to progress with KWM for the remainder of its initial term. Should you agree to extend KWM for a further twelve months, these work streams will continue into their second term:
  - a. Public consultation on the Essential Freshwater package (if KWM chooses to participate)
  - b. Analysing the options for introducing mandatory Māori measures of freshwater system health into the National Policy Statement for Freshwater Management (NPSFM)
  - c. Discussing how Te Mana o te Wai is reflected and incorporated into the NPSFM through public consultation
  - d. Engaging on the comprehensive review of the resource management system and Three Waters.

### *KWM's role in public consultation*

3. We support working alongside KWM during the public consultation process for several reasons:
  - a. It will increase the credibility of the package to Māori
  - b. It will demonstrate the Crown's commitment to working collaboratively with a range of Māori voices and perspectives
  - c. We can work with KWM to test policy options with Māori.
4. We believe that the best way for us to work together with KWM during public consultation is for KWM members to attend all or some of the hui scheduled by MfE. This will allow our respective views on the package to be communicated directly to all hui attendees. Should this not prove feasible, we have proposed to record statements from the advisory group Chairs to play at hui.
5. We have not had an indication if KWM will participate in public consultation. If they do not, this may have a negative impact on how Māori respond to the Essential Freshwater package. Māori attendees may ask how KWM's advice was reflected in the package, and why its members declined to participate in public consultation. It could give the impression that the package does not include sufficient 'wins' for Māori.

6. Individual KWM members may also decide to make public statements opposing some or all of the package. You have previously agreed that advisory group members will be free to express their individual views on the policy proposals.<sup>1</sup> Any opposing statements by KWM members may have an impact on how the package is received across Māoridom, given the broad cross-section of society that the group represents. These statements could also increase the risk of court or Waitangi Tribunal action.
7. We will update you when we know whether KWM members will be participating in public consultation.

## **Extending KWM for a further twelve months**

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### *Assessment of KWM's effectiveness and efficiency*

8. Minister Parker has previously indicated he intends to review the efficiency and effectiveness of KWM, and make decisions on its future, before the end of its first term.<sup>2</sup> We have reviewed the past year to determine what has worked well and where we could improve the working arrangements for the year ahead. A summary of this review is set out below and, on this basis, we recommend extending the KWM for a further year.
9. KWM has engaged strongly and positively through the Essential Freshwater process. They have worked alongside us to develop advice and have been clear on where their views and expectations go beyond the scope of the current work programme.
10. Some of the key benefits of working with KWM have included:
  - a. It has been an effective vehicle for broadening the conversation with Māori to include a wide variety of perspectives
  - b. We have received comprehensive advice from a diverse group of Māori experts across the breadth of the Essential Freshwater programme
  - c. Our policy proposals have benefited from being analysed through Māori concepts and frameworks, in particular Te Mana o te Wai
  - d. We have, in some instances, been able to collaboratively develop policy options for Ministers' consideration
  - e. Ministers have received advice directly from KWM as well as through officials.
11. There are areas where our relationship has been challenging. For example, our discussions with KWM have inevitably bumped against the limits of the current Cabinet mandate when it comes to addressing Māori rights and interests in freshwater. Should you agree to extend KWM, we will identify jointly with them a shared work programme and how we can continue to work together effectively in the year ahead.
12. Our ongoing engagement with KWM will need to be supported by specific engagement with other groups such as ILG and NZMC prior to key decision points, as has been agreed with them and we have done to date.
13. The expected benefits in renewing KWM include:
  - a. Freshwater policy, consultation and implementation will continue to benefit from the advice and collaborative development of an expert body of Māori leaders and technicians from across the range of Māori society

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<sup>1</sup> Weekly update to Hon. David Parker for the week starting 18 March 2019, section 2.1.

<sup>2</sup> See answers to questions 9489 (2019) and 2807 (2019)

- b. We will have an opportunity to build confidence within Māoridom in the work of MfE by demonstrating that we are proactively engaging with a broader range of Māori experts from an early stage
- c. We will be acting in a way that is consistent with the Crown's obligations under Te Tiriti o Waitangi
- d. We will continue to build our in-house capacity and capability in Te Ao Māori, tikanga Māori, mātauranga Māori and Te Mana o te Wai.

#### *Membership*

- 14. KWM's current membership has had the range of skillsets and degree of representativeness necessary for the continued work in water and, on this basis, we recommend that the existing members be invited to continue for a further twelve month period.
- 15. KWM's maximum membership is 15 under its Terms of Reference. However, we do not recommend appointing more than the current total of 11 members. The current membership has been able to reach consensus views despite its wide variety of viewpoints. Extending the group beyond this number may make policy discussions less productive, and may make it more difficult to achieve consensus views.
- 16. The exception to this is that we recommend you extend an invitation to the ILG to participate in the next stage of KWM's work programme, once the current membership have been invited to continue.
- 17. We recommend that Kingi Smiler be reappointed as the KWM Chair, and Tā Wira Gardiner be reappointed as the Crown Lead.
- 18. We recommend that KWM continue to operate under its current Terms of Reference.

#### *Financial implications*

- 19. Budget for renewing KWM for a further twelve months was provided in Budget 2019.

#### *Process for renewing KWM*

- 20. The Cabinet minute does not set a time limit on KWM's appointment [ENV-18-MIN-0032 refers]. KWM's agreed Terms of Reference established the group for an initial term of one year, but with the provision that members may be reappointed or have their terms extended.
- 21. We recommend that you extend KWM's term via the provisions in the Terms of Reference rather than reappointing the members through the Cabinet Appointments and Honours Committee. This can be done by Minister Parker sending letters to the existing KWM members and the Chair inviting them to continue in their roles for an additional twelve months. A draft letter is attached as **Appendix 1**. We recommend that these be sent as soon as possible to expedite the extension process.
- 22. Should any of the members decline to continue, we recommend that you seek nominations from KWM, the Crown Lead and officials to fill any capability and/or representation gaps. We expect that it may take at least two months to agree to any replacement members; however, this should not disrupt the ongoing operation of the group.

### **Indicative work programme for a further twelve months (October 2019 – September 2020)**

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#### *Potential work streams*

9(2)(f)(iv)

9(2)(f)(iv)

24. We also recommend taking a flexible and proactive approach to allow us to work with KWM on other freshwater-related work streams as they arise.

*Addressing Māori rights and interests in freshwater*

25. s9(2)(f)(iv)

27. The Waitangi Tribunal's report on stage two of the Freshwater and Geothermal Resources inquiry (Wai 2358) is scheduled to be released on 28 August 2019. We expect that this is likely to include substantial recommendations on how the Crown could address Māori rights and interests in freshwater. We will provide you with our initial advice on this report on 27 August 2019.

28. We are also aware that Minister Mahuta intends to publicly announce a whole-of-government response to the Tribunal's *Ko Aotearoa Tēnei* report (Wai 262) on 28 August 2019.

29. We will provide you with further advice on Māori rights and interests in freshwater by the end of September, once we have greater clarity on the above.

### Next Steps

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30. Should you approve our recommendations, we will produce letters for you to sign and send to the KWM members, and we will begin discussions with the KWM about their future work programme.

## Recommendations

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31. We recommend that you:

- a. **Agree** to extend KWM for a further twelve months (October 2019 – September 2020)

Minister for the  
Environment

Yes / No

Minister for Māori/Crown  
Relations: Te Arawhiti

Yes / No

Minister for Māori  
Development

Yes / No

- b. **Approve** us exploring an indicative work programme with KWM for this additional twelve-month period

Minister for the  
Environment

Yes / No

Minister for Māori/Crown  
Relations: Te Arawhiti

Yes / No

Minister for Māori  
Development

Yes / No

- c. **Agree** to send letters to the existing KWM members and the Chair inviting them to continue in their roles for an additional twelve months

Minister for the  
Environment

Yes / No

Minister for Māori/Crown  
Relations: Te Arawhiti

Yes / No

Minister for Māori  
Development

Yes / No

## Signature

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Katherine Meerman  
Director, Water Taskforce, Ministry for the Environment

Hon David Parker  
**Minister for the Environment**

Date

Hon Nanaia Mahuta  
**Minister for Māori Development**

Date

Hon Kelvin Davis  
**Minister for Māori/Crown Relations: Te Arawhiti**

Date



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## Summary of the Wai 2358 stage two report and associated talking points

Date Submitted:	28 August 2019	Tracking #: 2019-B-05950	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	<b>Note</b> our summary and talking points concerning the Wai 2358 stage two report	6 September 2019
CC Hon Nanaia Mahuta, Minister for Māori Development		
CC Hon Kelvin Davis, Minister for Māori/Crown Relations: Te Arawhiti		
CC Hon Andrew Little, Minister for Treaty of Waitangi Negotiations		
CC Hon Damien O'Connor, Minister of Agriculture		
CC Hon Shane Jones, Minister for Regional Economic Development		

Actions for Minister's Office Staff	<b>Forward</b> this briefing to Hon Kelvin Davis, Hon Nanaia Mahuta, Hon Andrew Little, Hon Damien O'Connor, and Hon Shane Jones <b>Return</b> the signed briefing to the Ministry for the Environment (MfE)
Number of appendices and attachments 1	Titles of appendices and attachments (ie separate attached documents): Appendix One: Talking points on the Wai 2358 stage two report
Note any feedback on the quality of the report	

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Matthew Cunningham		
Responsible Manager	Lucy Bolton	027 466 4634	✓
Director	Katherine Meerman		

## Summary of the Wai 2358 stage two report and associated talking points

### Purpose

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1. This briefing provides you with a summary of the Waitangi Tribunal's report on stage two of Wai 2358, the Freshwater and Geothermal Resources inquiry (the report). We have also included some talking points in **Appendix One** to assist you in responding to any questions you are asked about the report's findings and recommendations and how these relate to the Government's current and future work programmes.
2. Our initial review suggests that there appears to be considerable overlap between the Tribunal's recommendations and the Government's current and future work programmes. We will work with other agencies to determine how to provide further advice on the report's findings and recommendations and will report back to you on agencies' views on how best to proceed.

### The Tribunal's recommendations

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3. The stage two report makes a considerable number of recommendations. These include:
  - a. Amendments to the Resource Management Act 1991 (RMA), such as:
    - i. Including Te Mana o te Wai in section 6 as a matter of national importance that must be recognised and provided for by RMA decision makers
    - ii. Revising section 8 to state that the duties imposed on the Crown in terms of the principles of the Treaty of Waitangi are imposed on all those persons exercising powers and functions under the RMA
    - iii. Removing the statutory and practical barriers to the use of sections 33 and 36B of the RMA.
  - b. Amendments to the National Policy Statement for Freshwater Management (NPSFM) to strengthen Māori decision-making and the reflection of Māori values, such as:
    - i. Specifying in Objective D1 that iwi and hapū must be directly involved in decision-making and that Māori values/rights/interests must be recognised and provided for
    - ii. Fully populating the National Objectives Framework (NOF) to include attributes and bottom lines for sediment, the macroinvertebrate index, effective controls for nutrients
    - iii. Amending objective and policy AA1 in the NPSFM to state that Te Mana o te Wai must be recognised and provided for
    - iv. Urgently devising measures and standards for the absolute protection of wetlands
    - v. Developing attributes and bottom lines for the mahinga kai value in the NOF.
  - c. The creation of a new allocation system which:
    - i. Recognises and provides for Te Mana o te Wai
    - ii. Replaces the 'first in, first served' system and phases out over-allocation

- iii. Arranges for an allocation of water for the development of Māori land (including land returned in Treaty settlements) where such allocation is sustainable
  - iv. Provides a percentage of water to iwi and hapū that is perpetually renewable and inalienable (except by lease or some other form of temporary transfer), or investigate alternatives where this is not possible (such as creating headroom or providing compensation)
  - v. Investigates possible mechanisms for 'proprietary redress', including royalties.
- d. Urgent action on matters such as stock exclusion, native fish habitat protection and restoration, and for the absolute protection of wetlands.
  - e. The establishment of an independent national co-governance body with 50/50 Crown-Māori representation, to ensure that Treaty principles and Māori values, rights and interests are fully incorporated in freshwater policy and management (or a commitment to co-design future policy with national Māori bodies if a co-governance body is not established)
  - f. Making co-design with national Māori bodies standard practice where Māori interests are concerned
  - g. Providing substantial and ongoing resourcing to enable Māori to participate at all levels of freshwater management
  - h. Monitoring the Treaty performance of local authorities
  - i. Providing urgent assistance, including funding and expertise, for water infrastructure and the provision of clean, safe drinking water to marae and papakāinga.
4. The Tribunal also notes, but does not recommend, that it may be necessary to bring a test case before the courts on whether native title in freshwater exists as a matter of New Zealand common law and has not been extinguished.

## Summary of the report

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### *Content of the report*

5. The report provides a detailed analysis of the Crown's freshwater reforms up until the second half of 2017. It assesses the Treaty compliance of:
  - a. The RMA
  - b. The 'Sustainable Water Programme of Action' (2003-2008)
  - c. The 'Fresh Start for Fresh Water' and 'Next Steps for Fresh Water' reforms (2009-2017)
  - d. The allocation reform options developed by officials in 2016-2017.
6. A chapter is also dedicated to the water quality reforms that were developed and implemented as part of the above work programmes.
7. Although the report does not comment substantively on the Government's current work programmes, its findings and recommendations are still relevant to those programmes.

*The law in respect of freshwater (1991-2009)*

8. The Tribunal found that, while the RMA significantly improved on the status quo by introducing tikanga requirements into statute law for the first time, it remains inconsistent with the principles of the Treaty. In particular, it found that the Treaty clause in section 8 of the RMA does not adequately recognise and protect Māori interests, and that Māori interests tend to be 'balanced out' in the hierarchy of matters that decision-makers must consider in sections 6-8 of the RMA.
9. The Tribunal found that the Treaty standard for freshwater management is co-governance. It argued that existing participation mechanisms in the RMA, such as section 33 (transfer of authority), section 36B (joint management), iwi management plans and consultation requirements are flawed and do not deliver the outcomes they are intended to.
10. The Tribunal found that the 'first in, first served' allocation system under the RMA is inconsistent with the principles of the Treaty. It has prejudiced Māori by imposing barriers to participation, and through a lack of partnership in decision-making and the ongoing omission to recognise proprietary rights.

*Reforms to address Māori rights and interests (2009-2017)*

11. The Tribunal noted that as the Crown has repeatedly stated its intention to address Māori rights and interests in freshwater since 2009, the Treaty principles require it to act urgently and to do so in partnership with Māori.
12. The Tribunal found that collaboration between the Crown and the Freshwater Iwi Leaders Group (ILG) between 2009 and 2014 fell short of true partnership as it only involved limited co-design. The inclusion of Part D in the 2011 NPSFM, and the addition of Te Mana o te Wai in the 2014 amendments to the NPSFM, were found to be inadequate mechanisms for ensuring Māori involvement and the reflection of Māori values in freshwater decision-making.
13. From 2014 to 2017 the Crown worked more collaboratively with the ILG and the Iwi Advisors' Group (IAG). The Tribunal congratulated the Crown on its innovative process of co-designing freshwater policy proposals with a national Māori body during this period, which it suggested should be the status quo going forward. It also found that the Crown did not breach the Treaty by choosing to engage primarily with the Iwi Chairs Forum (ICF). However it suggested that the Crown should have broadened its co-design programme to include other groups, such as the New Zealand Māori Council (NZMC), when they expressed an interest in being involved in policy development.
14. The Tribunal found that the outcomes of this co-design process were disappointing, due primarily to the Crown reserving the final power of decision-making. It criticised the Crown for dismissing most of the proposals that were developed through this co-design process, including amending sections 33 and 36B of the RMA, strengthening Part D of the NPSFM, and adequately resourcing Māori to participate at all levels of freshwater management.
15. The three reforms that were implemented in 2017 – strengthening Te Mana o te Wai in the NPSFM, amending the RMA to include the Mana Whakahono a Rohe provision, and developing a guidance manual and training for Mana Whakahono a Rohe – did not go far enough to make the freshwater management system Treaty compliant.

*Water quality reforms (2008 – 2017)*

16. The Tribunal noted that the greatest difficulty that the Crown faced in developing and implementing freshwater quality reforms was balancing environmental and economic interests (particularly the primary sector). It found that, while the Crown has made a significant effort to address the pressures on freshwater through the introduction of the NPSFM in 2011 and subsequent amendments in 2014 and 2017, it has yet to meet the

Treaty duty of active protection of freshwater taonga. In particular, the Tribunal highlighted the omission of stock exclusion, the failure to address diffuse discharges (in particular sediment), and over-allocation. The Tribunal also stressed the threat that this poses to native fisheries.

17. The Tribunal also found that, while the Crown's funding initiatives for freshwater clean-up are an important first step, they are not yet sufficient to deal with the scale of the damage or to provide substantial and ongoing resourcing for Māori.

*Allocation reform options (2016-2017)*

18. The Tribunal did not make any findings on the reform options developed by officials in 2016-2017 as they were not progressed by the Crown before the 2017 election. However, it did provide its view on what was necessary to provide a Treaty-compliant allocation regime. It argued that:
- a. Water extraction and discharge rights needed to be allocated to iwi and hapū as well as Māori landowners
  - b. Allocation to iwi and hapū should be perpetually renewable and inalienable other than by lease
  - c. Charges or royalties on commercial users may also be appropriate.

*Water Commission*

19. The Tribunal considered that there should be an independent national body established on a co-governance basis with Māori, with its scope and functions to be negotiated and decided by the Treaty partners. At a minimum, its role should be to ensure that Treaty principles and Māori values, rights and interests are fully incorporated in freshwater policy and management.
20. The Tribunal did not recommend the duplication of authorities at the regional level, as had been proposed by the NZMC in the form of regional catchment boards.
21. If a co-governance body is not established, the Tribunal suggested that freshwater policy should be co-designed with an existing national Māori body or bodies, such as the ILG, the NZMC, and Te Kāhui Wai Māori (KWM).

**Next steps**

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22. We will work with other agencies to determine how to provide further advice on the report's findings and recommendations and will report back to you on agencies' views on how best to proceed.

**Recommendations**

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23. We recommend that you:

- a. **Note** our summary and talking points concerning the Wai 2358 stage two report

Minister for the Environment

Yes/No

**Signature**

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Katherine Meerman  
Director, Water Taskforce, Ministry for the Environment

Hon David Parker  
**Minister for the Environment**

**Date**

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## Appendix One: Talking points on the Wai 2358 stage two report

### What is this Government doing in response to the Wai 2358 stage two report?

- The Wai 2358 stage two report provides a detailed analysis of the Crown's freshwater reforms up until 2017.
- Although the report does not comment substantively on the Government's current work programmes, its findings and recommendations are still relevant to those programmes.
- Some of the Tribunal's recommendations have already been picked up by the work programmes that are currently underway. For example, as part of the Essential Freshwater Package we will shortly be releasing a package of reforms for public consultation that will stop further degradation and loss in our rivers, reverse past damage, strengthen Te Mana o te Wai and provide mandatory Māori measures of freshwater system health in the NPSFM.
- Other recommendations may fall within the scope of reforms that have just commenced like the comprehensive review of the resource management system.
- We want to take some time to fully engage with the Tribunal's recommendations so that we can provide a robust and well-informed response. We will consider the relevant recommendations of the Tribunal alongside the submissions we receive as part of the consultation on the Essential Freshwater package.

### Why hasn't the Crown already done more to address Māori rights and interests?

- When this Government began work on the Essential Freshwater package last October, we agreed to take a phased approach to our engagement with Māori.
- Our first priority was to engage with Māori on water quality issues, given the parlous state of our rivers. We were given a strong mandate from all New Zealanders at the last election to improve the quality of our rivers.
- We will shortly release a robust package of proposals for all New Zealanders to consider. This package will go a long way to stopping further degradation and loss, and reversing past damage.
- Following this, we intend to initiate a national conversation on freshwater allocation, starting with nitrogen discharges. This Government has also recently announced a comprehensive review of the resource management system. Some of the Tribunal's recommendations may fall within the scope of those work programmes.

### Will you be amending the RMA to adopt the Tribunal's recommendations?

- The Tribunal's report is timely. This Government has recently announced a comprehensive review of the resource management system.
- As a first step, we will be engaging with targeted groups on the scope of the review. This includes a number of national Māori organisations, including the Freshwater Iwi Leaders Group, the New Zealand Māori Council, and Te Kāhui Wai Māori. We are also engaging with iwi through the Ministry for the Environment's regional hui in September, and I have invited all iwi to submit feedback on the draft terms of reference for the review.

- Following this, the Government will make further decisions about the scope of the review. A Resource Management Review Panel will also be appointed to consult with a wider group at this stage. The approach the Panel will take to engaging with Māori will be confirmed after initial consultations.
- The Government has instructed the Resource Management Review Panel to consider a number of Waitangi Tribunal reports, including the Wai 2358 stage two report and *Ko Aotearoa Tēnei*.

### **Is this Government committed to addressing Māori rights and interests in freshwater?**

- The Government acknowledges that Māori have rights and interests in freshwater, and it is committed to addressing these by developing regulatory solutions rather than a contest about ownership.
- The Government and Māori have shared interests in:
  - Improving the quality of New Zealand's freshwater, including the ecosystem health of our waterways
  - Ensuring sustainable, efficient, and equitable access to and management of freshwater resources.
- The Government maintains that no one owns freshwater – it belongs to everyone, and we all have a guardianship role to look after it.
- We have already made good progress through the introduction of Te Mana o te Wai in the NPSFM and Mana Whakahono a Rohe in the RMA. In addition, the Crown has agreed to several co-governance arrangements through Treaty settlements.
- Some of the Tribunal's recommendations will be addressed in the freshwater package that we will shortly release. This includes proposals to strengthen Te Mana o te Wai and provide mandatory Māori measures of freshwater system health in the NPSFM.
- The Government will need to take some time to fully engage with the Tribunal's recommendations so that we can provide a robust and well-informed response.

### **Will the government co-design water policy with Māori as recommended by the Tribunal?**

- The process for working with Māori on the next tranche of reforms is not confirmed yet. However, building closer partnerships with Māori is one of this government's core priorities.
- The Tribunal had qualified praise for the process by which the government worked with Māori to develop the last tranche of reforms. We have tried to continue this through the establishment of Te Kāhui Wai Māori to collaboratively design policy proposals for the Essential Freshwater package.

### **How do the Government's work programmes align with the Wai 262 report?**

- This Government has just announced its intention to develop a whole-of-government approach to dealing with the issues raised by Māori and the Waitangi Tribunal in *Ko Aotearoa Tēnei*.

- This is the beginning of a long and important journey, and this Government is committed to developing a whole-of-government strategy for responding to *Ko Aotearoa Tēnei*.
- *Ko Aotearoa Tēnei* included recommendations on how to strengthen the role of Māori in environmental management and decision-making, The Wai 2358 stage two report adopts many of these recommendations – in some cases, it builds on them.
- The Ministry for the Environment will be actively participating in the whole-of-government response.

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**From:** [Joanna Morgan](#)  
**To:** [Perrine Gilkison](#)  
**Subject:** FW: Briefing concerning the future of Te Kahui Wai Maori  
**Date:** Thursday, 29 August 2019 4:00:22 PM  
**Attachments:** [image001.png](#)

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I've had this email on my reading list so am only just getting to it, but it looks like Matthew is suggesting much of what the River Iwi want from their Economic Development Work Programme.


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**From:** Matthew Cunningham <Matthew.Cunningham@mfe.govt.nz>  
**Sent:** Friday, 16 August 2019 1:25 PM  
**To:** Joanna Morgan <Joanna.Morgan@mfe.govt.nz>; Nyssa Payne-Harker <Nyssa.Payne-Harker@mfe.govt.nz>  
**Cc:** Kelly Palmer <Kelly.Palmer@mfe.govt.nz>; Lucy Bolton <Lucy.Bolton@mfe.govt.nz>  
**Subject:** Briefing concerning the future of Te Kahui Wai Maori

Kia ora korua,

I thought you might like to know that we have just completed [a briefing for Ministers Parker, Mahuta and Davis concerning the future of Te Kahui Wai Maori](#).

s9(2)(f)(iv)



There are some potential overlaps with the Wai 262 recommendations concerning environmental management, which (as you will no doubt know) included:

- Amending the RMA to enhance the development and use of Iwi Management Plans;
- Amending the RMA to improve existing mechanisms concerning delegating/transferring powers and joint management;
- Building Maori capacity to participate in RMA processes and management of taonga; and
- Developing national policy statements on Maori participation in resource management processes.

I'll let you know once we hear back from Ministers.

Na

**Dr Matthew Cunningham**

Senior Policy Analyst – Water

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 022 5170078 Email: [matthew.cunningham@mfe.govt.nz](mailto:matthew.cunningham@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143

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## Essential Freshwater 74: Seeking agreement on the future of the Kāhui Wai Māori

Date Submitted:	15 August 2019	Tracking #: 2019-B-05789	
Security Level	In-confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon Nanaia Mahuta, Minister for Māori Development	<b>Agree</b> to renew KWM for a further twelve months (Oct 2019 – Sep 2020), and to us exploring an indicative work programme with KWM for this additional twelve-month period	22 August 2019
To Hon Kelvin Davis, Minister for Māori/Crown Relations: Te Arawhiti	<b>Approve</b> our recommended process for renewing KWM for a further twelve months <b>Agree</b> that the indicative work programme for KWM's second term include developing a plan to address Māori rights and interests in freshwater <b>Agree</b> to share a copy of this briefing with KWM	
To Hon David Parker, Minister for the Environment	<b>Agree</b> to send a letter to KWM committing to develop a plan to address Māori rights and interests in freshwater <b>Agree</b> to publicly release this letter alongside the Essential Freshwater consultation package	
Actions for Minister's Office Staff	<b>Return</b> the signed briefing to the Ministry for the Environment (MfE)	
Number of appendices and attachments 4	Appendix One: Letter from KWM to Minister Parker dated 12 August 2019 Appendix Two: Detailed information on the proposed KWM forward work programme Appendix Three: Assessment of the effectiveness and efficiency of KWM Appendix Four: Detailed information on the process for renewing KWM for a further twelve months	

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Matthew Cunningham		
Responsible Manager	Lucy Bolton	027 466 4634	✓
Director	Katherine Meerman		

## Seeking agreement on the future of the Kāhui Wai Māori

### Purpose

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#### *Response to KWM letter dated 12 August 2019*

1. This briefing provides our advice in response to KWM's letter to Minister Parker dated 12 August 2019, which raises several questions about the Essential Freshwater package and the extent to which it addresses Māori rights and interests in freshwater (attached as **Appendix 1**). In particular, we recommend some practical steps that this Government can take to reach a durable resolution of Māori rights and interests in freshwater.
2. We have separately provided Minister Parker with a draft letter in response to KWM for review.

#### *Future of the KWM*

3. This briefing also updates you on the work programme for the remainder of KWM's first term (until the end of September 2019) and provides our advice on renewing KWM for a second term (from October 2019 to September 2020).
4. We also seek your approval to discuss an indicative forward work programme with KWM for this second term. This includes work streams that are already part of this Government's approved work programme, such as fair allocation. It also includes matters that are currently outside the Cabinet mandate for freshwater reform, in particular developing a plan to address Māori rights and interests.
5. A diagram displaying these work streams is located after our recommendations at the end of this briefing.

### Response to KWM letter dated 12 August 2019

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6. KWM's letter to Minister Parker dated 12 August 2019 advises that it is unlikely to support the consultation process or the Essential Freshwater discussion document unless clarity is provided on the following matters:
  - a. Te Mana o te Wai
  - b. Proposals to incorporate mātauranga Māori
  - c. Committing to address Māori rights, interests and obligations in freshwater.
7. KWM have appended this letter to their *Te Mana o te Wai* report, and intend that it be made public alongside the Essential Freshwater package discussion document.
8. As a first step, we recommend that you call the KWM Chair, Mr Kingi Smiler, to discuss these matters, and follow it with a written response using the draft letter we have previously provided to Minister Parker.
9. If you do not agree to a process to address KWM's points, there is a strong possibility that some or all of the current KWM members will decline to renew their membership or participate in public consultation. Some of the members may also publicly oppose the package. It is also likely to generate a negative response from other Māori groups, including the ILG and NZMC.

#### *Te Mana o te Wai*

10. The KWM's letter notes that it does not support the proposals to embed Te Mana o te Wai in the the National Policy Statement for Freshwater Management (NPSFM), as KWM does not believe they go far enough.

11. Our advice on how to strengthen and clarify Te Mana o te Wai in the NPSFM was informed by collaborative development of policy options with a KWM sub-group between February and April 2019. However, as we advised you in our briefing dated 18 July 2019, there are still some areas where our advice does not align with KWM's [2019-B-05805 refers]. Furthermore, as per our briefing dated 8 August 2019, KWM have not seen the latest version of the draft NPSFM, which we believe goes some way to addressing their concerns [2019-B-05899 refers]. KWM will have further opportunity to engage with the latest text once it is shared with the freshwater advisory groups post-Cabinet approval.
12. One key area where our advice disagrees with KWM is whether stronger legal wording is needed. KWM would like the NPSFM to 'give effect to' Te Mana o te Wai. Our position, as outlined in the aforementioned briefings, is that wording such as 'give effect to' will not provide the clarity that is currently missing, nor do we have sufficient analysis and detail to justify the use of stronger legal weighting.
13. You have agreed with us working with KWM to resolve some of these issues during public consultation, including:
  - a. Coming to an agreement on the wording of the fundamental concept to work towards reflecting both KWM's understanding of Te Mana o te Wai and Ministers' understanding of Te Mana o te Wai where possible
  - b. Confirming with KWM how content related to Te Mana o te Wai will provide further clarity to regional councils in terms of what the concept would require in practice, and where aspects of the NPSFM are already achieving this or not
  - c. Gaining further understanding from KWM on what policies are consistent with Te Mana o te Wai and where this could be signalled in the NPSFM to provide further clarity and certainty for regional councils, and to further embed Te Mana o te Wai in the regulation.

#### *Mātauranga Māori*

14. KWM asks for Minister Parker's rationale for not proceeding with officials' proposals to incorporate mātauranga Māori in the NPSFM.
15. In our briefing to you dated 28 May 2019 [2019-B-05597 refers], we recommended the following options to support the incorporation of Māori values and measures of freshwater system health and mātauranga Māori in the NPSFM:
  - a. Recognise mātauranga Māori through the descriptor of Te Mana o to Wai and in part D of the NPSFM
  - b. Direct regional councils to engage with hapū/iwi to establish a methodology or protocol for the appropriate use of mātauranga Māori in planning and decision-making
  - c. Direct regional councils to work with hapū/iwi to develop a mātauranga Māori resource (such as a tool or framework) to identify, prioritise, measure and implement freshwater management values and measures of health held by tangata whenua.
16. KWM endorsed these options, but advised that they needed to be implemented alongside a compulsory Māori value to be effective.<sup>1</sup>
17. You did not want to progress the second and third options as the responsibility for developing mātauranga Māori policies would be devolved to regional councils and could create significant burden on councils and Māori. The process of developing localised tools, methodologies and protocols could also significantly delay creating new plans and policies

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<sup>1</sup> Letter from KWM to Minister Parker, 21 May 2019. Appended to Essential Freshwater 56 [2019-B-05597 refers]



to the detriment of water quality and ecosystems. Given the existing requirements on councils to engage with Maori and reflect Maori values, such an additional requirement was considered unreasonable. You instructed MfE officials to continue working with KWM to develop advice on compulsory Māori values instead.

18. We also understand that you do not wish to over emphasise one knowledge system over another in the NPSFM, or to introduce policies that may result in objectives that are non-biophysical in nature or cannot be accurately measured. We believe that there are many robust monitoring tools that already exist which provide concrete measurements of Māori freshwater values, including the Mauri Compass and the Cultural Health Index. One of the functions of these tools is to provide balance mātauranga Māori and Western science.<sup>2</sup>
19. As per our briefing to you dated 8 August 2019, we have included mātauranga Māori in the draft NPSFM for your consideration by specifying that giving expression to Te Mana o te Wai requires councils to, amongst other things, enable the application of broader systems of values and knowledge, such as mātauranga Māori [2019-B-05899 refers]. The draft NPSFM also acknowledges that regional councils may draw on other systems of knowledge (such as mātauranga Māori) when identifying current attribute states.
20. We recommend that you include your rationale on these proposals in a response to KWM. Should you wish to revisit these proposals we can provide further advice.

*Māori rights and interests in freshwater*

21. KWM asks this Government to reserve Māori rights, interests and obligations in freshwater, including by confirming that actions taken in the interim shall not derogate from full and considered resolution, and commit to a timeframe for their resolution.

S9(2)(f)(iv)

23. These four areas are not substantially addressed by the Essential Freshwater package, and largely fall outside Cabinet's current mandate for freshwater reform. There are some overlaps with the comprehensive review of the resource management system, the Three Waters Review and Cabinet's mandate to introduce a royalty on bottled water. However, these work programmes do not extend to co-governance, resource rentals, or a share of the rights to freshwater based on whakapapa rather than land ownership. A consistent funding stream to resource Māori to participate at all levels of the freshwater process also does not currently exist.

24. There is significant alignment between the views of KWM, the Freshwater Iwi Leaders Group (ILG), the New Zealand Māori Council (NZMC), and other Māori organisations on the need to address Māori rights and interests in freshwater. We have also heard from our other freshwater advisory groups that they are looking to the Crown to provide certainty in this area.

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<sup>2</sup> 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.

25. Māori are likely to measure the Crown's progress against the commitments made by the then-Deputy Prime Minister Bill English before the High Court in November 2012 in the context of the Mixed Ownership Model litigation:

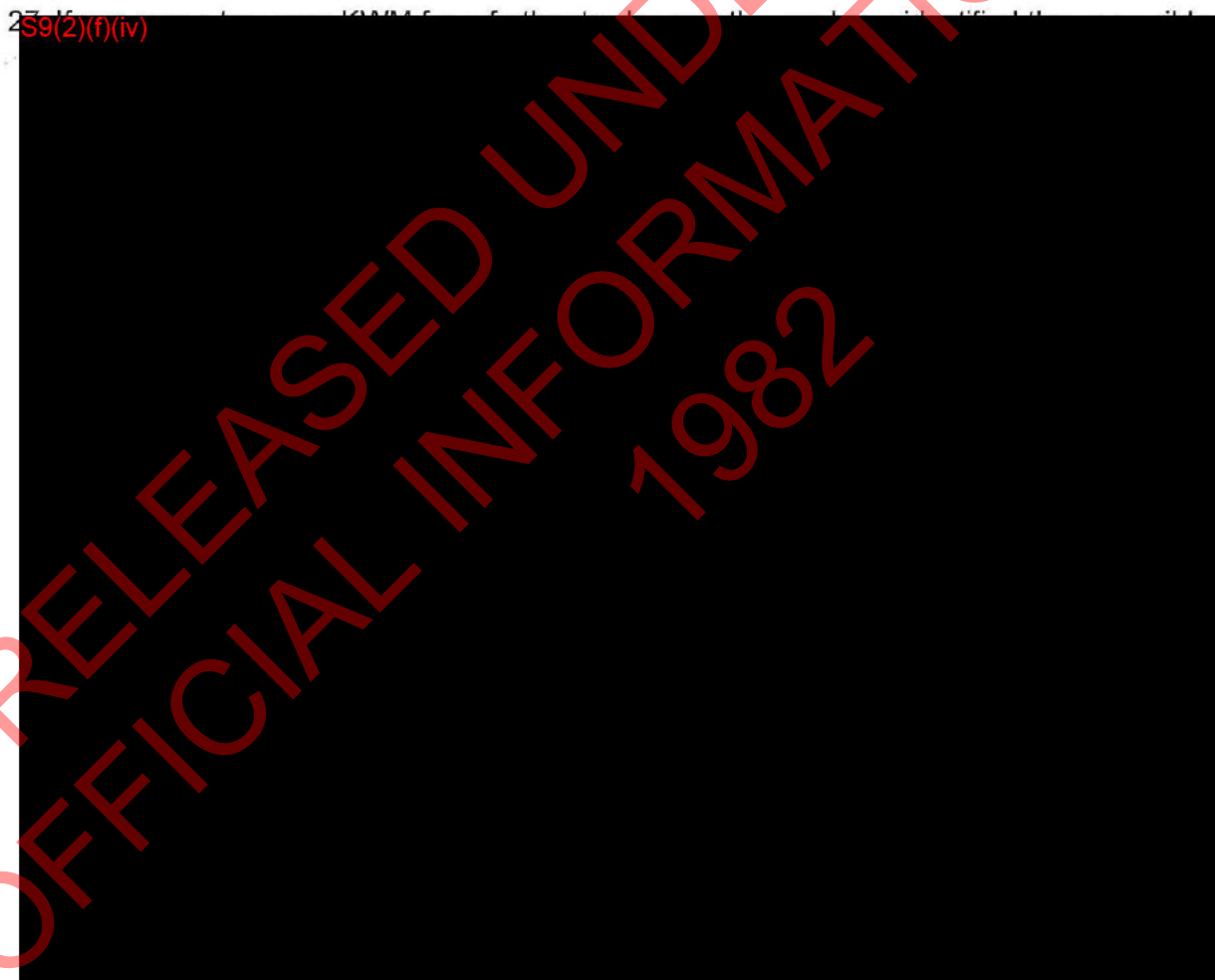
The Crown acknowledges that Māori have rights and interests in water and geothermal resources ...

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 ...

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 and agreement with iwi<sup>3</sup>

26. You have advised KWM that you need to discuss the Government's approach to Māori rights and interests further with your Cabinet colleagues, as issues such as pricing (which currently fall outside the Cabinet mandate) would need to be addressed.<sup>4</sup>

27. KWM has advised that it will discuss the Government's approach to Māori rights and interests further with your Cabinet colleagues, as issues such as pricing (which currently fall outside the Cabinet mandate) would need to be addressed.<sup>4</sup>



28. We recommend that this commitment be communicated to KWM and have provided a draft letter to Minister Parker for review. We also recommend that this letter be released publicly at the same time as the Essential Freshwater package.

<sup>3</sup> Affidavit of Simon William English in opposition to application for judicial review, 7 November 2012 (filed in *Pouakani Claims Trust v Attorney-General*, CIV-2012-485-2185), paras 28, 29, 38.

<sup>4</sup> Letter from Minister Parker to Kingi Smiler, 19 June 2019, p 2.

29. The Wai 2358 stage two report is likely to include recommendations on how to address Māori rights and interests in freshwater. Indicating the Government's intention to develop a plan would be a proactive response to this recommendation. In addition, we are also aware of Minister Mahuta's intention to announce a whole-of-government response to the Tribunal's *Ko Aotearoa Tēnei* report (Wai 262) later in August. This report makes recommendations on how to strengthen the role of Māori in environmental decision-making, including changes to the Resource Management Act (RMA), stronger national direction, and resourcing Māori to participate in freshwater management.

#### *Compulsory mahinga kai value*

30. KWM suggest in their letter that we provided incorrect advice to you that a compulsory mahinga kai value would apply to all freshwater bodies as opposed to sites identified by tangata whenua in each Freshwater Management Unit (FMU). We are satisfied that our written advice correctly reflects the proposal as initially described to us and noted that a compulsory mahinga kai value would apply in all FMUs.

### **KWM's role in public consultation on the Essential Freshwater package**

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31. MfE's upcoming consultation for the Essential Freshwater package will include a series of regional hui with Māori covering a broad spectrum of current policy areas. It also includes targeted water-specific workshops with national-level Māori organisations, iwi/hapū with Treaty settlements that require Crown engagement on freshwater policy development, and Māori technical experts.

32. We support working alongside KWM during the public consultation process for several reasons:

- a. It will increase the credibility of the package to Māori
- b. It will demonstrate MfE's commitment to acting in partnership with Māori
- c. We can work with KWM to test policy options with Māori.

33. We believe that the best way for us to work together with KWM during public consultation is for KWM members to attend all or some of the hui scheduled by MfE. This will allow our respective views on the package to be communicated directly to all hui attendees. Should this not prove feasible, we have proposed to record statements from the advisory group Chairs to play at hui.

34. KWM have agreed to release their *Te Mana o te Wai* report alongside the Essential Freshwater package for public consultation. The most recent version of their report, which we received on 12 August 2019, includes as Appendices several other papers that they have sent to Minister Parker and officials in response to our freshwater policy proposals between April and August. We are clarifying with KWM whether it intends those Appendices to be released as well. We also note that, during pre-Cabinet consultation, Ministers were only provided with the *Te Mana o te Wai* report.

35. If KWM decides not to participate in public consultation, this will have a negative impact on how Māori respond to the Essential Freshwater package. Māori will likely ask how KWM's advice was reflected in the package, and why its members declined to participate in public consultation. It could give the impression that the package does not include sufficient 'wins' for Māori.

36. Individual KWM members may also decide to make public statements opposing some or all of the package. You have previously agreed that advisory group members will be free to express their individual views on the policy proposals – at meetings, in the media, and

elsewhere – once the package is in the public domain.<sup>5</sup> Any opposing statements by KWM members will have an impact on how the package is received across Māoridom, given the broad cross-section of society that the group represents. These statements could also increase the risk that organisations like the ILG take the Government to court or the Waitangi Tribunal.

### **Remainder of initial term (until the end of September 2019)**

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37. We have identified several work streams that we will progress with KWM for the remainder of its initial term. These will likely continue beyond September 2019 into a second term (subject to reappointment):
- a. Analysing the options for introducing mandatory Māori measures of freshwater system health into the National Policy Statement for Freshwater Management (NPSFM)
  - b. Discussing how Te Mana o te Wai is reflected and incorporated into the NPSFM through public consultation
  - c. Engaging on the comprehensive review of the resource management system and Three Waters.
38. More information on these work streams is contained in **Appendix 2**.
39. The cost for working with KWM on these work streams will be covered by what remains of the appropriation approved by Cabinet for KWM for the 2018-2019 financial year, which has been carried over into the 2019-2020 financial year.

### **Renewing KWM for a further twelve months**

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#### *Assessment of KWM's effectiveness and efficiency*

40. KWM has engaged strongly and positively through the Essential Freshwater process. They have worked alongside us to develop advice and have been clear on where their views and expectations go beyond the scope of the current work programme.
41. Some of the key benefits of working with KWM have included:
- a. It has been an effective vehicle for broadening the conversation with Māori to include a wide variety of perspectives
  - b. We have received comprehensive advice from a diverse group of Māori experts across the breadth of the Essential Freshwater programme
  - c. Our policy proposals have benefited from being analysed through Māori concepts and frameworks, in particular Te Mana o te Wai
  - d. We have, in some instances, been able to collaboratively develop policy options for Ministers' consideration
  - e. Ministers have received advice directly from KWM as well as through officials.
42. There are areas where our relationship has been challenging. For example, our discussions with KWM have inevitably bumped against the limits of the current Cabinet mandate when it comes to addressing Māori rights and interests.
43. Our full assessment of KWM's efficiency and effectiveness to date as required by their

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<sup>5</sup> Weekly update to Hon. David Parker for the week starting 18 March 2019, section 2.1.

Terms of Reference is contained in **Appendix 3**.

*Recommendation to renew KWM*

44. Given our assessment of its effectiveness and efficiency, we recommend that KWM be renewed for a further twelve months. The expected benefits in doing so will include:
- a. Freshwater policy, consultation and implementation will continue to benefit from the advice and collaborative development of an expert body of Māori leaders and technicians from across the range of Māori society
  - b. We will continue to build our in-house capacity and capability in Te Ao Māori, tikanga Māori, mātauranga Māori and Te Mana o te Wai
  - c. We will have an opportunity to build confidence within Māoridom in the work of MfE by demonstrating that we are proactively engaging with Māori from an early stage
  - d. We will be acting in a way that is consistent with the Crown's obligations under Te Tiriti o Waitangi.
45. If you do not agree to renew KWM for a further twelve months (or if KWM members decline to renew their membership), we will not be able to benefit from its advice on future policy proposals that have already been approved by this Government, such as nitrogen discharge allocation.

*Alternatives to KWM*

46. We have identified several alternatives to reappointing KWM for a further twelve months:
- a. *Do not engage or appoint another Māori organisation.* This would result in policy that has not been collaboratively developed or analysed by Māori. It is also a step backwards from the process we have followed with the KWM (and, prior to KWM, the ILG), and it may impact on the Government's reputation among Māori or its ability to uphold the principles of the Treaty. It also raises the risk of court or Waitangi Tribunal litigation.
  - b. *Engage with an alternative Māori organisation.* Officials could return to engaging with the ILG, or with another national Māori organisation such as the NZMC, on future freshwater policy development. However, this would not resolve the dilemma of representativeness that led to the Government appointing KWM in the first place. This is also a step back from the current process. ILG have also stated that they do not intend to engage on Essential Freshwater.
  - c. *Engage with the new MfE-wide Māori advisory group.* As part of MfE's Te Ao Māori strategy, we are in the process of setting up a Ministry-wide Māori advisory group that will comment on all policy development from a Māori perspective. However, this group may not possess the same specialised freshwater knowledge that KWM possesses. It will also not be able to provide advice directly to Ministers where required. Furthermore, as an internal-facing group appointed directly by MfE, it may not have the same status among Māori as the KWM.
47. Our preferred option is to continue to engage on collaborative policy design and analysis with KWM. Renewing KWM will not prevent us from engaging with other groups such as the ILG and the NZMC, or from seeking the advice of the new MfE-wide Māori advisory group.

*Timetable for renewing KWM*

48. An indicative timetable for the renewal process is set out below. Further information on these steps is contained in **Appendix 4**.

What	Who	By when
Approach existing members about reappointment	KWM Chair / Crown Lead	23 August 2019
Confirm Chair's willingness to continue	MfE officials	23 August 2019
Identify potential replacement members (if any)	KWM and MfE officials	30 August 2019
Determine if potential replacement members are available and willing to join	KWM Chair and Crown Lead	30 August 2019
Advise Ministers of the proposed list of KWM appointees and draft appointment letter text	KWM and MfE officials	3 September 2019
Send draft Appointments and Honours Committee (AHC) Cabinet paper to Ministers	MfE officials	13 September 2019
Cabinet paper lodged with AHC	Minister's office	18 September 2019
Cabinet paper considered by AHC	AHC	25 September 2019
Appointment letters sent to KWM members	MfE officials	30 September 2019
Advise Ministers of proposed changes to KWM Terms of Reference	KWM and MfE officials	31 October 2019
Seek Ministers' approval of agreed work programme for second term	KWM and MfE officials	31 October 2019

#### Indicative work programme for a further twelve months

S9(2)(f)(iv)

50. More detail on these work streams is contained in **Appendix 2**.
51. This is an indicative list which we would like to explore and refine with KWM prior to seeking your approval on an agreed work programme. We also recommend taking a flexible and proactive approach to allow us to work with KWM on other freshwater-related work streams as they arise.
52. As discussed above, the current Cabinet mandate for freshwater reform does not include developing a plan to address Māori rights and interests in freshwater. Furthermore, the scope of some of these work streams (in particular fair allocation and water bottling) depends on the extent to which this Government commits to addressing those rights and interests.

53. Budget for renewing KWM for a further twelve months was provided in Budget 2019.

### Next Steps

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54. Should you approve our recommendations, we will share this briefing with KWM and use it as the basis for a further conversation with KWM about its future. We will also draft a letter setting out a process for addressing Māori rights and interests for your review.

### Recommendations

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55. We recommend that you:

- a. **Agree** to renew KWM for a further twelve months (October 2019 – September 2020), and to us exploring an indicative work programme with KWM for this additional twelve-month period
  - i. Minister for the Environment Yes / No
  - ii. Minister for Māori/Crown Relations: Te Arawhiti Yes / No
  - iii. Minister for Māori Development Yes / No
- b. **Approve** our recommended process for renewing KWM for a further twelve months
  - i. Minister for the Environment Yes / No
  - ii. Minister for Māori/Crown Relations: Te Arawhiti Yes / No
  - iii. Minister for Māori Development Yes / No
- c. **Agree** that the indicative work programme for KWM's second term include developing a plan to address Māori rights and interests in freshwater
  - i. Minister for the Environment Yes / No
  - ii. Minister for Māori/Crown Relations: Te Arawhiti Yes / No
  - iii. Minister for Māori Development Yes / No
- d. **Agree** to send a letter to KWM committing to develop a plan to address Māori rights and interests in freshwater
  - i. Minister for the Environment Yes / No
- e. **Agree** to publicly release this letter alongside the Essential Freshwater consultation package
  - i. Minister for the Environment Yes / No

- f. **Agree** to share a copy of this briefing with KWM
- i. Minister for the Environment Yes / No
  - ii. Minister for Māori/Crown Relations: Te Arawhiti Yes / No
  - iii. Minister for Māori Development Yes / No

**Signature**

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Katherine Meerman  
Director, Water Taskforce, Ministry for the Environment

Hon David Parker  
**Minister for the Environment**

Date

Hon Nanaia Mahuta  
**Minister for Māori Development**

Date

Hon Kelvin Davis  
**Minister for Māori/Crown Relations: Te Arawhiti**

Date

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## Appendix One: Letter from KWM to Minister Parker dated 12 August 2019

12 August 2019

Honourable Minister David Parker  
Parliament Buildings  
Private Bag 18041  
**WELLINGTON 6160**

Tēnā koe e te Minita,

### **ESSENTIAL FRESHWATER PACKAGE**

1. As you are aware, Te Kāhui Wai Māori has been engaging with your Ministry for the Environment officials on a range of policy matters in the Essential Freshwater Work Programme, key elements of which are:
  - (a) ensuring Te Mana o te Wai is the central framework for freshwater management in Aotearoa, including by embedding it in the National Policy Statement for Freshwater Management (**NPS-FM**);
  - (b) including a mahinga kai compulsory value within the NPS-FM; and
  - (c) the wider issue of addressing Māori rights, interests and obligations in freshwater.
2. This letter sets out our position on these matters, responding to the *Action for healthy waterways* Discussion Document as at 9 August 2019.

### **Mahinga kai compulsory value**

3. Te Kāhui Wai Māori is pleased to see the Discussion Document reflect the Government's support of Te Kāhui Wai Māori's proposed mahinga kai compulsory value (Proposal 1).
4. We understand that previous advice to you from officials had incorrectly identified that, were Proposal 1 to be implemented, the mahinga kai compulsory value would apply in every water body with significant associated costs, as opposed to tangata whenua identified sites or water bodies in every Freshwater Management Unit (**FMU**).
5. After an explanation from Te Kāhui Wai Māori Members on 29 July, officials have since agreed that their prior advice to you was incorrect. We are concerned that this misunderstanding persisted for so long, as we are aware that it had a bearing on the (incorrect) costs advice you received on the mahinga kai compulsory value.
6. Inclusion of the mahinga kai compulsory value within the NPS-FM is a bottom line issue for Te Kāhui Wai Māori.

### **Embedding Te Mana o te Wai within the NPS-FM**

7. We have received your officials advice to you on Te Kāhui Wai Māori's recommended changes to the NPS-FM (Essential Freshwater 68).
8. Te Kāhui Wai Māori disagrees with many of the conclusions in Essential Freshwater 68. Despite our requests for confirmation that officials have conducted robust legal analysis that ensures the implementation of the current proposed draft NPS-FM provisions (to be released for public consultation) will meet the policy intent, we understand that no such analysis has been conducted.
9. We have continued to find engagement with your officials on the NPS-FM frustrating and difficult. Their approach to engaging with Kāhui Wai Māori on the NPS meant we were only able to commence a clear and transparent conversation with officials on 17 July.
10. Consequently, while Kāhui Wai Māori acknowledges the Government's commitment to embedding Te Mana o te Wai in the proposals in this package, we do not consider that the draft NPS-FM proposed for release with this Discussion Document yet achieves that aim.
11. As at today's date, we remain at odds with your officials on how Te Mana o te Wai is embedded within the NPS-FM. Until such time as the wording is strengthened to our satisfaction, we do not support the proposed draft NPS-FM.

### ***Mātauranga Māori policies***

12. Te Kāhui Wai Māori understands that you have directed your officials not to proceed with incorporating mātauranga Māori policies in the NPS-FM additional to those carried across from the 2017 NPS-FM. Accordingly, they are not in the current draft NPS-FM.
13. Te Kāhui Wai Māori wishes to understand your rationale for this decision so that we can address your concerns.
14. We continue to believe that the inclusion of mātauranga Māori policies is critical to embedding Te Mana o te Wai within the NPS-FM.

### **Māori rights, interests and obligations**

15. Addressing Māori rights, interests and obligations in fresh water remains a bottom line for Te Kāhui Wai Māori.
16. In releasing the Discussion Document for public consultation, we ask that the Government reserve Māori rights, interests and obligations, including by confirming that actions taken in the interim shall not derogate from full and considered resolution, and commit to a timeframe for resolution.

**Next steps**

17. Unless we can get clarity on the above matters, Te Kāhui Wai Māori will be unlikely to support the consultation process on the Discussion Document.
18. We ask that you consider this letter, and advise to what extent, if any, the issues raised can be addressed for inclusion in the Discussion Document.
19. As always we are happy to work with officials on this process.

I roto i ngā mihi,  
**Te Kāhui Wai Māori**



**Kingi Smiler**  
**Chairperson**

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## Appendix Two: Detailed information on the proposed KWM forward work programme

### Purpose

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1. This Appendix provides more information on:
  - a. The work streams that we intend to explore with KWM for the remainder of its first term (until the end of September 2019)
  - b. The indicative forward work programme that we seek your approval to discuss with KWM (October 2019 – September 2020).
2. We also outline the commitments that Ministers and officials have already made to KWM regarding these work streams.

### Remainder of KWM's first term (until 30 September 2019)

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3. We intend to continue working with KWM on several work streams for the remainder of its first term. As noted in the main part of this briefing, some of these work streams may continue into KWM's second term should the group be renewed.

#### *Public consultation on the Essential Freshwater package*

4. Our advice on involving KWM in public consultation is set out in the main part of this briefing.

#### *Analysing the options for introducing mandatory Māori measures of freshwater system health into the NPSFM*

5. You have agreed to include two options in the package concerning mandatory Māori measures of freshwater system health:

- a. Making mahinga kai a new compulsory value in the National Objectives Framework (NOF)
- b. Creating a new 'tangata whenua' value category in the NOF to sit alongside the 'compulsory value' and 'other national value' categories which, when identified by tangata whenua through established engagement processes in the NPSFM, will become mandatory.

6. One of the reasons why we have recommended publicly consulting on both options is that neither has been fully impact tested. Consulting publicly will provide more time and perspectives for us to do full impact testing. It will also allow Māori, regional councils and other affected parties to provide feedback on both options.

7. We have agreed with KWM to co-develop a plan to carry out further analysis and testing of these options. This will likely include how we work together during public consultation to gather information on the options.

#### *Discussing how Te Mana o te Wai is reflected and incorporated into the NPSFM through public consultation*

8. Our advice on this work stream is set out in the main part of this briefing.

#### *Comprehensive review of the resource management system*

9. On 27 June 2019, Cabinet agreed to progress with a comprehensive review of the resource management system [ENV-19-MIN-0036 refers]. The first step of this review involves engagement with targeted groups on the scope of the review (including KWM), after which

you will report back to Cabinet seeking the specific decisions needed to continue the review.

10. You have advised KWM that its recommendations concerning freshwater under the Resource Management Act (RMA) can be considered as part of the comprehensive review. In particular, you have indicated that you would like to explore with KWM:
  - a. How its recommendations and ongoing input can form part of the scope of the review
  - b. How Te Mana o te Wai principles and obligations can be applied in the review<sup>6</sup>
11. You have also advised KWM that you will consider its recommendations concerning a standalone Water Act and a Te Mana o te Wai Commission as part of the Essential Freshwater and comprehensive review programmes. You indicated that you expect to engage further with KWM, and Māori more generally, on these proposals.<sup>7</sup>
12. We have agreed to meet again with KWM and/or a sub-group of KWM members at their earliest convenience to discuss the scope of the comprehensive review of the resource management system as it relates to freshwater.
13. Following this targeted engagement, Cabinet has agreed that a Resource Management Review Panel will consult with a wider group, and that the groups that will be involved in the wider consultation (including possibly KWM) will be confirmed at a later date.

*Continuing to work with sub-groups*

14. A KWM sub-group has been formed to work with Department of Internal Affairs (DIA) officials on the Three Waters Review. The sub-group members' daily fees for this engagement are paid out of the budget approved by Cabinet for KWM member fees. This contributes to alignment between the Essential Freshwater work programme and the Three Waters Review as well as providing the benefit of KWM's expertise to the Three Waters reforms. We expect that this arrangement will continue. Should you decide not to renew KWM for a further twelve months, DIA will need to make arrangements with the individuals on the sub-group if they wish to continue this engagement.
15. There may be other areas where officials and KWM agree that it would be useful to work together through sub-groups. For example, under the Environmental Reporting Act 2015 there is a requirement to report on the impacts of environmental change on Te Ao Māori, which would benefit from working with a sub-group to discuss how to better integrate mātauranga Māori into future reporting concerning freshwater. We have raised this with the Chair of KWM but have yet to receive a response.

#### **Indicative work programme with KWM for an additional twelve-month period (October 2019 – September 2020)**

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16. We have identified a number of areas that officials could work productively with KWM should the group be renewed for a further twelve months. This is not intended as a final work programme. We have endeavoured to make it as comprehensive as possible based on what we want to progress, and our understanding of the matters that KWM will want to discuss.
17. Where it is feasible, we intend to identify areas where officials and KWM can collaborate on advice for Ministers. This has occurred to some extent in the Essential Freshwater programme to-date. While it has not always resulted in us reaching an agreed position, we

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<sup>6</sup> Attachment to letter from Minister Parker to Kingi Smiler, 19 June 2019, p 2.

<sup>7</sup> Ibid., pp 2-3.

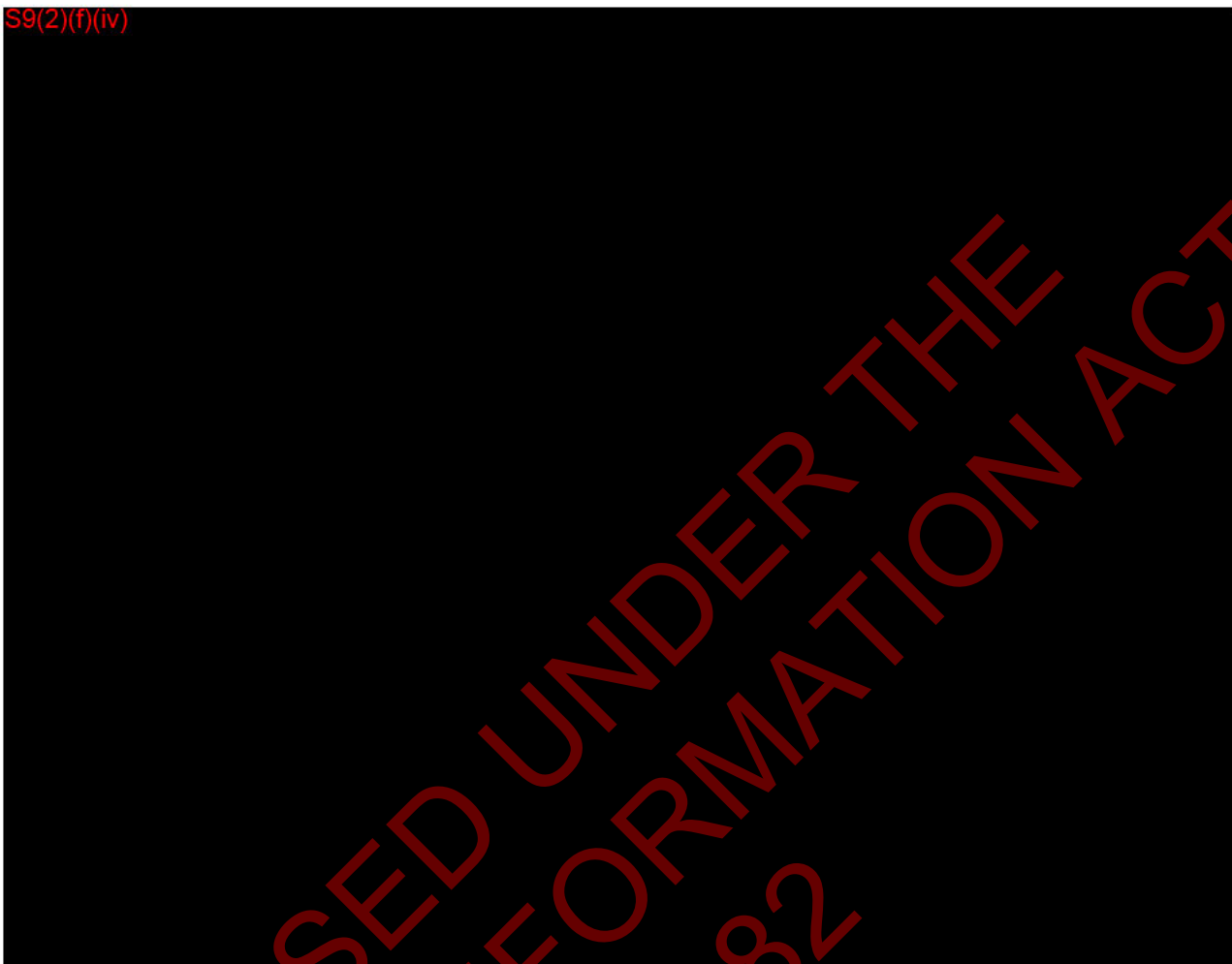
believe that it is an important practice to continue.

*Develop a plan to address Māori rights and interests in freshwater*

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S9(2)(f)(iv)



*Creating headroom to develop underdeveloped Māori land*

29. One of the points that KWM has raised in respect of the proposed National Environmental Standard (NES) is that headroom needs to be provided to develop underdeveloped Māori land.
30. You have advised KWM that you are open to working with it to develop a potential interim solution as part of the proposed NES regulations (and other Government initiatives like regional development funding). This may preserve options within the allocation work stream.<sup>12</sup>

*Implementation of the Essential Freshwater programme*

31. We would like to work with KWM on implementing the Essential Freshwater programme once a final package has been agreed to by Cabinet. This could include:
- a. Deciding how to implement the Essential Freshwater programme with the Budget appropriation for this financial year
  - b. Developing guidance to accompany the new NPSFM and NES regulations.

*Other relevant work streams*

32. We recommend taking a flexible and proactive approach to allow us to work with KWM on other freshwater-related work streams as they arise. This could include, for example, the proposed all-of-government response to the Waitangi Tribunal's *Wai 262: Ko Aotearoa*

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<sup>11</sup> Attachment to letter from Minister Parker to Kingi Smiler, 19 June 2019, p 4.

<sup>12</sup> Attachment to letter from Minister Parker to Kingi Smiler, 19 June 2019, p 2.



*Tēnei* report. We will continue to brief you as opportunities for further potential areas of collaborative policy development arise.

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## Appendix Three: Assessment of the effectiveness and efficiency of KWM

### Purpose

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1. You have advised Parliament that you intend to review the efficiency and effectiveness of KWM, and make decisions on its future, before the end of its first term.<sup>13</sup>
2. This Appendix contains our detailed analysis of KWM's efficiency and effectiveness, based on their approved functions in the Terms of Reference. We also identify ways in which we believe we can improve the way we work with KWM in the future. We intend to explore these potential improvements with KWM.

### Context

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3. On 3 July 2018, Cabinet approved the establishment of KWM [ENV-18-MIN-0032 refers]. The approved functions of the group are to:
  - a. Facilitate engagement between the Crown and Māori on freshwater reform
  - b. Collaboratively develop and analyse policy options on issues of particular importance to Māori across the freshwater reform programme
  - c. Provide advice directly to Ministers where it wishes to
  - d. Undertake any other advisory/research function agreed between the Crown and KWM
  - e. Undertake or facilitate engagement with the wider Māori community on key issues if necessary.
4. Cabinet also agreed that KWM:
  - a. Should be based on perspectives, insights and skills from a wide range of Māori society
  - b. Should include both rangatira and technical experts, supported by a secretariat based in the Ministry for the Environment.
5. The initial appointments to KWM were for a term of one year from 1 October 2018 until 30 September 2019.
6. As at the time of this briefing, KWM has held eleven meetings. Members have also attended a number of joint hui with the other advisory groups, and have held numerous teleconferences and sub-group meetings.
7. KWM has played an active role in shaping its work programme since its first meeting. In December 2018 you approved a broad list of projects which KWM sought to commission to assist it in developing its advice for Ministers [2018-B-05202 refers]. This included contracting its own Project Manager/Lead Technical Advisor and communications manager. In April 2019 KWM provided you with a report titled *Te Mana o te Wai* which set out a series of twelve interrelated recommendations designed to achieve fundamental systemic reform to the freshwater management system and recognise Māori rights and

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<sup>13</sup> See answers to questions 9489 (2019) and 2807 (2019)

interests.<sup>14</sup> It has since provided you with several other reports in response to officials' advice to Ministers on specific reforms.<sup>15</sup> Several members also participated in an integration working group that was formed in June to allow representatives from all of the advisory groups to collaboratively review the entire package of proposed reforms.

### **Facilitating engagement between the Crown and Māori on freshwater reform**

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*What worked well?*

8. KWM has been an effective vehicle for 'broadening the conversation with Māori', as envisaged by Cabinet [ENV-18-MIN-0032 refers]. The current membership includes leaders in Māori politics, business and agriculture; kaumātua; technical experts; academics; and flaxroots advocates. Members were nominated or endorsed by several groups, including the NZMC, the Federation of Māori Authorities, as well as iwi / hapū Trusts and resource management committees [2018-B-04841 refers]. Others were recommended by officials to fill specific gaps in representation [2018-B-04896 refers].

*What could have gone better?*

9. Appointing KWM had a negative impact on the Crown's relationship with ILG. While the intention of KWM was to broaden the Crown's conversation with Māori, the ILG does not consider KWM to reflect a Treaty partnership approach, in particular because its terms and members have to be approved by the Crown. As such, the ILG has declined your offer to nominate members for KWM, and has sought to engage directly with the Crown instead.
10. We have attempted to mitigate the relationship issues with the ILG. Our Crown Lead has held informal discussions with the ILG Chair, and similar discussions have been held between KWM and ILG members. The Government and the ILG also discussed the possibility of developing a joint work programme based on a set of shared short-term priorities. However, the ILG ultimately declined to pursue this due to 'the limited timeframes to input and respond to the established work programme and a lack of commitment to the Freshwater ILG relationship as the Treaty partner'.<sup>16</sup> We are preparing separate advice for you on how to respond to this response letter from the ILG.

### **Collaboratively developing and analysing policy options on issues of particular importance to Māori across the freshwater reform programme**

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*What worked well?*

11. We have had the benefit of receiving KWM's advice on a number of Essential Freshwater work streams. This advice has been provided kano ki te kano through scheduled group meetings and separate sub-group meetings, via email and through the various reports KWM have prepared for Ministers and officials. KWM has challenged us and, at times, pushed us to ensure that all of our thinking is analysed through a Māori lens, in particular the Te Mana o te Wai framework.
12. We have collaborated on or co-developed advice with KWM in some work streams:
  - a. Its advice on the pace of the at-risk catchments work stream contributed to Ministers agreeing to put it on a slower track. This allowed us to agree with a KWM sub-group to identify and appoint a committee of Māori experts to work with officials

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<sup>14</sup> 'Te Mana o te Wai: the health of our wai, the health of our nation', April 2019.

<sup>15</sup> See their reports dated 30 April, 21 May, 23 May, 10 June, and 21 June.

<sup>16</sup> Letter from Rukumoana Schaafhausen to Minister Parker, 26 June 2019.

to incorporate mātauranga Māori into the at-risk catchments work stream, and to identify research priorities. This committee, which includes Hauiti Hakopa and Joanne Clapcott, will be reconvened as needed as the work stream progresses.

- b. We worked with a KWM sub-group to identify options for strengthening Te Mana o te Wai and introducing mandatory Māori measures of freshwater system health to the NPSFM. While our advice ultimately ended up differing in some respects (discussed further below), our own understanding of, and advice on, Te Mana o te Wai was greatly enriched by this collaboration.
13. KWM has played an active role in setting its work programme. It has contracted independent advice, prepared its own reports and recommendations, and requested to discuss topics of relevance to Māori that are not within the Essential Freshwater programme (such as the Three Waters Review). It has also appointed its own part-time Project Manager/Lead Technical Advisor and communications manager. This level of autonomy has been an important method for realising the collaborative process approved by Cabinet. It has allowed KWM to develop robust and independent recommendations and provide detailed advice on our policy proposals.
  14. While we have not always agreed with KWM's position, we have nevertheless had the benefit of a comprehensive (and typically unified) response from a diverse group of Māori experts.  
*What could have gone better?*
  15. Our relationship with KWM has been challenging at times. The policy development process has been fast-paced and demanding, our positions have not always aligned, and the current Cabinet mandate for freshwater reform has limited our ability to deliver some of the more fundamental reforms that KWM, and Māoridom in general, expects.
  16. While KWM's active approach to setting its work programme has been advantageous in many ways, it has also required us to prioritise which work streams we engage with KWM on so that it has had sufficient capacity to progress its own priorities [2019-B-05268 refers]. We have endeavoured to keep KWM updated on the breadth of the programme, but there have been times where the members have not had the opportunity to review some policy as early as they would have liked (in particular the package of rural reforms). Furthermore, KWM's preference not to share the minutes of its meetings with officials has limited the extent to which we have been able to inform ourselves of previous discussions and prepare ourselves for meetings with them.
  17. Our collaborative work with KWM on Te Mana o te Wai and mandatory Māori measures of freshwater system health in the NPSFM has produced mixed results. Our initial period of identifying policy options with a KWM sub-group was very positive, and was praised by one KWM member as an example of potential best practice. However, our advice diverged in some respects once we began refining our advice and identifying our preferred options.
  18. This divergence of views was not necessarily a bad thing; we had anticipated that our views might diverge. However, it was compounded by a number of factors, including:
    - a. The fast pace at which policy has been refined as Ministers have considered officials' and KWM's advice and communicated their preferences
    - b. The high volume of other policy material and advisory group meetings occurring at the same time
    - c. The limited time that has been available for KWM to provide feedback on some work streams, and the limited availability of some KWM members to engage in detail on those work streams in a short time

- d. A lack of face-to-face meetings between officials and the KWM sub-groups, which caused some mutual confusion about what each other's preferred policy options entailed
  - e. KWM's disappointment at not being allowed to contribute directly to some work products, such as the drafting of the Regulatory Impact Statement and the NPSFM.
19. These factors have resulted in unnecessary confusion and frustration, given that our policy proposals have been reasonably well aligned in some respects.
20. Finally, there necessarily had to be a balance between discussing proposals at a high-level and delving into specific details.

### **Providing advice directly to Ministers where it wishes to**

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#### *What worked well?*

21. KWM has proactively sought opportunities to provide advice directly to Ministers, both in person and in written reports, on the Essential Freshwater programme. It has also provided advice to Minister Mahuta on the Three Waters Review.
22. We believe this is an essential function for KWM to continue to perform. Apart from providing Ministers with direct access to KWM and its views, it also provides KWM with more confidence that its views will be heard by Ministers. From a Te Ao Māori perspective, it also provides a channel for dialogue to occur directly with Crown Ministers rather than being mediated through officials.

### **Undertaking any other advisory/research function agreed between the Crown and KWM**

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#### *What worked well?*

23. KWM has contracted several pieces of original advice to-date. This advice has ranged from short 'position papers' (such as on allocation principles) to detailed analysis pieces (such as potential legislative reforms and non-regulatory mechanisms).
24. KWM's contracts have been completed in a disciplined manner under tight timeframes, and have fallen within the budget approved by Cabinet. They have provided value to MfE by providing KWM with the advice they need to provide robust and independent recommendations to Ministers and officials.

#### *What could have gone better?*

25. As per KWM's Terms of Reference, KWM has had control over identifying projects, setting the scope for those projects, selecting contractors, and setting quality assurance standards. Officials' role has been limited to carrying out the procurement process to contract and fund these projects. The sole exception to this process was when you declined to fund a proposed legal opinion about the nature of Māori rights and interests in freshwater at law, on the basis that it lay outside the Cabinet mandate [2018-B-05202].
26. As stated above, this level of autonomy has been important for realising the collaborative process approved by Cabinet. However, KWM has chosen to share only one of its contracted reports with officials. As a result, we have not been able to benefit from reading the detailed analysis that underpinned KWM's recommendations.

## **Undertaking or facilitating engagement with the wider Māori community on key issues if necessary**

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27. KWM has yet to decide whether or not it will participate in the Essential Freshwater public consultation programme.

*What worked well?*

28. KWM has provided us with some advice on how we should engage with Māori during public consultation, including through our quarterly regional engagement hui, which we have largely accepted. It has also appointed its own communications manager, who has liaised closely with officials and has helped KWM to develop its own communications strategy.

29. KWM has also produced a series of video vignettes, which will assist with communicating Te Mana o te Wai to a general audience. We will continue to work with KWM to agree on a suitable timeframe and channels to distribute this material.

*What could have gone better?*

30. We could have involved KWM more closely in designing and carrying out the first round of MfE's organisation-wide quarterly regional engagement hui in May 2019. The pace at which these hui were organised, as well as the volume of other work that was being progressed at the time, limited our ability to do so.

## **Potential improvements on how we work with KWM in the future**

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*Areas for improvement*

31. The above assessment highlights several areas where we could improve on how we work with KWM in the future:

- a. Providing sufficient time and resourcing for KWM to prepare its own advice, participate in collaborative projects and provide feedback on proposals developed by officials
- b. Ensuring that there is a clear and agreed understanding up-front on the projects we have agreed to collaborate on, including scope, timing, end product(s), roles and responsibilities
- c. Conducting our collaborative policy design through face-to-face engagement as much as possible to ensure that we understand each other's viewpoints
- d. Proactively identifying opportunities for us to work together
- e. Providing appropriate pathways for individual KWM members to collaborate on the detail of policy proposals while also allowing the space for the whole KWM to engage at a high level.

32. Some options for improving the way we engage with KWM are outlined below. Several of these options could be combined to produce better results. We intend to explore these further with KWM.

*Appointing additional KWM members*

33. Appointing additional KWM members could reduce the workload that the current members have had to shoulder. KWM's current Terms of Reference allow up to 15 members to be appointed. Any increase on this would require a change in the Terms of Reference, and may require further funding to ensure that the additional members' fees and associated expenses can be met.

34. We do not favour this option. Extending the group beyond its current number of 11 members may make policy discussions less productive, and may make it more difficult to achieve consensus views.

*Making more frequent use of KWM sub-groups*

35. Our most productive collaborations with KWM have occurred by working with sub-groups on specific work streams. While these collaborations have come with their own challenges, we would like to explore the idea of collaboratively designing policy with sub-groups as standard practice. This would leave KWM's scheduled meetings free to focus on providing high-level commentary on policy proposals that emerge from those collaborations.
36. One disadvantage of this approach is that it would place an additional burden on KWM members, most of whom have limited time available. We therefore do not recommend pursuing this option in isolation.

*Contracting additional technical advisors to support KWM*

37. KWM's contracted Project Manager/Lead Technical Advisor has greatly assisted KWM in engaging with policy proposals, contracting independent advice, and preparing their own recommendations.
38. Contracting additional technical advisors in a full- or part-time capacity may be helpful to support the ongoing work programme and KWM members. These additional technical advisors could be assigned to work with one or more KWM sub-groups on specific work streams. They could also potentially be seconded into the MfE office part-time to work alongside officials and keep abreast of the rapid changes that often occur during policy development.

*Building staff capability by developing technical advice for KWM*

39. KWM has relied heavily on contracted experts to provide it with technical advice.
40. We would like to explore the possibility of MfE staff providing technical advice of this sort to KWM in the future. While there will undoubtedly be areas that require the kind of specialist experience that we do not possess in-house, there may be other areas in which our staff are able to provide advice. There may also be areas where our staff can work with specialist contractors.
41. This will provide development opportunities for our staff and assist in building our in-house capacity and capability. It may also reduce KWM's contractor spend, freeing up more of its budget for other purposes.
42. There will continue to be occasions when KWM wishes to contract its own advice independently of officials. We encourage this to continue.

*Making better use of the Crown Lead in challenging conversations*

43. There have been several occasions during collaborative policy design when we have been required to have challenging conversations with KWM about differing perspectives and expectations. While we had originally intended for the Crown Lead to fill this role [2018-B-04896 refers], his unavailability has meant that these conversations have usually fallen to officials. This has not reflected the kind of rangatira-to-rangatira approach that is often required to address difficult matters.
44. We hope to explore the possibility of making more use of the Crown Lead in these conversations going forward.

*Agreeing on a joint work programme*

45. If we are able to agree on a joint work programme with KWM that meets Ministers' approval, it will assist us in clearly setting out roles, responsibilities, expectations, timeframes and

deliverables up front. We could also identify work streams that officials or KWM will take the lead on, as well as areas where we intend to collaboratively develop policy proposals.

*Set up 'project teams' comprising KWM members, contracted technicians and officials*

46. Setting up project teams for specific work streams is an option that combines many of the areas for improvement outlined above.
47. The purpose of project teams would be to carry out and deliver specific work streams in an agreed work programme. These teams would comprise officials and KWM members, as well as technicians contracted by KWM. This would free up regular KWM meetings to focus on high-level proposals, rather than delving into the detail.
48. We have previously worked with ILG technicians in a similar fashion:
  - a. An allocation work programme (in 2016-2017) to identify and develop acceptable options for the allocation of fresh water and discharges
  - b. Guidance for the Mana Whakahono ā Rohe provisions of the RMA (in 2017).
49. These experiences have indicated that collaborative policy development works best when the team has a clear mandate from Government to progress the work.

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## Appendix Four: Detailed information on the process for renewing KWM for a further twelve months

### Purpose

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1. This Appendix contains more information on the process we recommend for renewing KWM for a further twelve months.

### Process

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2. Cabinet approved a hybrid structure for KWM in which the Crown requests nominations from a small number of Māori organisations and contracts additional members at key engagement points who it thinks would bring particularly relevant perspectives or capabilities to specific issues [ENV-18-MIN-0032 refers]. While we do not recommend revisiting this mandate, we have suggested ways below in which KWM can be involved in co-determining its membership for a further twelve months.

*Identifying which existing members wish to be reappointed for a further twelve months*

3. KWM's current membership has had the range of skillsets and degree of representativeness necessary to engage productively with the Essential Freshwater package to-date. For this reason, and in order to ensure continuity, we recommend that the existing members be asked if they have the capacity and the desire to continue for a further twelve month period.
4. We suggest that the Chair of KWM and the Crown Lead be asked if they are willing to encourage the current members to remain. We also recommend that they be advised to have discussions with members who have been unable to attend many meetings about whether it is viable for them to continue as part of the group.

*Collaboratively working with KWM to identify potential replacement members*

5. Depending on KWM's future work programme, it is possible that officials or KWM may identify capability and/or representation gaps that need to be filled. For example, if the work programme includes developing a plan to address Māori rights and interests in freshwater, there may be a need for additional rangatira and kaumātua/kuia from within Māoridom who have experience in developing plans for sharing natural resources.
6. We recommend that officials and KWM work together to:
  - a. Identify the capability gaps that may need to be filled in order to undertake the future work programme
  - b. Agree on a process to identify members to fill those gaps.
7. KWM's maximum membership is 15 under its Terms of Reference. However, we do not recommend appointing more than the current total of 11 members. The current membership has been able to reach consensus views despite its wide variety of viewpoints. Extending the group beyond this number may make policy discussions less productive, and may make it more difficult to achieve consensus views.
8. If officials and KWM agree to seek nominations from national Māori organisations to fill any gaps, we recommend that KWM Chair and the Crown Lead make formal written contact with these organisations.
9. If officials and KWM identify specific individuals who possess the relevant skill sets to fill any gaps that are identified, we recommend that KWM Chair and the Crown Lead make

informal contact with these individuals to determine their availability and interest in being nominated to join the group.

10. Where there are differences of opinion between officials and KWM concerning potential new members, or the process for identifying new members, we recommend that these be jointly conveyed to Ministers for a decision.

*Appointing a Chair*

11. We recommend that Mr Smiler be reappointed as the KWM Chair.

*Carrying out the appointment process*

12. Once a proposed list of new and existing members has been agreed, we recommend that officials and KWM jointly convey this list to Ministers for their consideration along with proposed text for an appointment letter. This would also be an opportunity for Ministers to identify any additional members who are not included in the agreed list from officials and KWM.
13. Once Ministers have provided sign-off on a list of existing and new members, officials will draft a Cabinet paper for AHC for your review.

*Identifying any amendments that need to be made to the current Terms of Reference*

14. Responsible Ministers and KWM will need to agree to Terms of Reference for an additional twelve months.
15. We do not envisage making any major changes to the current Terms of Reference. Some cosmetic changes will need to be made, such as the reference to the term of the group.<sup>17</sup> The scope may also need to change given that the group's primary focus is likely to shift from Essential Freshwater policy development to include other reform programmes which relate to freshwater (such as the comprehensive review of the resource management system).<sup>18</sup>
16. We recommend officials work together with KWM to determine any changes that are required to the Terms of Reference, which we will then convey to responsible Ministers for your review.
17. Whatever changes are made to the Terms of Reference, it is crucial that KWM retain their direct relationship with you and other Ministers, including its ability to provide advice directly to you where it wishes to.

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<sup>17</sup> KWM agreed Terms of Reference, para 12.

<sup>18</sup> *Ibid*, paras 13-14.

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The following information has been provided as an excerpt under section 16(1)(e).

**Weekly Update**  
**Hon David Parker, Minister for the Environment**  
**For the week starting 2 September 2019**

**Updates for noting**

**Wai 262**

On Wednesday 28 August Minister Mahuta met with the Iwi Chairs Forum and announced the launch of a whole-of-government programme in response to the Waitangi Tribunal's report on Māori culture and identity (the Wai 262 report). We will actively participate in this project and consider the implications of the report on the Ministry's policy areas.

The meeting with the Iwi Chairs Forum also initiated a targeted engagement process. From now until October, Te Puni Kōkiri officials will engage with National and Sectoral Māori groups, including the Kāhui Wai Māori. The targeted engagement will seek feedback on the design of a whole-of-government response, before reporting back to Cabinet in December.

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**From:** [Joanna Morgan](#)  
**To:** [Matthew Cunningham](#); [Lucy Bolton](#)  
**Cc:** [Nyssa Payne-Harker](#)  
**Subject:** FW: Wai 262 - Te Pae Tahiti - Kete Tuarua - Agenda for meeting Thursday 5th, 10.30-12  
**Date:** Wednesday, 4 September 2019 3:50:11 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[The Waitangi Tribunal's Wai 262 inquiry.eml](#)

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Kia ora korua,

You may be aware that there is a Wai 262 meeting being held tomorrow. The agenda includes requests for information regarding the Kahui and the email Cheryl sent them last week.

Please provide information on the following, so Nyssa can take it to the meeting tomorrow:

- a. What responses have you received from the Kahui, if any?
- b. When is the next hui being held? Will Wai262 be on the agenda?

I should ask in the first instance - if the Kahui are willing (and able, per the scope of their mandate) to participate in targeted engagement to be undertaken by TPK officials regarding the whole-of-government Wai 262 response?

Any assistance you can provide is much appreciated.

Nga mihi, na  
Joanna

---

**From:** Roland Sapsford <sapsr@tpk.govt.nz>  
**Sent:** Wednesday, 4 September 2019 3:27 PM  
**To:** aidan.burch@mbie.govt.nz; john-david.chaker@mbie.govt.nz; Charlotte.Adam@mbie.govt.nz; megan.gill@mbie.govt.nz; Mark.Ormsby@mbie.govt.nz; tia.warbrick@tearawhiti.govt.nz; rewi.henderson@tearawhiti.govt.nz; benedict.taylor@tearawhiti.govt.nz; ngawini.keelan@mfat.govt.nz; daniel.wai-poi@mfat.govt.nz; Rosemary Paterson <rosemary.paterson@mfat.govt.nz>; megan.addis@mfat.govt.nz; alice.revell@mfat.govt.nz; patrick.rata@mfat.govt.nz; tarona@doc.govt.nz; kkingdonbebb@doc.govt.nz; lorena.stephen@epa.govt.nz; Tara Ross-Watt <rosst@tpk.govt.nz>; erica.gregory@epa.govt.nz; hana.ihaka-mcleod@epa.govt.nz; Kelly Palmer <Kelly.Palmer@mfe.govt.nz>; Joanna Morgan <Joanna.Morgan@mfe.govt.nz>; Nyssa Payne-Harker <Nyssa.Payne-Harker@mfe.govt.nz>; Matthew Cunningham <Matthew.Cunningham@mfe.govt.nz>; rebecca.barnes-clarke@mpi.govt.nz; janet.chambers@mpi.govt.nz; stewart.genery@mpi.govt.nz; Elizabeth.Davie@mpi.govt.nz; Keri.Iti@mpi.govt.nz; Marama.Findlay@mpi.govt.nz; kiri\_dargaville@moh.govt.nz; sam\_austin@moh.govt.nz; Ben Matthews <matthb@tpk.govt.nz>; Charles Ngaki <ngakc@tpk.govt.nz>; Sylvan Spring <spril@tpk.govt.nz>; Dominic Kebbell <kebbd@tpk.govt.nz>; Nadia Ward <wardn@tpk.govt.nz>; Erin Keenan <keene@tpk.govt.nz>; Tamati Olsen <olset@tpk.govt.nz>; Tara Ross-Watt <Tara.Ross-Watt3@mpi.govt.nz>  
**Cc:** Kiri.Dargaville@health.govt.nz; Sam.Austin@health.govt.nz; Jahnvi Manubolu <Jahnvi.Manubolu@mbie.govt.nz>  
**Subject:** Wai 262 - Te Pae Tahiti - Kete Tuarua - Agenda for meeting Thursday 5th, 10.30-12

Kia ora tatou

I hope this finds you well as the middle of the working week passes.

Below is the agenda for tomorrow's hui. The areas highlighted in yellow are ones where you may want to be prepared to share information as part of a round.

Also attached for your information is the email sent to Wai 262 DCEs (and equivalent) last week by our DCE Rahera Ohia.

Nga manaakitanga

Roland

Agenda Kete Tuarua

5 September 2019

10.30-12, Te Puni Kokiri Head Office

1. Karakia
2. Introductions and process updates
3. Update Round on Kete Tuarua work-streams
4. Round on communications and engagement
  - a. Who did you communicate with about Wai 262 – Te Pae Tawhiti launch?
  - b. What responses have you received?
  - c. What sectoral hui do you have coming up and when?
5. Process for targeted engagement
  - a. Shared responsibilities
  - b. Coordination and consolidation
6. Update on existing work on cross-cutting issues: Bioprospecting, Taonga species
7. Update on Kete Tuatoru
8. Process for Crown mahi
  - a. Organising ourselves
    - i. DCE Stewardship Group
    - ii. Kete management
  - b. November Cabinet paper: overview and timelines
  - c. Key tasks at kete level
    - i. Timing and nature of Wai 262 work within individual work streams
    - ii. Whole of government view on potential cross-cutting work streams
9. Any other issues
10. Karakia

---

**Roland Sapsford**

Principal Advisor

National Office



Tauwaea DDI : +64 4 819 6885 | Waea Pukoro M : +64 21 65 1105

Waea Whakaahua F : 0800 875 329

Te Puni Kokiri, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand



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**Roland Sapsford**

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National Office



Tauwaea DDI : +64 4 819 6885 | Waea Pukoro M : +64 21 65 1105

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**From:** [Raheera Ohia](#)  
**To:** [Anne Haira](#); [Becky MacNeil](#); [Bruce Parks](#); [Chris Bunny](#); [Colin Holden](#); [Heather Baggott](#); [John Whaanga](#); [Kelly Dunn](#); [Lorena Stephen](#); [Marilyn Little](#); [Michelle Hippolite](#); [Paul Stocks](#); [Penny Nelson](#); [Peter Douglas](#); [Peter Murray](#); [Racheal Millicich](#); [Trevor Moeke](#); [Victoria Hallum](#); [Wayne Ngata](#)  
**Subject:** The Waitangi Tribunal's Wai 262 inquiry  
**Date:** Wednesday, 28 August 2019 5:07:21 PM  
**Attachments:** [2019.08.Wai262 - Summary.docx](#)  
[2019.08.Wai262 - diagram.pdf](#)

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Nga mihi nui ki a koutou,

On 8 April 2019 Cabinet agreed to develop an all of government approach to addressing the issues raised in the Waitangi Tribunal's Wai 262 inquiry, also known as the 'flora and fauna' claim [Cab-19-Min-0138.01 refers]. Many of you will know about this work through internal conversations within your agencies.

Addressing Wai 262 issues will involve a long-term programme of work with significant implications for the Maori Crown partnership. The rationale for embarking on this work is twofold: to partner with Maori to shape the way forward on the problems and issues raised by the claim and, in doing so, take a more proactive, consistent and coordinated approach to supporting the Maori Crown relationship. To be successful, we will need to ensure each of our agencies is in a position to support the aspirations of Ministers and Maori for this mahi.

The Minister of Maori Development, who is leading this work, announced at the National Iwi Chairs Forum on 28 August that the Government is developing a whole-of-government approach to the issues raised by the Wai 262 claim and the subsequent Waitangi Tribunal report Ko Aotearoa Tenei. I am contacting you to:

- ensure that you are aware of the announcement
- propose that we establish a Deputy Chief Executives group to ensure senior public service officials help coordinate this work.

I would therefore be grateful if you would reply to me by **Monday, 2 September 2019** either:

- confirming that you are able to participate in this group
- advising me who can participate from your agency (if not you).

We will then arrange a time to hold our first meeting – likely to be towards the end of September beginning of October.

For further information about this work, I attach:

- a summary of this kaupapa, based on a briefing we recently sent to senior Cabinet ministers
- a diagram showing the proposed government structure, which includes:
  - a Ministerial Oversight Group comprised of senior Ministers (this was agreed in the April Cabinet paper)
  - Ministerial groups considering portfolio issues divided into three kete of issues (this was agreed in-principle in the April Cabinet paper).

I look forward to hearing from you to confirm your agency's attendance in this group.

---

**Raheera Ohia**  
Deputy Chief Executive  
**Te Puni Kokiri, National Office**

Waea Whakaahua F : 0800 875 329 | Paetukutuku W : [www.tpk.govt.nz](http://www.tpk.govt.nz)

**Te Puni Kokiri**, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand

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## SUMMARY OF WAI 262 WORK FOR [SENIOR OFFICIALS]

- In April 2019, Cabinet agreed to develop an all of Government approach to Wai 262 issues. “Wai 262 issues” is shorthand for a complex set of issues identified by the 1991 Wai 262 claim and subsequent 2011 Waitangi Tribunal report *Ko Aotearoa Tēnei*. Wai 262 shared many characteristics with what are now called ‘contemporary’ claims. *Ko Aotearoa Tēnei* was the Waitangi Tribunal’s first all of government inquiry.
- A central theme linking Wai 262 issues is how our nation should make decisions – and who should participate in decisions – that affect taonga Māori. Wai 262 issues encompass the Crown’s laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international agreements.
- As part of its April decisions Cabinet agreed to establish a Ministerial Oversight Group and agreed in principle to establish three focus groups or kete to coordinate work within government. Cabinet also agreed to undertake engagement with specific Māori groups and individuals about these proposals for how the Crown organises itself, before making final decisions on this.
- Engagement is planned to begin on 28 August with the National Iwi Chairs Forum and run through September and October. The focus will be on:
  - Te Puni Kōkiri-led discussions with a number of national Māori organisations
  - Discussion, in partnership with relevant Government agencies, with sectoral Māori reference groups established by many agencies.
  - Discussion, through a series of hui, with Māori academics and technical experts.
- The results of this engagement will inform a report to Cabinet before the end of 2019 on any changes needed to the Ministerial Oversight Group and kete. This end of year report will also address next steps in developing a coordinated and consistent approach across Wai 262 issues, and next steps in furthering a partnership conversation between the Crown and Māori.

### What is the Wai 262 claim?

- The Wai 262 claim was filed in the Waitangi Tribunal in 1991. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori (Māori traditional knowledge), traditional artistic and cultural expressions, the unique characteristics of indigenous flora and fauna, and New Zealand’s natural environment more generally.
- In 2011, the Waitangi Tribunal released its report *Ko Aotearoa Tēnei* (“This is New Zealand”), which recommended changes to the Crown’s laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international treaties and other instruments.



- The Waitangi Tribunal said Wai 262 was “*fundamentally a claim about how the future should look*” and noted that addressing Wai 262 issues could help “...*shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises about our ongoing relationships*”.
- This forward-looking perspective places work on Wai 262 within the project of nation-building through strengthening the Māori-Crown partnership. *Ko Aotearoa Tēnei* notes that this work has the potential to fuel innovation, strengthen national identity, and enhance our international reputation, as well as deliver direct benefits to Māori.
- The Crown has not made any formal response to the Wai 262 report.

### **How is this Government approaching Wai 262 issues?**

- Cabinet’s agreement to develop an all of government approach will enable a more consistent and considered approach to Wai 262 issues within existing and upcoming work programmes, and prepare for Crown-Māori dialogue on substantive and over-arching Wai 262 issues over the next few years.
- There is significant variation in the way agencies and portfolio Ministers are approaching Wai 262 issues at present. As noted in the Cabinet paper supporting April decisions, this creates ongoing risks and means opportunities may be missed.
- A genuine partnership approach, underpinned by co-ordinated and consistent government action in response to Wai 262 issues, requires governance structures within the Crown. To help the Government do this, Cabinet agreed in April to establish the Ministerial Oversight Group to provide high level oversight and strategic direction, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.
- Cabinet also agreed in-principle to establish three Ministerial focus groups. Each consists of Ministers with strong portfolio links to one of the following three broad kete of issues:
  - a. Kete 1: Taonga works<sup>1</sup> me te mātauranga Māori
  - b. Kete 2: Taonga species<sup>2</sup> me te mātauranga Māori
  - c. Kete 3: Kawenata Aorere / Kaupapa Aorere (broadly, international issues).
- Agencies have already held a number of interagency hui under each kete. The approach appears promising and has already facilitated the identification of some common issues and possible future work on cross-cutting issues within the Kete.

---

<sup>1</sup> The Waitangi Tribunal defined ‘taonga works’ as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>2</sup> The Waitangi Tribunal defined ‘taonga species’ as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.

# Wai 262 - Te Pae Tawhiti: Preliminary Proposals for Crown Organisation

## Ministerial Oversight Group (MOG)

(Rt Hon Jacinda Ardern, Rt Hon Winston Peters, Hon Kelvin Davis, Hon Dr Megan Woods, Hon Chris Hipkins, Hon Andrew Little, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi.)

- Oversee the government's high-level response across Wai 262
- Assist Ministers to co-ordinate within and across the three Ministerial groups (Kete 1-3)
- Determine the Crown's approach to high-level and cross-cutting issues
- Determine the high-level approach to Māori-Crown relationships on this kaupapa

**Ministers**  
 Rt Hon Jacinda Ardern, Hon Kelvin Davis, Hon Grant Robertson, Hon Carmel Sepuloni, Hon Nanaia Mahuta, Hon Tracey Martin, Hon Kris Faafoi, Hon James Shaw.

### Kete 1: Taonga works me te Mātauranga Māori

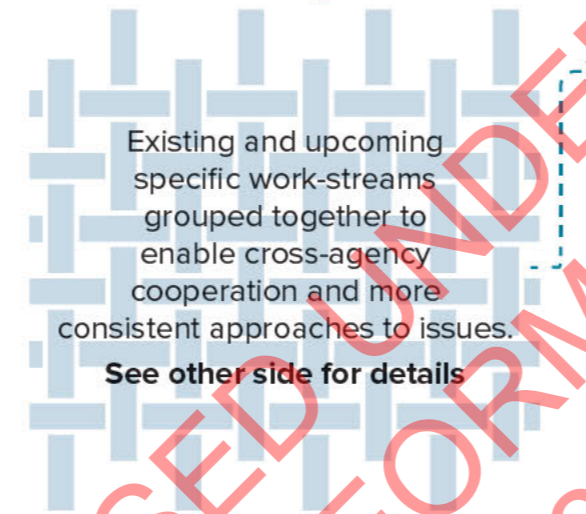


**Possible Cross-cutting work**

- Developing a partnership approach to laws, policies and decisions affecting taonga works and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga works and mātauranga Māori.
- Defining Crown roles in respect of taonga works and mātauranga Māori.
- Developing a new legal framework for the use and protection of taonga works and mātauranga Māori.

**Ministers**  
 Hon Dr Megan Woods, Hon Dr David Clark, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw, Hon Eugenie Sage.

### Kete 2: Taonga species me te Mātauranga Māori

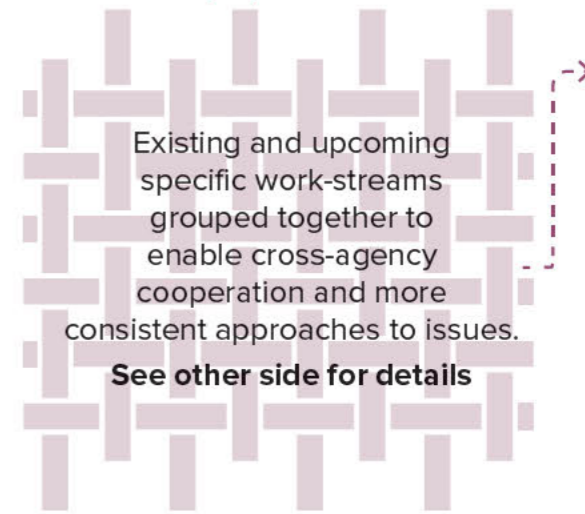


**Possible Cross-cutting work**

- Developing a partnership approach to laws, policies and decisions affecting taonga species and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga species and mātauranga Māori.
- Defining Crown roles in respect of taonga species and mātauranga Māori.
- Improving information about taonga species and mātauranga Māori.
- Transitioning issue-by-issue approach to a relationship-based Māori-Crown dialogue on taonga species and mātauranga Māori.

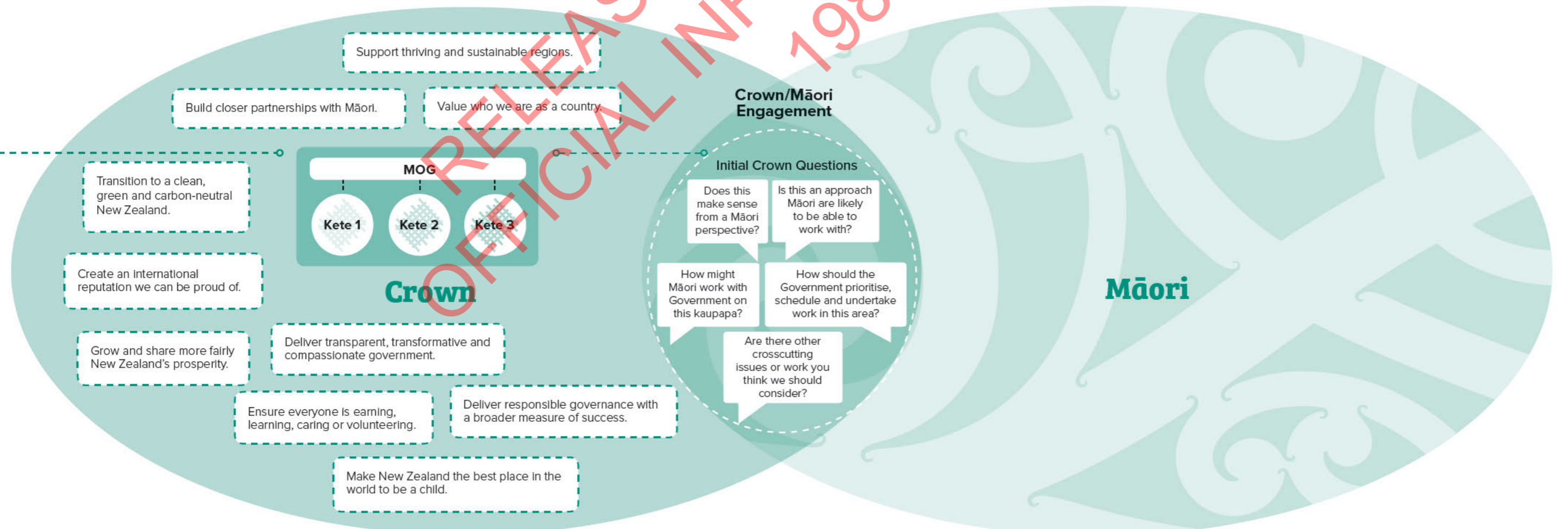
**Ministers**  
 Rt Hon Winston Peters, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw.

### Kete 3: Kawenata Aorere/ Kaupapa Aorere



**Possible Cross-cutting work**

- Working with Māori to identify Māori interests and understanding their nature and strength when negotiating international instruments and participating in international forums.
- A consistent approach to engaging with Māori when representing New Zealand.
- Māori representation in international forums.





### Kete 1: Taonga works me te Mātauranga Māori

In Kete 1 (Taonga Works me te Mātauranga Māori), relevant existing and upcoming Government workstreams include:

- a) The review of the Copyright Act
- b) The review of the Haka Ka Mate Attribution Act
- c) Government data stewardship and Māori data governance
- d) The review of Statistics Act 1975
- e) National Archival and Library Institutions (NALI) Ministerial Group
- f) Government Digital Strategy
- g) Refresh of Tau Mai Te Reo
- h) Review of the Te Ture mō Te Reo Māori Act
- i) Māori Media Sector Shift

Some of the options for future cross-cutting work in Kete 1 might include:

- a) What the roles of Māori and the Crown should be in developing laws and policies and making decisions that affect taonga works and mātauranga Māori.
- b) How the Crown could create space in various policy areas for kaitiaki to more fully exercise kaitiakitanga over taonga works and mātauranga Māori.
- c) Developing a Crown view on its role in respect of taonga works and mātauranga Māori.
- d) Developing a new legal framework governing the use of taonga works and mātauranga Māori.
- e) Developing a Crown approach to Māori data stewardship and governance issues.
- f) Developing a metadata framework for organising and facilitating access to mātauranga Māori held by the Crown.



### Kete 2: Taonga species me te Mātauranga Māori

In Kete 2 (Taonga Species me te Mātauranga Māori), relevant existing and upcoming Government workstreams include:

- a) Development of a new national biodiversity strategy
- b) Responding to the Supreme Court's decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*
- c) Improving Access to Cultural Materials
- d) Comprehensive review of the resource management system
- e) Essential freshwater
- f) Developing a National Policy Statement on Indigenous Biodiversity
- g) Zero Carbon Bill
- h) Emissions Trading Scheme
- i) Mātauranga Māori when presented as evidence in a decision-making hearing
- j) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- k) Three Waters Review
- l) Review of the Plant Variety Rights Act
- m) Consideration of whether there should be a 'disclosure of origin' requirement in the patent system
- n) Development of a Resource Strategy
- o) Review of the Crown Minerals Act
- p) Health Services and Outcomes inquiry Kaupapa Inquiry (Wai 2575)
- q) Māori Health Action Plan
- r) Fisheries Change Programme
- s) Review of the Biosecurity Act
- t) Forestry Strategy

Some of the options for future cross-cutting work in Kete 2 might include:

- a) What the roles of Māori and the Crown should be in developing laws and policies and making decisions that affect taonga species and mātauranga Māori.
- b) How the Crown could create space in various policy areas for kaitiaki to more fully exercise kaitiakitanga over taonga species and mātauranga Māori.
- c) Developing a Crown view on its role in respect of taonga species and mātauranga Māori.
- d) How better information systems about taonga species and mātauranga Māori might be developed.
- e) How we might transition Māori-Crown engagement on taonga species and mātauranga Māori from a transactional issue-by-issue approach to a relationship-based model.



### Kete 3: Kawenata Aorere/Kaupapa Aorere

Kete 3 (Kawenata Aorere/Kaupapa Aorere) is intended to focus on:

- a) How the Crown should work with Māori to identify Māori interests and the nature and strength of those interests when negotiating international instruments and participating in international forums.
- b) How Government agencies should engage with Māori when representing New Zealand.
- c) How Māori should be represented in international forums.

In Kete 3 existing, recent and upcoming Government workstreams of particular relevance include:

- a) Implementation of the 2001 Strategy for Engagement with Māori on International Treaties.
- b) The development of the Māori Crown Engagement Framework and Guidelines led by Te Arawhiti.
- c) The development of a Trade for All agenda. One of the Trade for All agenda's key principles is "the creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner."

The following are examples of existing or potential future international instruments and related kaupapa on which the Crown is currently engaging with Māori and will need to be mindful of the issues raised in the Wai 262 claim and Ko Aotearoa Tēnei:

- a) New Zealand's development of a plan on the United Nations Declaration on the Rights of Indigenous Peoples.
- b) World Intellectual Property Organization negotiations in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
- c) New Zealand's participation in the Permanent Forum.
- d) Convention on Biological Diversity.
- e) United Nations Agreement on Biodiversity Beyond National Jurisdiction negotiations.
- f) UNFCCC /Paris Agreement/Climate Change Negotiation.
- g) E-Commerce negotiations at the World Trade Organization.
- h) Digital Economic Partnership Agreement (DEPA) Negotiations with Chile and Singapore.
- i) Various Free Trade Agreements and related work

**From:** [Matthew Cunningham](#)  
**To:** [Joanna Morgan](#); [Lucy Bolton](#)  
**Cc:** [Nyssa Payne-Harker](#)  
**Subject:** RE: Wai 262 - Te Pae Tahiti - Kete Tuarua - Agenda for meeting Thursday 5th, 10.30-12  
**Date:** Thursday, 5 September 2019 7:39:41 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Kia ora Jo,

I won't be able to make today's meeting on account of the Essential Freshwater launch – Nyssa, could you please pass on my apologies?

We haven't received any responses from the Kahui yet re: Wai 262. They also don't have another meeting confirmed yet. They recently advised us that, as Minister Parker isn't willing to commit to a plan to address Maori rights and interests, they're only willing to continue for the next month or two to see their proposals in the NPSFM through public consultation. With that in mind, I suspect they will decline to engage on Wai 262 unless there is a shift in this Government's thinking. If there was, it does fall within their mandate regarding freshwater matters of relevance to Maori, but not broader environmental management.

The whole-of-MfE Kahui that is being set up is another group I think we should definitely engage on this kaupapa.

Na  
Matthew

---

**From:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Sent:** Wednesday, 4 September 2019 3:50 PM  
**To:** Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; Lucy Bolton <[Lucy.Bolton@mfe.govt.nz](mailto:Lucy.Bolton@mfe.govt.nz)>  
**Cc:** Nyssa Payne-Harker <[Nyssa.Payne-Harker@mfe.govt.nz](mailto:Nyssa.Payne-Harker@mfe.govt.nz)>  
**Subject:** FW: Wai 262 - Te Pae Tahiti - Kete Tuarua - Agenda for meeting Thursday 5th, 10.30-12

Kia ora korua,

You may be aware that there is a Wai 262 meeting being held tomorrow. The agenda includes requests for information regarding the Kahui and the email Cheryl sent them last week.

Please provide information on the following, so Nyssa can take it to the meeting tomorrow:

- a. What responses have you received from the Kahu, if any?
- b. When is the next hui being held? Will Wai262 be on the agenda?

I should ask in the first instance - if the Kahui are willing (and able, per the scope of their mandate) to participate in targeted engagement to be undertaken by TPK officials regarding the whole-of-government Wai 262 response?

Any assistance you can provide is much appreciated.

Nga mihi, na  
Joanna

---

**From:** Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>  
**Sent:** Wednesday, 4 September 2019 3:27 PM  
**To:** [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz); [john-david.chaker@mbie.govt.nz](mailto:john-david.chaker@mbie.govt.nz); [Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz); [megan.gill@mbie.govt.nz](mailto:megan.gill@mbie.govt.nz); [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [alice.revell@mfat.govt.nz](mailto:alice.revell@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [lorena.stephen@epa.govt.nz](mailto:lorena.stephen@epa.govt.nz); Tara Ross-Watt <[rosst@tpk.govt.nz](mailto:rosst@tpk.govt.nz)>;

[erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz); Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Nyssa Payne-Harker <[Nyssa.Payne-Harker@mfe.govt.nz](mailto:Nyssa.Payne-Harker@mfe.govt.nz)>; Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; [rebecca.barnes-clarke@mpi.govt.nz](mailto:rebecca.barnes-clarke@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz); [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz); Ben Matthews <[mattb@tpk.govt.nz](mailto:mattb@tpk.govt.nz)>; Charles Ngaki <[ngakc@tpk.govt.nz](mailto:ngakc@tpk.govt.nz)>; Sylvan Spring <[spril@tpk.govt.nz](mailto:spril@tpk.govt.nz)>; Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>; Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Tara Ross-Watt <[Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz)>

**Cc:** [Kiri.Dargaville@health.govt.nz](mailto:Kiri.Dargaville@health.govt.nz); [Sam.Austin@health.govt.nz](mailto:Sam.Austin@health.govt.nz); Jahnavi Manubolu <[Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz)>

**Subject:** Wai 262 - Te Pae Tahiti - Kete Tuarua - Agenda for meeting Thursday 5th, 10.30-12

Kia ora tatou

I hope this finds you well as the middle of the working week passes.

Below is the agenda for tomorrow's hui. The areas highlighted in yellow are ones where you may want to be prepared to share information as part of a round.

Also attached for your information is the email sent to Wai 262 DCEs (and equivalent) last week by our DCE Rahera Ohia.

Nga manaakitanga  
Roland

Agenda Kete Tuarua  
5 September 2019  
10.30-12, Te Puni Kokiri Head Office

1. Karakia
2. Introductions and process updates
3. Update Round on Kete Tuarua work-streams
4. Round on communications and engagement
  - a. Who did you communicate with about Wai 262 – Te Pae Tawhiti launch?
  - b. What responses have you received?
  - c. What sectoral hui do you have coming up and when?
5. Process for targeted engagement
  - a. Shared responsibilities
  - b. Coordination and consolidation
6. Update on existing work on cross-cutting issues: Bioprospecting, Taonga species
7. Update on Kete Tuatoru
8. Process for Crown mahi
  - a. Organising ourselves
    - i. DCE Stewardship Group
    - ii. Kete management
  - b. November Cabinet paper: overview and timelines
  - c. Key tasks at kete level
    - i. Timing and nature of Wai 262 work within individual work streams
    - ii. Whole of government view on potential cross-cutting work streams
9. Any other issues
10. Karakia

**Roland Sapsford**  
Principal Advisor  
National Office

Tauwaea DDI : +64 4 819 6885 | Waea Pukoro M : +64 21 65 1105  
Waea Whakaahua F : 0800 875 329

Te Puni Kokiri, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand



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[Facebook](#)

**Roland Sapsford**

*Principal Advisor*

**National Office**



*Tauwaea DDI* : +64 4 819 6885 | *Waea Pukoro M* : +64 21 65 1105

*Waea Whakaahua F* : 0800 875 329

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**From:** [Nicola Sole](#) on behalf of [Joanna Morgan](#)  
**To:** [Kelly Palmer](#)  
**Subject:** FW: Reference Group - MfE response to Wai262  
**Date:** Monday, 9 September 2019 10:03:53 AM

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-----Original Appointment-----

**From:** Joanna Morgan

**Sent:** Thursday, 29 August 2019 3:29 PM

**To:** Joanna Morgan; Nicola Sole; Charlotte Wood; Drew Bingham; Andrea Brooking

**Subject:** Reference Group - MfE response to Wai262

**When:** Thursday, 12 September 2019 2:30 PM-3:00 PM (UTC+12:00) Auckland, Wellington.

**Where:** Meetingroom EH 6C

Kia ora ano koutou,

Hope everyone can make this time. By some miracle, everyone's calendars look to be free at this time.

Look forward to meeting with you then ☺

Joanna

Kia ora koutou,

If you're available this time next week, I'd appreciate some time to meet with you regarding one of Mana Taiao's projects.

In April this year, Cabinet approved Minister Mahuta to develop a whole-of-government response to the Waitangi Tribunal's report into law and policy affecting maori culture and identity (the Wai 262 report). In case you're not familiar, the report recommends wide-ranging changes across the whole of government to better provide for the Maori-Crown partnership, including in environmental management. Anne has made this work a priority for Mana Taiao, and Nyssa and I have been attending TPK led work-shops since May.

Currently, we are looking to set up an MfE Reference Group with the purpose of supporting MfE's participation in cross-agency workshops, and collaborating to find solutions to shared policy issues regarding matauranga maori and the exercise of kaitiakitanga. I'm interested to know if this is something S&S could assist with, and if you have any thoughts about how something like this could work at MfE, including any suggestions/criticisms of the approach.

Let me know if you'd like to know a bit more before next Wednesday, happy to have a chat!

Nga mihi, na

Joanna

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**From:** [Nyssa Payne-Harker](#)  
**To:** [Andrew Wharton](#); [Lisa Gooch](#); [Robert Stratford](#); [Heidi Irion](#); [Sophie Lord](#)  
**Cc:** [Matthew Cunningham](#); [Joanna Morgan](#)  
**Subject:** BY MIDDAY TOMORROW-Wai262 information  
**Date:** Wednesday, 11 September 2019 12:28:49 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

Kia ora koutou,

I'm contacting you as you have been involved previously with providing information for engagement with iwi on Wai262 (<https://www.tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti#head4>).

TPK are start to collecting information about when Wai 262 issues are likely to arise and/or engagement with Maori occur. This is a simple indicative exercise rather than a comprehensive review, ahead of a cabinet paper that they will be putting together by November 7<sup>th</sup>.

Can you each provide a few bullets in the table from your work-streams as below?

- Lisa-RM review
- Robert-zero carbon and ETS
- Heidi/Sophie-indigenous biodiversity

I have included an example by freshwater. This needs to be returned by Friday, so if you could please respond by **midday tomorrow** or let me know who would be best to contact that would be ideal.

Workstream Title (from Appendix B):	
Wai 262 issues that arise:	
What is the next stage/phase of the process where these will be considered?	
When will/has engagement with Maori happened?	

Workstream Title (from Appendix C):	Essential Freshwater
Wai 262 issues that arise:	<ul style="list-style-type: none"> <li>• Building Maori capacity to participate in RMA processes and management of taonga</li> <li>• Develop national policy statements on Maori participation in resource management processes</li> </ul>
What is the next stage/phase of the process where these will be considered?	Public consultation (ends 5pm 17 October 2019)
When will/has engagement with Maori happened?	<p>We have yet to explicitly engage with Te Kahui Wai Maori on the Wai 262 recommendations.</p> <p>As part of public consultation on Essential Freshwater, regional hui are being arranged with Maori, as well as targeted hui with groups who have Treaty settlements that include commitments relating to freshwater.</p>

Nga mihi,

**Nyssa Payne-Harker – Kaitatari/Policy Analyst, National Direction and Mana Taiao**



Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 022 493 0553 Email: [nyssa.payne-harker@mfe.govt.nz](mailto:nyssa.payne-harker@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143



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**From:** [Joanna Morgan](#)  
**To:** [Nicola Sole](#); [Charlotte Wood](#); [Drew Bingham](#); [Andrea Brooking](#)  
**Cc:** [Kelly Palmer](#)  
**Subject:** RE: Reference Group - MfE response to Wai262  
**Date:** Thursday, 12 September 2019 1:53:24 PM  
**Attachments:** [MfE\\_Wai262\\_Reference\\_Group\\_-\\_Terms\\_of\\_Reference.docx](#)

---

Kia ora koutou,

Apologies for the late addition, but see attached a draft Terms of Reference that Nyssa and I have put together. It is currently with Kelly for review, then it will go to Anne.

It has a bit of background info that might be useful to you.

Cheers,  
Joanna

-----Original Appointment-----

**From:** Joanna Morgan  
**Sent:** Thursday, 29 August 2019 3:29 PM  
**To:** Joanna Morgan; Nicola Sole; Charlotte Wood; Drew Bingham; Andrea Brooking  
**Cc:** Kelly Palmer  
**Subject:** Reference Group - MfE response to Wai262  
**When:** Thursday, 12 September 2019 2:30 PM-3:00 PM (UTC+12:00) Auckland, Wellington.  
**Where:** Meetingroom EH 6C

Kia ora ano koutou,

Hope everyone can make this time. By some miracle, everyone's calendars look to be free at this time.

Look forward to meeting with you then ☺

Joanna

Kia ora koutou,

If you're available this time next week, I'd appreciate some time to meet with you regarding one of Mana Taiao's projects.

In April this year, Cabinet approved Minister Mahuta to develop a whole-of-government response to the Waitangi Tribunal's report into law and policy affecting maori culture and identity (the Wai 262 report). In case you're not familiar, the report recommends wide-ranging changes across the whole of government to better provide for the Maori-Crown partnership, including in environmental management. Anne has made this work a priority for Mana Taiao, and Nyssa and I have been attending TPK led work-shops since May.

Currently, we are looking to set up an MfE Reference Group with the purpose of supporting MfE's participation in cross-agency workshops, and collaborating to find solutions to shared policy issues regarding matauranga maori and the exercise of kaitiakitanga. I'm interested to

know if this is something S&S could assist with, and if you have any thoughts about how something like this could work at MfE, including any suggestions/criticisms of the approach.

Let me know if you'd like to know a bit more before next Wednesday, happy to have a chat!

Nga mihi, na  
Joanna

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## Ministry for the Environment Wai262 Reference Group – Terms of Reference

### Background

In 2011, the Waitangi Tribunal reported on claims concerning New Zealand law and policy affecting Māori culture and identity, *Ko Aotearoa Tēnei* (the Report). The Report recommended wide-ranging changes across the whole of government to better provide for the Māori-Crown partnership, including in environmental management.

Responding to the recommendations in the Report is an urgent matter for the Ministry for the Environment (the Ministry). Cabinet has approved Minister Mahuta to initiate a whole-of-government response, which the Ministry will need to play a role in and respond proactively to.

There are a number of active work-streams that will need to consider the recommendations in the Report, specifically:

- a. the comprehensive review of the resource management system;
- b. the New Zealand Biodiversity Strategy;
- c. the Essential Freshwater package;
- d. the NPS Indigenous Biodiversity;
- e. the Zero Carbon Bill;
- f. the Emissions Trading Scheme; and
- g. the Exclusive Economic Zone Act

A Wai262 reference group will enable the Ministry to have a coordinated response to Wai262 and the Report.

### Purpose

To support the Ministry's participation in cross-agency workshops, and collaborate on ways to provide for mātauranga Māori and the exercise of kaitiakitanga in the Ministry's policies.

### Membership

The following directorates and work streams at the Ministry should provide for at least one member at a senior level or above to represent their team in the Group:

- Mana Taiao
- the Māori Secretariat
- the Water Directorate
- Comprehensive review of the Resource Management Act 1991
- Climate change
- Strategy and Stewardship

The Group will be supported by Joanna Morgan and Nyssa Payne-Harker from the Mana Taiao Team.

## Role of the Wai262 Reference Group

The role of the Wai262 Reference Group is to:

- Participate proactively in the whole-of-government response on behalf of the Ministry
- Provide updates to Te Puni Kōkiri on the progress of the Ministry's work programmes
- Provide input into updates to the Minister as necessary
- Develop and carry out an implementation plan for a response to the recommendations in the Report
- Build connections across directorates and work-streams
- Elevate the awareness of Wai262 across the Ministry

## Scope

The Wai262 Reference Group will be addressing

- Initiatives from the whole-of-government response to Wai262 led by Te Puni Kōkiri
- Recommendations specific to the Ministry from the Report

## Meetings

The Reference Group will meet monthly. This may change if needed for a specific purpose. An agenda will be sent to members before meetings.

The meetings will provide an opportunity for updates on the whole-of-government response. Members can also provide updates from their work-streams and discuss how they are addressing whole-of-government initiatives and recommendations from the report.

Members of the Reference Group may meet at times other than these meetings either with other members or with the coordinators as necessary.

## High Level Deliverables

Clarification of role, scope and how Wai262 and report recommendations relate to work-streams	September 2019
Implementation plan for addressing Wai262 and Report recommendations in work-streams Contribution to whole-of-government Cabinet paper	October-December 2019
Implementation of Wai262 and report recommendations in work-streams Contribution to whole-of-government and Ministry Ministerial updates and briefings as necessary	January 2019 onwards

## Operation of the Wai262 Reference Group

- Meetings will be coordinated and facilitated by the staff supporting the Wai262 Reference Group
- The staff supporting the Wai262 Reference Group will attend whole-of-government meetings
- Members of the Wai262 Reference Group may attend meetings if needed
- The group will provide updates to the Deputy Secretary representative involved in the whole-of-government response
- Approval for changes to the operation of the Wai262 Reference Group will be provided by the Mana Taiao Manager and/or Deputy Secretary Representative

## Review of Terms of Reference

These terms of reference will be reviewed at appropriate intervals at the discretion of the Deputy Secretary – Partnerships and Customers, in consultation with the group.

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**From:** [Nyssa Payne-Harker](#)  
**To:** [Perrine Gilkison](#)  
**Cc:** [Joanna Morgan](#)  
**Subject:** FW: FINAL Hui notes - Wai 262 Kete Tuarua - 5th September 2019  
**Date:** Tuesday, 17 September 2019 11:51:32 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)

**From:** Nyssa Payne-Harker  
**Sent:** Friday, 13 September 2019 10:15 AM  
**To:** Roland Sapsford <sapsr@tpk.govt.nz>  
**Cc:** Joanna Morgan <Joanna.Morgan@mfe.govt.nz>; Matthew Cunningham <Matthew.Cunningham@mfe.govt.nz>; Kelly Palmer <Kelly.Palmer@mfe.govt.nz>  
**Subject:** RE: FINAL Hui notes - Wai 262 Kete Tuarua - 5th September 2019

Kia ora Roland,

Thank you for the updated notes.

Please find below the filled templates for work streams MfE is responsible for-

Workstream Title (from Appendix C):	Essential Freshwater
Wai 262 issues that arise:	<ul style="list-style-type: none"> <li>Building Maori capacity to participate in RMA processes and management of taonga</li> <li>Develop national policy statements on Maori participation in resource management processes</li> </ul>
What is the next stage/phase of the process where these will be considered?	Public consultation (ends 5pm 17 October 2019)
When will/has engagement with Maori happened?	<p>We have yet to explicitly engage with Te Kahui Wai Maori on the Wai 262 recommendations.</p> <p>As part of public consultation on Essential Freshwater, regional hui are being arranged with Maori, as well as targeted hui with groups who have Treaty settlements that include commitments relating to freshwater.</p>

Workstream Title (from Appendix B):	Taonga species
Wai 262 issues that arise:	Taonga species and land are identified in treaty settlements, and where Maori land is a Significant Natural Area, iwi/Maori will need to protect indigenous biodiversity.
What is the next stage/phase of the process where these will be considered?	Consultation on the National Policy Statement for Indigenous Biodiversity (NPSIB) is planned for Mid Nov 2019 to mid Jan 2020.
When will/has engagement with Maori happened?	Pre engagement hui with iwi/Maori on the NPSIB has taken place from Nov 2018 to April 2019.

Workstream Title (from Appendix C):	National Policy Statement for Indigenous Biodiversity
Wai 262 issues that arise:	<p>Building Maori capacity to participate in RMA processes and management of taonga species and significant natural areas.</p> <p>Work to identify significant natural areas in in</p>

	partnership with local authorities.
What is the next stage/phase of the process where these will be considered?	Public consultation Mid Nov 2019 to mid Jan 2020.
When will/has engagement with Maori happened?	Pre engagement hui with iwi/Maori has taken place from Nov 2018 to April 2019. Consultation on the New Zealand Biodiversity Strategy is taking place. The NPSIB was developed with a collaborative group that included a representative of the iwi leaders group. As part of public consultation on the NPSIB, regional hui are being arranged with Maori.

Workstream Title (from Appendix C):	Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (Ministry for the Environment / Environmental Protection Authority)
Wai 262 issues that arise:	Ensuring the parts of the EEZ Act that allow Maori to participate in the marine consent process are implemented. This includes: <ul style="list-style-type: none"> <li>• The ability of the EPA's Maori Advisory Committee to provide advice and assistance to the EPA on policy and decision-making</li> <li>• requirement that at least one member of the EPA board has knowledge and experience relating to the Treaty and tikanga</li> <li>• decision-makers must consider Treaty settlements and customary title granted under the Marine and Coastal Areas (Takutai Moana) Act 2011</li> <li>• Requirement of the Minister to establish and use a process that gives iwi adequate time to comment on proposed standards and regulations</li> </ul>
What is the next stage/phase of the process where these will be considered?	No new policy work planned in this financial year
When will/has engagement with Maori happened?	N/a as no new policy work is underway

Workstream Title (from Appendix B):	Climate Change Response (Zero Carbon) Amendment Bill
Wai 262 issues that arise:	<b>The expertise of the Climate Change Commission</b> - Commission members to have expertise in te ao Maori <b>The Crown's emission reduction plans</b> - an emissions reduction plan includes a strategy to recognise and mitigate the impacts on iwi (Climate change has potential impacts on indigenous flora and fauna) <b>The Crown's national adaptation planning</b> - the Minister's National Adaptation Plan is to take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Maori.
What is the next stage/phase of the process where these will be considered?	The Bill is currently at the Select Committee phase and is on track to be enacted late 2019
When will/has engagement with Maori happened?	There have been a range of engagement processes with Maori. This includes hui leading up to the development of the Bill. The Environment Select Committee is currently hearing submissions. 22 iwi/Maori organisations made written submissions on the Bill.



Workstream Title (from Appendix B):	Emissions Trading Scheme
Wai 262 issues that arise:	The Wai 262 issues are not clear at this stage when it comes to the New Zealand Emissions Trading Scheme (NZ ETS)
What is the next stage/phase of the process where these will be considered?	The NZ ETS is designed to incentivise new forest planting and does not favour native over exotic forests. There is no intention to review this at this time. Wider policy development may influence NZ ETS forestry settings in the future, for example, policies relating to biodiversity and water quality, development of a forest strategy led by Te Uru Rakau, and evaluation of the One Billion Trees programme.
When will/has engagement with Maori happened?	There was a hui with Maori on the ETS in September 2018. Maori engagement will be developed as part of ongoing developments in the ETS.

Workstream Title (from Appendix B):	Comprehensive RM Review
Wai 262 issues that arise: <ul style="list-style-type: none"> <li>Enhanced iwi management plans:</li> <li>Improved mechanisms for delivering control:</li> <li>A commitment to capacity-building:</li> <li>Greater use of national policy statements</li> </ul>	<p>The WAI 262 recommendations fall generally within the scope of the comprehensive resource management review. Although the scope of the review is not final yet, the draft identifies issues for consideration as part of the review. These include:</p> <ul style="list-style-type: none"> <li>Ensuring that Maori have a role in the resource management system</li> <li>Ensuring appropriate mechanisms for Maori participation in the system, including giving effect to Treaty settlement agreements</li> <li>Clarifying the meaning of iwi authority and hapu</li> </ul>
What is the next stage/phase of the process where these will be considered?	<p>Feedback has been received on the draft Terms of reference, and include additional issues of relevance to WAI 262 issues. The next step is for Cabinet to agree on a final scope of the review.</p> <p>The review Panel was approved by Cabinet on 10 September 2019. The panel will be informed of feedback received on Phase 1 of the review.</p> <p>Policy papers will be developed for the information of the Panel, including a paper on the Treaty of Waitangi relationship and the role of Maori in the resource management system.</p>
When will/has engagement with Maori happened?	<p>The first phase of the review has included engagement with targeted groups on the proposed scope of the review. These groups included the Iwi Leaders Group, New Zealand Maori Council, Te Tumu Paeroa (Led by the Maori Trustee), Federation of Maori Authorities, Kahi Wai Maori (an advisory group to the Essential Freshwater work programme), and Nga Aho (a network of Maori and Indigenous urban design professionals who come together to support each other to better service the design aspirations of Maori and indigenous communities). The Cabinet paper that initiated the review, and the draft Terms of reference were also sent to Maori iwi authorities. Responses were received from the following iwi groups:</p> <ul style="list-style-type: none"> <li>Papa Pounamu</li> <li>Nga Aho</li> <li>Nga Tirairaka O Ngati Hine (Northland, Nga Puhi )</li> <li>Ngati Toki, Ngati Horahia (Northland, Nga Puhi)</li> <li>Te Atiawa ki Te Tau Ihu (Marlborough)</li> <li>Te Orewai (Northland, Nga Puhi)</li> <li>Te Waiariki, Ngati Korora, Ngati Takapari, Ngati Kawiti o Waiomio, Ngati Hine, Ngati Kopaki, Ngati Te Ara, Te Kapotai, Ngati Manu, Te Orewai, Ngati Te Tarawa, and</li> </ul>

	<p>Ngati Wai (Ngati Wai)</p> <p>Feedback on phase 1 has also been received from the Ministers of Maori Development and Maori Crown Relations.</p> <p>There is an Iwi engagement Strategy for the RM review project.</p> <p>Future engagement includes 16 regional hui for iwi/Maori being held on a range of policy issues between 9 and 27 September 2019.</p> <p>There is also a public website on the review project, and an Issues and Options paper will be produced later this year.</p>
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The three waters team have let us know that if you have not already, you will need to contact DIA directly for an update on this. The contact there is Jane Fletcher - [Jane.Fletcher@dia.govt.nz](mailto:Jane.Fletcher@dia.govt.nz).

Best wishes to you too and we will see you next week.

Nga mihi mahana,

**Nyssa Payne-Harker – Kaitatari/Policy Analyst, National Direction and Mana Taiao**  
 Ministry for the Environment – Manatu Mo Te Taiao  
 Mobile: 022 493 0553 Email: [nyssa.payne-harker@mfe.govt.nz](mailto:nyssa.payne-harker@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
 23 Kate Sheppard Place, Thorndon, Wellington 6143




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**From:** Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>  
**Sent:** Thursday, 12 September 2019 4:40 PM  
**To:** Meeting Room - Level 1.4 <[Level1.4@tpk.govt.nz](mailto:Level1.4@tpk.govt.nz)>; [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz); [john-david.chaker@mbie.govt.nz](mailto:john-david.chaker@mbie.govt.nz); [Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz); [megan.gill@mbie.govt.nz](mailto:megan.gill@mbie.govt.nz); [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [alice.revell@mfat.govt.nz](mailto:alice.revell@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [lorena.stephen@epa.govt.nz](mailto:lorena.stephen@epa.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz); Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Nyssa Payne-Harker <[Nyssa.Payne-Harker@mfe.govt.nz](mailto:Nyssa.Payne-Harker@mfe.govt.nz)>; Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; [rebecca.barnes-clarke@mpi.govt.nz](mailto:rebecca.barnes-clarke@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz); [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz); Ben Matthews <[mattb@tpk.govt.nz](mailto:mattb@tpk.govt.nz)>; Charles Ngaki <[ngakc@tpk.govt.nz](mailto:ngakc@tpk.govt.nz)>; Sylvan Spring <[spril@tpk.govt.nz](mailto:spril@tpk.govt.nz)>; Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>; Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; [Kiri.Dargaville@health.govt.nz](mailto:Kiri.Dargaville@health.govt.nz); [Sam.Austin@health.govt.nz](mailto:Sam.Austin@health.govt.nz); [Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz); Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Jennie Smeaton <[smeaj@tpk.govt.nz](mailto:smeaj@tpk.govt.nz)>  
**Cc:** Riki Ellison <[ellri@tpk.govt.nz](mailto:ellri@tpk.govt.nz)>  
**Subject:** FINAL Hui notes - Wai 262 Kete Tuarua - 5th September 2019

Kia ora koutou

Attached please find the final version of the Kete Tuarua notes from last week. Thank you to those who provided feedback and updates for their agency descriptions.

The Action List is

- **Te Arawhiti:** circulate draft list of engagements to Wai 262 kete **DONE**
- **All:** review and update to Te Arawhiti by Friday 13 September
  
- **TPK** to circulate template for identifying Wai 262 issues within existing work streams **DONE**
- **All** to complete and return to TPK by Friday 13th September.
  
- **All** to contact Dominic Kebbell at TPK ([kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)) if you wish to be included in discussions about the initial briefing on bioprospecting.
  
- **TPK** to circulate draft Terms of Reference for a DCE's stewardship group to all kete for comment

If you have an action that is outstanding please follow through on it ☺

Best wishes for the fast approaching weekend and see you at our hui next week.

Nga manaakitanga

Roland

---

**Roland Sapsford**

*Principal Advisor*

**National Office**



*Tauwaea DDI* : +64 4 819 6885 | *Waea Pukoro M* : +64 21 65 1105

*Waea Whakaahua F* : 0800 875 329

**Te Puni Kokiri**, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand



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**From:** [Nyssa Payne-Harker](#)  
**To:** [Perrine Gilkison](#)  
**Cc:** [Joanna Morgan](#)  
**Subject:** FW: Wai 262 - Te Pae Tawhiti - Kete Tuarua - Draft notes from kete hui - Thursday 5th July 10.30-12  
**Date:** Tuesday, 17 September 2019 11:51:03 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[image012.png](#)

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**From:** Nyssa Payne-Harker  
**Sent:** Wednesday, 11 September 2019 11:58 AM  
**To:** Roland Sapsford <sapsr@tpk.govt.nz>  
**Cc:** tia.warbrick@tearawhiti.govt.nz; Joanna Morgan <Joanna.Morgan@mfe.govt.nz>; Kelly Palmer <Kelly.Palmer@mfe.govt.nz>  
**Subject:** RE: Wai 262 - Te Pae Tawhiti - Kete Tuarua - Draft notes from kete hui - Thursday 5th July 10.30-12

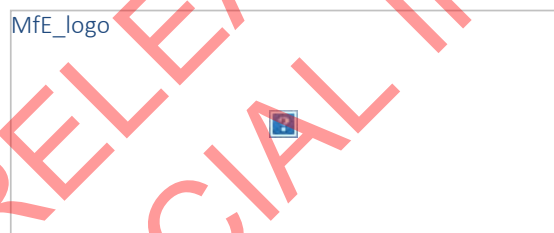
Kia ora Roland and Tia,

For the active engagement for MfE, can you please add:

- national policy statement urban development capacity
- proposal for national policy statement on highly productive lands
- proposed improvements to hazardous substances reassessment process
- product stewardship

Nga mihi,

**Nyssa Payne-Harker – Kaitatari/ Policy Analyst, National Direction and Mana Taiao**  
Ministry for the Environment – Manatu Mo Te Taiao  
Mobile: 022 493 0553 Email: [nyssa.payne-harker@mfe.govt.nz](mailto:nyssa.payne-harker@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
23 Kate Sheppard Place, Thorndon, Wellington 6143



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**From:** Roland Sapsford <sapsr@tpk.govt.nz>  
**Sent:** Monday, 9 September 2019 5:31 PM  
**To:** [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz); [john-david.chaker@mbie.govt.nz](mailto:john-david.chaker@mbie.govt.nz); [Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz); [megan.gill@mbie.govt.nz](mailto:megan.gill@mbie.govt.nz); [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [alice.revell@mfat.govt.nz](mailto:alice.revell@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [lorena.stephen@epa.govt.nz](mailto:lorena.stephen@epa.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz); Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Joanna Morgan

<[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Nyssa Payne-Harker <[Nyssa.Payne-Harker@mfe.govt.nz](mailto:Nyssa.Payne-Harker@mfe.govt.nz)>; Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; [rebecca.barnes-clarke@mpi.govt.nz](mailto:rebecca.barnes-clarke@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz); [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz); Ben Matthews <[mattb@tpk.govt.nz](mailto:mattb@tpk.govt.nz)>; Charles Ngaki <[ngakc@tpk.govt.nz](mailto:ngakc@tpk.govt.nz)>; Tara Ross-Watt <[rosst@tpk.govt.nz](mailto:rosst@tpk.govt.nz)>; Sylvan Spring <[spril@tpk.govt.nz](mailto:spril@tpk.govt.nz)>; Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>; Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Riki Ellison <[ellri@tpk.govt.nz](mailto:ellri@tpk.govt.nz)>

**Cc:** [Kiri.Dargaville@health.govt.nz](mailto:Kiri.Dargaville@health.govt.nz); [Sam.Austin@health.govt.nz](mailto:Sam.Austin@health.govt.nz)

**Subject:** Wai 262 - Te Pae Tawhiti - Kete Tuarua - Draft notes from kete hui - Thursday 5th July 10.30-12

Kia ora tatou

I hope Monday finds you well.

**Draft Notes from our last Hui**

Attached are the notes from late week's Kete Tuarua hui.

Please review and let me know any corrections by **Wednesday 11<sup>th</sup>**. I'll send out revised notes if needed.

A revised regular meeting for Kete Tuarua will be circulated later today or tomorrow.

Aroha mai if you were an apology and it's not recorded; the volume of emails for these kete hui is large. Just let me know if you'd like it noted :-)

**ACTION: Information on Wai 262 issues in your workstream(s)**

As discussed in the notes and at our hui, we need to start collecting information about when Wai 262 issues are likely to arise and/or engagement with Maori occur. This is a simple indicative exercise rather than a comprehensive review, and the focus is on items identified in **Appendix C** of the engagement document. Here is a simple template:

Workstream Title (from Appendix B):	
Wai 262 issues that arise:	
What is the next stage/phase of the process where these will be considered?	
When will/has engagement with Maori happened?	

Here is an example completed for the overall Work Programme

Workstream Title:	Wai 262 – Te Pae Tawhiti
Wai 262 issues that arise:	Giving operational effect to partnership
What is the next stage/phase of the process where these will be considered?	November Cabinet Paper
When will/has engagement with Maori happened?	Targeted engagement over Crown's preliminary proposals for organising itself, September –October 2019

Please get back to me with any questions – this is meant to be a quick desktop exercise on the workstreams your agency is leading that are shown in the Appendix ☺

**Out of Scope**

**Out of Scope**

Out of Scope

To help ensure completeness, please check the list and **if you have an “active” engagement that isn’t listed, please email myself at TPK and Tia Warbrick ([Tia.Warbrick@tearawhiti.govt.nz](mailto:Tia.Warbrick@tearawhiti.govt.nz)) at Te Arawhiti by the end of this week.**

Nga manaakitanga

Roland

<p><b>Roland Sapsford</b> Principal Advisor National Office</p> 	<p>Tauwaea <b>DDI</b> : +64 4 819 6885   Waea Pukoro <b>M</b> : +64 21 65 1105 Waea Whakaahua <b>F</b> : 0800 875 329</p> <p><b>Te Puni Kokiri</b>, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand PO Box 3943, Wellington 6140, New Zealand</p> <p> <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a></p>
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**From:** [Joanna Morgan](#)  
**To:** [Aidan Burch](#)  
**Subject:** RE: Advice sought from the kete on a proposal for joint decision making arrangements in the Plant Variety Rights Act review [IN-CONFIDENCE]  
**Date:** Friday, 20 September 2019 10:45:44 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Kia ora Aidan,

That sounds like a huge step in strengthening the Treaty partnership and shared decision-making. I don't know of any other arrangements like this, but I'm sure we will all be interested to stay in the loop as it progresses.

Nga mihi, na  
Joanna

---

**From:** Aidan Burch <Aidan.Burch@mbie.govt.nz>  
**Sent:** Thursday, 19 September 2019 2:49 PM  
**To:** Roland Sapsford <sapsr@tpk.govt.nz>; John-David Chaker <John-David.Chaker@mbie.govt.nz>; Charlotte Adam <Charlotte.Adam@mbie.govt.nz>; Megan Gill <Megan.Gill@mbie.govt.nz>; Mark Ormsby <Mark.Ormsby@mbie.govt.nz>; tia.warbrick@tearawhiti.govt.nz; rewi.henderson@tearawhiti.govt.nz; benedict.taylor@tearawhiti.govt.nz; ngawini.keelan@mfat.govt.nz; daniel.wai-poi@mfat.govt.nz; Rosemary Paterson <rosemary.paterson@mfat.govt.nz>; megan.addis@mfat.govt.nz; alice.revell@mfat.govt.nz; patrick.rata@mfat.govt.nz; tarona@doc.govt.nz; kkingdonbebb@doc.govt.nz; lorena.stephen@epa.govt.nz; erica.gregory@epa.govt.nz; hana.ihaka-mcleod@epa.govt.nz; Kelly Palmer <Kelly.Palmer@mfe.govt.nz>; Joanna Morgan <Joanna.Morgan@mfe.govt.nz>; Nyssa Payne-Harker <Nyssa.Payne-Harker@mfe.govt.nz>; Matthew Cunningham <Matthew.Cunningham@mfe.govt.nz>; rebecca.barnes-clarke@mpi.govt.nz; janet.chambers@mpi.govt.nz; stewart.genery@mpi.govt.nz; Elizabeth.Davie@mpi.govt.nz; Keri.Iti@mpi.govt.nz; Marama.Findlay@mpi.govt.nz; kiri\_dargaville@moh.govt.nz; sam\_austin@moh.govt.nz; Ben Matthews <mattb@tpk.govt.nz>; Charles Ngaki <ngakc@tpk.govt.nz>; Sylvan Spring <spril@tpk.govt.nz>; Dominic Kebbell <kebbd@tpk.govt.nz>; Nadia Ward <wardn@tpk.govt.nz>; Erin Keenan <keene@tpk.govt.nz>; Tamati Olsen <olset@tpk.govt.nz>; Kiri.Dargaville@health.govt.nz; Sam.Austin@health.govt.nz; Tara.Ross-Watt3@mpi.govt.nz; Jennie Smeaton <smeaj@tpk.govt.nz>  
**Cc:** Riki Ellison <ellri@tpk.govt.nz>; mhunt@doc.govt.nz  
**Subject:** Advice sought from the kete on a proposal for joint decision making arrangements in the Plant Variety Rights Act review [IN-CONFIDENCE]

Kia ora koutou,

I have a question for the kete that relates to our work on the Plant Variety Rights Act review. (This is the intellectual property regime for new plant varieties.) Implementing the Wai 262 recs on the PVR Act is part of our proposed package for making the regime Treaty compliant. This includes setting up a Maori Advisory Committee to advise the Commissioner of PVRs on whether the grant of a right would impact kaitiaki interests in taonga species. There are equivalent committees for trade marks and patents.

We have proposed to go one step further than those committees and give the Chair of the Committee an arbitral power alongside the Commissioner, i.e. a decision on a grant in relation to a taonga species would be made jointly by the Chair of the Maori Advisory Committee and the Commissioner of PVRs.

So my questions are:

- Does anyone have any similar examples where such a shared decision-making process has been set up?
- What are the kinds of things I need to think about? (Are there administrative law issues with the Chair of the Committee being involved in preparing advice and also in decision making? What happens if they cannot agree? Should other voices be there, eg industry?)
- And how should the Committee, and the Chair, be appointed? (In other IP statutes it is the Commissioner that appoints members with only a requirement that the members have the requisite knowledge. But we know that Maori consider that there should be Maori involvement in these appointments – do you know

of any examples where there is Maori involvement in this kind of appointment, and, if so, what's the process?)

If you have any thoughts on these questions, I'd really appreciate them at some point next week.

Thanks all!

Nga mihi, na  
Aidan

**Aidan Burch**

Senior policy advisor, Corporate Governance and Intellectual Property Policy  
Ministry of Business, Innovation and Employment | Building, Resources and Markets Group  
15 Stout Street | PO Box 1473 | Wellington 6140 | New Zealand | DX: SR57018  
Tel: +64 4 901 8563  
Email: [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz) Web: [www.mbie.govt.nz](http://www.mbie.govt.nz)  
NZBN 9429000106078

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**From:** Roland Sapsford [<mailto:sapsr@tpk.govt.nz>]

**Sent:** Thursday, 12 September 2019 4:40 p.m.

**To:** Meeting Room - Level 1.4; Aidan Burch; John-David Chaker; Charlotte Adam; Megan Gill; Mark Ormsby; [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); [rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz); [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [alice.revell@mfat.govt.nz](mailto:alice.revell@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [lorena.stephen@epa.govt.nz](mailto:lorena.stephen@epa.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [hana.haka-mcleod@epa.govt.nz](mailto:hana.haka-mcleod@epa.govt.nz); [kelly.palmer@mfe.govt.nz](mailto:kelly.palmer@mfe.govt.nz); [joanna.morgan@mfe.govt.nz](mailto:joanna.morgan@mfe.govt.nz); [nyssa.payne-harker@mfe.govt.nz](mailto:nyssa.payne-harker@mfe.govt.nz); [Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz); [rebecca.barnes-clarke@mpi.govt.nz](mailto:rebecca.barnes-clarke@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [kiri.dargaville@moh.govt.nz](mailto:kiri.dargaville@moh.govt.nz); [sam.austin@moh.govt.nz](mailto:sam.austin@moh.govt.nz); Ben Matthews; Charles Ngaki; Sylvan Spring; Dominic Kebbell; Nadia Ward; Erin Keenan; Tamati Olsen; [Kiri.Dargaville@health.govt.nz](mailto:Kiri.Dargaville@health.govt.nz); [Sam.Austin@health.govt.nz](mailto:Sam.Austin@health.govt.nz); [Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz); Roland Sapsford; Jennie Smeaton

**Cc:** Riki Ellison

**Subject:** FINAL Hui notes - Wai 262 Kete Tuarua - 5th September 2019

Kia ora koutou

Attached please find the final version of the Kete Tuarua notes from last week. Thank you to those who provided feedback and updates for their agency descriptions.

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If you have an action that is outstanding please follow through on it ☺

Best wishes for the fast approaching weekend and see you at our hui next week.

Nga manaakitanga  
Roland



Principal Advisor

National Office



Waea Whakaahua F : 0800 875 329

Te Puni Kokiri, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand



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**From:** [Ben Dickson](#)  
**To:** [Anne Haira](#)  
**Cc:** [Kelly Palmer](#); [Georgia Bishop](#); [Caitlin Hanson](#); [Joanna Morgan](#)  
**Subject:** Meeting Pack for feedback - Wai 262 DCE Group (Wai 262 – Te Pae Tawhiti: Crown Stewardship Group or WT-CSG)  
**Date:** Wednesday, 2 October 2019 1:33:19 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[2019\\_09\\_26 Paper 3 - Draft ToR .docx](#)  
[2019\\_09\\_23 CM Paper 2 - A3 on WAI262 road map .pptx](#)  
[2019\\_09\\_26 FN Paper 1 - A3 on Preliminary Crown Proposals.pdf](#)  
[2019\\_09\\_25 Cover note - Papers 1 & 2 .docx](#)  
[2019\\_09\\_17 FN Draft Agenda - DCEs Group 3 Oct 2019 FINAL .docx](#)  
[20191002 Memo for Anne Haira - WT-CSG meeting 1.doc](#)

Kia ora Anne,

Please find attached the Memo and related documents in preparation of the Wai262 Crown Stewardship Group meeting - Thursday 3 October. Apologies for the time taking to get this to you, significant alterations were made to the memo that was being prepared for Amanda's attendance.

I see you have desk time scheduled for 1030-1200 tomorrow, if you want to Joanna or I to talk you through any aspect of the meeting material or the Memo please let us know.

**Nga mihi,**  
**Ben Dickson – Senior Policy Analyst, Mana Taiao**

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**From:** Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>  
**Sent:** Wednesday, 25 September 2019 8:06 PM  
**To:** [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz); [Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz); [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [alice.revell@mfat.govt.nz](mailto:alice.revell@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [lorena.stephen@epa.govt.nz](mailto:lorena.stephen@epa.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz); Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Nyssa Payne-Harker <[Nyssa.Payne-Harker@mfe.govt.nz](mailto:Nyssa.Payne-Harker@mfe.govt.nz)>; Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; [rebecca.barnes-clarke@mpi.govt.nz](mailto:rebecca.barnes-clarke@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz); [kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz); [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz); Ben Matthews <[mattb@tpk.govt.nz](mailto:mattb@tpk.govt.nz)>; Charles Ngaki <[ngakc@tpk.govt.nz](mailto:ngakc@tpk.govt.nz)>  
**Cc:** Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>; Eli Waata-Amai <[waate@tpk.govt.nz](mailto:waate@tpk.govt.nz)>; Sylvan Spring <[spril@tpk.govt.nz](mailto:spril@tpk.govt.nz)>  
**Subject:** Draft Meeting Pack for feedback - Wai 262 DCE Group (Wai 262 – Te Pae Tawhiti: Crown Stewardship Group or WT-CSG)

Tena koutou

Apologies for the delay in getting these draft papers to you.

Please find attached the draft papers for the DCE meeting next Thursday 3 October, 1pm-2:30pm **for feedback by Friday 27 Sept 1pm.**

Most of the information you will be familiar with and or has been distributed (agenda and TORs). If you are pressed for time, please comment on the proposed roadmap and cover note for papers 1&2 as some of the information in these papers have not been presented at the Kete hui.

The agenda has been re-configured so that the conversation can commence with the Preliminary proposals (where we are now) followed by the Roadmap (where we are heading in the short-term).

The logic follows that the two preceding agenda items will provide your DCEs with the context to be able to

consider whether the TORs will enable the group to fulfil its purpose to provide collective system leadership on the Government's WAI 262 work programme.

**Final papers** will be provided to your DCE **by Monday 30 September**, and will be distributed to you at the same time.

Thank you in advance for the quick turnaround on your feedback – much appreciated.

If you have any queries about this hui, please contact Nadia Ward ([wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)) or contact me on 027 640 7880.

Nga mihi maioha

The Wai 262 ropu

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<p><b>Nadia Ward</b> <i>Principal Policy Analyst</i> <b>National Office</b></p> <div style="border: 1px dashed gray; width: 200px; height: 30px; margin: 10px auto; text-align: center;">?</div>	<p><i>Tauwaea DDI</i> : +64 4 819 6112   <i>Waea Pukoro M</i> : +64 27 640 7880 <i>Waea Whakaahua F</i> : 0800 875 329</p> <hr/> <p><b>Te Puni Kokiri</b>, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand PO Box 3943, Wellington 6140, New Zealand</p> <hr/> <p> <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a></p>
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## Terms of Reference – cover note

### Purpose

1. The purpose of this paper is to seek your approval of the attached terms of reference for the Wai 262 Crown Stewardship Group (WT-CSG).

### Background

2. On 28 August 2019, Raheera Ohia, DCE, Te Puni Kōkiri, informed you of her intention to establish a senior officials group to provide collective and system leadership, at a senior public service official level, in support of the Government's work programme on Wai 262.
3. Addressing Wai 262 issues will involve a long-term programme of work with significant implications for the Māori Crown partnership. The rationale for embarking on this work is twofold:
  - a. to partner with Māori to shape the way forward on the problems and issues raised by the Wai 262 claim
  - b. in doing so, take a more proactive, consistent and coordinated approach to supporting the Māori Crown relationship.
4. To be successful, we will need to ensure each of our agencies is in a position to support the aspirations of Ministers and Māori for this mahi.

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## Wai 262 – Te Pai Tawhiti: – Crown Stewardship Group (WT-CSG)

### Terms of Reference

#### Purpose

1. These Terms of Reference set out the role of WT-CSG, including its purpose and composition.

#### Background

2. In Paengawhāwhā (April) 2019, Cabinet agreed to develop an all of Government approach to Wai 262 issues [CAB 19-MIN-0138.01 refers]. “Wai 262 issues” is shorthand for a complex set of issues identified by the 1991 Wai 262 claim and subsequent 2011 Waitangi Tribunal report Ko Aotearoa Tēnei.
3. A central theme linking Wai 262 issues is how our nation should make decisions – and who should participate in decisions – that affect taonga Māori. Wai 262 issues encompass the Crown’s laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international agreements.
4. Wai 262 shared many characteristics with what are now called ‘contemporary’ claims. Ko Aotearoa Tēnei was the Waitangi Tribunal’s first all of government inquiry.
5. As part of its Paengawhāwhā (April) 2019 decisions Cabinet agreed to establish a Ministerial Oversight Group and agreed in principle to establish three focus groups or kete to coordinate work within government.

#### Purpose of the stewardship group

6. Addressing Wai 262 issues will involve a long-term programme of work with significant implications for the Māori Crown partnership. The rationale for embarking on this work is twofold:
  - a. to partner with Māori to shape the way forward on the problems and issues raised by the claim
  - b. in doing so, take a more proactive, consistent and coordinated approach to supporting the Māori Crown relationship.
7. To be successful, each agency needs to ensure it is in a position to support the aspirations of Ministers and Māori for this mahi, coordinate with other agencies and progress this work programme.
8. This kaupapa offers an early practical example of the type of directional change envisaged in reform of the State Sector Act 1988, especially Te Ao Tūmatanui - Strengthening the Māori / Crown relationship, and that envisaged by the suite of Cabinet-approved guidance material developed by Te Arawhiti (the Engagement Framework and Guidelines, Partnership Principles, and the Cabinet Office circular on Better Co-ordination of Treaty of Waitangi issues).
9. The WT-CSG provides essential machinery of government to support a joined-up Crown approach to work on Wai 262 – Te Pae Tawhiti over a number of years. The stewardship group will support this multi-year, multi-agency work programme by:
  - a. Providing collective leadership in support of the Government’s work programme on Wai 262

- b. Coordinating work across participating agencies, including the planning and allocation of resources
- c. Providing a forum to proactively address issues/risks and develop a collective resolution to challenges
- d. Providing system leadership and supporting capacity and capability building across agencies
- e. Coordinate advice to Ministers within the Ministerial Oversight Group established in April 2019
- f. Attend to other matters appropriate to WT-CSG or as recommended by the Ministerial Oversight Group.

10. The use of the term “stewardship” rather than “governance” reflects the fact that work on Wai 262 issues is grounded in a partnership approach between Māori and the Crown.

#### **Decision-making by the stewardship group**

11. The stewardship group will seek to make decisions by consensus. Where consensus cannot be reached the group will refer issues to the Māori-Crown Relations Chief Executive’s group for resolution. Where the matter requires decision at Ministerial level, Te Puni Kōkiri will coordinate the preparation of advice seeking a decision from the Ministerial Oversight Group.

#### **Membership**

12. The stewardship group comprises senior representatives (Deputy Chief Executive level or equivalent) of the agencies involved in Wai 262-Te Pae Tawhiti. Stewardship group members are expected to attend in person where possible but may send a delegate if they are unable to attend.

13. The initial membership, and the basis for membership, is listed in Appendix 1.

#### **Meetings**

14. Meetings of the governance group will be held at least every three months (ie quarterly), or more frequently if required. Minutes will be circulated to members no later than five working days after each meeting.

#### **Convenor**

15. Te Puni Kōkiri will convene the group and chair meetings.

#### **Quorum**

16. A quorum comprises eight members (or their delegates), including the chair.

#### **Secretarial Support**

17. Te Puni Kōkiri will provide Secretariat support. This includes organising and circulating the agenda and papers for meetings and taking minutes. Submission of papers to WT-CSG will be made in advance of meetings and in a timely manner, as co-ordinated with the Secretariat.

#### **Changes to the Terms of Reference**

18. Changes to the Terms of Reference will be agreed by the WT-CSG, on the same basis as any other decision. The Terms of Reference will be reviewed as required.

**Version record**

- Initial Draft 2 September 2019
- Revised Draft 12 September 2019
- Third revision 17 September 2019

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## Cover Note for Papers One and Two

### Purpose

1. The purpose of this paper is to:
  - a. seek your feedback on the preliminary proposals for Crown organisation that are summarised in the attached A3 entitled *Wai 262 – Te Pae Tawhiti: Preliminary proposals for Crown organisation* (paper 1)
  - b. seek your agreement to the proposed roadmap for June 2019 and 2020 (paper 2).

### Background

2. Wai 262 issues arise in many areas of government work. The Crown has begun to address some issues raised by Wai 262 and *Ko Aotearoa Tēnei* within specific government work programmes<sup>1</sup>. Individual work programmes under this Government (eg the Plant Variety Rights Act review, the biodiversity work programme) address some substantive Wai 262 issues. These work programmes include engagement with Māori in line with the Government's engagement framework.
3. There is significant variation in the way agencies and portfolio Ministers are approaching Wai 262 issues at present. As noted in the Cabinet paper supporting the April 2019 decisions, this variation creates ongoing risks and means opportunities may be missed.
4. A genuine partnership approach, underpinned by co-ordinated and consistent government action in response to Wai 262 issues, will require governance structures within the Crown. To help the Government do this, Cabinet agreed in April 2019 to establish the Ministerial Oversight Group to provide high-level oversight and strategic direction, given the breadth and significance of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*.
5. At that time, Cabinet also agreed in principle to establish three Ministerial focus groups. Each consists of Ministers with strong portfolio links to one of the following three broad kete of issues:
  - a. Kete 1: Taonga works<sup>2</sup> me te mātauranga Māori
  - b. Kete 2: Taonga species<sup>3</sup> me te mātauranga Māori
  - c. Kete 3: Kawenata Aorere / Kaupapa Aorere (broadly, international issues).

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<sup>1</sup> A summary of work to date was provided by the Minister for Māori Development in her November 2018 report to the House of Representatives under Section 8I of the Treaty of Waitangi Act 1975.

<sup>2</sup> The Waitangi Tribunal defined 'taonga works' as tangible and intangible expressions of mātauranga Māori that relate to or invoke ancestral connections, contain or reflect traditional narratives or stories, possess mauri and have living kaitiaki in accordance with tikanga Māori.

<sup>3</sup> The Waitangi Tribunal defined 'taonga species' as the species over which whānau, hapū or iwi claim kaitiakitanga (guardianship) obligations, and whose basis, history and content are set out in mātauranga Māori.



6. Cabinet also made a preliminary assignment of Ministers to the Ministerial Oversight Group and Kete. This has guided officials in establishing kete working groups at an inter-agency level. In addition, officials have sought to identify other key workstreams and portfolios which may be relevant and include them on a preliminary basis within the kete work.
7. Coordination across agencies is currently occurring through:
  - a. our trial of the kete structure
  - b. direct liaison between the offices of Ministers involved in particular work streams.
8. Establishing this DCEs group is a key step in providing leadership and coordination at an inter-agency level. Final proposals for Cabinet at the end of this year will include proposals for the role of the Kete within the machinery of government as well as any adjustments to structure and Ministerial representation.

## **Paper 1 – Preliminary Proposals for Crown Organisation**

### *Current status of proposals*

9. The attached proposals reflect and build on the initial Wai 262 decisions the Government made in April 2019. We have developed these collaboratively with agencies. The engagement material has also been reviewed by senior Ministers.
10. We are currently engaging with specific Māori groups and individuals about these proposals over September and October (the ‘targeted engagement’). Feedback from this process will inform final recommendations due with Cabinet at the end of 2019.
11. We have already begun to “road-test” the framework to:
  - a. assess whether it can drive a more integrated approach to Wai 262 issues
  - b. trial how the Kete approach can work in practice within the Crown.
12. This process has helped identify the initial cross-cutting issues you see in the attached A3. Some agencies are also developing internal Wai 262 networks to support a consistent and joined-up approach to Wai 262 issues.

### *Key discussion points*

13. We invite you to:
  - a. offer feedback on what adjustments to the proposed framework are needed (if any) to facilitate:
    - i. a partnership approach with Māori
    - ii. a joined up approach within the Crown.
  - b. share any steps your agency may have taken (or intends to take) to organise itself to support a consistent and joined-up approach to Wai 262.

- c. Inform us of anything Te Puni Kōkiri or other agencies might do to assist you organise yourself on this kaupapa.

## **Paper 2 – Proposed Wai 262 Te Pae Tawhiti Roadmap (June 2019 – July 2020)**

14. The roadmap is intended to show where we are at in the process and our proposed next steps. It shows key outcomes and milestones for each stage.
15. The roadmap starts at the Targeted Engagement stage. The key milestones before this stage included:



### *Targeted Engagement*

16. As mentioned above, we are currently engaging in targeted conversations with Māori groups and individuals about the initial Wai 262 decisions the Government made in April 2019.
17. The targeted engagement is seeking feedback on:
  - a. whether the Crown's proposed organisational structure makes sense from a Māori perspective
  - b. how Māori can work with Government on this kaupapa
  - c. how the Government should prioritise, schedule and undertake work in this area
  - d. whether there are cross-cutting Wai 262 issues or work we should consider.

### *Policy Decisions*

18. In the end of year report back to Cabinet, we intend to seek Cabinet decisions on:
  - a. whether the proposed Crown structure should be confirmed or modified
  - b. the vision, roadmap and initial work programme.
19. The Government will need to discuss options and proposals with its Treaty partners before making final decisions on the initial work programme. We therefore propose to seek policy decisions at this stage of the process that:
  - a. identify broad areas of potential work that we could prioritise to move the Wai 262 kaupapa forward
  - b. mandate Ministers and officials to discuss these potential areas of work with Māori, and
  - c. provide a process to enable those conversations to take place.

20. Your advice on these issues will be key to helping us develop proposals on next steps that will best work for all of us. In particular, we seek your assistance to develop proposals for an initial work programme that balances the need to:
- a. bring a meaningful work programme to the table for discussion with Māori, and
  - b. provide agencies with some lead-in time to determine how best to deliver that work programme and over what timeframe.

*Announcement and Partnership Approach phases*

21. This part of the roadmap sets out our current thinking about what the next steps in this process should be. There are three main steps:
- a. the Crown announces its intention to formally establish the frameworks set out in the A3 (as modified by the end of 2019 Cabinet decisions), and invites Māori to participate in a conversation about what the work programme should look like
  - b. the Crown provides time, space and resources for a series of Māori-Māori conversations about the Crown's proposals, and
  - c. Māori and the Crown come together for a summit to discuss and agree on the first tranche of work, and on how each Treaty partner will engage with the other throughout this work.

*Key discussion points:*

22. We invite you to consider and provide feedback on these key questions:
- a. What opportunities do you see for this project:
    - i. for the Māori Crown relationship, and
    - ii. to assist your agency to deliver on existing or potential workstreams in your area?
  - b. Is there cross-cutting work we could do that will help:
    - i. unblock difficult issues your agency is facing, and
    - ii. strengthen consistency of approach across workstreams in your area/sector?
  - c. What are your thoughts on the phasing of this project in the short-term?
  - d. What challenges and risks do you see in this process? Are there ways we can help each other mitigate or navigate them?

# Proposed Wai 262 Te Pae Tawhiti Roadmap (July 2019 - June 2020)

**Purpose:** The purpose of this document is to seek your approval of this roadmap of work including key milestones and outcomes to be achieved during this time.

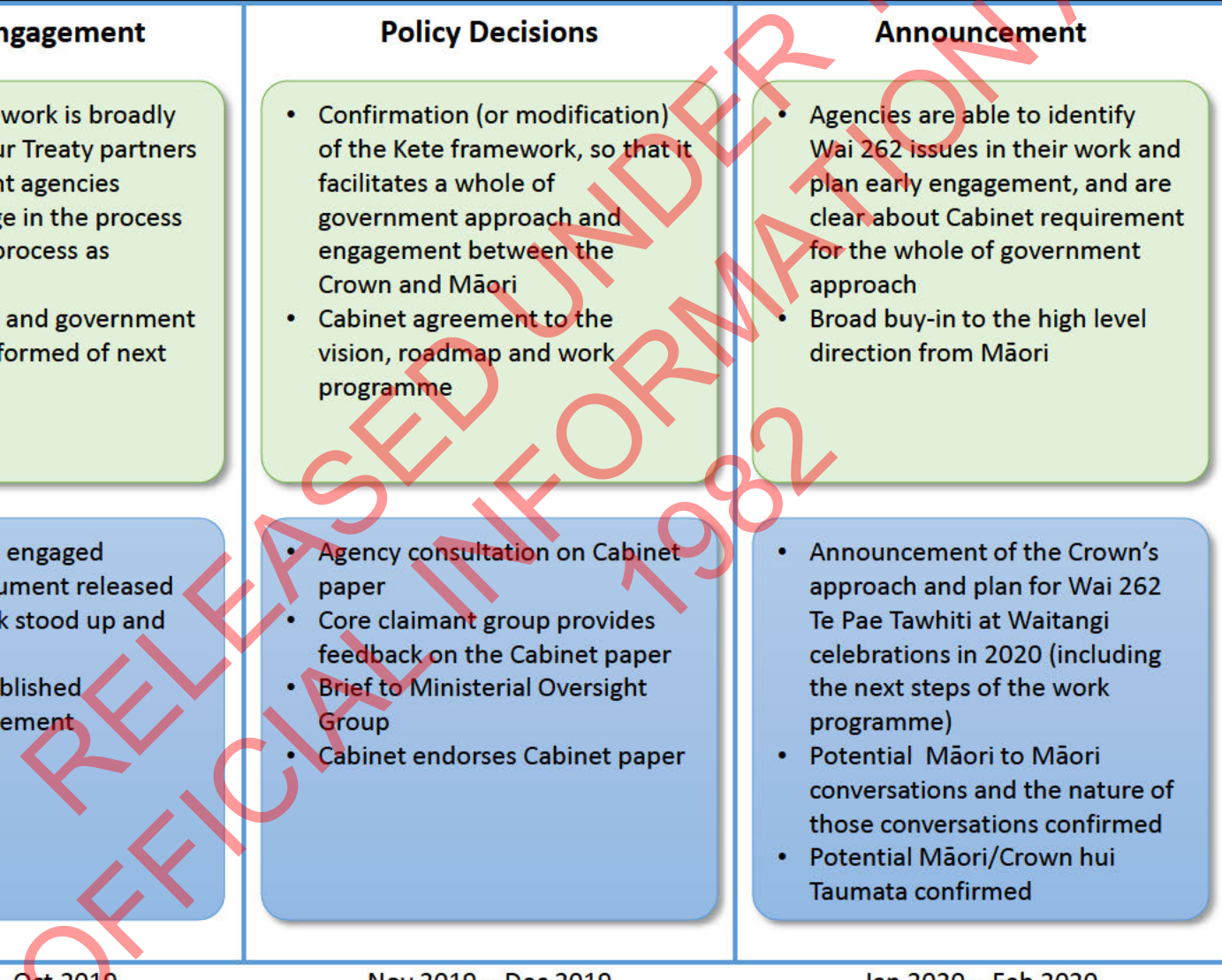
**Vision:**  
To strengthen national identity through a Treaty relationship that enables us to work out how the future should look together

**Outcomes**

**Milestones**

**Timeframe**

	Targeted Engagement	Policy Decisions	Announcement	Partnership Approach
Outcomes	<ul style="list-style-type: none"> <li>The Kete framework is broadly accepted by our Treaty partners and government agencies</li> <li>Agencies engage in the process</li> <li>Māori see the process as meaningful</li> <li>Treaty partners and government agencies are informed of next steps</li> </ul>	<ul style="list-style-type: none"> <li>Confirmation (or modification) of the Kete framework, so that it facilitates a whole of government approach and engagement between the Crown and Māori</li> <li>Cabinet agreement to the vision, roadmap and work programme</li> </ul>	<ul style="list-style-type: none"> <li>Agencies are able to identify Wai 262 issues in their work and plan early engagement, and are clear about Cabinet requirement for the whole of government approach</li> <li>Broad buy-in to the high level direction from Māori</li> </ul>	<ul style="list-style-type: none"> <li>Strong iwi / Māori engagement on WAI262 issues</li> <li>The partnership between the Crown and Māori is strengthened by trust and agreed mutual benefit</li> <li>Māori and government agencies benefit from increased trust and confidence in Wai 262 Te Pae Tawhiti process</li> </ul>
Milestones	<ul style="list-style-type: none"> <li>Claimant group engaged</li> <li>Discussion document released</li> <li>Kete framework stood up and tested</li> <li>DCE group established</li> <li>Targeted engagement completed</li> </ul>	<ul style="list-style-type: none"> <li>Agency consultation on Cabinet paper</li> <li>Core claimant group provides feedback on the Cabinet paper</li> <li>Brief to Ministerial Oversight Group</li> <li>Cabinet endorses Cabinet paper</li> </ul>	<ul style="list-style-type: none"> <li>Announcement of the Crown's approach and plan for Wai 262 Te Pae Tawhiti at Waitangi celebrations in 2020 (including the next steps of the work programme)</li> <li>Potential Māori to Māori conversations and the nature of those conversations confirmed</li> <li>Potential Māori/Crown hui Taumata confirmed</li> </ul>	<ul style="list-style-type: none"> <li>Potential series of Māori hui are held by Māori</li> <li>A Māori / Crown Taumata is held to agree on pathway going forward</li> <li>Cabinet paper on options for progressing the work programme for Wai 262 Te pae Tawhiti</li> </ul>
Timeframe	July 2019 – Oct 2019	Nov 2019 – Dec 2019	Jan 2020 – Feb 2020	Mar 2020 – Jun 2020





## Wai 262 – Te Pae Tawhiti Crown Stewardship Group

Date: 3 October 2019  
Time: 1pm-2:30pm  
Venue: Te Puni Kōkiri House, Room 1.4, Level 1

Item	Action	Paper No
a. Hei tīmatanga (10mins) i. Karakia ii. Mihi Whakatau iii. Apologies iv. Kōrero tīmatanga		
b. Preliminary proposals for Crown structure (30mins)	Discussion (provide feedback)	1 – A3 & Cover note for papers 1&2
c. Proposed roadmap (June 2019 – July 2020) (30mins)	Approve	2 – A3 & Cover note for papers 1&3
d. Terms of Reference (10mins)	Approve	3 – Cover note & document
e. Kōrero whakamutunga (5mins)		

# Wai 262 - Te Pae Tawhiti: Preliminary Proposals for Crown Organisation

## Ministerial Oversight Group (MOG)

(Rt Hon Jacinda Ardern, Rt Hon Winston Peters, Hon Kelvin Davis, Hon Dr Megan Woods, Hon Chris Hipkins, Hon Andrew Little, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi.)

- Oversee the government's high-level response across Wai 262
- Assist Ministers to co-ordinate within and across the three Ministerial groups (Kete 1-3)
- Determine the Crown's approach to high-level and cross-cutting issues
- Determine the high-level approach to Māori-Crown relationships on this kaupapa

**Ministers**  
Rt Hon Jacinda Ardern, Hon Kelvin Davis, Hon Grant Robertson, Hon Carmel Sepuloni, Hon Nanaia Mahuta, Hon Tracey Martin, Hon Kris Faafoi, Hon James Shaw.

### Kete 1: Taonga works me te Mātauranga Māori



**Possible Cross-cutting work**

- Developing a partnership approach to laws, policies and decisions affecting taonga works and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga works and mātauranga Māori.
- Defining Crown roles in respect of taonga works and mātauranga Māori.
- Developing a new legal framework for the use and protection of taonga works and mātauranga Māori.

**Ministers**  
Hon Dr Megan Woods, Hon Dr David Clark, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw, Hon Eugenie Sage.

### Kete 2: Taonga species me te Mātauranga Māori



**Possible Cross-cutting work**

- Developing a partnership approach to laws, policies and decisions affecting taonga species and mātauranga Māori.
- Creating space for kaitiaki to exercise kaitiakitanga over taonga species and mātauranga Māori.
- Defining Crown roles in respect of taonga species and mātauranga Māori.
- Improving information about taonga species and mātauranga Māori.
- Transitioning issue-by-issue approach to a relationship-based Māori-Crown dialogue on taonga species and mātauranga Māori.

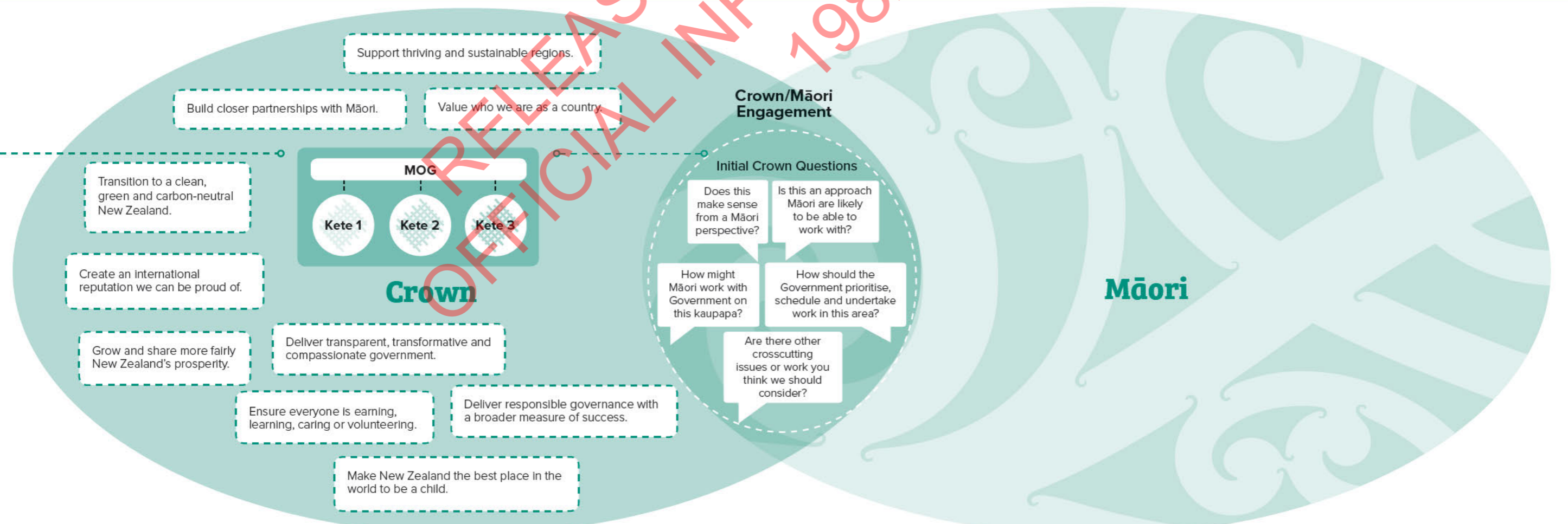
**Ministers**  
Rt Hon Winston Peters, Hon David Parker, Hon Nanaia Mahuta, Hon Kris Faafoi, Hon James Shaw.

### Kete 3: Kawenata Aorere/ Kaupapa Aorere



**Possible Cross-cutting work**

- Working with Māori to identify Māori interests and understanding their nature and strength when negotiating international instruments and participating in international forums.
- A consistent approach to engaging with Māori when representing New Zealand.
- Māori representation in international forums.





## Kete 1: Taonga works me te Mātauranga Māori

### What is the scope of this Kete?

Some of the options for future collaborative work between Māori and the Crown in Kete 1 might include:

- a) **Kaitiakitanga**  
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga works and mātauranga Māori?
- b) **Protection**  
Should there be a new legal framework to protect taonga works and mātauranga Māori? What should it look like?
- c) **Partnership**  
How should we make decisions affecting taonga works and mātauranga Māori in New Zealand and who should make them?
- d) **Stewardship**  
How should the Crown manage taonga works and mātauranga Māori it holds? How should the Crown approach Māori data stewardship and governance issues? How can the Crown better manage its metadata to enable access to the mātauranga Māori it holds?

### What are the existing work programmes that sit within this Kete?

The Government has so far identified the following workstreams as being likely to involve issues related to those considered in *Ko Aotearoa Tēnei* in Kete 1 (Taonga Works me te Mātauranga Māori):

- a) The review of the Copyright Act 1994
- b) The review of the Haka Ka Mate Attribution Act 2014
- c) Government data stewardship and Māori data governance
- d) The review of the Statistics Act 1975
- e) National Archival and Library Institutions (NALI) Ministerial Group
- f) Government Digital Strategy
- g) Refresh of Tau Mai Te Reo
- h) Review of the Te Ture mō Te Reo Māori Act 2016
- i) Māori Media Sector Shift.



## Kete 2: Taonga species me te Mātauranga Māori

### What is the scope of this Kete?

Some of the options for future collaborative work between Māori and the Crown in Kete 2 might include:

- a) **Kaitiakitanga**  
How can we better enable kaitiaki to more fully exercise kaitiakitanga over taonga species and mātauranga Māori?
- b) **Protection**  
How should we protect taonga species and mātauranga Māori? How might better information systems about taonga species and mātauranga Māori be developed?
- c) **Partnership**  
How should we make decisions affecting taonga species and mātauranga Māori in New Zealand and who should make them? How we might transition Māori-Crown engagement on taonga species and mātauranga Māori from a transactional, issue-by-issue approach to a relationship-based model?

### What are the existing work programmes that sit within this Kete?

The Government has so far identified the following workstreams as being likely to involve issues related to those considered in *Ko Aotearoa Tēnei* in Kete 2 (Taonga Species me te Mātauranga Māori):

- a) Development of a new national biodiversity strategy
- b) Responding to the Supreme Court's decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*
- c) Improving access to cultural materials
- d) Comprehensive review of the resource management system
- e) Essential freshwater
- f) Developing a National Policy Statement on Indigenous Biodiversity
- g) Zero Carbon Bill
- h) Emissions Trading Scheme
- i) Mātauranga Māori when presented as evidence in a decision-making hearing
- j) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- k) Three Waters Review
- l) Review of the Plant Variety Rights Act 1987
- m) Consideration of whether there should be a 'disclosure of origin' requirement in the patent system
- n) Development of a Resource Strategy
- o) Review of the Crown Minerals Act 1991
- p) Health Services and Outcomes Inquiry Kaupapa Inquiry (Wai 2575)
- q) Māori Health Action Plan
- r) Fisheries Change Programme
- s) Review of the Biosecurity Act 1993
- t) Forestry Strategy.



## Kete 3: Kawenata Aorere/Kaupapa Aorere

### What is the scope of this Kete?

The proposed focus for Kete 3 (Kawenata Aorere / Kaupapa Aorere) is:

- a) **Māori interests at international level**  
How should the Crown should work with Māori to identify Māori interests and the nature and strength of those interests when negotiating international instruments and participating in international forums?
- b) **Engaging with Māori**  
How should Government agencies engage with Māori when representing New Zealand?
- c) **Māori representation**  
How Māori should be represented in international forums?

### What are the existing work programmes that sit within this Kete?

In Kete 3 existing, recent and upcoming Government workstreams of particular relevance include:

- a) Implementation of the 2001 Strategy for Engagement with Māori on International Treaties
- b) The development of the Māori Crown Engagement Framework and Guidelines led by Te Arawhiti
- c) The development of a Trade for All agenda. One of the Trade for All agenda's key principles is "the creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner".

As set out above, this kete is primarily focused on the Crown relationship with Māori in the area of international instruments. To provide further context, the following are examples of existing or potential future international instruments and related kaupapa on which the Crown is currently engaging with Māori and will need to be mindful of the issues raised in the Wai 262 claim and *Ko Aotearoa Tēnei*:

- a) New Zealand's development of a plan on the United Nations Declaration on the Rights of Indigenous Peoples
- b) World Intellectual Property Organisation negotiations in the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore
- c) New Zealand's participation in the United Nations Permanent Forum
- d) Convention on Biological Diversity
- e) United Nations Agreement on Biodiversity Beyond National Jurisdiction negotiations
- f) UNFCCC/Paris Agreement/climate change negotiations
- g) E-Commerce negotiations at the World Trade Organization
- h) Digital Economic Partnership Agreement (DEPA) negotiations with Chile and Singapore
- i) Various free trade agreements and related work.



# Memo

To: Anne Haira – Deputy Secretary Partnerships and Customers

From: Joanna Morgan

Date: 30 September 2019

CC: Amanda Moran – Natural and Built System, Caitlin Hanson, Georgia Bishop, Ben Dickson, Kelly Palmer

Re: Wai262 Crown Stewardship Group meeting - Thursday 3 October

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## Purpose

1. To provide background information regarding the Wai 262 report and a whole-of-government response.
2. To provide detail of the Ministry for the Environment's involvement in the whole-of-government response.
3. To provide advice on the documents for consideration at the Crown Stewardship Group meeting, to be held on Thursday 3 October.

## Background

### *The Wai262 Claim*

4. The Wai 262 claim was filed with the Waitangi Tribunal in 1991. The claimants sought to establish who, if anyone, owns or controls mātauranga Māori, traditional artistic and cultural expressions, the unique characteristics of indigenous flora and fauna, and New Zealand's natural environment more generally.
5. In 2011, the Waitangi Tribunal reported on claims concerning New Zealand law and policy affecting Māori culture and identity, *Ko Aotearoa Tēnei*. It recommended changes to the Crown's laws, policies and practices relating to intellectual property, indigenous flora and fauna, resource management, conservation, the Māori language, arts and culture, heritage, science, education, health, and the making of international treaties and other instruments.

### *Crown Response to Wai262*

6. The Crown has not made any formal response to Wai 262.



7. In April 2019, Cabinet approved the development of a whole-of-government response to Wai 262, as proposed by the Minister of Māori Development. This strategy was made public on 28 August this year, when Minister Mahuta met with the National Iwi Chairs Forum.
8. Due to the amount of time since the claim was filed, and the report was released, the whole-of-government response takes an issues approach to responding to the report.
9. The broad issues identified in the Wai 262 report are directly relevant to key Government priorities, including building a closer partnership with Māori and improving how the public sector responds to Māori issues. The Waitangi Tribunal provides extensive guidance in the report on how the Crown could take a Treaty-based approach to establishing partnership mechanisms that enable appropriate levels of shared decision-making on important issues.
10. Te Puni Kōkiri is currently undertaking targeted engagement that seeks feedback on this approach, and how it might influence current work programmes across Crown agencies.

*Ministry for the Environment response to Wai262*

11. In 2015, some preliminary work was done at MfE to develop a response to Wai 262. The work included a stocktake of policy developments and legislative enactments since 2011, which addressed the recommendations and issues in the report. Progress on the project was stopped due to a change in political priorities.
12. Cabinet's approval of the development of a whole-of-government response requires MfE to re-consider its position in relation to the recommendations of the Wai 262 report.
13. Mana Taiao have undertaken analysis of the Wai 262 report as it relates to the Environment portfolio directly.
14. In summary, the Waitangi Tribunal recommends the Crown reform the Resource Management Act 1991 (RMA) to compel those with power under the Act to engage with kaitiaki, to deliver:
  - Māori control of environmental management of taonga where it is found that the kaitiaki interest should be accorded priority;
  - Partnership models for environmental management of taonga where it is found that kaitiaki should have a say in decision-making; and
  - Effective influence and appropriate priority to kaitiaki interests where decisions are made by others that affect kaitiaki interests.
15. Amendments to the Resource Management Act in 2017 address some of the issues identified by the Waitangi Tribunal, particularly through the provision for increased Māori participation in Mana Whakahono ā Rohe arrangements. However, the comprehensive review of the resource management system is best positioned to consider and address the recommendations.

16. It is recommended MfE participate in the Government work programme for Wai 262 in order to achieve aspirations for a Treaty relationship in natural resource management.

### **Ministry for the Environment in the whole-of-government response**

17. There are a number of work programmes in progress that relate to issues raised in the Wai 262 inquiry. The following have been identified as opportunities to consider how the recommendations in the report may inform policy development:

- a) The comprehensive review of the resource management system
- b) The biodiversity strategy
- c) Essential Freshwater package
- d) NPS indigenous biodiversity
- e) Zero Carbon Bill
- f) Emissions Trading Scheme
- g) Exclusive Economic Zone Act

18. MfE officials have attended a number of cross-agency hui for the whole-of-government response approach. To date, a number of cross-cutting themes have been identified for further discussion with the intent of deciding on a consistent approach across respective agencies.

19. The work programmes listed in para 17 above have been provided to Te Puni Kōkiri as examples of current Crown work programmes that have relevance to Wai 262.

20. MfE is establishing a reference group (the MfE Reference Group) to provide organisation wide support and input to forming a response to the report.

21. A draft Terms of Reference is currently being reviewed before it is presented to you for consideration.

### **Crown Stewardship Group meeting, Thursday 3 October**

22. The Crown Stewardship Group (WT-CSG) is a collective of Deputy Chief Executives (or agency equivalents) from agencies involved in the whole-of-government response (the Wai 262 work programme).

23. This will be the first time that WT-CSG meet.

24. The proposed purpose of the WT-CSG is to support the aspirations of Ministers and Māori, coordinate with other agencies, and progress the Government work programme. Members will be required to make decisions on behalf of their organisations, therefore, it is appropriate that a member of Te Pūrengi represents MfE at these meetings.

25. Te Puni Kōkiri will table three documents at the meeting:

1. Preliminary proposals for Crown organisation (attached to email);

2. Proposed Wai 262 Te Pae Tawhiti Roadmap (July 2019 – June 2020) (attached to email); and
3. Draft Terms of Reference for the Crown Stewardship Group (attached to email).

*Preliminary proposals for Crown organisation*

26. Te Puni Kōkiri are seeking comments on a proposed structure to organise agencies for the Wai 262 work programme.
27. The April cabinet paper proposed three groupings:
  1. Tangible products of mātauranga Māori (Kete One - Taonga Works me te Mātauranga Māori);
  2. The natural environment and mātauranga Māori (Kete Two - Taonga species me te Mātauranga Māori); and
  3. International instruments (Kete Three - Kawenata Aorere/Kaupapa Aorere).
28. MfE currently sits within Kete Two and Kete Three.
29. The issues in Kete Two directly relate to MfE's work programmes. Mana Taiao have actively participated in workshops for this kete, including the identification of scope and possible cross-cutting work.
30. The MfE Reference Group is intended to provide support to Kete Two as the work programme progresses.
31. The MfE Reference Group will be responsible for representing MfE at cross-agency meetings and providing respective teams with updates of the Wai 262 work programme.
32. Kete Three is primarily concerned with representation issues when negotiating international instruments and participating in international forums.
33. Mana Taiao recognise that the Ministry of Foreign Affairs and Trade actively lead Kete Three issues. Accordingly, we have had limited attendance at Kete Three meetings to date.

*Proposed Wai 262 Te Pae Tawhiti Roadmap*

34. Te Puni Kōkiri will seek approval for the Proposed Wai 262 Te Pae Tawhiti Roadmap (July 2019 – June 2020) (the Roadmap).
35. The Roadmap will require a commitment from MfE to fully engage with the Wai 262 work programme in the periods covering policy decisions and the announcement of the Wai 262 work programme.
36. The policy decisions period will require comment on the Cabinet paper due in December. Mana Taiao will undertake this task.

37. The announcement period will require identifying Wai 262 issues in work programmes, planning early engagement on those issues, and being clear about what Cabinet requires of the whole-of-government approach. The MfE Reference Group will support teams in this process.
38. There is a criticism of engaging on Wai 262 issues in work programmes, where that work programme has progressed beyond the point that engagement is practical. MfE should only commit to doing this where practical.
39. It is recommended that you approve the Roadmap.

*Draft Terms of Reference*

40. Te Puni Kōkiri will seek approval for the draft Terms of Reference for WT-CSG.
41. The Terms of Reference seek to encourage a collective approach from the WT-CSG to the official support of a whole-of-government response to the Wai 262 report.
42. Provided no substantive changes are made to the preliminary proposals provided and the Roadmap, it is recommended that you agree to the Terms of Reference.

**Recommendations**

43. I recommend that you:
- a) **Note** that the preliminary proposals for Crown organisation place MfE in Kete Two and Kete Three.
  - b) **Note** that Kete Two aligns with MfE's work programmes.
  - c) **Note** that the proposed MfE Reference Group will be tasked with representing MfE in Kete Two meetings and completing subsequent actions.
  - d) **Note** that Kete Three is primarily concerned with Māori representation in the negotiation of international instruments.
  - e) **Note** that MfE work programmes are at varied stages of development. Not all are in a position to engage on Wai 262 issues.
  - f) **Approve** the Roadmap and draft Terms of Reference.

**From:** [Joanna Morgan](#)  
**To:** [Kelly Palmer](#)  
**Subject:** RE: Initial Draft Wai 262 Cabinet Paper - Comments due Weds 6th November  
**Date:** Friday, 8 November 2019 12:31:25 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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Kei te pai.

I've had another look through the previous draft. I still don't have any commentary to add, but that might just be because I have no experience in trying to direct a multi-agency work programme.

It wouldn't surprise me if the next version comes in quite late today, if so, I'll have a look at it first thing on Monday morning.

If you want to catch up and have a chat about any of it, I have time before I leave at 4.30 today.

Joanna

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**From:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>  
**Sent:** Friday, 8 November 2019 9:43 AM  
**To:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Subject:** FW: Initial Draft Wai 262 Cabinet Paper - Comments due Weds 6th November

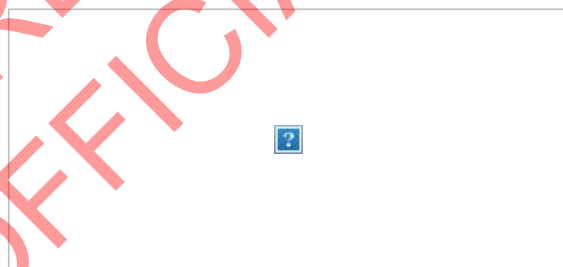
Kia ora Joanna,

FYI when the next version of the Cab paper arrives today we need to be all over it. Lorena and Anne have expressed a desire for us to front foot and be directive in our commentary and the direction of travel. I'll read through the previous draft this morning and then try and catch Anne later on to get a steer on her vision.

It will mean a bit of work today and Monday, potentially connecting in with others in the business and I'll probably make time in the weekend.

K.

**Kelly Palmer – Manager, Mana Taiao**  
Ministry for the Environment – Manatu Mo Te Taiao  
Mobile: 0224930065 Email: [kelly.palmer@mfe.govt.nz](mailto:kelly.palmer@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
23 Kate Sheppard Place, Thorndon, Wellington 6143



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**From:** Kelly Palmer  
**Sent:** Friday, 8 November 2019 9:24 AM  
**To:** Lorena Stephen <[Lorena.Stephen@mfe.govt.nz](mailto:Lorena.Stephen@mfe.govt.nz)>  
**Subject:** FW: Initial Draft Wai 262 Cabinet Paper - Comments due Weds 6th November

Next version of the cabinet paper arrives today. I'll jump on it this afternoon.

**Kelly Palmer – Manager, Mana Taiao**

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 0224930065 Email: [kelly.palmer@mfe.govt.nz](mailto:kelly.palmer@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143



**Subject:** RE: Initial Draft Wai 262 Cabinet Paper - Comments due Weds 6th November

Kia ora tatou

Thank you to those that provided comments on the initial draft of the full Wai 262 Cabinet Paper.

We have now closed off round one of feedback on the draft paper.

The next version for comment will be provided on **Friday 8 November for comment back by Monday 11 November, 2pm.**

We will also be going to **MCR on 3 December 2019**, and will provide revised Cabinet paper timeframes on Friday with the next version of the paper. At this time, we will advise on the agenda for the DCE hui, scheduled on 14 November 2019, 1-3pm, to be held at Ministry for Culture, Rm 1.13.

Nga mihi

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**Nadia Ward**

Principal Policy Analyst | Kaitatari Tumuaki  
Kaupapa Here

**Te Puni Kokiri, National Office**

Tauwaea **DDI** : +64 4 819 6112 | Waea Pukoro **M** : +64 27 640 7880

Waea Whakaahua **F** : 0800 875 329 | Paetukutuku **W** : [www.tpk.govt.nz](http://www.tpk.govt.nz)

**Te Puni Kokiri**, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand

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**From:** [Wai262@tpk.govt.nz](mailto:Wai262@tpk.govt.nz)

**Sent:** Ramere, 01 Whiringa-a-rangi, 2019 9:52 p.m.

**To:** 'trevor.himona@dia.govt.nz' <[trevor.himona@dia.govt.nz](mailto:trevor.himona@dia.govt.nz)>; 'polly.martin@dia.govt.nz' <[polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz)>; 'Chris.Szekely@dia.govt.nz' <[Chris.Szekely@dia.govt.nz](mailto:Chris.Szekely@dia.govt.nz)>; 'Alison.McIntyre@dia.govt.nz' <[Alison.McIntyre@dia.govt.nz](mailto:Alison.McIntyre@dia.govt.nz)>; 'Gabriel.Joseph@dia.govt.nz' <[Gabriel.Joseph@dia.govt.nz](mailto:Gabriel.Joseph@dia.govt.nz)>; 'Toma.Mason@dia.govt.nz' <[Toma.Mason@dia.govt.nz](mailto:Toma.Mason@dia.govt.nz)>; 'Julie.Black@dia.govt.nz' <[Julie.Black@dia.govt.nz](mailto:Julie.Black@dia.govt.nz)>; 'Katy.Team0@dia.govt.nz' <[Katy.Team0@dia.govt.nz](mailto:Katy.Team0@dia.govt.nz)>; 'marcus.smith@mbie.govt.nz' <[marcus.smith@mbie.govt.nz](mailto:marcus.smith@mbie.govt.nz)>; 'aidan.burch@mbie.govt.nz' <[aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz)>; 'Dmitry.Mitenkoff@mbie.govt.nz' <[Dmitry.Mitenkoff@mbie.govt.nz](mailto:Dmitry.Mitenkoff@mbie.govt.nz)>; 'Jahnavi.Manubolu@mbie.govt.nz' <[Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz)>; 'John-david.chaker@mbie.govt.nz' <[John-david.chaker@mbie.govt.nz](mailto:John-david.chaker@mbie.govt.nz)>; 'richard.walley@mbie.govt.nz' <[richard.walley@mbie.govt.nz](mailto:richard.walley@mbie.govt.nz)>; 'lee.robinson@mbie.govt.nz' <[lee.robinson@mbie.govt.nz](mailto:lee.robinson@mbie.govt.nz)>; 'george.wardle@mbie.govt.nz' <[george.wardle@mbie.govt.nz](mailto:george.wardle@mbie.govt.nz)>; 'katherine.lowe2@mbie.govt.nz' <[katherine.lowe2@mbie.govt.nz](mailto:katherine.lowe2@mbie.govt.nz)>; 'Mark.Ormsby@mbie.govt.nz' <[Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz)>; 'Julie.Fieldhouse@mbie.govt.nz' <[Julie.Fieldhouse@mbie.govt.nz](mailto:Julie.Fieldhouse@mbie.govt.nz)>; 'Turei.Reedy2@mbie.govt.nz' <[Turei.Reedy2@mbie.govt.nz](mailto:Turei.Reedy2@mbie.govt.nz)>; 'Ata.TeKanawa@mbie.govt.nz' <[Ata.TeKanawa@mbie.govt.nz](mailto:Ata.TeKanawa@mbie.govt.nz)>; 'tipene.chrisp@education.govt.nz' <[tipene.chrisp@education.govt.nz](mailto:tipene.chrisp@education.govt.nz)>; 'Addrienne.Long@education.govt.nz' <[Addrienne.Long@education.govt.nz](mailto:Addrienne.Long@education.govt.nz)>;

'Mahina.Melbourne@education.govt.nz' <[Mahina.Melbourne@education.govt.nz](mailto:Mahina.Melbourne@education.govt.nz)>; 'Lois.Searle@mch.govt.nz' <[Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz)>; 'jonathan.easthope@mch.govt.nz' <[jonathan.easthope@mch.govt.nz](mailto:jonathan.easthope@mch.govt.nz)>; 'Benoit.Lamy@mch.govt.nz' <[Benoit.Lamy@mch.govt.nz](mailto:Benoit.Lamy@mch.govt.nz)>; 'Kartini.Havell@mch.govt.nz' <[Kartini.Havell@mch.govt.nz](mailto:Kartini.Havell@mch.govt.nz)>; 'tia.warbrick@tearawhiti.govt.nz' <[tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz)>; 'rewi.henderson@tearawhiti.govt.nz' <[rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz)>; 'benedict.taylor@tearawhiti.govt.nz' <[benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz)>; 'Warren.Fraser@tearawhiti.govt.nz' <[Warren.Fraser@tearawhiti.govt.nz](mailto:Warren.Fraser@tearawhiti.govt.nz)>; 'paul.brown1@stats.govt.nz' <[paul.brown1@stats.govt.nz](mailto:paul.brown1@stats.govt.nz)>; 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'Martin.Wikaira@mfat.govt.nz' <[Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz)>; 'Emma.Thwaite@mfat.govt.nz' <[Emma.Thwaite@mfat.govt.nz](mailto:Emma.Thwaite@mfat.govt.nz)>; 'Jonas.Holland@mfat.govt.nz' <[Jonas.Holland@mfat.govt.nz](mailto:Jonas.Holland@mfat.govt.nz)>; 'Anna.Broadhurst@mfat.govt.nz' <[Anna.Broadhurst@mfat.govt.nz](mailto:Anna.Broadhurst@mfat.govt.nz)>; 'Alana.Messent@mfat.govt.nz' <[Alana.Messent@mfat.govt.nz](mailto:Alana.Messent@mfat.govt.nz)>; 'kathryn.beckett@mfat.govt.nz' <[kathryn.beckett@mfat.govt.nz](mailto:kathryn.beckett@mfat.govt.nz)>; 'Alana.Hudson@mfat.govt.nz' <[Alana.Hudson@mfat.govt.nz](mailto:Alana.Hudson@mfat.govt.nz)>; 'Krissy.Grace@mfat.govt.nz' <[Krissy.Grace@mfat.govt.nz](mailto:Krissy.Grace@mfat.govt.nz)>; 'kkingdonbebb@doc.govt.nz' <[kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz)>; 'tarona@doc.govt.nz' <[tarona@doc.govt.nz](mailto:tarona@doc.govt.nz)>; 'kknowles@doc.govt.nz' <[kknowles@doc.govt.nz](mailto:kknowles@doc.govt.nz)>; 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'janet.chambers@mpi.govt.nz' <[janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz)>; 'stewart.genery@mpi.govt.nz' <[stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz)>; 'Elizabeth.Davie@mpi.govt.nz' <[Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz)>; 'Keri.Iti@mpi.govt.nz' <[Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz)>; 'Marama.Findlay@mpi.govt.nz' <[Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz)>; 'Tara.Ross-Watt3@mpi.govt.nz' <[Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz)>; 'kiri\_dargaville@moh.govt.nz' <[kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz)>; 'sam\_austin@moh.govt.nz' <[sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz)>; Anthony Dancer <[danca@tpk.govt.nz](mailto:danca@tpk.govt.nz)>; Darin Bishop <[bishd@tpk.govt.nz](mailto:bishd@tpk.govt.nz)>; Ben Matthews <[mattb@tpk.govt.nz](mailto:mattb@tpk.govt.nz)>; Charles Ngaki <[ngakc@tpk.govt.nz](mailto:ngakc@tpk.govt.nz)>; Tara Ross-Watt <[rosst@tpk.govt.nz](mailto:rosst@tpk.govt.nz)>; Richard Laverty <[laver@tpk.govt.nz](mailto:laver@tpk.govt.nz)>

**Cc:** Dominic Kebbell <[kebbd@tpk.govt.nz](mailto:kebbd@tpk.govt.nz)>; Anaru Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Riki Ellison <[ellri@tpk.govt.nz](mailto:ellri@tpk.govt.nz)>; Sylvan Spring <[spril@tpk.govt.nz](mailto:spril@tpk.govt.nz)>; Eli Waata-Amai <[waate@tpk.govt.nz](mailto:waate@tpk.govt.nz)>; Karen Southon <[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>

**Subject:** Initial Draft Wai 262 Cabinet Paper - Comments due Weds 6th November

Kia ora tatou

Attached as promised is the initial draft of the full Wai 262 Cabinet Paper. The various Appendices are still being worked on and will be in the next draft.

Thank you to those who sent through comments on the outline earlier this week.

In your review, please focus on

- overall coherence, clarity and consistency
- any specific departmental perspectives

Minor editorial and grammatical corrections are a lower priority for your limited time.

As noted in the timetable provided earlier this week **we need your comments by noon on Wednesday 6** .

Please do feel free to call or email to clarify specific points.

Thank you for your ongoing participation in this whole of government endeavour and best wishes for the weekend,

Nga manaakitanga

Nadia Ward  
on behalf of Te Ropu Wai 262

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<b>National Office</b>	<i>Waea Whakaahua</i> F : 0800 875 329
	<b>Te Puni Kokiri</b> , Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand PO Box 3943, Wellington 6140, New Zealand
	 <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a>

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Document 33

**From:** [Kelly Palmer](#)  
**To:** [Anne Haira](#); [Lorena Stephen](#)  
**Cc:** [Joanna Morgan](#)  
**Subject:** Ministry draft commentary on Wai262 cabinet paper  
**Date:** Monday, 11 November 2019 12:58:39 PM  
**Attachments:** [image001.png](#)  
[Wai262 commentary.docx](#)  
**Importance:** High

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Kia ora korua,

- We received the latest version of the Wai262 cabinet paper on Friday evening.
- TPK have requested commentary back by 2pm this afternoon from agencies.
- We have had a brief conversation with Te Arawhiti officials and can confirm our high-level commentary and perspectives are consistent.
- See attached draft commentary from the Ministry, feedback would be appreciated.

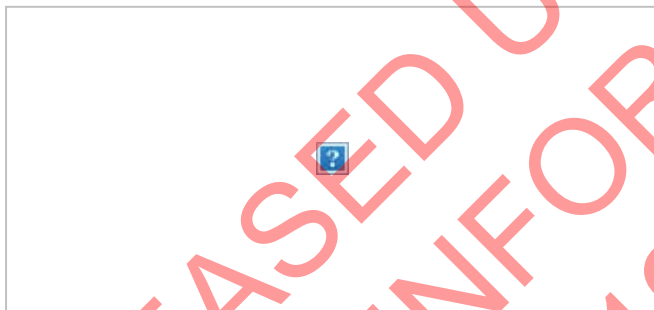
Nga mihi

**Kelly Palmer – Manager, Mana Taiao**

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 0224930065 Email: [kelly.palmer@mfe.govt.nz](mailto:kelly.palmer@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

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**Ministry for the Environment review**

**WAI 262 TE PAE TAWHITI – REPORT BACK AND NEXT STEPS**

Kelly Palmer – Manager Mana Taiao

High-level commentary (have tested and is consistent with Te Arawhiti)

- We’re broadly comfortable with the paper.
- It describes the response to WAI 262 as an opportunity to apply the Government’s objectives for Māori Crown relations. But we’re concerned that opportunity may be missed through lack of immediate/concrete action.
- The systematic assessment of existing work programmes proposed in the paper proposed is positive. But it is possible and necessary to grapple with issues of substance sooner so as to maintain credibility with Māori.
- We think the paper is little light on detail about the work streams where there will be significant challenges in applying a WAI 262 approach

Section	Blurb	Opinion
7.	<i>“Another problem identified in the Cabinet paper supporting April 2019 decisions was the disparate approaches Ministers and agencies were taking towards Wai 262 issues”</i>	Agree this is an issue.
18.	<i>“Following the targeted engagement, it has become clear to me that our primary focus must be on getting the partnership approach right”</i>	Support
18.	<i>“It has also become clear that doing this well will require us to both develop the capability and capacity of the Crown and provide enough time and support for Māori to engage in an informed and meaningful way”</i>	Support

19.	<i>"If we are to unlock the economic, social and cultural potential of Te Ao Māori, for both Māori and the whole of New Zealand, we need to tackle complex issues like the protection and use of mātauranga Māori in a comprehensive way"</i>	Agree, the Ministry requests an active 'support role' on this kaupapa.
24.	<i>"Te Pae Tawhiti needs to start well and accept that, as in any relationship, both the Crown and Māori need to "learn by doing". There is a risk for the Crown if people perceive our short term efforts in specific areas fall short of our long-term aspirations"</i>	Agree, this is a risk that will need to be actively managed.
34.1	<i>"Māori Crown partnership approach: clarity on what partnership means in practical terms, and a need to ensure a clear commitment to engaging Māori throughout the Wai 262 work. The current role of various Māori fora and organisations to be considered in ongoing conversations. Upskilling the Crown on how it works with Māori is key to the success of this kaupapa"</i>	Agree, it needs to align with existing policy processes and engagement 'in train'. Support cross-Crown alignment and capability building.
34.2	<i>"Inclusive process: there needs to be Māori representation at all levels of the Kete structure"</i>	Support an inclusive process with Māori representation at all levels of the Kete structure. Interested in how Māori representatives are defined, are these Crown officials who are Māori as well as Māori representatives from outside Crown?
34.3	<i>"Maintaining the mana of the original claim"</i>	Support
34.4	<i>"Resourcing: resourcing is required to enable Māori engagement with the Crown including resource for a parallel structure and Māori-to-Māori conversations"</i>	Support. How does this line up with work 'in train', other work that's outside the scope of Wai262 and other capability building initiatives cross-Crown.
34.5	<i>"Crown's proposed structure, scope and work programme: the scope of the work programme needs to be broadened. The work needs to align with the present and future states of both Crown and Māori (including urban Māori) worlds and align more to achieving social</i>	Agree and support a broadened scope. Greater clarity and a deliberate emphasis on interconnected work streams is required.

	<i>and economic parity. Crown needs to develop a consistent approach to engaging with Māori. More clarity needed on the interconnectedness of the three Kete and how Wai 262 will be joined up to other work e.g. work on mānuka honey”</i>	
34.6	<i>“Phasing and timeframes: more clarity on the phasing and timeframes of the work programme”</i>	Agree. Greater clarity on phasing would support the Ministry to align our existing and future actions. It would enable us to target resource and effort at key times in the process.
40.	<i>“That the purpose of these groups be to:</i> <ul style="list-style-type: none"> <li>• <i>support the implementation of the Government’s whole-of-government approach to Wai 262 issues;</i></li> <li>• <i>co-ordinate work streams across relevant Ministerial portfolios, including agreeing an appropriate approach to strategic and cross-cutting issues within each Kete;</i></li> <li>• <i>agree future strategic work for each Kete prior to final approval at Cabinet.</i></li> </ul>	Support the purpose of the Ministerial Kete.
41.3	<i>“seeking greater consistency, coordination and cohesion in existing Government work streams in which Wai 262 issues arise”</i>	Support. The Ministry has significant policy programmes in train, alignment cross-Crown would support us in delivering coordinated and ‘fit for purpose’ policy.
42.1	<i>“strengthen the coordination, consistency and coherence of the Government’s engagement and policy responses to Wai 262 issues”</i>	Support. The Ministry has significant policy programmes in train, alignment cross-Crown would be appreciated.
44. and 45.	<i>“44. Officials have identified that Wai 262 issues potentially arise in a large number of existing work streams. Appendix 4 sets out by Kete the list of these existing work streams provided to Māori as part of targeted engagement.</i> <i>45. This list is likely to be incomplete. Officials have also begun to identify other work streams that intersect with significant Wai 262 issues”</i>	Yes, the Ministry has significant policy programmes in train that align with Wai262.  The list in Appendix 4 is incomplete. Ministry officials are progressing an analysis of work streams that intersect with Wai262 issues, and issues identified in other Tribunal processes. We will share information on this process as it progresses.

		The Ministry is engaged in topical and relevant work programmes which could be targeted as “worked examples”.
48.	<p><i>“However, our Government has yet to systematically evaluate:</i></p> <p><i>48.1. the consistency of its approach to Wai 262 issues across these work streams</i></p> <p><i>48.2. the opportunities for coordination of engagement and decisions across work streams</i></p> <p><i>48.3. any risks arising from current approaches to Wai 262 issues in existing work streams</i></p> <p><i>48.4. any opportunities for early “joined up” work with Māori that can occur within existing authorisations and help address key Wai 262 issues”</i></p>	Support a systematic approach, these are live challenges, but present great opportunity.
53	<p><i>“Over the twelve months to November 2020, Kete Ministers:</i></p> <p><i>53.1 conduct a systematic assessment of existing work streams included in each Kete with a view to:</i></p> <ul style="list-style-type: none"> <li><i>• increasing alignment on approaches to Māori-Crown relations, and identifying risk mitigation approaches where appropriate</i></li> <li><i>• enabling full and timely consideration of relevant Wai 262 issues, including the findings and recommendations of Ko Aotearoa Tēnei</i></li> <li><i>• strengthening and coordinating engagement, participation and partnership approaches in ways that better suit the individual and collective needs of Māori</i></li> <li><i>• identifying synergies between work streams, and key strategic, emerging and challenging issues within and across the Kete”</i> </li></ul>	Support a systematic approach. The Ministry has significant policy programmes in train, assistance cross-Crown and taking advantage of opportunities to synergise would support delivery of improved outcomes.
53.2	<p><i>“identify:</i></p> <ul style="list-style-type: none"> <li><i>• strategic work that could be progressed in partnership with Māori in order to unblock longstanding issues that are impeding the Crown’s ability to progress various work streams .</i></li> <li><i>• opportunities for early joint work within existing authorisations”</i> </li></ul>	Support, aligns with the Ministry’s aspirations.

54.	<i>"Finally, I propose that Te Arawhiti and Te Puni Kōkiri develop material to assist policymakers to consider Wai 262 issues as part of applying current Cabinet engagement and Treaty guidelines in existing work and engagements by March 2020"</i>	Support, this is an important and helpful proposal. MfE request an active 'supporting role' in this process.
58.	<i>"58. By June 2020, Kete Ministers: 58.1. consolidate and review information across government on the current approaches of the Government in identifying Māori interests when negotiating international instruments"</i>	Support, the Ministry supports a number of these under our remit
58.2	<i>"identify opportunities to improve inter-agency coordination around issues that have both domestic and international component"</i>	Support
59	<i>"By November 2020, Kete Ministers: 59.1. review the existing guidance and approaches to the issues in paragraph 58 with a view to reinforcing consistency across the Crown. 59.2. identify options to strengthen alignment with agreed government approaches to Māori-Crown relations across and within work streams"</i>	Support
61	<i>"Kete 3 also offers a potential vehicle to help manage key international work streams with a close connection to Wai 262, like the United Nations Declaration on the Rights of Indigenous People"</i>	Support a plan for realising the aspirations of UNDRIP.
70.3	<i>"I propose that the Crown continue to explore possible approaches to future joint work with selected Māori design partners on possible new strategic work within Kete 1 and Kete 2"</i>	Support a work programme evaluating alternative design approaches that may deliver better outcomes.
74.	<i>"Developing "worked examples" of a possible joint process will enable the Crown and Māori to explore how to work together without pre-empting wider Māori-to-Māori conversations"</i>	Support immediate action and the progression of worked examples.

<p>103.3 (and 105)</p>	<p><i>“Development of legal and policy protections for taonga works and mātauranga Māori</i></p> <p><i>“This work will involve developing information, mechanisms and policies regarding how we treat taonga works and mātauranga Māori that will be highly relevant in other government policy areas (including taonga tūturu and the Crown’s obligations when it holds taonga works and mātauranga Māori)”</i></p>	<p>Support, the Ministry would like to be involved in this work.</p>
	<p><i>“Developing a framework and policy to address Bioprospecting and Bio-piracy”</i></p>	<p>Support the development of a deliberate and coordinated “bioprospecting regime”, the Ministry would like to be involved in this work.</p>

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Document 34

## RM Review 6 – draft working paper on te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system

Date Submitted	20 November 2019	Tracking #: 2019-B-06252
Security Level	In-confidence	MfE Priority: Urgent

	<b>Action sought:</b>	<b>Response by:</b>
To Hon David Parker, Minister for the Environment	Provide comments on the attached working paper	22 November 2019

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE.
Number of appendices and attachments: 2	Titles of appendices and attachments (ie, separate attached documents): 1. Working paper series 2. Working paper 5 - te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system

### Ministry for the Environment contacts

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	Will Collin	022 012 8488	
Responsible Manager	Andrew Wharton	022 517 3350	✓
Director	Simon King	022 047 5541	

### Purpose

1. This briefing attaches and summarises a draft working paper on te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system. This is to inform the comprehensive review of the resource management system (RM Review).
2. This is part of a series of papers developed by the Ministry for the Environment to inform the Resource Management Review Panel (the Panel). The series is listed in Appendix 1.
3. The papers assemble evidence about the resource management system including relevant history and context, current provisions and data, and problems identified in critical commentary on the Resource Management Act 1991 (RMA) and the wider system. Policy positions will be developed in conjunction with the Panel.

### Summary of the Treaty of Waitangi paper

4. This paper brings together information on some of the significant challenges and opportunities regarding the Treaty and the role of Māori in the resource management (RM) system, and poses some key strategic questions to support thinking and discussion on the changes to the system settings that will be required to meet the challenges.
5. This paper is but one avenue for a discussion on Māori interests. The paper focuses on the specific aspects of the system that relate to the Treaty and the role of Māori in the RM system. Māori interests in resource management are diverse and are embodied by te ao



Māori concepts such as whanaungatanga (kinship), kaitiakitanga (guardianship) and tino rangatiratanga (self-governance).

6. Māori interests need to be considered in an integrated way and this paper provides one part of a much more complex and fulsome picture. The other working papers on aspects of the RM system are also relevant to Māori interests, such as those on: Purpose and Principles, National Direction, Institutions, and Monitoring. We anticipate that through the RM Review the Panel will receive additional advice on matters relating to Māori interests, including from the te ao Māori reference group and from engagement with iwi/Māori.
7. This working paper:
  - provides some relevant context, including the scope of the review, some of the history and context behind the role of Māori in the RM system, and how Treaty settlements have had implications for this role
  - considers the relevant guiding principles and objectives from the RM Review's policy framework in terms of te ao Māori perspectives and discusses the possibilities of finding common ground
  - discusses the challenges regarding the Treaty and the role of Māori in the RM system, grouped into: legislative/regulatory, implementation, and capacity/support
  - reflects on the opportunities for improving the RM system to provide for better outcomes for Māori and a more effective role for Māori in the RM system, which revolve around a system design that supports improved relationships and partnerships with Māori at various levels
  - outlines some strategic questions on system settings that reflect both the opportunities and the RM review's guiding principles. The Treaty can be a positive force to improve environmental outcomes and provide for greater wellbeing for all. This section also includes a list of potential ideas from others for strengthening the system in this area.

## Recommendations

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8. We recommend that you:
  - a. **Provide feedback** on the attached working paper.

**Signature**

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Andrew Wharton  
**Manager - Resource Management Review**

Date

Hon David Parker  
**Minister for the Environment**

Date

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## Appendix 1: Working paper series

	Working paper	Date sent to Minister Parker
1	Future RM 2040	7 August
2	Problem definition & policy framework	7 August
3	Purpose and principles	7 August
4	National direction	13 August
5	Treaty of Waitangi and the role of Māori in the RM system	20 November
6	Spatial planning	11 October
7	Economic instruments	25 October
8	Regional and district planning	20 September
9	Role of the courts	20 September
10	Consenting	20 September
11	Compliance, monitoring and enforcement	25 October
12	Monitoring and system oversight	25 October
13	Institutions and their roles	
14	Climate change mitigation	13 November
15	Climate change adaptation	
16	Urban	7 October
17	Effects-based planning and the management of cumulative environmental effects	4 November

**Appendix 2: Working paper 5 - te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system**

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# Te Tiriti o Waitangi/the Treaty of Waitangi and the role of Māori in the resource management system

## Disclaimer

This paper aims to provide background material for the Resource Management Review Panel (the Panel), drawn together by MfE officials from a number of sources, and feedback received to date from a range of engagements with Māori. This paper is a ‘starter for ten’ to start a discussion on this important and complex topic and is intended to be but one avenue for a discussion on Māori interests in the resource management system in the Panel’s process. Further engagement with Māori will be a critical and ongoing aspect of the Panel’s process and, importantly, on the later phases of resource management reform.

## Executive summary

*This is the fourth paper in a series addressing aspects of the resource management system to support the comprehensive review of the resource management system (the review). This paper provides relevant context for the review and discusses some of the significant challenges and opportunities regarding Te Tiriti o Waitangi/the Treaty of Waitangi (the Treaty) and the role of Māori in the resource management system. The diagram below shows the sequence of papers in the series.*



1. This paper brings together information on some of the significant challenges and opportunities regarding the Treaty and the role of Māori in the resource management (RM) system, and poses some key strategic questions to support thinking and discussion on the changes to the system settings that will be required to meet the challenges.
2. This paper is but one avenue for a discussion on Māori interests in the process and the paper focusses on the specific aspects of the system that relate to the Treaty and the role of Māori in the RM system. Māori interests in resource management are diverse and are embodied by te ao Māori concepts such as whanaungatanga (kinship), kaitiakitanga (guardianship) and tino rangatiratanga (self-governance).
3. Māori interests need to be considered in an integrated way and this paper provides one part of a much more complex and fulsome picture. The other working papers look at aspects of RM

system are relevant to Māori interests, such as those on: Purpose and Principles, National Direction, Institutions, and Monitoring – among others. Further, it is anticipated that throughout the process additional advice will be provided to the Panel on matters relating to Māori interests, both from MfE and from feedback from engagement with Māori.

4. Whilst te ao Māori is different and unique from other worldviews, including what can be described as a 'Western' worldview, these perspectives hold much in common and a successful RM system for all New Zealanders must be capable of providing a means for recognising and providing for areas of both consensus and difference.
5. Developing a RM system that improves outcomes for Māori, the environment and wider communities is our challenge. Better relationships with Māori in resource management and beyond will have significant benefits for everyone and is one of the key areas of opportunity in the design of a new RM system.
6. The Resource Management Act 1991 (RMA) was designed to provide for better recognition and protection of Māori interests than its predecessors in the RM system. However, as has been widely discussed, the implementation of the RMA has not realised its potential in relation to Māori interests.
7. There are a number of RMA provisions that could provide for a more effective role for Māori which are rarely if ever used, for example s33 transfers of power have never been used and s36B joint management agreements have only been used twice outside of a Treaty settlement process. There is an apparent unwillingness of, at least some, local government decision-makers to use these provisions.
8. Central and local government can have inconsistent and intermittent relationships with iwi and hapū, and there can be a lack of understanding that, although the destination can be the same, te ao Māori can follow many paths to get there in terms of decision-making processes.
9. Further, there seems to be a sense that Māori are spending a lot of time and effort in individual resource consent processes and not enough time and resource at the strategic level which sets the direction for all else. Without explicit outcomes for Māori which are actively monitored over time, then it is hard to show how well the RM system is performing for Māori.
10. Capacity and capability issues with central government, councils and iwi/Māori authorities have limited the potential to use opportunities in the RMA.
11. The review will need to learn from the problems encountered in the current system in order to help design a new system which is capable of providing for better outcomes for Māori and a more effective role for Māori in the RM system.
12. Despite these challenges, there are some good examples of where the current regulatory framework has delivered some positive outcomes for Māori, such as use of cultural impact assessments, provision for papakāinga development, and RM roles in the water space.
13. Treaty settlements have brought considerable benefits to some iwi and allowed them to engage more in the RM system, often with complementary benefits for councils and the wider community. However, this has happened outside the RMA and, some would say, despite it.
14. This paper:
  - provides some relevant context which is needed to help develop an understanding of the current picture.
  - considers the relevant guiding principles and objectives from the policy framework for the review in terms of te ao Māori perspectives and discusses the possibilities of finding common ground between different viewpoints.

- discusses the challenges with regard to the Treaty and the role of Māori in the RM system. The challenges are grouped into:
  - legislative/regulatory
  - implementation
  - capacity and support.
- reflects on the opportunities for improving the RM system to provide for better outcomes for Māori and a more effective role for Māori in the RM system. These opportunities revolve around designing a system that supports the development of improved relationships and partnerships with Māori at various levels and, in particular, explore questions around:
  - How to ensure that Māori are involved in decision making at the strategic end of the system? What sorts of governance arrangements could best ensure a strategic role for Māori?
  - Would an 'outcomes' rather than an 'effects' based approach better suit a Third Law system?
  - How could methods for measurement and monitoring be developed to ensure the impacts of RM decisions on Māori are comprehensively understood and better outcomes for Māori are delivered by the system?
  - Would provision to protect and restore the environment be more consistent with the Treaty principles than merely avoiding, remedying or mitigating any adverse effects?
- outlines some strategic questions on system settings that reflect both the opportunities and the guiding principles for the review. The Treaty can be a positive force to improve environmental outcomes and provide for greater wellbeing for all. This section also includes a list of potential ideas from others for strengthening the system in this area. The strategic questions are:
  - What are the outcomes and role(s) that Māori desire in the RM system and what form/level of partnership and participation would best support this?
  - How can the RM system be (re)designed to ensure that a more effective role for Māori is provided for?
  - What are the opportunities or barriers in the system to giving due recognition to the relationship between the Crown and Māori through the principles of the Treaty?
  - How do we ensure that changes made to the 'top end' of the system to better reflect the Treaty flow through the system, and take into account the challenges that flow from implementation and capacity/support issues?
  - What other system shifts would be required in order to improve the system in in regards to the Treaty and the role of Māori?

## Context

15. Te Tiriti o Waitangi/The Treaty of Waitangi is the basis for the relationship between the Crown and Māori in New Zealand. As such it places obligations on the Crown to provide for the rights, interests and values of Māori in the RM system. Both Treaty partners should act in accordance with the principles of the Treaty.
16. Treaty principles, derived from the two texts of the Treaty and the context in which the Treaty was entered, have become increasingly recognised and reflected in regulatory frameworks over the past few decades and the RMA was one of the first pieces of legislation to include reference to the principles of the Treaty (s8 of the RMA). The RMA also provides for specific aspects of Māori interests, see figure 1 below:

**Figure 1: RMA sections that are of particular importance to Māori**

The RMA contains a number of sections that are of particular importance to Māori, other than section 8. These include:

- Sections 6 (e) and (g), which require that all persons exercising functions and powers under the RMA shall recognise and provide for
  - s6(e) “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other Taonga”
  - s6(g) “the protection of protected customary rights”
- Section 7 (a), requires that all persons exercising functions and powers under the RMA shall have particular regard to kaitiakitanga
- Section 8 which requires that all persons exercising functions and powers under the RMA shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)
- Section 33, which provides for local authorities to transfer functions, powers or duties to another public authority (which includes an iwi authority), if certain requirements are met.
- Sections 36B-E which provide a power for local authorities to make agreements for the joint management of resources with a public authority, iwi authority or group that represents hapū.
- Sections 58L-U which provide for Mana Whakahono ā Rohe arrangements (iwi participation arrangements) which provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes under the RMA.

17. This section covers:

- the scope of the review with regards to the Treaty and provision for the role of Māori in the RM system
- the history and context of the role of Māori in the RM system
- Treaty settlements and how they have provided for a greater role for Māori in the RM system.



## Scope of the review

18. The Cabinet paper establishing the review<sup>1</sup> highlights that the “RMA is of great significance to Māori” (p. 3), and that “RMA provisions for Māori participation are some of the most significant expressions of how the Crown provides for the Treaty of Waitangi (the Treaty) and the Māori-Crown relationship” (p. 3).
19. The aim of the review is to improve environmental outcomes and better enable urban and other development within environmental limits.
20. The draft terms of reference for the Panel states a number of key issues for the review to address and, in particular, for this paper:
  - Improving environmental outcomes, including through strengthening environmental bottom lines, and further clarifying Part 2
  - Ensuring that Māori have an effective role in the resource management system that is consistent with the principles of the Treaty of Waitangi.
  - Ensuring appropriate mechanisms for Māori participation in the system, including giving effect to Treaty settlement agreements.
  - Clarifying the meaning of iwi authority and hapū.
21. The scope for the review includes that Treaty settlement agreements will be carried over into any new RM system. This means that the design of a new RM system needs to look at the implications of any proposed changes in terms of their impact on settlements, and will also need to be tested against their potential to have unintended consequences for existing and future Treaty settlements. Essentially, anything agreed to by the Crown via a Treaty settlement cannot be lost or changed as part of the review and the Panel’s recommendations need to be consistent with the principles of the Treaty.
22. It should be noted that, whilst ensuring an effective role for Māori is a key issue for the review to address, issues relating to Māori rights and interests in freshwater, including current work looking at how Māori can fairly access freshwater resources, are out of scope of this review.<sup>2</sup>
23. When consulted on this paper, the key feedback from Te Puni Kōkiri was that the review needs to prioritise Māori wellbeing and provide tangible cultural and environmental outcomes for whānau. The key feedback from Te Arawhiti was that the review needs to align with this Government’s objectives for Māori-Crown relations, as signalled by the creation of the Arawhiti portfolio, the suite of engagement guidance and principles agreed by Cabinet (and also the proposed changes to the state services sector).
24. The principles agreed by Cabinet for building closer partnerships with Māori focus on the relationship first, and urge planning together from the start. The principles are a good set of guidance for best practice engagement and involve valuing each party’s contribution and knowledge and ensuring that outcomes are meaningful to all parties. The principles also include being open, flexible and accepting risk, and sharing decision-making. Decision-making

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<sup>1</sup> <https://www.mfe.govt.nz/sites/default/files/media/RMA/cabinet-paper-comprehensive-review-rm-system-scope-process.pdf>

<sup>2</sup> These issues are being progressed under the Essential Freshwater – Healthy Water, Fairly Allocated work programme. The Cabinet paper: *A new approach to the Crown/Māori relationship for freshwater* sets out decisions made by the Cabinet Environment, Energy and Climate Committee and endorsed by Cabinet (CAB-18-MIN-0318) – accessible at <https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/shared-interests.pdf>

can be shared at different levels as appropriate, from collaboration, through co-design, to empowerment.

25. There are a number of government programmes which relate to the review process that also have the potential to impact the Treaty and the role of Māori in the RM system. Key programmes including the Essential Freshwater programme, changes to the NPS-FM and the Kāhui Wai Māori work around Te Mana o te Wai, the all-of-government response to Wai 262, the local government funding and financing Productivity Commission inquiry, and the Three Waters Review.

## History and context of the role of Māori in the resource management system

26. This section outlines the te ao Māori relationship between the environment and people, the significance of the Treaty and the principles of the Treaty, the history of s8 of the RMA, and an overview of current legislative provisions relating to the role of Māori in the RM system.

### Te ao Māori relationship between the environment and people

27. The relationship between the environment and people in te ao Māori is a unique and distinct way of seeing the world.
28. The land is a tupuna (ancestor) which nurtures its descendants and needs to be nurtured in return. Tribal and personal identities are tied to the environment: to the land, rivers, mountains and the sea – *ko au te awa, ko te awa ko au*. The land gives life and identity to Māori, and Māori in turn become the kaitiaki of the land for future generations. Because of this relationship, the land and people are inseparable. For further background information, the Wai 262 report has a good chapter<sup>3</sup> on the Māori relationship with the environment and an extract from this chapter is appended to this document (see Appendix 5).
29. It is an ongoing but necessary challenge to articulate these relationships well in what is essentially a set of western regulatory frameworks, and to properly reflect te ao Māori in legislation. Key to this articulation will be the systemic nature of te ao Māori and the need to consider the concepts throughout the design of RM system.
30. Given the integrated nature of Māori concepts, it is important not to cherry pick Māori concepts to slot into the existing RM system, but to look for ways the te ao Māori system as a whole can interface better with the system.

Figure 2: The role of the Waitangi Tribunal

The Waitangi Tribunal<sup>4</sup> is a standing commission of inquiry. It makes recommendations on claims brought by Māori relating to legislation, policies, actions or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi.

The role of the Tribunal is set out in section 5 of the Treaty of Waitangi Act 1975 and includes:

- inquiring into and making recommendations on well-founded claims
- examining and reporting on proposed legislation, if it is referred to the Tribunal by the House of Representatives or a Minister of the Crown

<sup>3</sup> See chapter 3 of Waitangi Tribunal. 2011.

<sup>4</sup> <https://waitangitribunal.govt.nz/about-waitangi-tribunal/>

- making recommendations or determinations about certain Crown forest land, railways land, state-owned enterprise land, and land transferred to educational institutions.

In fulfilling this role, the Waitangi Tribunal has exclusive authority to determine the meaning and effect of the Treaty. It can decide on issues raised by the differences between the Māori and English texts of the Treaty.

Waitangi Tribunal inquiry reports have made numerous recommendations to improve the RM system in relation to the Treaty and the role of Māori, with the Wai 262 and Wai 2358 reports being two examples with significant recommendations in this area.

### The significance of the Treaty, the principles of the Treaty and the key provisions in the RMA related to Māori interests

31. In the major review of legislation affecting planning and the environment from 1988-1991 that produced the RMA, debate about Māori rights and interests and the recognition of the Treaty were significant topics of discussion.

32. The RMA is of great significance to Māori. RMA provisions for Māori participation are some of the most significant expressions of how the Crown provides for the Treaty and the Māori-Crown relationship. A key provision for this is s8 of the RMA which states:

*“In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).”*

33. The principles of the Treaty have been referenced in a government statement, court cases, laws, and Waitangi Tribunal (the Tribunal) findings over time. There is no final and complete list. Te Puni Kōkiri published *‘He Tirohanga o kawa kit e Tiriti o Waitangi - The principles of the Treaty of Waitangi as expressed by the Courts and the Waitangi Tribunal’* in 2001. The Tribunal and the courts have considered the broad sentiments, intentions and goals of the Treaty, and identified principles on a case-by-case basis. There is not a single set of Treaty principles that are to be applied in each case. However, over the years, some core principles have emerged from Tribunal reports, referenced in the 2008 Te Tau Ihu Tribunal Report (see Appendix 1).

### Treaty settlements

34. Treaty settlements have had large implications for some (but not all) Māori in the RM system. Some settlements have resulted in particular roles for Māori in the RM system, for example bilateral relationships between iwi/hapū/Māori and central/local government (including in some cases co-governance/co-management arrangements), and establishing in law the legal personhood of particular taonga.

35. However, this approach has also lead to inconsistent outcomes for Māori, particularly between those who have settled and those who have yet to settle. This is discussed further in the challenges part of this paper.

### Emerging decision-making arrangements to improve Māori participation in resource management

36. Treaty settlements have provided opportunities for Māori to have a greater role in RM decision-making over taonga, often in partnership with the Crown. These roles vary from high level advisory roles on national committees, to on-the-ground roles in undertaking

environmental restoration projects. The concepts of kaitiakitanga and stewardship are a fundamental reason why Māori desire to have a greater and more effective roles in the RM system. Often the ability to undertake this role is limited by the ‘western’ notion of proprietary ownership, which usually grants exclusive rights and title, meaning that Māori can be restricted from being able to exercise their kaitiaki roles within their rohe.

37. As the Wai 262 report notes “in reality the debate is not about who owns the taonga, but who exercises control over it”<sup>5</sup>. This theme of control rather than ownership is also found in other Waitangi Tribunal reports, for example in the 1999 report on the Whanganui River, the Tribunal concluded that:

*“Control, not ownership, is the key element in managing natural resources. Perhaps this points to a prospective merger of the two laws, for if we look to Māori history from the time of colonisation, as we do in the next chapter, it is not ownership but control that was central to their thinking, and respect for the mana of different peoples.”*<sup>6</sup>

38. In this case they nevertheless found that Māori kin groups could legally claim a property interest in ancestral rivers. However, since 1999, the situation of the Whanganui river has changed significantly and the river has been given legal personhood under the Te Awa Tupua settlement legislation.
39. Hence, propriety rights aren’t the only way that control can be exercised over resources, particularly for common pool resources. There are a number of other approaches taken to the resource management of common pool resources around the world.<sup>7</sup>
40. Dame Anne Salmond espouses one such approach, a public trust model, which operates in Hawai’i and other US states, where each state holds certain natural resources (including water) in trust for its citizens and must protect these resources from the obstruction or interference of private parties. Further information on this model is provided in Appendix 6.

#### *A possible common ground*

41. Justice Joe Williams provides a useful way to think about entwining te ao Māori and ‘Western’ viewpoints. He identifies three laws in Aotearoa New Zealand:<sup>8</sup>
1. Kupe’s law (the original indigenous law of Aotearoa)
  2. British law (imposed by the Crown via the colonial system)
  3. The Third law (law based on the Treaty of Waitangi – a mix of Kupe and British laws)
42. These three laws inevitably reflect different perspectives (or in the case of the Third Law-combinations of perspectives) about how humans relate to the world.
43. Judge Williams argues that the RMA is the ‘most sophisticated’ example of the Third Law in terms of its tangata whenua provisions, consultation processes, transfers of power opportunities, etc. He notes that “it was the first genuine attempt to import tikanga in a holistic way into any category of the general law”. He also argues that the “RMA is frankly not

<sup>5</sup> p. 112, Waitangi Tribunal. 2011

<sup>6</sup> p. 5, Waitangi Tribunal. 1999. Cited in Salmond. 2017. *Rivers as ancestors and other realities: Governance of Waterways in Aotearoa/New Zealand*

<sup>7</sup> Ostrom, 1990.

<sup>8</sup> Justice Joseph Williams, 2013. Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law, *Waikato Law Review*.

pulling its weight” – shown by the lack of implementation, powers of transfer unused, engagement failures, and most structural changes coming from Treaty settlements.

44. Other examples of the Third law include the Treaty settlement legislation including recognition by the Crown of Te Urewera, Te Awa Tupua (Whanganui River), Whangaehu River and also soon to be Taranaki Maunga. Under the Te Awa Tupua legislation for example, local decision makers are required to recognise and provide for the status of Te Awa Tupua “an indivisible and living whole comprising the river from the mountains to the sea incorporating its tributaries and its physical and metaphysical elements”. The river is recognised with all the rights, powers, duties and liabilities of a legal person.
45. Whilst this section has provided some context and history, this is by no means comprehensive. This paper does however provide some further background information in the appendices:
- **Appendix 3** contains an extract on the history of the Treaty clause, ie, what would become s8 of the RMA, from the Tribunal’s Wai 2358 stage 2 report on national Freshwater and Geothermal Resources Claims (Wai 2358 report<sup>9</sup>)
  - **Appendix 4** has further background on other current legislative provisions, both in the RMA and in other legislation, that relate to the role of Māori in the RM system.

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<sup>9</sup> Wai 2358 stage 2 report:

[https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_152208791/Freshwater%20W.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_152208791/Freshwater%20W.pdf)

## Principles to design a new system

### The policy framework for the review will guide the development of proposals

46. All recommendations in the review should be consistent with the guiding principles and objectives of the review. There are also practical considerations, which can act as further criteria to guide choices. These include how effective, workable and cost-effective potential options are at achieving the objectives for the review.
47. The objectives and guiding principles that are particularly relevant to this paper are below.

Figure 3: Particularly relevant guiding principles and objectives

<p><b>Guiding principles</b></p> <ul style="list-style-type: none"> <li>• <b>Treaty of Waitangi:</b> The relationship between the Crown and Māori is given due recognition including through the principles of partnership and active protection.</li> <li>• <b>Stewardship and kaitiakitanga:</b> Protecting and enhancing the environment for its own intrinsic value, as well as for the wellbeing of current and future generations.</li> <li>• <b>Fairness:</b> The system promotes fair distribution of costs and benefits across generations, communities and iwi/Māori.</li> <li>• <b>Subsidiarity and capacity:</b> Roles and responsibilities are assigned to the appropriate people/agencies in relation to issue scale and complexity, who is affected, and the capability and capacity to effectively deliver roles and responsibilities.</li> </ul> <p><b>Objectives</b></p> <ul style="list-style-type: none"> <li>• Objective 3: A system that sets clear direction to guide decision-making.</li> <li>• Objective 5: A system that provides greater recognition of the Treaty of Waitangi and te ao Māori throughout.</li> <li>• Objective 8: A system where decision-makers in the system are accountable, well advised and incentivised to achieve the system's purpose.</li> </ul>
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### Cabinet Circular – Te Tiriti o Waitangi / Treaty of Waitangi Guidance

48. CO (19) 5 was circulated on 22 October 2019. It sets out the guidelines agreed by Cabinet for policy-makers to consider the Treaty of Waitangi in policy development and implementation. The Circular does not replace other existing Treaty guidance but complements it, by considering the articles of the Treaty directly rather than the Principles of the Treaty. The guidance provides the English and Māori versions of the Treaty, along with a translation of the Māori text back to English by Sir Hugh Kawharu, indicating how Māori would have understood the text they signed (see Appendix 2).
49. The guidance includes a series of questions in relation to each article of the Treaty. Subsidiary questions and notes are also provided.
50. The guidance provides that Article One gave government 'the right to govern'. Primary considerations are:
  - How does the proposal/policy affect all New Zealanders? What is the effect on Māori (if different, how and why?)
  - How does the proposal demonstrate good government within the context of the Treaty?
  - What are the Treaty/Māori interests in this issue?
  - How does the proposal demonstrate that policy-makers are meeting the good faith obligations of the Crown?

- To what extent have policy-makers anticipated Treaty arguments that might be made?
51. In relation to Article Two, the guidance states that put simply, the Crown promises that Māori will have the right to make decisions over resources and taonga which they wish to retain; and elaborates on the following questions:
- Does the proposal allow for the Māori exercise of rangatiratanga while recognising the right of the Crown to govern?
  - Have Māori had a role in design/implementation?
  - Does the proposal:
    - enhance Māori wellbeing?
    - build Māori capability or capacity?
  - Is there any aspect of this issue that Māori consider to be a taonga?
52. Through Article Three, the Crown promises that its obligations to New Zealand citizens are owed equally to Māori. The guidance asks the following:
- Does the proposal aim to achieve equitable outcomes?
  - How does the proposal differ from previous efforts to address the issue?
  - How does the proposal demonstrate that policy-makers have looked at the proposal from the perspective of legal values such as natural justice, due process, fairness and equity?
  - How does the proposal demonstrate that policy-makers have looked at the issue from the perspective of tikanga values?
53. In whole, the guidance stimulates thoughtful policy development, and identifies important considerations in terms of the Treaty. The guidance is relevant to the review, any policy recommendations that may come out of it, and any subsequent policy development work.

### Te ao Māori perspectives

54. Reflecting the Treaty as part of the RM system includes ensuring effective participation by Māori in RM decision making.
55. In its Wai 262 report, the Waitangi Tribunal recommended wide-ranging reforms to laws and policies affecting Māori culture and identity and called for the Crown-Māori relationship to move beyond grievance to a new era based on partnership. The Tribunal found that in many respects, existing laws and policies fall short of partnership and instead marginalise Māori and allow others to control aspects of Māori culture. The Tribunal concluded that there is a lack of Māori involvement in environmental decision-making under the RMA.
56. The Environmental Defence Society consider that, while a te ao Māori worldview is different and unique from any 'Western' worldview, it is more closely aligned with an ecocentric world view than an anthropocentric world view<sup>10</sup>. Under an ecocentric worldview "nature is conceived of as a separate entity, with interests or rights that should be separately recognised and defended"<sup>11</sup>.
57. One piece of feedback that the Ministry has heard frequently from Māori at hui is that what works for everyone doesn't always work for Māori, but what works for Māori works for everyone.

<sup>10</sup> Severinsen & Peart, 2018. *Reform of the Resource Management System: The Next Generation Synthesis Report*. Environmental Defence Society.

<sup>11</sup> Ibid., p. 58.

58. An approach that the Panel may wish to consider is to move the RM system further towards a best practice 'Third Law' system that embraces the synergies between a te ao Māori worldview and an ecocentric worldview, and recognising that for the people to prosper, the environment needs to prosper.
59. This may require enhanced monitoring of central and local government performance in relation to the Treaty, as an important aspect of ensuring the system is achieving the goals desired.

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## Challenges and Opportunities

60. Since the RMA was enacted, significant attempts have been made to strengthen the role of Māori in the RM system. As noted earlier, in some parts of New Zealand, Māori have particular roles in geographic areas. However, while some iwi/hapū have significant influence within their rohe, for many the opportunities are scarce and the challenges numerous.
61. In successive reports the Waitangi Tribunal has found that, the RM system often falls short of fully adhering to the principles of the Treaty. In its recent Wai 2358 report, whilst the Tribunal congratulated the Crown on “its commitment to address Māori rights and interests in a Treaty-compliant manner”, it ultimately found that “the RMA had significant flaws in Treaty terms at the time the reform programme began, and that the reforms the Crown has completed are not sufficient to make the RMA and the freshwater management regime Treaty compliant”.<sup>12</sup>
62. The Waitangi Tribunal has been critical of the RM framework in New Zealand prior to and post the RMA 1991. The Tribunal found that this framework has prevented Māori from controlling the management of their own taonga or natural resources contrary to the principles of the Treaty. In relation to the RMA, the Tribunal stated in their Wai 262 findings that:<sup>13</sup>
- ...the Crown has not, in delegating extensive powers to local and regional authorities under the Act, ensured that its Treaty duty of protection of Māori interests will be implemented ... [f]or this reason we believe the 1991 Act to be fatally flawed...*
63. In some cases the challenges stem from the difficulties of working with Māori concepts and understandings in a primarily ‘Western’ framework, and concepts such as mātauranga Māori and tikanga not being understood well enough by non-Māori. In other cases, a lack of will or capability in central/local government to engage with Māori has led to failure of the system to adequately provide for the role of Māori in the RM system.
64. The review provides an opportunity to give effect to the principles of the Treaty to ensure that Māori have a more effective role in the system, one that recognises and provides for their role as kaitiaki as well as recognising Māori aspirations for sustainable resource use, provides for partnership arrangements between Māori and other agencies in the management of resources, and ensures active protection of Māori taonga.
65. Figure 4 below outlines the primary challenges relating to the Treaty and the role of Māori in the RM system. The table draws upon a number of sources including Waitangi Tribunal reports, formal Ministerial consultation<sup>14</sup>, previous engagement with Māori, departmental reviews of the RMA, and external reports on the RMA.
66. For the purposes of this paper these challenges have been grouped into ‘legislative/regulatory’, ‘implementation’ and ‘capacity and support’ challenges. Many of the challenges outlined below have multiple aspects, for example ‘balancing out’ of Māori interests in Part 2 of the RMA could be considered an implementation challenge (particularly in the light of the *King Salmon* decision) but could also be considered a legislative challenge (the legislation isn’t clear enough) or a capacity/support challenge (eg, some local authorities may need support to understand how to have ‘particular regard to’ kaitiakitanga).

<sup>12</sup> p. 523, Waitangi Tribunal, 2019.

<sup>13</sup> Waitangi Tribunal, 2011.

<sup>14</sup> In particular, the Minister for Māori Development (Hon Nanaia Mahuta) and the Minister for Māori Crown Relations: Te Arawhiti (Hon Kelvin Davis). See **Appendix 8** for the letters from these Ministers.

**Figure 4: key challenges relating to the Treaty and the role of Māori in the RM system**



## Legislative/regulatory challenges

### *Treaty of Waitangi principles are not given sufficient weight in Part 2*

67. The Waitangi Tribunal's Wai 2358 report is the latest in a number of reports that have found that the Treaty clause in section 8 of the RMA does not have the weight required to adequately recognise and protect Māori interests.
68. The Tribunal note that sometimes the requirements in s8 to take into account the Treaty principles are interpreted as a procedural requirement and that therefore only consultation is required. In other cases s8 is interpreted in terms of ss 6(e) and 7(a) with the result being that the wider Treaty principles (including partnership and active protection) were not necessarily considered.
69. The words 'take into account' are the weakest directing words used in Part 2. This in combination with a narrow interpretation of Treaty principles can lead to a situation in which the Treaty principles, which encompass much more than just what is to be recognised and provided for in s6(e) and had particular regard to in s7(a), are given insufficient weight and this in turn leads to worse outcomes for Māori in the RM system.
70. In the Tribunal's view, "the reference to the Treaty principles in the Act should encompass all those principles and impose an obligation or duty upon RMA decision makers. An amendment to section 8 ... is required to make the RMA Treaty-compliant".<sup>15</sup>

### *Local government as Treaty partners*

71. It is well established that local government is not the 'Crown' and is, therefore, not a Treaty partner (based on the strict letter of the law). The definition of the 'Crown' in the Public Finance Act 1989 includes central government departments, but does not include local government. While some legislation requires local government to take the Treaty 'into account' in certain circumstances, however it doesn't necessarily follow that local government has the Crown's Treaty partner responsibilities.
72. Nevertheless, local government has taken on the role of a Treaty partner in some cases (eg co-governance and co-management arrangements), and there is a widespread view amongst Māori that local government is carrying out functions and powers of the Crown that derive from the Treaty and is therefore a crucial player in the resource management Treaty relationship. There are calls for monitoring and reporting on the Treaty performance of local (and central) government.
73. The Tribunal and other commentators have said that by delegating responsibility to local government, the Crown also defers its responsibilities to provide for the Treaty. However, from the language used in some statutes, the obligations on local government in relation to the Treaty are not clear.
74. Overall, there is a complicated three way relationship between Māori, local government and central government, especially with the complex natural resources arrangements that are emerging out of Treaty settlements.
75. Despite this lack of clarity, the relationship between local government and Māori is important. Examples of positive and effective partnership exist such as the natural resources plan committee 'Te Upoko Taiao' set up to oversee the Greater Wellington Regional Council's new

<sup>15</sup> p. 51, Waitangi Tribunal. 2019.

regional plan. The growing body of settlement legislation is providing a nexus for the relationship of local government and Māori.

76. Further there have been a number of legislative/regulatory attempts by central government to better provide opportunities for Māori involvement in the RM system, eg the Mana Whakahono ā Rohe (iwi participation arrangements) provisions, and to better reflect te ao Māori, eg including Te Mana o te Wai as the first objective in the NPS for Freshwater management.
77. Nonetheless, whilst there have been improvements, there are still challenges for many iwi and hapū when attempting to interact with local government as a Treaty partner.
78. Questions remain as to whether a specific legislative change is required to reinforce that local government has a Treaty partner role when that role and subsequent responsibilities are delegated to it by central government.

*Inconsistencies in processes and interpretation hamper Māori involvement in RM systems*

79. While there are many obligations on government to provide a role for Māori in the RM system, these requirements can be highly complex. Processes and requirements relating to Māori are set out under different statutes, and these processes are often duplicated or overlap.
80. The language used in legislation is often inconsistent, and Te Reo Māori terms are defined differently between statutes. This can make it difficult for both government and Māori to understand what the requirements are. It is important to note though that one single English-translated definition of a Te Reo Māori term may not be suitable for all circumstances and all legislation.
81. The independent hearings panel on the proposed Auckland Unitary Plan found that explanations of Te Reo Māori terms are useful to help with interpretation of terms used in the plan but they are not intended to be used as definitions. They recommended Te Reo Māori words be placed in a glossary where they can provide help but do not function as definitions. There may be circumstances however, where it is appropriate to provide national direction for the RM definition of a Te Reo Māori term. For example, the term 'marae' could be defined, because its current definition in plans variously encompasses land use elements such as educational use, residential uses, or housing for kaumātua.

*Iwi management plans have a low-level of influence on plan making and decisions*

82. The Wai 262 report notes that iwi management plans "provide the only mechanism by which iwi authorities are able to exercise influence on resource management decisions by setting out their own issues and priorities without any consulting council or applicant filter. It is the only instance where Māori can be proactive in resource management without needing the consent of a minister, a local authority, or an official".<sup>16</sup>
83. The 2012 Kaitiaki Survey<sup>17</sup> highlighted that kaitiaki groups consider that iwi/hapū management plans are an excellent RMA tool with 92% of groups reporting that they were either 'useful' or 'very useful'.

<sup>16</sup> p. 117, Waitangi Tribunal. 2011.

<sup>17</sup> Kaitiaki Survey Results, Te Puni Kōkiri, 2013.

84. However, under the RMA local authorities only need to 'take into account' any relevant planning document recognised by an iwi authority when preparing a plan or policy statement. Again, 'take into account' are the weakest directing words in the RMA.
85. Often this means in practical terms that these plans have little influence on plan making and decisions under the RMA.

*Clarification of the RMA terms 'iwi authority' and 'hapū'*

86. The RMA reference to iwi authority is derived from the Runanga Iwi Act of 1991, which was subsequently repealed. The reference and definition of iwi authority was highlighted as an issue in the Te Roroa report produced in 1992 by the Waitangi Tribunal. The Terms of Reference specifically includes 'clarifying the meaning of iwi authority and hapū' as a key issue to be addressed as part of the review.
87. Current provisions for engagement with tangata whenua still focus on engagement with iwi authorities. These tend to be place-based and associated with particular rohe. Many Māori have affiliations across a number of different iwi, but do not live in the rohe that they whakapapa to. The depth of their engagement with te reo Māori and te ao Māori also varies considerably. For Māori who do not live in their rohe or do not identify with any particular iwi/hapū, there are considerably fewer opportunities to engage with the RM system and to engage as Treaty partners.
88. The definition of iwi authority and hapū are problematic for local government, and a number of councils have sought clarity through the review. While it is not appropriate for the Crown to determine the relative mana of different Māori representatives, the current provisions do not assist local government when iwi or hapū hold differing views.
89. It can be difficult for councils to know who they should be working with – which relevant iwi authority, and the role of hapū and whanau. The review could help with clarifying who councils should engage with and why, and providing councils with the key questions to ask in order to determine which iwi and hapū are the appropriate groups to engage with on a particular decision – whilst acknowledging their will always be some issues in working out who that should be.

*Issues with national guidance*

90. There are concerns by some system users about the lack of direction and guidance provided in relation to RMA provisions, such as section 6(e), 6(g) and 7(a).
91. There are also requirements under some pieces of national direction to engage with Māori. For example, the NPS-FM requires that councils engage with tangata whenua (Objective and Policy D1), including to involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region and to work with iwi and hapū to identify tangata whenua values and interests in fresh water.
92. However, there are also a number of other challenges from a local government perspective relating to engaging with Māori. Iwi/hapū/Māori attachments to place do not follow local government boundaries and are often overlapping (and sometimes contested). Māori processes do not follow electoral cycles and can be on much longer timeframes. Māori views on RM matters may not conveniently form into a single or simple, cohesive input into government processes. These are challenging areas to provide guidance on as a one-size-fits-all approach is almost always going to be inadequate.
93. It's interesting to note that significant guidance material is available on some RM matters. For example, the 'Māori Values Supplement' was issued in 2010 by the Ministry for the

Environment (the Ministry) to provide greater clarity on Māori world views and concepts, for decision-makers to consider in making decisions under the RMA<sup>18</sup>.

94. The challenge may be about the accessibility or usefulness of the available guidance.

## Implementation challenges

### *'Balancing out' of Māori interests in Part 2 of the RMA*

95. The Waitangi Tribunal's Wai 2358 report found no compelling evidence to dispute the claimants notion that Māori interests were often 'balanced out' when RMA decision makers must consider sections 6-8 of the RMA. The Tribunal recommended, among other things, legislative changes to section 8.
96. Part of this challenge may be that the relevant Part 2 provisions (6(e), 6(g), 7(a) and 8) haven't been interpreted and implemented as may have been intended. The Crown counsel for the Wai 2358 inquiry<sup>19</sup> argued that the Supreme Court *King Salmon* decision<sup>20</sup> showed that s5 of the RMA had to be interpreted as an integrated whole, with environmental protection at its core and that this same interpretation may apply to how Māori interests are treated in ss 6-8.
97. Hence, if the root issue regarding 'balancing out' of Māori interests are due to the way the legislation has been implemented prior to *King Salmon*, then changing the legislation may not prove to be effective. Nonetheless, legislative changes certainly have the potential to increase the weight given to the principles of the Treaty (and other sections in Part 2) and should be explored, whilst keeping implementation (and interpretation) issues in mind.

### *Resource management partnerships are often derived from Treaty settlements*

98. Historical Treaty settlements are leading the way in implementing resource management partnerships, however the arrangements put in place are by nature locally-specific and derive from individual settlements.

*The fact that historical Treaty settlements have become the principal vehicle for protecting mātauranga Māori and taonga leads to inevitable inconsistencies.*<sup>21</sup>

99. Some regard these settlements as an attempt to implement RMA opportunities through other avenues. Consequently some iwi have strong co-governance roles, others are not given such significant resource management decision-making responsibilities, or have none at all. The Crown's position on what it will consider within settlements changes over time, as do Māori priorities for redress – resource management arrangements may not always feature.
100. Variations between settlements may be justified by local circumstances, however the RM outcome is that there is no consistency in the uptake or application of RMA joint management agreements or transfer of powers provisions. Although the Ministry has entered into relationship agreements with several iwi as a result of settlements, Treaty settlements should not be relied on to enable Māori to give effect to the aspects of the RMA relating to their interests.

<sup>18</sup> Ministry for the Environment, 2010.

<sup>19</sup> p. 25, Waitangi Tribunal. 2019

<sup>20</sup> *Environmental Defence Society v The New Zealand King Salmon Company Limited* [2014] NZSC 38

<sup>21</sup> Waitangi Tribunal, 2011.

101. Central government has made attempts to address these issues in recent years, most notably the addition of the Mana Whakahono ā Rohe provisions (iwi participation arrangements) which are designed to assist tangata whenua and local authorities to discuss, agree and record how they will work together under the RMA. Given these provisions were only enacted in 2017, and only a small number of arrangements are in the process of being set up, it is too early to know how effective they may or may not be at increasing Māori participation in the RM system.
102. Nevertheless, issues remain in the system that span beyond Māori participation, and a challenge for any future RM system will be to bridge the gap between 'settled' iwi who have co-governance and co-management arrangements in place and those whose only means of exerting influence on natural resource decision-making are within the consultation framework of the RMA/LGA.
103. Whilst co-governance and co-management arrangements are becoming an increasingly popular mechanism of providing a greater role for Māori in the RM system, due to most of these arrangements being new and often unprecedented, very little evaluation has been carried out of their effectiveness.

*Limited uptake of legislative provisions*

104. There is limited uptake/implementation of some legislative provisions, such as section 33 of the RMA (delegations of local government functions to other entities) and section 36B (joint management agreements).
105. The Waitangi Tribunal in its Wai 2358 report suggests that the terms of section 33 of the Act have created barriers to its use, and there are no incentives and no compulsion for councils to transfer powers to iwi. They go on to state that "[d]ue to the failure of councils to use section 33, Joint Management Agreements were added in 2005, but these have only been used twice without the Crown's intervention in a Treaty settlement. Again, the Act creates barriers to their use but has no incentives or compulsion for councils to pursue co-management arrangements".<sup>22</sup>
106. Hence, whilst a large part of this challenge is a lack of uptake or implementation, it is clear that legislative barriers (in particular the criteria in ss33 and 36B that need to be met) are also a significant contributor to this challenge.

*Transparency and accountability*

107. Recognition of the role of Māori in the RM system by central and local government entities is hugely variable throughout New Zealand, which results in different outcomes for different iwi/hapū. Some treat engagement with Māori as a 'tick box' exercise and do the bare minimum to fulfil the statutory requirements, some have good intentions but struggle to deliver due to capacity or capability, while others have set up processes for a stronger level of involvement of Māori in decision-making.
108. There is a need for greater transparency and accountability in decision-making by government to provide confidence to Māori that their issues and concerns are being duly considered. While many formal agreements (such as relationship agreements or joint management agreements) have been established between government and Māori, informal agreements tend to dominate how local authorities engage with Māori.

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<sup>22</sup> p. xxi, Waitangi Tribunal. 2019.

### *Little monitoring of the impacts of RM decisions on Māori*

109. A lack of adequate monitoring is prevalent throughout the RM system. There has been little monitoring or evaluation of the impacts of RM decisions on Māori and certainly not in a comprehensive manner. This means that it is difficult to tell to what extent outcomes that are important to Māori are being achieved and how Māori wellbeing is affected.

## **Capacity and support challenges**

### *Engagement with Māori*

110. Despite the significant benefits of Māori engagement in the RM system, engagement can be time-consuming and resource-intensive for all parties involved. Significant levels of capability and capacity are required from central and local government and iwi/hapū for Māori engagement in RM system to be effective.
111. Central government, as part of the Crown, has obligations under the Treaty of Waitangi and Treaty Settlements, some of which put particular obligations on the Crown to engage on matters of importance to the iwi referred to in those Treaty Settlements. Despite this there is a generally low (but growing) level of engagement with Māori by some areas of central government and this can be partly attributed to challenges with capability and capacity.
112. While some iwi have the capability and capacity to engage fully in the RM system, many do not. Most iwi do not have a steady stream of income to dedicate to resource management, or dedicated and trained staff. Opportunities to engage are even fewer for Māori that live outside the rohe of the iwi/hapū that they whakapapa to. The result is inconsistent and ad hoc participation by Māori in the RM system.
113. The 2012 Kaitiaki Survey<sup>23</sup> highlighted that a large proportion of kaitiaki groups said that their work is mostly unpaid, with 47% of respondents reporting that only 0-20% of their work is paid. For groups that do have some funding, their main sources of funding are from iwi and hapū, with only 23% of groups reporting they received funding from local government and 17% of groups reporting they received funding from central government.
114. They survey further highlighted that groups often engaged with multiple local authorities, with 79% reporting that they engaged with 2 or more councils and 18% engaging with 5 or more councils. Additionally, groups in the Auckland area noted that although they engaged with just one council, they also engaged with 16 local boards and many Crown Controlled Organisations.
115. Groups were also asked about how timely and efficient engagement is for both local and national level RMA work. Groups were least positive about their engagement in national policy and planning work with 49% reporting that engagement was too late or non-existent.
116. This result highlights that Māori can often be absent from big strategic RM decision making processes. Efforts may be concentrated at lower level processes in minor planning and consenting decisions. This is resource intensive, means that iwi resources can be spread thinly, and overall means that Māori have less influence in the RM system.
117. Under s81 of the Local Government Act 2002 a local authority must “establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes

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<sup>23</sup> Kaitiaki Survey Results, Te Puni Kōkiri, 2013.



of the local authority” and must “consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority”.

118. The Productivity Commission’s draft report on *Better Urban Planning*<sup>24</sup> surveyed Councils perceptions of the barriers to engagement. The results (summarised in the diagram below) clearly identify resourcing as a significant issue as perceived by the Councils, with a number of other factors also being barriers, but to a somewhat lesser extent.

Figure 5: Councils’ perceptions of barriers to engagement with Māori on planning<sup>25</sup>



119. Some councils (and some central government departments) also do not appear to have sufficient capability and capacity to engage with Māori, and to understand and assess Māori values and interests. Some particular issue areas are a lack of understanding by central and/or local government of:

- te ao Māori, te reo Māori, tikanga Māori, and Māori values and interests
- the complexity of Māori relationships, in general, and specifically with the environment
- legislative requirements relating to Māori
- the importance of Māori engagement and the benefits of early participation of Māori
- how to effectively engage with Māori, what groups to engage with and how to reconcile differing views.

<sup>24</sup> New Zealand Productivity Commission, 2016.

<sup>25</sup> Ibid, at p. 297.

120. Whilst local government will always need to prioritise across outcomes and outputs, this lack of understanding may be a result, in part, of lack of political will to prioritise resourcing to this work. Resources may not necessarily be being applied in the right parts of the system, by either local government or Māori – the system overall is bottom heavy.
121. Government entities often rely on consultation to fill in gaps in their knowledge of Māori interests – which is often the most appropriate mechanism to do so as it allows Māori to speak for Māori interests. However, this can lead to Māori being inundated with requests for engagement. These government entities are often not aware that another entity is also consulting with a particular group and that Māori may have limited resources and competing priorities.
122. Relationships between Māori and local/central government (with some exceptions) tend to be issues based, rather than enduring partnership relationships.
123. Further, the large number of government entities and lack of ‘united front’ involved in the RM system creates difficulties for Māori in engaging with the system. Māori do not always have a clear understanding of the functions and duties of these organisations, and how they overlap.
124. There are also challenges for central and local government trying to establish which Māori groups or entities should be engaged on a particular issue and in particular places. There are sometimes overlapping areas of interest or iwi/hapū boundaries.
125. The costs required for central and local government to engage with Māori are significant, and there are no consistent sources of funding and support for engagement for either government or Māori. The lack of resources acts as a barrier to Māori engagement in resource management processes. However failing to engage can also be very costly (both financially and in terms of relationships) for government, if Māori consider their rights have been breached and take the Crown to court (again this is a symptom of a bottom heavy system).
126. Overall there a significant and multifaceted capacity and support challenges for all parties in regards to engagement with Māori.

### **Opportunities for improving the RM system – bringing together perspectives**

127. Whilst there are challenges, there are also opportunities to improve the RM system by bringing into the system Māori perspectives, finding the commonalities, and considering mechanisms for dealing with diverging perspectives.
128. The relationship of the Treaty with the RM system and Third Law idea put forward by Justice Joe Williams are a potential way forward to find common ground and make potentially fundamental improvements to the system for all New Zealanders. The commitments made by both the Crown and iwi/Māori have set up a mutually supportive partnership which is capable of leading to a system of resource management that delivers better outcomes for the environment, people and the economy. In this vein, there are a number of potential opportunities for the RM system that could improve the system

*How to ensure that Māori are involved in decision-making at the strategic end of the system? What sorts of governance arrangements could best ensure a strategic role for Māori?*

129. As has been noted earlier in this paper, Māori have had fewer opportunities to have a role at the strategic end of the RM system and too much effort is expended far too far down the decision-making ladder. For example, a strategic shift towards considering the environment as a network of connected ecosystems, and not compartmentalising the different aspects of the

environment, is an integrated and holistic idea that could be one way of finding common ground between 'Western' (particularly ecocentric) perspectives and te ao Māori perspectives.

130. Some councils are providing for a more strategic role for Māori, such as Te Upoko Taiao, Greater Wellington Regional Council's natural resources committee, in which half the members are appointed by the region's mana whenua.
131. However, overall, there are fewer opportunities for Māori to participate in strategic decisions in the RM system than there are, for example, opportunities to submit on resource consent applications (after the strategic decisions have already been made).
132. An opportunity for a future RM system is to better provide for a role for Māori at the strategic end of the system but developing, encouraging and promoting governance arrangements that could make this happen. For example, if a new strategic spatial planning approach was incorporated as a significant part of a new RM system – what could the role for Māori be in the governance of spatial planning that may influence RM outcomes in their rohe?

*Would an 'outcomes' rather than an 'effects' based approach better suit a Third Law system?*

133. As is documented in more detail in other working papers, the RMA is set up to manage 'effects' rather than 'outcomes'. A new system could assess proposals against a set of outcomes and values, rather than seeking to minimise negative effects.
134. Putting aside the practical challenges of measuring outcomes for now, there are a number of ways that this could be implemented. For example, not going below a set of environmental bottom lines could be seen as an outcome. However, as Durie, Joseph, Toki, and Erueti, note – Māori do not protect resources by looking for bottom lines:

[T]he value system on which Tikanga Māori is based, is aspirational, setting desirable standards to be achieved. Thus, where our state law sets bottom lines, or minimum standards of conduct below which a penalty may be imposed, Tikanga Māori sets top-lines, describing outstanding performance where virtue is its own reward<sup>26</sup>.

135. Equally, striving to achieve aspirational or desirable standards could be seen as an outcome. However, this would need to be tempered with the biophysical nature of the particular environment in question, eg the natural tannins from the bush and wetlands that surround the headwaters of the Waipa river reduce water clarity in that river<sup>27</sup> and would never be able to meet the same water clarity aspirations as, say, Lake Taupō.

*How could methods for measurement and monitoring be developed to ensure the impacts of RM decisions on Māori are comprehensively understood and better outcomes for Māori are delivered by the system?*

136. As noted earlier in this paper, there are calls for greater monitoring and reporting on the Treaty performance of local (and central) government. Greater monitoring and evaluation can lead to a better understanding of the impacts of decisions and can identify what is and isn't working (and why) in order to determine whether or not outcomes are being achieved.

<sup>26</sup> Durie, Joseph, Toki, and Erueti, *Ngā Wai o te Māori* (doc E13), p. 8 – cited in p.64, Waitangi Tribunal. 2019.

<sup>27</sup> <https://www.waikatoregion.govt.nz/environment/natural-resources/water/rivers/waipariver/how-clean-is-the-waipariver/>

137. Monitoring is also important from an environmental stand point (see the monitoring working paper). Te ao Māori monitoring methods, in addition to 'Western' scientific methods, can provide useful information on the health and wellbeing of the environment, and are another possible avenue for an enhanced role for Māori in the RM system.

*Would provision to protect and restore the environment be more consistent with the Treaty principles than merely avoiding, remedying or mitigating any adverse effects?*

138. It is possible that including in the RM system some requirements to protect and restore the environment would be more consistent with the Treaty principles (eg, redress and active protection), than merely avoiding, remedying or mitigating any adverse effects of activities on the environment.
139. This may be particularly the case where ecosystems are threatened or diminished.
140. It is worth noting that there is already provision for the "maintenance and enhancement of the quality of the environment" in s7(f) that may go some way towards this goal.

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## Strategic questions on system settings

141. It is important to start at a system level as the review process is a system review rather than a review of any specific provisions in the RMA. As the challenges section of this paper shows, the issues related to the Treaty and the role of Māori in the RM system are multi-faceted and, fundamentally, are systemic. Hence a system-level response is required in order to address any challenges – and provide for opportunities.
142. The Treaty can be a positive force to improve environmental outcomes and provide for greater wellbeing for all.
143. This section poses the strategic questions on system settings that the Panel could consider in order to improve the RM system in regards to the Treaty and the role of Māori.
144. These questions have been derived from the previous section on opportunities, as well as the guiding principles from the policy framework for the review:
  - What are the outcomes and role(s) that Māori desire in the RM system and what form/level of partnership and participation would best support this?
  - How can the RM system be (re)designed to ensure that a more effective role for Māori is provided for?
  - What are the opportunities or barriers in the system to giving due recognition to the relationship between the Crown and Māori through the principles of the Treaty?
  - How do we ensure that changes made to the ‘top end’ of the system to better reflect the Treaty flow through the system, and take into account the challenges that flow from implementation and capacity/support issues?
  - What other system shifts would be required in order to improve the system in regards to the Treaty and the role of Māori?

## Potential ideas suggested for the Treaty and the role of Māori in the RM system

145. A number of sources have suggested potential ideas for improving the RM system in relation to the Treaty and role of Māori, including Waitangi Tribunal reports, formal Ministerial consultation, feedback from previous engagement with Māori, departmental reviews of the RMA, and external reports on the RMA (including, but not limited to, reports by the Environment Defence Society, the Productivity Commission and Kāhui Wai Māori).
146. Designing an RM system that is fit for purpose for Māori and moving towards a more effective role for Māori in the system will require changes to the current system across the board. This paper has been deliberately focussed only on the RM system in respect of the Treaty and the role of Māori in resource management. Of course the ideas put forward in other papers to address all the other aspects of the RM system will be of relevance to Māori.
147. The scope for the review clearly outlines that Treaty settlement agreements and this will need to be carried over into any new RM system. The review proposals will also need to be assessed to ensure they do not have unintended consequences for existing and future Treaty settlements. Essentially, anything agreed to by the Crown via a Treaty settlement can't be lost or ignored as part of the review.

148. There are also legislative requirements under some Treaty settlements. For example, any changes to the RMA should have particular regard for the legal status of Te Awa Tupua (Whanganui River).
149. Our initial view is that none of the potential ideas in this note seem likely to have unintended negative consequences for existing and future Treaty settlements. We also consider that some of the ideas (in this paper and in other working papers) may have positive implications in terms of moving the RM system in a direction that better finds common ground with te ao Māori.
150. However, once any ideas are developed into options, these will need to be tested and assessed before the Panel makes their final recommendations.
151. Figure 6 below sets out a range of potential ideas suggested by others.
152. These ideas were developed to contribute, to varying degrees, to addressing some of the shortcomings of the current system. Many of the ideas outlined below are not mutually exclusive.
153. There are, of course, other potential ideas and further work would be required to garner additional ideas from Māori and work together with Māori on developing any ideas.
154. See Appendix 7 for a more fulsome description of these potential ideas.

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Figure 6: Potential ideas relating to the Treaty and the role of Māori in the RM system

Legislative/regulatory ideas	Governance and decision making ideas	Capacity and support ideas
<p>1. Amend Part 2 of the RMA to embed a Te Mana o te Wai-type framework [Kāhui Wai Māori and feedback from Māori].</p> <p>2. Give greater legislative weight to the principles of the Treaty when persons are exercising functions and powers under the RMA [Kāhui Wai Māori and feedback from Māori].</p> <p>3. Amend section 8 of the RMA to state that the duties imposed on the Crown in terms of the principles of the Treaty are imposed on all those persons exercising powers and functions under the RMA [Wai 2358 and feedback from Māori].</p> <p>4. Create a national policy statement which provides direction on how to give effect to the principles of the Treaty and on Māori participation in regards to resource management [Wai 262, part of a Productivity Commission recommendation].</p> <p>5. Require robust monitoring of local government performance in relation to the Treaty and the role of Māori in the RM system [Minister Davis and Wai 2358].</p> <p>6. Clarify and enhance the role and status of iwi management plans [Minister Davis, Minister Mahuta, Wai 262 and feedback from Māori].</p> <p>7. Clarify the terms iwi authority and hapū [from Cabinet paper, Minister Mahuta and feedback from Māori].</p>	<p>8. Establish ways for Māori to be represented on planning committees within each region, where mechanisms do not already exist, to advise councils on matters relating to Māori [derived from a Ngā Aho and Papa Pounamu idea].</p> <p>9. Establish a National Māori Advisory Board on Planning and the Treaty of Waitangi [Productivity Commission recommendation].</p> <p>10. Enable more effective participation of Māori Land Court judges in Environment Court proceedings where appropriate [Minister Davis].</p> <p>11. Include a requirement for expertise in tikanga Māori on independent hearing panels and remove barriers for effective Māori participation on independent hearing panels [Minister Davis and feedback from Māori].</p> <p>12. Provide mechanisms for promoting the uptake of arrangements under sections 33 and 36B [Minister Davis, Wai 262, Wai 2358 and feedback from Māori].</p> <p>13. Encourage and provide non-legislative guidance on partnership arrangements (eg, co-governance arrangements) between Māori and local government, especially in relation to planning processes [Minister Davis and part of a Productivity Commission recommendation].</p>	<p>14. Mechanisms for knowledge sharing between iwi/hapū on RM experiences and successes [derived from a Ngā Aho and Papa Pounamu idea].</p> <p>15. Non-legislative guidance for both councils and iwi that summarises legal obligations (Treaty settlement and RMA) relating to Māori and identifies opportunities for Māori engagement in the RM system [feedback from Māori].</p> <p>16. Introduce funding mechanisms for key documents produced by or co-designed with iwi/hapū [Wai 262, feedback from Māori].</p> <p>17. Central government-funded Māori advisors to sit within councils and assist with capability building for councils [derived from a Ngā Aho and Papa Pounamu idea].</p> <p>18. Funding for Māori engagement in RM processes to increase the quantity of Māori engagement [Wai 2358 and feedback from Māori].</p> <p>19. Fund capacity and capability building for all resource management practitioners, both Māori and government, to improve the quality of Māori engagement [Minister Davis, Wai 262, part of a Productivity Commission recommendation and feedback from Māori].</p>

## Conclusion

155. Some progress has been made in providing for the role of Māori in the RM system but there is still a way to go. As the Cabinet paper outlines, RMA provisions for Māori participation are some of the most significant expressions of how the Crown provides for the Treaty and the Māori-Crown relationship. However, there are significant and longstanding problems for Māori in how the RM system has been applied and the review is a significant opportunity to provide for better outcomes for Māori and a more effective role for Māori in the RM system.
156. Treaty settlements have included resource management-related redress which attempts to provide better outcomes for Māori. However, only some iwi have settled and among settled iwi the outcomes have been highly variable leading to different levels of involvement in the system between iwi. While some arrangements between iwi and government reflect the Treaty partnership, as the Waitangi Tribunal have found, the Treaty is not consistently given effect to by central and local government. As most of these mechanisms are relatively new, it is not clear whether they are delivering the outcomes sought by Māori.
157. The problems in the RM system for Māori extend across all aspects of the system and are interdependent. Simply addressing legislative issues will be insufficient to achieve results without also addressing implementation, capability and resourcing issues.
158. Hence, alongside regulatory change it is important that the capacity and capability of iwi, councils and central government to carry out their obligations is considered. It is this issue that contributes significantly to restricting the ability of Māori to effectively participate in the RM system.
159. The Panel may wish to consider several possible methods to address this, including providing for a greater role for Māori at the more strategic end of the system, reflecting a holistic and integrated RM system, shifting towards an 'outcomes' rather than an 'effects' based approach to environmental management, provision to protect and restore the environment, and better monitoring of the impacts of RM decision-making on outcomes that are important to Māori.



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## Appendix 1 – Principles of the Treaty

### Core principles of the Treaty<sup>28</sup>

#### *Partnership*

In the words of the president of the Court of Appeal, ‘the Treaty signified a partnership between the races’ and each partner had to act towards the other ‘with the utmost good faith which is the characteristic obligation of partnership’. The obligations of partnership included the duty to consult Māori and to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.

#### *Reciprocity*

Above all, the partnership is a reciprocal one, involving fundamental exchanges for mutual advantage and benefits. Māori ceded to the Crown the kawanatanga (governance) of the country in return for a guarantee that their tino rangatiratanga (full authority) over their land, people, and taonga would be protected. Māori also ceded the right of pre-emption over their lands on the basis that this would be exercised in a protective manner and in their own interests, so that the settlement of the country could proceed in a fair and mutually advantageous manner.

#### *Autonomy*

As part of the mutual recognition of kawanatanga and tino rangatiratanga, the Crown guaranteed to protect Māori autonomy, which the Turanga Tribunal defined as ‘the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants’. Inherent in Māori autonomy and tino rangatiratanga is the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlements.

#### *Active protection*

The Crown’s duty to protect Māori rights and interests arises from the plain meaning of the Treaty, the promises that were made at the time (and since) to secure the Treaty’s acceptance, and the principles of partnership and reciprocity. The duty is, in the view of the Court of Appeal, ‘not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable’, and the Crown’s responsibilities are ‘analogous to fiduciary duties’. Active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.

#### *Options*

The Treaty envisaged a place in New Zealand for two peoples with their own laws and customs, in which the interface was governed by partnership and mutual respect. Inherent in the Treaty relationship was that Māori, whose laws and autonomy were guaranteed and

<sup>28</sup> This list is from this website: <https://www.waitangitribunal.govt.nz/treaty-of-waitangi/principles-of-the-treaty/> and is from a particular inquiry. The Waitangi Tribunal stress that these are the principles the Tribunal in this case thought were appropriate to that inquiry and may differ from those in other inquiries. For more information on the Treaty principles see also Te Puni Kōkiri. 2001

protected, would have options when settlement and the new society developed. They could choose to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both and walk in two worlds. Their choices were to be free and unconstrained.

### *Mutual benefit*

When the Treaty was signed, both settlers and Māori were expected to obtain or retain the resources necessary for them to develop and prosper in the new, shared nation state. As we shall see, Lord Normanby's instructions (and those of the New Zealand Company to its agent) stated that the true payment for Māori who parted with land would be the rise in value of what they retained, which would enable them to participate fully in the benefits of settlement. The colonisation of New Zealand was thus to be for the mutual benefit of both Māori and settlers, and the retention of sufficient Māori land and resources was acknowledged as a critical factor in achieving that.

### *Equity*

The obligations arising from kawanatanga, partnership, reciprocity, and active protection required the Crown to act fairly to both settlers and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of equity – in conjunction with the principles of active protection and redress – requires that active measures be taken to restore the balance.

### *Equal treatment*

The principles of partnership, reciprocity, autonomy, and active protection required the Crown to act fairly as between Māori groups – it could not unfairly advantage one group over another if their circumstances, rights, and interests were broadly the same.

### *Redress*

The Tribunal, in its Report on the Crown's Foreshore and Seabed Policy, found:

Where the Crown has acted in breach of the principles of the Treaty, and Māori have suffered prejudice as a result, we consider that the Crown has a clear duty to set matters right. This is the principle of redress, where the Crown is required to act so as to 'restore the honour and integrity of the Crown and the mana and status of Māori'. Generally, the principle of redress has been considered in connection with historical claims. It is not an 'eye for an eye' approach, but one in which the Crown needs to restore a tribal base and tribal mana, and provide sufficient remedy to resolve the grievance. It will involve compromise on both sides, and, as the Tarawera Forest Tribunal noted, it should not create fresh injustices for others.

We note that, where well-founded grievances have been drawn to the Crown's attention in the past, and it has acknowledged those grievances and attempted remedies ...we will assess such remedies in light of the principle of redress. In the view of the Privy Council, where the Crown's own actions have contributed to the precarious state of a taonga, there is an even greater obligation for it the Crown to provide generous redress as circumstances permit.

## Appendix 2 – The Treaty of Waitangi / Te Tiriti o Waitangi

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu <sup>29</sup>
<b>Preamble</b>		
HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the	Ko Wikitoria, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona lwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te	Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship <sup>30[2]</sup> and their lands to them and to maintain peace <sup>31[3]</sup> and good order considers it just to appoint an administrator <sup>32[4]</sup> one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands <sup>33[5]</sup> and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that

<sup>29</sup> Sir Hugh Kawharu's translation sets out to show how Māori would have understood the meaning of the text they signed. It was published in the book *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, edited by Michael Belgrave, Merata Kawharu and David Williams (Oxford University Press, 1989)

<sup>30</sup> Chieftainship': this concept has to be understood in the context of Māori social and political organisation as at 1840. The accepted approximation today is 'trusteeship'.

<sup>31</sup> 'Peace': Māori 'Rongo', seemingly a missionary usage (rongo — to hear: ie, hear the 'Word' — the 'message' of peace and goodwill, etc).

<sup>32</sup> Literally 'Chief' ('Rangatira') here is of course ambiguous. Clearly, a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere 'functionary'. Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

<sup>33</sup> Islands': ie, coastal, not of the Pacific.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu <sup>29</sup>
<p>recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.</p>	<p>Kawanatanga kia kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.</p>	<p>no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents<sup>34</sup> to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.</p>
<p><b>Article One</b></p>		
<p><b>Article the First</b> The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her</p>	<p><b>Ko te Tuatahi</b> Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o</p>	<p><b>The first</b> The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give</p>

<sup>34</sup> Literally 'making': ie, 'offering' or 'saying' — but not 'inviting to concur'.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu <sup>29</sup>
<p>Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.</p>	<p>Ingarani ake tonu atu-te Kawanatanga katoa o ratou wenua.</p>	<p>absolutely to the Queen of England for ever the complete government<sup>35</sup> over their land.</p>
<p><b>Article Two</b></p>		
<p><b>Article the Second</b> Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they</p>	<p><b>Ko te Tuarua</b> Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga</p>	<p><b>The second</b> The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise<sup>36</sup> of their chieftainship over their lands, villages and all their treasures.<sup>37</sup> But on the other hand the Chiefs of the Confederation and all the Chiefs will sell<sup>38</sup> land</p>

<sup>35</sup> 'Government': 'kawanatanga'. Sir Hugh's view was that "there could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent." This view is not universally held. For more discussion of the views and understandings of participants at 1840 see He Whakaputanga me te Tiriti / The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, particularly chapter 10 (Waitangi Tribunal 2014).

<sup>36</sup> 'Unqualified exercise' of the chieftainship — would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.

<sup>37</sup> Treasures': 'taonga'. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, 'taonga' refers to all dimensions of a tribal group's estate, material and non-material — heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.

<sup>38</sup> Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu <sup>29</sup>
<p>may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.</p>	<p>o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.</p>	<p>to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.</p>
<p><b>Article Three</b></p>		
<p><b>Article the Third</b> In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.</p>	<p><b>Ko te Tuatoru</b> Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani</p>	<p><b>The third</b> For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties<sup>39</sup> of citizenship as the people of England.<sup>40</sup></p>

<sup>39</sup> 'Rights and duties': Māori at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly, this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

<sup>40</sup> Sir Hugh's view was that "there is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2." More recent scholarship suggests that Sir Hugh underestimated the knowledge of British tikanga that some Māori had.

English version	Māori version	Back translation of Māori text by Sir Hugh Kawharu <sup>29</sup>
<b>Post script</b>		
<p>Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.</p> <p>Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.</p>	<p>Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o mātou ingoa o matou tohu.</p> <p>Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.</p> <p>Ko nga Rangatira o te wakaminenga.</p>	<p>So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.</p> <p>Was done at Waitangi on the sixth of February in the year of our Lord 1840.</p>



## Appendix 3 – Background to the enactment of the Treaty clause in the RMA

The following paragraphs are from the Wai 2358 report section 2.4.2.1 (p. 47-49)

“In 1986, Cabinet instructed all Government departments to ‘give recognition to the Treaty of Waitangi as if it were part of the domestic law of New Zealand in all aspects of administration and in preparation of legislation’. This was reflected in the Conservation Act 1987, which stated: ‘This Act shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi’. By the time the Resource Management Bill was being prepared, however, the political mood of the Labour Government had changed.

In 1988, one of the Crown’s objectives for the RMLR was to ensure that ‘practical effect’ would be given to Treaty principles. Recognition of the Treaty principles was to be ‘an essential element in all resource management statutes and processes’. At the end of the year, the Minister for the Environment, Sir Geoffrey Palmer, put out a consultation paper which stated:

The new law will be both practical and just. The principles of the Treaty of Waitangi form an important component for the decisions made in this review. The new Resource Management Planning Act will provide for more involvement of iwi authorities in resource management, and for the protection of Māori cultural and spiritual values associated with the environment.

In 1989, there was an ‘extended debate’ on the wording of the Treaty clause. At first, the discussion focused on a clause that would require effect to be given to the principles of the Treaty, as with the Conservation Act. The Planning Tribunal judges recommended against leaving it to councils or the tribunal to identify how the principles would be applied. In the judges’ view, this would abrogate the Crown’s Treaty responsibilities. Haami Piripi of the Treaty of Waitangi Policy Unit recommended that, if the Crown was going to delegate resource management functions to others, it must also delegate its Treaty responsibilities in a clear and unambiguous way. The eventual wording of the Treaty clause, as endorsed by Ministers in November 1989, reflected this advice. It stated that ‘in achieving the purpose of this Act all persons who exercise powers and functions under this Act have a duty to balance kawanatanga and tino rangatiratanga as referred to in the Treaty of Waitangi’.

The Minister of Māori Affairs wanted to ensure that the Treaty relationship was defined at the Crown–Māori level, which would have made that relationship (and the Crown) a crucial factor in Māori resource management matters. He proposed an alternative clause that stated: ‘In achieving the purpose of this Act all persons who exercise functions and powers under this Act have an obligation to give practical effect to the special relationship between the Crown and tangata whenua as embodied in the Treaty of Waitangi.

Treasury, however, asked for the Treaty clause to be ‘toned down’. Cabinet therefore decided that the clause would simply state that ‘all persons who exercise functions and powers under this Act have a duty to consider the Treaty of Waitangi’. This was the clause that went into the Bill. According to Morris Te Whiti Love, the words ‘duty to consider’ reflected both a ‘nervousness about the impact of a Treaty section’ in this particular Bill and a ‘general retreat in terms of Treaty references in legislation’. This retreat occurred partly as a result of the Lands case, and the way the Court of Appeal had enforced the Treaty clause in the State-Owned Enterprises Act 1986.

Nearly all of the Māori submissions to the select committee condemned the Treaty clause as 'weak and inadequate'. A battle then ensued between Treasury and Koro Wetere, the Minister of Māori Affairs. Treasury wanted to dilute the Treaty clause even further, arguing that 'a strong Treaty of Waitangi clause in the legislation would cause endless litigation'. The Minister wanted to strengthen it. A compromise seems to have been arrived at in the select committee, which proposed that the clause would require all persons exercising functions under the Act [RMA] to 'take into account the special relationship between the Crown and te iwi Māori as embodied in the Treaty of Waitangi'. Robert McClean and Trecia Smith, in a report on Crown policies in respect of indigenous flora and fauna, suggested that this new version was more in line with the 'watered-down clause favoured by Treasury'.

The Labour Government lost the 1990 election before the Bill was enacted. The new National Government reviewed the Bill and the Treaty clause was amended for the final time. Reference to the Crown was removed from the clause but the words 'take into account' were retained. The final version stated that all those exercising functions and powers under the Act [RMA] must 'take into account the principles of the Treaty of Waitangi'."

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## Appendix 4 – Current legislative provisions relating to the role of Māori in the resource management system

1. As Treaty partners and tangata whenua, Māori have a significant interest and role to play in the resource management system. Since the late 1980s/early 1990s, this has been recognised in legislation, with key statutes imposing duties on decision-makers to involve Māori in decision-making about natural resources. These legislative protections have been gradually strengthened over time, through new legislation (including Treaty settlement legislation), legislative amendments and improvements in practice. However, despite Māori rights and interests being protected in legislation, the regime for involving Māori in decision-making about natural resources is far from perfect.
2. This section discusses the key legal requirements on decision-makers to provide for Māori rights and interests and involve Māori in decision-making in the resource management system. The following section discusses the effectiveness of the system in practice of the system for recognising Māori rights and interests, and the key issues with the current system.

### How Māori rights and interests are provided for in the current RM system

3. Māori rights and interests are recognised in key legislation in the RM and planning system, including:
  - Resource Management Act 1991
  - Local Government Act 2002
  - Land Transport Management Act 2003
  - Environmental Reporting Act 2015
  - Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
  - Heritage New Zealand Pouhere Taonga Act 2014
  - Crown Minerals Act 1991
  - Treaty of Waitangi (Fisheries Claim) Settlement Act 1993
  - Marine and Coastal Areas Act 2011
  - Te Ture Whenua Māori Act 1993
  - Treaty settlement legislation
4. The key statutory requirements relating to Māori are explained below. Other legislation in the RM system which sets out Māori rights and interests includes the Conservation Act 1987, Reserves Act 1977 and Local Electoral Act 2001.

#### Resource Management Act 1991

5. When it was enacted in 1991, the RMA was heralded for providing new opportunities for Māori participation, and for embedding the principles of the Treaty of Waitangi into law. There are a number of principles in the RMA which specifically acknowledge Māori rights and interests. Section 6(e) requires decision-makers to recognise and provide for “the relationship of Māori and their culture and traditions within their ancestral lands, water, sites, wāhi tapu, and other tāonga”. Section 7(a) requires decision-makers to

have particular regard to kaitiakitanga, when deliberating decisions. Section 8 requires decision-makers to take into account “the principles of the Treaty of Waitangi”.

6. Other relevant RMA provisions included in the 1991 Act include:
- Opportunities for transfer of functions delegations (section 33)
  - Recognition of tikanga Māori and te reo Māori at hearings (section 39)
  - Consultation provisions in relation to national environmental standards (NES), national policy statements (NPS), regional policy statements (RPS) regional plans (RP) and district plans (Part 5 and Schedule 1)
  - Provision for iwi management plans (Part 5)
  - Mana Whakahono a Rohe provisions (Subpart 2 of Part 5)
  - Provisions relating to water conservation orders and heritage orders (Parts 8-9).

There are also a range of provisions in the RMA relating to coastal occupation, aquaculture settlement rights, fisheries, Māori land, statutory acknowledgements provided in Treaty of Waitangi-related legislation, and the Marine and Coastal Area (Takutai Moana) Act 2011.

### RMA reforms affecting Māori rights and interests

7. Since 1991, the RMA has been amended on a number of occasions to improve Māori participation and better recognise Māori rights and interests. The primary changes have included:
- Change to the definition of kaitiakitanga (1997)
  - Change of status of iwi management plans (2003)
  - Improvements to records and information about iwi and hapū (2005)
  - Improvements to NPS participation (2005)
  - Improvements and clarification about the obligation to consult iwi authorities in Schedule 1 (2005)
  - Changes relating to NES, proposals of national significance and expert knowledge on boards of inquiries (2009)
  - Protection of customary rights (2011)
  - Cultural assessment as part of section 32 and Schedule 4 (2013).
  - Iwi participation arrangements, through which councils and iwi can agree on how iwi will participate in the preparation, change or review of policy statements and plans
  - Enhanced consultation requirements, including a requirement for councils to provide draft policy statements and plans to iwi for review before notifying these documents
  - Enhanced participation in decision-making, including requirements for councils to consult iwi on whether to appoint Commissioners with knowledge of tikanga Māori, prior to hearings on policy statements or plans.
  - Mana Whakahono ā Rohe provisions which provide an opportunity for tangata whenua and local authorities to work together under the RMA.
8. There have also been substantial changes specific to iwi and hapū as a result of Treaty of Waitangi settlement-related legislation.

## Freshwater reforms

9. In 2007, the Waitangi Tribunal found that the RMA regime for freshwater management was inconsistent with the principles of the Treaty of Waitangi because it failed to address the full nature and extent of Māori rights and interests in freshwater. The Tribunal also found that the provisions under the RMA failed to assure Māori of anything more than the right to be consulted.<sup>41</sup>
10. Since the Waitangi Tribunal report was released, freshwater management has been a significant focus of the Government's resource management reform programme.
11. The Freshwater Iwi Leaders Group, which formed in 2007, saw an opportunity to participate in the reforms and signed an agreement to engage with the Government in the ongoing development of freshwater policy. The Group became a member of the Land and Water Forum and has been involved in developing recent policy reforms/proposed reforms, including the reforms to the National Policy Statement on Freshwater Management in 2011 and 2013, and the reforms in the *Next Steps for Freshwater*.
12. The current priorities of the Iwi Leaders Group are:<sup>42</sup>
  - The Three Waters Policy
  - Discharges to Freshwater
  - Freshwater for Marae, papakāinga and communities
  - Access to freshwater for underutilised lands
  - Activating RMA (including Mana Whakahono ā Rohe) and settlement redress instruments.
13. The series of proposals that were outlined in the consultation document on *Next Steps for Freshwater* are intended to address iwi and hapū rights and interests in freshwater, and to recognise the relationship of Māori with water. These provisions included reflecting Te Mana o te Wai (a concept encompassing the holistic and integrated health and wellbeing of a water body) in their implementation of all relevant policies in the National Policy Statement for Freshwater Management. They also included establishing provisions for a new rohe (region or catchment)-based agreement between iwi and councils for natural resource management – a 'mana whakahono ā rohe' agreement that can be initiated by iwi authorities.
14. The Essential Freshwater work programme has three objectives: stopping further degradation and loss, reversing past damage, and addressing water allocation issues. The work programme seeks to deliver on these objectives through targeted action and investment in at-risk catchments, amendments to the Resource Management Act (to be introduced), a new National Policy Statement for Freshwater Management, and a new National Environmental Standard for Freshwater Management.

## Local Government Act 2002

15. A number of provisions in the Local Government Act 2002 (LGA) give effect to Māori rights and interests. Section 4 of the LGA refers to the Treaty of Waitangi and recognises the need to "maintain and improve opportunities for Māori to contribute to local government decision-making processes".

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<sup>41</sup> Waitangi Tribunal, 2008.

<sup>42</sup> Iwi Chairs, 2019.

16. Part 6 provides principles and requirements for local authorities for facilitating participation by Māori in decision-making processes. Section 81 requires local authorities to provide opportunities for Māori to contribute to decision-making processes, consider ways to foster the development of Māori capacity to contribute to decision-making and provide relevant information to Māori for the purpose of achieving this. Sections 108 – 110 (combined with Schedule 11) sets out objectives to consider in determining policies for rates remission in relation to Māori land.
17. The LGA was amended in 2014, and two new provisions were added which enhance Māori participation:
  - Section 76AA requires local authorities to have a “significance and engagement policy”
  - Clause 11 of Schedule 10 requires that all long term plans contain a summary of that policy.
18. The effect of this is that the engagement of local authorities with Māori will be available for public scrutiny.

### Land Transport Management Act 2003

19. The Land Transport Management Act 2003 (LTMA) sets out principles and requirements that are needed to facilitate participation by Māori in land transport management decision-making in order to take into account the principles of the Treaty (section 4). In particular, the LTMA requires:
  - Regional councils to consult in accordance with section 82 of the LGA (which sets out processes for consulting with Māori)
  - Auckland Council, New Zealand Transport Agency (NZTA) or other “approved organisations” to “do everything reasonably practicable” to consult with Māori about proposed activities (section 18G)
  - NZTA and other approved organisations must: establish processes for Māori involvement in decision-making processes; consider ways to foster development of Māori capacity; and provide relevant information to Māori for these purposes (section 18H).

### Environmental Reporting Act 2015

20. The Environmental Reporting Act 2015, and first report ‘Environment Aotearoa 2015’ recognise the need to consider the relationship of Māori and the environment in environmental reporting. The Act requires te ao Māori to be considered in the preparation of reports, to ensure issues are informed by a Māori perspective, and that iwi authorities are consulted in respect of any regulations made under the Act. Environmental reporting also provides an opportunity for Māori issues to be examined where the state of the environment is negatively impacting on Māori cultural values.<sup>43</sup>

### Heritage New Zealand Pouhere Taonga Act 2014

21. The Heritage New Zealand Pouhere Taonga Act 2014 (which replaced the Historic Places Act 1993) contains a new Treaty of Waitangi provision (section 7). This section requires at least three members of the Board of Heritage New Zealand Pouhere Taonga to have knowledge of te ao Māori and tikanga Māori, gives the Board power to delegate

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<sup>43</sup> Fox, C. and Bretton, C., 2016.

functions and powers to the Māori Heritage Council, and requires the Māori Heritage Council to ensure appropriate protection of areas of historic significance to Māori, including wāhi tūpuna and wāhi tapu. This section opens up opportunities for further protection of sites that are important to Māori.

### Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

22. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 contains several sections that reference Māori interests and the Treaty of Waitangi. This includes section 18, which provides for the Māori Advisory Committee to advise the Environmental Protection Authority on decision-making under the Act and section 4, which requires the EPA to notify iwi authorities and customary groups of consent applications that may affect them.

### Crown Minerals Act 1991

23. The Waitangi Tribunal has criticised the approach taken by management of petroleum in relation to Māori.<sup>44</sup> The Tribunal recommended legislative changes to strengthen the rights and interests of Māori in the legislation. The Tribunal's recommendations included requiring compulsory notification of applications on petroleum-related activities concerning Māori land, and establishing a Commissioner for the Treaty of Waitangi to audit compliance with the Treaty by government.
24. Amendments to the Act in 2013 gave effect to some (but not all) of the Tribunal's recommendations. For example, section 33C now requires certain permit holders to report annually to the Minister on their engagement with iwi/hapū. In addition, the Act contains provisions which require the principles of the Treaty of Waitangi to be given effect to through minerals and petroleum programmes.

### Treaty of Waitangi (Fisheries Claim) Settlement Act 1993

25. The Treaty of Waitangi (Fisheries Claim) Settlement Act 1993 provides opportunities for tangata whenua to apply to the Minister of Fisheries to exercise customary management and food gathering practices through, for example, creating mataitai reserves (restricted fishing areas). Tangata whenua may also recommend bylaws be approved by the Minister of Fisheries. There are now approximately 10 mataitai reserves around the country.

### Marine and Coastal Areas Act 2011

26. The Marine and Coastal Areas Act 2011 creates 'protected customary rights'. This effectively creates a veto power for certain types of resource consents for recognised customary rights groups in protected areas. The Act also creates 'customary marine title' for groups that have held an area in accordance with tikanga since 1840 without substantial interruption. This gives recognised customary groups the right to give or decline permission for certain activities in a specified area.

### Te Ture Whenua Māori Act 1993

27. The Te Ture Whenua Māori Act 1993 (TTWMA) governs Māori customary and freehold land. The Act ensures that Māori land is retained as tāonga tuku iho (a treasure passed down from ancestors) in the hands of its owners and their whanau. The Act also aims to

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<sup>44</sup> See Waitangi Tribunal, 2003; Waitangi Tribunal, 2011A.

promote the use, development and control of Māori land by its owners. The TTWMA requires the Māori Land Court to approve most dealings under the Act.

28. Targeted amendments to Te Ture Whenua Māori Act 1993 are proposed, focused on simplifying the succession process, establishing a dispute resolution mechanism and improving services in the Māori Land Court, which will be introduced into Parliament later this year

**Treaty settlement legislation**

29. To date, there are 68 pieces of settlement legislation with 74 claimant groups (comprising a mix of iwi, hapū and various collectives). As of August 2019, a further 22 groups are in pre-negotiation or active negotiation stages, and a further 36 are either deferred or stopped.
30. Settlements provide three kinds of redress to the claimant groups:
- *An historical account of the Treaty breaches, and Crown acknowledgement and apology* - The historical account details the ways that the Crown breached the Treaty. Both the Crown and the claimant group must agree on these. The Crown acknowledges and apologises for the Treaty breaches and the impact they had on the claimant group.
  - *Cultural redress* - Cultural redress can include things like: changing place names, the return of lands to the claimant group, and co-governance of rivers and lakes.
  - *Commercial and financial redress* - This is cash, property, or a mixture of both.
31. Cultural redress recognises the traditional, historical and spiritual associations of iwi/hapū with sites/resources owned by the Crown within their rohe (traditional area). This form of redress allows the iwi/hapū to work with the Crown to protect and enhance the values of the site/resource. Common forms of cultural redress established under Treaty settlement legislation are set out in the table below.

**Figure 7: summary of common cultural redress in Treaty settlement legislation**

Form of cultural redress	Legal effect
<b>Vesting of sites</b>	Certain sites/resources may be vested in iwi/hapū and the iwi/hapū becomes the owner of the site/resource. However, normally these sites/resources are subject to specific conditions, such as the preservation of public access and conservation values.
<b>Vesting and gift back</b>	Where ownership in a site/resource is transferred to iwi/hapū, and then transferred back to the Crown as a 'gift' from the iwi/hapū.
<b>Statutory acknowledgements/ Deeds of recognition</b>	Recognise iwi/hapū associations with certain sites/resources.  Statutory acknowledgements are recognised under the RMA and the Heritage New Zealand Pouhere Taonga Act 2014. The acknowledgements require that consent authorities provide summaries of consent applications to iwi/hapū where the sites/resources may be affected.



	Deeds of recognition specify the nature of the iwi/hapū input into management of the sites/resources by the Department of Conservation and Land Information New Zealand.
<b>Overlay classifications</b>	Acknowledge the traditional, cultural and historical association of an iwi/hapū with certain sites/resources of significance. Overlay classifications normally apply to conservation land and require the New Zealand Conservation Authority to have particular regards to the iwi/hapū values.
<b>Place name changes</b>	Official place names are changed to the name preferred by iwi/hapū.
<b>Crown payment</b>	The Crown may transfer funds to the iwi/hapū to use for specified cultural purposes. This payment is additional to the financial redress.

**Co-governance and co-management arrangements**

- 32. There are numerous examples of co-management arrangements involving Māori and local/central government around New Zealand. These arrangements have a significant effect on the resource management system, and provide a mechanism by which Māori rights and interests can be recognised, and Māori can partner with the Crown to manage natural resources. Co-management arrangements can be established ‘voluntarily’ outside of the Treaty settlement process,<sup>45</sup> but most are formed as part of Treaty settlement redress.
- 33. The terms ‘co-governance’ and ‘co-management’ are used to describe negotiated arrangements between iwi, central government, local government and/or local groups to achieve effective management of a resource. A 2016 report by the Controller and Auditor-General (Auditor-General) on ‘the principles for effectively co-governing natural resources’ comments that the terms co-management and co-governance are generally not well-understood. Figure 8 below provides a definition of these terms.

**Figure 8: Comparing co-management and co-governance**

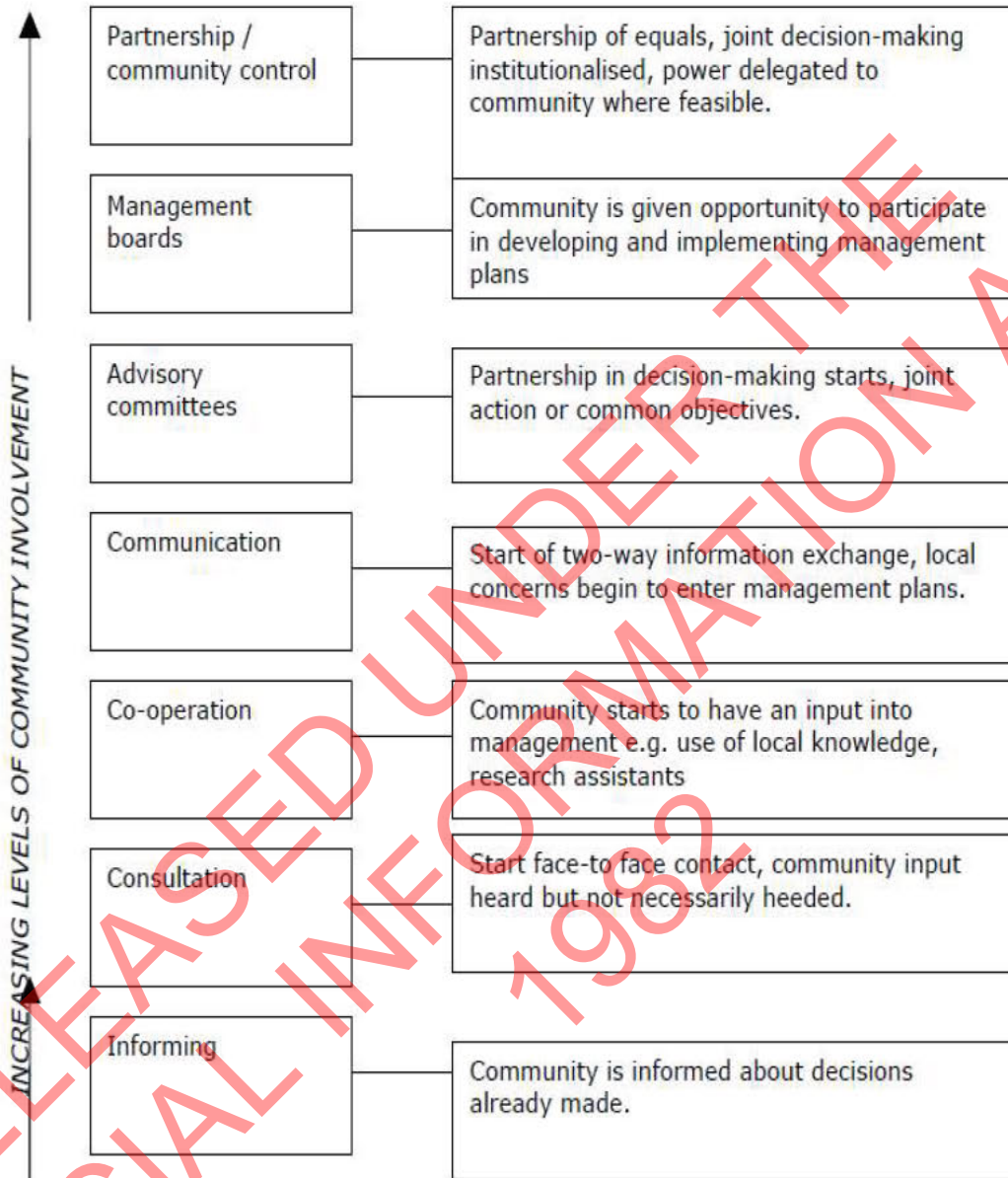
Co-management	Co-governance
The collaborative process of decision-making and problem solving within the administration of conservation policy.	Arrangements in which ultimate decision-making authority resides with a collaborative body exercising devolved power – where power and responsibility are shared between government and local stakeholders.

- 34. Co-management arrangements with iwi are hugely variable throughout the country, and the degree of influence that iwi have over decision-making ranges from minimal to significant. These arrangements can be given effect to via Joint Management Agreements (JMAs) under s36B of the RMA. The arrangements can cover a number of matters. For example the Ngāti Tuwharetoa JMA with Waikato Regional Council, among other things, established a water monitoring framework which allowed for customary activities, the creation of a co-governance committee for council planning and joint decision-making for consenting relating to Taupō waters.

<sup>45</sup> Such as Te Upoko Taiao, Greater Wellington Regional Council’s natural resources committee, in which half the members are appointed by the region’s mana whenua.

35. Figure 9 below sets out the range of co-management processes on a continuum from minimal involvement to significant devolution of power.

Figure 9: levels of involvement of Māori in decision-making<sup>46</sup>



36. Co-governance usually refers to arrangements where there are equal numbers of iwi representatives and council representatives involved in a decision-making body, where the council retains the final decision-making power. An example of such an arrangement is the Waikato River Authority, described below.

Figure 10: Waikato River Authority

Waikato River Authority was set up as a co-governance entity under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. The purpose of the Authority is to:

<sup>46</sup> This diagram has been adapted from Berkes, F. and Preston, R., 1991.

- Set the primary direction through the vision and strategy to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
- Promote an integrated, holistic, and co-ordinated approach to the implementation of the vision and strategy and the management of the Waikato River; and
- Fund rehabilitation initiatives for the Waikato River in its role as trustee for the Waikato River Clean-up Trust.

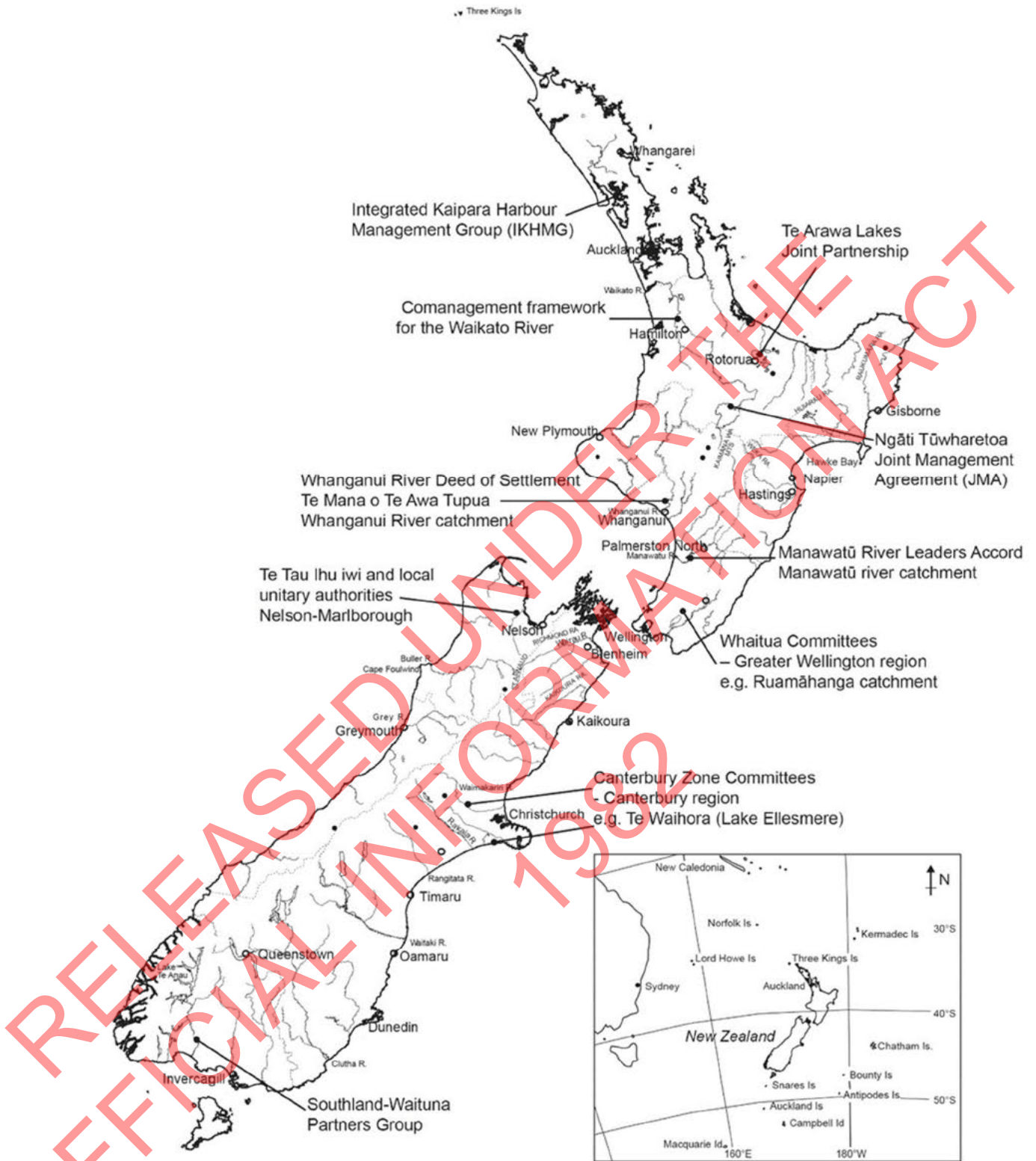
The Authority's Vision and Strategy document, which is considered to be part of the Waikato Regional Policy Statement, is binding on all national, regional, and district policy and decisions for the management of the river.

While it is too early to measure the effectiveness of the Waikato River Authority in improving the health of the river due to environmental lag times, the Authority is heralded as an example of a strong co-governance model. In the five years since establishment, the Authority has

- Developed the vision and strategy, which has been given effect to through Waikato region and district plans
- Funded a number of projects for the rehabilitation of the river.

One dairy industry representative, interviewed as part of the study by the Auditor General, commented on how the Authority had helped to bring industry partnerships and interests together:

*In the past, there has been an "us and them" tension. But now we have lots more interaction and are working in partnership ... anything is better than fighting in the Environment Court.*



**Figure 11: location of select Māori co-governance and co-management arrangements**

Harmsworth, G., Awatere, S., & Robb, M. (2016). Indigenous Māori values and perspectives to inform freshwater management in Aotearoa-New Zealand. *Ecology and Society*, 21(4).

## Natural resources as legal entities

37. The concept of natural resource having legal personality in New Zealand has arisen in relation to the Whanganui River and Te Urewera, and associated Treaty settlement legislation. The Te Urewera arrangement is described below.

Figure 11: Te Urewera Act 2014

Te Urewera National Park became 'Te Urewera' – a 'legal entity' with "all rights, powers, duties, and liabilities of a legal person"<sup>47</sup> in July 2014 under Te Urewera Act 2014. The legislation was the first to declare a natural resource as having legal personhood.

Te Urewera is now managed by a Te Urewera Board, which is responsible acting on behalf of Te Urewera. The Board has equal Tūhoe-appointed and Crown-appointed members (four each) for the first three years, and six Tūhoe-appointed members and three Crown-appointed members after that. The Board is directed to reflect the Treaty of Waitangi, Māori customary values in making decisions on behalf of Te Urewera.

This arrangement goes beyond current co-governance arrangements and forms a new kind of arrangement that was unprecedented in New Zealand. Te Urewera gives a significant level of governance to Tūhoe, giving the iwi effective control over the region and their self-determination. Other iwi are looking to the Tūhoe settlement as the 'gold standard', and those who have already settled are now considering options to also gain legal personality in respect of natural resources in their rohe.<sup>48</sup> However, given that Te Urewera was established only in 2014, the effectiveness of this model remains to be seen.

<sup>47</sup> Te Urewera Act 2014, section 11(1).

## Appendix 5 – The Environment and Mātauranga Māori (section 3.1 from the Wai 262 report)

The following extract is from Waitangi Tribunal. 2011. *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity (Wai 262 report)*. Wellington: Waitangi Tribunal.

### “3.1 The Environment and Mātauranga Māori

There is an old saying: ‘Kei raro i ngā tarutaru, ko ngā tuhinga a ngā tūpuna’ (beneath the herbs and plants are the writings of the ancestors). This remains true even in the fundamentally modified environment of modern New Zealand. And so the most powerful indicator that mātauranga Māori is a product of these islands is to be found in the environment itself – in the names imprinted in it, and the ancestors and events those names invoke.

The environmental issues raised by the Wai 262 claim pose one essential challenge: how can the voice of mātauranga Māori, etched as it is in the land, still speak in our changed circumstances? That is the question we attempt to answer. To do that, we must first understand the deep values that impel the Māori voice.

Of the two core values, the first is whanaungatanga or kinship. We mean kinship here in the wider sense, as used in a culture that sets such store by descent that commonly recited family lines are measured in 40 generations or more. As we have said in the preceding chapters, whanaungatanga is the organising principle of mātauranga Māori. It describes relationships between people, between people and natural resources, even between related bodies of knowledge. In fact, all relationships of importance in mātauranga Māori are explained through kinship. That is why whakapapa (genealogy) is so important: it is the practical manifestation of the kinship principle. For this reason, Māori relationships with taonga in the environment – with landforms, waterways, flora and fauna, and so on – are articulated using kinship concepts. Indeed, the first step in understanding the Māori relationship with the landscape (for example) is to understand that descent from it is an essential Māori belief. Māori attitudes towards the environment make sense if that is grasped.

The second core value is kaitiakitanga. It is often translated as guardianship or stewardship. Generally speaking, this is a fair approximation, although it lacks the core spiritual dimension that animates the concept. In Māori tradition the ‘guardians’ or ‘stewards’ are, as often as not, supernatural beings. Kaitiakitanga is really a product of whanaungatanga – that is, it is an intergenerational obligation that arises by virtue of the kin relationship. It is not possible to have kaitiakitanga without whanaungatanga. In the same way, whanaungatanga always creates kaitiakitanga obligations.

The Reverend Māori Marsden, in his writings on kaitiakitanga (which he prepared for those developing the Resource Management Act), suggested that people involved in environmental management should be guided by three basic principles that derive from a Māori world view:

- humankind’s contribution is to enhance and maintain the life support systems of Papa-tū-ā-nuku;

- people should treat Papa-tū-ā-nuku with love and respect in recognition of her life-supporting function, her role in the creation of the natural world, and her place in our own whakapapa; and
- we do not own Papa-tū-ā-nuku, but are recipients, and therefore stewards, of the natural environment.

This is a good representation of the highest ideals of whanaungatanga and kaitiakitanga in respect of the environment. We heard many examples in evidence that demonstrated these ideals in practical terms. The idea of a kin relationship with taonga, and the kaitiakitanga obligation that kinship creates, explains why iwi refer to iconic mountains, rivers, lakes, and harbours in the same way that they refer to close human relations. It explains why elders feel comfortable speaking directly to those elements and features, and why those elements and features are viewed as embodying distinct spiritual, as well as physical, qualities. It also explains why relationships with the environment are so important to the claimants. It is through those relationships that the Māori culture evolved, and through those relationships that it has a future.”

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## Appendix 6 – Extract from Salmond (2017) on a public trust model for resource management

The following extract is from Salmond, A. 2017. *Rivers as ancestors and other realities: Governance of Waterways in Aotearoa/New Zealand*.

### “Property Rights, Trusteeship and Fresh Water

While the Waitangi Tribunal has discussed property rights as the only way of legally recognising Māori relationships with ancestral rivers, many of those who participated in the Whanganui claim found this difficult to deal with. As Whanganui elder Toni Waho exclaimed, ‘It’s not an ownership issue... it’s kaitiakitanga [guardianship], its mana. My Māori heart says let it cease; but my Western mind says perhaps we can find a solution.’ He added, ‘But here’s the problem. There is no place where things can be graded with proper legal form in our world [Te Ao Māori], here in our land [New Zealand], which is able to resolve the conflict of the two worlds [Te Ao Māori, Te Ao Pākeha – the Māori and Western ‘worlds’].’

Although in New Zealand, ownership has been phrased as the only way for Māori kin groups to achieve legal recognition of relationships with ancestral waterways, it is interesting that in Hawai’i, another way has emerged of recognising the relationship between indigenous Hawai’ians and their ancestral streams and rivers, in the face of those who would deplete or degrade them. In the United States, the right of all citizens to enjoy and take care of those ‘things [that] by the law of nature are common to all’ (as framed by the Code of Justinian) has been recognised in a ‘public trust doctrine’, based on a US Supreme Court decision in 1892 which declared that each state holds certain natural resources (including water) in trust for its citizens and must protect these resources from the ‘obstruction or interference of private parties.’

In 1973, the Supreme Court of Hawaii – which until then had consistently ruled that a party that owned land also owned the surplus water of any stream that ran over it – ruled that all freshwater in the State was ‘held in trust by the state for the common good of its citizens.’<sup>25</sup> In the Waiāhole Ditch case in 2000, native Hawaiians and local farmers fought to restore water to streams diverted by powerful former sugar plantation companies, whose predecessors had participated in the 1893 overthrow of the Hawaiian monarchy.

In their judgement, the Hawaiian Supreme Court declared that the public trust doctrine is ‘a fundamental principle of constitutional law in Hawaii that applies to all water resources without exception,’ and stated that it

demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters for various uses in the public interest.

In 2012 in the Four Great Waters case, the Hawaiian Supreme Court further expanded the ‘public trust’ doctrine. By granting water permits to two powerful companies that set instream flows insufficient to sustain four major waterways on Maui, the Supreme Court ruled that the Commission had failed to ‘display a level of openness, diligence, and foresight commensurate with the high priority these [public trust] rights command under the laws of our state,’ or to consider their impact on ‘traditional and customary native Hawaiian practices.’ The water permits were overturned, and the rights of ordinary citizens to defend their ‘public trust’ interests in freshwater were strengthened.



The public trust doctrine has been extended further still in other countries, including Ecuador and India. In Ecuador, for instance, the rights of nature itself (Pacha Mama) are enshrined in the constitution. In India, the Supreme Court derives the public trust doctrine from law 'imposed on us by the natural world [that] must inform all of our social institutions,' along with Indian 'society's respect for plants, trees, earth, sky, air, water and every form of life.' Here, the courts have recently followed the New Zealand precedent by recognising the Ganges and Yamuna rivers as living entities with their own legal rights and responsibilities.

In New Zealand, while Te Awa Tupua Act has gone some way in recognising Māori notions of kinship, this could be taken much further. In the spirit of bringing 'two laws' together, for instance, a local version of the public trust doctrine might recognise **both** the common-law entitlement of all citizens to the 'lawful enjoyment' of waterways **and** whakapapa relationships between particular Māori kin networks and ancestral springs and rivers. Rather than 'rights', one might speak about relationships between people and springs, aquifers, rivers and lakes that aim to ensure the ongoing well-being (*ora*) of people and waterways alike, and draw on notions of reciprocal *kaitiakitanga* (guardianship).

While the idea of kinship with the Whanganui is already reflected in the Māori language sections of Te Awa Tupua Act, kin relations between people and waterways could be recognised for other ancestral water bodies in New Zealand. Injuries such as 'fouling,' 'corrupting,' 'poisoning,' 'stopping' and 'diverting' waterways might be recognised as injuries to the waterways themselves, as well as to their human users, and damages might be paid to the water bodies themselves, and devoted to their care and restoration.

These possibilities are under active discussion in New Zealand at present, for instance in 'Te Mana o te Wai' section of the National Policy Statement on Freshwater, that requires regional councils in their decision-making about freshwater to consider 'the innate relationship between *te hauora o te wai* (the health and *mauri* [roughly, life force] of water) and *te hauora o te taiao* (the health and *mauri* of the environment), and their ability to support each other, while sustaining *te hauora o te tāngata* (the health and *mauri* of the people).

It is quite possible that over time, all waterways across New Zealand will be seen as living entities whose *hau ora* must be protected, so that they and their communities of plants, animals and people can prosper together. Such ideas are in keeping with Māori ideas about binding together different lines of people, opening up new kinds of futures."

## Appendix 7 – Potential ideas on the Treaty and the role of Māori in the RM system

Legislative/regulatory ideas	Governance and decision making ideas	Capacity and support ideas
<ol style="list-style-type: none"> <li>1. Amend Part 2 of the RMA to embed a Te Mana o te Wai-type framework [Kāhui Wai Māori and feedback from Māori].</li> <li>2. Give greater legislative weight to the principles of the Treaty when persons are exercising functions and powers under the RMA [Kāhui Wai Māori and feedback from Māori].</li> <li>3. Amend section 8 of the RMA to state that the duties imposed on the Crown in terms of the principles of the Treaty are imposed on all those persons exercising powers and functions under the RMA [Wai 2358 and feedback from Māori].</li> <li>4. Create a national policy statement which provides direction on how to give effect to the principles of the Treaty and on Māori participation in regards to resource management [Wai 262, part of a Productivity Commission recommendation].</li> <li>5. Require robust monitoring of local government performance in relation to the Treaty and the role of Māori in the RM system [Minister Davis and Wai 2358].</li> <li>6. Clarify and enhance the role and status of iwi management plans [Minister Davis, Minister Mahuta, Wai 262 and feedback from Māori].</li> <li>7. Clarify the terms iwi authority and hapū [from Cabinet paper, Minister Mahuta and feedback from Māori].</li> </ol>	<ol style="list-style-type: none"> <li>8. Establish ways for Māori to be represented on planning committees within each region, where mechanisms do not already exist, to advise councils on matters relating to Māori [derived from a Ngā Aho and Papa Pounamu idea].</li> <li>9. Establish a National Māori Advisory Board on Planning and the Treaty of Waitangi [Productivity Commission recommendation].</li> <li>10. Enable more effective participation of Māori Land Court judges in Environment Court proceedings where appropriate [Minister Davis].</li> <li>11. Include a requirement for expertise in tikanga Māori on independent hearing panels and remove barriers for effective Māori participation on independent hearing panels [Minister Davis and feedback from Māori].</li> <li>12. Provide mechanisms for promoting the uptake of arrangements under sections 33 and 36B [Minister Davis, Wai 262, Wai 2358 and feedback from Māori].</li> <li>13. Encourage and provide non-legislative guidance on partnership arrangements (eg, co-governance arrangements) between Māori and local government, especially in relation to planning processes [Minister Davis and part of a Productivity Commission recommendation].</li> </ol>	<ol style="list-style-type: none"> <li>14. Mechanisms for knowledge sharing between iwi/hapū on RM experiences and successes [derived from a Ngā Aho and Papa Pounamu idea].</li> <li>15. Non-legislative guidance for both councils and iwi that summarises legal obligations (Treaty settlement and RMA) relating to Māori and identifies opportunities for Māori engagement in the RM system [feedback from Māori].</li> <li>16. Introduce funding mechanisms for key documents produced by or co-designed with iwi/hapū [Wai 262, feedback from Māori].</li> <li>17. Central government-funded Māori advisors to sit within councils and assist with capability building for councils [derived from a Ngā Aho and Papa Pounamu idea].</li> <li>18. Funding for Māori engagement in RM processes to increase the quantity of Māori engagement [Wai 2358 and feedback from Māori].</li> <li>19. Fund capacity and capability building for all resource management practitioners, both Māori and government, to improve the quality of Māori engagement [Minister Davis, Wai 262, part of a Productivity Commission recommendation and feedback from Māori].</li> </ol>

## Potential idea descriptions

### Legislative/regulatory ideas

1. Idea 1 would amend Part 2 of the RMA with the underlying intent being to embed te ao Māori better in the RM system.
2. This could be achieved by embedding a Te Mana o te Wai-type framework, as outlined in the Kāhui Wai Māori report<sup>49</sup>. However, as the purpose and principles of the RMA apply to all aspects of the environment, the framework would need to be expanded to apply not only to water, but to the environment as a whole. There are a number of ways this could be done, for example:
  - Idea 1A – Changing s5(2) to have a hierarchy of obligations as per the Te Mana o te Wai framework, ie the first obligation is to protect the health and mauri of the environment, the second obligation is to provide for essential human needs<sup>50</sup>, the third obligation is for other consumptive uses – provided that such use does not adversely impact the mauri of the environment.
  - Idea 1B – Inserting a new sub-paragraph 5(2)(aa) which could read “recognising and respecting the kawa, tikanga, and kaitiakitanga of marae, whānau, hapū, and iwi of natural and physical resources (excluding minerals)”. This may have a similar effect to the framework as the hierarchy of obligations under Te Mana o te Wai is a common thread in the kawa, tikanga and kaitiakitanga of marae, whānau, hapū, and iwi throughout Aotearoa.
  - Idea 1C – Whilst Kāhui Wai Māori support wholesale reform of the RMA in their report, they have recommended some immediate amendments to the RMA. One of their recommendations is a new section could be added (eg s8A) to detail the importance of Te Mana o te Wai, including the hierarchy of obligations and the principles for the sustainable management of water in particular, by embracing kaitiakitanga (stewardship/guardianship); manaakitanga (care/ respect); and mana whakahaere (partnered governance).

Feedback from Māori engagement also emphasised embedding other te ao Māori concepts in the RM system, e.g rāhui and tapu.
3. Idea 2 would aim to give greater weight to the principles of the Treaty. There are also a number of ways this could be done, for example:
  - Changing “take into account” to “shall conform with” in s8 [Kāhui Wai Māori recommendation] or “give effect to” [feedback from engagement with Māori].

Practically, as a key part of the issue has been the implementation/interpretation of s8, any amendments would need to be complemented with national guidance.
4. Idea 3 would amend s8 to clarify/affirm that anyone exercising powers and functions under the RMA needs to do so in accordance with the principles of the Treaty. This would ensure that the duties imposed on the Crown in terms of the principles of the Treaty are also imposed upon anyone else (eg local government) who exercises powers and functions under the RMA.

<sup>49</sup> <https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/kahui-wai-maori-report.pdf>

<sup>50</sup> This could include the reasonably foreseeable needs of future generations as per the current s5(2)(a)

5. Idea 4 would create an NPS that would provide national guidance on the implementation and interpretation of the provisions in Part 2 that are particularly relevant to Māori (eg enshrining the jurisprudence and implications of the *King Salmon* decision about ‘balancing’ of interests in Part 2), and how to give effect to the principles of the Treaty and engage with Māori in a resource management context. This could also include procedural principles to reinforce requirements for Māori to be involved in decision making where their rights and interests are affected.
6. The Wai 262 report recommended development of national policy statements “on Māori participation in resource management processes, including iwi resource management plans, and arrangements for kaitiaki control, partnership and influence on environmental decision-making”<sup>51</sup>.
7. The Productivity Commission recommended in their *Better Urban Planning* report providing clearer guidance through a National Policy Statement on Planning and the Treaty of Waitangi, including the active protection of Māori Treaty interests in the environment. This would include guidance on:
  - the involvement of mana whenua in spatial planning and the recognition of Iwi Management Plans
  - the recognition and protection of sites of significance to Māori
  - co-governance arrangements for such sites when appropriate
  - planning provision for papakāinga and other kaupapa Māori development
  - support for the development of iwi and hapū capability to participate in planning.
8. Idea 5 would require councils and/or MfE to provide regular performance monitoring reports on how obligations to Māori are being met and the performance of central and/or local government in respect of Treaty obligations. This could include: requiring regional councils to submit regular reports on their activities in respect of sections 33 and 36B; and, requiring councils to explain (eg through section 32 reports) how Māori consultation has informed policies and plans and how iwi management plans have been influenced the policies and plans. It is worth noting that some existing monitoring systems cover some of these aspects, for example the national monitoring system measures local authorities and the kaitiaki monitoring system measures kaitiaki throughout the country. A piece of work could be to compare the results of these two monitoring systems to find the key areas where councils and Māori diverge in their views.
9. Idea 6 would seek to clarify and enhance the role iwi management plans are intended to take in the RM system and increase the level of consideration that councils are required to give iwi management plans in the plan development or resource consent processes. These plans are a valuable representation of local knowledge and provide a te ao Māori view of the system and what is working and not-working. Requirements could include: defining iwi management plans in legislation and introducing content requirements; legislatively requiring iwi management plans to be recognised and provided for through plans, policies and resource consents; and, giving greater legal weight to iwi management plans in respect of water bodies where co-governance/co-management has not been arranged.

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<sup>51</sup> p. 119 Waitangi Tribunal. 2011

10. The Wai 262 report recommended enhanced iwi management plans (and that they be renamed iwi resource management plans). They recommended that these plans be developed by iwi in consultation with local authorities; that these plans identify iwi resource management priorities and opportunities for delegation of control to kaitiaki or establishment of partnerships; and that these plans be confirmed during a joint statutory negotiation process between iwi and local authority representatives, during which there may be compromise. They recommended that, once adopted, these plans have the same status under the RMA as any district or regional plan or policy statement as the case may be.
11. Idea 7 would seek to clarify the terms iwi authority and hapū in the RMA to address the issues associated with the Crown definition of tribal entity, eg the level at which recognition occurs (at hapū or iwi level).

### Governance/decision making ideas

12. Idea 8 would require regional councils to establish ways for Māori to be represented on planning committees (eg independent Māori statutory boards) within each region where mechanisms aren't already in place. These entities could advise on resource management issues and decisions, and represent at hearings panels and council committees, as with the Auckland Council's Independent Māori Statutory Board.
13. Idea 9 would establish a National Māori Advisory Board on Planning and the Treaty of Waitangi as proposed by the Productivity Commission in their *Better Urban Planning* report. They propose that the Board should be established under statute and:
  - “monitor how the planning system gives effect to the principles of the Treaty of Waitangi;
  - advise central government agencies (with stewardship responsibilities for the planning system) on policies, regulations, processes and methods that will best give effect to the principles of the Treaty of Waitangi; and
  - carry out a Treaty of Waitangi audit of the planning system every five years<sup>52</sup>.
14. Idea 10 would work to develop mechanisms that would enable more effective participation of Māori Land Court judges in Environment Court proceedings, where this would be appropriate. This would aim to ensure that judges with additional expertise are available to the Court in regards to matters relating to the Treaty and the role of Māori in the RM system.
15. Idea 11 would aim to ensure that independent hearing panels have appropriate expertise in tikanga Māori and would aim to increase Māori participation on these panels. This could be achieved, for example, either via idea 7 above or by MfE making the Making Good Decisions course more widely available to and free for Māori.
16. Idea 12 would aim to facilitate the greater use of the transfer of functions (s33) and joint management agreements (s36B) sections of the RMA, where appropriate. This could involve developing guidance, providing incentives for their use, and/or compelling councils to actively seek opportunities for their use.
17. To be effective, as the Wai 262 and Wai 2358 reports argue, this idea may also need to explore legislatively reducing the statutory barriers to the use of these provisions, eg supplementing the criteria under s33 to include the improved participation of Māori in the RM system. Further oversight and monitoring may also be required, eg requiring

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<sup>52</sup> New Zealand Productivity Commission, 2016, p. 454.

local authorities to regularly review their activities to see if they are making appropriate use of ss 33 and 36B, and be required to report annually to the Parliamentary Commissioner for the Environment explaining why they made delegations or established partnerships in some circumstances and not in others. The Wai 262 report also recommended that MfE be required to proactively explore options for delegations under s188, and to report annually to Parliament on this.

18. Idea 13 would aim to enhance and improve Māori and local government partnerships. This could occur by, for example, providing different models in guidance material (eg best practice guidelines on iwi engagement such as the Healthy Rivers/Wai Ora project run in the Waikato region).

### Capacity/support ideas

19. Idea 14 would develop mechanisms and provide opportunities for iwi/hapū with significant experience and success in their involvement in the RM system to share their knowledge with other groups with less experience. This would aim to build the capability and capacity of iwi/hapū to be involved further in the RM system. There are already a number of tools that have been developed<sup>53</sup>, however resources to increase awareness of these tools and to continue developing these tools among practitioners and kaitiaki are limited.
20. Idea 15 would involve developing guidance (or promoting existing guidance further) that summarises legal obligations relating to Māori and identifies opportunities for Māori engagement in the RM system. This would aim to provide information to those organisations who have legal obligations to Māori about those obligations, with the ultimate aim of better ensuring those obligations are met.
21. Idea 16 would involve developing funding mechanisms for certain key documents (eg Iwi Management Plans, Mana Whakahono ā Rohe agreements) in order to assist Māori funding the development of these key documents. This funding could come from a number of sources, for example central government grants, local government grants, and/or amending s36 of the RMA to enable local authorities to fix charges payable on consumptive environmental uses (with the some of this funding going to the development of these documents).
22. Idea 17 would involve central government funding advisors to sit within councils and advise and assist the council to build capability to engage with Māori. The aim of this would be to build the capability and capacity of councils to engage with Māori. This could be limited to smaller councils as larger councils may have the capacity to fund advisors themselves.
23. Idea 18 would seek to ensure that under-resourcing no longer prevents iwi, hapū or local government from participating effectively in RMA processes. Funding for this could come from a number of sources, eg Central Government, resource rental charges, etc.
24. Idea 19 would involve targeted capacity and capability building for all resource management practitioners who are involved with Māori engagement. This could include matters such as: commissioner training and accreditation, iwi practitioner training, te ao Māori knowledge-building for central and local government staff, and assisting kaitiaki to develop the technical

<sup>53</sup> See p. 25 Ngā Aho and Papa Pounamu, 2016. Taonga Tuku Iho. Expression of Māori values in 'urban' planning. Better Urban planning Wānanga.

## Appendix 8 – Letters from Ministers Mahuta and Davis

*The letters to Minister Parker from Ministers Mahuta and Davis on the comprehensive review of the RMA.*

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MP for Hauraki-Waikato

Minister for Māori Development

Minister of Local Government

Associate Minister for the Environment

30 JUL 2018

Hon David Parker  
Minister for the Environment  
Parliament Buildings

Tēnā koe David

Hau karioi ki Raukawa Moana, hau ai noa ki Te Whanganui ā Tara. Whātoro whakararo atu, whakaneinei atu, whakatetonga. Nei rā aku mihi; tēnei ka hāro atu, tēnā ka hāro mai.

Taiope noa te au o aituā, te aupounamu ki te Honoiwairua. Taiea noa ko tātau i muri nei, hāpai ake ai, i te pūkainga kaupapa i waihotia mai.

Thank you for the opportunity to consider the proposed staged approach to resource management and planning system reform from the perspective of my Māori Development and Local Government portfolios.

#### *First stage RMA reform*

I support your proposals for a Resource Management Amendment Bill to be introduced in 2018. They will address a number of my concerns around the 2017 RMA amendments that could adversely impact public participation and local decision-making. In particular, I support reducing the limitations that the 2017 RMA amendments placed on notification and appeals, and removing powers established in the 2017 RMA amendments that may undermine local decision-making. I also support improving the compliance and enforcement mechanisms in the RMA.

#### *Second stage RMA reform*

I support that all reform to the resource management system must uphold Part 2 of the RMA, provide for local decision-making and public participation opportunities, and achieve good environmental outcomes.

I consider that any future reform to the resource management and planning system should take the opportunity to provide better outcomes and opportunities for whānau, hapū, iwi, and Māori communities and businesses.

Please find below a list of issues and opportunities associated with Māori interests in the resource management system which you could consider as part of the second stage RMA reform.



### *General environmental issues*

1.	Ensuring that Māori have a more effective and influential role in the resource management and planning system that: <ul style="list-style-type: none"><li>a. Recognises and provides for their role as kaitiaki</li><li>b. Provides for partnership arrangements between Māori and other agencies in the management of natural and physical resources</li><li>c. Ensures active protection of resources and areas of cultural significance to Māori.</li></ul>
2.	Addressing planning and consenting barriers to building on Māori land: <ul style="list-style-type: none"><li>a. Many councils do not specifically provide for papakāinga in their district plans. This could be a requirement through a range of options</li><li>b. District plans have differing frameworks and rules for Māori which are difficult for whānau, hapū and iwi to interpret and comply with, and some are overly restrictive</li><li>c. Lack of expertise among some council officers to effectively engage with Māori when making decisions that affect how Māori land can be used.</li></ul>
3.	Assessing the role and status of iwi management plans in the context of Mana Whakahono ā Rohe and other partnership agreements in a post-settlement context.
4.	Clarifying the term iwi authority in the RMA and how the Crown supports local authorities to determine who are the appropriate iwi authorities within their region or district.
5.	More effective implementation of the clear directives in sections 6(e), 7(a) and 8 of the RMA to recognise and provide for Māori interests through policy statements, plans and decisions on resource consents.
6.	Ensuring the planning system is agile, effective and equitable in providing for Māori interests and responding to future states, including changing water rights, interests and allocations; changing biodiversity values; and the transition to a low carbon economy.

### *Whenua Māori environmental issues*

7.	Greater recognition of rangatiratanga in the planning system. Ensuring Māori can use their land for their own purposes. Need to balance any increase in environmental regulation with the need to provide rangatiratanga in accordance with Te Tiriti o Waitangi. There should be no increase in regulation and restrictions on Māori land but rather the existing barriers need to be removed.
8.	Ensuring the planning system complements the Whenua Māori work programme to enable Māori landowners to use their land how they wish.

### *Whānau Wellbeing and Māori Growth environmental issues*

9.	Reviewing development contribution applicability and potential exclusions for papakāinga developments and other developments on Māori land.
10.	Addressing overlaps in the land development system which frustrate and/or slow whānau or rōpū land developments: <ul style="list-style-type: none"><li>a. Better alignment and certainty when applying for resource consents (or other permits) from different authorities</li><li>b. Better alignment and certainty between the resource and building consent processes.</li></ul>

I look forward to discussing these issues and opportunities for the second stage RMA reform further with you. Ngā mihi nui ki a koe.

Nāku noa, nā



Hon Nanaia Mahuta  
Te Minita Whanaketanga Māori

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# Hon Kelvin Davis

MP for Te Tai Tokerau

Minister for Māori Crown Relations: Te Arawhiti

Minister of Corrections

Minister of Tourism

Associate Minister of Education



27 AUG 2019

Hon David Parker  
Minister for the Environment  
Parliament Buildings  
Private Bag 18041  
WELLINGTON 6160

**By email:** [d.parker@ministers.govt.nz](mailto:d.parker@ministers.govt.nz)

Tēnā koe David

This letter responds to the recent invitation from Cabinet to write to you with specific issues that fall within scope of the comprehensive review of the Resource Management Act 1991 (RMA) you recently announced.

I support your proposal to tackle the core problems in our resource management system. Reducing complexity and protecting the environment are important objectives and well aligned with Māori interests. On their own however these objectives are insufficient to address other fundamental problems for Māori under the RMA.

When the RMA was enacted it was widely seen as an opportunity for Māori to be more effectively involved as Treaty partners and kaitiaki in resource management. That promise has not been consistently delivered through the implementation of the RMA. Māori have consequently turned to Treaty settlements, which have produced positive but varying outcomes. The upcoming review is an opportunity to avoid the implementation problems of the RMA and to systematically build upon the progress made through Treaty settlements. The need for Māori to be better involved in decision-making under the RMA was a key theme when I consulted on the scope of my portfolio.

I am pleased that the review will uphold the core principles in part 2 of the RMA. They represent some of the Crown's most progressive provisions for meeting its Treaty responsibilities in legislation. However, the policy intent of these provisions has not always been realised. The current framing of the review raises doubts that this will be directly addressed. I recommend the final scope and terms of reference require the review to realise the intent of the core principles as they relate to Māori interests.

It will be crucial for the policy proposals developed by the review group to reflect the government's current efforts to strengthen Māori Crown relationships. The review group must therefore include members with appropriate expertise in te ao Māori, as you intend. However, the appointee(s) will not have a mandate to speak for all Māori. I recommend the final terms of reference be explicitly amended to require the review group's proposals to be consistent with the Crown's duties as a Treaty partner. I also recommend you establish a Māori reference committee to assist the review group.

I am heartened that relevant aspects of Treaty settlements will be carried over in any new regime. This work will be complex but critical for ensuring the durability of settlements. I look forward to my officials working closely with the review group on this matter.

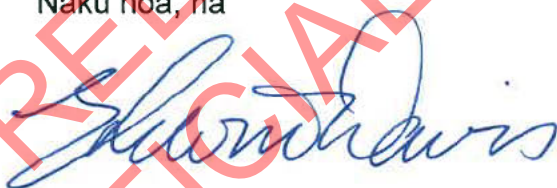
The review group's approach to engagement with Māori is not yet finalised. Given the depth and breadth of Māori interests in the RMA, the engagement approach needs to align with the guidelines and framework for Crown engagement with Māori and the principles for building partnerships with Māori agreed by Cabinet. This will require broader and more collaborative engagement with Māori than currently proposed. It will also be important for the engagement to be consistent with relevant relationship agreements established through Treaty settlements. I therefore recommend you engage with post settlement governance entities on the scope of the review.

The table below includes further information on specific issues relevant to my portfolio. Given the significance of these issues, I ask that you add me to the Ministerial governance group to oversee the review and instruct your officials to undertake a complete stocktake of issues for Māori under the RMA. At the appropriate time I also ask that you report to the Cabinet Māori Crown Relations: Te Arawhiti Committee on the issues for Māori arising from the review, as required by the Cabinet Office circular CO (19) 3 - *Better Co-ordination of Contemporary Treaty of Waitangi Issues*.

I appreciate the need for a focussed and efficient review of the RMA and I am confident that the issues raised in this letter can be addressed without delaying the review unduly.

Thank you for progressing this difficult but vitally important work. I look forward to the next phase.

Nāku noa, nā



**Hon Kelvin Davis**  
**Minister for Māori Crown Relations: Te Arawhiti**

## Comprehensive RMA review – engagement issues for Māori Crown relations

The process for the review should:

1. Be consistent with Cabinet's engagement framework/guidelines for engagement with Māori and principles for building closer partnerships which, in light of the significance of the kaupapa, would require collaboration at multiple levels of Māori society.
2. Be consistent with the Cabinet Office circular (19) 3 - *Better Co-ordination of Contemporary Treaty of Waitangi Issues*.
3. Support the whole of government strategy that Cabinet has decided to develop in response to the Waitangi Tribunal's WAI 262 report.
4. Take into account work already completed on issues for Māori in resource management (including relevant reports from Waitangi Tribunal, the Iwi Leaders Group, and Kāhui Wai Māori).

## Comprehensive RMA review – policy issues for Māori Crown Relations

The review group's proposals should:

1. Reinforce the significance of sections 6(e), 7(a) and 8 and provide mechanisms to ensure they are appropriately implemented.
2. Encourage partnership arrangements between Māori and agencies/local government especially in relation to planning processes.
3. Provide mechanisms for promoting the uptake of arrangements under sections 33 and 36B.
4. Include procedural principles to reinforce requirements for Māori to be involved in decision making where their rights and interests are affected.
5. Address barriers which prevent fair access for Māori to natural resources (including freshwater, coastal space etc).
6. Require robust monitoring and enforcement of local government performance in relation to Māori involvement in resource management.
7. Effectively accommodate Māori land tenure.
8. Clarify the role and status of iwi management plans.
9. Ensure the durability of Treaty settlements and the integrity of the Marine and Coastal Area (Takutai Moana) Act 2011 are actively supported.
10. Remove barriers to effective Māori participation on hearing committees.
11. Enable more effective participation of Māori Land Court judges in Environment Court proceedings where appropriate
12. Be well integrated with other national direction relating to Māori interests.
13. Promote capacity and capability building for Māori in resource management processes.

From: [Kim Matthews](#)  
 To: [Vicky Robertson](#)  
 Subject: Daily Wrap Up and tomorrow's meetings  
 Date: Monday, 25 November 2019 4:31:59 PM  
 Attachments: [image001.jpg](#)

**KIM'S LIST**

ITEM	ACTION	DETAILS	COMMENTARY
1.	FYI	Out of s9(2) [REDACTED]	
2.	FYI	Out of Scope [REDACTED]	
3.	FYI	Out of Scope [REDACTED]	Out of Scope [REDACTED]

**JUSTIN'S LIST**

1	OAIN	Out of Scope [REDACTED]	
2	FYI	Out of Scope [REDACTED]	
3	FYI	Out of Scope [REDACTED]	
4	FYI	Following up on Wai 262 – I believe that our role have been pretty passive – last I heard was from legal but this was simply an update on progress - still checking if there is anything that I am unaware of.	
5	FYI	Out of Scope [REDACTED]	

**MEETINGS**

**ONENOTE LINK**

1	Out	[REDACTED]	[REDACTED]
2	Out	[REDACTED]	[REDACTED]
3	Out	[REDACTED]	[REDACTED]
4	O	[REDACTED]	[REDACTED]
5	Out	[REDACTED]	[REDACTED]
6	O	[REDACTED]	[REDACTED]
7	O	[REDACTED]	[REDACTED]
8	Out	[REDACTED]	[REDACTED]
	O	[REDACTED]	[REDACTED]

Regards

Kim Matthews – Executive Assistant to Vicky Robertson, Secretary for the Environment  
 Ministry for the Environment – Manatu Mo Te Taiao  
 Mobile: 022 517 3266 Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
 Environment House, 23 Kate Sheppard Place, Thorndon, PO Box 10362, Wellington 6143



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**From:** [Carl Chenery](#)  
**To:** [Lisa Attrill](#)  
**Cc:** [Andrew Wharton](#); [Alison Newbald](#); [Joanna Morgan](#); [Ben Dickson](#); [Kelly Palmer](#)  
**Subject:** FW: RM Review Panel meeting on 26-27 November in Wellington - tranche 2  
**Date:** Wednesday, 27 November 2019 2:40:55 PM  
**Attachments:** [image001.jpg](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Kia ora Lisa,

Happy to provide background on what was previously done, or connections to current work. There has not been a briefing as such from the Ministry to Minister Parker on Wai 262. There are cabinet papers on it and the Cross-Crown approach, Minister Parker in his role as Attorney General is involved on the Ministerial oversight group and as Minister for the Environment involved in Kete 2. There have been updates to the Minister in the weekly updates re: the TPK led Cabinet papers, and also memos to Anne Haira Dep-Sec for cross-crown group attendance.

On Friday, Simon said he released the all Waitangi Tribunal RMA findings document (including Wai 262, 2358 and 23 others) under OIA, and said he wanted to give it to the Panel with the Treaty paper (following changes from Ministers comments). Do you want something separate to that?

Carl

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**From:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Sent:** Wednesday, 27 November 2019 9:43 AM  
**To:** Carl Chenery <[Carl.Chenery@mfe.govt.nz](mailto:Carl.Chenery@mfe.govt.nz)>  
**Cc:** Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>  
**Subject:** FW: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

H Carl

I can't find that we have provided anything for Wai 262 and I hear that you are the knower of all on this.

I have looked in the Briefings Ministerials spreadsheet but it starts in late 2017 and doesn't seem to have anything.

Do you have anything that we can provide the Panel with please?

Lisa

---

**From:** Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>  
**Sent:** Wednesday, 27 November 2019 6:45 AM  
**To:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Subject:** Re: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Ta and yes please to looking up Wai262. If we haven't provided them with something then can you please do a Te Puna search of recent briefings on it and I'll get one of the managers to talk to the author

Sent from my Samsung Galaxy smartphone.



----- Original message -----

From: Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>

Date: 26/11/2019 20:02 (GMT+12:00)

To: Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>

Subject: FW: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Hi Simon

We have provided the summaries of Wai 2358 findings.

We have provided the below:

- 2019-B-05950 Summary of the Wai 2358 stage two report excluding the appendix
- Chair's notes on WAI 2358 - Waitangi Tribunal Report

I don't think that we have provided anything on Wai 262 but I can double check in the morning in case something wasn't entered before we had the document register.

Is that what you called about?

Lisa

---

**From:** Ross Scrivener <[Ross.Scrivener@mfe.govt.nz](mailto:Ross.Scrivener@mfe.govt.nz)>

**Sent:** Tuesday, 26 November 2019 5:31 PM

**To:** Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>; Pat Thorn <[Pat.Thorn@mfe.govt.nz](mailto:Pat.Thorn@mfe.govt.nz)>; Lesley Baddon <[Lesley.Baddon@mfe.govt.nz](mailto:Lesley.Baddon@mfe.govt.nz)>; Joe Beaglehole <[Joe.Beaglehole@mfe.govt.nz](mailto:Joe.Beaglehole@mfe.govt.nz)>; Linley Wilkinson <[Linley.Wilkinson@mfe.govt.nz](mailto:Linley.Wilkinson@mfe.govt.nz)>; Alan Johnson <[Alan.Johnson@mfe.govt.nz](mailto:Alan.Johnson@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>; Kate Sedgley <[Kate.Sedgley@mfe.govt.nz](mailto:Kate.Sedgley@mfe.govt.nz)>; Amanda Moran <[amanda.moran@mfe.govt.nz](mailto:amanda.moran@mfe.govt.nz)>; Prue Fullerton-Smith <[Prue.Fullerton-Smith@mfe.govt.nz](mailto:Prue.Fullerton-Smith@mfe.govt.nz)>; Phill Reid <[Phill.Reid@mfe.govt.nz](mailto:Phill.Reid@mfe.govt.nz)>; Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Nicholas Smith <[Nicholas.Smith@mfe.govt.nz](mailto:Nicholas.Smith@mfe.govt.nz)>; Lisa Gooch <[Lisa.Gooch@mfe.govt.nz](mailto:Lisa.Gooch@mfe.govt.nz)>; Peggy Cunningham-Hales <[Peggy.Cunningham-Hales@mfe.govt.nz](mailto:Peggy.Cunningham-Hales@mfe.govt.nz)>; Marguerite Quin <[Marguerite.Quin@mfe.govt.nz](mailto:Marguerite.Quin@mfe.govt.nz)>; Steven Smith <[Steven.Smith@mfe.govt.nz](mailto:Steven.Smith@mfe.govt.nz)>; Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>; William Collin <[William.Collin@mfe.govt.nz](mailto:William.Collin@mfe.govt.nz)>

**Subject:** RE: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Hi all,

FYI here are the actions agreed with the Panel from their meeting today:

Ref	Actions	Owner	By when
1.	Out of Scope [Redacted]	Pat	
2.	Out of Scope [Redacted]	Amanda	27 November
3.	Out of Scope [Redacted]	Joe, Phill, Alan, Lisa G	29 November
4.	Out of Scope [Redacted]	Steve	29 November
5.	Out of Scope [Redacted]	Nicholas	29 November



■	Out of Scope	■
■	■	■

Hard copy meeting packs will be available at the meeting.

The following documents have been uploaded to the portal last week (in addition to our email of Friday):

List of Additional Documents Upload to the Portal Week of 18 November 2019		
Document Type	Name of Document	Comments
Out of Scope	■	■
■	■	■
■	■	■
■	■	■
■	■	■
■	■	■

Nga mihi

Lisa

**Lisa Attrill**  
**Administrator – RM Strategy (Contractor)**  
 Ministry for the Environment – Manatu Mo Te Taiao  
 Mobile: 021 426 453 Email: [Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
 23 Kate Sheppard Place, Thorndon, Wellington 6143

cid:image003.jpg@01D26A65.99010DF0



**From:** [Carl Chenery](#)  
**To:** [Alison Newbald](#)  
**Cc:** [Joanna Morgan](#); [Ben Dickson](#)  
**Subject:** RE: RM Review Panel meeting on 26-27 November in Wellington - tranche 2  
**Date:** Friday, 29 November 2019 10:35:53 AM  
**Attachments:** [image001.png](#)  
[image002.jpg](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Kia ora Alison,

1. The Wai 262 cabinet paper has been proactively released. All on this page here: **Wai 262 – Te Pae Tawhiti** - The Government is developing a whole-of-government approach to address the issues raised by the vast Wai 262 claim and the Waitangi Tribunal report, *Ko Aotearoa Tenei*. <https://www.tpk.govt.nz/en/a-matou-kaupapa/wai-262-te-pae-tawhiti>  
The [Cabinet paper with appendices](#) and [the A3](#).  
The Comprehensive Review of the Resource Management System is identified in Kete 2.  
Minister Parker is in the oversight group for Kete 2 as Minister for the Environment, and also as Attorney General of the Ministerial oversight group.
2. Our advice is that you reach out to TPK to *advise them* that you want to give this to the Panel. This is to ensure any proper context is given, and there may be updates to that paper in April.
3. We could supply the Ministry feedback on the Cabinet paper. Perrine in our team is back on Tuesday and could do so then.

Nga mihi,

Carl

---

**From:** Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>  
**Sent:** Thursday, 28 November 2019 3:27 PM  
**To:** Carl Chenery <[Carl.Chenery@mfe.govt.nz](mailto:Carl.Chenery@mfe.govt.nz)>  
**Subject:** RE: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Hi Carl,

Could we get a copy of the cabinet paper on Wai 262 (has it been proactively released?) to provide to the Panel?

I have got the Summary documents that was released in the OIA – but looking for something on Wai 262 (although in my ignorance I am not really sure what).

Cheers  
Alison

**Alison Newbald** Manager, Resource Management Review  
Ministry for the Environment – Manatu Mo Te Taiao  
Mobile: 022 0110734 Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)  
Environment House, 23 Kate Sheppard Place, PO Box 10362, Wellington 6143

<http://intranet/sites/all/files/Lockup-8pt.png>



---

**From:** Carl Chenery <[Carl.Chenery@mfe.govt.nz](mailto:Carl.Chenery@mfe.govt.nz)>  
**Sent:** Wednesday, 27 November 2019 2:41 PM  
**To:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Cc:** Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>;  
Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Ben Dickson <[Ben.Dickson@mfe.govt.nz](mailto:Ben.Dickson@mfe.govt.nz)>; Kelly Palmer  
<[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>  
**Subject:** FW: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Kia ora Lisa,

Happy to provide background on what was previously done, or connections to current work. There has not been a briefing as such from the Ministry to Minister Parker on Wai 262. There are cabinet papers on it and the Cross-Crown approach, Minister Parker in his role as Attorney General is involved on the Ministerial oversight group and as Minister for the Environment involved in Kete 2. There have been updates to the Minister in the weekly updates re: the TPK led Cabinet papers, and also memos to Anne Haira Dep-Sec for cross-crown group attendance.

On Friday, Simon said he released the all Waitangi Tribunal RMA findings document (including Wai 262, 2358 and 23 others) under OIA, and said he wanted to give it to the Panel with the Treaty paper (following changes from Ministers comments). Do you want something separate to that?

Carl

---

**From:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Sent:** Wednesday, 27 November 2019 9:43 AM  
**To:** Carl Chenery <[Carl.Chenery@mfe.govt.nz](mailto:Carl.Chenery@mfe.govt.nz)>  
**Cc:** Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>  
**Subject:** FW: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

H Carl

I can't find that we have provided anything for Wai 262 and I hear that you are the knower of all on this.

I have looked in the Briefings Ministerials spreadsheet but it starts in late 2017 and doesn't seem to have anything.

Do you have anything that we can provide the Panel with please?

Lisa

---

**From:** Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>  
**Sent:** Wednesday, 27 November 2019 6:45 AM  
**To:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Subject:** Re: RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Ta and yes please to looking up Wai262. If we haven't provided them with something then can you please do a Te Puna search of recent briefings on it and I'll get one of the managers to talk to the author

Sent from my Samsung Galaxy smartphone.

----- Original message -----

**From:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>  
**Date:** 26/11/2019 20:02 (GMT+12:00)  
**To:** Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>  
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**Sent:** Tuesday, 26 November 2019 5:31 PM  
**To:** Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>; Pat Thorn <[Pat.Thorn@mfe.govt.nz](mailto:Pat.Thorn@mfe.govt.nz)>; Lesley Baddon <[Lesley.Baddon@mfe.govt.nz](mailto:Lesley.Baddon@mfe.govt.nz)>; Joe Beaglehole <[Joe.Beaglehole@mfe.govt.nz](mailto:Joe.Beaglehole@mfe.govt.nz)>; Linley Wilkinson <[Linley.Wilkinson@mfe.govt.nz](mailto:Linley.Wilkinson@mfe.govt.nz)>; Alan Johnson <[Alan.Johnson@mfe.govt.nz](mailto:Alan.Johnson@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>; Kate Sedgley <[Kate.Sedgley@mfe.govt.nz](mailto:Kate.Sedgley@mfe.govt.nz)>; Amanda Moran <[amanda.moran@mfe.govt.nz](mailto:amanda.moran@mfe.govt.nz)>; Prue Fullerton-Smith <[Prue.Fullerton-Smith@mfe.govt.nz](mailto:Prue.Fullerton-Smith@mfe.govt.nz)>; Phill Reid <[Phill.Reid@mfe.govt.nz](mailto:Phill.Reid@mfe.govt.nz)>; Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Nicholas Smith <[Nicholas.Smith@mfe.govt.nz](mailto:Nicholas.Smith@mfe.govt.nz)>; Lisa Gooch <[Lisa.Gooch@mfe.govt.nz](mailto:Lisa.Gooch@mfe.govt.nz)>; Peggy Cunningham-Hales <[Peggy.Cunningham-Hales@mfe.govt.nz](mailto:Peggy.Cunningham-Hales@mfe.govt.nz)>; Marguerite Quin <[Marguerite.Quin@mfe.govt.nz](mailto:Marguerite.Quin@mfe.govt.nz)>; Steven Smith <[Steven.Smith@mfe.govt.nz](mailto:Steven.Smith@mfe.govt.nz)>; Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>; William Collin <[William.Collin@mfe.govt.nz](mailto:William.Collin@mfe.govt.nz)>  
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4.	Out of Scope [Redacted]	Steve	29 November
5.	Out of Scope [Redacted]	Nicholas	29 November
6.	Out of Scope [Redacted]	Alison/Will	27 November
7.	Out of Scope [Redacted]	Simon	Pre-xmas
8.	Provide summary of Wai 262 and Wai 2358 findings	Simon	Check if already provided
9.	Out of Scope [Redacted]	Joe	4 December

Ross

**From:** Lisa Attrill <[Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz)>

**Sent:** Monday, 25 November 2019 5:10 PM

**To:** [tonranderson@xtra.co.nz](mailto:tonranderson@xtra.co.nz); [rachel.brooking@al.nz](mailto:rachel.brooking@al.nz); [raewyn@eds.org.nz](mailto:raewyn@eds.org.nz); [kevin.prime@outlook.com](mailto:kevin.prime@outlook.com); [dean.kimpton@tuhuraconsulting.co.nz](mailto:dean.kimpton@tuhuraconsulting.co.nz); [amelia.linzey@beca.com](mailto:amelia.linzey@beca.com)

**Cc:** [shinaeterekia@outlook.com](mailto:shinaeterekia@outlook.com); Simon King <[Simon.King@mfe.govt.nz](mailto:Simon.King@mfe.govt.nz)>; Pat Thorn <[Pat.Thorn@mfe.govt.nz](mailto:Pat.Thorn@mfe.govt.nz)>; Lesley Baddon <[Lesley.Baddon@mfe.govt.nz](mailto:Lesley.Baddon@mfe.govt.nz)>; Joe Beaglehole <[Joe.Beaglehole@mfe.govt.nz](mailto:Joe.Beaglehole@mfe.govt.nz)>; Linley Wilkinson <[Linley.Wilkinson@mfe.govt.nz](mailto:Linley.Wilkinson@mfe.govt.nz)>; Alan Johnson <[Alan.Johnson@mfe.govt.nz](mailto:Alan.Johnson@mfe.govt.nz)>; Alison Newbald <[Alison.Newbald@mfe.govt.nz](mailto:Alison.Newbald@mfe.govt.nz)>; Kate Sedgley <[Kate.Sedgley@mfe.govt.nz](mailto:Kate.Sedgley@mfe.govt.nz)>; Amanda Moran <[amanda.moran@mfe.govt.nz](mailto:amanda.moran@mfe.govt.nz)>; Prue Fullerton-Smith <[Prue.Fullerton-Smith@mfe.govt.nz](mailto:Prue.Fullerton-Smith@mfe.govt.nz)>; Phill Reid <[Phill.Reid@mfe.govt.nz](mailto:Phill.Reid@mfe.govt.nz)>; Andrew Wharton <[Andrew.Wharton@mfe.govt.nz](mailto:Andrew.Wharton@mfe.govt.nz)>; Nicholas Smith <[Nicholas.Smith@mfe.govt.nz](mailto:Nicholas.Smith@mfe.govt.nz)>; Stuart Brodie <[Stuart.Brodie@mfe.govt.nz](mailto:Stuart.Brodie@mfe.govt.nz)>; Becky Menzinger <[Becky.Menzinger@mfe.govt.nz](mailto:Becky.Menzinger@mfe.govt.nz)>; Georgia Bishop <[Georgia.Bishop@mfe.govt.nz](mailto:Georgia.Bishop@mfe.govt.nz)>; Lisa Gooch <[Lisa.Gooch@mfe.govt.nz](mailto:Lisa.Gooch@mfe.govt.nz)>; Ross Scrivener <[Ross.Scrivener@mfe.govt.nz](mailto:Ross.Scrivener@mfe.govt.nz)>; Peggy Cunningham-Hales <[Peggy.Cunningham-Hales@mfe.govt.nz](mailto:Peggy.Cunningham-Hales@mfe.govt.nz)>; Marguerite Quin <[Marguerite.Quin@mfe.govt.nz](mailto:Marguerite.Quin@mfe.govt.nz)>; Steven Smith <[Steven.Smith@mfe.govt.nz](mailto:Steven.Smith@mfe.govt.nz)>

**Subject:** RM Review Panel meeting on 26-27 November in Wellington - tranche 2

Kia ora koutou

Please find attached the second tranche of documents for the meeting on 26-27 November in Wellington. This meeting is on level 7, so please remember to bring your security passes.

Please note that documents 135 and 156 replace documents sent on Friday.

**Supporting documents**

Doc number	Documents	Action
Out of Scope	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
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[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

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[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

Nga mihi

Lisa

**Lisa Attrill**

**Administrator – RM Strategy (Contractor)**

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 021 426 453 Email: [Lisa.Attrill@mfe.govt.nz](mailto:Lisa.Attrill@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143





RELEASED UNDER THE  
OFFICIAL INFORMATION ACT  
1982

**From:** [Joanna Morgan](#)  
**To:** [Natalie Pike](#)  
**Subject:** RE: wai 262  
**Date:** Thursday, 19 December 2019 1:24:21 PM  
**Attachments:** [2019\\_12\\_10\\_CP\\_Draft\\_Cabinet\\_Paper\\_\(Min\\_consult\\_REVISED\\_draft\\_\)\\_Version\\_2\\_CLEAN\\_-\\_for\\_Kete\\_4pm.docx](#)

---

Kia ora Natalie,

As Matthew said, we've been participating in the TPK led whole-of-government response. I'm not aware of any teams actively considering the report and its recommendations, though there is some work being done for the RM review.

The attached is going to Ministers for consultation in early February, with the aim of reaching Cabinet before the end of February. The paper seeks approval to confirm the structure of the work programme. Another paper is planned for the future, providing advice on a plan of action (rec 22 of the attached).

I have talked to Anne about setting up a reference group at MfE, with representatives from all the policy teams and co-ordination from the Treaty Partnerships team. A draft terms of reference is currently sitting with Kelly and Lorena.

I've assumed you're already aware of the whole-of-government work that TPK is co-ordinating, apologies if this is not the case. Let me know if you'd like to know anything else.

Nga mihi, na  
Joanna

---

**From:** Natalie Pike <[Natalie.Pike@mfe.govt.nz](mailto:Natalie.Pike@mfe.govt.nz)>  
**Sent:** Thursday, 19 December 2019 9:33 AM  
**To:** Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>  
**Cc:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Subject:** RE: wai 262

Wonderful, thanks so much.

---

**From:** Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>  
**Sent:** Thursday, 19 December 2019 9:32 AM  
**To:** Natalie Pike <[Natalie.Pike@mfe.govt.nz](mailto:Natalie.Pike@mfe.govt.nz)>  
**Cc:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Subject:** RE: wai 262

Kia ora Natalie,

Jo Morgan's probably better placed to answer this than me. My general understanding is that we've been involved in the TPK-led work programme to develop advice on the Government's general process for responding to the Wai 262 report, which involves setting up dedicated kete for specific kaupapa led by Ministerial oversight groups.

I'm not really familiar with what's being done in other MfE teams to respond to specific Wai 262 recommendations. Insofar as freshwater is concerned, the Wai 262 environmental recommendations are built upon and expanded in the Wai 2358 stage two report, so we've been more focused on that – albeit in a somewhat piecemeal fashion at present.

Jo, are you able to provide more information to Natalie?

Na  
Matthew

---

**From:** Natalie Pike <[Natalie.Pike@mfe.govt.nz](mailto:Natalie.Pike@mfe.govt.nz)>  
**Sent:** Thursday, 19 December 2019 9:26 AM  
**To:** Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>  
**Subject:** wai 262

Hi Matthew,

This may come out of the blue a bit – but do you know where the Ministry is currently in regards to Wai 262?

**Natalie Pike - Principal Legal Advisor - Legal & Procurement**

OIA s9(2)(a)

**The content of this email may be legally privileged and confidential – please check with the author before forwarding any of this content outside the Ministry for the Environment.**

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 022 076 3818 Email: [natalie.pike@mfe.govt.nz](mailto:natalie.pike@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

## Wai 262 – Te Pae Tawhiti – Kaupapa Template

<b>Kaupapa:</b>	Proposed National Policy Statement for Indigenous Biodiversity (NPSIB)
<b>Responsible Minister(s):</b>	Nanaia Mahuta – Associate Minister for the Environment
<b>Lead Agency(s)</b>	Ministry for the Environment, Department of Conservation
<b>Wai 262 – Te Pae Tawhiti Kete:</b>	Tuarua
<b>Relevant Chapter(s) of Ko Aotearoa Tēnei Report:</b>	3 – relationship with the environment
<b>Brief description:</b>	<p>The proposed NPSIB is currently out for consultation. This proposed NPSIB places the whakataukī Hutia te Rito at its heart, acknowledging the crucial relationship between people and the natural environment. The objectives set out in the proposed NPSIB relate to Te Tiriti, recognising tangata whenua as kaitiaki, and providing for Hutia te Rito in the management of indigenous biodiversity by:</p> <ul style="list-style-type: none"> <li>• Giving them support</li> <li>• Building meaningful relationships between Māori and those exercising the functions and powers of the RMA</li> <li>• Incorporating mātauranga Māori into indigenous biodiversity decision-making and management and;</li> <li>• Identifying and protecting taonga species.</li> </ul> <p>A Biodiversity Collaborative Group – comprised of members of industry groups, farming representatives, environmental NGOs and a member of the iwi chair's forum through Pou Taiao Iwi Leaders Group - completed a draft NPSIB and recommended complementary measures in October 2018. This draft NPSIB has been further developed by officials from the Ministry for the Environment and the Department of Conservation to refine it into the proposed NPSIB currently out for consultation. Its aim is to maintain and restore indigenous biodiversity under the Resource Management Act 1991, through an integrated and holistic approach.</p>
<b>Key Milestones (including Ministerial or Cabinet decisions)</b>	
Expected milestone	When you expect to reach it
Consultation closes	14 March 2020
Summary of submissions for Ministers	April/May 2020
Final Ministerial decisions on policy	June 2020
Cabinet decisions on policy	Mid 2020
NPSIB Gazettal	Mid 2020

## Wai 262 – Te Pae Tawhiti – Kaupapa Template

<b>Wai 262 issues<sup>1</sup> arising in this kaupapa</b>	
Wai 262 issue/recommendation	Proposed approach
<b>Kaitiaki relationships with the environment</b>	The proposed NPSIB aims to increase Māori involvement in the resource management system of Aotearoa. Policies such as Hutia te Rito reflect Te Tiriti o Waitangi, and is consistent with wider government policy (Vision Mātauranga policy, Te Mana o te Wai in the NPSFM). Hutia te Rito will acknowledge and incorporate te ao Māori, mātauranga and tikanga Māori, placing it at the forefront of decision making for biodiversity management. The proposed NPSIB also aims to balance future development with the protection and maintenance of indigenous biodiversity. Restoration and enhancement will be promoted through regional biodiversity strategies which are collaboratively developed by councils, tangata whenua, landowners and communities. Collectively, the intent is that the proposed NPSIB will ideally lead to an increase in indigenous biodiversity which will further enable kaitiakitanga.
<b>Human impacts on the environment</b>	The purpose of the proposed NPSIB is to maintain indigenous biodiversity. This will include identifying, protecting, restoring and enhancing the indigenous biodiversity of New Zealand. Ideally, indigenous biodiversity will increase, bringing back the extent of lost habitat/fauna.
<b>Resource Management Act 1991</b>	The proposed NPSIB aims to recognise and protect taonga species and ecosystems as well as requiring councils to work with tangata whenua to use mātauranga Māori and tikanga Māori in environmental decision making under the Resource Management Act 1991. Policy 3.14 intends to provide for this by protecting taonga species and ecosystems from impacts of development through council policies and plans. Tangata whenua can identify, describe values and map taonga species in collaboration with councils to the degree they are comfortable with. Councils must talk through with Māori the associated risks/benefits of identifying, or not identifying, taonga species.  Additionally effective implementation of Hutia te Rito would mean that local authorities will initiate engagement early to ensure that Māori perspectives and values are considered when pen

<sup>1</sup> Wai 262 issues for these purposes means issues that are directly in the scope of the Wai 262 claim, *Ko Aotearoa Tenei* and/or are affected by the Treaty jurisprudence in the report, and/or linked through subsequent jurisprudence to the report. For the avoidance of doubt, “within the scope of *Ko Aotearoa Tēnei*” means within scope of the matters considered rather than solely the recommendations.

## Wai 262 – Te Pae Tawhiti – Kaupapa Template

	<p>is first put to paper to draft plans and policies, not as an afterthought.</p> <p>See also above in proposed approach to 3.1</p>	
<b>A commitment to capacity building</b>	<p>Alongside the proposed NPSIB, supporting measures, to assist in the implementation of the NPSIB, will be identified. Examples include guidance, technical expertise and funding. Feedback on what kinds of supporting measures are most useful is being gathered through hui and public consultation currently underway.</p>	
<b>Greater use of National Policy Statements</b>	<p>The proposed NPSIB is a new National Policy Statement being led by the Ministry for the Environment in collaboration with the Department of Conservation. It aims to increase Māori participation in resource management processes in relation to terrestrial biodiversity. If Gazetted, it should advance this interest.</p>	
<b>Engagement with Māori</b>		
<u>Who</u> are you engaging with?	<u>How</u> will you engage <sup>2</sup> ?	<u>When</u> will engagement occur?
Iwi, hapū and whānau	15 MfE led regional hui	February 2020
<b>Links with other work</b>		
<b>Kaupapa</b>	<b>Nature of Link</b>	
New Zealand Biodiversity Strategy (NZBS)	<p>Provides the overarching vision and goals for indigenous biodiversity in New Zealand. The NPSIB will be one of the regulatory tools operating under this to ensure the vision and goals are met.</p>	
Action for Healthy Waterways – National Policy Statement for Freshwater Management (NPS-FM) & new National Environmental Standard	<p>This package contains policies which are complementary to the proposed NPSIB – especially regarding wetlands. No further loss of natural wetlands would be allowed, alongside tighter controls on certain activities that damage inland and coastal wetlands. The proposed NPSIB would promote the restoration of all wetlands in terms of indigenous vegetation.</p> <p>The core decision making concept Te Mana o te Wai in the NPSFM is consistent with the decision making concept Hutia te Rito in the proposed NPSIB. Both recognise the health of the environment is integral to our wellbeing.</p>	
New Zealand Coastal Policy Statement (NZCPS)	<p>The NZCPS concerns managing the 'coastal environment'. The coastal environment includes a terrestrial component that overlaps with the proposed NPSIB. The NZCPS requires protection of indigenous biodiversity and includes a list of types of indigenous biodiversity to be protected.</p>	

<sup>2</sup> Eg through a series of regional hui, through a written submission process at iwi level, with directly affected hapu and whānau in person, etc,

	<p>The proposed NPSIB and the NZCPS are largely aligned and complementary and it is anticipated that councils will apply both policies in the terrestrial component of the coastal environment.</p>
<p><b>Other Relevant Information:</b> (eg relevant issues raised during engagement on this kaupapa before now)</p> <p>Officials from DOC and MFE held 23 hui with tangata whenua between November 2018 and April of 2019. These covered the development of the New Zealand Biodiversity Strategy, the BCG’s draft NPSIB and other conservation and biodiversity topics. What we heard on the proposed NPSIB is as follows:</p> <ul style="list-style-type: none"> <li>• People and environment inextricably linked. It is important to tell this story and to ensure biodiversity is integrated across domains and into wider government policy.</li> <li>• Local perspectives and empowerment are important. Any NPSIB needs to allow for local priorities and knowledge to be applied. This includes exploring the use of mātauranga Māori in biodiversity monitoring and reporting, noting the sensitivities around gathering and using this knowledge.</li> <li>• While the approach to working with councils is supported, most hapū and iwi lack capacity to be fully involved in resource management decision-making. The challenge of resourcing has been a consistent message through early engagement.</li> <li>• Some whanāu, hapū and iwi raised concerns that criteria for Significant Natural Areas would inequitably disadvantage Māori land owners who may want to develop and gain economic benefit from these lands. The approach needs to allow for some land-use change but have incentives to support biodiversity protection.</li> <li>• As Treaty partners, iwi need to be actively included at every level of the decision-making process.</li> </ul>	

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## Wai 262 – Te Pae Tawhiti – Kaupapa Template

### Worked Example: Te Ture mō te Reo Māori 2016 Review

<b>Kaupapa:</b>	Te Ture mō te Reo Māori 2016 Review
<b>Responsible Minister(s):</b>	Minister for Māori Development
<b>Lead Agency(s)</b>	Te Puni Kōkiri
<b>Wai 262 – Te Pae Tawhiti Kete:</b>	Tuatahi
<b>Relevant Chapter(s) of Ko Aotearoa Tēnei Report:</b>	5
<b>Brief description:</b>	<p>The key purpose of the review is to ensure that the legislation is achieving the original intent of the legislation, specifically:</p> <ol style="list-style-type: none"> <li>1. Whether the mechanisms established under are operating as intended</li> <li>2. resolve any unintended consequences, and</li> <li>3. identify any further opportunities for strengthening the impact of the legislation</li> </ol> <p>The approach to the review will be driven by the desire to maintain an integral role that te reo Māori has in promoting cultural, social, economic wellbeing for Māori and all New Zealanders. The review is required by legislation (three years after enactment).</p>
<b>Key Milestones (including Ministerial or Cabinet decisions)</b>	
Expected milestone	When you expect to reach it
Cabinet decision on TORs	28 February 2020
Engagement with stakeholders	30 April 2020
Analysis of data	30 June 2020
Policy position paper	30 July 2020
Engagement on policy position	31 August 2020
Cabinet decisions on proposed legislation changes	30 November 2020
<b>Wai 262 issues arising in this kaupapa</b>	
Wai 262 issue	Proposed approach
Failure to protect te reo me ngā tikanga of the claimant iwi	<p>The legislation established a new approach to language revitalisation by enacting a partnership model. It established Te Mātāwai, an independent statutory entity, to provide leadership on behalf of iwi and Māori in their role as kaitiaki of the Māori language. It also provided for Te Mātāwai and the Crown to develop Māori language strategies to support the revitalisation of the Māori language.</p> <p>The Act also adjusted the functions of Te Taura Whiri, Te Reo Whakapuaki Irirangi, and the Māori Television Service and disestablishes Te Pūtahi Paoho.</p>



**Wai 262 – Te Pae Tawhiti – Kaupapa Template**

	<p>Recommendations from the KAT regarding strengthening the powers of Te Taura Whiri in relation to language planning, te reo curriculum, dispute resolution and monitoring were not included.</p> <p>The review will identify any further opportunities for strengthening the impact of the legislation which will extend to the recommendations made in the KAT report.</p>	
<b>Engagement with Māori</b>		
<u>Who</u> are you engaging with?	<u>What form</u> will engagement take?	<u>When</u> will engagement occur?
First stage of engagement to include Maihi Karauna (MCH, DIA, MoE, Te Māngai Pāho, Te Taura Whiri entities and Te Mātāwai)	Mix of kanohi kitea and written feedback	March – April 2020
<b>Links with other work</b>		
<b>Kaupapa</b>	<b>Nature of Link</b>	
Māori Media Sector Shift	The sector shift is current progressing a preferred option on how the sector can be organised to best support outcomes for te reo Māori.	
Tau Mai Te Reo Review	The Tau Mai Reo Review is the Ministry of Education's contribution to the Maihi Karauna Implementation Plan 2019/20.	
<b>Other Relevant Information:</b> (eg relevant issues raised during engagement on this kaupapa before now)		

**From:** [Glenn Wigley](#)  
**To:** [Amanda Moran](#); [Vicky Robertson](#)  
**Subject:** Download from Min Sage meeting with EPA Board (and senior EPA staff)  
**Date:** Wednesday, 13 February 2019 4:59:50 PM

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Hi all

I thought I would send some notes from the Min Sage meeting with the EPA Board this afternoon, as I know that you are meeting with Allan and Julie on Friday.

Questions.

- Board member asked about how is Government responding to Wai 262 work, and how is this integrated into EPAs work. Are we doing enough? Minister indicated that a general theme of that work was incorporation of Te Ao Maori into work programmes, and it was felt by the EPA and the Minister that this was being done well within EPA. There was reference to a specific rec from Wai 262 that 2 Board members are appointed by NKTT (Maori advisory group). Minister asked whether changes would be needed to EPA Act to do this – was indicated it probably would need changes. We need to look into this – will get team onto it.
- Minister downplayed likelihood of any legislative change on matter above in this term of Government, due to heavy legislative programme.

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**From:** [Joanna Morgan](#)  
**To:** [Mailbox - Wai 262 - Te Pae Tawhiti](#)  
**Subject:** RE: Wai 262 - Te Pae Tawhiti - Agenda for Kete Hui Week Commencing 10 February  
**Date:** Thursday, 13 February 2020 11:50:34 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[NZ ETS workstream updates.docx](#)

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Kia ora ano e Roland,

Thank-you for getting back to me. I was disappointed not to attend the meeting. Benedict has encouraged us to have representation at the hui, and has offered to fill me in on discussions.

See attached the update from the NZ ETS team.

The ZCB was passed in November last year. It should be removed from the list of work programmes accordingly.

Mauri ora,  
Joanna

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**From:** Mailbox - Wai 262 - Te Pae Tawhiti <[Wai262@tpk.govt.nz](mailto:Wai262@tpk.govt.nz)>  
**Sent:** Tuesday, 11 February 2020 3:47 PM  
**To:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Subject:** RE: Wai 262 - Te Pae Tawhiti - Agenda for Kete Hui Week Commencing 10 February

Thanks Joanna

We look forward to an update from the Climate Change team and aim to have notes out next Tuesday.

Nga manaakitanga  
Roland

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**Roland Sapsford**  
Principal Advisor  
National Office

*Waea Pukoro* M : 021651105  
*Waea Whakaahua* F : 0800 875 329 | *Paetukutuku* W : [www.tpk.govt.nz](http://www.tpk.govt.nz)

Te Puni Kokiri, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand

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**From:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Sent:** Tuesday, 11 February 2020 10:11 am  
**To:** Mailbox - Wai 262 - Te Pae Tawhiti <[Wai262@tpk.govt.nz](mailto:Wai262@tpk.govt.nz)>  
**Subject:** RE: Wai 262 - Te Pae Tawhiti - Agenda for Kete Hui Week Commencing 10 February

Kia ora team,

Our apologies, we are unable to attend the meeting today.

I am waiting on one more work programme update to come from our ETS team.

I look forward to receiving any notes that come out of today's hui.

Mauri ora,  
Joanna

**From:** Mailbox - Wai 262 - Te Pae Tawhiti <Wai262@tpk.govt.nz>

**Sent:** Friday, 7 February 2020 3:43 PM

**To:** [Julie.Black@dia.govt.nz](mailto:Julie.Black@dia.govt.nz); [trevor.himona@dia.govt.nz](mailto:trevor.himona@dia.govt.nz); [Gabriel.Joseph@dia.govt.nz](mailto:Gabriel.Joseph@dia.govt.nz); [polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz); [Toma.Mason@dia.govt.nz](mailto:Toma.Mason@dia.govt.nz); [Alison.McIntyre@dia.govt.nz](mailto:Alison.McIntyre@dia.govt.nz); [Chris.Szekely@dia.govt.nz](mailto:Chris.Szekely@dia.govt.nz); [aenghirst@doc.govt.nz](mailto:aenghirst@doc.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [katherine.lowe2@mbie.govt.nz](mailto:katherine.lowe2@mbie.govt.nz); [Dmitry.Mitenkoff@mbie.govt.nz](mailto:Dmitry.Mitenkoff@mbie.govt.nz); [lee.robinson@mbie.govt.nz](mailto:lee.robinson@mbie.govt.nz); [marcus.smith@mbie.govt.nz](mailto:marcus.smith@mbie.govt.nz); [richard.walley@mbie.govt.nz](mailto:richard.walley@mbie.govt.nz); [Benoit.Lamy@mch.govt.nz](mailto:Benoit.Lamy@mch.govt.nz); [jonathan.easthope@mch.govt.nz](mailto:jonathan.easthope@mch.govt.nz); 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[Adam.vanOpzeeland@mpi.govt.nz](mailto:Adam.vanOpzeeland@mpi.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz)

**Cc:** Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Anaru Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Eve Fevrier <[fevre@tpk.govt.nz](mailto:fevre@tpk.govt.nz)>; Jason Matajo <[mataj@tpk.govt.nz](mailto:mataj@tpk.govt.nz)>; Ngawa Hall <[ngatn@tpk.govt.nz](mailto:ngatn@tpk.govt.nz)>; Anthony Dancer <[danca@tpk.govt.nz](mailto:danca@tpk.govt.nz)>

**Subject:** Wai 262 - Te Pae Tawhiti - Agenda for Kete Hui Week Commencing 10 February

Kia ora tatou

Happy New Year! Welcome to the first round of our Wai 262 – Te Pae Tawhiti Kete Hui for 2020. This year our focus is on progressing the work that we have collectively proposed to Ministers in our Cabinet Paper.

As you know, Ministers' have expressed some interest in opportunities for early progress. We will discuss this more in the hui, but as a start we attach, for reflection and feedback, a short note looking at possible criteria for "early wins".

This email is going to those on our agency contact list who are shown as attending attend Kete 1, 2 or 3. If you have forwarded the kete invite to others, please also pass on this email.

Here is the agenda for each of the hui. There is some common content across the three hui, but the detail will differ.

ITEM	TIME
1. Karakia	
2. Introduction and update round	10m
3. Cabinet Paper Update and questions	15m
4. Budget Bid Update and questions	15m
5. Forward workplan for the Kete	30m
- Finalising kaupapa template work (Kete 1 and 2 only)	

- Outline of work through to June (Kete specific)	
6. Early opportunities for Progress	20m
- Overall approach	
- discussion re proposed criteria (see attached)	
7. Karakia	

As a reminder:

- Kete Tuarua (Kete 2) meets on TUESDAY 10.30am-12noon
- Kete Tuatahi (Kete 1) meets on WEDNESDAY 10.30am-12noon
- Kete Tuatoru (Kete 3) meets on WEDNESDAY 1pm-2.30pm

Best wishes for the fast approaching weekend,

Nga manaakitanga  
Roland

**Roland Sapsford**  
Contractor | Kaitono  
National Office



Tauwaea DDI : +64 4 819 6855 | Waea Pukoro M :  
Waea Whakaahua F : 0800 875 329

Te Puni Kokiri, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand



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## Wai 262 – Te Pae Tawhiti – Kaupapa Template

<b>Kaupapa:</b>	Emissions Trading Scheme
<b>Responsible Minister(s):</b>	
<b>Lead Agency(s)</b>	Ministry for the Environment (MfE)
<b>Wai 262 – Te Pae Tawhiti Kete:</b>	Tuarua
<b>Relevant Chapter(s) of Ko Aotearoa Tēnei Report:</b>	Chapter 9
<b>Brief description:</b>	<p>The Emissions Trading Scheme aims to reduce greenhouse gas emissions by creating a financial incentive for businesses who emit to invest in technologies and practices that reduce emissions. It also encourages forest planting and requires most sectors of New Zealand's economy to report on their emissions, and to purchase and surrender emissions units to the Government for these emissions.</p> <p>The Government plans to improve the Emissions Trading Scheme, to help set Aotearoa New Zealand on a trajectory towards a low-emissions, climate-resilient future.</p> <p>Two engagement processes have been, and continue to be conducted in parallel on the NZ ETS:</p> <ul style="list-style-type: none"> <li>• on the legislative changes to the NZ ETS, via the Climate Change Response (Emissions Trading Reform) Amendment Bill or ETR Bill</li> <li>• on regulatory changes to the NZ ETS.</li> </ul> <p>Te Uru Rākau, the Ministry for Primary Industries and the Ministry for the Environment are working on improving their engagement approach with iwi/Māori, with a focus on more ongoing regional engagement.</p>
<b>Key Milestones (including Ministerial or Cabinet decisions)</b>	
Expected milestone	When you expect to reach it
Policy decisions for Climate Change Response (Emissions Trading Reform) Amendment Bill Departmental Report – Forestry and Non-Forestry (two separate Cabinet papers)	Mid-March 2020
MfE departmental report on the Climate Change Response (Emissions Trading Reform) Amendment Bill	Mid- March 2020
Consultation on Proposed New Zealand Emissions Trading Scheme Annual Technical Regulations Updates	Mid- March 2020
Auction Rules	Late March 2020
NZ ETS Fixed Price Option Supplementary Order Paper	April 2020
NZ ETS settings and Provisional Emissions regulations	April 2020

Te Puni Kōkiri, December 2019. For information contact Wai 262@tpk.govt.nz

Wai 262 – Te Pae Tawhiti – Kaupapa Template

Forestry rules	Mid- May 2020
<b>Wai 262 issues<sup>1</sup> arising in this kaupapa</b>	
Wai 262 issue	Proposed approach
Lack of engagement with Māori in development of ETS policy	<p><i>Climate Te Ao Māori Strategy</i></p> <p>A draft Climate Te Ao Māori Strategy is under development, which seeks to implement the vision of MfE's wider Te Ao Māori strategy. MfE is being supported by Te Arawhiti in this process.</p> <p>Key objectives in the current draft strategy include developing new ways of working with Māori on climate issues (e.g. Ihirangi), nurturing trust-based relationships with iwi/Māori and ensuring Māori perspectives resonate at the core of climate policy development.</p> <p>As part of MfE's Te Ao Māori strategy, MfE is developing a new process (Ihirangi) that seeks to ensure climate-related policy, and mitigation and adaptation strategies, adequately support the particular interests and needs of Māori in local communities throughout Aotearoa New Zealand.</p> <p>The concept of Ihirangi was endorsed at the National Iwi Chairs Forum in November 2019. An Interim Establishment Committee is now being formed to engage widely and inclusively with iwi/Māori on the proposed process, and to oversee its establishment phase over the coming months.</p> <p><i>Hui ā Rohe</i></p> <p>MfE will keep conducting quarterly regional hui, Hui ā Rohe, to engage with iwi/Māori on environmental policy development, including climate issues.</p> <p><i>Targeted engagement with interested Pan-Māori groups – 'technical hui'</i></p> <p>We plan to begin a process of targeted engagement with interested Pan-Māori groups. These hui would have the purpose of discussing technical aspects of the ETS so that emergent ideas can be incorporated into policy advice.</p>

<sup>1</sup> Wai 262 issues for these purposes means issues that are directly in the scope of the Wai 262 claim, *Ko Aotearoa Tenei* and/or are affected by the Treaty jurisprudence in the report, and/or linked through subsequent jurisprudence to the report. For the avoidance of doubt, "within the scope of *Ko Aotearoa Tenei*" means within scope of the matters considered rather than solely the recommendations.

Wai 262 – Te Pae Tawhiti – Kaupapa Template

<b>Engagement with Māori</b>		
<u>Who</u> are you engaging with?	<u>How</u> will you engage <sup>2</sup> ?	<u>When</u> will engagement occur?
ETS stakeholders including iwi/Māori	We are currently running a number of consultation sessions on the proposed NZ ETS settings, which are open to the general public and have been promoted at regional hui. Māori stakeholders and iwi have received specific invites.	The consultation sessions have taken place in Auckland, Rotorua and Wellington and Christchurch between February 3 <sup>rd</sup> -12 <sup>th</sup> .
Waikato-Tainui	As a follow up on our last hui with Waikato-Tainui, we held a hui at MfE on February 12. We will be providing updates on policy consultations and engagements, and identifying opportunities to work collaboratively on projects. This is a hui with a wider focus than the Emissions Trading Scheme, however opportunities and obstacles identified in the NZ ETS settings will be a topic of discussion.	February 12 <sup>th</sup>
Pan-Māori groups interested in technical aspects of ETS	<p>We are extending an offer to Māori/iwi groups to participate in a hui to discuss the technical aspects of the NZ ETS settings proposal.</p> <p>The proposed New Zealand Emissions Trading Scheme settings pose both opportunities and possible challenges for Māori, iwi, hapū, and whanau. Opportunities because the emissions price will bring important changes to the value of whenua, offering potentially higher income when planting trees for carbon forestry, and possible challenges due to moderate financial impacts for households that comes with an increased emissions price.</p>	Late in February

<sup>2</sup> Eg through a series of regional hui, through a written submission process at iwi level, with directly affected hapu and whānau in person, etc,



**Wai 262 – Te Pae Tawhiti – Kaupapa Template**

	By engaging with Māori/iwi groups in February we can incorporate these important discussions into advice to Ministers about the Emissions Trading Scheme settings in March.	
<b>Links with other work</b>		
<b>Kaupapa</b>	<b>Nature of Link</b>	
Agricultural emissions pricing / He Waka Eke Noa	<p>The Government is working with primary sector leaders to build an enduring framework for a farm-level emissions reduction scheme – either as part of the Emissions Trading Scheme or through an alternative pricing mechanism.</p> <p>This joint work programme, known as He Waka Eke Noa will be overseen by a Steering Group that includes representatives from the agriculture industry, government and iwi/Māori, including a representative from the Federation of Māori Authorities and a representative who can bring broader perspectives of whānau, hapū and iwi.</p>	
<b>Other Relevant Information:</b> (eg relevant issues raised during engagement on this kaupapa before now)		

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**From:** [Kelly Palmer](#)  
**To:** [Claire Gibb](#); [Heather Griffiths](#); [Nicola Sole](#); [Miranda Grimmer](#)  
**Cc:** [Winiata Tahau-Anderson](#); [Rachel Fyfe](#); [Joanna Morgan](#); [Ben Dickson](#)  
**Subject:** RE: Copy of Wai 262 paper under consideration by our Minister  
**Date:** Tuesday, 18 February 2020 11:21:15 AM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)

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Kia ora koutou,

Okay so I know a reasonable amount about Wai262 and where we are heading.. Anne Haira is on the Dep Sec Group, Minister Parker is in two of the kete ropu (wearing multiple Ministerial hats) and for MfE Joanna Morgan is coordinating our response/ involvement. For Stats Nyssa Payne-Harker is the Senior Analyst involved.

Anne and Joanna are looking to coordinate a cross-MfE group, we've had a couple of sessions already over the last 6 months where we identified the relevant work of MfE and how it aligned with specific things identified in the Tribunal report. In those hui Managers/ Senior Analysts got together and had a korero about alignment then filled in tables with blurbs about alignment.

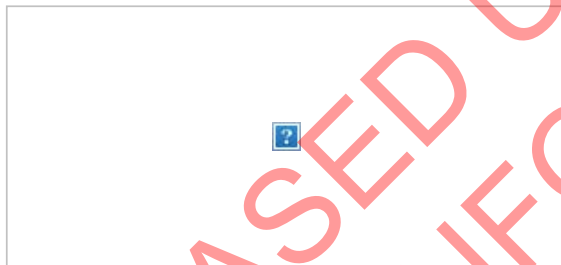
K.

**Kelly Palmer – Strategy and Stewardship Division**

Ministry for the Environment – Manatu Mo Te Taiao

Mobile: 0224930065 Email: [kelly.palmer@mfe.govt.nz](mailto:kelly.palmer@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

23 Kate Sheppard Place, Thorndon, Wellington 6143



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**From:** Claire Gibb <[Claire.Gibb@mfe.govt.nz](mailto:Claire.Gibb@mfe.govt.nz)>

**Sent:** Monday, 17 February 2020 1:05 PM

**To:** Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>; Miranda Grimmer <[Miranda.Grimmer@mfe.govt.nz](mailto:Miranda.Grimmer@mfe.govt.nz)>

**Cc:** Winiata Tahau-Anderson <[Winiata.Tahau-Anderson@mfe.govt.nz](mailto:Winiata.Tahau-Anderson@mfe.govt.nz)>; Rachel Fyfe <[Rachel.Fyfe@mfe.govt.nz](mailto:Rachel.Fyfe@mfe.govt.nz)>

**Subject:** RE: Copy of Wai 262 paper under consideration by our Minister

Kia ora koutou,

We Cc'd in TPK (Tiki-Tu and Helen) to our conversations but they didn't provide any input or attend any meetings.

Claire

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**From:** Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>

**Sent:** Monday, 17 February 2020 12:22 PM

**To:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>; Miranda Grimmer <[Miranda.Grimmer@mfe.govt.nz](mailto:Miranda.Grimmer@mfe.govt.nz)>

**Cc:** Winiata Tahau-Anderson <[Winiata.Tahau-Anderson@mfe.govt.nz](mailto:Winiata.Tahau-Anderson@mfe.govt.nz)>; Claire Gibb <[Claire.Gibb@mfe.govt.nz](mailto:Claire.Gibb@mfe.govt.nz)>; Rachel Fyfe <[Rachel.Fyfe@mfe.govt.nz](mailto:Rachel.Fyfe@mfe.govt.nz)>

**Subject:** RE: Copy of Wai 262 paper under consideration by our Minister

I would have thought our project should be on there too. Do we need to organise a chat with Roland? From TPK it was Helen McNaught and Chales Ngaki who provided input on the briefing and budget bid last year (is that right Claire?).

Also, just wondering if we've agreed to meet Te Arawhiti yet? Copying in Rachel – as perhaps she is leading this now?

Heather

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**From:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>  
**Sent:** Friday, 14 February 2020 12:49 PM  
**To:** Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>; Miranda Grimmer <[Miranda.Grimmer@mfe.govt.nz](mailto:Miranda.Grimmer@mfe.govt.nz)>  
**Cc:** Winiata Tahau-Anderson <[Winiata.Tahau-Anderson@mfe.govt.nz](mailto:Winiata.Tahau-Anderson@mfe.govt.nz)>  
**Subject:** Fw: Copy of Wai 262 paper under consideration by our Minister

FYI, I'd suggest our EMRS reform work stream needs to be cognisant of this. Appendix 3 notes data stewardship and governance, our work maybe should be in there too..? I.e. I'd have thought we can't propose a future system without pondering the role of Maori and what we are going to do with their data..

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**From:** Mailbox - Wai 262 - Te Pae Tawhiti <[Wai262@tpk.govt.nz](mailto:Wai262@tpk.govt.nz)>  
**Sent:** Friday, 14 February 2020 12:43 PM  
**To:** [Julie.Black@dia.govt.nz](mailto:Julie.Black@dia.govt.nz) <[Julie.Black@dia.govt.nz](mailto:Julie.Black@dia.govt.nz)>; [trevor.himona@dia.govt.nz](mailto:trevor.himona@dia.govt.nz) <[trevor.himona@dia.govt.nz](mailto:trevor.himona@dia.govt.nz)>; [Gabriel.Joseph@dia.govt.nz](mailto:Gabriel.Joseph@dia.govt.nz) <[Gabriel.Joseph@dia.govt.nz](mailto:Gabriel.Joseph@dia.govt.nz)>; [polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz) <[polly.martin@dia.govt.nz](mailto:polly.martin@dia.govt.nz)>; [Toma.Mason@dia.govt.nz](mailto:Toma.Mason@dia.govt.nz) <[Toma.Mason@dia.govt.nz](mailto:Toma.Mason@dia.govt.nz)>; [Alison.McIntyre@dia.govt.nz](mailto:Alison.McIntyre@dia.govt.nz) <[Alison.McIntyre@dia.govt.nz](mailto:Alison.McIntyre@dia.govt.nz)>; [Albert.Stewart2@dia.govt.nz](mailto:Albert.Stewart2@dia.govt.nz) <[Albert.Stewart2@dia.govt.nz](mailto:Albert.Stewart2@dia.govt.nz)>; [Chris.Szekely@dia.govt.nz](mailto:Chris.Szekely@dia.govt.nz) <[Chris.Szekely@dia.govt.nz](mailto:Chris.Szekely@dia.govt.nz)>; [Katy.Teamo@dia.govt.nz](mailto:Katy.Teamo@dia.govt.nz) <[Katy.Teamo@dia.govt.nz](mailto:Katy.Teamo@dia.govt.nz)>; [mhunt@doc.govt.nz](mailto:mhunt@doc.govt.nz) <[mhunt@doc.govt.nz](mailto:mhunt@doc.govt.nz)>; [aenghirst@doc.govt.nz](mailto:aenghirst@doc.govt.nz) <[aenghirst@doc.govt.nz](mailto:aenghirst@doc.govt.nz)>; [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz) <[tarona@doc.govt.nz](mailto:tarona@doc.govt.nz)>; [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz) <[kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz)>; [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz) <[erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz)>; [hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz) <[hana.ihaka-mcleod@epa.govt.nz](mailto:hana.ihaka-mcleod@epa.govt.nz)>; [doug.jones@epa.govt.nz](mailto:doug.jones@epa.govt.nz) <[doug.jones@epa.govt.nz](mailto:doug.jones@epa.govt.nz)>; [Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz) <[Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz)>; [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz) <[aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz)>; [katherine.lowe2@mbie.govt.nz](mailto:katherine.lowe2@mbie.govt.nz) <[katherine.lowe2@mbie.govt.nz](mailto:katherine.lowe2@mbie.govt.nz)>; [Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz) <[Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz)>; [Dmitry.Mitenkoff@mbie.govt.nz](mailto:Dmitry.Mitenkoff@mbie.govt.nz) <[Dmitry.Mitenkoff@mbie.govt.nz](mailto:Dmitry.Mitenkoff@mbie.govt.nz)>; [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz) <[Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz)>; [Turei.Reedy2@mbie.govt.nz](mailto:Turei.Reedy2@mbie.govt.nz) <[Turei.Reedy2@mbie.govt.nz](mailto:Turei.Reedy2@mbie.govt.nz)>; [lee.robinson@mbie.govt.nz](mailto:lee.robinson@mbie.govt.nz) <[lee.robinson@mbie.govt.nz](mailto:lee.robinson@mbie.govt.nz)>; [marcus.smith@mbie.govt.nz](mailto:marcus.smith@mbie.govt.nz) <[marcus.smith@mbie.govt.nz](mailto:marcus.smith@mbie.govt.nz)>; [Ata.TeKanawa@mbie.govt.nz](mailto:Ata.TeKanawa@mbie.govt.nz) <[Ata.TeKanawa@mbie.govt.nz](mailto:Ata.TeKanawa@mbie.govt.nz)>; [richard.walley@mbie.govt.nz](mailto:richard.walley@mbie.govt.nz) <[richard.walley@mbie.govt.nz](mailto:richard.walley@mbie.govt.nz)>; [george.wardle@mbie.govt.nz](mailto:george.wardle@mbie.govt.nz) <[george.wardle@mbie.govt.nz](mailto:george.wardle@mbie.govt.nz)>; [Benoit.Lamy@mch.govt.nz](mailto:Benoit.Lamy@mch.govt.nz) <[Benoit.Lamy@mch.govt.nz](mailto:Benoit.Lamy@mch.govt.nz)>; [jonathan.easthope@mch.govt.nz](mailto:jonathan.easthope@mch.govt.nz) <[jonathan.easthope@mch.govt.nz](mailto:jonathan.easthope@mch.govt.nz)>; [Kartini.Havell@mch.govt.nz](mailto:Kartini.Havell@mch.govt.nz) <[Kartini.Havell@mch.govt.nz](mailto:Kartini.Havell@mch.govt.nz)>; [Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz) <[Lois.Searle@mch.govt.nz](mailto:Lois.Searle@mch.govt.nz)>; [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz) <[megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz)>; 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Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; [michelle.podmore@mfat.govt.nz](mailto:michelle.podmore@mfat.govt.nz) <[michelle.podmore@mfat.govt.nz](mailto:michelle.podmore@mfat.govt.nz)>; [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz) <[patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz)>; [john.riley@mfat.govt.nz](mailto:john.riley@mfat.govt.nz) <[john.riley@mfat.govt.nz](mailto:john.riley@mfat.govt.nz)>; [Emma.Thwaite@mfat.govt.nz](mailto:Emma.Thwaite@mfat.govt.nz) <[Emma.Thwaite@mfat.govt.nz](mailto:Emma.Thwaite@mfat.govt.nz)>; [geetha.verhaeghe@mfat.govt.nz](mailto:geetha.verhaeghe@mfat.govt.nz) <[geetha.verhaeghe@mfat.govt.nz](mailto:geetha.verhaeghe@mfat.govt.nz)>; [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz) <[daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz)>; [Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz) <[Martin.Wikaira@mfat.govt.nz](mailto:Martin.Wikaira@mfat.govt.nz)>; [Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz) <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; Perrine Gilkison

<[Perrine.Gilkison@mfe.govt.nz](mailto:Perrine.Gilkison@mfe.govt.nz)>; Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Lorena Stephen <[Lorena.Stephen@mfe.govt.nz](mailto:Lorena.Stephen@mfe.govt.nz)>; [tipene.chrisp@education.govt.nz](mailto:tipene.chrisp@education.govt.nz) <[tipene.chrisp@education.govt.nz](mailto:tipene.chrisp@education.govt.nz)>; [Addrianne.Long@education.govt.nz](mailto:Addrianne.Long@education.govt.nz) <[Addrianne.Long@education.govt.nz](mailto:Addrianne.Long@education.govt.nz)>; [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz) <[sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz)>; [kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz) <[kiri\\_dargaville@moh.govt.nz](mailto:kiri_dargaville@moh.govt.nz)>; Tara.Ross-Watt3@mpi.govt.nz <[Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz)>; [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz) <[janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz)>; [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz) <[Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz)>; [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz) <[Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz)>; [stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz) <[stewart.genery@mpi.govt.nz](mailto:stewart.genery@mpi.govt.nz)>; [Keri.Ilti@mpi.govt.nz](mailto:Keri.Ilti@mpi.govt.nz) <[Keri.Ilti@mpi.govt.nz](mailto:Keri.Ilti@mpi.govt.nz)>; [Adam.vanOpzeeland@mpi.govt.nz](mailto:Adam.vanOpzeeland@mpi.govt.nz) <[Adam.vanOpzeeland@mpi.govt.nz](mailto:Adam.vanOpzeeland@mpi.govt.nz)>; [paul.brown1@stats.govt.nz](mailto:paul.brown1@stats.govt.nz) <[paul.brown1@stats.govt.nz](mailto:paul.brown1@stats.govt.nz)>; [dale.elvy@stats.govt.nz](mailto:dale.elvy@stats.govt.nz) <[dale.elvy@stats.govt.nz](mailto:dale.elvy@stats.govt.nz)>; [Nyssa.Payne.Harker@stats.govt.nz](mailto:Nyssa.Payne.Harker@stats.govt.nz) <[Nyssa.Payne.Harker@stats.govt.nz](mailto:Nyssa.Payne.Harker@stats.govt.nz)>; [Warren.Fraser@tearawhiti.govt.nz](mailto:Warren.Fraser@tearawhiti.govt.nz) <[Warren.Fraser@tearawhiti.govt.nz](mailto:Warren.Fraser@tearawhiti.govt.nz)>; [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz) <[rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz)>; [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz) <[benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz)>; [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz) <[tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz)>

**Cc:** Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Anaru Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Eve Fevrier <[fevre@tpk.govt.nz](mailto:fevre@tpk.govt.nz)>; Jason Mataio <[matai@tpk.govt.nz](mailto:matai@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Anthony Dancer <[danca@tpk.govt.nz](mailto:danca@tpk.govt.nz)>; Jareth Fox <[fojar@tpk.govt.nz](mailto:fojar@tpk.govt.nz)>; Tawheta Hautapu <[hautt@tpk.govt.nz](mailto:hautt@tpk.govt.nz)>; Alexandra Stephen <[stepa@tpk.govt.nz](mailto:stepa@tpk.govt.nz)>; Jade Fox <[foxja@tpk.govt.nz](mailto:foxja@tpk.govt.nz)>; Ngawa Hall <[ngatn@tpk.govt.nz](mailto:ngatn@tpk.govt.nz)>

**Subject:** Copy of Wai 262 paper under consideration by our Minister

Kia ora tatou

As promised at Kete hui this week, here is the copy of the Wai 262 paper being reviewed by Minister Mahuta. Our recommendation to the Minister was that this proceed to Ministerial consultation next week (ie week commencing 17 January). We await her feedback, and expect this Monday or Tuesday.

You last received a version in December 2019.

This updated version reflects feedback from:

- Minister Mahuta following an oral item at MCR in late 2019,
- OMCR in January 2020, and
- discussions at Waitangi between Minister Mahuta, TPK officials and claimant representatives.

The recommendations are largely unchanged. Key amendments include:

- an adjustment of timeframes for the Plan of Action and Maori to Maori conversations, and consequently for initial meetings of Ministerial groupings. This reflects the current timeframe for both the Crown and the claimant representative ropu, and the timing of the upcoming election.
- an explicit commitment to look for opportunities for early progress (as discussed at Kete hui this week) during the plan development.

As always we welcome any questions you may have.

We wish you most well for the fast approaching weekend,

Nga manaakitanga  
Roland

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**Roland Sapsford**

*Principal Advisor*

**National Office**

*Waea Pukoro* **M** : +64 21 65 1105

*Waea Whakaahua* **F** : 0800 875 329

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**Te Puni Kokiri**, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand  
PO Box 3943, Wellington 6140, New Zealand

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Document 43

**From:** [Joanna Morgan](#)  
**To:** [Miranda Grimmer](#); [Rachel Fyfe](#)  
**Subject:** RE: Matauranga Maori and Environmental Reporting catch up  
**Date:** Wednesday, 26 February 2020 11:54:54 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
**9(2)(f)(iv)- Attachment withheld**

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Kia ora Miranda,

Thank you for organising our meeting. I just want to be clear about my capacity to support your work – I'm not familiar with ER, current or past work programmes. Nor am I someone who can speak to partnering with Maori in a future system. Where I can help, is to connect you to the whole-of-government work on Wai 262 (Te Pae Tawhiti). The work programme is available to agencies to work collaboratively on cross-cutting themes related to Maori culture and identity, the key theme for MfE is adequately providing for kaitiakitanga. This is a multi-agency, multi-year work programme aiming for Crown agencies to have a collective approach to the Treaty Partnership.

In brief – there is an opportunity in this work programme for ER to connect with other agencies and discuss how to better provide for kaitiakitanga, whether that be through engagement strategies, building capacity of our organisations to understand tikanga and matauranga, or building capacity of Maori to participate in the system.

The attached is the most recent version of a Cabinet paper to go to MCR following ministerial consultation. It has a bit of background and next steps to the work programme.

Happy to have a chat if you have any questions.

Na,  
Joanna

-----Original Appointment-----

**From:** Miranda Grimmer <[Miranda.Grimmer@mfe.govt.nz](mailto:Miranda.Grimmer@mfe.govt.nz)>

**Sent:** Wednesday, 26 February 2020 8:54 AM

**To:** Rachel Fyfe; Joanna Morgan

**Cc:** Nicola Sole

**Subject:** Matauranga Maori and Environmental Reporting catch up

**When:** Tuesday, 3 March 2020 11:30 AM-12:00 PM (UTC+12:00) Auckland, Wellington.

**Where:** Meetingroom EH 6B

Morena Joanna,

Hope you've been having a good week.

Would this time suit you to catch up with Rachel and I about what might have been done before in this space and what our options might be for partnering with Maori in a future system?

I've found one document that looks to go into a bit of detail about what has happened before but if there is anything else you know of that we could read before the meeting it would be great if you can send it through:

<https://www.mfe.govt.nz/sites/default/files/media/Environmental%20reporting/priorities-for-te-ao-maori-reporting.pdf>

Let me know if you need more information from me about what we are doing

Thanks in advance

Nga mihi,  
Miranda

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**From:** Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>  
**Sent:** Tuesday, 25 February 2020 5:14 PM  
**To:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Cc:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Rachel Fyfe <[Rachel.Fyfe@mfe.govt.nz](mailto:Rachel.Fyfe@mfe.govt.nz)>; Miranda Grimmer <[Miranda.Grimmer@mfe.govt.nz](mailto:Miranda.Grimmer@mfe.govt.nz)>  
**Subject:** RE: Te Pae Tawhiti - Wai 262: Kete Tuarua regular hui AGENDA for 25 February

Kia ora Joanna

Thanks so much for rounding back with us so quickly - we're pleased you were able to highlight our work programme at a high level and it was of interest to the group.

We'd love to be involved in the korero around matauranga. Do you know when this might happen? Miranda in my team has just kicked off some work to summarise past attempts to partner with Maori/better incorporate matauranga and lessons learnt into our environmental reporting system. This is the first step in broader policy work we know we need to progress regarding Iwi Maori partnership / in the Environmental Monitoring and Reporting System.

Rachel and Miranda - would you be able to catch up with Joanna please to find out a little more about what bringing this work to the kete might mean going forward to ensure we can deliver on expectations? Really happy to join you too if that would be helpful?

Thanks for the heads up on the cross MfE group too.

Nga mihi  
Nicola

---

**From:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Sent:** Tuesday, 25 February 2020 4:25 PM  
**To:** Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>  
**Cc:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Rachel Fyfe <[Rachel.Fyfe@mfe.govt.nz](mailto:Rachel.Fyfe@mfe.govt.nz)>  
**Subject:** RE: Te Pae Tawhiti - Wai 262: Kete Tuarua regular hui AGENDA for 25 February

Kia ora koutou,

Thank you for these talking points, Nicola. I attended the kete hui this morning and they sounded interested in the work programme you mention below.

Of particular interest, is that environmental reporting looks at the system as a whole rather than policy for specific areas.

A couple of matters for you to consider:

1. TPK is looking to develop a number of workshops for agencies in kete tuarua, one of which is a korero around matauranga and what we (Crown agencies) do with it. If this workshop gets off the ground, would you be interested in sending representation from your team?
2. If you would like to bring this work to the kete, please fill in the attached document. I will forward on to TPK so they can send it out to other agencies in the kete. For reference – see attached the RM table. For the section on 'Wai 262 issues arising in this kaupapa' I suggest taking a broad approach, following the RM example eg. Failing to adequately provide for kaitiakitanga in environmental reporting.
3. The cross-MfE reference group has only got as far as a draft terms of reference, yet to be approved by Anne. If it does get off the ground, I'll get in touch with Claire.

Happy to have a yarn.

Thank you,  
Joanna

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**From:** Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>  
**Sent:** Monday, 24 February 2020 2:55 PM  
**To:** Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>  
**Cc:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Rachel Fyfe <[Rachel.Fyfe@mfe.govt.nz](mailto:Rachel.Fyfe@mfe.govt.nz)>  
**Subject:** RE: Te Pae Tawhiti - Wai 262: Kete Tuarua regular hui AGENDA for 25 February

Kia ora Joanna

Kelly's just looped us in to the Kete Tuarua hui you're attending tomorrow on behalf of the Ministry. We understand you'll be having a discussion about the high-level work plan and early opportunities. In the absence of a completed opportunities template, if you get a chance to reference (and flag early) the Environmental Reporting and Monitoring System Reform work at a high level that would be great. A couple of bullet's to inform what you could say:

1. Collectively as Government, we have growing expectations on the importance of environmental monitoring and reporting to inform the health of our environment and the decisions needed. With the scale of environmental challenges (such as fresh water and climate change) increasingly apparent, there is fundamental and urgent need to ensure our data and science system is fit for purpose and we understand the impact of our interventions. In Environment Aotearoa 2019, Stats NZ and the Ministry for the Environment (MfE) set out key challenges affecting our understanding of the environment and provided a high-level frame for strengthening our knowledge and reporting system.
2. Additionally the November 2019 Parliamentary Commissioner for the Environment (PCE) report *Focusing Aotearoa New Zealand's Environmental Reporting System*. sets out detailed recommendations that cover changes to the Environmental Reporting Act 2015 and operational improvements. The report also advises that MfE should lead the development of "a comprehensive nationally coordinated environmental monitoring system - with input from the standing science advisory panel and Stats NZ, as well Iwi Maori, local government, central government agencies and Crown Research Institutes". MfE, Stats NZ and the Regional Sector provided considerable input into the review and have agreed to endorse the findings.
3. MfE are commencing work to develop a comprehensive nationally coordinated environmental monitoring and reporting system. This will include engagement with Iwi/Maori to identify how we better partner with them in the system overall, to deliver a system that reflects our New Zealand context - and monitors and reports on what's important to New Zealand. We're really happy to come back to this meeting and have a more detailed conversation should this be of interest.

Really happy to pop by your desk this afternoon if it would be helpful to have a conversation about this ☺.

Nga mihi  
Nicola

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**From:** Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>  
**Sent:** Monday, 24 February 2020 9:30 AM  
**To:** Heather Griffiths <[Heather.Griffiths@mfe.govt.nz](mailto:Heather.Griffiths@mfe.govt.nz)>; Nicola Sole <[Nicola.Sole@mfe.govt.nz](mailto:Nicola.Sole@mfe.govt.nz)>  
**Subject:** FW: Te Pae Tawhiti - Wai 262: Kete Tuarua regular hui AGENDA for 25 February

See below Agenda item 5. For me our EMRS reform should be in Kete 1, but if we were going to flag it tomorrow is the time...

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**From:** Mailbox - Wai 262 - Te Pae Tawhiti <[Wai262@tpk.govt.nz](mailto:Wai262@tpk.govt.nz)>  
**Sent:** Friday, 21 February 2020 4:55 PM



**To:** Rosemary Paterson <[rosemary.paterson@mfat.govt.nz](mailto:rosemary.paterson@mfat.govt.nz)>; Anaru Rewi <[rewia@tpk.govt.nz](mailto:rewia@tpk.govt.nz)>; [Julie.Black@dia.govt.nz](mailto:Julie.Black@dia.govt.nz); [Katy.Teamoo@dia.govt.nz](mailto:Katy.Teamoo@dia.govt.nz); [tarona@doc.govt.nz](mailto:tarona@doc.govt.nz); [kkingdonbebb@doc.govt.nz](mailto:kkingdonbebb@doc.govt.nz); [erica.gregory@epa.govt.nz](mailto:erica.gregory@epa.govt.nz); [Charlotte.Adam@mbie.govt.nz](mailto:Charlotte.Adam@mbie.govt.nz); [aidan.burch@mbie.govt.nz](mailto:aidan.burch@mbie.govt.nz); [Jahnavi.Manubolu@mbie.govt.nz](mailto:Jahnavi.Manubolu@mbie.govt.nz); [Mark.Ormsby@mbie.govt.nz](mailto:Mark.Ormsby@mbie.govt.nz); [megan.addis@mfat.govt.nz](mailto:megan.addis@mfat.govt.nz); [ngawini.keelan@mfat.govt.nz](mailto:ngawini.keelan@mfat.govt.nz); [patrick.rata@mfat.govt.nz](mailto:patrick.rata@mfat.govt.nz); [daniel.wai-poi@mfat.govt.nz](mailto:daniel.wai-poi@mfat.govt.nz); Matthew Cunningham <[Matthew.Cunningham@mfe.govt.nz](mailto:Matthew.Cunningham@mfe.govt.nz)>; Joanna Morgan <[Joanna.Morgan@mfe.govt.nz](mailto:Joanna.Morgan@mfe.govt.nz)>; Kelly Palmer <[Kelly.Palmer@mfe.govt.nz](mailto:Kelly.Palmer@mfe.govt.nz)>; [sam\\_austin@moh.govt.nz](mailto:sam_austin@moh.govt.nz); [Tara.Ross-Watt3@mpi.govt.nz](mailto:Tara.Ross-Watt3@mpi.govt.nz); [janet.chambers@mpi.govt.nz](mailto:janet.chambers@mpi.govt.nz); [Elizabeth.Davie@mpi.govt.nz](mailto:Elizabeth.Davie@mpi.govt.nz); [Marama.Findlay@mpi.govt.nz](mailto:Marama.Findlay@mpi.govt.nz); [Keri.Iti@mpi.govt.nz](mailto:Keri.Iti@mpi.govt.nz); [rewi.henderson@tearawhiti.govt.nz](mailto:rewi.henderson@tearawhiti.govt.nz); [benedict.taylor@tearawhiti.govt.nz](mailto:benedict.taylor@tearawhiti.govt.nz); [tia.warbrick@tearawhiti.govt.nz](mailto:tia.warbrick@tearawhiti.govt.nz); Jareth Fox <[fojar@tpk.govt.nz](mailto:fojar@tpk.govt.nz)>

**Cc:** Nadia Ward <[wardn@tpk.govt.nz](mailto:wardn@tpk.govt.nz)>; Erin Keenan <[keene@tpk.govt.nz](mailto:keene@tpk.govt.nz)>; Tamati Olsen <[olset@tpk.govt.nz](mailto:olset@tpk.govt.nz)>; Eve Fevrier <[fevre@tpk.govt.nz](mailto:fevre@tpk.govt.nz)>; Ngawa Hall <[ngatn@tpk.govt.nz](mailto:ngatn@tpk.govt.nz)>; Tawheta Hautapu <[hautt@tpk.govt.nz](mailto:hautt@tpk.govt.nz)>; Marie Winitana <[winim@tpk.govt.nz](mailto:winim@tpk.govt.nz)>; Anthony Dancer <[danca@tpk.govt.nz](mailto:danca@tpk.govt.nz)>; Roland Sapsford <[sapsr@tpk.govt.nz](mailto:sapsr@tpk.govt.nz)>; Jason Mataio <[mataj@tpk.govt.nz](mailto:mataj@tpk.govt.nz)>; Jade Fox <[foxja@tpk.govt.nz](mailto:foxja@tpk.govt.nz)>; Karen Southon <[soutk@tpk.govt.nz](mailto:soutk@tpk.govt.nz)>; Alexandra Stephen <[steba@tpk.govt.nz](mailto:steba@tpk.govt.nz)>; Kelvin Lange <[Kelvin.Lange@mpi.govt.nz](mailto:Kelvin.Lange@mpi.govt.nz)>; [Sam.Austin@health.govt.nz](mailto:Sam.Austin@health.govt.nz); Albert Stewart <[Albert.Stewart2@dia.govt.nz](mailto:Albert.Stewart2@dia.govt.nz)>; [Turei.Reedy2@mbie.govt.nz](mailto:Turei.Reedy2@mbie.govt.nz)

**Subject:** Te Pae Tawhiti - Wai 262: Kete Tuarua regular hui AGENDA for 25 February

Kia ora tatou

Below is the agenda for our next Kete Tuarua hui on **Tuesday 25 February, 10:30am-12pm** at Te Puni Kokiri.

Our update earlier this week included a high-level work plan and the early opportunities template. Please send through any initial proposals for early opportunities.

**Please can you complete any outstanding Kaupapa templates before the hui** – we need these to move forward as Kete.

There is no budget bid update scheduled for this hui as we will have no further information on the budget bid before the 28<sup>th</sup> of February.

## AGENDA

- 1 Karakia
- 2 Introductions and Check-In
- 3 Cabinet Paper update
- 4 Wai 262 101 Hui Update
- 5 Scope of Kete work area – Are the key workstreams included?
- 6 Work Plan and Early Opportunities Discussion
- 7 Closing karakia

### Item 5: Scope

- This is a scope check at this point to make sure that there are no additional key workstreams across government that should ideally be included in the Taonga Species and Matauranga Maori workstream. It is acknowledged that workstreams will come and go overtime, but this is just to double at this early stage that we have included the key existing workstreams.

### Item 6: Work Plan and Early Opportunities

- As discussed at the last Kete hui, we are looking at a collective discussion of the information contained in templates as a start at developing a forward work plan and early opportunities for the Kete. Unfortunately I have not been able to do an initial analysis as a start to this exercise so in the absence of that am circulating the complete kaupapa templates for people to familiarise themselves with before Tuesday.
- On Tuesday we would be looking at a high and initial level at this stage for opportunities for how the work identified in these templates could be co-ordinated, aligned or augmented going forward to achieve benefits in delivering on Wai 262 issues.

- I appreciate the concern some agencies have raised regarding confidentiality of information that has been provided. I'd remind agencies that an overall objective of the Kete approach is for agencies to work together to develop a joined-up and collaborative work programme going forward so the information sought and provided for the group will be circulated to the group. It is not intended that TPK will gate keep information in any way.
- We will also circulate any early opportunities templates that come through before the hui.

Unfortunately I am not here on Tues. Roland will host the upcoming Kete hui.

Nga mihi,

Andrew

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<p><b>Andrew Rewi</b> Principal Policy Analyst   Kaitatari Tumuaki Kaupapa Here <b>National Office</b></p> 	<p><b>Tauwaea DDI</b> : +64 4 819 0115   <b>Waea Pukoro M</b> : +64 27 232 3944 <b>Waea Whakaahua F</b> : 0800 875 329</p> <hr/> <p><b>Te Puni Kokiri</b>, Te Puni Kokiri House, 143 Lambton Quay, Wellington 6011, New Zealand PO Box 3943, Wellington 6140, New Zealand</p> <hr/> <p> <a href="#">Te Puni Kokiri Website</a>  <a href="#">Kokiri Magazine</a>  <a href="#">Facebook</a></p>
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**From:** [Joanna Morgan](#)  
**To:** [Ben Dickson](#)  
**Subject:** Handover documents  
**Date:** Wednesday, 18 March 2020 3:52:17 PM  
**Attachments:** **Out of Scope**  
[Wai 262 Handover.docx](#)

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Hello again,

Attached are my handover documents for Wai 262, **Out of Scope**.

Let me know if there's anything you think I should change/add before I finish up on Friday.

Thanks,  
Joanna

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1982

## Handover Document for Wai 262

**Name:** Joanna Morgan

**Title/Role:** Senior Analyst

**Department:** Partnerships Directorate - Treaty Partnerships Team

**Date:** March 2020

### General overview of the role:

Participate in Te Pae Tawhiti – Whole-of-Government response to Wai 262, lead by Te Puni Kōkiri.

### Key events:

The below table outlines key events and associated actions to date.

Minister/Official	Activity	Support
Cabinet	Development of a whole-of-government response to Wai 262 – April 2019	MfE was consulted on the Cabinet paper
Te Puni Kōkiri	Regular meetings in the Kete Tuarua grouping	Attend cross-agency meetings
MCR	Update on progress of Te Pae Tawhiti	Consulted on Cabinet paper

### Key documents:

The below table contains relevant documents. These documents can be found in either the [‘Wai 262 Cross-government response’](#) folder, or the [‘Wai262 MfE Response’](#) folder

Document	Activity	File location
Cabinet paper – April 2019	Whole-of-government response to Wai 262	Wai262 Cross-government response
Draft budget bid	Bid to Treasury to resource support for Te Pae Tawhiti	Wai262 Cross-government response
Draft cabinet paper – March 2020	Update to whole-of-government response to Wai 262	Wai262 Cross-government response
MfE Wai 262 work-streams updates	Update to Te Puni Kōkiri officials	Wai 262 MfE Response

Document	Activity	File location
Terms of Reference for MPI's Wai 262 coordinating group	MPI's approach to organising their agency - Provided at a Wai 262 workshop, February 2020	Wai262 Cross-government response
Wai 262 Knowledge Nybble Wānanga – Presentation and Presentation Lesson Plan	DIA's approach to organising their agency - Provided at a Wai 262 workshop, February 2020	Wai262 Cross-government response
MfE Wai262 Reference Group – Terms of Reference	Organisation across MfE teams to feed into and receive feedback from Te Pae Tawhiti	Wai 262 MfE Response

### Comments:

This work programme has primarily required a watching brief of the Te Pae Tawhiti – Whole-of-Government response to Wai 262, work programme. This requires attending regular cross-agency meetings hosted by Te Puni Kōkiri and providing work-stream updates.

While there are specific recommendations in the Wai 262 Report *Ko Aotearoa Tēnei* that are directed at MfE, the approach of Te Pae Tawhiti is issues based, focusing on the bigger picture of the Treaty Partnership.

It is worth noting that there is no singular approach to supporting this work programme. Agencies are organising themselves in different ways. MPI has developed a 'Community of Practice' that supports interested staff to understand the issues of the report and discuss ways to address them in their work. DIA (Archives and National Library units) is delivering Wai 262 101 lessons to interested staff, providing background information to the claim and its importance (See documents at the links above).

This work sits with the Treaty Partnerships team. Currently, the Ministry has yet to adopt a more comprehensive approach to addressing this work programme.

### Critical long-term tasks/projects:

- Organise MfE to participate in Te Pae Tawhiti
  - Comments – teams have been providing updates when requested (see policy leads in table below). To ensure consistent adequate support, this work programme requires commitment from across the Ministry.

### Regular activities:

Attend Kete Tuarua hui every second Tuesday, 10.30 – 12 (next hui 24 March 2020 – see contacts below)

### Contacts list:

Name	Role	Contact
Roland Sapsford	Principal Advisor – Te Puni Kōkiri	sapsr@tpk.govt.nz

Wai 262 Team	Te Puni Kōkiri	Wai262@tpk.govt.nz
Matthew Cunningham (Internal)	Senior Analyst – Rights & Interests, Water Directorate	Matthew.cunningham@mfe.govt.nz
Will Collin (Internal)	Senior Analyst – Planning Standards, RM	William.collin@mfe.govt.nz
Lilian Fougere	Project Lead – NPS-IB, Strategic Policy (DoC)	lfougere@doc.govt.nz
Maggie Fellowes (Internal)	Analyst, Climate Markets	Maggie.fellowes@mfe.govt.nz

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**From:** [Joanna Morgan](#)  
**To:** [Lorena Stephen](#); [Ben Dickson](#)  
**Subject:** Handover notes  
**Date:** Friday, 20 March 2020 4:03:52 PM  
**Attachments:** **Out of Scope** [REDACTED]  
[Wai 262 Handover.docx](#)

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Kia ora korua,

See attached my handover notes, Te Puna link below, for:

- [REDACTED]
- [REDACTED]
- Wai 262

**Out of Scope** [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

Wai 262 Handover.docx  
<https://tepuna.mfe.govt.nz/otcs/cs.dll/link/13454755>

Will come in on Monday to drop off my laptop and gears, so will hopefully catch up with you then.

Kia pai te wikenā,  
Joanna

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## Handover Document for Wai 262

**Name:** Joanna Morgan

**Title/Role:** Senior Analyst

**Department:** Partnerships Directorate - Treaty Partnerships Team

**Date:** March 2020

### General overview of the role:

Participate in Te Pae Tawhiti – Whole-of-Government response to Wai 262, lead by Te Puni Kōkiri.

### Key events:

The below table outlines key events and associated actions to date.

Minister/Official	Activity	Support
Cabinet	Development of a whole-of-government response to Wai 262 – April 2019	MfE was consulted on the Cabinet paper
Te Puni Kōkiri	Regular meetings in the Kete Tuarua grouping	Attend cross-agency meetings
Anne Haira, Deputy Secretary – Partnerships and Customers	DCE's meetings – October 2019	Provide updates and advice
MCR	Update on progress of Te Pae Tawhiti – April 2020	Consulted on Cabinet paper
Wai 262 101 Workshop	Workshop on different ways agencies are organising themselves	Attended workshop

### Key documents:

The below table contains relevant documents. These documents can be found in either the ['Wai 262 Cross-government response'](#) folder, or the ['Wai262 MfE Response'](#) folder. Te Puni Kōkiri also has

Document	Activity	File location
2019_07_09_Wai_262 – Background Pack for officials	Wai 262 and Whole-of-government response	Wai262 Cross-government response



Document	Activity	File location
Cabinet paper – April 2019	Whole-of-government response to Wai 262	Wai262 Cross-government response
Draft budget bid	Bid to Treasury to resource support for Te Pae Tawhiti	Wai262 Cross-government response
Draft cabinet paper – March 2020	Update to whole-of-government response to Wai 262	Wai262 Cross-government response
MfE Wai 262 work-streams updates	Update to Te Puni Kōkiri officials	Wai 262 MfE Response
Terms of Reference for MPI's Wai 262 coordinating group	MPI's approach to organising their agency - Provided at a Wai 262 workshop, February 2020	Wai262 Cross-government response
Wai 262 Knowledge Nybble Wānanga – Presentation and Presentation Lesson Plan	DIA's approach to organising their agency - Provided at a Wai 262 workshop, February 2020	Wai262 Cross-government response
MfE Wai262 Reference Group – Terms of Reference	Organisation across MfE teams to feed into and receive feedback from Te Pae Tawhiti	Wai 262 MfE Response
2020 03 05 WAI262 101 Workshop – Notes from the day	WAI262 101 Workshop	Wai262 Cross-government response

### Comments:

This work programme has primarily required a watching brief of the Te Pae Tawhiti – Whole-of Government response to Wai 262, work programme. This requires attending regular cross-agency meetings hosted by Te Puni Kōkiri and providing work-stream updates.

While there are specific recommendations in the Wai 262 Report *Ko Aotearoa Tēnei* that are directed at MfE, the approach of Te Pae Tawhiti is issues based, focusing on the bigger picture of the Treaty Partnership. My advice to officials picking up this work is to start with the *2019 07 09 WAI 262 – Background Pack for officials* document prepared by Te Puni Kōkiri. The [Te Puni Kōkiri Wai 262 website](#) also has a lot of background information in language that's easy to understand.

It is worth noting that there is no singular approach to supporting this work programme. Agencies are organising themselves in different ways. MPI has developed a 'Community of Practice' that supports interested staff to understand the issues of the report and discuss ways to address them in their work. DIA (Archives and National Library units) is delivering Wai 262 101 lessons to interested staff, providing background information to the claim and its importance (See documents at the links above).

This work sits with the Treaty Partnerships team. However, successfully participating in the whole-of-government response and addressing the issues in *Ko Aotearoa Tēnei* will require commitment from the Ministry to develop a more comprehensive approach to addressing this work programme.

### Critical long-term tasks/projects:

- Organise MfE to participate in Te Pae Tawhiti
  - Comments – teams have been providing updates when requested (see policy leads in table below). To ensure consistent adequate support, this work programme requires commitment from across the Ministry.

### Regular activities:

- Attend Kete Tuarua hui every second Tuesday, 10.30 – 12 (next hui 24 March 2020 – see contacts below)
- Support Anne Haira to attend DCE's meetings
  - No date has been set for the next hui.

### Contacts list:

Name	Role	Contact
Roland Sapsford	Principal Advisor – Te Puni Kōkiri	sapsr@tpk.govt.nz
Wai 262 Team	Te Puni Kōkiri	Wai262@tpk.govt.nz
Matthew Cunningham (Internal)	Senior Analyst – Rights & Interests, Water Directorate	Matthew.cunningham@mfe.govt.nz
Will Collin (Internal)	Senior Analyst – Planning Standards, RM	William.collin@mfe.govt.nz
Lilian Fougere	Project Lead – NPS-IB, Strategic Policy (DoC)	lfougere@doc.govt.nz
Maggie Fellowes (Internal)	Analyst, Climate Markets	Maggie.fellowes@mfe.govt.nz