

## Kahui Wai Māori meeting minutes, 1-2 November 2018

*Environment House meeting room 1C*

Kahui Wai Māori (KWM) members met with Ministry for the Environment (MfE) officials on 1-2 November in Wellington at Environment House. The main focus of the agenda was to update KWM on what MfE had heard from Māori previously through work with the Pou Taiao Iwi Leaders Group (ILG), to provide an overview of the Essential Freshwater work programme and identify any gaps, and to outline the forward work programme.

### Highlights

- All work on Māori rights and interests needs to consider how we can provide for tino rangatiratanga and kaitiakitanga alongside kāwanatanga. These are not focused solely on allocating water to underdeveloped Māori land: they include being involved in the decision-making process.
- There are insufficient incentives and accountabilities on local government to involve Māori in decision-making and insufficient capacity and capability to make this happen.
- Some regional councils are dominated by farming interests, which represents a conflict of interest.
- The quality of governance varies across local government which impacts Māori involvement in decision-making.
- Resourcing is required to build capability and capacity for compliance and monitoring to ensure the quality of data and reliability of monitoring is improved.
- Values of importance to Māori are not well described or represented in regional council planning documents or decisions, and there is a need to consider and provide for Māori measures of freshwater health in the setting of freshwater objectives and limits. There was some discussion among the members that Māori measures, which include relationship and identity measures, are not necessarily solely held by Māori.
- A balance needs to be struck between regulatory action and education, increased resourcing, incentives, and the use of market mechanisms.
- The target should be 'best practice' rather than 'good practice'.
- The drivers of change, and what's inhibiting those changes, need to be identified.
- Sensible resourcing options need to be explored that will allow hapū and iwi participation in various aspects of the resource management process.
- It is critical to connect the freshwater and climate change policy work.
- The impact of, and value from, water users including hydroelectric power stations needs to be better understood.
- The principles undergirding water allocation need to be clearly defined.
- Māori need to be given the opportunity to resolve water allocation questions internally prior to local government making rule changes.
- The issues articulated by members relate to urban and rural water holistically.

## 1 November 2018 (9:30 am – 4:00 pm)

**Attendees:** Kingi Smiler (Co-chair), Tā Wira Gardiner (Co-chair), Millan Ruka, Mahina-arangi Baker, Hon. Dover Samuels, James Ataria, Tanira Kingi (from mid-morning), Riki Ellison (from mid-morning), Jacinta Ruru (via telephone)

MfE officials: Bryan Smith, Jade Newton, Jo Armstrong, Jo Burton, Kirsten Forsyth, Lucy Bolton, Matthew Cunningham, Oscar Montes de Oca Munguia, Tania Gerrard, Tim Saunders, Vicki Addison

Apologies: Annette Sykes, Paul Morgan, Traci Houpapa

### Introduction

1. The members of KWM began by introducing themselves and outlining what they hoped to achieve through this process.

### Agenda item 3: Terms of Reference

2. The draft Terms of Reference (TOR), and the changes made by Ms Sykes and Professor Ruru, were discussed. Members accepted the draft TOR and agreed to officials forwarding a copy to Ministers Parker and Davis.

### Agenda item 1: Conflicts of interest

3. The members agreed to complete conflict of interest forms and provide them to Dr Bolton.

### Agenda item 4: Background and context setting

4. Mr Smith and Ms Gerrard gave an overview of what Māori have said about their freshwater aspirations as conveyed to the ILG in 2014-2015, the progress that has been made concerning those aspirations, and the proposed MfE future work programme (Document A). He advised that officials could provide members with copies of the evidence provided by MfE to the Waitangi Tribunal's freshwater inquiry (Wai 2358) if requested.
5. The members discussed a number of the instruments that are currently in place to recognise Māori rights and interests (such as Te Mana o Te Wai and Mana Whakahono-ā-Rohe agreements) and identified some of the gaps that they consider exist. These included:
  - a. Reflection of the Māori perspective that Māori rights and interests regarding freshwater are akin to ownership;
  - b. Governance and recognition of tino rangatiratanga;
  - c. Mechanisms to audit local government on the extent to which they are implementing the instruments contained in the Resource Management Act 1991 (RMA) and National Policy Statement on Freshwater Management (NPS-FM);
  - d. Alleged conflicts of interest within regional councils (in particular where the majority of councillors are farmers);

- e. Central government providing additional funding to local government (beyond their rating base) so that they can properly implement a Treaty partnership;
  - f. Resourcing Māori to participate in local government processes; and
  - g. Resourcing Māori to develop the capacity and capability needed to participate in local government processes.
6. Members considered that all work should be viewed within the overarching need to provide for tino rangatiratanga to understand Māori relationships with freshwater, governance and decision-making. There is a need for the Treaty partners to agree upon what rangatiratanga means in a freshwater policy context. The usefulness of technical tools or definitions to assist local government in understanding concepts such as mahinga kai was also discussed.
  7. The members discussed the idea of a water commission comprised of equal numbers of Māori and non-Māori members.
  8. The members discussed the Science and Technology Group (STAG). Dr Bolton agreed to send the members a list of the membership of the STAG.
  9. The members discussed the economic development and use of water resources. They stressed that the definition of 'economic development and use' contained in Document A was not broad enough, as it does not capture concepts such as mahinga kai and kapata kai. The members also discussed the economic aspect of water bottling and exporting, and how Māori do not receive any royalties or dividends from that.
  10. Ms Addison gave a presentation on the NPS-FM (Document D). The members asked if a report has been produced on the progress of regional councils in implementing the current NPS-FM objectives and limits. The members said it would be good to know this.
  11. The members observed that, while the NPS-FM contains a considerable number of scientific objectives, it contains little information relating to Māori values or measures of freshwater health (such as ways of measuring mahinga kai). As a result, regional councils typically ask Māori to provide this information; however, Māori are not funded to provide it. The appeal of setting objectives that reflect a Māori approach is that they reflect a more systemic and holistic view of the environment.
  12. Members highlighted the problem that there is no investment in hapū to gather data, or to put together hapū or iwi management plans.
  13. Mr Smith then gave an additional presentation which summarised freshwater management and identified a potential sequence of interventions to improve the current system. The members observed that it is important that Māori are involved from the start in decision-making processes regarding the allocation of freshwater.

14. The members noted that any interventions adopted will only go so far until there are market alternatives to support them. As an example, they identified structural gaps in market information, such as a shortage of forestry consultants. They stressed that a significant 'communication push' needs to happen.
15. The members asked officials to provide information on the principles that are being applied to identify at-risk catchments and to develop short-term interventions.

#### **Agenda item 5: At-risk catchments**

16. Officials summarised the at-risk catchment work programme (Document H). They outlined the proposal to identify ten pilot sites for immediate intervention which can then be scaled up to other at-risk catchments.
17. Officials noted that an initial list of at-risk catchments was compiled by seeking advice from a range of bodies, including regional councils, non-government organisations, and iwi and hapū listed in the MfE database. Officials agreed to provide the members a copy of this complete list.
18. The members queried the extent to which Māori had been consulted when compiling the initial list of at-risk catchments. They suggested that a common list of iwi contacts needs to be prepared which combines the databases held by MfE, regional councils, and Te Puni Kokiri.
19. The members noted that there are other, non-scientific means of quantifying risk, such as social science models that can identify social, cultural, and spiritual risk.
20. The members discussed the workshop that is scheduled for 14 November to discuss at-risk catchments. For future workshops, the members asked officials to take into account the availability of Māori experts, in particular any other Māori conferences or functions that are on at the same time.
21. The members suggested that an alternative to identifying a small number of at-risk catchments would be to identify the interventions that will deal with risk across the greatest number of catchments. They suggested that a framework be developed of the interventions that have worked across multiple catchments and regional councils which can then be applied nationally.
22. In addition to developing this 'intervention toolbox', the members also stressed the importance of setting catchment limits that align with what ecologists and iwi consider to be appropriate.
23. The members highlighted the importance of drawing on existing catchment data, in particular the data collated on the Land Air Water Aotearoa website.
24. The members stressed that the freshwater and climate change work programmes need to be connected, as they are complementary.

#### **Agenda item 6: Potential changes to national direction**

25. Officials provided a summary of potential changes to the national direction on freshwater management. Three main problems were highlighted: freshwater quality is getting worse, indigenous flora and fauna are threatened or in decline, and low flows and lower groundwater levels need to be better managed (Document I).
26. The members reiterated some of the observations they had made earlier in the day, those being:
- a. While there appears to have been a lot of work in the water quality space, the way in which Māori engage in decision-making through the expression of tino rangatiratanga has not been addressed;
  - b. Work should be done to develop a toolkit of national intervention options that are likely to have the broadest effect across the biggest number of catchments; and
  - c. If authority is devolved onto regional councils, then further resourcing needs to be devolved as well.
27. A discussion was held about good farming practices. The members felt that MfE should be aiming at encouraging best practice rather than good practice. They also stressed that, while regulation provides certainty for farmers, it needs to be balanced with market incentives (such as pricing mechanisms and branding) and better information on alternatives available to farmers. The government and private organisations such as Fonterra and Dairy NZ all have a role to play in this.
28. The members discussed the need for an educative programme to reconnect people with water, especially those residing in urban areas. They suggested that 'the lack of connection with water' be added as additional problem to Document I.
29. The members agreed that Aotearoa's freshwater resource was in a 'crisis situation'.
30. Officials offered to invite representatives of the three waters programme to give a presentation to a future KWM meeting.

#### **Agenda item 7: Meeting summary and other matters**

31. Mr Smith reflected on some of the key issues that had been raised by members during the course of the day:
- a. Tino rangatiratanga, governance, and the role of Māori as partners in the decision-making process;
  - b. Conflicts of interest within councils and the quality of governance;
  - c. Local government and their relationship with the Treaty and Treaty responsibilities;
  - d. Quality of data and reliability of monitoring;
  - e. Compliance monitoring, and the importance of having people on the ground (including Māori being part of compliance strategy process);

- f. The values that are of importance to Māori are not well described or represented to regional councils at the moment (i.e. through the NPS-FM);
- g. This is a crisis, and our responses need to reflect the fact that we are in a crisis;
- h. A balance needs to be struck between regulatory action as well as education, resourcing, incentives, and marketing;
- i. Targets should be higher than 'good practice'; and
- j. The drivers of change, and what's inhibiting those changes, need to be identified.

## 2 November 2018 (9:30 am – 3:00 pm)

**Attendees:** Kingi Smiler (Co-chair), Tā Wira Gardiner (Co-chair), Millan Ruka, Mahina-arangi Baker, Hon. Dover Samuels, James Ataria, Tanira Kingi, Riki Ellison, Jacinta Ruru

**MfE officials:** Bryan Smith, Dan Shenton, Jo Burtons, John Doorbar, Jennie McMurrin, Jade Newton, Lucy Bolton, Matthew Cunningham, Sam King, Tim Saunders

**Apologies:** Traci Houpapa, Annette Sykes, Paul Morgan

### Introduction

1. Mr Smith gave a brief introduction of the agenda items that were scheduled to be discussed during the day.
2. The members advised that Ms Baker, Dr Ataria, and Dr Kingi would be the KWM representatives on the STAG.

### Agenda item 6: Potential changes to national direction

3. Officials returned to the proposed changes to the NPS-FM and the elements of the proposed new National Environmental Standard for freshwater (NES-FM). The members suggested that it would be useful if the NPS-FM and NES-FM included directions for regional councils to work with iwi to develop their own attributes relating to Māori measures of freshwater health (such as mahinga kai), as these will vary between areas.
4. The members requested further information on the impact of the NPS-FM on Māori communities since the first statement was introduced in 2011 – for example, how have councils attempted to implement the national objectives framework, and any examples of iwi being funded to do their own monitoring. Ms Baker offered to provide information on a mahinga kai monitoring project that Te Ātiawa ki Whakarongotai have implemented with the Greater Wellington Regional Council.
5. The members held a discussion on how potential changes to the NPS-FM and the NES-FM could be ‘embedded’ to change the culture of regional councils. They stressed that regional councils do not currently give proper effect to existing mechanisms, such as iwi management plans and consultation on resource consent applications. The members stressed that the MfE should provide direction to regional councils that 20 days’ notice for resource consent applications is not good enough, and that resource consents should not be processed if the applicant has not consulted with Māori first.
6. The members emphasized the importance of adequate auditing mechanisms to ensure that regional councils meet their responsibilities to Māori. Some of the potential vehicles for such audits include the Office of the Auditor-General and a national version of the Treaty audits performed by the Independent Māori Statutory Board (Auckland).
7. The members also discussed the need for the NPS-FM and regional policy statements to include indicators that reflect Māori values. It was suggested that

In-confidence

NOT GOVERNMENT POLICY

some of the social science models that are available – such as the environmental distress scale – are more accurate than recreational health monitoring.

**Agenda item 9: Land use regulation and good farming practice (the ‘rural package’)**

8. Officials discussed the ‘rural package’ work programme. They highlighted the four key areas of farming practice that require new approaches (good management, intensification, high-risk activities, and stock exclusion) and summarised a mix of different intervention options (enhanced status quo, risk-based regulatory approach, and targeted national regulation) (Document J).
9. The members stated that ‘enhanced status quo’ is insufficient: potential interventions need to be aiming well beyond the status quo.
10. The members reiterated the need for market incentives and price signals to complement regulatory measures. This will incentivise farmers to change their practices – or to change to a different type of farming – and it will encourage people to upskill in order to advise farmers on how to make these transitions. They highlighted the importance of linking freshwater policy and emissions trading in this context.
11. The members also suggested the idea of introducing a ‘warrant of fitness’ for farms, or for some form of state certification to recognise farms and products which meet national carbon and freshwater standards.
12. The members asked officials whether sufficient research existed regarding land use suitability for alternatives to dairy farming. Mr Smith advised that the research is good in some places but not in others – for example, we don’t fully understand the capability of our soils, topography or critical source areas. He noted that MfE officials meet with representatives of Crown research institutes fairly regularly, but more needs to be done to bring some of the research funding in line with the proposed freshwater reform packages.
13. The members suggested that it would be useful to connect with other research initiatives involving similar kaupapa, such as Ngā Pae o Te Maramatanga and the National Science challenge.
14. The members also discussed the need for ongoing consideration about how the Crown engages and consults with iwi, hapū and whānau regarding the essential freshwater work programme, and what role KWM might play in that.

**Agenda item 9: Discharge allocation and land development**

15. Officials spoke about the proposed reforms to discharge allocation (Document K). They advised the members that this is a pressing issue, and that the government is prepared to put itself in the middle of this conversation to try and avoid lengthy and repetitive litigation in the Environment Court.
16. The members stated that tino rangatiratanga, and the resolution of Māori rights and interests both to the allocation and taking of water, need to be resolved.



17. The members also questioned whether the primary way that this work programme affects Māori is because they hold a disproportionately high amount of underdeveloped land. They repeated the point that the recognition of Māori rights and interests is a wider goal than just providing for land development.
18. A discussion was held about the ongoing litigation regarding the Bay of Plenty Regional Council's proposed change to their regional plan concerning nitrogen discharges to Lake Rotorua (plan change 10). The members made a number of observations about the root cause of this litigation, including:
  - a. The Crown has assumed the right to devolve water allocation rights to local government in a way that does not consider tino rangatiratanga;
  - b. Until the Crown supports tino rangatiratanga as the framework by which Māori participate in decision-making, Māori will continue to look for other vehicles to become involved (such as Court processes); and
  - c. Māori need to be given the opportunity to resolve water allocation disputes internally prior to local government making rule changes. The members cited Lake Rerewhakaaitu as a good example of this.
19. The members then prepared a rough model of how tino rangatiratanga could be better reflected within the existing freshwater management structure. Some members expressed the view that it would require substantial changes to the Local Government Act 2002 to implement.
20. The members discussed whether direct negotiations between iwi and the Crown need to occur at some point regarding water allocation issues.

#### **Agenda item 10: Forward work programme**

21. Officials presented an A3 sheet outlining the proposed forward work programme (Document L). They advised that the wording in Document L would be updated to reflect the wording changes that had been discussed the previous day.
22. The members asked that the naming of work programmes in Document L be changed to align with the wording in the other background documents that members had been briefed on during the course of the meeting. They also asked that Document L be revised to make it clear when KWM is expected to provide advice on various freshwater matters.
23. The members noted that it would be useful if officials could provide information on what water rights and values the government considers are held by water bottlers, hydroelectric and geothermal power plants. Officials advised that they can provide some information on the nature of different uses and the value that water adds to some industries, such as irrigation and water bottling. Officials advised that this information was not comprehensive.
24. The members stated that they wanted to deal with the impact of hydroelectric stations on water quality.
25. Members and officials confirmed the following future meeting dates:

- 19-20 November 2018. The members asked to hold a joint meeting with the Freshwater Leaders Group (FLG) on the afternoon of the 19<sup>th</sup>;
- 6-7 December 2018;
- 29-30 January 2019;
- 27-28 February 2019;
- 18-19 March 2019;
- 29-30 April 2019; and
- 22-23 May 2019.

26. The members advised that they were happy to continue to meet in Wellington unless a specific matter being discussed required them to meet elsewhere.

27. The members advised officials that they would discuss whether to nominate another KWM member to join the FLG.

28. The members asked for a list of the highlights from this meeting, and how they are going to be incorporated into the work programme, so that they know how to shape their own work programme going forward.

29. The members then met separately without officials present.

## Appendix A: Action points

No.	Action	Responsibility	Date
1	Provide Minister Parker with a copy of the agreed ToR for his consideration	MfE officials	Done (7/11/2018)
2	Provide Dr Bolton with conflict of interest forms	KWM members	
3	Provide KWM members with a list of the members of the STAG	MfE officials	Will be provided in covering email accompanying the agenda
4	Provide KWM members with the full list of at-risk catchments that have been identified	MfE officials	Will be provided during at-risk catchment update on 19-20 November
5	Invite officials from the three waters programme to give a presentation to a future KWM meeting	MfE officials	Scheduled for 20 November 2018
6	Provide KWM members and officials with information on a mahinga kai monitoring project that Te Ātiawa ki Whakarongotai have implemented with the Greater Wellington Regional Council	Ms Baker	
7	Provide KWM members with information on the values that water adds to some industries, such as irrigation and water bottling	MfE officials	Included in background material
8	Arrange a joint meeting between KWM and FLG	MfE officials	Scheduled for 7 December 2018
9	Seek the Minister's approval to appoint an additional KWM member onto the FLG	MfE officials	Done (Riki Ellison)
10	Provide information on the principles that are being applied to identify at-risk catchments and to develop short-term interventions	MfE officials	Will be provided during at-risk catchment update on 19-20 November
11	Provide information on the progress of regional councils in implementing the current NPS-FM objectives and limits	MfE officials	Included in background material
12	Provide information on how Māori communities have attempted to engage with regional councils in the implementation of the NPS-FW, including examples of Māori communities being funded to undertake monitoring	MfE officials	Included in background material
13	Provide KWM members with a list of the highlights from this meeting, and how they are going to be incorporated into the freshwater work programme	MfE officials	Included in these minutes