

## Kahui Wai Māori Meeting Minutes, 19-20 November 2018

**19 November 2018 (9:30 am – 3:30 pm)**

**Venue:** Front & Centre, corner Tory and Tennyson Streets, Wellington

**Attendees:** Kingi Smiler (Co-chair), Tā Wira Gardiner (Co-chair), Annette Sykes, Hon. Dover Samuels, Dr James Ataria, Mahina-a-Rangi Baker, Millan Ruka, Paul Morgan, Riki Ellison

Ministry for the Environment (MfE) officials: Annabelle Ellis, Bryan Smith, Jade Newton, Jo Armstrong, Jo Burton, Janice Rodenburg, Kirsten Forsyth, Dr Lucy Bolton, Dr Matthew Cunningham, Oscar Montes de Oca Munguia, Tim Saunders, Vicki Addison

**Apologies:** Dr Jacinta Ruru, Dr Tanira Kingi, Traci Houpapa

### Introduction

*Karakia timata*

1. Tā Wira began by updating Kahui Wai Māori (KWM) members on his recent discussion with Minister Parker on the matters raised by members during the previous meeting:
  - a. *Draft Terms of Reference (ToR):* The Minister is still reflecting on the draft ToR with his colleagues.
  - b. *Tino rangatiratanga:* The Minister emphasised that the principles of the Treaty are well understood. The Crown and Māori share similar aspirations around water quality, rights and interests. He is interested to hear what the group thinks tino rangatiratanga means in a freshwater policy context, and how it would relate to kāwanatanga.
  - c. *Māori measures of freshwater health:* The Crown is keen to explore how Māori measures of freshwater health can be better represented in freshwater policy.
  - d. *Active participation:* The Crown wants to understand how it can better reflect Māori participation in freshwater policy.
  - e. *Allocation:* The Minister stressed that the government does not intend to pursue a commercial fisheries-type 'settlement' for freshwater allocation. Its focus is on the fair allocation of freshwater in scarce catchments.
2. The members expressed some concern about the compartmentalisation of Māori rights and interests into discrete pieces of work, and the fact that the Essential Freshwater programme does not extend to constitutional reform or reform of the

Local Government Act 2002 (LGA). Nevertheless, the Chair expressed the view that they could continue to have a productive conversation, on the basis that the government's current parameters on Māori rights and interests in freshwater would not prevent KWM from proposing specific ideas or options.

3. The members and officials discussed the proposed reforms to the Resource Management Act 1991 (RMA). Officials advised that Minister Parker intends to conduct a two-stage review:
  - a. A brief amendment to the RMA concerning provisions introduced by the previous government (due to be introduced to the House in December 2018).
  - b. A more comprehensive range of amendments to support the substance of the Essential Freshwater programme and potentially wider RMA / system reform, which will be developed throughout 2019.
4. The members asked to see a copy of the brief amendment to the RMA. Officials advised that they would report back to the members. The members also asked to be kept apprised of any other legislation that is likely to be relevant to the work of KWM, in particular climate change.
5. The members discussed whether it would be useful for them to commission their own experts to advise them on technical subject matter so that they can engage effectively in co-developing policy.
6. The members noted that it was important that they are kept abreast of the work of other advisory bodies, in particular the Freshwater Leaders Group (FLG) and the Science and Technology Advisory Group (STAG). They asked officials to identify, in advance, the agenda for the joint hui scheduled for 7 December 2018, as well as the separate KWM hui being held the previous day. They also noted that it would be useful to be kept informed of the issues raised by industry lobby groups such as Federated Farmers.
7. Dr Bolton asked those members who have yet to provide her with completed conflict of interest forms to do so at their earliest convenience.

### **Agenda item 3a: Minutes of previous meeting**

8. The members provided officials with some minor changes to the draft minutes of the KWM meeting held on 1-2 November 2018.
9. Officials agreed to circulate a revised version of the minutes for members to review.

### **Agenda item 3b: Evolution of work programme**

10. Mr Ruka asked officials to provide members with copies of an MfE local government compliance monitoring report that was produced in November 2016.
11. The members expressed an interest in forming a sub-committee to work on the budget for KWM.

12. Officials then discussed background document B, which outlined what officials had heard from members at the previous meeting about the Essential Freshwater programme. This was divided into four main areas or 'yellow boxes' under the framework of tino rangatiratanga. Officials suggested that this division is not intended to compartmentalise tino rangatiratanga; rather, it shows the different parts and components that we need to think about in order to ensure Māori can assert their rangatiratanga:
  - a. Stronger direction for giving effect to Māori values.
  - b. Allocation and access to freshwater.
  - c. Input into governance and decision-making.
  - d. Compliance monitoring and enforcement.
  
13. The members made a number of observations on these four areas:
  - a. Buy-in from local government is essential. This is usually done in one of two ways: changing the law or incentivising the desired behaviour.
  - b. The Minister appears to be focused on centralising decision-making rather than leaving control at a catchment level (which is what Māori prefer).
  - c. An audit process is required to assess local government compliance with their responsibilities to Māori.
  - d. Local government may struggle to implement something they cannot afford.
  - e. A targeted charge on water would minimise the cost falling on ratepayers or central government.
  - f. Language is important – 'recognition of' Māori decision-making in Crown processes is more appropriate than 'input into'.
  - g. Funding for science and innovation, including Māori models of science, needs to be sufficient and aligned.
  - h. More substantive Crown funding of clean-up and restoration of waterways is needed.
  
14. The members reiterated their desire to discuss the budget allocated to KWM in order to decide what expert and secretariat support they need to prepare and present their ideas and options. Ms Sykes mentioned the wānanga model that was used to develop advice on the Te Ture Whenua Māori Act 1993.
  
15. The members asked to be provided with a timetable displaying the work streams, milestones and decision points for the various aspects of the Essential Freshwater programme, so that KWM are aware of when they need to engage on specific matters.

16. The members highlighted the need to define the underlying principles of freshwater allocation. They stressed that these principles need to consider various competing interests and be consistent with tikanga māori. The members requested copies of any relevant existing material that has previously been prepared on the principles of freshwater allocation and allocation models.
17. Dr Bolton offered to provide members with a copy of some principles on urban water which were recently produced by an MfE working group.
18. Officials suggested that 'principles for a freshwater allocation system' could be one of the subjects discussed at the joint hui scheduled for 7 December. The members expressed some concern about whether there was sufficient time prior to this hui to develop the underpinnings of their work. Officials stressed that there is no expectation that KWM members will agree to a set of allocation principles on 7 December. The Minister is not proposing to commence public consultation on freshwater allocation until mid-2019.

#### **Agenda item 4: Potential changes to national direction**

19. Officials discussed background document C, which provided a summary of the work areas being undertaken in respect of the National Policy Statement for Freshwater Management (NPS-FM) and the proposed National Environment Standard (NES).
20. Ms Baker briefly reported on her discussions with officials about Māori measures of freshwater health.
21. The members discussed the importance of adopting a holistic, systemic approach that captured people's relationship with water as well as the water itself. They highlighted the need to drive cultural change and to reconnect people to water. It was suggested that this could engender wider support for measures designed to improve water quality. Ms Baker highlighted a recent example in Auckland where the public supported a rates increase to clean up waterways and beaches.
22. The members discussed the idea of issuing on-the-spot infringement notices to farmers failing to exclude stock from waterways. Officials mentioned that the government has been considering the use of regulations under section 360 of the RMA which prescribe infringement fees for farmers failing to exclude stock from waterways.
23. The members asked how the proposed changes to the national direction would contribute to the Minister's goal of achieving improvements in water quality in five years. Officials stated that they are looking at a wide range of tools to achieve that goal. The NES may achieve results sooner but be blunt, whereas the NPS-FM will take longer to filter through but provides more flexibility.
24. The members expressed some concern that the proposed changes to the national direction do not appear to extend to estuaries, freshwater fisheries, or monitoring. They suggested that these jurisdictional divides create problems in terms of knowing who is responsible for action, and do not accord with a holistic view of the environment as an interconnected system. Officials emphasized that the Essential

Freshwater work programme was very much based on a 'mountains to sea' ethos, with estuaries and sensitive receiving environments being explicitly contemplated.

25. Officials discussed the timetable for the national direction work, and the various tranches of briefings that are being prepared for the Minister before decisions are made in March 2019. The members indicated that they would form a sub-group to work with officials on the national direction work stream. Officials indicated that they would provide more detail at the next meeting on the specific points which members wanted to engage with.

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

26. Officials circulated a brief powerpoint presentation on the at-risk catchments process. They discussed the process by which the first tranche of catchments was identified, how 'at-risk' was defined, and why catchments that were already severely degraded were not on that list. They also provided an update on the workshop that was held on 14 November 2018 to identify the first tranche of catchments.
27. The members expressed some concern about the pace of the at-risk catchment work programme. They also suggested that Māori had not been adequately involved in the process for identifying the first tranche of at-risk catchments, and that the definition of 'at-risk' had not considered a Māori perspective. They suggested that one important criterion that had not been considered was whether hapū and iwi in the proposed first tranche catchments were sufficiently resourced to participate. Some members considered that the KWM has limited ability to influence the at-risk catchments work stream given the work that has already been done.
28. The Hon. Dover Samuels asked why Lake Ōmāpere had not been included in the first tranche of at-risk catchments. He suggested that it would have been included if Māori values had better informed the assessment of which catchments were most 'at-risk'. Officials agreed to meet with a sub-group of KWM members to discuss the tranche one selections,
29. The members asked officials to consider what success will look like in the first tranche of at-risk catchments and how this can be monitored.
30. The members highlighted the importance of drawing on existing catchment data, in particular the data collated on the Land Air Water Aotearoa website, to avoid reinventing the wheel. However, they also questioned the reliability of some of that data, given that it is collected by regional councils.
31. Members and officials discussed the next steps in the first tranche of at-risk catchments. Officials advised that they intend to consult with the local communities, councils, hapū and iwi in these catchments, scheduled for January or February 2019. The members asked to be kept abreast of this process. They also asked officials to record any hapū/iwi monitoring work that is already occurring on the first tranche of catchments.

32. Officials discussed the process for the next tranche of the at-risk catchments work stream. The members asked to be provided with a timetable outlining the milestones and decision points for the next stage.

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

**Attendees:** Kingi Smiler (Co-chair), Tā Wira Gardiner (Co-chair), Annette Sykes, Hon. Dover Samuels, Dr Jacinta Ruru, Dr James Ataria, Mahina-a-Rangi Baker, Millan Ruka, Paul Morgan, Riki Ellison, Traci Houppapa

MfE officials: Bryan Smith, Gerard Willis, John Doorbar, Jade Newton, Dr Lucy Bolton, Dr Matthew Cunningham, Tim Saunders

Department of Internal Affairs (DIA) officials: Allan Prangnell, Jane Fletcher, Nik MacDonald-Washburn

**Apologies:** Dr Tanira Kingi

### Introduction

1. The members advised officials that they aimed to conclude the meeting by 1:00pm so that members could meet by themselves in the afternoon.
2. MfE officials introduced the officials from DIA who had been invited to speak to the members about the Three Waters programme.

### Agenda item 7: Three Waters review

3. DIA officials presented a powerpoint presentation discussing the Three Waters review.
4. The members stressed that local government reform would be necessary if the objectives of the Three Waters programme were to be achieved. They noted that the LGA currently has no 'teeth' to make local authorities comply with their obligations to Māori.
5. Members and DIA officials discussed the tension between potentially aggregating the provision of three water services versus the desire of hapū and iwi to manage freshwater at a local/catchment level. The members stressed that water is a key factor in social, economic and cultural wellbeing. As such, local government must continue to be involved in freshwater issues regardless of governance arrangements regarding infrastructure. Ms Baker stressed that a balance needs to be struck between 'a catchment-based approach' and 'central regulatory protection'.
6. The members expressed concern that the Three Waters programme appears to assume that the Crown holds the sole authority to make decisions about water allocation and ownership without involving Māori. DIA officials replied that they are presently in the issue identification stage, and the government has yet to scope any policy in this area. The government's first priority is to deal with funding and capability issues, such as through a national water fund or the consolidation of service provision to draw on a bigger rating base in order to spread the cost and realise greater efficiencies.
7. The members expressed concern about the fact that Māori are often being put in a position of having to trust the Crown. They identified this as an opportunity for

In-confidence

NOT GOVERNMENT POLICY

the Crown to trust Māori by involving them at the design stage and looking into ways to share decision-making authority. They also stressed that Māori should be involved in areas other than cultural interests, such as science and industry.

8. DIA officials reiterated that their engagement with Māori is still at the formative stages. They are developing a paper to guide their engagement with Māori, which they offered to provide to the members at a later date.
9. The members discussed the fact that there is no equivalent of KWM for the Three Waters programme, and the possibility that KWM might develop proposals that contradict the work being done in the Three Waters programme. Mr Smiler suggested that the KWM write to the DIA officials working on the Three Waters programme to establish a more formal engagement process. However, the members also expressed some concern about whether they would have the capacity to engage with the Three Waters programme.
10. The members and DIA officials discussed the possibility that the Tax Working Group might suggest levying charges on those that pollute or profit from freshwater use. There may be governance questions which emerge from that. The members suggested that a levy on water use could provide revenue for the infrastructure projects that emerge from the Three Waters programme.

**Agenda item 8: Land use regulation and good farming practice ('rural package')**

11. Officials presented a powerpoint presentation to update the members on the rural package work stream.
12. The members made several points on good management practices:
  - a. Their impact needs to be properly measured, and research funding needs to be aligned with the scientific methods required to measure them.
  - b. MfE have taken a positive step by taking the lead on this, as the industry has largely not done so itself.
  - c. Cultural measures, such as the availability of watercress, are also good indicators of whether farms are implementing good management practice.
  - d. The goal should be best practice or 'tino pai' rather than 'good', as a lot of the industry will want to set the standard at the lowest common denominator.
  - e. The programme needs to be independently monitored for compliance, and resourcing needs to be provided for this.
  - f. The current timeline to have every farm on a farm environment plan by 2030 is too long.
  - g. Regional councils also need a toolkit of non-regulatory tools so that they can make positive changes in a more involved way with communities.



- h. Industry needs to set higher standards of its suppliers, and the government needs to incentivise them to do that.
  - i. Better incentives are needed to encourage more people to upskill to assist farmers to develop best practices.
  - j. One of the things inhibiting change is the number of farmers serving as regional councillors.
  - k. Farmers need to be treated with compassion to support them through any changes they are required to make.
  - l. Every farm should have a warrant of fitness.
13. Officials noted that Minister O'Connor is keen to consolidate a number of compliance demands that are being asked of farmers into a single package. Farm environment plans may become a module in this package.
14. Members and officials then discussed high-risk land activities. Members observed that most farming activities are permitted under regional plans (ie. they don't require resource consents), with the exception in some plans of nitrogen discharge. Officials highlighted that an NES has the potential to directly amend regional plans by setting national requirements.
15. The members noted that it is important to learn from the use of farm environment plans to-date, including in regions such as the Manawatū. They suggested that more research is required to measure the success of these plans. Localised data needs to inform decision-making about sustainable land-use and good management practice.
16. The members suggested that officials get the views of industry groups such as DairyNZ and Beef & Lamb on what constitutes bad practice.
17. The members suggested that a joint approach is needed between central government regulation and farm environment plans. It is important to explain in clear language why the changes are needed, and to set realistic timeframes – 5 to 10 years is too long.
18. Members and officials then discussed the joint hui scheduled for 7 December. The following potential agenda items were identified:
- a. Freshwater allocation.
  - b. Current state of water quality.
  - c. Economic analysis across the work programme to inform decision-making and policy.
19. The members then met separately without officials present.

## Appendix A: Action points

No.	Action	Responsibility	Date
1	Follow-up on draft ToR	MfE officials	Still being considered by Minister
2	Report back to KWM members on their request to see a copy of the brief amendments to the RMA	MfE officials	Done - emailed to members on 29/11/2018
3	Provide KWM Chair with the draft agenda items for the KWM hui scheduled for 6 December 2018	MfE officials	Done – draft agenda emailed to members on 29/11/2018
4	Provide Chairs the draft agenda items for the joint KWM/FLG/STAG hui scheduled for 7 December 2018	MfE officials	Done – draft agenda emailed to members on 29/11/2018
5	Provide Dr Bolton with conflict of interest forms	KWM members	
6	Provide KWM members with a revised copy of the minutes for the KWM meeting held on 1-2 November 2018	MfE officials	Done – final version of the minutes available via the portal under 'meeting minutes'
7	Provide KWM members with a copy of the November 2016 MfE local government compliance monitoring report	MfE officials	Done – available via the portal under 'background documents'
8	Discuss with KWM Chair the members' proposal to form sub-groups on specific kaupapa (such as budget, national direction, Three Waters etc.)	MfE officials	Done
9	Provide KWM members with copies of any relevant existing material that was prepared by the Iwi Leaders Group (ILG) on the principles of freshwater allocation and allocation models	MfE officials	Done – available via the portal under 'background documents'
10	Provide KWM members with a timetable displaying the work streams, milestones and decision points for the various aspects of the Essential Freshwater programme	MfE officials	Done – tabled during meeting on 6/12/18
11	Provide KWM members with a copy of the principles on urban water which were produced by an MfE working group	MfE officials	Done – available via the portal under 'background documents'