



Kahui Wai Māori Meeting Minutes, 6 December 2018

6 December 2018 (9:30 am – 3:30 pm)

Venue: Terrace Conference Centre, 114 The Terrace, Wellington

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

Ministry for the Environment (MfE) officials: Alice Jacobs, Annabelle Ellis, Bryan Smith, Dan Shenton, Jade Newton, Jo Burton, Kirsten Forsyth, Lucy Bolton, Matthew Cunningham, Nik Andic, Sam King, Peter Nelson, Tim Saunders, Vicky Addison

Provincial Development Unit (PDU) officials: Jane Frances, Robert Pigou

Introduction

Karakia i timata

1. Tā Wira began by providing Kahui Wai Māori (KWM) members with an update from the co-chairs, and some general updates from the Crown:
 - a) *Communication with Ministers:* The co-chairs have signalled that they wish to meet with Minister Parker from time-to-time to update him on KWM's progress. Tā Wira also advised members that open discussion between KWM and officials was preferred during these preliminary stages of policy development, as opposed to offline conversations with Ministers.
 - b) *Volume of work:* The large volume of information being provided to the members was acknowledged. Officials are trying to balance the scale of what is provided with KWM's requests for information. It was also noted that there are some aspects of the work programme that can be isolated and tackled sooner rather than later.
 - c) *Terms of Reference (TOR):* Officials are aiming to have the TOR agreed by Ministers before Christmas. Ministers are happy with majority of the TOR, but wish to discuss some of the wording further before they sign-off on the TOR.
 - d) *Tino Rangatiratanga:* Ministers acknowledge that this is a longer term issue.
 - e) *Resourcing:* Officials will endeavour to provide KWM with resourcing to carry out their proposed work programme; however, there may be a need for the members to prioritise their work given the amount of funding that has been allocated.

2. The members agreed that it was important for Mr Smiler and Tā Wira to meet with Minister Parker from time-to-time. They also stressed the importance of having the TOR finalised to ensure that the focus for the group is clear.
3. The members also expressed some concerns about the level of support they receive from MfE officials.

Agenda item 1: Introduction to the provincial growth fund

4. Ms Frances outlined the Government's key objectives with the Provincial Growth Fund (PGF) which is an investment fund intended to lift income in the regions, with a focus on jobs and employment. The PGF will provide seed capital to businesses (where banks typically do not), and have a longer timeframe for a return on investment. Another key focus is to encourage Māori to invest and grow their assets.
5. Water storage will be an investment focus under the PGF, as access to water is critical to land-development. Water storage projects will need to align with water quality and climate change policy.
6. The members agreed that this was a good kaupapa, but there were problems with barriers to access. Ms Sykes raised the issue that if the focus for investment is premised on Māori landholdings, then some iwi will be disadvantaged as they have yet to reach Treaty settlements with the Crown, have suffered from raupatu or have undeveloped land and thus do not have the land-base or money required to engage in the process. She was concerned that this could perpetuate a 'first-in, first-served' approach to funding applications.
7. Ms Frances responded that the PGF cannot address these issues, but that staff can assist applicants with writing applications to address some capability gaps. Likewise the PGF is aimed at providing capital as opposed to allocating funding based on the most sustainable land use.
8. The members were interested in how officials are engaging Māori to apply for PGF funding, and how officials communicate what assistance is available. Mr Pigou noted that they have been working closely with other government agencies, such as the Department of Conservation (DOC) and Te Puni Kōkiri (TPK) who have staff in the regions in order to use a collaborative approach to engagement.
9. Mr Ruka raised the issue of a lack of benefits accruing to Māori, and little Māori involvement in the process.
10. Members and officials discussed current applications under the PGF, including the amount of applications from Māori, and the applications that have been approved so far.
11. Hon. Samuels advised that it is critical for officials to take into account multiple sources of information, and to be cognisant of the integrity of these sources, when assessing applications.

12. Mr Pigou closed with acknowledging that further consultation and expert advice was needed to ensure a robust process for PGF funding.

Agenda item 2: At-risk catchments update

13. Ms Ellis provided the members with an update on the at-risk catchments (ARC) project following the stakeholder workshop, and the meetings with the freshwater advisory groups. Officials heard that they need to clarify and communicate their intent better, outline what the project deliverables are, and engage with Māori better.
14. As a result, the Minister has agreed to extend the timeframes for the project and adopt a revised approach that will:
 - a. Gather national-level data and information (with a map of all risks to target investment and interventions);
 - b. Allow for officials to work more closely with Māori;
 - c. Establish a criteria that encompasses broader values;
 - d. Focus on exemplar catchments, which would be representative of a range of different pressures and issues;
 - e. Ensure a collaborative approach with other government agencies, regional councils, hapū/iwi, and communities; and
 - f. Take a bottom up approach.
15. The members discussed the importance of the Te Mana o te Wai and Te Mauri o te Wai framework, which connects the health of the water to the community and captures a holistic view of the wellbeing of the water.
16. The members discussed the need to target science investment towards addressing big picture strategic outcomes, and for interventions to be aimed at critical effects in order to achieve the biggest impact. Mr Ataria outlined that cumulative impacts are always at the end of the pipe which is where case studies should be targeted.
17. The members discussed the importance of taking a holistic perspective. They expressed some concern that the remit of the Science and Technical Advisory Group (STAG) is limited to science, and does not consider social, policy or economic issues.
18. KWM members also discussed Māori participation in the ARC project, and asked how Māori can play a role on the ground. Ms Ellis agreed that it will be pivotal to engage mana whenua and that the team will be seek KWM's advice on engagement.
19. Mr Ellison added that more work needed to be done to target the systemic issues. There was some discussion on the value of the ARC project in providing a better picture of these systemic issues. Officials suggested that the government could adopt an approach that both holds the line in at-risk catchments and seeks to address the systemic problems through wider policy reform.

20. Ms Sykes was in favour of case studies that reconnected Māori and communities to water. The case studies could be used as examples of structure, progress and education, and community interaction with the catchments.
21. The members stressed that it is important that there is Māori capability within the team, particularly for the people undertaking the case study analysis.
22. The members highlighted the need for a joined up approach to understanding the science, having local data and information, and understanding the regulatory landscape.
23. Members and officials agreed for the sub-group on at-risk catchments to meet later in the day.

Agenda item 3: National direction discussion

24. Ms Burton introduced Background Document B which contained all of the new National Policy Statement for Freshwater Management (NPS-FM) proposals. Members identified that there was no reference to Te Mana o te Wai, nor was there any explanation of how the proposed changes to the NPS-FM related to Te Mana o te Wai.
25. Ms Burton stated that Te Mana o te Wai is the first principle of the NPS-FM and everything flows from that and fits into that framework.
26. The members advised that Te Mana o te Wai is a holistic framework of principles with a hierarchy of values. Ms Sykes discussed the centrality of whakapapa to this kaupapa, and provided an overview of how whakapapa stems from Ranginui and Papatūānuku and draws many elements together. She suggested that policy silos confine whakapapa to one realm in a way that is inconsistent with a Māori worldview. Mātauranga Māori is informed by this worldview, and needs to be integrated into freshwater management and planning.
27. Furthermore, the members outlined that Te Mana o te Wai is a water governance framework under which decisions are made. Therefore the components of the NPS-FM proposals need to articulate how they fit within Te Mana o te Wai. Ms Burton replied that officials are open to this.
28. There were concerns expressed relating to overall implementation. The members suggested that the NPS-FM and the Resource Management Act 1991 (RMA) already include tools and mechanisms that are not being implemented by Councils, and there are no statutory mechanisms to compel compliance. The members noted that enforcement and auditing processes are critical to strengthening the freshwater management and planning systems.
29. There was a discussion on how to operationalise Te Mana o te Wai and integrate it throughout the NPS-FM. Ms Baker suggested that officials focus on developing an overarching framework before continuing to identify attributes, as the right attributes will fall from the framework. Members agreed that taking a holistic view

to policy development will ensure that coastal and climate change issues are also addressed.

30. The members reiterated the importance of having Māori capability within MfE in order to develop policy that is consistent with Māori rights and interests.
31. Mr Smith outlined that councils have been implementing the NPS-FM for years, He highlighted that the Minister's focus is to complete the NPS-FM. The members noted the difference between completing the NPS-FM and wanting to rewrite the NPS-FM.

Update on Plan Change 10

32. Mr Smith updated the KWM about plan change 10, as it concerns the issue of allocation. Minister Parker has indicated his intention to become involved in litigation currently before the Environment Court.
33. Mr Kingi explained that the Minister's involvement relates to his interests in a proposed allocation framework within the NPS-FM, as it provides a test case for the Minister's allocation principles.

Agenda item 2: Work programme update (continued)

Upcoming milestones and decision points

34. Officials tabled an A3 sheet displaying the work streams, milestones and decision points for the various aspects of the Essential Freshwater programme, and plotting what officials understood to be the KWM's proposed work streams.
35. The members noted that the A3 sheet did not appear to include all of the work they were proposing to undertake or commission, including their interest in identifying potential mechanisms for the exercise of tino rangatiratanga alongside the different levels of kawanatanga. Mr Smith advised that the Minister was still considering this proposed work stream.

Kahui Wai Māori work programme

36. The members tabled a work programme document which they had prepared, which identified five areas that the KWM had identified as requiring work:
 - a. Collating work and ideas to date for recognising Māori rights, responsibilities and interests in freshwater;
 - b. Developing a tino rangatiratanga / kawanatanga framework for freshwater;
 - c. Identifying methods that ensure Māori measures of freshwater system health inform regulation;
 - d. Developing non-regulatory mechanisms to restore freshwater health; and
 - e. A legal opinion on whether Māori have rights to water akin to ownership.
37. The members advised that they also sought three additional work streams which they had not had time to incorporate into their draft work programme:

- a. Principles of allocation;
 - b. Governance and decision-making; and
 - c. A communication plan.
38. The members advised that they envisioned that their proposed work programme would assist both the Essential Freshwater programme as well as longer-term reforms. However, they had some concerns about whether these projects could be completed within the current timeframes for the various Essential Freshwater workstreams.
39. Mr Smith asked if 'compliance monitoring and support' and 'distribution of funding and revenue' – two of the subjects which officials understood the KWM wanted to explore – were included in this programme. Mr Smiler advised that they were part of the second and third proposed projects.
40. The members advised that they wanted to engage the foremost experts to carry out this work, and had begun contacting potential candidates. They also stressed that they wish to engage a secretariat to undertake the following functions:
- a. Scope and project manage the work streams proposed by the KWM;
 - b. Provide research support and analysis; and
 - c. Prepare minutes for all KWM hui.
41. The members advised that they wished to contract Maia Wikaira of Whāia Legal to scope and manage their proposed work streams. They asked if Ms Wikaira could commence work immediately in order to develop projects briefs and secure potential researchers before Christmas. Officials confirmed that this was possible.
42. The members supported officials' suggestion that MfE staff from the 'Iwi Rights and Interests' team could fulfil the other two functions, subject to their availability.
43. The members stressed that they wanted a secretariat in place from first thing in the New Year.
44. Officials advised that Minister Parker would need to approve the proposed KWM work programme before funding could be allocated. The members asked if officials could update their draft work programme to incorporate the three additional work streams they had proposed so that it could be attached to a briefing for the Minister.
45. The members and officials agreed that, once Ms Wikaira had scoped the KWM's proposed work streams and their cost, Mr Smiler would write to Dr Bolton identifying the projects that the KWM seek to commission.

Other matters

46. The members suggested that Mr Smiler and Tā Wira meet with Minister Parker from time to time to provide their first hand views of the process. Officials agreed to raise this with the Minister.
47. The members expressed their concern about the speed of the presentations given by non-MfE officials. They stressed that presenters need to identify how their work

relates to the KWM rather than provide an 'information drop', which felt more like a box-ticking exercise.

Agenda item 4: Developing an objectives framework

48. Mr King discussed the format of the allocation objectives framework workshop which officials planned to hold at the joint advisory groups meeting the following day.
49. The members and officials briefly discussed allocation models, and the importance of understanding which models have and have not worked internationally in order to inform discussions in the New Zealand context. However, they agreed that it is important to define principles and objectives first, although the members expressed some concern that the two terms were being used interchangeably.

Ngā Mātāpono ki te Wai

50. The members advised officials that they had discussed the principles for freshwater that were set out by the Iwi Leaders Group (Ngā Mātāpono ki te Wai), which accorded with their own views:

- a. Te Mana o te Wai
- b. Access
- c. Wai Tuku Kiri
- d. User assessment
- e. Te Mana Motuhake o ia wai o ia wai ki te wai
- f. Te Tiriti o Waitangi te tāhuhu o te wai
- g. Te kaitiakitanga o ngā hapū me ngā iwi ki te wai
- h. Certainty
- i. Te kaitiakitanga o ngā hapū me ngā iwi ki te wai
- j. Equity

51. The members asked whether the government supported these principles, as this would make it easier to set freshwater allocation objectives and values. Officials advised that, while officials had supported these principles when they were developed by the ILG, they had not been agreed to by the government. They also highlighted that there are tensions within the principles that need to be worked out.

52. Officials advised that the left-hand column of the annex to Background Document C represented what had been developed with the Iwi Advisors' Group in 2016. The members did not feel that the language reflected a Māori worldview. They highlighted that Ngā Mātāpono are a 'hierarchy of values' based on whakapapa which cannot be mixed up or only applied in part.

53. The members suggested that the allocation team consider a report produced by Telfer Young for the Waitangi Tribunal's freshwater inquiry (Wai 2358) on the rights to water accrued by water bottlers, hydroelectric and geothermal power plants.

54. The members asked if international trade agreements placed any limitations on potential allocation models. Officials replied that it depended on the allocation model being considered, but the general principle was that foreign and domestic

participants need to be treated equally. The members suggested that this did not take into account preservation arrangements in trade agreements.

Format for the joint workshop

55. Mr King returned to the proposed format for the workshop scheduled for the following day. Broadly, officials proposed to split the members into five groups to take turns discussing five possible outcomes for an allocation framework which officials had identified. He asked the members if they thought this format needed to change given the points they had raised.
56. The members noted that the five outcomes that officials had identified did not reflect their views. They were also unsure if the other advisory groups had given enough thought yet to allocation to be able to discuss the level of detail envisioned. They suggested that it would be better if the workshop focused on principles rather than the five outcomes suggested by officials.
57. The members suggested that the annex to Background Document C (which was intended to form the basis for the workshop) be revised to display Ngā Mātāpono on one side and the Crown's perspective on the other side. The workshop could then focus on bringing the two positions together. They suggested that this sort of kanohi ki te kanohi discussion was likely to be more productive than splitting into smaller groups.
58. Officials supported the idea of a kanohi ki te kanohi discussion between the groups. However, they added that the other advisory groups do not represent the Crown, and they might wish to table their own ideas on allocation principles.
59. The members and officials agreed on a revised format for the joint workshop:
 - a. The Chairs of each of the advisory groups would be invited to summarise their groups' thoughts and discussions on freshwater allocation in order to identify areas of agreement and disagreement.
 - b. Tā Wira would facilitate a group discussion on high level principles for fair allocation.
60. Officials agreed to advise the Chairs of the other advisory groups about the change in format for the workshop.
61. The members suggested that there was unlikely to be a large gap between the thinking of the respective advisory groups. Most members were likely to agree with Te Mana o Te Wai: it was the principles that followed it which would need to be debated.

Wrap-up

62. Mr Smiler moved that the minutes of the last hui be approved. Hon. Samuels approved, and the motion was carried unanimously.
63. Dr Bolton reminded the members to provide her with copies of their conflict of interest forms.

64. The members suggested that it would be useful if the membership of the Science and Technical Advisory Group (STAG) was expanded to include experts in economics and social sciences. They asked officials for their view on the idea of expanding the STAG membership.

65. A sub-group of the members then met separately with the at-risk catchments team.

Karakia whakamutunga

Appendix A: Action points

| No. | Action | Responsibility | Date |
|-----|--|----------------|---|
| 1 | Prepare a contract for Ms Wikaira to scope and manage the work streams proposed by the KWM | MfE officials | Done |
| 2 | Update the draft KWM work programme document to incorporate three additional work streams (principles of allocation, governance and decision-making, and a communication plan) | MfE officials | Done (6/12/18) and forwarded to Ms Baker |
| 3 | Discuss the draft KWM work programme document with Minister Parker | MfE officials | Done (10/12/18) – outcome communicated to KWM members via email on 24/12/18 |
| 4 | Write to Dr Bolton identifying the projects that the KWM seek to commission | KWM Chair | Done (14/02/19) |
| 5 | Raise with Minister Parker the suggestion that Tā Wira and Mr Smiler meet with him from time to time to give him their first hand views | MfE officials | Done |
| 6 | Advise the Chairs of the other advisory groups about the change in format for the allocation workshop on 7 December | MfE officials | Done (6/12/18) – the Chairs were happy with the revised format |
| 7 | Provide Dr Bolton with conflict of interest forms | KWM members | |
| 8 | Provide thoughts on expanding the membership of the STAG to include economists and social scientists | MfE officials | Done |