

Kahui Wai Māori Meeting Minutes, 29-30 January 2019

The Chair has requested that minutes of Te Kāhui Wai Māori's closed sessions not be provided to MfE officials (although they are comfortable with approved highlights being conveyed). These minutes have therefore not been reviewed by officials.

29 January 2019 (10:00am – 5:00pm)

Venue: Thistle Inn, 3 Mulgrave Street, Pipitea

Attendees:

Kahui Wai Māori: Kingi Smiler (Co-chair), Annette Sykes (after lunch), Hon. Dover Samuels, Prof. Jacinta Ruru (via phone for part of the hui), Mahina-a-rangi Baker, Dr Tanira Kingi (via phone for part of the hui)

Kahui Wai Māori contractors: Lyn Harrison, Maia Wikaira

Ministry for the Environment (MfE) officials: Matthew Cunningham, Bryan Smith (afternoon session only), Lucy Bolton (afternoon session only)

Crown Lead: Tā Wira Gardiner (for the introduction only)

Apologies: Dr James Ataria, Millan Ruka, Paul Morgan, Riki Ellison, Traci Houpapa

Introduction

Karakia i timata

1. The members present in Wellington agreed to commence the meeting and teleconference those members whose presence had been delayed by the fog. They also agreed to extend the meeting into the following morning to discuss any matters that could not be covered today.
2. The members briefly discussed the Crux Water Quality Forum held in Queenstown the previous night, and asked whether it (or any other groups like it) are providing advice to Minister Parker. Tā Wira informed the members that, while other bodies may choose to send material to Ministers, the KWM is the government's official forum for collaborating on the development and analysis of policy options for issues of particular relevance to Māori.

Revised Terms of Reference

3. The members discussed Minister Parker's revisions to the Terms of Reference (ToR) that were sent to members in December 2018. Dr Kingi and Dr Ruru were dialled in for part of the discussion.
4. The members raised two key matters:

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- a. Paragraph 14 noted that '[n]othing in this terms of reference shall diminish the rights of Iwi, Hapū, Whānau ... as set out in Article II and Article III of Te Tiriti o Waitangi', without defining what those rights are; and
 - b. Paragraph 13 notes that the KWM will be guided by Treaty 'principles' rather than Treaty 'rights', which may suggest that the scope of the KWM is more limited than the scope of the rights guaranteed to iwi, hapū and whānau.
5. Dr Kingi stressed the importance of recognising that Māori seek a fundamental change to the freshwater governance framework in order to realise the Treaty partnership. He was concerned that officials were focusing instead on incorporating Māori values into the existing framework. Some discussion was held on whether it was possible to reflect this level of detail in the ToR, or whether it would emerge through the KWM's proposed work streams.
 6. The members agreed to continue the discussion about the revised ToR the following day, when more members were scheduled to be present in person.

Communications plan

7. The members resolved that Ms Harrison's attendance at the hui did not constitute a conflict of interest, and that Mr Smiler should not participate in any final decisions confirming Ms Harrison's engagement by KWM. Mr Smiler did not participate in either resolution.

Work programme

8. The members discussed the revised KWM work programme that had been prepared by Ms Wikaira, and how it intersected with the Essential Freshwater work programme and the papers being tabled by officials for KWM meetings.
9. The members raised several matters, including:
 - a. It is important that officials work closely with KWM in developing policy, so that the papers which are put before the whole group already reflect the KWM's advice;
 - b. The KWM's work plan needs to be agreed on as soon as possible so that contractors can begin work. If this does not happen, there is a risk that the contractors' papers will be superseded by officials' work;
 - c. Ms Wikaira should act as the point of conduit between the members and KWM's contractors. Dates and timeframes need to be agreed well in advance for KWM members to input into and review drafts;
 - d. MfE should provide the KWM and its contractors with a list of all previous papers produced which relate to Māori rights and interests. This will assist them in preparing their own advice. Ms Wikaira asked that this list include the documents referred to in [a response to a recent OIA request lodged by Ms Yvonne Tahana](#); and
 - e. The members need to stress to officials that their mandate is to advise Ministers, not officials.

Te Mana o te Wai and the National Policy for Freshwater Management

10. Ms Baker noted that document B (Te Mana o te Wai and Māori values) tabled by officials contains some good proposals that are very similar to what she had planned to develop as part of KWM's workstream 3. Rather than prepare a separate report, Ms Baker advised that she hopes to work with officials on proposed changes to the National Policy for Freshwater Management (NPSFM) to strengthen Te Mana o te Wai and provide greater recognition of Māori freshwater values and measures.
11. Ms Baker and Sykes, and Dr Kingi, added that officials have some way to go in developing their understanding of Te Mana o te Wai as a concept (as set out in document C). They stressed that it is an overarching framework that incorporates governance and decision-making as well as the values and measures that inform decision-making. Ms Sykes also stressed that Te Mana o te Wai must acknowledge te mauri o te wai, the whakapapa from the Ātua through the wai down to tangata whenua, and the obligations that this whakapapa bestows upon tangata whenua. Ms Baker noted the unique kaitiaki role which this places on tangata whenua.
12. Ms Baker suggested that the KWM spend some time developing an agreed understanding of Te Mana o te Wai that will inform their own work and guide officials' thinking. The members agreed to provide their feedback on documents B and C to Ms Baker to assist her in working with officials to develop proposals for amending the NPSFM.

Te Mana o te Wai presentation

13. The members provided feedback on Ms Baker's draft presentation on Te Mana o te Wai, which she had prepared to present to the joint advisory group hui the next day. They agreed to discuss the presentation further the following day when more members would be present in person.

KWM's advice to Minister Parker

14. The members agreed that planning needs to commence soon on the shape and timing of the KWM's advice to Minister Parker. They agreed that their final report needs to be provided to the Minister by the end of April to accompany officials' final advice.
15. Ms Harrison agreed to seek clarity from officials about whether KWM's report would be confidential, and whether they would have control over its release.

Other matters

16. The members asked Ms Wikaira to leave the room for a moment. While she was absent, they discussed whether the hourly rate she had quoted to be the KWM's technical advisor and project manager was sufficient. Ms Sykes stressed that, as a general rule, all of the KWM's contractors should be paid at commercial market rates. Mr Smiler advised that he would raise with Ms Wikaira the matter of her hourly rate. Ms Wikaira was then invited to return to the meeting.

17. The members stressed that Ms Wikaira's time must not be taken up by administrative work, as MfE have promised to provide this under the ToR. Dr Cunningham asked Ms Wikaira to continue to liaise with him about any administrative work that she wants to offload. The members agreed that Ms Wikaira may provide draft KWM documents (including draft contractors' reports) to Dr Cunningham to print ahead of future meetings.

Essential Freshwater work programme update

18. Dr Bolton and Mr Smith arrived.
19. Mr Smiler asked Mr Smith for an update on the Essential Freshwater forward timetable. Mr Smith advised that officials' final advice on the national direction proposals is currently due to go to Minister Parker in mid-April, and the final allocation advice is due to go at the end of April. In addition, Minister Parker is interested in pursuing more comprehensive reform of the resource management system. Mr Smith suggested that KWM start advising Ministers as soon as possible about the more systemic reforms which they think need to happen. He added that the KWM, and Māori in general, will be the best and most effective advocates for transformational change, as other sectors in society are unlikely to do so.
20. The members discussed the idea of a central water commission, and the degree of authority that should be centralised versus the matters that should continue to be addressed locally. Mr Smith advised that Minister Parker has not reached a position on a water commission, but that officials generally take the approach of trying to determine the management functions that are needed before discussing what type of structure is best suited to perform them.
21. The members expressed concern about whether they have enough time/capacity to progress their own work streams while also engaging with officials on the Essential Freshwater programme. They asked that, if officials want to put papers to KWM, they should discuss this with Mr Kingi and Ms Wikaira first, who will work with the KWM to decide if they have capacity to engage on the proposed kaupapa.
22. Ms Baker referred to a recent briefing sent by officials to Minister Parker on ecosystem health (Essential Freshwater 31). She expressed her disappointment that the feedback provided to officials on ecosystem health at KWM's last meeting had not been reflected in that paper, yet the wording in places could be construed as suggesting that the KWM supported the proposals. The members asked that, if officials intend to include text in future briefings stating that they've engaged with KWM, the KWM should have the opportunity to sign off on the text. Otherwise, officials should note that KWM have not been consulted on the briefing.
23. The members advised officials of their intent to produce a report for Minister Parker outlining their recommendations by the end of April. Mr Smith advised that the KWM can put their report directly to Minister Parker. He added that it would be valuable for the members and officials to be informed by each others' ideas.

24. Mr Smiler asked whether Te Mana o te Wai would be reflected in papers prepared by officials. Mr Smith envisaged that Te Mana o te Wai should be pervasive throughout officials' advice.
25. The members asked officials if it would be useful for the KWM to provide talking points for the Prime Minister's meetings at Waitangi the following week. Mr Smith replied that it would be very useful. The members also asked if they could be provided with a copy of officials' talking points to the Prime Minister for Waitangi.
26. Officials agreed to update the members on whether a new representative from Te Arawhiti would be appointed to replace Tim Saunders.
27. The members updated officials on their proposed work programme. Ms Wikaira asked to be provided with an updated version of the forward programme for Essential Freshwater so that she could ensure that contract dates and deliverables align with key programme milestones. Dr Bolton agreed to provide this. She also noted that MfE's freshwater Māori rights and interests team are available to support KWM's work programme.

Conclusion

28. The members agreed to reconvene the following morning at 8:00am at Environment House. They asked that future meetings not be held at the Thistle Inn due to the lack of facilities.

Karakia whakamutunga

30 January 2019 (8:00am – 12:00noon)

Venue: Environment House meeting room 1B, Kate Sheppard Place, Pipitea

Attendees:

Kahui Wai Māori: Kingi Smiler (Co-chair), Annette Sykes, Hon. Dover Samuels, Prof. Jacinta Ruru (via phone for part of the hui), Mahina-a-rangi Baker, Millan Ruka, Paul Morgan, Riki Ellison, Dr Tanira Kingi (via phone for part of the hui)

Kahui Wai Māori contractors: Lyn Harrison, Maia Wikaira

Ministry for the Environment (MfE) officials: Matthew Cunningham

Crown Lead: Tā Wira Gardiner

Apologies: Dr James Ataria, Traci Houpapa

Introduction

Karakia i timata

KWM work programme

1. The members discussed the draft KWM work programme prepared by Ms Wikaira, the six projects it entailed, and potential dates for the members to provide input to the contractors on those projects.

Update from Tā Wira

2. Tā Wira arrived. He presented some updates on Minister Parker's thinking, and that of officials:
 - a. *Ownership rights.* The government's position that no one owns water has not changed: therefore, Minister Parker is not willing to fund the legal opinion requested by KWM.
 - b. *Timeframes.* As noted in the update that was sent to members before Christmas, Minister Parker has agreed to shift out the launch of the Essential Freshwater programme from April until July 2019.
 - c. *Te Mana o te Wai.* The KWM's presentation on mana and mauri at the joint advisory group hui on 7 December has had a significant impact on officials' thinking. They are now trying to develop an overarching Te Mana o te Wai framework to inform the package of proposals being developed, which they hope to work with KWM on.
 - d. *Iwi Chairs Forum (ICF).* The Prime Minister is attending the ICF hui on 1 February.
3. The members and Tā Wira discussed the relationship between the KWM and the Freshwater Iwi Leaders Group (ILG). Tā Wira suggested that he and Mr Smiler meet regularly with the ILG Chair.
4. The members and Tā Wira discussed a number of other matters, including:

- a. The need for a clear KWM communications strategy;
- b. The role that KWM might play during public consultation on the Essential Freshwater programme;
- c. Being frank with Ministers about the KWM's position on proprietary rights to freshwater, even if Minister Parker has declined to fund a legal opinion on the subject;
- d. The guarantees made by the Hon. Bill English before the High Court in November 2012; and
- e. Proposals for a water commission.

5. Tā Wira departed.

Other matters

Talking points for Waitangi

- 6. The members discussed what they should include in their talking points to the Prime Minister for her Waitangi engagements. Some of the points discussed included:
 - a. The health and wellbeing of water is vital to the health and wellbeing of the nation;
 - b. This is a complex issue that we all face, and the government is seeking a range of views;
 - c. Māori have always maintained that Te Mana o te Wai is the overarching framework to guide the nation;
 - d. The state of our waterways requires urgent action; and
 - e. We should all commit to kaitiaki values as a nation.
- 7. Ms Harrison agreed to draft a set of talking points for the members to review.

Terms of Reference

- 8. The members continued the discussion of the draft ToR. In general, they were happy with the wording of the ToR and the additional changes that had been suggested the previous day.
- 9. Prof. Ruru suggested that the wording regarding the Cabinet minute establishing the KWM be adjusted so that it does not appear to suggest that the KWM support Cabinet's freshwater reform mandate, as it does not extend to fundamental matters relating to Māori rights and interests.
- 10. The members agreed that they were happy to sign the ToR provided that their recommended changes were made. Ms Wikaira agreed to send a revised version of the ToR to Tā Wira.

Te Mana o te Wai presentation

- 11. The members provided further feedback to Ms Baker on her draft Te Mana o te Wai presentation.

Work programme

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12. The members agreed that they were not in a position to respond to officials' background document A (allocation principles) as they have not yet identified their own allocation principles.
13. The members continued to discuss the draft KWM work programme. They agreed that, in general, the proposed projects are intended to produce 'position papers' rather than detailed analysis and research. They should be short (only a few pages), with any extra detail contained in appendices.
14. Ms Baker mentioned a paper written by Prof. Ruru which may contain some useful material for project one of the KWM's work programme.

Communications plan

15. The members had an initial discussion with Ms Harrison about their communications plan, and the kind of audiences that the KWM may wish to talk to in the future.

Karakia whakamutunga

Appendix A: Action points

No.	Action	Responsibility	Date
1	Provide feedback on documents B and C to Ms Baker, who will consider it when working with officials on the national direction work stream	KWM members	
2	Kōrero with Maia about her proposed hourly rate	Mr Smiler	
3	Email Dr Cunningham a copy of Ms Tahana's OIA request	Ms Wikaira	Completed (30/01/2019)
4	Arrange dates/times dates for contractors to meet with KWM members to discuss their projects	Ms Wikaira	
5	Advise Dr Cunningham of any administrative work that the KWM contracted secretariat needs to offload	Ms Wikaira	
6	Extract material from Dr Ruru's paper that might be useful for project one of the KWM work programme	Ms Baker	
7	Draft the KWM's proposed changes to the ToR and send to Tā Wira	Ms Wikaira	Completed (30/01/2019)
8	Draft the KWM's talking points for the Prime Minister to take to Waitangi	Ms Harrison	Completed (30/01/2019)
9	Seek clarity about the confidentiality of the KWM's final report, and the extent to which the KWM can control its release	Ms Harrison	
10	Draft a communications strategy for the KWM	Ms Harrison	
11	Determine if the KWM can see a copy of officials' briefing for Ministers to take to Waitangi	Dr Cunningham	Done – talking points forwarded to KWM on 27/2/19
12	Update the KWM on whether a new co-locator from Te Arawhiti will be appointed to work with the MfE Water Taskforce	Dr Cunningham	Completed (11/02/19)
13	Compile a list of past papers completed under the MfE's rights and interests work (prioritizing material that may be relevant for Dr Kingi's project)	Dr Cunningham	Done – sent to KWM in two tranches (5/3/19 and 27/3/19)
14	Arrange dates/times for officials to collaborate with Ms Baker on the national direction work stream	Dr Cunningham	Done
15	Provide the KWM with an updated version of the Essential Freshwater forward work programme	Dr Bolton	Completed (30/01/19)