



Kāhui Wai Māori Meeting Minutes, 19-20 March 2019

The Chair has requested that minutes of their 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.

19 March 2019 (9:00am – 5:00pm)

Venue: Terrace Conference Centre, 114 The Terrace, Wellington

Attendees:

Kahui Wai Māori: Kingi Smiler, Annette Sykes, Hon Dover Samuels, Dr Jacinta Ruru, Mahina-a-rangi Baker, Millan Ruka, Paul Morgan, Riki Ellison, Dr James Ataria,

Kahui Wai Māori contractors: Lyn Harrison, Maia Wikaira, Matthew Smith,

Ministry for the Environment (MfE) officials: Dr Matthew Cunningham, Huriwai Paki

Apologies: Tā Wira Gardiner, Dr Tanira Kingi, Traci Houpapa

Karakia i timata

General matters

1. Kāhui Wai Māori (KWM) discussed some possible changes to their agenda, including:
 - a) The meeting with Minister Mahuta may not go ahead or the location may shift due to the increased security presence at Parliament following the events in Christchurch the previous week; and
 - b) The order of updates from KWM contractors may need to change.
2. The minutes for the previous meeting (27-28 February 2019) were moved by Mr Morgan, seconded by Ms Sykes, and carried by the KWM.
3. The members discussed work-stream 2B (water commission) including:
 - a. Form (e.g. 50/50 Māori/Crown) vs. function (e.g. accountability and what decisions should be at national/local level); and
 - b. Prioritising where KWM's focus should be.

Agenda item 1: communications strategy

4. Lyn updated the KWM on the communications strategy. By way of update:

- She has had two meetings with Janice Rodenburg (Principal advisor, MfE) since the last KWM meeting. They have been constructive, open and information has been shared freely by Ms Rodenburg;
 - KWM are free to give their own views as members of the public; and
 - MfE will soon finalise their consultation programme and KWM can see where they may want to input.
5. At this stage, the members agreed that the primary audience for their final report are Ministers Parker, Mahuta and Davis. More broadly, KWM want to get the messaging of Te Mana o te Wai (TMotW) across government departments. KWM agreed to look at getting in contact with Juliet Gerrard, Chief Science Advisor to the Prime Minister, to discuss this point.
6. KWM had substantial discussions about the draft TMotW diagram in the draft KWM communications plan, including:
- The structure as well as the wording of each layer in the diagram;
 - Ensuring that the diagram Ms Baker did categorising the KWM work-streams under their three headings is aligned together with Ms Harrison's draft diagram;
 - Ensuring the diagram clearly shows the whakapapa from mana ātua down to mana o te wai and then its connection to mana tangata;
 - Having appropriate Pākehā words alongside the Māori words;
 - Ensuring the diagram is clear when it goes out for consultation and is as self-explanatory as possible;
 - Ensuring TMotW is the central framework from which all freshwater policy stems or rather the korowai that envelopes all freshwater policy;
 - Small vignettes would be useful to help explain TMotW, its importance and meaning;
 - Discussions about kaitiakitanga is based on role;
 - Discussions about emphasis on ensuring good decision making and not on who is making the decisions; and
 - Adding the catch phrase 'health of the water, health of the nation'.
7. The draft diagram was subsequently amended.

Agenda item 2: tino rangatiratanga / kāwanatanga framework

8. Ms Hunia (work-stream 2A) and Mr Smith (work-stream 2B) presented their draft work to the KWM. Ms Hunia's update focussed on showing the connections between the Resource Management Act 1991 (RMA), the Local Government Act 2002 (LGA) and how a proposed 'Wai Act' could bring about the change necessary to have tino rangatiratanga and kāwanatanga. Mr Smith's update was more about workshopping and gauging KWM's appetite on certain matters.
9. Discussion occurred around:
- Having work-streams 2A and 2B align.
 - Timing concerns of when the Waitangi Tribunal is likely to release their decision on Wai 2358 and when Government will start consulting on freshwater reforms;

- Workshopping the nature and extent of functions at national and local level, including rule making, decision making, implementation and resourcing;
 - What functions/powers would a water commission need to deal with allocation, governance and accountability for compliance, monitoring and/or enforcement;
 - Prioritising water quality and/or water quantity first (whilst addressing both);
 - Whether the KWM report will be palatable within the current political climate;
 - Potential to increase the number of Māori hearing commissioners;
 - Ensuring that any proposed water commission aligns to Te Mana o te Wai and Te Mauri o te Wai;
 - Having reforms that are immediate or staged;
 - Ensuring that appropriate attention is paid to highlighting changes to the LGA to ensure councils are either more accountable in general or accountable to a proposed water commission;
 - Regional councils' role under any new proposals, including whether councils need to shift their role to become service providers;
 - Whether the core issue within the current legislative framework is poor decision making or the wrong decision makers. This went into a deeper discussion about needing to either increase Māori representation as decision makers and/or making non-Māori decision makers more culturally aware (treaty principles, Māori values, mātauranga māori);
 - Small changes that are possible including process rule changes (e.g. change rules to automatically allow for greater iwi/hapū participation) or stronger consenting conditions, or a mandatory equal decision making at sub-committee or committee levels;
 - Build from the recent Ngāi Tai case in the Supreme Court (regarding s4 Conservation Act) and consider Canada's example in resource management law and go into 'consult and accommodate'. Accommodation meaning that proposed consent activities have to show how their activity gives effects to the first nations rights and interests;
 - Potential risk that having a Water Act could contradict a more holistic Māori world view; and
 - Providing enough options (e.g. option 1 being small changes, option 2 being major transformation such as a water commission and option 3 being a hybrid of some sort).
10. Ms Hunia and Mr Smith moved the discussion towards key decisions they need from KWM to progress work from a draft into a final version. Key among them is knowing the TMotW framework principles. From that they can draft the mechanisms/rules/decisions/outcomes to meet those principles.
11. In response, KWM pointed to three documents:
- KWM's philosophical conceptual framework;
 - Ngā Mātāpono ki te Wai; and
 - Ms Harrison's TMotW diagram.
12. KWM continued their discussion, including:

- Having clear messaging to Ministers around proposals including the scope of current work but also potential to connect with wider issues (e.g. potential reforms needed to Fisheries Act 1996 or the Conservation Act 1987);
- The need for local decision making to be paramount to give effect to local rangatiratanga. This is still subject to the overall framework of TMotW;
- The potential for a moratorium on new water discharge or take consents, or alternatively letting current consents expire without an automatic renewal/assumption of a renewal being granted; and
- A possible appointments process for members of a proposed water commission including a potential need for an independent appointment process.

Agenda item 3: Meeting with Minister Mahuta

13. Minister Mahuta (alongside officials from the Minister's office, MfE and Department of Internal Affairs (DIA)) met with KWM to discuss KWM's concerns about the Three Waters Review. Their concerns included:

- The overall timing of the Three Waters Review is out of step with MfE's engagement with Māori on freshwater, and will pre-empt the conversations on issues like allocation;
- If DIA go out too early, or their messages are either unclear or out of sync with wider messages in the Essential Freshwater work, there is a risk to the success of the engagement process;
- The proposal for a regulator must consider Māori rights and interests;
- There is a lack of visible connection between the Three Waters Review and the Essential Freshwater programme, including how Three Waters Review policy proposals will uphold TMotW; and
- The feedback loop between KWM and DIA officials has not been helpful.

14. KWM suggested that Minister Mahuta:

- Clarify and align the key messages DIA will present on when engaging with Māori to the overarching Essential Freshwater messages;
- Delay the Three Waters Review engagement until after April when KWM will present their report to Minister Parker; and
- Establish a stronger feedback loop with DIA on the Three Waters Review.

15. Minister Mahuta accepted that, for Māori, wai is wai. She added that:

- The fast pace of the Three Waters Review is due to the urgent issues that arose out of the Havelock North inquiry;
- The focus right now is drinking water, and the Ministry of Health will be coming up with proposals for a regulator by June for Ministers to make decisions;
- There is therefore an opportunity for officials to take the KWM's report into account before proposals go to Ministers in June;
- The Three Waters Review relates more to Te Mauri o te Wai and Mātauranga Māori than TMotW; and
- The Three Waters Review is designed to have opportunities to connect with Essential Framework and it is possible to increase those connections

16. The KWM members replied that Māori rights and interests need to be addressed before the Three Waters Review proposals are implemented. They also reiterated the potential disjunction between the Three Waters Review and their recommendations. For example, they noted that the KWM might recommend that water is no longer managed by regional councils.
17. Minister Mahuta responded that the Māori rights and interests conversation is being led by Ministers Parker and Davis. Her concern is to ensure that space is left in the Three Waters Review for those rights and interests to be addressed. She also mentioned examples of iwi investing in Three Waters infrastructure, and about how service delivery will be informed by those investments.
18. The members and Minister Mahuta agreed to arrange a further meeting to discuss the detail of the Three Waters proposals.

Summary

19. The KWM discussed the action points emerging from the day and set timeframes for their completion. They also discussed who would be able to attend the meeting on 1-2 April to draft the KWM's final report to Minister Parker.

Karakia whakamutunga

20 March 2019 (8:30am – 4:30pm)

Venue: Terrace Conference Centre, 114 The Terrace, Wellington

Attendees:

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

Kahui Wai Māori contractors: Dayle Hunia, Lyn Harrison, Maia Wikaira

MfE officials: Dr Matthew Cunningham, Huriwai Paki. Other MfE staff are noted at each agenda item. Taimania Clark from Te Arawhiti also attended.

Apologies: Dr James Ataria, Traci Houpapa, Tā Wira Gardiner

Karakia i timata

Agenda item 1: Update from MfE CEO

MfE attendee: Vicky Robertson

20. Ms Robertson noted that:

- Minister Parker is really excited about progress to date on water. He can see the various advisory groups coming together with similar ways forward. He can also see a pathway forward and wants to step through it carefully;
- Minister Parker wants to hear principles that everyone can agree to (including farmers and non-Māori (e.g. no grandparent due to social and treaty issues). He wants to hear from all advisory groups as some will be coming from different angles (e.g. fairness, economic lens). He is trying to build an argument for why we need to change so we bring everyone along with the issues; and
- Minister Parker has asked officials to review their draft allocation objectives framework to ensure that it reflects the principles of a wide variety of groups.

21. The members and Ms Robertson discussed a number of points, including:

- The need to do a lot of economic impact research, including modelling the benefits of TMotW or impacts to agriculture sector if they lose water consents or financial costs if you remove consents;
- A need to reframe the way we talk about water from having a right to pollute to having roles/responsibilities back to the water.
- Minister Parker is asking for things like (a) scarcity (b) distributional and social impacts;

- Those who hold consents but aren't using them are sometimes doing so for preservation purposes; and
 - The need for a good transition process.
22. The members and Ms Robertson also discussed the current focus of the fair allocation work programme on nutrient allocation. Ms Robertson reiterated that the current Cabinet mandate extends to access to water for underdeveloped Māori land, but not to a share in freshwater or royalties. She added, however, that the Minister does not support grandparenting.
23. Mr Ruka discussed Māori proprietary rights to freshwater. He offered to prepare a case study on Poroti Springs for Minister Parker.

Agenda item 2: Te Mana o te Wai narrative document

24. The KWM members discussed revisions to the TMotW diagram.

MfE attendees: Martin Workman, Jo Burton, Jade Newton, Alice Jacobs

25. Ms Baker spoke to the Te Mana o te Wai narrative which she co-developed with MfE officials, which sets out the position and context of TMotW for policy makers to uphold across the Essential Freshwater work.
26. KWM broadly agreed with the substance of the document. Some suggestions for improvement were offered:
- It needs to be concise and more clear in its messaging;
 - It needs to be applicable for wider audiences than policy makers;
 - Replace tino rangatiratanga/kāwanatanga with mana whakahaere. The reason for this is to help shift New Zealand and especially non-Māori into understanding and taking on the philosophy and values of TMotW; and
 - Developing a simple two-page narrative summary to accompany the more detailed narrative.
27. KWM also discussed whether they needed their own separate TMotW narrative.

Agenda item 3: Fair allocation

MfE attendees: Claire Graeme, Sam King

28. Mr King updated the KWM on the current scope and progress on allocation work to date:
- The current focus is still allocating discharge nutrients; and
 - Some of the potential allocation models (cap and trade, administrative allocation, tax) were tabled with KWM in their January meeting but were not delivered due to delays in flights.
29. A discussion occurred on the following matters:

In-confidence

NOT GOVERNMENT POLICY

- Having social equity as the starting point of an allocation discussion, not scarcity;
- Putting options into a matrix or presentation so KWM can give clearer direction;
- Having a stronger connection (e.g. through a preamble) that shows TMotW's link with allocation options;
- Having a clear, fair allocation system that allows new users access to any proposed allocation system;
- Access for Māori needs to include appropriate resourcing. Māori often don't have the right liquidity to negotiate a strong position so the option of letting the market sort itself will not be fair to Māori;
- A long transition into any new allocation model may be needed;
- Any allocation system must encourage positive behaviour change;
- Whether a model for allocation discharge for nitrogen will be able to work for other harmful discharges like phosphorous or e-coli or alternatively be a short-term solution focusing just on nitrogen;
- A case study might be beneficial to test the current allocation options and gather more data;
- Considering iwi and hapū who suffered from raupatu if the allocation models go down a land-use basis;
- The shortfalls of Overseer including the science behind the data and access to the Overseer files;
- The need for strong compliance, monitoring and enforcement, which Mr King agreed to discuss further with Mr Ruka; and
- Potential uses for an allocation fund, including bringing new users into the allocation system.

30. Mr King also provided more information on each allocation model:

- Option 1 – cap and trade (including uses for tax raised e.g. up to community)
- Option 2 – revenue (including a credit advance and wellbeing tax)
- Option 3 – tax on nitrogen (downside being no limit set on nitrogen)
- Option 4 – input practices (where the rules depend on the community)
- Option 5 – administrative reallocation

Agenda item 3: Rural package

MfE attendees: Nick Martelli, Milly Strong, Claire Graham, Irene Parminter, Jennie McCurran, Martin Freeman.

31. Ms Parminter led the session, which focused on how each of the options being considered aligns, to their understanding, with TMotW.

32. Feedback and discussion with the KWM included:

- Mana pakihi is a highly inappropriate word/concept to use and shows that officials do not understand TMotW at all. Delete the word mana pakihi. Replace it with mana whenua, as the hierarchy of use contained in TMotW should not be altered;
- Replace the arrows used in the option boxes with something clearer;

- FEP certification or verification;
- The need to consider processors like Miraka/Fonterra;
- Export licences (e.g. Zespri);
- Market incentives and holistic system change like in Denmark;
- Who would/could monitor the proposals under consideration (e.g. neighbours, fellow farmers, local hapū, independent auditors, and options for dealing with non-compliance (such as requiring farmers to apply for a consent to farm));
- FEPs generally good so long as it is within TMotW and improves water quality;
- The potential for ETS regulations to assist in nitrogen issues;
- Allowing for land use intensification so long as a sustainable limit is set;
- Introducing moratoriums on nitrogen discharges;
- The Provincial Growth Fund and its work on water storage and connectors back to Essential Freshwater work; and
- Budget bids for farm advisors to help implement quickly.

General matters

33. KWM discussed Mr Smith's work, and the issue that MfE could only contract him through a company. As a Barrister, Mr Smith cannot have his own company so KWM tabled and agreed for MfE to contract Ms Sykes' firm as his instructing solicitor.
34. KWM agreed for Ms Sykes' firm to be instructing solicitors for Mr Smith, to receive and pay Mr Smith's fees, to be on the conflict of interest register, and be bound by their conflict management clause as per their work plan.

Agenda item 4: allocation principles analysis

35. The KWM had a brief discussion with Ms Wikaira on work done to date on the allocation principles analysis. Ms Wikaira went through her paper and made changes as directed by KWM members.
36. The members agreed to contact Ms Wikaira if they had any further changes to recommend.

Karakia whakamutunga

Appendix A: Action points

No.	Action	Responsibility	Status
1	Contact Ms Gerrard, Chief Science Advisor to PM, to discuss Te Mana o te Wai	Mses Wikaira and Harrison	
2	KWM to get in touch with Mr Smith with any other ideas on delegation of powers for regional/local decision making	All	Done
3	Mr Smith to complete sequencing before next KWM meeting on 01 April	Mr Smith	Done
4	Mr Smith to do a 1-2 pager to then get stress tested by KWM	Mr Smith	Done
5	Mr Morgan to focus the sub-committee to keep workstreams 2A and 2B on time	Mr Morgan	Done
6	Draft an invitation letter to Minister Davis to attend a future KWM meeting	Dr Cunningham	Done
7	Draft a thank you letter to Minister Mahuta and invite her to attend another KWM meeting	Dr Cunningham	Done
8	Mr Smith to submit re-draft to KWM by Friday 29 March for	Mr Smith	Done
9	Ms Harrison to convert Te Mana o te Wai diagram from a PDF to word document	Ms Harrison	Done
10	Ms Baker to work with officials to revise the TMotW narrative document and associated papers	Ms Baker	Done
11	Mr King to get in contact with Mr Ruka regarding monitoring	Mr King	Done
12	Draft a case study on Poroti Springs for Minister Parker	Mr Ruka	Done