



Kahui Wai Māori meeting minutes, 28 May 2019

Venue: Terrace Conference Centre, 114 The Terrace, Wellington

Attendees:

Kahui Wai Māori: Kingi Smiler (Chair), Dr James Ataria, Prof. Jacinta Ruru, Mahina-arangi Baker, Paul Morgan (VC in the morning, in-person in the afternoon) Riki Ellison, Dr Tanira Kingi

Kahui Wai Māori contractors: Lyn Harrison, Dr Richard Meade (closed session only)

Ministry for the Environment (MfE) officials: Andrew Wharton, Bryan Smith, Jo Gascoigne, Dr Lucy Bolton, Dr Matthew Cunningham, Simon King, Taimania Clark

Freshwater Leaders' Group (FLG) representatives (afternoon session only): Hugh Logan

Science and Technical Advisory Group (STAG) representatives (afternoon session only): Dr Marc Schallenberg (via VC)

Regional Sector Water Sub-group (RSWS) representatives (afternoon session only): Clare Wooding, Doug Leeder, Vaughan Payne

Apologies: Hon. Dover Samuels, Maia Wikaira, Millan Ruka, Traci Houpapa, Tā Wira Gardiner

Karakia i timata

Response to Te Kāhui Wai Māori's report (1)

1. Mr Smith updated Te Kāhui Wai Māori on Minister Parker's written response to the 'Te Mana o te Wai report'. He advised that officials had provided Minister Parker detailed advice on Te Kāhui's recommendations the previous week. However, as Minister Parker had only arrived back in New Zealand the previous evening, he has yet to respond to officials' advice.
2. Mr Smith relayed officials' current thinking on Te Kāhui's recommendations, which had informed the advice that was provided to Minister Parker.

Recommendation 1 – Embed Te Mana o te Wai principles and obligations to guide all activities.

3. Mr Smith noted that officials are keen to make Te Mana o te Wai the overarching korowai that directs and informs freshwater policy development and management.
4. However, officials are concerned about directing regional councils to 'recognise and provide for' Te Mana o te Wai in the National Policy Statement for Freshwater

Management (NPSFM) without a detailed analysis of the potential legal and economic implications.

5. Instead, officials have recommended a suite of improvements to the NPSFM to strengthen and clarify how regional councils are expected to uphold Te Mana o te Wai, both in the short-term (through setting objectives and limits in line with the hierarchy of obligations) and in the long-term (through a shared vision on what the waterbody should look like). A more comprehensive definition of Te Mana o te Wai, including the three obligations and the principles identified by Te Kāhui, would be included as a 'core concept' underpinning the entire NPSFM.
6. The members made several points about officials' approach, including:
 - a. It is inconsistent for officials to claim to support Te Mana o te Wai while not supporting stronger legal wording in the NPSFM;
 - b. Helping regional councils to understand how to uphold Te Mana o te Wai should not be the main factor in deciding how to revise Te Mana o te Wai in the NPSFM;
 - c. The economic impacts of stronger legal wording would be mitigated by implementing Te Kāhui's recommended Te Mana o te Wai capacity and capability strategy; and
 - d. There is no analysis to support the status quo.
7. The members also expressed some concern that Minister Parker appears to consider that Māori concepts are 'spiritual' and therefore cannot be included in freshwater regulations. Mr Smith replied that Minister Parker wants regulations to rely on biophysical measures so that spiritual concepts do not end up being debated in the courts. The members noted that there are many values that are not biophysical but are still tangible and measureable.

Recommendation 2 – Recognise and resolve iwi/hapū customary title and rights in water

8. Mr Smith advised that officials agree that this needs to be resolved, and it will continue to be raised by Māori if it is not. They have recommended that Minister Parker have a discussion with his Cabinet colleagues about developing a plan to resolve Māori rights and interests in freshwater.

Recommendation 3 – Declare a ten-year moratorium

9. Mr Smith advised that officials have included additional high-risk activities in response to Te Kāhui's feedback (such as proposals to increase irrigation). However, they do not recommend introducing a moratorium on additional discharges or water-related consents, due in part to concerns about how difficult it would be to monitor and enforce.
10. The members noted that a moratorium:
 - a. Will send a powerful message that this government takes freshwater reform seriously;

- b. Will prevent people from manipulating the system to get approval for high-risk activities; and
- c. Is designed to provide time for more fundamental systemic reforms to be implemented, and for Māori rights and interests to be addressed.

11. The members also asked if other forms of intensification, such as increases in point-source discharges, were covered by the officials' rural package recommendations. Mr Smith advised that officials needed to do more work on this area.

Recommendation 4 – Reform the Resource Management Act 1991 (RMA)

12. Mr Smith advised that he was unsure what Minister Parker's response would be to Te Kāhui's recommended changes to the RMA.

Recommendations 5 (Water Act) and 6 (Te Mana o te Wai Commission)

13. Mr Smith advised that officials support continuing to explore the possibility of a stand-alone complementary Water Act and a Te Mana o te Wai Commission. However, they stress that the functions need to be identified first before considering what the appropriate governance or regulatory structure is.

14. The members discussed whether the Three Waters Review may provide a more immediate channel to progress Te Kāhui's recommendations. Mr Smith advised that Minister Mahuta has decided to push out public consultation on the proposed Three Waters regulator from June to August 2019.

Recommendation 7 – Develop new accountability and partnership requirements for local government

15. Mr Smith advised that officials want to work with Te Kāhui Wai Māori on this recommendation. The members recommended that officials develop guidance for local government on how to be Treaty-compliant.

Recommendation 8 – Develop mandatory Māori measures of wellbeing

16. Mr Smith advised that officials are keen to explore how to implement mandatory Māori measures of wellbeing in the National Objectives Framework (NOF) with Te Kāhui Wai Māori. He added that this would need to be completed within two weeks in order to be included in the package of proposals put before Cabinet.

17. The members agreed to develop a one-page proposal on how to introduce a compulsory value to the NPSFM that will provide for Māori measures of freshwater system health.

Recommendation 9 – Design and implement a national funding system

18. Mr Smith advised that officials agreed with the concept of a user-pays system for funding the ongoing clean-up of waterways. He anticipated that it might be an election issue for the government.

Recommendation 10 – Te Mana o te Wai capacity and capability strategy

19. Mr Smith advised that officials support the development of a Te Mana o te Wai capacity and capability strategy, and would like to work with Te Kāhui Wai Māori to develop it. He suggested that work on the strategy could commence once the budget was released.
20. Dr Kingi noted that the strategy needed to include a concerted effort to resource communities to build their capacity to input into policy development. He also stressed that the budget package should not be separate from the Independent Climate Change Commission.
21. Mr Smiler asked Mr Smith to continue his update after the following session.

Comprehensive review of the resource management system

22. Ms Gascoigne, and Messrs King and Wharton, arrived.
23. Ms Gascoigne advised that, while Cabinet had still not made a decision on the process or the scope for the comprehensive resource management system reforms, officials thought it would be useful to have a discussion about how Te Kāhui's recommendations relating to water might translate into a whole-of-RMA focus.
24. The members and officials discussed the phase one narrow amendment bill that is preceding the phase two comprehensive reforms. The members reiterated their recommendation that their proposed changes to the RMA should be included in the phase one bill. Their concern was that comprehensive reforms have been promised for a long time, and may take many years to complete.
25. Ms Gascoigne reiterated that phase one was meant to focus on minor changes (such as rolling back the provisions added by the previous government). However, she agreed to convey to Minister Parker that Te Kāhui have reiterated their recommendation that their proposed revisions to the RMA be incorporated into the phase one bill.
26. The members and officials agreed on the importance of taking a step back from the current effects-based RMA and determining what type of resource management legislation is needed in the 21st century. Officials advised that they have been looking at examples of resource management legislation around the world.
27. Officials asked the members whether the values and principles they identified as part of the Te Mana o te Wai framework (i.e. manaakitanga, kaitiakitanga, and mana whakahaere) also apply in a broader resource management perspective. The members advised that they do.

28. The members expressed their concern with some of the minor changes included in phase one, such as the proposal to make the Environmental Protection Authority (EPA) responsible for monitoring regional council compliance.
29. Officials confirmed that there would be no opportunity for the freshwater advisory group network to comment on the phase one bill before it is introduced via the select committee process. Ms Gascoigne noted that the decision to progress the phase one bill was made by Ministers prior to Te Kāhui Wai Māori being established. She assured the members that it would be made clear in the narrative surrounding the bill that the advisory groups had not been consulted about it.
30. The members stressed the importance of coordinating the comprehensive resource management system review with the fair allocation work stream.
31. Mr King advised the members that, once Cabinet signs off on the process for the phase two comprehensive reforms, officials intend to commence a wider engagement process, including with Te Kāhui Wai Māori. The members and officials agreed to arrange a further meeting to commence this engagement once Cabinet had provided sign-off. The members also noted that there is a sufficient body of existing literature on Māori environmental perspectives that officials should familiarise themselves with.
32. The members suggested that MfE develop guidance for local government on how to comply with the principles of Te Tiriti. Ms Gascoigne noted that there are concerns about regional councils' compliance across the board, and that officials are interested in looking at ways of addressing that (such as legislative or implementation changes). The members stressed that it was important for MfE to prepare specific Treaty-compliance guidance, both to uphold its own Treaty responsibilities and to demonstrate its maturity as an organisation.
33. Ms Gascoigne, and Messrs King and Wharton, departed.

Response to Te Kāhui Wai Māori's report (2)

34. Mr Smith continued his update on officials' current thinking concerning Te Kāhui's recommendations.

Recommendation 11 – National Freshwater Science Strategy

35. Mr Smith advised that officials agree that this is a gap that needs to be addressed in order to better coordinate science funding.
36. The members made several points, including:
 - a. Investment is needed in data modelling and limit setting tools other than Overseer;
 - b. There is a need for a short document setting out the key tools and data collections in order to identify the gaps that exist;
 - c. Investment needs to be directed towards understanding the drivers of change; and

- d. Local authorities need to use the same digital systems in order to better coordinate and plan for the future.

Recommendation 12 – New water allocation system

37. Mr Smith identified two areas of feedback from Te Kāhui on officials' allocation proposals. The first appeared to be technical matters on specific policy issues, which officials are open to addressing. The second related to fundamental questions of governance, decision-making, and a share of the resource. Officials have advised that Minister Parker have a discussion with his Ministerial colleagues on how to progress the latter, as they are currently outside the Cabinet mandate for freshwater reform. Mr Smith also stressed the importance of starting a national conversation on allocation now.

38. The members made several points, including:

- a. Te Kāhui seek substantive progress on their recommendations concerning allocation, otherwise they recommend that the discussion document be abandoned;
- b. If the discussion document is circulated for public discussion without a clear strategy for addressing Māori rights and interests, it will just delay the issue and potentially confuse people;
- c. Officials appear to be conflating allocation models with management approaches; and
- d. The discussion document appears to reinforce grandparenting at several points.

39. Mr Smith advised that it is not officials' intention to reinforce grandparenting, so they will review the draft discussion document to ensure that this is clear. He also stressed that Minister Parker has set down two significant markers – that grandparenting is off the table, and that current discharge rights will not be converted into permanent property rights.

Other recommendations

40. Mr Smith committed that officials would provide a written response to Te Kāhui's other feedback that is not covered in Minister Parker's response to their 12 recommendations (such as proposed exceptions for hydroelectricity generators).

41. The members asked when they will be allowed to share their report with other Ministers, such as Minister Sage and Shaw. Mr Smith replied that he would follow this up with Minister Parker's office.

42. The members asked Mr Smith to outline a compelling case for them to remain as members of Te Kāhui Wai Māori going forward. Mr Smith identified a number of areas where he suggested that they could contribute, such as:

- a. Developing a plan to address Māori rights and interests in freshwater (if Cabinet agree to this);
- b. Developing a strategy for building capacity and capability; and

- c. Defining the criteria for the hearing panels proposed in officials' advice concerning ways to speed up the regional plan development process.
43. The members asked if Te Arawhiti will be involved in the Essential Freshwater public consultation programme. Ms Clark advised that they would be.
 44. Officials advised that Tā Wira would be back in New Zealand in mid-June.

Closed session – strategic planning

45. Officials departed for Te Kāhui Wai Māori's closed strategic planning session. Dr Meade was present for the session.

Communications plan

46. Mses Rodenburg and Hoerara arrived, and Drs Bolton and Cunningham and Ms Clark returned.
47. Ms Rodenburg handed out a slideshow presentation. The slideshow outlined officials' current thinking on the public consultation process, as well as some potential opportunities to start signalling the Essential Freshwater reform package prior to public consultation.
48. Ms Rodenburg asked the members whether it would be appropriate to organise a photo opportunity for matariki to inform select media outlets (such as Māori television) of the work being done. Mses Rodenburg and Harrison suggested that basing it around a water restoration project, such as Ms Baker's work on the Waikanae River, could be a good idea. The intention would be to release the Te Mana o te Wai vignettes shortly after that.
49. The members replied that the idea broadly fits in with the kōrero behind Waiti, the star associated with water. However:
 - a. They have some concerns about whether the focus of the event would be the Essential Freshwater programme (which the members are not yet in a position to say that they support) or Te Kāhui Wai Māori's own recommendations;
 - b. They are uncomfortable with the Te Mana o te Wai vignettes being used to support the Essential Freshwater package without knowing where the package is going to land;
 - c. It may be difficult to arrange an event in time given Ms Baker's other matariki commitments; and
 - d. If an event does proceed, Te Papa may be an appropriate venue.
50. Ms Rodenburg stressed that it is crucial to get Te Mana o te Wai into common usage, as it provides a framework to bring the wider public into the conversation about nurturing the environment rather than taking away from it. However, she agreed that it is important to consider the appropriate timing to release the vignettes.

51. Ms Rodenburg outlined officials' thinking on the public consultation programme. Officials are considering a multi-level engagement package that will allow individuals to engage at the level they are comfortable with. This will include:
- a. A high-level, holistic summary of all of the reforms being developed across MfE (water, climate, biodiversity etc.);
 - b. More detailed information on each of the areas of reform; and
 - c. Technical detail on each of the areas of reform (such as drafts of the NPSFM and the National Environmental Standard).
52. The members and Ms Rodenburg discussed several matters, including:
- a. Fronting the public consultation with the importance of systemic change;
 - b. Reflecting back to kaitiaki the feedback they have previously provided to MfE;
 - c. Drawing on multiple engagement networks (such as EPA's Te Hiringa Network); and
 - d. Piggy-backing on existing Māori fora/hui.
53. The members and officials discussed Te Kāhui Wai Māori's public consultation on their report. Officials confirmed that Te Kāhui can hold their own parallel process of public consultation if they wish to. Dr Bolton advised that she is involved in MfE's budget planning discussions, and will ensure that resourcing for a separate Kāhui consultation programme is included in these discussions.
54. Ms Rodenburg noted that the advisory group Chairs may receive invitations to Minister Parker's upcoming speaking events. She advised that the Chairs may pass these on to other members if they wish.
55. Mses Rodenburg and Hoerara departed.

Other matters

56. Mr Smiler approved officials' request to forward copies of all of Te Kāhui's reports to Minister Parker to the contractor undertaking a cultural impacts assessment of the Essential Freshwater programme.
57. The members cautioned, however, that Māori rights, interests and obligations concerning freshwater should not be misconstrued as solely 'cultural interests'. Dr Bolton assured the members that the cultural impacts assessment will look at a broad spectrum of Māori rights and interests. She suggested that it may be appropriate for the author of the cultural impacts assessment to meet with Te Kāhui once the assessment is complete.
58. The members agreed to hold their next meeting on 25 June 2019.

Session with representatives of the other advisory groups

59. Messrs Payne, Leeder and Logan, and Ms Wooding, arrived. Dr Schallenberg connected via VC.

60. The Kāhui members gave a powerpoint presentation on their report. Some of the matters discussed with the FLG, STAG and RSWS representatives are outlined below.

Current good practices

61. Mr Payne suggested that Te Ture Whaimana o Te Awa o Waikato may be a good current example of the water being put first. The Kāhui members replied that Te Kāhui Wai Māori are seeking a fundamental step change that would see best practices elevated to become business as usual.

Governance

62. Mr Logan suggested that Te Kāhui's depiction of leadership as 'Mana Whakahaere – Governance' may be seen by some audiences as too binary.

Addressing Māori rights and interests within three years.

63. The FLG, STAG and RSWS members all supported Māori rights and interests being addressed. Mr Leeder asked what the vehicle would be for addressing them within three years. The members replied that rights and interests should be resolved between Māori and the Crown rangatira ki te rangatira. If it is not, other vehicles would include the Waitangi Tribunal's report into stage two of the freshwater inquiry (Wai 2358) and the courts.

Moratorium

64. Mr Payne identified some potential unintended consequences of a moratorium, such as disincentivising investment in water infrastructure, preventing changes in urban water supply, or preventing regional plans from being finalised. The Kāhui members stressed that the moratorium is about engaging people's minds, driving behaviour change, and providing the breathing room to achieve systemic reform.
65. Mr Logan noted that the FLG were leaning towards recommending limits on intensification in at-risk catchments rather than a moratorium. Mr Payne suggested that some parts of the system (such as point-source discharges) are working well, and have improved dramatically over the last 30 years.
66. Dr Schallenberg suggested that the proposed moratorium would not achieve much if it only held the line for ten years. He suggested that the changes being proposed for the NPSFM would start to improve water quality from 2025. The Kāhui members replied that the current system is not working due to a lack of resourcing for regional councils to monitor compliance. A moratorium on the input side (i.e. resource consents) will be more effective and ethical, and will also cover urban contaminants that are not monitored in the NPSFM (such as heavy metals). Dr Schallenberg suggested that improvements are not yet being seen because the new requirements in the NPSFM do not need to be implemented until 2025.

67. Mr Payne agreed that more attention needs to be paid to monitoring regional councils' performance. He offered to share [a report commissioned by Local Government New Zealand \(LGNZ\) assessing compliance monitoring across all regional councils](#). Mr Leeder added that regional councils are enforcing really old consents that do not come up for renewal until 2022 to 2025.

68. Ms Sykes commented that regional councils do not prosecute breaches of resource consent conditions as often as they should. Mr Leeder replied that the threshold for prosecution is too high, but the RSWS has asked Minister Parker for the power to impose fines. The members suggested that regulation is needed to empower and resource kaitiaki to undertake monitoring, and that prosecution should be based on environmental outcomes rather than on a consent-by-consent basis. Mr Payne noted that there may soon be iwi enforcement officers in the Waikato.

RMA changes, a Water Act, and a Te Mana o te Wai commission

69. Mr Logan noted that the FLG support establishing a new central agency to provide central government with greater capacity, similar to the National Water and Soil Conservation Authority.

70. Messrs Leeder and Payne cautioned against creating too much additional bureaucracy – change needs to be as close to the ground as possible, and regional councils need to be resourced to respond to complaints as they happen. They also noted that central government should undertake more monitoring of regional councils' performance.

71. Mr Payne also noted that:

- a. First schedule plan changes inevitably leave communities behind as the process becomes more technical;
- b. There needs to be more agility in getting regional plan changes across the line instead of endlessly litigating them in the courts; and
- c. Separating water from the rest of the environment may take away from a holistic approach.

72. The Kāhui members noted that the length of time to get regional plans agreed to is partly the result of the high burden of proof required in Western science. They also noted that bundling the entire environment together can have the effect of invisibilising some kaupapa.

Compulsory Māori value

73. Dr Schallenberg supported adding a compulsory Māori value to the NPSFM, although he added that it has not been discussed much by the STAG. He suggested that tuna may not be a good species to use as a 'barometer' for a mahinga kai value because they are quite resilient.

FLG's draft report

74. Mr Smiler asked Mr Logan if there were any other points in the FLG's draft report that he wished to raise with Te Kāhui.

75. Mr Logan noted that the FLG:

- a. Aim to land their allocation principles in the next two weeks;
- b. Agree that the first right to the water should go to the water; and
- c. Believe that the entire Essential Freshwater package needs to be very well integrated or it won't be successful.

76. The Kāhui members advised Mr Logan that the FLG's recommendations appear to be reasonably well aligned with Te Kāhui's. They suggested that the FLG may wish to refocus their recommendations on their key priorities or 'big hitters'.

STAG update

77. Dr Schallenberg gave an update on the STAG's evolving thinking. He noted that the STAG have proposed several potential new attributes or monitoring requirements for the NPSFM. If they are implemented, he believed that they would have a significant impact when they come into force.

78. Regarding the STAG's proposed fish index of biotic integrity, the Kāhui members expressed some concern about trout being treated as an 'honourary native'. They suggested that it would be more appropriate to invest in more research into native species so that communities have enough information to develop fish measures that are appropriate for their local catchment.

79. Regarding the STAG's proposed ecosystem health metrics, Ms Baker suggested that these will generate significant change. However, she also noted that they are only focused on the biophysical attributes of the wellbeing of water. She stressed that there also needs to be a broader understanding beyond biophysical attributes. A compulsory Māori value is essential for achieving this.

80. Mr Smiler asked how the STAG's evolving thinking relates to Overseer and natural capital. Dr Schallenberg noted that their work relates more to attributes than monitoring requirements.

RSWS's recommendations

81. Mr Payne drew some overarching comments from the RSWS's recommendations to Minister Parker:

- a. The RSWS supports Te Mana o te Wai as the overarching korowai for freshwater management;
- b. There needs to be an appropriate regulatory vehicle to make it easier for regional councils to provide for Māori representatives in governance bodies; and
- c. Regional councils would find it easier to engage with one mandated iwi/hapū body in their rohe rather than multiple iwi/hapū/whānau. He noted the Kai Tahu example in Canterbury.

82. The Kāhui members replied that:

- a. In the absence of rangatiratanga being properly provided for at a local level, Māori will try to have input wherever then can;
- b. It is impractical to set a national template for engaging with iwi/hapū;
- c. Māori often have to deal with multiple local authorities rather than one; and
- d. Representation issues cannot be fully addressed unless Māori and the Crown develop an agreed co-governance structure.

83. Mr Payne also highlighted five points from the RSWS's response to the Essential Freshwater proposals:

- a. There are significant capacity constraints which may impact on the feasibility of some of the proposals (such as those concerning Farm Environment Plans);
- b. The responsibility to improve water quality is shared by everyone, not just regional councils;
- c. The national science funding system needs to be better aligned to provide the information that is needed to support the proposed package;
- d. The STAG's nutrient proposals need to be peer-reviewed; and
- e. A robust implementation plan will be needed to ensure that the package is successful.

84. Mr Smiler asked Messrs Leeder and Payne if they supported the continued use of Overseer as the main tool for limit setting. They replied that it is the best tool currently available, but that it should not be used in isolation.

Karakia whakamutunga

Appendix A: Action points

No.	Action	Responsibility	Date
1	Develop a one-page proposal on how to introduce a compulsory value to the NPSFM that will provide for Māori measures of freshwater system health	Te Kāhui Wai Māori	Done (29/5/19)
2	Consider other forms of intensification that are not currently covered by MfE's rural package proposals, such as increases in point-source discharges	MfE officials	Will be raised with integration working group
3	Advise Minister Parker that Te Kāhui have reiterated their recommendation that their proposed revisions to the RMA be incorporated into the phase one changes	Ms Gascoigne / Mr King	Done
4	Arrange a further meeting with Te Kāhui on the scope of the phase two RM reforms once Cabinet has agreed to progress this work	Ms Gascoigne / Mr King (via Dr Cunningham)	In progress – Cabinet not scheduled to discuss until 27/6/19
5	Review officials' draft allocation discussion document to check that the content does not appear to reinforce grandparenting	MfE officials	Done
6	Provide written responses to the points raised by Te Kāhui in their 30 April report which were not covered during this meeting	MfE officials	Done – written response provided on 14/6/19
7	Confirm whether Te Kāhui can share their report with other Ministers	Mr Smith	Done – Minister Parker has asked Te Kāhui not to share their report with other Ministers yet
8	Confirm whether the FLG are available to hold a joint hui on 25 June	Dr Cunningham	Superseded by the integration group
9	Provide copies of all of Te Kāhui's reports to Minister Parker to James Whetu to assist his cultural impact assessment on the Essential Freshwater package	Dr Cunningham	Done (28/5/19)
10	Provide Te Kāhui with a copy of the regional council compliance monitoring report commissioned by LGNZ	Dr Cunningham	Done (18/6/19) – available here