

Kahui Wai Māori

Terms of Reference

30 January 2019

Background

1. Kahui Wai Māori – the Māori Freshwater Forum (KWM) has been established to enable collaborative development and analysis of freshwater policy options for issues of particular relevance to Māori.
2. KWM will not be the only way in which the Crown engages with Māori about freshwater. It does not hold a mandate to ‘sign off’ on final options for reflecting Māori rights and interests in freshwater policy and regulation. The Crown will still meet with other Māori and non-Māori organisations prior to significant decision points and wider public consultation.
3. The Crown approved the establishment of KWM (including the above) in Cabinet Committee Minute ENV-18-MIN-0032 (endorsed by Cabinet in CAB-18-MIN-0318), which is available on the Ministry for the Environment (MfE) website.
4. KWM is a Ministerial advisory group for the purposes of the Cabinet guidelines on committees and appointments. It will comprise up to 15 members, led by a Chair and a Crown Lead. KWM will be supported by a secretariat.
5. Freshwater is a precious and limited resource and a taonga of huge significance to all New Zealanders including tangata whenua.
6. Te Tiriti o Waitangi/the Treaty of Waitangi is the underlying foundation of the Iwi/Hapū-Crown relationship with regard to freshwater resources. Addressing tangata whenua values and interests across all of the wellbeings – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people – and including the involvement of Hapū and Iwi in the overall allocation, protection and management of freshwater, are key to giving effect to Te Tiriti o Waitangi/the Treaty of Waitangi.
7. Māori have used a range of channels to engage with the Crown on their rights and interests in freshwater, including the Freshwater Iwi Leaders Group and the Waitangi Tribunal Inquiry into National Freshwater and Geothermal Resources (Wai 2358). It is envisaged that KWM will build on the body of work presented through these various engagement channels in the way it undertakes its functions.
8. Many of the issues that need to be addressed to improve water quality are challenging – technically, legally, economically, socially and culturally. KWM will help the Government navigate these challenges and find enduring solutions.

Functions of KWM

9. KWM has the following functions (ENV-18-MIN-0032 refers):
 - a) facilitate engagement between the Crown and Māori on freshwater reform;
 - b) collaboratively develop and analyse policy options on issues of particular importance to Māori across the freshwater reform programme;
 - c) provide advice directly to Ministers where it wishes to;
 - d) undertake any other advisory/research function agreed between the Crown and the KWM; and
 - e) undertake or facilitate engagement with the wider Māori community on key issues if necessary.
10. The exercise of any function with financial implications should be agreed between the Chair, Crown Lead and MfE.
11. KWM does not hold decision-making powers on government policy and decisions will remain with Ministers or chief executives as appropriate.
12. KWM will be established for an initial term of one year (the Term).

Scope

13. KWM will be focused on the recognition of, and provision for, Māori rights, interests and responsibilities in relation to the *Essential Freshwater* reform programme. KWM and the Crown are free to discuss any other specific or more general issues that members consider have a bearing on freshwater policy. KWM will be guided by Te Tiriti o Waitangi/Treaty of Waitangi, ngā mātāpono and ngā tikanga Māori in its work programme and in its advice on policy options that may be pursued.¹
14. Nothing in this terms of reference shall diminish the rights, interests and responsibilities of Iwi, Hapū, Whānau to exercise their Rangatiratanga over those matters of importance to them, as set out in Article II and Article III of Te Tiriti o Waitangi and/or is confirmed in Iwi Settlement legislation.

Membership

Chair

¹ See Appendix 2.

15. The Minister for the Environment will appoint the Chair of KWM.
16. The Chair is appointed on the terms and conditions specified in their letter of appointment and this Terms of Reference.
17. The Chair may resign at any time by notifying the Minister for the Environment in writing.

Crown lead

18. The Chair will co-lead KWM with a Crown Lead.
19. There will be one Crown Lead through the Term of KWM appointed by the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti, and the Minister for Māori Development.
20. The Crown Lead is appointed on the terms and conditions specified in their letter of appointment and this Terms of Reference.
21. The Crown Lead may resign at any time by notifying the Minister for the Environment in writing.

Members

22. Members' appointments are on the terms and conditions specified in the letter of appointment and this Terms of Reference.
23. Members may be reappointed or have their terms extended.
24. A Member's appointment may be terminated at any time for good reason by the Minister for the Environment. Good reason includes, but is not limited to, failure to attend more than two consecutive KWM meetings, and failure to act in accordance with the standards of conduct outlined in **Appendix 1**.
25. A Member may resign from KWM at any time by notifying the Chair and the Minister for the Environment in writing.

Meetings of KWM and subgroups

Meetings

26. Meetings will be held in Wellington, usually for full days unless the Chair has received prior approval from the Ministry for the Environment to hold a meeting in another location.
27. KWM must meet a minimum of monthly, with more regular meetings to be set up by the Chair and Crown Lead if needed throughout the Term.

28. The Chair and the Crown Lead will determine the meeting procedures and meeting frequency for subgroups on a case-by-case basis.
29. Members may not send proxies to attend KWM meetings in their place unless prior approval has been obtained from the Chair and the Minister for the Environment.
30. The Chair, or Acting Chair, and the Crown Lead may cancel or defer a meeting if insufficient members are able to attend.
31. The Chair, or Acting Chair, and the Crown Lead may invite any non-member individuals or groups to attend KWM meetings.

Use of subgroups to progress work

32. The Chair and the Crown Lead may establish, for a term they consider appropriate, subgroups of KWM members to progress specific deliverables or consider specific topics.
33. The Chair and the Crown Lead will appoint a lead KWM member to run a subgroup.

Roles and Responsibilities

The Chair

34. The Chair will:
 - a) agree a forward work programme with the Crown Lead and oversee the progression of the work in conjunction with MfE;
 - b) set meeting agendas, with the assistance of the MfE secretariat, and approve meeting minutes;
 - c) co-Chair and facilitate meetings with the Crown Lead, encouraging and modelling open communication where all members contribute effectively;
 - d) determine, with assistance from the MfE secretariat and the Crown Lead, what action is appropriate if a member has a potential conflict of interest;
 - e) represent KWM in any meetings with the Minister for the Environment, MfE or other stakeholders, as required; and
 - f) seek written approval from the Secretariat before incurring any expenditure or financial commitment on behalf of KWM.
35. If the Chair is absent from a meeting, the Chair may designate an Acting Chair for that meeting. If the Chair does not designate an Acting Chair, then the Acting Chair shall be

elected by simple majority of those members present at the meeting when an election is required.

Crown Lead

36. The Crown Lead will:

- a) co-chair and facilitate meetings of the group in conjunction with the Chair; and
- b) liaise with the Chair to discuss any significant matters that may arise from discussions.

Members

37. All KWM members have the following roles and responsibilities:

- a) make every effort to attend each meeting and report anticipated absences to the MfE secretariat;
- b) prepare adequately prior to each meeting and participate actively in meetings, contributing to actions when agreed;
- c) bring matters of significance to the attention of KWM and use professional perspectives to undertake analysis or prepare advice as required;
- d) maintain a broad knowledge of the issues and interests that relate to the operations of KWM, not regarding themselves as representatives or advocates for particular sectors or interests;
- e) comply with the Standards of Conduct in **Appendix 1**; and
- f) complete the conflict of interest declaration form in **Appendix 3** and return it to the MfE Secretariat before the first KWM meeting, and at any time during the Term if a new conflict arises. In the event of a conflict of interest being identified the Secretariat will provide guidance on the appropriate response.

38. The members of KWM will be governed by tika pono and aroha, and should reflect the mātāpono and hanga outlined in **Appendix 2**.

Secretariat

39. The Secretariat will:

- a) assist the Chair, Crown Lead, and subgroup leads to prepare meeting agendas;
- b) record meeting minutes and action points from KWM meetings;

- c) circulate meeting packs (agenda, minutes and any papers required);
- d) create or commission papers for KWM meetings as required;
- e) procure research and guest speakers on behalf of KWM if required;
- f) book travel, accommodation, catering and venues as required; and
- g) administer expenditure requests, member remuneration and reimbursement as required.

Access to policy material

40. The release of Cabinet material, whether draft or final, to KWM is subject to approval from the Minister for the Environment or other relevant portfolio Ministers.

Appendices

1. Standards of Conduct, and Remuneration and Expenses
2. Te Kawa o Kahui Wai Māori
3. Conflict of Interest Declaration Form

Appendix 1 to KWM terms of reference

Standards of Conduct, and Remuneration and Expenses

Conflicts of interest

A conflict of interest will occur when a member's or an observer's private or professional interest interferes, or appears to interfere, with an issue that faces KWM. A conflict of interest will also occur when there is a possibility that a benefit may apply to a sector, industry or organisation that they represent. A conflict of interest may be real or perceived.

Any situation that involves or may be expected to involve any real or potential conflict of interest must be declared immediately to the Chair, as soon as the conflict arises, using the form in **Appendix 3**.

At the discretion of the Chair, members may participate in discussions about issues in which they have declared a conflict of interest.

Guidelines for completing the Conflict of Interest Declaration Form

Members of the Group may have direct or indirect dealing with organisations or persons, both commercial and other, which could lead to a perceived or actual conflict of interest. By disclosing interests, members ensure that they are accountable and that the integrity and public confidence in the Group is maintained.

Members should be pragmatic about disclosing interests and are not required to include an interest that is remote or insignificant so that it cannot reasonably be regarded as likely to influence the member in carrying out his or her responsibilities. In deciding whether a member is interested, he or she should consider whether it would be reasonable to see the interest as likely to influence decision-making.

As a guide, an interest may be financial, professional, personal, direct or indirect and may include:

- you or your spouse, de facto partner, child, or parent may derive a financial benefit from the matter
- you may have a financial interest in a person to whom the matter relates
- you are a partner, director, officer, council member, or trustee of a person who may have a financial interest in a person to whom the matter relates
- you are otherwise directly or indirectly interested in the matter.

For example, the following types of interest might be relevant:

- employment/directorship within an institution applying to MfE or the Water Taskforce for funding
- interests in business enterprises or professional practices
- sharing ownership/beneficial interests in a trust
- existing professional or personal associations with MfE or the Water Taskforce
- professional and personal associations with organisations in the environmental sector
- a family relationship (including member with shares/ benefits in trusts etc).

Members may be concerned about the privacy of such information. Information held by the Water Taskforce is subject to the Official Information Act 1982. Officials from the Water Taskforce will consult with the person who provided the information before making a final decision on release. If that person cannot be located, the Water Taskforce will consult with the Chair on behalf of that person. Other members of the Group will be aware of disclosed interests and have a duty to notify the Water Taskforce of any failure of any member to comply with obligations to disclose interests.

Confidentiality and media

In order for KWM to operate effectively, members must maintain the confidence of the group, including maintaining confidentiality of matters discussed at meetings, and any information or documents provided to the group.

Where information is already properly in the public domain (through no fault of a member or observer), the confidentiality requirements do not apply to that information.

Where information is not already public:

- the Chair may seek agreement from the Minister for the Environment for KWM to release a media statement.
- a Member may only participate in a media interview or public statement about the business of KWM if they have obtained the prior written approval of Chair and the Minister for the Environment.

Privacy Act 1993

Members must at all times comply with the requirements of the Privacy Act 1993 and keep information about identifiable individuals confidential.

Official Information Act 1982

All information provided to KWM or by KWM to the Secretariat is official information under the Official Information Act 1982 and, subject to the requirements of that Act, may be released to the public if there are no grounds for withholding it.

If MfE is considering releasing information about KWM meetings or KWM-authored documents under the Official Information Act 1982, MfE will consult with the person who provided the information before making a final decision on release. If that person cannot be located, MfE will consult with the Chair on behalf of that person.

Corporate opportunities

Members must not exploit any opportunity that is discovered through access to information within KWM for their own personal gain or that of any industry, sector or organisation that they represent.

Respect for others

Members will treat each other and the opinions of others with respect at all times. Members will not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair dealing practices.

Remuneration and expenses

Daily rates

KWM is classified as a Group 1 Level 4 Board under the Cabinet Fees Framework. KWM members are entitled to a daily rate of \$500, and \$1,000 for the Chair as specified in each letter of appointment.

With the prior approval of the Chair, Crown Lead and MfE, members may receive payment of the daily rate for additional days' work that is required outside of KWM meetings.

Expenses

The Secretariat will, as a general rule, book all accommodation and travel for Members, the Chair and the Crown Lead.

Where a Member and the Chair book their own accommodation or travel, that person is entitled to have the actual and reasonable costs of expenses for travel and accommodation (Expenses) to attend KWM meetings, subgroup meetings and other KWM events reimbursed by the MfE if:

- the Expense is charged at actual and reasonable cost; and
- the claim for Expenses is supported by GST receipts.

Appendix 2 to KWM terms of reference

Te Kawa o Kahui Wai Māori

In the interests of transparency, the members of the KWM wish to note that at all times they will be governed by tika pono and aroha, and should reflect the mātāpono and hanga (behaviours) outlined below:

Ngā Mātāpono (principles):

Whakapapa / Whanaungatanga

Iwi and Hapū have a kinship relationship with the natural environment, including freshwater, through shared whakapapa. Iwi and Hapū recognise the importance of freshwater in supporting a healthy ecosystem, including human health, and have a reciprocal obligation as kaitiaki to protect freshwater quality.

Mana

Te Mana o te Wai is an important concept in the development of understandings and practices relating to wai. Te Mana o Te Wai acknowledges and protects the mauri of the water. Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people). Te Mana o Te Wai acknowledges that Wai is a taonga with all the consequent obligations to preserve the taonga for present and future generations.

Manaakitanga / Kaitiakitanga

Iwi and Hapū have a responsibility of care to ensure environmental management and sustainable enterprise within the overarching obligation to protect the environment and waters for present and future generations. It includes the obligation to take care of taonga for the future and foster wellbeing, as opposed to just maintaining ownership and the right to divest assets in contemporary settings.

The exercise of guardianship is important for KWM, particularly in relation to natural resources, such as lands, waterways, aquifers and harbours, flora and fauna, and people, that comprise elements of the natural environment. This principle requires that sustainability and environmental protection is valued. KWM recognises that the owners or trustees of an enterprise, including rights and interests in water, are also kaitiaki or guardians and are therefore responsible for protecting resources for future generations – not just for short-term or individual or Whānau profit.

Tapu / Noa / Utu

The concept of mana is closely allied to the principles and practices of tapu and noa. Wai, flora, fauna and objects in the environment can all be affected by tapu and noa. When a person, living thing or object is tapu, it can restrict people's behaviour or limit the range of uses of a resource or object. Noa means ordinary, common or free from restriction or the rules of tapu. Often ceremonies were carried out to remove the influence of tapu from objects or people so people were able to act without restrictions. Utu or balance enables the justices or merits of a particular situation to be balanced having regard (but not just limited by) to the principles of mana, tapu, and utu. KWM will have regard to the dynamics of these precepts in the way they develop options for allocation; protection and management of Wai.

Rangatiratanga

The exercise of tino rangatiratanga, particularly focused on resource production, utilisation, care and management for current and future requirements and the obligations to future generations, will underpin the work of KWM as it explores options for water allocation, management and protection of the taonga. The practice of rangatiratanga includes strategic development and oversight, relationship development and maintenance, problem-solving, conflict resolution and peace-making, adaptation, risk analysis, and care, management and regulation of Wai.

Ngā Tikanga (correct procedure)

KWM acknowledges that their work programme and advice will endeavour to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi and its guarantees and will be guided by the values embedded in this constitutional foundation stone of the modern Aotearoa New Zealand government.

KWM acknowledges that disagreement will exist with some of the precepts and assumptions that underpin the present government approach, but KWM will work within the *Essential Freshwater* reform programme in good faith and in accordance with Tikanga Māori, including ngā mātāpono, to develop *constructive* pathways and options for the care, allocation, management and protection of Wai.

Appendix 3 to Kahui Wai Māori terms of reference: Conflict of Interest Declaration Form

Kahui Wai Māori - Conflict of Interest Declaration Form

An actual conflict of interest arises in a situation where a candidate's private interest interferes or appears to interfere with an issue that faces the Kahui Wai Māori (the Group). Perceived or potential conflicts of interest exist in situations where a candidate of the Group, a family member or a close personal relation has private interests that interfere or appear to interfere with an issue that faces the Group.

A conflict of interest arises in a situation where there is a possibility that a benefit may apply to a sector, industry or organisation that a candidate may represent.

Name:	
<input type="checkbox"/> I declare that there are no conflicts of interest could compromise my objectivity, judgement, integrity or ability to perform the responsibilities of the Group.	
<input type="checkbox"/> I declare the following situation(s) that would cause a conflict of interest to exist 	
Please describe how this conflict of interest will be managed: 	

I declare the following situation(s) that may be perceived as a conflict of interest

Please describe how this conflict of interest will be managed:

Date:

Signed: