



Te Wai Māori

FURTHER FEEDBACK ON THE RESOURCE MANAGEMENT
REVIEW PANEL'S ISSUES AND OPTIONS PAPER -
"TRANSFORMING THE RESOURCE MANAGEMENT
SYSTEM: OPPORTUNITIES FOR CHANGE"





Further Feedback on the Resource Management Review Panel's Issues and Options Paper - *"Transforming the Resource Management System: Opportunities for Change"*

Introduction

1. Te Wai Māori Trust (Te Wai Māori, the Trust) welcome the opportunity afforded by the independent review panel at the Ministry for the Environment's (MfE) February 19th hui at Environment House, to provide further feedback on the Issues and Options paper for the comprehensive review of the resource management system (RM system). Te Wai Māori Trust also provided feedback through a joint response with Te Ohu Kaimoana, dated 10 February 2020.
2. Te Wai Māori Trust works on behalf of 58 mandated Iwi organisations (MIOs), who represent all Māori throughout Aotearoa. This document is not intended to usurp or detract from any responses made independently by Iwi or hapū or any other pathways Iwi and hapū may pursue to affirm their rights.

Te Wai Māori Trust

3. This response is made on behalf of Te Wai Māori Trust who are an independent Māori Trust established under the Maori Fisheries Act 2004 (the Maori Fisheries Act). The purpose of Te Wai Māori Trust is to advance Māori interests in freshwater fisheries¹ (s 94, Maori Fisheries Act). Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries.
4. Our core values are te mana o te wai, whakapapa, and kaitiakitanga and represent the natural order of the Te Wai Māori Trust worldview. First and foremost, we value freshwater and all that is encompassed in its ecosystems.
5. Healthy freshwater fisheries depend on upholding our responsibilities to ensure the health and well-being of freshwater environments (including surrounding terrestrial and riparian habitats). This in turn requires good information, constructive inter-agency relationships, effective regulations and rules, and clear priorities for action.

Proposed Freshwater Planning Process

6. It is noted, with concern, that consultation with Iwi and hapū did not occur ahead of Cabinet decisions on the proposed new freshwater planning process. The impact statement² signals that consultation occurring as part of the Ministry's Essential Freshwater programme and comprehensive review of the RMA would provide an (indirect) avenue for consultation on the issue. We therefore take this opportunity to provide feedback on the proposed freshwater planning process.
7. Section 2.5 of the impact statement states that the Ministry's freshwater advisory group Te Kāhui Wai Māori was engaged in informal discussions ahead of Cabinet decisions and expressed support for

¹ The Maori Fisheries Act defines "freshwater fisheries" as including the species, habitat, surrounding land, water column, and water quality and quantity. Sports fisheries or unwanted aquatic life or activities conducted under the Freshwater Fish Farming Regulations 1983 are excluded from this definition.

² Impact Statement: A new planning process for freshwater: <https://www.mfe.govt.nz/sites/default/files/media/Legislation/RIS/impact-statement-a-new-planning-process-for-freshwater-updated.pdf>

faster freshwater improvements and holding councils to greater account. However, they raised concerns over whether the freshwater hearings panel would have sufficient tikanga Māori expertise. The document also notes that Te Arawhiti raised concerns about the lack of engagement and analysis of impacts on Iwi and Treaty settlements and the need for a Māori engagement strategy. It is unclear whether any formal engagement has since occurred with Te Kāhui Wai Māori nor whether an engagement strategy was prepared. Te Wai Māori seeks clarification from officials on this issue.

8. The inclusion of Māori/tangata whenua within section 2.5 of the impact statement titled '*What do stakeholders think?*', further highlights the significant lack of understanding within Government of the Crown/Treaty partner relationship; the obligations and expectations encompassed within that and the fundamental difference between that and the Crown's relationship with 'stakeholders' generally.
9. Iwi and hapū have expressed that there is a real need for the identification and articulation of Iwi and hapū values and perspectives of freshwater ecosystems to help build greater understanding within and alongside Crown agencies. Effective understanding of Māori interests and values within Crown/government agencies and across decision-making bodies requires full Iwi and hapū participation and a commitment to collaborate in good faith and build strong, enduring relationships.
10. The current approach proposed for appointing the freshwater planning panel³ would require only a single representative with an 'understanding' of tikanga Māori and mātauranga Māori (selected from nominations by local tangata whenua) to be appointed to a panel of up to 5 members. In an existing system that does not appropriately provide for, invest in or value tikanga Māori and mātauranga Māori in the same way it does western paradigms and knowledge systems, such an approach is weak and tokenistic, and does not address the issue that this review has identified with respect to lack of support for Māori participation.
11. No consideration appears to have been given to ensuring Māori technical freshwater practitioners (i.e. Māori freshwater scientists; Māori planners and Māori RM lawyers) are included in the 'pool of national freshwater commissioners' (from which two members will be appointed to the panel). Instead this new process in all likelihood will result in the appointment of a solitary Māori voice to a panel of decision-makers who are likely to have very limited understanding of Iwi and hapū values and perspectives of freshwater ecosystems. This falls severely short of a partnership approach, further exacerbating the inadequate engagement and exclusion from the development phase of the process in the first place (as outlined in para. 6 and 7).
12. Te Wai Māori consider that all members of the freshwater planning panel should be required to have a sound understanding of Māori freshwater values and concepts, this would require expanding and reviewing the matters covered currently in "module 3 – considerations relating to Māori" of the 'Making Good Decisions' commissioner certification, or creating a new freshwater planning module that includes Māori freshwater values and concepts from a Māori perspective. This baseline level of understanding of all panel members, should then be complemented by additional expertise provided by panel members with specific tikanga Māori and mātauranga Māori expertise and the appointment of Māori technical freshwater practitioners from the pool of national freshwater commissioners.

³ The freshwater planning panel is proposed to be made up of two elected representatives (or commissioners nominated by the council; one member with an understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua) and two members from the pool of national freshwater commissioners (one of whom would chair the panel and have a casting vote).

13. We understand that there is an existing shortfall of 'Making Good Decisions' accredited commissioners with appropriate expertise in these areas. One measure central government should explore to aid in addressing this shortfall would be to fund the certification of suitable Māori candidates (i.e. individuals with specific tikanga Māori and mātauranga Māori expertise and Māori technical freshwater practitioners). Te Wai Māori, through our existing networks with the 58 mandated Iwi organisations representing all Iwi throughout Aotearoa, could assist with this.
14. The proposed NPS-FM 2020 includes proposals that are described as seeking to strengthen provisions for 'Te Mana o te Wai', Māori values and the role of Māori in decision-making processes. If the Government is genuinely seeking to achieve this it must address the barriers for Māori, Iwi and hapū participation in resource management processes⁴ and not further entrench and exacerbate this issue through establishing new processes, such as the new freshwater planning process, that fail to adequately consider or provide for Māori.

Underutilisation of Existing Mechanisms and Lack of Resourcing and Accountability

15. A number of existing co-management arrangements and ability to transfer powers are available to Iwi/local authorities under the RMA. These include provisions under Section 33 (which enables the transfer of functions and powers to Iwi authorities), Section 36B (which enables joint management agreements between councils, and Iwi and hapū) and Sections 58O and 58P relating to the initiation of Mana Whakahono ā Rohe arrangements.
16. Section 33 allows local authorities, including regional councils, to transfer one or more of its functions, powers, or duties under the RMA to another public authority. For the purposes of the Act, Iwi authorities and statutory authorities, such as Te Wai Māori Trust, are considered public authorities. Using this mechanism, it would theoretically be possible for councils to transfer management functions over significant waterways to Iwi. This would give Iwi rangatiratanga above broader stakeholders. This approach would directly address the most significant of threats to freshwater fish species while enhancing the role of Iwi with regards to environmental management.

However, despite these mechanisms being provided for in legislation, in some cases for decades (i.e. s33), they are poorly utilised. Reasons for this include chronic under-resourcing of Māori, Iwi and hapū to enable genuine participation in these processes, and lack of willingness on the part of local authorities to transfer powers or enter joint management arrangements. The success and utilisation of these mechanisms is also heavily contingent on both resourcing and the nature of the relationship between an Iwi and local authority and where these are not optimal the Māori voice is 'effectively silenced'⁵. Compounding this is the absence of any robust monitoring or auditing of the performance of Central Government and local authorities with respect to their statutory and legislative obligations to Māori⁶.

17. Further, there is a distinct lack of consistency and coherence in terms of proposals currently being consulted on by Central Government. Issues that the independent panel has signalled for review are being incorporated into new proposals being developed and consulted on by the Ministry for the Environment and Department of Conservation. For instance, the Draft National Policy Statement for Indigenous Biodiversity (NPSIB); the discussion document for which identifies under-use of existing mechanisms as a 'problem with the current approach' to biodiversity management. However, in the

⁴ Refer to Perception Planning report - Scoping Report: Issues and options for incorporating Māori values and outcomes in freshwater management planning, decision-making and implementation, prepared for the Ministry for the Environment 16 December 2019

⁵ Waitangi Tribunal Report, Ko Aotearoa Tēnei: A report into claims concerning New Zealand law and policy affecting Māori culture and identity (WAI 262)

⁶ Perception Planning Report, December 2019.

same document it then refers to those very mechanisms (i.e. Mana Whakahono ā Rohe), as tools that Iwi/Māori could utilise in order to implement the NPSIB. Therefore, despite policy makers being aware of existing barriers to the use of these mechanisms (intended to aid Māori participation in resource management decision making), there appears to be little will to address the implementation issues or genuinely provide for Māori interests.

Use of Māori Terms and Concepts in Legislation and Lack of Māori Involvement

18. While it is encouraging to see continued moves toward providing for a Māori voice in legislation and policy through the inclusion of Māori terms and concepts, this could be seen as inappropriate and disingenuous, given this is being done within an existing regime that fails to appropriately provide for Māori, Iwi and hapū participation in policy development and decision-making processes (as explored above). Central to this issue, as noted earlier, is a lack of Māori involvement in policy development (both in terms of policy staff, in governance/decision-making and through lack of genuine engagement) and lack of capacity and capability of policy makers on Māori matters.
19. An example is 'Te Mana o te Wai' which under the proposed revised NPS-FM 2020 is proposed to be 'strengthened and clarified' and is being considered for elevation to Part 2 of the Act as part of the comprehensive review of the RM system. However, throughout consultation for the Essential Freshwater package, 'Te Mana o te Wai' has been described as "a concept for all New Zealanders" that will be "defined by communities" (at a regional level through planning processes).
20. Given the lack of Māori representation within Central Government (both generally and in policy development); in local authorities; and among elected representatives on councils, such an approach is problematic and instead of genuinely providing for Māori concepts and freshwater values in legislation and decision-making, it risks diminishing them, through predominantly non-Māori policy makers, decision-makers and 'communities' defining Māori concepts in policy/legislation and determining how they will be implemented and monitored. It is noted that definitions in the Act itself generalise Māori terms, such as kaitiakitanga, this then flows through to planning instruments and interpretation of RM practitioners in decision-making.
21. Accordingly, we consider that the use of Māori concepts in a legislative context must be clearly defined and led by tangata whenua through a Te Tiriti based process, with guidance and compulsion for local authorities to do so provided within legislative instruments. As well as seeking to increase Māori involvement and representation in decision-making, there is also a need to upskill those working within the resource management system generally (i.e. policy makers and central Government officials, regulatory staff and elected officials within local government), on:
 - RMA provisions providing for Māori interests in resource management;
 - Treaty of Waitangi obligations;
 - Māori values and concepts;
 - Tikanga Māori; and
 - Mātauranga Māori.
22. The significant lack of internal capability and capacity in the above listed areas within Central Government is apparent in the raft of proposed policy and legislation changes recently developed.

Protection of Habitat of Taonga Species

23. The comprehensive review of the RM system provides an opportunity to provide for express reference to the protection for the habitat of tuna (eels), whitebait species, piharau/kanakana (lamprey) and other taonga freshwater species, and the relationship between Māori and these species in sections 6 and/or 7 of the RMA, similar to the explicit protection provided to the habitat of

introduced species such as trout and salmon, affording those species' habitat more protection than that of our indigenous taonga fish species. Integral to this would be consideration of requirements to ensure consistency across territorial authorities for matters relating to freshwater habitat, such as requirements for native fish protection during 'drain' clearance works.

Allocation of Freshwater

24. Addressing water allocation issues (including Māori rights and interests in freshwater) was not progressed as part of the Government's Essential Freshwater proposals currently being finalised. The Government has noted that its focus should start with water quality before it addresses allocation. It is noted that the Waitangi Tribunal in its Wai 2358 report clearly recommended that Māori proprietary rights in freshwater be addressed.
25. We are disappointed that the scope of this review excludes consideration of Māori rights and interests in freshwater and the findings of the Waitangi Tribunal in Wai 2358. Given the Government's lack of progress and apparent lack of political will to progress this issue, we consider that valuable insight and information could have been obtained through the independent review to inform any future approach to allocation.
26. Te Wai Māori would expect the Government's revised approach to allocation to move firmly away from the present highly inequitable "first in first served" approach, widely recognised as disadvantaging Māori, to a Treaty compliant regime. Key to such an approach would be shared governance and partnership arrangements that genuinely provide for Māori freshwater values and concepts, in addition to review of the current Cabinet parameters⁷ that are narrowly focussed on under-developed Māori land.

General Comments

27. We note that the various policies/national instruments being developed by Central Government do not align with the potential change in direction signalled by the independent panel's issues and options paper. We note that a considerable Government work programme will be required to ensure coherence and consistency, should the final recommendations of the independent panel be adopted.
28. Te Wai Māori tautoko the view expressed at the MfE hui of exploring a fundamental change in expression of the RMA, by reframing it away from 'managing the environment' as resource to effectively be exploited for human needs, to managing the way people interact with the natural environment.

Conclusion

29. Te Wai Māori Trust have a significant interest in the resource management system, particularly the Resource Management Act and its relationship to protecting Māori interests in freshwater fisheries (including surrounding terrestrial and riparian habitats); protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities to ensure healthy freshwater fisheries and freshwater environments. We are encouraged by the fulsome and thorough approach taken by the independent panel in its issues and options paper which has identified a wide range of systemic issues with the existing resource management system, including insufficient recognition of the Treaty and lack of support for Māori participation.

⁷ Cabinet Environment, Energy and Climate Committee Minute of Decision: A New Approach to the Crown/Māori Relationship for Freshwater (ENV-18-MIN-0032).



30. We would like to see Central Government commit to genuinely acknowledging and addressing the barriers for Māori, Iwi and hapū participation in resource management processes and commit to meeting its Treaty and settlement obligations and move toward implementing a Treaty compliant environmental regime. We would be happy to meet kānohi ki te kānohi with the panel and/or officials to discuss the points raised in this submission.

Nāku noa, nā

A handwritten signature in blue ink, appearing to read 'Graeme Hastilow', is written over a light blue circular stamp.

Graeme Hastilow
Kūrae Wai/Manager
Te Wai Māori Trust



Te Wai Māori