

Te Taitokerau Draft Freshwater Plan Change – Tangata Whenua Water Advisory Group Feedback

✦ Prepared for

Northland Regional Council

✦ April 2024



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Quality Control Sheet

TITLE Te Taitokerau Draft Freshwater Plan Change – Tangata Whenua Water Advisory Group Feedback

CLIENT Northland Regional Council

ISSUE DATE 3 April 2024

JOB REFERENCE A03740102

Revision History					
REV	Date	Status/Purpose	Prepared By	Reviewed by	Approved
1	3/04/2024	Final	Simon Greening & Aimee Matiu	Phil Hook	Simon Greening

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1.0 Introduction

Section 80A of the Resource Management Act 1991 (RMA) requires regional councils to undergo a Freshwater Planning Process (FPP) and prepare a Freshwater Planning Instrument (FPI) that gives effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM).

Northland Regional Council (NRC) has prepared a draft freshwater plan change (dFPC) (i.e. the FPI) and associated guidance documents (see Section 2.0) for the Te Taitokerau rohe to give effect to the NPS-FM. This dFPC has been prepared having received advice from the Te Taitokerau Māori and Council (TTMAC) and the Tangata Whenua Water Advisory Group (TWWAG).

As part of the process, NRC has released a draft FPI for feedback from the general public and other interested parties.

TWWAG was invited to provide their advice and feedback on the dFPC document and associated documents. As such, this feedback focuses on the consistency between the dFPC provisions drafted by NRC against TWWAG's Stage 2 TWWAG Report: *Ngā Roimata o Ngā Atua: The tears of Ranginui and Papatūānuku*, (the Stage 2 report). Accordingly, provisions from the Stage 2 report have either been incorporated, not incorporated or incorporated but amended into the dFPC.

This document sets out the feedback and commentary to NRC regarding TWWAG's position in relation to each of the documents, along with any recommendations or advice for TTMAC's consideration. This feedback and advice is expected to inform NRC's notified plan change document.

2.0 Purpose

There are four documents that have been developed as part of the dFPC. These are:

- ∴ Draft Freshwater Plan;
- ∴ Draft Freshwater Action Plan;
- ∴ Draft Targeted Water Allocation Policy; and,
- ∴ Draft Stock Exclusion Plan.

It is critical that an analysis of these various documents is undertaken from a tangata whenua perspective to ensure provisions set out in earlier work are incorporated and remain fit for purpose.

The following section outlines the review undertaken against the Stage 2 Report provisions recommended by TWWAG and provides feedback to NRC to inform their preparation of the notified Plan Change.

3.0 Draft Freshwater Plan Analysis and Recommendation

3.1 Legislative Context

TWWAG is acutely aware of the signalled changes to the legislative framework that drives the requirement for a freshwater plan change, and in particular the proposed changes to the National Policy Statement for Freshwater Management 2020 (NPSFM). In brief, this includes:

- ∴ The Natural and Built Environment Act (NBA) being repealed on 24 December 2023;
- ∴ Central Government's announcement that changes to the NPSFM are being made including (insofar as they affect Freshwater Plan Changes):
 - Government will review and replace the NPSFM in this parliamentary term (between 18 to 24 months).
 - Government extended the statutory deadline for councils to notify FPI's to implement the NPSFM by three years (i.e. 31 December 2027).

Having acknowledged these changes and impending changes, TWWAG's notes the feedback on the dFPC in its current form is provided in context of the existing NPSFM requirements. However, TWWAG also notes the principles will be enduring regardless of any future reforms that Central Government may make. Although this is the case, TWWAG will need to consider the form and nature of any future NPSFM requirements and reconsider the feedback/recommendations within both the Stage 2 report and this report to check consistency with and advice against any future NPSFM.

3.2 General Feedback

The dFPC encompasses a significant portion of the provisions and guidelines recommended in the Stage 2 report which have been brought through in the dFPC which TWWAG supports. Nonetheless, certain elements have not been adopted, or have been adopted but amended. As a result, some of the objectives and policies proposed by TWWAG have not been included in the dFPC and/or potential disparities in wording and meaning have been identified. A summary of these disparities are detailed below.

Prior to making comment on each policy provision, TWWAG has set out some more general feedback to comments received from NRC. This feedback is provided in response to comments from NRC staff which identified that the tangata whenua policies that TWWAG proposed were:

- ∴ often high level;
- ∴ repeat direction in the RMA or NPS policy;
- ∴ incorporate words that are not defined;

- ∴ sit separately to the existing policies which are much more specific and directive; and
- ∴ unclear on what types of consents these policies would have bearing on.

In conclusion, NRC considered that in their current form, NRC runs the risk the policies will not be effective in decision making. In response to these comments TWWAG provides specific responses as follows:

1. High level policy: TWWAG consciously developed a policy set that focused on human behaviour and relationships with wai. This represents a significant shift in 'status quo' policy and TWWAG consider this is the opportunity to adopt a more philosophical approach that focuses on putting wai first, and not people's needs. Arguably, this is equally directive, but in a different way to which 'directive policy' has been interpreted to date. TWWAG has discussed at length the need for mana i te whenua to be involved, to be the ones who interpret how this policy is applied, even though may not sit comfortably with the status quo way of doing things.
2. Repeats higher order direction: TWWAG has been conscious on trying not to replicate higher order direction, however this may be unavoidable in some instances. It is not clear which specific policies this applies too, but in many cases, the wording proposed has tried to be put into a Te Tai Tokerau context and written with a specific purpose in mind. This may overlap somewhat with higher order wording, but is ultimately designed to give effect to higher order documents.
3. Definitions: In a similar manner, TWWAG consider that not every word needs defining, and it should be the role of mana i te whenua to determine the meaning of some words and/or phrases on a case by case basis. Again this may not sit comfortably with the status quo, but TWWAG consider this is the opportunity to be bold with the approach.
4. Existing policies: Similarly to point 1, TWWAG recognised that higher level policy was desirable and were cognisant of the existing policy that already existed. TWWAG consider that specific policy should be developed on a Freshwater Management Unit (FMU) by FMU basis in a local context and NRC would need to understand local iwi, hapu and marae requirements in order develop FMU specific and directive policy. Furthermore, directive elements were incorporated through rules that drove bottom line outcomes sought by TWWAG.
5. Activity types: In response to NRC querying which activities these policies apply to, TWWAG notes that they apply to all applications affecting water, as is the purpose of the Plan Change. Accordingly, it applies to activities regulated under s.13, s.14 and s.15 of the RMA.

The context within which these provisions were developed by TWWAG is vitally important to understand, and may not appear immediately obvious. TWWAG recommend that NRC continue to engage with both TWWAG and mana i te whenua to understand this context.

3.3 Provisions Incorporated

The following provisions have been incorporated in the dFPC as proposed by the Stage 2 report. Given these provisions are incorporated, TWWAG do not provide further feedback or advice on these Objectives other than some minor alterations where appropriate.

Table 1: Provisions Incorporated in dFPC		
Provision Reference	Provision Wording	TWWAG Feedback
Objectives		
Objective 1 of the Stage 2 report now Objective F.1A.2	<i>The spiritual wellbeing and whakapapa of wai is prioritised and enhanced. All people who use and/or affect wai, listen to and respect Te Hurihanga Wai.</i>	None.
Objective 2 of the Stage 2 report now Objective F.1A.3	<i>The land, wai and associated ecosystems are treated as one to ensure the mauri, health and wellbeing of wai is put first.</i>	None.
Objective 5 of the Stage 2 report now Objective F.1A.7	<i>Tangata whenua environmental, economic, social, spiritual, and cultural wellbeing is enabled and resourced.</i>	None.
Objective 6 of the Stage 2 report now Objective F.1A.8	<i>Wai is improved and then maintained so that by 2040 the wellbeing of wai meets target attribute states set by tangata whenua.</i>	None.
Objective 7 of the Stage 2 report now Objective F.1A.4	<i>The impacts of climate change must be integrated into all wai decision making.</i>	None.
Policies		
Policy 2.2 of the Stage 2 report now Policy D.4.35)	<i>Tāngata whenua can exercise and apply their mātauranga Māori in freshwater management decision making.</i>	Note, TWWAG considers that there are minor wording amendments needed to this policy and the Advice Note that Tangata whenua needs to guide decision making needs to be reinstated, however these are considered inconsequential.

Table 1: Provisions Incorporated in dFPC

Provision Reference	Provision Wording	TWWAG Feedback
		TWWAG note that there are also no clear guidelines as to how this will be implemented or recognised by NRC in the plan change, which should be addressed.
Policy 2.4 of the Stage 2 report now Policy D.4.37	<i>Allocation of water must provide for the mauri of the wai, taonga species and mahinga kai, taking into account climate change impacts.</i>	None.
Policy 4.4 of the Stage 2 report now Policy D.4.53	<i>Avoid the taking of wai for commercial wai bottling purposes unless that wai is:</i> 1) <i>supported by tāngata whenua or</i> 2) <i>taken for the purpose of supplying water for domestic needs within the Te Tai Tokerau region.</i>	None.
Policy 6.1 of the Stage 2 report now Policy D.4.47)	<i>Protect tangata whenua values associated to wetlands, rivers, lakes and their margins, receiving environments, including their ecosystems, from inappropriate activities that effect wai.</i>	None.
Policy 6.2 of the Stage 2 report now Policy D.4.48	<i>To restore and then maintain degraded wetlands, rivers, lakes and their margins, and receiving environments, so that:</i> 1) <i>taonga species are healthy and resilient</i> 2) <i>wetlands and water bodies function as they should in Te Hurihanga Wai</i>	None.

Table 1: Provisions Incorporated in dFPC

Provision Reference	Provision Wording	TWWAG Feedback
	<ul style="list-style-type: none"> 3) <i>mahinga kai are thriving and supporting cultural, social, environmental, spiritual and economic outcomes for tāngata whenua</i> 4) <i>cultural practices and tikanga can be undertaken in wai tapu and other significant water bodies identified by tāngata whenua</i> 5) <i>harmful pest species are controlled in an integrated way at levels that enables taonga species to thrive</i> 6) <i>access to water bodies for waka is enabled where access is limited.</i> 	
<p>Policy 7.2 of the Stage 2 report now Policy <u>D.4.52</u>.</p>	<p><i>Recognise that adapting to the climate crisis needs to be built into all freshwater decision-making so that:</i></p> <ul style="list-style-type: none"> 1) <i><u>The health and integrity of</u> aquifers are preserved and protected</i> 2) <i>Surface water and ground water management is integrated;</i> 3) <i>Wetlands are conserved, maintained and rehabilitated;</i> 4) <i>Water dependency and related climate risks are understood, and urban and rural communities’ exposure to risks are reduced and resilience increased; and</i> 	<p>TWWAG considers that the minor wording amendments made to this policy (underlined) only serve to strengthen the wording and TWWAG support this.</p>

Table 1: Provisions Incorporated in dFPC

Provision Reference	Provision Wording	TWWAG Feedback
	<p>5) <i>Freshwater-related infrastructure is climate-proofed, including in design of new and retrofit of existing infrastructure.</i></p>	
<p>Policy 7.3 of the Stage 2 report now Policy <u>D.4.53</u>.</p>	<p><i>Recognise that how we use the way water is used can help mitigate climate change. e.g. use of energy efficient pumps and use of water for renewable energy generation.</i></p> <p><i>Advice Note: For example, the use of energy efficient pumps and use of freshwater for renewable energy generation.</i></p>	<p>TWWAG considers that the minor wording amendments and last sentence being turned into an Advice Note is inconsequential and therefore no objections are made.</p>

3.4 Provisions Incorporated but Amended

The following Objectives have been carried through but have been amended. The amendment either retains the same intent and therefore does not alter the overall outcome, or changes the intent or way the Objective is implemented. In both scenarios, we have identified what the amendment is, how it effects the interpretation and/or implementation of the Objective, together with advice and/or recommendations for TWWAG to consider.

There are a number of provisions that reference certain terms which have different meanings in terms of implementation and create a “hierarchy”. The statutory hierarchy means that a “stronger direction” is given in relation to provisions that must be given effect to as compared to matters that must be taken into account.

Section 18A of the RMA is relevant to consider and has possibly guided NRCs choice of words for particular policies, as the Council may respond to matters set out in section 6 to 8 of the RMA. Section 18A, where relevant states:

Every person exercising powers and performing functions under this Act must take all practicable steps to—

(b) ensure that policy statements and plans—

(i) include only those matters relevant to the purpose of this Act; and

The relevant RMA sections require decision makers to:

- ∴ “recognise and provide for” certain matters of national importance (Section 6);
- ∴ “have particular regard to” other matters (Section 7);
- ∴ “take into account” the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (Section 8);

The relevant NBEA section requires:

- ∴ decision makers to “give effect” to the principles of Te Tiriti o Waitangi (Section 5);

Each of the above phrases have a slightly different requirement for NRC in drafting the dFPC and set out below is how the terms have been described / defined through relevant case law.

- ∴ “**give effect to**” means “to implement”. This is a very directive requirement which means that provisions have to be met and leaves little room to balance against other competing provisions.

- ∴ **“have (particular) regard to”** means¹ to *...to give the matter genuine attention and thought, but it remains open to the decisionmaker to conclude that the matter is not of sufficient significance to outweigh other contrary considerations”*.
- ∴ **“take into account”** requires decision-makers to consider the provision, to weigh those up with other relevant factors and to give them the weight that is appropriate in the circumstances.

¹ Sanford Ltd v New Zealand Recreational Fishing Council [2008] NZCA 160 at [95] adopting the interpretation from an earlier Court of Appeal decision, New Zealand Fishing Association v Ministry of Agriculture and Fisheries [1988] 1 NZLR 544 (CA), at 551 per Cooke P.

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
Objectives			
Objective 3: Tangata whenua exercise Rangatiratanga and Kaitiakitanga in wai decision-making.	Objective F.1A.5: Tangata whenua <u>can</u> exercise Rangatiratanga and Kaitiakitanga in wai decision-making.	The word “can” has been added. The wording addition is subtle, but shifts it from a requirement to an ambition. NRC suggested the word 'can' provides flexibility to tangata whenua to choose to exercise or not, but also stated the word ‘can’ has been added to read like an Objective.	TWWAG consider that the word “can” should be removed and revert to the original wording. The wording doesn’t oblige or require tangata whenua to be involved if they do not wish, but emphasis that they will exercise Rangatiratanga and Kaitiakitanga. This ability is not a permissive requirement - hapū and iwi have the mana to exercise rangatiratanga and NRC does not permit this.
Objective 4: Tikanga Māori, He Whakaputanga, Te Tiriti o Waitangi and Wai 1040 Stage 1 findings are given effect to, including in wai decision-making.	Objective F.1A.6: Freshwater management decisions: 1) take into account Tikanga Māori and He Whakaputanga, and 2) give effect to the principles of te Tiriti o Waitangi.	The original wording would have required wai decisions makers to “give effect” to Tikanga Māori, He Whakaputanga, Te Tiriti o Waitangi and Wai 1040 Stage 1 findings. The new wording proposed by NRC would require wai decisions makers to: ∴ “take into account” Tikanga Māori and He Whakaputanga. ∴ “give effect” to Te Tiriti o Waitangi. ∴ not consider Wai 1040 Stage 1 findings at all. <u>NRC noted that their wording aligns with s.7 and 8 of the RMA (i.e. uses the words ‘take into account; rather than give effect to).</u>	TWWAG has carefully considered this matter, and recommend that the wording should be reinstated in the first instance on the basis that regional plans can be more stringent than the RMA, as long as they do not contradict the RMA. It is essential to ensure consistency with the RMA’s over-arching framework and principles. As an alternative, TWWAG would consider the use of the “recognise and provide for” which shifts the comparison of wording away s.6 to 8 of the RMA while still retaining the same intent.
Policies			
Policy 1.1: The spiritual connection tangata whenua have with wai is recognised and upheld by providing opportunity for mana i te whenua to: a) Undertake cultural practices; b) Apply localised mātauranga and tikanga to inform decision making c) Hapū Kaitiakitanga d) Access wai AND	Policy D.4.32: Tāngata whenua spiritual connection with wai The spiritual connection tāngata whenua have with wai is recognised and upheld by providing opportunity for mana i te whenua to: 1) Undertake cultural practices; 2) Apply localised mātauranga and tikanga to inform decision making; 3) Undertake hapū Kaitiakitanga; and 4) Have an active and healthy relationship with wai, including physical and spiritual access to wai.	Policy 1.1 and 4.2 has been rolled together in Policy D.4.32. The policy retains the original intent, but also has additional wording added as follows (in underline): 3. <u>Undertake</u> hapū Kaitiakitanga; and 4. <u>Have an active and healthy relationship with wai, including physical and spiritual</u> access to wai. NRC had no specific feedback on this policy.	TWWAG consider that this additional wording is useful and expands on the original intent of the Stage 2 report wording in a positive way.

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p><i>Policy 4.2: Enable tangata whenua to have an active and healthy relationship with wai.</i></p>	<p><i>Advisory Note: Access to waterbodies remains a major limiting factor for tāngata whenua. However, regional council has no legal ability to require tāngata whenua access to waterways under the Resource Management Act or any other Act.</i></p>		
<p><i>Policy 2.1: Connectivity between all wai, land and receiving environments, is prioritised in alignment with the Te Mana me te Mauri o te Wai hierarchy to protect Taiāpure and Mātaitai and ki uta ki tai – mountains to the sea.</i></p>	<p><i>Policy D.4.34: Connectivity between all wai, land and receiving environments, through te Hurihanga Wai, is prioritised to protect ki uta ki tai – mountains to the sea.</i></p>	<p>The amended provision generally achieves the same outcome, however has been reframed to remove “alignment with the Te Mana me te Mauri o te Wai hierarchy to protect Taiāpure and Mātaitai” and replace with “te Hurihanga Wai” while still referencing ki uta ki tai.</p> <p>NRC considered that the original policy limits protection to Taiāpure and Mātaitai only and the dFPC version is much broader and well as limiting the scope to freshwater only (recognising provisions can relate to the impacts on coastal/estuarine environments, but any direction needs to relate to activities in Freshwater).</p>	<p>TWWAG considers that the inclusion of the words Taiāpure and Mātaitai does not limit the consideration to only these values when considering connectivity. This is due to the use of the conjunctive “and” which further opens consideration to ki uta ki tai – mountains to the sea.</p> <p>The prominence of the words Taiāpure and Mātaitai elevates their importance to the decision makers.</p> <p>Furthermore, the wording is considered to fit within the freshwater scope. It focuses on those activities occurring on wai, land and receiving environments in order to protect coastal environments, which is entirely consistent with integrated management. It does not seek to manage activities in the coastal environment.</p>
<p><i>Policy 2.3: Wai habitat is protected and enhanced in collaboration with mana i te whenua to enable taonga species to migrate and thrive by:</i></p> <p><i>a) Reconnecting migratory pathways by:</i></p> <ul style="list-style-type: none"> <i>i. avoiding new and removing or remediating existing fish barriers</i> <i>ii. avoiding new and restoring river modification or diversion</i> <i>iii. maintaining flow</i> <p><i>1) unless there is a functional need for such activities to occur</i></p> <p><i>b) Improving and then maintaining healthy habitat</i></p> <p><i>c) Controlling harmful pest species</i></p>	<p><i>Policy D.4.36: Wai habitat is protected and enhanced in collaboration with mana i te whenua to enable taonga species to migrate and thrive by:</i></p> <p><i>1) Reconnecting migratory pathways by:</i></p> <ul style="list-style-type: none"> <i>a) avoiding new and removing or remediating existing fish barriers</i> <i>b) avoiding new and restoring river modification or diversion</i> <i>c) maintaining sufficient flow</i> <p><i>unless there is a functional need for such activities to occur,</i></p> <p><i>2) Improving and then maintaining healthy habitat,</i></p>	<p>The amended provision is still generally the same, however has removed the ability to set kaitiaki limits on wai quantity to protect and enhance wai.</p> <p>NRC queried whether the kaitiaki limits covered by the targeted water allocation policy, did not understand what a kaitiaki limit is, or how it would be implemented. They considered it could sit within a standalone policy about process or be more effective in the Action Plan.</p>	<p>TWWAG consider the policy wording should be reinstated. In terms of a definition, this is something mana i te whenua can describe on a case by case basis, but in general the provision of this wording has been to ensure that cultural values for a local water body can be reflected in a targeted limit. The intention is that kaitiaki limits would not be prescribed within the Plan itself, but rather developed on an application by application basis. This is because water quantity limits are often set at lower catchment levels, however they may not provide necessary cultural protection in smaller head water tributaries.</p> <p>A kaitiaki flow can be applied which may be more or less stringent than the catchment limits, and could apply to either the amount taken, or flow required to be retained instream.</p>

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p>d) <i>Improving and then maintaining wai quality</i></p> <p>e) <u>Setting kaitiaki limits on wai quantity</u></p> <p>f) <i>Recognising the importance of estuarine and coastal ecosystems and habitats 1</i></p>	<p>3) <i>Controlling harmful pest species,</i></p> <p>4) <i>Improving and then maintaining wai quality,</i></p> <p>5) <i>Recognising the importance of estuarine and coastal ecosystems and habitats</i></p>		<p>Such limits have been implemented elsewhere in Aotearoa in regional plans.</p> <p>Policy 6.5 in picks this requirement up as a standalone policy which could be implemented.</p> <p>Having further considered this policy, TWWAG proposes a shift from a Kaitiaki limit to a Mauri limit, where water quantities are determined based on the necessary levels required to preserve and enhance the mauri of a particular water body.</p>
<p><i>Policy 2.5: Existing resource consents that effect wai are reviewed by no later than 2030 and/or when new flows, limits and standards are imposed. This may be undertaken using section 128 of the RMA:</i></p> <p>a) <i>at any time or times specified for in the consent, or</i></p> <p>b) <i>when a rule in a Regional Plan becomes operative that has wai limits set, or</i></p> <p>c) <i>at any time to address any identified effects on cultural values that were not identified by tangata whenua, and which were subsequently identified and agreed through any regional planning process or set in the objectives, policies and standards of the Regional Plan.</i></p>	<p><i>Policy D.4.38: Resource consents that affect wai may be reviewed when any new limits, standards or cultural values become operative in the Regional Plan and the resource consent allows activities inconsistent with the new limits, standards or cultural values.</i></p>	<p>The policy still generally provides for the outcomes sought by TWWAG.</p> <p>NRC noted that this provision has been amended due to likelihood of legal challenge due to the ability to review a consent at “any time to address effects on cultural values”.</p>	<p>TWWAG has been advised that such wording is used elsewhere in Aotearoa in regional plans. This wording reflects the fact that tangata whenua may not always be able to respond during consent processes due to resourcing or other pressures, but that this should not indicate tacit approval of a consent. In any case, the wording restricts the review potential only to instances where cultural values are identified in the regional plan where they weren’t previously considered in the consent application process. It doesn’t provide an opportunity for tangata whenua to at any time request a review of consent.</p>

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p>Policy 2.7: Wai decision making gives effect to tangata whenua climate change mitigation and adaptation responses.</p>	<p>Policy D.4.39 Tāngata whenua climate change mitigation and adaptation</p> <p><i>Wai decision making has particular regard to tāngata whenua climate change mitigation and adaptation responses (for example as articulated in hapū and iwi environmental management plans and other relevant iwi authority and hapū planning documents).</i></p>	<p>The original wording would have required wai decisions makers to “give effect” to tangata whenua climate change mitigation and adaptation responses. The new wording proposed by NRC would require wai decisions makers to have “particular regard to” to this requirement.</p> <p>NRC considered that this wording aligns with s.7 or the RMA or is beyond scope of RMA.</p>	<p>The same response applies as for Objective F.1A.6 above. TWWAG request the original wording is reinstated or as an alternative the use of the words: “recognise and provide for”.</p>
<p>Policy 3.1: All authorities regulating wai must give effect to:</p> <ul style="list-style-type: none"> a) Te Hurihanga Wai; b) Te Tiriti o Waitangi; c) Hapū and iwi management plans; and d) Mana whakahono a rohe arrangements; e) Treaty settlement legislation. f) Cultural practices according to tikanga including but not limited to rahui. 	<p>Policy D.4.41 Matters to consider when making decisions for wai</p> <p>All authorities regulating wai must:</p> <ol style="list-style-type: none"> 1) <u>take to into account</u> Te Hurihanga Wai; 2) <i>give effect to the principles of Te Tiriti o Waitangi and Treaty settlement legislation;</i> 3) <u>have particular regard</u> to hapū and iwi management plans recognised by an iwi authority or hapū and lodged with councils; 4) <u>comply with</u> Mana whakahono a rohe arrangements; and 5) <u>recognise and provide for</u> cultural practices according to tikanga including but not limited to rāhui. 	<p>This policy has been amended so that instead of giving effect to these matters, a variety of alternative wording has been used as highlighted.</p> <p>NRC considered that this wording aligns with s.7.</p>	<p>The same response applies as for Objective F.1A.6 above. TWWAG request the original wording is reinstated or as an alternative the use of the words: “recognise and provide for”.</p>
<p>Policy 3.4: Northland Regional Council investigates and transfers powers to Tangata whenua using s.33 (RMA) and utilises Joint Management Agreements using s.36B (RMA).</p>	<p>Policy D.4.42 Transfer of powers and joint management agreements</p> <p>The Northland Regional Council will investigate the transfer of powers to tāngata whenua (section 33, RMA) and joint management agreements (section 36B, RMA).</p>	<p>The Policy wording is diluted so that the NRC only has to investigate these mechanisms. The original wording went a step further and required the transfer of power and utilisation of JMAs.</p> <p>NRC stated that the transfer of powers must undergo a special consultative procedure under s.83 of the Local Government Act 2002 (LGA) which exposes the process to public feedback and uncertainty of the outcome and cannot occur until this process is complete. They noted NRC will need to be satisfied regarding the LGA process prior to forming any agreement; hence the 'diluted' policy D.4.42.</p>	<p>Firstly, TWWAG has been advised that the s.83 LGA process is consultative and would not prevent NRC making the decision in the end to transfer any powers to mana i te whenua. Provided the request is reasonable and within mana i te whenua ability to undertake, there is no reason this process should create a barrier to process. Even if the process did find mana i te whenua unable to undertake the work where power is transferred, then the Policy wording does not limit NRC to ending there, and other opportunities can arise to transfer other powers.</p>

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
		Further NRC noted that the requirement for Council to carry out a specific action or commit finances has been removed, as it is not the role of a Regional Plan to make these decisions, nor which powers are to be transferred and there is a specific process in the Act to carry out transfers.	Secondly, the wording specifically doesn't limit what powers would or could be transferred or JMAs created, which is intentional. Section 33(6) clearly sets out the process for this: <i>(6) A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed.</i> This Policy ties to Policy 4.1 (D4.43) that requires Tangata whenua to be resourced to practice and exercise tikanga and kawa.
<i>Policy 4.1: Tangata whenua are resourced to practice and exercise tikanga and kawa.</i>	<i>Policy D4.43²: Tāngata whenua are enabled to practice and exercise tikanga and kawa in freshwater decision-making and monitoring.</i>	The wording has been changed from resourcing Tangata whenua to enabling Tangata whenua to practice and exercise tikanga and kawa. However, this may be satisfied by the inclusion of Objective F.1A.7 which requires: <i>Tāngata whenua environmental, economic, social, spiritual, and cultural wellbeing is enabled and resourced.</i> NRC noted that their decisions to resource an activity is subject to Annual/Long Term Plans and the original policy is unclear on the extent of resource needed.	TWWAG note that this policy is largely aimed at resource consent applicants, but can also be considered an informative policy for other Policies which do require resourcing for mana i te whenua. TWWAG consider that it would be appropriate to use the word 'budget or budgeting' instead of 'fund' or 'funding', as the latter has connotations of charitable work, whereas tangata whenua work is commensurate with any other expertise required for natural resource management, and which is budgeted for. TWWAG therefore consider NRC need to develop an annual budget for tangata whenua to be able to participate in various processes.
<i>Policy 4.3: People develop a positive relationship with wai so that every interaction improves and then maintains te mauri o te wai and wai is healed where it is not meeting target attribute states.</i>	<i>D.4.43 Te mauri o te wai Ensure that every interaction improves and then maintains te mauri o te wai, and that wai is healed.</i>	The Policy has been amended to remove reference to "people" developing a positive relationship with water. This was a significant Policy for TWWAG. The wording change also makes it appear that all wai is degraded and needs healing which may not be the case. NRC considered that the original wording could be reinstated, although contemplated whether the removal of the word 'people' when developing a positive relationship with wai might be unachievable through the RMA.	TWWAG consider that the reference to people is crucial as it represents a mind shift change required by people, and not for the environment to continue to be subject to peoples control. There equally is no person that does not rely on or interact with wai. We all drink it and need it, and therefore it is not just limited to applicants. However TWWAG consider the term could be changed to 'everyone'.

² Note, NRC has two policies both referred to as Policy D.4.43. This will require correction to avoid confusion. (NRC COMMENT: this has been fixed)

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p><i>Policy 5.1: Promote wai sovereignty and the sustainable use of wai for the wellbeing of marae, papakāinga, Māori-owned land and current and future Treaty settlement land.</i></p> <p>AND</p> <p><i>Policy 5.2: Wai quality and quantity is reserved and protected for use by marae, papakāinga, and Māori landowners resulting in:</i></p> <p><i>a) enhanced tikanga Māori and customary practices (see Advisory Note 2);</i></p> <p><i>b) economic, cultural and social well-being and development for Māori;</i></p> <p><i>Advisory Note:</i></p> <p><i>a) Wai sources for marae, papakāinga and Māori landowners including through Treaty settlement legislation, should be identified within 5 years by tangata whenua in accordance with tikanga Māori.</i></p> <p><i>b) This includes but is not limited to sustainable māhinga kai, Gazetted Rohe Moana areas, s.186A (Fisheries Act 1996) temporary closures, taiāpure and tauranga waka sites.</i></p> <p><i>c) Nothing in this plan should limit the ability of indigenous agroecology and activities to take place are enabled in relation to ngāhere food, medicine forests, and traditional methods of customary use and harvesting.</i></p>	<p><i>D.4.45 Sustainable use of wai</i></p> <p><i>Water is managed in a way that provides for tāngata whenua to manage and sustainably use wai for marae, papakāinga, Te Ture Whenua, and current and future Treaty settlement land, to enable their economic, social and cultural wellbeing and enhance tikanga Māori.</i></p>	<p>Policy 5.1 and 5.2 has been rolled together in Policy D.4.45.</p> <p>The Policy still generally seeks the same end outcome, however the words ‘Promote wai sovereignty’ and ‘customary practices’ are notably absent, as is the wording to ‘reserve water quality and quantity’ for the specific tangata whenua purposes.</p> <p>The Advisory note has also not been carried through which is useful for explaining the context.</p> <p>NRC noted that applicants would not be able to carry out the specific direction included/sought.</p>	<p>TWWAG, strongly request this Policy is reinstated and refer NRC back to the following relevant Waitangi report findings.</p> <p>WAI 2358 - National Freshwater and Geothermal Resources Claim³: The Tribunal found that Māori rights in the water resources at 1840 included authority and control over access to water and over its use. This authority was sourced in tikanga and carried with it kaitiaki obligations to care for and protect the resource. This authority and control extended to all elements of a water body; its constituent elements (water, banks, fish etc) were not severable, because of the way in which the waterbody was used and valued.</p> <p>WAI 1040 – Te Paparahi o Te Raki⁴: The report follows the Tribunal’s stage 1 report <i>He Whakaputanga me te Tiriti – The Declaration and the Treaty</i> (2014) which concluded that in February 1840 the rangatira who signed te Tiriti in the Bay of Islands and Hokianga did not cede their sovereignty. Rather, they agreed to a relationship in which they and the Governor were to be equal while having different roles and different spheres of influence. A common theme in the claims is the desire of Te Raki Māori to regain their ability to exercise the tino rangatiratanga promised to them in te Tiriti. Overall, the Tribunal found that the Crown overstepped the bounds of its kāwanatanga (authority to govern) in Te Raki between 1840 and 1900, leading to the erosion of Te Raki Māori rangatiratanga.</p> <p>As mana i te whenua, hapū and iwi of Te Tai Tokerau have the rights and responsibilities to ensure the sovereignty and sustainability of wai for their economic, cultural and social well-being.</p>

³ <https://www.waitangitribunal.govt.nz/inquiries/kaupapa-inquiries/national-fresh-water-and-geothermal-resources-inquiry/>

⁴ <https://www.waitangitribunal.govt.nz/news/tribunal-releases-report-on-te-paparahi-o-te-raki-inquiry/>

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p><i>Policy 6.3: To improve the mauri of wai, and thriving taonga species, by 2030 at least 30% of degraded natural inland wetlands are:</i></p> <p>a) <i>under effective restoration; and</i></p> <p>b) <i>effectively conserved and managed through protected areas.</i></p>	<p><i>D.4.49 Mauri of wetland</i></p> <p><i>Through good wetland management (including stock exclusion and sustaining flows) enhancement and restoration to improve the mauri of wetlands, by 2030:</i></p> <p>1) <u><i>Taonga species are thriving</i></u></p> <p>2) <u><i>The ecological condition of at least 30% of wetlands is improving</i></u></p> <p>3) <u><i>The plant and animal communities of significant wetlands for each wetland type, are thriving.</i></u></p>	<p>The new wording doesn't read well, however the intent of the Policy appears retained.</p> <p>NRC acknowledged the wording could have been better, but suggested the TWWAG wording is more of an objective than policy.</p>	<p>TWWAG general accept this change and agree it can be an Objective.</p>
<p><i>Policy 5.3: Where primary allocation is available for abstraction, the Northland Regional Council will allocate 20% of the total wai available in every allocation unit, for use for the following activities:</i></p> <p>a) <i>contribution to environmental enhancement; or</i></p> <p>b) <i>wai for domestic use by marae and papakāinga; or</i></p> <p>c) <i>any other use of wai, provided that:</i></p> <p>i. <i>it includes contribution to a Te Mana me te Mauri o te Wai fund managed by the Northland Regional Council in consultation with tangata whenua,</i></p> <p>ii. <i>the fund will be used to provide for development of Māori wellbeing;</i></p> <p>iii. <i>the contribution to the fund is proportional to the amount of reserved wai being taken and any commercial returns resulting from the application; and,</i></p> <p>d) <i>the development of Māori owned land and land returned to a Post-Settlement Governance Entity through a Treaty Settlement.</i></p>	<p><i>D.4.46 Allocation of water</i></p> <p><i>Council is seeking feedback on the recommendations of TWWAG water allocation policy. Please refer to the Water allocation companion document for more information.</i></p>	<p>Refer to Section 5.0 below.</p> <p>NRC considered that this Policy requires a lot of work and is not overly clear. NRC would also need to make changes to the allocation framework, to incorporate financial contribution provisions and make sure the policy didn't read like an allocation to a "group of people" to which there is caselaw stating this is not appropriate and could unnecessarily draw submission and appeals.</p>	<p>TWWAG was advised that a using almost the same wording has been tested through a public process in Hawkes Bay (TANK Plan Change), although TANK is subject to appeal. The only difference is the allocation of only high river flows in Hawkes Bay versus all primary allocation in Te Tai Tokerau. On this basis, TWWAG recommend that this Policy is adopted as is and is not concerned with the possibly of submissions or appeals.</p>

Table 2: Provisions Carried Through but Amended in dFPC			
Stage 2 Provision	dFPC Provision	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<i>Advisory Note: Māori wellbeing is best defined by tangata whenua groups who may be apply to this fund. This can include better social and cultural outcomes for Māori.</i>			
<i>Policy 6.4: Wai must be maintained in the current attribute state band, or achieve target attribute states.</i>	<i>D.4.50 Improving degraded⁵ wai Further degradation of wai must be prevented and efforts made to improve current attribute states where these are below bottom lines, with the aim of achieving target attribute states.</i>	<p>The wording has been significantly altered and introduced a level of vagueness or ambiguity compared with the more simplified wording TWWAG proposed.</p> <p>It appears diluted to some extent as it is unclear what “efforts made” means, and “with the aim of” somewhat falls short compared with requiring the achievement of target attribute states.</p> <p>NRC noted that the application of this policy might rest of the distinction between the word “Wai” and “water” and may have limited values as it mirrors the NPSFM.</p>	TWWAG consider this Policy is retained as is and has little consequence as it reiterates the intent of the NPSFM. Wai has the same meaning as water in this case and the Policy applies to all attributes, including cultural.
<i>Policy 7.1: Recognise that better freshwater decision making is an essential component of climate change mitigation and adaptation.</i>	<i>D.4.51 Climate change mitigation and adaptation Recognise that climate change mitigation and adaptation is an essential component of freshwater decision making</i>	The emphasis of the sentence has been flipped around.	TWWAG does not have any concern with the new wording.

⁵ Note the spelling mistake which requires correction from NRC. (NRC COMMENT: this has been fixed)

3.5 Provisions Not Incorporated

The following provisions in Table 3 have not been included and none of the rules TWWAG proposed have been incorporated.

In response to these omissions, TWWAG considers that these provisions are critical and request that NRC incorporate them into the notified Plan Change, subject to any minor amendments recommended in in Table 3 below.

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
Policy 1.2	<i>Mana i te whenua are the authority to determine the spiritual wellbeing and whakapapa of wai in their rohe and how best to respect Te Hurihanga Wai.</i>	NRC staff indicated that the intent of this policy is written throughout many other provisions.	TWWAG accepts that while the intent of this policy comes through in other policies, this policy succinctly explains who is responsible for making this assessment, and does not leave it to interpretation that other third parties could make this determination on behalf of mana i te whenua.
Policy 1.3	<i>Recognising mana atua by applying legal personhood to all wai.</i>	NRC considered that a Regional Plan may not be the appropriate place for this policy but rather it would evolve directly from Parliament rather than through Regional Plans. NRC considered legal advice would be needed.	TWWAG consider NRC should seek legal advice on this matter and include the Policy if legally viable.
Policy 1.4	<i>Relevant tangata whenua are invited and adequately resourced at every stage to undertake a Cultural Impact Assessment (or similar) for every resource consent application that affects wai. However, this may be satisfied by the inclusion of Objective F.1A.7 which requires: Tāngata whenua environmental, economic, social, spiritual, and cultural wellbeing is enabled and resourced</i>	NRC staff indicated that the intent of this policy is written throughout many other provisions and could result in regulatory backlogs. NRC questioned what 'every stage' means, what 'resourced' means and what 'relevant tangata whenua' means. Further they noted that a CIA may not be needed for every consent, and it is unclear which consents 'affect wai'	TWWAG agree that the wording "at every stage" can be misinterpreted. Accordingly, it is recommended the wording "at any stage", in the expectation that ordinarily, one CIA will be prepared (although this should be limited where consent applications span years and proposals change significantly). In regards to resourcing, previous policies deal with this matter.

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
			TWWAG note that 'relevant tangata whenua' will not be defined and is determined on a case by case basis from mana i te whenua.
Policy 2.6	<p><i>When considering an application for resource consent that effects wai, regard shall be given to establishing and applying a consent term of no more than 10 years, unless:</i></p> <ul style="list-style-type: none"> <i>a) The activity and consent duration is supported by tangata whenua; or</i> <i>b) The activity is for the sole purpose of environmental enhancement; or</i> <i>c) The activity is necessary to enable the use or development of regionally significant infrastructure; or</i> <i>d) A longer term is demonstrated by the applicant to be appropriate in the circumstances.</i> 	<p>NRC has noted that Policy D.2.14 has added a clause to note that activities not supported by mana i te whenua have a generally shorter consent duration, however also commented that 10 years is likely unacceptable for NRC and would be cumbersome from a regulatory view and question what consents these would apply to.</p>	<p>TWWAG consider this Policy should be adopted in its entirety.</p> <p>Resource consents with a duration of 10 years are regularly issued by Councils around Aotearoa. The applicant pays and NRC should be able to resource applications that they receive. There are various methods NRC could employ to do this, including out-sourcing of resource consent application processing if necessary.</p>

Table 3: Provisions Not Carried Through in dFPC			
Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
	<i>Advisory Note: These are in no order of priority and do not preclude the wider assessment of activities.</i>		
Policy 2.8	<i>Wai is taken and used within the same catchment, unless there is a functional need to carry wai outside the catchment.</i>	NRC considered this Policy could be included back in.	TWWAG recommend that is it reinstated.
Policy 4.1	<i>Tangata whenua are resourced to practice and exercise tikanga and kawa. However, this may be satisfied by the inclusion of Objective F.1A.7 which requires: Tāngata whenua environmental, economic, social, spiritual, and cultural wellbeing is enabled and resourced</i>		
Policy 6.5	<i>Wai taken from a water body is subject to a cultural flow limit and cultural values assessment prepared by tangata whenua. Advisory Note: The cultural flow limit must be specifically designed to protect cultural values in that reach of river or downstream reaches.</i>	NRCs questions and feedback was the same as for Policy 2.3 (Policy D.4.36) in Table 2 above.	See Policy 2.3 (Policy D.4.36) in Table 2 above.

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p><i>Policy 6.6</i></p>	<p><i>Any activity that affects wai must apply the effect management hierarchy to managing adverse effects on tangata whenua values associated with wai.</i></p>	<p>NRC comments that hierarchy has limited application in NPS-FM.</p>	<p>TWWAG recommend that this Policy is adopted as written.</p>
<p><i>Rule 1.1.1</i></p>	<p><i>The point-source discharge of contaminants to a water body that does not have a functional need to discharge to those water bodies is a non-complying activity.</i></p> <p><i>Advisory notes:</i></p> <p><i>Functional need for this rule has the same meaning as the NPSFM and means ‘the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment’.</i></p> <p><i>Water body has the same meaning as the RMA and means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.</i></p>	<p>NRC considered that this would require a very high bar to pass through and that some point source discharges may have less than minor effects which would capture far more activities than necessary to achieve targets.</p> <p>Additionally, NRC considered the rule unclear as to the type of activity it’s trying to manage and would apply the Non-Complying activity status to some very benign activity (e.g. residential stormwater discharge).</p>	<p>TWWAG recommend that this Rule is incorporated as originally proposed. This policy applies to ‘contaminant’ discharges, as opposed to activities such as stormwater discharges, which are ‘water’ discharges. TWWAG want to actively discourage the point discharge of contaminants to water so that land based discharges are incentivised and prioritised.</p> <p>Additional, if a discharge did have such low effects (minor or less) after it had been proven to have a functional need to discharge to a river, then the s.104D gateway would not present a problem to the application.</p>

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<p><i>Rule 1.1.2</i></p>	<p><i>The point-source discharge of contaminants to a water body that has a functional need to discharge to those water bodies is a discretionary activity.</i></p> <p><i>Advisory note:</i></p> <p><i>Functional need for this rule has the same meaning as the NPSFM and means ‘the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment’.</i></p> <p><i>Water body has the same meaning as the RMA and means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.</i></p>	<p>As per Rule 1.1.1 above.</p>	<p>As per Rule 1.1.1 above. This rule lowers the bar for those discharges that do demonstrate a functional need to discharge contaminants to rivers.</p>
<p><i>Rule 1.1.3</i></p>	<p><i>The point-source discharge of contaminants to land is a restricted discretionary activity subject to the following conditions:</i></p>	<p>As per Rule 1.1.1 above.</p>	<p>As per Rule 1.1.1 above. This rule incentives discharge of contaminants to land.</p>

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
Rule 5.1.1	<p><i>The take and use of surface water for:</i></p> <ul style="list-style-type: none"> <i>a) contribution to environmental enhancement;</i> <i>b) domestic use by marae and papakāinga;</i> <i>c) any activity that contributes to the development of environmental and Māori wellbeing;</i> <p><i>is Controlled Activity subject to the following conditions:</i></p>	NRC commented that a number of these would be permitted activities.	TWWAG consider that this matter can be resolved with the inclusion of the wording: “where not permitted.”
Rule 5.1.2	<p><i>The take and use of groundwater for:</i></p> <ul style="list-style-type: none"> <i>a) contribution to environmental enhancement;</i> <i>b) domestic use by marae and papakāinga;</i> <i>c) any activity that contributes to the development of Māori wellbeing;</i> <p><i>is a Restricted Discretionary Activity subject to the following conditions:</i></p>	As per Rule 5.1.1 above.	As per Rule 5.1.1 above.

Table 3: Provisions Not Carried Through in dFPC

Provision Reference	Provision Wording	Summary of Amendment and NRC commentary/reasoning	TWWAG Feedback
<i>Rule 5.1.3</i>	<i>Activities that effect freshwater used for drinking water where Attribute Table A4 applies is a Non-Complying Activity.</i>	As per Rule 5.1.1 above.	As per Rule 5.1.1 above.
<i>Rule 6.3.1</i>	<i>Vegetation clearance, earthworks and the taking, use, damming, diversion, or discharge of water for the purpose of wetland creation for environmental enhancement is a restricted discretionary activity.</i>	NRC noted that this rule would restrict some wetland enhancement that is currently a permitted activity.	TWWAG note that whilst permitted, if not done properly, then wetland enhancement can cause damage. Consideration should be had by NRC as to whether to elevate such activities to require consent if they do not meet certain conditions. This could be addressed through the requirement for guidance documents.

3.6 Other Comments

Among the policies outlined, it is noteworthy that only Policy D.4.2, pertaining to industrial or trade wastewater discharge to water, expressly takes into account cultural impacts. Specifically, it stipulates that resource consent for such discharge will generally not be granted unless a discharge to land has been thoroughly evaluated and deemed culturally, environmentally, economically, or practicably unviable. Furthermore, it requires the adoption of the best practicable option for the treatment and discharge of contaminants. In contrast, Policies D.4.3, D.4.3A, and D.4.3.B, which respectively cover the discharge of municipal, domestic, horticultural or farm wastewater to water, do not incorporate explicit considerations for cultural impacts. Instead, they primarily focus on environmental, economic, and practical viability assessments in their criteria for granting resource consent. Changes to Policies D.4.3, D.4.3A, and D.4.3.B are recommended to include cultural impacts.

D.4.43 Tikanga and Kawa, D.4.44 Te mauri o te wai, D.4.47 Tangata Whenua Values do not have any guidelines as to implementation.

F.1A.1 Priorities for Freshwater Management is before Te Hurihanga Wai which is F.1.A.2.

4.0 Draft Freshwater Action Plan

4.1 Context

The Draft FAP outlines the approach by which NRC will contribute to achieving the outcomes and target attribute states through its diverse functions. These initiatives represent a selection of the numerous activities aimed at fulfilling the environmental goals set for freshwater and target attribute states.

4.2 Provisions Consistent with TWWAG Recommendations

Most of the recommendations of TWWAG have been included in the Draft FAP. Therefore, the Draft FAP is supported by TWWAG in almost its entirety. Set out below are some further comments on the Draft FAP.

The funding allocation for the seven proposed actions⁶ to support Tangata Whenua in freshwater management and decision-making is outlined in the dFPC. While this is favourable, there remains a critical need for well-defined guidelines pertaining to its management and the subsequent execution of proposed actions. Without a clear roadmap in place, the effective utilisation of these resources may be hampered, potentially inhibiting tangata whenua and te mana me te mauri o te wai. It is imperative that a robust framework for financial oversight and implementation strategies be established, ensuring transparency, accountability, and the optimal allocation of resources.

⁶ Page 12, listed as Proposed Actions (a) to (g).

While TWWAG's recommendations have been carried over into the Draft FAP they lack direction and guidelines to ensure they are able to be implemented.

NRC also acknowledges there is little information available at present to create a potential Māori freshwater values attributes monitoring program and that it is likely to require extra council funding, possibly surpassing \$1 million annually. NRC is prepared to invest resources into this as they acknowledge that not only can it support better water outcomes but it could lead to strengthened relationships and increase trust with tangata whenua.

Although the Māori freshwater values attributes monitoring program could be integrated into the Mātauranga Māori Monitoring Framework, it has been highlighted separately because it is an essential action that NRC recognises they must undertake.

4.3 Provisions/Matters Requiring Focus

The following areas of the role of tangata whenua and hapū, iwi planning documents which were requested by TWWAG be included in the Draft FAP have not clearly been outlined in the Draft FAP.

Give effect to empower tangata whenua through s.33 and s.36B of the RMA to assess water quality and quantity levels, taking into account cultural indicators or attributes they have identified. TWWAG was very clear that they wanted these sections of the RMA not only to be investigated by NRC but putting steps in place to be transferring powers so as tangata whenua can genuinely exercise rangatiratanga and kaitiakitanga.

Give effect to hapū and iwi planning documents and/or whakahono a rohe agreements. It is important for TWWAG to inquire about the timeline for incorporating hapū and iwi planning documents currently in possession of NRC into freshwater management and decision-making, as this is not specified as a proposed action plan.

5.0 Water Allocation Policy Analysis

5.1 Context

The draft Targeted Water Allocation Policy (TWAP) has been released as a separate document to the dFPC. NRC decided to document the water allocation policy as its own document due to the potential contentious nature of what is being proposed and receive public feedback. This section assesses the targeted water allocation policy and sets out where TWWAG either supports or opposes proposed actions. It is important to note that NRC did request legal feedback on the proposed changes with Rob Enright of Public Law. Public Law indicated that whilst it is possible to enact the targeted water allocation policy, its highly contentious so NRC could expect some legal challenge.

5.2 Provisions Consistent with TWWAG Recommendations

All the objectives within Stage 2 have been carried across into the water allocation policy including water allocation policy which includes the 20% reservation of wai for use by Tangata Whenua.

The way the policy has been written is clear on how the 20% targeted allocation will work in practice. The ability to be able to continue to take wai within the 20% allocation is important to allow for further development (not necessarily economic) by hau kainga.

The contribution fund is supported for implementation. See section 4.2.3 for more information.

5.3 Provisions/Matters Requiring Focus

The draft TWAP, states that objectives F.1A.5-7 recommended by TWWAG and endorsed by TTMAC have been included in the dFPC⁷, however Policy F.1A.6 has been modified in the dFPC from what TWWAG recommended.

Although the water allocation policy is the same as proposed in the Stage 2 report, TWWAG request particular focus to some key elements of the policy. In particular, TWWAG consider that the definition of “*contribution to environmental enhancement*” and how this is implemented will need to be thought through further. It is recommended that TWWAG and NRC consider whether resource consent applicants need to show how they are contributing to environmental enhancement in their resource consent application, and whether mana i te whenua are involved in the process to reject/approve any application for this.

We note that some reaches/catchments in Te Tai Tokerau are currently fully allocated, or near full allocation and there is a policy mechanism (D.4.38) to review conditions to align with new catchment allocation policies. TWWAG recommend that it will be important for NRC to determine how many catchments still have 20% available to better understand which reaches/catchments this policy would affect.

Although the fund is supported in principle, its final implementation or how it works in practice is still yet to be determined. Mana i te whenua will need to be involved in any fund usage. A potential option would be that any fund contributions be spent within the rohe that the allocation has come from.

⁷ Te Panonitanga o te Mahere Wai Māori Hukihuki: Te Kaupapa Here Tuaritanga Wai Arotahi The draft Freshwater Plan Change: Targeted Water Allocation Policy Companion document to the Freshwater Plan Change.

6.0 Stock Exclusion Policy Analysis

6.1 Context

A draft stock exclusion plan (SEP) has also been developed as a separate document for feedback. The Stage 2 report did not address or make recommendations on stock exclusion policies. However, PDP has identified the areas TWWAG may be interested in.

It is noted that regulations already exist for this purpose under the Resource Management (Stock Exclusion) Regulations 2020 (RMSER) and Regional Plan for Northland. Although these regulations exist, a rule in a regional plan can be more stringent than the RMSER as noted in Regulation 19 of the RMSER:

Despite section 68(2) of the Act, a more stringent rule in a regional plan prevails over a provision in these regulations that relates to the same matter.

It is on this basis that NRC is proposing further restrictions relating to stock exclusion.

6.2 NRC Questions

The draft SEP poses a series of questions and asks for feedback on the options for changes to the stock exclusion rules. In summary the key questions and TWWAGS response are as follows:

- ∴ Question 1: How far away from waterways should stock be kept?
 - A 3-metre setback.
 - A 5-metre setback.
 - A 10-metre setback.
- ∴ Question 2: Should stock exclusion rules apply to highly erodible land?
 - “Highly erodible land” is land NRC has mapped which is steep and most at risk of erosion.
- ∴ Question 3: What should the rules be for excluding stock from wetlands?
 - The current rules require dairy stock and pigs to be excluded from wetlands greater than 500 m² and beef, dairy support cattle and deer to be excluded from wetlands greater than 500 m² on low-slope land.
 - The current rules do not require beef, dairy support cattle and deer to be excluded from wetlands in hill country areas.
- ∴ Question 4: Should stock exclusion be extended to apply to other animals?
 - The current rules apply to dairy cattle, pigs, beef cattle, dairy support cattle, and deer.

- The current rules do not require sheep and goats to be excluded.
- ∴ Question 5: What timeframes are feasible for any new stock exclusion rules?
 - The government requires NRC be ambitious but reasonable in setting timeframes for improving freshwater.
 - The current rules require non-dairy stock (beef and dairy support cattle and deer) to be excluded from lowland rivers and wetlands of 500 m² or more by 2025;

6.3 TWWAG Response

An individual response is not provided to each question, however TWWAG recommends the following in regards to the SEP:

- ∴ 10 m setbacks are supported, however, often a one-size fits all approach isn't appropriate either.
- ∴ If farm owners would like to be excluded from the 10 m setback rule, then they must apply for consent to do so.

7.0 Conclusion

TWWAG has reviewed NRC's dFPC documents and considered NRC's reasoning for some provisions from the Stage 2 report having been either incorporated but amended, or omitted entirely. In response, TWWAG has considered each of these provisions and provides feedback to NRC that sets out TWWAG's position in respect to each of these. It is expected that NRC further consider this feedback in order to inform their notified Freshwater Plan Change. TWWAG request and look forward to NRC further engaging with TWWAG to understand the context and reasoning behind these provisions so that support cultural aspirations in giving effect to Te Mana o Te Wai and the NPSFM.