

Executive Summary

Māori commonly link themselves with landmarks that surround them, thus being able to identify as tangata whenua, people of the land. Acknowledging through whakapapa and pepeha our mountains, waterways and oceans as expressions of the relationships and links between whānau, hapū and iwi. These landmarks are often reflected as ancestors to Māori, and as such are considered sacred and living beings.

Tangata whenua further rely on the mauri of wai and ecosystems to be well and prosperous in order for the health and wellbeing of people to thrive and survive. Wai and taonga species found within them are fundamental to the identity and cultural wellbeing of Māori, without which will be detrimental for tangata whenua.

As a result of the significant damage to wai and loss of control tangata whenua have in decision making over freshwater, the impact has been detrimental. In places this has resulted in a considerable loss to the mauri of wai, ecosystems and taonga species that rely on it to be well.

The recommendations provided in this report identify some of these issues and provides recommendations with respect to how the fundamental concept of Te Mana o Te Wai in the National Policy Statement for Freshwater Management 2020 (NPSFM) can be implemented in Te Tai Tokerau in the Freshwater Planning Instrument (FPI) required by s.80A of the RMA. It provides a background to the topic, and acknowledges:

- ∞ Te Mana me te Mauri o te Wai as the korowai of the FPI must be upheld in any future freshwater decision making;
- ∞ Te Mana me te Mauri o te Wai refers to Te Tai Tokerau interpretation of Te Mana o Te Wai described in the NPSFM.
- ∞ recognition of Te Hurihanga Wai as an overarching vision statement for the Region;
- ∞ recommended tangata whenua provisions to inform future decision-making on plan changes and the FPI;
- ∞ there are multiple issues and current activities that impact freshwater;
- ∞ the hierarchy of obligations in the NPSFM must be given effect to in any future decision-making; and,
- ∞ variances exist amongst whanau, hapū and iwi with priorities around freshwater decision making in Te Tai Tokerau.

While this report records the work of the Tangata Whenua Water Advisory Group (TWWAG), it does not seek to override the individual mana motuhake and rangatiratanga hapū and iwi in Te Tai Tokerau respectively uphold. Rather, the report provides a regional approach and recommendations as to how other tangata whenua groups can be involved in future decisions.

1 Recommendations

The following recommendations are proposed as part of this report in order to give effect to Te Mana me te Mauri o te Wai in Te Tai Tokerau:

Tangata whenua provisions and text

1. The proposed tangata whenua provisions presented in Part 3 of this report are included in the Freshwater Planning Instrument (FPI) for Te Tai Tokerau (Northland) to give effect to the National Policy Statement for Freshwater Management 2020 (NPSFM);
2. The Te Mana me te Mauri o te Wai Statement for Te Tai Tokerau with inclusion of Te Hurihanga Wai is incorporated in the FPI; and,
3. The provisions guide the impact of human behaviour and treatment of wai.
4. The definition of Te Mana me te Mauri o te Wai includes all water including water in pipes, tanks and cisterns.

Empowering Mana Whakahaere

5. Review existing Freshwater Management Units (FMUs) with tangata whenua who have an existing relationship or are mana whakahaere over those units;
6. Vision, values, limits, allocation, flows, current state of attributes must be developed with relevant haukāinga as part of this process;
7. Northland Regional Council (NRC) must enable tangata whenua to wānanga and develop their own work programmes to develop future FMUs in their respective takiwā and rohe;
8. Tangata whenua develop through wānanga, and hui appropriate processes and criteria based on their mātauranga and tikanga for developing new visions, values and subsequent provisions to meet NPSFM and FMU requirements;
9. Tangata whenua who are mandated entities and recognised are resourced by NRC to develop and identify freshwater values to guide freshwater decision-making processes in their rohe and takiwā;
10. Haukāinga are included in the decision-making process with respect to how the FMU is defined in their respective area(s);
11. Develop action plans and implementation plans in partnership with tangata whenua;
12. Develop mātauranga guidelines with mana whenua to identify where tikanga Māori practices should occur over wai – such as rāhui to enhance and manage mauri;
13. Develop work programme with tangata whenua to develop future FMUs;
14. Te Hurihanga Wai applies to all freshwater and the concept is also included in a different form in the three waters process when working to give effect to Te Mana me te Mauri o te Wai in multiple forms;
15. Review existing resource consents against limit and flows defined in future FMUs established by tangata whenua; and

16. Develop consenting pathway guidance in partnership with tangata whenua that is distributed before pre-application meetings initiated by applicants.

Communication and engagement

17. Engagement and communication of the FPI with councillors, communities and the general public is required.

Implementation and next steps

18. Case studies should be considered and tested as part of the next steps and how they apply to tangata whenua;
19. Monitoring of freshwater should occur by tangata whenua to determine target attribute states and baselines and NRC must resource this;
20. NRC must investigate⁶ and implement within two years, as required by section 3.4(3) of the NPSFM the use of existing mechanisms available under the Resource Management Act 1991 (RMA) to involve tangata whenua in freshwater decision making such as through:
 - a. the transfer of powers under s.33;
 - b. joint management agreements under s.36B;
 - c. Mana Whakahono a Rohe Agreements under s.58M;
 - d. cultural impact assessments as enabled under s.88(2)(b) of RMA;
21. NRC must establish and resource an independent Māori technical group to undertake the transactional process to improve and assist in the interpretation of the processing of resource consent applications⁷;
22. Tangata whenua and NRC collaboratively review consents and permits on a three yearly basis to ensure that the use of water authorised by these consents remain consistent with environmental outcomes sought by the FPI, and efficient use of the freshwater resource and gives effect to Te Mana me te Mauri o te Wai, either:
 - a. on a three yearly basis to require the adoption of the best practicable option to remove or reduce any adverse effect on the environment; or,
 - b. 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 FPI, or,
 - c. at any time to deal with any unanticipated adverse effect on the environment which may arise from the exercise of a consent; or,
 - d. at any time to deal with any new FWFPs.

⁶ Advisory body to be established (i.e. TTMAC) to advise on consent processes at an implementation and operational levels.

⁷ Existing arrangements that tangata whenua have for reviewing resource consents are still upheld and will not be subject to the Māori Technical group. This includes existing Post Settlement Governance Entities (PSGEs) where consents are provided to.

Data and information management

23. Data and information gathered through FMUs remains the intellectual property of tangata whenua;
24. A Geographic Information System (GIS) portal with freshwater overlays for tangata whenua is developed to assist with freshwater decision making;
25. Information protocols are developed in partnership by NRC and tangata whenua to ensure data and information gathered is used appropriately and sensitive information is protected; and,
26. NRC data is made readily available for tangata whenua to inform freshwater decision making.

Non-regulatory methods and other actions

27. Education campaigns, resources and training opportunities are provided by NRC and developed in partnership with tangata whenua;
28. New processes, methods and tools that assist with the implementation of the NPSFM and in particular tangata whenua provisions are prioritised and developed; and,
29. Tangata whenua are resourced by NRC through the Local Government Act 2002 (LGA) or subsequent legislation to actively and meaningfully take part in freshwater decision-making processes.

The following non-regulatory methods and other actions are recommended to assist with the implementation of the tangata whenua provisions drafted above:

30. Additional resourcing should be provided to tangata whenua representatives in order for effective decision making to occur. Resourcing could provide for, but not be limited to:
 - a. attending hui / meetings
 - b. preparing cultural value or impact assessments, and,
 - c. undertaking cultural monitoring of freshwater bodies.
31. Adequate access to freshwater data and information to inform decision making by tangata whenua.
32. Development of information protocols with tangata whenua to ensure sensitive information is appropriately gathered and stored in an accessible facility, agreed to by them and in accordance with tikanga Māori.
33. Development of new systems, processes and tools to assist with the implementation of the proposed provisions developed with TWWAG. This includes:
 - a. Compulsory training programme on tangata whenua values for NRC staff and decision makers implementing provisions of the proposed Regional Plan for Northland
 - b. New cadet and internships for rangatahi and taitamariki interested in freshwater monitoring

- c. Development of GIS tools readily accessible to tangata whenua so the environment is understood and digitally mapped with the most up to date data to ensure robust and well considered decision making occurs for freshwater monitoring. This might include:
 - Extent of existing wetlands, lakes, aquifers, rivers, ephemeral water, and artificial water bodies;
 - water processes and interactions between groundwater surface water and coastal waters;
 - classifications of wai;
 - sites or areas of significance or value to tangata whenua.
- 34. Training and education and resourcing for tangata whenua freshwater monitoring and enforcement roles.
- 35. Investigate how scattering of ashes in freshwater/coastal areas are regulated by NRC.
- 36. Enhanced and more stringent monitoring and enforcement into breaches of this plan. This may include the introduction of a graduated response model in to reported incidents.
- 37. Where possible partner up with tangata whenua kaitiaki officers and NRC compliance staff to investigate possible breaches.
- 38. Access to NRC owned land where kaitiaki can monitor freshwater bodies.
- 39. Encourage access for tangata whenua onto private land for freshwater monitoring over culturally significant water ways.
- 40. Councils develop methods to enable tangata whenua access to wai sites through easements, private agreement, conditions of subdivision, conditions of consent.

2 Purpose of the Report

The purpose of this report is to provide recommendations and advice to the TWWAG and NRC. In particular on the tangata whenua provisions proposed to be included in the FPI to give effect to the NPSFM. This includes non-regulatory methods and other actions.

3 Limitations

This report was prepared by Kohu Strategy and Planning Ltd (KSP) and Pattle Delamore Partners Ltd (PDP), with the assistance of Tapuwae Cultural Footprints, on behalf of TWWAG. TWWAG has been established by NRC on the recommendations of the Te Tai Tokerau Māori and Council Working Party (TTMAC)⁸.

The report is limited to providing recommendations to TWWAG and NRC on the basis of fourteen workshops from May 2022 – January 2023 to develop tangata whenua provisions presented in this report.

⁸ See TTMAC Terms of Reference 2019 –2022 for further information. <https://www.nrc.govt.nz/your-council/elected-members/council-and-committees/>

The report does not provide direction on any other wider provisions for other values, environmental outcomes (objectives) and policies required as part of the NPSFM. It is recognised though that Māori values permeate through every aspect of freshwater decision making, and as such Māori values should be incorporated through the development of other provisions.

A number of workshops were held online as a result of Covid-19 restrictions. This limited the involvement of some participants, who were at times constrained by technology and appropriate internet connectivity. Members were able to attend in person and provided feedback where possible throughout the development of this report.

Timing for the workshops were limited as a result of additional business and the complex workloads of members of TWWAG and NRC at that time. As a result of this, timing for deliverables became restricted in some places and not all topics could be covered in a timely manner through the workshops.

Due to the complexity of some topics required under the NPSFM, such as reviewing existing and identifying new FMUs in Te Tai Tokerau, recommendations have been drafted in this report to provide direction as to how this work can be undertaken in the future. Further research and collaboration with tangata whenua and communities will be required for this task.

The interpretation and application of parts of this recommendations report may be limited in the preparation of the FPI and the options analysis of the section 32 report as required by the RMA.

4 TWWAG Terms of Reference

TWWAG was established with the support of TTMAC to provide feedback, analysis and advice on the development of the FPI to give effect to the NPSFM. NRC has acknowledged in the Terms of Reference (ToR) for TWWAG that this will not be the only way the NRC will engage with tangata whenua. Also TWWAG acknowledges it does not have the mandate to speak for all tangata whenua, whānau, hapū and iwi.⁹ Other consultation processes involving tangata whenua and community groups are planned, to receive further feedback on the draft FPI.

The ToR includes but is not limited to the scope, membership, values, objectives and deliverables, some of which are covered here in this Stage 2 Report.

The drafting of this report and involvement of members from TWWAG should not preclude or limit further involvement through the formal notification process defined under Schedule 1 of the RMA. Where there are disputes with respect to wording from parties, submissions and further submissions through Schedule 1 can be used.

⁹ TWWAG ToR March 2022.