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**SUBMISSION on
Proposed National Policy Statement for
Freshwater Management**

**To: The Ministry for the Environment
PO Box 10362
Wellington**

This Submission is from:

Waikato Raupatu Trustee Company Ltd
Private Bag 542
Ngaaruawaahia

Phone: +64 7 824 8689

Fax: +64 7 824 5133

Email: timmm@tainui.co.nz

INTRODUCTION

BACKGROUND TO THE SUBMITTER – WAIKATO RAUPATU TRUSTEE COMPANY LIMITED

1. This submission has been written to outline the position of Waikato Raupatu Trustee Company Ltd (WRTCL) with respect to the Proposed National Policy Statement for Freshwater Management (proposed NPS), and identify potential areas and issues of significance to Waikato-Tainui, so that the tribe's interests, and those of its Tupuna Awa, are protected.

Waikato Raupatu Trustee Company Limited

2. WRTCL succeeded the Tainui Maori Trust Board in 1999 and is the trustee of the Waikato Raupatu Lands Trust (WRLT). The WRTCL is the legal and constitutional Iwi Authority for Waikato-Tainui. The sole shareholder of the WRTCL is Waikato-Tainui Te Kauhanganui Incorporated (Te Kauhanganui), the representative governing body of Waikato-Tainui.

Waikato-Tainui Te Kauhanganui Incorporated

3. Te Kauhanganui has 201 members with three elected from each of the 67 Raupatu Marae of Waikato-Tainui. Ten representatives from Te Kauhanganui are elected to the Tainui executive "Te Arataura", the eleventh member of this executive is appointed by the head of Te Whare Kaahui Ariki. Currently, there are over 50,000 registered tribal members for the 67 marae.

BASIS OF WAITATO-TAINUI INTEREST IN THE PROPOSED NPS

THE TREATY OF WAITANGI

4. Article 2 of the Treaty of Waitangi guaranteed that the Chiefs retained "*te tino rangatiratanga (chieftainship)*" and that Maaori retained all their possessions, including lands, forestry and fisheries unless they freely parted with them. Waikato-Tainui never freely parted with our lands which included the Waikato River and its fisheries. The proposed NPS impacts on all of those aspects identified in Article 2. Water remains a taonga guaranteed under Article 2 of the Treaty of Waitangi and with that come rights and obligations of both Treaty partners and therefore Maaori must be actively involved in all aspects of freshwater management.

WAIKATO-TAINUI'S CLAIM IN RESPECT OF THE WAIKATO RIVER

5. In March 1987, the late Sir Robert Mahuta, on behalf of himself and on behalf of the members of Waikato-Tainui, the members of the Tainui Maori Trust Board and Ngaa Marae Toopu, filed a claim with the Waitangi Tribunal. In summary, that claim relates to:
 - the Waikato River;
 - Waikato-Tainui lands (being those confiscated from Waikato-Tainui under the purported authority of the New Zealand Settlements Act 1863); and

- The West Coast Harbours (being Kaawhia, Whaingaroa, Aotea and Manukau harbours).
6. The Waikato-Tainui lands claim (which the exception of Wairoa and Maioro land blocks) was settled by Waikato-Tainui with the Crown in May 1995. However, this settlement excluded Waikato-Tainui's claims in respect of:
 - (a) The Waikato River;
 - (b) The West Coast Harbours, and
 - (c) the Wairoa block or the Maioro block.
 7. On 20 December 2005, the Minister in Charge of Treaty of Waitangi Negotiations and the Waikato-Tainui Co-negotiators (Lady Raiha Mahuta and Tukoroirangi Morgan) signed the Terms of Negotiation setting out the basis for the negotiation of the remaining outstanding claims of Waikato-Tainui. The Crown also agreed to give priority to the negotiation of the Waikato-Tainui claim to the Waikato River.
 8. On 16 December 2007 an Agreement in Principle for the Settlement of the Historical Claims of Waikato-Tainui in relation to the Waikato River (AIP) was signed by Waikato-Tainui and the Crown. The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.
 9. On 22 August 2008 the Minister in Charge of Treaty of Waitangi Negotiations and the Waikato-Tainui Co-Negotiators signed a Deed of Settlement (DoS) in relation to the Waikato River. Importantly, the deed includes a commitment by the Crown to enter into a new era of co-management with Waikato-Tainui over the Waikato River in order to achieve the overarching purpose of the settlement.
 10. Arrangements under the Agreement in Principle and DoS reflect a commitment by the Crown and Waikato-Tainui to enter a new era of co-management over the Waikato River with an overarching purpose of the settlement to restore and protect the health and wellbeing of the Waikato River for future generations.
 11. On 25 September 2008 the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Bill had its first reading in Parliament. The Bill is currently before select committee.

THE DEED OF SETTLEMENT

12. Waikato-Tainui Waikato River claim applies to the Waikato River from the Huka Falls to the mouth and includes its waters, banks, beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation and floodplains as well as its metaphysical being. Therefore the proposed NPS will have an impact on our definition the river.
13. The Waikato River is of significant cultural and historical importance to Waikato-Tainui. The Waikato River is the Tupuna Awa of Waikato-Tainui and we are one and the same, as our tribal name "Waikato" was derived from our Tupuna Awa. This was also reaffirmed by Sir Robert Mahuta when, in filing the Waikato River Claim, he stated "*The River belongs to us just as we belong to the River*". Waikato-Tainui exercise mana whakahaere within their rohe (from Karapiro to Te

Puuaha o Waikato) and were known as decision makers of all issues pertaining to the Waikato River. Waikato Tainui has never relinquished their mana whakahaere over the Waikato River.

14. The Waikato River settlement reflects the dual principles of Mana o te Awa and Mana whakahaere.

Mana o te Awa

15. This principle encapsulates the spiritual authority, protective power and prestige of the Waikato River which, to Waikato-Tainui, has its own life force. The relationship Waikato-Tainui has with the Waikato River lies at the heart of their spiritual and physical wellbeing and their identity.

Mana Whakahaere

16. This principle embodies the authority Waikato-Tainui has with respect to the Waikato River to exercise control and management of the River and its resources in accordance with the values, ethics and norms of conduct embodied in the tikanga of Waikato-Tainui.

DEVELOPMENT OF A VISION AND STRATEGY FOR THE WAIKATO RIVER

17. A key aspect of the settlement of Waikato-Tainui's claim to the Waikato River has been the development of a Vision and Strategy for the Waikato River. This was developed by a specially formed body, known as the Guardians Establishment Committee (which contained members appointed by both the Crown and Waikato-Tainui). The preparation of the Vision and Strategy document included calling for public submissions, and the final document was subsequently approved by both the Crown and Waikato-Tainui for inclusion in both the DoS and Settlement Legislation.

STATUTORY RECOGNITION OF THE VISION AND STRATEGY

18. In accordance with the DoS, the Settlement Legislation will provide that the Vision and Strategy is a National Policy Statement for the purposes of:
 - (a) the Resource Management Act 1991 (RMA); and
 - (b) any other Act that refers to a national policy statement under the RMA.
19. Regional Councils will therefore be required to "give effect" to the Vision and Strategy in preparing or changing plans and policy statements, and have regard to the Vision and Strategy when considering relevant resource consent applications.
20. As required by the DoS, persons performing functions or exercising powers under other legislation relevant to the Waikato River will have to have particular regard to the Vision and Strategy.
21. Due to the regional importance of the Vision and Strategy to the Waikato River; its ability to integrate a number of other relevant legislation and the robust nature of the consultation processes undertaken to develop it; the Vision and Strategy

should be given due priority over the proposed NPS where there maybe conflicts in freshwater management in the Waikato River catchment.

WAIKATO-TAINUI'S RECOMMENDATIONS TO THE PROPOSED NPS

22. With respect to the proposed NPS, Waikato-Tainui seeks the following recommendations (but not limited to):

22.1 Where the proposed NPS influences freshwater management matters within the Waikato River catchment; there should be a clear provision within the proposed NPS that states:

(a) *"The NPS for Freshwater Management shall be interpreted in a manner that is consistent with the Vision and Strategy; and best furthers the overarching purpose for the Waikato River."*

22.2 The following overriding objective to be included in the proposed NPS so as to ensure the wellbeing of waterways is being met, so as to meet the wellbeing of people and communities:

(a) *"The health and wellbeing of freshwater waterways be protected and enhanced for future generations"*

22.3 The following Waikato-Tainui objectives be reflected in the development of the proposed NPS, as and when they relate to the Waikato River and activities in its catchment:

- a the restoration and protection of the health and wellbeing of the Waikato River;
- b the restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships;
- c the integrated, holistic and co-ordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River;
- d the adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the River;
- e the recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the River;
- f the recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities;
- g the protection and enhancement of significant sites, fisheries, flora and fauna; and
- h the application to the above of both maatauranga Maaori and latest available scientific methods.

- 22.4 The proposed NPS objectives and policies should include processes to enable effective early engagement with tangata whenua and their participation in management and decision making in and around Freshwater Management which may include but limited to co-management and the sharing of authority.
- 22.5 The best available information for decision-making processes should include a robust analysis of Maaori values and value methods by tangata whenua; and must include Waikato-Tainui cultural methods when concerning waterways within the Waikato-Tainui tribal area.
- 22.6 That maatauranga maaori be utilised in identifying, assessing and supporting all Freshwater Management matters within the proposed NPS.
- 22.7 Waikato-Tainui have had input, through discussions between Maori advisors and Crown officials, in certain provisions that are now contained in the proposed NPS. In this regard a number of specific changes were made to an earlier draft of the proposed NPS. Waikato-Tainui recommends that those changes are maintained in any final NPS.

Those specific additions and insertions and one deletion are as follows:

- (a) Paragraph five of the Preamble to the proposed National Policy Statement for Freshwater Management be redrafted by inclusion of the words "including the involvement of iwi and hapu" to read:

The Treaty of Waitangi (Te Tiriti o Waitangi) is the underlying foundation of the Crown–Māori relationship with regard to Fresh Water Resources. This proposed National Policy Statement is one step in the process of addressing tangata whenua values and interests *including the involvement of iwi and hapu* in the management of fresh water. Additionally, the proposed National Policy Statement is a non-exhaustive step towards progressive strategies at the national and regional level in order to meet shared objectives in respect of the fresh water resources of New Zealand.

- (b) Objective 3 of the Preamble to the proposed National Policy Statement for Freshwater Management be redrafted by inclusion of the words "or exceed" to read:

To ensure the progressive enhancement of the overall quality of Fresh Water Resources, including actions to ensure appropriate Fresh Water Resources can reach *or exceed* a swimmable standard.

- (c) Objective 6(b) of the proposed National Policy Statement for Freshwater Management be redrafted by inclusion of the word "biophysical" to read:

the need to provide for resilience against the *biophysical* effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water); and

- (d) Objective 8 of the proposed National Policy Statement for Freshwater Management be redrafted by inclusion of the words "including the matters specified in Objectives 1-7" to read:

To ensure that iwi and hapu are involved, and Tangata Whenua Values and Interests are identified and reflected, in the management of Fresh Water Resources *including the matters specified in Objectives 1-7*.

- (e) Policy 4(d) of the proposed National Policy Statement for Freshwater Management be redrafted by deleting “(including electricity generation)” to read:

The contribution of existing and potential uses *[deleted: (including electricity generation)]* of Fresh Water Resources and of existing economic investment to regional and national social, economic and cultural wellbeing;

- (f) Policy 6 of the proposed National Policy Statement for Freshwater Management be redrafted by replacing “as far as practicable and appropriate” with “unless appropriate” to read:

Without limiting policies 1 to 3, this National Policy Statement will be achieved also through the inclusion, *unless inappropriate [deleted: as far as practicable and appropriate]*, of conditions on any relevant resource consents granted and recommendations on designations confirmed in respect of the following:

CONCLUSION

- 23 Waikato-Tainui will continue to work in good faith with relevant Crown agencies and the Board of Inquiry to effect the recommendations outlined above.
- 24 Waikato-Tainui support other Iwi, Hapu and Marae submissions where they are consistent with Waikato-Tainui submission and interests.
- 25 We wish to be heard on this matter.
- 26 Please do not hesitate to contact the submitter should you have any queries or concerns.

Ngaa mihi

Tim Manukau
Environmental Manager
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Private Bag 542
Hopuhopu
0800 (TAINUI)
timm@tainui.co.nz

