RESPONSE TO
MINISTRY FOR THE ENVIRONMENT ON
PROPOSED NATIONAL POLICY STATEMENT FOR
ACTION ON HEALTHY WATERWAYS

This response is filed for Waikato-Tainui by:

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INTRODUCTION

1. This response is made on behalf of Te Whakakitenga o Waikato Incorporated (formerly known as Waikato-Tainui Te Kauhanganui Incorporated).

2. Te Whakakitenga o Waikato Incorporated (Waikato-Tainui) is the governing body for the 33 hapuu and 68 marae of Waikato Tainui and manages the assets of Waikato-Tainui for the benefit of over 77,000 registered tribal members.

3. Waikato-Tainui makes this response on behalf of our hapuu and iwi members.

4. This response outlines the position of Waikato-Tainui in response to the discussion document, “Action for Healthy Waterways” (“discussion document”) published by the Ministry for the Environment (“MfE”). Throughout this response, we refer to the proposals set out in that document as the “Freshwater Reform Programme”.

5. Waikato-Tainui would like to be heard in respect of this response if that opportunity is available.

FURTHER BACKGROUND TO WAIKATO-TAINUI

6. Waikato-Tainui marae are kaitiaki of their environment and regard the holistic integrated management of all elements of the environment (such as flora, fauna, land, air and water) with utmost importance.

7. Waikato-Tainui are tangata whenua and exercise mana whakahaere within our rohe (tribal region). Our Waikato-Tainui rohe is bounded by Auckland in the north and Te Rohe Potae (King Country) in the south and extends from the west coast to the mountain ranges of Hapuakohe and Kaimai in the east. Significant land marks within the rohe of Waikato include the Waikato and Waipaa Rivers, the sacred mountains of Taupiri, Karioi, Pirongia and Maungatautari, and the west coast of Whaingaroa (Raglan), Manukau, Aotea and Kawhia moana, the eastern areas of Tikapa Moana (Firth of Thames), and principally, New Zealand’s longest river, the Waikato.

8. We acknowledge and affirm the intrinsic relationship of Waikato-Tainui with our natural environment.

9. Waikato-Tainui entered into a Deed of Settlement regarding our Waikato River claim under Te Tiriti o Waitangi in 2008 (“Settlement”). This was followed by the signing of a revised Deed in 2009 and ultimately, enactment of the Waikato-Tainui Raupatu (Waikato River) Settlement Act 2010 (“Settlement Act”). The settlement marked the genesis of the Crown’s statutory recognition of Te Mana o te Awa and the requirement for an integrated approach to freshwater management.

10. Waikato-Tainui is concerned about the proposed reforms and wants to ensure that:
(a) the freshwater reform programme does not adversely affect the rights, interests, responsibilities and opportunities of Waikato-Tainui; and

(b) the co-management principles that underpin our Waikato River settlement legislation between Waikato-Tainui and the Crown must be recognised and upheld.

LACK OF CROWN ENGAGEMENT

11. Waikato-Tainui supports the Government’s significant concerns regarding, and aspirations to improve freshwater quality. However, any legislative reforms to achieve that outcome must be progressed in accordance with the Crown’s obligations under the Settlement and Settlement Act.

12. Waikato-Tainui considers that the process that has been followed for developing the freshwater reform programme has not been conducted in good faith, in accordance with the principles of co-management or consistently with the Crown’s obligations under the Settlement and Settlement Act. A cornerstone of the Settlement is that both Waikato-Tainui and the Crown have committed to enter into a new era of co-management. This includes the highest level of good faith engagement and consensus decision-making as a rule, while having regard to the statutory frameworks and the mana whakahaere of Waikato-Tainui (and other Waikato River Iwi).

13. Consistent with the principle of co-management, the Settlement and Settlement Act specifically require the Crown to engage directly with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River. The Crown has failed to do this with respect to the freshwater reform programme.

14. Waikato-Tainui was only invited to nominate members (via the Iwi Chairs Forum) for appointment to Kaahui Wai Maaori, the membership of which was solely determined by the Crown. That offer was firmly rejected as not reflecting a true relationship of partners under Te Tiriti, a view that was clearly expressed to the Government at the time. Waikato-Tainui has repeatedly written to relevant Ministers, seeking to address this issue. However, the few responses received have been cursory and wholly insufficient.

15. Waikato-Tainui continues to seek direct engagement with the Crown on these matters. It is certainly inconsistent with the Crown’s obligations for Waikato-Tainui to be left merely react to and submit on relevant Bills and policies that have already been developed by officials, as had been the norm prior to entering into the Settlement. Unfortunately, that is exactly what has happened in the present case.
OVERVIEW OF THE WAIKATO-TAINUI POSITION

16. Waikato-Tainui has a range of rights and interests including, but not limited to:
   (a) rights and interests arising under the 1995 Waikato Raupatu Lands Settlement (and the Waikato Raupatu Settlement Act 1995) and the 2008-2009 Waikato River Settlement (and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010);
   (b) rights and interests according to tikanga and customary law;
   (c) rights and interests arising from the common law (including the common law relating to aboriginal title and customary law); and
   (d) rights and interests under the Treaty of Waitangi and its principles.

17. Waikato-Tainui seeks to ensure that these rights and interests are recognised and protected with any policy development.

18. As part of the River Settlement signing in 2008, we also signed the Kiingitanga Accord. A cornerstone of the settlement is that both Waikato-Tainui and the Crown have committed to enter into a new era of co-management.

19. The intention of the settlement was that the Crown would respect and work with Waikato-Tainui in good faith, as a Treaty partner. As set out in the Kiingitanga Accord, this requires the Crown to engage with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River.

20. The development of the proposals relating to freshwater reform programme is certainly inconsistent with this obligation for the Crown to leave Waikato-Tainui to merely react to and “submit” on relevant bills and policies that have already been developed by officials, as had been the norm prior to our settlement being reached.

SCOPE AND PURPOSE OF RESPONSE

21. Notwithstanding the Crown’s failure to honour its obligations under Te Tiriti and the Settlement, Waikato-Tainui is compelled to respond to the freshwater reform programme, given its relationship with and authority in relation to the Waikato River. The fact that we are making this response in no way detracts from or compensates for the lack of engagement with Waikato-Tainui on these matters to date. Our request for such direct engagement remains.

22. The purpose of this response is to convey the views of Waikato-Tainui in relation to the freshwater reform programme. Despite this, Waikato-Tainui will continue to seek direct engagement with the Crown on freshwater matters.
23. For ease of reference, this response follows the structure of the discussion document, namely:

(a) Setting and clarifying policy direction (Section 2);
(b) Raising the bar on ecosystem health (Section 3);
(c) Supporting the delivery of safe drinking water (Section 4);
(d) Better managing stormwater and wastewater (Section 5); and
(e) Improving farm practices (Section 6).

24. We also provide comment on the need to restore the relationship between Waikato-Tainui and the Crown as partners under Te Tiriti o Waitangi in Section 7 below.

SPECIFIC COMMENTS ON THE PROPOSED REFORMS

SETTING AND CLARIFYING POLICY DIRECTION (Discussion Document Section 4)

25. The proposals set out in this section of the discussion document include:

(a) Introducing a new freshwater planning process that will require councils to have new plans in place no later than 2025.
(b) Strengthening and clarifying the requirement to manage freshwater in a way that gives effect to Te Mana o te Wai
(c) Restructuring and redrafting the current National Policy Statement – Freshwater Management (“NPS-FM”) to improve clarity and reinforce a holistic approach to freshwater management.
(d) Strengthening the requirement to identify and reflect Māori values in freshwater planning.
(e) Supporting renewable energy targets by exempting major hydro-electric schemes from some freshwater management requirements.

New freshwater planning process

26. The Resource Management Amendment Bill (“the Bill”) was introduced to parliament on 23 September 2019 and is now the subject of submissions before the Select Committee. The Bill introduces a new freshwater planning process requiring regional councils to notify changes to their policy statements and plans to implement the NPS-FM no later than 31 December 2023.\(^1\) Final decisions must be notified by 31 December 2025.

\(^1\) Clause 80(4)(b) of the Bill.
27. Waikato-Tainui supports a faster response from councils on freshwater management, so welcomes the earlier 2025 timeframe for decision making as opposed to the current 2030 deadline.

28. However, these reforms must integrate well with existing obligations, such as those outlined in Te Ture Whaimana o Te Awa o Waikato / the Vision and Strategy for the Waikato River (“TTWM”). True engagement with Waikato Tainui consistent with co-management will therefore be a critical part of this revised planning process and the Bill presently fails to provide sufficiently for this. For example, only 1 of 5 Freshwater Commissioners need to be nominated by tangata whenua.²

29. Waikato-Tainui intends to lodge a separate response on the Bill to elaborate on this and other concerns.

Giving effect to Te Mana o te Wai

30. Waikato-Tainui supports the strengthening and clarification of the requirement to manage freshwater in a way that gives effect to Te Mana o te Wai. Integrated and holistic health and well-being of freshwater is consistent with the freshwater objectives and initiatives set out in the Settlement.

31. However, Waikato-Tainui is concerned the draft NPS-FM does not appropriately embed Te Mana o te Wai into the proposals. Waikato-Tainui note that this is consistent with the view of Kahui Wai Māori.³

32. Again, further engagement is needed to ensure that Settlement mechanisms are not undermined and that the draft NPS-FM reflects those mechanisms, where it relates to Waikato-Tainui and the Waikato Region.

Restructuring and redrafting of the NPS-FM

33. Waikato-Tainui supports the intent for the draft NPS-FM to:
   (a) Improve clarity and reinforce a holistic approach to freshwater management; and
   (b) Provide stronger and clear direction in order to enable Councils and the communities they represent to more easily put the health and wellbeing of the water first.

34. However, Waikato-Tainui reiterates that for freshwater within its rohe (and most importantly, the Waikato River), these outcomes can only be achieved via direct engagement with Waikato-Tainui, consistent with the Settlement and Settlement Act. Only then can we ensure that the proposals will be consistent with Te Mana o te Awa and consequently, Te Mana o te Wai.

² Ibid, clause 58(1)(c).
Strengthening Māori values

35. Waikato-Tainui supports the elevation of mahinga kai⁴ as a compulsory value and strengthening of the priority given to tangata whenua freshwater values. That said, it is currently unclear how this relates with Waikato-Tainui’s objectives for the Waikato River as set out in TTWM. Again, further engagement is needed to ensure consistency with Waikato-Tainui objectives.

36. In this regard, we note that Waikato Regional Council has been progressing Plan Change 1 (the “Healthy Rivers” plan change) to the Waikato Regional Plan, specifically to achieve the requirements of TTWM.

37. Waikato Tainui have been working collaboratively with the Waikato Regional Council on the review of the Region’s Plan Change that focuses on improving the overall health and wellbeing of our waterways for future generations. This aspiration is consistent with our Settlement.

38. Considerable work will be required by Waikato Regional Council to ensure its regional planning documents reflect Waikato-Tainui’s objectives, which in turn should also mean they are consistent with the draft NPS-FM. While there is still much to do, Waikato-Tainui would be concerned if this good work is undermined by the NPS-FM.

39. Waikato-Tainui also notes and supports the view that regional councils will need to improve their levels of expertise with regards to understanding mahinga kai values, in order to uphold and properly implement TTWM. There is an expectation that this issue is addressed alongside Council’s respective iwi counterparts.

Exemption for major hydro-electric schemes

40. Waikato-Tainui strongly opposes the proposed exemption for hydro-electric schemes from meeting all freshwater management responsibilities. Such an exemption is contrary to Te Mana o te Wai and the integrated, holistic approach purported to be at the heart of the freshwater reform programme. We note that all the Government’s advisory groups also disagree with providing such an exemption.⁵

41. It is our expectation that all users need to do more to protect the health and wellbeing of freshwater bodies. While Waikato-Tainui acknowledges the importance of hydroelectric power generation in modern life, it should not excuse the responsibilities that everyone has, including hydro-electric companies, to achieve te mana o te wai.

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⁴ Waikato acknowledges that there might be dialectal differences, as we use the term Hauanga Kai.
⁵ Supra at 3, page 36.
42. If this Government is serious about water quality issues, and if we are to improve water quality in this country, then this Government must ensure consistent application of the policy.

43. As noted in the discussion document, several existing hydro-electric schemes are likely subject to various obligations under Te Tiriti settlements and “[a]n assessment of this proposal, and others, against existing settlements will be critical and completed before final decisions.” It is our expectation that further engagement is required with Waikato-Tainui in this regard, particularly given relevant obligations under the Settlement and Settlement Act.

44. The Waikato hydro scheme is listed as one of the schemes that would be exempt from certain obligations under the draft NPS-FM, if the reforms are progressed as currently proposed. However, the Settlement Act makes it clear that with respect to the Waikato River, TTWM prevails over the NPS-FM. Any exemption of the Waikato hydro scheme under the draft NPS-FM is therefore likely to be ineffective and contravenes the settlement agreed between Waikato-Tainui and the Crown. Again, this demonstrates the issues that arise when the Crown does not meet its obligations under the Settlement Act and engage with Waikato-Tainui in accordance with the principle of co-management.

RAISING THE BAR ON ECOSYSTEM HEALTH (Discussion Document - Section 5)

45. This section of the discussion document covers the following proposals:
   (a) Te hauora o te wai;
   (b) New attributes and management for ecosystem health;
   (c) Aquatic life;
   (d) Habitat; and
   (e) Water quality.

46. Waikato-Tainui generally supports the draft NPS-FM broadening the focus of national direction and planning to have a more holistic view of ecosystem health and require better monitoring and reporting. Such outcomes are consistent with the Settlement and Settlement Act. However, as noted above, direct engagement with Waikato-Tainui is necessary to ensure such outcomes are properly reflected in the draft NPS-FM and in turn, relevant regional planning instruments.

47. Waikato Tainui would support greater integration across the current national policy frameworks under review; to provide for cultural and heritage and support the adoption of principles that provide a greater level of protections for sites of significance.

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6 Ibid, page 35.
7 Ibid, page 35.
8 Settlement Act, section 12(1).
48. Cultural harvesting of our flora and fauna connected to our whenua, wai and heritage of our places are critical to our identity. Waikato Tainui oppose any intention of the freshwater reform programme where Iwi would need to seek a consent to access our wetlands to harvest our native flora and fauna for cultural purposes. This would be viewed as being inconsistent with our own Environmental Plan and our mechanisms within our settlement.

49. Waikato-Tainui opposes the identification of trout as a “priority species”, given this is introduced and not native to Aotearoa.

50. The introduction of new attributes (being indicators of ecosystem health) are generally supported. Again, these need to be incorporated into the draft NPS-FM and subsequently regional planning instruments in a manner that is consistent with the Settlement Act and TTWM. This can only be achieved via direct engagement with Waikato-Tainui. Waikato-Tainui further considers that relevant objectives and targets should be set above bottom lines and proactively managed, particularly with respect to the Waikato River.

51. Waikato-Tainui also supports the following proposals from the discussion document being part of the freshwater reform programme:

(a) The imposition of higher water quality standards, to ensure that rivers and streams are swimmable during summer.
(b) Greater protection for urban and rural wetlands and streams.
(c) A new proposed compulsory national value for threatened species for the NPS-FM to ensure regional planning identifies and manages this, particularly for indigenous species currently under threat.
(d) Requiring regional councils to provide for fish passage in accordance with the voluntary guidelines developed by the NZ Fish Passage Advisory Group.

52. Waikato-Tainui acknowledges the proposal for the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 be updated to provide for more regular reporting of water use using telemetry. We note that Kahui Wai Māori and some members of the Freshwater Leaders Group suggest that the total volume of water take should also be considered when deciding which users should be required to install telemetry devices, so that those with high takes at a lower rate are also subject to these requirements.

53. For Waikato-Tainui, the health and wellbeing of land and water is interconnected and is necessary to protect these resources for future generations. That being said, as a Raupatu Iwi subject to mass land confiscation, Waikato-Tainui does

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9 Supra Note 3, page 42.
10 Ibid, page 43.
11 Ibid, pages 51 and 52.
not have the same access to their lands to manage access to water and allocation within the current system. This disadvantages Waikato-Tainui.

54. Waikato Tainui support an approach that considers the most practical way to prevent further cumulative increases of contaminants from land development intensification, as supported through PC1 to minimise intensification of land in the short term.

55. Waikato Tainui are seeking recognition of sites of mana whenua and the heritage of our places as critical to our identity, and the resolution of Raupatū brought with it the hope for a new generation to determine their own future so that we could advance a better future for our tamariki and mokopuna.

SUPPORTING THE DELIVERY OF SAFE DRINKING WATER (Discussion Document - Section 6)

56. This part of the freshwater reform programme stems from the Government’s “Three Waters” reforms. The Government intends to create a new legislative framework for drinking water that is overseen by an independent regulator. These changes will be supported by proposed amendments to the National Environmental Standard for Sources of Human Drinking Water.

57. Waikato-Tainui recognises the significance of securing safe drinking water for human consumption and looks forward to seeing increased monitoring and proactive management in this regard.

58. The discussion document notes that engagement with tangata whenua will be part of this new framework. However, as Tiriti partners, Waikato-Tainui considers this should be an ongoing dialogue that commences before any policy proposals are put out for public consultation.

BETTER MANAGING STORMWATER AND WASTEWATER (Discussion Document - Section 7)

59. The proposed initiatives contained in the discussion document in this regard include:

(a) A proposed National Environmental Standard for Wastewater Discharges and Overflows which would prescribe requirements for setting consents conditions on discharges from wastewater treatment plants and engineered overflow points.\(^\text{12}\)

(b) Nationally-prescribed environmental performance measures for wastewater and stormwater network operators which are reported on annually to their communities and a regulatory agency set out in a new Water Services Act.\(^\text{13}\)

\(^{12}\) Ibid, page 58.
\(^{13}\) Ibid, page 60 and 61.
The preparation of risk management plans for wastewater and stormwater network operators.\(^{14}\)

National guidance on incorporating green infrastructure into policy and plan provisions, or stormwater design and management.\(^{15}\)

Waikato-Tainui supports further enhancement of good management practice and its application to all operators. New objectives and targets are expected to be set above the bottom lines, be proactively managed, and ensure consistency with existing settlements under Te Tiriti o Waitangi relating to freshwater bodies.

**IMPROVING FARM PRACTICES (Discussion Document - Section 8)**

The prevalence of agriculture throughout the Waikato region makes reform in farm practices significant for the health and wellbeing of the Waikato River, as well as Waikato-Tainui. Waikato-Tainui is generally supportive of the improved farm practice reforms and commends the commitment of the agricultural sector to delivering good farm practice, in order to manage risks to freshwater.

In terms of the specific proposals regarding improving farm practices, Waikato-Tainui comments as follows:

(a) The introduction of interim measures to restrict further intensification of rural land use until regional freshwater management plans are operative is supported.

(b) Greater monitoring and reporting on farm management is required in order to ensure desired outcomes are achieved. Regional councils have a poor track record of enforcing the requirements of the RMA and conditions set out in resource consents. Waikato-Tainui strongly believe that the aspirations of the NPS-FM will not be realised unless good policy is effectively implemented and effective measurement, monitoring and reporting requirements are put in place to hold regional councils to account.

(c) The requirements for all farmers and growers to have plans to manage risks to freshwater is supported. However, it will be critical to understand how the agricultural sector is best supported in this transition to ensure desired outcomes are achieved, particularly given the short timeframe. It will also be necessary to consider what tools are available to assist, from those that support voluntary conversion through to enforcement tools.

(d) Consideration of risks to threatened plant and wildlife species is also supported.

(e) Exclusion of stock from waterways is supported and should comprise part of the farm management plan/module relating to management of risks to freshwater.

\(^{14}\) Ibid, pages 59 to 61.

\(^{15}\) Ibid, page 62.
The introduction of standards for intensive winter grazing, feedlots and stock holding areas is supported because they ensure the welfare of the animal, while maintaining the environmental standards.

Waikato-Tainui generally supports the initiatives to reduce nitrogen loss, particularly given the status of the lower catchment area of the Waikato River as an ‘at risk catchment’. However, we note that immediate action to reduce nitrogen from poor management practices excludes the Waikato/Waipa catchment.\(^{16}\) Waikato-Tainui opposes such an exclusion. Results need to be seen quickly and further measures introduced to help improve conditions for the Waikato River.

RESTORING A PARTNERSHIP UNDER TE TIRITI AND TE MANA O TE WAI/TE MANA O TE AWA

63. What is clear from the discussion document, as noted above, is that it is critical to ensure there is early, genuine and ongoing engagement with tangata whenua on all freshwater matters. The discussion document repeatedly notes the benefits and necessity of Iwi involvement in the freshwater reform programme. Despite this, the necessary engagement and analysis on matters related to Te Tiriti has been severely deficient. The Government claims that it wants to strengthen Maori values, but then consults with its partners under Te Tiriti after the fact as “submitters”, simply on the basis that they can assist regional councils to “help understand” the draft NPS-FM. This is insulting, paternalistic and unacceptable given the partnership created under Te Tiriti, and in particular Waikato-Tainui’s ongoing involvement in the management of the Waikato-River.

64. Waikato-Tainui is encouraged by the Crown’s intent to manage freshwater resources more holistically. However, there is no sense in the Government directing policy under the RMA which is contrary to and/or inconsistent with existing settlement commitments and the principles of Te Tiriti. It merely delays the implementation of measures desperately needed maintain and enhance Te Mana o te Wai and creates unnecessary tension between the partners under Te Tiriti.

65. Waikato-Tainui invites direct engagement with the Crown, so that these important issues can be progressed with the urgency and respect that they demand.

\(^{16}\) Ibid, page 70.
CONCLUSION

66. In conclusion, Waikato-Tainui:

(a) considers that the process that has been followed for developing the freshwater reform programme has not been conducted in good faith, or in accordance with the principles of co-management or consistently with the Crown's obligations under the 1995 Waikato Raupatu Lands Settlement (and the Waikato Raupatu Settlement Act 1995), the 2008-2009 Waikato River Settlement (and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010), the 2008 Kiingitanga Accord and the 2010 Waikato-Tainui Environment Accord;

(b) considers the lack of engagement is in breach of Te Tiriti o Waitangi; the commitments of the 1995 Waikato Raupatu Lands Settlement (and the Waikato Raupatu Settlement Act 1995), the 2008-2009 Waikato River Settlement (and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010), the 2008 Kiingitanga Accord and the 2010 Waikato-Tainui Environment Accord;

(c) expects that the proposed freshwater reform programme does not adversely affect the rights, interests, responsibilities and opportunities of Waikato-Tainui;

(d) expects that the co-management principles that underpin our Waikato River settlement legislation between Waikato-Tainui and the Crown must be recognised and upheld;

(e) strongly opposes the proposed exemption for hydro-electric schemes from meeting all freshwater management responsibilities;

(f) supports the strengthening and clarification of the requirement to manage freshwater in a way that gives effect to Te Mana o te Wai;

(g) Supports the intent of the draft NPS-FM to reinforce a holistic approach to freshwater management; and

(h) expects that there is stronger and clear direction in order to enable Councils and the communities they represent to more easily put the health and wellbeing of the water first.
67. Accordingly, Waikato-Tainui seeks direct engagement with the Crown and its officials on the ongoing process of development of the NPS-Action on Healthy Waterways should it lead to adoption and implementation, including the matters set out in this response.

DATED 31 October 2019

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