TE KĀHUI WAI MĀORI

1 The members of Te Kāhui Wai Māori are:

- Kingi Smiler (Chair)
- Hon. Dover Samuels
- Millan Ruka
- Professor Jacinta Ruru
- Annette Sykes
- Mahina-a-rangi Baker
- Dr James Melville Ataria
- Dr Tanira Kingi
- Traci Houpapa
- Paul Morgan
- Riki Ellison

INTRODUCTION

2 This submission is made by Te Kāhui Wai Māori on the Action for healthy waterways discussion document (the Discussion Document), and the following associated key proposals:

a. The Draft National Policy Statement for Freshwater Management (Draft NPSFM);
b. The Proposed National Environmental Standards for Freshwater (Draft NES); and
c. The Draft Stock Exclusion Section 360 Regulations (Draft Regulations),

collectively, the ‘Reform Proposals’.

TE MAHI O TE KĀHUI WAI MĀORI

3 In October 2018 Te Kāhui Wai Māori was formed to collaboratively develop and analyse freshwater reform policy options.

4 On 15 April 2019 we provided Hon Minister Parker with structural and system reform recommendations, not limited to the Essential Freshwater policy package, to restore the health of our wai and transition to a new system of care and respect for wai (the Te Mana o Te Wai Report).

5 Since then, we have worked with Ministry for the Environment officials to reflect Te Kāhui Wai Māori recommendations in the Essential Freshwater policy package. Where our views have differed, we have provided clear responses to policy development. The full Te Mana o Te Wai Report, including those responses, is available here.

6 Te Kāhui Wai Māori makes this submission in order to collate and consolidate our position on the Reform Proposals.

WAI 2358 STAGE 2 REPORT

7 It must be acknowledged that these Reform Proposals are presented against the backdrop of the Waitangi Tribunal’s Wai 2358 Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Stage 2 Wai 2358 Report), which was released in pre-publication form in August 2019.

8 This long-awaited report follows the Stage 1 Wai 2358 Inquiry, which dealt with Māori freshwater rights as at 1840, and the impact of the Crown’s proposed sale of shares in state-owned power companies. The Tribunal released an interim Stage 1 report in August 2012 and its final report in December 2012 which found:

“We have now found, upon inquiry into the facts (and as other Tribunals have found before us) that Māori have rights for which full ownership was the closest cultural equivalent in 1840. Today, Māori have residual proprietary rights where that can be established on the facts and – the Crown having stated that it does not claim ownership and that no one else can claim ownership – the Treaty entitles them to the recognition of those rights today” (at p 190).
“[T]here is a nexus between the asset to be transferred (shares in the power companies) and the Māori claim (to rights in the water used by the power companies), sufficient to require a halt if the sale would put the issue of rights recognition and remedy beyond the Crown’s ability to deliver (at p 142).”

9 The Tribunal also endorsed a right to development:

“As we see it, a right to develop one’s properties is a right possessed under the law by all New Zealand property owners. What is unique about this claim is that Māori citizens were guaranteed the property that they possessed in 1840. That right of property was not constrained by what could be legally owned in England. Rather it depended on what Māori possessed at the time in custom and in fact. As we have found, they possessed (and in the English sense owned) their water bodies in 1840. And inherent in their proprietary interests is the right to develop their properties, and to be compensated for the commercial use of their properties by others. There is nothing unusual or novel in this finding” (at p 193).

10 Stage 2 of the inquiry is directly relevant to the Reform Proposals. Its focus was extensive:

a. Whether the current law in respect of fresh water and freshwater bodies is consistent with the principles of the Treaty of Waitangi.

b. Whether the Crown’s freshwater reform package, including completed reforms, proposed reforms, and reform options, is consistent with the principles of the Treaty of Waitangi.

c. To what extent the completed reform package, proposed reforms, or reform options (including those proposed by the Crown in consultation) address Māori rights and interests in specific freshwater resources.

d. Whether any limits in addressing Māori rights might be appropriate today in Treaty terms.

e. To the extent that Māori rights and interests are addressed, whether the resultant recognition of those rights is consistent with the principles of the Treaty.

f. What amendments or further reforms are required to ensure consistency with Treaty principles.

11 The Stage 2 Wai 2358 Report is required reading cover to cover by Ministers, officials and every person engaged in environmental and natural resource reforms in Aotearoa, including climate change, indigenous biodiversity, elite soils, urban development, waste and hazardous substances and the “comprehensive” review of the RMA.

12 The Stage 2 Wai 2358 Report found, among other things, that:

a. The present law in respect of fresh water is not consistent with Treaty principles. The Treaty section (section 8, RMA) is weak and the result is that Māori interests have too often been balanced out altogether in freshwater decision-making.

b. The RMA does not provide adequately for the tino rangatiratanga and the kaitiakitanga of iwi and hapū over their freshwater taonga. The RMA has no incentives or compulsion for councils to pursue co-management arrangements.

c. Iwi management plans, are not given sufficient legal weight.

d. Under-resourcing is a chronic problem which the Crown is aware inhibits Māori participation in RMA processes.

e. The RMA is also in breach of Treaty principles because the Crown refused to recognise Māori proprietary rights during the development of the Act (the Resource Management Law Reform in 1988–90). The result is that the RMA does not provide for Māori proprietary rights in their freshwater taonga.

f. Provision must be made for ‘proprietary redress’ and developing a new allocation regime in partnership with Māori.
g. Past barriers (including some of the Crown’s making) have prevented Māori from accessing water in the RMA’s first-in, first-served system. This is a breach of the principle of equity.

h. In terms of the active protection of freshwater taonga, we found that the RMA has allowed a serious degradation of water quality to occur in many ancestral water bodies, which are now in a highly vulnerable state.

13 Te Kāhui Wai Māori fully endorses the Waitangi Tribunal's Wai 2358 recommendations, and is encouraged that they echo a number of the recommendations made by Te Kāhui Wai Māori in its 15 April 2019 Report.

GENERAL STATEMENT OF POSITION

14 We have repeatedly indicated that our proposals for structural and system change in the Te Mana o te Wai Report are not a menu of options from which only some recommendations might be chosen. The recommendations need to be implemented in their entirety to achieve the necessary outcomes for Te Mana o te Wai.

15 A number of critical aspects of the Te Mana o te Wai Report are not addressed by the Reform Proposals, nor have the members received assurance that they will be addressed as proposed by Te Kāhui Wai Māori in future freshwater policy development or other work programmes such as the “comprehensive” review of the resource management system focused on the Resource Management Act 1991.

16 Accordingly, we consider that the Reform Proposals do not represent the significant step-change that we were promised in October 2018 with the launch of the Essential Freshwater Reforms.

17 We set out below, critical aspects of the Te Mana o te Wai Report that remain unaddressed.

Iwi rights and interests

18 One of the principles underpinning the Essential Freshwater work programme is to address “the rights and interests of Māori in freshwater and the development aspirations of owners of Māori freehold land, consistent with the Crown's Treaty obligations.” However, these Reform Proposals offer no commitment to resolving iwi rights and interests other than an indication in the Discussion Document that “the Government will continue to work with Māori to address their rights and interests in freshwater, particularly in the context of addressing allocation issues”. That statement has been made by successive governments in similar discussion documents. It can be afforded no weight.

19 Te Kāhui Wai Māori has consistently maintained Māori proprietary and co-governance rights, interests and obligations must be resolved by the Government, suggesting a timeframe of three years. In the context of allocation, the Wai 2358 Report has now recommended that development of a new allocation regime must happen urgently.

20 Furthermore, multiple precedents exist for mechanisms which can protect Māori rights, interests and obligations while facilitating water quality and efficiency enhancing reforms. The Crown forest licensed land regime is just one example. Such mechanisms (i.e. improved versions thereof, informed by their experience) must be put in place ahead of any nitrogen or other water-related allocation reforms. Once in place, reforms can proceed while rights, interests and obligations are being resolved. The sooner this is addressed the sooner that certainty can be provided to everyone.

Mana whakahaere is a key aspect of Te Mana o te Wai

21 In order to give effect to the hierarchy of obligations, the Te Mana o te Wai framework provides Aotearoa New Zealand’s freshwater leaders with a bicultural principled way to govern, care and respect freshwater. Te Mana o te Wai does not stand without its six core principles:

Mana whakahaere – Governance
Kaitiakitanga – Stewardship
Manaakitanga – Care and respect

22 Mana whakahaere is the rights and obligations of mana whenua inherited through whakapapa to the land and water, when exercising their authority, ability and freedom to implement their values and realise their aspirations as guaranteed by Te Tiriti o Waitangi/Treaty of Waitangi.

23 If meaningful improvement in the health and well-being of the nation’s freshwater is desired, then central government needs to direct both sharing and complete devolution of governance and management by regional councils with and to Māori. Co-governance is implied under Treaty principles. In fact, this level of Māori governance is required as a minimum given Crown-acknowledged Māori rights, interests and obligations in water. The Crown presuming ultimate control of water-related reform is not consistent with either position.

24 The provision that directly touches on influencing existing governance arrangements and decision-making in the current Reform Proposals is Section 3.3 of the NPS-FM. It states:

**3.3 Tangata whenua roles and interests**

(1) As part of the requirement to give effect to Te Mana o te Wai, regional councils must engage with tangata whenua in the management of waterbodies and freshwater ecosystems.

(2) Engagement with tangata whenua requires taking reasonable steps to:

a) involve tangata whenua in freshwater management and decision-making regarding freshwater planning; and

b) identify tangata whenua values and interests in relation to waterbodies and freshwater ecosystems; and

c) reflect those values and interests in the management of, and decision-making regarding, the waterbodies and freshwater ecosystems in the region.

25 Section 3.3 represents a carrying over of Section D of the existing NPS-FM to the Reform Proposals, save for that part of Section 3.3 that confirms (as a product of the proposed elevated statutory weighting) that engagement with tangata whenua by regional councils is part of "giving effect to" Te Mana o te Wai.

26 Two issues emerge:

a. There is an inherent conflict between providing Section 3.3 stating in sub-clause (1) that it is part of the requirement to "give effect to Te Mana o te Wai", and then providing in sub—clause (2) for a relationship that is less than mana whakahaere.

b. Further, the Wai 2358 Report has found that Section D is not Treaty compliant. We agree with the Tribunal.

27 New Section 3.3 needs to specify a direct, co-governance level of involvement in freshwater decision-making to satisfy Treaty standards and the mana whakahaere / governance intent of Te Mana o te Wai.

28 Writing in relation to Section D, the Waitangi Tribunal recommends that it must be amended to specify:

a. that iwi and hapū must be directly involved in freshwater decision-making;
b. that Māori values, rights, and interests must be recognised and provided for in freshwater decision-making; and

c. that councils must actively seek opportunities to enter into section 33 transfers and section 36B Joint Management Agreements for freshwater bodies (where Treaty settlements have not already established co-governance agreements for freshwater bodies).

29 It also recommends consequential amendments are made to what is now section 3.3(2), and further policies could be inserted as required. These amendments should specify ‘a leading role for iwi and hapū in developing, applying and monitoring/enforcing water quality requirements’, and a decision-making role in both plan-making and relevant consents.

30 We understand that officials have indicated that being a lower order document, the NPS-FM cannot direct the RMA in respect of co-governance and transfer of powers; that such a proposal requires an amendment to the RMA. Te Kāhui Wai Māori is not aware whether officials have sought legal advice, but we do not agree with this position. In particular, we consider that inclusion of the Tribunal recommendations in the draft NPS-FM is within the scope of the RMA as it stands.

31 Finally, and directly in relation to officials’ advice, the very avenue for addressing this issue as identified by officials – the RM Review – presently precludes Māori governance arrangements from consideration. The Cabinet Paper confirming the RM Review states that “it is not anticipated that the review will extend to legislating for such concepts as co-governance”, let alone transfer of powers.

32 Our 29 August 2019 letter committed to seeing the appropriate embedding of Te Mana o te Wai in the NPS-FM through to completion, which includes addressing this issue.

33 We also again request that the terms of the RM Review are expanded to include co-governance arrangements and transfer of powers to Māori, and use the Stage 2 WAI 2358 Report as a starting point for its analysis.

Te Mana o te Wai Commission

34 Te Kāhui Wai Māori recommended the establishment of an independent national regulatory Te Mana o te Wai Commission that should be sustainably resourced to design and implement the Te Mana o te Wai Structure and System Reform that includes: setting national direction that promotes Te Mana o te Wai; calling-in applications at the local catchment level where appropriate; auditing water-related local government and catchment level processes and decisions; and bringing, and participating in, proceedings relating to local government and catchment level processes and decisions.

35 Full details of our proposal, which include 50 per cent Māori representation in respect of the appointed Commissioners, are available at paragraphs 42 to 46 of our Te Mana o te Wai Report.

36 Te Kāhui Wai Māori recommend an independent national regulator to create a nationally consistent approach to councils implementing the NPS-FM, and a vehicle for enforcing this implementation.

37 Local government has largely failed to responsibly and effectively discharge its responsibilities and obligations to sustainably manage freshwater. This position is well supported by the current state of freshwater. New accountability measures on local government are necessary.

38 The critical issue is that effective implementation by plans of the NPS-FM provisions is not occurring even plans are operative.

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2 Cabinet Paper, Comprehensive review of the resource management system: scope and process, paragraph 83.
One of the key recommendations in the Te Mana o te Wai Report that goes hand in hand with the establishment of a Te Mana o te Wai Commission is to **Develop new accountability and partnership requirements for local governments.**

The priority for Te Kāhui Wai Māori is to ensure that effective accountability measures on local government are available to confirm that councils are actually implementing their plans. This is because a system where new policy proposals are not being implemented, or are not achieving the intended policy outcomes, is still a broken system.

We do not see any clarity in the Reform Proposals around the consequences for local government, and local water users, if plans are not implemented.

With respect to support for local governments, councils need significant new partnerships/leverages to effectively implement plans. Status quo arrangements are not working and are not going to work in the future.

Finally, we acknowledge the 25 October 2019 announcement by Hon Ministers Mahuta and Clark of their latest decisions regarding the Three Waters Reform, which include that Cabinet has agreed to establish an independent regulator as a Crown entity responsible for overseeing the drinking water regulatory system. We speak to drinking water later in this submission, however, we note that this regulatory proposal does not address the accountability issues raised by Te Kāhui Wai Māori.

**Funding for iwi and hapū to participate**

There is not a sufficient and sustainable source of funding for all water governance activities, including funding to support the investments that are increasingly needed to provide for initiatives that restore, care and protect degraded water bodies.

Central government will need to support existing ratepayer budgets by resourcing the necessary change, and at the appropriate level. Contested funds are inconsistent with ‘giving effect to Te Mana o te Wai’ and will not suffice.

Where tikanga Māori is the foundation of a policy proposal, it is critical that resourcing iwi and hapū directly to drive the necessary change is done; not simply providing funds to Councils for tangata whenua engagement.

We also encourage councils to engage with the intent of the policy changes that give effect to Te Mana o te Wai. They are not new expectations on councils but rather, a more deliberate way of directing councils’ around their current expectations and obligations with respect to iwi and hapū values, rights, interests and obligations. The issue is not just about being expected to do much with little, an issue that is a daily reality for iwi and hapū organisations, but rather changing (increasing) the priority afforded iwi and hapū values, rights, interests and obligations in funding.

Te Kāhui Wai Māori also want to stress that it is not appropriate, and unfair to expect, that iwi and hapū, whose asset base originates in redressing acknowledged historical grievances, use these resources to engage in work to meet the requirements of future freshwater management. Those resources must necessarily be tagged to overcoming the current conditions that have arisen for their people as a consequence of those historical grievances.

**SPECIFIC REFORMS**

We make the following comments on the NPS-FM, which collate our prior comments.

**Te Mana o te Wai In the NPS-FM**

Te Kāhui Wai Māori sought a change of wording from “consider and recognise”, to a requirement that regional councils “give effect to” Te Mana o te Wai when implementing the NPS-FM. We commend this Government for the change in statutory direction in the Draft NPS-FM that is reflected in the Draft NPS-FM.
Some submitters have read Te Mana o te Wai as simply a Māori policy, and therefore conflated it with section 6(e) of the RMA. They have then analysed it with reference to section 6(e) (for example, that the NPS-FM cannot "give effect to" Te Mana o te Wai, because that would elevate it beyond the statutory language of “recognise and provide for” in section 6(e)). With respect, these submissions misunderstand Te Mana o te Wai.

Te Mana o te Wai is a multi-faceted concept for all New Zealanders. We have been clear that Te Mana o te Wai has six core principles (not three Māori principles that have been translated into English, or vice versa).

Recognising and providing for the Māori relationship to water (as per section 6(e)) is just one key component of giving effect to Te Mana o te Wai, alongside others.

Giving effect to Te Mana o te Wai is consistent with the intent and purpose of the RMA, and does not stop at, or represent an equivalent to, section 6(e).

It is in the nations interests that we give effect to Te Mana o te Wai, thereby protecting freshwater and its values.

The draft NPS-FM requires further work to address outstanding issues raised by the Kāhui, including:

a. the description of the Te Mana o te Wai requires further refinement to improve clarity and reflect the Kāhui understanding of Te Mana o te Wai; and

b. the need to specify a direct, co-governance level of involvement in freshwater decision-making for tangata whenua.

As identified above, we are committed to seeing this work through to completion.

Māori Compulsory Values in the NPS-FM

Te Kāhui Wai Māori recommended that the status of mahinga kai be elevated to a compulsory national value in the NPS-FM. This compels regional councils to support hapū and iwi (including Māori landowner-driven) efforts to identify and articulate mahinga kai values and to incorporate these into freshwater planning documents.

Mahinga kai was deliberately chosen as a compulsory value by the Kāhui because it comprises multi-faceted and integrated indicators that address mahinga kai safety (human health for harvesting and consumption) which is ultimately a proxy that is directly correlated to the mauri of the wai – good mahinga kai correlates to healthy and intact mauri.

How the mahinga kai compulsory value is to be reflected in the NPS-FM requires confirmation as part of the work still requiring completion. We are committed to engaging with officials on that work.

Exemptions for Major Hydro

Te Kāhui Wai Māori is strongly opposed to the exemptions. Major hydroelectricity schemes are responsible for significant water degradation, and many are non-compliant with safe fish passage.

The proposal:

a. is a serious risk to our major rivers;

b. is not consistent with Te Mana o te Wai; and

c. completely undermines the Essential Freshwater objective to stop further degradation and loss.

Major hydroelectricity schemes should not be:

a. prioritised such that they are provided for, regardless of the effects;

b. given primacy over other matters in sections 6, 7 or 8 of the RMA.
Major hydroelectricity generators need to mitigate against their contribution to fresh water decline.

**New planning process requiring new plans by 2025**

Te Kāhui Wai Māori will address its position on this process in a submission on the Resource Management Amendment Bill direct to the Environment Select Committee.

Te Kāhui Wai Māori notes that we have suggested the following appointment criteria for the Freshwater Hearing Panels:

a. Chaired by a retired or current Environment Court judge, or Māori Land Court judge with a warrant to sit as an alternate Environment Court judge.

b. The Commissioners will have the following expertise:
   i. all Commissioners must understand and implement Te Mana o te Wai as the framework for managing water resources; and
   ii. proven understanding of tikanga and mātauranga Māori.

**Raising the bar on Ecosystem Health**

Te Kāhui Wai Māori supports all of the proposals for improving ecosystem health:

To shift the focus of national direction and planning to a more holistic view of ecosystem health, and require better monitoring and reporting including valuing and supporting mātauranga Māori and social science research to augment the current narrow biophysical view of water quality – an approach that is consistent with a broad values-based approach being promoted by Te Mana o te Wai.

To measure and manage the following new ecosystem health attributes:

a. nutrients (nitrogen and phosphorus)

b. sediment

c. fish and macroinvertebrate numbers

d. lake macrophytes (amount of native or invasive plants)

e. river ecosystem metabolism and dissolved oxygen in rivers and lakes.

A higher standard for swimming in summer.

To protect urban and rural wetlands and streams:

a. Require councils to identify all existing natural inland wetlands, monitor their health, set policies to protect them, and think about how to make restoration easier.

b. There will also be restrictions on activities considered the most destructive to inland and coastal wetlands.

A new compulsory national value for threatened indigenous freshwater species.

Require councils to provide for fish passage in line with established guidelines, both in plan-making and consenting, and in imposing design requirements on some types of new in-stream structures.

Improvements to setting minimum water flows and reporting on water use.

**Drinking Water, Storm and Wastewater**

Proposals to amend the National Environmental Standard for Sources of Human Drinking Water and require wastewater and stormwater operators to meet new standards and improve practices arise from the Three Waters Review.

Te Kāhui Wai Māori is encouraged that the Government is addressing access to safe, clean and affordable drinking water. This has long been an issue for Māori communities, particularly Māori residents in isolated or rural areas, and associated marae and
papakainga. Provision of clean drinking water is the second in the Te Mana o te Wai hierarchy of obligations: to provide for essential human health needs, such as drinking water.

77 However, the Government has assumed that it has the right to regulate the suppliers of the three waters in the face of Māori rights, interests and obligations in fresh water, including governance rights in respect of those three waters suppliers, that remain unresolved.

78 The DIA-prepared Q&A associated with the recent Three Waters announcement by Hon. Ministers Mahuta and Clark states:

Q. How is it proposed that the drinking water regulator reflect and protect Treaty of Waitangi and Māori interests?

A: There are several elements that have been agreed to which it is considered collectively reflect and protect Treaty of Waitangi and Māori interests. These include legislation specifying the regulator will support Te Mana o te Wai. The legislation will also specify that the operating principles of the regulator will include the need to engage early with Māori; and that it will need to understand, support, and enable mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised.

A Māori Advisory Group will be established to advise the regulator on these matters.

79 Te Kāhui Wai Māori does not consider that the answers respond to the question that is posed.

80 We recommend a parallel process be provided to address Māori rights, interests and obligations.

81 This can be done by undertaking that the legislation implementing the Three Waters Reform and establishing a central drinking water regulator include express provision that nothing in the reforms undermines Māori customary and Treaty rights, interests and obligations in water.

Draft NES Exemptions

82 The Draft NES includes exemptions to the farming regulations for:

a. pastoral farms of less than 20 hectares;

b. arable farms of less than 20 hectares; and

c. horticultural farms of less than five hectares.

83 We oppose this exemption, as we cannot find a clear justification supporting for it. A two hectare farm can potentially do just as much environmental harm as a 15 hectare farm if it does not act in accordance with Te Mana o te Wai.

84 Everyone has a part to play in giving effect to Te Mana o te Wai.

Restricting further land intensification

85 In the Te Mana o te Wai Report, Te Kāhui Wai Māori recommended a moratorium (prohibited activity status) on additional resource consents for consumptive takes and discharges for 10 years.

86 The Freshwater Leaders Group were in two minds, and their report identified two options:³

Option 1 – Taking the precautionary approach, and in order to avoid grandparenting high contaminant loads from current intensive systems and penalising extensive farmers, there should be a moratorium on changes of land use that increase risks to freshwater quality. (Some examples include any land use change to dairy or dairy support, from large scale plantation

³ FLG Report, paragraph 54(c).
forestry to any intensive pastoral use, from nonirrigated pastoral to irrigated pastoral use, and from any land use to vegetable growing.) However, provision will need to be made for normal vegetable crop rotation policies and movements of cropped areas within catchments.

Option 2 – Change of land use should be allowed under a non-complying activity consent if land users can demonstrate that there will no additional negative impact on freshwater quality consistent with the NPS-FM. Deforestation to extensive pastoral land use should be permitted.

The policy proposal is more permissive than both of these suggestions, making the offending activities a discretionary activity, which Te Kāhui Wai Māori does not support. If the more expansive Te Kāhui Wai Māori proposal is not accepted, we at least recommend a change from discretionary to non-complying activity status to reflect the Option 2 FLG recommendation.

Further, we consider that the policy intent is also not reflected in the drafting. The Discussion Document states:4

For certain, a resource consent will only be granted if the activity does not increase nitrogen, phosphorus, sediment or microbial pathogen discharges above the enterprise or property’s 2013–18 baseline (average for this period).

However, the current draft clauses 35 and 36 propose to make these high risk land use changes a discretionary activity, and propose that (among other things), not exceeding the average nitrogen, phosphorus, sediment, or microbial pathogen discharges of any farm over the period 2013 – 2018 will be a condition of consent.

If discretionary activity status is retained, at the very least, not exceeding the average nitrogen, phosphorus, sediment, or microbial pathogen discharges of any farm over the period 2013 – 2018 should be a threshold criteria for eligibility to apply for discretionary activity consent.

For the above reasons, the proposed intensification restrictions are considered by Te Kāhui Wai Māori to be ineffective, incremental and not sufficient to improve the health of our waterways.

Farm Environment Plans

In our view, Farm Environment Plans (FEPs) should be mandatory and the requirements for them should be developed using a risk-based approach, using the catchment or the sub-catchment as the basis for assessing risk.

However, FEPs should not be used as a tool to set limits for environmental performance in their own right, or to ensure regulatory compliance. They should only be used as a tool to assist farmers to comply with limits and regulations set by central and/or local government.

Nitrogen Reduction

Te Kāhui Wai Māori supports interim measures to reduce nitrogen loss in high nitrate-nitrogen catchments with, until all regions have operative freshwater management plans.

The current proposals involve setting a nitrogen cap (with reductions required to come under the cap), or FEP-based reductions.

If nitrogen caps are used, the Kāhui considers those under the threshold should also be required to do their part, by being subject to a cap at the threshold and a catchment-based nitrogen reduction target of 10 per cent.

In some highly-impacted catchments, it will take more than improving practices to achieve ecosystem health, and some land-use change will be required.

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Stock Exclusion

98 Keeping farm animals, and their effluent, out of waterways is critical to upholding Te Mana o te Wai and protecting human and ecosystem health.

99 In principle, the Kāhui supports the two-tier approach to the proposals:
   a. national standards, enforced by regional councils for larger waterbodies; and
   b. using farm plans to develop bespoke approaches for excluding stock from smaller streams and drains.

100 Compliance, monitoring and enforcement will be critical to the success of this proposal.

Controlling intensive winter grazing

101 Te Kāhui Wai Māori is deeply concerned at the environmental and animal welfare impacts of poor winter grazing practices. This has a negative impact on Te Mana o te Wai.

102 We want to see standards for all winter grazing (even if the activity does not require a consent) to include:
   a. providing a dry place for animals to lie; and
   b. no activity at all on highly permeable soils where there is a high risk of preferential flow pathways (eg, mole and tile drains or gravelly soil).

103 Te Kāhui Wai Māori support the following activities being classed as high risk and requiring regulation:
   a. irrigation on vulnerable soils; and
   b. winter grazing on highly permeable soils (such as gravels or river accretion) or mole and tile drained soils.

Feedlots and stock holding areas

104 Feedlots and stock holding areas create a higher risk of pollution (nutrients, pathogens and sediment) entering waterways.

105 Te Kāhui Wai Māori supports requiring all feedlots to meet standards, as set out in a resource consent.

106 We also support requiring stock holding areas to get a resource consent that would set standards for permeability and managing effluent.

HE KUPU WHAKAKAPI

107 For more than 100 years, iwi, hapū, whānau, along with Māori landowners throughout the country, have been strongly articulating to central and local government, and the courts, the urgent need for reform of water-related law and policy.

108 We acknowledge and endorse all this work, including the more recent work of the New Zealand Māori Council and National Iwi Chairs Forum, in striving for a better system of care and respect for water in this country.

109 The time is now to make the change to a new system.