Submission on:

*Action for healthy waterways: national direction for our essential freshwater*

31 October 2019
INTRODUCTION

1 This submission is made by the Tūwharetoa Māori Trust Board (Trust Board), 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’.

TŪWHARETOA WHAKAPAPA, TIKANGA AND WAI MĀORI

Ko Tongariro te Maunga
Tongariro is the Sacred Mountain
Ko Taupō te Moana
Taupō is the Lake
Ko Tūwharetoa te Iwi
Tūwharetoa is the Tribe
Ko te Heuheu te Tangata
Te Heuheu is the Man

2 Ngāti Tūwharetoa hold mana whenua, kaitiakitanga and rangatiratanga over the Central North Island including the Lake Taupō Catchment and part of the Upper Waikato, Whanganui, Rangitikei and Rangitaiki Catchments.

3 Ngāti Tūwharetoa are the descendants of Ngatoroirangi, Tia and other tūpuna who have occupied the Taupō Region continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between whānau, hapū, marae and our taonga tuku iho.

4 As kaitiaki, Ngāti Tūwharetoa have an intrinsic duty to ensure the mauri and the physical and spiritual health of the environment (inclusive of our whenua and water resources) in our rohe is maintained, protected and enhanced.

5 For Ngāti Tūwharetoa, water comes from the sacred pool of our ancestor, Io. Tāne entrusted the guardianship of all the waterways to Tangaroa while Tāwhirimatea was assigned the guardianship over the atmospheric forms of water and the weather. These two guardians hold the mauri, the essential life forces, of these forms of water.

6 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor, our earth mother Papatūānuku. The universe and atmosphere above and around us is our sky father, Ranginui. The geographical pinnacle of Papatūānuku, within our rohe, is our maunga (mountains) including our esteemed ancestor, Tongariro. To the north of Tongariro lies our inland seas, Taupō and Rotoaira. Our mauri flows from our maunga through our ancestral awa (surface and underground streams and rivers) to our moana and to the hinterlands via the Waikato, Whanganui and Rangitaiki. They link us directly with our neighbouring iwi.

7 This tangible natural water flow is necessary to nurture every form of life it encounters during its journey. It is the intangible interconnecting web that is the lifeblood of our whakapapa and enables the survival of our wellbeing and identity as iwi, hapū, marae, landowners and whānau. This way of looking at our fresh water highlights a truth we would all acknowledge: water is our lifeblood. Water is necessary for life. Water is us and we are water.
THE TRUST BOARD

8 The Trust Board was established pursuant to the Māori Land Amendment Act 1924 and Māori Land Claims Adjustment Act 1926. The Trust Board later became a Māori Trust Board under the Māori Trust Boards Act 1955.

9 By Deeds with the Crown dated 28 August 1992 and 10 September 2007 the Trust Board is the legal owner of the bed, water column and air space of Lake Taupō, the Waihora, Whakaia, Whanganui, Whareroa, Kuratau, Poutu, Waimarino, Tauranga-Taupō, Tongariro, Waipehi, Waiotaka, Hinemoaia and Waitahanui Rivers (the Taupō Waters), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.

10 The Trust Board’s relationship to Taupō Waters is unique. The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

11 The Trust Board is also a party to the Waikato River Deed with the Crown dated 31 May 2010 (the Waikato River Deed). The Crown and the Trust Board agreed to enter into the Waikato River Deed in recognition of “the interests of Ngāti Tūwharetoa in the Waikato River and its catchment and in Taupō Waters and to provide for the participation of Ngāti Tūwharetoa in the co-governance and co-management arrangements in respect of the Waikato River”.¹

12 The Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (the Upper Waikato River Act). The overarching purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations.²

13 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato and Waipā Rivers (Te Ture Whaimana) is a product of the settlements agreement between the Crown, Ngāti Tūwharetoa and other Waikato and Waipā River Iwi. It is a statutory instrument,³ and the primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.

14 The obligation to give effect to Te Ture Whaimana is the strongest direction that Parliament has given in relation to any RMA planning document. Te Ture Whaimana prevails over any inconsistent provision in the NZ Coastal Policy Statement, any national policy statement and a national planning standard. It also prevails over a national environmental standard if more stringent than the standard. Te Ture Whaimana automatically forms part of a Regional Policy Statement.

15 The Trust Board also has a joint management agreement with the Waikato Regional Council relating to the Waikato River and activities within its catchment affecting the Waikato River, as well as Taupō Waters.

16 Finally, the Trust Board participated as co-governors and co-managers in the development of Plan Change 1 to the Waikato Regional Plan. Plan Change 1 is a response to the statutory requirement to give effect to the Waikato and Waipā River Settlement Legislation and the National Policy Statement for Freshwater Management 2014 (2017). Plan Change 1 seeks to reduce the amount and effects of four key contaminants⁴ entering the Waikato and Waipā catchments,⁵ in order to give effect to Te Ture Whaimana, including making the Waikato and Waipā Rivers swimmable and

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¹ Waikato River Deed, 31 May 2010, clause 8.
² Upper Waikato River Act, Section 3.
³ Given legislative effect through the Waikato and Waipā River Settlement Legislation: see also Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Maniapoto (Waipā River) Act 2012.
⁴ Nitrogen, sediment, phosphorus, and bacteria.
⁵ Through both discharges to land and water.
viable for food collection along their entire length. Hearings have been completed and the Trust Board understands that decisions are anticipated in mid-2020.

THE TRUST BOARD’S UNIQUE POSITION: WAIKATO RIVER AND TAUPÔ WATERS

17 The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

18 The nature of the Treaty settlement arrangements within the rohe of Tūwharetoa results in different statutory and planning directions with respect to the water bodies within our rohe.

19 Te Ture Whaimana applies to the Upper Waikato River. This statutory document prevails over the Draft NPSFM, Draft NES and Draft Regulations that implement the reform proposals, keeping the interests of Ngāti Tūwharetoa and other Waikato River Iwi intact where they conflict.

20 However, the balance of the waterways within our rohe will be subject to the Reform Proposals. In respect of Taupō Waters, the Trust Board is deeply disappointed that no bespoke arrangements that respect our unique ownership of the bed, water column and air space of the Taupō Waters have been investigated, let alone provided for in the Reform Proposals.

21 The Trust Board encourages the Crown to provide an avenue for direct conversations between the two parties. There is an opportunity for a leading framework to be developed that not only provides for strong water quality outcomes for Taupō Waters and Te Awa o Waikato, but also a model for the nation.

CRITICAL ASPECTS NECESSARY TO EFFECT CHANGE MISSING (IWI RIGHTS AND INTERESTS, MĀORI GOVERNANCE, AUDITING & FUNDING)

Iwi rights and interests

22 We have set out above the unique ownership arrangements of the Trust Board in respect of the wai in our rohe.

23 The Trust Board fully endorses the recommendations from the WAI 2358 National Freshwater and Geothermal Resources Inquiry Waitangi Tribunal Stage Two Report (Stage Two Tribunal Report), in particular that:

a. the Crown must recognise iwi proprietary rights and economics interests by providing for proprietary redress;

b. the Crown must devise a new allocation regime in partnership with Māori;

c. Objective D1 of the NPSFM (which now forms part of Clause 3.3 in the Draft NPSFM) should be amended to specify that iwi and hapū must be directly involved in freshwater decision-making, that Māori values, rights, and interests must be recognised and provided for in freshwater decision-making; and

d. 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.

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6 Area B on Survey Office Plan 409144.
7 Officials confirmed that no analysis had been undertaken on carving out Taupō Waters from the general Reform Proposals when asked by the Trust Board’s Natural Resources Manager, Maria Nepia, at the Māori Technicians Consultation Hui on 23 October 2019.
No changes to governance arrangements

24 The Trust Board has a long and detailed history of asserting rights to, and protecting, the wai and whenua within our rohe, including Taupō Waters.

25 More recently, that history includes investing heavily to participate (together with the other River Iwi and the Waikato Regional Council) as co-governors and co-managers in the development of Plan Change 1 – a right accorded Ngāti Tūwharetoa for the first time through the Upper Waikato River Act – with the intent that it realise the statutory vision in Te Ture Whaimana:

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

26 This innovative policy and governance approach is a product of the commitment and determination of the Waikato and Waipā River Iwi.

27 The River Iwi governance voice was absolutely critical to ensuring notified Plan Change 1 (while requiring refinement) represented a trajectory of change that reflected, rather than diluted or undermined, the expectations of the Waikato and Waipā River settlements for freshwater management. Those expectations, which for too long had been ignored by those in power, include:

a. Restoring and protecting the health and wellbeing of the Rivers is paramount - the aim must be to prevent further degradation of the Rivers.

b. Intergenerational responsibility.

c. Intergenerational timeframes, lag effects and the complexity of the problem are not defensible reasons to delay putting in place management interventions.

d. Maintaining the status quo will not contribute to achieving restoration outcomes. Nor will the status quo prevent water quality from deteriorating further.

28 While the policy aspect of the Waikato and Waipā River settlements has seemingly provided a roadmap for a range of similar policy issues now covered by the Reform Proposals, these reforms maintain the status quo with respect to governance arrangements.

29 This is bitterly disappointing to the Trust Board; particularly in the face of clear evidence that:

a. Maintaining the status quo, including existing governance arrangements that exclude tangata whenua, has contributed to the serious deterioration of water quality acknowledged in the Discussion Document as requiring urgent action.

b. Water reform originating in Treaty settlements, where statutory amendments can address those aspects of the current water management system that are broken, is generating innovative, future-focused, water policy outcomes.\(^8\)

30 If it wants to see meaningful improvement in the health and well-being of the nation’s freshwater, central government needs to direct both sharing, and complete devolution, of governance and management by regional councils with and to Iwi.

31 At the 23 October 2019 Māori Technicians Consultation hui the attendees were told that co-governance could be addressed in other reform processes, including the proposed “comprehensive” review of the resource management system focused on the Resource Management Act 1991. However, the Cabinet Paper confirming the review states that “it is not anticipated that the review will extend to legislating for such concepts as co-governance.”\(^9\)

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\(^8\) See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

\(^9\) Cabinet Paper, Comprehensive review of the resource management system: scope and process, paragraph 83.
We therefore expect, as a minimum, that the scope of the “comprehensive” review be extended to include legislating for co-governance.

**Auditing local authorities**

During consultation, Trust Board representatives asked, what happens if regional councils set water quality improvement targets in a regional plan and they are not met? No one could confirm that the option of enforcing compliance to meet the targets was available.

While local authorities remain in power in respect of freshwater governance and management, a strong auditing regime needs to be put in place. We note that both Te Kāhui Wai Māori and the Freshwater Leaders Group recommended the establishment of an independent national body to oversee freshwater management implementation, whose role would include (among other things) auditing local authority functions and duties and enforcing compliance.

It is the Trust Board’s view that at least 50 per cent of the persons appointed to such a body must represent iwi and hapū interests. The current approach of proposing a single Māori appointee where co-governance arrangements are provided for does nothing to ensure Māori leadership in freshwater management is reflected in the outputs from such groups.

In addition, the Ministry for the Environment has a role to ensure that the policy intent of national direction is implemented at local authority level.

**Funding - for iwi and hapū participation**

In the case of proposals giving national direction to local authorities, the Trust Board anticipates that the Government will receive submissions identifying that the costs of the Reform Proposals cannot be met by existing ratepayer budgets.

From the Trust Board’s perspective, a lack of funding is not a defensible reason to delay putting in place the necessary policy change. It is a sufficient reason to require central government to ensure it resources the necessary change, and at the appropriate level.

For many of the policy proposals, which have tikanga Māori as their foundation, that level will involve resourcing iwi and hapū to drive the necessary change.

**PRESERVATION OF EXISTING TREATY SETTLEMENTS**

The Trust Board acknowledges and supports the intent of the Reform Proposals to amend freshwater management in a manner consistent with existing Treaty settlement obligations. We oppose any policies that will have the effect of undermining existing Tūwharetoa settlement obligations, but do support policies that build on, strengthen and enhance those settlements.

**TE MANA O TE WAI IN THE NPS-FM**

**Definition of Te Mana o te Wai**

The high-level definition of Te Mana o te Wai in the Draft NPS-FM, and subsequent references to Te Mana o te Wai in later provisions of the NPS-FM, focus on Te Mana o te Wai as it is understood locally being capable of different interpretation “by different people in different contexts”; essentially a suggestion that Te Mana o te Wai is a concept defined by local communities.

While Te Mana o te Wai can and should be embraced by communities as a framework for freshwater management, only tangata whenua can define what Te Mana o te Wai is locally. This right must be reserved to iwi, and the NPS-FM re-drafted accordingly.

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10 Discussion Document at 2.7 (page 22).
11 Fundamental Concept – clause 1.5.
Clause 3.3

This clause entirely replicates Objective D1 of the NPSFM. The Stage Two Tribunal Report found that Objective D1:

a. it is not Treaty compliant, and that Māori have been prejudiced in their exercise of tino rangatiratanga and kaitiakitanga in respect of their freshwater taonga as a result;

b. the NPS-FM will not be Treaty compliant until Objective D1 is reformed in such a way that provides more effectively for the tino rangatiratanga of iwi and hapū.

Their recommendation was that Objective D1 of the NPS-FM should be amended to specify that:

a. iwi and hapū must be directly involved in freshwater decision-making, suggesting ‘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;

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

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).

The Trust Board endorses this approach.

Long-term vision

The Trust Board endorses the long-term vision identified in clauses 3.2(5) – (8) of the Draft NPSFM, which appears to attempt to reflect, at a national scale, Te Ture Whaimana.

The Trust Board makes two recommendations regarding the long-term vision:

a. a key aspect of the Plan Change 1 experience that is missing from these provisions, is the setting of a timeframe for achieving the long-term vision. The draft National Objectives Framework (NOF) does require the setting of timeframes for achieving specific target attribute states tagged to achieve the environmental outcomes associated with freshwater values, however there is no clear link or nexus to the long-term vision.

The Trust Board recommends that clause 3.2(6) include a fourth requirement to set a timeframe for achieving the long-term vision.

b. absent the statutory direction in Te Ture Whaimana, the current NPSFM drafting (which proposes that Te Mana o te Wai can be interpreted differently by different people) presents a risk that setting a timeframe will be used to undermine giving effect to Te Mana o te Wai, by placing the timeframe for realising the vision so far out into the future as to make it meaningless.

c. the Plan Change 1 80-year long term time frame was considered appropriate because it was close enough to not to lose sight of the immense goal ahead, but far enough out into the future that it recognised the pace of change that would need to happen and the economic burden associated with that change. It was not a universally agreed figure among the Waikato and Waipā River iwi. We all wanted it achieved faster and at various rates; but it was a compromise in the context of the transition that was necessary for the Waikato and Waipā River catchments.

The Trust Board recommends that 80 years should therefore be the longest possible timeframe for a long-term vision under clause 3.2.

12 Draft NPSFM, clause 3.9.
REFORMS AFFECTING FARM PRACTICES

48 The Trust Board understands that the farm practice proposals do not apply to:

a. pastoral farms of less than 20 hectares;
b. arable farms of less than 20 hectares;
c. horticultural farms of less than 5 hectares.

Farm planning

49 The Trust Board supports freshwater farm planning, which is a feature of Plan Change 1. We understand that the proposal is that the farm plan’s freshwater module would have to include:

a. farm map identifying features such as waterways, critical source (discharge of contaminant) areas, highly erosion-prone areas, and other risks to the health of the freshwater ecosystem;
b. risk assessment across specific activities including irrigation, application of nutrients, effluent application, winter grazing, stock holding areas, stock exclusion, offal pits, and farm rubbish pits;
c. schedule of actions to manage identified features and address identified risks of on-farm contaminant losses that impact on freshwater ecosystems, and could also include risks to threatened plant and wildlife species, and how these could be addressed.

50 The Trust Board supports independent auditing of freshwater modules, with progress reports to regional councils. A similar process has been followed in Plan Change 1.

Interim measures to restrict any further intensification of land use

51 The Trust Board supports the policy intent behind interim measures involving tighter restrictions on high risk land use changes, including land use change to commercial vegetable production.

52 A key aspect that was critical to the Trust Board (and the other Waikato and Waipā River iwi) supporting Plan Change 1 was the interim non-complying activity status for land intensification for similar high risk land use changes, which held the line by preventing further unmanaged land use change in the short-term.

53 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.

54 The Waikato Region is the fourth largest region in the country, the fourth largest region by population in New Zealand, as at March 2011 the region’s total GDP contributed 8.5 per cent of New Zealand’s GDP, and one of its largest industries contributing towards GDP in the Waikato region is dairy cattle farming.

55 If the Waikato Region can sustain non-complying activity status for high risk land use changes, then the rest of the country should be able to as well.

56 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.

The Trust Board recommends:

➢ a change from discretionary to non-complying activity status; and
➢ if discretionary activity status is retained, not exceeding the average nitrogen, phosphorus, sediment, or microbial pathogen discharges of any farm over the period 2013 – 2018 is made a threshold criteria for eligibility to apply for discretionary activity consent.

**Nitrogen loss cap**

57 The Trust Board supports interim measures to reduce nitrogen leaching in catchments with high nitrate/nitrogen levels. This has been a key focus of Plan Change 1.

**Exclude stock from waterways**

58 The Trust Board has long supported stock exclusion, and endorses the two-tier approach involving:

a. National standards for stock exclusion from wetlands, lakes and rivers more than one metre wide, and for setbacks, enforced by regional councils for larger waterbodies.

b. Requiring farmers to also to have a freshwater module in their farm plan setting out how and when they will exclude stock from rivers and streams less than a metre wide, and drains.

**Apply standards for intensive winter grazing, feedlots and stock holding areas**

59 The Trust Board supports:

a. the application of standards for intensive winter grazing, feedlots and stock holding areas.

b. proposed measures to restrict feedlots; and

c. proposed measures to reduce pollution from stockholding areas.

**NATIONAL POLICY DIRECTION**

**New freshwater planning process**

60 The Trust Board will address its position on this process in a submission on the Resource Management Amendment Bill direct to the Environment Select Committee.

**Māori values in freshwater planning**

61 The Trust Board understands that there are two proposals to strengthen the requirement to identify and reflect Māori values in freshwater planning.

62 The Trust Board supports Proposal 1 - to consolidate and elevate the two existing mahinga kai values in the NOF to become a single compulsory value:

a. Proposal 1 is necessary to ensure regional councils are compelled to provide for mahinga kai values, just as they currently do ecosystem and human health.

b. The Trust Board agrees that mahinga kai values and attributes must be determined at the local level; national level attributes for mahinga kai would completely undermine the whole concept of mahinga kai for Ngāti Tūwharetoa, which necessarily stems from our whakapapa with our rohe.

63 We have heard from officials that the intention of proposal two was to weave Section 3.3 into the NOF. The Trust Board supports Proposal 2 - to create a new ‘tangata whenua freshwater values’ category in the NOF, but not in substitution for Proposal 1, as the exact policy weight (and therefore, compulsion) associated with Proposal 2 is unclear.13

64 The Trust Board notes the following in relation to Proposal 1:

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13 The “how it would work” section on the Discussion Document does not explain this.
a. Only Ngāti Tūwharetoa can determine mahinga kai values in our rohe, set the relevant measures appropriate for those values, and monitor progress to achieving them. The current draft NPSFM simply proposes to include mahinga kai as an additional compulsory value in Appendix 1A. Amendments are required to Draft NPSFM clauses 3.7 – 3.14 to reflect the role for iwi an hapū.

b. An important element that is missing from the information on both proposals is clarity around funding sources for iwi and hapū. For the reasons outlined at paragraph [38] above, funding to support us to identify Ngāti Tūwharetoa mahinga kai values and attributes is absolutely critical.

ECOSYSTEM HEALTH

New attributes

65 The Trust Board supports the addition of the new attributes for ecosystem health to the NPSFM, which will better assist in measuring physical and chemical water quality.

Swimmable standard

66 The Trust Board supports the swimmable standard as a first step, recognising that it applies only to ‘primary contact sites’ in summer.

67 The Plan Change 1 long-term outcome statement that the Trust Board developed (together with other Waikato and Waipā River Iwi) for the quality of water in the Waikato and Waipā River catchments, was that the Rivers needed to be restored to a level that is safe for people to swim in and harvest kai from over their entire lengths. Swimmable included in all seasons across a range of flows, with the understanding that different standards might apply at flood flows.

No further loss of wetlands

68 The Trust Board supports the proposals to preserve and enhance wetlands, which we understand involve:

a. Through the Draft NPS-FM, regional councils being required to identify all existing natural inland wetlands, monitor their health, set policies to protect them, and think about how to make restoration easier.

b. Through the Draft NES, restrictions on activities considered the most destructive to inland and coastal wetlands: drainage, damming, diversion, water takes, reclamation, or disturbance of the bed, or clearance of indigenous vegetation.

Protect threatened indigenous freshwater species

69 The Trust Board has a unique relationship with the indigenous freshwater fishery within Taupō Waters, preserved by section 14(2) of the 1926 Act. Which reserves to the members of Ngāti Tuwharetoa tribe the right to fish for and catch for our own use any indigenous fish. The Taupō Fishery Regulations 2004, issued pursuant to sections 48 and 48A of the Conservation Act 1987 and section 14 of the 1926 Act, give effect to this relationship.

70 Accordingly, the Trust Board welcomes the proposed threatened indigenous freshwater species compulsory value, which will assist in ensuring that sufficient wai is available to support our the Taupō Waters indigenous fishery.

Provide for fish passage

71 The Trust Board understands that the fish passage proposal is to require regional councils to provide for fish passage in line with existing voluntary guidelines, both in plan-making and consenting, and in imposing design requirements on some types of new in-stream structures less than four metres high.
While the Trust Board welcomes the proposal, we note the limited application to “only some types of new structures.”

➢ The Board recommends that existing structures are also included in these proposals.

**DRINKING AND STORMWATER**

The Trust Board acknowledges the work the Government is currently undertaking on this important kaupapa. To date, the engagement between the Trust Board DIA has been positive and constructive.

We also 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 understand that legislation will be required to operationalise the new regulator and the Crown is working towards introduction of a Bill late this year.

The Trust Board expects to continue to be engaged on this kaupapa.

**Drinking water**

The Trust Board supports:

a. A centralised drinking water regulator (subject to the Trust Board’s further comments in paragraphs 80 and 81.

b. Equal Māori governance on the regulator. In that regard, the current draft design for the regulator requires further work that the Trust Board looks forward to being involved in.

c. Additional, specific and secured on-going funding for marae and papakāinga that will come under the regulations.

d. Further work being undertaken to determine how the regulator will ensure Treaty relationship with iwi, alongside ensuring the ongoing protection of the Trust Board’s property rights is appropriately taken into account and given effect to.

e. Further work being undertaken to show how the Trust Board could undertake the monitoring, enforcement and / or compliance function of the regulator, with respect to Taupō Waters, being undertaken by the Trust Board.

f. If there is a change to current government policy and the Crown look to charge, even on a cost recovery basis, for access to drinking water at a National level then the Trust Board as owner of Taupō Waters must be engaged directly. The Trust Board’s current position is based on the government not charging for access to drinking water.

The Trust Board does not support:

a. A Māori Advisory Committee/s. Co-governance is our expectation.

b. The EPA, in its current form, as the regulator. Independence is required and, in the Trust Board’s view, the EPA in its current form is not the appropriate place for the regulator to be housed.

The Trust Board notes further that the regulator staff must be suitably qualified including with suitable Māori expertise.

**Stormwater and wastewater**

Taupō Waters is unique given the Trust Board’s ownership and kaitiaki relationship over its taonga.
The Trust Board is comfortable with National bottom lines subject to the Trust Board developing higher standards for Taupō Waters that must be agreed to.

The Trust Board intends to continue discussing the option of the Trust Board undertaking some of the relevant regulatory functions over stormwater and wastewater for Taupō Waters.

FLEXIBILITY FOR DEVELOPMENT OF TANGATA WHENUA ANCESTRAL LAND

Plan Change 1 includes provision for the flexibility of the use of land returned under Treaty of Waitangi settlement processes and Māori freehold land under the jurisdiction of Te Ture Whenua Māori Act 1993. The relevant provisions include Objective 5 and Policy 16.

Objective 5 and Policy 16 of Plan Change 1 provide policy guidance to the Council for applications for use of tangata whenua ancestral land that falls to be considered as a non-complying activity. The decision-maker is obliged to (among other things) ‘recognise and provide for’ the relationship of tangata whenua with their ancestral lands when assessing the appropriateness of the proposed land use. The intent is to address past and future inequities and impediments to the flexible use of Māori land.

The policy approach recognises and seeks to affirmatively address the historical and contemporary restrictions placed on Māori freehold and Treaty settlement land, and ensures Plan Change 1 does not provide a further impediment to the use and development of tangata whenua ancestral land (which, in the case of Treaty settlement land, creates a new prejudice in respect of lands that were provided with the intention of redressing past prejudice).

Provisions related to the development of tangata whenua ancestral land are consistent with section 6(e) and upholding the principles of the Treaty of Waitangi, which includes active protection of the right to economic development (as recognised by the Supreme Court in Ngai Tai ki Tamaki Tribal Trust v Minister of Conservation14).

CONTACT

Please direct all communications to the Trust Board in relation to this submission to Nāku iti nei, nā Natural Resources Manager at (Personal details removed).