APPENDIX ONE

A BRIEF CUSTOMARY HISTORY OF THE NELSON AND TASMAN DISTRICT

1. In the 1820s and 1830s, mana whenua then living in Te Tau Ihu were conquered by tribes from the North Island, including Ngāti Rārua, Ngāti Awa (now known as Te Ātiawa), Ngāti Tama and Ngāti Koata. This tribal grouping is known as Ngā Tāngata Heke – the people of the Heke. The Heke were the series of migrations back and forth from the north to the south, including to Te Tau Ihu, in the early 19th century from the Kāwhia and Taranaki coasts. These migrations are remembered in the collective memory of the people as a series of named Heke.

2. By 1830, it was established that the hapū who held Māori customary title or mana whenua in Nelson, Tasman Bay and Golden Bay were the descendants of the four Tainui-Taranaki iwi of Ngāti Koata, Ngāti Rārua, Ngāti Tama and Te Ātiawa.

3. The four Tainui-Taranaki iwi in western Te Tau Ihu are recognised as the mana whenua on the basis of acquiring Māori customary title through a combination of take (raupatu (conquest) and tuku (gift)) and ahi kā roa (keeping the fires alight, by occupation or in other recognised ways). Over time, the whakapapa of the migrant iwi from the north became, as the Waitangi Tribunal has put it, ‘embedded in the whenua through intermarriage with the defeated peoples, the burial of placenta (whenua) and the dead, residence, and the development of spiritual links.’

4. From the time of the heke onwards, Māori customary title manifested itself in western Te Tau Ihu (Nelson, Tasman Bay and Golden Bay) as an exclusive right to land, with the power to exclude others if necessary, with the ability to dictate how land and resources was used and accessed.

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9 Waitangi Tribunal, Te Tau Ihu o Te Waka a Maui, vol III, 1366.
Ngāti Rārua, Te Ātiawa, Ngāti Tama and Ngāti Koata did not move to Te Tau Ihu en masse, but particular whānau and hapū, or sections of particular whānau and hapū, from those iwi settled in a staged series of migrations, with land allocated in various locations as different groups arrived.

The pattern of mana whenua in Te Tau Ihu was dictated by the pattern of settlement, in which each kāinga (village) was established around a chief or chiefs and each kāinga was home to extended whānau, with most residents at each kāinga related by blood or marriage. The whānau or hapū (an extended whānau or cluster of whānau could equally be described as a hapū) tended to establish themselves at locations where their neighbouring communities were relatives and/or close allies.

By 1840, whānau or hapū belonging to the four Tainui Taranaki iwi were established in Nelson, Tasman Bay and Golden Bay as the mana whenua.

The arrival of the New Zealand Company

When the New Zealand Company ("NZ Company") arrived in the South Island in 1841, rangatira [tribal leaders] representing the families of those whānau or hapū who held mana whenua and who were resident in western Te Tau Ihu negotiated with Captain Arthur Wakefield of the NZ Company and agreed to welcome European settlement in parts of the Nelson, Motueka and Golden Bay area.

One of the main reasons for this agreement, from the Māori perspective, was to promote trade relationships between European settlers and Māori for mutual benefit, bearing in mind that tribes of Te Tau Ihu had already had several decades of contact with European traders prior to 1841.
10. According to the arrangements a major benefit promised by the NZ Company when it entered into what it called ‘Deeds of Purchase’, was that the resident Māori and their families who held mana whenua in the relevant parts of western Te Tau Ihu (Nelson, Motueka and Golden Bay), would be entitled to retain all existing Māori settlements, including urupa, wāhi tapu and cultivated land, and in addition reserves would be set aside comprising one-tenth of the land purchased. These additional land reserves became known as the Nelson Tenths Reserves (“Tenths Reserves”).

11. As a result of the negotiations between the NZ Company and tāngata whenua, the Crown issued a grant in 1845 which extinguished Māori aboriginal (or customary) title over 151,000 acres in Nelson and Tasman (the Nelson settlement). The 1845 Crown Grant excluded all existing Māori settlements, including urupa, wāhi tapu and cultivated land, along with one-tenth of the total area of land acquired for European settlement (15,000 acres).

12. The Crown intended to hold the Tenths Reserves on trust on behalf of and for the benefit of the tāngata whenua who were those families who held Māori customary title to the 151,000 acres in the 1840s.

13. Despite the guarantees and the provisions stipulated in the 1845 Crown Grant, the Crown failed to reserve a full one-tenth of land or exclude settlements, urupa, wāhi tapu and cultivated land from European settlement.

14. On completion, the NZ Company’s Nelson Settlement comprised approximately 172,000 acres, although it is likely a much larger area of approximately 460,000 acres was eventually acquired by the Crown.

15. As at 1850, the Nelson Tenths Reserves comprised only 3,953 acres (this figure does not include the designated Occupation Reserves).
16. Between 1841 and 1881, Crown officials administered the Tenths Reserves and the occupation reserves on behalf of the original owners. From 1882, the Public Trustee administered the estate.

**Identifying the original land owners**

17. In 1892–1893, the Native Land Court undertook an inquiry to ascertain who owned the land in Nelson, Tasman Bay and Golden Bay prior to the transaction with the New Zealand Company. The reason for this inquiry was to determine the correct beneficiaries of the Tenths Reserves trust.

18. The Native Land Court Judge (Judge Alexander MacKay) considered that the “New Zealand Company Tenths” (as he called them) had been set aside in accordance with the NZ Company’s stipulation in the Kapiti Deed that it would hold a portion of the land on trust, and accordingly he decided that to ascertain those persons with a beneficial interest “it was necessary to carry back the inquiry to the date the land comprised in the original Nelson Settlement was acquired by the Company”.

19. The Court’s ruling determined the ownership of the 151,000 acres “at the time of the Sale to the New Zealand Company”, with the ownership of the four hapū – Ngāti Koata, Ngāti Tama, Ngāti Rārua and Ngāti Awa – broken down according to each of the areas awarded by Commissioner Spain in 1845 (Nelson district, 11,000 acres; Waimea district, 38,000 acres; Moutere and Motueka district, 57,000 acres, and Massacre Bay, 45,000 acres).

20. The Judge’s ruling included a determination:

*That although the Reserves made by the Company were situated in certain localities the fund accruing thereon was a general one in which all the hapū who owned the territory comprised within the*
Nelson Settlement had an interest proportionate to the extent of land to which they were entitled, at the time of the Sale to the Company.

21. The Court requested each of the hapū so entitled to provide lists of the persons who were the original owners of the land at the time of the New Zealand Company’s arrival and their successors.

22. Importantly, therefore, the 1893 lists were not drawn up by the Native Land Court, but by the people. The evidence of how this was done is consistent with a tikanga Māori style process where the lists were debated and revised until consensus is reached.

The Crown’s management of the land

23. From 1842 until 1977, when the original owners regained control of their lands, the Crown held the Tenths Reserves and occupation reserves in trust and managed it on behalf of its owners.

24. From 1882 onwards, the Public Trustee, Native Trustee and Maori Trustee administered the Tenths Reserves and occupation reserves on behalf of the original owners and their descendants. During this period, a great deal of land was either sold or taken under public works legislation - in many cases without the owners’ consent and without compensation for the loss.

25. A clear example of the Crown’s mismanagement during this period is illustrated by the imposition of perpetual leases on the Tenths Reserves and occupation reserves. By way of legislation, the Crown imposed perpetual leases on the land, which for example, allowed for 21-year rent review periods, rents below market value, and perpetual rights of renewal for lessees. In practice this meant the Māori owners could not access or use their land, nor did they receive adequate rent for leasing the land. The
problems associated with the perpetual lease regime continue to impact adversely on the submitters’ land, despite some legislative changes in 1997.

26. In the period to 1977, as a result of the Crown’s mismanagement, the Tenths Reserves estate was reduced to 1,626 acres.

**Proprietors of Wakatū (Wakatū Incorporation)**

27. By the 1970s, the descendants of the original owners were lobbying for the return of their land to their control and management. This led to a Commission of Inquiry (the Sheehan Commission) into Māori Reserved Lands.

28. Our establishment was the result of recommendations made by the Sheehan Commission of Inquiry that the Tenths Reserves should be returned to the direct ownership and control of Māori. This recommendation was implemented by the Wakatū Incorporation Order 1977, which according to its explanatory note constituted “the proprietors of the land commonly known as the Nelson-Motueka and South Island Tenths”.

29. The land vested in Wakatū Incorporation comprised the remnants of the Tenths Reserves and occupation reserves and the beneficial owners of the land were allocated shares in the same proportion as the value of their beneficial interests in the land transferred.

30. With a few exceptions, those beneficial owners were the descendants of the 254 tūpuna identified as beneficial owners by the Native Land Court in 1893. Wakatū can therefore trace the genesis of a large portion of the land in its estate back to the initial selection of the Tenths Reserves in 1842.
Wakatū Incorporation today

31. Wakatū is the kaitiaki and legal trustee of the remnants of the Tenths Reserves and occupation reserves. Wakatū Incorporation is responsible for the care and development of the owners’ lands.

32. The Incorporation represents approximately 4000 Māori land owners in Nelson, Tasman Bay and Golden Bay. Apart from the Crown and local authorities, Wakatū is one of the largest private landowners in the Nelson/Tasman regions.

33. Since 1977, the owners of Wakatū have built a successful organisation that has contributed to the economic growth of the Tasman District and the economic, social and cultural well-being of the descendants of the original owners.

34. Wakatū Incorporation’s primary focus is based around its management and use of the ancestral lands of the owners for their cultural and economic sustenance. Today, this comprises a mixture of leasehold land, commercial land and development land.

35. Wakatū has interests in horticulture, viticulture and aquaculture (Kono NZ LP) throughout the Tasman and Nelson District as well as in other parts of New Zealand.

36. The principles and values of Wakatū Incorporation are reflected in its guiding strategic document – Te Pae Tāwhiti.

Further information

37. A full history of the lands administered by Wakatū Incorporation, along with Ngāti Rārua Ātiawa Iwi Trust, Rore Lands, and other whānau and iwi
trusts, who own land in the Nelson and Tasman region is set out and discussed more fully in the Waitangi Tribunal, Te Tau Ihu o te Waka a Maui report. Also see www.wakatu.org.nz for further information.
APPENDIX TWO

NATIONAL FRESHWATER AND GEOTHERMAL RESOURCES CLAIM:
SUMMARY OF WAITANGI TRIBUNAL STAGE 2 REPORT

Findings

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

2. 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.

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

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

5. 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.

6. 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.
7. 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.

Specific comments on three major reforms completed to date, to address Māori rights and interests in fresh water:

8. The Crown has included section D in the National Policy Statement for Freshwater Management (NPS-FM), which requires councils to ‘involve’ Māori in freshwater management, and to work with iwi and hapū to ensure that their values are identified and reflected in freshwater management. Section D is not Treaty compliant: it needs to specify a direct, co-governance level of involvement in freshwater decision-making to satisfy Treaty standards.

9. The Iwi Leaders Group’s concept ‘Te Mana o te Wai’, which requires the health of freshwater bodies to come first in freshwater management, has been included in the NPS-FM. In our view, this has the potential to make the national policy statement a more powerful instrument for the recognition of Māori values in freshwater management and the exercise of kaitikitanga. Te Mana o te Wai is also a vehicle for wider community as well as Māori values in respect of healthy water bodies. There is a strong risk, however, that the potential may not be fulfilled due to the weakness of section D, the relative weakness of the operative provision for Te Mana o te Wai (objective AA1), and the severing of Te Mana o te Wai from the National Objectives Framework.

10. Mana Whakahono a Rohe (iwi participation) arrangements have been included in the RMA through the Resource Legislation Amendment Act 2017. The version that was enacted in 2017 was watered down from that proposed by the Iwi Leaders Group. In reality, it is a mechanism for councils and iwi to do the things that schedule 1 of the Act already required.
them to do. Anything extra comes under the parts that the parties may discuss and agree but there is no requirement for them to do so.

**Process of engagement**

11. Mana Whakahono a Rohe arrangements and the strengthening of Te Mana o te Wai in the NPS-FM were two outcomes of the 'Next Steps for fresh water' process, in which the Crown and the Iwi Leaders Group worked intensively to co-design reform options (as noted) in 2015–16. Although this was a promising process, its outcomes were disappointing in Treaty terms. This was mainly because the Crown did not make decisions in partnership but reserved all decision-making to itself.

12. The results of the 'Next Steps' process were not Treaty compliant. So many essential reform options were omitted or not followed through. There were no reforms to the RMA’s participation provisions, no reforms to address resourcing and capacity (other than a training programme), no enhancement of iwi management plans, no strengthening of section D of the NPS-FM, no agreement in principle on an allocation to iwi and hapū, no recognition of Māori proprietary rights, no funding for marae water supplies – the list goes on. The 'Next Steps' reforms, which include the Mana Whakahono provisions and the strengthening of Te Mana o te Wai, have not made the RMA and its freshwater management regime Treaty compliant.

**Content comments (relevant to Māori interests)**

13. In our view, each iteration of the NPS-FM failed to meet the Treaty standard of active protection of freshwater taonga. There are no compulsory Māori values in the National Objectives Framework, no national bottom lines for Māori values, and no cultural indicators.
14. In terms of allocation, 16 years have gone by and the first-in, first served system is still in operation. The Crown supported an allocation for Māori land development during ‘Next Steps’ but would not consider the Iwi Leaders Group’s proposal for allocations to iwi and hapū.

15. The Crown must now recognise Māori proprietary rights and provide what the New Zealand Māori Council called ‘proprietary redress’.

Key Recommendations

Part 2 of the RMA

16. Section 6 – The amendment of section 6 to include Te Mana o te Wai as a matter of national importance that must be recognised and provided for by RMA decision makers.

17. Section 8 – Be amended to state that the duties imposed on the Crown in terms of the principles of the Treaty of Waitangi are imposed on all those persons exercising powers and functions under the RMA.

Co-governance and co-management

18. National co-governance body for fresh water – A national co-governance body should be established with 50/50 Crown–Māori representation, to ensure that Treaty principles and Māori values, rights, and interests are fully incorporated in freshwater policy and management. The details should be arranged between the Treaty partners. We also recommend that the national co-governance body should assess whether a separate Water Act is necessary. Whether such an Act is required or not, we do not recommend the duplication of authorities at the regional level. Land, water, and other natural resources should be managed in an integrated manner by regional councils on a co-governance/co-management basis with iwi and hapū.
19. Sections 33 and 36B –
   a. Should be amended to remove statutory and practical barriers to their use, to provide incentives for their use, and to compel councils to actively seek opportunities for their use. Sections 33 and 36B should also be amended so that transfers of power and Joint Management Agreements cannot be revised or cancelled without the agreement of both parties. Section 33 should be amended so that transfers of power in respect of a water body or water bodies may be made to hapū. Joint Management Agreements for water bodies should apply to the whole catchment of a water body, and should include (among other things) ‘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. Should also be amended to include a process for iwi authorities to apply to councils for transfers and Joint Management Agreements. A mandatory process of engagement would follow any application, with mediation and the assistance of the Crown (or the co-governance body for freshwater applications) to be available as required.

20. Mana Whakahono a Rohe - should be amended to make the co-governance and co-management of freshwater bodies a compulsory matter that must be discussed and agreed by the parties. Other matters could also be made compulsory (as discussed in chapter 4), and the Crown should discuss and agree to any such further proposed amendments with the ILG, which designed the original Mana Whakahono a Rohe proposal.

21. Objective D1 of the NPS-FM - 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 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). Consequential amendments should be made in policy D1, 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.

22. **Iwi management plans** – The provisions for iwi management plans should be amended to provide that, in the case of water bodies where co-governance and co-management has not been arranged, the iwi and hapū management plans filed by kaitiaki will have greater legal weight in the process of developing or amending regional plans and in consenting processes.

23. **Co-governance / co-management agreements** – should be offered for freshwater bodies in all future Treaty settlements, unless sole iwi governance of a freshwater taonga is more appropriate in the circumstances.

**Resourcing**

24. **Addressing under-resourcing** - The Crown should urgently take such necessary action(s) to ensure that under-resourcing no longer prevents iwi and hapū from participating effectively in RMA processes, including freshwater management and freshwater decision-making.

25. **Freshwater resourcing** - In respect of fresh water, the resourcing measures be developed, and their effectiveness monitored, by the national co-governance body. If the national co-governance body has not been established, that role should be performed by the Crown in partnership with the Iwi Chairs Forum and NZMC. Because this issue of resources is not confined to RMA processes relating to fresh water, we have not specified the ILG and Te Kahui Wai Māori here. This recommendation
includes the building of capacity and capability for iwi and hapū to enter into co-governance and co-management arrangements and Mana Whakahono a Rohe arrangements, and support for both councils and Māori to establish those arrangements.

Co-design

26. That the Crown continue its approach of co-design of policy options with a national Māori body or bodies and that this should be made a regular feature of government where Māori interests are concerned.

Water quality

27. That water policy (including water quality standards and national bottom lines) be decided by or in conjunction with the national co-governance body, with the details to be arranged between the Treaty partners.

28. If such a body is not established, or agreement cannot be reached between the Crown and Māori representatives, we recommend the following amendments to the NPS-FM:

a. Overall aim - The overall aim of the NPS-FM should be the improvement of water quality in freshwater bodies that have been degraded by human contaminants, so as to restore or protect the mauri and health of those water bodies, while maintaining or improving the quality of all other water bodies. The board of inquiry's objectives E1 and E2, from the board’s report in 2010, should be inserted in the NPS-FM and consequential changes made.

b. NOF - The NOF should be fully populated as soon as practicable, including the development and insertion of the attributes that have been omitted (the details are in chapter 5), so that national water quality standards are comprehensive and effective. This should
include attributes and bottom lines for wetlands, aquifers, and estuaries, and more effective controls for nutrients.

c. **National bottom lines** - More stringent national bottom lines should be set so as to **recognise** and provide for Māori values (including Te Mana o te Wai – the health of the water body must come first) and the revised overall aim of the NPS-FM.

d. **Māori values** - Te Mana o te Wai, and such other Māori values as the national co-governance body decides or recommends, should be made compulsory national **values** in the NOF, with national bottom lines. Cultural indicators should also be added to the NOF.

e. **Te Mana o te Wai** - Objective AA1 and policy AA1 should be amended to state that Te Mana o te Wai must be recognised and provided for, in conjunction with the amendments to objective D1 as recommended above (a direct involvement of Māori in freshwater decision-making).

f. **Timeframes** - Timeframes for implementation should be reassessed, and interim measures be arranged (perhaps through National Environmental Standards) to ensure that water bodies are not further degraded in the meantime.

29. We also recommend that:

a. **Stock exclusion** - National stock exclusion regulations be promulgated urgently.

b. **NES** - The Crown and the national co-governance body should consider the promulgation of National Environmental Standards, including a standard for ecological and cultural flows (which has been on hold for some years).
c. **Wetland Protection** - The Crown and the national co-governance body should devise measures and standards urgently for the absolute protection of wetlands. This may require statutory amendment, regulations, or some other tools, or a combination of all of these.

d. **Native fish species** - The Crown and the national co-governance body should also take urgent action to develop measures for habitat protection and habitat restoration, and any other measures necessary to save three-quarters of freshwater native fish species from the threat of extinction. The development of attributes and bottom lines for the Mahinga Kai value in the NOF would be one of the necessary actions.

e. **Sewage effluent disposal to land** - The Crown and the national co-governance body should develop measures to encourage and assist councils to dispose of sewage effluent to land wherever feasible.

30. If the national co-governance body has not been established, these recommendations should be carried out by the Crown in partnership, and on a co-design basis, with the Freshwater ILG, the NZMC, and Te Kāhui Wai Māori.

31. **Funding for restoration** - we recommend that the Crown provide funding and that, where possible, levies on commercial users also be applied funding and that, where possible, levies on commercial users also be applied for the restoration of water bodies. The co-governance body should design and oversee a programme for restoration of freshwater bodies, which could involve it in considering and deciding applications and monitoring projects. This body should also identify priorities for the restoration of freshwater taonga. While that programme is being developed, we recommend that the Crown continue to fund projects for
freshwater quality improvement. We also recommend that the Crown and the co-governance body should consider retaining the Te Mana o te Wai Fund as a long-term fund for the restoration of degraded freshwater taonga.

Māori proprietary rights and economic interests vis-à-vis the allocation regime

32. **Proprietary redress** - We recommend that the Crown recognise Māori proprietary rights and economic interests through the provision of what the NZMC has called ‘proprietary redress’.

33. **Te Mana o te Wai** - The allocation regime should be reformed so as to recognise and provide for Te Mana o te Wai, and this should be done urgently.

34. **First-in, first-served system of allocation** - should be replaced, and over-allocation phased out.

35. **Partnership with Māori** - The Crown should devise a new allocation regime in partnership with Māori, including through the national co-governance body.

36. **Allocation on percentage basis** - The Crown should arrange for an allocation of water on a percentage basis to iwi and hapū, according to a regional, catchment-based scheme to be devised by the national co-governance body in consultation with iwi and hapū. If any iwi, hapū, or local authority reports that catchment circumstances do not allow the allocation to be made, the national co-management body should hold an inquiry on that matter, and investigate possibilities for the creation of head room, as well as any alternatives to the allocation (including the possibility of compensation). All allocations to iwi and hapū should be perpetually renewable and inalienable other than by lease or some other form of temporary transfer.
37. **Allocation for development of Māori land** - The Crown should also arrange for an allocation of water for the development of Māori land (including land returned in Treaty settlements), where such allocation is sustainable, according to a scheme to be devised by the national co-governance body.

38. **Other mechanisms for proprietary redress** - The national co-governance body should investigate other possible mechanisms for 'proprietary redress', including royalties, as there is insufficient evidence for the Tribunal to make a recommendation to the Crown. We think this should include leading a wider conversation within Māoridom on proprietary rights and how these might be recognised.

39. If the co-governance body is not established, then the Crown should carry out these recommendations in partnership (and on a co-design basis) with the Freshwater ILG, the NZMC, and Te Kāhui Wai Māori.

*Monitoring and enforcement*

40. **Treaty performance** - The Crown should monitor the Treaty performance of local authorities. For freshwater matters, this should be carried out by the co-governance body.

41. **Regular Council reports to PCE** - Councils should also make regular reports on their activities in respect of section 33 and 36B to the Parliamentary Commissioner for the Environment or – in the case of freshwater bodies – to the co-governance body if it is established.

*Clean, safe drinking water for marae and papakāinga*

42. **Urgent funding and expertise** - The Crown provide urgent assistance, including funding and expertise, for water infrastructure and the provision
of clean, safe drinking water to marae and pākāinga. This will likely need to include a subsidy scheme.

**Water supply and infrastructure scheme** - The national co-governance body should devise an appropriate water supply and infrastructure scheme for marae and pākāinga, which may need to be developed and implemented with or alongside a scheme for safe, clean rural water supplies. If the national co-governance body is not established, the Crown should develop and implement a scheme in partnership with Māori on a co-design basis and with co-governance of the scheme.