

6 March 2020

Hon Minister David Parker  
Parliament Buildings  
Private Bag 18041  
WELLINGTON 6160

By email

Tēnā koe e te Minita,

### **ESSENTIAL FRESHWATER PACKAGE – TE KĀHUI WAI MĀORI**

1. We refer to the ongoing work by Te Kāhui Wai Māori engaging with officials in respect of the *Essential Freshwater* policy package (the **Package**).
2. By joint letter dated 5 March 2020 you received confirmation from Te Kāhui Wai Māori, together with the Regional Sector Water Subgroup and the Freshwater Leaders Group about our position on certain matters touching on that Package.
3. We are also aware that today you have received an omnibus briefing setting out Independent Advisory Panel (**IAP**) recommendations, and officials' views and recommendations for your decision prior to impact testing.
4. The purpose of this letter is to indicate select Te Kāhui Wai Māori positions on the broader Package. Those positions concern:
  - a. the status of Te Mana o te Wai and the hierarchy of obligations in the National Policy Statement or Freshwater Management (**NPS-FM**);
  - b. provision for mana whakahaere in the NPS-FM; and
  - c. resourcing tangata whenua involvement in implementing the mahinga kai compulsory value;
  - d. defining Māori terms, namely ki uta ki tai and mātauranga Māori, in the NPS-FM.

### **Te Mana o te Wai, hierarchy and long-term vision**

5. The IAP have suggested the removal of the directive 'give effect to' language regarding Te Mana o te Wai, diluting the hierarchy of obligations to avoid legal challenge, and removing the requirement to set a long-term vision.
6. We agree with officials that 'give effect to', the hierarchy of obligations and the long-term vision must continue to be reflected in drafting for the following reasons:
  - a. Te Kāhui Wai Māori has consistently advocated for the NPS-FM to "give effect to" Te Mana o te Wai. This directive drafting has received overwhelming support from submitters. Giving effect to Te Mana o te Wai is consistent with the intent and purpose of the RMA. It is in the nations interests that we give effect to Te Mana o te Wai, thereby protecting freshwater and its values.
  - b. We do not consider that the legal challenge that the IAP allude to will result. The hierarchy of obligations is not in conflict with the purpose of the RMA. In

fact, it gives substance to the purpose and principles of the RMA in relation to the sustainable management of fresh water. The hierarchy of obligations underscores in particular the National Objectives Framework and the long-term vision and is a key component in practice to the limit-setting process.

- c. Te Ture Whaimana (the Vision & Strategy for the Waikato River) demonstrates the benefits of having a clear long-term view and that each plan that is developed contributes to achieving this vision.

7. We therefore support officials' proposals to:

- a. **Retain** Te Mana o te Wai as the fundamental concept of the NPS-FM and **clarify** in drafting how Te Mana o te Wai is described and woven into the instrument.
- b. **Clarify** the underlying policy intent in the drafting of the hierarchy of obligations and how councils are expected to give effect to Te Mana o te Wai.
- c. **Retain** the long-term vision requirement in the NPSFM and **clarify** its role and scale.

s 9(2)(h) [Redacted]

8. s 9(2)(h) [Redacted]

9. s 9(2)(h) [Redacted]

10. s 9(2)(h) [Redacted]

### Resourcing tangata whenua in NOF implementation

- 11. In relation to NOF implementation, tangata whenua values, including the mahinga kai compulsory value, are matters that only tangata whenua can identify.
- 12. Tangata whenua need to be supported and resourced by Councils to undertake this work, just as experts are to undertake NPF implementation for other plan values. To that end, we consider that express drafting requiring tangata whenua to be "supported and resourced" is required in the Draft NPS-FM. Nothing in the RMA prevents the NPS-FM from providing such a policy direction.

### Defining Māori terms

- 13. The IAP has suggested that *ki uta ki tai* and *mātauranga Māori* in the NPS-FM should be defined, and have proposed definitions. Te Kāhui Wai Māori does not agree that national definitions are appropriate. These are concepts that have long been included in resource management planning documents and are understood. Omitting a definition ensures these concepts are not shackled to a particular formula, which would be highly inappropriate.

**He kupu whakakapi**

14. We are happy to discuss these matters when we meet with you to discuss the rights, interests and obligations proposals in late March 2020.

Nāku i roto i ngā mihi,  
**Te Kāhui Wai Māori**



**Kingi Smiler**  
Chairperson