

He tono nā



**Te Rūnanga o NGĀI TAHU**

ki te

**MINISTRY FOR THE ENVIRONMENT**

e pā ana ki te

**THE PROPOSED AMENDMENTS TO THE NATIONAL POLICY STATEMENT FOR  
FRESHWATER MANAGEMENT 2011**

4 February/Kahuru 2014

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contact person

[ withheld ]

## **1. EXECUTIVE SUMMARY**

1.1. Te Rūnanga o Ngāi Tahu (Te Rūnanga) supports in principle:

- the intent of the proposed reforms to the National Policy Statement for Freshwater Management (NPS-FM); and
- the National Objectives Framework (NOF) as it is a step in the right direction towards improving better water quality outcomes; and
- inclusion of Te Mana o te Wai as an aspirational goal.

1.2. However, Te Rūnanga notes that:

- appropriately recognising and providing for iwi rights and interests in freshwater is critical to developing a durable and sustainable water management regime that provides the certainty required for ongoing investment in the economy; and
- more concerted work is required to ensure that the NOF framework appropriately provides for iwi values.

1.3. In this respect, the NPS-FM is but a starting point and much more focused work is required throughout the wider freshwater reform process to satisfactorily address the issue of iwi rights and interests in freshwater and improvement to water quality across the country.

## **2. STATEMENT OF POSITION AND OVERALL RECOMMENDATIONS**

2.1 It is the position of Te Rūnanga that:

- The substantive reforms in relation to the management and use of freshwater is welcomed;
- The future health and wellbeing of our waterways is a matter of utmost importance to Ngāi Tahu whānui, all iwi and all New Zealanders;
- Te Rūnanga is an active member of the Land and Water Forum and supports the recommendations of the three reports. Te Rūnanga supports these reforms in the manner in which they give effect to the LaWF recommendations;
- There needs to be more thorough analysis which assesses the inter-relationships between various reforms which will be used to ensure the right mix of measures are adopted to achieve the desired outcomes;
- Te Rūnanga is committed to the relationship with the Crown and looks forward to continued, meaningful and direct discussion about these issues with the Government (and other stakeholders) on the proposals outlined in relation to the Freshwater Reforms;
- Any enduring and sustainable framework for the future governance and management of freshwater in Aotearoa must appropriately recognise and provide for the rights, interests and responsibilities of iwi in relation to water;

- Te Rūnanga supports the Government's acknowledgement of iwi rights and interests in freshwater;
- Iwi rights and interests must be interwoven throughout the entire freshwater framework. The long term durability of the freshwater regime remains reliant on the resolution of these rights and interests (from input into management and decision-making through to a mechanism that provides for an equitable share of economic benefits);
- Te Rūnanga considers that more focused work is required throughout the reform process to satisfactorily address the issue of iwi rights and interests, which will require bold leadership at the national level. Te Rūnanga remains committed to the on-going engagement with the Crown on these matters;
- The changes must give effect to the Treaty relationship in local planning and decision-making. Te Rūnanga has historically played a constructive role in the policy development process, both nationally and locally, and we expect our partnership role to be appropriately provided for and supported by the Crown, in relation to these reforms;
- The reforms must bring about improvements for those involved in the sustainable management and use of freshwater. As kaitiaki, Ngāi Tahu whānui take a long-term view on such matters and look to the purpose and principles of the Resource Management Act (RMA) as a the framework to provide for the sustainable use of these resources;
- Te Rūnanga remains concerned with the degree of flexibility provided to councils when implementing the NOF framework. Local authorities should be required to implement the NOF in realistic timeframes to ensure freshwater resources are managed in a manner which provides for the needs of future generations;
- Improving the capacity and capability of both iwi and councils will be critical to meeting the expected outcomes for freshwater. This will require support and resources (financial included) from central government and it is of concern to Te Rūnanga that there is no indication how the Crown intends to develop capacity and capability at a regional level to enable effective participation;
- The state of the freshwater systems across Te Waipounamu vary significantly. The vast majority of water bodies are facing water quality and/or quantity issues. There is however a small body of pristine water systems which require protection. Central government should prescribe that local authorities cannot use pristine waters as a trade-off for poorer water quality outcomes elsewhere within a region. Furthermore, this framework must ensure that these water bodies are preserved in their current pristine state; and
- The Papatipu Rūnanga of Te Rūnanga have been intimately involved with the Canterbury Water Management Scheme (CWMS) since its inception. Te Rūnanga is aware that there are inconsistencies with the proposed amendments to the NPS-FM and the work of zone committees. Te Rūnanga wants to see closer alignment between national and regional reform across the freshwater framework.

2.2 The following specific overall recommendations are made by Te Rūnanga in relation to the proposed changes:

- Commit to addressing iwi rights and interests in freshwater through direct discussions between Government and iwi leaders;
- Ensure that overall freshwater reforms incorporate mechanisms compatible with satisfactory resolution of the full spectrum of iwi rights and interests from an iwi perspective;
- Provide clarity and guidance around incorporating iwi interests and values in objectives and monitoring programmes to assist delivery of Objective D;
- Address legacy issues, recognising past decisions that have degraded and continue to degrade waterways, including the issue of long term consents and the need for improved ability to correct over-allocation through adjustment of consent parameters and conditions;
- Incentivise improvement in water quality;
- Extend the NOF to incorporate the full range of freshwater bodies, including groundwater, wetlands, hāpua and waterway discharge to estuaries, and the full range of factors important to maintenance or enhancement of particular values, including sedimentation, groundwater abstraction and contamination, presence of taonga species;
- Provide further national direction and improved definition for a key water management unit;
- Provide better clarity around what 'maintain or improve' means;
- Improve guidance from central government in relation to: the exceptions policy, conflict management and resolution, the relationship of statutory acknowledgements and taonga species to freshwater values, and providing for Te Mana o te Wai in freshwater planning;
- Support further development of the concept and delivery of freshwater accounting;
- Provide sufficient resources to assist regional councils in designing appropriate freshwater accounting systems and specifically, articulate how the outcomes of accounting would feed into decision-making;
- Ensure that any accounting system is used alongside mechanisms to reduce rates and volumes of abstraction in over-allocated catchments;
- Specify the timeframe for regional councils to commence and implement a comprehensive freshwater accounting system as two years from the gazettal of the NPS-FM;
- Amend the accounting cycle for water quality so that it occurs annually;
- Demarcate an FMU at the same unit of measure as a catchment (for example: a hydrologically coherent area that includes the associated land area and land uses), unless there is compelling rationale to combine multiple catchments together (eg interconnected groundwater) or to specifically target sub-catchments;
- Ensure that setting FMUs happens in partnership with iwi at the local level;
- Support and further develop the broad concept of the National Objectives Framework (as part of the process to set robust and enforceable limits);

- Articulate, commit to and publish a comprehensive programme of action (with dedicated resourcing) to fill the science and information gaps that currently exist in order to complete a more comprehensive NOF;
- Clarify whether regional councils are measuring progress towards achieving freshwater objectives by using attribute states (eg, State B) or the actual limits that would be set in regional plans as the benchmark;
- Carefully monitor the outcomes of the National Objective Framework across Te Waipounamu (and Aotearoa) to avoid any unintended consequences or perverse outcomes of regional council decisions and track and deal with inaction (eg, reliance on 2030 timeframe).
- Support the concept of including compulsory national values for Ecological Health and Human Health;
- Review the level at which the national bottom lines are set for the compulsory value of Ecological Health to ensure the application of the national bottom lines will achieve the protection of Ecosystem Health;
- Set contact recreation or 'swimmable' as a compulsory aspirational national outcome for freshwater that the community —and indeed Aotearoa— wish to re-establish in the long-term;
- Develop Te Mana o te Wai over time so that it becomes a compulsory value;
- Support the concept of allowing exceptions to the proposed national bottom lines in specific and clearly defined situations unrelated to correctable human induced degradation (eg, where natural processes would result in the waterbody exceeding any national bottom line);
- Clearly define what is contemplated by an 'historical activity', if the exception for historical activities is to be retained;
- Discard the concept of transitional freshwater objectives and instead adopt the process framework in policy A2 of the NPS-FM;
- Incorporate Te Mana o Te Wai in the NPS-FM for Freshwater Management (NPS-FM) as an overarching "National Outcome for Fresh Water", as outlined in paragraph 13.6;
- Support the concept of monitoring (more broadly) and the development of monitoring plans;
- Provide sufficient resources to assist regional councils in designing monitoring plans and, specifically, articulate how the outcomes of monitoring would feed into decision-making;
- Clearly articulate the linkages between freshwater accounting systems and monitoring and how the two data sets would feed into freshwater decision-making; and
- Bring forward the deadlines and timeframes so that the intent of the NPS-FM is achieved within a decade, in terms of objective setting and monitoring.

### 3. TE RŪNANGA O NGĀI TAHU

3.1 This response is made on behalf of Te Rūnanga o Ngāi Tahu (Te Rūnanga). Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act).

3.2 We note for the Ministry the following relevant provisions of our constitutional documents:

Section 3 of the Act States:

*“This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.”*

Section 15(1) of the Act states:

*“Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.”*

3.3. The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of the tribal interests.

3.4. Te Rūnanga respectfully requests that the Ministry accord this response the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 50,000 members, registered in accordance with section 8 of the Act.

3.5. Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

### 4. TE RŪNANGA INTERESTS IN THE NPS-FM AMENDMENTS

4.1 Te Rūnanga notes the following particular interests in the proposed amendments to the proposed amendments to the National Policy Statement for Freshwater Management 2011.

#### ***Treaty Relationship***

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Treaty is founded.
- The management of the environment and resources within the takiwā of Ngāi Tahu Whānui, including the natural environment, for which Ngāi Tahu Whānui have kaitiaki responsibilities and over which Ngāi Tahu Whānui maintain rangatiratanga status, must take into account the principles of the Treaty of Waitangi.
- There has already been acknowledgment from the Crown of the Ngāi Tahu interests within the environment covered by the regulations through Statutory Acknowledgments as set out in the Deed of Settlement.
- Furthermore, agreed settlement outcomes and wider integrity of the Ngāi Tahu Settlement is to be protected and not marginalised or undermined as a result of any reforms relating to Freshwater Management.

- The NPS-FM including NOF and related reforms must not affect any rights or interests that Ngāi Tahu have in relation to water or other natural resources or any ability to claim such rights and interests.

#### **Kaitiakitanga**

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources, protecting taonga species and mahinga kai resources for future generations.
- Ngāi Tahu whānui are both users of natural resources, and stewards of those resources. At all times, Te Rūnanga is guided by the tribal whakataukī: “mō tātou, ā, mō kā uri ā muri ake nei” (for us and our descendants after us).

#### **Whanaungatanga**

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and ensure that the management of Ngāi Tahu assets and the wider management of natural resources supports the development of iwi members.

#### **Te Pūtea**

- Te Rūnanga through its commercial entities has significant landholdings within the Ngāi Tahu Takiwā which we are looking to make more productive within a sustainability framework which will lead best practice. Ngāi Tahu Whānui through a number of land incorporations, also have interests in the productive sector.

4.2 Te Rūnanga has a specific interest by virtue of the Ngāi Tahu Claims Settlement Act 1998 (the NTCSA). The Act provides for Ngāi Tahu and the Crown to enter an age of co-operation. An excerpt of the Act is attached as Appendix One, as a guide to the basis of the post-Settlement relationship, which underpins this response.

4.3 The Crown apology to Ngāi Tahu is a recognition of the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.

4.4 With regards to the Ngāi Tahu takiwā, Section 5 of the Te Rūnanga o Ngāi Tahu Act 1996 statutorily defines the Ngāi Tahu takiwā as those areas “south of the northern most boundaries described in the decision of the Māori Appellate Court ...” which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island.

4.5 Section 2 of the Ngāi Tahu Claims Settlement Act 1998 statutorily defines the Ngāi Tahu claim area as being:

*“the area shown on allocation plan NT 504 (SO 19900), being—*

*(a) the takiwā of Ngāi Tahu Whānui; and*

*(b) the coastal marine area adjacent to the coastal boundary of the takiwā of Ngāi Tahu Whānui; and*

*(c) the New Zealand fisheries waters within the coastal marine area and exclusive economic zone adjacent to the seaward boundary of that coastal marine area;—*

*and, for the purposes of this definition, the northern sea boundaries of the coastal marine area have been determined using the equidistance principle, and the northern sea boundaries of the exclusive economic zone have been*

*determined using the perpendicular to the meridian principle from the seaward boundary of the coastal marine area (with provision to exclude part of the New Zealand fisheries waters around the Chatham Islands)."*

(See the map attached as Appendix Two)

- 4.6 As set out above, the traditional and statutorily recognised interests of Ngāi Tahu in freshwater are significant, which is why appropriate management of this resource is of such importance to the iwi.
- 4.7 Te Rūnanga is a member of the Iwi Chairs Forum and the Freshwater Iwi Leaders Group and as such participates in direct discussions with the Crown in the Government's freshwater management reforms and related workstreams. Te Rūnanga continues to remain committed to engaging directly with the Crown on these matters.

## **5. IWI RIGHTS AND INTERESTS**

- 5.1 The position of Te Rūnanga on the proposed reforms, from a Treaty partnership perspective is that the Freshwater Reform framework must be developed in a manner which gives full effect to iwi rights and interests in a contemporary post-settlement framework.
- 5.2 Ultimately, this bundle of rights and interests must have no less a status, and where appropriate should have a greater status, than the bundle of rights and interests which have been or will be created for or recognised as being held by any existing or future users, stakeholders, landowners and the like.
- 5.3 It is for this reason that Te Rūnanga has been, and will continue to be, involved in direct discussions with the Crown (through the Freshwater Iwi Leaders Group(ILG)) and with other interested parties such as the Land and Water Forum (LAWF) and Local Government in the Government's freshwater review and related workstreams, including engagement on the issue of iwi rights and interests.
- 5.4 Te Rūnanga considers that the current work streams are positive steps to ensure continued iwi engagement with the Crown in relation to iwi rights and interests in freshwater. These processes must continue to the satisfaction of Te Rūnanga o Ngāi Tahu and the Freshwater Reforms must not prejudice the associated discussions or outcomes.
- 5.5 The current preference of Te Rūnanga is to continue dialogue with the Crown at a leadership level in relation to how best to recognise and protect Iwi rights and interests in relation to freshwater. If necessary, Te Rūnanga will consider taking further action to preserve and protect its rights and interests in this regard.

### **Recommendations**

- 5.6 Te Rūnanga recommends the following:
- Commit to addressing iwi rights and interests in freshwater through direct discussions between Government and iwi leaders; and
  - Ensure that overall freshwater reforms incorporate mechanisms compatible with satisfactory resolution of iwi rights and interests from an iwi perspective.

## 6. SECTION 2: AMENDMENTS TO THE NPS-FM

- 6.1 Te Rūnanga believes that some of the challenges with implementation have been correctly identified. However, greater direction in many areas is required such as:
- Cultural values not being embedded in goal setting and monitoring;
  - How local authorities incorporate amendments into existing policies;
  - Local councils working towards improvements in water quality rather than focussing on maintaining water quality;
  - Managing the compounding effects on the quality of freshwater on ground water/aquifers, taonga species, hāpua, estuaries, and coastal waters.
- 6.2 Te Rūnanga has consistently supported increased national guidance. Therefore, the further development of NPS-FM and National Environmental Standards is welcomed as it provides increased certainty, consistency and clarity at a regional level.
- 6.3 Te Rūnanga has also repeatedly called for integrated catchment management, ki uta ki tai, which includes decision-making that accounts for the range of factors influencing Te Mana o te Wai, such as sedimentation, groundwater abstraction, groundwater contamination and other related matters, and covers the full range of water environments, including wetlands, hāpua and estuaries.
- 6.4 Defining minimum acceptable states for water quality cannot be done in a piecemeal fashion. Te Rūnanga believes that this approach runs the risk of costly interim decision-making, both to the environment and economy. For example, currently, there is a minimum state for ecological health that does not make any reference to sedimentation. Therefore, further work needs to be done to address these inconsistencies.
- 6.5 Te Rūnanga is also concerned that Tangata whenua values are routinely articulated, but may not necessary be well understood or accommodated. Te Rūnanga believes that often issues occur when parties try to match iwi values with science (and policy) and vice versa. Therefore, better direction and involvement with iwi is required to ensure the values are articulated in policy in a way that reflects the intent of iwi. In addition, Ngāi Tahu has had iwi management plans for over twenty years that state how the iwi value water and why and what Ngāi Tahu would like to see happen. Unfortunately, the Iwi Management Plans are not utilised in a way to assist in addressing these matters.
- 6.6 Te Rūnanga is concerned with delivery of Objective D. The freshwater objectives need to be directly informed by iwi values and interests. This could be greatly improved through the introduction of the value of Te Mana o te Wai as an overarching outcome. Monitoring needs to specifically include monitoring of the performance of local authorities in relation to giving effect to Objective D.
- 6.7 Te Rūnanga recommends the following:
- Provide clarity and guidance around incorporating iwi interests and values in objectives and monitoring programmes to assist delivery of Objective D;
  - Incentivise improvement in water quality; and
  - Extend the reforms to incorporate the full range of freshwater bodies, including groundwater, wetlands, hāpua and waterway discharge to estuaries, and the full range of factors important to maintenance or enhancement of particular

values, including sedimentation, groundwater abstraction and contamination, presence of taonga species.

## **7. SECTION 3: OPTIONS FOR PROVIDING FURTHER NATIONAL DIRECTION**

7.1 Te Rūnanga believes that some problems have been correctly identified in the discussion document. However, Councils will face additional challenges and therefore would require further national direction on a range of key matters.

7.2 Te Rūnanga is concerned that there is no definition for a key water management unit, no clarity around what 'maintain or improve' means and a great deal of ambiguity around the exceptions policy.

7.3 In addition, Te Rūnanga believes that additional guidance on the following matters is required:

- Clear conflict management guidance and support from central government when necessary;
- Guidance on how statutory acknowledgments and taonga species relate to defining the values of water bodies and in such instances appropriate recognition of iwi as an affected party;
- Supporting text for Te Mana o Te Wai to assist local authorities in how to provide for this in freshwater planning; and

7.4 Te Rūnanga also believes more detailed guidance which allows for regional flexibility is required from the Government to support local authorities to implement the NOF.

### ***Recommendations***

7.5 Te Rūnanga recommends the following:

- Provide further national direction and improved definition for a key water management unit;
- Provide better clarity around what 'maintain and improve' means; and
- Improve guidance from central government in relation to: the exceptions policy, conflict management and resolution, the relationship of statutory acknowledgments and taonga species to freshwater values, and providing for Te Mana o te Wai in freshwater planning.

## **8. SECTION 4.1: ACCOUNTING FOR WATER QUALITY AND QUANTITY**

8.1 Te Rūnanga supports the proposals that councils should establish and operate an accounting system to account for water quality and water quantity (such as the abstraction of water).

8.2 Te Rūnanga believes all consent holders must be made to address over-allocation issues over time and consent holders when trading and/or transferring water in over-allocated catchments must be subject to claw back. Achieving a reduction in allocation will be reliant on an 'actual and reasonable use' test at the time of applying for consent, and return of surplus water to the waterbody.

8.3 The ability for regional councils to account for water quality and water quantity changes was advocated by the Freshwater Iwi Leaders Group (ILG) to the Crown as

critical to the long-term management of freshwater. This view is supported by Te Rūnanga.

- 8.4 Te Rūnanga believes that a functioning and robust accounting system would allow regional councils to gather up-to-date information to support the initial setting, or review of, limits for water quality and water quantity. Importantly decision-makers would have good quality information to make operational decisions to manage within limits set for water quality.
- 8.5 The accounting system operates within an identified geographical area called a Freshwater Management Unit (FMU). The FMU is essentially a unit of measure and, its geographic extent is to be determined by a regional council. Accounting information related to water quality and water quantity would be recorded at the same scale as the FMU.
- 8.6 However, Te Rūnanga remains concerned that the proposed accounting system does not include any minimum standards for how accounting should be undertaken. The process for accounting, the “type” of accounting and the extent and detail of information to be accounted should be better prescribed.
- 8.7 Te Rūnanga is specifically concerned that the level of detail for each accounting system is proposed to be “appropriate to the significance of the water quality and water quantity problems” in an FMU. Specific concerns include potentially variable quality of information across Te Waipounamu (and Aotearoa), which may not be an improvement from the status quo.
- 8.8 Te Rūnanga also notes that the proposed amendments only prescribe a 5-year accounting cycle for water quality and a 1-year accounting cycle for water quantity. The 5-year gap between water quality accounting is likely to be problematic as changes to land use change can be rapid and, are often cumulative over time. This may mean decision-makers are not aware of changes to water quality (for example, upward or downward trends) in between cycles. Rather than long gaps between recordings, a move closer to real-time monitoring would be of great benefit in terms of managing risks to water quality. Te Rūnanga notes the discussion document is absent on this issue and therefore, Te Rūnanga encourages better linkages between the proposed monitoring plans and the freshwater accounting proposals.
- 8.9 The proposed amendments also stipulate a two-year grace period before an accounting system must be put in place. Following the two-year grace period, regional councils only need to account for water quality and water quantity in an FMU when they begin the process of setting or reviewing freshwater limits. Potentially, and notwithstanding a baseline set of information that would be available to the community for the limit setting process, the first set of accounting information for water quality may be up to seven years away, which is a concern for Te Rūnanga.
- 8.10 Te Rūnanga notes that the FMU has its own unique set of issues. The geographical extent of the FMU is to be determined by the regional council and, in theory could be:
- I. a single waterbody;
  - II. any part of a single waterbody;
  - III. multiple water bodies or parts of multiple water bodies; or
  - IV. a region.

8.11 The definition of a FMU does not technically include the land area associated with a water body or multiple water bodies. Te Rūnanga proposes that the FMU, as a management unit, should be demarcated over a hydrologically coherent area and include the associated land area and land uses. Te Rūnanga also expects to be directly involved, with mana whenua, in establishing FMUs at the local level in the Ngāi Tahu takiwā.

### **Recommendations**

8.12 Te Rūnanga recommends the following:

- Support further development of the concept and delivery of freshwater accounting ;
- Provide sufficient resources to assist regional councils in designing appropriate freshwater accounting systems and specifically, articulate how the outcomes of accounting would feed into decision-making;
- Ensure that any accounting system is used alongside mechanisms to reduce rates and volumes of abstraction in over-allocated catchments;
- Specify the timeframe for regional councils to commence and implement a comprehensive freshwater accounting system as two years from the gazettal of the NPS-FM;
- Amend the accounting cycle for water quality so that it occurs annually;
- Demarcate an FMU at the same unit of measure as a catchment (for example: a hydrologically coherent area that includes the associated land area and land uses), unless there is compelling rationale to combine multiple catchments together or to specifically target sub-catchments; and
- Ensure that setting FMUs happens in partnership with iwi at the local level.

## **9. SECTION 4.2: NATIONAL OBJECTIVES FRAMEWORK VALUES**

9.1 Te Rūnanga supports the development of a national set of values through the development of the National Objectives Framework (NOF). As a standalone component, the NOF has the potential to deliver positive outcomes for the sustainable management (and iwi), if appropriately developed and implemented.

9.2 The concept of the NOF was supported by the ILG through the Land and Water Forum (the LaWF) process.

9.3 Te Rūnanga acknowledges that the purpose of the NOF is to provide regional councils with a process framework for setting objectives —the intended freshwater outcome over a set period of time.

9.4 Te Rūnanga notes that a key benefit of the NOF is that the science underpinning the framework is said to be robust and, is agreed to nationally and therefore can be applied consistently across Te Waipounamu (and Aotearoa). This science should provide some certainty for the community, who will place much reliance on the NOF, and be used by regional councils to articulate community values into objectives for fresh water.

9.5 Te Rūnanga is mindful that the proposed amendments only introduce a limited number of values and corresponding attributes and attribute states leaving the NOF incomplete. The coverage developed to date is a starting point and further work

will be required to fill the information and science gaps, and subsequently introduce additional values, attributes and attribute state into the NOF (proposed to be in 2016 and 2019). In addition this will also be too late for most regional plans.

- 9.6 Te Rūnanga believes it is necessary for the Crown to invest substantial resources to continue populating the NOF and to ensure the science that supports the framework is 'agreed to' and 'robust'.
- 9.7 The requirement to maintain and improve water quality across a region means that the water quality of some FMU's could decline over time. Under the proposed amendments, it would be possible to create headroom for new development by allowing for steady state water quality to move down within a State as a result of human induced discharges (eg, water quality moves from the top of State B to the bottom of State B). Provided the FMU maintained the same State, the overall water quality of the region could be maintained or improved. This situation is considered to be a perverse outcome and is unlikely to have been envisaged by the community when they initially set freshwater objectives.
- 9.8 At this time it is not clear from the proposed amendments whether the collective Attribute States or the actual limits —as translated into a regional plan— for a FMU would be used to assess whether the overall water quality within a region has been maintained or improved. Using the actual limits provides a numerical reference point and more certainty to the community. This would be important in relation to any perceived water quality slippage within the various Attribute States.
- 9.9 Te Rūnanga notes that the existing timeframe of 2030 for regional councils to set limits in their regional plans is proposed to be retained and is the absolute end date for the full regime to be implemented. Given the relative importance of freshwater management, the 2030 timeframe is simply too far into the future to meet the expectations of the community and Te Rūnanga would support a shorter timeframe for implementation.

#### ***Attributes of the National Objectives Framework***

- 9.10 Te Rūnanga supports the numerical values associated with primary contact such as swimming being included in the NOF. The concept of 'secondary contact' is a newly introduced term that does not correspond with current planning norms, which tend to set objectives around 'contact recreation', meaning that it is safe for swimming. Te Runanga does not support introduction of this new distinction.
- 9.11 Te Rūnanga also notes that the following attributes and freshwater body types are absent:
- groundwater, freshwater wetlands, and hāpua (estuaries and lagoons);
  - temperature;
  - Total Nitrogen attribute for ICOLs;
  - sediment;
  - biological measures such as Indigenous fish species (presence and abundance) and macro-invertebrates.

#### ***Environmental Flows***

- 9.12 Te Rūnanga supports the use of numeric attributes but remains concerned about the emphasis placed on these numbers over narrative attributes, and the focus on the 'bottom lines'. Te Rūnanga has concerns that local authorities will view 'bottom

lines' as a management standard rather than looking to improve water quality. As such, Te Rūnanga supports councils performance being regularly and thoroughly monitored.

- 9.13 Te Rūnanga supports the narrative attribute states in appendix 2 of the NPS-FM. However, numerical attributes may not adequately provide for the inclusion and qualitative assessment of narrative attributes. Narrative attributes are critical when accounting for iwi values.

#### ***Timing***

- 9.14 Te Rūnanga supports the implementation of the NOF to the extent in which it delivers water quality outcomes.
- 9.15 Te Rūnanga believes no action will inevitably result in further deterioration of our waterways and as such supports immediate efforts that provide for iwi and community values being properly provided for in freshwater management.

#### ***Process for freshwater objective setting***

- 9.16 Te Rūnanga agrees with having the process requirements to link values and freshwater objectives directed in policy CA1 in the proposed amendments.
- 9.17 Te Rūnanga believes the outcome of these processes will vary significantly across the takiwā as such processes are reliant on individual local authorities.
- 9.18 Te Rūnanga believes that the proposed matters in policy CA1(f) are some of the matters that must be considered when establishing freshwater objectives however these matters are not absolute.
- 9.19 Te Rūnanga believes more direction and examples of application need to be provided to local authorities to help them understand how best to consider the impacts of the limits, management methods, and timeframes.
- 9.20 Te Rūnanga supports regions having some level of discretion to determine timeframes for meeting freshwater objectives, however believes that on the whole timeframes associated with setting objectives are too lenient. Decisions around timing should be made by councils and iwi in partnership, recognising that many iwi have waited a long time to see degradation recognised and remedied, so empowering mana whenua in the process of healing waterways is essential.
- 9.21 Te Rūnanga believes that some aspects of the process are not clear including the following:
- the timing of the research and setting water quality states;
  - implementation dates for assessing water quality;
  - how “outstanding freshwater bodies” and “significant values” are determined;
  - how narrative attributes are to be included in developing freshwater management units and how they will be assessed and reported when determining compliance with bottom lines;
  - conflict management resolution;

- how further amendments to the NPS-FM will be incorporated into work already undertaken by councils, iwi and communities.

### **Recommendations**

9.22 Te Rūnanga recommends the following:

- Support and further develop the broad concept of the National Objectives Framework (as part of the process to set robust and enforceable limits);
- Articulate, commit to and publish a comprehensive programme of action (with dedicated resourcing) to fill the science and information gaps that currently exist in order to complete a more comprehensive NOF;
- Clarify whether regional councils are measuring progress towards achieving freshwater objectives by using attribute states (eg, State B) or the actual limits that would be set in regional plans as the benchmark;
- Carefully monitor the outcomes of the National Objective Framework across Te Waipounamu (and Aotearoa) to avoid any unintended consequences or perverse outcomes of regional council decisions and track any deliberate inaction (eg, reliance on 2030 timeframe).

## **10. SECTION 4.3: COMPULSORY VALUES IN THE NPS-FM**

10.1 The proposed amendments introduce two compulsory national values for ecosystem health and human health into the NOF and, a new human health objective into the NPS-FM. Te Rūnanga supports the concept of compulsory national values but notes that there are some key issues that need to be resolved.

10.2 Te Rūnanga considers secondary contact recreation (such as wadable) as the national bottom line is not sufficient to adequately protect Human Health values and falls well below the expectations of Ngāi Tahu whānui. It is more than likely to fall well below the expectations of the community as well.

10.3 As such, Te Rūnanga is concerned that primary contact (such as swimming) is not a compulsory national value and that the community (including iwi and water users) would need to agree through the collaborative process to elevate swimmable as a freshwater objective. As a minimum, Te Rūnanga is of the view that primary contact (e.g. swimming) should be included as an aspiration goal to be working to over time.

10.4 The addition of a compulsory national value for Human Health was initially advocated by the ILG through the LaWF process and also through subsequent engagement with the Crown. Te Rūnanga supports this position.

10.5 Te Rūnanga also notes that there are a number of crucial attributes that should comprise ecosystem health that are not included in the NOF, specifically:

- temperature
- MCI (stream insects)
- sediment
- nutrients to control slime growth; and
- oxygen as applicable everywhere (not just below point sources).

- 10.6 Overall, Te Rūnanga remains concerned at the amount of work that needs to be undertaken before iwi can be sure that the full objectives of the NOF will be able to protect Ecosystem Health and Human Health as intended.

**Recommendations**

- 10.7 Te Rūnanga recommends the following:
- Support the concept of including compulsory national values for Ecosystem Health and Human Health;
  - Set primary contact recreation or 'swimmable' as an aspirational national outcome for freshwater that the community—and indeed Aotearoa—aspire to in the long-term; and
  - Develop Te Mana o te Wai over time so that it becomes a compulsory.

**11. QUESTIONS FOR SECTION 4.4: NATIONAL BOTTOM LINES**

- 11.1 The proposed amendments to introduce national bottom lines for the two compulsory values. The concept of having robust national bottom lines as one pillar of wider reforms across the freshwater framework was supported by Te Rūnanga via participation in the ILG through the LaWF process.
- 11.2 Te Rūnanga believes that some of the proposed national bottom lines for the compulsory national values are not adequately set and, ultimately may not result in the protection of Ecosystem Health and Human Health. Protecting Ecosystem Health is a core tenant of freshwater reform and is one of the three pou that comprise Te Mana o Te Wai.
- 11.3 It is the view of Te Rūnanga that many of the National Bottom lines are set at a lower level than current water quality. The risk is that adopting the national bottom lines would enable water quality to be further degraded down (to the bottom of State C). Te Rūnanga supports swimmability being added as a national bottom line as this is an intrinsic national value which must be protected for future generations.
- 11.4 Furthermore, Te Rūnanga believes that a number of key indicators are currently missing, as noted in paragraph 10.5.
- 11.5 Irrespective of monitoring plans and freshwater accounting undertaken by regional councils, the Crown needs to satisfy itself that the national bottom lines are protecting Ecosystem Health and Human Health objectives. Te Rūnanga believes this role should be undertaken by an independent third party reporting to the Crown and a system to deal with failure of councils to perform, could dovetail with requirements of the forthcoming Environmental Reporting Bill.
- 11.6 Te Rūnanga believes that numeric and narrative bottom lines might also be mutually utilised. Cultural narratives have been used in the CWMS to provide a meaningful reference for iwi, alongside measurable bottom lines, both of which have been necessary in order for representatives to be able to reach agreement.

**Recommendations**

- 11.7 Te Rūnanga recommends the following:

- Support the concept of including national bottom lines for Ecosystem Health and Human Health;
- Review the level at which the national bottom lines are set for the compulsory value of Ecological Health to ensure the application of the national bottom lines will achieve the protection of Ecosystem Health;
- Ensure independent verification that the national bottom lines set in the NPS-FM will protect the core Ecosystem Health and Human Health objectives.

## **12. QUESTIONS FOR SECTION 4.5: EXCEPTIONS TO NATIONAL BOTTOMLINES**

- 12.1 Te Rūnanga does not support that there should be exceptions where the state of the freshwater management unit breaches bottom lines as a result of human activities. Te Rūnanga acknowledges that in some instances due to the likes of legacy issues that national bottom lines might not be able to be met in the short term and in such instances it may be necessary to set an objective below a national bottom line with the view to improve overtime. Regular monitoring of local authorities will be essential to track the progress in this regard.
- 12.2 Te Rūnanga does not agree that there should be exceptions where historical activities have created impacts on water quality and the reversal of those impacts is not reasonably practicable, either physically or ecologically, even in the long term. It is unclear whether an exception to a national bottom line would allow water quality to decline for other attributes (that comprise the national bottom line) or, just those attributes that necessitate the exception. For example if the principle reason for the exception was for elevated levels of one attribute, would the exception then apply to all other attributes? A blanket exception policy could lead to perverse outcomes and further degradation of water quality.
- 12.3 Te Rūnanga is also concerned that there is no definition of what a ‘historical activity’ is. Additionally, the scope of what could be considered a historical activity may mean that a number of like land uses with a cumulative discharge over time (eg, urban areas or farmed areas) could apply for an exception to national bottom lines.
- 12.4 Te Rūnanga does not believe exceptions are necessary for significant existing infrastructure (eg, dams) where a choice is made to manage a freshwater management unit below bottom lines. An exceptions policy of this nature would mean that developers may believe certain types of existing infrastructure could be considered significant, and may apply for exceptions or argue for nitrification of lakes such as Tekapo, Manapōuri and Dunstan, which Te Rūnanga deems to be totally unacceptable, or enable rivers downstream of the dams to be substantially degraded. Where there is existing downstream degradation, Te Rūnanga anticipates that planning should involve eventual restoration, rather than resorting to establishment of a perpetual exception. Te Rūnanga also expects that planning for new infrastructure should not result in downstream degradation of waterways to a state below national bottomlines.
- 12.5 Te Rūnanga also does not believe that freshwater management units eligible in relation to the dams and historical activities should be decided by regional councils. Decisions pertaining to an exception of this nature should be made by the

Government, ensuring of course that there is appropriate engagement with affected iwi.

- 12.6 Te Rūnanga does not believe that there is any justification for freshwater management units to be eligible for an exception due to the effects of significant existing infrastructure.
- 12.7 The text in the discussion documents pertaining to the exceptions policy is generally confusing. In principle, Te Rūnanga does not support exceptions from the NPS-FM that relate to human induced degradation as they undermine the intent of the framework. Section 5 of the RMA provides for the balancing of social, environmental and economic interests and developments should be required to meet national bottom lines and the interests balanced as appropriate under this piece of legislation.
- 12.8 Te Rūnanga, through its engagement in the ILG, supported the inclusion of exceptions to national bottom lines for specific and clearly defined situations such as where natural processes would result in the waterbody exceeding any proposed national bottom lines.
- 12.9 Allowing transitional freshwater objectives that are set below the national bottom lines will not move communities towards protecting Ecological Health and Human Health. An alternative approach would be to adopt the process set out in Policy A2 of the NPS-FM where the regional council specifies targets and implements methods to assist the improvement of water quality.

### **Recommendations**

- 12.10 Te Rūnanga recommends the following:
- Support the concept of allowing exceptions to the proposed national bottom lines in specific and clearly defined situations unrelated to correctable human induced degradation (eg, where natural processes would result in the waterbody exceeding any national bottom line);
  - Clearly define what is contemplated by an ‘historical activity’, if the exception for historical activities is to be retained; and
  - Discard the concept of transitional freshwater objectives and instead adopt the process framework in policy A2 of the NPS-FM.

## **13. QUESTIONS FOR SECTION 4.6: ARTICULATING TĀNGATA WHENUA VALUES**

- 13.1 Te Rūnanga through its engagement in the ILG has advocated that water quality is the corner stone of freshwater management and, through the Ngā Mātāpono ki te Wai model, articulated that Te Mana o te Wai should underpin the NPS-FM in terms of national objectives.
- 13.2 Te Rūnanga does not think the proposed NPS-FM as drafted adequately provides for Te Mana o te Wai. The fact that communities can choose to manage for particular values and not others means that the values which attribute to Te Mana o te Wai may not necessarily be provided for. Further guidance on how local authorities could provide for Te Mana o Te Wai is necessary to allow local authorities to deliver in this regard.

- 13.3 Furthermore, the proposed amendments confine Te Mana o te Wai to the preamble of the NPS-FM and, vaguely link Te Mana o te Wai to the national bottom line objectives of human health and ecosystem health. Although the latter linkage may have some merit, the preamble of the NPS-FM has no legal statutory weight and is unlikely to materially affect interpretation of the NPS-FM.
- 13.4 Te Rūnanga remains concerned that it is difficult to accurately determine (from an RMA perspective) whether Te Mana o Te Wai is being achieved or not as part of Objective A1 in the NPS-FM. Te Mana o Te Wai represents the ability of a water body —or water bodies— to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (health of the environment) and te hauora o te wai (health of the waterbody itself) and is not an absolute concept. Therefore it would be largely unfair for regional councils to be in a situation of trying to monitor progress towards achieving an objective that is difficult to quantify.
- 13.5 Te Rūnanga notes that the ILG engagement with the Iwi Chairs Forum and individual iwi has indicated support for Te Mana o Te Wai as an aspirational outcome for Fresh Water. Te Mana o te Wai has also been acknowledged by iwi as one of the underlying principles of the Nga Matapono model.
- 13.6 Although the proposed amendment suggests Te Mana o te Wai could potentially be added to the preamble and Objective A1, Te Rūnanga considers Te Mana o Te Wai could be a National Outcome for Fresh Water that sits above the NPS-FM objectives and policies, as outlined below:

**National Outcome for Fresh Water**  
**Te Mana o Te Wai**

Te Mana o Te Wai represents the inherent health of the water body (mauri) and its ability to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (health of the environment) and te hauora o te wai (health of the waterbody). The more significant the inherent values of the water body (including environmental, economic, cultural and/or social values) the greater the mana of the waterbody.

The mauri and Te Mana o Te Wai (the mana of a water body) can be diminished by pollution, degradation, or other actions that interfere with the health and wellbeing of the water body and/or peoples relationship with it over time. Te Mana o Te Wai can also be enhanced or restored by reducing pollution and/or improving the health and quality of a waterbody over time and, consequently, its ability to provide for the range of values associated with that water body.

- 13.7 As an overarching National Outcome, Te Mana o Te Wai is a good strategic fit with the proposed amendments to the NPS-FM as it weaves the dual objectives of Ecosystem Health and Human Health together.
- 13.8 Te Mana o Te Wai represents the ability of a water body —or water bodies— to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (health of the environment) and te hauora o te wai (health of the waterbody itself) and is not an absolute concept. For example, Te Mana o Te Wai can be degraded by

pollution over time and/or restored by improvements that support the values of the water body over time.

- 13.9 The inclusion of Te Mana o Te Wai as a National Outcome will be widely acceptable to both iwi and the wider community. This is because Te Mana o Te Wai embodies the holistic wellbeing of the water body and the relationship between people and freshwater more generally.
- 13.10 As Te Mana o Te Wai reflects the inherent health and wellbeing of a water body and the sum-total of the collective values of the local iwi and community (including environmental, social, cultural and economic values), each community is able to determine what 'level' of Te Mana o Te Wai they aspire to for each water body. In this way, Te Mana o Te Wai provides scope for regional councils to work with their communities to set appropriate freshwater management objectives that collectively would achieve the agreed level of Te Mana o Te Wai overtime.
- 13.11 Te Mana o Te Wai as a National Outcome supports the 'maintain or improve' requirement in Objective A2. All water bodies, even degraded ones, will have some level of mauri and associated mana. The requirement to maintain or improve water quality is reflective of the existing level of Te Mana o Te Wai and, any improvements to the water body will likely support a restoration of the mauri (and associated mana) of the water body as an aspirational objective.
- 13.12 This approach is consistent with the shared understanding of both the ILG and the Crown that the changes to the way we manage freshwater are intergenerational. The use of Te Mana o Te Wai as a National Outcome provides communities with a platform for delivering meaningful improvements in water quality while, at the same time increasing the ability of freshwater to provide for us over an agreed timeframe.
- 13.13 To ensure that iwi values are included appropriately, Te Rūnanga reinforces the need to elevate Iwi values and objectives in recognition of our Treaty Partner status, which can be done through the addition of Te Mana o te Wai as a National Outcome.

#### **Recommendations**

- 13.14 Te Rūnanga recommends the following:
- Incorporate Te Mana o Te Wai in the NPS-FM for Freshwater Management (NPS-FM) as an overarching "National Outcome for Fresh Water", as outlined in paragraph 13.6.

#### **14. QUESTION FOR SECTION 4.7: MONITORING**

- 14.1 Te Rūnanga supports the new section in the NPS-FM which requires the development of monitoring plans and for regional councils to actively monitor progress towards achieving freshwater objectives and, for this information to feed into decision-making regarding land use change. Any monitoring programme should incorporate the tracking of mana whenua values that have been identified by iwi and reflected in freshwater management tools, in order to give effect to Section D.
- 14.2 The purpose of monitoring plans is to measure the progress toward achieving freshwater objectives over time. The requirement to monitor progress toward

achieving freshwater objectives would complement freshwater accounting requirements for water quality and water quantity, and in theory should provide good levels of information to decision-makers.

- 14.3 One of the central problems is how monitoring information would feed into the operational decision-making of regional councils. Without reliable and robust information from regular and reliable monitoring, it would be difficult for a regional council to make good management decisions to ensure water bodies (or FMU's) operate within water quality and water quantity limits.

#### **Recommendations**

14.4 Te Rūnanga recommends the following:

- Support the concept of monitoring (more broadly) and the development of monitoring plans;
- Provide sufficient resources to assist regional councils in designing monitoring plans and, specifically, articulate how the outcomes of monitoring would feed into decision-making; and
- Clearly articulate the linkages between freshwater accounting systems and monitoring and how the two data sets would feed into freshwater decision-making.

#### **15. QUESTION FOR SECTION 4.8: TIMEFRAME FOR SETTING LIMITS**

15.1 Te Rūnanga acknowledge the reform of freshwater management is likely to take some time to implement, and that new processes put in place now (eg, the NOF as part of the limit setting regime) are likely to become more refined, efficient and ultimately effective over time.

15.2 However, there is concern with the lack of robust deadlines and timeframes to implement parts of the NPS-FM. At this time the 2030 deadline for regional councils to set freshwater limits has been retained. Te Rūnanga note that this timeframe is unacceptably slow.

#### **Recommendations**

15.3 Te Rūnanga recommends the following:

- Bring forward the deadlines and timeframes so that the intent of the NPS-FM is achieved within a decade.

## APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

### ***Part One – Apology by the Crown to Ngāi Tahu***

#### ***Section 6 Text in English***

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

*“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”*

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

2. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.
3. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
4. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tirenī!' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').
5. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

6. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.
7. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

APPENDIX TWO: NGĀI TAHU TAKIWĀ

