

He tono nā



**Te Rūnanga o NGĀI TAHU**

ki te

**MINISTRY FOR THE ENVIRONMENT**

e pā ana ki te

**CLEAN WATER PACKAGE**

28 April/ Kai-Te-Haere2017

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## **1. EXECUTIVE SUMMARY**

- 1.1. Te Rūnanga o Ngāi Tahu (Te Rūnanga) provides this response in the context of an active working relationship with the Crown that seeks to address outstanding freshwater management issues impacting on Ngāi Tahu whānui and the extensive Ngāi Tahu takiwā.
- 1.2. Te Rūnanga notes the recent Organisation for Economic Co-operation and Development Environmental Performance Reviews: New Zealand 2017 report, which concluded that New Zealand is reaching its environmental limits, and that improving water quality is going to be difficult due to a heavy reliance on productivity gains and no reduction in agricultural outputs.
- 1.3. The focus on agricultural outputs is consistent with our own experience of what is happening in Te Wai Pounamu. Significant changes are required to the way our freshwater resources are managed and used in order to protect and sustain Te Mana o Te Wai. The nation needs to be more effective in the allocation and use of water, as well as management of discharges, to address the adverse effects of current and historic management decisions.
- 1.4. Te Rūnanga acknowledges the incremental improvements that have been made across the freshwater management regime and hope we can collectively use these changes as a springboard to address the significant challenges to improving water quality and sustaining Te Mana o te Wai - mō tātou ā mō kā uri ā muri ake nei (for us and our children after).
- 1.5. Te Rūnanga takes a holistic view of our natural environment, including freshwater management. Freshwater is one of the most important and valuable resources in the Ngāi Tahu takiwā. Te Rūnanga expects these freshwater resources to be sustainability managed, ki uta ki tai (from the mountains to the sea). This approach requires the integrated management of all waterbodies throughout the takiwā, including main stems and all associated tributaries, wetlands, surface water and groundwater resources.
- 1.6. Throughout this response areas for further improvement are highlighted to support the transition towards freshwater management that aligns with the Ngāi Tahu way of approaching wai as a taonga.

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

- 2.1 It is the position of Te Rūnanga that:
  - The proposed amendments are supported to the extent that they contribute to the resolution of iwi rights and interests in freshwater and provide for Te Mana o te Wai, particularly improvements to the health and wellbeing of waterways; and
  - There are still further improvements required before our freshwater management regime will be sufficiently effective to manage the increasing pressure on our freshwater resources.
- 2.2 The following specific overall recommendations are made by Te Rūnanga in relation to the proposed changes:

- Clarify the intent of swimmable targets, preferably raising levels in every region to the 90% goal.
- Set timeframes that ensure improvement towards the 90% goal is not delayed in regions where the earlier 80% target is being met.
- Develop attributes and thresholds for other factors that impact swimmability such as algal levels and turbidity, not just *E. coli*.
- Further guidance is provided on which waterways should be included in maps and on the website, based on information about sites used and valued by iwi and local communities.
- An expanded range of criteria for swimmability which is made publically available.
- Ensure the framework supports regular and accurate reporting on the suitability of popular waterways for swimming throughout the Ngāi Tahu tribal takiwā, including health warnings where necessary, and that local information is being used to inform these processes.
- Retain the wording and position of Te Mana o Te Wai as an overarching objective in the NPS-FM.
- Maintain the current *E. coli* standards, in which the A grade median only allows for a 0.1% chance of getting sick from swimming.
- Include the medians and percentiles for *E. coli* in the NOF Attributes table rather than exceedances over 540 *E. coli* per 100 ml to create consistency and clarity.
- Retain a National Bottom Line for *E. coli* and increase the threshold to enable primary contact recreation as a minimum, with reference to existing health guidelines.
- Include the Macroinvertebrate Community Index as a mandatory requirement for measuring ecosystem health.
- Ensure there is a responsive system in place where monitoring shows that freshwater objectives are not being met, as per Objective CB1.
- Retain the utilisation of Mātauranga Māori, in parallel with Western science, to support monitoring activities and improvements in freshwater management.
- Provide specific attributes for groundwater in the NOF to support the maintenance and improvement of water quality.
- Require councils to maintain water quality at its current level within a NOF band to ensure there is no downward trend in water quality.
- Provide support to councils to establish in-stream objectives for concentrations of dissolved inorganic nitrogen and dissolved reactive phosphorus when managing for periphyton growth.
- Delete the note at the bottom of the Periphyton attribute table to ensure that Nitrate Toxicity and Periphyton attributes can be managed simultaneously.
- Remove the reference to economic well-being in Objective A2 and Objective B1.

- Amend Policy CA3 of the NPS-FM so that an exception only applies in the situation where significant infrastructure is the primary and dominant cause of irreversible water quality degradation below National Bottom Lines.
- Explicitly provide for iwi involvement in establishing criteria and adding significant infrastructure into Appendix 3 to ensure that iwi values and interests are recognised and provided for in the decision-making process.
- Remove the proposed wording from Policy CA3 that refers to “attribute or attributes”.
- Retain the inclusion of ICOLLs in the NPS-FM to ensure that these important water bodies are maintained and improved in a manner consistent with other freshwater resources.
- Ensure that the Freshwater Improvement Fund is linked to overall strategic goals and areas of need, is apportioned fairly across the country, and that results are monitored over time.
- Retain the proposal to exclude stock from waterways, including artificial drains that connect to natural water bodies, but provide for more consistency across land and water types, apply a shorter timeframe than 2030 and incorporate sheep.
- Ensure that existing regimes are not undermined by new regulations and explicitly enable stock exclusion to be strengthened according to local conditions and aspirations for water quality.
- Provide for stricter conditions to apply to stock crossings.
- Apply a higher penalty than \$2,000 for failure to comply with stock exclusion regulations.
- Commit to substantively addressing iwi rights and interests in freshwater through direct discussions with iwi leaders.
- Incorporate mechanisms that progress the resolution of iwi rights and interests in freshwater through any future reforms to the freshwater management regime.
- Improve the relationship between the NPS-FW and Coastal Policy Statements to improve outcomes for hāpua and coastal lagoons as an important component of addressing iwi rights and interests.
- Continue to advance Good Management Practice as a tool that supports freshwater management objectives, including addressing over-allocation and improving availability of allocation for iwi.
- Continue to progress research that incorporates Mātauranga Māori as part of the National Science Challenge programme.

### **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 CLEAN WATER PACKAGE**

- 4.1 Te Rūnanga notes the following particular interests in the proposed amendments to the proposals outlined in Clean Water Consultation Document.

##### ***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 freshwater management reforms.
- The NPS-FM, including the National Objectives Framework (NOF) and related reforms, must not adversely 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 and interests in the productive sector, which require us to work within a best practice sustainability framework in order to achieve tribal objectives.
- 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 work streams. Te Rūnanga continues to remain committed to engaging directly with the Crown on these matters.

## **5. SECTION 1: SWIMMABLE TARGET**

- 5.1 Te Rūnanga support the proposal to ensure 90% of waterways are swimmable by 2040. However, we believe the water quality standard proposed as 'swimmable' is far too low. Te Rūnanga also believe further clarification is needed on how 90% will be achieved (i.e. is this a national or regional goal).
- 5.2 Te Rūnanga want to see immediate action to improve our waterways and recommends consideration is given to bringing forward the timeframes for achieving the targets for swimmability, particularly in areas where water quality is either near or at the current levels required by the proposed changes. For example, in the Ngāi Tahu takiwā under the proposed swimmable criteria Southland would need to make improvements by 2030 to reach the 80% swimmable mark, however Canterbury and Otago will not be required to make improvements until after 2030 as they are already at 80% swimmable (refer graph on page 9).
- 5.3 Te Rūnanga is also concerned that a measure of *E. coli* levels alone is not sufficient to determine whether a waterway is swimmable or not.

### ***Recommendations***

- 5.4 Te Rūnanga recommends:
- Clarify the intent of swimmable targets, preferably raising levels in every region to the 90% goal.
  - Set timeframes that ensure improvement towards the 90% goal is not delayed in regions where the earlier 80% target is being met.
  - Develop attributes and thresholds for other factors that impact swimmability such as algal levels and turbidity, not just *E. coli*.

## **6. SECTION 2: SWIMMABILITY INFORMATION**

- 6.1 Te Rūnanga supports the proposal to improve the information publically available regarding the swimmability of particular waterbodies.
- 6.2 To support the provision of information, further guidance is required on what is an adequate level of water quality and quantity for swimming.
- 6.3 Some regional councils within the Ngāi Tahu takiwā have surveyed their communities to identify where they currently swim, where they used to swim and where they would like to be able to swim again. Swimmability information needs to be based on iwi and community identifying important sites for swimming and other full immersion activities such as gathering mahinga kai and waka ama.

- 6.4 Te Rūnanga would like to see a broader range of attributes being monitored, particular at popular swimming sites. A wider range of attributes are required to ensure all factors that contribute to water being safe for swimming are monitored and reported on. Furthermore, the acceptable level of *E. coli* should align with the Guidelines for Marine and Freshwater Recreational Areas (MfE and MoH 2003) which classify 550 *E. coli* per 100 ml as being Action/Red Level due to the associated public health risk.

#### **Recommendations**

- 6.5 Te Rūnanga recommends:
- Further guidance is provided on which waterways should be included in maps and on the website, based on information about sites used and valued by iwi and local communities.
  - An expanded range of criteria for swimmability which is made publically available.
  - Ensure the framework supports regular and accurate reporting on the suitability of popular waterways for swimming throughout the Ngāi Tahu tribal takiwā, including health warnings where necessary, and that local information is being used to inform these processes.

### **7. SECTION 3: National Policy Statement for Freshwater (NPS-FW) AMENDMENTS**

#### **Te Mana o Te Wai**

- 7.1 Te Mana o Te Wai places the health and well-being of the water body and its ability to meet the needs and aspirations of iwi and the wider community at the centre of fresh water management. Te Rūnanga supports this approach as it empowers iwi and the community to identify aspirational outcomes for water quality that will be achieved over time and avoid water quality being degraded through the cumulative impacts of unsustainable resource use.
- 7.2 Te Rūnanga supports regional and local values being the basis for establishing freshwater objectives and limits. Effectively engaging with iwi and the wider community is one of the most important factors for improving freshwater management and Te Mana o Te Wai empowers councils, as well as iwi and the community, to engage in that discussion. Ultimately if iwi and community aspirations for water quality are substantively higher than what currently exists then councils must give effect to Te Mana o Te Wai and work with iwi and community to determine how this can be achieved over time.
- 7.3 Te Rūnanga supports the inclusion of Te Mana o te Wai in the preamble and as an objective in the NPS-FM and want dedicated resources to support iwi to work in partnership with councils and the community to determine values for waterbodies in their catchments.
- 7.4 The recently enacted Resource Legislation Amendment Act 2017, and particularly the Mana Whakahono-a-rohe provisions will also support the effective implementation of Te Mana o Te Wai.

#### **Recommendations**

- 7.5 Te Rūnanga recommends:

- Retain the wording and position of Te Mana o Te Wai as an overarching objective in the NPS-FM.

### **Swimming and recreation values**

- 7.6 Te Rūnanga supports an increase in monitoring of rivers and lakes, and the regular reporting on their suitability for swimming. Water quality information needs to reflect the actual state of the water at different points in time. This requires regular monitoring in appropriate locations to generate necessary data.
- 7.7 All regions across the Ngāi Tahu tribal takiwā face significant water quality and water quantity challenges. Approximately 10% of rivers and lakes nationally have the characteristics defined as suitable for swimming (0.4 m deep for rivers and perimeters of 1.5 km or greater for lakes). However, in reality whānau are no longer able to swim in many favoured waterways due to poor water quality and/or other factors such as reduced flows, limited access, or algal growth. In addition, the reference to fourth order rivers is too great a scale and misses out significant tributaries.
- 7.8 Te Rūnanga considers the risk to human health from the proposed water quality standard is too high and therefore does not support the proposed changes to the *E. coli* attributes for swimmability. The Guidelines for Marine and Freshwater Recreational Areas (Ministry for the Environment and Ministry of Health, 2003) provide guideline levels that will ensure public health and consider any reading over 550 *E. coli* per 100 mL to be a health risk level. As such, Te Rūnanga oppose 540 *E. coli* per 100 ml being classified as an A attribute. Furthermore, Te Rūnanga does not believe attribute state C is suitable for swimming, as it allows for exceedances of 540 *E. coli* per 100 ml 10-20% of the time.
- 7.9 Te Rūnanga is concerned about the disconnect between some of the proposed *E. coli* attributes and the current *E. coli* attribute table (as well as other attributes in the NOF). The NOF Attribute Table has shifted to using exceedances rather than previous annual medians and 95<sup>th</sup> percentiles. The medians and percentiles for *E. coli* are referred to on the website but not in the proposed NPS-FM table. The proposed structure of only using exceedances in the NOF table creates confusion and is inconsistent with current practice, which Te Rūnanga wishes to see retained.
- 7.10 Importantly *E. coli* is not the only factor that needs to be considered in assessing the suitability of a water body for swimming, yet it is the only factor proposed in the Clean Water document to determine swimmable water. Te Rūnanga considers it is important to also monitor other factors such as toxic algae, algal growth and turbidity to determine the suitability of a waterway for swimming.
- 7.11 Te Rūnanga opposes the removal of the National Bottom Line, which is currently associated with secondary contact in the NPS-FM. Te Rūnanga is concerned about the secondary contact threshold, and Te Rūnanga does not support the complete removal of a National Bottom Line when it comes to attributes associated with Human Health for Recreation.

### **Recommendations**

- 7.12 Te Rūnanga recommends:
- Maintain the current *E. coli* standards, in which the A grade median only allows for a 0.1% chance of getting sick from swimming.

- Include the medians and percentiles for *E. coli* in the NOF Attributes table rather than exceedances over 540 *E. coli* per 100 ml to create consistency and clarity.
- Retain a National Bottom Line for *E. coli* and increase the threshold to enable primary contact recreation as a minimum, with reference to existing health guidelines.

### **Monitoring**

- 7.13 Te Rūnanga supports the inclusion of the Macroinvertebrate Community Index as a mandatory requirement for measuring and monitoring ecosystem health. Te Rūnanga recommends this is included in the NOF framework to reduce inconsistencies throughout the Ngāi Tahu tribal takiwā.
- 7.14 If monitoring indicates that objectives are not being met, councils should be required to establish methods to respond, as provided for in the new monitoring objective.
- 7.15 Te Rūnanga supports increased use of mātauranga Māori in freshwater management, including monitoring.

### **Recommendations**

- 7.16 Te Rūnanga recommends:
- Include the Macroinvertebrate Community Index as a mandatory requirement for measuring ecosystem health.
  - Ensure there is a responsive system in place where monitoring shows that freshwater objectives are not being met, as per Objective CB1.
  - Retain the utilisation of Mātauranga Māori, in parallel with Western science, to support monitoring activities and improvements in freshwater management, as in Policy CB1.

### **Maintain or improve overall water quality**

- 7.17 Te Rūnanga supports the proposed change to manage water quality within Freshwater Management Units (FMU), particularly the proposal to require water quality to be maintained or improved within an FMU. Te Rūnanga interprets this to mean that there is no further decline from the current state for waterbodies that are already above the bottom-line and in fact over time improvements in water quality can be expected across the board where waterbodies are degraded.
- 7.18 Te Rūnanga believe it is important to note that an FMU can include groundwater, although currently there are no attributes associated with groundwater. Te Rūnanga considers it important to include groundwater in the NPS-FM and NOF attributes to support the maintenance and improvement of water quality within the Ngāi Tahu takiwā.
- 7.19 Te Rūnanga expects that Ngāi Tahu will be directly involved in defining FMUs with relevant councils, as is consistent with Objective D.
- 7.20 Te Rūnanga does not support 'maintaining' water quality being defined as maintaining water quality within a Band. Defining water quality as being 'maintained' when it is within the same Band potentially allows significant deterioration of water quality, particularly where existing water quality is near the top of a Band, but may deteriorate to a level closer to the bottom of the Band.

- 7.21 Te Rūnanga does not believe the new proposed *E. coli* standards are consistent with the 'maintain or improve' requirement. The new proposed *E. coli* attributes in the proposed A band are at a significantly lower level than the current A band.

### **Recommendations**

- 7.22 Te Rūnanga recommends the following:
- Provide specific attributes for groundwater in the NOF to support the maintenance and improvement of water quality.
  - Require councils to 'maintain' water quality at its current level within a NOF band to ensure there is no downward trend in water quality.

### **Managing nitrogen and phosphorus**

- 7.23 Te Rūnanga supports councils being required to manage freshwater in an integrated manner, ensuring that a range of contaminants are managed in accordance with the establishment of additional NOF attributes.
- 7.24 Te Rūnanga expects to work with councils within the Ngāi Tahu takiwā in determining the appropriate concentrations of nitrogen and phosphorous, as well as any additional NOF attributes to ensure our aspirations for waterbodies are met.
- 7.25 Te Rūnanga does not support the current wording of the "note" at the bottom of the periphyton attribute table which excludes application of the Nitrate Toxicity attribute where periphyton growth is present and the Periphyton attribute is used.
- 7.26 It is proposed that DIN and DRP concentrations are to be set before establishing periphyton objectives, with only a vague reference to the sensitivity of downstream environments. The Nitrate Toxicity attribute is concerned with sensitivity of species to toxic effects of contamination. Te Rūnanga is also concerned with the sensitivity of mahinga kai and taonga species, including those recorded in the Ngāi Tahu Claims Settlement Act 1998. Consideration of toxicity to species cannot be optional if Treaty responsibilities are to be met. The presence of periphyton growth would suggest the presence of diffuse pollution impacting a waterway, which should not be a reason to then discount the toxic effects of nitrate contamination on species in that waterway. Such an approach does not accord with Te Mana o Te Wai and restoration of degraded waterways.

### **Recommendations**

- 7.27 Te Rūnanga recommends:
- Provide support to councils to establish in-stream objectives for concentrations of dissolved inorganic nitrogen and dissolved reactive phosphorus when managing for periphyton growth.
  - Delete the note at the bottom of the Periphyton attribute table to ensure that Nitrate Toxicity and Periphyton attributes can be managed simultaneously.

### **Economic well-being**

- 7.28 For Ngāi Tahu whānui the health and wellbeing of the waterway is paramount, which is the essence of Te Mana o Te Wai. Te Rūnanga remains concerned that short term economic gains continue to take precedence over longer term intergenerational outcomes. Economic considerations are already provided for in Part 2 of the RMA and Section 32, so the proposal to insert economic well-being into

the NPS-FM further risks economic considerations taking precedence over the sustainable management of water resources. Te Rūnanga wants to see decision makers demonstrate how they are taking into account the long term impacts and benefits of taking a particular course of action across the four well-beings - environmental, social, cultural and economic.

- 7.29 It is also of concern to Te Rūnanga that economic well-being is treated differently in Objective A2 Water Quality and Objective B1 Water Quantity, with more weight provided to economic value in relation to water quantity.

### **Recommendations**

- 7.30 Te Rūnanga recommends the following:

- Remove the reference to economic well-being in Objective A2 and Objective B1.

### **The effect of national bottom lines on infrastructure**

- 7.31 While Te Rūnanga does not oppose the proposal to allow exceptions for significant infrastructure, Policy CA3 as it stands requires amendment to reduce the risk of unintended consequences. Te Rūnanga considers the existing test that significant infrastructure ‘contributes’ to degraded water quality is too low and should be amended to provide clarity around the dominant relationship of infrastructure to degraded water quality.

- 7.32 The risk in using the existing test is that the actual ‘cause’ of the water quality degradation (for example, diffuse source of contaminants from land use) could be masked by significant infrastructure which may only ‘contribute’ in a minor way to the problem. Infrastructure should only be added if it can be proven it is the primary and dominant cause of water degradation and a fundamental barrier to achieving water quality above National Bottom Lines.

- 7.33 Te Rūnanga does not support the proposed wording in Policy CA3 that refers to “attribute or attributes” as it allows for exemptions if just one attribute is below the bottom line.

### **Recommendations**

- 7.34 Te Rūnanga recommends:

- Amend Policy CA3 of the NPS-FM so that an exception only applies in the situation where significant infrastructure is the primary and dominant cause of irreversible water quality degradation below National Bottom Lines.
- Explicitly provide for iwi involvement in establishing criteria and adding significant infrastructure into Appendix 3 to ensure that iwi values and interests are recognised and provided for in the decision-making process.
- Remove the proposed wording from Policy CA3 that refers to “attribute or attributes”.

### **Coastal lakes and lagoons**

- 7.35 Most intermittently opening and closing lagoons (ICOLLS) managed as freshwater are located within the Ngāi Tahu takiwā and are areas of cultural significance to Ngāi Tahu. This includes areas subject to Statutory Acknowledgements under the Ngāi Tahu Claims Settlement Act 1998, and areas vested with Te Rūnanga (eg Te Waihora).

- 7.36 Te Rūnanga supports the clarification that ICOLLS are included in the NOF attributes for freshwater lakes, which will provide for them to be maintained or improved over time.
- 7.37 Proposals related to the ICOLLS should be discussed directly with Te Rūnanga, and Te Rūnanga must be included in any decision making process to establish transitional objectives or to include an ICOLL within Appendix 4.
- 7.38 Addressing the water quality issues for ICOLLS requires an integrated approach which takes into account the impact upstream activities have on the water quality of our wai taonga.

### **Recommendations**

- 7.39 Te Rūnanga recommends:
- Retain the inclusion of ICOLLS in the NPS-FM to ensure that these important water bodies are maintained and improved in a manner consistent with other freshwater resources.

## **8. SECTION 4: FRESHWATER IMPROVEMENT FUND**

- 8.1 Te Rūnanga supports additional funding to improve water quality. However we believe there needs to be a more integrated approach to funding across government. Funding continues to be allocated on an ad hoc basis and there is lack of strategic oversight to determine where needs are greatest and to measure whether funds allocated are generating the necessary improvements in water quality.
- 8.2 The distribution of funding so far has been inconsistent throughout the country, with areas such as Otago receiving little funding in comparison to other regions (page 24 consultation document) despite having nationally significant lakes and waterways.
- 8.3 Increasing iwi capability and capacity has been identified as a need for some time, which warrants a targeted funding approach, as a companion to the proposed Freshwater Improvement Fund.

### **Recommendations**

- 8.4 Te Rūnanga recommends the following:
- Ensure that the Freshwater Improvement Fund is linked to overall strategic goals and areas of need, is apportioned fairly across the country, and that results are monitored over time.

## **9. SECTION 5: STOCK EXCLUSION**

- 9.1 Te Rūnanga supports, in principle, the exclusion of livestock from waterways and the resultant benefits of reducing contaminant loss directly to water bodies over time. However, we believe there need to be more consistent requirements for riparian boundaries across the different land types and waterway sizes.
- 9.2 Often water sources begin in steeper lands, which although difficult to fence off should be a priority. Water quality is naturally high in these areas and Te Rūnanga considers it important to protect these areas from contamination.

- 9.3 Te Rūnanga have concerns that mahinga kai habitat will be left vulnerable if only water ways wider than 1 m are to be included in stock exclusion.
- 9.4 Te Rūnanga supports the proposal to exclude pigs and dairy cows by July 2017. However, we recommend bringing forward the deadline for the cases where waterways will not be fenced off until 2030. Te Rūnanga acknowledge the costs involved in excluding stock and the need to provide a transition to fully achieving this proposal, but believe this needs to be balanced with the detrimental impacts on waterbodies and therefore the timeframes for achieving stock exclusion should be shortened.
- 9.5 Te Rūnanga have concerns regarding the implications of these proposals for existing local rules where they are more stringent and already established. More guidance is required regarding where and in what instance more stringent rules might be necessary.
- 9.6 Stock exclusion rules should also apply for sheep, as they can have a detrimental impact on water quality on low-land farms and when farmed close to sensitive or significant water bodies.
- 9.7 Te Rūnanga have concerns for the criteria of stock crossing, given that stock can cross waterways as frequently as once a fortnight without a culvert or bridge. Within the Ngāi Tahu takiwā stricter conditions already apply and Te Rūnanga does not want the proposed stock exclusion regulations to undermine progress that has already been made in protecting sensitive areas.
- 9.8 The \$2,000 penalty for breaching stock exclusion rules does not appear to be a sufficient deterrent or incentive to establish barriers to stock access and should be higher, reflecting the significant impacts of stock on the health of waterways.

### **Recommendations**

- 9.9 Te Rūnanga recommends:
- Retain the proposal to exclude stock from waterways, including artificial drains that connect to natural water bodies, but provide for more consistency across land and water types, apply a shorter timeframe than 2030 and incorporate sheep.
  - Ensure that existing regimes are not undermined by new regulations and explicitly enable stock exclusion to be strengthened according to local conditions and aspirations for water quality.
  - Provide for stricter conditions to apply to stock crossings.
  - Apply a higher penalty than \$2,000 for failure to comply with stock exclusion regulations.

## **10. SECTION 6: FUTURE WORK**

### **Iwi Rights and Interests**

- 10.1 Te Rūnanga have consistently said that any new framework to manage freshwater must be developed hand-in-hand with the resolution of iwi rights and interests in a contemporary post-Settlement framework.
- 10.2 For Te Rūnanga the resolution of Ngāi Tahu of rights and interests in freshwater must provide for a rebalance between the rights of existing users and the rights and

interests of Te Rūnanga. This includes ensuring Ngāi Tahu have access to an equitable share of allocable quantum. Ensuring iwi are able to access an equitable share of allocable water and the ability to discharge contaminants within limits is a primary principle for Te Rūnanga.

- 10.3 Te Rūnanga will continue to engage in direct dialogue with the Crown (through the Freshwater Iwi Leaders Group) to substantively resolve rights and interests in freshwater. Te Rūnanga will continue to actively participate with multi-stakeholder groups such as the Land and Water Forum (LAWF) and Local Government New Zealand, as well as with a range of stakeholders and private sector interests to support the development of a new freshwater management framework in Aotearoa.
- 10.4 Te Rūnanga acknowledges the current proposals contained in the Clean Water Package are not designed to substantively resolve the full suite of iwi rights and interests in freshwater. However, Te Rūnanga considers that the proposed amendments significantly underrepresent the full range of iwi rights, interests and aspirations for fresh water.
- 10.5 Te Rūnanga would prefer to continue the dialogue with the Crown, including at the Ministerial level, to advance the recognition of iwi rights and interests in freshwater. Any amendments to improve the existing framework for managing freshwater must be consistent with and support iwi rights and interests to the satisfaction of Te Rūnanga o Ngāi Tahu.
- 10.6 The Crown should note that if necessary, Te Rūnanga will take further action to preserve and protect our rights and interests in this regard.
- 10.7 As a component of the wider discussion, Te Rūnanga has established rights and interests in hāpua and coastal lagoons, which are impacted by freshwater management decisions although they are managed within the coastal marine area framework. Te Rūnanga supports greater consideration of the relationship between the NPS-FW and Coastal Policy Statements. Hāpua and coastal lagoons are highly valued for their unique ecosystems and mahinga kai amongst other things. Sitting at the bottom of catchments, they act like sinks for pollutants from up catchment and it is critical they are managed in an integrated manner, ki uta ki tai. These resources must be maintained and improved over time in tandem with the changes being implemented across the freshwater framework, in order to appropriately address Ngāi Tahu rights and interests.

### **Recommendations**

- 10.8 Te Rūnanga recommends:
  - Commit to substantively addressing iwi rights and interests in freshwater through direct discussions with iwi leaders.
  - Incorporate mechanisms that progress the resolution of iwi rights and interests in freshwater through any future reforms to the freshwater management regime.
  - Improve the relationship between the NPS-FW and Coastal Policy Statements to improve outcomes for hāpua and coastal lagoons as an important component of addressing iwi rights and interests.

### **Good Management Practice**

- 10.9 Te Rūnanga supports good management practice being progressed in both urban and rural environments as soon as possible. It is important that good management

practice is employed in tandem with other measures that support more sustainable behaviours and the more efficient use of water.

- 10.10 Good management practice and technical efficiency standards should apply to all users in all catchments, not just those catchments that are approaching or have reached full capacity. What constitutes Good Management Practice should also be regularly reviewed to ensure that it reflects current knowledge, practices and technological advances.
- 10.11 Any reduction in water use and/or discharges through the application of Good Management Practice should be used to first address over-allocation, to meet in-stream limits and support Te Mana o te Wai, and secondly to provide opportunities for iwi to access an equitable share of the allocable quantum.

***Recommendations***

10.12 Te Rūnanga recommends:

- Continue to advance Good Management Practice as a tool that supports freshwater management objectives, including addressing over-allocation and improving availability of allocation for iwi.

**National Science Challenge- Our Land our Water**

10.13 Te Rūnanga acknowledges that a mix of practical and technological solutions will be required to address the myriad of freshwater challenges facing the country and support research that generates better environmental outcomes. Te Rūnanga welcome greater recognition of the role and value of iwi and Mātauranga Māori in research that supports improved freshwater management.

***Recommendations***

10.14 Te Rūnanga recommends the following:

- Continue to progress research that incorporates Mātauranga Māori as part of the National Science Challenge programme.

## 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 Tireni!’ (‘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**

