



TŪWHARETOA
MĀORI TRUST BOARD

Submission by the Tūwharetoa Māori Trust Board

concerning the:

***Exposure draft of the National Policy Statement for Freshwater Management
2020 and National Environmental Standard for Fresh Water 2020***

15 July 2022

INTRODUCTION

1. This submission is made by the Tūwharetoa Māori Trust Board (the **Trust Board**) on behalf of Ngāti Tūwharetoa to the Minister for the Environment in relation to the Exposure draft for the National Policy Statement for Freshwater Management 2020 (the **NPS-FM 2020**) and the National Environmental Standard for Fresh Water 2020 (the **NES-FW 2020**).
2. The Trust Board was established pursuant to the Māori Land Amendment Act 1924 and Māori Land Claims Adjustment Act 1926. The Trust Board later became a Māori Trust Board under the Māori Trust Boards Act 1955.¹
3. In September 2007, the Trust Board and Her Majesty the Queen (**Crown**) signed a Deed of Settlement (the **2007 Deed**) confirming the Trust Board as the owners of the bed of Lake Taupō, the bed of that part of the Waikato River from Lake Taupō to Te Toka a Tia (the rock of Tia), inclusive of the Huka Falls, and the bed of certain rivers or streams flowing into Lake Taupō. The collective beds specified in the 2007 Deed are known as “Taupō Waters” and are held in Māori freehold title by the Tūwharetoa Māori Trust Board, in its capacity as the sole trustee of the Taupō Waters Trust.
4. The Trust Board’s relationship to Taupō Waters is unique; it holds legal title as trustee and acts as kaitiaki for Taupō Waters. The High Court² has confirmed the Trust Board has the right under clause 2.5.1 of the 2007 Deed to:
 - (i) require the Commercial Users to obtain from the Trust Board rights to occupy or use parts of Taupō Waters for commercial activities; and
 - (ii) charge Commercial Users for the same; and
 - (iii) notwithstanding an exemption granted to certain activities under Clause 2.5.5 of the 2007 Deed or an occupation/use right granted by the Trust Board under Clause 2.5.1 of the 2007 Deed, Commercial Users have no lawful right to occupy or use any part of Taupō Waters for commercial activities.
5. The 2007 Deed also sets out that Taupō Waters will be managed as if it were a reserve for recreation purposes under section 17 of the Reserves Act 1977 through a management board known as the Taupō-nui-a-Tia Management Board³. The Management Plan for Taupō Waters was determined by the Taupō-nui-a-Tia Management Board on 15 June 2021.
6. The Trust Board is also a party to the Waikato River Deed with the Crown dated 31 May 2010 (the **Waikato River Deed**). The Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (the **Upper Waikato River Act**). The Waikato River Deed provides that the Crown and the Trust Board agreed to enter into the Waikato River Deed in recognition of “the interests of Ngāti Tūwharetoa in the Waikato River and its catchment and in Taupō Waters and to provide for the participation of Ngāti Tūwharetoa in the co-governance and co-management arrangements in respect of the Waikato River”.⁴

¹ Māori Trust Boards Act 1955, refer section 10.

² Refer to Tūwharetoa Māori Trust Board v Taupō Waters Collective Limited [2020] NZHC 1871 [23 July 2021]

³ Clause 1.7.2 and 2.3.1 2007 Deed.

⁴ Waikato River Deed, 31 May 2010, refer clause 8

7. In addition to the above matters, the Trust Board is also a Party to existing Joint Management Agreements with the Waikato Regional Council and Taupō District Council⁵ and is an iwi authority [for Ngāti Tūwharetoa] for the purposes of Part 1 of the Resource Management Act 1991 (RMA).⁶
8. Please direct all communications in relation to this submission to Peter Shepherd, Natural Resources Manager at peter@tuwharetoa.co.nz, 021 974 652.

ACKNOWLEDGEMENT

9. The Trust Board wishes to thank the Minister for the Environment for the opportunity to provide feedback on the exposure draft of the NPS-FM 2020 and the NES-FW 2020.

SPECIFIC POINTS OF SUBMISSION

10. The Trust Board provides the following specific points of submission on the NPS-FM 2020 exposure draft and requests that subsequent and parallel amendments are made to NES-FW 2020 exposure draft where applicable.

SUBMISSION 1

Definition of baseline state

Relief sought

11. The Trust Board support the amendments to the definition of baseline state to read:

baseline state, in relation to an attribute, means the best state out of the following:

- (a) the state [of the attribute](#) on the date it is first identified by a regional council [for the purposes of this National Policy Statement](#)
- (b) the state [of the attribute](#) on the date on which a regional council set a freshwater objective for the attribute under the National Policy Statement for Freshwater Management 2014 (as amended in 2017)
- (c) the state [of the attribute](#) on 7 September 2017

Rationale

12. The proposed amendment to the definition makes it clear the baseline state refers to the state of any attribute in relation to (a) to (c).
13. The Trust Board notes the timeframe established in the definition of the baseline state for the Waikato and Waipā Rivers does not apply and is determined through the Vision and Strategy for

⁵ Available at <https://www.Taupōdc.govt.nz/our-council/policies-plans-and-bylaws/joint-management-agreements/Documents/JointManagement-Agreement.pdf> and <https://www.waikatoregion.govt.nz/assets/WRC/Community/Council-Meetings-and-Agendas/Joint-Management-Committees/Tuwharetoa/Tuwharetoa-WRC-Presentation-He-Taiao-Mauriora-Iwi-Involvement.pdf>

⁶ See <http://www.tkm.govt.nz/iwi/Ngāti-Tūwharetoa/>

the Waikato and Waipā Rivers - Te Ture Whaimana o Waikato (Te Ture Whaimana) in terms of no further degradation.

SUBMISSION 2

Definition of degraded

Relief sought

14. The Trust Board support the amendments to the definition of degraded to read:

degraded, in relation to an FMU or part of an FMU, means that as a result of something other than a naturally occurring process:

- (a) the FMU or part of the FMU is less able (when compared to 7 September 2017) to provide for any value [described in Appendix 1A or any other value](#) identified for it under the NOF

Rationale

- 15. The proposed amendment to the definition of degraded makes it clear that (c) only applies to compulsory values set out in Appendix 1A, including for mahinga kai.
- 16. The Trust Board notes Objective (h) of Te Ture Whaimana explicitly states that the Waikato River is degraded, and therefore irrespective of the definition, the Waikato and Waipā Rivers are degraded and the health and wellbeing of the awa must be restored and protected.

SUBMISSION 3

Definition of environmental flows and limits

Relief sought

17. The Trust Board support the new definition of environmental flows and limits to read:

[environmental flows and levels means the flows and levels set for an FMU or part of an FMU under clause 3.16](#)

Rationale

- 18. The new definition of environmental flows and levels provides a clear and unambiguous linkage to clause 3.16 of the NPS-FM 2020.

SUBMISSION 4

Definition of limit

Relief sought

19. The Trust Board support the amendments to the definition of degraded to read:

limit means either a limit on resource use or a take limit and includes environmental flows and levels

Rationale

20. The proposed amendment to the definition makes it clear that environmental flows and levels are a fundamental component of limits.
21. The amended definition of limit coupled with the new definition for environmental flows and levels is important and reinforces the requirement that regional councils must undertake a process to set environmental flows and levels as a fundamental component of setting limits.
22. For the Waikato River this means the historical process that was employed to set environmental flows for the Waikato River [under Variation 6] would not give effect to the NPS-FM 2020. The Trust Board consider the Waikato Regional Council must implement the National Objectives Framework (NOF) for the Waikato and Waipā Rivers, subject to clause 3.7(1) and giving effect to Te Ture Whaimana.

SUBMISSION 5

Clause 1.6

Relief sought

23. The Trust Board support the amendments to Clause 1.6 to read:
 - (1) ~~A requirement in~~ In implementing this National Policy Statement ~~to local authorities must~~ use the best information available at the time ~~is a requirement to use, which means,~~ if practicable, using complete and scientifically robust data.
 - (2) In the absence of complete and scientifically robust data, the best information may include information obtained from modelling, as well as partial data, mātauranga Māori at place, local knowledge, and information obtained...
 - (3) A ~~person who is required to use the best information available at the time~~ local authority:

Rationale

24. The proposed amendment to the header of clause 1.6 clarifies that local authorities, in 'implementing' the NPS-FM 2020, must use the best available information, at that time, to make decisions.
25. The amendment to insert 'In implementing...', infers that Clause 1.6 is to be read alongside, and necessarily applies to, the implementation of the NOF. The Trust Board note the exposure draft proposes to delete reference to 'use the best information available at the time' in Clause 3.10 [Identifying attribute states and their baseline states], 3.11 [Setting target attribute states], 3.14 [Setting limits on resource use], 3.16 [Setting environmental flows and levels].

26. The Trust Board consider Clause 1.6(2) should include mātauranga Māori at place as an integral component of best available information. This is because tāngata whenua have an intrinsic connection with te Taiao based on whakapapa, and with that connection comes carefully curated inter-generational knowledge. As traditional knowledge keepers, tāngata whenua must be involved in setting policy and respected as experts at place.

SUBMISSION 6

Policy 7 and Clause 3.21 and 3.24

Relief sought

27. The Trust Board oppose the amendment to Policy 7 and Clause 3.21 and 3.24 to insert 'bed' after river to read 'river bed'.

Rationale

28. The Trust Board consider amendment of Policy 7 and Clause 3.21 and 3.24 constrains the application of "Māori freshwater values" to just the river bed and fundamentally cuts across the holistic construct of Te Mana o te Wai and the Te Ao Māori world view where all things are interconnected.
29. the Trust Board reminds the Ministry for the Environment that the bed of Lake Taupō, the bed of that part of the Waikato River from Lake Taupō to Te Toka a Tia (the rock of Tia), inclusive of the Huka Falls, and the bed of certain rivers or streams flowing into Lake Taupō are held in Māori freehold title by the Trust Board. Ngāti Tūwharetoa view the bed, the water column and air column [above the bed] as being part of the indivisible entity associated with Taupō Waters, including those parts of the title that are defined in the NPS-FM 2020 as 'River'.
30. Additionally, the Trust Board also considers it is difficult to understand how the application of Te Mana o Te Wai — expressed by Ngāti Tūwharetoa and implemented through the hierarchy of obligations— could possibly entertain the compartmentalisation of an awa to just the bed. This compartmentalised view, to 'fit' western science, is misaligned with Tūwharetoa mātauranga.
31. Clause 3.24 requires that regional councils insert a policy into their Regional Plans to 'avoid' the loss of river extent and values associated with those rivers, including "Māori freshwater values". The Trust Board believe the construct of "Māori freshwater values" in the NPS-FM 2020 are purposefully designed to exist in separation to the NOF instream values.
32. The Trust Board supported the intent of Clause 3.24 when the NPS-FM was being promulgated, particularly the wording of Clause 3.24(3)(a) where an applicant would need to apply the "effects management hierarchy" cumulatively and without limitation to "Māori freshwater values", amongst other matters. While the wording in Clause 3.24(3)(a) is protected, it is difficult to see how "Māori freshwater values" can be made to apply to just the bed of an awa, as opposed to the awa as an indivisible entity.

SUBMISSION 7

Clause 3.6

Relief sought

33. The Trust Board support the amendments to Clause 3.6 to read:

- (1) This clause applies to all decisions by regional councils ~~relating to:~~ made under this National Policy Statement, and applies in addition to any other requirement under the Act relating to processes for making or changing regional policy statements or plans.

~~(a) clause 3.4(3) (about mechanisms to involve tangata whenua in freshwater management); and~~

~~(b) clause 3.15 (about preparing action plans).~~

Rationale

34. The deletion of (1)(a) and (b) and amendments to the header of Clause 3.6 require that decision-making on implementing the NPS-FM 2020 under (2) and (3) applies to all of matters, as opposed to just involving tāngata whenua in freshwater management and preparing actions plans.

SUBMISSION 8

Definition of biosecurity and wetland maintenance [Clause 3.21]

Relief sought

35. The Trust Board support the new definitions of biosecurity and wetland maintenance to read:

biosecurity means eliminating or managing pests and unwanted organisms

wetland maintenance means activities, such as weed control, intended to prevent the deterioration of a wetland's condition

Rationale

36. The new definitions of biosecurity and wetland maintenance provide for the wider exceptions to clause 3.22(1) of the NPS-FM 2020 to enable biosecurity and wetland maintenance activities within natural inland wetlands.

SUBMISSION 9

Definition of natural wetland [Clause 3.21]

Relief sought

37. The Trust Board support in part amendments to the definition of natural wetland to read:

natural wetland means a wetland (as defined in the Act) that is not:

- (a) a deliberately constructed wetland, ~~constructed by artificial means~~ ~~(unless it was other than a wetland~~ constructed to offset impacts on, or to restore, an existing or former natural wetland as part of giving effect to the effects management hierarchy; or
- (b) a wetland that has developed in or around an artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal), since the construction of the artificial watercourse; or
- (c) ...
- (d) a wetland within an any area of improved pasture that:
 - (i) ~~that, at the commencement date, is dominated by (that is more~~ has ground cover comprising more than 50% of) exotic pasture species as identified in the National List of Exotic Pasture Species (see clause 1.8)); and is subject to temporary rain-derived water pooling
 - (ii) does not contain threatened species or acknowledged taonga [as defined in the draft NPS-IB]

Rationale

- 38. The proposed amendment to insert 'deliberately constructed' into (a) provides improved definition between a natural and a constructed wetland.
- 39. Inserting 'other than a wetland' into (a) and deleting the brackets, provides certainty that improvements [via offsetting or general enhancement, restoration] to existing and reconstruction of former natural wetlands DOES NOT create an unintentional exemption from the definition of natural wetland. The Trust Board consider that restoration and enhancement activities on existing, and reconstruction activities on former, natural wetlands does not remove or undermine naturalness.
- 40. The intent of new (b) is supported by the Trust Board. The problem is the term 'deliberately constructed water body' is not defined in the NPS-FM 2020. Improved language is the use of "artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)" from the definition of River in the Resource Management Act (RMA) 1991.
- 41. Amendments to (d) when read together imply, "natural wetland means, a wetland that is not a wetland that is...". Combining (i) into (d) improves the framing of the wetlands within an area of

pasture that is subject to new (i) and (ii). The Trust Board consider (ii) should include 'acknowledged taonga' as defined in the draft National Policy Statement for Indigenous Biodiversity 2022 (NPS-IB). Where identified under Clause 3.19 of the draft NPS-IB, wetlands that meet (d)(i) and contain threatened species or acknowledged taonga would not be exempted from being defined as natural wetlands.

SUBMISSION 10

Clause 3.22

Relief sought

42. The Trust Board support in part the amendments to Clause 3.22 to read:

(1) Every regional council must include the following policy (or words to the same effect) in its regional plan: "The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:

(a) the loss of extent or values arises from [activities for](#) any of the following [purposes](#):

(i) the customary harvest of food or resources undertaken in accordance with tikanga Māori

(ii) [wetland maintenance](#), restoration, [or biosecurity](#)

(iii) ...

~~(c) the regional council is satisfied that:~~

~~(i) the activity is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development); and~~

~~(ii) the activity occurs on land identified for urban development in an operative regional or district plan; and~~

~~(iii) the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle; and~~

~~(iv) there is either no practicable alternative location for the activity, or every other practicable location would have equal or greater adverse effects on a natural inland wetland; and~~

~~(v) the effects of the activity are managed through applying the effects management hierarchy and, if aquatic offsetting or aquatic compensation is applied, the offsetting or compensation will be maintained and managed over time; or~~

~~(d) the regional council is satisfied that:~~

~~(i) the activity is for the purpose of expanding an existing, or developing a new, quarry for the extraction of aggregate; and~~

- ~~(ii) extraction of the aggregate will provide significant national or regional benefits; and~~
- ~~(iii) there is a functional need for the extraction to be done in that location; and~~
- ~~(iv) the effects of the activity are managed through applying the effects management hierarchy; or~~
- ~~(e) the regional council is satisfied that:

 - ~~(i) the activity is for the purpose of extracting any mineral in its natural state from the land; and~~
 - ~~(ii) extraction of the mineral will provide significant national or regional benefits; and~~
 - ~~(iii) there is a functional need for the activity to be done in that location; and~~
 - ~~(iv) (iv) the effects of the activity are managed through applying the effects management hierarchy; or~~~~
- ~~(f) the regional council is satisfied that:

 - ~~(i) the activity is necessary for the purpose of expanding an existing, or developing a new, landfill or cleanfill; and~~
 - ~~(ii) the new or expanded landfill or cleanfill will provide significant national or regional benefits; and~~
 - ~~(iii) there is either no practicable alternative location, or every other practicable alternative location would have equal or greater adverse effects on a natural inland wetland; and~~
 - ~~(iv) the effects of the activity will be managed through applying the effects management hierarchy."~~~~

Rationale

43. As noted in submission 8, the Trust Board consider the amendment to Clause 3.22(1)(a)(ii) provides for the works necessary to maintain natural inland wetlands, including through pest control [biosecurity] and vegetation management and earthworks [wetland maintenance].
44. New Clause 3.24(1)(c), (d), (e) and (f) provide exemptions for resource consent applicants and plan change processes to escape from the Regional Plan policy requirement, "the loss of extent of natural inland wetlands is avoided and their values are protected". The practical reality of retaining new Clause 3.22(1)(c)-(f) is the significant risk that existing natural wetlands within a region will be greatly reduced and the full spectrum of associated values lost. The Trust Board consider that such an approach will not give effect to Te Mana o te Wai.
45. In particular, new Clause 3.22(1)(c)(i)-(v) sends a perverse signal to decision-makers that it is defensible to include land containing natural wetlands in a Regional Spatial Strategy (RSS) when

identifying and signalling new/future growth areas. Previously under the gazetted version of the NPS-FM 2020, the Trust Board had some confidence that existing natural wetland would have protection from development pressure, particularly those wetlands and their margins that exist on the fringe of urban centres.

46. In addition to paragraph 43, the Trust Board believes the National Policy Statement for Urban Development (NPS-UD) 2022 is blind to the health and wellbeing of Te Taiao. Accordingly, the Trust Board has NO confidence the tests in new 3.22(1)(c)(i) being 'necessary for the purpose of urban development' [as defined under Policy 1 of the NPS-UD 2022] will result in good planning outcomes. In this instance, the Trust Board defines a good planning outcome as when high quality urban development is cognisant of existing natural inland wetlands and is therefore purposefully designed to harmonise with, and enhance the values of, that natural wetland.
47. The additional tests in Clause 3.22(1)(c) -(f) for 'no practical alternative', 'functional need for the extraction/activity in that location' and 'provide significant national or regional benefits' are unclear, not defined in the NPS-FM 2020 and are easily 'gamed' with advocate information. The Trust Board has NO confidence these provision will provide for the necessary protection of natural wetland areas, including preventing the loss of extent.
48. The Trust Board believes there is no compelling reason why broadening the existing exceptions to the Regional Policy requirement to "avoid the loss of wetland extent" in Clause 3.22(1) is reasonably required or would improve the outcomes from implementing the NPS-FM 2020.

SUBMISSION 11

Appendix 6 and 7

Relief sought

49. The Trust Board support in part new Appendix 6 and 7 to insert criteria for consideration of aquatic offsetting and aquatic compensation to read:
 - (2) [When aquatic offsetting is not appropriate: Aquatic offsets are not appropriate in situations where, in terms of ~~conservation~~ Te Mana o te Wai outcomes, the extent or values cannot be offset to achieve no net loss, and preferably a net gain, in the extent and values. Examples of an offset not being appropriate would include where:](#)
 - (a) ...
 - (9) [Science and mātauranga Māori: The design and implementation of an aquatic offset is a documented process informed by science and mātauranga Māori at ~~place, where available.~~](#) [Appendix 6]
 - (11) [Science and mātauranga Māori: The design and implementation of an aquatic offset is a documented process informed by science and mātauranga Māori at ~~place, where available.~~](#) [Appendix 7]

Rationale

50. The Trust Board support in principle the concept of making decisions through the correct use of the effects management hierarchy [in relation to natural inland wetlands and rivers] as defined in Clause 3.21 of the NPS-FM 2020.
51. The Trust Board notes Appendix 6 and 7 replicate Appendix 3 and 4 of the draft NPS-IB. In the context of indigenous biodiversity and giving effect to “Te Rito o te Harakeke”, the framing of achieving ‘conservation outcomes’ may be appropriate; however, this is unlikely to be the case for freshwater management. If retained in Appendix 6 and 7, the Trust Board is concerned that decision-makers will view ‘conservation outcomes’ as a proxy for “Māori freshwater values”. A better approach would be to refer to “Te Mana o te Wai outcomes”, which is entirely consistent with the implementation directive of the NPS-FM 2020 and requires the involvement with tāngata whenua under Clause 3.4.
52. The Trust Board notes the reference to mātauranga Māori in Sections 9 and 11 [respectively in Appendix 6 and 7] cannot be relied upon to consider the appropriateness of aquatic offsetting or compensation as these Sections speak to the design and implementation of offsets and compensation.
53. Part 9 of Appendix 6 and Part 11 of Appendix 7 speak to the design and implementation of aquatic offsets and compensation, and requires a documented process is followed that is informed by science and mātauranga Māori, where available. The language ‘where available’ constrains the use of mātauranga Māori in favour of science information and needs to be deleted. Additionally, the reference of mātauranga Māori should include “at place” referenced in submission 5.

SUMMARY

54. Ngāti Tūwharetoa are linked by whakapapa to their lands and their taonga. This connection establishes their mana whenua, kaitiakitanga and rangatiratanga, including their right to establish and maintain a meaningful and sustainable relationship between hapū, whanau and their taonga.
55. The Tūwharetoa Māori Trust Board has an inherent obligation to ensure that the mauri, and the physical and spiritual health of their environment, specifically Taupō Waters and the Waikato River, is maintained, protected, and enhanced.
56. Expressions of our intrinsic connection to Nga wai o Tūwharetoa have been well documented through our iwi planning documents, Joint Management Agreement with Taupō District Council, and the Waikato Regional Council, as well as reflected at a national level through legislation such as the National Policy Statement for Freshwater – Te Mana o te Wai. The Trust Board will continue to express our position through participation in numerous planning and policy processes.
57. Te Mana o te Wai which requires responsible and sustainable use of the water resource in the district and is considered a valuable and pertinent overarching principle to include here to ensure that the first right of water goes to water and that any ‘human’ use of water is considered secondary to the water itself.
58. The Tūwharetoa Māori Trust Board support the submissions made by Raukawa Charitable Trust, Maniapoto Māori Trust Board, Te Arawa River Iwi Trust, and Waikato-Tainui.

59. We do not wish to be heard in support of this submission at a hearing.

Nāku iti nei, nā

A handwritten signature in blue ink, appearing to be 'P.S.' with a flourish.

Peter Shepherd
Natural Resources Manager
Tūwharetoa Māori Trust Board