



TŪWHARETOA
MĀORI TRUST BOARD

Submission by the Tūwharetoa Māori Trust Board

concerning the:

Water Services Entities Bill

22 July 2022

INTRODUCTION

1. This submission is made by the Tūwharetoa Māori Trust Board (the **Trust Board**) on behalf of Ngāti Tūwharetoa to the Finance and Expenditure Select Committee on the Water Services Entities Bill.
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

WAI MĀORI

7. 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.
8. 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.
9. 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 the participation in numerous planning and policy processes.
10. 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.
11. 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

SCOPE OF SUBMISSION

12. The Trust Board provides the following specific points of submission on:
 - (a) overarching comments on the Water Services Entities Bill (the Bill) and its development
 - (b) those matters that are included in the Bill
 - (c) some critical matters that are not yet included in the Bill (and views on those matters, and
 - (d) potential impacts on the treaty settlement for iwi and hapū

SUBMISSION 1

OVERARCHING COMMENTS

1. The Trust Board records the following overarching concerns with the Bill in its current form and the process for its development:

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/>

(a) **The Bill needs to meet its stated aims:**

The early indications from those driving the reform were that this reform was intended to be transformational.

Transformation would see the elevation of Te Mana o te Wai as not only the vision, but also as a core value for all people living in Aotearoa. Reaching this point requires involvement of Iwi/Māori to set the direction, it requires community education to broadly raise the importance of water in everyone's mindset, as well as specifically within the water industry.

Elevation of what Te Mana o te Wai means from an Iwi/Māori perspective, requires investment in training and enabling appropriate engagement with Ngāti Tūwharetoa in parallel with the development of technical responses for water infrastructure that fits with cultural values.

Additionally, the water services entities themselves need to move beyond status quo and under council control. New Zealand faces a significant infrastructure challenge in relation to the drinking water, wastewater, and stormwater services that are currently delivered by territorial authorities. Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes from those services. To achieve this requires transformational change in the way infrastructure is currently managed and operated and must deliver outcomes that will benefit iwi and our wider communities.

(b) **Failure to recognise iwi and hapū rights and interests in water (and other taonga):**

The Trust Board continues to be concerned at the lack of priority shown by successive Governments on the issue of recognising iwi rights and interests in water (and other taonga). This Bill has the potential to continue and perpetuate that failure and undermine any future recognition of iwi rights and interests in water.

As a result, the Bill needs to include a stronger provision to safeguard, and keep alive, those rights and interests until such time as the resolution of iwi rights and interests in water have been resolved directly with Ngāti Tūwharetoa.

The Trust Board recommends that the legislation includes a provision confirming that "nothing in legislation creates or transfers a proprietary interest in water or limits, extinguishes, or otherwise adversely affects or constrains iwi or hapū authority over, or rights and interests in, water."

Hapū and Iwi hold an inherited responsibility to manage their taonga in a way that balances Rangatiratanga (rights and interests) alongside Kaitiakitanga (obligations) for the benefit of current and future generations. The Trust Board holds this mantle on behalf of our hapū and iwi, which is recognised in statute. As such it is imperative that our rights and interests with regard to our taonga are recognised and upheld.

(c) **Treaty of Waitangi settlements and Crown Arrangements must be upheld:**

It is critical that redress provided under Treaty of Waitangi Settlements and Crown arrangements with the Trust Board are upheld. Whilst the WSE Bill specifically provides that Treaty Settlements must prevail, this will need to be carefully considered (and tested) and recognised through, the establishment of the water services entity, the rest of the policy development process and legislative drafting of Bill 2.

Additionally, and importantly, the deeds and agreements identified in paragraph 3 above do not comprise, nor arise from, Treaty settlements between the Crown and Ngāti Tūwharetoa. Accordingly, the necessary engagement between the Department and the Trust Board must be separate from, and of a different nature to, any engagement proposed or directed to 'upholding' Treaty settlements. While the partnership relationship between the Trust Board and the Crown is consistent with the Crown's Te Tiriti obligations, the Crown's obligation to recognise and uphold the Trust Board's legal rights and interests arises as a matter of law and active Te Tiriti obligation independent from, and separate to, any Treaty settlement obligations to Ngāti Tūwharetoa

(d) **Negotiated agreements under the RMA that relate to Water Infrastructure (e.g. JMAs and Mana Whakahono ā Rohe) must also be upheld:**⁷

It is equally critical that co-governance arrangements that relate to water infrastructure that currently exist under the RMA are also upheld (for example, JMAs entered into under the RMA that do not arise from Treaty settlements⁸, Mana Whakahono ā Rohe⁹ and section 33 RMA transfers¹⁰).

It should be noted that there are also a number of mitigation agreements arising from resource consent applications and the responsibility of those discharging in the waterways are continuing improving systems to achieve Te Mana o te Wai and other restoration priorities. These arrangements will have to be discussed directly with those iwi and hapū involved.

SUBMISSIONS ON MATTERS INCLUDED IN THE BILL

2. The Trust Board supports some key elements in the Bill which it submits must be maintained. In this respect, it is understood that many of these matters have been included in the Bill in their current form as a result of the recommendations from the Working Group on Governance,

⁷ There are currently JMAs or related co-governance agreements under the RMA through Treaty Settlements across the motu in varying forms.

⁸ There are currently JMAs under the RMA between Ngāti Tūwharetoa and Taupō District Council (2009) regarding consenting on Māori land and between Ngāti Porou and Gisborne District Council (2015) regarding decision-making in the Waiapu catchment. Māngai Māori arrangements on critical decision-making committees between Waikato-Tainui and both Hamilton City Council and Waikato District Council.

⁹ Being an iwi participation arrangement entered into under Part 5 Subpart 2 of the RMA (noting the recent mana whakahono ā rohe signing between Ngāti Tūrangitukua and Taupō District Council)

¹⁰ There is currently one transfer that has been made under section 33 of the RMA (being between Ngāti Tūwharetoa and Waikato Regional Council).

Representation and Accountability.

3. However, there is still aspects of the Bill that can be enhanced (including further work on the policy to inform the legislative drafting).

Te Tiriti o Waitangi and Te Mana o te Wai (clause 4)

4. The Trust Board supports section 4 of the Bill that requires all persons performing or exercising duties, functions or power under the Bill must give effect to:
 - (a) the principles of the Te Tiriti o Waitangi; and
 - (b) Te Mana o te Wai (to the extent that Te Mana o te Wai applies to those duties, functions or powers).
5. The Trust Board acknowledges that the water services entity is required to give effect to Te Mana o te Wai to the extent that it applies to the duties and functions of the entity. While this is consistent with the approach across all legislation relating to water services, including the Taumata Arowai, the conditioning language “to the extent that Te Mana o te Wai applies to those duties, functions or powers” provides an avenue for water service entities to avoid giving effect to Te Mana o te Wai. The Trust Board considers there must be a more positive obligation placed on the entities delivering water services to communities.
6. Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of water protects the mauri of the wai and the health and well-being of the wider environment. It is the view of the Trust Board that Te Mana o te Wai must be strengthened to apply to all persons performing or exercising duties, functions, or power under the Bill at all times, as such:
 - recognises the fundamental importance of waterways to our country; and
 - prioritises the health and well-being of water bodies and ecosystems for current and future generations.
7. Water services are essential building blocks for communities. Therefore, the Trust Board would elevate the importance of core values such as Te Mana o te Wai that will guide decision making, planning, governance, accountability, and service delivery – reflected at all levels of the water services entities framework, including but not limited to:
 - Te Mana o Te Wai being given effect to by the Minister in developing the Government Policy Statement.
 - Te Mana o Te Wai being given effect to by the Regional Representative Group in the development of the Statement of Strategic and Performance Expectations and Statement of Intent.
 - Te Mana o Te Wai being given effect to in asset management plans; and
 - Te Mana o Te Wai being given effect to in infrastructure strategies.

8. By having strong objectives focused on Te Mana o te Wai, it is likely to lead to better protection of the environment and its life sustaining capacity. Setting objectives focused on Te Mana o te Wai (top down and bottom up), must also be set at a regional level in partnership with iwi and hapū utilising mātauranga Māori (for example, in relation to water). These points need to be the subject of further consideration and policy development.

Interpretation (clause 6)

Mana Whenua

9. Mana whenua for an identified area, means the iwi or hapū holding and exercising, in accordance with tikanga, authority or other customary rights or interests in that area.
10. The Trust Board would support this definition, ensuring that our whakapapa relationship between the marae/ hapū of Ngāti Tūwharetoa and Te Taiao, and related customary rights and interests (including tikanga, kawa and mātauranga), are appropriately recognised and upheld in the three waters reforms and the establishment of the water services entities.

Te Mana o te Wai

11. Te Mana o te Wai has the meaning set out in the National Policy Statement for Freshwater Management (NPS-FM) issued in 2020 [under section 52 of the Resource Management Act 1991] and any statement issued under that section that amends or replaces the 2020 statement.
12. The Trust Board supports a more integrated whole-of-system approach to wai, from mountains (maunga) to the sea (moana), or ki uta ki tai. This all-of-system approach also recognise the fundamentals of tikanga, mātauranga and kaitiakitanga Māori, which provide a unique, inclusive and transformative approach to the management of water and water-related infrastructure in Aotearoa for the benefit of all New Zealanders.
13. At a practical level, the Trust Board is also of the view that the proposed amendments to the definition of Te Mana o te Wai will also provide a bridge and connection to resource planning and consenting on water take and discharge – helping underpin consistency in the overall system and which will guide behaviours to a common sense of purpose.

Treaty Settlement obligations (clause 9)

14. As such, the Trust Board supports the provisions of clause 9, and the requirement that where provisions of the Water Services Entities Act is inconsistent with a Treaty Settlement obligation,

the Treaty settlement obligation prevails.

15. Additionally, the Trust Board expects our arrangements under the 2007 Deed are equally recognised and upheld.

Operating principles (clause 13)

16. The Trust Board supports the proposed intent of the current operating principles of a water services entity to partner and engage early and meaningfully with Iwi/Māori, particularly as it relates to:

- giving effect to Te Mana o te Wai;
- understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and
- giving effect to Treaty settlement obligations.

17. There are a number of ways Te Mana o te Wai could be implemented in the new system by the entities however, there must be ongoing engagement on definitions of “kaitiakitanga” and “mātauranga” to ensure these are terms founded in, and expressed through, tikanga and assist with furthering the intent of the Bill to uphold the principles of Te Tiriti o Waitangi and Te Mana o te Wai. The term ‘iwi and hapū’ should be retained and used throughout the Bill and subordinate instruments.

18. It will also be important that the implementation of Te Mana o te Wai upholds its integrity and purpose, which is not only the well-being of the natural environment, its interconnectedness and life sustaining capacity, but also the intrinsic relationship between iwi and hapū and te Taiao. For Te Mana o te Wai to be implemented effectively, iwi and hapū must co-develop implementation processes, frameworks and plans with the Crown and Local Authorities.

19. The Trust Board acknowledges that this is a progressive obligation on the respective water services entity. However, it notes that transitional arrangements are being explored including the establishment of local transition teams that will act and operate as interim water services entities.

20. Therefore, if this provision is to be fully achieved and implemented, it is critical that Ngāti Tūwharetoa be engaged immediately in this transition phase of establishment of the entity. Particularly if the overarching aims objectives for the reform are to be achieved (including, in particular, those expressly referred to in this submission).

Shares in Water Services Entities (clause 16)

21. The Trust Board supports the direction that three waters assets must remain in public

ownership and the ownership model must help protect against privatisation. These are legacy assets that must remain publicly owned for the benefit of both current and future generations.

22. The Trust Board also supports the express prohibition on local authorities providing financial support (such as guarantees or indemnities) or lending money or providing credit or capital to water services entities. This will help ensure the ownership model is not seen by the credit rating agencies as a form of parent-company support. However, it is not intended to restrict what is likely to become business as usual arrangements such as service agreements or potential joint ventures.
23. Alternatively, the Trust Board sees itself as a natural partner, if there are opportunities to ensure the assets remain in New Zealand ownership and potential joint venture opportunities arise.
24. The Trust Board acknowledges the multi-level requirements that a proposal for a WSE to divest its ownership in a water service or sell or lose control of significant infrastructure. Another layer of protection could include a potential offer to iwi/Māori through a right of first refusal mechanism. Again, the intent is that this will ensure ownership of water services is retained within New Zealand.

Mana whenua representation (clause 27)

25. Governance across any new system will be critical. It is accepted that there will be a two-tier governance structure comprising:
 - A regional representative group (which is set up to appoint the board, set performance expectations, sign-off on the entity's strategic direction, and to monitor and hold the board to account), and
 - A corporate skills-based board (which will develop the strategy, appoints the chief executive, monitors execution of strategy by the senior management, and is answerable to the regional representative group).
26. The Trust Board supports the involvement of mana whenua representation (in particular iwi and hapū) who were previously excluded from decision making, and considers this is critical to the success of the water services entities, and implementation of its related strategies, moving forward.
27. In respect to each of the Entity boundaries, the following principles can be applied in relation to the governance of any new system:
 - (a) The Regional Representative Group does not usurp the mana of iwi/hapū in their respective rohe.
 - (b) Membership of any Regional Representative Group must reflect Te Tiriti o Waitangi partnership and must be 50% Iwi and 50% Territorial Authority appointees:

- (i) Iwi appointments must be determined by Iwi/hapū within the entities.
 - (ii) Iwi appointees accountable to iwi and hapū
 - (iii) Co-chair appointed by each partner.
- (c) Regional Representative Group can co-opt skill-based technical support where required (i.e. pūkenga, governance, science and mātauranga, legal, policy, etc).
- (d) Resourcing for operation of Regional Representative Group must be provided by the Crown (initially), then the respective water services entity (long term), and include dedicated secretariat (e.g. comprised of senior officials and iwi/hapū technicians).
28. Consistent with the objective of working together with the common goal of improved water services, it is pleasing to see that consensus decision-making is a key principle for the Regional Representative Group.
29. At a specific regional level, the following principles can be applied in relation to the governance of any new system:
- (a) Mana motuhake o ia iwi, o ia iwi, i tā rātou rohe.
 - (b) Membership of Regional Advisory Panels give effect to Treaty of Waitangi partnership and must be 50% Iwi appointees and 50% Territorial Authority appointees:
 - (i) Iwi appointments made by iwi and hapū and territorial authority appointments made by Local Authorities respectively.
 - (ii) Iwi appointees accountable to iwi and hapū and territorial appointees accountable to Local Authorities.
 - (iii) Co-chairs appointed by each partner.
 - (c) Composition (i.e. number of members) of Regional Advisory Panels should be designed to reflect Treaty of Waitangi settlement arrangements [where they exist], iwi and hapū rohe and Local Authority boundaries and to maintain operational effectiveness of governance arrangement (i.e. fit for purpose membership composition).¹¹
 - (d) Roles of Regional Advisory Panels to guide direction and development of wider planning frameworks including those intended to be developed through the Spatial Planning Act and National Built Environment Act including the co-design of:
 - (i) Regional Spatial Strategies.
 - (ii) National Built Environment Plans.
 - (e) Resourcing for Regional Advisory Panels provided by Local Crown and include secretariat (e.g. local authority and iwi/hapū technicians, co-opted skill-based technical appointments – tikanga Māori, science and mātauranga, planning and policy, legal etc).

¹¹ Noting the 50% Local Authority and Crown composition may shift depending on the role of the Regional Governance Arrangement.

- (f) Scope of role for regional roles and functions will assist to guide the principles (i.e. specific water infrastructure issues / arrangements at catchment level).
30. The Trust Board notes that the representative process is to be reflected through a constitution (which is yet to be developed). However, to provide better certainty for iwi in decision making, the inclusion of the representation and process should be included in the legislation.

Board Appointment Committee (s38)

31. The Trust Board supports the involvement of mana whenua representation through the Regional Representative Group to appoint board appointment committees.

Membership of board (clause 57)

32. The Regional Representative Group is responsible for developing the strategic priorities for the water services entities, and as such, should ensure the board of the water services entities collectively have knowledge of, and experience and expertise in relation to:
- performance monitoring and governance.
 - network infrastructure industries.
 - the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - perspectives of mana whenua, mātauranga, tikanga, and te ao Māori.
33. The Trust Board believe that current and past problems in relation to water services, which have adversely affected the environment and human health in several regions, could have been avoided by making better use of the knowledge, skills and mātauranga available within communities.
34. While there is an obligation of ensuring board members possess these skills, the Trust Board believes there are skilled and competent iwi/Māori with expertise within the communities to fill these roles.
35. Therefore, in the spirit of true co-governance, the Trust Board would advocate that the boards of the water services entities should also include 50/50 membership of iwi/Māori representation on the water services entities boards.

Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi (clause 74)

36. The Trust Board supports the requirement that the board of a water services entity must maintain systems and processes to ensure that, for the purpose of carrying out its functions, the entity has the capacity and capability to:
- give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - engage with, and understand perspectives of, mana whenua.

37. The Trust Board supports the requirement that the board of a water services entity must also ensure continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Development of the Constitution (sub-part 7, clause 91)

38. The Constitution for the water services entities is going to be a critical tool which will set out the processes for the Regional Representative Groups, the regional advisory panels, funding arrangement, composition of the water services entity boards and related governance processes.
39. As a result, the Trust Board expects iwi/Māori be involved in the development and drafting of the Constitution at an early stage.
40. The Trust Board would welcome discussions with officials, to work together, to design the process of how the Constitution is intended to be developed and the commitment of iwi/Māori involvement.

Te Mana o te Wai statements (clause 141)

41. The Trust Board acknowledges that wai, or water, is a taonga of paramount importance to iwi and hapū and is essential to life and identity. Every iwi will have a whakataukī or pepehā which references an expanse of water, whether it is a river, a lake, or a harbour. For many iwi, a body of water is their most important self-identifying feature.
42. Therefore, the Trust Board supports the development of Te Mana o te Wai Statements to allow iwi and hapū to reflect their relationship with their wai and ensures Ngāti Tūwharetoa are well positioned to:
- (a) take advantage of the proposed Te Mana o te Wai statement mechanism;
 - (b) ensure that any plans are informed by Te Mana o te Wai statements; and
 - (c) ensure on-going compliance of giving effect to Te Mana o te Wai in all activities and operations
43. As such, the Trust Board supports the requirement of the board of water services entity to receive te mana o te wai statements, engage with the mana whenua to agree on how the entity intends to give effect to Te Mana o te Wai through its statement of intent, strategic planning for infrastructure, investments, and operations.
44. Therefore, the Trust Board expects that the water services entity can draw on Te Mana o te Wai statements in a number of ways to assist with local water services delivery arrangements, including:
- development of Te Mana o te Wai statements for water services as identified by relevant mana whenua (which statements may relate to an individual iwi/hapū or catchment, or may be multi-iwi/hapū or multi-catchment);

- regional advisory panels providing direct input into regional strategic priorities by reference to relevant Te Mana o te Wai statements; and
 - Regional Representative Groups, setting the strategic direction for WSEs (including recognising and providing for Te Mana o te Wai as a core principle that will guide service delivery).
45. In addition to the overarching commitment to recognise and provide for Te Mana o te Wai statements, the Trust Board acknowledge that there are a number of water bodies in our rohe which are in the service area of Entity B. Therefore, the relationship between Ngāti Tūwharetoa and the water services entities will be critical to ensure our wai are being protected in accordance with Tūwharetoa tikanga.
46. The Trust Board would recommend that this work is undertaken during the transition phase, alongside Ngāti Tūwharetoa, and not wait until after the water services entity is established.
47. The Trust Board supports that appropriate resourcing and funding is provided by the Crown (and water services entities) to develop Te Mana o te Wai statements, and to engage with the water services entities on their response to the statements.

SUBMISSIONS ON MATTERS THAT ARE NOT INCLUDED IN THE BILL

48. There are a number of matters that will ultimately be included in the National and Built Environments Act, but are not in the Bill. The submissions below address the key matters for Ngāti Tūwharetoa.

Recognition of hapū/iwi rights and interests in water

49. The recognition of water rights and interests of iwi and hapū must not be negatively affected through the ultimate design of the Act. Currently, the Bill does not provide for the recognition of iwi/hapū rights and interests. The select committee must ensure that the next steps for the Bill do not preclude future recognition of rights and interests.
50. Addressing rights and interests in water covers the areas of governance, management, and allocation. In that regard, Te Mana o te Wai and Ngā Mātāpono ki te Wai can guide the consideration of these matters. These frameworks ensure that the mana of water is upheld while also recognising and providing for the full expression of iwi/hapū rights and interests in water.
51. The water rights and interests of iwi and hapū are substantive, not merely procedural or participatory. Any policy objectives relating to freshwater governance, management and allocation must therefore reasonably include (alongside other policy parameters):
- (a) giving effect to the principles of Te Tiriti;
 - (b) better reflecting a Te Ao Māori view (including by upholding both Te Mana o te Wai and Te Oranga o te Taiao); and
 - (c) addressing iwi/hapū rights and interests.

52. Iwi and hapū rights in water must be addressed as a matter of priority and the Bill must not restrict options for recognition.
53. As a result, the Bill also needs to future proof such rights and interests in water until such time the resolution of iwi rights and interests in water have been adequately prioritised and resolved directly with Ngāti Tūwharetoa.
54. The Trust Board recommends that the legislation includes a provision confirming that “nothing in legislation creates or transfers a proprietary interest in water or limits, extinguishes, or otherwise adversely affects or constrains iwi or hapū authority over, or rights and interests in, water.”

Relationship with Resource Management Reforms

55. Improving how we plan for future growth and development within agreed environmental limits is a fundamental plank of the Resource Management Reforms, but it is also a key consideration for the future operation and development of the water services entities.
56. The Trust Board understands that the proposed Spatial Planning Act (SPA), which will require the development of long-term regional spatial strategies, will be of key importance for the new water services entities. These strategies will identify the areas that will be suitable for growth and development within a 30-year planning horizon, as well as those area that require protection and may be vulnerable to a rapidly changing climate and natural hazards. Infrastructure planning will require entities to service growth and development and that is likely to mean future requirements for freshwater and to discharge more contaminants. These matters will require the active involvement of Ngāti Tūwharetoa and intersect with unresolved rights and interests and upholding existing Te Tiriti settlement arrangements.
57. The development of natural and built environment plans under the proposed Natural and Built Environments Act (NBA), which will likely also need to give effect to Te Mana o te Wai (under the NPS-FM 2020), will also be important to decision-making within regions.
58. The Trust Board believe that attention should be given to streamlining and aligning these arrangements. Ideally the regionalisation and co-governance arrangements should conform with each other, and any differences should be kept to a minimum and only exist for very good reasons
59. The Trust Boards expectation is it must be engaged at an early stage of any spatial planning process that is employed to develop Regional Spatial Strategies.

Other related reform processes

60. In addition to the Resource Management Reforms there are currently a range of interconnected reform processes underway (including the Economic Regulation, the Drinking Water regulations that will be or have been introduced as a part of the Three Waters reform package).

61. These strands of reform are connected and there needs to be cohesion including the interaction with the Resource Management Reforms. In our view, the development of the various strands of reform is currently siloed. The Department of Internal Affairs together with the Ministry for the Environment must show leadership and ensure that the dots are joining up across the various parts of the reform packages.

Transitional arrangements

62. Transition arrangements are currently unclear on how they are to work together in partnership with iwi / Māori.
63. Specifically in relation to the Local Transition Teams, the design and implementation of Te Mana o te Wai being embedded within the water services entities, the development of Te Mana o te Wai statements, workforce development and future planning. It will be important to ensure that Ngāti Tūwharetoa is involved in the development of any new system (given that many of those arrangements must be developed with iwi).

SUMMARY

64. In conclusion, the Trust Board records the following summary:
- (a) The water services entities must be transformational that would see better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori recognised. Additionally, it requires transformational change in the way infrastructure is currently managed and operated and must consider outcomes that will benefit iwi Māori and our wider communities.
 - (b) The Trust Board continues to be concerned at the lack of priority shown by successive Governments on the issue of recognising iwi rights and interests in water (and other taonga).
 - (c) The 2007 deed, the Upper Waikato River Act and the Waikato River Act arrangements with the Tūwharetoa Māori Trust Board must be upheld and carefully tested through the establishment of the water services entities.
 - (d) It is critical that redress provided under Treaty of Waitangi Settlements are negotiated agreements under the RMA that relate to Water Infrastructure (e.g. JMAs and Mana Whakahono ā Rohe, Section 33 delegations) must also be upheld.

65. Please direct all communications in relation to this submission to Peter Shepherd, Natural Resources Manager at peter@tuwharetoa.co.nz, 021 974 652.

Nāku iti nei, nā

A handwritten signature in blue ink, consisting of a large, stylized initial 'P' followed by a series of loops and a long horizontal stroke extending to the right.

Rakeipoho Taiaroa
Chief Executive Officer
Tūwharetoa Māori Trust Board