

13 June 2024

Finance and Expenditure Select Committee
Parliament Buildings
Wellington
fe@parliament.govt.nz

Tēnā koe

PREAMBLE:

He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi were some of the enabling frameworks, outside of Te Ao Māori, that our tupuna envisioned would support the development of our nationhood as Aotearoa/New Zealand.

This submission is an ongoing part of that continuum to realise and reassert the aspirations of our tupuna to facilitate intergenerational equity whilst recognising and upholding Te Mana me te Mauri o te Taiao and Te Tiriti o Waitangi.

Submission to the Finance and Expenditure Select Committee on the Local Government (Water Services Preliminary Arrangements) Bill

1. This response is made on behalf of Te Kahu o Taonui (Te Tai Tokerau Iwi Chairs Forum).
2. Te Kahu o Taonui was established in 2006/07 and is now a collective of Authorities in Te Tai Tokerau namely Ngāti Kuri Trust Board, Te Rūnanga Nui o Te Aupōuri, Te Rūnanga o Te Rarawa, Te Rūnanga o NgāiTakoto, Te Iwi o NgātiKahu Trust, Kahukuraariki Trust / Ngātikahu ki Whangaroa, Te Rūnanga o Whaingaroa, Te Runanga-Ā-Iwi-O Ngāpuhi, Te Runanga o Ngāti Hine, Ngātiwai Trust Board, Te Iwi o Te Roroa and Te Rūnanga o Ngāti Whātua.
3. The aim of Te Kahu o Taonui is to advance the collective aspirations of Te Tai Tokerau iwi and hapū. *"Me mahi tahi tātou mō te iwi te take"*.

Local Government (Water Services Preliminary Arrangements) Bill

POSITION:

4. Te Kahu o Taonui (Te Kahu) supports maintaining the principles of Te Mana o te Wai within the Bill but is **strongly opposed** to the hierarchical obligations being repealed in the setting of wastewater environmental performance standards.
5. The following comments reflect the issue around being able to address the health and well-being of water bodies and freshwater ecosystems as a fundamental priority when developing wastewater environmental performance standards.
6. Te Kahu is especially concerned around the current and subsequent impact and effects of the receiving environments on the wairua of iwi, hapū and our wider communities from failing and aging wastewater treatment plants.



7. Water bodies and freshwater ecosystems are part of our spiritual, cultural, genealogical and ecological DNA, which is clearly articulated within karakia, waiata, haka, whakataukī, pepeha and mihi mihi.
8. This relationship is a taonga tuku iho and is manifested in the maintenance of mana and the subsequent rangatiratanga obligations and responsibilities placed on us as kaitiaki, consumers and developers.
9. The health and well-being of water bodies and freshwater ecosystems should be the priority first and foremost.
10. The ability of people and communities to provide for their social, economic, and cultural wellbeing, now and into the future cannot be supported by degraded ecosystems.
11. Successive governments have grappled with the question (and notion) of Māori rights and interests in water, irrespective of whether it is acknowledged that Māori do have interests and rights in freshwater resources even though the full nature and extent of those rights and interests have not yet been defined¹. These rights and interests have been considered and supported by the Judiciary; however the Crown chooses to maintain and defend a position of inertia preferring for this matter to be unresolved.
12. Iwi and hapū relationships with water bodies and freshwater ecosystems (and other) taonga and the subsequent developmental impacts has been clearly identified and clarified via a range of significant Waitangi Tribunal Reports, for example:
 - Mangonui Sewerage Report 1988
 - Ko Aotearoa Tēnei 2011
 - National Freshwater and Geothermal Resources Claim 2012; through to
 - Tino Rangatiratanga me te Kāwanatanga. Stage 2 Report of the Te Paparahi o Te Raki Inquiry 2022, specifically noting that hapū did not cede their sovereignty and hence their rights and interests to water have still not been addressed
13. Te Kahu sees s.138(3A) of this Bill as another blatant process of marginalising iwi and hapū relationships with their taonga thereby undermining their mana whakahaere².
14. Within Te Taitokerau our iwi, hapū, marae, whānau and the wider community have consistently fought and argued for the health and wellbeing of water bodies and freshwater ecosystems, specifically the issues around resource consent renewals for aging wastewater treatment plants^{3 4}.
15. The ability to sustain our current and future generations should not be seen as a trade off on Aotearoa's natural capital and there needs to be a balance or reset bearing in mind that

¹ Waitangi Tribunal Report (2012). Stage 1 Report on the National Freshwater and Geothermal Resources Claim. Wai 2358:pp 36.

² See NPS-FM 2020:pp5

³ See Te Runanga o Te Rarawa v NRC A121/2009 NZEnvC 326 (17 November 2009), but more recently see NRCs Independent Hearing Commissioners determination on two RC applications to operate the Opononi / Ōmapere and Kohukohu WWTPs lodged by FNDC.

⁴ See NRC v FNDC [2019] NZEnvC 47 (20 March 2019).



economic determinants have invariably maintained the status quo where our water quality and freshwater ecosystem issues are getting worse not better.

16. The hierarchical obligations of Te Mana o te Wai, is the reset and must be maintained.

STATEMENT OF KEY MATTERS OF CONCERN:

Te Tiriti o Waitangi / Treaty of Waitangi

17. The Crown has an obligation to make decisions in a way that is consistent with Aotearoa / New Zealand's founding document, Te Tiriti o Waitangi.
18. Water bodies and freshwater ecosystems are a taonga and as such is (or should be) protected under the second article of Te Tiriti o Waitangi.
19. As a Te Tiriti partner our responsibility comes from mana tuku iho and coupled with our world view and epistemology, it is inherent on us to safeguard the health and well-being of our natural environment first and foremost.
20. Te Kahu is concerned that in lieu of the Te Tiriti partnership, this Bill fails to recognise or provide for Iwi / Māori rights and interests in water. These rights and interests have been critically assessed by the Waitangi Tribunal, the Judiciary and the Crown⁵
21. These rights and interests are still unresolved, and components of this Bill seeks to further marginalise the input and participation of the Treaty partner. This is untenable.

Te Tiriti o Waitangi settlements⁶

22. Within Te Tai Tokerau seven of our iwi members have negotiated Treaty Settlements with the Crown whereby a range of formal and informal arrangements have been negotiated in response to the Crown's Treaty breaches.
23. All Treaty settlements recognise and articulate that the Crown has breached Te Tiriti o Waitangi / Treaty of Waitangi and its principles and the Crown's inability to act in good faith has, *inter alia*:
 - Failed to appropriately recognise and respect the mana and rangatiratanga of the claimants; and
 - Restricted their ability to act as kaitiaki over their taonga.
24. Te Kahu has concerns that Treaty settlement entities who have negotiated formal and informal arrangements in good faith relative to water bodies and freshwater ecosystems including, but not limited to:
 - Returned assets
 - Co-governance and co-management mechanisms; through to
 - Statutory acknowledgements

Will be adversely affected, and Te Kahu would expect that the Crown will directly engage with its Treaty settlement partners.

⁵ Waitangi Tribunal Report (2012). Stage 1 Report on the National Freshwater and Geothermal Resources Claim. Wai 2358:pp 36.

⁶ See [Quarterly-report-to-31-Mar-2024.pdf \(tearawhiti.govt.nz\)](https://tearawhiti.govt.nz/Quarterly-report-to-31-Mar-2024.pdf).



Te Mana o te Wai

25. The concept and associated framework for Te Mana o te Wai is not new for iwi and hapū, who have consistently advocated this philosophy over multiple generations. Seeking to repeal the hierarchical obligations will be a return to the philosophy that iwi and hapū do not have a unique value proposition as a Treaty partner. From Te Kahu's perspective, this is untenable and indefensible.
26. The Fifth National Government initiated the Te Mana o te Wai obligations, thereby recognising them within the National Policy Statement for Freshwater Management (NPS-FM) 2014 and it was identified as a first step to improve freshwater management at a national level.

"The Treaty of Waitangi/Te Tiriti o Waitangi is the underlying foundation of the Crown–iwi/hapū relationship with regard to freshwater resources. Addressing tangata whenua values and interests across all of the well-beings, and including the involvement of iwi and hapū in the overall management of fresh water, are key to giving effect to the Treaty of Waitangi."⁷

27. The Sixth Labour Government made subsequent amendments to the NPS-FM from the original recognition of the connection between ecosystem health and human health, through to the current 6 principles and hierarchical obligations. All amendments have sought to improve the balance between the water, the wider environment, and the community.
28. Te Kahu supports the current Te Mana o te Wai framework in seeking to improve this balance.

CONCLUSION:

29. Te Kahu o Taonui is adamant that repealing the Te Mana o te Wai hierarchical obligations will significantly impact the downstream impacts of multiple receiving environments. These environments are fundamental in iwi, hapū, marae, and whānau exercising their mana and rangatiratanga with water bodies and freshwater ecosystems.
30. Therefore, Te Kahu o Taonui fundamentally opposes s.138(3A) of the Bill⁸ as a mechanism to maintain the degradation of our water resources and requires the Crown to maintain the status quo in relation to the National Policy Statement for Freshwater Management 2020.
31. Please note that Te Kahu o Taonui seeks to make an oral submission and wishes to be heard on the Bill.
32. Please also note that this request does not usurp the mana of our respective Authorities to engage directly with the Select Committee should they so wish.

Signed:

Harry Burkhardt
Co-Chairperson
Te Kahu o Taonui

Dated: 13 June 2024

Aperahama Edwards
Co-Chairperson
Te Kahu o Taonui

Address for Service:

Kiri Sloane-Hobson
Amorangi / Operations Manager Te Rōpū Ringa
Raupā
Te Kahu o Taonui kiri@tkot.org.nz

Telephone: 021 420 257

⁷ NPS-FM 2014: Preamble

⁸ Amendment Paper No 41.