



## **BACKGROUND PAPER 6: FRESHWATER MANAGEMENT (prepared by Sacha McMeeking, Ngai Tahu)**

### **Introduction**

The former Labour government instigated the Sustainable Water Programme of Action to reform the management and allocation of freshwater. The programme of work successfully identified broad ranging issues and completed wide research on potential mechanisms to address the various issues. However, the programme moved slowly and did not produce tangible outcomes or a clear programme for reform. Toward the end of its term, the government did however create three instruments under the RMA, which are still progressing through the consultative process, including:

- Proposed National Policy Statement for Freshwater Management;
- National Environment Standard for Measurement of Water Takes; and
- National Environment Standard on Ecological Flows and Water Levels.

The new government instigated a new direction for the freshwater reform early in its term and indicated that establishing a fairer and more efficient water management system is a priority. The process for achieving this will be through or in parallel to the government's resource management reforms. The work programme is known as New Start for Freshwater and has a number of substantial work programmes across the full spread of water quality, allocation, governance and related areas.

Iwi Chairs, Sir Tumu Te Heuheu, Mark Solomon, Tukuroirangi Morgan, Sir Archie Tairaroa and Toby Curtis first engaged in discussions surrounding freshwater with the Prime Minister of the Labour Government in May 2007 as the Labour Government was embarking on the Sustainable Water Programme of Action. The incoming government renewed the commitment to continue engaging with Iwi Leaders on the New Start for Freshwater programme and to support technician level work with Crown officials. Iwi Leaders sought engagement because providing for Iwi rights and interests and the tikanga, values and principles underpinning the relationship that Iwi have with freshwater is a fundamental issue

This paper provides an overview of the current situation regarding freshwater and is set out as follows:

- Freshwater Issues
- The Crown's work programme;
- Engagement between the Crown and Iwi Leaders;
- Feedback from Hui; and
- Next steps.

### **Freshwater Issues**

There are a number of issues pertaining to freshwater, each of which manifest distinctly within the rohe of different Iwi. Below is a brief summary of the generic policy issues concerning freshwater:

## ***Governance of water***

Water Management is currently undertaken at two levels of government.

- (i) Central Government; and
- (ii) Regional councils

Central Government sets national policy and standards, while the day to day responsibility for managing water and decision making has been devolved to regional councils. Decisions made by Regional Councils includes water extraction and setting water quality limits.

While there is a direct Treaty relationship between Iwi and the Crown, the Treaty relationship with Regional Councils is not clear. Iwi need to consider the best governance structure to achieve the outcomes we are seeking through freshwater management. Governance structures may include a spectrum of options from a fully centralised management regime through to co/joint management structures including Iwi.

## ***Allocation and management of water***

Water is allocated for a wide range of uses, all of which have the potential to impact on Iwi values in freshwater. A major focus of the government's freshwater policy development is to maximise the value from water use by ensuring water is allocated to its most productive use. For Iwi this includes our kaitiakitanga obligations and ensuring the mauri of the water bodies are protected and in stream values are balanced with extractive uses.

Iwi need to ensure we are effectively engaged in decision making processes regarding the allocation of water. This will include examining issues of water quality, the setting of environmental limits (which includes the role of tangata whenua values in setting minimum flows), decision-making under the RMA and the exploration of alternative tools and measures outside of the RMA.

## ***Quality***

Water quality is a key determinant of water health and the mauri of the water bodies. Ensuring high levels of water quality is a critical aspect of providing for Iwi rights and interests in freshwater. Maintaining and/or restoring water quality continues to be a core principle of the Iwi Leader Group's engagement to date on freshwater management.

As Iwi we need to determine the most important indicators of water quality from our perspective and balance this with the use of water for the benefit of Aotearoa. Clarifying Iwi views and expectations of water quality levels will enable more effective input into developing the future management framework and strengthen the ability of Iwi to be an integral part of water management decision-making.

## ***The Crown's Work Programme***

The government announced the new strategy *New Start for Fresh Water* in June 2009, setting out the new direction for water management in New Zealand and the intended process for progressing policy development. The policy programme is part of the government's Phase Two RMA reforms.

The government has adopted the following positions on freshwater:

- Sound water management is essential to provide for New Zealand's economic development and growth, and to maintain social and cultural values.
- In some parts of New Zealand, water resource limits are being approached, which is seen in deteriorating water quality, water demand outstripping supply, and constrained economic opportunities.

- The right balance needs to be found between the different interests and values in water, as not all values and expectations can be met in all places at all times.
- Some other contributing issues that need to be addressed are the interests of Māori in New Zealand's fresh water
- Many New Zealanders don't understand the limits of water resources – information about how much water we use is poor, and there is limited institutional capacity and expertise needed for sound water management.

The outcomes the government is seeking from the policy programme include:

- provide stronger central government direction and leadership
- set some resource limits to shape the actions taken on managing water quality and allocation
- develop an allocation regime that provides for ecological and public purposes (including Treaty considerations), and then maximises the return from the remaining water available for consumptive use
- identify the contribution water infrastructure (including storage) could make to improve water use, and address the barriers to achieving this
- address some of the scientific, technical, information and capability gaps that hold back improved management
- establish supplementary measures to address the impacts of land use intensification on water quality, and manage urban and rural demand
- maintain Treaty-based engagement with Māori on water management options.

The priority work areas include:

- water quality, including managing the impacts of land use intensification
- water quantity, particularly allocation and demand management
- water infrastructure and storage.
- Much existing work on water management tools will continue (such as the proposed National Policy Statement for Freshwater Management, some proposed national environmental standards).
- Much work also carries on outside central government: management of natural resources by local government, industry initiatives, and community action (e.g. the Primary Sector Water Partnership).

The process for developing freshwater policy has three aspects:

- A stakeholder-led collaborative process under the Land and Water Forum (previously known as the Sustainable Land Use Forum) will be used to develop a shared understanding of the issues and big picture outcomes wanted for New Zealand, and options for achieving those outcomes.
- The Government will continue to work alongside Iwi in the development of freshwater policy.
- Ongoing discussions will continue between the Crown and Iwi leaders, with officials and Iwi advisers also continuing to work on areas of common interest.

The timeframe is broadly that:

- The Land and Water Forum process will report to government in mid 2010.
- Officials will work on related policy options during the next year

### **Engagement between the Crown and Iwi Leaders**

Iwi Leaders have been engaging with the Crown since May 2007. That engagement is based on the principle, stated by Iwi leaders and confirmed by the Hon Dr Michael Cullen, that "The Treaty of Waitangi underpins our relationship with the Crown and is the basis for our engagement on all issues over water". The engagement is also based on the express position that the Iwi Leaders do not purport to represent all Iwi/Māori, and that the leaders are conscious of not usurping the mana of Iwi and hapū.

The engagement is occurring at both between Iwi Leaders and Ministers, and at the technicians level between Crown officials and Iwi advisors. The objectives of the engagement are to:

1. Enhance decision-making through greater involvement of Iwi at national and regional levels
2. Ensure Iwi freshwater views inform and influence the government's freshwater work
3. Ensure Iwi cultural and economic aspirations are factored into freshwater decision-making at all levels
4. Ensure that property rights akin to ownership are not created in any new freshwater regime

The Iwi Leaders have been careful not to enter into any discussions with the Government over the ownership of Water, and have also been very clear that engagement is not a substitute for meaningful discussions directly with respective Iwi/Hapu and the Crown. The Iwi Leaders have also expressly stated that engagement on policy development is part of the Treaty partnership, but that the engagement in no way spans discussions of a 'national settlement'.

The Iwi Leaders have provided regular reports on progress to forums such as the Pukawa Accord and also the regular Iwi Chairpersons' Meetings. Regional hui have also been held throughout the Mōtu and provided an opportunity for Iwi Leaders to update iwi and hapū.

## **Feedback From Hui**

### **Summary of workshop reports at Iwi Māori National Summit on Freshwater.**

A national hui on freshwater was held in December 2009 to bring Iwi and hapū representatives together to discuss the rights and expectations of Iwi and hapū concerning freshwater. The hui consisted of; a keynote presentation from Hon Dr Pita Sharples and an overview of the Crown work programme and engagement between Iwi Leaders and the Crown to date. The hui then broke into workshops to discuss priority issues. Each of the workshop discussions are summarised below and the transcript of the keynote speech is included in the appendices.

#### ***Rights and Interests Workshop***

- a. A group of tikanga and legal experts should wananga to assist the development of a paper that addresses tikanga and legal imperatives
- b. Iwi are entitled to take legal action to have their mana over their waters determined at law
- c. Working together is supported but required defined principles – kia pono te mahi tahi
- d. Economic sovereignty should not override our tikanga
- e. Kotahitanga has been supported for many years, and too often we have not respected the importance of working together
- f. Ngahiwi – ownership is the core issue. We need to strongly advocate the position that we own the water. We had our law / tikanga prior to the common law and the challenge should be to get the common law to recognise our law, rather than the other way round. We need to be emphatically clear on the fundamental pre-existence of our rights and relationships with ngā Wai Māori. When we talk to each other, we are clear on who has mana over the river. However when we speak with the Crown we get confused about it. We should pursue action through the Courts to recognise our rights. Ownership in the Māori sense is the key. We need to bring together our tikanga experts to discuss the kawa, whakapapa and tikanga associate with Wai Māori.
- g. Justice Durie – this discussion repeats the discussion held in the early 1980s regarding the Quota Management System. In the early discussions on the QMA, the model was presented as a management model with a clear disclaimer that it was not about ownership. However it is fact now that the QMA established property rights. In my opinion, there is an inevitability that freshwater will be, in time, subject to an equivalent quota management system. Accordingly it is imperative that we are thinking strategically about engaging with this trajectory. How we do this must be founded in tikanga Māori and the recognition of our pre-existing rights to water. Perhaps a case could be taken to the Tribunal to have the prior right to extract identified so that it can be put to the government. There is a great deal of jurisprudential support for these assertions.

- h. The framework needs to capture the Māori dimension that support water health and quality, but anticipates the likelihood of a quota based framework being developed, so that we have secured the prior right to take water

### **Water Quality Workshop**

- a. Water quality issues identified included:
- Land use changes
  - Vegetation clearance
  - Nutrient and sediment runoff from farms
  - Point source discharges – factory pollution
- b. There are a range of problems with the existing consent framework, including:
- Lack of monitoring of consents
  - A sliding baseline of ever-decreasing water quality
- c. Indicators of good water quality:
- Ability to drink water – noting that this is what our tūpuna were able to do, and we know we can't do this with many waterways now
  - Ika
  - See water flowing
  - Healing properties for the health of our people – noting that our kaumātua used the water for its healing properties
- d. Iwi views and expectations:
- Standards must be raised as an imperative, and Councils must improve their practices because they are not achieving current standards
  - Mātauranga Māori must be used – western is insufficient and incapable of reflecting a holistic approach
  - Tikanga must be a key part of all planning documents
  - Active and constructive engagement
- e. Future management regimes – recognising the role of Iwi:
- Water quality standards must be developed by Iwi and Crown, because at this time local government doesn't recognise Treaty obligations
  - Working relationships with local government need to be enhanced – local authorities must be more proactive
  - Working relationships with other stakeholders need to be improved as well – noting that discharge and watertake participants are typically not Māori
  - Recognition and participation of Iwi in future water quality management
  - Community buy-in through quality indicators chosen by communities

### **Management and Allocation Workshop**

- a. The group conducted a survey to provide some context to the makeup of the group. The key survey questions were:
- Does your iwi participate in water management within your rohe? The results showed the majority of iwi 'always' or 'sometimes' participate in water management. However there are still some iwi who 'never' participate.
  - Do you understand how decisionmaking on water management occurs in New Zealand (for the purpose of gauging individual understanding)? The results showed reasonable understanding of how decisions are made, but that information and education gaps are still prevalent.
- b. The discussion also considered the question: What would help you and your iwi participate better in Water Management and Allocation in your rohe? The outcomes were:

- Recognition of our Tino Rangatiratanga
  - Education and promotion that increases the awareness of our Whanau
  - Legislation that provides clear roles and relationships on how Iwi / Hapu are included in decisionmaking
  - Decisionmaking processes that include our Reo and Values
  - Compulsory adoption and implementation of Iwi Management Plans
  - Improved resourcing
  - Processes to communicate Iwi Māori Issues that make better use of our established networks
  - Make Regional bodies more accountable
  - Increase capacity and capability of Hapu / Whanau to assist them to engage with and respond to problems
  - Research undertaken should be provided to Iwi to help their decisionmaking, and be carried out by Iwi
- c. The discussion also considered the question: If a new allocation regime was developed, what do you think it should consider?
- Priorities should be reset; Health and Wellbeing are the most important and first priorities
  - There must be transparent / honest monitoring and reporting of water in a way that we can understand
  - Iwi / Hapu doing the monitoring if the capacity exists
  - Iwi / Hapu involved in the planning from the beginning – not once a plan has been developed
  - Iwi included in the flowsetting process
  - True implementation of partnership
  - Support Hapu / Iwi capacity and capability building
  - Build an awareness of our values so that they become inherent practice
  - Local solutions for local situations
  - Evidence-based decisions
  - If a reset occurs – review should be done on all consents, including a clawback for over-allocated waterways
  - Eliminate or reduce adverse effects on waterways
  - Ensure legislation provides clarity to implementers, and compulsion to implement

### **Governance Workshop**

- a. Governance matters must be addressed for a number of reasons – there is no luxury of choice:
- Paramount amongst these are the intergenerational obligations we have to our Tūpuna and our Mokopuna to maintain the health and wellbeing of ngā Wai Māori
  - Immediate issues also necessitate these matters are addressed:
    - The looming prospect of privatisation
    - The continual decline of water quality
- b. The way in which we address governance is plagued by two philosophical issues:
- Governance overlaps with the issue of ownership. There are both strategic and principles-based desires for ownership to be the basis on which governance is framed. Ownership is seen to be important because it speaks to the inherent and inalienable relationship between Iwi and Hapū and ngā Wai Māori. But it is also laden with English law baggage that is not consistent with our tikanga and relationships with Wai Māori
  - There is a tension in designing a governance framework between matters of principle and pragmatism. Matters of principle demand that we develop a framework based on Mātauranga Māori, whereas pragmatism supports securing material advance. There is a tension because it will take time and a long fight to secure a transformative approach based on Mātauranga Māori,

and there are immediate issues that necessitate action, such as the signals relating to the looming privatisation of water resources

- c. The difficulty in reconciling these philosophical issues means that there is a lack of clarity as to how governance should look. That difficulty is also amplified by Iwi Māori being commonly committed to supporting each other to have their own aspirations realised, which is naturally positive, but also means that people are reluctant to develop models that could inadvertently impact on other Iwi and Hapū
- d. There is a common commitment to working together, and the model we should be developing is one based on mātauranga Māori that duly reflects the intergenerational obligations and the centrality of the health and wellbeing of the water
- e. The most practical outcomes should be that:
  - Iwi and hapū should have the right to make decisions their and others interactions with ngā Wai Māori within their rohe
  - Iwi and hapū have decisionmaking roles at any level and place they want in the decisionmaking train
  - That our mokopuna and generations to come inherit strong and vital waters

### **Report from Regional Hui in June-July 2009**

As noted above, a series of regional hui were held during July 2009. The regional hui provided important feedback on the proposed national work programme – A New Start for freshwater, and supported the development of a consensus across iwi and hapū on the priority issues pertaining to freshwater. Eight regional hui were held and discussions shared the following themes:

#### ***Work of the Iwi Leaders:***

- The ongoing work of Iwi Leaders in fronting the review of freshwater management with the Crown and their approach received widespread support.
- Iwi Leaders were also acknowledged for being clear with the Crown that they do not represent the collective interests of Iwi.

#### ***Rights and Interests***

- The rights and interests of Iwi in relation to the management of freshwater in New Zealand remain unresolved.
- Establishing what the rights and interests of Iwi are in relation to freshwater was viewed as a priority by the hui participants.
- The consensus view was that Iwi don't necessarily "own" water (in the Pakeha sense of the word), however Iwi do have an inherent responsibility and duty of care for safeguarding the mauri of water. Hui participants expressed concern their responsibility as kaitiaki was being placed in jeopardy by the outcome of poor water management practices.

#### ***Existing legislative framework***

- Te Mana o Te Wai is not recognised by the existing legislative framework and Iwi are not an integral part of the freshwater decision-making process.
- A common view was Māori values and the holistic approach that Iwi took to traditionally managing land and water were not appropriately recognised, or given effect to, by the existing legislative framework. As a direct outcome, hui participants believed Regional Council planning documents did little to articulate Iwi and hapū values.
- Hui participants expressed a sense of powerlessness in the current decision making processes governing the use of freshwater in their rohe. The unanimous long-term view expressed at the hui was for Iwi to have an integral role in the decision-making process in relation to freshwater management.
- Discussion around how Māori could achieve being part of the decision-making process focused largely on legislative change and co-management governance approaches.

### **Capacity and Capability**

- Increased level of support will be required for Iwi and hapū to build capacity and proactively engage on freshwater management at the regional level.
- A common theme was Iwi and hapū not having the resources or expertise to adequately deal with the volume or complex nature of freshwater management under the existing legislative framework.
- A large proportion of hui participants felt disenfranchised by the retrospective nature of Regional Council engagement with Iwi. Concerns fell into two categories:
  - i. Iwi and hapū needing to react to become involved in freshwater management; and
  - ii. drafting of Regional Planning documents being undertaken without any meaningful input from Iwi and hapū.

### **Regional strategies for freshwater management**

- Develop detailed regional level strategies to direct freshwater management.
- The regional hui provided impetus for discussing the development of regional level strategies to direct the management of freshwater. Hui participants believed the development of regional level strategies would assist decision-making bodies by clearly articulating Iwi values for freshwater within a rohe.

### **Communication plan**

- Develop a communication plan to ensure Iwi and hapū are kept informed of the work that Iwi Leaders are doing in fronting the review of freshwater management with the Crown.
- Although many Iwi and hapū are aware of the work Iwi Leaders have undertaken, some Iwi and hapū believe a communications plan should be developed to ensure targeted information and milestone reporting is sent to all Iwi and hapū with an interest in freshwater management.

### **Next Steps**

The work that will continue in the coming months includes:

- Further report backs at Iwi Chairs hui and a wider plan to increase communications across the motu; and
- Ongoing engagement at a technicians level with Crown officials.

Refer to pp 50 – 54 (Appendix 2 – Speech by Hon Dr Pita Sharples to the Iwi Māori National Summit on Freshwater Management – 10 December 2009), and pp 55 – 58 (Appendix 3 – Panui for and Background to the National Maori Summit on Freshwater)