



**TŪWHARETOA**  
MĀORI TRUST BOARD

**Submission on:**  
***Local Government (Water Services Preliminary  
Arrangements) Bill***

**13 June 2024**

## **INTRODUCTION**

- 1 This submission is made by the Tūwharetoa Māori Trust Board (**Trust Board**) on the Local Government (Water Services Preliminary Arrangements) Bill and Amendment Paper No 41 (the **Bill and Amendment Paper**).
- 2 The focus of the Trust Board's submission is on those provisions in the Bill that impact our rangatiratanga, customary rights and interests in wai, and our existing resource management arrangements, including arising from our unique ownership arrangements in respect of Taupō Waters and Upper Waikato River settlement legislation.

## **WISH TO BE HEARD**

- 3 The Trust Board does not wish to be heard in support of this submission.

## **TŪWHARETOA WHAKAPAPA, TIKANGA AND WAI MĀORI**

Ko Tongariro te Maunga	Tongariro is the Sacred Mountain
Ko Taupō te Moana	Taupō is the Lake
Ko Tūwharetoa te Iwi	Tūwharetoa is the Tribe
Ko te Heuheu te Tangata	Te Heuheu is the Man

- 4 Ngāti Tūwharetoa hold mana whenua, kaitiakitanga and rangatiratanga over the Central North Island including the Lake Taupō Catchment and part of the Upper Waikato, Whanganui, Rangitikei and Rangitaiki Catchments.
- 5 Ngāti Tūwharetoa are the descendants of Ngatoroirangi, Tia and other tūpuna who have occupied the Taupō Region continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between whānau, hapū, marae and our taonga tuku iho.
- 6 As kaitiaki, Ngāti Tūwharetoa have an intrinsic duty to ensure the mauri and the physical and spiritual health of the environment (inclusive of our whenua and water resources) in our rohe is maintained, protected and enhanced.
- 7 Our relationship with Taupō Waters as tangata whenua is long-standing, deeply-rooted and unequivocal.
- 8 For Ngāti Tūwharetoa, water comes from the sacred pool of our ancestor, Io. Tāne entrusted the guardianship of all the waterways to Tangaroa while Tāwhirimātea was assigned the guardianship over the atmospheric forms of water and the weather. These two guardians hold the mauri, the essential life forces, of these forms of water.
- 9 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us is Ranginui. The geographical pinnacle of Papatūānuku, within our rohe, is our maunga (mountains) including our esteemed ancestor, Tongariro. To the north of Tongariro lies our inland seas, Taupō-nui-a-Tia and Rotoaira. Our mauri flows from our maunga through our ancestral awa (surface and underground streams and rivers) to our moana and to the hinterlands via the Waikato, Whanganui and Rangitaiki. They link us directly with our neighbouring iwi.
- 10 This tangible natural water flow is necessary to nurture every form of life it encounters during its journey. It is the intangible interconnecting web that is the lifeblood of our whakapapa and

enables the survival of our wellbeing and identity as iwi, hapū, marae, landowners and whānau. This way of looking at our fresh water highlights a truth we would all acknowledge: water is our lifeblood. Water is necessary for life. Water is us and we are water.

## **TŪWHARETOA MĀORI TRUST BOARD**

- 11 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.
- 12 The Trust Board administers a range of resource management arrangements and documents, including as arising through Treaty settlements, that reflect the importance of the Ngāti Tuwharetoa relationship with our taiao.

### **1992 and 2007 Deeds**

- 13 By deeds with the Crown dated 28 August 1992 and 10 September 2007, the Trust Board is the legal owner of the bed, water column and air space of Lake Taupō, the Waihora, Waihāhā, Whanganui, Whareroa, Kuratau, Poutu, Waimarino, Tauranga-Taupō, Tongariro, Waipēhi, Waiotaka, Hinemaiaia and Waitahanui Rivers (**Taupō Waters**), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.
- 14 The Trust Board's relationship to Taupō Waters is unique. The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

### **Waikato River Deed and Upper Waikato River Act**

- 15 The Trust Board is also a party to the Waikato River Deed with the Crown dated 31 May 2010 (**Upper Waikato River Deed**). 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”.<sup>1</sup>
- 16 The Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (**Upper Waikato River Act**). The overarching purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations.<sup>2</sup>
- 17 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato and Waipā Rivers (**Te Ture Whaimana**) is a product of the settlement agreements between the Crown, Ngāti Tūwharetoa and other Waikato and Waipā River Iwi. It is a statutory instrument,<sup>3</sup> and the primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.<sup>4</sup>

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<sup>1</sup> Upper Waikato River Deed 31 May 2010, clause 8.

<sup>2</sup> Upper Waikato River Act, section 3.

<sup>3</sup> Given legislative effect through the Waikato and Waipā River Settlement Legislation: see also Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Ngāti Tuwharetoa (Waipā River) Act 2012.

<sup>4</sup> The obligation to give effect to Te Ture Whaimana is the strongest direction that Parliament has given in relation to any RMA planning document.

### **Joint Management Agreements**

- 18 The Trust Board has a joint management agreement (**JMA**) with:
- a. the Waikato Regional Council relating to the co-governance and co-management of the Waikato River and activities within its catchment affecting the Waikato River, as well as Taupō Waters.
  - b. Taupō District Council regarding the administration of the RMA in relation to multiply-owned Māori land within the rohe of Ngāti Tūwharetoa.
- 19 Finally, since 2020 the Trust Board has assumed the Waikato Regional Council function of monitoring water quality around Lake Taupō, through an RMA section 33 transfer of powers.

### **TIRITI CONTEXT TO WATER SERVICES DELIVERY REFORM**

- 20 It must be acknowledged that this Bill is presented against the backdrop of the Waitangi Tribunal's Wai 2358 Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Stage 2 Wai 2358 Report), which made several findings and recommendations following a hearing process lasting several years. The Tribunal found:
- a. The Crown's guarantees to Māori in the Treaty, including the guarantee of tino rangatiratanga, require the use of partnership mechanisms for the joint governance and management of freshwater taonga.
  - b. The Crown's Next Steps reform programme failed to meet its stated objective of enhancing Māori participation in freshwater management and decision-making, due largely to Crown omission of options to address Māori rights and interests.
  - c. Iwi without co-governance and co-management arrangements in their Treaty settlements are unable to act effectively as Treaty partners in freshwater management. The governance and co-management mechanisms available to iwi under the RMA have been made virtually inaccessible.
- 21 The suggested amendments in this submission are made with this context in mind.

### **POSITION OF TŪWHARETOA MĀORI TRUST BOARD**

#### **Bill's core elements not sufficient to address water services reform needs**

- 22 A key criticism of the Bill is that it does not actually address the fundamental issues with our current water services delivery regime.
- 23 Clause 8 of the Bill requires each territorial authority to prepare water services plans (**WSPs**) that demonstrate publicly the authority's commitment to deliver water services in a way that ensures the territorial authority will meet all relevant regulatory quality standards, is financially sustainable for the territorial authority, and supports the territorial authority's housing growth and urban development.
- 24 Given the widely accepted historic underinvestment in water infrastructure, there is a stark lack of clarity on how territorial authorities are expected to be able to meet this requirement.
- 25 A critical matter identified by the extensive policy work that informed by past reforms, which appears to have been ignored by this Government, is that achieving scale – and the associated

benefits of greater debt capacity, greater sharing of costs, and the ability to general efficiencies from scale – were crucial aspects of affordable reform.

- 26 While the Bill has the option for territorial authorities to submit joint WSPs,<sup>5</sup> there appears to be a significant risk that without any compulsion for councils to develop joint WSPs, these proposals will result in a number of “orphan” councils who are unable to meet the requirement for financially sustainable WSPs. It seems likely at least that some councils will be unwilling to enter into joint WSP arrangements with less financially sustainable neighbouring councils due to the accompanying liability and costs that would consequently fall upon their ratepayers.
- 27 In this regard, while the Bill is portrayed by the Government as a reform directed to “flexibility and localism” (the deep irony that the same drivers were ignored entirely by this Government in the recent Local Government (Electoral Legislation and Māori Wards and Māori Constituencies) Amendment Bill is not lost on many), the reality is that this Bill must be considered together with future amendments proposed in a third Bill, which will necessarily include regulatory backstop powers to be used when required to ensure effective delivery of financially sustainable water services. This Bill fails to grapple with the challenging decisions required to address Aotearoa’s water services delivery problems.

#### **Bill’s lack of consideration of iwi and hapū interests**

- 28 The Trust Board is greatly concerned that the Bill contains no mention of iwi, hapū or Treaty of Waitangi settlements generally.
- 29 The policy advice in the Regulatory Impact Statement (**RIS**) states that the *Local Water Done Well* policy recognises that iwi have rights and interests in water, but that “this Bill does not have specific objectives in relation to the role of iwi/Māori decision-making for water services.”<sup>6</sup> It also acknowledged the Waitangi Tribunal’s statement that, “*where the Crown has delegated functions to local authorities, it must still ensure that the Crown’s obligations of active protection under Ko te Tuarua/Article 2 of te Tiriti/the Treaty must be fulfilled*”.<sup>7</sup>
- 30 Clause 11 (prescribing the contents of WSPs) is devoid of any requirement for a territorial authority to appropriately consider any Treaty settlement arrangements that exist in the area to be serviced by the WSP, including identifying risks, issues and future arrangements subject to clause 12 (prescribing additional requirements for joint WSPs).
- 31 This issue is further exacerbated by there being no requirement to engage with iwi and hapū in the development of WSPs. Indeed, the Bill does not require a territorial authority to consult in relation to a WSP, which means engagement or consultation on WSPs falls to existing processes, including under the Local Government Act 2002 (**LGA**).<sup>8</sup> The RIS acknowledges that “Māori have been critical of local authorities’ responses to these LGA requirements”, and that the “[Bill] proposals do not seek to address implementation issues of the LGA with regards to Māori participation.”<sup>9</sup>
- 32 There is also no specific provisions for how areas not currently receiving water services will be supported under these proposals (just a requirement under clause 11 for territorial authorities to include a description of any areas in the district that do not receive water services). Again, the Trust Board voices concern about the impact this lack of direction to provide support to

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<sup>5</sup> Bill, clause 9.

<sup>6</sup> RIS, page 34, paragraph 136.

<sup>7</sup> Waitangi Tribunal (1993), The Ngawha Geothermal Resource Report 1993, page 153

[https://forms.justice.govt.nz/search/Documents/WT/wt\\_DOC\\_68348162/Ngawha%20Geothermal%20Resources%201993.pdf](https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68348162/Ngawha%20Geothermal%20Resources%201993.pdf)

<sup>8</sup> Bill, clause 15(3).

<sup>9</sup> RIS, page 35, paragraph 139.

areas not currently receiving water services will have on small rural communities, including many areas with high Māori populations.

- 33 Clauses 20 and 23 provide for the appointment of Crown facilitators and Crown water services specialists to assist the relevant territorial authority or group of territorial authorities regarding WSPs. Their role as set out in clauses 22<sup>10</sup> and 25<sup>11</sup> respectively, is likely to have significant influence regarding the preparation of a WSP. Part 3 of the Bill provides for the establishment of water services council-controlled organisations (**WSCCOs**).
- 34 We support the Commerce Commission having the role of economic regulator for the delivery of water services, provided it is subject to the broad obligation to act in a manner consistent with Treaty principles and Treaty settlements.
- 35 The Trust Board considers that:
- a. All appointed Crown facilitators and Crown water services specialists must have a mandatory duty to uphold existing Treaty settlements and any agreement, arrangement, or understanding with iwi or hapū.
  - b. In discharging this duty, any Crown facilitator or Crown water services specialist must engage with the relevant iwi and hapū whose rohe is within the territorial authority or joint territorial authorities.
  - c. Any Treaty settlements or other existing agreements, arrangements or understandings with iwi or hapū must be foundational regarding the establishment of a WSCCO. This includes any decision being taken by a territorial authority to form a WSCCO, whether individually or jointly with other territorial authorities.
- 36 The Trust Board is particularly ardent about existing agreements, arrangements or understandings relating to water services delivery outside of Treaty settlements, as it is not a product of Treaty settlements, and it administers a number of relationships that have been entered into outside of that process.

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<sup>10</sup> The role of a Crown facilitator includes to assist to, and advise how to, prepare a WSP; to assist to amend a draft WSP after being advised to do so by the Secretary for Local Government (**Secretary**); to assist 2 or more territorial authorities to agree on the terms of a joint arrangement, including, for example, by co-ordinating the negotiation process or by determining the terms of the joint arrangement; and to assist a territorial authority or group of territorial authorities to comply with the requirements in the Bill.

<sup>11</sup> The role of the Crown water services specialist is to do one or more of the following: prepare a water services delivery plan for the territorial authority or the group of territorial authorities; direct the territorial authority or the group of territorial authorities to adopt a specified water services delivery plan (which may be a plan that the specialist has prepared); direct the territorial authority or the group of territorial authorities to submit a specified water services delivery plan to the Secretary under section 16; anything else specified in the specialist's terms of reference.

## Amendments sought

37 We seek the following amendments:

- (a) To ensure that the Crown's obligations of active protection are fulfilled, we seek a new clause stating:

*All persons or organisations exercising duties, functions or powers under this Act must act in a manner consistent with:*

- (a) the principles of the Treaty of Waitangi; and*
- (b) Treaty settlements.*

- (b) We seek inclusion of a further provision in clause 11 that requires territorial authorities to describe how areas not receiving water services will be supported, and that this include engagement with iwi and hapū.

- (c) We seek the imposition of the following mandatory duty on all appointed Crown facilitators and Crown water services specialists, through a new clause as follows:

- (1) This clause applies to a person performing the role of Crown facilitator or Crown water services specialist.*
- (2) The person must, in performing or exercising its duties, functions, or powers, uphold the integrity, intent, and effect of Treaty settlements and any agreement, arrangement, or understanding with iwi or hapū.*

- (d) In discharging this duty, any Crown facilitator or Crown water services specialist must engage with the relevant iwi and hapū whose rohe is within the territorial authority or joint territorial authorities.

- (e) That any Treaty settlements or other existing agreements, arrangements or understandings with mana whenua are foundational regarding the establishment of a WSCCO, as per the following clause:

- (1) On and after a relevant water services council-controlled organisation's establishment date, the water services council-controlled organisation is to be treated as being responsible for performing or exercising any functions, duties, or powers relating to water services that are set out in any agreement, arrangement, or understanding between a local authority and iwi or hapū that was entered into before that date, either—*

- (a) in place of the local authority; or*
- (b) as a party to the agreement, arrangement, or understanding in addition to the local authority.*

- (2) By, or as soon as practicable after, a relevant water services council-controlled organisation's establishment date, the organisation must work together with the relevant local authority and iwi or hapū to prepare for the assumption by that organisation of any responsibility set out in the agreements, arrangements, and understandings under subclause (1).*

### **Amendment Paper No. 41 – Te Mana o Te Wai hierarchy of obligations**

- 38 The Select Committee has been asked to consider an amendment paper alongside the Bill, which proposes to amend the Water Services Act 2021 to provide that, when making wastewater environmental performance standards, Taumata Arowai must not have regard to the hierarchy of obligations contained in Te Mana o te Wai (proposed new sections 138(3A) and (3B).
- 39 The Trust Board considers this proposal unreasonably pre-emptive of the upcoming review of the NPS-FM. We strongly oppose this approach. The hierarchy gives much-needed national direction on how to manage freshwater sustainably and is an invaluable tool in supporting the development of wastewater environmental performance standards.
- 40 Te Mana o te Wai is about using water sustainably and without destroying the integrity of the environment, which both people and the economy need to thrive. It directs that the use of water for the needs of our communities and our economy should be enabled in a manner which ensures the health and wellbeing of our waterways. There can be no reasonable objection to that as a matter of principle. However, the Bill directly undermines the objective of managing freshwater sustainably, which has been the basic principle of the NPS-FM since it originated in 2011 and has wide public support.
- 41 While Te Mana o Te Wai is a concept that is derived from Te Aō Māori, its source in mātauranga does not preclude it from having universal application for all New Zealanders in terms of how we use and manage water. It is a principle that has been developed over many decades in concert with local communities, councils, industry and other stakeholders. To undermine this now will take our country backwards. Further, there has already been significant investment and buy-in to the implementation of the Te Mana o Te Wai hierarchy by key water services delivery players including councils and Water New Zealand, the country's largest water industry body. The Government appears to be ignoring the groundswell of support for Te Mana o Te Wai in Aotearoa.
- 42 Rather than dismissing Te Mana o te Wai, the Trust Board considers that more should be done in the building of capacity and capability in the application of Te Mana o te Wai. We have advocated strongly for increased investment in this space for all water users since its first introduction into national regulation. Underinvestment in this regard, coupled with the usual resistance to change that comes with any new policy necessitating transition, has resulted in misunderstanding of the concept and how it can deliver improved water outcomes for all New Zealanders.

### **Amendment sought**

- 43 The Trust Board urges the Select Committee to recommend that the Amendment Paper not proceed to a Second Reading.

### **CONTACT**

- 44 Please direct all communications to the Trust Board in relation to this submission to Peter Shepherd, Natural Resources Manager at [peter@tuwharetoa.co.nz](mailto:peter@tuwharetoa.co.nz).