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## Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material related to progressing the three waters service delivery reforms, 14 June 2021

These documents have been proactively released:

***14 June 2021, CAB-21-MIN-0228 Minute: Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three, Cabinet Office; and***

***14 June 2021, Cabinet Paper: Protecting and Promoting Iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three, Office of the Minister Local Government.***

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# Cabinet

## Minute of Decision

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### Protecting and Promoting iwi/Māori Rights and Interests in the New Three Waters Service Delivery Model: Paper Three

**Portfolio**                      **Local Government**

On 14 June 2021, Cabinet:

#### Context

- 1 **noted** that the government has ambitions to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a manner that is efficient and affordable for New Zealanders, and which protects and promotes the rights and interests of iwi/Māori in the proposed new three waters service delivery system;
- 2 **noted** that the paper under CAB-21-SUB-0228 is the third in a suite of papers seeking decisions on a comprehensive, integrated package of proposals to transform the three waters service delivery system, which is intended to be considered together with two other papers:
  - 2.1 A New System for Three Waters Service Delivery (Paper 1); [CAB-21-SUB-226]
  - 2.2 Designing the New Three Waters Service Delivery Entities (Paper 2); [CAB-21-SUB-227]
- 3 **noted** that Paper 3 focuses on how iwi/Māori rights and interests feature in the proposed reforms, including by:
  - 3.1 considering and addressing the requirements of the Cabinet Office Circular, *Te Tiriti o Waitangi / Treaty of Waitangi Guidance* [CO (19) 5];
  - 3.2 explaining how iwi/Māori rights and interests have been considered in the development of the overall reform package; and
  - 3.3 proposing specific mechanisms for addressing iwi/Māori rights and interests in the new service delivery model, as set out in Paper 1 and Paper 2;
- 4 **noted** that there has been, and will continue to be, extensive engagement with iwi/Māori in relation to the three waters reforms, the feedback from which has informed the proposals in the paper under CAB-21-SUB-0228;
- 5 **noted** that the proposals have also been guided by a set of 'Crown/Māori relationship objectives', which include a focus on:
  - 5.1 enabling greater strategic influence;

- 5.2 integration within a wider system;
- 5.3 reflecting of a Te Ao Māori perspective;
- 5.4 supporting clear accountabilities;
- 5.5 improving outcomes at a local level;

### **Mechanisms for addressing iwi/Māori rights and interests within the new three waters service delivery model**

- 6 **noted** that a consistent guiding principle throughout the three waters regulatory and service delivery reforms has been ensuring the Treaty of Waitangi and Te Mana o te Wai are referenced appropriately within the legislative framework;
- 7 **agreed** to provide for the following references in the legislation that establishes the proposed new three waters service delivery system:
  - 7.1 a reference to the principles of the Treaty of Waitangi, where the water service entities maintain systems and processes to ensure that, for the purposes of carrying out its functions, they have the capability and capacity to:
    - 7.1.1 give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi;
    - 7.1.2 engage with Māori and to understand perspectives of Māori;
  - 7.2 a reference to Te Mana o te Wai, which can be exercised at an iwi/hapū and whanau level, primarily through the Te Mana o te Wai statement referred to in paragraph 16 below;
- 8 **noted** that Te Arawhiti's view is that the proposed approach is consistent with the broader policy work on Treaty references in legislation currently underway;
- 9 **noted** that Paper 2 provides for local government interests in the new water services entities to be expressed through a Regional Representative Group, which would influence the strategic framework in which the entities will operate;
- 10 **agreed** to provide for a similar approach for iwi/Māori, through the creation of a 'mana whenua representative group', which would have the same rights and mechanisms as territorial authorities to influence the boards of the new water services entities;
- 11 **noted** that iwi/Māori should be able to decide the most effective representative interest for mana whenua on the mana whenua group, and that this is best provided for, and guided by, a kaupapa Māori process;
- 12 **noted** that a kaupapa Māori process will take time and, therefore, a transitional approach is proposed, which would be guided by the appointment of an independent Crown/Māori Relationship Lead within the boundary of each new water services entity, and through the potential appointment of a Ministerial Group to guide representative processes set out in Paper 2;
- 13 **invited** the Minister of Local Government to report back in July 2021 with further information on the approach to supporting a kaupapa Māori process for the mana whenua group, including the role of independent chairs;

- 14 **noted** that Paper 1 proposes a statutory objective for the water services entities relating to ‘giving effect to Te Mana o te Wai’, and that a key way for the entities to do this is to ensure the boards have appropriate competencies;
- 15 **agreed** that the board of each water services entity be required to have:
- 15.1 general collective competence in understanding the principles of the Treaty of Waitangi and mātauranga Māori, tikanga Māori, and te ao Māori; and
  - 15.2 members with specific expertise in supporting and enabling the exercise of mātauranga Māori, tikanga Māori, kaitiakitanga, and te ao Māori with the respect to the delivery of water services;
- 16 **noted** that feedback from the engagement with iwi/Māori indicates that kaitiakitanga is more likely to be exercised at a hapū/whānau level with respect to the provision of water services, and the water services entities will need the ability to connect governance with delivery on the ground at a hapū/whānau level;
- 17 **agreed** to a mechanism that enables the expression of kaitiakitanga, through the preparation of ‘Te Mana o te Wai statements’ by mana whenua;
- 18 **agreed** that Te Mana o te Wai statements would be provided to relevant water services entity, and that relevant entity would be required to prepare and publish a formal reasonable response to the statements within a prescribed timeframe;
- 19 **agreed** that the Te Mana o te Wai statements would be an enabling mechanism, which provide iwi/hapū/whānau with the ability to communicate their expression of Te Mana o te Wai, including through other documents, which may include (but is not limited to) Iwi Management Plans, Cultural Impact Statements, and/or Statements of Mana Whenua;
- 20 **agreed** that the relevant water services entity fund and support capability and capacity of mana whenua within their boundary to participate in relation to three waters service delivery;

## Implementation

- 21 **noted** that Cabinet has previously agreed to a high-level principle of partnership with iwi/Māori, which will be followed throughout the reform programme, and reflected in the new service delivery system [CAB-20-MIN-0521.01];
- 22 **agreed** that officials continue a high-level principle of partnership with iwi/Māori on the transition and implementation of water services entity;
- 23 **noted** that decisions sought through Paper 1 are to approve the Ngāi Tahu takiwā as the boundary for the South Island water services entity;
- 24 **agreed** that officials work with Ngāi Tahu on features of a South Island water services entity whose boundaries will align with the takiwā, including during the legislative drafting process referred to below;

**Legislative implications**

- 25 **agreed** that decisions in the paper under CAB-21-SUB-0228 be implemented through the Water Services Entities Bill, which has a category 4 priority on the 2021 Legislation Programme (to be referred to select committee in 2021), specifically the proposals relating to:
- 25.1 references to the Treaty of Waitangi and Te Mana o te Wai;
  - 25.2 the creation of a mana whenua representative group, at the strategic influence and oversight level of the new water services entities;
  - 25.3 the Te Mana o te Wai statements;
- 26 **invited** the Minister of Local Government to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;
- 27 **agreed** that Parliamentary Council Office be instructed to provide particular assurance on the appropriate treatment of the statutory references and definitions related to mana whenua contained within the proposed legislation;
- 28 **noted** that the Minister for Māori Crown Relations: Te Arawhiti, the Attorney-General and the Minister of Local Government will consider further the wording of the statutory references to the Treaty of Waitangi (paragraph 7.1.1 above) during the course of drafting the Bill and will report back to Cabinet if necessary;
- 29 **authorised** the Minister of Local Government to approve all other minor policy and technical matters that may arise during the course of drafting;
- 30 **agreed** that technical experts and iwi/Māori representatives can be consulted, if needed, during the drafting process.

Michael Webster  
Secretary of the Cabinet

Office of the Minister of Local Government

Chair

Cabinet Government Administration and Expenditure Review Committee

## **Protecting and promoting iwi/Māori rights and interests in the new three waters service delivery model**

### **Proposal**

1. This is the third of a suite of papers seeking decisions on a package of proposals to transform the three waters service delivery system.
2. This paper summarises iwi/Māori rights and interests in the three waters service delivery reforms, and proposes a number of specific mechanisms for protecting and promoting rights and interests in the new service delivery model. Key proposals relate to:
  - 2.1 statutory recognition of the Treaty of Waitangi and Te Mana o te Wai in legislation;
  - 2.2 a mana whenua representative group at the oversight and strategic influence level of the new water services entities, which has equal rights to territorial authorities, and a kaupapa Māori selection method for this group;
  - 2.3 Te Mana o te Wai statements, which would be issued to the entity by mana whenua, and to which the entity board would be required to respond;
  - 2.4 requirements that the board of each entity, collectively, has competence relating to the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and Te Ao Māori;
  - 2.5 requirements that the board of each entity includes members with specific expertise in supporting and enabling the exercise of kaitiakitanga, mātauranga and tikanga Māori with respect to the delivery of water services;
  - 2.6 requirements that the entities fund and support capability and capacity of mana whenua to participate in relation to three waters service delivery.
3. This paper is intended to be considered with two other papers, which set the scene for the reforms and seek decisions on core components of the new service delivery model:
  - 3.1 Paper 1: *A new system for three waters service delivery.*
  - 3.2 Paper 2: *Designing the new three waters service delivery entities.*
4. A fourth paper, setting out proposed arrangements for transitioning to and implementing the new system, will follow shortly afterwards, in July 2021. Together, these papers present the initial package of reform proposals. If agreed, most of these proposals will be included in a Water Services Entities Bill, which is included in this year's legislative programme with a priority category 4 (to be referred to select committee within the year).

## Relation to government priorities

5. This Government has ambitions to significantly improve the safety, quality, natural hazards and climate resilience, accessibility, and performance of three waters services, in a manner that is efficient and affordable for New Zealanders.
6. In April 2019, it was agreed that the Three Waters Review is a Government priority. The 2020 Labour Party Manifesto committed to reform New Zealand's drinking water and wastewater system, and upgrade water infrastructure to create jobs across the country.

## Executive summary

7. For the past three and a half years, we have been exploring the challenges and opportunities facing the three waters system. Through this work, we are seeking to address a complex set of systemic issues relating to the regulation, funding, financing, and provision of drinking water, wastewater, and stormwater services (the three waters). This is critical for public health and wellbeing, environmental outcomes, economic growth and job creation, housing and urban development, adapting to the impacts of climate change, emissions reduction, and building resilience to natural hazards.
8. An important part of this work has been to ensure recognition of the rights and interests of iwi/Māori in the three waters. Water can be a taonga of particular significance and importance to Māori, and the Crown has a duty to protect iwi/Māori rights and interests under the Treaty of Waitangi / Te Tiriti o Waitangi (the Treaty / Te Tiriti), and existing and subsequent Treaty settlements. The Crown has responsibilities under the principles of Te Tiriti to protect such a relationship and allow for an appropriate exercise of tino rangatiratanga alongside kāwanatanga. The Crown also has broad responsibilities to protect taonga, the exercise of tino rangatiratanga and kāwanatanga, and the principles of Te Tiriti.
9. This is the third of a suite of papers seeking substantive decisions on a package of proposals to transform the three waters service delivery system. The first paper, *A new system for three waters service delivery* (Paper 1), provides an overview of the overall reform package, and proposes to establish a new service delivery model, with four new water services entities. The second paper, *Designing the new three waters service delivery entities* (Paper 2), seeks agreement to detailed proposals relating to the core design features of the new entities, and explains the interactions between the new entities, consumers and communities, and iwi/Māori.
10. This paper focuses on how iwi/Māori rights and interests feature in the proposed reforms. It considers and addresses the requirements of the Cabinet Office Circular, *Te Tiriti o Waitangi / Treaty of Waitangi Guidance* (CO (19) 5), explains how iwi/Māori rights and interests have been considered in the development of the overall reform package, and seeks agreement to specific mechanisms for addressing rights and interests in the new service delivery model.

11. **Part A of the paper identifies and seeks to understand iwi/Māori rights and interests in the three waters reforms.** It explains some of the considerations relating to Te Tiriti, and the approach that has been taken in the three waters reforms to date – including in relation to the creation of Taumata Arowai and the development of the Water Services Bill. It also outlines the engagement processes that have been undertaken with iwi/Māori, and the main points of feedback so far.
12. **Part B outlines how I have considered iwi/Māori rights and interests as they apply to the service delivery reform proposals,** with particular reference to the requirements of the Cabinet Office Circular, and Articles One, Two, and Three of Te Tiriti.
13. **Part C proposes a number of specific mechanisms for protecting and promoting iwi/Māori rights and interests in the new three waters service delivery model.** Key proposals include:
  - 13.1 statutory recognition of the Treaty of Waitangi and Te Mana o te Wai in legislation;
  - 13.2 a mana whenua representative group at the strategic level of the new water services entities exercising greater tino rangatiratanga than the current system allows, which has equal rights to territorial authorities, and a kaupapa Māori selection method for this group;
  - 13.3 Te Mana o te Wai statements, which would be issued to the entity by mana whenua, and to which the entity board would be required to respond;
  - 13.4 requirements that the board of each entity, collectively, has competence relating to the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and te ao Māori;
  - 13.5 requirements that the board of each entity includes members with specific expertise in supporting and enabling the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga with respect to the delivery of water services;
  - 13.6 requirements that the entities fund and support capability and capacity of mana whenua to participate in relation to three waters service delivery.

### Background and context

14. For the past three and a half years, we have been exploring the challenges and opportunities facing the three waters system. This work has resulted in a programme of reforms to the regulatory and service delivery arrangements relating to the three waters, including:
  - 14.1 decisions during 2019 to significantly strengthen the regulatory system, through the creation of Taumata Arowai, and the introduction of legislation to enhance the regulation of drinking water and performance of wastewater and stormwater networks;
  - 14.2 in principle decisions, during 2020, to reform current local government water service delivery arrangements into larger-scale entities – to realise significant economic, public health, environmental, and other benefits over the medium to long term.



15. Paper 1 of my latest suite of papers provides additional background information, and summarises the case for change. Further details can also be found in the accompanying regulatory impact assessment.
16. The analysis and proposals in this paper sit within the overall reform package, as described in the preceding two papers, and need to be considered in this context.
17. Paper 1 summarises the case for change and overall reform package, and proposes:
  - 17.1 to establish a new service delivery model, with four new water services entities;
  - 17.2 the purpose, objectives, operating principles, and responsibilities of the new water services entities;
  - 17.3 to strengthen stewardship of the three waters service delivery system, including through a Government Policy Statement to provide strategic direction to the new water services entities.
18. Paper 2 provides detailed proposals relating to the core design features of the entities – including the proposed governance structure, and ownership, accountability, and financial arrangements. It also explains the interactions between the new entities, consumers and communities, and proposals for providing for the rights and interests of iwi/Māori within the entity design model – which are expanded on in this paper.
19. The reforms also need to be considered within a broader context. Māori express a relationship with water as kaitiaki. Māori do not distinguish their rights and interests in freshwater from the three waters; they are viewed as a connection to the water environs and its systems. This holistic approach highlights the important connection between my review of three waters service delivery arrangements and other work programmes underway across government, particularly those that relate to resource management and freshwater allocation.
20. A clear concern from iwi/Māori is that all proposals need to uphold, align and integrate with Te Tiriti and Te Mana o te Wai. In addition, iwi/Māori have roles within the current three waters service delivery system that will need to be acknowledged. They are suppliers and/or recipients of water services (particularly to rural marae, papakāinga, and rural communities), and are often members of communities that are underserved by the existing three waters service delivery system, and who receive poor quality or no three waters services.

## **Analysis**

### **Part A: Identifying and understanding iwi/Māori rights and interests in the three waters reforms**

#### ***General considerations relating to Te Tiriti o Waitangi***

21. How the Crown engages with iwi/Māori on the three waters reforms, and how the interests of iwi/Māori are recognised through the reforms, is not only important to ensure effective public policy decision making, but also from a Māori/Crown relationship perspective. This also ensures the Crown meets its obligations under te Tiriti.

22. Crown Law advice is that there are two significant Treaty principles applicable to the Three Waters Review: partnership and active protection. The principle of partnership requires the Treaty partners to act reasonably and with good faith to each other. The duty of good faith includes a requirement that the Crown take reasonable steps to make informed decisions on matters that affect Māori interests.
23. Failure to meet those obligations would undermine the Māori/Crown relationship and could create a litigation risk for the Crown. The risk is greater in the Waitangi Tribunal given its jurisdiction is broader than the Courts. The Waitangi Tribunal would likely deal with a claim about the three waters in its National Freshwater and Geothermal Resources Inquiry (Wai 2358).
24. A further consideration is that iwi/Māori rights and interests in anything water-related are broad and integral. Water holds an important place for Maori, and the holistic Māori world view resists separating out parts of water or the environment (or compartmentalising through portfolio-related reviews or work programmes). It is therefore beholden on the Crown to acknowledge this wider context, and understand how three waters reform and development of a new system of service delivery sits within this Te Ao Māori context.
25. This tension has been difficult to navigate. While I have examined iwi/Māori rights and interests within the narrower scope of three waters infrastructure provision and service delivery, I have also sought to ensure that the mechanisms for expressing rights and interests through the service delivery reform proposals do not pre-empt or limit what might be provided for through other water or resource management related reforms.
26. I envision that a more comprehensive recognition of iwi/Māori rights and interests will be done through resource management reform, and reforms related to the allocation of freshwater. Notwithstanding this complexity, I consider that my reforms of the three waters system provide the opportunity for a step change in the way iwi/Māori rights and interests are recognised throughout this system. This includes proposed new mechanisms to influence strategic decision making and investment prioritisation with regards to service delivery, and changes to the regulatory environment, as provided for by Taumata Arowai and the Water Services Bill.

***How iwi/Māori rights and interests have been recognised in the three waters reform work to date***

*Early engagement on the three waters reforms*

27. Engagement with iwi/Māori on the three waters service delivery reforms is a continuation and extension of a multi-year programme of engagement undertaken through the Three Waters Review, which included the establishment of Taumata Arowai and a suite of regulatory reforms. This multi-year engagement programme is summarised in Appendix A.
28. I have worked to ensure that the groups targeted for engagement included a range of perspectives, to help understand Māori interests in the three waters. Groups included Kāhui Wai Māori, the Māori freshwater forum, and a group of iwi representatives from key regions. Case studies of rural communities with a high Māori population that face three waters issues have also contributed to this understanding.

29. Te Mana o te Wai has been an important vehicle for the Government to engage with Māori during the creation of Taumata Arowai and development of the Water Services Bill. Māori have consistently identified improving water quality and ecosystem health as a priority, and their feedback on the three waters regulatory reform proposals reflected these concerns. Key concerns included:
  - 29.1 that the proposals need to uphold Te Mana o te Wai, and promote a holistic approach to water (including having one regulator for all three waters);
  - 29.2 that mātauranga Māori (Māori knowledge and expertise about water management) should be given equal weight to scientific knowledge (recognising that these are not mutually exclusive) throughout the system;
  - 29.3 to enable kaitiakitanga aspirations at a catchment-by-catchment level;
  - 29.4 protecting existing Treaty settlement arrangements.
30. These concerns were viewed alongside other impressions, including:
  - 30.1 recognition of the case for change the decline of water quality and poor environmental outcomes;
  - 30.2 general openness to change from current service delivery arrangements (although differences of opinion in the nature of that change).
31. As the three waters service delivery reforms are part of broader reforms relating to the entire three waters system, it is important to understand how rights and interests have been recognised in other parts of the system. In the establishment of Taumata Arowai, iwi/Māori rights and interests have been recognised via:
  - 31.1 a statutory objective to give effect to Te Mana o te Wai;
  - 31.2 statutory operating principles, which relate to partnering and engaging early and meaningfully with Māori, including to inform how Taumata Arowai can:
    - 31.2.1 give effect to Te Mana o te Wai; and
    - 31.2.2 understand, support, and enable the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga;
  - 31.3 collective board knowledge and experience relating to the Treaty of Waitangi and its principles, and perspectives of Māori and tikanga Māori;
  - 31.4 collective duties on the board to maintain systems and processes to ensure Taumata Arowai has the capability and capacity to:
    - 31.4.1 uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles;
    - 31.4.2 engage with Māori and to understand perspectives of Māori;
  - 31.5 a Māori Advisory Group.
32. The Māori Advisory Group is charged with advising Taumata Arowai and the board on Māori interests and knowledge as they relate to the objectives, functions, and principles of Taumata Arowai. This includes:
  - 32.1 developing and maintaining a framework that provides advice and guidance on how to interpret and give effect to Te Mana o te Wai;
  - 32.2 providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised.

*Hui-ā-motu September to October 2020*

33. The approach to the recognition of rights and interests in the service delivery reforms followed a similar pathway to that of the earlier regulatory reforms, and involved iterative engagement with iwi/Māori.
34. In September and October 2020, officials from the Department of Internal Affairs and Taumata Arowai Establishment Unit held successive hui-ā-motu and virtual hui with iwi/Māori across the country, alongside informal, face-to-face meetings.
35. General feedback from these engagements was that, from a te Ao Māori perspective of water issues, the proposed reform of three waters service delivery arrangements is narrowly focused – given it is targeted to address immediate concerns about drinking water safety, and the performance of wastewater and stormwater systems.
36. Several other clear themes also emerged, under the following broad headings:
  - 36.1 Partnership – Iwi and Māori shared resounding support for a stronger partnership between tangata whenua and the Crown, with the need to have the Treaty of Waitangi embedded more explicitly throughout the reform process and beyond.
  - 36.2 Participation – Iwi and Māori shared concerns regarding their ability to participate and engage in this kaupapa. Currently, there is insufficient capacity and capability for many iwi, hapū and Māori to engage. Support needs to be given to develop Māori capacity and capability to participate.
  - 36.3 Protection – Iwi and Māori called for protection of their rights, roles and responsibilities as tangata whenua particularly for protection around their cultural assets. Iwi and Māori also want to see protections against privatisation of water services.
  - 36.4 Recognition of cultural values – Iwi want to see their mātauranga-ā-iwi incorporated within the three waters reform process and Taumata Arowai's regulatory regime. In relation to entity design, iwi and Māori do not want to see catchments broken and have a strong preference for the entity boundaries to adhere to the 'ki uta ki tai' concept. Additionally, iwi, hapū and Māori do not want their whakapapa/iwi/hapū boundaries to be separated by the new entities.
  - 36.5 Use mana enhancing processes – Iwi see the reform as an opportunity to work together to design something that works better than the status quo for iwi, hapū, whānau and small rural communities.
37. Iwi/Māori also told officials they wanted to be involved at all levels of the reform programme and with the new water services entities, once established. In particular, they wanted to be involved in the 'nitty gritty' aspects where they can provide the greatest change on issues that relate to their communities – such as decisions relating to the operate of a wastewater treatment plant.
38. During this engagement, officials focused on equitable outcomes in the proposed new water services entities as a mechanism for recognising rights and interests. Ensuring that policy options for the new entities provide for equitable services to iwi/hapū/Māori is paramount.

*Further engagement – including March 2021 workshops*

39. Through the early engagement on the service delivery reforms in mid-2020, iwi representatives were invited to targeted stakeholder workshops, which included break-out sessions to discuss iwi/Māori perspectives on the reforms. These discussions were informative and insightful, but attendance of iwi representatives was low – half (or fewer, in some places) of those invited have attended. For this reason, additional, dedicated resources were brought in to the reform programme, and a range of engagement techniques have been used – including formal meetings and informal conversations.
40. To support and guide this work, officials have created a Te Ao Māori Technical Working Group (Technical Working Group), comprising of members from across a wide-range of technical, industry, governance and iwi/Māori work experience and backgrounds. These experts have been engaged for their technical knowledge and do not participate as decision-makers for their respective iwi.
41. As the service delivery reform proposals started to take shape, I sought a further round of engagement in partnership with iwi/Māori. Alongside the Joint Central/Local Government Three Waters Reform Steering Committee, officials undertook a series of workshops with local government and iwi/Māori throughout March 2021.
42. These workshops were an opportunity to discuss and test initial thinking about possible mechanisms for recognising iwi/Māori rights and interests in the service delivery reforms. The options discussed included mechanisms relating to:
  - 42.1 Statutory recognition of both the Treaty of Waitangi and Te Mana o te Wai in legislation.
  - 42.2 Recognition that water services sit with a wider Te Ao Māori framework, including support for capacity and capability, and application of mātauranga Māori.
  - 42.3 Creation of new mechanisms to enable iwi/Māori to directly influence outcomes for Māori. This includes proposals around water service entity oversight, governance, board competencies, and a direct mechanism for mana whenua in the form of Te Mana o Te Wai statements and protections for Māori consumers.
  - 42.4 Opportunities to improve wider outcomes for Māori, including recognition of the need for improved service for marae and papakāinga, and opportunities for partnership in delivery of services.
43. Feedback from the workshops confirmed the themes from earlier engagement, but with a greater degree of specificity. Key themes included:
  - 43.1 Resourcing, capacity and capability – The reform offers a step change in the relationship between iwi/Māori and the three waters service delivery system. As a result, iwi/Māori have expressed concerns about their capacity and capability to prioritise and contribute to these reforms and the new system once it is in operation.

- 43.2 Inclusion of mātauranga – Mātauranga Māori will play an important role in the future success of the broader system. This is already evidenced in our approach to improving fresh water outcomes. Iwi/Māori have raised the importance of providing for mātauranga Māori knowledge, cultural indicator frameworks and appropriate measurement approaches to sit alongside proposed new performance measurement approaches.
- 43.3 Protection of existing arrangements – Iwi/Māori have noted that Mana Whakahono-ā-Rohe agreements should transfer to the new service delivery system and that existing settlements are protected and provided.
- 43.4 Mana whenua representation – the opportunity to increase oversight and strategic influence for iwi/Māori gives rise to issues of representation, including through the transition. This is particularly important given that iwi/Māori experience of water service delivery is likely to be at a whānau/hapū level. Achieving this within larger water entities will be critical.
- 43.5 Rohe/takiwā boundaries – the importance of taking a ki-uta-ki-tai, source to sea, approach to the determination of entity boundaries, linking rohe/takiwā by whakapapa where possible.
- 43.6 Te Mana o te Wai – enabling the individual expression of Te Mana o te Wai to sit within a broader national framework.
- 43.7 Entity ownership – dissatisfaction with the current ownership arrangements and the degree to which reform perpetuates local government ownership of the entity. This reflects a common iwi/Māori perspective on the primacy of the Treaty partnership being directly with the Crown.
- 43.8 Prioritisation – concerns around the prioritisation of investment works and how community needs will be addressed.
- 43.9 Economic opportunity – recognition that significant investment requirements will be rich with economic opportunity, both in terms of direct investment, and Māori enterprise being involved more directly in water service delivery.
44. Across the workshops the reforms were seen by Māori participants as an opportunity for stronger mana whenua voice in the provision of water services. It was also seen as an avenue for establishing a system that embodies a true partnership with mana whenua and meets local expectations for upholding Te Mana o Te Wai. Officials were cautioned to be mindful of the additional complexities facing Māori attendees through these reforms.
45. Māori attendees noted that they see no role for themselves in this reform, particularly with the lack of inclusion of mātauranga Māori. By excluding their mātauranga, Māori attendees felt that it had not been considered in the proposed entities.
46. However, there were mixed directives from Māori attendees around the inclusion of their mātauranga within the reforms and how prescriptive the language should be in this regard. Many Māori attendees wanted assurance within the legislation that the proposed entities will uphold true partnership with them and demonstrate an understanding of Te Ao Māori. In contrast, many Māori attendees did not want their terminologies and concepts defined in legislation as it is their mātauranga to define for themselves. Others commented that Crown application of mātauranga is completely inappropriate.

47. A common concern expressed by iwi and hapū throughout the workshops was the intergenerational effects of the reforms. Many iwi and hapū do not currently receive council water services and manage their own private systems. There was a desire from some iwi and hapū to maintain the status quo in this regard because they do not want to leave their mokopuna with the bill.
48. In relation to this, Māori attendees urged officials to make resourcing available to better enable their participation throughout the reform. It was highlighted that iwi, hapū and Māori will be further disadvantaged in the delivery of water services if they do not receive support to build their own capacity and capability before the proposed date entities would 'go live' of July 2024.
49. Iwi/hapū attendees expressed that there is a potential risk to the reform, and the Māori/Crown relationship, in the alignment between government agencies regarding the delivery of water services and issues around water allocation. In Te Ao Māori, wai is wai, so to separate water allocation and ownership from the water reform discussion raised suspicions of Māori attendees in the intentions of each reform.
50. This suspicion led to assumptions that the Crown is attempting to take ownership of water by stealth. Māori attendees suggested that if the three waters reform is to succeed, there needs to be greater alignment between the Department of Internal Affairs (Department) and Ministry for the Environment (MfE). Representatives from the Department acknowledged the context behind these statements and informed Māori attendees that public ownership of three waters entities is a bottom line of the reforms and discussions around water allocation remain with MfE.
51. Many Māori attendees expressed that having their people involved across all levels of the proposed entities is critical for the success of the reforms. While welcoming the proposal for the entities, once established, to resource Māori, attendees also stressed the need for resourcing to build their capability and capacity now to better engage with the entities. Across the workshop discussions, Māori attendees questioned how their existing arrangements, such as their Mana Whakahono-ā-Rohe, would be considered by the new water entities. Iwi and hapū wanted to ensure these will be considered and want to know what a transfer, if any, would look like.
52. Additionally, mechanisms to enhance iwi, hapū and Māori participation and mana in the proposed entities will not take anything away from existing arrangement between iwi, hapū and Māori and their local authorities. The inclusion of these mechanisms throughout the reforms seeks to provide iwi, hapū and Māori communities with additional opportunities to those currently in place.
53. Across the workshop discussions, Māori attendees raised questions around the role of local government in the new water entities. There was a strong expression many did not want to see local government owning them in the future, raising concerns around the current management of water services by councils.
54. Regarding the oversight and governance of the proposed entities, iwi and hapū strongly expressed a desire for a 50/50 split as it is seen to reflect a true Treaty partnership. This point was also raised in the hui-ā-motu in September and October 2020.

55. My officials are continuing to engage with iwi/Māori on the issues raised above. This will continue over the course of the reform period and well into the transition. I view this as a positive sign, as iwi/Māori groups specifically request officials return for further engagement. Recent examples of this include hui with Ngāi Tahu, and hui in the Taranaki region and with Waikato River iwi. Treating these discussions as an ongoing partnership approach, rather than discrete engagement, is consistent with the shift I would like to see continue through to the transition approach, and to help shape the future culture of service delivery in terms of a Treaty partnership approach.

## **Part B: Consideration of Treaty rights and interests as they apply to the proposed reforms**

### ***Objectives for the Crown/Māori relationship within the three waters service delivery reforms***

56. The Government's ambition for progressing service delivery reform sits within a broader Treaty partnership context. In formulating my proposals to respond to the issues, rights and interests raised by iwi/Māori, I have closely examined the guidance agreed as part of a broader framework for improving Crown/Māori relationships [CO (19) 5 refers]. In addition, the process by which I have arrived at these conclusions has been well-informed by the views of iwi/Māori as characterised above, and consistent with the principles of Te Tiriti.
57. Within our three waters service delivery reform objectives, I have also developed a set of 'Crown/Māori relationship objectives' to guide the consideration of issues relating to iwi/Māori rights and interests, and the development of mechanisms to address them that are set out later in this paper. These objectives were informed by engagement with iwi/Māori and a consideration of the reform outcomes. The objectives represent a step change in the relationship iwi/Māori would have with three waters service provision in the future and include:
- 57.1 Enabling greater strategic influence: Enable iwi/Māori to have greater strategic influence to exercise their rangatiratanga over water services delivery, including through enhanced capacity and capability.
  - 57.2 Integration within a wider system: Ensure that the rights and interests of iwi/Māori are analysed within a wider system, including issues related to allocation and the future of the Resource Management Act 1991, but specifically focussing on issues that relate to the establishment of water services entities and delivery of water services.
  - 57.3 Reflection of a Te Ao Māori perspective: Recognise the holistic manner (environmental, cultural, spiritual, economic) in which water is viewed using te ao Māori perspectives and Te Mana o te Wai including ki uta ki tai or a catchment-based approach, consistent with rohe/takiwā or whakapapa links.
  - 57.4 Supporting clear accountabilities: Ensure roles, responsibilities, and accountability for the relationship with the Treaty partner is clear throughout the wider system, and that capacity and capability is available to honour the Crown's Treaty obligations.



- 57.5 Improving outcomes at a local level: Provide a step change improvement in delivery of water services for iwi/Māori at a local level, including through enhanced capacity and capability and improved wellbeing.

**Article one – A right to govern**

58. As indicated in Paper 1, this Government has a desire to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a way that is efficient and affordable for all New Zealanders. This is critical for:
- 58.1 public health and wellbeing;
  - 58.2 environmental outcomes;
  - 58.3 economic growth and job creation;
  - 58.4 housing and support for population growth;
  - 58.5 adapting to the impacts of climate change and reducing greenhouse gas emissions;
  - 58.6 mitigating the effects of natural hazards.
59. The reforms I am proposing to achieve these improved outcomes are based around several core components, and informed by a strong case for change. These components are outlined earlier in this paper and explained in further detail in Papers 1 and 2. It is important to note that my proposals form an integrated package, and will need to be implemented together in order to achieve the maximum impact and desired outcomes.
60. The intent is that all communities and New Zealanders will benefit from the reforms in the long term. However, in the short-to-medium term, the reforms may affect communities differently, including iwi/Māori.
61. The initial focus of the reforms is on three waters services that are currently owned and operated by, or on behalf of, local authorities – and the proposed new water services entities would become responsible for these services and infrastructure. This means households and communities that receive local government water services will be affected by the reforms as soon as they are implemented (anticipated to be 1 July 2024).
62. Communities that do not receive local government water services may not see immediate benefits from the new system. This is likely to include and affect many iwi/Māori, who have historically been members of communities that are underserved by, or receive no water services from, local government.
63. As I explain in Paper 1, we need to consider communities served by private and community supplies, and marae and papakāinga, as part of the reform proposals, and during the transition and implementation phases. This includes considering the potential roles that the new entities might play in building the capacity of these supplies to achieve compliance with regulatory requirements, and the potential to transfer responsibility for these supplies to the new entities.

64. I am proposing that obligations in the Water Services Bill, which currently apply to territorial authorities, would apply to the new water services entities. These obligations include a duty to ensure communities have access to drinking water if existing, non-council suppliers face significant problems with their services; and a requirement to undertake a 'proactive' assessment of the drinking water services available to communities in each district, at least once every three years.
65. Over time, I would expect the new service delivery system to offer significant benefits for iwi/Māori, particularly to those people living in underserved communities, when compared with status quo arrangements. This will be achieved through the increased capacity and capability of water services entities, and the duties and obligations they will have to ensure safe drinking water, protect the environment, respond to climate risks, and support private and community supplies.
66. A key part of developing the new service delivery system is ensuring that it does not prejudice settlement legislation that has been developed. Obligations in relation to settlement legislation that exist in relation to three waters services that are currently held by local authorities will be transferred to the water services entities. A similar approach would be taken in regard to the consent conditions placed on local authorities as they relate to three waters service delivery.
67. Through the course of engagement, I have heard arguments that these proposals should not progress until the question of ownership of water has been resolved, and that decisions relating to the role of iwi/Māori in the management of freshwater need to be clarified before developing a new system for three water service delivery. I have also heard iwi/Māori frustration and dissatisfaction with the Treaty partnership approach, and cultural responsiveness from territorial authority water service delivery arrangements, and the impact that has on water quality, service quality and environmental outcomes.
68. I have taken the stance that the new arrangements for three waters service delivery, and the new water services entities, will need to operate irrespective of the ownership of water and the resource management system. The proposals outlined in my accompanying papers discuss the interaction with the broader regulatory system. I do not anticipate that possible changes to the resource management system will materially alter the ability of the new three waters system and entities to operate. Any changes are likely to complement and bring further clarity to the operation of the three waters service delivery system.

***Article two – consideration of tino rangatiratanga***

69. The proposals I am putting forward provide for increased ability for iwi/Māori to exercise rangatiratanga in relation to the regulation, funding, financing, and provision of three waters services. In the current system, iwi/Māori do not have a clearly defined or consistent role, either as a decision maker or by providing direction on the provision of three waters services. It is important to distinguish this te ao Māori expression from that of Katiakitanga.
70. I have considered several mechanisms to provide for rangatiratanga in the new system for three waters services delivery. These are discussed further in Part C below, and include a mana whenua representative group to have joint oversight and strategic influence the water services entities, with equal rights to territorial authorities, and with the ability to issue 'Te Mana o te Wai statements' to the entities.

71. The objectives for the Crown/Māori relationship within the three waters service delivery reforms, described above, has guided the development and analysis of these mechanisms. Recent engagement with iwi/Māori has also informed refinement of their design.

***Article three – the rights of Māori as citizens***

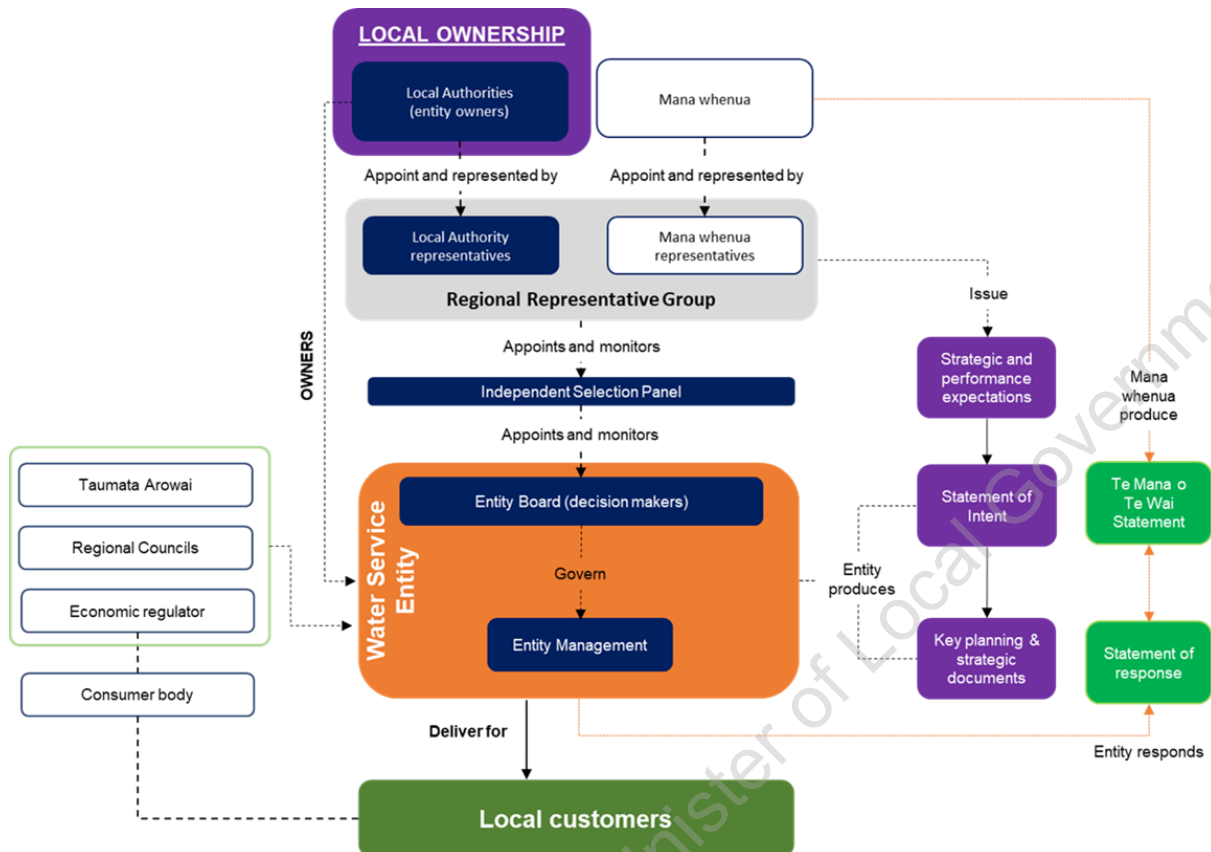
72. Finally, the rights and interests of Māori as consumers of water services need to be considered, predominantly under Article Three of the Treaty. There are good reasons for general mechanisms of consumer protection and advocacy to specifically address the interests of Māori, particularly as they relate to historic inequity and the specific interests of Māori who are not mana-whenua within the boundary of a specific entity, including urban Māori.
73. Key issues that have been examined in the context of our Treaty partnership approach include:
- 73.1 the need to consider whether the specific interests of Māori as consumers need to be provided for in the design of consumer protection mechanisms;
  - 73.2 that Māori have the ability to access the economic benefit that will arise from the significant investment activity and jobs growth, including by the need to consider the opportunity for Māori in any workforce transition plan.
74. Appendix B provides a summary of the analysis of iwi/Māori rights and interests relating to Article Two and Article Three of Te Tiriti.

**Part C: Mechanisms for addressing iwi/Māori rights and interests**

75. My proposed reforms, and the introduction of new legislative, governance and management arrangements to deliver water services, provide an opportunity to include mechanisms for the recognition of iwi/Māori rights and interests in the new three waters system.
76. The mechanisms I am proposing are set out below. These mechanisms have been designed to achieve the Crown/Māori relationship objectives I described earlier, and the broader three waters reform objectives and outcomes. Significantly, the mechanisms also fit with the other key design features and components of the new service delivery entities. The options analysis that led to the identification of these mechanisms is provided in Appendix C.
77. The proposed mechanisms relate mainly to the design of the new entities – as described in detail in Paper 2 – and to the role of iwi/Māori in influencing the direction of these entities. As indicated in the diagram (Figure 1) and sections below, key mechanisms within the structure of the new water services entities include:
- 77.1 a mana whenua group at the joint oversight and strategic influence, with equal rights to territorial local authorities (with a kaupapa Māori selection method for this group with transitional provisions to enable this to occur);
  - 77.2 requirements that the board of the entity, collectively, has competencies relating to the Treaty of Waitangi, mātauranga Māori, tikanga Māori and Te Ao Māori;

- 77.3 requirements that the board of the entity has specific expertise in supporting and enabling the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga with respect to the delivery of water services (recognising that given the size of the proposed entity boundaries, these competencies will be universally the same, and this will have to be taken into account on an entity by entity basis);
- 77.4 Te Mana o te Wai statements, which would be issued to the entity by the mana whenua group, and would require a statement of response from the entity board (noting officials will work with Parliamentary Council Office to ensure there is clarity around the membership of the group);
- 77.5 requiring the water services entities to fund and support capability and capacity of mana whenua to participate in relation to three waters service delivery.
78. There is also a need to align with the broader regulatory framework within which the new water services entities will operate. This includes statutory recognition of both the Treaty of Waitangi and Te Mana o te Wai in legislation.
79. Te Arawhiti have been consulted on the proposed mechanisms and it is their view that the proposed approach is consistent with the broader policy work on Treaty references in legislation.
80. Finally, I note that there are also relevant proposals in Paper 1, which are part of the overall reform package. For example:
- 80.1 one of the proposed statutory objectives of the water services entities would relate to “giving effect to Te Mana o te Wai (to the extent Te Mana o te Wai applies to the duties and functions of the entities)”;
- 80.2 the proposed operating principles for the entities include “partnering and engaging early and meaningfully with Māori”; and “understanding, supporting and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised – both within the entities and when engaging with iwi/Māori”.

Figure 1: Proposed water services entity structure



### The broader statutory framework

81. The regulatory system within which three waters services are provided is in varying stages of reform. A consistent guiding principle we have brought to our work together is that Government will want to ensure Te Tiriti and Te Mana o te Wai are appropriately referenced within the broader legislative framework. This is reflected in the establishment of Taumata Arowai and the Water Services Bill.
82. For the proposed water services entity legislation, I am seeking agreement to provide for two distinct Treaty references:
  - 82.1 A statutory reference to the principles of the Treaty of Waitangi, which should focus on the conduct of the entities and other system participants, including their capacity to be a good Treaty partner. I propose that this approach be broadly consistent with the approach we have taken with the Kāinga Ora – Homes and Communities Act 2019 and the Taumata Arowai – the Water Services Regulator Act 2020.
  - 82.2 A statutory reference to Te Mana o te Wai that should be sufficiently and practically applied to ensure mana is able to be exercised at an iwi/hapū and even whānau level, primarily through the creation of the mechanism outlined below – the 'Te Mana o te Wai statement'. This will provide alignment and continuity with the broader regulatory system.

83. This second statutory reference needs to sit within a moving system, which recognises that giving effect to Te Mana o te Wai is a requirement in the Water Services Bill and the National Policy Statement for Freshwater Management. This will likely be reinforced through Te Mana o Te Taiao statutory obligations under the proposed reform to the Resource Management Act 1991. It will be important to ensure that the hierarchy of statutory obligations to Te Mana o te Wai does not provide confused accountabilities in an already complex system. My officials will work closely with officials from the Ministry for the Environment, Te Arawhiti and Parliamentary Counsel Office to ensure this is addressed. If any conflict is envisaged, I proposed the Minister for the Environment, Minister for Māori Crown Relations and myself be delegated the ability to resolve any outstanding policy issues.
84. Furthermore, we need to ensure that the entities themselves are able to prioritise and invest at a scale and pace we have not seen in this sector to date. Officials engaged in issues related to statutory reference, and iwi/Māori, recognise the importance of this recognition. On balance, I propose that the water services entities be required to give effect to Te Mana o te Wai in statute, in a manner that will also satisfy obligations that will be required under the Taumata Arowai – the Water Services Regulator Act 2020, through:
- 84.1 involving mana whenua including through support (funding, capacity, time) for the establishment of a mana whenua group within their entity boundary;
  - 84.2 ensuring board competencies reflect general competence in the principles of the Treaty of Waitangi and specific expertise in supporting and enabling the exercise of mātauranga Māori and tikanga Māori and kaitiakitanga with respect to the delivery of water services (this is a similar to the approach taken in the Taumata Arowai – the Water Services Regulator Act 2020 with respect to board competencies);
  - 84.3 maintaining systems, processes and support to enable the aspirations of mana whenua, including through receiving and providing a response to mana whenua Te Mana o te Wai statements. The first part of this approach borrows from the Kāinga Ora – Homes and Communities Act 2019. The second half reflects a new mechanism that is described below.

***The opportunity for greater oversight and strategic influence – through a mana whenua representative group***

85. The proposed water services entities will not have standard commercial ownership arrangements. For example, as set out in Paper 2, the entities would not have shares or shareholders, so shares will not be able to be traded and will therefore have no value. With a small number of entities across the country, multiple local authorities will have represented interests on a Regional Representative Group.
86. Cabinet has already made it clear it wants to put in place a range of statutory protections against privatisation. While many iwi/Māori do not consider iwi ownership as ‘private ownership’, I have not considered policy options that would enable transfer of ownership of the proposed water services entities to iwi. Rather the intention is that these entities be deemed to remain in local ownership, and iwi/Māori be provided with a role in strategic influence oversight of these arrangements.

87. Iwi/Māori have raised a desire for the new water services entities to be co-governed. This has also been raised by some local government sector representatives.
88. In paper 2, I propose that local government interests will be expressed through a representative 'Regional Representative Group' that will have limited decision-making powers, with the majority of decision-making rights being exercised by an independently-appointed, competency-based, professional board. This structure is considered to better enable the structural separation required to create independent balance sheet capacity in the water services entities and is currently being tested through credit rating agency engagement. It is therefore not an orthodox governance arrangement.
89. I have considered the potential mechanisms for iwi/Māori to influence the strategic framework within which the water services entities operate. I am proposing the creation of a 'mana whenua representative group' (or similar name) for each entity. These groups would fulfil the roles outlined in Paper 2 around joint oversight and strategic influence oversight and limited governance functions and the Regional Representative Group – where I am proposing that local authorities and mana whenua will undertake these tasks on a joint basis.
90. I note that some iwi/Māori have raised the question of whether there is an opportunity to invest in water services entities. As a general proposition, the entities will have flexibility in relation to how and where they source debt finance.
91. Iwi/Māori are a potential source of finance. It is recognised that iwi/Māori bring a different perspective, including considerations of intergenerational benefits and outcomes that may be aligned to wider reform objectives. Separate to issues of ownership, there is no reason why iwi/Māori should not be a source of debt finance to the proposed entities or in relation to specific projects that the entities will deliver. Ultimately, this will be a decision for each entity's board.

***Strategic influence, oversight and establishing representative rights***

92. The proposed water services entities will be of a significantly larger scale than current service delivery arrangements, to provide scale benefits in service provision and infrastructure investment. Within the boundaries of each of these entities there will be multiple rohe/takiwā.
93. Consistent with the conclusions of the *New directions for resource management in New Zealand* (Randerson Review), engagement with iwi/Māori has highlighted the reality of kaitiakitanga, as it relates to the provision of water services, often operates at a hapū or whānau level. It is also important to ensure the proposed water services entities are not in a position to determine who represents mana whenua interests.
94. Officials from the Ministry for the Environment are actively considering options to improve resource management tools related to mana whenua involvement into a single, integrated, partnership process at a regional level. The Resource Management Review Panel recommended that the current Mana Whakahono ā Rohe provisions should be enhanced to provide for an integrated partnership process between mana whenua and local government to address resource management issues.

95. If this recommendation is provided for in a new resource management system, it will assist in improving issues as they relate to the role of mana whenua. The proposed water services entities will operate within the environmental regulatory system; however, it will also be important they have a direct relationship with mana whenua given the significance of water from a Te Ao Māori perspective.
96. I see the need for iwi/Māori to be able to decide the most effective representative interest for mana whenua. This representative interest is best provided for and guided by a kaupapa Māori process that may, appropriately, take time.
97. I see two important considerations with respect to supporting an effective transition toward a greater role for iwi/Māori in three waters service provision:
- 97.1 ensuring iwi/Māori are well supported to contribute to the new roles created through the reform process, including through the proposed oversight and strategic influence representative role, and exercising kaitiakitanga under the Te Mana o te Wai mechanisms;
  - 97.2 ensuring the new water services entities are set up to be effective Treaty partners, which are well-informed and influenced by iwi/Māori – insofar as the entities and their boards will be required to give effect to Te Mana o te Wai, and understand, support and enable mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised throughout their organisations, and when engaging with iwi/Māori.
98. I am expecting there will need to be a process to prepare iwi/Māori and mana whenua for the significant new opportunities that the reforms enable and I intend to take a leadership role to support this process. The following functions are particularly critical to the establishment period:
- 98.1 establishing the composition of a transitional Mana Whenua Representative Forum, comprising post-settlement governance entities, and those entities recognised as having a mandate through the Treaty settlement process where settlement has not occurred;
  - 98.2 undertaking a kaupapa Māori approach to establishing mana whenua within each entity boundary, to ensure the proposed oversight and strategic influence arrangements can be given effect as soon as practicable after establishment;
  - 98.3 support for mana whenua within an entity boundary to prepare Te Mana o te Wai Statements to inform the development of the entities' transitional strategic documents, including preliminary asset management plans.
99. I am seeking agreement to support a kaupapa Māori process, and to how the Crown will be organised to provide that support. I am proposing this occurs in two key ways:
- 99.1 that a Crown/Māori Relationship Lead be appointed to support the Crown's interest in the kaupapa Māori process within each entity boundary; and
  - 99.2 that the Crown provides reasonable financial support to iwi/Māori to participate in that process – along similar lines to the approach to supporting local government.



100. Providing reasonable financial support will be important if we are to enable iwi/Māori to participate fully and meaningfully in the transition. There is currently insufficient capacity for many iwi, hapū and Māori to engage in this kind of process, or to undertake the roles envisaged.
101. I will report back with further information on supporting a kaupapa Māori process for the mana whenua group, including the role of independent chairs, in my transition and implementation paper in July 2021.
102. Furthermore, I propose to appoint an expert group to oversee the process for establishing representation for both mana whenua and local authority, to provide advice to me on progress, provide clarification on issues of process, and to adjudicate on any disputes that arise in determining representative interest by either local authorities or mana whenua. This would be a 'back-stop' mechanism to make sure representation arrangements are workable. I am seeking agreement to this in Paper 2.
103. This approach has been tested through engagement. Some iwi/Māori were keen to ensure that Post Settlement Governance entities be time limited providing this function. More detail on this will be included in the transition paper.
104. The Technical Working Group agree this is a complex area though have urged my officials not to be prescriptive to ensure a process of self-determination occurs and providing sufficient time and resource be set aside to enable this to occur. They were particularly interested in an option, or transition to an option, that enables early influence of iwi/Māori on the board through the formative establishment period. This is important to ensure that the culture and capacity of the water services entities is prioritised early in the process.

#### ***Board competencies***

105. A central way for Te Mana o te Wai to be embedded as an objective of the entity is to ensure the board is adequately competent to give effect to this objective, with expertise in accessing mātauranga Māori, tikanga Māori and Te Ao Māori to inform the entity's activities.
106. I am therefore proposing that the board of each entity is required to have:
  - 106.1 general collective competence in understanding the principles of the Treaty of Waitangi and mātauranga Māori, tikanga Māori and te ao Māori; and
  - 106.2 members with specific expertise in supporting and enabling the exercise of mātauranga Māori, tikanga Māori, kaitiakitanga and te ao Māori with respect to the delivery of water services.
107. These matters would be considered during board appointment processes. A similar approach has been taken in relation to Taumata Arowai and is reflected in that legislation.

***Kaitiakitanga and Te Mana o te Wai statements***

108. Consistent with feedback I have received from the engagement to date, Te Mana o te Wai is exercised in place, and that kaitiakitanga is more likely to be exercised at a hapū/whānau level with respect to the provision of water services. The ability to connect strategy setting with delivery on the ground will require the proposed water services entities to make a difference in place at a hapū/whānau level. This will primarily be achieved through the preparation of asset management plans and the process that guides investment decision making.
109. I see the need for a new mechanism for expression of kaitiakitanga, that will enable mana whenua to prioritise their capacity and capability through a flexible mechanism where the onus of response shifts to the water services entity. I am proposing a new statutory mechanism that enables mana whenua to prepare 'Te Mana o te Wai statements', and requires each water services entity to provide a formal published response to these statements within a prescribed timeframe.
110. Rather than statutorily prescribe the requirements of an expression of kaitiakitanga, my preference is to enable mana whenua to express this in a manner that aligns with their mātauranga-a-iwi. I propose that the legislation broadly describe the mechanism and identify existing statutory documents that may serve as Te Mana o Te Wai statements where mana whenua decide they adequately reflect. For example, the legislation could identify that Iwi Management Plans, Cultural Impact Statements, Statements of Mana Whenua or any other statement agreed as representing Te Mana o Te Wai as guided by the Mana Whenua Forum. This would include a mechanism by which mana whenua may influence outcomes relating to service level and coverage. It will also enable flexibility for the approach to resource management and freshwater management to evolve and for the proposed Te Mana o Te Wai mechanism to accommodate any new instruments. As stated earlier, I proposed to seek delegation to clarify any policy tensions and related drafting instructions that may be required to be considered by the Minister for the Environment and Minister for Crown Māori relations and myself.
111. Once received, a water service entity must provide a reasonable response to the statement within a specified timeframe, most likely two years. This response would be published and demonstrate how the entity is meeting or planning to meet the expression of Te Mana o Te Wai. Design of mechanisms to give effect to Te Mana o Te Wai need to carefully balance iwi/hapū/whānau input with the need for the water services entity to undertake investment activities to address the significant infrastructure deficit and consistent with the new economic regulatory regime. Designed well, I think these objectives need not be mutually exclusive.

***Broader wellbeing outcomes***

112. The proposed Te Mana o te Wai statements could also be used by mana whenua to express their interest in participating within the broader water services delivery system. I see the statements as being holistic, enabling Māori to express a broad wellbeing approach, consistent with a Te Ao Māori approach to such matters, including economic, cultural, social and environmental expectations.

113. Such statements could contain economic aspirations with respect to Māori enterprise and job creation, particularly – but not exclusively – in areas related to mātauranga Māori expertise. This would require response from the water services entity as set out above, that does not prescribe solutions, but would present the shift in integrated partnered delivery that in combination with the other legislative settings above, that would be a material step change to current arrangements.

### **Implementation**

114. The changes set out within this paper require significant implementation effort, but within the broader regulatory and delivery system and in partnership with iwi/Māori. Issues and proposals related to transitional support for iwi/Māori will be set out in a further paper in July 2021. This paper will include recommendations on funding mechanisms to support capability and capacity through the transition and on an ongoing basis.

### **Partnership approach**

115. In December 2020 Cabinet agreed to a high-level principle of partnership with iwi/Māori, which will be followed throughout the reform programme, and reflected in the new service delivery system (CAB-20-MIN-0521.01 refers). There is a need to ensure that this high-level principle is again utilised in the implementation and transition to new water service entities.

### **Ngāi Tahu Partnership**

116. An example of this approach has been undertaken with Ngāi Tahu and there is an emerging similar model in the central north island. In the Ngāi Tahu case, my officials have been engaging with Ngāi Tahu as Treaty partner to understand Ngāi Tahu's rights and interests in the takiwā. Ngāi Tahu is well progressed in its thinking and is seeking a cooperative working relationship with the Crown and the councils across the takiwā to progress the reforms.
117. Ngāi Tahu has communicated its view that the Ngāi Tahu Claims Settlement Act 1998 confirms the takiwā boundary and that Ngāi Tahu has rangatiratanga within this area. The Ngāi Tahu position is that the relevant water services entity boundary should align with the Ngāi Tahu takiwā, within which Ngāi Tahu has established relationships with councils. Ngāi Tahu wishes to engage and co-design the water services entity that could align with the takiwā to ensure it gives effect to rangatiratanga.
118. I am advised by my officials that the economic case for a water services entity's boundary aligning with the Ngāi Tahu takiwā is strong. Discussions with the councils within this region have also indicated a preference for this alignment.
119. It is my view that there is benefit in continuing to engage with Ngāi Tahu to shape a solution that works for Ngāi Tahu and the councils in the Takiwā. In paper 1, I am proposing that the entity boundary for the South Island water services entity is informed by the Ngāi Tahu takiwā but may require further engagements with other interested parties. I see the need for my officials to continue to work in partnership with Ngāi Tahu through the next phases of the reform.

### **Financial implications**

120. This information is provided in Paper 1.

## Legislative implications

121. I am seeking agreement to implement the decisions in this paper through a Water Services Entities Bill, which is included in this year's legislative programme with a priority category 4 (to be referred to select committee within the year). In particular, the Bill would give effect to the proposals relating to:

121.1 references to the Treaty of Waitangi and Te Mana o te Wai;

121.2 the creation of a mana whenua group, at the oversight and strategic influence level of the new water services entities;

121.3 Te Mana o te Wai statements.

122. Subject to Cabinet approval, I may wish to consult with technical experts and iwi/Māori representatives during the drafting process.

## Impact analysis

### *Regulatory Impact Statement*

123. The Regulatory Impact Assessment relating to the package of reform proposals is attached to Paper 1, and the quality assurance statement is provided in that paper.

### **Climate Implications of Policy Assessment**

124. None

### **Population Implications**

125. None

### **Human Rights**

126. None

### **Consultation**

127. The Ministry for the Environment; Ministry of Health; Ministry of Business, Innovation and Employment; The Treasury; Ministry for Primary Industries; National Emergency Management Agency; Ministry of Housing and Urban Development; Department of the Prime Minister and Cabinet; Ministry of Transport; Te Puni Kōkiri; Te Arawhiti; Infrastructure Commission; New Zealand Transport Agency; Inland Revenue Department; Public Services Commission; and Kāinga Ora have been consulted on this paper. The Department of Conservation, Ministry of Education, New Zealand Defence Force, and Department of Corrections have operational responsibility for three waters services and have been consulted in this capacity.

128. As explained earlier in this paper, there is also ongoing engagement with iwi/Māori about the three waters reforms. Appendix A provides a summary of the engagement carried out to date.

### **Communications**

129. Comprehensive and strategic communications and engagement plans, aligned with a national public information and education campaign, are being put in place to support the reform programme, and Government decisions.

## Proactive Release

130. I intend to release this suite of papers (subject to any redactions) to align with announcements about the Government's decisions on these reforms. I note that this may occur outside of the timeframes in Cabinet Office circular CO (18) 4.

## Recommendations

131. The Minister of Local Government recommends that the Cabinet Government Administration and Expenditure Review Committee:

### Context

1. **note** that this Government has ambitions to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a manner that is efficient and affordable for New Zealanders, and which protects and promotes the rights and interests of iwi/Māori in the proposed new three waters service delivery system;
2. **note** that this is the third in a suite of papers seeking decisions on a comprehensive, integrated package of proposals to transform the three waters service delivery system, which is intended to be considered together with two other papers:
  - 2.1 A new system for three waters service delivery (Paper 1);
  - 2.2 Designing the new three waters service delivery entities (Paper 2);
3. **note** that this paper focuses on how iwi/Māori rights and interests feature in the proposed reforms, including by:
  - 3.1 considering and addressing the requirements of the Cabinet Office Circular, *Te Tiriti o Waitangi / Treaty of Waitangi Guidance* (CO (19) 5 refers);
  - 3.2 explaining how iwi/Māori rights and interests have been considered in the development of the overall reform package; and
  - 3.3 proposing specific mechanisms for addressing iwi/Māori rights and interests in the new service delivery model – as set out in Paper 1 and Paper 2;
4. **note** that there has been, and will continue to be, extensive engagement with iwi/Māori in relation to the three waters reforms, the feedback from which has informed the proposals in this paper;
5. **note** that the proposals have also been guided by a set of 'Crown/Māori relationship objectives', which include a focus on:
  - 5.1 enabling greater strategic influence;
  - 5.2 integration within a wider system;
  - 5.3 reflecting of a Te Ao Māori perspective;
  - 5.4 supporting clear accountabilities;
  - 5.5 improving outcomes at a local level;

***Mechanisms for addressing iwi/Māori rights and interests within the new three waters service delivery model***

6. **note** that a consistent guiding principle throughout the three waters regulatory and service delivery reforms has been ensuring the Treaty of Waitangi and Te Mana o te Wai are referenced appropriately within the legislative framework;
7. **agree** to provide for the following references in the legislation that establishes the proposed new three waters service delivery system:
  - 7.1 a reference to the principles of the Treaty of Waitangi, where the water service entities maintains systems and processes to ensure that, for the purposes of carrying out its functions, has the capability and capacity—
    - 7.1.1 to uphold the Te Tiriti and its principles; and
    - 7.1.2 to engage with Māori and to understand perspectives of Māori;
  - 7.2 a reference to Te Mana o te Wai, which can be exercised at an iwi/hapū and whanau level, primarily through the Te Mana o te Wai statement referred to in paragraph 16 below;
8. **note** that Te Arawhiti's view is that the proposed approach is consistent with the broader policy work on Treaty reference in legislation currently underway
9. **note** that Paper 2 provides for local government interests in the new water services entities to be expressed through a Regional Representative Group, which would influence the strategic framework in which the entities will operate;
10. **agree** to provide for a similar approach for iwi/Māori, through the creation of a 'mana whenua representative group', which would have the same rights and mechanisms as territorial authorities to influence the boards of the new water services entities;
11. **note** that iwi/Māori should be able to decide the most effective representative interest for mana whenua on the mana whenua group, and that this is best provided for, and guided by, a kaupapa Māori process;
12. **note** that a kaupapa Māori process will take time and, therefore, a transitional approach is proposed, which would be guided by the appointment of an independent Crown/Māori Relationship Lead within the boundary of each new water services entity, and through the potential appointment of a Ministerial Group to guide representative processes set out in Paper 2.;
13. **invite** the Minister of Local Government to report back in July 2021 with further information on the approach to supporting a kaupapa Māori process for the mana whenua group, including the role of independent chairs;
14. **note** that Paper 1 proposes a statutory objective for the water services entities relating to 'giving effect to Te Mana o te Wai', and that a key way for the entities to do this is to ensure the boards have appropriate competencies;
15. **agree** that the board of each water services entity be required to have:
  - 15.1 general collective competence in understanding the principles of the Treaty of Waitangi and mātauranga Māori, tikanga Māori, and te ao Māori; and

- 15.2 members with specific expertise in supporting and enabling the exercise of mātauranga Māori, tikanga Māori, kaitiakitanga, and te ao Māori with the respect to the delivery of water services;
16. **note** that feedback from the engagement with iwi/Māori indicates that kaitiakitanga is more likely to be exercised at a hapū/whānau level with respect to the provision of water services, and the water services entities will need the ability to connect governance with delivery on the ground at a hapū/whānau level;
17. **agree** to a mechanism that enables the expression of kaitiakitanga, through the preparation of 'Te Mana o te Wai statements' by mana whenua;
18. **agree** that Te Mana o te Wai statements would be provided to relevant water services entity, and that relevant entity would be required to prepare and publish a formal reasonable response to the statements within a prescribed timeframe;
19. **agree** that the Te Mana o te Wai statements would be an enabling mechanism, which provide iwi/hapū/whānau with the ability to communicate their expression of Te Mana o te Wai, including through other documents, which may include (but is not limited to) Iwi Management Plans, Cultural Impact Statements, and/or Statements of Mana Whenua;
20. **agree** that the relevant water services entity fund and support capability and capacity of mana whenua within their boundary to participate in relation to three waters service delivery;

### ***Implementation***

21. **note** Cabinet agreed to a high-level principle of partnership with iwi/Māori, which will be followed throughout the reform programme, and reflected in the new service delivery system (CAB-20-MIN-0521.01 refers);
22. **agree** for officials to continue a high-level principle of partnership with iwi/Māori on the transition and implementation of water services entity;
23. **note** decisions sought through paper 1 approve the Ngāi Tahu takiwā as the boundary for the South Island water services entity;
24. **agree** for officials to work with Ngāi Tahu on features of a South Island water services entity whose boundaries will align with the takiwā, including during the legislative drafting process referred to below;

### ***Legislative implications and issuing of drafting instructions***

25. **agree** that decisions in this paper be implemented through the Water Services Entities Bill, which is included in this year's legislative programme with a priority category 4 (to be referred to select committee within the year), specifically the proposals relating to:
  - 25.1 references to the Treaty of Waitangi and Te Mana o te Wai;
  - 25.2 the creation of a mana whenua representative group, at the strategic influence and oversight level of the new water services entities;
  - 25.3 the Te Mana o te Wai statements;

26. **invite** the Minister of Local Government to issue drafting instructions to Parliamentary Counsel in accordance with the decisions in this paper;
27. **agree** that Parliamentary Council Office be instructed to provide particular assurance on the appropriate treatment of the statutory references and definitions related to mana whenua contained within the proposed legislation;
28. **authorise** the Minister for the Environment, Minister for Māori Crown Relations and the Minister of Local Government to resolve any outstanding policy issues to guide legislative drafting related to the treatment of Treaty of Waitangi statutory references;
29. **authorise** the Minister of Local Government to approve all other minor policy and technical matters that may arise during the course of drafting;
30. **agree** that technical experts and iwi/Māori representatives can be consulted, if needed, during the drafting process.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government



## Appendix A: Summary of iwi/Māori engagement in three waters service delivery reforms

Date	Engagement	Rohe/Takiwā	Hui participants
8-July-20	Introduction letter	Via email	all iwi
15-September-20	Iwi introduction webinar	Via Zoom	all iwi
17-September-20	Water Services Bill webinar	Via Zoom	all iwi
21-September-20	Palmerston North hui	Palmerston North	local iwi/hapū
21-September-20	Kaitia hui	Kaitia	local iwi/hapū
22-September-20	Wellington hui	Wellington	local iwi/hapū
22-September-20	Whangarei hui	Whangarei	local iwi/hapū
24-September-20	Nelson hui	Nelson	local iwi/hapū
25-September-20	Hamilton hui	Hamilton	local iwi/hapū
28-September-20	Tauranga hui	Tauranga	local iwi/hapū
29-September-20	Ōpōtiki hui	Ōpōtiki	local iwi/hapū
30-September-20	Gisborne hui	Gisborne	local iwi/hapū
1-October-20	Napier hui	Napier	local iwi/hapū
6-October-20	Whanganui hui	Whanganui	local iwi/hapū
6-October-20	Rotorua hui	Rotorua	local iwi/hapū
7-October-20	New Plymouth hui	New Plymouth	local iwi/hapū
7-October-20	Taupō hui	Taupō	local iwi/hapū
8-October-20	Auckland hui	Auckland	local iwi/hapū
13-October-20	Zui of hui a motu	Via Zoom	all iwi
15-October-20	Palmerston North hui	Palmerston North	Rangitāne
17-October-20	Ngāi Tahu hui	Arowhenua Marae, Temuka	Ngāi Tahu
14-October-20	Te Wai Māori Trust hui	Department of Internal Affairs	Fisheries group
9-October-20	update email	Via email	all iwi
23-October-20	update email	Via email	all iwi
3-November-20	Ngāpuhi meeting	Via Zoom	Ngāpuhi
3-November-20	Zui with Te Tau Ihu iwi	Via Zoom	Te Tau Ihu Iwi
10-November-20	Iwi and Local Government Chief Executives Forum	Te Runanga o Whaingaroa, Kerikeri	Chairs and Chief Executives of Te Tai Tokerau iwi and Council
10-December-20	Technical Working Group	Via Zoom	Technical Working Group Members
16-December-20	Technical Working Group	Via Zoom	Technical Working Group Members

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<b>Date</b>	<b>Engagement</b>	<b>Rohe/Takiwā</b>	<b>Hui participants</b>
17-December-20	Kahui Wai Māori presentation on Three Water reform	Ministry for the Environment	Member of Kahui Wai Māori
23-December-20	Update email with save the date	Via email	all iwi
20-January-20	Technical Working Group	Via Zoom	Technical Working Group Members
29-January-20	Technical Working Group	Via Zoom	Technical Working Group Members
3-February-21	Heretaunga	Informal	Ngāti Kahungunu Iwi Incorporated
9-February-21	Presentation on Three Water reform	Via Zoom	Local Government New Zealand Te Maruata Roopu Whakahaere
12-February-21	Formal invitation to workshops	Via email	all iwi
17-February-21	Kahui Wai Māori update on reform	Ministry for the Environment	Member of Kahui Wai Māori
18-February-21	Presentation on Three Water reform	Ministry for the Environment	Various Māori organisations
23-February-21	Pre March-workshops presentation	Via Zoom	All iwi
24-February-21	Technical Working Group	Wellington	Technical Working Group Members
9-March-21	March workshop	Nelson	local iwi/hapū and Local Authorities
10-March-21	Presentation on Three Water reform	Via Zoom	Local Government New Zealand Te Maruata Whānui
11-March-21	March workshop	Palmerston North	local iwi/hapū and Local Authorities
12-March-21	March workshop	Auckland via Zoom	local iwi/hapū and Local Authorities
15-March-21	Ngāpuhi	Wellington	Ngāpuhi
17-March-21	March workshop	Wanaka	local iwi/hapū and Local Authorities
19-March-21	March workshop	Wellington	local iwi/hapū and Local Authorities
23-March-21	March workshop	Christchurch	local iwi/hapū and Local Authorities
25-March-21	Tauranga Moana	Tauranga	Tauranga Moana iwi
26-March-21	March workshop	Rotorua	local iwi/hapū and Local Authorities

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Date	Engagement	Rohe/Takiwā	Hui participants
29-March-21	Taranaki	Via Zoom	Te Rūnanga o Ngāti Ruanui
30-March-21	March workshop	Whangārei	local iwi/hapū and Local Authorities
7-April-21	Technical Working Group	Via Zoom	Technical Working Group Members
12-April-21	Te Rūnanga o Ngāi Tahu	Christchurch	Te Rūnanga o Ngāi Tahu
14-April-21	Taranaki	New Plymouth	Iwi rūnanga of Taranaki Maunga
15-April-21	Tāmaki Makaurau	Via Zoom	Tāmaki Mana Whenua Kaitiaki Forum
19-April-21	Wairarapa	Masterton	Rangitāne o Wairarapa Iwi Authority
22-April-21	Te Waipounamu	Wellington	Te Rūnanga o Ngāi Tahu
27-April-21	Te Tau Ihu	Via Zoom	Ngāti Rārua Iwi Authority
29-April-21	Te Arawa/Kāiāgaroa	Reporoa	Whānau, hapū, lands trusts and owners associated with Ngāti Tahu-Ngāti Whāoa Iwi Authority & Kāiāgaroa Forest Iwi
30-April-21	Te Rūnanga o Ngāi Tahu and South Island Councils	Christchurch	Te Rūnanga o Ngāi Tahu and South Island Councils
18-May-21	Technical Working Group	Wellington and via Zoom	Technical Working Group Members
6-May-21	Te Rūnanga o Ngāi Tahu	Via Zoom	Te Rūnanga o Ngāi Tahu

## Appendix B: Analysis of iwi/Māori rights and interests


Right	Considerations	Interest analysis	Commentary
<b>Article two – Rangatiratanga</b> Māori will have the right to make Decisions over resources and taonga which they wish to retain	<ul style="list-style-type: none"> <li>Are there options for Māori to exercise rangatiratanga while recognising the right of the Crown (including through local government) to govern?</li> <li>What role is there for Māori in design and implementation?</li> <li>Does the Three Waters reform offer an opportunity to enhance Māori wellbeing or build Māori capability and capacity?</li> </ul>	<ul style="list-style-type: none"> <li>Iwi/Māori have expressed dissatisfaction with the Treaty partnership approach and cultural responsiveness of current territorial authority delivery. This includes understanding and application of mātauranga Māori frameworks as they apply in place (hapū/whānau level)</li> <li>Introduction of new legislative, governance and management arrangements will give rise to interests in co-governance opportunities.</li> <li>Iwi/Māori have expressed interest in ownership (including investment), governance, board appointments and board composition</li> </ul>	<ul style="list-style-type: none"> <li>Iwi/Māori interests related to issues related to <b>Article Two sit within the broader context of reform</b> of the resource management system and issues associated with water allocation.</li> <li>Given the nature of the proposed statutory entities, <b>traditional ownership and governance tools are likely to be less influential</b> compared to other reforms. For example – there are unlikely to be shares that can be traded and valued.</li> <li>Opportunities will exist to <b>materially improve the connection between Iwi/Māori rights and interests</b> as they relate Mana Whakahaere, Kaitiakitanga, Manaakitanga on the delivery of services. It is likely that a new instrument is required.</li> <li>Water services entities will be operating within a legislative environment containing several Treaty related statutory references. A <b>new statutory Treaty reference will be required</b> and will need to ensure it reflects the appropriate hierarchy particularly in relation to the Water Services Bill and proposed amendments to the Resource Management Act.</li> </ul>
<b>Article three – Rights as Citizens</b> Implicit assurance that rights will be enjoyed equally by Māori with all New Zealanders. This may warrant special measures to attain that equal enjoyment of benefits.	<ul style="list-style-type: none"> <li>What are the implications for equitable outcomes?</li> <li>What considerations should support legal values including natural justice, due process, fairness, and equity including through regulatory processes?</li> <li>What does a tikanga lens bring to consideration of the issues?</li> </ul>	<ul style="list-style-type: none"> <li>Iwi/Māori raised the importance of ensuring that water services are affordable for all.</li> <li>Iwi organisations have raised the potential for Māori to benefit from alternative delivery mechanisms more directly (for example. Jobs or social enterprise).</li> <li>Iwi organisations have also expressed a desire to invest in the water infrastructure sector.</li> </ul>	<ul style="list-style-type: none"> <li>Consumer protections will need to ensure issues of equity, particularly as it applies to <b>rural and remote communities</b> (particularly Marae or papakāinga supplies), are adequately addressed.</li> <li>Some iwi/Māori have raised the opportunity to encourage maximum <b>local job creation</b> and be supported such as social procurement and skills matching services.</li> <li>Issues related to how water services entities are able access funding including <b>equity partners/investment sources</b>.</li> </ul>

## Appendix C: Options analysis

## ASSESSMENT KEY:

 Does not meet objectives

 Partially meet objectives

 Meets objectives

Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
<b>GOVERNANCE</b> <i>What is the of mana whenua role in Governance?</i>					<p>It is likely that the governance framework for water services entities will include instruments such as a Government Policy Statement (GPS), Letter of Expectation (LOE) and Statement of Intent (SOI). This statutory framework will include prohibitions on share transfer, divesting ownership, sale of assets and dividend payments for a given entity. For that reason, options of direct ownership of the water services entities by iwi/Māori have not been explored.</p> <p>Iwi/Māori have raised opportunity for co-governance as a mechanism to achieve strategic influence. However, in the proposed entities traditional governance governance levers are more limited than other governance structures. I have therefore analysed a broader range of options for iwi/Māori to influence the strategic framework within which the entities operate.</p> <p>Any option also needs to be considered from a regulatory system perspective including connections to Government Decisions on water allocation as well as they review of the Resource Management Act 1991 (RMA).</p>
<b>BOARD ARRANGEMENTS</b> <i>What are the Board competency requirements?</i>	<b>NO SPECIFIC COMPETENCY</b> No specific Treaty or Te Ao Māori competency required of Directors.	<b>GENERAL TREATY OF WAITANGI COMPETENCY</b> A specific requirement for Treaty of Waitangi competency	<b>MĀTAURANGA MĀORI, TIKANGA MĀORI AND TE AO MĀORI COMPETENCY</b> A specific competency requirement related to prescribed areas of Te Ao Māori competency.	<b>COLLECTIVE COMPETENCY</b> A collective Treaty of Waitangi Board competency with a specific competency related to Mātauranga Māori knowledge.	<p>It is proposed that the competency based professional Board for each water services entity be appointed by an Independent Selection Panel.</p> <p>A central way for Te Mana o Te Wai to be embedded as an operating principal of the entity is to ensure that the Board is adequately competent both as a Treaty partner, and with expertise in accessing mātauranga Māori, tikanga Māori and Te Ao Māori knowledge to inform the water entities activities.</p>

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Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
<b>ESTABLISHING MANA WHENUA INTERESTS</b> <i>How would a multi-regional entity identify which mana-whenua have interest within their boundary?</i>	<b>MANA WHENUA - SELF DECEMBERLARED</b> Mana-whenua groups are identified consistent with current RMA processes via mechanisms like Te Kahui Wai Māngai.	<b>MANA WHENUA – WITH SUPPORT FOR A KAUPAPA MĀORI APPROACH</b> Mana whenua groups are identified through kaupapa Māori process once entities are established	<b>POST SETTLEMENT GOVERNANCE ENTITIES</b> Mana whenua interests are represented by post-settlement iwi authorities or through entities who are mandated for Treaty settlement purposes	<b>TRANSITION: PSGES UNTIL A KAUPAPA MĀORI PROCESS CONFIRMS INTEREST</b> A combined option whereby PSGEs and mandated entities through the Treaty settlement process operate as a mana-whenua forum for a transitional period until a kaupapa Maori process for mana-whenua can occur	<p>The proposed water services entities will need to be significantly larger scale than current service delivery arrangements to provide scale benefits in service provision and infrastructure investment. Within the boundaries of each of these entities there will therefore be multiple rohe/takiwā.</p> <p>Consistent with the conclusions of the Randerson Review, engagement with iwi/Māori has highlighted that kaitiakitanga as it relates to the provision of water services often operates at a hapū or whānau level. It is also important to ensure that the proposed entities are not in a position of determining who represents mana-whenua interests. Officials from Ministry for the Environment are actively considering options to improve RMA tools related to mana whenua involvement into a single integrated partnership process. The proposed entities will operate within the environmental regulatory system, however it will also be important that they have a direct relationship with mana whenua given the significance of water from a Te Ao Māori perspective.</p>
<b>KAITIAKITANGA MECHANISM</b> <i>How will hapū/whānau level be able to influence the water services entities outcomes?</i>	<b>EXISTING MECHANISMS</b> Rely on existing mechanisms such as input into spatial plans and mechanisms the Resource Management Act (and its replacement) to adequately address environmental effects .	<b>NEW STATUTORY REQUIRED PLANS</b> Require water services entities to prepare statutory plans that addressed Te Mana o Te Wai.	<b>TE MANA O TE WAI STATEMENTS AND RESPONSE</b> Enable mana whenua to provide a statement of mana whenua (with flexibility to determine form) and require water entities to reasonably respond to that statement		<p>Consistent with feedback, Te Mana o Te Wai is richly experienced in place and kaitiakitanga is more likely to be exercised at a hapū/whānau level. The ability to connect governance with delivery on the ground will require the proposed water services entities to make a difference in place at a hapū/whānau level. This will primarily be achieved through the preparation of asset management plans and investment decision making tools.</p> <p>Rather than statutorily prescribe the requirements of the plan, our preference to enable mana-whenua to prioritise their capacity and capability to this Kaupapa through a flexible mechanism where the onus of a reasonable response shifts to the entity.</p>

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Design Feature	Option 1	Option 2	Option 3	Option 4	Comments
<b>COMMUNITY AND CONSUMER INPUT</b> <i>How will Māori input as consumers?</i>	<b>MĀORI AS CONSUMERS</b> Māori consumers have access to the same consumer advocacy and inputs as other consumers	<b>REPRESENTATIVE CONSUMER INTERESTS</b> The needs of Māori are particularly highlighted in the design of consumer advocacy instruments to recognise, and not perpetuate, historic inequities			Iwi/Māori have interests as consumers and community members within the water service system. There is evidence of historical inequities in investment for remote and rural communities. Māori are also more likely to be over-represented in vulnerable community groups. For that reason, the consumer interests of Māori are likely to require specific attention across the regulatory system.

Proactively released by the Minister of Local Government