

# Wai Maori

## Discussion on Freshwater - Summary

### Purpose

This paper provides a summary of the discussion document *Wai Maori: Discussion on Freshwater*. The purpose of the paper is to discuss the significance of freshwater to iwi and Maori and describe the present state of freshwater management in New Zealand. The discussion document also identifies key strategic areas for iwi and Maori for their own discussions on freshwater.

### Background

On 12 November 2007 Te Wai Maori Trustee Limited (Wai Maori) hosted a freshwater wananga in Wellington. The participants provided the mandate for Wai Maori to develop a guiding document that scopes iwi and Maori future in freshwater. The discussion document is also in response to the numerous conversations that are occurring amongst iwi and Maori regarding freshwater in light of the proposed policy change to water management in New Zealand.

#### Historical Context

- Water regulated by whanau and hapu as vital resource for pa and kainga. It is an integral political, spiritual and economic resource.
- Health of the water reflects health of people and is intimately linked with identity. Ko wai koe.
- Undivided entity – included lakes, lagoons, rivers, swamps, their associated beds and the adjoining land.
- Colonisation introduced a new way of managing the freshwater resource. Maori concept of water systematically fragmented.
- Crown's interpretation of Treaty is that they maintain sovereignty over water.

### **Present State**

- Evolution of statute in New Zealand has led to uncertainty regarding rights in freshwater creating a tension between the Maori and Crown world views.
- Iwi have sought recognition of their tino rangatiratanga through the Waitangi Tribunal and the Treaty settlement process.
- In 1991 the introduction of the Resource Management Act manages all water resources.
- In 2003, the introduction of the Sustainable Water Programme of Action to improve the management of freshwater, protect freshwater resources into the future and acknowledge the fundamental importance of water to all New Zealanders.
- Iwi and Maori continue to have a strong interest in water quality and quantity and the life supporting capacity of water and will continue to have economic aspirations in water.

### **Pathways for freshwater discussion – Wai Maori perspective**

- Rights based approach
  - Maori customary rights in water
  - Maori customary rights of In land waterways
- Management and use of water
  - Development of a robust management framework
  - Participation in the management of freshwater
- Habitat sustainability
  - Protection and enhancement of freshwater environment
  - Freshwater research

### **Pathways for freshwater discussions**

- This section aims to assist iwi and Maori in identifying their own pathways for discussions in freshwater. Identified are three areas including; rights based approach, use and management of freshwater, and habitat sustainability.

- Wai Maori believes these are strategically important areas for iwi and Maori that occur at regional and national levels. Iwi and Maori need to consider what is the most appropriate body to represent iwi and Maori interests.
- Discussion is already occurring through Te Taumata Korero comprising of iwi with strong interest in freshwater. This group has engaged with Ministers - specifically in relation to the SWPoA - to discuss iwi and Maori interests in freshwater.
- On particular issues, a collective effort is required to strongly influence the development of, for example, policy reform. Te Ohu Kaimoana Trustee Limited (Te Ohu) and/or Wai Maori have experience and capability to engage on these issues.

### Rights based approach

#### *Maori Customary Rights in Water*

- Tino rangatiratanga for Maori is reaffirmed in the Treaty of Waitangi and is therefore the starting point for determining Maori resource rights. Currently, there is legal uncertainty about the nature and extent of any Maori rights in freshwater and the introduction of the SWPoA has raised the issue of freshwater ownership.
- Any proposals to extinguish Maori customary rights in water must be negotiated with Maori as prior to colonisation, Maori held all the rights and simply possessed a river or lake or other water body including the bed, banks and the flow as a single entity.

#### *Maori Customary Rights of In land Waterways*

- The introduction of the Foreshore and Seabed Act 2004 (FSSB) has parallels to the clarification of ownership and treaty rights in water for iwi and Maori. The FSSB was introduced in 2004 as a result of the application to the Maori Land Court by the iwi of Te Tau Ihu in 1997 for a declaration that the foreshore and seabed of the Marlborough Sounds was Maori customary land under Te Ture Whenua Maori Act 1993 (Te Ope Mana a Tai, 2003). This was to prevent tendering of coastal space by the Crown.
- The result was the Crown legislated, imposing their ownership over the foreshore and seabed. To date, Ngati Porou and Te Whanau a Apanui have signed heads of

agreement that describe a range of tools and instruments to recognise Ngati Porou and Te Whanau a Apanui's customary interest in their seabed and foreshore.

- Ngati Pahauwera has an application for a customary rights order and the same acknowledgement given to Ngati Porou and Te Whanau a Apanui has been provided by the Crown (Powell, 2008).
- Iwi and Maori could consider applying for declaration that the bed of a water body is Maori customary land. This approach was followed by the iwi of Te Tau Ihu in the Marlborough sounds and has been utilised by a number of iwi in relation to lakes.
- By asserting tino rangatiratanga over in land waterways Maori can potentially have a substantial involvement in the decision making relating to the management of that particular water body. Owners would be able to undertake their own developments (still pursuant to the RMA) but these could be given priority.

### Management and Use of Water

#### *Development of a robust management framework*

- Maori rights to participate in management of water are recognised through both legislation and recent Treaty settlements. The control of water and water resources has traditionally been vested in the government however there can be a coordinated effort for stronger role in the management of water from co-management arrangements, devolution of responsibilities, and involved in the development of national policy statements. Co-management structures ensure that the government engage with Maori in natural resource management.
- Iwi and Maori have a right to participate in the preservation of water resources for future generations. The development of an appropriate framework for interacting with iwi on key matters including issues of national importance to Maori will ensure better input into the decision making process (Te Ohu Kaimoana, 2004).

#### *Participation in the Management of Freshwater*

- Iwi and Maori can continue to engage with regional councils under the provisions that provide for Maori participation in the RMA.
- When regional and territorial authorities prepare or change plans required under the RMA, they must notify the relevant iwi authorities. They must also take into account

any relevant planning document recognised by an iwi authority and lodge with the council, the extent that it's content has bearing on resource management issues of the area. These planning documents are commonly referred to as 'iwi management plans' (Te Puni Kokiri, 2006).

### Habitat Sustainability

- There are whanau and hapu groups that continue to protect and enhance their freshwater, freshwater species, and the adjoining land regardless of the discussions occurring around ownership.
- Wai Maori is aware that there is a strong desire that iwi and hapu reassert their mana over their freshwater fisheries recognising that restoring habitats is the foundation upon which fisheries can develop. These groups participate in central and local government processes to ensure the sustainability of their waterways.
- Whanau and hapu also undertake a range of freshwater research to achieve their freshwater aspirations. This research is an effective way to advance Maori interests in freshwater. The research contributes to a broadening of Maori knowledge on freshwater fisheries restoration, protection, management and/or development.

### **Summary**

- The discussion document outlines the significance of freshwater to iwi and Maori and provides the contemporary context for water ownership, use and management in New Zealand. Wai Maori consider this the start of the conversation on freshwater.
- There exists a plethora of issues that effect iwi and Maori interests in freshwater and Wai Maori has presented options that serve to assist iwi and Maori in their own discussions in freshwater.

## References

1. Powell Webber and Associates. (2008) Presentation on Maori Rights to Freshwater and Inland Waterways to Ngati Kahungunu Iwi Incorporated Board. Hastings.
2. Te Ohu Kaimoana Trustee Limited (2004). *Submission on the Sustainable Water Programme of Action*. Wellington: Te Ohu Kaimoana Trustee Limited.
3. Te Ope Mana a Tai. (2003). Discussion framework on customary rights to the Foreshore and Seabed.
4. Te Puni Kokiri. (2006). *Maori and Council Engagement under the Resource Management Act 1991*. Wellington: Te Puni Kokiri.



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