

**BOARD OF INQUIRY
Watercare Waikato River Water Take Proposal**

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF a Board of Inquiry appointed under s149J of the
Resource Management Act 1991 to consider the
application for resource consents by Watercare
Services Ltd to increase abstraction of water from the
Waikato River

**STATEMENT OF EVIDENCE OF TIPA TE ATAWHAI MAHUTA ON BEHALF OF
THE WAIKATO RIVER AUTHORITY**

Dated: 18 June 2021

BUDDLE FINDLAY

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INTRODUCTION

1. My full name is Tipa Te Atawhai Mahuta.
2. I am Waikato-Tainui. Kei te riu o Waikato, ko Rahui Pookeka, ko Waahi Paa, Ko Ngati Mahuta e tau ana.
3. I am the Iwi Co-Chair of the Waikato River Authority (**WRA**).
4. My other roles include:
 - (a) Waikato Regional Council – Councillor for Ngaa Hau e Wha; and
 - (b) Counties Manukau District Health Board – Deputy Chair.
5. I am providing this evidence in relation to the resource consent application by Watercare Services Limited (**Watercare**) for a water take and discharge (and associated infrastructure) from and to the Waikato River (**the application**).
6. I am authorised to provide this evidence on behalf of the WRA.
7. The application is now before the Board of Inquiry for determination.
8. The WRA made a submission on the application on 26 March 2021 opposing the application (**WRA's submission**).
9. My evidence addresses:
 - (a) the background to the Waikato River arrangements;
 - (b) the role of the WRA;
 - (c) an overview of Te Ture Whaimana o te Awa o Waikato - Vision and Strategy (**Te Ture Whaimana**);
 - (d) the WRA's position on the application; and
 - (e) outcomes sought.

WAIKATO RIVER IWI

10. The WRA acknowledges and respects the role and mana of Waikato-Tainui and the other River Iwi.¹

¹ Where I refer to 'River Iwi' this means Ngāti Tuwharetoa, Raukawa, Te Arawa River Iwi and Maniapoto, as well as Waikato-Tainui.

11. Waikato-Tainui are taangata whenua of the area where the resource consent activity is sought to be undertaken. WRA supports Waikato-Tainui and defers to them on matters appropriate to mana whakahaere in relation to the water take location. The WRA also acknowledges the mana whakahaere of River Iwi elsewhere in the catchment whose interests will be affected by this take.

BACKGROUND

12. There is significant context to the Waikato River arrangements. Those arrangements arise out of significant and lengthy negotiations between the Crown and five River Iwi.
13. In 1987, my father, the late Sir Robert Mahuta, filed an historic claim to the Waitangi Tribunal on behalf of the Tainui Maaori Trust Board, Ngaa Marae Toopu and himself.
14. The Wai 30 claim sought redress for the unjust confiscation of my tribal lands. The Raupatu (confiscation) Settlement was agreed and signed on 21 May 1995 and is reflected in the Waikato Raupatu Claims Settlement Act 1995. That settlement did not resolve all matters associated with the Wai 30 claim, including the claim in relation to the Waikato River.
15. In 2004, my mother, Lady Raiha Mahuta was appointed as co-negotiator to resolve the prejudices that my Iwi faced, in relation to the acts, policies and omissions of the Crown to the Waikato River, specifically:²
 - (a) by which the ownership and mana of the Waikato River was denied to Waikato-Tainui;
 - (b) by which the waters of the Waikato River were desecrated, polluted, and depleted;
 - (c) in failing to recognise and protect Waikato-Tainui fisheries and lands in the Waikato River;
 - (d) by which Waikato-Tainui fisheries in the Waikato River were depleted by pollution, over-fishing, and spiritual desecration; and
 - (e) in providing a legislative framework for land use planning, water use planning and resource planning which failed to properly take into

² Deed of Settlement in relation to the Waikato River, 17 December 2009, at clause 2.2.

account Waikato-Tainui concerns for the Waikato River and which were inappropriate for the protection of Waikato-Tainui rights guaranteed by the Treaty.

16. In 2010, near the confluence of the Waikato and Waipaa Rivers, a Treaty settlement was reached by Waikato-Tainui in relation to the Waikato River, and signed by Tukoroirangi Morgan and my mother. That was a hugely significant day for all of the people of Waikato-Tainui.
17. Those negotiations resulted in deeds of settlement and ultimately three Acts of Parliament:
 - (a) the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010;
 - (b) the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; and
 - (c) the Ngā Wai o Maniapoto (Waipā River) Act 2012.
18. One central mechanism arising out of the settlement reached is the WRA. It is a privilege for me to carry on the work of my parents in my current role as the Iwi Co-Chair of the WRA.
19. I cannot emphasise strongly enough the significance of the Waikato River settlement to the people of Waikato-Tainui. The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 includes the following 'Statement of significance of the Waikato-River to Waikato-Tainui':

8 Statement

(1) The Crown recognises the statement of significance of the Waikato River to Waikato-Tainui as stated in this section.

(2) He tuupuna noo ngaa iwi o Waikato-Tainui Te Awa o Waikato. E mau ana te mana te mauri me te kaha o te Iwi. He mauri tu tahi e kore e wehea. Ka rere mai oona wai i Te Taheke hukahuka puta atu ki te Puuaha o Waikato. Ka hono haere ai ngaa wai o Te Awa o Waikato i ngaa parenga, i ngaa whaiawa, i nga momo takawai o raro, i ngaa rerenga, i ngaa waikeri, i ngaa wehenga, i ngaa roto, i ngaa ika, i ngaa tupunga otaota, i ngaa maania, i ngaa repo, i ngaa motu, i ngaa puna, i ngaa arawai o te awa, i ngaa ararangi o te awa, i ngaa tuaapapa o te awa, tae noa ki oona tohu a wairua me toona mauri. Naa too maatou hononga ki te awa, naa too maatou manaaki i te awa te take ka tiaki i te mana o te awa, aa, ka riro maa maatou taua mana whakahaere i runga i ngaa tikanga tuku iho mo te awa. No reira, naa too maatou hononga ki te awa hei kaitiaki te puutake

o too maatou oranga a wairua, oranga a tinana, a, tae noa ki oo maatou tikanga a iwi katoa.

(3)The Waikato River is our tupuna (ancestor) which has mana (spiritual authority and power) and in turn represents the mana and mauri (life force) of Waikato-Tainui. The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being. Our relationship with the Waikato River, and our respect for it, gives rise to our responsibilities to protect te mana o te Awa and to exercise our mana whakahaere in accordance with long established tikanga to ensure the wellbeing of the river. Our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.

20. That statement reflects that the Waikato River is a tupuna which has mana and in turn reflects the mana and mauri of Waikato-Tainui. The statement also reflects two of the key principles upon which the settlement negotiations were based:

- (a) the protection of te mana o te Awa (the mana of the river); and
- (b) the exercise of mana whakahaere by Waikato-Tainui in accordance with long established tikanga to ensure the wellbeing of the river. Our relationship with the river and our respect for it lies at the heart of our spiritual and physical wellbeing, and our tribal identity and culture.

21. The 'overarching purpose' of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 is as follows:

The overarching purpose of the settlement is to restore and protect the health and wellbeing of the Waikato River for future generations.

22. That restoration and protection principle is at the heart of the aspirations and work of the WRA in relation to the Waikato River.

23. Two of the key mechanisms arising out of the settlement are:

- (a) the establishment of the WRA; and
- (b) Te Ture Whaimana o te Awa o Waikato – the Vision and Strategy for the Waikato River (**Te Ture Whaimana**).

THE WAIKATO RIVER AUTHORITY

24. The WRA was established as an independent statutory authority under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and other river legislation.
25. The WRA is intended to be the central direction setting authority for the Waikato River. The WRA reflects a co-governance approach between River Iwi and the Crown, with all working towards the restoration and protection of the health and wellbeing of the Waikato River.
26. The WRA has 10 board members, five are appointed by the River Iwi and five by Ministers of the Crown (with recommendations from local authorities and following consultation among Ministers).
27. The purpose of the WRA is to:
 - (a) set the primary direction through Te Ture Whaimana to achieve the restoration and protection of the health and wellbeing of the Waikato River for future generations;
 - (b) promote an integrated, holistic, and co-ordinated approach to the implementation of Te Ture Whaimana and the management of the Waikato River; and
 - (c) fund rehabilitation initiatives for the Waikato River in its role as the trustee of the Waikato River Clean-up Trust.
28. A central focus for the WRA is therefore to take the responsibility of setting the overall direction for the Waikato River through Te Ture Whaimana.
29. As explained by Mr Penter's evidence, the chief executive of the WRA, in carrying out its functions, the WRA has, among other things:
 - (a) directly awarded \$55.6 million since 2011 for restoration activities in the river catchment;
 - (b) been heavily involved in the proposed plan change 1 and variation 1 process for the Waikato Regional Plan;
 - (c) submitted on various national policy statements and national environmental standards to protect the integrity and spirit of Te Ture Whaimana and the founding settlements; and

- (d) appointed 25 accredited commissioners to river related hearing panels in consultation with River Iwi.
30. Working alongside the River Iwi, the WRA therefore takes a leading role on matters that have a bearing on the protection and restoration of the health and wellbeing of the Waikato River.

TE TURE WHAIMANA O TE AWA O WAIKATO - VISION AND STRATEGY

31. The 'vision' of Te Ture Whaimana is:³

Tooku awa koiora me oona pikonga he kura tangihia o te maataamuri.

The river of life, each curve more beautiful than the last.

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

32. Te Ture Whaimana contains a set of objectives and strategies to achieve this vision.
33. Te Ture Whaimana is intended by Parliament to be the 'primary direction-setting document' for the Waikato River. The role of the WRA is not only to set that strategic direction, but also to review Te Ture Whaimana periodically and to monitor the implementation, effectiveness, and achievement of Te Ture Whaimana.
34. It is the expectation of the legislation, and the WRA, that Te Ture Whaimana is front and centre in the consideration of any proposed activities on or affecting the Waikato River.

THE WAIKATO RIVER AUTHORITY'S POSITION ON THE APPLICATION

35. The WRA opposes Watercare's application for resource consent, for the reasons set out in WRA's submission.⁴
36. My evidence focuses particularly on the following issues with the application:
- (a) the lack of respect and any meaningful engagement with the WRA;

³ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Schedule 2.

⁴ WRA's submission, at paragraphs 18-36.

- (b) the lack of any meaningful assessment and respectful consideration of Te Ture Whaimana in Watercare's application; and
- (c) other issues with the application.

Lack of meaningful engagement

- 37. Watercare did not engage with the WRA in any meaningful way in relation to this application.
- 38. The WRA finds it difficult to understand how Watercare could have acted in that way, particularly in light of the context outlined above in relation to the Waikato River settlement and the primary role of both the WRA and Te Ture Whaimana in matters affecting the Waikato River.
- 39. The WRA is mandated in statute to set the primary direction for the Waikato River through Te Ture Whaimana, and to monitor and review Te Ture Whaimana. Those Treaty settlement mechanisms are the culmination of generations of grievances, and negotiations to address those grievances, for Waikato-Tainui.
- 40. The purpose of the Treaty settlements and agreements was to redress those wrongs and set a new direction with Waikato-Tainui, the WRA, Te Ture Whaimana and the health and wellbeing of the Waikato River being at the heart of future processes affecting the Waikato River.
- 41. The Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 and the Nga Wai o Maniapoto (Waipa River) Act 2012 also provide statements of significance for these respective Iwi and reinforce the mana of Te Ture Whaimana. The WRA has a responsibility to support the relationship of each of the five River Iwi with the Waikato and Waipaa Rivers.
- 42. I would have thought that engaging respectfully with the WRA would have been a key element in Watercare's engagement processes. However, the WRA was not mentioned once in Watercare's application, and Te Ture Whaimana receives only brief mention and is the subject of little meaningful analysis.
- 43. The view of the WRA is that Watercare's approach has been dismissive and disrespectful of the Waikato River arrangements (including the significant history and context to them outlined earlier in my evidence).

44. There is no evidence that Watercare understands or respects the role of the WRA, the central importance of Te Ture Whaimana as the primary direction setting document for the Waikato River, or the focus on the restoration and protection of the health and wellbeing of the Waikato River.
45. That is not the standard that would be expected of a public entity such as Watercare and for an application of this scale. The WRA would have expected early, respectful and sustained engagement with the WRA and a very close consideration of Te Ture Whaimana as a central feature of the application. That has not been the case.
46. As Mr Penter notes in his evidence, the Assessment of Environmental Effects (**AEE**) provides an overview of who Watercare consulted with on its application, including back in 2013 when the original application was made.⁵ At no point is reference made to consultation between Watercare and WRA. The application has not therefore been informed by the views of the WRA.
47. I have read the evidence of Mr Fisher on behalf of Watercare. In that evidence Mr Fisher only refers to the WRA on two occasions:
- (a) a reference to a seat that WRA may have on a proposed trust (a matter that has not been discussed in any detail or agreed with the WRA);⁶ and
 - (b) a reference to the Waikato River Clean Up Trust being the beneficiary of funds should agreement not be reached with Waikato-Tainui. Again, this has not been discussed in any detail or agreed with the WRA.⁷
48. In my view Mr Fisher's evidence reflects and reinforces the disrespectful and presumptuous approach taken by Watercare to this application. That evidence does not respond to any of the concerns raised by the WRA in our submission.
49. That approach can be contrasted with the highly respected and engaged approach of other entities such as the Waikato Regional Council, Waka Kotahi and the Department of Conservation.

⁵ AEE, part 11, at pages 108-114.

⁶ Statement of Evidence of Robert Anthony Fisher, at paragraph 10.21.

⁷ Statement of Evidence of Robert Anthony Fisher, at paragraph 11.4.

No robust assessment of Te Ture Whaimana

50. The WRA's position is that the application is not consistent with Te Ture Whaimana and therefore the relevant RMA planning documents. The analysis of Te Ture Whaimana is only at a superficial level which does not reflect its statutory status as the primary direction setting document for the Waikato River.

51. For example, the application is not consistent with the vision of Te Ture Whaimana:

Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

52. The application does not deal with Te Ture Whaimana respectfully or appropriately, and it does not explain in any meaningful way how the vision or objectives of Te Ture Whaimana will be achieved. The focus of the application is on the needs of Auckland, not the needs of the Waikato River and its communities. The WRA does not consider that the application provides genuine focus and attention to the restoration and protection of the health and wellbeing of the Waikato River (objective (a) of Te Ture Whaimana).

53. While the WRA defers to Waikato-Tainui and the other River Iwi on cultural matters, the application is inconsistent with the objectives of Te Ture Whaimana. For example, the application does not appropriately respond to the restoration and protection of the relationships of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships (objective (b)). Another example is objective (c): the restoration and protection of the relationships of Waikato River Iwi according to their tikanga and kawa with the Waikato River, including their economic, social, cultural, and spiritual relationships.

54. The lack of meaningful analysis and the failure to demonstrate respect for, or consistency with, Te Ture Whaimana remains of significant concern to the WRA.

Broader issues with the application

55. Watercare places significant weight on the proposed trust and payments to that trust.
56. The WRA does not consider that the Board of Inquiry can have any confidence in that trust mechanism, particularly given the lack of agreement with Waikato-Tainui.
57. Even with the existence of such a trust (with the arbitrary identification of a monetary payment), the WRA questions whether that provides a meaningful response to Te Ture Whaimana and to the matters raised through submissions. The WRA does not believe that to be the case.
58. The application is unclear in terms of how the water take will contribute to the 'restoration' of the Waikato and similarly it does not address the issue of 'betterment' in any meaningful way. It is not clear how restoration or betterment will be achieved, in particular through an integrated and coordinated approach with all parties, including the WRA, Waikato-Tainui and River Iwi. A general commitment to a trust, with an arbitrary monetary payment, with no certainty that agreement will be reached, falls well short of what is required.
59. The other concerns of the WRA include:
- (a) the application represents a wealth transfer from the Waikato region to the Auckland region, and this is at the expense of the future communities of the Waikato region;
 - (b) that water will be permanently lost from the Waikato River catchment if the application is approved, which undermines the definition of the Waikato River to Waikato-Tainui and River Iwi, being an indivisible entity:⁸

...The Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being...

⁸ Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, s 8(3).

- (c) it is not clear that this is the only viable option to meet Auckland's water needs and that alternatives have been appropriately or robustly considered, to the extent they should in light of the objectives of Te Ture Whaimana.

OUTCOMES SOUGHT BY THE WAIKATO RIVER AUTHORITY

60. The WRA seeks that the application be declined. That is not a position that the WRA has reached lightly, but the application and approach is so deficient that the WRA considers that to be the only viable outcome.
61. The outcomes sought by the WRA remain as set out in the WRA's submission.⁹

A handwritten signature in blue ink, appearing to read 'Tipa Te Atawhai Mahuta', is positioned above the typed name and date.

Tipa Te Atawhai Mahuta

18 June 2021

⁹ WRA's submission, at paragraphs 37-38.