

13 June 2024

Committee Secretariat, Finance and Expenditure Committee
Parliament Buildings, Wellington

Tēnā koe,

Local Government (Water Services Preliminary Arrangements) Bill

1. This response is made by Te Rūnanga o Ngāi Tahu (**Te Rūnanga**), the representative tribal body of Ngāi Tahu Whānui. Te Rūnanga encompasses eighteen Papatipu Rūnanga, who each uphold the mana whenua and mana moana of their rohe.
2. Ngāi Tahu exercises rangatiratanga in our Takiwā, which covers the largest geographical area of any tribal authority in New Zealand (see **Appendix One**). The Crown and Parliament have recognised the enduring nature of Ngāi Tahu rangatiratanga through:
 - Article II of Te Tiriti o Waitangi (**‘Te Tiriti’**);
 - The 1997 Deed of Settlement between Ngāi Tahu and the Crown (**‘the Deed’**);¹ and
 - The Ngāi Tahu Claims Settlement Act 1998 (**‘the Act’**).
3. As recorded in the Crown Apology to Ngāi Tahu (see **Appendix Two**), the Ngāi Tahu Settlement marked a turning point in the Crown-Ngāi Tahu relationship and the beginning of a “new age of co-operation”. The Crown confirmed that it “recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.”
4. This response is without prejudice to any legal proceedings or actions Ngāi Tahu and its Papatipu Rūnanga are currently undertaking against the Crown, or may take in the future.²
5. Te Rūnanga does not wish to be heard by the Committee.

TE RŪNANGA RESPONSE TO THE BILL

6. Te Rūnanga agrees that water services reform is urgently required to ensure the delivery of equitable, affordable, and quality services which protect and enhance the environment, human health, and our resilience to climate change. However, Te Rūnanga is unable to support the Local Government (Water Services Preliminary Arrangements) Bill (**‘the Bill’**) in its current form for the reasons set out below.
7. While there is a need for urgency in improving water services, the process adopted for this Bill is rushed and ill-considered. In particular:

¹ Noting that the Crown has also made commitments to Ngāi Tahu via the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Māori Fisheries Act 2004 and the Māori Commercial Aquaculture Claims Settlement Act 2004.

² In particular, and without limitation, nothing in this response overrides or limits any pleadings in the Ngāi Tahu wai māori case (*Tau & Ors v Attorney-General*, HC Christchurch CIV 2020-409-534).

- Te Rūnanga has had only limited engagement with the Crown on the policy proposals in this Bill, and not to a level that meets our expectations and the Crown's obligations to Te Rūnanga as a Tiriti partner exercising rangatiratanga in our Takiwā;
 - The Bill was drafted without undertaking a Tiriti analysis, contrary to Te Tiriti and its principles;³
 - Under the Crown's own quality metrics, this Bill only partially meets quality criteria;⁴ and
 - The submission period for this Bill is unreasonably short.
8. In addition, the Bill does not provide a strategic long-term approach to serve future generations. The emphasis placed on financial sustainability and regulatory compliance for water services delivery is a 'bare minimum' approach that misses an opportunity to innovate and integrate water services delivery deeply within a long-term planning framework.
9. Te Rūnanga is also disappointed that this Bill and the Government's water services reform programme fail to address the gaps in the current regulatory framework in which responsibility for drinking water protection sits across regional and local councils, as well as Taumata Arowai. The issue of source water protection is particularly important in our Takiwā. For example, in mid-2022 Te Rūnanga o Waihao were notified that their drinking supply exceeded the Maximum Acceptable Value for nitrate contamination. The do-not-drink notice was lifted later in the year, but nitrate concentrations remain elevated due to intensive agriculture in the catchment and the shallow groundwater supply remains vulnerable to contamination during high rainfall and flood events. Waihao Rūnanga have enacted a Ture to return nitrate to safe levels below 1 mg/L. Water services reform must close this regulatory gap and enable our rūnanga to work alongside councils as Tiriti partners to deliver community aspirations.

SPECIFIC FEEDBACK ON THE BILL

10. The Bill is silent on the Crown's obligations to Ngāi Tahu as the Tiriti partner. This failure cannot be remedied by deferring consideration of Te Tiriti and Treaty settlement obligations to the forthcoming Bill later this year.⁵ Te Rūnanga recommends that clauses be inserted in this Bill to uphold Treaty settlements and require persons to act in accordance with Te Tiriti and its principles.
11. In addition, and to uphold the Ngāi Tahu contract with the Crown as set out in the Ngāi Tahu Deed and Act, the Ngāi Tahu Takiwā requires recognition. Local government boundaries are currently misaligned with the Takiwā. A new clause is necessary to confirm council responsibilities to and relationships with Ngāi Tahu as tāngata whenua, and to

³ In respect of the Bill generally, see Cabinet Paper: *Local Government (Water Services Preliminary Arrangements) Bill: Approval for Introduction* (proactively released on 31 May 2024), p. 6, [36]-[37]. In respect of the exclusion of Te Mana o te Wai hierarchy in wastewater standards, see Te Tari Taiwhenua and Taumata Arowai 'Briefing: Wastewater standards – Amendments to the Water Services Act' (29 May 2024, proactively released on 31 May 2024), p. 10 [54].

⁴ See Cabinet Paper: *Local Water Done Well stage 2: establishing the framework and transitional arrangements* (proactively released on 31 May 2024), pp. 18-19 [127]-[131].

⁵ Departmental Disclosure Statement (2024, No.

52) <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=52>.

ensure that councils develop service delivery plans consistent with Ngāi Tahu rangatira status (see **Appendix Three**).

Amendment Paper No. 41: Te Mana o te Wai

12. Te Rūnanga opposes the exclusion of Te Mana o te Wai hierarchy of obligations from the setting of wastewater performance standards by Taumata Arowai. Seventy percent of New Zealand's freshwater resource is within our tribal takiwā. In many areas, especially along the eastern seaboard, freshwater is highly degraded and several of our marae face drinking water contamination issues. By way of example, we have attached some images of degraded freshwater in our Takiwā in **Appendix Four**. Excluding the hierarchy and allowing freshwater to decline further is unacceptable.
13. Te Rūnanga does not consider that this exclusion is necessary to align with the proposed removal of the hierarchy from resource consenting.⁶ Wastewater consents are distinct from others as they are a necessary function of service delivery, but they often involve legacy issues which tend to favour the culturally insensitive practice of wastewater discharge into water. The hierarchy requires that these significant consents be developed with a greater focus on the environment (including receiving environments) and public health. Such an approach is vital to protect receiving ecosystems and sources of drinking water. Maintaining the hierarchy puts more options on the table that do not rely on using our precious waterways as a means of wastewater treatment. Te Rūnanga expects that funding will be enabled in the forthcoming substantive Bill to support the investigation of land-based treatment and disposal alternatives for wastewater.
14. Te Rūnanga requests that clause 101 (section 138 amended) be removed from the Amendment Paper (with a consequential amendment to clause 100).

Council-controlled service delivery model

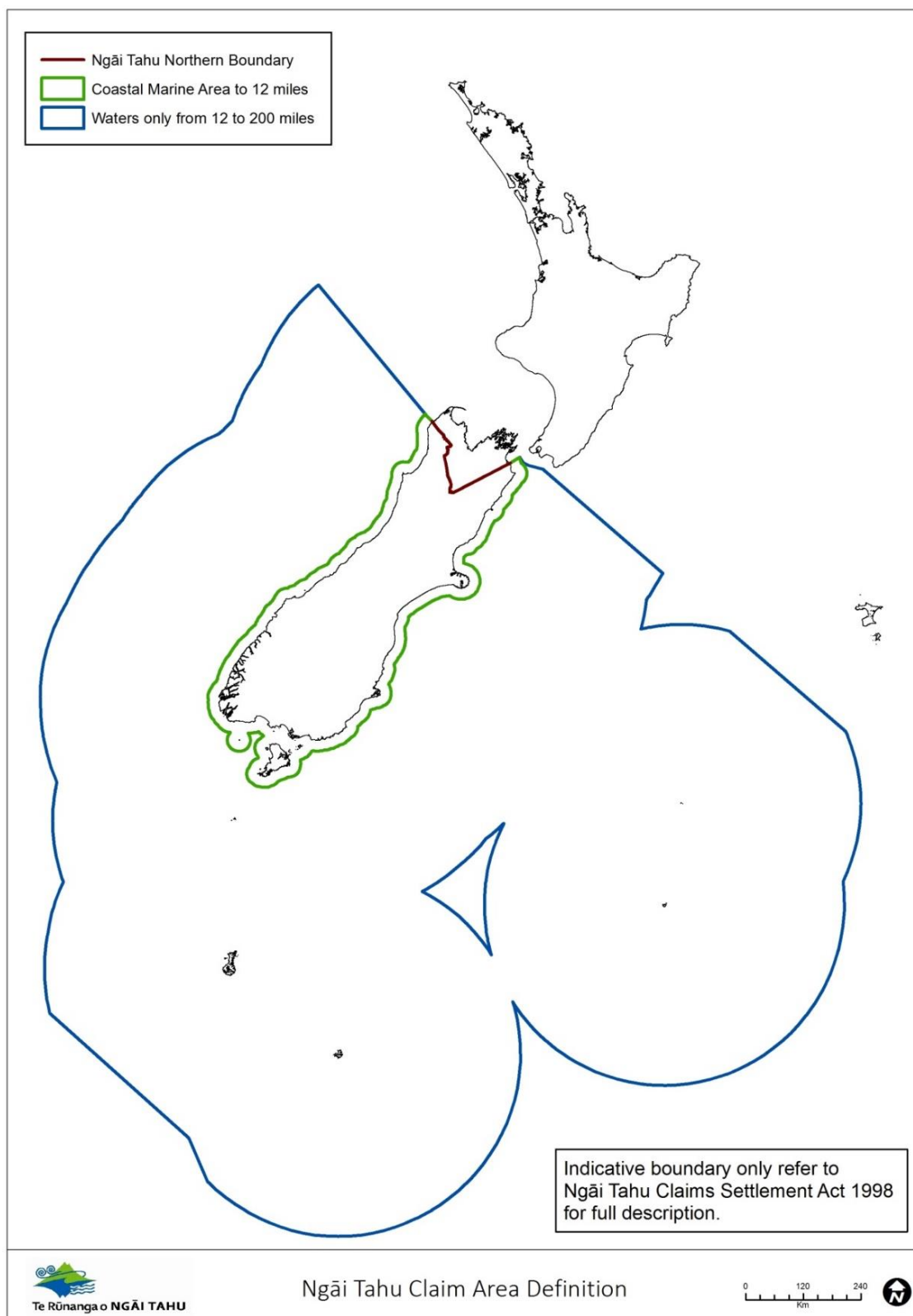
15. Te Rūnanga is concerned that the council-controlled model favoured by these reforms could see larger and financially better-off councils grouping together, disadvantaging smaller rural councils. This will worsen current inequities in water services in our Takiwā. As the Bill is currently drafted, we have no confidence that the Crown will have the ability to properly address this concern.
16. Te Rūnanga also shares the concerns expressed by councils at the delay in providing for the new range of structural and financing tools. This constrains councils' consideration of what form of water entity would best suit their communities, and further narrows the timeframe for adopting a Water Services Delivery Plan.
17. We thank the Committee for its consideration of our response. We are happy to provide any further information should the Committee require it.

Nāhaku noa, nā,

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⁶ As proposed in the Resource Management (Freshwater and Other Matters) Amendment Bill, which Te Rūnanga also opposes.

APPENDIX ONE: THE NGĀI TAHU TAKIWĀ



APPENDIX TWO: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

The text of the apology in Māori is as follows:

1. Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoaka”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā: ‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhuatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’ Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.
2. E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhuatanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.
3. E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.
4. E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtake mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhuatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatupuranga heke iho. Te whakataukāi i pūtake mai i aua āhuatanga: “Te mate o te iwi”.
5. E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.
6. E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtake mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.
7. E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i

ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.

8. E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāianei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

"This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name."

2. The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.
3. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.
4. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
5. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tirenī' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').
6. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.
7. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects

resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

8. **The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.**
9. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

[Emphasis added]

APPENDIX THREE: TAKIWĀ CLAUSE

Te Rūnanga requests that the following clause be inserted into the Bill:

Water services within the Takiwā of Ngāi Tahu Whānui

- 1) *Any persons or territorial authorities exercising functions, powers, and duties under this Act within the Takiwā of Ngāi Tahu Whānui as defined in section 5 of Te Rūnanga o Ngai Tahu Act 1996 must have particular regard to:*
 - a) *the status of Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui: and*
 - b) *the views of Te Rūnanga o Ngāi Tahu when provided in accordance with the provisions of this Act and the Local Government Act 2002.*

APPENDIX FOUR: FRESHWATER DEGRADATION IN THE TAKIWĀ

The following three images of freshwater are unaltered and are examples of degraded waterways in our Takiwā. Photo credit: Anne Noble.

a) *Halswell River into Lake Ellesmere*



b) *Mataura River*



c) *Lake Ellesmere*

