



23 February 2025

Committee Secretariat, Finance and Expenditure Committee  
Parliament Buildings, Wellington

Tēnā koe,

### **Local Government (Water Services) Bill**

1. Ngāi Tahu has a strong interest in water service provision in the Ngāi Tahu Takiwā. 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. Many of our Papatipu Rūnanga face significant legacy issues from historical under-investment and environmental contamination.
2. The current Bill and the coalition Government's Local Water Done Well (LWDW) policy fall well short of Ngāi Tahu expectations. The focus on the 'bare minimum' of financial sustainability risks prioritising 'cost-saving' over the regulatory strength necessary to protect environmental and human health. Both also demonstrate a clear intent to devalue and diminish the role of Ngāi Tahu by failing to recognise and enable Ngāi Tahu rangatiratanga, as required by Te Tiriti o Waitangi, and the Ngāi Tahu Deed of Settlement 1997 and Ngāi Tahu Claims Settlement Act 1998.
3. **Te Rūnanga does not support the Local Government (Water Services) Bill ("the Bill") in its current form.**

### **TE RŪNANGA O NGĀI TAHU**

4. This submission 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.
5. 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 rangatiratanga through:
  - Article II of Te Tiriti o Waitangi (**Te Tiriti**);
  - The 1997 Deed of Settlement between Ngāi Tahu and the Crown; and
  - The Ngāi Tahu Claims Settlement Act 1998.
6. As recorded in the Crown Apology to Ngāi Tahu, the Ngāi Tahu Settlement marked a turning point in the Ngāi Tahu-Crown 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”.<sup>1</sup>

7. This submission 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.<sup>2</sup>

## TE RŪNANGA RESPONSE TO THE BILL

### Ngāi Tahu Treaty Settlement and Te Tiriti:

8. The Bill does not comply with the Ngāi Tahu Treaty Settlement and Te Tiriti. The Bill:

- a. **Fails to uphold the guarantee of Ngāi Tahu rangatiratanga.** To date the Crown’s engagement with Ngāi Tahu does not meet our objectives and expectations for engagement as a Tiriti partner<sup>3</sup>. Ngāi Tahu recognises that water services delivery is a challenging area of reform for the Crown due to its technical complexity, and the interaction of central and local government and iwi. Ngāi Tahu long-standing relationships with local government around the Takiwā and inhouse water expertise, means we bring significant resource to the table, and we are ready and willing to work in partnership with the Crown on solutions that will meet the requirements of the Takiwā and enable the exercise of Ngāi Tahu rangatiratanga.
- b. **Fails to recognise the Ngāi Tahu Takiwā.** Statutory recognition of the Ngāi Tahu takiwā is required to recognise the unique legal status of Ngāi Tahu as tāngata whenua and to address the misalignment of local government boundaries with the Takiwā boundary. A takiwā clause – as suggested at **Appendix Two** - confirms council responsibilities to, and relationships with, Ngāi Tahu and ensures that councils develop water service delivery plans consistent with Ngāi Tahu rangatiratanga status.
- c. **Fails to adequately recognise Tiriti obligations.** Te Tiriti is an integral part of New Zealand’s constitutional framework. Clause 41 requiring water service providers to act consistently with Treaty Settlement obligations does not go far enough towards acknowledging the Crown’s broader and more general Te Tiriti obligations towards Ngāi Tahu and other iwi.
- d. **Provides insufficient protection for existing agreements and contracts with iwi/Māori:** The Bill must make it explicit that, where councils or their water services delivery organisations have also entered into agreements and arrangements with iwi/Māori about water services outside of Treaty settlements, they continue to apply regardless of the future arrangements that councils choose to use for delivery of services.
- e. **Breaches Māori rangatiratanga over their lands:** The Bill must require that water service providers obtain full consent from the owners or trustees of Māori land before carrying out work of **any** kind on that land, including work related to inspection, maintenance, risk management, overland flow paths, or the registration of easements.

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<sup>1</sup> Ngāi Tahu Claims Settlement Act 1998, section 6.

<sup>2</sup> 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).

<sup>3</sup> *Crown Engagement with Ngāi Tahu on Freshwater reform (Appendix Three)*

### **Equitable and affordable service delivery**

9. Te Rūnanga has previously expressed concern that LWDW risks disadvantaging smaller rural councils and perpetuating current inequities in local water services and infrastructure. This Bill does not address those concerns.
10. Te Rūnanga has serious doubts as to whether this Bill can achieve the stated goals of service quality and financial sustainability. The reliance on local authorities to create joint arrangements is misguided, as vastly different economies of scale between urban and rural councils create highly varied incentives for councils to take part in such schemes. Our observation of council intentions to date is that larger and more financially secure urban councils are unwilling to partner with smaller councils operating with small ratepayer bases spread over large geographical areas.
11. This will likely result in highly unequal levels of service and cost for people in our Takiwā. Te Rūnanga objects to changes that fail to provide equal access to clean and affordable water to all New Zealanders.

### **Environmental outcomes**

12. Te Rūnanga opposes the removal of the requirement to give effect to Te Mana o te Wai. This will undo years of progress in shifting the priorities of our water management system away from destructive exploitation and toward sustainable water health. The concept of Te Mana o te Wai has widespread support across the water sector, as it is well recognised that the ways we use, treat, and manage water need urgent change.
13. In effectively changing the duration of a wastewater or stormwater resource consent from a *maximum* of 35 years to a *minimum* of 35 years, the Bill moves in precisely the wrong direction in achieving sustainable water use and environmental impact. Given the degree of environmental change and damage that can occur in this timespan, Te Rūnanga considers that extending it even further is profoundly irresponsible and further prioritises economic interests over the health of our water.
14. Preventing rūnanga and local authorities from setting higher standards for wastewater and stormwater than the 'single standard' set by central government undermines their ability to meet local aspirations for water quality and environmental performance. Overriding the power of local authorities runs directly counter to this Government's stated intention of giving more power to local government to determine their own direction on water issues.

### **Conclusion**

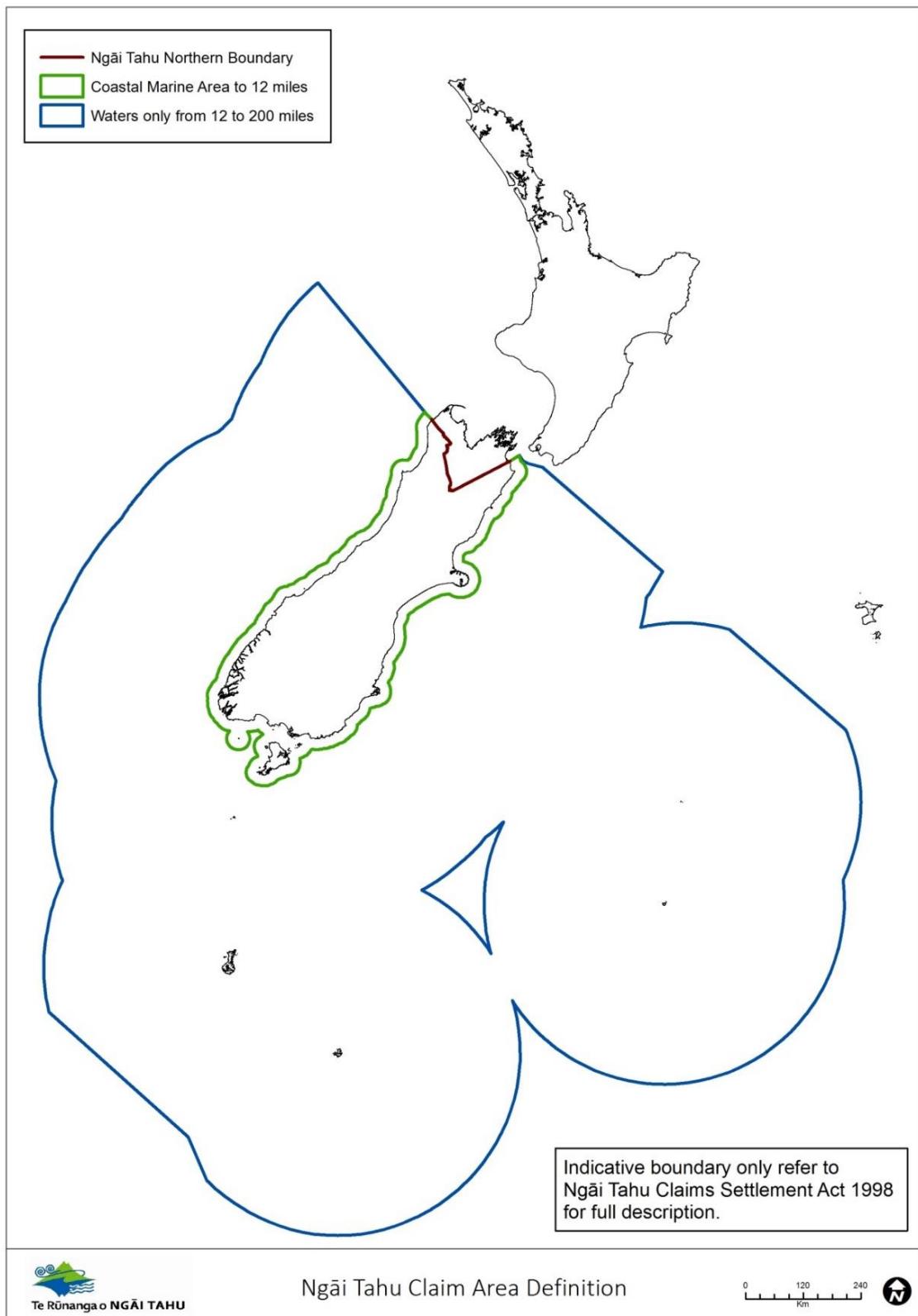
15. We thank the Committee for considering our response to the Bill. Te Rūnanga does not wish to be heard by the Committee. We are happy to provide further information should the Committee require it.

Nāhaku noa, nā,



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## APPENDIX ONE: THE NGĀI TAHU TAKIWĀ



## **APPENDIX TWO: 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 THREE:

# Crown Engagement with Ngāi Tahu on Freshwater Reform



## INTRODUCTION

This document advises the Crown of Ngāi Tahu objectives and expectations for engagement on freshwater matters and reforms.

The Crown is currently progressing freshwater reforms. Freshwater is a taonga, a treasure of utmost importance to Ngāi Tahu. 62% of New Zealand's surface water and 81% of groundwater is within the Ngāi Tahu Takiwā.<sup>4</sup>

Freshwater in the Ngāi Tahu takiwā is in crisis, and legislation currently constrains Ngāi Tahu from exercising its rangatiratanga to address it. Ngāi Tahu is ready and willing to work with the Crown on freshwater reforms that will meet the circumstances of the Takiwā and enable the exercise of Ngāi Tahu rangatiratanga. The Crown can only meet its Treaty of Waitangi obligations to Ngāi Tahu through direct engagement.

Investing in an effective working relationship with Ngāi Tahu is the most efficient way to uphold the Crown's obligations and deliver more effective freshwater outcomes in the Takiwā for the benefit of all New Zealanders.

Ngāi Tahu recognises that freshwater is a challenging area of reform for the Crown due to its technical complexity, the need to take account of multiple interests, the interaction of central and local government and iwi, and the Crown's repeated promises to address Māori rights and interests in freshwater.

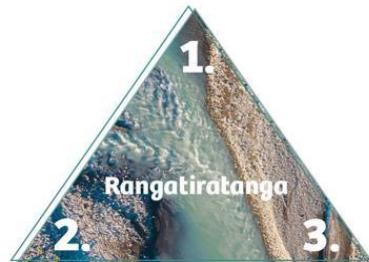
When the Crown engages with Ngāi Tahu as its Treaty partner in the Takiwā, it will find that Ngāi Tahu has the answers to addressing many of these complexities. Our in-house expertise in freshwater science and policy, relationships with local government around the Takiwā, and status as New Zealand's largest iwi by landmass means we bring significant resource to the table.

Engagement or co-design with Ngāi Tahu does not have to mean a never-ending series of meetings. It should not be seen as a hurdle, check-box exercise, or a potential hold-up. It is in fact something that can make the process in this complex area of the law a more streamlined and productive exercise, and ultimately a more successful set of reforms for both the Crown and Ngāi Tahu.

## NGĀI TAHU RELATIONSHIP WITH THE CROWN

The contemporary relationship between the Crown and Ngāi Tahu is defined by three core documents

1. **Te Tiriti o Waitangi**, which guarantees Ngāi Tahu rangatiratanga alongside Crown kāwanatanga (a right to govern).
2. **Ngāi Tahu Deed of Settlement 1997**; and
3. **Ngāi Tahu Claims Settlement Act 1998**



<sup>4</sup> Surface water estimate from Collins et al (2015), groundwater estimate from Moreau & Bekele (2017).

Collectively these documents form a contract between Ngāi Tahu and the Crown. Ngāi Tahu rangatiratanga is recognised and guaranteed by Article II of Te Tiriti o Waitangi, and its enduring nature recognised by the Crown and Parliament in the 1997 Ngāi Tahu settlement and Ngāi Tahu Claims Settlement Act 1998.<sup>5</sup> In addition, the Crown pledged in the 1997 settlement to enter into “a new age of co-operation with Ngāi Tahu”.<sup>6</sup>

## STATE OF FRESHWATER IN THE NGĀI TAHU TAKIWĀ

Freshwater in the Ngāi Tahu takiwā is currently in crisis; affecting drinking water, mahinga kai (food gathering) and other customary activities.

- Within the Takiwā water is becoming more scarce and less reliable due to intensive land use practices and associated irrigation. Most of the country’s irrigated land is in the Takiwā and increasing groundwater nutrient loads are threatening ecosystems and human health.<sup>7</sup>
- Ngāi Tahu considers that the current maximum acceptable value for nitrate in drinking water is out of date and hazardous to public health and have adopted a precautionary threshold of 1 mg/L nitrate-nitrogen.<sup>89</sup> 75% of all groundwater monitoring sites in the Takiwā exceeded this threshold on at least one sampling occasion (2004 – 2022). 54% of these sites are likely, or very likely degrading, and 10% were above the maximum standard for drinking water.<sup>6</sup>

The freshwater crisis and continued Crown inaction resulted in a legal claim being made by Te Rūnanga o Ngāi Tahu and tribal leaders against the Crown in late 2020. The claim seeks recognition that Ngāi Tahu has legal entitlements to exercise its rangatiratanga over freshwater, and that the Crown ought to work with Ngāi Tahu to design a system accommodating those entitlements to exercise rangatiratanga.

## PRINCIPLES OF GOOD ENGAGEMENT WITH NGĀI TAHU

- **Direct engagement with Ngāi Tahu as tangata whenua:**  
The Crown must engage with Ngāi Tahu directly. Ngāi Tahu does not support blanket solutions or national settlements for freshwater. Ngāi Tahu participation in pan-Māori groups does not constitute, or replace the need for, direct engagement with Ngāi Tahu.
- **The exercise of Ngāi Tahu rangatiratanga must be enabled and respected:**
  - Rangatiratanga is the inherent authority of Ngāi Tahu to exercise its rights, responsibilities and obligations over freshwater its takiwā.
  - Rangatiratanga is not sourced from the Crown or Parliament. However, the Crown has a duty to recognise and respect rangatiratanga, and has, along with Parliament, committed to do so.

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<sup>5</sup> Sections 5(7) and 6(7) Ngāi Tahu Claims Settlement Act 1998.

<sup>6</sup> Sections 5(8) and 6(8) Ngāi Tahu Claims Settlement Act 1998.

<sup>7</sup> Statistics New Zealand Agriculture Production Survey (2019).

<sup>8</sup> Based on academic research on nitrate consumption and risk of cancer and adverse birth outcomes. E.g. Schullehner et al. (2018); Espejo-Herrera, et al. (2016); Elwood and van der Werf (2022); Temkin et al. (2019) and the NPS-FM (2020) for Attribute Band A.

<sup>9</sup> -2022 data from regional council measures compiled by Land, Air, Water Aotearoa (LAWA).

- **All engagement on freshwater matters is without prejudice to Ngāi Tahu legal action:**  
Ngāi Tahu legal action presently before the High Court seeks declarations of fundamental legal entitlements and subsequent duties of the Crown. Any Ngāi Tahu engagement with the Crown is without prejudice to that legal action.

#### WHAT THIS LOOKS LIKE IN PRACTICE:

1. **Communicate early:** Notify Ngāi Tahu as early as possible when a new proposal is being explored that impacts freshwater in the Takiwā. Ngāi Tahu must have the opportunity to be involved from the outset.
2. **Design a streamlined, mutually acceptable engagement and work programme:**
  - Include Ngāi Tahu in the co-design of a streamlined and results-driven process, including the type of engagement and timetable.
  - Ensure engagement reflects and enhances the mana of both parties (for example, appropriately assigned personnel, agenda planning for online or in-person meetings).
  - Seek Ngāi Tahu agreement on participation at each stage of the work programme, from problem definition to delivering the solution, and in setting the strategic priorities.
3. **Plan for an effective working relationship:**
  - **Know the Treaty partner:** Ensure staff engaging with Ngāi Tahu have, or at least wish to develop, sufficient background knowledge and consideration to what Ngāi Tahu rangatiratanga means in practice, Treaty responsibilities and obligations, and in particular, the Ngāi Tahu Treaty Settlement.
  - **Innovate:** The freshwater crisis is urgent, complex and inter-generational and demands a novel approach. This requires engaging with emerging and international and local research, as well as partnerships with Ngāi Tahu to understand the unique context of the takiwā.
  - **Implement:** Consider ongoing roles in implementation to ensure successful delivery of outcomes and at what levels (Takiwā, regional, local). Local delivery from Papatipu Rūnanga or their collectives at regional levels should be considered.