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Taumata Arowai

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Tēnā koe,

Proposed Wastewater Environmental Performance Standards

1. Water is in crisis throughout the Ngāi Tahu Takiwā, and water services reform is long overdue. The position of Te Rūnanga o Ngāi Tahu is that water services must deliver equitable and affordable services that meet the needs and aspirations of communities while protecting, restoring, and enhancing the environment, human health, and our resilience to natural hazards and climate change. The treatment and discharge of wastewater is a significant driver of many issues our Papatipu Rūnanga face due to historical underinvestment and ongoing environmental contamination in their rohe.
2. The proposed standards for wastewater environmental performance are inadequate in several respects. They restrict the aspirations of local communities regarding the health of their waterbodies. They demonstrate a lack of sufficient study and consideration by Taumata Arowai of the diversity of discharge environments and fail to take a ki uta ki tai approach to wastewater management. Finally, their complexity regarding what is included in the standard and what must continue under the normal consent process means they will be ineffective in achieving the stated goals of cost reduction, increased efficiency, and improved environmental and public health outcomes over time.
3. **Te Rūnanga believes the proposed standards are not fit for purpose and require extensive reconsideration and revision.**

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”.¹
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.²

TE RŪNANGA RESPONSE TO THE PROPOSED STANDARDS

Issues with the legislative context

8. These standards are being progressed in context of legislative changes to the regulation of wastewater standards under the Local Government (Water Services) Bill (**the Bill**); changes that Te Rūnanga oppose.
9. Preventing local and territorial authorities from setting stricter standards for wastewater (cl. 269 of the Bill) runs counter to the principle that local people should have the ability to set their own direction on water issues. The ability to incorporate local knowledge, mātauranga, and expertise is essential to respond to unique places, environmental conditions, and challenges at regional and local levels. A standardised approach also risks allowing continued environmental degradation if the standards are too lenient or are unsuitable for sensitive areas, such as lowlands and receiving wetlands where traditional mahinga kai values are particularly strong. The race to the lowest consenting cost and time means lost opportunities to make generational leaps in levels of service for improved environmental and societal outcomes, instead placing the burden on future generations.
10. Setting the minimum consent duration for a wastewater plant or activity that meets the standards to 35 years (cl. 277 of the Bill) is a serious misstep. Significant changes to population size, treatment technologies, and the environment occur over much shorter time periods, and consenting for wastewater treatment must be responsive to this. Such a long period for consents is prohibitive of necessary upgrading and future proofing, as it effectively ‘locks in’ treatment solutions that may become inappropriate as conditions change. A structured review process is also essential to ensure approved activities remain compliant and consider opportunities to adopt new technologies and lift performance in response to changing conditions.
11. Te Rūnanga is also concerned about the introduction of greater standardisation in plant design and products (cl. 319 of the Bill), as this favours cost saving over the ability of a plant to deal with site-specific and complex challenges that require vastly different treatment approaches (for example, in waterways with high sediment and nutrient levels). It also fails to incentivise innovation in the sector, as operators are incentivised to simply comply with the standardised design rather than build plants best suited to their circumstances.

¹ Ngāi Tahu Claims Settlement Act 1998, section 6.

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).

Standards will not achieve the intended goals

12. As the standards do not cover the full range of contaminants that require addressing in the consenting process, a high level of bespoke consenting will still be required for those contaminants not addressed by the standards. The perceived gains in cost and efficiency brought about by the standards will be limited and come at the expense of the environment and community aspirations. Ultimately, there will be little meaningful reduction in the consenting process for many wastewater treatment plants.
13. The standards will operate in a complex regulatory environment that is not well integrated into local planning and the wider regulatory system. The standards themselves will likely exacerbate this issue. For example, the consultation materials do not reference the National Environmental Standard for Drinking Water, and the full-scale reform of national direction is not aligned with the development of these standards. Such inconsistency creates uncertainty and risks unintended consequences.
14. Although the standards are expected to inform council Long-Term Plans, Ngāi Tahu notes the need for clarity and direction on how competing interests can be managed effectively, especially with regard to challenging issues such as wastewater and stormwater. Meaningful change at a local level is contingent upon the integration of infrastructure and performance measures into Long-Term Plans and budgets.

Inadequate consideration of tikanga and mana whenua values

15. Little regard has been given to Sites and Areas of Significance to Māori, and no protection has been provided for ensuring water-based wāhi tapu, wāhi tūpuna, mahinga kai, and kai moana sites are free from human and animal waste and contaminants.³ Further work is required to ensure the standards uphold Treaty settlements and interests, especially as a standardised approach is inherently inconsistent with the principle of mana resting at place. For example, the Ngāi Tahu Treaty settlement includes specific mechanisms such as statutory acknowledgement areas, nohoanga sites, tribal properties, and co-governance agreements (such as Te Waihora). Te Tiriti o Waitangi exemptions should be considered for statutory acknowledgement waterbodies recorded in Treaty settlements (including waterbodies that feed into them) and Specified Māori Land (using the definition in the National Policy Statement for Highly Productive Land).
16. The discharge of wastewater into waterbodies is culturally offensive to Ngāi Tahu values, but in relation to specific sites is subject to the rangatiratanga of Papatipu Rūnanga. Water service providers must respect the tikanga and rangatiratanga of local mana whenua on a case-by-case basis and avoid the temptation to make 'one size fits all' assumptions. Given the significant number of wastewater and stormwater discharges, the system should prioritise regulation and monitoring where mana whenua interests are most concentrated, such as lowland, coastal, and wetland environments.
17. Ngāi Tahu considers that the proposals to address mahinga kai health in the standards are inappropriate:
 - The proposal to enable Quantitative Risk Management Assessments (**QRMA**) to determine numeric parameters for pathogens where shellfish are regularly collected,

³ National Policy Statement for Freshwater Management (2020). Appendix 1B – Other values that must be considered 3) Wai Tapu.

or contamination issues are known is an infringement of customary property rights. Taumata Arowai must partner with mana whenua and ensure mana whenua have the opportunity to lead this process.

- The proposal to limit QRMA to shellfish is too narrow, as other species also accumulate pathogens. The scope of QRMA should be determined by mana whenua according to the circumstances of mahinga kai sites in their rohe.

18. The proposed standards for discharge to water appear to pay little heed to the Crown's own engagement with mana whenua and tikanga when it seems inconvenient and costly. Despite it being made clear in the 'Case Studies' report that there is a general disapproval on the part of Māori for discharge into water, the cultural risks of water-based discharge are not mentioned at all in the discussion document, whereas they are mentioned when discussing land-based discharge and biosolid reuse. An apparent regard for cultural concerns cannot be used as an 'excuse' to avoid consideration of more difficult but appropriate solutions.

19. The Discussion Document notes that Taumata Arowai is engaging with holders of customary marine title (**CMT**) under the Marine and Coastal Area (Takutai Moana) Act 2011. Te Rūnanga notes that in some cases, CMT applicants may wish to engage with Taumata Arowai as well. As a preliminary step, Te Rūnanga recommends that Taumata Arowai supply further information to all rights holders and applicants about the impact of these proposals on the Takutai Moana framework.

Failure to prevent further degradation

20. The standards provide no consideration or protection for catchments or specific waterbodies where nutrient loads have exceeded the capacity of the system. This will mean on-going environmental degradation and make it more challenging and cost prohibitive to achieve community aspirations. It will also place an increased burden on stakeholders (such as farmers and communities) in these catchments to further reduce their contaminant losses to compensate for wastewater treatment plants. These issues are of particular concern to Ngāi Tahu, as two of the three regions with the highest catchment nutrient loading issues are within its takiwā, with many waterbodies consequently degraded.

21. Taumata Arowai should consider introducing standardised triggers to breaches of the standards such as remediation requirements and off-setting, as well as penalties and consequences for serious ongoing non-compliance such as imposing a cap on new connections until compliance is achieved and growth planned for (if not in these standards, then in future changes to legislation under the resource management reform process). Remediation of site condition should also be incorporated into end-of-use and unplanned discharge management.

Unclear lines of responsibility

22. The standards must provide a clearer indication of lines of responsibility in response to the reporting of both parameter breaches and harmful events such as sewage and other overflows. If a breach or overflow is detected, there must be clear delineation as to which organisations are responsible for particular remedies or enforcement actions within clear timeframes. It is also unclear how this standard applies if a site is designated or managed under a bylaw (excluding trade-waste bylaws).

23. The chains of reporting and responsibility are disjointed and unclear between parameters covered by the standards and those covered by the traditional consent process. In other words, who actions what, particularly in cases of multiple parameter breaches? The names, roles, and responsibilities of the various practitioners involved require better definition.
24. Given the extended minimum duration of consents regulated by the standards, the standards fail to make clear who among the various parties has responsibility for responding to change over time and ensuring that conditions remain fit for purpose.
25. Te Rūnanga supports third-party auditing, but the current proposals lack clarity around this process. The required auditing services must be better defined and include training and qualification requirements to ensure minimum standards of service, and consequences for operators who fail or receive low audit grades. This training and qualification must be overseen by Taumata Arowai, including auditing of the auditors.
26. Te Rūnanga supports telemetric reporting, but in the interest of transparency recommends that this information always be publicly available, without deletion of data.

Issues with Discharge to Water

27. The Discharge to Land proposal details a site-specific assessment of factors determining whether a site is suitable for the application of the standards. This includes the assessment of the capacity of the site to assimilate the wastewater discharge. However, the same respect has not been afforded to waterbodies as part of the Discharge to Water proposal, with a wrongly made assumption in the technical advice that discharges will improve the water quality in the receiving environment.
28. While Te Rūnanga supports the exemption of discharges to pristine waters, the use of the National Policy Statement for Freshwater Management (**NPS-FM**) Attribute Banding to determine what is and isn't regarded as 'pristine'⁴ is inherently flawed, as it ignores the collective values that define 'pristine'. The definition of 'pristine' must be made at a local level, with the collective values considered in a local context in a way that supports community aspirations. They cannot be simply defined at a national level based on a nation-wide averaging of attributes.
29. However, exempting 'pristine' waterbodies from the standards assumes that it is acceptable for less-than-pristine waterbodies to degrade further. Ngāi Tahu does not accept this.
30. The dilution ratio used to determine the assimilation capacity of the receiving environment is fundamentally flawed. It does not take into account the upstream concentrations of contaminants, cumulative effects of the discharge, or the capacity of the receiving environment to assimilate the additional nutrient load. Furthermore, it makes inaccurate assumptions that the discharge will fully mix with the waterbody and that there will be no localised effects on aquatic biota.
31. The use of annual median values is also problematic as it does not take into account discharge events that may exceed tolerance levels and cause harm to aquatic biota, so long as the median remains low.

⁴ The Technical Advice on Discharge to Water Standards uses the Attribute Band Level A to define a waterbody as being pristine only if it achieves Band A classification for all attributes defined in the NPS-FM (2020).

32. The classification of receiving environments based on the dilution ratio is arbitrary and has no scientific basis. There is considerable risk associated with creating classes that are un-proven, including undesirable outcomes such as degraded water quality, eutrophication, loss of biodiversity, and loss of values.
33. The standards set arbitrary nutrient concentrations for wastewater discharge without taking into account the assimilative capacity of the receiving environment. This can result in changes in nutrient ratios and loads, relief of nutrient-limitation, and exceedances of ecological tipping points leading to eutrophication, with negative flow-on effects on users and communities.
34. International best practice is to set the minimum standard for compliant levels of contaminant concentrations whilst allowing for more strict standards to be achieved where desired or required. Ngāi Tahu supports minimum standards with the ability for communities to set stricter standards to meet local aspirations.
35. There is a lack of provision for the effects of climate change when determining the 7-day Mean Annual Low Flow used in determining the dilution ratio. This is particularly important for those receiving environments that are at the lower end of each category in the dilution ratio, as it may result in an overestimation of their capacity to assimilate contaminants over the life of the consent. Similarly, the many treatment plants subject to the Small Plant Standard (**SPS**) exemption will also contribute to the overestimation of assimilation capacity.
36. Setting the monitoring requirement to 'end-of-pipe' only is shortsighted and wrongly assumes that all receiving environments will respond to the discharge in the same manner. This assumption is misconceived, ignoring the intrinsic and extrinsic factors that influence the receiving environment's assimilation capacity. Furthermore, it is inconsistent with a *ki uta ki tai* approach advocated by Ngāi Tahu and adopted by the NPS-FM for catchment management. Retention of discharge monitoring downstream of the mixing zone is essential to ensure that the mixing zone is functioning as intended.
37. The proposal that small treatment plants are excluded from the total nitrogen and phosphorus standards lacks consideration for sensitive catchments and waterbodies. The criteria for excluding any given small treatment plant must take into account the receiving environment and be determined on a case-by-case basis.
38. Te Rūnanga supports the site-specific risk assessment proposal for periphyton growth prevention in discharges to hard-bottomed or rocky streams and rivers. However, this must also be responsive to changes in the environment, such as when a bed previously classed as a rocky stream or river becomes covered by sediment due to land use such as farming or hydropower.
39. Te Rūnanga is also concerned about the long-term impact of the SPS in permitting discharge and opposes the exemption for nutrients. Other non-nutrient standards should also be stringent and not reduced further. The proposal to account for seasonal population change is also inadequate. As seasonal variation is accounted for under a mean annual influent value (cBOD₅ load of 85 kg/day or less), operational procedures are not required to change for significant spikes. For example, this could mean that partially treated wastewater could be permitted in order to meet demand spikes and still comply with the mean value, all without consideration of nutrient standards.

Issues with Discharge to Land

40. In mentioning cultural concerns with regard to land-based discharge but not water-based discharge, the standards give the inaccurate impression that land-based discharge poses a greater risk to the tikanga and wāhi tapu of mana whenua (despite the acknowledgement of iwi/Māori perspectives on this issue at p. 16 of the Discussion Document). In fact, the opposite is often true – for example, Ōnuku Rūnanga has spent considerable time and effort advocating for a land-based discharge solution near their marae, instead of water-based discharge which could harm their coastal waters and mahinga kai.
41. The standards need more detail regarding the risk screening assessments used to determine site capability categories for land-based discharge. There is currently too little information to give a properly informed response to this. For example, when determining risk, who decides on certain aspects related to cultural concerns and wāhi tapu? Simply consulting the New Zealand Heritage List for wāhi tapu locations is insufficient, as it is not comprehensive and is often out of date. Mana whenua must be involved in making such determinations.

Issues with Biosolids

42. The proposed standard for biosolids requires more clarity to ensure the grading system is fit for purpose. As currently proposed, Te Rūnanga does not support the standards as the grading system focuses only on pathogens and 'acceptable' levels of mitigation. The grades must be defined in more detail to understand the appropriateness of the proposed annual applications for the local area and wider catchment. Further consideration should also be given to incentivising private investment and innovation in bioresources, given its potential for cost-offsetting in the agricultural sector.
43. The use of an average rate for biosolid application across an application zone could give rise to localised intensification, resulting in nutrient leaching hotspots.
44. Further, the proposals do not consider differences in soil types and local climate which could impact the efficacy of these sites.
45. Regarding consenting pathways:
 - The restricted discretionary pathway must provide for mana whenua values, Treaty settlements, and iwi planning documents (not just cultural sites) as mandatory matters for consideration.
 - Te Rūnanga opposes the controlled activity pathway as this means applications cannot be declined. The scale of activities and likelihood that cultural effects will not be less than minor does not support a default approval pathway.
46. A full understanding of the threat posed by contaminants of emerging concern is needed. Undertaking proper risk analysis to determine where these threats may arise is crucial. Therefore, Te Rūnanga supports Option Two regarding the short-term addressing of contaminants of emerging concern.

Clarity regarding Sewage Overflows and Bypasses

47. Te Rūnanga understands the need for sewage overflows to occur as an emergency response when a plant is overwhelmed during extreme events. However, Te Rūnanga does not support

these overflows occurring in instances where planning and treatment design has been inadequate. Overflows must not become normalised as a mechanism to save on treatment costs. Appropriate planning should consider the potential effects of climate change and population growth, and treatment plant designs should represent this, for example, by providing adequate stormwater storage.

48. While improvements to the management and reporting of sewage overflows and bypasses are welcomed, it remains unclear who will be responsible for reporting and taking action in response to any breaches of the standards. Without clear and agreed lines of authority, such breaches will continue to remain unchecked and lack follow-up action.
49. The proposed Network Risk Management Plan and associated Risk Framework for monitoring and reporting provides little detail on how these will work, who is responsible for determining risks, and who is responsible for follow-up action.
50. Te Rūnanga expects that network operators will be required to partner and engage early and meaningfully with mana whenua in the development of these plans and frameworks.
51. There must be clear guidelines and timeframes for public announcements regarding sewage overflows and bypasses. As a minimum, this information must be standardised, easy to understand, and easy to access by the general public. Published information must be clearly found on websites such as both the council site *and* Safeswim and must also occur in a timely manner (ideally within 12 hours of the discharge). Reports should also be sent directly to central regulators (Taumata Arowai, Health New Zealand), the relevant regional council, and iwi authorities.

Nāhaku noa, nā,



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APPENDIX ONE: THE NGĀI TAHU TAKIWĀ

