

**COPY OF CONDITIONS IMPOSED BY THE ENVIRONMENT COURT IN ITS DECISION (ENV-2019-AKL-181) DATED 08 March 2021**

**NOTE:** Pursuant to Section 116 of the Resource Management Act 1991, the date of commencement of this consent is **08.03.2021**.

**FAR NORTH DISTRICT COUNCIL**

To undertake the following activities associated with the operation of the East Coast Wastewater Treatment System on Pt Allot 24 PSH of Taipa and Sec 1 SO 69379 Blk IV Mangonui SD (treatment plant) and Sec 1 SO 65075 Blk IV Mangonui SD (wetland)Pt:

**AUT.004007.01.03 To discharge treated municipal wastewater to an unnamed tributary of Te Wai o Te Parapara (Parapara Stream), at or about location co-ordinates 1640435E 6126160N.**

**AUT.004007.02.02 To discharge contaminants to land from the base of a wastewater treatment system, at or about location co-ordinates 1641450E 6126950N and 1640435E 6126160N.**

**AUT.004007.03.02 To discharge contaminants to air (primarily odour) from a wastewater treatment system, at or about location co-ordinates 1641450E 6126950N and 1640435E 6126160N.**

*Note: All location co-ordinates in this document refer to Geodetic Datum 2000, New Zealand Transverse Mercator Projection.*

Subject to the following conditions:

**AUT.004007.01.03 and AUT.004007.02.02 – DISCHARGE TO WATER AND LAND**

- 1 The volume of treated wastewater discharged to the unnamed tributary of Te Wai o Te Parapara must not, based on a 30-day rolling average dry weather flow, exceed 790 cubic metres per day. The average dry weather flow is defined in Section 1 (Wastewater Volumes) of Schedule 1 (**attached**).
- 2 The Consent Holder must install and maintain an operational flow meter with a measurement error of no more than  $\pm 5\%$  to measure the volume of wastewater discharged into the unnamed tributary.
- 3 The Consent Holder must keep a record of the daily volume of wastewater through the flow meter required by Condition 2 and the calculated 30-day rolling average dry weather flow discharge volume. A copy of these records must be forwarded to the Northland Regional Council's Compliance Manager by the 15<sup>th</sup> of each month and also upon request by the Northland Regional Council's assigned Monitoring Officer.
- 4 The Consent Holder must calibrate the flow meter at least annually. The calibration must be undertaken by a suitably qualified and experienced person. Written verification from the suitably qualified and experienced person that the meter accuracy has been verified must be forwarded to the Northland Regional Council's assigned Monitoring Officer within one month of the verification being completed.

- 5 The Consent Holder must, no later than 1 October 2022, de-sludge the ponds, remove the excess vegetation present in the wetland and undertake any other improvements necessary so that the quality of the treated wastewater, as measured at NRC Sample Site 101687 (discharge from the wetland) meets the following standards, based on the results of 26 fortnightly samples collected each calendar year as required by Schedule 1 (**attached**):

Parameter	Unit	Average*	85% percentile*	95% percentile*
Total Nitrogen	mg/L	16	23	25
TSS	mg/L	35	55	85
BOD	mg/L	15	25	30
DO	mg/L	>2	>2	>2
pH	-	>6.5	>6.5	>6.5
Faecal coliforms	CFU/100ml	850	1500	3000

\*Based on pH8 and 20°C.

*[Condition 6 has been deleted and the number not re-used so is intentionally blank]*

- 7 The Consent Holder must, no later than 1 October 2021, establish a Working Group and invite three representatives of Ngāti Kahu (appointed by mana whenua) and one representative of the broader Doubtless Bay community (appointed by Te Mana o Te Wai Hapu Integration Roopu Charitable Trust) to be members of the Working Group. The Working Group must also comprise of two senior officers appointed by the Consent Holder, supported by an independent person qualified and specialising in wastewater engineering and land disposal systems (appointed by the Consent Holder and certified by the Northland Regional Council's Compliance Manager as being independent and having no conflict of interest).
- 8 The purpose of the Working Group is to provide for the involvement of Ngāti Kahu in:
- [DELETED];
  - The assessment of disposal options for the treated wastewater required by Condition 10;
  - Providing a recommendation to the Consent Holder regarding the best practicable option for the disposal of treated wastewater required by Condition 10;
  - The analysis of options for upgrading the wastewater treatment plant if such an upgrade is required by Condition 13;
  - Providing a recommendation to the Consent Holder regarding the upgrade required by Condition 13; and
  - Post-commissioning monitoring of water quality.
- 9 Schedule 2 sets out the initial Terms of Reference for the Working Group.

10 The Consent Holder must, no later than 1 September 2022, provide a report to the Northland Regional Council’s Compliance Manager which assesses the options for disposing treated wastewater from the East Coast Wastewater Treatment and the report must include a recommendation as to which disposal option is considered to be the best practicable option (**BPO**). The assessment must include the option of disposing the treated wastewater to land and must identify the costs and benefits of all practicable disposal options. The assessment of options must be undertaken by a suitably qualified and experienced person(s) and must involve the Working Group established in accordance with Condition 7.

11 If the report required by Condition 10 determines that the BPO is to change to land disposal then the Consent Holder must, no later than 1 July 2023, advise the Northland Regional Council’s Compliance Manager, in writing, whether or not it is committing to the land disposal option.

**Advice Note:** *The ten-month period between the date specified in Condition 10 and the date specified in Condition 11 has been provided in acknowledgement that the Consent Holder may need to undertake consultation with the local community and that funding for the land disposal system may need to go through, and may need to be approved through, its Long Term Plan or Annual Plan processes.*

12 If the Consent Holder has advised the Northland Regional Council’s Compliance Manager that it is committing to the land disposal option (refer Condition 11) then the Consent Holder must establish and commission the land disposal system no later than 1 September 2027. During the period that the land disposal system is being established, the Consent Holder must provide a written progress report to the Northland Regional Council’s Compliance Manager every six months.

13 If the Consent Holder has advised the Northland Regional Council’s Compliance Manager that it is not committing to the land disposal option (refer Condition 11) then the Consent Holder must, no later than 1 September 2026, upgrade the wastewater treatment system (and commission the upgrades) so that the quality of the treated wastewater, as measured at NRC Sample Site 101687 (discharge from the wetland), meets the following standards, based on the results of 26 fortnightly samples collected each calendar year as required by Schedule 1 (**attached**):

Parameter	Unit	Median*	85% percentile*
Total Nitrogen	mg/L	12	16
TSS	mg/L	20	30
BOD	mg/L	20	40
DO	mg/L	>2	>2
pH		>6.5	>6.5
Total Phosphorus	mg/L	10	15
Faecal coliforms	CFU/100ml	1000	1500

\*Based on pH8 and 20°C.

**Advice Note:** *The Consent Holder has advised that it will involve the Working Group required to be established in accordance with Condition 7 in determining the appropriate option to upgrade the wastewater treatment plant to meet these standards.*

- 14 The treated wastewater discharged from the constructed wetland must not result in any of the following effects in the waters of the unnamed tributary of Te Wai o Te Parapara downstream of NRC Sample Site 105941 (refer NRC Plan 3078A **attached**):
- (a) The pH must not be outside the range of 6.0 to 9.0.
  - (b) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials
  - (c) Any conspicuous change in the colour or visual clarity
  - (d) Any emission of objectionable odour.
- 15 The Consent Holder must maintain easy and safe access to the discharge point from the constructed wetland for the purposes of sampling.

#### **AUT.004007.03.02 – DISCHARGE TO AIR**

- 16 The exercise of this consent must not result in the discharge of contaminants which are deemed by a Monitoring Officer of the Northland Regional Council to be noxious, dangerous, offensive or objectionable at or beyond the property boundary of the East Coast Wastewater Treatment Plant.

#### **GENERAL CONDITIONS**

- 17 The Consent Holder must maintain the treatment system so that it operates effectively at all times, and a written record of all maintenance undertaken must be kept. A copy of this record must be forwarded as soon as practicable to the Northland Regional Council upon written request.
- 18 The Consent Holder must monitor the exercise of these consents in accordance with Schedule 1 (**attached**).

**Advice Note:** *The Consent Holder should attempt to maintain fencing of the drain, an unnamed tributary of the Parapara Stream, between NRC sampling sites 101687 and 105940, as shown on NRC Plan 3078A (**attached**), to prevent stock access.*

- 19 The Consent Holder must, on becoming aware of any unauthorised discharge associated with the East Coast Wastewater Treatment System:
- (a) Take immediate action to stop and/or contain the discharge; and
  - (b) Immediately notify the Northland Regional Council by telephone of the discharge; and
  - (c) Take all reasonable steps to remedy or mitigate any adverse effects on the environment resulting from the discharge; and
  - (d) Notify the Northland Regional Council in writing within one week on the cause of the unauthorised discharge and the steps taken or being taken to remedy or mitigate the effects of the discharge.

For telephone notification during the Northland Regional Council's opening hours (8.00 a.m. to 5.00 p.m.), the Northland Regional Council's assigned Monitoring Officer for these consents must be contacted. If that person cannot be spoken to directly, or it is outside of the Northland Regional Council's opening hours, then the Environmental Hotline (0800 504 639) must be contacted.

- 20 The Northland Regional Council may, in accordance with Section 128 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of these consents:
- (a) Annually for one or more of the following purposes:
    - (i) To deal with any adverse effects on the environment that may arise from the exercise of the consents and which it is appropriate to deal with at a later stage, or
    - (ii) To require the adoption of the best practicable option to remove or reduce any adverse effect on the environment.
  - (b) Within three months of receiving the written report required by Condition 10 to provide for additional work on land disposal options; and
  - (c) [DELETED];
  - (d) Annually during the month of October to change the Monitoring Programme in Schedule 1 to deal with the ongoing monitoring of the wastewater treatment system.

The Consent Holder must meet all reasonable costs of any such review.

#### **EXPIRY DATES**

Resource consents AUT.004007.01.03, AUT.004007.02.02 and AUT.004007.03.02 will expire eight years from their dates of commencement.

**Issued by the Environment Court Consent Order dated 08 March 2021.**



Scale:	N.T.S.
Drawn:	KATM 05/19
File Number:	4007
Plan Number	<b>3078A</b>

## East Coast Bays Wastewater Treatment System Sampling Sites



# SCHEDULE 1

## MONITORING PROGRAMME

The Consent Holder, or its authorised agent, must undertake the following monitoring:

### 1. WASTEWATER VOLUMES

The Consent Holder must keep a record of the daily (midnight to midnight) treated wastewater flows through the meter required by Condition 2 of the consent. The 30-day rolling average dry weather flow discharge volume must be calculated and recorded daily. A wet weather flow day is defined as any day with 10 or more millimetres of rain and the two subsequent days. A dry weather flow day is defined as any day that is not a wet weather flow day.

The daily rainfall must be taken from the Northland Regional Council's automatic rain station 530511 (Oruru Bowling Club). This data can either be downloaded from the Northland Regional Council's website or supplied by the Northland Regional Council on request. An alternative rainfall station may be used with the prior written approval of the Northland Regional Council's Compliance Manager.

### 2. MONITORING OF THE WASTEWATER WITHIN THE WASTEWATER TREATMENT PLANT

At fortnightly intervals, samples of wastewater must be collected at the influent to the WWTP, outflow from Pond 3, and the outflow from the Maturation Pond, and analysed for the following:

- (a) Total ammoniacal nitrogen ( $\text{g}/\text{m}^3$ )
- (b) Five-day biochemical oxygen demand ( $\text{g}/\text{m}^3$ )
- (c) pH
- (d) Dissolved oxygen ( $\text{g}/\text{m}^3$ )
- (e) Temperature ( $^{\circ}\text{C}$ ).

### 3. MONITORING OF THE DISCHARGE FROM THE CONSTRUCTED WETLAND

At fortnightly intervals, samples of wastewater must be collected at NRC Sampling Site 101687 (discharge point from the wetland) and analysed for the following:

- (a) Total ammoniacal nitrogen ( $\text{g}/\text{m}^3$ )
- (b) Five-day biochemical oxygen demand ( $\text{g}/\text{m}^3$ )
- (c) pH
- (d) Dissolved oxygen ( $\text{g}/\text{m}^3$ )
- (e) Total suspended solids ( $\text{g}/\text{m}^3$ )
- (f) Temperature ( $^{\circ}\text{C}$ )

- (g) Escherichia coli (cfu/100 mL)
- (h) Enterococci (cfu/100 mL).

#### **4. MONITORING OF RECEIVING WATER QUALITY**

Each calendar month, samples of water must be collected from the unnamed tributaries of the Te Wai o Te Parapara at NRC Sampling Sites 105939, 105940, and 105941, as shown on NRC Plan 3078A (**attached**), and analysed for the following:

- (a) Total ammoniacal nitrogen (g/m<sup>3</sup>)
- (b) pH
- (c) Dissolved oxygen (g/m<sup>3</sup>)
- (d) Escherichia coli (cfu/100 mL)
- (e) Enterococci (cfu/100 mL).

#### **5. SAMPLE COLLECTION, SAMPLE TRANSPORT, AND LABORATORY REQUIREMENTS**

All samples must be collected using standard procedures and in appropriate laboratory supplied containers.

All samples collected as part of this monitoring programme must be transported in accordance with standard procedures and under chain of custody to the laboratory.

All samples collected must be analysed at an independent laboratory with registered quality assurance procedures<sup>#</sup>, and all analyses are to be undertaken using standard methods, where applicable.

*<sup>#</sup> Registered Quality Assurance Procedures are procedures which ensure that the laboratory meets recognised management practices as would include registrations such as ISO 9000, ISO Guide 25, Ministry of Health Accreditation.*

#### **6. REPORTING**

By the 15<sup>th</sup> of each month, the results of monitoring in accordance with Sections 2, 3 and 4 of this schedule, for the previous calendar month, must be forwarded to the Northland Regional Council.

This information must be in an electronic format that has been agreed to by the Northland Regional Council.



# SCHEDULE 2

## TERMS OF REFERENCE FOR WORKING GROUP

### 1. Kaupapa

The Working Group is made up of representatives of Ngāti Kahu hapu, Far North District Council and the community. The Working Group representatives will work together to support good decision making for the upgrade of the Taipa wastewater treatment plant that will promote the wellbeing of Ngāti Kahu hapu and the wider community by striving to achieve the best outcome to bring back the mauri to the wai.

**Attachment 1** provides the context within which parties enter this relationship.

### 2. Ngati Kahu

In 1988 the Waitangi Tribunal reported on its findings of Claim number Wai-171. The claim was put forward by Ngāti Kahu and related to the Taipa wastewater treatment plant, and in particular the siting of the plant on the Adamson- Ngāti Kahu farm and the discharge of treated wastewater into the Parapara catchment. Although the outcome of the Tribunal hearing did not grant the claim being sought by Ngāti Kahu, the report itself is very important because it sets down a detailed account of the significance of the Parapara area to Ngāti Kahu; and the grievance suffered by tangata whenua with the implementation of the Taipa sewerage scheme. With that in mind, it is important to consider the records contained in the Waitangi Tribunal report to gain an understanding of the context behind the Kaupapa outlined in these terms of reference.

### 3. Background

The Taipa Wastewater Treatment Plant discharges treated wastewater into a tributary of the Parapara Stream. The discharge is authored by Northland Regional Council resource 4007. That resource consent expired in 2008 and an application for replacement resource consent was lodged with the Regional Council before it expired. The resource consent application was notified in 2010 to allow for public submissions on the proposal. Far North District Council requested that the application be placed on hold after the submission period to try and resolve the concerns that were raised by submitters, particularly those of Ngāti Kahu hapu. The application remained on hold until it proceeded to a hearing in 2019. A decision granting the resource consent for a term of eight years was issued in August 2019.

The decision was appealed to the Environment Court by Te Mana O Te Wai Hapu Integration Roopu Charitable Trust & Others. The appellants and FNDC have worked together to develop these terms of reference as a means of resolving the appeal.

### 4. Terms of Reference

#### 4.1 Vision

To bring back the mauri to the wai for the benefit of the whanau, hapu and the community.

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<sup>1</sup> Report of the Waitangi Tribunal on the Ngāti Kahu - Mangonui Sewerage Claim (Wai-17). - Wellington, N.Z

## 4.2 Values

The parties making up the Working Group will work together with the intention and commitment to establishing a collaborative, interactive, positive and balanced relationship exercising good faith, co-operation and flexibility and responsiveness in working together.

## 4.3 Objectives

The Working Group will strive to achieve the following objectives:

- Providing a forum for Ngāti Kahu mana whenua, Te Mana o Te Wai Hapu Integration Ropu Charitable Trust and FNDC to develop a mutual understanding of specific issues and constraints associated with the Taipa wastewater treatment plant.
- Working to facilitate the sharing, development and gathering of information for the purpose of developing options for addressing the adverse effects of the wastewater discharge from the Taipa wastewater treatment plant.
- Working together acknowledging Council's duty to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.
- Working towards the long-term objective of reducing or removing any discharge of wastewater to freshwater from the Taipa Wastewater Treatment Plant.
- Supporting education and engagement with the community about tikanga (why) and upgrade and disposal options (what) to enable the community to give informed feedback to Council in respect of the upgrade/disposal recommendations put forward by the Working Group.
- Working together to develop agreed ways of measuring the long-term health of the receiving environment affected by the wastewater treatment plant discharge. This includes exploring options to include mātauranga Māori approaches to monitoring water quality and stream health.
- Continuing to investigate means of improving the discharge from the wastewater treatment plant by reviewing and recommending wastewater treatment standards that are better than those in the resource consent including associated upgrade and discharge options.
- Addressing these objectives in both the short term and long term.

## 4.4 Milestones

The Working Group will work towards achieving the milestones in the consent.

In terms of the September 2026 milestone in condition 10, the Working Group will strive to achieve 1 September 2025 (a year earlier).

## 4.5 Membership

### (a) Working Group

The Working Group is to comprise representatives of Ngāti Kahu mana whenua, TMOTWHIRCT and the Far North District Council including as a minimum:

- Two senior Council staff

- Any other Council staff as required to support any meetings that require Council delegations that are not held by the regular attendees.
- Three hapu representatives of Ngāti Kahu mana whenua.
- A representative of the community appointed by TMOTWHIRCT.

**(b) Independent Wastewater Engineer**

- An Independent person qualified and specialising in wastewater engineering and land disposal systems to be appointed by the consent holder and certified by NRC (as being independent and having no conflicts of interest).
- The independent wastewater engineer is responsible for providing independent and objective expert advice to the Working Group in respect of matters relating to wastewater treatment and disposal.

**4.6 Responsibilities**

**(a) Council**

- FNDC staff to liaise with members of the working group to keep them updated to ensure they are fully informed of the agreed work being completed.
- Any feedback from elected members will be reported back to the Working Group.
- Key FNDC elected members will be brought to the table as required.
- FNDC commits to working with marae representatives to achieve the required outcomes, this includes building capacity of, and providing support to, the hapu to ensure all parties are able to fully engage with the working group process.
- FNDC will hold a master folder containing / storing all key documentation /information esp. minutes, reference material, plans and maps associated with this project that will be duplicated and shared with TMOTWHIRCT.

**(b) Hapu and Community responsibilities**

- Marae representatives on the working group will liaise with respective marae and report all feedback from the marae back to the working group on a regular basis.
- Marae representatives to provide cultural knowledge and capabilities to support the working group.
- Community representative to report to the community they represent and report back. Community representatives liaise with Doubtless Bay community groups and report all feedback and concerns to the Working Group on a regular basis.

**(c) Shared responsibilities**

- Engaging with the wider community to report on the progress and outcomes of the milestones of the Working Group.

**4.7 Resourcing**

- Council will pay a meeting allowance of \$250 per member per meeting. For clarity, this sum is to cover the costs of meeting attendance, meeting preparation, mileage to the

meetings, and work associated with reporting back to parties each attendee represents.

- It may be necessary for Working Group members to undertake work outside regular meetings (and associated ancillary tasks), such as consultation meetings with the community, meetings during the Long Term Plan preparation and/or meetings of Council to present recommendations. It is acknowledged personal expense as a result of participating in other work, workshops and hui may be incurred. Council will resource the Working Group members for additional work under the principle that members should not be financially disadvantaged by the work requirements of the Working Group.

**(a) Technical Expertise**

- Independent technical expertise will be engaged to support the recommendations put forward to Council by the Working Group. Costs to be met by FNDC and FNDC procurement process will apply.
- Technical expertise is to be agreed mutually by the Working Group representatives via supplier a panel process.
- Technical expertise is to include peer review services and decision making facilitation if required.

**4.8 Decision Making and Recommendations to FNDC**

- The Working Group will follow best practice approaches when identifying and shortlisting disposal and upgrade options.
- Recommendations to council for the BPO will be by consensus of the group.
- If consensus cannot be reached, an independent facilitator will be selected from the supplier panel to assist with a resolution.
- If the recommendation(s) made by the Working Group are not accepted by FNDC , then the matter will be sent back to the Working Group to reconsider and to make further recommendation(s).

## **TERMS OF REFERENCE ATTACHMENT 1: CONSTITUTIONAL CONTEXT FOR THE WORKING GROUP**

This section is a synthesis from the teachings of the late McCully Matiu (Te Whānau Moana), Māori Marsden (The Woven Universe) and other elders; the research and writings of Professor Margaret Mutu, Dr Moana Jackson, Dr Ani Mikaere, Associate Professor Claire Charters and others; the websites of the Human Rights Commission, Waitangi Action Group, Waitangi Tribunal, Matike Mai o Aotearoa and the Aotearoa Independent Monitoring Mechanism on the Rights of Indigenous Peoples.

**These are the constitutional foundations that underpin the working group:**

- 1. Tikanga Māori**
- 2. He Hakaputanga 1835**
- 3. Te Tiriti o Waitangi 1840**
- 4. Resource Management Act 1991**
- 5. Pouhere Taonga Act 2016**
- 6. United Nations Declaration on the Rights of Indigenous Peoples**
- 7. Matakairiri Haukanga Hapū and Ngati Tara Cultural Impact Assessments**

### **Short Form Definitions:**

- 1. Tikanga Māori:** A set of cultural values and principles as well as a body of laws and practices. The first law of this land. The nearest western legal equivalent in New Zealand to Tikanga Māori is English Law.
- 2. He Hakaputanga (1835) – aka He Whakaputanga and/or He Wakaputanga:** A written declaration made to the world by Rangatira Māori declaring the independence and sovereignty of their Hapū and Iwi.
- 3. Te Tiriti o Waitangi (1840):** A treaty of peace and friendship between Rangatira Māori and the English Sovereign.
- 4. Resource Management Act 1991:** An Act of Parliament and the principal legislation for environmental management in New Zealand.
- 5. Pouhere Taonga Act 2016:** An Act of Parliament that promotes the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.
- 6. United Nations Declaration on the Rights of Indigenous Peoples:** An internationally recognised human rights instrument which solemnly proclaims and codifies the Rights of Indigenous Peoples to a set of minimum standards of achievement to be pursued in a spirit of partnership and mutual respect by signatory nation state members of the UN and their respective indigenous peoples.
- 7. Cultural Impact Assessments:** Cultural impact assessments (CIA) have been prepared by hapū Matakairiri and Ngati Tara and referenced below:
  - Karipori/Taipa Marae, Matakairiri Haukanga Hapū - Cultural Impact Assessment on the Taipa Wastewater Plant Upgrade, dated June 2019.
  - Ngati Tara – Cultural Impact Assessment on the Impact of Sewage Discharge into Te Wai o Parapara, dated August 2020.

## Long Form Definitions:

### TIKANGA MĀORI

The laws by which Māori customarily conduct ourselves and carry out our responsibilities are called tikanga. The RMA describes tikanga Māori as "*Māori customary values and practices*".

Under Māori constitutionalism, mana and tikanga are like the maihi and amo of a whare tūpuna – they hold the "*house*" of the people together.

Historically, tikanga was both the law and a discrete set of values by which mana was given constitutional structure and expression. It still is

*"... tikanga Māori controls interpersonal relationships, provides ways for groups to meet and interact, and even determines how individuals identify themselves. It is difficult to imagine any social situation where tikanga Māori has no place."* [Professor Sir Hirini Moko Mead – in his work "Tikanga Māori – Living by Māori Values"]

*"Tikanga may be seen as Māori principles for determining justice ... The principles of tikanga provide the base for the Māori jural order."* [Sir Edward Taihakurei Durie – former Chair of the Waitangi Tribunal]

As a practical law, tikanga still influences every aspect of Māori constitutionalism, from the political organisation of our Hapū and Iwi to the social interactions of individuals.

As a set of values it ... is the "*ought to be*" of Māori existence. Together, both aspects of tikanga mutually reinforce mana.

*"Mana was always about political power or personal status, but it was always about protecting the whakapapa and the whenua too ... that was its tikanga, the whole idea of relationships and making sure they were in sync."*

*"... we've got trapped in the last few years to only see rangatiratanga as a right or some sort of power ... and sometimes we think it's just about making money. But it was always a legal authority more than anything else ... just like sovereignty is, except it rests on tikanga ..."*

*"If we look at what or how mana was exercised ... nothing could be done unless it was done in the name of the law ... tikanga was like a precondition for mana ... and there is no doubt that mana or rangatiratanga was always meant to be exercised in a tika way."*

While some Tauīwi fear a strong Māori constitutionalism, many more do not.

*"... for a long time [some] Pakeha said we didn't have real law, and now they just say their law should prevail ... their law should be the one law for all ..."*

*"Saying you can have a Māori constitution without tikanga is like Pakeha saying they can have their constitution without the Magna Carta ... It doesn't make sense."*

Although we come from different constitutional and cultural traditions and have a way to go yet, we and our Tauīwi allies are already modelling the kind of tikanga relationships upon which practical constitutional transformation is already happening.

*"... Tikanga was created because our old people knew humans were prone to make mistakes or act in a non-tikanga way ... it's where we need to start."*

Tikanga Māori is essentially the correct way to carry out something in Māori cultural terms. Tikanga Māori is the Māori equivalent of English law. For example, the manner in which people respect or treat wāhi tapu is the tikanga in respect of that wāhi tapu.

For each whānau and hapū, tikanga is a vast body of knowledge, wisdom and custom. It derives from the very detailed knowledge gained from residing in a particular geographic area for many years, of developing relationships with other neighbouring communities as well as those further afield and learning from

practical experience what works and what does not. This body of law is very different from English law in how it is established.

Māori cannot be reduced to writing and hence fixed as a prescriptive set of rules in the way that legislation works.

As a body of law, Tikanga Māori is very flexible and each situation requires its own particular form of tikanga. An important aspect of Māori culture is the tikanga of hui. When a take (issue, topic) arises, it will be determined by consensus of the whānau, hapū or iwi concerned, particularly if the matter is anything other than very straight forward. As a result, whānau and hapū may spend considerable time in hui discussing what an appropriate tikanga for a particular take should be. Consensus in such hui is very important, and for that reason they may invariably run for several hours to allow all possible aspects of the take to be thoroughly aired. If consensus is not reached the hui will either continue until it has been reached, even if it takes several days, or, if the divisions are too great, the hui will be adjourned and reconvened at a later time when everyone has had more time to reflect on the matter.

As a set of values, Tikanga Māori provides stability and assurance to its adherents that they will be treated respectfully and fairly when important decisions that affect them are to be made.

Time is not an influencing factor when important decisions are to be made. This is a trait of Tikanga Māori which has often frustrated and annoyed non-Māori affected by the process. The philosophy of elders in this respect is that they would far rather take their time and reach a well-considered decision than rush it through and end up having to fix up a mess afterwards.

## Summary

The legal flexibility of Tikanga Māori, anchored by a stable values base, makes it an important constitutional foundation for the Working Party.

## HE WHAKAPUTANGA O TE RANGATIRATANGA O NU TIRENI (1835)

Any consideration of He Whakaputanga begins with understanding both its unique origins and the practical limitations of its reach after 1835 due to the pressures of colonisation which inevitably affected people's understanding of it.

The ideals it expressed were acknowledged and respected by all because they saw it as a novel and brave articulation of an old concept and site of constitutional power that had allowed an adjustment to changing circumstances, but remained consistent with traditional Māori legal, philosophical and religious thought.

Essentially, He Whakaputanga proposed that a collective of Iwi and Hapū polities should regularly come together in a Whakaminenga, or assembly, to make joint decisions on matters of common concern, while respecting the mana of each participating polity. That joint decision-making power is defined in Article Two of He Whakaputanga as a "*Kingitanga*" where "*all sovereign power and authority*" is

*"... declared to reside entirely and exclusively in the hereditary chiefs and heads of tribes ... who also declared they will not permit any legislative authority separate from themselves."*

At the Waitangi Tribunal hearings into He Whakaputanga and Te Tiriti, the kaumātua Nuki Aldridge stated that

*"The purpose of Te Wakaminenga was for Māori to control their own changes in the 'new world' ... [it was] about how Māori were able to think and put themselves into the future."*

In the same hearings, Professor Patu Hohepa described it simply as

*"a declaration of our independence and sovereignty as a nation of independent rangatira."*

Professor Dame Anne Salmond also stated at those hearings that under He Whakaputanga

*“the rangatira ... foreshadowed the possibility that they might delegate kāwanatanga or function of government to someone whom they themselves had appointed. In such an arrangement however, they would retain their rangatiratanga or independence, and their mana and Kingitanga or sovereign authority and power. The Declaration is unambiguous and the relationship between these key terms is clear.”*

## **Summary**

Because of its core ideals and clear expression of an existing constitutional authority, He Whakaputanga is a necessary constitutional baseline for the Working Party.

## **TE TIRITI O WAITANGI (1840)**

Te Tiriti o Waitangi consists of a Preamble and four Articles; the fourth Article was added at Waitangi on 6 February 1840, although it does not appear in the Crown’s English-language version. The significant differences between Te Tiriti and the Crown’s English-language version are most crucially evident in Articles 1 and 2 but are to be found in all parts of the documents.

### **Preamble**

The Preamble is an introductory statement, expressing the Queen’s good will to the Rangatira and hapū of New Zealand, asking them to allow a place for her Governor, and committing to a peaceful future together. It recognises that other people will come.

### **Article I**

Te Tiriti o Waitangi says that the Rangatira and hapū agree to the Queen’s Governor exercising kāwanatanga (a transliteration of the word governorship) within the lands granted to non-Māori. Clearly this did not mean that the Governor was to have authority over Māori but rather only over the British subjects and others *“living here in a state of lawlessness”*.

The Crown’s English version says that the Rangatira would cede their sovereignty to the Queen, meaning the Crown would have complete power and authority over everything and everybody throughout the land.

### **Article II**

Te Tiriti o Waitangi says that the Crown recognises and will uphold the paramount authority (tino rangatiratanga) of the many Rangatira of the many hapū in their lands, villages and all that is precious to them (taonga). This directly contradicts the cession of sovereignty referred to in Article 1 of the Crown’s English version, which in Article II guarantees to Māori only *“the full, exclusive and undisturbed possession of their lands and estates, forest, fisheries, and other properties”* as long as they wish. Many of the cases brought to the Waitangi Tribunal have succeeded because it has been shown that, following the signing of the Treaty the Crown took actions that forced land and other taonga out of Māori hands.

The word taonga in te Tiriti is not limited to property and possessions, as stated in the Crown’s English-language version; understood within the Māori cultural context, taonga are recognised as having inherent value and the word encompasses all things held precious: for example, language, culture, access to traditional food sources, people, yet-to-be born descendants, a clean environment and health.

Article II in the Crown’s English version allows the Crown priority over individuals in land dealings with hapū. In Te Tiriti o Waitangi, the Rangatira just allow the Crown to trade for the use of those pieces of land that hapū consent to allocate.

### **Article III**

Article III in both texts accords to Māori the same rights as British people, that is, additional to the rights they already enjoy in their own society.



## Article IV

At the first Treaty signing, William Colenso (Anglican) recorded a discussion on religious freedom between Bishop Pompallier (Catholic) and Captain Hobson. In answer to a direct question from Pompallier, Hobson and the Rangatira agreed to add the following statement which was read out in te reo Māori and written on the document before anyone had signed:

*“The Governor says the several faiths (beliefs) – of England, of the Wesleyans, of Rome, and also Māori custom and religion – shall all alike be protected by him.”*

In the Māori language Tiriti, the word *ritenga* is used in reference to beliefs and practices of the spiritual relationship between humans and the rest of the natural world. The Crown’s English-language Treaty does not include this Article.

The Māori language Tiriti was signed by Captain Hobson and over 500 Rangatira, more than 40 of them at Waitangi on February 6<sup>th</sup>, 1840.

The Treaty of Waitangi was written after February 6<sup>th</sup> and was only signed by about 40 rangatira at Port Waikato/Manukau later in 1840, where the discussion was about the content of the Māori document (Te Tiriti) but the English document Treaty was presented for signing.

### When two documents conflict ...

In international law where there is any ambiguity:

- The contra preferendum principle applies, which means that a decision is made against the party that drafts the document, and
- the indigenous language text takes preference. In oral cultures such as Māori, verbal agreements take preference over what is written.

### This means that for the Treaty of Waitangi the text in te reo takes precedence on all these counts.

In November 2014 the Waitangi Tribunal summarised their conclusions on the Nga Puhī claim (WAI 1040):

- The rangatira who signed te Tiriti in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.
- The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.
- The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.
- The rangatira agreed to enter into land transactions with the Crown, and the Crown promised to investigate pre-treaty land transactions and to return any land that had not been properly acquired from Māori.
- The rangatira appear to have agreed that the Crown would protect them from any foreign threats and represent them in international affairs, where that was necessary.

### **In summary**

Te Tiriti o Waitangi is a treaty of peace and friendship which confirms Māori authority and sovereignty, guaranteeing to Māori the full control and authority in their lands, people, settlements and all that is of value to them, including their social, political and economic relationships and institutions.

It allows a place for a Governor to exercise control over non-Māori within the lands allocated to them.

Te Tiriti o Waitangi provides a framework for relationships and political organisation between Tangata Whenua and the Crown, to ensure peace and good order into the future. Similarly, it provides a relational framework for members of the Working Party.

### **RESOURCE MANAGEMENT ACT 1991**

Part II of the Resource Management Act 1991 [the Act].

Principles and Purposes of the Act.

- **Section 6.** Matters of national importance  
*(e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapū, and other taonga.*
- **Section 7.** Other matters  
*in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to -*  
*(a) Kaitiakitanga*
- **Section 8.** Treaty of Waitangi  
*the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*
- **The Fourth Schedule of the Act**  
*Identifies cultural effects, any effects on ecosystems, and any effect on natural and physical resources having spiritual or cultural value for present or future generations.*

### **POUHERE TAONGA ACT 2016:**

In Part 1:

- **Section 3**  
*promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.*
- **Section 4**  
*the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga.*

### **UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

**What is it?** The Declaration consists of an introduction, called the Preamble, and 46 articles that set out the rights and responsibilities of the Declaration.

**When was it adopted?** The United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples in September 2007. New Zealand was the second to last country in the world to sign up to it on 20<sup>th</sup> April 2010.

**How does the Declaration apply to New Zealand?** Māori are the indigenous people of New Zealand and the rights set out in the Declaration apply to them. The Declaration reflects and elaborates on the provisions of Te Tiriti o Waitangi as well as the Universal Declaration of Human Rights.

**What does the Preamble say?** The Preamble proclaims the Declaration to be “a standard of achievement to be pursued in a spirit of partnership and mutual respect”. It is an aspirational document, whose text is not legally binding on States.

The Preamble sets out some of the reasons which led to the development of a declaration on indigenous peoples’ rights, and the principles that underpin it.

- Everyone has human rights: Indigenous peoples are equal to all other peoples and have all the human rights that everyone has – including the right to self-determination; the right to be free from discrimination; the right to be respected as distinct peoples; and collective, as well as individual rights.
- Indigenous peoples have not always been able to fully realise their human rights: Historical injustices, including through colonisation and the loss of lands and resources, have prevented indigenous peoples from fully exercising all of their rights. Therefore, there is an urgent need to respect and promote the rights of indigenous peoples.
- The Declaration offers assistance to better ensure indigenous peoples are able to fully enjoy their rights, and to strengthen the relationship between States and indigenous peoples: The Declaration is a standard of achievement to be pursued in a spirit of partnership and mutual respect.

**What do the Articles Say:** The articles of the Declaration set out the rights indigenous peoples have, as well as States’ responsibilities to respect and protect those rights.

**Indigenous peoples have the right to:**

- 1) All human rights, including collective rights
- 2) Equality and non-discrimination
- 3) Self-determination
- 4) Autonomy or self-government
- 5) Their own institutions
- 6) A nationality
- 7) Life, liberty and security
- 8) Protection from cultural destruction or assimilation
- 9) Belong to indigenous communities or nations
- 10) Freedom from forced removal from their lands
- 11) Their culture and cultural property
- 12) Their spiritual and religious customs
- 13) Their languages, stories and names
- 14) Education, including in their own language
- 15) The dignity and diversity of their culture
- 16) Their own media and equal access to all other media
- 17) Protection in employment

- 18) Participation in decisions that affect them
- 19) Good faith consultation on laws and policies that affect them
- 20) Their own political, social and economic institutions and activities
- 21) Improvement of their economic and social conditions
- 22) Particular attention to the needs of elders, women, youth, children and disabled people
- 23) Development
- 24) Health and to their traditional medicinal resources and health practices
- 25) Their spiritual relationship with their lands and resources
- 26) Recognition and protection of their lands and resources
- 27) Fair processes for dealing with their rights to lands and resources
- 28) Redress for lands and resources taken or damaged without consent
- 29) Environmental protection
- 30) Consultation before their lands are used for military activities
- 31) Their cultural and intellectual property
- 32) Use and develop their lands and resources, and consultation on projects that would affect these
- 33) Determine their own identity and membership
- 34) Their own institutions, laws and customs
- 35) Determine the responsibilities of individuals to their communities
- 36) Maintain and develop contacts across borders
- 37) Observance of their treaties with States

**Who does the Declaration apply to?** The final articles of the Declaration provide guidance on how it is to be interpreted and applied.

**The Declaration is applied:**

- 38) By States, in consultation and cooperation with indigenous peoples, through appropriate measures, including legislation
- 39) Through financial and other assistance to indigenous peoples
- 40) By ensuring indigenous peoples have access to fair procedures for resolving disputes with States, and remedies for breaches of their rights
- 41) With financial and other assistance from the United Nations and other international organisations, and by establishing ways to ensure indigenous peoples' participation in matters that affect them
- 42) Through promotion and follow up by the United Nations and States.

**The rights set out in the Declaration:**

- 43) Are minimum standards
- 44) Apply equally to males and females
- 45) Do not diminish any other rights that indigenous peoples have

- 46) Do not allow actions that are contrary to the Charter of the United Nations, or which diminish the territorial integrity of States.

**In summary:**

Although the UNDRIP is currently still an aspirational document, it is also a set of normative standards that the New Zealand government, as a signatory, is obligated to implement. To that end, in 2019 the New Zealand government appointed a Working Party which completed [He Puapua: The Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand](#). Although completed in November 2019, it was only released under the Official Information Act in January 2021 and has yet to be publicised by government. However, it can be read in its current form by clicking the hyperlink above.

The UNDRIP is “a landmark declaration that brought to an end nearly 25 years of contentious negotiations over the rights of native people to protect their lands and resources, and to maintain their unique cultures and traditions.” As such, it provides a useful constitutional context for this Working Party.

**A final word about English translations of Māori terms and concepts in this Terms of Reference:**

It must always be borne in mind that the value system associated with Māori terms and concepts is a system embedded in Māori culture. As such, Māori terms and contexts in this Terms of Agreements can best be understood within that cultural context and the Māori language.

Translations into English of Māori terms rarely adequately explain the terms. We simply note here that each and every one of the world’s languages is the expression of the culture to which that language belongs and no language can describe the concepts of another culture adequately, especially if the two cultures are totally unrelated as Māori and English are.

Any Māori terms used in the English text of this Terms of Reference has been used because there is no equivalent term in English. Notwithstanding this, the purpose of this section is to attempt to provide some understanding of these concepts. While they are explained in English, they are approached from a Māori perspective. It is important to bear this in mind.

It is also noted that these concepts have their origins in traditional Māori life. Contact with Western culture and the subsequent settlement of New Zealand by the British has not changed either the values which underpin these concepts or the concepts themselves. The Whare Wānanga o Te Taitokerau has ensured this is the case for the iwi of the north. As such, they are still relevant and practiced today.

However, the practical implementation of the concepts has and continues to be adapted to accommodate the changing social environment in the same way that all cultures adapt to changing circumstances in order to survive.