

9 June 2023

Hon Kieran McAnulty
Minister for Local Government

By email: kieran.McAnulty@parliament.govt.nz

I would like to acknowledge the work you are doing to improve the provision and delivery of water services across the Aotearoa New Zealand, and to thank you for recently speaking at the Water New Zealand Stormwater Conference in Tāmaki Makaurau Auckland in May 2023.

Today, I am writing to highlight an issue that was raised by delegates attending the Stormwater Conference, which relates to the definition of Te Mana o te Wai in the Water Services Entities Act 2022 (Act).

Te Mana o te Wai—

(a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under [section 52](#) of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* [sections 4](#), [5](#), and [14](#) of this Act);

~~and~~

(b) applies, for the purposes of this Act, to water (as that term is defined in [section 2\(1\)](#) of the Resource Management Act 1991)

Section 6 of the Act adopts the definition of “water” in the Resource Management Act 1991, which excludes water in pipes, tanks or cisterns. This is likely to have unintended consequences. On the one hand, the proposed Water Services Entities under the Act, and Taumata Arowai and other parties (including the water service entities) with powers, functions and duties under the Water Services Act 2021 are required to give effect to Te Mana o te Wai and on the other hand, the delivery of water services involves pipes, tanks and cisterns.

To improve the provision of water services, and to enable an enhancement of the water environment the regulatory system needs to be clear and unambiguous with its intent.

We need consistent Te Mana o te Wai requirements across stormwater service provision

In towns and cities across Aotearoa many hundreds of kilometres of freshwater streams have been forced into pipes during the early development of urban areas. For the most part such practice is no longer permitted with recognition of the ecological and cultural value of streams. However, the currently piped urban streams have historically received very little protection due to the definition of water in [section 2\(1\)](#) of the Resource Management Act 1991 (“RMA”).

As such many of our underground streams have been managed as ‘drainage assets’ which convey contaminants to downstream receiving environments. As an example, in Wellington City, it is estimated that approximately 95% of urban freshwater streams are now in pipes despite the significant cultural and ecological value they once held.

The maps below illustrate:

- Streams in the Pōneke Wellington City area; and

- Green marked pipes that were open waterways and have been piped over the years.

For a stream particularly in an urban context, it may transition from an open waterway to a culvert to a pipe and back to an open waterway. For an entity that is required to give effect to Te Mana o te Wai this creates a challenging situation of the water being “in” for open waterways and culverts and “out” for pipes.

It is important to remember these piped streams can flow with permanent freshwater and support resilient communities of indigenous fish and invertebrates. They also provide critical (albeit highly compromised) links between the coastal waters and forested headwaters.

Water New Zealand and its members are aware through engagements and consultations across Aotearoa, mana whenua groups and communities have expressed strong desires to see these ‘lost’ waterways respected and protected with long term aspirations to see them returned to the surface where practical.

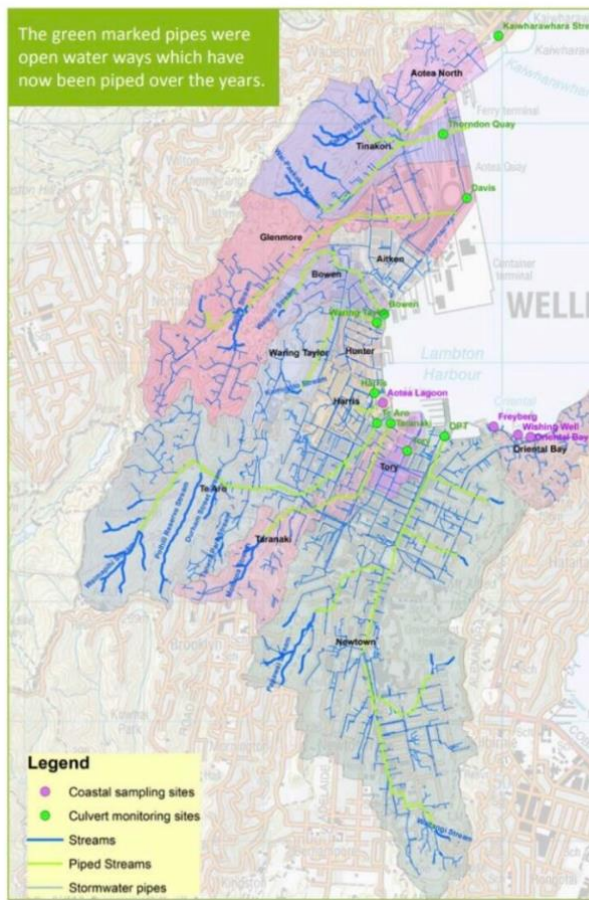


Figure 1: Piped streams in the Wellington CBD



Figure 2: Streams in the Wellington City Area

Having just hosted the Stormwater Conference 2023 in Tāmaki Makaurau (within catchment of the piped [Waihorotiu](#) Stream) there was a desire from delegates to better embed the principles of Te Mana o te Wai into the urban context and to ensure regulation provides a driver to seek improved outcomes for freshwater whether in open or piped streams.

We need consistent Te Mana o te Wai requirements across drinking water supply and wastewater systems

Drinking water supply and wastewater service provision unambiguously involves pipes, tanks and cisterns.

Te Mana o te Wai’s role within integrated water management will evolve. It will impact decisions the Water Services Entities and their communities, both Mana Whenua and Tangata

Tiriti, around for example, what the next water source should be, whether smart meters should play a role in encouraging economically efficient demand management, and the location and nature of treated wastewater discharge.

For entities required to give effect to Te Mana o te Wai this, again, creates a potentially challenging situation of the water being “in” for parts of drinking water supply and wastewater yet “out” when drinking water and wastewater are in pipes. The fact that drinking water networks in Aotearoa experience ~20% leakage rates, and wastewater networks experience infiltration and both wet and dry weather overflows highlights how the definition of Te Mana o te Wai excluding water in pipes, tanks and cisterns is likely to be problematic.

Worsening mauri and mana of waterways during a period of uncertainty

The intent of developing iwi/hapu specific Te Mana o te Wai statements and adopting whole of catchment planning, informed by meaningful mana whenua engagement, should support the future protection of rural and urban waterways (including those in pipes). However, there is a risk of worsening mauri and mana of waterways in the short to medium term.

The uncertainty created by the definition of Te Mana o te Wai as it applies to water and given the nature of water services provision will create ambiguity and could lead to delays in investment. This ambiguity also places unclear boundaries between Water Service Entities and councils in the funding and delivery of Te Mana o te Wai outcomes.

Proposed change

Water New Zealand seeks a change to the definition of Te Mana o te Wai in the Water Services Entities Act 2022, through the Water Services Legislation Bill legislative process.

Water New Zealand **recommends** replacing (b) of the Te Mana o te Wai definition with a modified version of the definition of water from the Resource Management Act.

Te Mana o te Wai—

(a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under [section 52](#) of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* [sections 4](#), [5](#), and [14](#) of this Act); ~~and~~

(b) applies, for the purposes of this Act, to: ~~water (as that term is defined in [section 2\(1\)](#) of the Resource Management Act 1991)~~

(i) water in all its physical forms whether flowing or not and whether over or under the ground; and

(ii) fresh water, coastal water, and geothermal water.

Water New Zealand considers these changes are necessary to protect and enhance the water environment of Aotearoa as expressed in the National Policy Statement on Freshwater Management 2020 (NPS-FM).

In summary, drinking water, wastewater and stormwater are all forms of water, whether enclosed in pipes or daylighted. Ka ora te wai, ka ora te whenua, ka ora ngā tangata. If the water is healthy, the land is healthy, the people are healthy.

I look forward to the opportunity to engage with you further on improving water service provision in Aotearoa in general, or on this matter specifically.

Nga mihi nui | Kind regards

A handwritten signature in black ink, appearing to read "Gillian Blythe". The signature is fluid and cursive, with the first name "Gillian" and the last name "Blythe" clearly distinguishable.

Gillian Blythe
Chief Executive

M: +64 21 388 469

E: gillian.blythe@waternz.org.nz