

BEYOND CONSENTS: WATERCARE'S JOURNEY TO HONOURING TE TIRITI O WAITANGI

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ABSTRACT

Understanding Te Tiriti o Waitangi (Te Tiriti), treaty settlements and settlement mechanisms from a water industry perspective can be both challenging and confronting. The settlement landscape itself is often complex. Iwi at different phases of the settlement process means capacity can be a barrier for participation on significant issues like water.

Historically, consents are the first touch point of engagement with iwi. But we must view this as the beginning and not the end. For Watercare, navigating our place and purpose under Te Tiriti, has seen a shift in the way we do our mahi. Guided by Auckland Council's 'Kia Ora Tāmaki Makaurau' Māori outcomes wellbeing framework, we are on a journey to move beyond the conditions of a consent, to understanding what it means to be a genuine Te Tiriti partner.

This paper explores the steps Watercare has taken to create meaningful partnerships with the 19 mana whenua of Tāmaki Makaurau. We will discuss examples of kawenata (agreements) Watercare has in place with mana whenua partners including Te Kawerau ā Maki and Waikato-Tainui. These kawenata are vehicles for collaboration and we will share insights and learnings into the arrangements Watercare has implemented to support the intent of broader settlement aspirations.

Statutory recognition of Te Tiriti and Te Mana o Te Wai through the proposed water reforms means Watercare will need to pivot in essential aspects of our service delivery arrangements. Much like Water New Zealand's own strategic purpose, 'Ka ora te wai, ka ora te whenua, ka ora ngā tāngata,' Te Mana o Wai recognises the life-supporting capacity of wai and the relationship it has with the environment and our communities.

This paper also outlines the approaches Watercare is taking to build staff capability and knowledge of Te Mana o Te Wai through workshops and training programmes. This includes ways Watercare can better support and resource mana whenua to achieve their vision for Te Mana o Te Wai alongside us, and the development of strategies that demonstrate best practice of Te Mana o Te Wai principles.

KEYWORDS

Te Tiriti o Waitangi, Te Mana o Te Wai, mana whenua partnerships, iwi and hapū, treaty settlements

PRESENTER PROFILE

Te Tuanui Paki (Waikato) is a qualified lawyer and spent 10 years working in various policy roles with a focus on treaty settlements and iwi rights and interests. Prior to joining Watercare in 2022 as a Kaitohutohu Kaupapa Here Mataamua (Senior Policy Advisor), he held Senior Advisor roles to the CEO and Kaiwhakahaere (Chair) for Te Rūnanga o Ngāi Tahu.

Kuiarangi Paki (Waikato) joined Watercare in 2021 as the Kaihautū Matua Rautaki Māori (Senior Lead & Strategic Advisor). With a background in communications and public relations, she spent 15 years working for her iwi at Waikato-Tainui in various management roles within operations, project management and communications. Kui has previously worked for the Department of Conservation and the University of Waikato.

1.0 INTRODUCTION

Te Tiriti o Waitangi – the Treaty of Waitangi was signed on February 6, 1840. As a foundational document in New Zealand’s history, it has formed the basis of relationships between the Crown and Māori. Its importance and relevance to the water industry in New Zealand cannot be understated.

Te Tiriti o Waitangi guarantees Māori the right to "continue to exercise tino rangatiratanga" or "full authority" over their taonga including water. It recognises the rights of Māori to water and the significance it holds both as a taonga (possession) and natural resource. [1]

In recent years, there has been a growing recognition of the importance of Te Tiriti o Waitangi in the water industry. Decisions around water and water use in New Zealand now involve the application of a Māori values lens to a much greater extent. The Government’s water services reform provides the most significant change.

The introduction of the Water Services Entities Act 2022 [2] and the statutory recognition of Te Tiriti o Waitangi and Te Mana o Te Wai means the future of New Zealand’s water industry will depend on our ability to work with Māori to find solutions that puts the needs of water first.

As the country’s largest water utility, Watercare’s understanding and maturity in this space continues to evolve. We recognise that relationships with Māori cannot be formed to simply meet conditions and tick boxes of a consent. Rather, we are trying to shift our thinking and have a real desire to go 'beyond consents', to demonstrate true treaty partnership in action.

2.0 MECHANISMS TO SUPPORT TE TIRITI O WAITANGI

2.1 MANA WHENUA PARTNERS

Mana whenua refers to Māori who have historic and territorial rights over the whenua [3]. These rights acknowledge the ancestral and cultural ties that iwi and

hapū (tribal groups and subgroups) hold with specific areas of land. It is important to note that relationships between iwi are often multifaceted and entail overlapping interests.

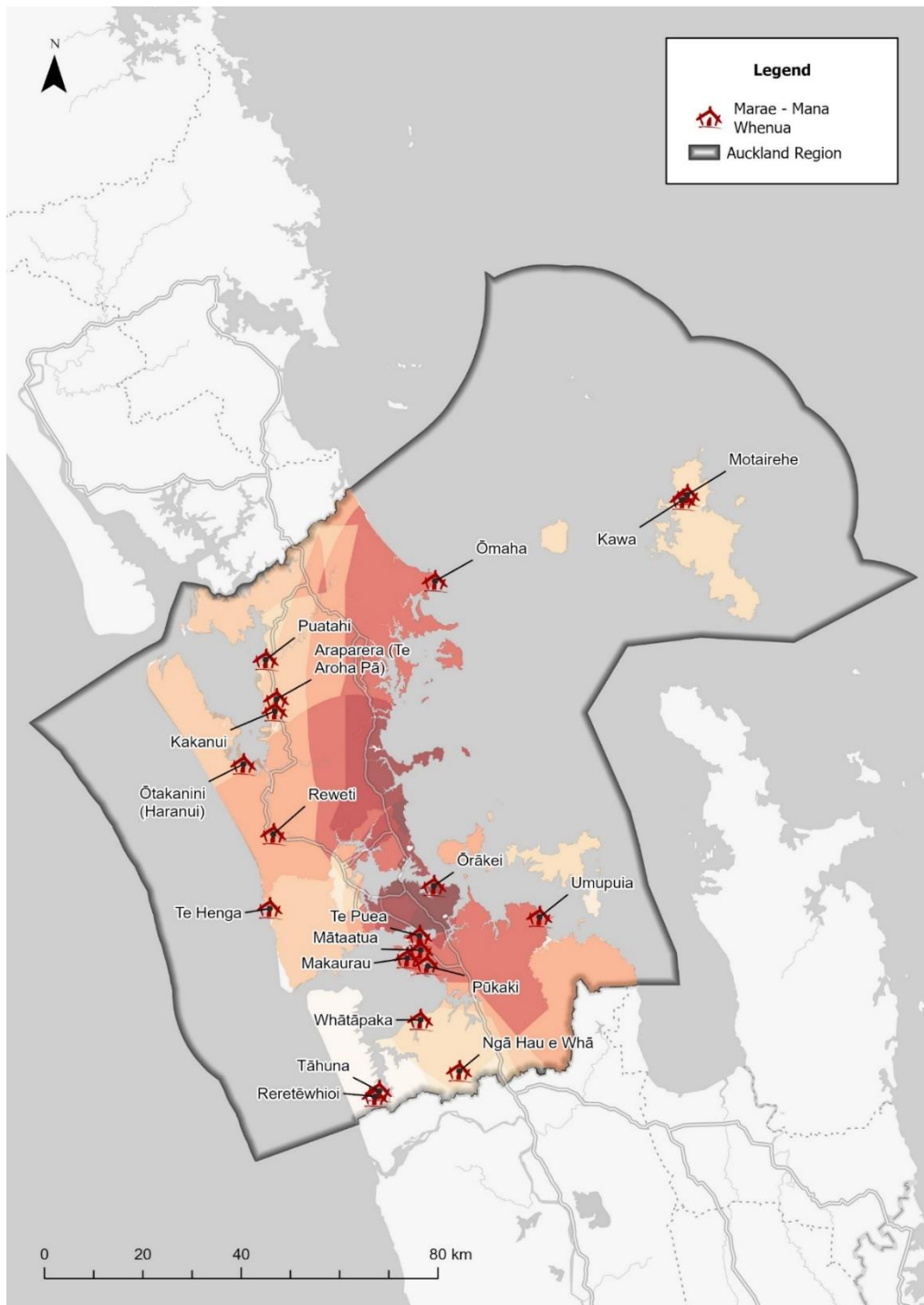


Figure 1: Map of Auckland outlining mana whenua areas of interest.

Within in Tāmaki Makaurau (Auckland), mana whenua interests are represented by 19 iwi tribal authorities. As holders of relationships with both central and local governments, capacity and resourcing limitations are challenges frequently faced by our mana whenua partners. Our expectations and demands for their input must

be balanced with investment from Watercare into building the capability and capacity of iwi and hapū.

TRIBAL GROUP	IWI AND HAPŪ	TRIBAL AUTHORITY
Ngāti Wai	Ngāti Wai	Ngāti Wai Trust Board
	Ngāti Manuhiri	Ngāti Manuhiri Settlement Trust
	Ngāti Rehua	Ngāti Rehua - Ngāti Wai ki Aotea Trust
Ngāti Whātua	Ngāti Whātua	Te Rūnanga o Ngāti Whātua (regional body)
	Te Uri o Hau	Te Uri o Hau Settlement Trust
	Ngāti Whātua o Kaipara	Ngā Maunga Whakahii o Kaipara Trust
	Ngāti Whātua o Ōrākei	Ngāti Whātua Ōrākei Trust
Waiohua –Tāmaki	Te Kawerau a Maki	Te Kawerau Iwi Tribal Authority
	Ngāti Tamaoho	Ngāti Tamaoho Trust
	Te Akitai Waiohua	Te Akitai Waiohua Iwi Authority
	Ngāti Te Ata Waiohua	Te Ara Rangatū o Te Iwi o Ngāti Te Ata Waiohua
	Te Ahiwaru	Makaurau Marae Trustees
	Ngai Tai ki Tāmaki	Ngai Tai Ki Tāmaki Tribal Trust
Marutūahu	Ngāti Paoa	Ngāti Paoa Trust
	Ngāti Whanaunga	Ngāti Whanaunga Incorporated
	Ngāti Maru	Ngāti Maru Rūnanga Incorporated
	Ngāti Tamaterā	Ngāti Tamaterā Settlement Trust
	Te Patukirikiri	Te Patukirikiri Incorporated
Waikato	Waikato	Waikato-Tainui Te Kauhanganui Incorporated

Table 1: Mandated mana whenua as recognised by Auckland Council

2.2 ACHIEVING OUTCOMES FOR MĀORI

Watercare's engagement with mana whenua has conventionally revolved around resource consent and the need to understand the implications our projects might impose upon the wai (water), whenua (land), and wider taiao (environment).

Over the years, Watercare has progressively undertaken efforts to cultivate skills and capacity both internal and external of our business. This pursuit has prompted several pivotal shifts within Watercare's approach:

- In 2012, Watercare established the Mana Whenua Kaitiaki Forum. This forum serves as a non-statutory entity, comprising representatives from the 19 iwi authorities. It stands as a central instrument in the manner by

which we engage iwi and hapū in strategic planning and decision-making processes for developing infrastructure. A similar advisory group of mana whenua representatives, has also been instituted to oversee Watercare's Central Interceptor project.

- The unveiling of Watercare's Māori Outcomes Plan in 2021 signalled our commitment to deliver initiatives that contribute to Māori social, cultural, environmental, and economic wellbeing. Aligned to Auckland Council's *Kia Ora Tāmaki Makaurau* Māori outcomes framework [4], notable accomplishments from our plan include the launch of Watercare's flagship Koiora Māori leadership program for kaimahi Māori, integration of our Kōnehunehu and Kōpatapata reo and tikanga Māori learning modules, and an incremental target of allocating 5% of Watercare's total contract expenditure (both direct and indirect) to Māori pakihi (businesses) by 2025.
- In 2021, Watercare also established Te Rua Whetū, its dedicated Māori Outcomes and Relationships team to help drive and implement its Māori Outcomes Plan. Aware that it needed intrernal expertise to lead this work, the team provide guidance and direction on critical matters relevant to Māori.
- More recently, Watercare also held workshops and presentations for staff and board members on Te Mana o te Wai and the judicial recognition of tikanga in law. The aim was to increase staff capability, and to lift our baseline understanding of these concepts and how they could be applied to decisions in water service delivery.

Adoption of these initiatives and new ways of working have had a definite influence on Watercare's ability to better engage with mana whenua and Māori communities. Above all however, these efforts have initiated a journey for Watercare towards honouring Te Tiriti o Waitangi and furthering our understanding of the significance and importance of wai.

2.3 KAWENATA AND RELATIONSHIP AGREEMENTS

2.3.1 Kawenata – Watercare and Te Kawerau ā Maki

Te Kawerau ā Maki are mana whenua iwi of Nga Rau Pou ā Maki (the Waitākere Ranges) and Te Wao Nui ā Tiriwa (the Waitākere Forest). These areas are considered their tribal heartlands. Te Kawerau ā Maki have rights and interests that stem from whakapapa and tikanga Māori and are articulated in the Te Kawerau ā Maki Deed of Settlement 2014, Te Kawerau ā Maki Claims Settlement Act 2015 and the Waitākere Ranges Heritage Area Act 2008.

Watercare holds leases over and operates five main water storage lakes within the Waitākere Ranges: Upper Huia, Lower Huia, Upper Nihotupu, Lower Nihotupu, and Waitākere. We also maintain a large network of related infrastructure within the Waitākere Ranges, including the Huia, Huia Village and Waitākere water treatment plants. Watercare also owns land in Riverhead forest for water supply purposes.

The public water catchment and supply system within the Waitākere Ranges is also listed as a heritage feature of the Waitākere Ranges heritage area by the Waitākere Ranges Heritage Area Act 2008. Under that Act one of the objectives of

establishing the heritage area is to protect those features of the area that relate to its water catchment and supply functions.

In August 2022, Watercare and Te Kawerau ā Maki Settlement Trust entered into a kawenata (agreement) for the purposes of strengthening its existing relationship and working together in partnership to achieve shared outcomes in the Waitākere Ranges and the Waitākere Forest.

The kawenata was developed and informed by direct engagement with Te Kawerau ā Maki. The kawenata was structured under the following headings and objectives. (Also included are comments on some of the considerations/ideas that were discussed during our engagement):

1. Interests and aspirations: This included understanding what our shared interest and aspirations were?
2. Partnership principles: What were our shared values and principles? Principles for engagement?
3. Roles and Responsibilities: What were the roles and responsibilities of each of the parties? Who was responsible for certain activities?
4. Commitments: What were our agreed outcomes and commitments? How were we going to achieve our shared outcomes, interests, and aspirations? Work programme?
5. General matters: General matters including definitions of statements and terms.

To provide an idea of what some of the interests and aspirations of Te Kawerau ā Maki were, a few examples are recorded below:

- a) To undertake kaitiakitanga (stewardship/guardianship) duties over the Western Water Supply Catchment Area and also the land owned by Watercare at Riverhead, as well as other areas within their rohe;
- b) To undertake manaakitanga (generosity) duties to the people of Auckland through supporting the provision of wai māori (drinking water) from its tribal heartland;
- c) To safeguard the integrity and tapu of the rāhui (restrictions) placed over Te Wao Nui ā Tiriwa that includes the forested area of the Western Water Supply Catchment Area;
- d) To protect and to enhance the mauri of the Western Water Supply Catchment Area; and
- e) To strengthen its partnership with Watercare through co-management of the environmental values of the Western Water Supply Catchment Area; under Te Tiriti ō Waitangi and the Waitākere Ranges Heritage Area Act 2008.

Since signing the kawenata, a key learning has been the emphasis on 'prioritising and investing into the relationship' with the iwi. This approach has been pivotal in fostering Watercare's relationship with Te Kawerau ā Maki. It has allowed Watercare to better understand the histories and cultural significance of the area, discuss shared outcomes but more importantly, to partner and collaborate on several projects and shared outcomes within the Waitākere area, these have included:

- Establishing the Waima Biodiversity Trust, with a dedicated trustee being appointed by Te Kawerau ā Maki;
- Direct input into the preparation and implementation of the Huia Water Treatment Plant Management Plans, including Biodiversity and Kauri Dieback management plans;
- Collaboration with Te Kawerau ā Maki on a number of cultural monitoring tools and mechanisms;
- Opportunities for cultural design or interpretation at existing or new Watercare managed sites or structures; and
- Opportunities for secondments, training, job experience, or procurement of Te Kawerau ā Maki people with Watercare operations within the Waitākere Ranges.

2.3.2 Kawenata – Watercare and Waikato-Tainui

Watercare and Waikato-Tainui have had a longstanding relationship that dates back to the 1990s. There have been several agreements developed over the years between both organisations. A brief history of these agreements is outlined below:

- A Memorandum of Understanding signed in 1998;
- A Deed of Memorandum of Relationship dated November 2009 and re-signed in October 2011;
- An Agreement in Principle signed in 2016; and
- A Kawenata that signed in November 2020. This version is currently being reviewed to ensure it best reflects the evolving nature of our relationship and ongoing aspirations.

Watercare holds a resource consent for the abstraction of water from the Waikato River. Watercare also has resource consents authorising the damming, diversion, and abstraction of water from the headwaters of Mangatangi and Mangataawhiri Streams, which are tributaries of the Waikato River.

Waikato-Tainui has a special relationship with the Waikato River and its tributaries as outlined in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the Waikato River Deed of Settlement between Waikato-Tainui and the Crown dated 17 December 2009 (2009 Deed) and the WAI 30 Statement of Claim to the Waitangi Tribunal.

For Waikato-Tainui, the Waikato River is a single indivisible being that flows from Te Taheke Hukahuka to Te Puuaha o Waikato (the mouth) and includes its waters, banks, and beds (and all minerals under them) and its streams, waterways, tributaries, lakes, aquatic fisheries, vegetation, flood plains, wetlands, islands, springs, water column, airspace, and substratum as well as its metaphysical being.

The restoration and protection of the health and wellbeing of the Waikato River for future generations is the overarching purpose of the settlement contained in the 2009 Deed, and is a core goal for Waikato-Tainui. The relationship with the Waikato River also gives rise to the rights and responsibilities of Waikato-Tainui to protect the mana and mauri of the River and to exercise mana whakahaere (authority) in respect of the River and its resources in accordance with long established tikanga.

The views expressed above and the overarching principle of protecting and advancing the health and wellbeing of the Waikato River is what underpins the relationship between Watercare and Waikato-Tainui. Since signing the Kawenata, we have proactively partnered and worked together on several shared outcomes and projects, these have included:

- Supporting the opening of the Tuakau Water Treatment Plant;
- Establishment of a working group to monitor the progress of our shared outcomes;
- Collaboration between both organisations on alternative solutions to water use i.e., recycled water and other sustainable options;
- Opportunities for economic development, by way of investment or co-investment;
- Opportunities for secondments, training, job experience, or procurement of services within Watercare operations; and
- Research and development opportunities. Looking at co-funding research and development and monitoring programmes focused on the restoration of waterways and improving the overall health and wellbeing of the River.

3.0 TE MANA O TE WAI AS A CATALYST FOR CHANGE

Te Mana o te Wai serves as the interface between the water industry and Māori. It is a concept that provides a korowai, or protective cloak, over all waterbodies in Aotearoa New Zealand. The concept refers to the fundamental importance of water and recognises that protecting the health and wellbeing of water will in turn, protect the health and wellbeing of the wider environment and the communities it services.

Although Te Mana o te Wai is grounded in Te Āo Māori, it is the responsibility of all New Zealanders to uphold and prioritise the health and wellbeing of water. Transformational in nature, it will force us to construct innovative solutions that respond to the ongoing challenges of water and wastewater services.

In that respect, it is the catalyst for true transformational change. Water stands as an interconnected element of the taiao and through Te Mana o te Wai, creates opportunities to foster a deeper appreciation of mātauranga Māori. Many iwi and hapū have their own solutions that prioritises Te Mana o te Wai.

For Watercare we embrace this change and have started the journey to increase staff capacity and capability in this area. But we recognise that our mana whenua partners will play a key role in building this knowledge for the industry and have committed to resourcing them to develop Te Mana o te Wai statements now.

Transitioning to the new Water Service Entities affects both parties, and the responsibility of implementing Te Mana o te Wai must be shared by all.

4.0 CONCLUSIONS

There is still much for Watercare to learn. Our journey to date has not always resulted in success. Te Tiriti o Waitangi and Te Mana o Te Wai will play an integral role in guiding us through this innovative approach to water services. Transformation not transition, is where the value proposition of Māori direction must be amplified.

Our greatest lessons and insights can be summarised as follows: Te Tiriti o Waitangi must be embraced from the very top of the organisation; shifting perspectives from box ticking demands authenticity and lasting change; iwi and hapū are uniquely different, there isn't a one-size-fits-all approach; applying a Māori values lens to every facet of the business will serve to enrich our services; investment in iwi and hapū relationships needs to happen now – think beyond the immediate future to take a generational view of people and water; true partnership begins with understanding and learning; and finally, the first right of water must always go to water.

ACKNOWLEDGEMENTS

Ngā Mana Whenua o Tāmaki Makaurau for their ongoing resilience to protect Te Mana me te Mauri o te Wai.

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