

Meeting: Tarawera Awa Restoration Strategy Group

Meeting Date: 28 February 2023

Presentations and Tabled Document

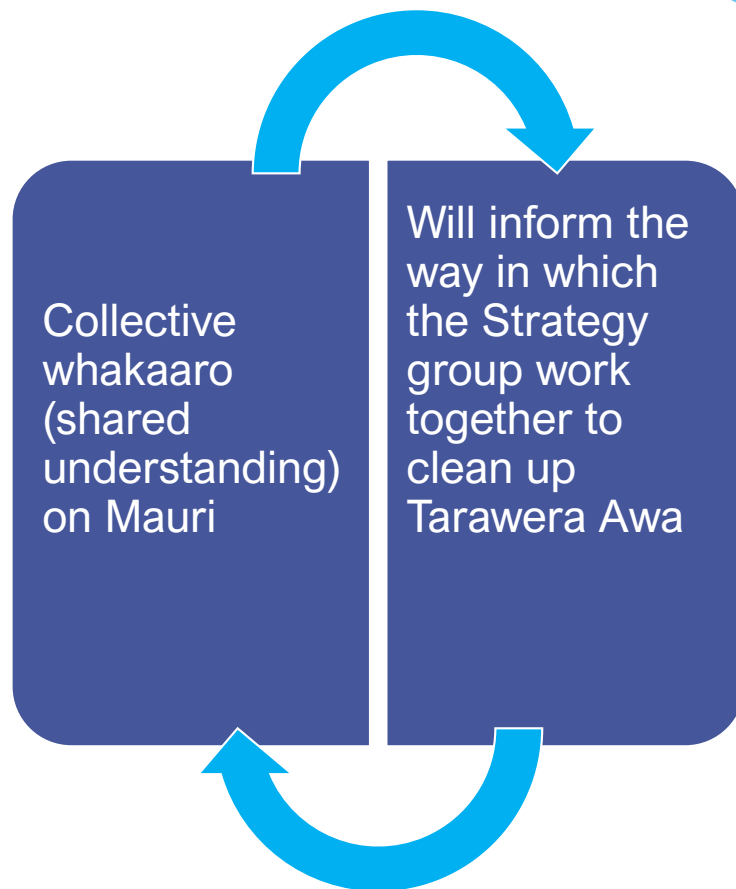
Agenda Item 7.4	A Paper on Mauri o Tarawera Awa - Te Awa o te Atua	
	Presentation - Mauri o Tarawera Awa - Te Awa o te Atua	2
Agenda Item 7.5	Freshwater Policy Programme interface with Tarawera Awa Restoration Group	
	Presentation - Essential Freshwater Policy Programme	12
Agenda Item 8.1	Partner Members: General Discussion of Resource Management Act and Three Waters Reform Submissions	
	Tabled Document 1 - Ngāti Rangitihi Submission to Environment Select Committee - Natural and Built Environment Bill 2022 and Spatial Planning Bill 2022	29



Tarawera Awa Restoration Strategy Group Hui

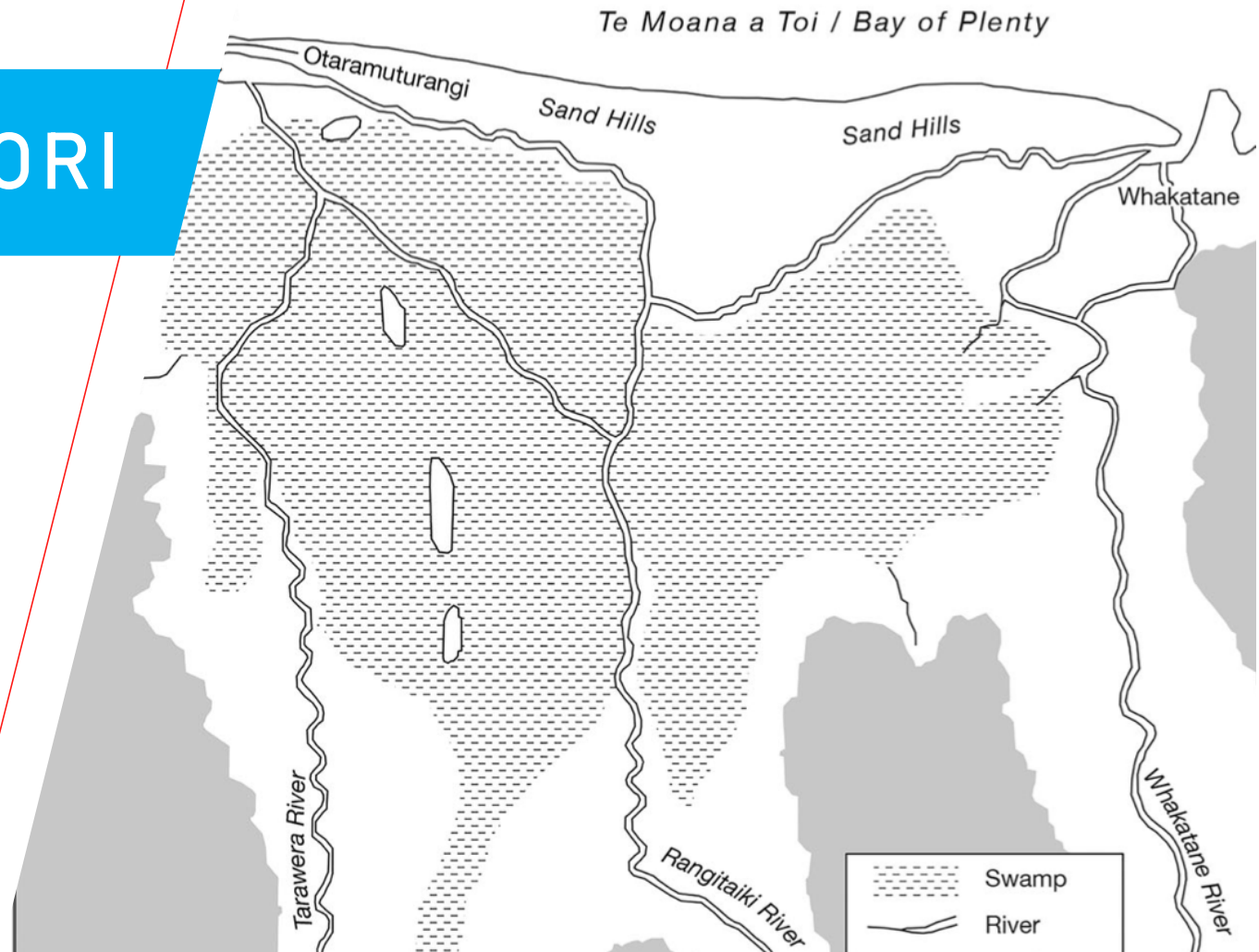
Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

**Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua**



KORERO HITORI

- Te Awa o te Atua- once pure, revered and had productive wai.
- Teeming with wildlife and fish, tuna and inanga which sustained the iwi and locals of the Matatā community

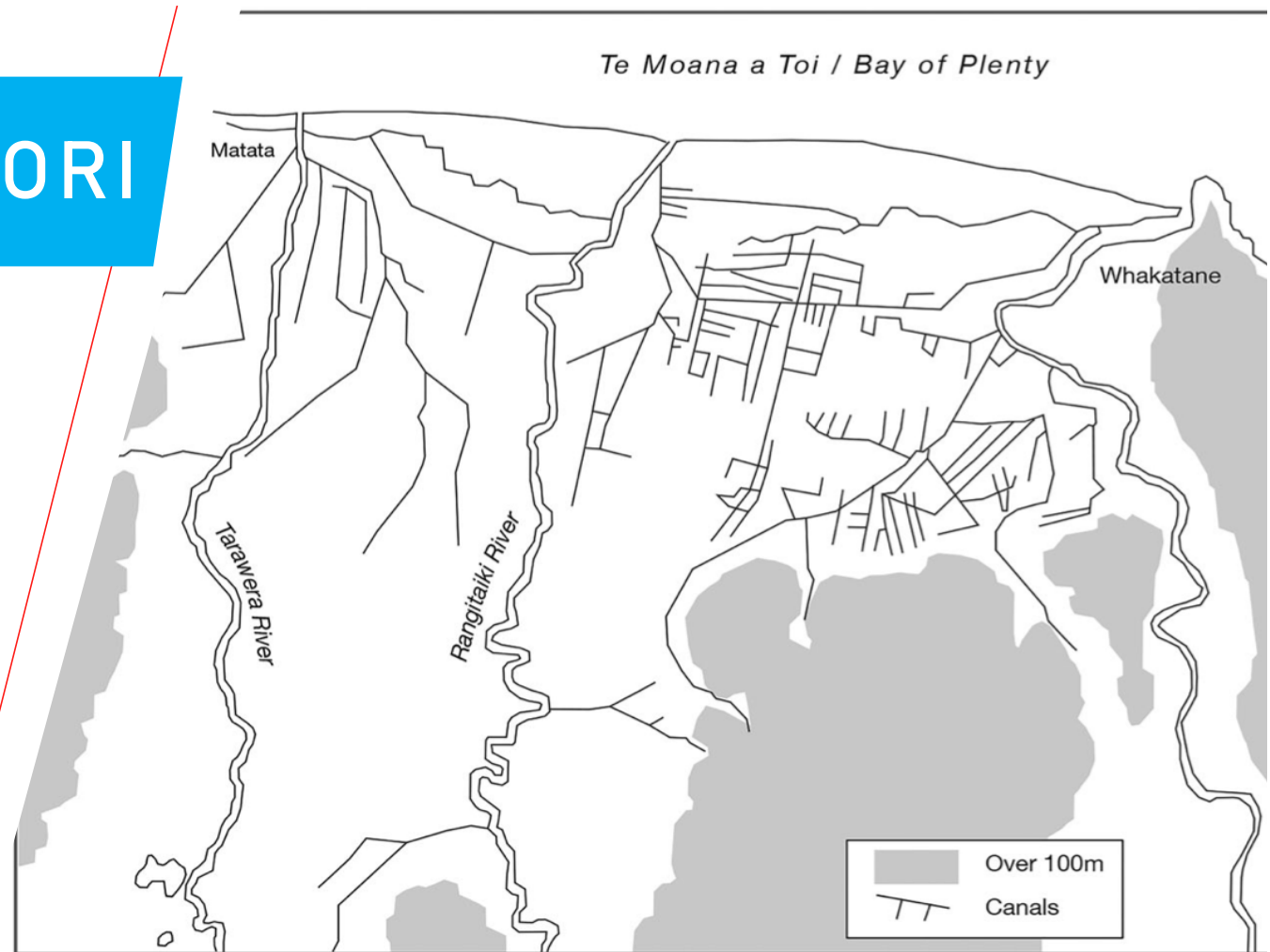


Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

KORERO HITORI

In 1917 it's head was severed as part of the Rangitaiki Plains drainage programme

A Ngāti Rangitihi iwi member stated: *'The lagoon is dead to the community since the awa was re-directed, an environmental catastrophe that's been swept under the carpet'*

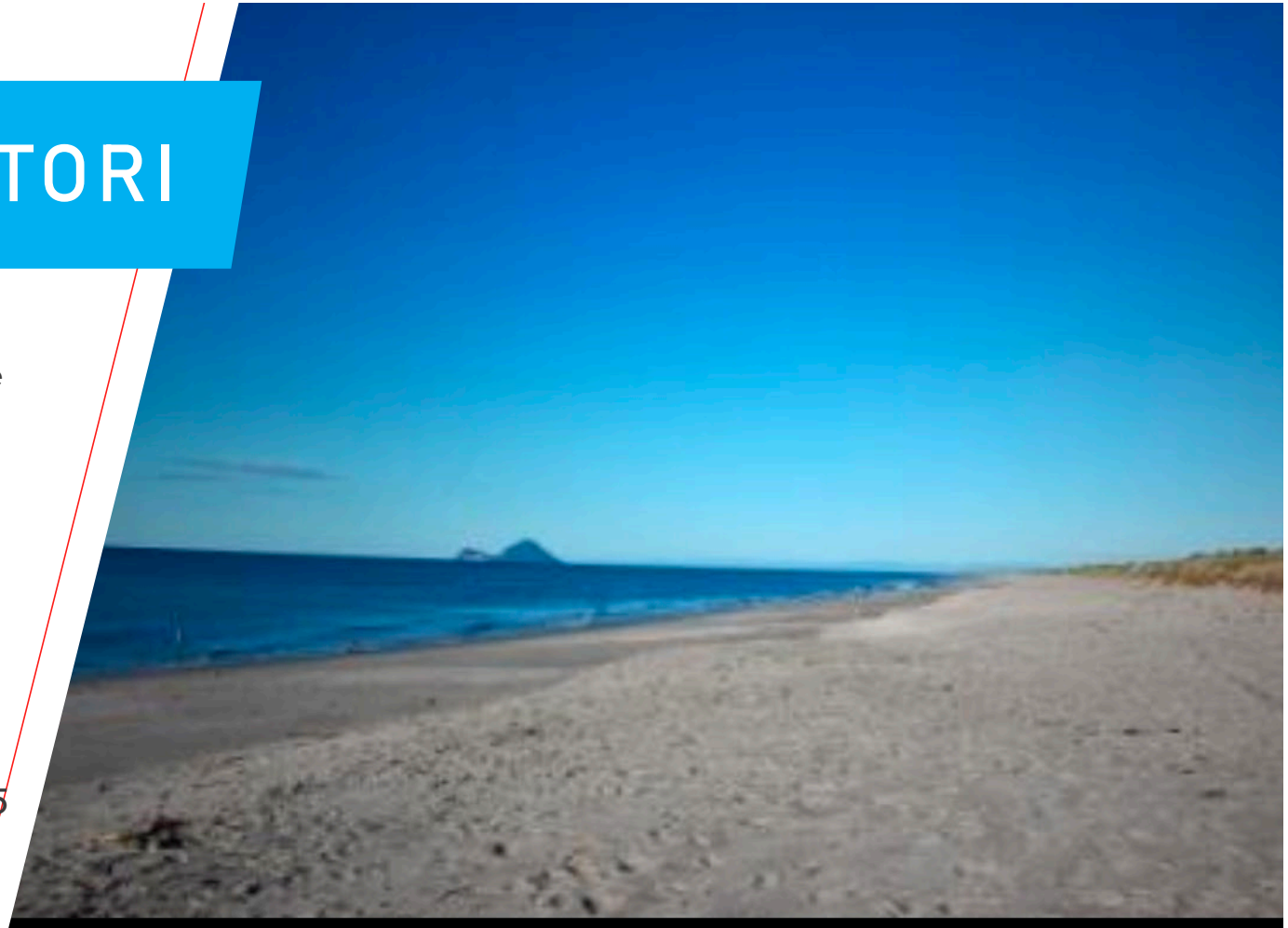


Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

KORERO HITORI

Other events that have devastated Te Awa o Te Atua:

- accumulation of pulp and paper waste from the timber and pulp – Kawerau pulp and paper mill constructed in 1954
- Debris from the 2005 flooding



MAURI O TE WAI

Current State

1. Iwi collective thoughts on 'Te Mauri o Tarawera Awa ki te Awa o Te Atua



Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

MAURI O TE WAI

Future State

2. Iwi collective thoughts on our aspirations for Tarawera Awa ki te Awa o te Atua



Item 7.4, Presentation - Mauri o Tarawera Awa - Te Awa o te Atua



Next Steps

Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

NEXT STEPS

Our main function for the Tarawera Awa Restoration Strategy Group - support, co-ordinate and promote the integrated restoration of the Mauri of the catchment

Our primary duty - create and execute the Tarawera Awa Restoration Strategy Document.



Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua

NEXT STEPS

This includes stopping the Kawerau Pulp and Paper Mill from discharging into the awa, upgrading wastewater infrastructure throughout the catchment to avoid leaching into the awa, and managing farm pumping and water extraction from the awa appropriately.

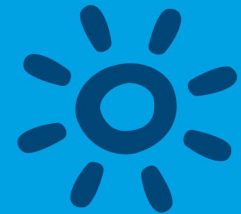


**Item 7.4, Presentation - Mauri o Tarawera Awa -
Te Awa o te Atua**



Tarawera Awa Restoration Strategy Group Essential Freshwater Policy Programme

28 February 2023



1. Introduction





Introduction

- This programme is **significant for the whole region**
 - Most people value freshwater bodies, harbours and estuaries
 - Everybody needs freshwater
- **Large programme of work** for BOPRC
 - Spans 6+ years
 - >50 staff involved to greater or lesser extent
- Some of the **most technical, challenging and substantial decisions Council will make** in this term – late 2023 and 2024
 - Changing policy and rules for freshwater and land management



National direction for freshwater management

- Freshwater management is directed by the RMA and National Policy Statement for Freshwater Management 2020
- RMA directs regional councils to implement the NPSFM by **December 2024** - notification
- Ahead of reforms!
- National Objectives Framework
- Involve tangata whenua
- Increased protection (wetlands, rivers (from loss), outstanding water bodies, indigenous freshwater species)



NPSFM - Te Mana o te Wai

Prioritise:

1st the health and wellbeing of water bodies and freshwater ecosystems

2nd the health needs of people (such as drinking water)

Then the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future

*Mana
Whakahaere*

*Manaaki-
tanga*

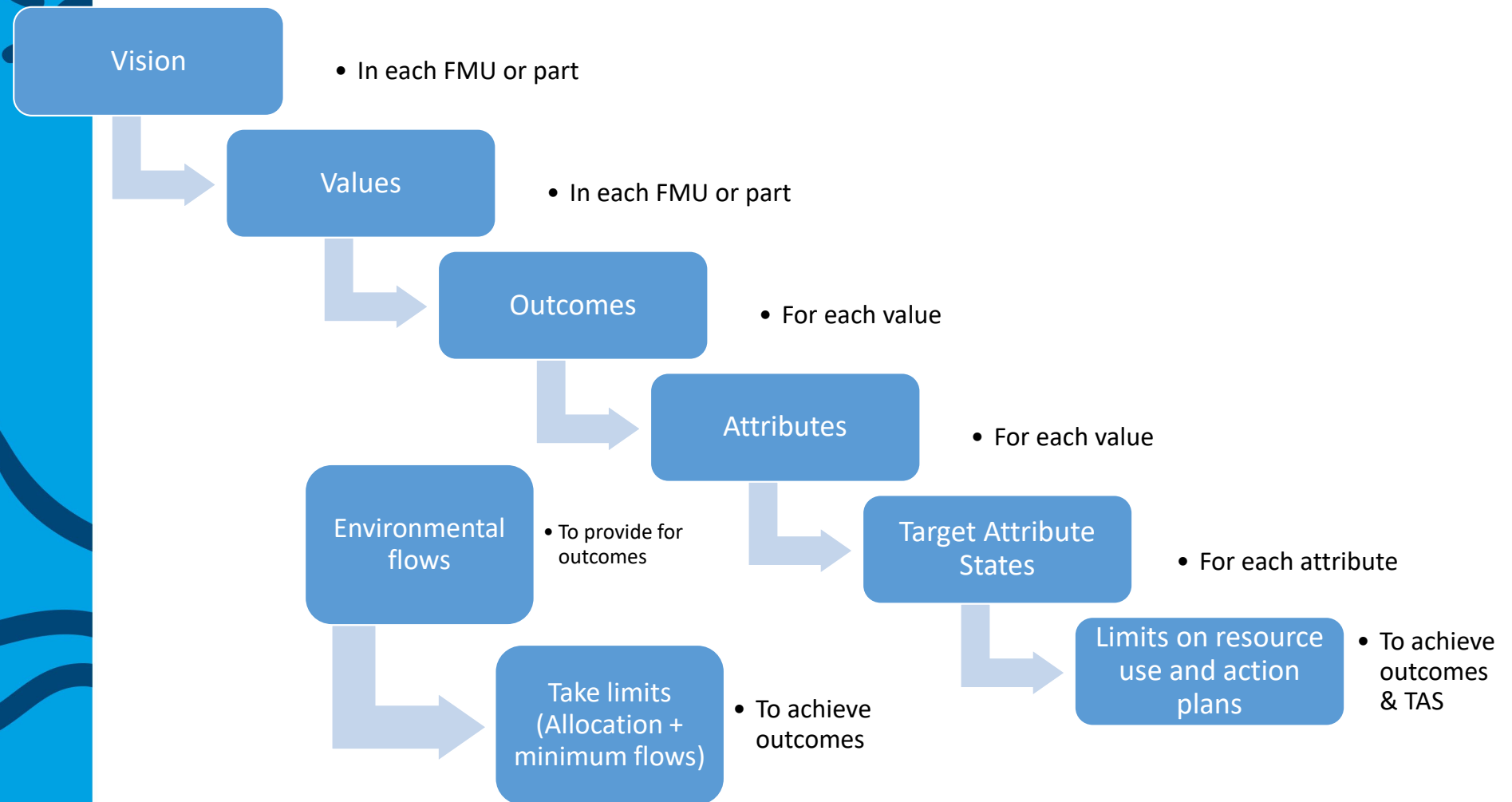
*Kaitiaki -
tanga*

*Govern-
ance*

*Steward-
ship*

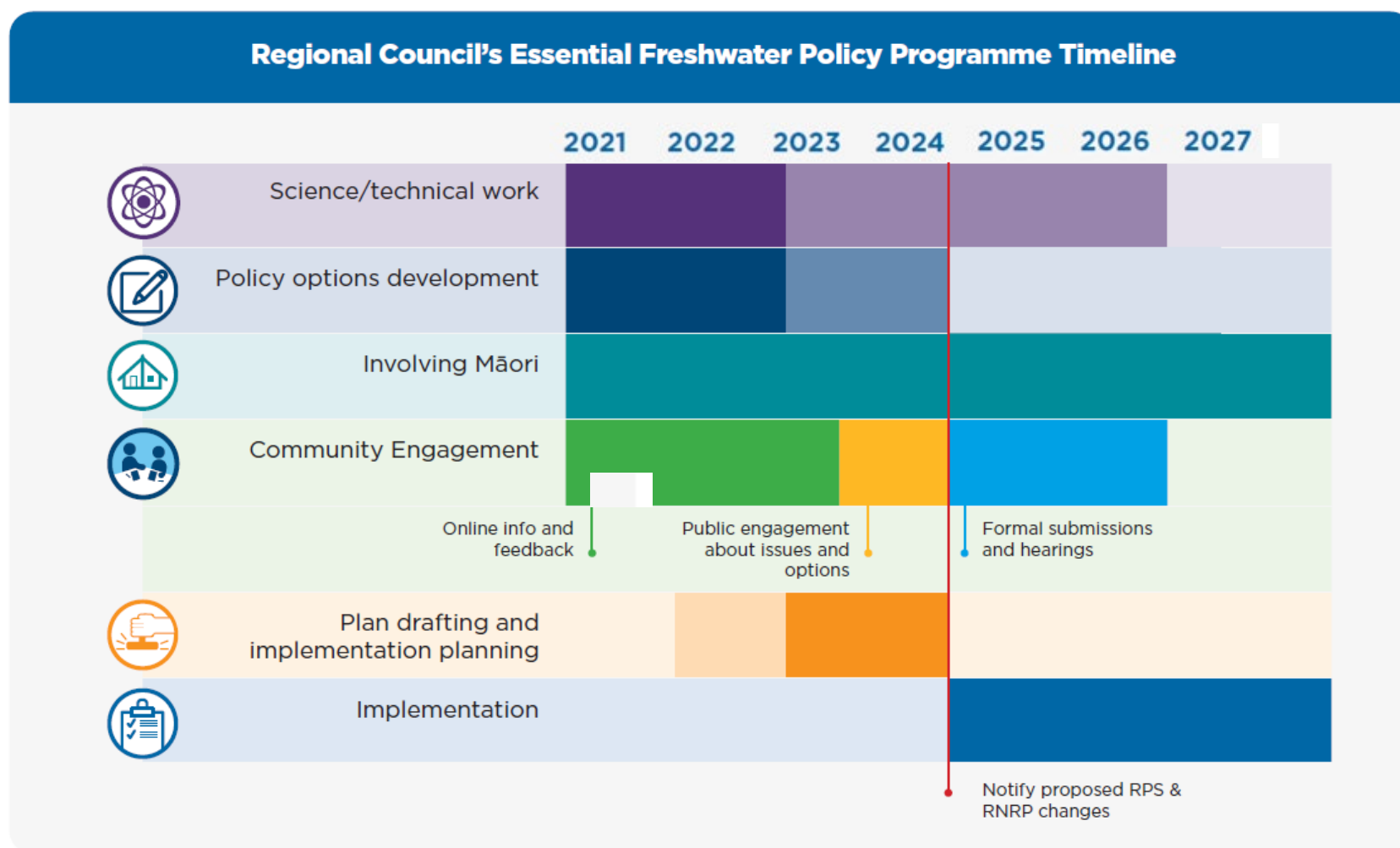
*Care and
respect*

NPSFM - National Objectives Framework



2. Policy Programme





Notes: Dark coloured blocks show when the bulk of work occurs. Light coloured blocks show activity continuing.
 RPS = Regional Policy Statement & RNRP = Regional Natural Resources Plan

Progress to date



- Many tech reports done (state, trend, sources), much still to do (load reductions, effectiveness of options). Uncertainties and limited information in several areas
- Draft options for most region wide chapters, still working on FMUs
- A number of tangata whenua-led freshwater projects. Open invitations to engage. Hui-a-rohe being planned. Known capacity constraints.
- Online public engagements. Rural and Environmental Sector Organisation Forum, TLA Forum workshops, Community engagement calendar.
- Draft plan change text for most region wide material

Tangata Whenua Engagement

- Mix of actions and roles (Te Amorangi, Planning, Community Engagement, Communications, relationship/project managers)
- 2023 Baseline engagement planning
- Supporting current engagement projects/relationships, assessing new initiatives
- Ongoing open invitation
- Capacity projects (MFE/LTP projects)....
- Exploring future ready planning responses – “portals”

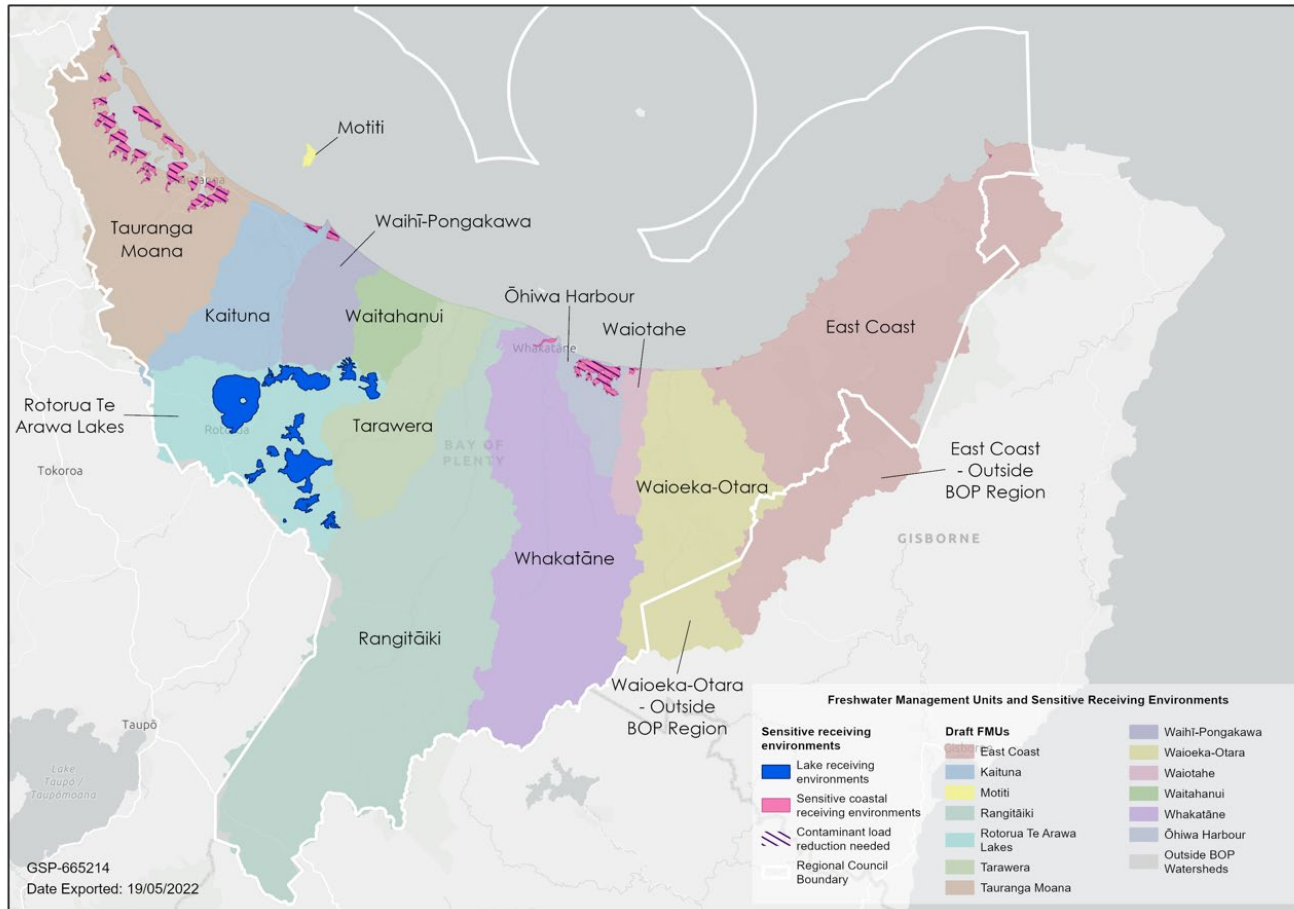
Te Mana o te Wai Projects

- Tūhourangi Taiao Wānanga Series
- Te Mana o Te Wai - Te Arawa Primary Sector
- Tauranga Moana Wai Māori (MfE)
- Te Papa Ahurewa
- Wai Ora Mātaatua
- Te Au o Te Wai (MfE)
- Te Wahapu o Waihi (MfE)
- Ngāti Whakaue Iwi Management Plan

Projects being explored

- Cultural flows Rotorua water supply
- Te Tawera Hapū o te Wai
- Wairoa River Strategy –

FMUs and sensitive receiving environments





Indication of water quality issues in FMUs

1. Estuary, harbour and lake ecological health
2. Lowland modified rivers in drained, pumped, intensively farmed landscapes

FMUs	Indicative relative scale of change needed Due to Nitrogen, Phosphorus, Sediment and/or <i>E.coli</i>
Kaituna, Waihi Estuary, Lakes Rotorua, Rotoehu, Rotoiti and Okaro	H
Tauranga, Lakes Rotokakahi, Rerewhakaaitu and Okareka, Whakatane, Rangitaiki, Ohiwa, Waiotahe, Waioeka	M
Lakes Rotoma, Tarawera, Tikitapu, Okataina and Rotomahana, Waitahanui, Motiti, Tarawera, East Coast	L



Indication of the scale of change

FMU	WATER QUALITY*	GROUND WATER QUANTITY	SURFACE WATER QUANTITY
East Coast	Small	Moderate	Moderate
Kaituna	High	Small	Small
Motiti	Small	Moderate	Small
Ōhiwa Harbour	High	Small	Small
Rangitāiki	Small	Small	High
Rotorua Te Arawa Lakes	High	Small	Small
Tarawera	Moderate	Small	Small
Tauranga Moana	High	Moderate	Moderate
Waihi Estuary	High	Small	Moderate
Waioeka-Ōtara	Small	Small	Small
Waiōtahe	High	Small	Small
Waitahanui	Small	Small	Moderate
Whakatāne	Small	Small	Small

*For at least one key contaminant

KEY: Indicative scale of change needed to improve water quality, or likely water quantity constraint.

Small Moderate High



3. Connections





The Tarawera and the NPSFM programme

- Current rules - *Operative Regional Plan for the Tarawera River Catchment Plan*
- Statutory Acknowledgements, Iwi Management Plans, cultural impact assessments.....
- Tarawera Awa Restoration Strategy Document to come
- **But** NPSFM 2024 Deadline fixed by legislation



The Tarawera and the NPSFM programme #2

- Both processes looking at similar things
- Mana of the Strategy Document and Group's process to develop need to be respected
- Challenge is how both processes can be aligned/connected to ensure the best outcome for the Tarawera awa

Relationships, engagement, communication

Item 7.5, Presentation - Essential Freshwater Policy Programme

QUESTIONS?

WHO? WHAT? WHERE? WHEN? HOW? Why?

Submission of Ngāti Rangitihi on the Natural and Built Environment Bill 2022 and the Spatial Planning Bill 2022.

Introduction

1. Te Mana o Ngāti Rangitihi Trust, the post-settlement governance entity representing Ngāti Rangitihi, wishes to submit the following on the Natural and Built Environment Bill and Spatial Planning Bill. The following is also of relevance to the Water Services Legislation Bill.
2. In summary, Ngāti Rangitihi submit that:
 - (a) The Tarawera River is a taonga tuku iho to Ngāti Rangitihi.
 - (b) The Crown has acknowledged that it breached Te Tiriti o Waitangi by permitting the Tarawera River to become the most polluted river in Aotearoa (the “black drain”).
 - (c) The Tarawera Awa Treaty settlement redress (outlined below) is designed for the purpose of restoring the mauri of Tarawera River.
 - (d) The NBE Bill introduces a new resource management regime that does not provide for Ngāti Rangitihi’s Treaty settlement redress.
 - (e) Although the Crown has undertaken to protect and preserve Ngāti Rangitihi’s Treaty settlement redress, the Bill as currently drafted does not adequately do so.
 - (f) The Crown ought not to proceed with the Bill until it has worked in partnership with Ngāti Rangitihi to agree the bespoke legislation that will be put in place to give effect to Ngāti Rangitihi’s legal and te Tiriti rights.

Crown breaches of Te Tiriti o Waitangi

The Ngāti Rangitihi Claims Settlement Act 2022 [the Settlement Act] records the Crown acknowledgement that;¹

the Tarawera River and its tributaries are taonga of great spiritual and cultural importance to Ngāti Rangitihi and once acted as a major trade route and abundant source of customary resources for them. The river conveys the mana of the senior lines of the iwi; and

it promoted legislation in 1954 that minimised regulatory oversight of the Tasman Pulp and Paper Company’s disposal of industrial effluent into the Tarawera River. For many years the Crown did not effectively monitor the harm being done to the river by this pollution. The Crown became aware of the pollution by 1974 at the latest, but failed to take reasonable steps to protect the river from harm until the

¹ Ngāti Rangitihi Claims Settlement Act, s 9(10).

1980s, despite the existence of alternative effluent disposal schemes to mitigate against pollution; and

the pollution of the river has been an ongoing source of distress and grievance to Ngāti Rangitihi; and

its failure until 1986 to begin applying standard statutory protections to the river caused immense harm to the Tarawera River and was a breach of te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

The Settlement Act further records the Crown's apology for its historical breaches of te Tiriti regarding the Tarawera River:²

The Crown makes the following apology to Ngāti Rangitihi, to your tūpuna and to your mokopuna, and recognises your arduous journey in pursuit of justice. This apology is long overdue.

The Crown is profoundly sorry for the many hardships and tribulations Ngāti Rangitihi have endured, and unreservedly apologises for its failure to fulfil its obligations to you under the Treaty of Waitangi.

...

The Crown's failure to protect the Tarawera River, a taonga of immense economic, cultural, and spiritual significance to Ngāti Rangitihi, left the river defiled, degraded and polluted. The Crown's acquisition of Ngāti Rangitihi lands combined with environmental damage has had a devastating social and economic impact on Ngāti Rangitihi, undermined your cultural hauora and left you feeling as strangers in your own rohe. For this the Crown apologises.

It is the Crown's wish that through this settlement it can restore its sullied honour and atone for the past injustices it has inflicted upon Ngāti Rangitihi. The Crown pays tribute to your proven loyalty, including your long and honourable record of military service in many countries and your resilience in the face of great adversity.

The Crown hopes this settlement will be a starting point rather than an end, and will signal the beginning of a new, strengthened relationship between Ngāti Rangitihi and the Crown based on co-operation, mutual trust and respect for the Treaty of Waitangi.

Treaty settlement redress concerning Tarawera River restoration

3. The restoration of the mauri of the Tarawera catchment is of fundamental importance to Ngāti Rangitihi. The restoration of the mauri of the awa will serve the

² Ngāti Rangitihi Claims Settlement Act, s 10.

future aspirations of the iwi to obtain kai from the awa, observe the return of flora and taonga species, to swim in the awa without fear of sickness and to ensure that their mokopuna will inherit a healthy awa.

4. The Settlement Act provides for the establishment of the Tarawera Awa Restoration Strategy Group [the Strategy Group] as part of the settlement of Ngāti Rangitihi's historical claims.
5. The purpose of the Strategy Group is to support, co-ordinate and promote the integrated restoration of the mauri of the catchment. Their key function is to develop and implement the Tarawera Awa Restoration Strategy Document [the Strategy Document].
6. The Strategy Group is made up of 8 representatives:
 - a. One representative from each of the four iwi who have interests in the awa – Ngāti Rangitihi, Ngāti Awa, Ngāti Māhino and Tūwharetoa ki Kawerau; and
 - b. one representative from each of the four relevant local authorities - Bay of Plenty Regional Council, Kawerau District Council, Rotorua Lakes District Council and the Whakatāne District Council.
7. The Strategy Group and associated Strategy Document is a fundamental mechanism for the restoration of the mauri of the awa. Critical actions to restore the awa will include the upgrade of wastewater infrastructure across the catchment to prevent leaching into the awa, an end to discharging from the Kawerau Pulp and Paper Mill into the awa and the appropriate management of agricultural pumping and water extraction from the awa. These are key priorities for Ngāti Rangitihi in the restoration process.

Protecting the integrity of the Settlement Act arrangements under the proposed resource management regime

8. Ngāti Rangitihi has fundamental concerns about the Crown's proposed resource management and water infrastructure reforms, regarding their ability to pursue the restoration of the mauri of the awa.
9. In November 2022, Ngāti Rangitihi received a formal letter of commitment from the Crown undertaking that the integrity of their Treaty settlement arrangements would be protected and transferred into the new resource management framework (**annexed**).
10. Ngāti Rangitihi considers that bespoke legislative arrangements must be put in place to preserve their rights under the Settlement Act in these reforms. This is particularly so to ensure that the Strategy Group mechanism is preserved and allowed to operate to the full intent and spirit of the Settlement Act.

Deficiencies in the NBE and SPA Bills

11. Ngāti Rangitihi considers that the NBE and SPA Bills as currently drafted do not adequately ensure that bespoke legislative arrangements will be put in place. Schedule 2 of the respective Bills provides for the Crown to use best endeavours to amend Treaty settlement legislation within 18 months, following appropriate engagement with relevant iwi to ensure the integrity of settlement legislation is upheld.
12. However, as the principle of Parliamentary supremacy currently operates, Parliament cannot pass legislation binding a future Parliament to introduce the amendments. A commitment to use 'best endeavours' to pass the amendments is therefore of no real legal substance and demonstrates by definition that the Bills currently provide insufficient protection of Ngāti Rangitihi's rights.
13. The Crown has a te Tiriti obligation to work in partnership with Ngāti Rangitihi to ensure their te Tiriti and legal rights under the Settlement Act are given effect to in the new regime. This needs to occur **before** the Crown proceeds any further with the legislative process.
14. In Ngāti Rangitihi's view, upholding the integrity of their settlement arrangements will likely include the need to amend the Settlement Act but will also need to include specific provision in the NBE and SPA Bills to ensure appropriate transferal of the Strategy Group mechanism to its full effect.

Further In-depth Analysis Required

15. Ngāti Rangitihi also note that the exact nature of the necessary bespoke arrangements that would be required is currently unclear. In-depth analysis and further negotiation between te Tiriti partners is required to determine how Ngāti Rangitihi's settlement arrangements can be given effect to under the proposed reforms.

The Importance and Influence of Current Arrangements

16. Of particular significance, the Settlement Act currently provides for the Strategy Document to be recognised and provided for in the preparation of local planning documents where to do so is relevant and consistent with the purpose of the Resource Management Act 1991 [RMA].
17. The composition of the Strategy Group including representatives from relevant local authorities is also significant. It provides a direct point of engagement with the local authorities who are currently responsible for the preparation of local planning documents and for resource consenting. The Settlement Act also provides for other interactions between rights established under the Act and the RMA.
18. These Settlement Act arrangements are therefore a powerful mechanism for Ngāti Rangitihi and their neighbours to progress the vision of the awa restoration, in partnership with the Crown. Pursuing the restoration of the mauri of the awa will

necessarily involve input into the planning framework and particularly, to resource consenting processes to prevent ongoing discharging into the awa, as noted above.

19. However, the proposed resource management reforms will fundamentally alter the planning framework and the resource consenting process, through the creation of new entities and the shifting of powers, functions and duties across those entities.
20. Consequently, significant work is required to determine how the intent and influence of the Strategy Group can be maintained under the new regime to an equivalent level.

Proposed Regional Planning Committees

21. In particular, the relationship between the proposed Regional Planning Committees [the Committees] and the Strategy Group is undefined in the NBE Bill. This is despite the significant power the Committees will have in resource management planning.
22. Further, there is no guarantee that Ngāti Rangitihi's interests will be directly represented on the Committee. In fact, other Treaty settlement arrangements have the potential to significantly impact how all relevant iwi and hapū voices are represented on the Committees. This was recognised by the Waitangi Tribunal in their interim report on the issue.³ As the Tribunal explicitly noted, it therefore cannot be said that the Committee proposal is Treaty compliant.
23. This situation further undermines Ngāti Rangitihi's legal and te Tiriti rights in relation to the Committees. Adequate protection for those rights must be determined before the passage of the Bill.

Water Infrastructure Reforms

24. Similar issues arise from the creation of a new entities to manage water infrastructure under the Water Services Entities Act 2022 and the Water Services Legislation Bill. A significant priority for Ngāti Rangitihi is addressing wastewater infrastructure and its impacts on the awa. The power shift to the new entity will dilute the relationship between the Strategy Group and the local authorities previously responsible for water infrastructure. The failure to address this dilution under the relevant Bills is a breach of Ngāti Rangitihi's legal and te Tiriti rights.

Insufficient Timeframes

25. Ngāti Rangitihi considers that the timeframes adopted in passing the resource management and water reform legislation are grossly insufficient to allow Ngāti Rangitihi to fully engage with the Crown as te Tiriti partners in these proposals.

³ Waitangi Tribunal *The Interim Report on Māori Appointments to Regional Planning Committees* (Wai 2358, 2022) at 87 and 110.

Comprehensive engagement with Ngāti Rangitihi to determine the way forward should have occurred prior to the introduction of any reforming legislation.

26. The passage of the Bills should be paused and the Crown must actively engage with Ngāti Rangitihi to determine how their settlement arrangements and te Tiriti rights will be upheld.

Conclusion

27. The Tarawera awa is a taonga tuku iho to Ngāti Rangitihi. The Crown has acknowledged and apologised for its breaches of te Tiriti o Waitangi that allowed the awa to become the most polluted river in New Zealand. The Crown has provided redress under the Settlement Act to support the restoration of the mauri of the awa.
28. Ngāti Rangitihi acknowledges the Crown's commitment to protecting the integrity of their Treaty settlement arrangements in the proposed resource management reforms. However, Ngāti Rangitihi considers that the current proposals are deficient to ensure that protection.
29. The legislative provisions requiring the Crown to use best endeavours to amend the NBE and SPA Bills provide no legal guarantee that Ngāti Rangitihi's rights under te Tiriti and the Settlement Act will be upheld in the reforms.
30. Proceeding with the Bills in their current form will breach the Crown's te Tiriti obligations to act in partnership with Ngāti Rangitihi and to actively protect Ngāti Rangitihi's rights and interests. It will undermine the integrity of the Crown's apology to Ngāti Rangitihi and the redress already agreed in settlement of the Crown's historical breaches.
31. The legislative process ought to be delayed and further time provided for full analysis and engagement between Ngāti Rangitihi and the Crown in the development of bespoke legislation to uphold Ngāti Rangitihi's legal and te Tiriti rights.