

Rangitāiki River Forum

Items Circulated under Separate Cover for the:

Rangitāiki River Forum Meeting to be held in the
Reception Lounge, Edgecumbe War Memorial Hall,
Kauri Street, Edgecumbe on:

Friday, 6 September 2019 commencing at 10.00 am

Maramena Vercoe
Chairperson
Rangitāiki River Forum

4 September 2019

The Rangitāiki River Forum is a permanent joint committee made up of representatives from Ngāti Whare, Ngāti Manawa, Ngāti Awa, Ngāti Tūwharetoa, Te Kōpere o te iwi o Hineuru, Tūhoe Te Uru Taumata as well as councillors from Bay of Plenty Regional Council, Whakatāne District Council and Taupō District Council.

Items circulated under separate cover

Agenda Item 9 - Briefing Note: Fonterra Limited Presentation Edgecumbe Discharges to the Rangitaiki River	15
Agenda Item 11.2 - Legal Review File Note of the Forum's Vision and Mission - Te Mana o Te Wai	19
Agenda item 11.2 - Background Information: Chair's Report: Haerenga Whakamua - Our journey forward - 7 June 2019	21

Meeting with Rangitāiki River Forum – 6 September 2019

Briefing Note: Fonterra Edgecumbe Site – Discharges to the Rangitāiki River

Purpose of Meeting

Fonterra has requested a meeting with the Rangitāiki River Forum to provide an update on the implementation of its Wastewater and Stormwater Management Strategy and the timing for lodgement of an Updated Assessment of Environmental Effects supporting its resource consent application for ongoing discharges to the Rangitāiki River.

Edgecumbe Site

Fonterra Limited (Fonterra) owns and operates the Edgecumbe Dairy Manufacturing Site and an associated distillery located at 520 Awakeri Road, Edgecumbe. Low strength dairy factory wastewater, cooling water and stormwater are discharged to the Rangitāiki River as part of the operation of the Edgecumbe site. Stormwater is also discharged to the East Bank Road drain which flows into Reids Canal and which, in turn, flows into the Rangitāiki River at Thornton.

Current Resource Consents and Application

The current resource consents authorising the various discharges (02-4211, 02-4212, and 02-4606) expired in June and July 2010. Fonterra lodged applications for replacement consents in December 2009 and, pursuant to s124 of the Resource Management Act 1991, has been operating in accordance with those earlier consents pending determination of the current applications.

Fonterra's application to BOPRC for a new resource consent (covering all its discharges to the Rangitāiki River) was publicly notified and seven submissions were received as follows.

Submitter	Position	Key Issues Raised
Department of Conservation	Neutral	Concerns include effects on indigenous fish, and the need for ecological monitoring.
Whakatane District Council Iwi Liaison Standing Committee	Neutral	Wants consent term of 10 years, and future consultation with Ngāti Manawa and Ngāti Whare.
Ngāti Tūwharetoa	Oppose	Concerns include lack of cultural impact assessment, impact on spiritual connection, cumulative effects on river (i.e. temperature and contaminants), and the need for consultation.
Ngāti Awa	Not stated	Concerns include heat effects of discharge on customary kai awa, cumulative effects on river, cultural effects, and the need for consultation.
Barry Marshall	Oppose	Concerns include adverse effects on receiving waters, including foam, pH, and nuisance biological growths.
Murray Langdon	Oppose	Concerns include water quality for stock, when Fonterra's discharge is considered in conjunction with TrustPower's proposal to reduce river flow.

Submitter	Position	Key Issues Raised
TrustPower Limited	Support	The application has not had sufficient regard to the constraints within which the Matahina Hydro Electric Scheme operates or TrustPower's application to renew consents for the Scheme, including that aspect which seeks consent to a proposed new operating regime.

Since notification the application has been 'on hold'. This is because:

- The Environment Court directed that TrustPower's applications relating to the on-going operation of the Matahina Hydro Electric Power Scheme, which is located on the Rangitāiki River upstream of the Edgecumbe site, be processed by BOPRC before Fonterra's application;
- The need for a comprehensive hydrology report to be completed (following the granting of TrustPower's consents) to understand the flow regimes in the Rangitāiki River as a result of TrustPower's "Modified Operating Regime" (MOR);
- Fonterra also completed a full review of the Wastewater and Stormwater Management Strategy for the Edgecumbe site (and then embarked on implementing the first two stages of that strategy – discussed below); and
- Fonterra needed to re-assess the effects of Fonterra's proposed discharges on the Rangitāiki River in relation to both TrustPower's MOR and Fonterra's new Wastewater and Stormwater Management Strategy.

Changed Policy and Regulatory Environment

Since Fonterra's application was lodged, there have been a number of significant changes to the regulatory environment as a result of new statutory instruments being prepared under the RMA and the formation of the Rangitāiki River Forum (including the preparation of Te Ara Whānui o Rangitāiki - Pathways of the Rangitāiki). The proposed discharges need to be, and have been, assessed against the more recent policy and planning documents to determine their appropriateness against the current RMA policy framework. This updated assessment has been provided in an Updated Assessment of Environmental Effects which is shortly to be lodged with BOPRC.

Proposed Wastewater and Stormwater Management Strategy

Fonterra is advancing a Wastewater and Stormwater Management Strategy for the Edgecumbe site that will ensure a sustainable and integrated wastewater treatment solution with significantly reduced environmental effects to both the Rangitāiki River and cumulatively to the Rangitāiki catchment as a whole.

The proposed strategy options were canvassed with iwi in 2016, and including a meeting with the Rangitāiki River Forum, who reinforced the continued option of discharge to land and discharge of a treated wastewater to the Rangitāiki River.

The strategy is being implemented as a three-stage approach to improvements in relation to environmental performance.

Stage 1, completed in 2017, included:

- Commissioning of a river discharge de-aeration tank to avoid foams and reduce pH variability; and
- A complete review of the High Strength Waste Irrigation System and implementation of measures to ensure proof of placement (using GPS irrigator tracking) and fail-safe operational systems.

Stage 2, which was referred to as 'Project Picasso' costing \$56M and completed in 2018, involved:

- A 200% increase in irrigation land area from 104 ha to > 300 ha to enable the following:
 - A 47% reduction in nitrogen loading from 2010 limits; and
 - Diversion of up to 2,000 m³/day of wastewater from the river;
- Upgrade of the spray irrigation system (including construction of wet-weather storage tanks – 8 million litres capacity); and
- A comprehensive upgrade of the Edgecumbe site stormwater management system.

Stage 3, to be implemented by 1 July 2026, involves the construction and commissioning of a Biological Wastewater Treatment Plant (or alternative technology) to achieve significant contaminant reduction in any dairy factory wastewater discharged to the Rangitāiki River.

Following the commissioning of a Biological Wastewater Treatment Plant (or alternative technology) the following operating regime is proposed:

- The discharge of all high and medium strength dairy factory wastewater to land via irrigation is the preferred option with the recycling of nutrients for pasture growth, thus replacing alternative fertiliser usage.
- An integrated approach of sustainable land management for wastewater treatment with up to 5,200 cubic metres of dairy factory wastewater per day.
- When the discharge of dairy factory wastewater to land is not sustainable, for example due to soil moisture / saturation and climatic events, it is proposed that the wastewater storage option is first utilised and only after that has been exhausted will irrigation wastewater be fully treated and discharged to the Rangitāiki River.
- From 1 July 2026, no untreated wastewater will be discharged to the Rangitāiki River. Fonterra will invest in a Biological Wastewater Treatment Plant (or alternative technology) to treat the wastewater.
- The quality of that wastewater will be significantly enhanced (including a significant reduction in the mass load of contaminants discharged).

Assessment of Environmental Effects

The Updated Assessment of Environmental Effects concludes that Stage 3 will significantly improve the quality of the dairy factory wastewater discharged to the Rangitāiki River. The extent of improvement of Stage 3 is shown below, together with the improvements that Fonterra has already made to the quality of the wastewater when compared against the current consent conditions (i.e. “current limit”).

Parameter	Unit	Current Limit	Actual Discharge (annual mean F14-F16)	Proposed (annual mean)	% Reduction
cBOD5	Kg/day	7,500	2,774	80	97%
Lactose	Kg/day	6,300	823	Essentially zero or 100% reduction – this is verified by the BOD mass load proposed	
Fat	Kg/day	650 (5-day average)	162		
TP	Kg/day	No limit specified	282	20	93%
TN	Kg/day	No limit specified	414	120	71%
NO ₃ -N	g/m ³	No limit specified	32	6	
NH ₄ -N	g/m ³	No limit specified	0.45	2	
SS	Kg/day	3,000	382	60	84%
pH		6 – 9	1.48 – 12.94	6 – 9	
E.coli		No limit specified		110 cfu/100mL	

Where to from here?

- Complete Updated Assessment of Environmental Effects to be lodged with BOPRC by end September 2019.
- Ongoing engagement with tangata whenua and other parties.
- Fonterra holds 6 monthly environmental performance meetings that are publicly advertised to help ensure open communications should there be any concerns.
- Fonterra is finalising on a memorandum of understanding with the Rangitāiki Hapu Coalition.
- Fonterra will continue to be an active and participating member of the Rangitāiki River Environmental Fund Trust.

FILE NOTE

LEGAL ADVICE



To: Chairperson and Members of the Rangitāiki River Forum (RRF)

From: Donna Llewellyn, In-House Legal Counsel

Date: 3 September 2019

Subject: Adoption of “Te Mana o Te Wai” and “Te Reo o Te Wai – Te Mana”

Introduction

The RRF’s meeting of 7 June 2019 considered a report and presentation from the Chair entitled “*Haerenaga Whakamua – Our Journey Forward*”. The report outlined the statutory purpose, paramount principle, roles and functions of the RRF, recorded a number of workshop ideas and posed concluding questions for further consideration.

In general terms, the report was to stimulate discussion and provide a platform to consider improvements and the future focus of RRF to achieve its fundamental purpose of protecting and enhancing the environmental, cultural and spiritual health and wellbeing of the Rangitāiki River and its resources for the benefit of present and future generations.

Resolutions were passed that the RRF “*Adopts as its vision “Te Mana o Te Wai”*” (Resolution 2) and “*Adopts as its mission “Te Reo o Te Wai – Te Mana”*” (Resolution 3). I have been instructed to provide legal advice on the implications of these resolutions.

Analysis & Advice

The RRF’s river document “*Te Ara Whānui o Rangitāiki – Pathways of the Rangitāiki*” was approved in February 2015. Key objectives of the document have also been imbedded into Chapter 2 (Treaty Co-Governance) of the Bay of Plenty Regional Policy Statement (RPS) and became effective from 9 October 2019.

In practical terms, this requires all planning and decision-making under the Resource Management Act 1991 to consider the significant issues affecting the Rangitāiki River Catchment, the various objectives of the river document, along with indicating relevant policies and methods (including implementation agencies) of the RPS aimed at achieving the river document’s objectives.

In regard to the implications of the two resolutions in question, the following key points are noted:

1. Te Mana o Te Wai is the integrated and holistic well-being of a freshwater body. Upholding TE Mana o Te Wai acknowledges and protects the mauri of the water. This requires that in using water we must also provide for Te Hauora o Te Taiao (the health of the environment), Te Hauora o Te Wai (the health of the waterbody) and Te Hauora o Te Tangata (the health of people). The engagement promoted by Te Mana o Te Wai incorporates the values of tangata whenua and the wider community in relation to each water body.
2. The statutory purpose and functions of the RRF set out in the Ngāti Whare and Ngāti Manawa Claims Settlement Acts 2012 are broad, encompassing and are not in conflict with the concepts of Te Mana o Te Wai and Te Reo o Te Wai.
3. The Vision (Wawata) at page 4 of the river document is similarly inclusive and complimentary to the concepts of Te Mana o Te Wai and Te Reo o Te Wai.

This file note contains information that is confidential or subject to legal privilege. Legal advice remains the property of the Bay of Plenty Regional Council / Toi Moana and may not be disseminated, distributed or copied to external parties without prior consent of the In-House Legal Counsel or the Chief Executive.

4. The overall thrust of Desired Outcomes (He Taonga Tuku Iho) at page 20, Objectives (Te Huarahi) at page 21, and associated Action Plan at pages 22 – 25 of the river document are also intrinsically linked to the concepts of Te Mana o Te Wai and Te Reo o Te Wai.
5. In my view, it would not be necessary to undertake a formal review of the river document in order to incorporate the concepts of Te Mana o Te Wai and Te Reo o Te Wai into the business and decision-making of the RRF.
6. The Treaty settlement legislation contains specific provisions for review of and amendments to the river document (i.e. section 128 of Ngāti Whare’s legislation correlates with section 124 of Ngāti Manawa’s legislation).
7. The RRF may at any time review and, if necessary, amend their river document or any component of the document.
8. It is mandatory to start a review no later than 10 years after approval of the first river document (i.e. 2025).
9. Any review is first subject to statutory consultative obligations in the same manner as preparing the first river document. Then it comes down to whether the proposed amendment is material – in which case a full process of notification, submissions, decision-making, approval and public notice would be required. If the proposed amendment is not material – the amendment can be simply approved by RRF with subsequent public notification.
10. If it is accepted that the concepts of Te Mana o Te Wai and Te Reo o Te Wai are already inherent and complimentary to the RRF’s purpose, function and the river document – then another logical avenue might be to reinforce and incorporate the concepts into the RRF’s Terms of Reference.

Of further relevance and general interest on this matter, I note that on 23 August 2019 the Waitangi Tribunal released its Stage 2 report on the National Freshwater and Geothermal Resources Claims (Wai 2358) which has significant commentary on the development of Te Mana o Te Wai in the context of the National Policy Statement – Freshwater Management (NPS-FM).

On balance, the Tribunal found that 2017 amendments had improved the NPS-FM in Treaty compliant terms, but the amendments still have some weaknesses and that Māori continue to be prejudiced by weakness in the mechanisms for the inclusion of their values and interests in freshwater management. Key recommendations of the Tribunal of relevance to Te Mana o Te Wai included:

- Amend section 6 of the RMA to include Te Mana o Te Wai as a matter of national importance that must be recognised and provided for by RMA decision makers;
- Number of pathways and mechanisms for co-governance and co-management which, severally or in combinations, will enable iwi and hapū to arrive at the most appropriate arrangement for their particular rohe and for each of their water bodies;
- The Crown should offer co-governance / co-management agreements for freshwater bodies in all future Treaty settlements, unless sole iwi governance of freshwater Taonga is more appropriate in the circumstances;
- More stringent national bottom lines should be set so as to recognise and provide for Māori values (including Te Mana o Te Wai – the health of the water body must come first) and the revised overall aim of the NPS-FM;
- Te Mana o Te Wai, and such other Māori values as the national co-governance body decides or recommends, should be made compulsory national values in the National Objectives Framework (of the NPS-FM), with national bottom lines. Cultural indicators should also be added to the NOF; and
- NPS-FM Objective and policy should be amended to state that Te Mana o Te Wai must be recognised and provided for, in conjunction with amendments to Tāngata Whenua roles and interest section of the NPS-FM to allow direct involvement of Māori in freshwater decision-making.

Report To: Rangitaiki River Forum
Meeting Date: Friday 7 June 2019
Report From: Maramena Vercoe, Chair, Rangitaiki River Forum

Rangitaiki River Forum – Haerenga Whakamua

Our journey forward

Executive Summary

The Rangitaiki River Forum was established under the Ngati Whare and Ngati Manawa Treaty Settlement Claims Act from 2012. Under that Act, the Forum was tasked to set itself up, to write a river document and to have that river document reflected in some way in to the Regional Policy Statement. This has been completed.

Since 2016, the Forum has had an annual work programme set against the objectives identified in the River Document.

The Forum workshopped a review to assist in determining what our kaupapa and future direction will be. This was done by discussing three main pou.

- Purpose of the Forum
- Paramount Principle of the Forum
- Roles and functions of the Forum

This report provides for further discussion prior to making firm decisions on our journey forward.

Recommendations

That the Rangitaiki River Forum:

- 1. Receives the report, Rangitaiki River Forum – Haerenga Whakamua – Our journey forward.**
- 2. Adopts as its vision ‘Te Mana o Te Wai’.**
- 3. Adopts as its mission ‘Te Reo o te wai – Te Mana’.**
- 4. Approves amendments to the Rangitaiki River document, Te Ara Whanui o Rangitaiki – Pathways of the Rangitāiki, to include new Rangitāiki River Forum partners, when appropriate as they occur.**

1. Background

The Rangitaiki River Forum has been in operation since 2014 and the Rangitaiki River Document was launched in February 2015. Over that time, as a new Treaty tool to co-govern a natural resource, the Forum has built positive relationships based on respect and goodwill. The twin challenges around bringing iwi representatives and elected representatives together and learning about our roles and functions as well as keeping an awareness of the issues catchment wide made for interesting discussions. However, the purpose of the Forum and the focus on the catchment was never far from our thinking.

It is now time to consider our journey forward.

2. Purpose of the Forum

The Forum's purpose is *to protect and enhance the environmental, cultural and spiritual health and wellbeing of the Rangitaiki River and its resources for the benefit of present and future generations.*¹

Attached as Appendix 1 is the matrix of the three well beings with the projected states (issues) and stakeholder interests. This matrix could form the basis for developing the work programme as well as identifying key stakeholders that the Forum needs to establish relationships with at a high level. It may also provide the basis for setting benchmarks with which to measure our performance as a Forum and how we are achieving our purpose. This will require more work.

The matrix also identifies the need for the Chair of the Forum and the Chair of the Regional Council to meet to discuss a way forward – How will the Forum contribute to the Council? How will the Council integrate their role with the role of the Forum?

3. Paramount Principle of the Forum

In examining the Purpose of the Forum, there is a connection to the concept of Te Mana o Te Wai – First right to water is to the water².

This is a truth which recognises that not having water jeopardises life. It is also a truth to the concept of kaitiakitanga. If you don't look after it, it can't look after you. Newton called it 'action, reaction'. Maori call it utu (reciprocity).

For the Forum, with a purpose of protecting and enhancing the 3 well beings, Te Mana o te Wai requires us to step up and look after the water – In the Forum's case, the Rangitaiki River Catchment.

¹ Te Ara Whanui o Rangitaiki – Pathways of the Rangitaiki p 7

² [National Policy Statement for Freshwater Management 2017](#)

On this basis, the vision for the Forum could be Te Mana o te Wai. Our mission could be to be 'Te Reo o te wai – Te Mana', that being the voice of the wai, restoring Te Mana o te Wai.

4. Roles and Functions of the Forum

This aspect of the Forum is considered in two parts. Part one, our journey up until now. Part two our journey in to the future.

Our journey up until now was focussed on completing the River Document and having it incorporated somehow in to the Regional Policy Statement. From what we have learned so far, we are now at a place where we need to determine how we will exercise the roles and functions of the Forum in pursuit of our purpose.

At the core of the roles and functions is the sentence that enables us to do whatever is necessary to achieve our purpose.

As the result of the workshop review, some clear ideas came through.

- Provide leadership regarding Te Mana o te Wai.
- Advocate for the river, the fishery, the habitats, water quality, water quantity, land use, customary use and harvest, spiritual connections, relationships with our environment.
- Prepare for resource consenting of Aniwaniwa Dam 2026.
- Work with and engage stakeholders.
- Bring a sensory approach to managing the resource, the catchment.
- Trace a Te Mana o te Wai trail from the National Policy Statement on Freshwater through to regional and local water management arrangements.
- Develop a tool for hapu and iwi to use to apply Te Mana o Te Wai as a yardstick to measure wellbeing of the wai, fishery, habitat.³
- How do the Forum members get access to the data held by councils?
- Data availability will enable us to make decisions based on information rather than us rubber stamping and the ticking 'the consulted with iwi' box.
- This is the same issue when full information from consent applicants are not provided and the council personnel do not ask for fully completed forms.

5. Conclusion

The Rangitaiki River Forum is poised to make changes to improve on what we do and how we do it. Some points to consider are –

- What is our authority and how, where and when do we exercise it?

³ Te Mana o Te Wai presentation, Tina Porou 18 February slide 8 and 9

- How do we prepare ourselves to be good stewards and protectors of the catchment?
- What would a good custodian of the river need to do in the future?
- Forum members are asked to consider and discuss the renaming of the Rangitāiki River Forum to reflect the purpose and function.
- How the korero of new iwi to the Forum is incorporated into Te Ara Whanui – Pathways of the Rangitaiki?
- The Forum needs to discuss how we will do the work of the Forum, how we work through matters with the Councils, in particular the Regional Council and whether iwi are ready to pick up kaupapa at a high level - to work with other stakeholders, provide leadership and discuss what this will mean.
- Given that iwi are overloaded with mahi due to small teams, limited resources and multitudes of issues, we need to be proactive and smart in how we do things.

Rangitaiki River Forum – Three Wellbeings – Projected States

Wellbeing	Kaupapa	Projected state	Stakeholders
Environmental	Water quality	Drinkable, swimmable	BOP RC, DOC, WDC, Land users
		Monitoring – volumes, take, discharges, specified sites. On farm data, Catchment wide. Testing for contaminants Farm environment plans Nutrient management plans Nitrogen, phosphorous, e coli	Farmers, horticulturalists, BOP RC, District councils
	Water flow	In river levels – seasonal variation,	Hydro dams, BOP RC
	River ecology	In River ecology -Native flora/ fauna Exotic flora/fauna eradication River bank ecology – native flora	
	Tuna	Egress through the river	Hydro Power companies, BOP RC
	Whitebait	Spawning areas	BOP RC, Catchment Management, rivers and drainage
	Riparian vegetation	River banks – tree planting, no rock lining	Land owners, farmers
	Hydro Dams	Tuna egress Resource Consents Kaupapa Maori Resource Fund	Power companies, Tuna Industry fishers, BOP RC,

	Sewage treatment/disposal	Land disposal R&D Technology options	WDC
	Flooding		BOPRC, WDC
	Climate Change	Sea level rising Significant rain events Emergency management	BOP RC, WDC
Cultural	Te Mana o Te Wai	Our tupuna awa – treasured, protected, enhanced Essential to life .	National Policy Statement – Freshwater National Iwi Chair’s forum Tangata Whenua
	Water quality	Pure, drinkable water for rituals Mahinga kai flourish free from pollution/contamination Swimmable means putting ones head in the water therefore the standard needs to be drinkable.	Monitoring, analysis, reporting Iwi involvement in monitoring Land users

	<p>I am the river, the river is me.</p>	<p>The naturalness of the river, the water, the ecology.</p> <p>Our wellness and the wellness of the river is mutually interdependent and beneficial.</p> <p>Balancing our use of the resources by exercising discipline with the sustainability of the resource for future generations.</p> <p>How our people interact with the awa -</p> <p>Intergenerational mahinga relationships with the river endure through:</p> <p>Use of kai</p> <p>Taonga</p> <p>Wahi tapu</p> <p>Use of the river, springs, designated tuna fishing areas, tuna boxes, use of the retireti.</p> <p>Te Mana o te Wai – how we treat a resource from the gods – rights to use not to abuse.</p>	<p>Matauranga Maori</p> <p>Tangata whenua, iwi, Maori trusts and incorporations</p> <p>Land users – Farm environment plans, nutrient plans, Riparian planting, fencing off waterways, buffer zones between farming land and waterways – effluent, whey applications for example</p>
--	--	---	--

	Iwi and hapu aspirations	We want to continue to have the river available for our use just as our ancestors did. Our right is to use not abuse.	Refer to Iwi/hapu environmental management plans/relationship plans
	Matauranga	Knowledge that can contribute and inform new solutions Senses approach – touch, smell, see, feel, taste. Respected and valued as a historical, encyclopaedic collection of information based on intergenerational, customary relationships. Water is free flowing and debri free	Habitat for native fauna Iwi/hapu RRF model to be identified
Spiritual	Landscapes	Maintain the original landscape We interfere with the river – leave it alone. Our tupuna awa – it has a balance of it's own.	BOP RC, Rivers and Drainage team, Hydro companies.
		Wai is clean , is continuously moving – generates a feeling of peace in and beside the awa. A sense of belonging – the river is part of me.	Maori world view – RRF model. Land and water users, water quality management.

	Customary use	Accessible for historic customary use – tuna boxes, puna wai, whanau puna, whanau tuna sites	Hapu and iwi traditions Owned by hapu and iwi. Water quality issues
	Mauri, Taha wairua	All of the elements work in harmony and balance – taha wairua, tikanga, karakia, cultural awareness and connections from the past, to the present in to the future Unbroken relationship between the people and Papatuanuku and Ranginui.	Hapu and iwi traditions and tikanga/kawa.
	Tuna	Able to move up and down the river	Clause 125 in Ngati manawa settlement. What does this mean for us – Ngati Manawa? How to progress?
	Pollution	Gather information, take action,	
Media Message: Clean up our waterways – pollution is no longer acceptable. Install regular monitoring of sites, report data to BOP RC.			

