*Tēnā koutou katoa*

*Below is a template submission covering the Spatial Planning and Natural and Built Environments Bills for Māori Incorporations and Ahuwhenua Trusts.*

*These Bills as currently drafted will not restore and protect our environment for future generations, consistent with the aspirations of Māori Incorporations and Ahuwhenua Trusts in Aotearoa New Zealand.*

*They will not result in fair and equitable participation in the reformed resource management system, and the allocation of freshwater and other resources to* ***all*** *holders of Māori rights relevant to the taiao e.g. Māori landowners.*

*These Bills have implications for Māori landowners, as the underlying assumption of these reforms is that iwi and groups of hapū are the voice for all Māori, including Māori landowners.*

*Te Tai Kaha suggest that you personalise your submission. Set out the expectations of your Incorporation / Ahuwhenua Trust role in the reformed resource management system and the changes required to these Bills to ensure mana motuhake, and the exercise of manaakitanga and kaitiakitanga by all Māori rights holders.*

*Submissions can be emailed to* *en@parliament,govt.nz* *or uploaded directly at* [*www.parliament.nz*](http://www.parliament.nz)*. Submissions close 11.59pm, Sunday 5 February 2023.*

Insert Date

Committee Secretariat

Environment Committee

Parliament Buildings

Wellington

By Email: en@parliament.govt.nz

Tēnā koe

**SUBMISSION TO THE ENVIRONMENT COMMITTEE ON THE SPATIAL PLANNING BILL AND THE NATURAL AND BUILT ENVIRONMENT BILL**

|  |  |
| --- | --- |
| Name of Māori Incorporation / Ahuwhenua Trust |  |
| Hectares of Māori Freehold land & land use |  |
| Number of Owners / Shareholders |  |

***Introduction***

[Insert a paragraph about your Incorporation / Ahuwhenua Trust] as context to your submission.]

1. ***All Māori rights holders must be recognised***

The Spatial Planning Bill (SP Bill) and Natural and Built Environment Bill (NBE Bill) are both drafted on the basis that in most cases only “iwi and hapū” have rights and responsibilities relevant to the taiao, and in some cases it is only iwi/post-settlement governance entities (“**PSGEs**”) who matter.

That is wrong as a matter of tikanga, te Tiriti and State law, as it ignores and makes invisible rights that are held by whānau / hapū / ahi kā / Māori landowners and marae.

The focus on “iwi and hapū’ is inconsistent with Te Ture Whenua Māori Act 1993, which Māori Incorporations and Ahuwhenua Trusts hold title to their ancestral lands. The preamble to that Act does not restrict recognition to “iwi and hapū.”

Post Settlement Governance Entities (PSGEs) under Treaty Settlements are given some legal rights and responsibilities, and those legal rights and responsibilities need to be transferred into the new Resource Management (RM) system. But other Māori rights holders must not be excluded, or invisibilised, in the process.

PSGEs have no general mandate to represent whānau, hapū, ahi kā, Māori landowners and should not be assumed to do so unless free and prior informed consent to do that is demonstrated.

Currently, s 6(e) of the RMA includes as a matter of national importance that “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” must be recognised and provided for.

The current National Policy Statement for Freshwater Management 2022 (“the NPSFM”) recognises the multiple layers of rights and interests at the catchment and sub-catchment level. It uses the principle of “Mana whakahaere” to guide the determination of the “who’ in the system.

Mana whakahaere is defined in theNPSFM as “the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater”. Mana Whakahaere is inclusive of iwi, hapū, whānau, ahi kā, landowners and marae.

To limit rights and responsibilities to “iwi and hapū” only, is a backwards step, and represents a failure by the Crown to adequately protect the rights of Māori land holding entities, Incorporations and Trusts.

Recommended changes:

We ask that the primary reference term that is used in the SP and NBE Bills for Māori rights and responsibilities holders is “mana whakahaere”, based on the definition in the NPSFM (or, as a second best alternative, that the approach taken in s 6(e) of the RMA is retained).

We prefer “mana whakahaere” as it is a more expansive term in depicting a wider relationship with natural features / resources / environments than “iwi and hapū” does. That in turn better reflects the full range of overlapping rights, interests and responsibilities held by iwi, hapū, whānau, Māori landowner and urban Māori.

We also consider that the underlying issue that Māori communities who have rights and responsibilities are ignored should be addressed by the Crown providing resources to Māori, in the exercise of their tino rangatiratanga rights, to design, create and then control and administer a national register of all Māori rights holders, broken down by sub-catchment/catchment/region. The register can be used to identify (overlapping) Māori rights holders, and to ensure that all Māori rights holders are able to participate in the new RM system in a way that appropriately recognises and respects the nature of the rights they hold.

1. ***The Spatial Planning Bill and the Natural and Built Environment bills need a preamble***

[Name] are concerned that neither the SP Bill nor NBE Bill contain a te reo Māori preamble that explains the te ao Māori worldview which is intended to be woven into the new RM system. The SP Bill and NBE Bill will have a daily impact on Māori landowners and communities across the motu at least as great as Te Ture Whenua Māori Act 1993 does. Like that legislation, an appropriate preamble, in te reo Māori and followed by its English translation, should be included.

1. ***Te Tiriti clause needs to be stronger***

Clause 4 of the NBE Bill and clause 5 of the SP Bill propose a stand-alone te Tiriti clause.

This clause is too narrow in its focus on “the principles of te Tiriti”, rather than te Tiriti text.

The principles of te Tiriti water down te Tiriti (the Māori text) and reaffirm the essence of the English text. Te Tiriti clause should be part of the purpose clause of the NBE Bill (clause 3), not separate to it, to avoid diluting te Tiriti clause. The Government has previously adopted such an approach in the Education and Training Act 2020 (ss 4 and 9).

Recommended changes:

[Name] ask that clause 4 of the NBE Bill is deleted, and that te Tiriti clause is re-homed in the purpose provision, clause 3, amended to read as follows:

*(1) The purposes of this Act are to–*

 *(a) give effect to te Tiriti o Waitangi; and*

*(b) recognise and uphold Te Oranga o te Taiao, including—*

*(i)The interconnectedness of the taiao*

*(ii)The fundamental role of ecosystem health/ecological integrity to sustain the well-being of the wider environment.*

*(iii)The relationships between Māori and te taiao in accordance with tikanga.*

*(c) enable the use, development, and protection of the environment in a way that—*

*(i) supports the well-being of present generations without compromising the well-being of future generations; and*

*(ii) promotes outcomes for the benefit of the environment; and*

*(iii) complies with environmental limits and their associated targets; and*

*(iv) manages adverse effects.*

*(2) Any person who exercises any power or discretion, or performs any function or duty under this Act, must exercise that power or discretion, or perform that function or duty, in a manner that is consistent with the purposes of this Act.*

This drafting will ensure that te Tiriti clause operates as the korowai (cloak) that it needs to, informing the understanding as well as the application of **all** aspects of the new RM system.

1. ***Te Oranga o te Taiao needs to better reflect a Māori worldview.***

The NBE Bill defines te Oranga o te Taiao with a focus on the “health of the natural environment”.

This reflects a western mindset that continues throughout the Bill: that the health of ‘nature’ and ecosystems can be thought about separately from humans and the rest of the environment. This is not consistent with a Māori worldview which recognises that economic, social, and cultural values are interdependent with ecosystem health, and that the taiao is an integrated system.

The NBE Bill fails to give clear direction that ecosystem health must be prioritised to the extent that it can support economic, social, and cultural well-being.

The definition of Te Oranga o te Taiao proposes recognising and upholding the “intrinsic relationship between iwi and hapū and te Taiao”, meaning the “natural environment”. This is a step backwards from the more inclusive approach of the current Resource Management Act which recognises and requires provision for the relationships of **all Māori** to the taiao, not just iwi and hapū.

Environmental limits as proposed in the Bill will not protect ecosystems, because the Bill only requires setting environmental limits that prevent ecosystems degrading from their current state.

The NBE Bill requires that ‘targets’ are set for each of those limits, but there is no direction to set these at a state that is sustainable, and there is no certainty about when these targets will have effect.

Recommended changes:

We recommend that any reference to the ‘natural environment’ in connection to Te Oranga o te Taiao, or te taiao generally is removed.

We also ask that a ‘hierarchy of obligations’ as in the National Policy Statement for Freshwater Management 2020 is applied, to require that first the health of ecosystems is prioritised, second the health needs of people, and third their social, economic, and cultural well-being.

There should be a requirement for limits to be set at a state of health that is sustainable and ensures the protection of ecosystems, rather than merely current state.

1. ***Land rights must be better protected***

Clause 497 of the NBE Bill defines “protected Māori land” for the purposes of both the SP and NBE Bills. This definition is too narrow in only including General Land if that was transferred from the Crown with the intention of returning it to mana whenua. The definition needs to be widened to extend to any land Māori owners regard as taonga, to avoid the perverse outcome of culturally significant land bought by Māori from private owners, perhaps out of Treaty settlement proceeds, not qualifying as “protected Māori land”.

Recommended changes:

We ask that clause 497 is amended by adding a new paragraph (f) to bring within the definition of “protected Māori land”: “*any other land that is a taonga tuku iho for the owners of the land and the mana whakahaere associated with the land*”.

1. ***Water rights must be better protected***

Clause 814 of the NBE Bill preserves Māori rights in freshwater. But it is too weak as it is drafted. The assurance in clause 814(1) of no further prejudice to Māori rights in freshwater does not provide for or even protect future water rights claims. It is also undermined by clause 814(3), which says that nothing in clause 814 affects the lawfulness or validity of any action under the legislation. This appears to mean that the assurance of no further prejudice in clause 814(1) cannot have any practical effect on how the new RM laws are interpreted and applied. If that is its purpose or effect, clause 814 provides no protection.

The NBE Bill goes on in clauses 689-693 to propose a Freshwater Working Group, which it appears will be made up of Crown and “iwi and hapū” representatives who the Crown must approve (and, potentially, may choose). But it is a toothless tiger, because clause 692 allows the Crown to choose to ignore its recommendations. After the Group’s report has been released, clause 693 allows “iwi and hapū” – but not other Māori rights holders, even if they have greater rights than iwi/PSGEs in relation to bodies of water at the (sub-) catchment level – to try to negotiate with the Crown to agree on a statement for how freshwater should be allocated at a regional, catchment or sub-catchment level. But the Crown has to agree to any statement, effectively giving it a power to veto any statement.

If it does not veto it, and a freshwater allocation statement is made, clause 693(7) allows for the impact of a freshwater allocation statement to be delayed for up to 5 years if the regional planning committee wants to. It is quite possible that, in those 5 years, the water bodies that mana whakahaere seek to protect through a freshwater allocation statement will tip beyond a point of no return.

We are also concerned that the narrow focus in clauses 689-693 on iwi and hapū alone as the Māori rights holders is an example of the Crown prioritising some Māori rights holders over others. As the NBE Bill is written, this could also lead to iwi/PSGEs deciding who get water rights at a sub-catchment level and choosing to allocate water rights to PSGEs rather than to the ahi kā / landowners/ individuals, whānau who live by the affected rivers and lakes and have been working so hard as kaitiaki for so many generations to save them.

Recommended changes:

We ask that clause 814 is amended by deleting clause 814(3) and by amending clause 814(2)(a) by adding at the end of it “*that would or may prejudice Māori rights or interests in freshwater or geothermal resources*”.

To address the problems identified with the Freshwater Working Group proposals, we also ask that in clauses 691-693 (as elsewhere) “*mana whakahaere*” is substituted for “*iwi and hapū*”; that clause 692(2) instead reads “*Not later than 6 months after receiving the report, the Minister, on behalf of the Crown, must present a response on the report to the House of Representatives that explains how the recommendations of the Working Group will be implemented and within what timeframe*”; and that clause 693 is amended as follows:

*(2) The outcome of the engagement undertaken under subsection (1) must be reflected in an allocation statement on the issues relevant to the allocation of freshwater, if mana whakahaere wish to have such a statement.*

*(3) An allocation statement must be prepared by the Crown and mana whakahaere in partnership and it may be developed — …*

*…*

*(7) … (b) the date that is 12 months after the relevant regional planning committee receives the allocation statement.*

1. ***Regional Planning Committees must be genuine partnership bodies***

Clause 2 of Schedule 8 of the NBE Bill provides that regional planning committees must comprise at least 6 members, at least 2 of whom must be appointed by 1 or more Māori

appointing bodies of the region. This is well short of the 50:50 partnership te Tiriti requires.

Recommended changes:

Accordingly, we ask that clause 2(5) is amended as follows: “*Not less than half of all members must be appointed by 1 or more Māori appointing bodies of the region*”.

1. ***Engagement Agreements should inclusive all rights and interests holders***

Clause 39 of the SP Bill, and Clause 11, Subpart 2, Schedule 7 of the NBE Bill set out requirements for Regional Planning Committees (RPC) to enter into “engagement agreements”. It is effectively mandatory for a RPC to enter into an engagement agreement with iwi, groups that represent hapū, and Coastal Marine Title groups should those groups so wish. However, in the case of “other Māori” for example collectives of Māori landowners, whether they are invited to initiate an “engagement agreement” is at the complete discretion of the RPC. As a result it is iwi, groups that represent hapū, and Coastal Marine Title groups who will be supported and resourced to participate in the resource management process.

Recommended changes:

We recommend that Clause 11 (1)( c ) of the SP Bill and Clause 11 (1) ( c ), Subpart 2, Schedule 7 of the NBE Bill just refer to “other Māori groups with interests in the region.” It should be for Māori to determine whether or not that wish to participate at a regional level with RPCs through an “engagement agreement”(as is the position for iwi, groups that represent hapū, and Coastal Marine Title groups). It is wrong for some rights holders to have automatic rights to participation (if they wish), and other rights holders to be at the discretion of the RPC.

1. ***Mana Whakahono-a-Rohe arrangements should be inclusive of all rights and interests holders***

Mana Whakahono-a-Rohe (clauses 675 to 688), are a mechanism for iwi authorities, groups that represent hapū, local authorities, and planning conmittees to discuss, agree and record arrangements for participation in resource management and decision – making. These arrangements are narrowly focussed on iwi, and groups of hapū, as the only rights holders.

Recommended changes:

We ask that the primary reference term that is used in the SP and NBE Bills for Māori rights and responsibilities holders is “mana whakahaere”, based on the definition in the NPSFM (or, as a second best alternative, that the approach taken in s 6(e) of the RMA is retained). Mana Whakahono-a-Rohe arrangements should be inclusive of Māori landowners.

1. ***The National Māori Entity must be stronger***

The powers proposed for the National Māori Entity do not go far enough.

Clause 664(1)(a) of the NBE Bill gives the Crown the ability to take up to 6 months to respond to a report by the National Māori Entity. A 6-month delay will become the ‘default’ for the Crown’s response in every case, which might sometimes mean the Crown does not address identified harm to the taiao until it is too late.

Second, the National Māori Entity should have the right – and responsibility – to work closely with the Minister for the Environment on the National Planning Framework (“the **NPF**”) – which will set national ‘baselines’ and rules that will determine what can and cannot be done regionally and locally – to ensure that the NPF gives effect to te Tiriti. One way the National Māori Entity can help to ensure this is for the Bill to require the Minister to collaborate and attempt to agree with the National Māori Entity on what limits the NPF should set on uses of water bodies to protect and preserve the mauri of water bodies, and to ensure that Māori communities will get equitable allocations of use rights in the new system.

The National Māori Entity should also have enforcement tools available to it to help to try and stop breaches of te Tiriti when they are happening. One obvious tool would be to give the National Māori Entity the power – and responsibility – to bring litigation to support positive progress on Māori rights at the national, regional, or local levels, where it considers that it is necessary for the National Māori Entity to bring litigation of that kind. The National Māori Entity should also have a fund that it manages, and which Māori communities can apply to for grants to support them bringing litigation to protect or preserve tikanga or te Tiriti rights. That fund could be modelled on the Environment Legal Assistance Fund, which the Ministry for the Environment currently manages, but instead be managed by the National Māori Entity and exist to help Māori communities who need financial support to protect their taonga.

It is also critical to the effectiveness of the National Māori Entity that it receives the funding that it will need each year to be an effective actor.

Recommended changes

[Name] asks that clause 662(1)-(2) is amended as follows:

*(1) The primary functions of the National Māori Entity are to develop the national planning framework collaboratively with the Minister and to independently monitor and assess the cumulative effect of the exercise of functions, powers, and duties under this Act and the Spatial Planning Act 2022 by (monitored entities) in giving effect to the principles of te Tiriti o Waitangi (see section 4).*

*(2) In carrying out its primary functions, the National Māori Entity must—*

*…*

*(e)* *publish such material as it considers to be necessary or appropriate to educate people and communities about risks that they and te taiao face, and how those risks can be avoided; and*

*(f) bring or support any legal proceeding it considers to be necessary or appropriate to ensure that te Tiriti o Waitangi is being given effect to (see section 4).*

We also ask that clause 664(1)(a) is changed to require the Crown to respond to National Māori Entity reports “*as soon as practicable but not later than 6 months after receiving the report from the National Māori Entity*”.

Finally, we request the Environment Committee stress in its report that it will be critical to the effectiveness of the National Māori Entity for it to receive funding at a level which will enable it to have the capacity and capability to effectively discharge its functions, powers, and duties. Mana whakahaere will also need to be provided funding to support their capacity and capability to act in the various roles that are proposed for them as decision-makers and participants in the new RM system.

**Request to make oral presentation**

The RM reforms process presents what will be a once in a generation chance to get our environmental settings right. Te Tiriti responsibility to get those right is a shared one. Accordingly, [Name] wish to speak to the Environment Committee on its submission.

[Name] support the submissions of the Federation of Māori Authorities and Te Tai Kaha Māori Collective which advocates for full recognition and strong protection of te Tiriti o Waitangi (“**te Tiriti**”) rights and interests in all areas impacted by the RM reform programme.