



**TŪWHARETOA**  
MĀORI TRUST BOARD

**Submission on:**  
***Resource Management (Freshwater And Other Matters)***  
***Amendment Bill***

**June 2024**

## INTRODUCTION

- 1 This submission is made by the Tūwharetoa Māori Trust Board (**Trust Board**) on the Resource Management (Freshwater And Other Matters) Amendment Bill (**Bill**).
- 2 The focus of the Trust Board's submission is on those provisions in the Bill that impact our rangatiratanga, customary rights and interests in natural resources, whenua and treasured taonga, and our existing resource management arrangements, including arising from our Treaty of Waitangi settlement legislation and unique ownership arrangements in respect of Taupō Waters.

## WISH TO BE HEARD

- 3 The Trust Board does not wish to be heard in support of this submission.

## TŪWHARETOA WHAKAPAPA, TIKANGA AND WAI MĀORI

Ko Tongariro te Maunga	Tongariro is the Sacred Mountain
Ko Taupō te Moana	Taupō is the Lake
Ko Tūwharetoa te Iwi	Tūwharetoa is the Tribe
Ko te Heuheu te Tangata	Te Heuheu is the Man

- 4 Ngāti Tūwharetoa hold mana whenua, kaitiakitanga and rangatiratanga over the Central North Island including the Lake Taupō Catchment and part of the Upper Waikato, Whanganui, Rangitikei and Rangitaiki Catchments.
- 5 Ngāti Tūwharetoa are the descendants of Ngatoroirangi, Tia and other tūpuna who have occupied the Taupō Region continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between whānau, hapū, marae and our taonga tuku iho.
- 6 As kaitiaki, Ngāti Tūwharetoa have an intrinsic duty to ensure the mauri and the physical and spiritual health of the environment (inclusive of our whenua and water resources) in our rohe is maintained, protected and enhanced.
- 7 For Ngāti Tūwharetoa, water comes from the sacred pool of our ancestor, Io. Tāne entrusted the guardianship of all the waterways to Tangaroa while Tāwhirimātea was assigned the guardianship over the atmospheric forms of water and the weather. These two guardians hold the mauri, the essential life forces, of these forms of water.
- 8 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us is Ranginui. The geographical pinnacle of Papatūānuku, within our rohe, is our maunga (mountains) including our esteemed ancestor, Tongariro. To the north of Tongariro lies our inland seas, Taupō-nui-a-Tia and Rotoaira. Our mauri flows from our maunga through our ancestral awa (surface and underground streams and rivers) to our moana and to the hinterlands via the Waikato, Whanganui and Rangitaiki. They link us directly with our neighbouring iwi.
- 9 Ngāti Tūwharetoa assert our intergenerational custodial and customary right of tino rangatiratanga over the taonga in our rohe. Our tribal taonga include ownership of the bed, water column and air space of Lake Taupō, its tributaries, and the Waikato River from the outlet of Lake Taupō to Te Toka a Tia. They also include Te Kāhui Maunga (Tongariro National Park),

the largest production forests in the North Island (Kaingaroa, Lake Taupō and Lake Rotoaira) and ownership of 51% of the whenua in the Taupō region.

## **TŪWHARETOA MĀORI TRUST BOARD**

- 10 The Trust Board was established pursuant to the Māori Land Amendment Act 1924 and Māori Land Claims Adjustment Act 1926. The Trust Board later became a Māori Trust Board under the Māori Trust Boards Act 1955.
- 11 The Trust Board administers a range of resource management arrangements and documents, including as arising through Treaty settlements, that reflect the importance of the Ngāti Tūwharetoa relationship with our taiao.

### **1992 and 2007 Deeds**

- 12 By deeds with the Crown dated 28 August 1992 and 10 September 2007 the Trust Board is the legal owner of the bed, water column and air space of Lake Taupō, the Waihora, Waihāhā, Whanganui, Whareroa, Kuratau, Poutu, Waimarino, Tauranga-Taupō, Tongariro, Waipēhi, Waitotaka, Hinemaiaia and Waitahanui Rivers (**Taupō Waters**), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.
- 13 The Trust Board's relationship to Taupō Waters is unique. The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

### **Waikato River Deed and Upper Waikato River Act**

- 14 The Trust Board is also a party to the Waikato River Deed with the Crown dated 31 May 2010 (**Upper Waikato River Deed**). The Crown and the Trust Board agreed to enter into the Waikato River Deed in recognition of "the interests of Ngāti Tūwharetoa in the Waikato River and its catchment and in Taupō Waters and to provide for the participation of Ngāti Tūwharetoa in the co-governance and co-management arrangements in respect of the Waikato River".<sup>1</sup>
- 15 The Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (**Upper Waikato River Act**). The overarching purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations.<sup>2</sup>
- 16 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato and Waipā Rivers (**Te Ture Whaimana**) is a product of the settlement agreements between the Crown, Ngāti Tūwharetoa and other Waikato and Waipā River Iwi. It is a statutory instrument,<sup>3</sup> and the primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.<sup>4</sup>

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<sup>1</sup> Upper Waikato River Deed 31 May 2010, clause 8.

<sup>2</sup> Upper Waikato River Act, section 3.

<sup>3</sup> Given legislative effect through the Waikato and Waipā River Settlement Legislation: see also Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Maniapoto (Waipā River) Act 2012.

<sup>4</sup> The obligation to give effect to Te Ture Whaimana is the strongest direction that Parliament has given in relation to any RMA planning document.

## TRUST BOARD POSITION ON BILL

### In principle position on clarifying and streamlining RMA processes

- 17 The Trust Board is not, in principle, opposed to amendments to the RMA that improve certainty or reduce timeframes through more efficient, streamlined approval processes.
- 18 However, we:
- a. reject any suggestion that Te Mana o te Wai, and implementing the hierarchy of obligations (**Hierarchy**), is a material cause of uncertainty or creates delay in the current planning and approval regime under the RMA;
  - b. oppose the contents of the Bill, which:
    - i. undermine Te Mana o te Wai, a fundamental and well considered principle developed over many years and supported by iwi/hapū and other stakeholders including industry, farmers, councils, and environmental interests;
    - ii. undermine iwi and hapū rights and interests in relation to freshwater and to natural resources more generally;
    - iii. are likely to enable continuing, and potentially irreparable, harm to our taiao, (including to freshwater and to its biodiversity);
    - iv. impinge on the Te Tiriti-consistent participation of iwi/hapū in consenting processes and in the development and amendment of national direction; and
    - v. risks turning the creation or amendment of national direction into a political process.

### Te Mana o te Wai

- 19 The Bill excludes the Hierarchy within the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) from resource consent application and decision-making processes by precluding:
- a. the requirement for resource consent applicants to include an assessment of their proposed activity against the Hierarchy in their applications for consent;<sup>5</sup>
  - b. consent authorities from requesting information from consent applicants or commissioning reports on the Hierarchy;<sup>6</sup>
  - c. consent authorities from having regard to the Hierarchy when considering resource consent applications.<sup>7</sup>
- 20 These amendments will apply to all consent applications lodged once the Bill commences and until the time that the NPS-FM is replaced.
- 21 These amendments are **fundamentally opposed** by the Trust Board. It is clear to us that these amendments are intended to pre-emptively “rebalance” Te Mana o te Wai in advance of the upcoming review of the NPS-FM, which we understand is to occur over the next twelve to eighteen months. In that regard, the Bill not only removes the imperative to consider the Hierarchy, it assumes the outcome of the review.
- 22 Te Mana o Te Wai refers to the fundamental importance of freshwater and recognises that protecting the health of freshwater protects the health and well-being of the wider

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<sup>5</sup> Bill, clause 26.

<sup>6</sup> Bill, clause 22.

<sup>7</sup> Bill, clause 23.

environment. Te Mana o te Wai is about using water sustainably and without destroying the integrity of the environment, which both people and the economy need to thrive.

- 23 Te Mana o te Wai is as much an economic concept as it is an environmental and social concept. It directs that the use of water for the needs of our communities and our economy can be enabled where the health and wellbeing of our waterways is protected. There can be no reasonable objection to that as a matter of principle.
- 24 The Hierarchy provides much-needed national direction on *how to* manage freshwater sustainably. It is not about preventing appropriate development, nor is it a bureaucratic roadblock. The Hierarchy is about giving practical effect to the concept described in Te Mana o te Wai through employing a sequential process. The Bill undermines the intent of managing freshwater sustainably, which has been the basic principle for the NPS-FM since it originated in 2011. Given the degraded state of our freshwater, the approach in the Bill is short-sighted and will enable further, potentially irreversible, damage. Polluted water undermines the health of our communities, our economic future, and our international reputation.
- 25 While Te Mana o te Wai is a concept that is derived from Te Ao Māori and founded in mātauranga, this does not preclude it from having universal application for all New Zealanders in terms of how we use and manage water. It is a conceptual way of thinking that has been developed in concert with local communities, councils, industry and other stakeholders. To undermine this now will take our country backwards.
- 26 Rather than dismissing Te Mana o te Wai, the Trust Board considers that more should be done in the building of capacity and capability in the application of Te Mana o te Wai. Underinvestment in this regard, coupled with the usual resistance to change that comes with any new policy necessitating transition, has resulted in misunderstanding of the concept and how it can deliver improved water outcomes for all New Zealanders.
- 27 A Regulatory Impact Statement was prepared in relation to the proposed exclusion of the hierarchy and for the purpose of targeted amendments to the RMA and national direction. That advice is not referred to in the general policy statement, and instead can be found through Amendment Paper No 41 in the name of Hon Simeon Brown to the Local Government (Water Services Preliminary Arrangements) Bill.
- a. The value of the advice in that Regulatory Impact Statement can only be limited as it notes breadth of consideration was limited by Ministerial and Cabinet direction on the commitments made in the coalition agreements, which limited policy options;
  - b. the pace of reform.
- 28 We understand this to mean that the advice was working within the scope of foregone conclusions. The advice acknowledges that the limited engagement still resulted in clear points from iwi and Māori that the reforms were occurring despite limited and inadequate engagement and would impact of freshwater quality, customary rights, and some Treaty settlement commitments.

#### Recommendation sought from Select Committee

- 29 The Trust Board seeks a recommendation that the Te Mana o te Wai clauses 22, 23, and 26, are removed from the Bill, with any consequential amendments required, including to Schedule 1.

#### **Process and procedure for guiding documents at the national level**

- 30 The Bill will amend the RMA so that “national direction” (a newly expanded term encompassing national environmental standards, national planning standards, national policy statements, and national coastal policy statements):

- a. no longer need to be made in compliance with the evaluation requirements which examine whether the proposal is the best way to achieve the purpose of the Act;
  - b. are no longer made with a board of inquiry process;
  - c. are now evaluated against effectiveness, impact on the environment and the economy, and reasonably practicable alternatives;
  - d. may be amended without undergoing the full process if the change is to:
    - i. align it with New Zealand standards, New Zealand international obligations, an emissions reduction plan, or national adaptation plan;
    - ii. remove redundant provisions arising from legislative amendment;
    - iii. amend time frames for implementation of a national environmental standard;
    - iv. correct errors or is only minor in effect.
- 31 In the course of amending national direction, “adequate time and opportunity” for notified parties to submit is now subject to the Minister’s view of what is adequate.
- 32 The Government has made amendments to the RMA with the intention to “speed up” the process to make or amend national direction. We have already noted above our deep concern about pre-emptive amendments to the operation of the NPS-FM. This Bill is manufacturing a situation where changes can be made to remove existing and appropriate content of national direction without a robust process.
- 33 It is vital that national direction be made or amended through rigorous and publicly accessible processes, that include meaningful iwi and hapū engagement. The amendments will remove participation in the process by those most affected and who maintain deep connections with the land and resources and know them best. The amended process will enable political expediencies and interests to be favoured and advanced ahead of ancestral connection and the sustainable use of resources.
- 34 The Trust Board **fundamentally opposes** the proposed amendments which:
- a. remove the independent board of inquiry process;
  - b. only provide the public and iwi/hapū with “what the Minister considers to be adequate time and opportunity” to make a submission;
  - c. remove existing RMA requirements of evaluation reports (for example, there is no requirement for a cost-benefit analysis to be undertaken);
  - d. provide for the Minister to make the final decision; and
  - e. inappropriately broaden the criteria for the Minister to review, change or revoke national direction without following the public process set out in the RMA.
- 35 These processes and procedures plainly align with those adopted in the Fast-track Approvals Bill. It is inexplicable to remove decision-making on key policy from the hands of experts constituted for that purpose, and to place it in the hands of a Minister motivated by personal interest and political gain. This will greatly increase the risk of pre-determination, bias, enhanced and inappropriate political lobbying and conflicts of interest.
- 36 Further, a number of Treaty settlements also interrelate directly with national instruments. This amendment will undermine those settlement mechanisms and be a breach of the commitment that this Government has made to upholding settlements.

Recommendation sought from Select Committee

- 37 The Trust Board seeks a recommendation that the relevant clauses 5 to 20, inclusive, be removed from the Bill.

### Significant natural areas

- 38 Clause 21 of the Bill proposes to amend the RMA as it relates to the National Policy Statement for Indigenous Biodiversity (**NPS-IB**):
- a. The Bill suspends, for 3 years, NPS Indigenous Biodiversity requirements for councils to identify and notify new SNAs using the national direction assessment criteria and principles. It is intended that the 3-year suspension period will allow time for a review of the operation of SNAs more broadly.
  - b. The Bill also amends timing provisions in the NPS Indigenous Biodiversity for when local authorities must publicly notify any policy statement or plan or changes necessary to give effect to national direction on SNA provisions. The date is extended to 31 December 2030.
- 39 The Trust Board supports a review of the operation of SNAs, including the processes to identify SNAs.
- 40 Ngāti Tūwharetoa entities are not opposed to the protection of biodiversity, and, where it has been significantly lost, its restoration. However, our experience is that the disproportionate impact and burden of those provisions falls on Ngāti Tūwharetoa whenua. The irony is that biodiversity only exists because of the kaitiaki obligations of Ngāti Tūwharetoa landowners, who have maintained biodiversity on our whenua while other landowners have not.
- 41 We are also concerned to ensure that Ngāti Tūwharetoa landowners are not further restricted in the use of our whenua, particularly given historic impediments that constrain the effective use of Māori-owned whenua (and associated contemporary effects<sup>8</sup>). Ngāti Tūwharetoa landowners should not be further penalised, nor should we be expected to forgo the development of our whenua, to offset the actions of other landowners who have actively made decisions that have led to a diminished state of biodiversity either locally, regionally or nationally.
- 42 We therefore consider that more work is required than was achieved through the NPS-IB to date, and welcome the Government's review of the use of this mechanism to protect and enhance indigenous biodiversity **subject to** early, full and meaningful iwi and hapū participation in the review.
- 43 In particular, the Trust Board and our Tūwharetoa entities wish to engage with the Government through the NPS-IB review on behalf of Ngāti Tūwharetoa landowner interests (comprising over 250,000 hectares of Māori land and representing over 51% of whenua in the Taupō District),<sup>9</sup> so that the Government can understand:
- a. The heavy impact such regimes have on regions where Ngāti Tūwharetoa whenua has, against all odds, been retained in Ngāti Tūwharetoa ownership.
  - b. Ngāti Tūwharetoa's unique arrangements, which require a sophisticated approach, including deference and respect for existing management arrangements in Taupō Waters. For example, pursuant to the RMA, in its recent district plan change SNAs had been identified by the Taupō District Council within Taupō Waters, undermining existing

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<sup>8</sup> Historical impediments include customary tenure in the nineteenth century, public works, rating law, Te Ture Whenua Māori Act, and confiscation. Some impediments or their effects continue currently, including issues of governance, fragmentation and compliance with central and local government regulations such as regional and district plans.

<sup>9</sup> Including 67 Māori land trusts and incorporations as well as whānau landowners.

management arrangements that arise from the 1992 and 2007 Deeds between the Crown and Ngāti Tūwharetoa, including the Management Plan for Taupō Waters.

Recommendation sought from Select Committee

- 44 The Trust Board seeks that the Select Committee makes clear in its report that any review **must be undertaken with the full and informed participation of iwi and hapū**. Ensuring iwi and hapū voices inform the policy instrument will best enable a successful review of the NPS-IB. We reiterate that any delay in identifying SNAs **will not result in better outcomes unless accompanied by early, fulsome and meaningful engagement**.

**Farming**

- 45 The Bill proposes to amend:
- a. the Resource Management (Stock Exclusion) Regulations 2020 which regulate the grazing of beef cattle and deer on low slope land and require stock on low slope land to be excluded from natural wetlands of 0.05 hectares or more.
  - b. the Resource Management (National Environment Standards for Freshwater) Regulations 2020 to revoke regulations 26 and 27 to 31, which relate to the use of farmland for intensive grazing by stock. Those regulations are intended to minimise adverse effects on freshwater that come from these activities by requiring certain consents.
- 46 The Trust Board opposes the revocation of these amendments without engagement with hapū, iwi and the relevant stakeholders. The amendments were drafted in the knowledge that previous engagement with Treaty partners had resulted in a clear preference for keeping livestock out of freshwater and maintaining provisions that are consistent with Te Mana o te Wai.<sup>10</sup>
- 47 The Regulatory Impact Statement associated with these particular amendments states that no engagement has occurred since 2023 and that there is limited information from stakeholders and Treaty partners giving their current views on the amendments. In fact, because of time constraints and the restrictions on Treaty impact analysis, officials were unable to offer advice on whether to continue with the amendments rather than maintain the status quo. Regardless, removing national direction on these matters fails to meet the stated aim of the Bill to provide certainty to industry and other stakeholders.
- 48 The Trust Board was an active participant in the development of Plan Change 1 for the Waikato and Waipā Rivers (PC1). The stock exclusion regulations in the NES-FW are one of the mandatory components that underpin Farm Environment Plans in PC1. While the current stock exclusion regulations and low slope mapping, may require amendment to improve the balance between environmental protection and practical workability, the complete removal of these regulations will ultimately undermine the ability of PC1 to give effect to Te Ture Whaimana.
- 49 In addition, our understanding is that farmers have already made significant investment in excluding stock from waterbodies to comply with the regulations. We are deeply concerned that removing the regulations will marginalise this investment and sends a dangerous signal that voluntary compliance with, and early adoption of, freshwater regulations is a poor decision.
- 50 In summary, considerable work has been done over many years to transition the farming sector towards being more financially, socially and environmentally sustainable. These national

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<sup>10</sup> <https://www.mpi.govt.nz/dmsdocument/61960>

standards are an important mechanism to achieve consistency in environmental protection and animal welfare standards across the motu.

Recommendation sought from Select Committee

- 51 The Trust Board seeks a recommendation that the relevant clauses of Schedule 2 amending the Resource Management (Stock Exclusion) Regulations 2020 and the Resource Management (National Environment Standards for Freshwater) Regulations 2020 be removed from the Bill.

**CONTACT**

- 52 Please direct all communications to the Trust Board in relation to this submission to Peter Shepherd, Natural Resources Manager at [peter@tuwharetoa.co.nz](mailto:peter@tuwharetoa.co.nz).