



**T Ū W H A R E T O A**  
M Ā O R I T R U S T B O A R D

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Tēnā koe Penny,

**RE: FEEDBACK ON DEPARTMENT OF CONSERVATION DISCUSSION DOCUMENTS**

**INTRODUCTION**

- 1 This feedback by the Tūwharetoa Māori Trust Board (**Trust Board**) is provided on the following Department of Conservation (the **Department**) Discussion Documents:
  - a. 'Exploring charging for access to some public conservation land'; and
  - b. 'Modernising conservation land management',together, the '**Discussion Documents**'.
- 2 The Department will be aware that the Trust Board has unique conservation arrangements that interact with conservation legislation, namely the management arrangements for Taupō Waters and Te Ture Whaimana in respect the Waikato River.
- 3 This letter outlines our comments and concerns regarding the proposals outlined in the Discussion Documents. We expect **direct engagement** on these matters to ensure policy and legislative development is properly informed.
- 4 We also make the below preliminary comments.

**Recommendations of independent Options Development Group**

- 5 We note that it is unclear where the recommendations arising from the review by the independent Options Development Group (**ODG**)<sup>1</sup> sit in the context of these proposals.
- 6 As you will know, the ODG was established in response to the Supreme Court decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*,<sup>2</sup> to review the Conservation General Policy and General Policy for National Parks. The resulting report made recommendations in seven

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<sup>1</sup> Options Development Group, *Partial reviews of the Conservation General Policy and General Policy for National Parks regarding Te Tiriti o Waitangi / the Treaty of Waitangi* Department of Conservation (March 2022).

<sup>2</sup> *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368.

categories to help the Department meet its Treaty obligations as per section 4 of the Conservation Act 1987:

- a. *Fundamental Reform*: Transform conservation through a fundamental reform of the conservation system.
- b. *Purpose of Conservation*: Reframe the purpose of conservation to ensure it is fit-for-purpose for Aotearoa New Zealand.
- c. *Kawa, Tikanga, and Mātauranga*: Centre kawa, tikanga, and mātauranga within the conservation system.
- d. *Lands, Waters, Resources, Indigenous Species, and other Taonga*: Recast the legal status of conservation lands, waters, resources, indigenous species and other taonga.
- e. *Te Tiriti Partnership*: Reform conservation governance and management to reflect te Tiriti partnership at all levels.
- f. *Tino Rangatiratanga*: Enable devolution of powers and functions including decision-making to meaningfully recognise the role and exercise of rangatiratanga.
- g. *Resourcing*: Build capability and capacity within DOC and tangata whenua to give effect to Te Tiriti.

7 We understood the Department is or was in the midst of drafting proposed amended policies and was expected to have nationwide public consultation on those policies. The release of these Discussion Documents against that background has left the Trust Board with a number of questions about the ongoing relevance of that work and its role in informing these proposals.

8 We ask for clarification of this as soon as possible.

#### **Treaty Clause Review**

9 We are aware that the coalition agreement between National and NZ First requires a comprehensive review of all legislation (except Treaty settlement legislation) that includes “the principles of the Treaty of Waitangi” to replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references (the **Review**).

10 We are mindful that section 4 may yet be included in, and affected by, the Review.

11 We fundamentally oppose the Review. You will know that the Waitangi Tribunal’s report, [\*Ngā Mātāpono / The Principles: the Interim Report\*](#), made the following findings regarding the Review:<sup>3</sup>

- a. *Breach of Treaty Principles*: The Review is inconsistent with the principles of Te Tiriti o Waitangi. The Crown has acted unilaterally in a way that disregards Māori rights and interests.
- b. *Lack of Māori Engagement*: The policy process supporting the Review lacks proper engagement with Māori. The Government has failed to meet even its own standards for Māori engagement, as set out in Te Arawhiti documents.
- c. *Pattern of Policy and Lawmaking*: The Tribunal identified a pattern of Government action that reduces references to Treaty principles across legislation without consultation. This is seen as part of a broader legislative approach that undermines Māori rights.
- d. *Impact on the Māori-Crown Relationship*: The Government’s approach demonstrates a reckless disregard for the Māori-Crown relationship, potentially causing long-term damage.

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<sup>3</sup> Report at paragraph 5.5.4.

It found that the actions of the Crown "threaten to disfigure or rupture" the relationship, eroding trust and setting back foundational partnerships.

- e. *Use of Parliamentary Process Against Māori*: The Tribunal found that the Government is using the policy and legislative process to unilaterally alter Treaty rights, rather than upholding its obligations under Te Tiriti. This was described as a potential "constitutional crisis."

- 12 As the proposals in the Discussion Document are worked through, we remind the Department that, until such time as legislation is passed the well-understood convention is that existing primary legislation guides lower order policy development.

#### **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

- 13 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.
- 14 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.
- 15 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.
- 16 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.
- 17 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us are 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.
- 18 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.

## TŪWHARETOA MĀORI TRUST BOARD

- 19 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.

### 1992 and 2007 Deeds

- 20 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, Waiotaka, Hinemaiaia and Waitahanui Rivers (**Taupō Waters**), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.
- 21 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.

### Relationship with Conservation Legislation

- 22 Pursuant to the 1992 and 2007 Deeds, Taupō Waters is managed as if it were a reserve for recreation purposes under section 17 of the Reserves Act 1977 in partnership between the Crown and the Board through a management board known as Taupo-nui-a-Tia Management Board.<sup>4</sup>
- 23 The Taupō-nui-a-Tia Management Board has developed the Taupō Waters Management Plan as part of its role as an administrative body under the Reserves Act 1977.

### Waikato River Deed and Upper Waikato River Act

- 24 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>5</sup>
- 25 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>6</sup>
- 26 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>7</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>8</sup>

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<sup>4</sup> 2007 Deed, clause 1.7.2.

<sup>5</sup> Upper Waikato River Deed 31 May 2010, clause 8.

<sup>6</sup> Upper Waikato River Act, section 3.

<sup>7</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>8</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.

#### Relationship with Conservation Legislation

- 27 Te Ture Whaimana is a statement of general policy under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, Wild Animal Control Act 1977, Wildlife Act 1953 (to the extent to which the content of Te Ture Whaimana relates to the carrying out of functions or the exercise of powers for the Waikato River and activities in its catchment that affect the Waikato River).<sup>9</sup>
- 28 The following plans must not derogate from Te Ture Whaimana:<sup>10</sup>
- a. a conservation management strategy or a conservation management plan made under the Acts referred to in paragraph 27 above;
  - b. a freshwater fisheries management;
  - c. a sports fish management plan.
- 29 There is also a general duty to “have particular regard to” Te Ture Whaimana whenever a person is carrying out functions or exercising powers under the Conservation Act 1987, National Parks Act 1980, Reserves Act 1977, Wild Animal Control Act 1977, Wildlife Act 1953 (among other legislation) that relate to the Waikato River or activities in the catchment that affect the Waikato River.<sup>11</sup>

#### **EXPLORING CHARGING FOR ACCESS TO SOME PUBLIC CONSERVATION LAND**

- 30 We note the Department’s proposal to introduce charges for access to some public conservation land in Aotearoa.
- 31 As an overarching comment we note there is a perception that the Department’s proposals are driven primarily by economic motivations rather than conservation priorities. Revenue generation through access fees risks prioritising financial outcomes over ecological protection and cultural preservation. The issue of access fees must therefore be carefully considered with reference to core conservation values, and in a manner that gives effect to Treaty principles such as partnership and active protection, including protection of mana whenua rights and interests in the management of conservation land.
- 32 The Trust Board has the following specific comments:
- a. No access charge for tangata whenua;
  - b. Specific response on Tongariro National Park;
  - c. Access charges on public conservation land more generally; and
  - d. Partnership with tangata whenua in the management of access charge funds.

#### **No access charge for tangata whenua**

- 33 The starting point must necessarily be that it would be a gross violation of the inherent whakapapa-derived right of tangata whenua to their whenua to charge us for access to public conservation land within our respective rohe.
- 34 Where settlements have occurred in a particular area, this fundamental principle may be aggravated by the fact that popular or under pressure conservation lands for which charges might be considered are often areas where return of the whenua to iwi and hapū ownership has been denied through settlement.

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<sup>9</sup> Upper Waikato River Act, section 17.

<sup>10</sup> Upper Waikato River Act, section 17(7) and (10).

<sup>11</sup> Upper Waikato River Act, section 18.

- 35 It is disappointing that there is no articulation of this in the Discussion Document.

Recommendation

- 36 Charging tangata whenua to access public conservation land within their respective rohe is strongly opposed.

**Specific response for Tongariro National Park**

- 37 The Trust Board endorses and echoes the feedback of Ngāti Hikairo regarding Tongariro National Park, which opposes the introduction of access charges as outlined in the Discussion Document.
- 38 We are concerned that introducing access charges will shift the narrative from preservation and protection to commercialisation. This:
- a. is inconsistent with the Park's foundational principles, which are grounded in the protection of its natural resources and its deep spiritual and cultural connection to iwi, specifically Ngāti Hikairo and Ngāti Tūwharetoa
  - b. undermines the original intent behind the formation of the National Park, and the expectations of iwi.
- 39 The introduction of access charges risks diminishing the value of the park, including as a dual World Heritage area, recognising both its natural and cultural significance. Monetisation could lead to overuse, strain on resources, and prioritisation of revenue over conservation. It could also lead to an expectation on those being charged that payment gives them a *right* to the National Park rather than a *privilege*, and create the conditions for disrespect of tangata whenua and Department staff where they seek to address inappropriate behaviours or conduct.
- 40 Charging for access to public conservation land may also create barriers for iwi in fulfilling our role as kaitiaki, limiting our ability to exercise tikanga, conduct rituals, or maintain our connection to ancestral lands. Such a move would infringe on cultural rights.
- 41 The Department has a clear obligation to give effect to the principles of the Treaty of Waitangi under section 4 of the Conservation Act 1987, including protection of mana whenua rights and interests in the management of conservation land.

Recommendation

- 42 If access charging is to occur, a collaborative and culturally grounded approach is needed to ensure the National Park's long-term preservation and equitable management.

**Access charges on public conservation land more generally**

- 43 With the concerns and cautions in relation to Tongariro National Park firmly in mind, as they will also apply to other public conservation areas, the Trust Board acknowledges that there may be *some* public conservation areas for which access charges can be appropriately imposed.
- 44 In that regard we make the following general comments:
- a. The purpose of any such charge must be squarely tagged to maintaining conservation and cultural values of the places that are affected by the presence of users. In that regard the only reasonable option for use of funds is that any money collected should be invested at the place it is collected in (e.g within a national park); not invested regionally or as part of a general nationwide Department fund.
  - b. The framing of any such charge to users needs to be done deliberately and carefully. It is important to keep in mind that many persons that visit Aotearoa's public conservation areas are international visitors. These persons have no framework for appreciating Aotearoa's conservation ethic, let alone the tikanga-based rights and responsibilities that govern

tangata whenua relationships with these places. They need to understand that the charge is to address the impact of their presence on the conservation and cultural values of the places they are visiting. It is not about supporting a customer experience of a place and it does not give rise to any rights to that place. Those rights are retained by the tangata whenua of that place, and visitors must enter an area with respect for that dynamic.

- c. While the Trust Board supports an increase in concessionaire-based access charges where their impact on public conservation lands has not been accounted for, it will again be important to ensure that the Department does not create a 'concession business' that risks over-allocation of concessions.

#### **Partnership with tangata whenua in the management of access charge funds**

- 45 A critical omission in the Discussion Document is recognition that tangata whenua, as partners with the Crown, must necessarily have a role in managing the funds generated from access charges, where those charges are deemed appropriate; particularly in light of the purpose of such funds being to maintain conservation and cultural values.
- 46 This is inherent in the Department's section 4 Conservation Act obligation to "give effect to" Treaty principles of partnership, active protection, mutual benefit, equity and redress.

#### **MODERNISING CONSERVATION LAND MANAGEMENT**

- 47 We offer the following comments on the Discussion Document concerning changes to the conservation land management system.

##### **Proposal to simplifying the structure of statutory planning documents**

- 48 The Trust Board is not opposed to the *concept* of a single National Conservation Policy Statement (**NCPS**) and a single layer of "area-based plans without overlapping coverage".
- 49 However, we identify the following concerns, on which we expect **direct engagement** to ensure legislative development is properly informed:
  - a. The Trust Board's conservation planning arrangements (the Taupō Waters Management Plan and recognition for Te Ture Whaimana as outlined at paragraphs 12-13 and 17-19) must be afforded due respect and recognition in the NCPS, to ensure they are not inadvertently undermined.
  - b. We strongly oppose any potential for amended conservation legislation to adopt the revised national policy statement process under the Resource Management Act 1991 (which came into effect via the Resource Management (Freshwater and Other Matters) Amendment Act 2024, with the intention to "speed up" the process to make or amend national direction).
  - c. We are opposed to permitting classes of activities as exempt and/or permitted in advance under the NCPS without safety valves that require localised processes to address cumulative, or unintended, effects. See our comments on concessions below for further discussion on this matter.

##### **Engaging with the Trust Board, and other iwi and hapū**

- 50 The Discussion Document section on engaging with iwi is disappointingly light.
- 51 Section 4 of the Conservation Act 1987 requires that the Act be interpreted and administered in a manner that "gives effect to" the principles of the Treaty of Waitangi. The Supreme Court decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*<sup>12</sup> has made clear that the Department's obligation to give effect to the principles of the Treaty under section 4 is not

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<sup>12</sup> *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation* [2018] NZSC 122, [2019] 1 NZLR 368.

overridden by other statutory imperatives set out in the conservation legislation (as the General Policies at that time wrongly stated). Rather, such other statutory (and non-statutory) objectives must be achieved in a way that best gives effect to the principles of the Treaty.<sup>13</sup>

- 52 We acknowledge the statement in the Discussion Document that “all commitments in Treaty settlement legislation about engagement in the planning process will be upheld and incorporated into any new arrangements”. What also missing from the document is recognition of the need to also uphold arrangements outside of settlement, such as our Taupō Waters arrangements.
- 53 In respect of settlements, our expectation is that the policy and legislative work to uphold our settlement will be developed in partnership with us, and in respect of our Waikato River settlement, together with other Waikato and Waipā River iwi. We are not otherwise confident that officials understand the sophistication of our settlement to comprehend how it must land in any new conservation land management regime.
- 54 By way of example, the statement in the discussion document that “engagement on area plans is likely to be more extensive than on the NCPS, given the localised content of area plans”<sup>14</sup> is concerning:
- a. As the proposed new higher order document in the conservation hierarchy, which is to have binding effect,<sup>15</sup> engagement with iwi and hapū, including the Trust Board, on the development of the policy and legislative settings for the NCPS and its relationship to lower order documents must be seen as foundational to any new conservation management regime; particularly in the context of the Department’s section 4 obligations.
  - b. Any assumption that bespoke settlement arrangements that currently engage with conservation management strategies (slated for removal by these proposals) should be provided for at the area plan level rather than the NCPS is a wrong and inappropriate starting point. It is important to first understand what is proposed in the NCPS and area plans respectively (the information in this Discussion Document is too high level to do this effectively), and then determine where settlement obligations best fit. For Te Ture Whaimana, the expectation is that it prevails over the NCPS where inconsistent.
- 55 We expect to be engaged early and substantively on these matters.

#### **Concessions**

- 56 We do not support the permitting of classes of activities as exempt and/or permitted in advance under the NCPS without safety valves that require localised processes to address cumulative, or unintended, effects. (It may be easier to list prohibited activities in an NCPS, at least where those activities are objectively offensive to the purpose of public conservation land generally.)
- 57 We also consider more information is required to engage with this proposal, as more thinking is required to ensure any listed activities do not result in adverse consequences.
- 58 For example, taking the reference to “drone use” in the Discussion Document, permitting drone use might be appropriate over a general public conservation area, but would be entirely inappropriate for cultural reasons above Tongariro, Ruapehu or Ngauruhoe maunga. Further, there is likely to become a scale of drone use that is unacceptable in all public conservation areas (including due to the risks of collisions endangering the safety of any public below) even if one or two drones would not cause an issue otherwise. Permitting activities in advance at an area plan level in the NCPS, without giving thought to the different types of area plan

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<sup>13</sup> At paras [57] and [76]-[77].

<sup>14</sup> Discussion Document, section 5.3.5.

<sup>15</sup> Discussion Document, sections 7.2.1 and 7.2.4.



(particularly given area plans are to overtake the existing distinction between conservation management plans and national park management plans) is problematic.

- 59 We reserve our final position on this matter until we have further information.

**Enabling competitive allocation of concessions**

- 60 The Trust Board is supportive of high-demand concessions being allocated through a competitive process rather than on a first come, first-served basis where the criteria for that process have been co-designed with iwi and hapū.

- a. We support clarifying the ability to return a concession application to initiate a competitive (tendering) process within 40 days of receiving an application.
- b. We support allowing a successful tender applicant to be directly offered a concession (rather than having to still apply for a concession), but only where to do so is consistent with Part 3B of the Conservation Act.

- 61 With regard to the proposed criteria to decide when to competitively allocate, we support recognising Treaty rights and interests, as the process must ensure that iwi and hapū are not locked out of opportunities on our own whenua, and instead proactively enabled to participate.

**Land exchange and disposal proposals**

- 62 The Discussion Document refers to how the Fast-track Approvals Act intends to provide for land exchanges of public conservation land to facilitate the delivery of infrastructure and development projects with significant regional or national benefits, noting there is scope to consider whether the Government should have greater flexibility for exchanges and disposals more generally, and identifies land exchange and disposal proposals for feedback.

- 63 The Trust Board strongly opposes the land exchange and disposal proposals to parties other than hapū and iwi. These changes are effective sale of the conservation estate through this mechanism. The ability to exchange or dispose of conservation land raises significant concerns about the loss of lands that hold deep ancestral and spiritual significance. Conservation lands are not just about conservation management, but also about the cultural landscapes that define iwi and hapū identities. These areas contain wāhi tapu, sites of historical and spiritual significance, and native ecosystems that we have been part of for centuries. Removing these lands from the conservation estate could sever the relationship between iwi and hapū and our whenua.

- 64 One of the most alarming aspects of the proposed reforms is the lack of safeguards to ensure that iwi and hapū interests are protected. If the government allows for easier land exchanges without such safeguards, there is a real risk that lands currently designated for conservation could be traded away for purposes that are inconsistent with conservation management, environmental protection or cultural values. This could open the door to commercial development, extractive industries, or other land uses that prioritise economic gain over the wellbeing of ecosystems and cultural heritage. We are deeply concerned that this will lead to the permanent loss of lands that should instead be restored and protected under the principles of rangatiratanga and kaitiakitanga.

- 65 The proposal also disregards decades-long, hard-fought for Treaty settlements and other legal agreements that have established relationship arrangements over conservation lands. If land can be exchanged or disposed of without the explicit agreement of iwi and hapū, these settlements and agreements will be undermined.

- 66 If land is surplus to requirements that should trigger a return to iwi and hapū.

### Next Steps

- 67 I ask that your officials communicate with our Natural Resources Manager, Peter Shepherd, ([peter@tuwharetoa.co.nz](mailto:peter@tuwharetoa.co.nz) and 021 974 652) to set up a hui to discuss these matters directly, and a programme of work to address our concerns in any resultant policy and legislative development.

Noho ora mai,



**Rakeipoho Taiaroa**

Chief Executive

Tūwharetoa Māori Trust Board