



**RESPONSE TO
MINISTRY FOR THE ENVIRONMENT ON
PROPOSED NATIONAL POLICY STATEMENT FOR
HIGHLY PRODUCTIVE LAND**

This response is filed for Waikato-Tainui by:

Te Whakakitenga o Waikato Incorporated

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INTRODUCTION

1. This response is made on behalf of Te Whakakitenga o Waikato Incorporated (formerly known as Waikato-Tainui Te Kauhanganui Incorporated). Te Whakakitenga o Waikato Incorporated is the governance entity for the iwi of Waikato-Tainui, which has over 76,500 members affiliating to 68 marae and 33 hapuu.
2. Te Whakakitenga o Waikato Incorporated is the trustee of both the Waikato Raupatu Lands Trust and the Waikato Raupatu River Trust and is the mandated iwi organisation for Waikato-Tainui for the purpose of the Maaori Fisheries Act 2004.
3. Waikato-Tainui is concerned about the proposed reforms and wants to ensure that:
 - (a) the Proposed National Policy Statement for Highly Productive Land (**NPS-HPL**) does not adversely affect the rights, interests and opportunities of Waikato-Tainui; and
 - (b) if enacted, the co-management principles that underpin our Waikato River settlement legislation between Waikato-Tainui and the Crown will ensure that any benefits from the NPS-HPL are fully realised within the Waikato region.

OVERVIEW OF THE WAIKATO-TAINUI POSITION

4. Waikato-Tainui has a range of rights and interests including, but not limited to:
 - (a) rights and interests arising under the 1995 Waikato Raupatu Lands Settlement (and the Waikato Raupatu Settlement Act 1995) and the 2008-2009 Waikato River Settlement (and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010);
 - (b) rights and interests according to tikanga and customary law;
 - (c) rights and interests arising from the common law (including the common law relating to aboriginal title and customary law); and
 - (d) rights and interests under the Treaty of Waitangi and its principles.
5. Waikato-Tainui seeks to ensure that these rights and interests are recognised and protected with any policy development.

6. As part of the River Settlement signing in 2008, we also signed the Kiingitanga Accord. A cornerstone of the settlement is that both Waikato-Tainui and the Crown have committed to enter into a new era of co-management.
7. The intention of the settlement was that the Crown would respect and work with Waikato-Tainui in good faith, as a Treaty partner. As set out in the Kiingitanga Accord, this requires the Crown to engage with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River.
8. The development of the proposals relating to NPS-HPL is certainly inconsistent with this obligation for the Crown to leave Waikato-Tainui to merely react to and “submit” on relevant Bills and policies that have already been developed by officials, as had been the norm prior to our settlement being reached.
9. From our perspective, the process that has been followed for developing the Government’s current proposals has **not** been conducted in good faith, in accordance with the principles of co-management or consistently with the Crown’s obligations under our settlement.
10. Waikato-Tainui seeks to ensure that these rights and interests are recognised and protected following the Government’s adoption and implementation of the NPS-HPL.

PROPOSED REFORM

11. Waikato-Tainui supports and promotes a coordinated, co-operative and collaborative approach to natural resource and environmental management, restoration responsibilities and care within the Waikato Tainui rohe.
12. Mana whakahaere embodies the authority that Waikato Tainui have established in respect of our environment and we view the holistic integrated management of all elements of the environment such as flora and fauna, land, air and water as of utmost importance.
13. Waikato-Tainui are responsible for protecting and nurturing the mauri of all living things in accordance with tikanga (values, ethics and norms of conduct). Therefore, when exercising mana whakahaere, we recognise the intricate balance and integral relationship between all-natural resources in the Waikato Tainui rohe. Accordingly, we strive to ensure these tikanga values (including responsibilities) are inherent in all our actions.
14. Waikato-Tainui has developed a range of formal resource management relationships with different central and local government agencies. For example,

our multiple joint management arrangements with local authorities within the Waikato River catchment area.

15. Waikato-Tainui welcomes reform that is intended to align and integrate the resource management system to enhance iwi and hapuu participation. We also welcome reform that provides robust and durable planning and environmental outcomes.
16. Equally, Waikato-Tainui opposes any legislative and policy development that may undermine participation in resource management processes that we have achieved to date, either as a result of Treaty settlement legislation or as a function of our relationships.
17. In respect of the Waikato River, Te Ture Whaimana/the Vision and Strategy for the Waikato River is of paramount importance and must continue to prevail over other planning instruments. In order to ensure that the Vision and Strategy is properly given effect, Waikato Tainui participation in planning processes relating to the Vision and Strategy must not be diluted.
18. However, having regard to the information that is currently available and noting other than one general engagement meeting, the absence of any direct engagement with Waikato-Tainui regarding the development of these NPS-HPL that:
 - (a) Waikato-Tainui be afforded the opportunity to actively engage directly with the Crown in respect of the implementation of the proposed NPS-HPL and the potential effects and opportunities that it may have for both Waikato-Tainui and the Waikato region;
 - (b) the ability of Waikato-Tainui to regulate and develop environmental strategies and practices that uphold the rights and interests of Waikato-Tainui is maintained and not compromised or otherwise inhibited by the terms of the enactment of the NPS-HPL;
 - (c) Te Ture Whaimana / the Vision and Strategy for the Waikato River is of paramount importance and must continue to prevail over other planning instruments.;
 - (d) Waikato-Tainui supports the principles of protecting highly productive lands for primary production purposes and acknowledges the importance of highly productive land to the health and wellbeing of our marae, hapuu whanau and the wider community. We also acknowledge the importance highly productive lands contribute to the New Zealand domestic and export markets;

- (e) The Waikato-Tainui region is characterised by an exceptionally productive rural sector arising from the existence of high-class soils. The protection of land for food production is an important issue for our region and we support Waikato Regional Policy Statement provisions relating to the protection of high-class soils from inappropriate subdivision, use and development; and
- (f) Waikato-Tainui generally supports the policy intent to give councils, joint-management partners and their communities the flexibility to identify highly productive land based on a range of considerations such as climate, water, and access to transport routes and appropriate labour markets.

PRIORITY AREAS

Te Ture Whaimana prevails over any National Policy Statement for Highly Productive Land

- 19. Te Ture Whaimana is intended to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the River.
- 20. Te Ture Whaimana has certain status and prevails over any inconsistencies in other policies, plans, or processes affecting the Waikato River. Relevant policies, plans, and processes cannot be amended so that they are inconsistent with Te Ture Whaimana and must be reviewed and amended, if required, to address any inconsistencies.
- 21. Resource management, use, and activities within the Waikato River catchment in the Waikato-Tainui rohe is to be consistent with Te Ture Whaimana.
- 22. Waikato-Tainui therefore seeks to ensure that the proposed National Policy Statement for Highly Productive Lands is consistent with:
 - (a) Te Ture Whaimana;
 - (b) Waikato-Tainui rights and interests within the Waikato boundaries.
- 23. Waikato-Tainui expects to actively engage with the Crown on the implementation of the National Policy Statement for Highly Productive Lands and the potential effects and opportunities that it may have for both Waikato Tainui, our marae and hapuu, and the Waikato region.

Crown Processes: Policy co-design with Waikato-Tainui

24. Waikato-Tainui are disappointed that the Government is choosing to progress the NPS-HPL reforms without any proper or meaningful engagement with Waikato-Tainui and without understanding the implications for our Waikato River settlement. It is important that both Waikato-Tainui and the Crown have a comprehensive understanding of what these implications might be, particularly with respect to:
- (a) Waikato-Tainui's ability to exercise its rights and obligations regarding the Waikato River, as provided for in that settlement; and
 - (b) The Crown's corresponding obligations under that settlement.
25. In 2008, Waikato-Tainui and the Crown signed both the Kiingitanga Accord and our Deed of Settlement for the Waikato River, culminating in the passing of our Waikato River settlement legislation in 2010. A cornerstone of the settlement is that both Waikato-Tainui and the Crown have committed to enter into a new era of co-management.
26. Clause 4 of Schedule 1 to the Waikato River Settlement Act sets out relevant principles from the Kiingitanga Accord. Those include the principle of co-management, which is described as follows:

"4 Co-management

(1) ...The principle of co-management includes:

- (a) The highest level of good faith engagement; and*
- (b) Consensus decision-making as a general rule;*

while having regard to the statutory frameworks and the mana whakahaere of Waikato-Tainui and other Waikato River Iwi.

(2) To be effective co-management must:

- (a) Be implemented and achieved at a number of levels and across a range of management agencies, bodies and authorities, including (but without limitation) the following:*
 - (i) The development, amendment and implementation of strategies, policy, legislation and regulations that may potentially impact on the health and wellbeing of the Waikato River; and*
 - (ii) The process for granting, transfer, variation and renewal of consents, licenses, permits and other authorisations for all activities that potentially impact on the health and wellbeing of the Waikato River; and*
- (b) Include provision for effective Waikato-Tainui input and participation by engagement at an early stage in statutory and management processes, and other actions, that may affect the health and wellbeing of the Waikato River,*

including the planning and development of new and amended policies or management initiatives or decisions affecting or relating to the Waikato River. This is a positive engagement obligation to provide for early and effective input from Waikato-Tainui, rather than simply an obligation to consult.”

27. It is disappointing that 10 years on, the Crown is failing to meet this fundamental obligation of our settlement.
28. The intention of the settlement was that the Crown would respect and work with Waikato-Tainui in good faith, as a Treaty partner. As set out in the Kiingitanga Accord, this requires the Crown to engage with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River. It is certainly inconsistent with this obligation for the Crown to leave Waikato-Tainui to merely react to and submit on relevant Bills and policies that have already been developed by officials, as had been the norm prior to our settlement being reached.
29. From our perspective, the process that has been followed for developing the Government’s current Freshwater reform programme and specifically, the NPS-HPL has not been conducted in good faith, in accordance with the principles of co-management or consistently with the Crown’s obligations under our settlement.
30. The Crown has not sought to engage with Waikato-Tainui on these proposals directly or at an early stage of their development.
31. Waikato-Tainui wishes to actively engage and work co-operatively with the Crown through all stages of the implementation process. To this end, Waikato-Tainui seeks early engagement with the Crown in respect of the implementation of the NPS-HPL, including in relation to both the active protection of the Waikato-Tainui’s rights and interests and the opportunities that might exist for Waikato-Tainui and the Waikato regional economy.

Long-term vision for land management

32. The return of Waikato lands through the 1995 Settlement was always a priority for Waikato-Tainui in order to advance the socio-economic position of Waikato-Tainui in a rapidly growing and changing society.
33. The resolution of raupatu brought with it the hope for a new generation to determine their own future so that we could advance a better future for our children and mokopuna.
34. At the time of the settlement negotiations, Waikato-Tainui were acutely aware that many of our people had struggled with the consequences of being made a landless tribe. The consequent impact on the social, economic, cultural and

environmental well-being of Waikato-Tainui was a big motivator to advancing the first settlement in this country.

35. As such, Land is a taonga to Waikato and Te Whakakitenga o Waikato is the trustee of whenua held for the benefit of Waikato-Tainui marae, hapuu and tribal members.
36. There must be a most holistic approach to land development to ensure the right protections are in place and any development does not adversely affect our natural environment.
37. Therefore, proper inclusion of mana whenua involvement in land development processes is critical and will also assist in streamline development and improve overall development outcomes.
38. Waikato-Tainui wishes to actively engage and work co-operatively with the Crown through all stages of the implementation process. To this end, Waikato-Tainui seeks early engagement with the Crown in respect of the implementation of the NPS-HPL, including in relation to both the active protection of the Waikato-Tainui's rights and interests and the opportunities that might exist for Waikato-Tainui and the Waikato regional economy.

Primary Production

39. As stated, the Waikato-Tainui region is characterised by an exceptionally productive rural sector arising from the existence of high-class soils. We generally support the policy intent to give councils, joint-management partners and their communities the flexibility to identify highly productive land based on a range of considerations, including the health and well-being of our people, hapuu and marae.
40. We also cannot separate ourselves from the paramount importance of the Waikato River. Clause 1(2) Te Ture Whaimana / the Vision and Strategy states "...a future where a Healthy River sustains abundant life and prosperous communities". This cannot be viewed independently from a healthy river. Te Ture Whaimana identifies abundant life and prosperous communities as the positive consequence of a healthy river.
41. We are sympathetic that urban growth in existing horticulture production areas (including South Auckland) are impacting land for commercial vegetable production. But any claimed public good should not and does not offset adverse effects on the health of the Waikato River.

Wider Implications

42. Waikato-Tainui has an economic base of \$1.4 billion. We are the largest ratepayer in the Waikato region.
43. Waikato-Tainui is a major investor in the Waikato region and beyond with its diversified investment portfolio including retail, residential, commercial, industrial and rural properties and interests in the both the primary sector and tourism.
44. The assets of trusts, incorporations, ruunanga, settlement entities and Maaori entities contribute \$2.9B (46%), Maaori businesses contribute \$3.3B (54%) to the overall Maaori asset base of the Waikato region. Furthermore, Maaori businesses generated \$1.4B in value added in the region in 2012, representing 8% contribution to the total GDP of the Waikato.
45. Maaori and indeed iwi, play a significant role in the Waikato economy through participation in the work force, contribution to GDP, and ownership of assets.
46. Waikato-Tainui reiterates its position and wish to actively engage and work co-operatively with the Crown through all stages of the implementation process.
47. To this end, Waikato-Tainui seeks early engagement with the Crown in respect of the implementation of the NPS-HPL, including in relation to both the active protection of Waikato-Tainui's rights and interests and the opportunities that might exist for Waikato-Tainui and the Waikato regional economy.

CONCLUSION

48. Waikato-Tainui wishes to ensure that:
- (a) the proposed NPS-HPL does not adversely affect the rights and interests and opportunities of Waikato-Tainui; and
 - (b) if adopted and implemented, that Waikato-Tainui will co-design the draft NPS with the Crown to ensure that any benefits from its adoption are fully realised within the Waikato region.
49. Accordingly, Waikato-Tainui seeks direct engagement with the Crown and its officials on the ongoing process of development of the NPS-HPL should it lead to adoption and implementation, including the particular matters set out in this submission.

DATED

10 October 2019

TE WHAKAKITENGA O WAIKATO INCORPORATED



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