

18 October 2019

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By email: soils@mpi.govt.nz

Tēnā koe,

RE: PROPOSED NATIONAL POLICY STATEMENT FOR HIGHLY PRODUCTIVE LANDS

Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) welcome the opportunity to comment on the Proposed National Policy Statement for Highly Productive Land (“**pNPS- HPL**”) and associated Discussion Document ‘Valuing Highly Productive Land’.

Ngāi Tahu strongly agree that our land is a precious taonga. As tangata whenua, Ngāi Tahu identify as from the land and of the land.

Te Rūnanga agree that a considered approach to land classification and management is necessary, and in many instances well overdue. Land use that reflects the nature of the land itself seems like a simple concept. However, it is clear that in practical terms the issue is far more complex.

To support the development of a framework that will deliver the correct balance between protection and necessary change, Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) make the following comments for your consideration.

Background

Te Rūnanga is statutorily recognised as the representative tribal body for Ngāi Tahu Whānui.

The Ngāi Tahu takiwā (region) covers the largest geographic area of any tribal authority in New Zealand (a map of the Ngāi Tahu takiwā is attached as Appendix One). Ngāi Tahu currently have in excess of 65,000 individuals registered with the iwi, most of who reside in Aotearoa.

As stated in the Crown Apology to Ngāi Tahu (attached as Appendix Two), the Ngāi Tahu Claims Settlement marked a turning point, and the beginning for a new age of cooperation.

Te Rūnanga o Ngāi Tahu Position Statement

Treaty Relationship

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (**Te Tiriti**) and the principles upon which Te Tiriti is founded.
- As a Te Tiriti Partner, Te Rūnanga expects an appropriate level of engagement on matters of significant government policy that will affect our rights and interests. The Te Tiriti partnership is important to Ngāi Tahu and elevates the relationship beyond that of a 'stakeholder'.
- This expectation is particularly relevant when considering the proposed processes councils will need to undertake when assessing and identifying land within their regions. It is the position of Te Rūnanga that the Crown's devolution of authority to local government does not diminish or sever the Treaty partnership, rather simply transfers it.
- Te Rūnanga expects that councils in the Ngāi Tahu takiwā will engage with Ngāi Tahu as implementation of the pNPS-HPL progresses.

Proposed National Policy Statement

- Te Rūnanga agree that in this instance the Resource Management Act ("**RMA**") is poorly equipped to ensure that appropriate weighting of values occurs when considering land use.
- Te Rūnanga agree that of the options considered, an NPS is the greatest potential to achieve the desired management outcomes for this particular kaupapa. Providing an overarching expectation nationally is important, but identification and management of land and the best approach to deliver those expectations and outcomes will be subject to regional circumstances and environmental settings. In this context, an NPS is a suitable tool to complement the RMA in delivering these outcomes.
- It is positive to see acknowledgement of the suite of regulations that would surround and interact with the pNPS- HPL. Consistency across these is critical, and they should be drafted, implemented, and monitored to complement each other. This is necessary to ensure outcomes are achieved, but also to provide clarity to landowners and users.
- Te Rūnanga have noted that although an NPS provides national direction while allowing for regionally specific delivery, inconsistency is still possible if councils are not supported with practical guidance, and are able prioritise implementation. This becomes obvious for an organisation like Te Rūnanga, who engage with numerous councils in our takiwā, across numerous kaupapa.
- The flexibility that allows councils to apply an NPS to the local circumstances must not become a mechanism that allows misinterpretation or misapplication of the intended outcomes of this kaupapa. There must be mandatory requirements within the pNPS-HPL to compel implementation and measure delivery of outcomes.

- To counter the last point, Te Rūnanga suggest that central government will have an ongoing responsibility to provide clear, comprehensive guidance and support to councils as they navigate competing interests while finding the correct balance of values in their circumstances.

Comments on the Feedback Paper

To ensure the pNPS-HPL reaches its potential, Te Rūnanga makes the following comments:

- Te Rūnanga are pleased to see recognition that factors such as climate change and technological advancements will shift the possibilities and therefore the parameters of how 'best use' should be defined. While acknowledging that this adds an element of complexity for councils, it is critical that it is considered and frequently revisited to ensure that new information and technology is a factor in decision making.
- While Te Rūnanga support protecting this whenua, it is important to recognise that the issues leading to this action are symptoms of other genuine factors, including the economic prerogative of landowners, and the need to house a growing population. The pNPS- HPL will be an additional barrier narrowing the range of options to address those factors, and as such the government must proactively seek avenues to support those requirements in other ways, and ensure an appropriate balance is found.
- Te Rūnanga agree that fragmentation of land title, in this case to create rural 'lifestyle' properties, does in many instances compromise that land's productivity potential. This could be offset somewhat by incentivising productive use of land in certain parcel sizes, whether through tax incentives or otherwise.
- The challenges faced by Māori landowners are well documented, and government efforts to alleviate these challenges and unlock the potential of a lot of Māori land has had mixed success. In specific relation to this kaupapa are restrictions relating to residential occupancy and zoning.
- Te Rūnanga do not see this policy as having the scope to make significant inroads in many of the barriers faced by Māori landowners. However, we urge caution to ensure that the pNPS-HPL does not simply add more barriers to Māori landowners seeking to benefit from their asset.
- For example, Māori land should not be viewed or regulated in the same way as typical freehold land title. The government must consider whether it is appropriate to place category-based restrictions on Māori land given the context of how and why Māori land is held as it is.
- Te Rūnanga argue that in most instances, the historical intent and purpose of land being vested as Māori land outweighs the outcomes being sought by the pNPS-HPL. It would be unjust to further fetter Māori from determining their own needs-based outcomes from their land, whatever they may be.

If you have any questions or require further clarification, please contact Chris Brankin at [REDACTED] or on [REDACTED]

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'R. Clements', with a small flourish at the end.

GENERAL MANAGER (ACTING), STRATEGY AND INFLUENCE

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoaka”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā:

‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhuatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’

Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.

E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhuatanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.

E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.

E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtaka mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhuatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatupuranga heke iho. Te whakataua i pūtaka mai i aua āhuatanga: “Te mate o te iwi”.

E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.

E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtaka mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.

E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāianei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown’s responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu’s use, and to provide adequate economic and social resources for Ngāi Tahu.

The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu’s use and ownership of such of their land and valued possessions as they wished to retain.

The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tirenī!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb ‘Te mate o te iwi’ (‘The malaise of the tribe’).

The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi

and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.

The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.

APPENDIX TWO: NGĀI TAHU CLAIMS AREA

