

27 June 2024

Primary Production Select Committee
Parliament Buildings Wellington

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Tēnā koe

PREAMBLE:

He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi were some of the enabling frameworks, outside of Te Ao Māori, that our tupuna envisioned would support the development of our nationhood as Aotearoa/New Zealand.

This submission is an ongoing part of that continuum to realise and reassert the aspirations of our tupuna to facilitate intergenerational equity whilst recognising and upholding Te Mana me te Mauri o te Taiao and Te Tiriti o Waitangi.

Submission to the Primary Production Select Committee on the Resource Management (Freshwater and Other Matters) Amendment Bill

1. This response is made on behalf of Te Kahu o Taonui (Te Tai Tokerau Iwi Chairs Forum).
2. Te Kahu o Taonui was established in 2006/07 and is now a collective of Authorities in Te Tai Tokerau namely Ngāti Kuri Trust Board, Te Rūnanga Nui o Te Aupōuri, Te Rūnanga o Te Rarawa, Te Rūnanga o NgātiTakoto, Te Iwi o NgātiKahu Trust, Kahukuraariki Trust / Ngātikahu ki Whangaroa, Te Rūnanga o Whaingaroa, Te Runanga-Ā-Iwi-O Ngāpuhi, Te Runanga o Ngāti Hine, Ngātiwai Trust Board, Te Iwi o Te Roroa and Te Rūnanga o Ngāti Whātua.
3. The aim of Te Kahu o Taonui is to advance the collective aspirations of Te Tai Tokerau iwi and hapū. *"Me mahi tahi tātou mō te iwi te take"*.

Resource Management (Freshwater and Other Matters) Amendment Bill

POSITION:

4. Te Kahu o Taonui's position is premised on the fundamental philosophy that the sustainability and mauri of Te Taiao is the priority first and foremost, followed by our iwi /hapū tino rangatiratanga and Treaty Settlements (both existing and potential). Sustainable development should not override these imperatives but rather support our people and communities social, cultural and economic wellbeing, now and in the future.



Therefore, Te Kahu o Taonui:

- Strongly opposes the exclusion of the hierarchy of obligations in the National Policy Statement for Freshwater Management (NPS-FM) from resource consenting.
- Has environmental concerns on repealing the low slope maps and associated requirements from stock exclusion regulations.
- Has environmental concerns on repealing the permitted and restricted discretionary activity regulations and associated conditions for intensive winter grazing.
- Opposes aligning the provisions for coal mining with other mineral extraction activities.
- Supports suspending the requirements under the NPS-IB for Councils to identify new Significant Natural Areas (SNAs) and include them in District Plans.
- Supports, in part, the speeding up and simplifying the process for preparing and amending national direction, including national environmental standards, national planning standards, national policy statements and the New Zealand Coastal Policy Statement.

5. This Amendment Bill is part of the coalition Governments proposal to reform the RMA et al, and is happening at pace. The speed of these reforms and the lack of effective engagement and consultation will result in the development of sub-standard legislation and policy directives.
6. This pace, alongside utilising the Select Committee as a defacto consultation and engagement platform sets a precedent that further enhances and exacerbates sub-standard decision-making.
7. There is little to no regard for the timely input and participation of your Treaty partner, which has been limited to officials internal desktop analyses.

STATEMENT OF KEY MATTERS OF CONCERN:

Te Tiriti o Waitangi / Treaty of Waitangi

8. The Crown has an obligation to make decisions in a way that is consistent with Aotearoa / New Zealand's founding document, Te Tiriti o Waitangi.
9. The principles of partnership, participation and protection provide foundational pre-requisites in lieu of the Articles of Te Tiriti o Waitangi.
10. Within the Regulatory Impact Statement (RIS) regarding the exclusion of Te Mana o te Wai hierarchical obligations, the two key principles of partnerships and active protection were identified by officials.
 - *The principle of partnership is a duty for the Crown and Māori to act towards each other 'with the utmost good faith', was articulated by the Court of Appeal in the Lands case in 1987.*¹

¹ New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641, and affirmed by the Privy Council New Zealand Māori Council v Attorney-General [1994] 1 NZLR 513.



- *The principle of active protection is “not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable”.*²

11. However, whilst officials identified the above obligations, they have also clearly articulated that:

*The pace of the reform and timeframe[s] “... has limited the identification of options, level of analysis, collation and review of evidence, and engagement with iwi/Māori and stakeholders.”*³

It is difficult to assess whether or not the principles of partnership and active protection have been met (for both the proposal and policy development process) in light of the information and analysis in the preceding sections, specifically:

- *the limited engagement with iwi/Māori*
- *the nature of feedback received through that engagement (including that there was insufficient time or detail on the changes to be able to assess possible impacts)*
- *the nature of some Treaty settlement commitments (including engagement obligations)*
- *the uncertainty about the potential impact of the changes on freshwater*
- *the context of the Crown’s previous commitments on Māori freshwater rights and interests.*⁴

12. Te Kahu o Taonui is of the opinion that the above processes do not reflect the commitment of a Treaty partner acting in good faith.

Relief Sought

13. That as a Treaty partner acting in good faith, and in supporting the development of robust legislative reform, that the Crown pause this Amendment Bill and actively engage and consult with its Treaty partners.

Te Tiriti o Waitangi settlements⁵

14. Within Te Tai Tokerau seven of our iwi members have negotiated Treaty Settlements with the Crown whereby a range of formal and informal arrangements have been negotiated in response to the Crown’s Treaty breaches.

15. In response to the government’s proposed Amendments, no consultation and/or engagement has occurred with our Treaty Settlement Entities.

16. Similarly, the same process issues have also resulted in:

- *Time constraints have not allowed for engagement with PSGEs on how best to uphold Treaty settlement arrangements and Iwi/Māori.*⁶

² Ibid.

³ See [Regulatory Impact Statement Template \(environment.govt.nz\)](https://environment.govt.nz/regulatory-impact-statement-template):pp3.

⁴ See [Regulatory Impact Statement Template \(environment.govt.nz\)](https://environment.govt.nz/regulatory-impact-statement-template): pp23

⁵ See [Quarterly-report-to-31-Mar-2024.pdf \(tearawhiti.govt.nz\)](https://tearawhiti.govt.nz/Quarterly-report-to-31-Mar-2024.pdf)

⁶ See [sar-national-direction-bill-1-140524-final.pdf \(environment.govt.nz\)](https://environment.govt.nz/sar-national-direction-bill-1-140524-final.pdf):pp4.



- Due to the limited time available, it has not been possible to engage with iwi/Māori on these proposals nor fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.⁷
- As well as broad obligations under the Treaty of Waitangi to engage with Māori on matters that affect them, the Crown has specific commitments through Treaty settlements to engage with post-settlement governance entities on relevant policy matters under relationship agreements and accords, including when preparing national direction. Where national direction is amended through primary legislation, there remain relationship risks if the Crown has not complied specific procedural or substantive obligations in settlements related to preparing national directions. We have not undertaken further analysis of those risks.⁸

17. This modus operandi to develop draft legislation at pace at the risk of not engaging with PSGEs has also occurred within previous Bills. Te Kahu o Taonui, once again, considers this another fundamental breach to our Te Tiriti / Treaty partnership relationship.

Relief Sought

18. Te Kahu o Taonui will be adversely affected by a range of system changes and we are seeking that the Crown pause this Bill and directly engage with our PSGEs in order to support robust analyses to make informed decisions.

Te Mana o te Wai

19. Water bodies and freshwater ecosystems are part of our spiritual, cultural, genealogical and ecological DNA, which is clearly articulated within karakia, waiata, haka, whakataukī, pepeha and mihi mihi.

20. This relationship is a taonga tuku iho and is manifested in the maintenance of mana and the subsequent rangatiratanga obligations and responsibilities placed on us as kaitiaki, consumers, developers and farmers.

21. The health and well-being of water bodies and freshwater ecosystems should be the priority first and foremost.

22. The ability of people and communities to provide for their social, economic, and cultural wellbeing, now and into the future cannot be supported by degraded ecosystems.

23. Successive governments have grappled with the question (and notion) of Māori rights and interests in water, irrespective of whether it is acknowledged that Māori do have interests and rights in freshwater resources even though the full nature and extent of those rights and interests have not yet been defined⁹. These rights and interests have been considered and supported by the Judiciary, however the Crown chooses to maintain and defend a position of inertia preferring for this matter to be unresolved.

⁷ See [Supplementary Analysis Report: Amending the consenting pathway for coal mining in or around wetlands and significant natural areas \(mbie.govt.nz\)](#):pp4.

⁸ Ibid.

⁹ Waitangi Tribunal Report (2012). Stage 1 Report on the National Freshwater and Geothermal Resources Claim. Wai 2358:pp 36.



24. Excluding the Te Mana o Te Wai hierarchy of obligations from resource consent application and decision-making processes will be unacceptable to iwi and hapū, for reasons that include:
 - Te Mana o Te Wai is a holistic framework to protect the mauri of the wai.
 - Te Mana o te Wai is an integral element of the NPS-FM that progresses iwi and hapū freshwater rights and interests which were acknowledged by the Crown in the High Court in 2012,¹⁰ and recorded in the Supreme Court in 2013.¹¹ Watering down Te Mana o te Wai has the potential for creating negative and irreversible impacts on freshwater quality. Improving water quality and the health of ecosystems and waterways has consistently been articulated by iwi and hapū as being of utmost importance to us.¹²
 - The proposed changes would likely result in commercial uses of freshwater being prioritised over the health and wellbeing of waterbodies and freshwater ecosystems, and the health needs of people. This is the direct opposite to Māori values.
 - Freshwater is a taonga and is in a vulnerable state, and the Crown has a Treaty obligation that extends to “active protection of Māori people in the use of their lands and waters to the fullest extent practicable”.¹³ The proposed changes will undermine the implementation of the Treaty principle of active protection.
 - The proposed changes could negatively impact on the upholding of existing and future Treaty settlements and may reduce the scope of matters in the NPS-FM that can be considered by iwi or hapū who have roles in consent decision-making under a Joint Management Agreement, or Treaty settlement.
25. The concept and associated framework for Te Mana o te Wai is not new for iwi and hapū, who have consistently advocated this philosophy over multiple generations. Seeking to repeal the hierarchical obligations will be a return to the philosophy that iwi and hapū do not have a unique value proposition as a Treaty partner. From Te Kahu’s perspective, this is untenable and indefensible.

Relief Sought

26. Te Kahu o Taonui supports maintaining the current Te Mana o te Wai hierarchical obligations framework within resource consent application and decision-making processes.

Modifying obligations under the National Policy Statement for Indigenous Biodiversity (NPSIB 2023)

27. Te Kahu o Taonui supports the extension to timeframes for mapping SNAs in District Plans provided that government seeks to implement positive incentive regimes (e.g. biodiversity credits or similar) for biodiversity protection by landowners. This is particularly important for a region such as Te Taitokerau, which has comparatively large areas of indigenous vegetation cover on Māori land which will be disproportionately affected by SNA mapping and management.

¹⁰ Ibid.

¹¹ New Zealand Māori Council v Attorney General [2013] NZSC 6, [2013] 3 NZLR 31 at [145].

¹² Waitangi Tribunal The Stage 2 Report on the National Freshwater and Geothermal Resources Claims (Wai 2358, 2019)

¹³ New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641 and affirmed by the Privy Council New Zealand Māori Council v Attorney-General [1994] 1 NZLR 513.



28. Māori landowners need recognition and support for protecting and managing these areas to achieve material change and relying solely on regulatory approaches is not likely to be as effective as combining incentives with regulation as needed. Bearing in mind that the ability for Councils to use blunt instruments like rating relief and funding grants tend to have limited influence.
29. We note that the previous government started investigating a biodiversity credit system. Te Kahu o Taonui encourages this government to continue developing this burgeoning economy with the opportunity of refining settings in the Emissions Trading Scheme to incorporate broader ecosystems.

Changing the process and s32 requirements for creating or amending national direction

30. Te Kahu o Taonui supports a more streamlined process for creating and amending national direction, provided there are explicit processes and systems for engagement and consultation with iwi, hapū and PSGEs and that as a consequence their input and participation informs the decision-making process. However, we are concerned that the Bill as it stands does not guarantee this and leaves very wide discretion to the Minister in terms of consultation arrangements, the matters to be considered, and justifying the case for change.
31. National direction will have significant implications for iwi and hapū that should be subject to independent expert scrutiny such as a Board of Inquiry which adds rigour to decision-making process. We therefore consider that the Board of Inquiry process should remain an option in the RMA.
32. We are very concerned about the omission of reference to the assessment of social and cultural impacts from the evaluation report. We do not consider it sufficient to consider only the impact on the environment and the economy when proposing whether to regulate. This may reduce the level of impact analysis on matters considered important to iwi, hapū and our communities.
33. The new section 32AB would apply far less prescription to the evaluation required for national direction than that required to be undertaken for a Council plan change or proposal under section 32. This is despite national direction typically having more significant implications than a council plan change proposal.
34. In our view, Regulatory Impact Statements (RIS) neither cover the same requirements as a section 32 within the RMA, nor can they serve as an adequate replacement for section 32 evaluation reports. We also note RIS are more a requirement for legislative changes and not necessarily applied to national direction under the RMA (e.g. national standards). In the absence of a requirement for a RIS some means to ensure a robust evaluation is needed to ensure the instrument is workable, efficient and effective and fit for purpose such as a section 32 evaluation under the RMA.



CONCLUSION:

35. The development of this Bill (and subsequent Amendment Bills) has been significantly impacted on by the limitations and constraints of its analyses. The consistent themes within the associated Supplementary Analysis Reports and Regulatory Impact Statements clearly outlines the governments non-commitment to its Treaty partnership relationship.

Consistency with the government's Treaty of Waitangi obligations

Excluding the hierarchy of obligations within the NPSFM 2020 from resource consent application and decision-making processes:¹⁴

In light of the limited engagement and uncertain impact of the proposal on freshwater, it was difficult to assess (for both the proposal and policy development process):

- *whether or not the Treaty principles of partnership and active protection have been met*
- *whether or not general engagement obligations contained in some Treaty settlements have been met*
- *whether or not processes provided for in certain settlements have been met*
- *implications for the Crown's commitments on Māori freshwater rights and interests.*

Aligning the consenting pathway for coal mining with other extractive activities across national direction:¹⁵

Due to the limited time available, it has not been possible to engage with iwi/Māori on these proposals nor fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

Modifying local authority obligations under the NPSIB 2023 to identify new SNAs and include them in district plans for three years.¹⁶

Due to the limited timeframes, there was limited engagement with iwi/Māori representative groups on the proposals in the Bill. Iwi/Māori that provided feedback did not express strong opinions but noted:

- *the need to respect Te Tiriti obligations and Māori private property rights*
- *Māori have a significant interest in maintaining indigenous biodiversity on their land and also seek to ensure they have a continued ability to use and develop their land*
- *concern that councils may delay applying the more development oriented NPSIB provisions to existing SNAs on Māori land while the suspension of new SNAs is in force*
- *concern that the consultation was too limited in time and scope and did not allow for a full analysis of the implications, nor time for a considered response.*

It has not been possible to fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

¹⁴ See [bill government 2024 47.pdf \(legislation.govt.nz\)](https://legislation.govt.nz/legislation/bill-government-2024-47.pdf): pp10.

¹⁵ See [bill government 2024 47.pdf \(legislation.govt.nz\)](https://legislation.govt.nz/legislation/bill-government-2024-47.pdf): pp10.

¹⁶ Ibid



Amending the stock exclusion regulations in relation to sloped land:¹⁷

Due to time limitations and constraints on the analysis for this proposal, it is difficult to assess:

- *whether or not the Treaty principles of partnership and active protection have been met*
- *whether or not general engagement obligations contained in some Treaty settlements have been met*
- *whether or not processes provided for in certain settlements, have been met, and*
- *implications for the Crown's commitments on Māori freshwater rights and interests.*

No engagement was conducted with Treaty partners on the proposals, due to time constraints.

Repealing the intensive winter grazing regulations in the NES-F:¹⁸

Due to time limitations and constraints on the analysis for this proposal, it is difficult to assess:

- *whether or not the Treaty principles of partnership and active protection have been met*
- *whether or not general engagement obligations contained in some Treaty settlements have been met*
- *whether or not processes provided for in certain settlements, have been met, and*
- *implications for the Crown's commitments on Māori freshwater rights and interests.*

No engagement was conducted with Treaty partners.

36. From Te Kahu o Taonui's perspective the above, and on-going, systemic issues amounts to fundamental breaches in the Te Tiriti partnership which is distressing, debilitating, untenable and lacks integrity.
37. Added to the above, utilising the Select Committee as a default mechanism to engage and consult directly with the Treaty partner, and Treaty Settlement partners, further exacerbates our aggrieved position.
38. Therefore, Te Kahu o Taonui:
 - Strongly opposes the exclusion of the hierarchy of obligations in the National Policy Statement for Freshwater Management (NPS-FM) from resource consenting.
 - Has environmental concerns on repealing the low slope maps and intensive winter grazing.
 - Opposes aligning the provisions for coal mining with other mineral extraction activities.
 - Supports suspending the SNA requirements provided that government seeks to implement positive incentive regimes.

¹⁷ Ibid: pp11.

¹⁸ Ibid: pp11.



- Supports, in part, the speeding up and simplifying the process for preparing and amending national direction, but opposes the exclusion of Board of Inquiries, social and cultural impact assessments and s.32 evaluation analyses.

39. Please note that Te Kahu o Taonui seeks to make an oral submission and wishes to be heard on the Resource Management (Freshwater and Other Matters) Amendment Bill.

40. Please also note that this request does not usurp the mana and/or autonomy of our individual iwi and hapū to engage directly with the Crown and Select Committee in order to clearly articulate their tino rangatiratanga rights, interests and responsibilities as guaranteed by Te Tiriti o Waitangi.

Signed:

Harry Burkhardt
Co-Chairperson
Te Kahu o Taonui

Dated: 27 June 2024

Aperahama Edwards
Co-Chairperson
Te Kahu o Taonui

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