TE RŪNANGA O NGĀTI RŪANUI

SUBMISSION ON THE RESOURCE LEGISLATION AMENDMENT BILL

14 MARCH 2016

CONTENTS

1. INTRODUCTION

1.1 This submission is made on behalf of Te Rūnanga o Ngāti Ruanui (the **Rūnanga**) on the proposed Resource Legislation Amendment Bill (the **Bill**).

1.2 The Rūnanga is the mandated voice for the members of the 16 hapū that comprise Ngāti Ruanui, and makes this submission on behalf of our hapū and iwi members. The takiwā (tribal region) of Ngāti Ruanui is bounded by the Whenuakura River in the South and the Waingongoro River in the North and extends inland to the east to the Matemateonga Ranges. We acknowledge and affirm the intrinsic relationship of Ngāti Ruanui with our natural environment.

1.3 The Rūnanga can be contacted through Debbie Ngarewa-Packer, Kaiarataki, Te Rūnanga o Ngāti Ruanui Trust at kaiarataki@ruanui.co.nz.

1.4 The Rūnanga would like to be heard by the Select Committee in person.

2. SUMMARY OF POSITION

2.1 Ngāti Ruanui places the utmost importance on our role as kaitiaki for all life forms of the environment. We have always believed that the environment, including all indigenous species of fish, flora and fauna, are inter-related through whakapapa and all are precious to Ngāti Ruanui. All species are important and play their particular role within the environment. The integration of all species in the environment is woven within the holistic pattern of life itself. Ngāti Ruanui as a people are part and parcel of the environment.

2.2 Kaitiakitanga is an inherited responsibility of those who hold mana whenua. We must ensure that the mauri of the natural resources of our takiwa is healthy and strong, and the life-supporting capacity of our ecosystems is preserved. Kaitiakitanga is central to the protection of the natural environment and is fundamental to the ongoing existence of Ngāti Ruanui. Ngāti Ruanui as kaitiaki must protect and preserve the natural environment for future generations.

2.3 Accordingly, the Rūnanga endorses and welcomes legislative and policy development that is intended to achieve improved environmental outcomes and enhance iwi and hapū participation in resource management processes so that we can effectively exercise our inherited kaitiakitanga obligations. However, on a close review of the Bill the Rūnanga is not convinced that the amendments will result in improved environmental outcomes or enhanced iwi and hapū participation in resource management processes.

2.4 Rather, we see a move toward centralisation of resource management processes and facilitation of development both on land and in the EEZ that has the potential to marginalise iwi, hapū and other stakeholder engagement. We consider this is to the detriment of policy statement and plan development, which should rightly reflect the

values of diverse communities those policy statements and plans are intended to serve.

2.5 This submission addresses the Rūnanga's specific concerns with the Bill.

3. SPECIFIC SUBMISSIONS

AMENDMENTS TO THE RESOURCE MANAGEMENT ACT 1991

Iwi Participation Arrangements

3.1 The Bill places a statutory obligation on councils to invite iwi to form an iwi participation arrangement, the purpose of which is to provide an opportunity for local and iwi authorities to discuss, agree, and record ways in which tangata whenua (through iwi authorities) may participate in the preparation, change, or review of a policy statement or plan under Schedule 1.[1]

3.2 An iwi participation arrangement must record the parties agreements about:

a. how an iwi authority may participate in the preparation or change of a policy statement or plan;

b. how the parties will give effect to the requirements of any provision of any iwi participation legislation, including any requirements of any agreements entered into under that legislation; and

c. ways in which iwi authority parties can identify resource management issues of concern to them.

3.3 Accordingly, iwi participation arrangements compel Councils to confirm <u>how</u> iwi shall participate in respect of the development of policy statements and plans, and the implementation of any legislation that provides a role for iwi and hapū processes under the Act (effectively, Treaty settlement legislation),[2] but do not direct Councils to achieve targeted outcomes, like participation in decision making. Therefore, iwi participation arrangements do nothing to provide for *meaningful* iwi participation in Schedule 1 planning processes. Nor do they provide any role at all for iwi on the broader range of resource management issues and processes affecting them, such as the proposed new collaborative and streamlined planning processes, applications for resource consents and appointment of committees and other decision-makers.

3.4 Iwi participation arrangements will be effective in providing meaningful iwi participation only where Councils are willing to go beyond the status quo – a practice

[1] Resource Legislation Amendment Bill, Explanatory Note, proposed sections 58K and 58L.
[2] Referred to as "iwi participation legislation" in the Bill, it is defined as any legislation that provides a role for iwi and hapū processes under the RMA.

which has occurred in limited circumstances to date where not compelled by Treaty settlement legislation.

3.5 The Rūnanga also considers that iwi participation arrangements should be iwi initiated. Iwi have different priorities and are at different stages in their development. Not all iwi will be in a position to effectively engage to achieve meaningful participation in resource management processes (which is not guaranteed by the amendments proposed but rather must be negotiated) if dictated by Council timeframes. There is precedent for iwi initiated engagement in the Mana whakahono a rohe agreements proposed in the recently released consultation document on Freshwater Management reform, *Next Steps for Fresh Water*.[3]

3.6 Finally, the Government should make funding available for both iwi and Councils to engage in respect of, and then implement, any iwi participation arrangements. Without funding, the ability for iwi to effectively respond and engage with Councils will depend on the funding and resourcing iwi have at their disposal.

Submission 1: The Bill should prescribe minimum targeted outcomes that an Iwi Participation Arrangement must achieve.

Submission 2: The Iwi Participation Arrangements should also cover collaborative and streamlined planning processes, applications for resource consents and the appointment of committees and other decision-makers.

Submission 3: Iwi participation arrangements should be iwi initiated to give iwi the ability to choose when to engage.

Submission 4: Government funding should be made available for iwi and local authorities to engage in and implement any iwi participation arrangement.

Collaborative Planning Process

3.7 Proposed new clauses 36 to 73 of Part 4 to Schedule 1 provide that a local authority may use a collaborative planning process for the preparation or change of a policy statement or plan.

3.8 The Rūnanga supports the collaborative planning process, as this is currently employed by Council as best practice. However, the provision for iwi and hapū engagement in this process, which provides that at least one Māori person will represent the interests of diverse iwi and hapū groups within a region, is misguided. Despite our commonalities, iwi and hapū groups are necessarily different – a fact that the Government has indeed been acknowledging for years now through Treaty settlement processes. Accordingly, Ngāti Ruanui can only ever speak for Ngāti

[3] Ministry for the Environment. 2016. *Next Steps for Fresh Water: Consultation Document*. Wellington: Ministry for the Environment, page 29.

Ruanui in resource management processes, and so it is for other iwi groups in the local authority regions in which we are located. We expect that the provision for one Māori voice is to reflect the many stakeholders that might be involved in a collaborative group. However, this does not recognise the elevated status of iwi and hapū as Treaty partners and dilutes our voice and ability to effectively influence policy and plan development.

Submission 5: At a minimum, there should be at least 1 person nominated on the collaborative group and the review panel from each of the iwi who have an interest in the relevant area.

Streamlined Planning Process

3.9 Proposed new section 80B provides a streamlined planning process to achieve an expeditious planning process that is "proportionate to the complexity and significance of the planning issues being considered".

3.10 Local authorities can apply to the responsible Minister[4] for a direction to proceed under this process if they consider that the planning instrument satisfies one of the following criteria (proposed new section 80C):

a. the proposed planning instrument will implement a national direction;

b. as a matter of public policy, the preparation or change of a planning instrument is urgent;

c. the proposed planning instrument is required to meet a significant community need;

d. an operative planning instrument raises an issue that has resulted in unintended consequences;

e. the proposed planning instrument will combine several policy statements or plans to develop a combined document prepared under section 80;[5] and

f. any other circumstances comparable to those set out above.

3.11 The Rūnanga is concerned that the criteria in section 80C import broad discretion on the part of the Council's and Minister involved. In particular, any number of planning issues could be framed as necessary to meet a "significant community need" or be urgent "as matter of public policy".

[4] The Minister of Conservation for a regional coastal plan, both Ministers if the planning instrument will cover matters within the jurisdiction of each, and the Minster for the Environment in all other cases.
[5] Section 80 is an existing section under the RMA addressing combined regional and district documents.

3.12 Given that this process results in the Minister approving the planning instrument concerned rather than the more robust Schedule 1 process, the instances in which this process is appropriate should be restricted.

Submission 6: That the following amendment be made to the criteria for the proposed streamlined planning process:

a. the proposed planning instrument will implement a national direction;
b. ~~as a matter of public policy,~~ the preparation or change of a planning instrument is urgent;
c. ~~the proposed planning instrument is required to meet a significant community need;~~
d. an operative planning instrument raises an issue that has resulted in unintended consequences;
e. the proposed planning instrument will combine several operative policy statements or plans to develop a combined document prepared under section 80;[6] and
f. ~~any other circumstances comparable to those set out above.~~

National Planning Template

3.13 The Rūnanga supports the national planning template to the extent that it improves the clarity and user-friendliness of RMA plans and policy statements. However, we do not consider that any purported efficiency gains from nationalisation of resource management regulation outweigh the loss of local solutions and controls through centralisation of planning controls at a national level. In fact, we see centralisation as inherently dangerous, with the potential for drivers in key central government constituencies to influence planning nationwide. The reform to special housing areas in the Bill is an example.

Submission 7: Limit the national planning template to improvement of the clarity and user-friendliness of RMA plans and policy statements.

Notification

3.14 The notification rules under the RMA are poised to change significantly through the proposed amendments in the Bill. The notification test has traditionally been about "effects" based assessment,[7] but the amendments see a move to prescribing types of activities for which notification does not apply. The risk in prescribing nationwide notification standards by reference to types of activity is that unanticipated effects of an activity are not accounted for in the notification assessment and therefore people otherwise affected by an activity are denied the ability to participate.

3.15 In respect of the specific categories of notification proposed through the amendments, we note the following:

[6] Section 80 is an existing section addressing combined regional and district documents.
[7] Resource Management Act 1991, section 95A(2)(a).

a. **Limits on public notification:** New section 95A(5) proposes not to notify applications for restricted discretionary or discretionary activities if the activity is a boundary activity, a subdivision of land, or a residential activity. Ngāti Ruanui accepts that boundary or residential activities are likely to have effects on neighbouring or adjacent land only, such that public notification may not be not required. However, subdivision of land, particularly if a discretionary activity, may indeed have effects beyond adjacent land. Examples of broader effects might be intensification and urban creep or effects on natural character and landscape values if the proposed subdivision is in a sensitive environment.

b. **Limited notification:** Of most concern is new section 95B(6)(b), which provides that limited notification is precluded if the application is for a resource consent for a controlled activity other than a subdivision of land, or an activity prescribed by regulation under section 360G(1)(a)(ii). This precludes participation by a group who can otherwise identify themselves as affected by a matter reserved for the decision maker's control, and who may wish to use their affected status to advocate for particular conditions to be placed on the grant of consent for the relevant activity.

3.16 The Rūnanga consider that the "effects" based assessment currently employed under the RMA better accords with the purpose and principles of the RMA.[8]

Submission 8: Remove the prescription of types of activities for which notification does not apply. Full (existing) notification rights should exist.

Appeals

3.17 The Rūnanga opposes the nature and extent of the limitations that are proposed on rights of appeal for the various processes contained in the Bill:

a. Amendments have been made throughout the Bill to consistently limit the rights of appeal to the Environment Court to by way of re-hearing and/or points of law.

b. Proposed new section 120(1A) also states that persons may appeal only in respect of a provision or matter raised in the person's submission.

3.18 These amendments will have a significant effect on the ability of iwi and hapū groups with limited resources to participate in resource management processes.

3.19 Currently, Environment Court hearings are *de novo* in nature, where the Environment Court hears any evidence it requires and makes its own decision, replacing that of the local authority. Many iwi and hapū groups therefore engage in first instance Council level hearings themselves, given the prohibitive cost of engaging planning, technical and legal services at the outset. It is important to note that, in doing so, not

[8] Resource Management Act 1991, section 95A(2)(a).

all iwi and hapū groups have "environmental units" in their organisations with the technical expertise to effectively engage in resource management processes.

3.20 However, in appeals by way of rehearing, a party to the appeal must seek leave of the Environment Court to introduce new evidence and the Environment Court may grant leave only if it considers that the proposed new evidence was not able to be produced at the hearing conducted by the local authority or panel.[9] This puts emphasis on the evidence presented at the first instance hearing and the original council decision.

3.21 Where iwi and hapū groups have the resources, the proposed amendments will require them to obtain planning, legal and technical representation (as necessary) to ensure that all possible arguments are presented at first instance, so as to not to limit the scope of their later involvement. However, resourcing, both in respect of funds and personnel, is an ongoing issue for iwi and hapū groups, including the Rūnanga.

3.22 It is the Rūnanga's view that the true effect of the proposed amendments will be to limit iwi and hapū engagement in RMA processes, by requiring us to compromise participation across the full range of issues affecting us due to the prohibitive cost of involvement; whereas development and economic interests will have greater capacity to have their interests represented and heard.

3.23 RMA decision-makers make significant value judgements in their decisions under the RMA. Plan-making and resource consenting is the outcome of a system where values are considered once they are brought to the attention of a decision-maker by participants in the process. The combined effect of the appeal provisions will be to marginalise iwi and hapū participation in RMA decisions, such that the values we represent are not drawn to decision-makers' attention and do not, therefore, find their way into plan provisions and consent conditions.

Submission 9: In respect of limits on appeal under the collaborative plan process, we consider that restrictions to appeals on points of law should only exist where the appellant was a party to consensus decision-making and the consensus decision was given effect to in the plan.

Submission 10: Full (existing) appeal rights should otherwise exist.

[9] RM Legislation Bill, new proposed section 277A(4) and (5).

AMENDMENT TO THE TAKUTAI MOANA (MARINE AND COASTAL AREA) ACT 2011

Removal of coastal structures from the common marine and coastal area

3.24 The Bill includes new sections 19(3) to (3C) of the Takutai Moana (Marine and Coastal Area) Act 2011, which provide a process for regional councils to more expeditiously remove structures from the common marine and coastal area where ownership of a structure in a part of the common marine and coastal area is uncertain and the structure does not have a current resource consent.[10]

3.25 Currently, under section 19 of the Takutai Moana Act, where the above circumstances arise, the regional council must undertake an inquiry to ascertain the identity or the whereabouts of the owner. Under the amendments, the regional council can remove the structure without an inquiry where, in the opinion of the relevant council, the structure is likely to have no, or minimal, value to any owner or to the community; and efforts to locate the owner have not been successful (proposed new section 19(3B) of the Takutai Moana Act).

3.26 The regional council may determine whether to remove a structure, in whole or in part:[11]

a. in accordance with the provisions of the regional coastal plan; or
b. without complying with any conditions in the regional coastal plan or obtaining a resource consent if, in the council's opinion, any adverse effects of removing the structure would be no more than minor (proposed new section 19(3C)(b) of the Takutai Moana Act).

3.27 The Rūnanga recognises the relatively small number of coastal structures and occupations within the common marine and coastal area in Taranaki. However, where such structures do exist, the Rūnanga advocates for active engagement of iwi by Councils in any consenting and ongoing monitoring. This includes the removal of structures.

3.28 Ngāti Ruanui are not opposed to the removal of coastal structures in the circumstances set out in proposed new section 19(3B) of the Takutai Moana Act, because of the effects of coastal structures on the cultural and other values of the coastal environment. However, we are aware that the removal of structures may also adversely affect the coastal environment, and consider that 19(3C)(b), which allows removal of coastal structures by regional councils in lieu of complying with the regional coastal plan, provides councils with too broad a discretion to remove structures.

Submission 11: Delete proposed new section 19(3C)(b) of the Takutai Moana Act.

[10] Proposed amendment to Takutai Moana Act, new section 19(3).
[11] Proposed amendment to Takutai Moana Act, new section 19(3C).

AMENDMENTS TO THE EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF (ENVIRONMENTAL EFFECTS) ACT 2012

3.29 Ngāti Ruanui is located in an area where intensive mineral exploitation has occurred. However, Ngāti Ruanui for many years has been side-lined from fully participating in this industry because of impediments put in place by both the historic and contemporary legislative framework. The vexed issue of nationalised minerals means that Ngāti Ruanui are alienated from meaningful participation in regulation of the control and exploitation of the petroleum based minerals that reside in our takiwā.

3.30 The Bill makes some wide ranging changes to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), including amendments to various definitions, and replacement of significant portions of the current EEZ Act. It appears that the proposed amendments to the EEZ Act are a response to two recent marine consent applications being declined – a 2013 application by Trans-Tasman Resources Ltd to undertake an iron sand mining project in the South Taranaki Bight and a 2014 application by Chatham Rock Phosphate Ltd to mine phosphorite nodules from the Chatham Rise.

3.31 The reforms to the EEZ Act focus on encouraging and promoting activities in the EEZ rather than improving environmental protection. We oppose such measures, as we consider that the Government's focus should be on addressing the environmental impacts caused by development in the EEZ (including worst case scenario predictions) and the impacts on iwi and coastal communities. We set out our specific submissions below.

Minister to appoint Boards of Inquiry

3.32 A significant change to the EEZ Act is to the appointment of decision making committees. Under the existing EEZ Act, the Environmental Protection Authority (**EPA**) may delegate its decision-making functions to a committee including at least 1 member of the EPA board, or to a Board of Inquiry in respect only of consent for nationally significant cross-boundary activity.[12]

3.33 New proposed section 53 provides that the Minister must now appoint Boards of Inquiry for applications for publicly notifiable marine consent applications other than discharges and dumping. These activities relate to applications for structures and submarine pipelines and cables on or under the seabed. This amendment introduces the possibility of politically influenced boards to hear applications and has the potential to undermine the independence of the previous decision making system.

Submission 12: Delete proposed section 53 and maintain the status quo.

[12] Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), section 16.

EEZ Policy Statements

3.34 The Bill proposes to introduce new EEZ Policy Statements in a new section 37A of the EEZ Act, which may apply to all or part of the exclusive economic zone and the continental shelf. The purpose of EEZ policy statements is to state objectives and policies to support decision-making on applications for marine consents.[13]

3.35 Given the other amendments proposed, which signal a desire by the Government to encourage development in the EEZ, the Rūnanga is concerned that these policy statements will be a further opportunity to encourage and promote activities in the EEZ, rather than improving environmental protection.

Submission 13: Proposed section 37A of the Bill should require Policy Statements to be consistent with environmental protection.

Requirements of Marine Consent Impact Assessments

3.36 The Rūnanga supports the two additional requirements of marine consent impact assessments, being:

a. identify the effects of the activity on the biological diversity and integrity of marine species, ecosystems, and processes; and

b. identify the effects of the activity on rare and vulnerable ecosystems and habitats of threatened species.

3.37 This is particularly important given these are two criteria that a decision-maker must currently take into account when determining an application for a marine consent.[14]

Submission 14: Retain proposed sections 39(1)(e) and 39(1)(f).

4. CONCLUSION

4.1 The Rūnanga would like to be heard by the Select Committee in person.

4.2 Please direct all communications in this matter to Debbie Ngarewa-Packer.

Nāku noa,

Debbie Ngarewa-Packer
Kaiarataki

[13] Proposed amendment to EEZ Act, new section 37A(1).
[14] EEZ Act, section 59.