

Ministry of Business, Innovation and Employment
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New Zealand



Ngāti Kahungunu Iwi
INCORPORATED

30 October 2015

Submission: Block Offer 2016 (Pegasus and East Coast Basins – 68,661 km²)
From: Ngāti Kahungunu Iwi Incorporated

Tēnā koutou

1. **Ngāti Kahungunu Iwi Incorporated** (NKII) is the mandated iwi organisation responsible for all aspects of Kahungunu development. Ngāti Kahungunu has the third largest iwi population (62,000¹) and the second largest tribal rohe and coastline, from Paritū and extending inland across the Wharerata ranges in the north to Turakirae in South Wairarapa.
2. The iwi authority maintains an independent position to protect and advocate for the interests, rights, values, beliefs and practices of Ngāti Kahungunu whānau, hapū and iwi. This includes a responsibility and obligation as kaitiaki to care and protect te taiao for future generations.
3. Ngāti Kahungunu has significant interests in the natural environment and seeks to firstly avoid any potential risks and negative impacts on the environment that may be caused by prospecting, exploration and mining for minerals and petroleum. Avoidance is the most efficient and effective control, however subsequent to this NKII seeks to ensure mitigation and remedial initiatives are appropriate and consider the interests Ngāti Kahungunu. There is a Tiriti o Waitangi partnership that can assist in providing for Ngāti Kahungunu interests.
4. Ngāti Kahungunu would like to work with the Crown, petroleum and mineral companies to explore ways to ensure that any potential economic growth and development generated from sustainable extraction of petroleum and minerals found in the Ngāti Kahungunu rohe, provide 'adequate' benefits for local tāngata whenua and communities.

Waitangi Tribunal Claim

5. Ngāti Kahungunu has lodged a claim with the Waitangi Tribunal against the Crown in respect to indigenous rights and interests to petroleum resources. The claim was made on behalf of Ngāti Kahungunu by William Blake of Wairoa, Toro Waaka of Napier, Marei Apatu of Hastings, and Murray Hemi of Masterton. This claim was registered in June 2000 as **Wai 852**. As noted in the claim, tāngata whenua have suffered the effects of past, present and future prospecting, exploration and mining of petroleum resources within the Ngāti Kahungunu rohe and have been denied the 'exercise of development rights' in respect of those resources. The Ngāti Kahungunu rohe is described as:

- *“the area on the east coast of the North Island in New Zealand stretching from Mahia Peninsula in the north to Cape Palliser and Lakes Onoke and Wairarapa in the south and inland to the shores of Lake Waikaremoana and to the Kaiweka, Kaimanawa, Ruahine,*

¹ 2013 Census of Population and Dwellings, New Zealand Kahungunu population only.

*Tararua and Rimataka Ranges to the west, including all riverbed, lakebed, foreshore and seabed areas within or adjacent to those areas.*²

6. The claimants sought an outcome that would allow Ngāti Kahungunu to exercise tino rangatiratanga and kaitiakitanga in respect of petroleum resources within the rohe and recognise the customary rights in respect of those resources.
7. **Ngāti Kahungunu seeks** the iwi petroleum and minerals Treaty of Waitangi claim be recognised and provided for.
8. The Waitangi Tribunal released a Report in 2003 *'The Petroleum Report'* that refers to the Ngāti Kahungunu claim Wai 852³. The Waitangi Tribunal found that for the petroleum management regime to meet the standards of the Treaty that four criteria needed to be met. Tāngata whenua must be able to:
 - *Count on being involved at key points in decision-making processes that affect their interests;*
 - *Make a well-informed contribution to decisions;*
 - *Afford to have that level of involvement; and*
 - *Be confident that their contribution will be understood and valued.*
9. **Ngāti Kahungunu supports** the Waitangi Tribunal recommendation to reform the Crown Minerals Act including; strengthening the provisions of the Treaty of Waitangi, amending the compulsory arbitration requirements, and enhancing the provisions for site protection.
10. **Ngāti Kahungunu supports** the Waitangi Tribunal recommendation to use a small percentage of the Crown's petroleum royalties to establish a fund for iwi and hapū to apply for assistance to help them participate more effectively in petroleum management processes.
11. In our view, the Waitangi Tribunal report and associated recommendations have not been addressed.
12. The Waitangi Tribunal has scheduled an additional report on petroleum to be completed. It is appropriate the Ngāti Kahungunu claim and all the associated reports be finalised and addressed to give effect to Te Tiriti o Waitangi. We consider the current approach to not finalise this work continues to adversely affect the rights and interests of Ngāti Kahungunu.

Indigenous Rights and Interests

13. Ngāti Kahungunu maintains an interest in petroleum and minerals and has never relinquished our rights. Ngāti Kahungunu whānau, hapū and iwi benefited from the uninhibited use and access to te taiao prior to European arrival. The arrival of Europeans and the subsequent alienation of our rights and interests through a range of mechanisms including legislation and policy from these natural resources leads us to state:
 - Ngāti Kahungunu disputes the Crown assertion of sole ownership and sole right to royalties. **Ngāti Kahungunu seeks** a share of the profits from the Crown as a result of any petroleum or mineral resource(s) extraction.

² WAI 852 Claim 1.2(a), para 2

³ Waitangi Tribunal *The Petroleum Report* (Wai 796, 2010) at 1,10,41,42,44,45,64,75 and 76

- **Ngāti Kahungunu disputes** the Crown assertion that it is the ultimate decision maker for what happens in the Ngāti Kahungunu rohe and **seeks** compensation from the Crown for any exclusion from part of our traditional rohe, moana and the equivalent of a lease and/or rental for all the seabed and riverbed space and associated resources.
- Ngāti Kahungunu **insists** on being totally informed and involved in all stages of prospecting, exploration and mining petroleum or minerals in the Ngāti Kahungunu rohe.

“Block Offer 2016”

14. There is one Block in the 2016 “Block Offer” that Ngāti Kahungunu has specific interests in as it includes the traditional tribal rohe of Ngāti Kahungunu namely;
 - ‘Pegasus and East Coast Basins 16PEG-R1 (68,661 square kilometres).
15. This block is situated near the regions of Wairarapa and Hawke’s Bay. If a tender for this block is accepted by the Crown, we insist that the relevant petroleum company makes contact with us and other organisations that represent the interests of Ngāti Kahungunu hapu and whanau immediately.

Significant Sites

16. The responsibility of safe guarding ‘sites of significance’ or ‘areas of land of particular importance to the mana of iwi and hapū’ is a collaboration between those parties, the Crown and their representatives. The Crown has a strong obligation and duty of care as the self-appointed custodian to identify and protect these areas.
17. Many organisations go to considerable length to identify and record significant sites, wāhi tapu, wāhi taonga and “**areas of particular importance to the mana iwi and hapū**”. There is provision within the Crown Minerals Act to provide for their protection.
18. At present Ngāti Kahungunu has not been in a position to identify areas of particular importance to the mana of iwi and hapū, as provided for within the current respective minerals and petroleum programmes.
19. As a ‘Treaty’ partner and as a sign of goodwill we believe the Crown consider the areas that have already been identified by iwi and hapū organisations as sites of significance, are to be excluded from the operations of the minerals and petroleum programmes.
20. There are also other ‘sites’ that may not be readily known or identified that deserve no less respect or duty of care, specific discussions should be held with iwi and hapu organisations in order to establish a comprehensive record.
21. The entire coastline from Paritu north of Mahia down to Turakirae in the South Wairarapa and adjacent rohe moana, which includes 16PEC-R1 is of cultural significance to Ngāti Kahungunu. The Ngāti Kahungunu coastline is unique due to its abundance of kaimoana particularly pāua, kina and crayfish⁴, and the association coastal hapū have with these resources. Due to the alienation of our natural resources such as the land based assets, the coastal resources have become increasingly important to Ngāti Kahungunu. Regional Coastal Environment Plans often

⁴ Kina, pāua, crayfish are recognised taonga species for Ngāti Kahungunu.

identify areas of significance to iwi⁵ and hapū as well as generally significant areas that should be considered and protected where appropriate.

22. Ngāti Kahungunu Iwi Incorporated, Ngāti Kahungunu Asset Holding Company, the Hapū Coastal Collective, Te Kupenga Whiturauroa a Maui collaborated together and consulted with our constituent hapū and whānau to develop the '*Kahungunu ki Uta, Kahungunu ki Tai Marine and Freshwater Fisheries Strategic Plan*' launched in 2008. This strategy is an iwi management plan relative to the block offer. We recommend this Strategic Plan and this submission are provided to any applicant considering this block offer. There are also other relevant iwi and hapū management plans that should be considered.

Ngāti Kahungunu Fishing Rights

23. Ngāti Kahungunu has settled its fisheries interests with the Crown through **1992 Treaty of Waitangi (Fisheries Claims) Settlement Act and the Maori Fisheries Act 2004**. Any detrimental effect from petroleum or mineral prospecting, exploration and mining could be catastrophic and undermine the fisheries settlement. We would treat this as breach of our settlement rights and would react accordingly. If an incident were to occur, the fishing potential and in turn mana of Ngāti Kahungunu hapū and iwi would be diminished.
24. Striking a balance with respect to the fishing industry and the possible impacts on this by the petroleum and mineral industry is very important to Ngāti Kahungunu. Ngāti Kahungunu does not want to risk an important and certain industry (fisheries) for the unknown possibilities and risks associated with off shore petroleum exploration. A pre-cautionary approach should be mandatory by the petroleum and mineral industry. We understand that this is internationally accepted as best practice.
25. Ngāti Kahungunu hapū have maintained customary use of marine resources out to and beyond the EEZ 12 nautical mile limit. Customary use and hapū authority has been acknowledged and gazetted via the **1998 Fisheries (Kaimoana Customary Fishing) Regulations**. Hapū boundaries are included in these regulations and in some cases are applicable out to 200 nautical miles. These boundaries are also being recognised in settlement legislation relevant to Ngāti Kahungunu.
26. Ngāti Kahungunu is involved in an offshore aquaculture farm and the prospecting, exploration and mining operation of the petroleum and minerals industry could potentially compromise or diminish Ngāti Kahungunu aquaculture aspirations and opportunities. This would adversely affect the provision of the **Māori Commercial Aquaculture Settlement Act 2004**.

Kaitiakitanga and the Environmental Protection

27. The balance between the protection of the environment and economic development can prove problematic depending on use and interpretation. There is a risk that any proposed quantifiable economic benefit will generally outweigh unquantifiable ecological, social and customary benefits provided by the environment. **Ngāti Kahungunu recommends** the use of a pre-cautionary approach.
28. **Ngāti Kahungunu seeks** Crown protection for our taonga, particularly given the Crown assumption of authority to invite and award prospecting, exploitation and mining. **Ngāti**

⁵ Hawke's Bay Regional Coastal Environment Plan, 8 November 2014 acknowledges that the whole of the Coastal Marine Area is of significance to Ngāti Kahungunu.

Kahungunu seeks the Crown be held responsible to ensure there is adequate capacity and capability for appropriate equipment to be available to clean up any potential mishap, disaster, and catastrophe.

Parliamentary Commissioner for the Environment Recommendations

29. **Ngāti Kahungunu supports** the findings and recommendations of the Parliamentary Commissioner for the Environment (“PCE”) related to petroleum and minerals. Including the PCEs’ November 2012 report “*Evaluating the environmental impacts of fracking in New Zealand: An interim report*” (“Interim Report”) and it’s following findings:

- Choose the well site carefully.
- Design and construct wells to prevent leaks.
- Prevent spills and leaks on the surface.
- Store and dispose of waste with care.

30. The Interim Report provides further detail around these findings and has specific reference to the proposed expansion of petroleum activity in the Hawke’s Bay, East Coast and the rohe of Ngāti Kahungunu in particular. **Ngāti Kahungunu believes** it is timely for the relevant Ministers to address the findings of the Interim Report.

31. **Ngāti Kahungunu supports ALL** the recommendations from the latest report relevant to petroleum by the PCE “*Drilling for oil and gas in New Zealand: Environmental oversight and regulation*” (“Oil and Gas report”) released in June 2014. The Oil and Gas report recommendations cover the following:

- Provision of direction through a national policy statement – the Government has actively encouraged exploration for oil and gas in the East Coast Basin. However, the responsibility for managing the environmental impacts of oil and gas expansion rests on regional and district councils. Therefore the Government have an obligation to support, guide, and where necessary direct, councils on how they need to prepare for and manage what could be a very rapidly growing industry.
- Revision of regional council plans – in most existing council plans, the same rule covers drilling a bore for extracting oil and gas drilling a bore for extracting water. Consents in the Hawke’s Bay and Manawatu are ‘controlled activities’ and not being publicly notified, hence hampering opportunity for community input. Drilling should be a ‘controlled activity’ to enable councils the right to decline consent applications.
- Integrity of oil and gas wells – regional councils [need to] include the protection of freshwater layers as a condition on consents for drilling oil gas wells.
- Liability for contamination – *see specific comments from Ngāti Kahungunu related to this in the heading below.*
- Enforcement of controls on hazardous substances – amend legislation (or regulations) so that regional councils are legally responsible for enforcing the provisions of the Hazardous Substances and New Organisms Act 1996 on oil and gas work sites.

- Disposal of solid waste from drilling – consider how solid waste from oil and gas wells in the East Coast Basin should be disposed of before wells begin to proliferate.

32. Ngāti Kahungunu has no reason to believe that any of the above subjects and related recommendations have been adequately recognised and provided for since the publication of the PCE’s Oil and Gas Report in June 2014. Ngāti Kahungunu view the recommendations as being sound, reasonable and logical, and failure to address the recommendations creates undue risk and is tantamount to negligent, is being irresponsible, is unsustainable approach to resource management and is not in the spirit of kaitiakitanga.

Liability and Guarantee

33. **Ngāti Kahungunu insists** a “contingency fund” be established in case ‘something goes wrong’ to be used immediately while waiting for insurance claims and processes. The contingency fund should not admonish liability for any mishaps or negligence, but rather act as an immediate measure to ensure resources are directly and readily available to affected tāngata whenua and communities should the need arise. Adverse effects could occur immediately and become significantly more adverse while waiting for insurance claims to be processed.

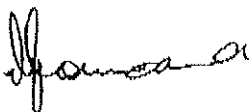
34. The PCE provided related recommendations which we also support:

- Requires the adequacy of public liability insurance held by companies bidding for exploration permits to be assessed by New Zealand Petroleum and Minerals (NZP & M) as part of ‘credit checking’ and;
- Ensure that the oil and gas industry bears the cost or ongoing monitoring of abandon oil and gas wells and the remediation of future leaks, by, for example, the imposition of an annual levy.⁶

35. As stated, Ngāti Kahungunu Iwi Incorporated encourages the NZP&M to share this submission with any applicant bid for the stated block offer. We believe it is important that we continue to maintain dialogue between petroleum companies and the Crown to ensure our interests are best represented.

36. Ngāti Kahungunu Iwi Incorporated are supportive of other Ngāti Kahungunu iwi, Taiwhenua and hapū organisations submitting on this matter. Please forward all queries directly to Jonathan Dick, Pouarataki – Director of Environment and Natural Resources, jonathan@kahungunu.iwi.nz.

Nā māua,



Ngahiwi Tomoana
Tumuaki/Chairman
Ngāti Kahungunu Iwi Incorporated



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⁶ Parliamentary Commissioner for the Environment, June 2014. *Drilling for Oil and gas in New Zealand: Environmental oversight and regulation*