

4<sup>th</sup> August 2021

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**Ngāti Kahungunu Iwi**  
INCORPORATED

**Submission to Environment Select Committee**  
**Natural and Built Environments Bill:**  
**Consultation Draft**

**NGĀTI KAHUNGUNU IWI INCORPORATED**

*Act in the beneficial interests of all descendants of Kahungunu, particularly where the interests and rights of Ngāti Kahungunu tāngata whenua, hapū and whānau have been unfairly subjugated.*

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## INTRODUCTION

1. **Ngāti Kahungunu Iwi Incorporated** (NKII) is the mandated iwi organisation responsible for all aspects of Ngāti Kahungunu development. Ngāti Kahungunu has the third largest iwi population (61,626<sup>1</sup>) and the second largest tribal rohe and coastline, from Paritu on the coast north of Wairoa and extending inland across the Wharerata ranges down towards Tararua ranges and Turakirae on the southern Wairarapa coastline.

The mission of Ngāti Kahungunu Iwi Incorporated is:

*“To enhance the mana and well-being of Ngāti Kahungunu”.*

2. The iwi authority maintains an independent position to advocate for the interests and rights, including tikanga, values and practices of Ngāti Kahungunu tāngata whenua, whanau, hapū and iwi. Tāngata whenua hold significant cultural, economic and spiritual connection to the natural environment and have rights and interests to its resources. This includes a responsibility and obligation as kaitiaki to care and protect the natural environment for future generations, there is particularly concern given to adverse cultural and environmental effects, particularly the unencumbered cumulative effects.
3. The natural environment has guided shaped and characterized Ngāti Kahungunu tāngata whenua, iwi, hapū and whānau, who have always been strategically located near important natural resources. Maori ‘traditionally’ made great use of the environment and worked in conjunction with it to develop their physical world (resources) sustainably, bringing certainty and safety to their communities and those of future generations. These practices and way of life have been eroded drastically by contemporary resource management policies and legislation and foreign practices.
4. Ngāti Kahungunu Iwi Incorporated invests considerable amount of time, resources and energies in drawing together and considering the views and aspirations of Ngāti Kahungunu tāngata whenua mai Paritu ki Turakirae including the relevant hapū, Taiwhenua, PSGE’s and communities. Maintaining these networks and appreciating all perspectives is vital for a holistic over view and progressing towards enduring outcomes and solutions.
5. NKII has held a number of public meetings for tāngata whenua that primarily focused on interests and initiatives associated with the environment and water. Discussions have highlighted the commonality amongst tāngata whenua in terms of their values. However, despite the best efforts of tāngata whenua to engage with the Crown and local councils, there has been little change in terms of outcomes over the years.
6. There are numerous iwi and hapū planning document that should be considered in the development of natural resource management policy and legislation, the documents alone only provide an introduction; tāngata whenua need resourcing to independently translate their tikanga and matauranga in a ‘form’<sup>2</sup> digestible to local government.

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<sup>1</sup> 2013 Census of Population and Dwellings, New Zealand resident Ngāti Kahungunu population only.

<sup>2</sup> Planning and western science.

## SCOPE OF SUBMISSION

7. This submission addresses:
  - (a) overarching comments on the Natural and Built Environments Bill (the **Bill**) and its development;
  - (b) those matters that are included in the Bill; and
  - (c) some critical matters that are not yet included in the Bill (and views on those matters).
8. We wish to make an oral submission in support of this written submission.

## OVERARCHING COMMENTS

9. Ngāti Kahungunu records the following overarching concerns with the Bill in its current form and the process for its development:

- (a) **The Bill needs to meet its stated aims:**

The early indications from those driving the reform were that this reform was intended to be transformational. In addition, the Bill is intended to improve recognition of te ao Māori and Te Tiriti o Waitangi (which includes reference to Te Oranga o te Taiao in the Bill's purpose).

It is critical that, in the next phase of policy development and drafting, the overarching aims objectives for the reform are achieved (including, in particular, those expressly referred to in this submission).

- (b) **Failure to recognise iwi and hapū rights and interests in freshwater and related taonga:**

Ngāti Kahungunu continues to be concerned at the lack of priority shown by successive Governments on the issue of recognising iwi rights and interests in freshwater and related taonga. This Bill has the potential to continue and perpetuate that failure and undermine any future recognition of iwi rights and interests in freshwater. The development of this Bill further stresses the importance of the Government urgently prioritising the resolution of iwi rights and interests in freshwater.

- (c) **Treaty of Waitangi settlements must be upheld:**

It is critical that redress provided under Treaty of Waitangi Settlements are upheld. Whilst the Accompanying Paper to the Exposure Draft notes that Treaty Settlements will be upheld, this will need to be carefully considered (and tested) through the rest of the policy development and legislative drafting phases.

- (d) **Negotiated agreements under the RMA (e.g. JMAs and Mana Whakahono ā Rohe) must also be upheld:**

It is equally critical that arrangements under the RMA are meaningfully improved.

#### **SUBMISSIONS ON MATTERS INCLUDED IN THE BILL**

10. Ngāti Kahungunu supports some key elements in the Bill which it submits must be maintained. In this respect, it is understood that many of these matters have been included in the Bill in their current form as result of the engagement of iwi technicians alongside Crown officials in the development of the Bill.
11. However, there is still a lot of work that needs to be done on the Bill (including further work on the policy to inform the legislative drafting). This process (i.e. the Exposure Draft process) provides an opportunity for early comment on those matters to ensure amendments can be made before the Bill is formally introduced into the House of Representatives.
12. Ngāti Kahungunu is concerned that not enough consideration and engagement has been afforded directly with the iwi, particularly given the efforts of Ngāti Kahungunu on previous reforms, local resource management application and failures, and formal Court or decision making processes including case law establishment.
13. In contrast with this lack of engagement is the significant engagement with local resource management bodies including Regional Councils. Ngāti Kahungunu see's these reforms as an opportunity for fundamental change from the status quo; however, engagement dominated by enablers and perpetrators of poor resource management inhibits opportunity for improvement towards a new normal and transformation change for the benefit of future generations and their prosperity. We are happy to elaborate through oral submission process on the failings and the 'patch protection' culture of Crown appointed decision makers.

#### **Purpose (clause 4)**

14. Ngāti Kahungunu supports inclusion in the purpose clause to enable Te Oranga o Te Taiao to be upheld. We suggest the drafting be amended to require Te Oranga o Te Taiao to be upheld (rather than to enable it).
15. It is also important that Te Oranga o Te Taiao is able to be reflected regionally (rather than have a rigid definition that is at a National level).
16. It is also clear that further work is required to ensure that Te Oranga o te Taiao will be upheld across the entire system. Ngāti Kahungunu expects that the legislative provisions within the Bill will provide the foundation for Te Oranga o te Taiao and enable the relationship of iwi/hapū with Te Taiao and related tikanga to be recognized, 'restored' and upheld. In our view, the cumulative effect of these provisions – together with the provision requiring decision-makers under the Bill to give effect to principles of Te Tiriti – represents a step beyond the current position under the RMA. The retention of Te Oranga o Te Taiao within the purpose, and its implementation throughout Bill and subordinate instruments, is crucial to deliver transformational change.

17. There are a number of ways Te Oranga o Te Taiao could be upheld. However, there must be ongoing engagement on definitions of “kaitiakitanga” and “mātauranga” to ensure these are terms founded in and expressed through tikanga, and assist with furthering the purpose of the Bill to uphold Te Oranga o te Taiao. The term ‘iwi and hapū’ should be retained and used throughout the Bill and subordinate instruments.
18. It will also be important that the implementation of Te Oranga o te Taiao upholds its integrity and purpose, which is not only the well-being of the natural environment, its interconnectedness and life sustaining capacity but also the intrinsic relationship between iwi and hapū and te Taiao. For Te Oranga o te Taiao to be upheld iwi and hapū must negotiate the implementation processes.
19. Ngāti Kahungunu is concerned that clause 5 (1) (b) refers only to the “use” of the environment in supporting the wellbeing of current generations without compromising the wellbeing of future generations. It is important to recognise that well-being encompasses both the use and the protection of the environment. Use alone would present conflict with the NPS FM 2020.

#### **Te Tiriti o Waitangi (clause 6)**

20. Ngāti Kahungunu supports section 6 of the Bill that requires all persons exercising powers and performing functions and duties under the Bill to give effect to the principles of the Te Tiriti o Waitangi. Giving effect should be applied to the Te Tiriti o Waitangi.
21. It will be important to ensure that this obligation is also given further expression through the Act. For example, by ensuring that there are appropriate mechanisms for iwi and hapū decision-making throughout the various processes in the Bill (some of which are yet to be developed) and through the evolution of National Planning Instruments.

#### **Environmental limits (clause 7)**

22. The concept of environmental limits is likely to lead to better protection of the environment and its life sustaining capacity. However national level limits may lead to bottom lines (rather than ceilings) that are subject to political maneuvering and become the targets to which development aims. This has occurred under previous iterations of the NPS FM<sup>3</sup> and must be avoided. The legislation of “maintaining and enhancing water quality and water quantity” must be retained, strengthened and promoted in sub-ordinate planning documents
23. It is unclear what “limits” are intended to be set at a National level (aside from the guidance in the accompanying paper to the Exposure Draft). Environmental limits must also be set at a regional level in partnership with iwi and hapū utilizing tikanga and mātauranga Māori (for example, in relation to freshwater). These points need to be the subject of further consideration and policy development by respective experts, not politics. Please refer to

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<sup>3</sup> Hawke’s Bay Regional Council– Plan Change 5 proposed significant allowances for Heretaunga ground water quality degradation, effectively target 11.3 mg/l nitrates, (National Drinking Water Standard), a level significantly lower than ALL indicator sites. See appendix 1.



following section within this submission regarding the **National Policy Statement for Freshwater Management 2020 - Te Mana o Te Wai**.

24. In many instances, enhancement and restoration targets should be applied rather than limits and the risk of “working down” targets. This has been criticized in the Environment Court Decision where Ngāti Kahungunu was the successful appellant.

#### **Environmental outcomes (clause 8)**

25. The environmental outcomes expressed in the Bill need to be interpreted through the lens of Te Oranga o te Taiao (to ensure that where outcomes may conflict, an approach or interpretation that enables Te Oranga o te Taiao is upheld).

#### **National planning framework (Part 3)**

26. Whilst the concept of a National Planning Framework is reasonably necessary, the process to develop the content of the National Planning Framework is currently not clear. In that regard, Ngāti Kahungunu consider the co-development of, and regional input into, a national direction setting framework is critical.
27. In addition, and relevant to the consideration of National level matters, Te Oranga o te Taiao me Te Mana o te Wai are able to act as korowai across the new system. Te Mana o te Wai must be retained and strengthened in in the development of the new resource management system (including the setting of any National direction).

#### **Governance – at a National and Regional level**

28. Governance across any new system will be critical. It is accepted that there will be National level direction (primarily through the National planning framework). However, regional level limit setting and governance are also an essential part of the system.
29. At a National level, the following principles can be applied in relation to the governance of any new system:
- (a) National Body to provide advice to the Minister for the Environment on National Direction (i.e. make recommendations on the National Planning Framework) and have a mandated oversight role in monitoring and compliance for National Direction matters **only**.
  - (b) Convention that the Minister makes decisions in accordance with recommendations of the National Body.
  - (c) National Body does not usurp the mana of hapū and iwi in their respective rohe.
  - (d) Membership of any National Body must reflect Treaty of Waitangi partnership and must be 50% Iwi and 50% Crown appointees:
    - (i) Iwi appointments could be based on a Te Kawai Taumata type model and Crown appointments made by Minister.
    - (ii) Iwi appointees accountable to iwi and Crown appointees accountable to Minister.

- (iii) Co-chair appointed by each partner.
  - (e) National Body can co-opt skill-based technical support where required (i.e. pūkenga, governance, science and mātauranga, legal, policy, etc.).
  - (f) Resourcing for operation of National Body must be provided by the Crown and include dedicated secretariat (e.g. comprised of senior Crown officials and iwi/hapū technicians).
30. At a Regional level, the following principles can be applied in relation to the governance of any new system:
- (a) Mana motuhake o ia iwi, o ia iwi, i tā rātou rohe.
  - (b) Membership of Regional Governance Arrangements give effect to Treaty of Waitangi partnership and must be 50% Iwi appointees and 50% Local Authority and Crown appointees:
    - (i) Iwi appointments made by iwi and hapū and local authority and Crown appointments made by Local Authorities and the Minister respectively.
    - (ii) Iwi appointees accountable to iwi and hapū and Crown appointees accountable to Local Authorities.
    - (iii) Co-chairs appointed by each partner.
  - (c) Composition (i.e. number of members) of Regional Governance Arrangements should be designed to reflect Treaty of Waitangi settlement arrangements [where they exist], iwi and hapū rohe and Local Authority boundaries and to maintain operational effectiveness of governance arrangement (i.e. fit for purpose membership composition).<sup>4</sup>
  - (d) Roles of Regional Governance Arrangements to implement functions of Spatial Planning Act and National Built Environment Act including the co-design of:
    - (i) Mandatory environmental limits.
    - (ii) Regional Spatial Strategies.
    - (iii) National Built Environment Plans.
  - (e) Resourcing for Regional Governance Arrangements provided by Local Authorities/Crown and include secretariat (e.g. local authority and iwi/hapū technicians, co-opted skill-based technical appointments - tikanga Māori, science and mātauranga, planning and policy, legal etc.).
  - (f) Scope of role for regional roles and functions will assist to guide the principles (i.e. limit setting at a catchment level).
31. Any policy objectives relating to governance, management and allocation must therefore reasonably include (alongside other policy parameters):
- (a) giving effect to the principles of Te Tiriti;

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<sup>4</sup> Noting the 50% Local Authority and Crown composition may shift depending on the role of the Regional Governance Arrangement.

- (b) better reflecting a Te Ao Māori view (including by upholding both Te Oranga o te Taiao and Te Mana o te Wai); and
  - (c) addressing iwi/hapū rights and interests.
32. The process used to develop, and the content of, National Direction, Regional Spatial Strategies and National Built Environment Plans (see below) must be co-designed with iwi and hapū.

#### **Natural and Built Environments Plans (Part 4)**

33. The Governance principles set out above apply equally to the development and confirmation of the proposed National and Built Environment Plans. The composition of proposed Planning Committees, whose primary function will be to make decisions on and maintain National and Built Environment Plans, should be designed to reflect Treaty of Waitangi settlement arrangements [where they exist], iwi and hapū rohe and Local Authority boundaries.
34. The purpose of National and Built Environment Plans (clause 20) should be to achieve the purpose of the Act, provide a framework for the integrated management of the region that the plan relates to, and include provisions to resolve conflict between environmental outcomes.
35. Ngāti Kahungunu consider the clauses relating to the content and consideration of plans are incomplete and need to be the subject of more detailed policy development. Where they exist, environmental plans prepared by iwi and hapū must be given effect by planning committees in the design of content for National and Built Environment Plans.

#### **SUBMISSIONS ON MATTERS THAT ARE NOT INCLUDED IN THE BILL**

36. There are a number of matters that will ultimately be included in the National and Built Environments Act, but are not in the Bill. The submissions below address the key matter for Ngāti Kahungunu.

#### **Recognition of hapū/iwi rights and interests in freshwater**

37. The recognition of freshwater rights and interests of iwi and hapū must not be negatively affected through the ultimate design of the Act. Currently, the Bill does not provide for the recognition of iwi/hapū rights and interests. The select committee must ensure that the next steps for the Bill do not preclude future recognition of rights and interests.
38. Addressing rights and interests in freshwater covers the areas of governance, management and allocation. In that regard, Te Mana o te Wai and Ngā Mātāpono ki te Wai can guide the consideration of these matters. These frameworks ensure that the mana of freshwater is upheld while also recognising and providing for the full expression of iwi/hapū rights and interests in freshwater.
39. The freshwater rights and interests of iwi and hapū are substantive, not merely procedural or participatory. They include decision making on upholding the quality of the wai and an equitable, fair and permanent share of access to water take and discharge entitlements for iwi/hapū (separate from, and in addition to, any policy initiatives for developing Māori land).



40. Any policy objectives relating to freshwater governance, management and allocation must therefore reasonably include (alongside other policy parameters):
- (a) giving effect to the principles of Te Tiriti;
  - (b) better reflecting a Te Ao Māori view (including by upholding both Te Mana o te Wai and Te Oranga o te Taiao); and
  - (c) addressing iwi/hapū rights and interests.
41. Iwi and hapū rights in freshwater must be addressed as a matter of priority and the Bill must not restrict options for recognition.

### **Consenting**

42. Consenting is not addressed in the Exposure Draft.
43. Ngāti Kahungunu understand the current focus of the Ministry of the Environment's work to focus on the plans and limits, thereby reducing the need for permits to be as onerous as they currently are. Caution needs to be applied to any assumption that the proposed plans will be able to fix all issues currently being experienced under the RMA (as the RMA plans have not done that).
44. Ngāti Kahungunu recommends that provisions in the new legislation to enable better allocation through the review of consents, and discontinuation of activities contrary to or not permitted by provisions in the National Planning Framework or Natural and Built Environment Plans, should be strengthened.

### **The Strategic Planning Act**

45. Improving how we plan for future growth and development within agreed environmental limits is a fundamental plank of the reforms. While the details of the Strategic Planning Act are still to be developed and agreed by Ministers, the purpose is to set long-term (i.e. 30-year) outcomes and objectives for a spatial area (i.e. a region) and to integrate resource management planning, infrastructure provision and investment decisions.
46. Ngāti Kahungunu understands that Regional Spatial Strategies are likely to precede any process to develop National and Built Environment Plans and would likely 'set the scene' for how natural resources (i.e. water, land etc) are utilised. Ngāti Kahungunu are aware that there are overlaps with the way in natural resources are protected (or restored) and allocated within environmental limits.
47. Iwi and hapū must be engaged at an early stage in any spatial planning process that is employed to develop Regional Spatial Strategies. Ngāti Kahungunu also think there may be opportunities to signal the development of Māori land through Regional Spatial Strategies which could be the subject of further submissions.
48. Ngāti Kahungunu intends to make a submission on the Strategic Planning Bill when it is introduced.

### **The Climate Adaption Act**

49. There is currently very little visibility over the Climate Adaption Act.

50. It is important that the various reform programmes are connected and progressing in tandem.
51. Ngāti Kahungunu intends to make a submission on the Climate Adaption Bill when it is introduced.

#### **Other related reform processes**

52. There are currently a range of interconnected reform processes underway (including the Three Waters Review and those other Bills that will be introduced as a part of this reform package).
53. These strands of reform are connected and there needs to be cohesion. In our view, the development of the various strands of reform is currently siloed. The Ministry for the Environment must show leadership and ensure that the dots are joining up across the various parts of the reform.

#### **Transitional arrangements**

54. Transition arrangements are currently unclear. This should be highlighted.
55. Specifically, in relation to the National Policy Statement on Freshwater Management, it will be important to ensure that the work undertaken by iwi to date on Te Mana o Te Wai within the National Policy Statement for Freshwater Management must not be derogated from through any new system (if those arrangements have been developed with iwi).

#### **National Policy Statement for Freshwater Management 2020 - Te Mana o Te Wai**

56. The National Policy Statement for Freshwater Management 2020 (NPS FM 2020), objective 2.1 provides a hierarchy of priorities, that promotes sustainability and aligns with the tikanga and desired outcomes of Ngāti Kahungunu and arguably the community at large.
57. To give meaningful effect to the priority hierarchy and improved environmental and cultural outcomes, Ngāti Kahungunu recommend that this objective in tandem with Te Tiriti o Waitangi should be applied throughout legislation and policy development while also assisting in the process.
58. For example, when settling regional / rohe limits and targets; the negotiation should (first) occur between Te Tiriti o Waitangi partners with a focus on 'sustainable limits' and 'enhancement targets' with respect to "*health and well-being of water bodies and freshwater ecosystems*" as per the NPS FM 2020, objective 2.1. first priority. Second and third tier interests should only be considered after this first tier process. In turn second tier allowances "*health needs of people (such as drinking water)*" and in the opinion of Ngāti Kahungunu inclusive of mahinga kai, should take place before and without industry and economic third tier considerations. To be clear this is a stepped process based on subject matter priorities, key is the inclusion of relevant mātauranga and expertise, for example the first tier discussion would include those experts in the fields of water body health and well-being as well as ecosystem health experts. This process would save a significant amount of time and resources in the long run while offering a logical pathway to greater sustainability and desired outcomes.

#### **Other Matters**

59. In considering adverse effects and cultural interests the Resource Management Act considers "avoid, remedy and mitigate"; cultural interests are typically the last consideration and

mitigation is usually offered. "Avoiding" adverse effects on cultural interests is the preferred enduring approach. This should be reflected throughout relevant legislation and policy.

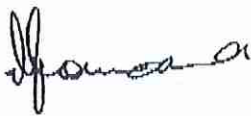
### A Process Forward from Experience

60. We recommend mana whenua<sup>5</sup> are resourced (through their hapū and iwi organisations) to engage their preferred planners and experts to assist in developing their own hapū waterway catchment plans<sup>6</sup>. This MUST occur in isolation from Crown and Local Government<sup>7</sup>. This is a simple necessary and unavoidable process that will endure beyond its predecessors<sup>8</sup>.
61. These Hapū Plans should form the basis for Crown and Iwi obligations to nga wai and Te Tiriti and the evolution of Catchment Plans and Regional Plans. "Co-development occurs through each Treaty Partner "negotiating" the "incorporation and inclusion" of "iwi and hapū plans" towards transformational natural resource management". It is important that tangata whenua are afforded space (and oxygen) to under and develop their aspirational plans and how to communicate and incorporate these plans and ideas to local government decision makers and their scientific advisors.
62. Iwi Management Plans are currently legally required to be "taken into account", this has largely made little material difference to Te Tiriti o Waitangi obligations, local council business and environmental outcomes. Greater and more meaningful legislations would provide that "Hapu and Iwi (catchment) Plans are **"incorporated or included"** through out local planning documents including objectives, policies and rules in addition to preambles and appendices.

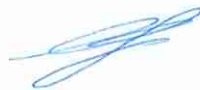
### Conclusion

63. Environment legislation should fundamentally be sustainable and work within sound and evidence based environmental and cultural limits and enhanced or restoration targets. The alternative is pushing issues and problems onto future generations, this contrary to the obligations of tangata whenua and responsible communities.

Nā māua,



Ngahiwi Tomoana  
Tumuaki/Chairman  
Ngāti Kahungunu Iwi Incorporated



Chrissie Hape  
Kaiwhakahaere Matua/Chief Executive  
Ngāti Kahungunu Iwi Incorporated

<sup>5</sup> In this context – those who whakapapa to the whenua and wai.

<sup>6</sup> Resourcing is important to ensure they are fit for purpose and provide and assist in gaining parity with local government.

<sup>7</sup> In most instances; oral submission can elaborate.

<sup>8</sup> Iwi/hapū, tangata whenua learnings of Plan Change 5 / Regional Plan Change Process, Tukituki Catchment Proposal through Board of Inquiry, HBRC TANK /Plan Change 9 Process. and Mohaka Mana Whenua Process.



