



Resources Policy Group  
Ministry of Economic Development  
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New Zealand

**Ngāti Kahungunu Iwi**  
INCORPORATED

2012

## **Submission: Review of the Crown Minerals Act 1991 regime – Discussion Paper**

### **Background**

1. **Ngāti Kahungunu Iwi Incorporated (NKII)** is the mandated iwi organisation / authority responsible for all aspects of Ngāti Kahungunu development. Ngāti Kahungunu has the third largest iwi population (55,946<sup>1</sup>) and the second largest tribal rohe, from Paritū and extending inland across the Wharerata ranges in the north to Turakirae (Cape Palliser) in the south.
2. As the mandated iwi organisation / authority we maintain a level of responsibility and assert an independent position to advocate for the interests and rights, including values, beliefs and
3. Ngāti Kahungunu has significant interests in the natural environment and subsequent impacts on it, our submission seeks assurance that the natural environment, a taonga and significant resource for Ngāti Kahungunu and future generations will be protected.
4. The Iwi Fisheries Management Unit is responsible for implementing the ***Kahungunu ki Uta, Kahungunu ki Tai, Marine and Freshwater Fisheries Strategic Plan*** (KKUKKT Strategy). The KKUKKT Strategy is the product of collaboration between NKII, the Kahungunu Asset Holding Company, Te Kupenga a Whiturauroa a Māui and the Coastal Hapū Collective.
  - 4.1. **Kahungunu Asset Holding Company Limited (KAHC):** Established by NKII in 2005 to receive and manage the Treaty of Waitangi fisheries settlement assets on behalf of Ngāti Kahungunu.
  - 4.2. **Coastal Hapū Collective (CHC):** Coastal Hapū who hold the customary fishing and management rights within their rohe moana and are primarily responsible for kaitiakitanga in their respective areas.
  - 4.3. **Te Kupenga a Whiturauroa a Māui (Te Kupenga):** Regional kaitiaki customary fisheries forum.
5. The KKUKKT Strategy sets out the aspirations, interests and rights of tāngata whenua regarding the management of their marine and freshwater fisheries, including environmental concerns.
6. The KKUKKT Strategy priorities local management in accordance with tikanga and supports the mana of hapū. To achieve the most durable solution we support the aspirations including submissions of iwi, hapū and whānau, and this submission by no means serves to neither undermine nor subvert the submissions of tāngata whenua. Ngāti Kahungunu Iwi Incorporated desire greater input by tāngata whenua, particularly hapū, in management and decision making processes.
7. In line with our advocacy role we have invested considerable amount of time, resources and energies in drawing together the views and aspirations of iwi, hapū and whānau, and we also realise this will continue to be on-going process. Maintaining these networks and appreciating all perspectives is vital to maintaining a holistic over view and progressing sustainable outcomes and solutions.

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<sup>1</sup> 2006 Census of Population and Dwellings, New Zealand Ngāti Kahungunu population only

### **Aspirations and Considerations of Ngāti Kahungunu**

8. Ngāti Kahungunu Iwi Incorporated supports the submission on the review of the Crown Minerals Act 1991 Regime made on behalf of Te Runanga o Ngati Ruanui Trust, Taranaki Iwi Trust, Te kaahui o Rauru, Te Runanga o Ngati Mutunga and Te Atiawa Iwi Authority.
9. This submission initially covers many of the generic concerns and views the iwi has with regards to petroleum and minerals. Responses to the discussion paper are covered in more detail from 29 onwards.

#### *Indigenous Rights, Interests and the Treaty of Waitangi*

10. Ngāti Kahungunu maintains its interest in petroleum, gas and minerals and has not forgone its rights within the iwi rohe. It is regrettable the scope of the discussion paper does not cover the wider and long held interests of Ngāti Kahungunu.
  - 10.1. Ngāti Kahungunu disputes the Crown assertion of sole ownership.
  - 10.2. Ngāti Kahungunu disputes the Crown's sole right to royalties. Ngāti Kahungunu **seeks** a share of the profits from the Crown for any resource(s) found and **seeks compensation** from the Crown for any exclusion from part of our traditional rohe moana and or the equivalent of lease / rental for all the seabed and riverbed space and associated resources.
  - 10.3. Ngāti Kahungunu disputes the Crown assertion that they are the ultimate decision maker for what happens in our own rohe. 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.
11. Ngāti Kahungunu has a Waitangi Tribunal Claim (**WAI 852**) against the Crown with respect to petroleum resources within the Ngāti Kahungunu rohe. The Waitangi Tribunal has released a Report on the Management of the Petroleum Resource (**WAI 796**).
12. The Waitangi Tribunal found that for the petroleum management regime to meet the standards of the Treaty, four criteria needed to be met. Tāngata whenua must be able to:
  - 12.1. count on being involved at key points in decision-making processes that affect their interests;
  - 12.2. make a well-informed contribution to decisions;
  - 12.3. afford to have that level of involvement; and
  - 12.4. be confident that their contribution will be understood and valued.
13. The Crown Minerals Act (CMA) Review provides an excellent and well over due opportunity to improve the legislation and address some of the concerns Māori have raised, particularly those highlighted by the Waitangi Tribunal:
  - 13.1. The substance of the legislation is biased against Māori and favoured the interests of others.
  - 13.2. The processes established to apply the legislation failed to ensure effective participation by Māori. The process can serve to deter or deny Māori involvement, meaning that Māori struggle to safeguard their interests.
  - 13.3. The lack of reliable and sufficient assistance for Māori communities to participate in resource management processes has created a further obstacle.
  - 13.4. The regime has breached the Treaty of Waitangi, including the principles espoused by the Crown; a genuine approach with regard to the concerns of Māori and through reasonable legislative change would make a meaningful commitment to the Crown iwi partnership.
  - 13.5. Unfortunately the CMA review has failed to seize this opportunity to develop policies that give effect to the recommendations of the Waitangi Tribunal. Instead the document consistently either does not mention, or downplays the role of iwi.
14. Ngāti Kahungunu **supports** the Waitangi Tribunal recommendation to Reform the Crown Minerals Act, including strengthening the Treaty provisions, amending the compulsory arbitration requirements, and enhancing the provisions for site protection.

15. Ngāti Kahungunu **supports** the Waitangi Tribunal recommendation to use of a small percentage of the Crown's petroleum royalties to establish a fund to which iwi and hapū could apply for assistance to help them participate more effectively in petroleum management processes.
16. Direct engagement of Ngāti Kahungunu with companies is also supported.

*Consultation and Information and Consultation requirements*

17. Information is a key element and integral to robust decision-making. Ngāti Kahungunu **insists** on being fully informed during all stages of the process from initial application for permits to fully operational, so that we can make informed decisions and work together to influence the processes undertaken the industry in our rohe.
18. Ngāti Kahungunu **insists** that the Crown ensures that Petroleum companies communicate with iwi and hapū fully, to a standard that iwi and hapū are satisfied with. Ngāti Kahungunu reserves the right to communicate directly with Petroleum companies and where applicable work together for mutual benefit.
19. The use of Te Reo Māori terminology in association with petroleum or mineral sites and operations should at the very least involve discussion with the appropriate tāngata whenua (Tāngata whenua IP and terminology).

*Fishing and other Resource Concerns*

20. Ngāti Kahungunu has settled its fisheries interests with the Crown through **1992 Treaty of Waitangi (Fisheries Claims) Settlement Act**; however any detrimental effect from petroleum or mineral prospecting, exploration and mining on this resource could be catastrophic and undermine the fisheries settlement and potentially constitute a new breach.
21. Striking a balance with respect to the fishing industry and the possible impacts on this (both positive and negative) 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. Caution (as highlighted in this submission) is mandatory for Ngāti Kahungunu.
22. Ngāti Kahungunu, including Kahungunu ki Wairarapa 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.
23. Exploration rights could potentially compromise or diminish Ngāti Kahungunu aquaculture aspirations and opportunities, and adversely affect the **Māori Commercial Aquaculture Settlement Act 2004**. Ngāti Kahungunu is involved in offshore aquaculture.
24. Ngāti Kahungunu environmental, social and economic values and beliefs are largely consistent from the mountains to the sea (Kahungunu ki Uta, Kahungunu ki Tai) as the KKUKKT Strategy suggests. Any relevant act currently or subsequently, including the proposed **Exclusive Economic Zone (EEZ)** legislation must at the very least be consistent with the purposes of the RMA, Fisheries and in particular the Conservation Acts. This includes "giving effect to" the principals of the Treaty of Waitangi and acknowledging and protecting Ngāti Kahungunu taonga.
25. Petroleum and mineral exploration and mining has potential implications to the rights sought by Ngāti Kahungunu and other iwi highlighted in the **WAI 262** Waitangi Tribunal claim, commonly referred to as the Flora and Fauna claim. Ngāti Kahungunu also reserves its rights and interests in terms of freshwater and is pursuing this further, including claims with the Waitangi tribunal.

*Kaitiakitanga and the Environmental Protection*

26. 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 and social (customary) benefits provided by the environment. We **insist** using a precautionary approach (i.e. err on the side of caution) which is internationally accepted as best practice, determined through an independent agency.

27. Ngāti Kahungunu **insists** the Crown ensures our taonga will be protected, particularly if they are assuming the authority to invite and award prospecting, exploitation and mining.
28. Ngāti Kahungunu **insists** that the Crown is responsible and should have the capacity including appropriate equipment to clean up any potential mishap, disaster, and catastrophe. In proportion and scale to the largest prospecting, exploitation and mining operation potential or otherwise. To enable immediate response and mitigation, it is better to be over prepared than under prepared.

#### *Liability and Guarantee*

29. Ngāti Kahungunu **insists** an insurance or contingency fund be set aside in case 'something goes wrong'. The contingency fund should not admonish liability for any mishaps related to mineral and petroleum exploration, but rather be an interim measure for resources made directly and readily available to affected tāngata whenua if the need arises. If Companies and the Crown consider there is no or only a low risk of any mishaps, 'blowouts', well failures or alike, then a contingency fund should not be an issue.

#### **The Discussion Paper**

30. Ngāti Kahungunu is not adverse to any regime changes that facilitate practical and efficiency gains as long as HSE and iwi considerations are not compromised, if unsure the iwi should be consulted.

#### *Health, Safety and Environmental Matters*

31. Health, Safety and Environmental Matters (HSE) would benefit from a more coordination between the relevant agencies and their respective regulatory functions. Iwi should be involved in any HSE review.
32. Ngāti Kahungunu prefers the prequalification option, to assess companies' eligibility prior to lodging a prospecting or exploration permit; this should apply to all potential operations rather than a subset. Only those companies that have a proven HSE track record should be able to proceed. For successful companies their Health, Safety and Environmental Frameworks, should be made public and provided to iwi, relevant to their Rohe.

#### *Work Programme Review Meetings*

33. Ngāti Kahungunu **insists** that iwi be given the option of attending annual review meetings, and sees this as a prime opportunity for meaningful involvement of iwi in the decision making process.

#### *Iwi Engagement on Crown Minerals*

34. While we acknowledge chapter 3: iwi engagement on Crown minerals, Ngāti Kahungunu **insists** that the Crown's commitment to iwi and the Te Tiriti o Waitangi be explicitly captured throughout the entire discussion (paper) and subsequent legislation regarding Crown Minerals, without including these specifics the best of intentions are commonly lost in translation (practice and interpretation).
35. Ngāti Kahungunu **supports** any opportunity to influence decision making and to participate from an economic perspective.
36. Ngāti Kahungunu **encourages** direct industry engagement with iwi, and appreciates Crown support to achieve this, however is uncertain on how the Crown plans to facilitate the creation of guidelines to 'help iwi and industry to work together'. Iwi are presently engaged with a number of industries.
37. Ngāti Kahungunu **insists** that it can offer more than input of our local knowledge to Crown decisions on petroleum and minerals policy and permits. This is a condescending assertion and ignores the international relationships and experience iwi have.
38. Ngāti Kahungunu Iwi Inc. **requests** further information on how genuine opportunities to 'input Ngāti Kahungunu knowledge' into Crown decisions might manifest, and what do the Crown consider as the potential options.
39. Section 4 of the Crown Minerals Act says that "all persons exercising functions and powers under the Act shall have regard to the principals of the Treaty of Waitangi (Te Tiriti o Waitangi). Ngāti Kahungunu **insists** that the word 'have regard' be substituted with 'adhere' and the word

'the principals of the' be removed; to read "all persons exercising functions and powers under the Act shall adhere to Te Tiriti o Waitangi (Treaty of Waitangi).

40. Ngāti Kāhungunu **requests** further detail and transparency regarding how the Treaty of Waitangi is weighted by all those exercising a power of decision under the Crown Minerals Act. What is the assessment Criteria? In particular at what point will potential economic benefits be outweighed by other considerations, if at all?
  - 40.1. Ngāti Kāhungunu **insists** that those companies that have developed good relationships with indigenous peoples and have impeccable environmental practices should be favoured (i.e. higher weighting in evaluation process). Ngāti Kāhungunu offers input of our global knowledge and experience on this consideration.
  - 40.2. Ngāti Kāhungunu **insists** that we should only accept the best industrial practice for mineral prospecting, exploration and extraction, and that this best practice be specifically captured within the Crown Minerals Act.
  - 40.3. Potential benefits are not just economic and should be considered in the evaluation process. Bottom line profit is not enough.
41. What difference or potential changes is the Crown prepared to consider on the outcome of the Waitangi Tribunal Claim (WAI852) by Ngāti Kāhungunu?
42. Ngāti Kāhungunu **insists** that Ngāti Kāhungunu Iwi Inc. is notified of any applications to mine on public conservation land, and all the relevant information is provided with reasonable time to make comment. Tāngata whenua have played a major role in establishing public conservation land and in many instances at significant expense to their well-being; iwi, hapū and whanau continue to maintain a strong interest in all public conservation land.
43. Ngāti Kāhungunu **does not support** any proposed change or amendment to the process for the approval of mineral-related access arrangements over Crown land. Ngāti Kāhungunu insists that if the Crown continues to amend this part of the act the exact details should be provided to Ngāti Kāhungunu Iwi Inc. and be publically notified

#### *Petroleum*

44. Ngāti Kāhungunu agrees with the introduction of HSE considerations for petroleum, in a prequalification process. There should also be a consistency in review process for existing and new approaches that HSE considerations should apply to all equally.
45. As an alternative to longer petroleum exploration permits durations, reducing the area or acreage of exploration blocks in the first instance should be considered. Meaningful discussion with iwi should occur prior to any permit extension. Extensions and time durations should be reduced for badly performing companies.
46. Permit holders should report with relevant data and information by the end of each phase of work (displayed in Table 2. of the discussion document), with the information provided to iwi.
47. If information regarding work programmes and clear involvement during the proposed HSE assessments is provided to iwi, this may remove the need for iwi to lodge submissions against permit applications. Again the involvement of iwi and disclosure of this information may create a more efficient system with less objections being generated.
48. Permit holders should actually comply rather than show 'reasonable effort to comply'. Reasonable effort can be too ambiguous and allows greater risk to non-compliant practices.
49. Permit conditions including work programme obligations should be agreed after underlying geology is reasonably understood.
50. Deviations from agreed primary and secondary work programmes should be approached with caution and avoided where possible.
51. **Do not agree** with the proposal to change the relinquishment mechanism within the PEP regime. That is retain the status quo where an extension is sought permit holder must release one-half of the area comprised in the permit. Reducing the size of the initial permitted areas will help alleviate some of these issues.

#### *Tier 1 Minerals*



52. Ngāti Kahungunu **insists** that is informed and involved with any applications, proposals or existing mining of Tier 1 minerals within the Ngāti Kahungunu rohe. In general permit areas should be of a reasonable size so iwi can adequately consider any potential impact.
53. **Agree** as per existing requirement permit holders should continue to relinquish acreage in order to be granted an extension of duration for their mineral prospecting permit.
54. **Agree** with the introduction of HSE considerations for tier 1 mineral, in a prequalification process for all (without exception) potential permit holders, and reassess during operations when capacity and capability is able to be better assessed.
55. The current 25-day period for Newly Available Acreage (NAA) tenders is not consistent with the data relinquishment requirements of the party whose tenure over the acreage has terminated that being 40 days. To ensure that all parties which may be interested in tendering for a permit under NAA processes have access to the information contained in the relevant permit conclusion report and records, it is proposed to amend the Minerals Programme for Minerals so that the NAA does not start until after the relevant data have been supplied and made publicly available.
56. This change does not seem to align to iwi who would still be required to comment on the application prior to the 40 day period for release of information has occurred. This change is not supported unless clear involvement and timeframes are aligned for iwi participation.
57. **Agree** a Land Mineral Status report be submitted as part of the application process and iwi are afforded a copy in a timely fashion.

#### *Tier 2 Minerals*

58. Ngāti Kahungunu **insists** that is informed and involved with any applications, proposals or existing mining of Tier 2 minerals within the Ngāti Kahungunu rohe. In general permit areas should be of a reasonable size so iwi can adequately consider any potential impact.
59. Ngāti Kahungunu is particularly interested in aggregate mining located on or adjacent to a bed of a river or stream or a marginal strip. Ngāti Kahungunu hapū do not appreciate mining on their sacred river, particularly when it affects their mahinga kai and their cultural relationship with the awa. In a number of instances 'Medium to Heavy Vehicles' (vehicle classes 2-5) drive directly past the marae gate and access the river adjacent to the marae and whānau. Not only are tāngata whenua, tāngata awa not afforded the same access they are forced to accept the mess, disruption and destruction of their traditional environment without adequate means of redress.
60. Tier 1 and 2 Mineral operations should not rely on the Resource Management Act 1991 to provide adequate protection against cumulative impacts.

*Provide an explicit policy to decline applications for prospecting permits for alluvial gold, industrial rock and building stones, and other low-value minerals*

61. These applications would default to exploration permits, and in effect there would be two applications: exploration and mining. Iwi would need to be aware of the greater number of activities which can occur at exploration phase, and a more detailed evaluation would need to take place considering all factors. It is submitted that more specific detail about iwi engagement must be included to ensure participation is guaranteed.
62. **Disagree** with proposal to delineate unpermitted areas that have alluvial minerals, and undertake proactive consultation with relevant iwi groups about appropriate areas to include in new permits.
63. **Disagree** with the proposal to remove permitting requirements over unformed legal roads and other such areas. That is excluding Crown-owned Tier 2 minerals located on land that is existing or stopped legal road, or that is on a bed of a river or stream or a marginal strip, which pass through an area of otherwise privately-owned minerals **is not supported**.
64. **Disagree** with the proposed measures to reduce reporting requirements for Tier 2 minerals.

#### *Royalties*

65. Ngāti Kahungunu **insists** transparency in terms of further detail around royalty rate for all minerals should be made available to iwi.

66. Ngāti Kāhungunu **insists** a conservation fund based on mineral royalties should proceed. In conjunction with contributing to conservation, this initiative has the potential to provide direct and visible conservation benefits ("giving back") to the communities exposed to mineral exploitation.
67. Ngāti Kāhungunu **insists** the Crown ensures the appropriate communities and hapu receive its fair share of the value of its petroleum and mineral resources. Giving back to communities particularly for environmental causes could potentially contribute to better community by-in and more favourable outcomes on both sides.

*Petroleum and Mineral data and reporting*

68. Annual production data should be made available on a well-by-well basis in addition to the current field production totals published in the Energy Data File.
69. Agree that survey and well information should be made publically available.

**Summary**

70. Ngāti Kāhungunu Iwi Inc. supports the submissions of other iwi, hapū, whānau and tāngata whenua, we desire greater input by tāngata whenua, in management and decision making process at all levels.
  - 70.1. Ngāti Kāhungunu Iwi Incorporated supports the submission on the review of the Crown Minerals Act 1991 Regime made on behalf of Te Runanga o Ngāti Ruanui Trust, Taranaki Iwi Trust, Te kaahui o Rauru, Te Runanga o Ngāti Mutunga and Te Atiawa Iwi Authority.
71. Ngāti Kāhungunu maintains its interest in petroleum, gas and minerals and has not forgone its rights within the iwi rohe. Accordingly, the iwi has a Waitangi Tribunal Claim (WAI 852), and seeks royalties and compensation.
72. Not adverse to any regime changes that facilitate practical and efficiency gains as long as HSE and iwi considerations are not compromised, if unsure the iwi should be consulted.
73. Expectation of consultation or engagement during all phases, including block offers, prospecting, exploration and mining. As well expectation of providing timely information sharing, in its entirety unless commercially sensitive. Sharing information can generate efficiency with potentially less objections.
74. Kaitiakitanga and Environmental Protection – maintained and enhanced, not degraded. Responsibility, Liability and Guarantee – contingency fund readily and directly available to tāngata whenua.

We would welcome the opportunity to present our submission orally, if required. For any additional information on this submission, please contact Dr Adele Whyte, Pouarataki – Ngā tini a Tangaroa (Director of Fisheries), [adele@kahungunu.iwi.nz](mailto:adele@kahungunu.iwi.nz).

Nā māua,



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