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Secretariat
Environment and Local Government Select Committee
Select Committee Services
Parliament Buildings
**WELLINGTON 6160**

# Submission to the Select Committee on Resource Legislation Amendment Bill

Principal proposed amendments to the Resource Management Act 1991 (**RMA**), the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (**EEZ Act**), and the Environmental Protection Authority Act 2011 (**EPA Act**). The Bill would also amend the Conservation Act 1987 (**Conservation Act**), the Reserves Act 1977 (**Reserves Act**), and the Public Works Act 1981 (**PWA**).

## NGATI KAHUNGUNU IWI INCORPORATED

Promote, protect and assert the mana, rangatiratanga and kaitiakitanga of ngā uri o Ngāti Kahungunu;

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

**Background**

1. **Ngāti Kahungunu Iwi Incorporated** (the Iwi / Iwi authority) is a mandated iwi organisation. Ngāti Kahungunu has the third largest iwi population (62,000[1]) and the second largest tribal rohe and coastline, from Paritu and extending inland across the Wharerata ranges in the north to Turakirae in southern Wairarapa.

   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 values, beliefs and practices of all Ngāti Kahungunu tāngata whenua, whanau and hapū. Tāngata whenua hold significant cultural, economic and spiritual connections to the natural environment. As kaitiaki, Ngāti Kahungunu have an obligation to protect and restore the mauri, and the physical and spiritual well-being of natural environment for future generations.

3. Ngāti Kahungunu Iwi Incorporated invests a significant amount of time, resources and energies in drawing together and considering the views and aspirations of Ngāti Kahungunu tāngata whenua mai Paritu ki Turakirae. Maintaining these networks and appreciating all perspectives is vital for a holistic over view and progressing towards enduring outcomes and solutions**.**

4. The Iwi has held or been privy to many hui for tāngata whenua that have had a focus on the natural environment and water in particular. Discussions have reiterated our common values and interests and also highlighted the reoccurring adverse environmental impacts on them.

**Introduction**

5. The overarching purpose of the current resource management act is sustainable resource management. The Iwi is committed to ensure central and local government agencies and policy appropriately reflect our interests as they relate to sustainable resource management.

6. The Iwi has been following and submitting on the various proposals and discussion documents related to resource management over the years. There have been some very concerning propositions contrary to values, culture and traditions of the iwi. Including proposals we believe move away from sustainable resource management, and move further from a Te Ao Maori worldview of resource management.

7. The consultation for the content of the Resource Legislation Amendment Bill (the Bill) has been abysmal, much of the proposal offers 'new changes' or rehashes changes from previous proposals that have been heavily criticized by the public and Maori alike. There is genuine concern regarding the direction, information used and process taken to advance changes in our resource management framework, this has in our view limited the opportunity for meaningful improvements.

8. At present section 6e of the RMA the "recognition and provision for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, taonga species and other taonga" is commonly ignored or inadequately catered for. The proposed changes could genuinely worsen this situation.

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

9. The Iwi authority submission, covers three major areas:

    i. Local Government vs Central Government

    ii. Planning Process

    iii. Iwi Participation Arrangements

**LOCAL GOVERNMENT vs CENTRAL GOVERNMENT**

**National Planning Instruments – Ministerial Powers**

10. We strongly oppose the ministers increased powers and unprecedented discretion to override local communities. There appears to be a number of avenues within the Bill that would enable this scenario.

11. While in principle the iwi supports national guidance and the promotion of minimum standards we are cautious and wish to prevent national prescription. At present the current National Policy Statement for Freshwater Management has been used to justify a "working down" approach to resource management and in places directly contravenes aspects of the current RMA. This in effect defeats the purpose of a national planning instrument to provide clarity and consistency to territorial authorities when implementing the RMA.

    **Recommendation 1** Oppose section 360D and 45A entirely.

    **Recommendation 2** Support in principle national planning instruments to the extent that they improve clarity and consistency to plans and policy.

**Local Government Functions - Hazardous Substances**

12. The repeal of section 30 (1)(c)(v) and section 31(1)(b)(ii). "Control the use of land for the purpose of – the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances". There is a clear and practical role for local government to continue these functions as resource managers, removing this function would inhibit a logical and integrated management approach.

13. The Iwi has appealed to both district and regional councils to "give effect" to this function to ensure every possible resource management precaution is taken to avoid contaminating the pristine and highly valuable groundwater resources in Hawke's Bay, including he well documented cultural significant Heretaunga Plains Aquifer system. Safe guarding groundwater from contamination could not be satisfactorily managed by a central government agency including the Environmental Protection Authority (EPA), response time and local knowledge would be insufficient before irreparable damage occurs locally. The statutory scope of the EPA is also limited, and largely excludes land use and activities, and not akin to a precautionary approach.

    **Recommendation 3** **Oppose** repeal of section 30 (1)(c)(v) and section 31(1)(b)(ii).

**PLANNING PROCESSES**

**Collaborative Model**

14. The Iwi authority has had first-hand experience in collaborative planning processes, and is currently involved in a Hawke's Bay collaborative stakeholder group for Tutaekuri, Ahuriri, Ngaruroro and Karamu waterways (TANK), since 2012.

15. This approach is not new to the rohe and although it has been useful in bringing together interested parties who may not have otherwise come together, the model is far from perfect. The process has been running for over four years and during that time the iwi has sought improvements to the process and its administration that have largely been ignored.

16. The collaborative model places a heavy burden on Māori organizations and whānau volunteers and terms this 'front loading'. In terms of resource management and planning processes, the iwi supports the ability for ngā uri of Ngāti Kahungunu to be heard directly for resource management and planning processes. Despite the struggle against continual efforts to pigeon whole iwi and hapu our interests are very broad and diverse, so require a wider range of skills and expertise than every other participant. The iwi is of the view that only considerable energy, time and willingness can improve the model.

17. During public consultation regarding the collaborative planning process, there was vocal opposition from Māori to the proposed restrictions on people's ability to access the court system through the schedule one process.

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

**Recommendation 4** Oppose the legislating of the collaborative planning process in the legislation Bill.

**Streamlined Planning Process**

19. It is proposed that Local authorities may apply to the Minister to expedite the planning process that is, "proportionate to the complexity and significance of the planning issues being considered". The proposed new section 80B, has the ability to designate significant power to the minister.

20. The following reasons are offered (proposed new section 80C) to justify such as approach:

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

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

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

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

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

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

21. The criteria offered are far too broad and any issue could potentially be argued within this framework. This could limit local participation and increases likelihood of national objectives being imposed upon tāngata whenua.

22. Proposed new section 84(2), offers the Minister further discretion in that the minister when deciding whether to approve a proposed planning instrument, must "have regard to" whether the proposed planning instruments meets the requirements of the RMA. This new level of unprecedented discretion is inappropriate.

23. There is no indication of how section 6e matters would be given effect in light of this proposal. At present discretion and ignorance is used as a default to ignore the rights of interests of iwi. This proposal has the potential to exacerbate the situation.

**Recommendation 5** Oppose the streamlined planning process.

**Notification**

24. The Bill makes significant changes to notification under the RMA, which will significantly constrain peoples ability to participate in RMA processes. The notification test has traditionally been about "effects" based assessment; at times this already excludes iwi and hapu from being notified on a range of activities that potentially could impact our interests. The current "effects" based approach already does not adequately cater for "effects" on tāngata whenua.

25. The amendments now prescribe types of activities for which notification does not apply. Activities are very rarely so black and white, this approach ignores unanticipated effects of an activity, because those who could be affected are denied the ability to participate. This approach is highly risky and not precautionary, Māori are already excluded due to lack of capability and local knowledge on the council's behalf, this situation would be exacerbated further under the proposed changes.

26. It also denies those affected (but unanticipated) persons the ability to prove their interest. Whereas judicial review was otherwise available for non-notification decisions, if non-notification is statutorily prescribed, affected persons will be left without a remedy despite the effects on them.

**Recommendation 6:** Maintain full existing notification rights.

**Appeals**

27. Amendments have been proposed that consistently limit the rights of appeal to the Environment Court to by way of re-hearing and/or points of law. 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 engage in first instance with the Council and then through the hearings process. Iwi and hapu are always hopeful of resolving the matter without potentially escalating the cost required to engage.

28. The proposed new section 271A(4) and (5) places an emphasis on evidence produced during council hearings and an appeal to the Environment Court could ignore the introduction of new evidence. The proposed changes take advantage of the prohibitive cost of engaging planning, technical and legal services and unduly disadvantage the lay person, hapu and iwi organisations if they wish to appeal a decision. Iwi and hapu groups can not anticipate the outcomes through the various levels of engagement; it is logical and fiscally responsible to avoid costs where possible. Involvement of iwi, hapu or individuals should not be unduly disadvantaged, particularly given the relatively limited funds of Maori and the demands of many cultural experts who often volunteer their time.

29. Ngāti Kahungunu has achieved significant resolution through the Environment Court, from experience these changes would have severely affected our rights and interests being provided for.

**Recommendation 7:** Maintain full existing appeal rights.

**IWI PARTICIPATION ARRANGEMENTS**

30. The new Bill proposes statutory obligations on councils to invite iwi to establish an "iwi participation arrangement", through which a number of agreements must be recorded. The proposed iwi participation arrangement: reflects a minimum requirement; are limited to change of a policy statement or plan; and, similar to many other 'arrangements' are at the behest of local government, their priorities and timelines.

31. Within the regulatory framework there are many provisions that could be used better to cater for the interests and rights of Ngāti Kahungunu. For example it could be agreed that certain customary activities could be provided for as permitted activities without the need for authorization. The use of discretion and lack of knowledge and willingness has been the predominant hurdle in more meaningful engagement between the iwi authority and local government.

32. Iwi relationships with local government have mixed track records with variable outcomes also those involved are often freshly exposed to conflicting world views and the meaningful recognition and provision for the relationship of Māori and our culture and traditions with te Taiao. It makes practical sense to achieve enduring and meaningful outcomes that any iwi participation arrangement needs the ability to evolve and improve.

33. While there are opportunities and some intent to involve iwi further there have also been missed opportunities and in our view past actions that have excluded the Iwi authority from further participation in natural resource decision-making.

34. Ngāti Kahungunu Iwi Inc last submission in 2015 to a select committee criticized the "Hawke's Bay Regional Planning Committee Bill". This Bill now an Act actively excluded the iwi authority of Ngāti Kahungunu in framing and participating on a committee whose purpose was to "support tāngata whenua aspirations" and has an arrangement in the participation and preparation or change of policy statements or plans. The irony now is that the current proposed Environmental Legislation Bill directs councils to arrange formal participation with the iwi. Neither direction from both local and central government has necessarily been helpful to the interests of Ngāti Kahungunu Iwi Inc.

35. Primarily, the Iwi authority seeks to maintain its independence from the strong influence of local government and the discretion and ability to determine how an Iwi Participation Arrangement might unfold and what they might include.

**Recommendation 8** Iwi Participation Arrangements are initiated by iwi.

**Recommendation 9** Iwi Participation Arrangement increases the scope (with discretion to the iwi) to cover a wider range of resource management matters over and above new or changed plans or policy statements, to include collaborative planning, streamlined processes, monitoring, resource consents, appointments to committees, hearing panels and other decision making roles.

**Recommendation 10** Iwi are supported through dedicated funding to resource iwi to achieve equal partnership with councils.

**Recommendation 11** Iwi Participation Arrangements provide a process to explore whether customary activities could be carried out by the iwi or hapū without the need for a statutory authorisation from the local authority; and in particular, whether customary activities could be provided for as permitted activities in relevant regional plans or district plans.

36. At present tāngata whenua participation in the RMA varies greatly in many areas it is poor.

- 15 per cent of local authorities involved iwi/hapū in resource consent monitoring.
- 54 per cent of local authorities made a budgetary commitment to iwi/hapū participation in RMA processes.
- 51 per cent of local authorities had written criteria or a set policy for staff to determine when iwi/hapū should be considered an affected party to resource consent applications.

- 24 per cent of local authorities had a policy requiring a cultural impact assessment as part of the resource consent application when a site, species or resource is of concern to iwi/hapū.[2]

**CONCLUSION**

37. The proposed changes are aimed at "improving" the resource management act; it has been claimed that it is cumbersome and preventing development and thus economic growth. The resource management act is designed to provide the necessary checks and balances so New Zealand natural and physical resource values weren't eroded while, exploiting the natural environment and to safe guard it for future generations. Many of the arguments used to justify change do not align with many of the statistics and trends:

38. Ministry for the Environment RMA statistics:[3]

    i. 36, 154 resource consents applications were processed through to a decision.
    ii. 4 per cent (1414) of resource consent applications were publically notified
    iii. Local authority officers acting under delegated authority made 91% of decision on resource consent applications.
    iv. 0.56 per cent (203) of resource consent applications were declined (99.42% were approved).
    v. 1 per cent (357) of resource consent decisions were appealed.
    vi. 95 per cent of resource consent applications were processed on time.
    vii. 68 per cent of consents that required monitoring were actually monitored.

39. The proposed changes portray the environment as an enemy to economic development, this ignores the fact that our economy was largely built on our environment and those who have preserved its integrity. Sustainable resource management rather than sustainable development must remain the purpose of the RMA.

40. Ngāti Kahungunu Iwi Incorporated wish to be heard in relation to this Bill. For any additional information on this submission, please contact Jonathan Dick Pouarataki – Te Taiao me ona Rawa (Director of Environment and Natural Resources), Jonathan@Kahungunu.iwi.nz

Nāku noa,

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[2] http://www.mfe.govt.nz/publications/rma/annual-survey/2003-04/full-report/page11.html
[3] Ibid - Year 2010/2011; Since major RMA reforms have been proposed, production and output of highly informative and relevant statistics have diminished, however the trends are unlikely to have varied greatly.