



WAKATŪ INCORPORATION

SUBMISSION ON THE DRAFT NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

16 March 2020



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Introduction

1. This submission, on behalf of the Wakatū Incorporation (**Wakatū**), is made on the draft National Policy Statement for Indigenous Biodiversity (the **NPS-IB**).
2. Our submission includes overarching and specific submissions, alongside framing our submission with kōrero about our responsibilities as kaitiaki (guardians) and our connection to our taonga (treasure/s).

Ko wai mātou? Who are we?

3. Wakatū Incorporation (**Wakatū**) is a Māori Incorporation pursuant to Te Ture Whenua Māori Act 1993. Based in Nelson, New Zealand, Wakatū has approximately 4,000 shareholders who are those families who descend from the customary Māori land owners of the Nelson, Tasman and Golden Bay Regions – Te Tau Ihu.
4. Wakatū has an intergenerational 500 year vision - Te Pae Tawhiti - which sees us through to 2512.¹ It is a declaration of our fundamental values, common goals and guiding objectives that will ensure our success and create a strong identity now and in the future. At the heart of Te Pae Tawhiti is our overarching purpose which is to preserve and enhance our taonga for the benefit of current and future generations.
5. Wakatū grew from \$11m asset base in 1977 to a current value of over \$300m. Whenua is the foundation of our business with 70% of assets held in whenua (land) and waterspace. We manage a diverse portfolio from vineyards, orchards to residential properties, large retail developments, office buildings, marine farms and waterspace. Wakatū owns, on behalf of its shareholders, both Māori land and General land.

¹ Te Pae Tawhiti is available online at <https://www.wakatu.org/te-pae-tawhiti>.

6. Kono is our food and beverage business focused on high quality beverages, fruit bars, seafood products, pipfruit and hops. We understand that innovation and adaptability is the key to our success.
7. Auora is that part of our organisation which is focused on innovation, particularly new ingredients, new products and new business and service models.
8. Our whānau and our businesses are located primarily in our traditional rohe, Te Tau Ihu – the top of the South Island.
9. In short, our purpose is to preserve and enhance our taonga, for the benefit of current and future generations. Our submission on the Panel's Issues and Options Paper is made with that at the forefront of our minds.
10. We have included further detail in an **Appendix** to this submission which sets out who we are in further detail.

Our kaitiaki responsibilities

Toitū te marae a Tāne, Toitū te marae a Tangaroa, Toitū te Iwi

11. We have a unique relationship with our ancestral lands and waters which have sustained us since the arrival of our tūpuna. The proverb above, "Toitū te marae a Tāne, Toitū te marae a Tangaroa, Toitū te Iwi", has been passed down by our ancestors and identifies that when the realm of Tāne – deity of the forest and the domain of Tangaroa – god of the Ocean are sustained, so too is the future of the iwi. The Māori connection to customary land is very powerful. It is mana tūpuna - power from the ancestors. This generation is the living face of all those that came before, carrying all of their hopes and aspirations in our DNA. They give us the right to be.

12. As mana whenua, we have customary and legal rights to use and access our land and water within our rohe. We also have intergenerational responsibilities to protect the physical and spiritual components of our land and water. We are always mindful of the need to look after our resources for the benefit of current and future generations.
13. As kaitiaki, we adhere to certain practices and protocols that were established by our tūpuna when using land and resources. These practices ensure that the physical and spiritual aspects of life are kept in balance.
14. Fundamental to our identity is our connection with place. It has reflected the tenets of our culture since time immemorial. It shapes our thinking, our way of being and our priorities of what is of value. Learning about land is not the same as recognising that we learn best from land.
15. Our interaction with our lands and waters defines us, providing clarity on our roles and relationships, our responsibilities, and our place in the natural world.
16. Our relationship with our land and water is based on and strengthened by our whakapapa to the land and water and the fact that we are descendants of the earth and sky, and all elements. We whakapapa to our ancestral lands and waters and see them as a part of us, as our ancestors.
17. This whakapapa demonstrates how the world has unfolded both physically and spiritually. It is the thread connecting us from the beginnings of time to today and beyond. It demonstrates how everything is part of a web of relationships, not only in relation to other human beings but in relation to everything in nature as well. This understanding underpins our approach to our environment and our use of resources.
18. There is no separation between the land, water and people. All things are inter-connected, particularly through the burial of our ancestors. The land and water, for example, is one - an indivisible whole. The land is connected to the water resources which flow in, on or under it, as is the

water connected to the land that surrounds it. Both the land and water are in turn connected to us, as the people who have mana whenua and mana moana over this area. Water is imbued with a mauri, a life force and personality of its own which is to be protected and sustained for future generations. Maintaining and protecting the mauri of our ancestral waters are of critical importance to us.

19. Wakatū has a number of work-programmes underway focused on ensuring that we whakatinana (embody) our kaitiaki values and responsibilities, these include our Whenua Ora and Tangata Ora programmes. Wakatū is committed to showing leadership in these matters to achieve transformative change for our taiao and our whānau.

Overarching submissions

20. Māori are kaitiaki of the natural world; we are connected to the natural world through whakapapa. Within our kaitiaki responsibilities, we are also part of industry. This places Māori in a unique position to, among other things, carry over kaitiaki responsibilities into industry best practice. The NPS-IB needs to recognise the multi-faceted rights and responsibilities that Māori hold, particularly Māori landowners.
21. Te Tiriti o Waitangi is central to this discussion. There is a broader constitutional conversation that needs to occur in parallel to reform such as this. The place of Te Tiriti, and the rights and responsibilities of Māori that are guaranteed by Te Tiriti, need to be properly considered and given effect to by the Crown. The current Governmental arrangements do not reflect a true partnership.
22. Last year, the Government announced that it intends to take an all-of-Government approach to responding to *Ko Aotearoa Tēnei*.² *Ko Aotearoa Tēnei* includes a chapter addressing the environmental concerns that the

² Waitangi Tribunal, *Ko Aotearoa Tēnei* (WAI 262 Waitangi Tribunal 2011) (***Ko Aotearoa Tēnei***).

claimants raised through the Wai 262 inquiry. The Tribunal has made recommendations to protect indigenous biodiversity but also highlights that Māori are both kaitiaki of the environment, part of it and users.

23. Local authorities' regulatory powers need to be tightened to make room for Māori authority over our taonga (for our indigenous biodiversity).
24. The Government needs to invest in measuring water, soil and biodiversity quality in catchments.
25. Wakatū have recently led, in conjunction with our local authorities and broader community, the development of the Te Tau Ihu Intergenerational Strategy.³ In developing the Strategy, we held a range of intergenerational public conversations. These were all heavily subscribed (with some being over-subscribed). In our view, the process we followed to develop the Strategy, which was inclusive and values-led, is an example of how planning can proceed differently in communities (including planning about the management of our Taiao and the processes proposed by the NPS-IB).
26. There needs to be consistency and coherency across the Government's current reform programmes. For example, although Wakatū is supportive of the thrust of the reform required to protect indigenous biodiversity, some of the unintended consequences that will result if the NPS-IB is progressed in its current form could be devastating for Māori land and Māori landowners. In that respect, the Government's current focus on unlocking Māori land and increasing productivity, seems to run counter to what may result through the NPS-IB. In that regard, amendments are required to ensure that the Government's focus on Māori land is realised within appropriate environmental limits.

³ Available at <https://tetauihu.nz/>

Specific submissions on the NPS-FM

27. Wakatū is supportive of the thrust of what we understand to be the primary driver of the NPS-IB namely to protect Aotearoa's indigenous biodiversity. However, some of the proposals will likely lead to Māori land owners being inequitably treated by virtue of Māori land having high proportions of indigenous biodiversity on our land.
28. This is for a range of reasons but, primarily, due to Māori land being locked out of development historically. It also is due to Māori investing in, and protecting, indigenous biodiversity on our lands. Māori should not now be punished (again) for doing so historically where other landowners (including the Crown) have not been as diligent at protecting indigenous biodiversity.
29. This section of the submission addresses those matters that are provided for in the NPS-IB:

Compensation

30. Although both the Discussion Document and the section 32 report accompanying the NPS-IB acknowledges the disadvantage that will likely result to Māori land given the vast tracts of indigenous biodiversity on Māori land, the NPS-IB fails to address that.
31. The Crown has a responsibility under Te Tiriti to seek active and informed consent to any proposal which may have an impact on Māori land or land which has customary significance, from the owners and kaitiaki of that land.
32. As currently drafted, the Proposed NPS-IB runs the risk of further disenfranchisement of Māori to develop Māori Freehold land. This is unacceptable and a further Treaty breach. Māori landowners already have a number of additional hurdles before them when considering development

of Māori freehold land. This reform package cannot result in further locking up of Māori land.

Eco-systems based services

33. The efforts Māori landowners have taken, including Wakatū, to protect indigenous biodiversity on their land to date should be recognised. Wakatū recommends introducing the concept of eco-systems based services into this discussion, and potentially the NPS-IB, to ensure that Māori landowners can recognise their investments in a tangible way. A services network that provides for this means that indigenous biodiversity would be something that was measurable on a balance sheet.
34. An eco-systems based services model for Maori landowners must be grounded in tikanga Maori principles. This could vary from region to region. For example, Te Mana o Te Wai in the National Policy Statement for Freshwater Management (**NPS-FM**) requires particular bottom-lines to be met (and will do so in a strengthened way if the current draft NPS-FM is approved) with regional variation to ensure that it is hapū and iwi specific.
35. This type of approach also recognises the benefit to the wider area / catchment of a specific area rich in indigenous biodiversity. This may also resolve some issues where it is clear that a high value SNA is going to prevent the development of Māori land when that Māori land has been identified as productive but has been locked out of development opportunities.

Insufficient capability and capacity within local government currently

36. Wakatū is concerned that Aotearoa does not currently have the extent of technical expertise available to assist regional and district councils to identify SNAs and mobile species across their territorial areas within the next five years.

37. The requirements on regional and district councils including timeframes should ensure that the identification of these habitats and species is robust, and is undertaken in a way which engages landowners (particularly Māori landowners) and communities, builds understanding and knowledge, and which empowers local conservation efforts.

Hutia Te Rito

38. Wakatū support the principle of Hutia Te Rito including explicit matauranga Māori and tikanga Māori.
39. Given the likely consequences for Māori landowners of the NPS-IB, Wakatū recommends that the Proposed NPS-IB explicitly states that Māori landowners must be engaged in partnership through the development and implementation of the Proposed NPS-IB. This obligation will primarily fall on local authorities.
40. Conceptually, Hutia Te Rito needs to also recognise the “use” relationship Māori have always had with the land. This is captured eloquently in the Waitangi Tribunal’s *Ko Aotearoa Tenei* report. The Tribunal emphasised that, “though it is important to acknowledge the central places of whanaungatanga and kaitiakitanga in the Hawaiki and Māori world views, it is also important not to romanticise the early Polynesian impact on the environment of Aotearoa”.⁴ Māori were kaitiaki of the environment but they also used natural resources. The Tribunal explained the nature of this relationship as “not necessarily by forbidding their use, but by using them in ways that enhance rather than damage kin relationships.”⁵

Identifying and mapping Significant Natural Areas

⁴ *Ko Aotearoa Tēnei* at 239.

⁵ *Ko Aotearoa Tēnei* at 269.

41. Wakatū supports the identification of areas with significant indigenous plants and or species, by experts working with communities and in partnerships with landowners, who in many cases will also be experts with specific and local knowledge (for example, our kaumatua and tohunga). This assessment must be undertaken in a consistent manner, with the significance of habitats verified or refined through an on the ground assessment, rather than just through reliance on spatial maps.

42. Wakatū has concerns about the process proposed in the Proposed NPS-IB particularly in relation to timeframes, those who need to be involved, resourcing and capacity. In short, it is critical that Māori landowners and governing structures (such as Wakatū and other Māori entities) are involved alongside those who are identifying these habitats and in informing the ongoing management of these habitats within pastoral based land uses and activities. This is an essential element to providing successful and enduring conservation outcomes.

43. Wakatū recommends that:
 - (a) Early engagement with, and then notification to, Māori Landowners in the NPS-IB. Sufficient resourcing will then need to be made available to enable this engagement and work.

 - (b) Provision 3.3 is amended to ensure engagement with Māori landowners is compulsory (the current drafting of “must involve tangata whenua” is unclear and may not include Māori landowners – the wording needs to be amended to be clear and to specifically include Māori landowners).

 - (c) Provision 3.3 and 3.8 are modelled further on the collaborative process envisaged for FMU’s in the revised National Policy Statement for Freshwater Management. This process is more prescriptive, providing more certainty for parties, than the current provision 3.8.

- (d) Provision 3.8 is amended to enable local authorities, alongside Māori landowners, the time to undertake this work in a robust manner.

Recognising and protecting taonga species and ecosystems

44. Māori landowners must be involved in identifying and mapping significant natural areas, as should also be the case with recognising and protecting taonga systems and eco-systems.

Conclusion

45. The Panel has a real opportunity to affect positive change for our environment and our people. However, in order for this to be successful the work needs to be done in a manner which is consistent with Te Tiriti and the expectations of Māori and Māori landowners. If this does not occur, the reforms will not be sustainable nor will they achieve their objectives.
46. We encourage the Panel to be expansive in its thinking and to have courage when providing its recommendations to the Minister particularly in relation to Te Tiriti o Waitangi.
47. Thank you for the opportunity to participate in this process.

Ngā mihi nui,

Kerensa Johnston,
Wakatū CEO

APPENDIX

A BRIEF CUSTOMARY HISTORY OF THE NELSON AND TASMAN DISTRICT

1. In the 1820s and 1830s, mana whenua then living in Te Tau Ihu were conquered by tribes from the North Island, including Ngāti Rārua, Ngāti Awa (now known as Te Ātiawa), Ngāti Tama and Ngāti Kōata. This tribal grouping is known as Ngā Tāngata Heke – the people of the Heke. The Heke were the series of migrations back and forth from the north to the south, including to Te Tau Ihu, in the early 19th century from the Kāwhia and Taranaki coasts. These migrations are remembered in the collective memory of the people as a series of named Heke.
2. By 1830, it was established that the hapū who held Māori customary title or mana whenua in Nelson, Tasman Bay and Golden Bay were the descendants of the four Tainui-Taranaki iwi of Ngāti Koata, Ngāti Rārua, Ngāti Tama and Te Ātiawa.
3. The four Tainui-Taranaki iwi in western Te Tau Ihu are recognised as the mana whenua on the basis of acquiring Māori customary title through a combination of take (raupatu (conquest) and tuku (gift)) and ahi kā roa (keeping the fires alight, by occupation or in other recognised ways). Over time, the whakapapa of the migrant iwi from the north became, as the Waitangi Tribunal has put it, 'embedded in the whenua through intermarriage with the defeated peoples, the burial of placenta (whenua) and the dead, residence, and the development of spiritual links.'⁶
4. From the time of the heke onwards, Māori customary title manifested itself in western Te Tau Ihu (Nelson, Tasman Bay and Golden Bay) as an exclusive right to land, with the power to exclude others if necessary, with the ability to dictate how land and resources was used and accessed.

6 Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui*, vol III, 1366.

5. Ngāti Rārua, Te Ātiawa, Ngāti Tama and Ngāti Koata did not move to Te Tau Ihu en masse, but particular whānau and hapū, or sections of particular whānau and hapū, from those iwi settled in a staged series of migrations, with land allocated in various locations as different groups arrived.
6. The pattern of mana whenua in Te Tau Ihu was dictated by the pattern of settlement, in which each kāinga (village) was established around a chief or chiefs and each kāinga was home to extended whānau, with most residents at each kāinga related by blood or marriage. The whānau or hapū (an extended whānau or cluster of whānau could equally be described as a hapū) tended to establish themselves at locations where their neighbouring communities were relatives and/or close allies.
7. By 1840, whānau or hapū belonging to the four Tainui Taranaki iwi were established in Nelson, Tasman Bay and Golden Bay as the mana whenua.

The arrival of the New Zealand Company

8. When the New Zealand Company (“NZ Company”) arrived in the South Island in 1841, rangatira [tribal leaders] representing the families of those whānau or hapū who held mana whenua and who were resident in western Te Tau Ihu negotiated with Captain Arthur Wakefield of the NZ Company and agreed to welcome European settlement in parts of the Nelson, Motueka and Golden Bay area.
9. One of the main reasons for this agreement, from the Māori perspective, was to promote trade relationships between European settlers and Māori for mutual benefit, bearing in mind that tribes of Te Tau Ihu had already had several decades of contact with European traders prior to 1841.
10. According to the arrangements a major benefit promised by the NZ Company when it entered into what it called ‘Deeds of Purchase’, was that the resident Māori and their families who held mana whenua in the relevant parts of western Te Tau Ihu (Nelson, Motueka and Golden Bay),

would be entitled to retain all existing Māori settlements, including urupa, wāhi tapu and cultivated land, and in addition reserves would be set aside comprising one-tenth of the land purchased. These additional land reserves became known as the Nelson Tenths Reserves (“Tenths Reserves”).

11. As a result of the negotiations between the NZ Company and tāngata whenua, the Crown issued a grant in 1845 which extinguished Māori aboriginal (or customary) title over 151,000 acres in Nelson and Tasman (the Nelson settlement). The 1845 Crown Grant excluded all existing Māori settlements, including urupa, wāhi tapu and cultivated land, along with one-tenth of the total area of land acquired for European settlement (15,000 acres).
12. The Crown intended to hold the Tenths Reserves on trust on behalf of and for the benefit of the tāngata whenua who were those families who held Māori customary title to the 151,000 acres in the 1840s.
13. Despite the guarantees and the provisions stipulated in the 1845 Crown Grant, the Crown failed to reserve a full one-tenth of land or exclude settlements, urupa, wāhi tapu and cultivated land from European settlement.
14. On completion, the NZ Company’s Nelson Settlement comprised approximately 172,000 acres, although it is likely a much larger area of approximately 460,000 acres was eventually acquired by the Crown.
15. As at 1850, the Nelson Tenths Reserves comprised only 3,953 acres (this figure does not include the designated Occupation Reserves).
16. Between 1841 and 1881, Crown officials administered the Tenths Reserves and the occupation reserves on behalf of the original owners. From 1882, the Public Trustee administered the estate.

17.

Identifying the original land owners

18. In 1892 – 1893, the Native Land Court undertook an inquiry to ascertain who owned the land in Nelson, Tasman Bay and Golden Bay prior to the transaction with the New Zealand Company. The reason for this inquiry was to determine the correct beneficiaries of the Tenths Reserves trust.
19. The Native Land Court Judge (Judge Alexander MacKay) considered that the “New Zealand Company Tenths” (as he called them) had been set aside in accordance with the NZ Company’s stipulation in the Kapiti Deed that it would hold a portion of the land on trust, and accordingly he decided that to ascertain those persons with a beneficial interest “it was necessary to carry back the inquiry to the date the land comprised in the original Nelson Settlement was acquired by the Company”.
20. The Court’s ruling determined the ownership of the 151,000 acres “at the time of the Sale to the New Zealand Company”, with the ownership of the four hapū – Ngāti Koata, Ngāti Tama, Ngāti Rārua and Ngāti Awa - broken down according to each of the areas awarded by Commissioner Spain in 1845 (Nelson district, 11,000 acres; Waimea district, 38,000 acres; Moutere and Motueka district, 57,000 acres, and Massacre Bay, 45,000 acres).
21. The Judge’s ruling included a determination:

That although the Reserves made by the Company were situated in certain localities the fund accruing thereon was a general one in which all the hapus who owned the territory comprised within the Nelson Settlement had an interest proportionate to the extent of land to which they were entitled, at the time of the Sale to the Company.

22. The Court requested each of the hapū so entitled to provide lists of the persons who were the original owners of the land at the time of the New Zealand Company's arrival and their successors.
23. Importantly, therefore, the 1893 lists were not drawn up by the Native Land Court, but by the people. The evidence of how this was done is consistent with a tikanga Māori style process where the lists were debated and revised until consensus is reached.

The Crown's management of the land

24. From 1842 until 1977, when the original owners regained control of their lands, the Crown held the Tenth's Reserves and occupation reserves in trust and managed it on behalf of its owners.
25. From 1882 onwards, the Public Trustee, Native Trustee and Māori Trustee administered the Tenth's Reserves and occupation reserves on behalf of the original owners and their descendants. During this period, a great deal of land was either sold or taken under public works legislation - in many cases without the owners' consent and without compensation for the loss.
26. A clear example of the Crown's mismanagement during this period is illustrated by the imposition of perpetual leases on the Tenth's Reserves and occupation reserves. By way of legislation, the Crown imposed perpetual leases on the land, which for example, allowed for 21-year rent review periods, rents below market value, and perpetual rights of renewal for lessees. In practice this meant the Māori owners could not access or use their land, nor did they receive adequate rent for leasing the land. The problems associated with the perpetual lease regime continue to impact adversely on the submitters' land, despite some legislative changes in 1997.
27. In the period to 1977, as a result of the Crown's mismanagement, the Tenth's Reserves estate was reduced to 1,626 acres.

Proprietors of Wakatū (Wakatū Incorporation)

28. By the 1970s, the descendants of the original owners were lobbying for the return of their land to their control and management. This led to a Commission of Inquiry (the Sheehan Commission) into Māori Reserved Lands.
29. Our establishment was the result of recommendations made by the Sheehan Commission of Inquiry that the Tenth's Reserves should be returned to the direct ownership and control of Māori. This recommendation was implemented by the Wakatū Incorporation Order 1977, which according to its explanatory note constituted "the proprietors of the land commonly known as the Nelson-Motueka and South Island Tenth's".
30. The land vested in Wakatū Incorporation comprised the remnants of the Tenth's Reserves and occupation reserves and the beneficial owners of the land were allocated shares in the same proportion as the value of their beneficial interests in the land transferred.
31. With a few exceptions, those beneficial owners were the descendants of the 254 tūpuna identified as beneficial owners by the Native Land Court in 1893. Wakatū can therefore trace the genesis of a large portion of the land in its estate back to the initial selection of the Tenth's Reserves in 1842.

Wakatū Incorporation today

32. Wakatū is the kaitiaki and legal trustee of the remnants of the Tenth's Reserves and occupation reserves. Wakatū Incorporation is responsible for the care and development of the owners' lands.
33. The Incorporation represents approximately 4000 Māori land owners in Nelson, Tasman Bay and Golden Bay. Apart from the Crown and local

authorities, Wakatū is one of the largest private landowners in the Nelson/Tasman regions.

34. Since 1977, the owners of Wakatū have built a successful organisation that has contributed to the economic growth of the Tasman District and the economic, social and cultural well-being of the descendants of the original owners.
35. Wakatū Incorporation's primary focus is based around its management and use of the ancestral lands of the owners for their cultural and economic sustenance. Today, this comprises a mixture of leasehold land, commercial land and development land.
36. Wakatū has interests in horticulture, viticulture and aquaculture (Kono NZ LP) throughout the Tasman and Nelson District as well as in other parts of New Zealand.
37. The principles and values of Wakatū Incorporation are reflected in its guiding strategic document – Te Pae Tāwhiti.

Further information

38. A full history of the lands administered by Wakatū Incorporation, along with Ngāti Rārua Ātiawa Iwi Trust, Rore Lands, and other whānau and iwi trusts, who own land in the Nelson and Tasman region is set out and discussed more fully in the Waitangi Tribunal, Te Tau Ihu o te Waka a Maui report. Also see www.Wakatū.org.nz for further information.