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Ministry for the Environment  
Environment House  
WELLINGTON

By email: indigenousbiodiversity@mfe.govt.nz

## **POUTINI NGĀI TAHU – SUBMISSION ON HE KURA KOIORA I HOKIA: NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY**

- 1 This submission is made on behalf of Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (together Poutini Ngāi Tahu) who exercise rangatiratanga in Te Tai Poutini (the West Coast).
- 2 Poutini Ngāi Tahu are two of the 18 Papatipu Rūnanga that collectively make up Te Rūnanga o Ngāi Tahu:
  - 2.1 the takiwā of Te Rūnanga o Ngāti Waewae is centred on Arahura and Hokitika and extends from the north bank of the Hokitika River to Kahuraki and inland to the Main Divide together with a shared interest with Te Runanga o Makaawhio in the area situated between the north bank of the Pouerua River and the south bank of the Hokitika River; and
  - 2.2 the takiwā of Te Rūnanga o Makaawhio is centred at Makaawhio and extends from the south bank of the Pouerua River to Piopiotahi and inland to the Main Divide together with a shared interest with Te Rūnanga o Ngāti Waewae in the area situated between the north bank of the Pouerua River and the south bank of the Hokitika River.<sup>1</sup>
- 3 This submission is intended to be complimentary to the submission made by Te Rūnanga o Ngāi Tahu, which Poutini Ngāi Tahu supports.
- 4 The proposed NPS-IB fails to respect Poutini Rangatiratanga and mana. Poutini Ngāi Tahu have not been included in the design of the NPS-IB. More than consultation is required to satisfy the Crown's Treaty obligations that it owes to Poutini Ngāi Tahu.
- 5 The NPS-IB proposes new standards for designation of Significant Natural Areas (SNAs). Approximately 84.2% of the Poutini Ngāi Tahu takiwā is public conservation land, foreclosing development opportunities. The addition of Land Information New Zealand (LINZ) land, along with Schedule 1 and Schedule 2 wetlands adds another 7% SNA land. All in all, around 90% of the Poutini Ngāi Tahu takiwā would face significant development constraints under SNA classification proposed NPS-IB.<sup>2</sup>
- 6 The NPS-IB proposes to severely interfere with and dispossess property rights held by Poutini Ngāi Tahu. Historically to Māori, this deprivation is known as raupatu –

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<sup>1</sup> Te Runanga o Ngai Tahu (Declaration of Membership) Order 2001.

<sup>2</sup> Or approximately 8.65% of land would not be restricted. In support of this preliminary figure based on oral advice of expert ecologists, it is assumed that potential SNAs under the NPS-IB are likely to cover most Scheduled wetland areas, although the exact figure is uncertain.

forcible confiscation of land and rights associated with land. Poutini Ngāi Tahu are concerned that this proposed NPS-IB is raupatu in all but name. If this issue is not addressed, the NPS-IB could constitute the largest land grab in Te Waipounamu since the colonial purchases. Poutini Ngāi Tahu have borne witness to the intergenerational grievances that accrued as a result of alienating whānau from their land and resources. Our Treaty settlement resolved historical grievances and renewed relationships with the Crown on the basis that further grievances would be averted and afforded full liability at law.

- 7 To date the Crown has failed to work with its Treaty Partners. In the spirit of Treaty partnership, Poutini Ngāi Tahu seek further engagement with the Crown, towards realising a co-operative relationship that recognises and respects our rangatiratanga, our mana, and our protocols.

### **General comments**

- 8 The overall position of Poutini Ngāi Tahu is that:
  - 8.1 the draft NPS-IB will prevent the effective use and development of Māori land; and
  - 8.2 the draft NPS-IB is in breach the Crown's obligation to work with its Treaty Partner, and is inconsistent with the acknowledgement of Ngāi Tahu rangatiratanga.
- 9 Flowing from its rangatiratanga and kaitiakitanga, Poutini Ngāi Tahu has a responsibility to manage indigenous biodiversity in its takiwā. The framework proposed in the NPS-IB frustrates this responsibility and will obstruct us from balancing that responsibility with whānau rights to use their customary and ancestral land to support their whānau.
- 10 The proposed reform perpetuates the failure to address the wider concerns around the Resource Management Act 1991 (RMA) and the role of iwi. The Crown has so far failed to utilise its opportunity to design a Treaty-compliant RMA in the course of the 'Essential Freshwater' reforms.<sup>3</sup> Poutini Ngāi Tahu is concerned that the Crown is not seeking to address its fundamental rights and interests in good faith with Poutini Ngāi Tahu.
- 11 The Crown is required to design and implement laws and policies consistently with the Treaty and its Treaty obligations. Continuing to provide for early engagement as the standard for iwi and local government relationships while vesting the ultimate and sole decision-making authority in local authorities is contrary to the Treaty and its principles.

### **Impacts on Māori land and interests**

- 12 The "*Summary for Iwi / Māori*" discussion document acknowledges that the draft NPS-IB could unfairly impact Māori landowners and Māori Land Trusts, but states that the NPS-IB has provisions which aim to address this.
- 13 Poutini Ngāi Tahu does not agree that the NPS-B addresses this concern.
- 14 The West Coast contains large areas of land with indigenous biodiversity present. Much of this is Māori land, which is already burdened with other institutional and

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<sup>3</sup> Waitangi Tribunal, Stage 2 Report on Geothermal Resources and Freshwater Claims (WAI 2358), p. 299.

regulatory barriers to utilisation. If the NPS-IB restricts the ability to use and develop Māori land, it will create yet another barrier for whanau to use their land. This is fundamentally incompatible with the Treaty and its principles that guarantee Māori rangatiratanga over resources and taonga.

- 15 Poutini Ngāi Tahu strongly oppose the NPS-IB applying to Māori land, as this offends the rangatiratanga and mana of Poutini Ngāi Tahu.

#### **Application of the NPS-IB to public conservation land**

- 16 Including all conservation land as Significant Natural Areas (SNAs) will have significant impacts on Poutini Ngāi Tahu.
- 17 A large proportion of the takiwā of Poutini Ngāi Tahu is conservation land. This land already has significant protection from conservation legislation and in many instances prevents mana whenua from accessing the land, exercising kaitiakitanga and practising mahinga kai. Adding an additional layer of “*protection*” through the identification of SNA’s will cause even greater restrictions.
- 18 Furthermore, there is concern that delegating greater responsibilities on territorial authorities to map and manage activities on conservation land will limit Poutini Ngāi Tahu rights and interests that are benefited and protected by section 4 of the Conservation Act 1987. Reforms to laws and policies cannot progress if they have the effect of diminishing the Crown’s responsibilities to its Treaty partner.
- 19 Poutini Ngāi Tahu strongly oppose the NPS-IB applying to conservation land.

#### **Territorial authority responsibility**

- 20 In Te Tai Poutini, our experience has been that local authorities are under-resourced and struggle to meet their current obligations for environmental protection and enhancement. Councils, even if well intentioned, cannot be relied on to implement the NPS-IB.
- 21 The West Coast Regional Council is the smallest regional council in New Zealand but manages one of the largest areas of land, which contains a substantial amount of indigenous biodiversity. Central government must provide adequate resourcing for both the identification and management of SNAs, as well as the actions required by local authorities to meet Treaty obligations.
- 22 While local and regional approaches in environmental protection and enhancement are important, to recognise the diversity of landscapes and mana whenua perspectives and approaches, the Crown must ensure that its obligations under the Treaty are at the forefront of any regional or local governance. It is not uncommon for local and regional authorities to disregard the Crown’s obligations under the Treaty.
- 23 The NPS-IB must provide for strong obligations on territorial authorities to satisfy Treaty partnership relationship requirements with iwi.

#### **Significant Natural Areas**

- 24 Local authorities must partner with mana whenua in the implementation of the NPS-IB, including the identification of SNAs and the management of activities on SNAs. The identification of SNAs must be consistent with the Treaty of Waitangi, Deed of Settlement and Ngāi Tahu Claims Settlement Act 1998.

- 25 Whilst the protection of indigenous biodiversity is generally supported, the NPS-IB must reflect the fact that mana whenua exercise rangatiratanga within their takiwā. Section 6(7) of the Ngāi Tahu Claims Settlement Act states that “in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.” Consistency with existing statutory rights requires the NPS-IB to respect the mana and rangatiratanga of Poutini Ngāi Tahu.
- 26 The ecological criteria for identifying SNAs (under the headings representativeness, diversity and pattern, rarity and distinctiveness, and ecological pattern) fail to include Māori perspectives on whether land is or is not an SNA. Even if Māori were to submit this advice, there is no requirement for the council to consider this when deciding if land is an SNA.
- 27 For the Westland District, the data used to identify the indicative SNAs signalled is pulled from computer analysis and not checked with what is actually on the ground, nor was it verified with Poutini Ngāi Tahu. The Report chose indigenous vegetation area coverage as a proxy for SNA area coverage. This approach is inappropriate for identifying SNAs across districts and regions without properly ‘ground truthing’ the identified areas and without incorporating Māori perspectives.

### **Identifying taonga**

- 28 In principle, Poutini Ngāi Tahu support the requirement for local authorities to work with tangata whenua when identifying taonga in their district. However, the provisions around identified taonga status and taonga management are vague. A Treaty-compliant approach to taonga management requires active co-governance between local authorities and iwi. Co-governance arrangements must be achieved by co-design with Poutini Ngāi Tahu, so that co-governance can be achieved in a manner that respects the rangatiratanga and mana of Poutini Ngāi Tahu.

### **Conclusion**

- 29 For the reasons above, Poutini Ngāi Tahu strongly opposes the NPS-IB unless and until the Crown engages meaningfully with Poutini Ngāi Tahu to advance takiwā-specific solutions that will address Poutini Ngāi Tahu rights and interests.
- 30 Poutini Ngāi Tahu support the relief sought in the submission from Te Rūnanga o Ngāi Tahu.
- 31 Poutini Ngāi Tahu would welcome a Hui with Ministry staff and representatives of the Crown to further outline our concerns.
- 32 Poutini Ngāi Tahu continue to exercise and uphold our rangatiratanga that courses through our past, present and future. Our desire to see our people flourishing in Te Tai Poutini alights our rangatiratanga, and with that in mind, Poutini Ngāi Tahu will be actively and assertively protecting our land, rights and interests to the fullest extent.

Francois Tumahai  
Chairman  
Te Rūnanga o Ngāti Waewae

Paul Madgwick  
Chairman  
Te Rūnanga o Makaawhio