TAHEKE 8C

The Proprietors of Taheke 8C and Adjoining Blocks (Inc)
Toitu te whenua he oranga whakatupuranga

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To:	Ministry for the Environment By Email
Name of Submitter:	The Proprietors of Taheke 8C & Adjoining Blocks Incorporation
Contact Person:	Sandra Eru
Address for Service:	The Proprietors of Taheke 8C & Adjoining Blocks Incorporation 170 Ranolf Street PO Box 10097 Rotorua Mail Centre Rotorua 3046
Telephone: Email:	07 348 8470 gm@taheke8c.co.nz

170 Ranolf Street, Rotorua PO Box 10097, Rotorua Mail Centre, Rotorua 3046 **P** 07 348 8469 **F** 07 347 0910 **E** admin@taheke8c.co.nz

The Proprietors of Taheke 8C & Adjoining Blocks Incorporation wishes to be heard in support of this submission.

1. Introduction

1.1. The Proprietors of Taheke 8C and Adjoining Blocks Incorporation **("Taheke")** was incorporated in 1954 by Order of Incorporation issued by the Maori Land Court pursuant to Rule 81 of the Maori Land Act 1931.

1.2. Taheke is located approximately 20 minutes north east of Rotorua on State Highway 33. The area is known as Okere Falls and Incorporation's lands lie adjacent to Te Awa Okere also known as the Upper Catchment of the Kaituna River. The total land administered by Taheke is approximately 1214ha and the legal description is "The Proprietors of Taheke 8C & Adjoining Blocks Incorporation".

1.3. Taheke maintains a register of shareholders names and their shares in accordance with the requirements of Te Ture Whenua Maori Act 1993 (**TTWMA**) and the Maori Land Court. There are currently 1328 shareholders holding 50,611 shares in total.

1.4. From 1954-2017 aside from mining of Sulphur from our geothermal resource in the early 1900s the primary activity of Taheke was sheep and beef dry stock farming. Following a 6-year review the Taheke determined it was economically unsustainable to continue farming and in December 2017 the Committee made the decision to terminate its farming operation and entered into a Forestry Lease in January 2018.

1.5. In addition, Taheke has been investigating the geothermal resource under its land. In December 2019 Taheke signed a project development agreement with experience geothermal developer Eastland Generation Limited (**Eastland**). Taheke and Eastland will be seeking to consent a geothermal power plant on Taheke land, This, is the first of a number of intended activities on Taheke land. With partners including Eastland Taheke will be developing a range of geothermal related activities utilizing the resource under Taheke land and the land of the neighboring Maori trust Whangamoa Trust. Most will involve renewable energy development and use and would therefore sit under the NPS for Renewable Energy.

1.6. Since (2010/2011) Taheke has and continues to be actively involved in both local and national government processes in terms of submitting on all relevant national government legislative reviews and consultations as well as local government consultations in regard to their long-term plans and the like. Additionally, since 2010 Taheke has been and continues to actively develop its land and renewable resources. In order to facilitate these developments Taheke engaged with both Regional and District Councils to negotiate/mediate a Taheke 8C Development Plan. Following mediation, the Taheke Development Plan was accepted and entered into the Rotorua Lakes Council District Plan. The plan provides for the specific activities Taheke will require to complete its development aspirations.

2. Executive Summary

2.1. Prior to proceeding further, Taheke makes the following points:

a. Prior to incorporation, the land blocks owned by Taheke were managed by the "scheme" then by Native Affairs (formerly known as the "scheme" and finally by Maori Affairs (formerly known as Native Affairs). The structures remained as they were all that changed was the name of the management organisation. Therefore, in effect it was just a name change.
b. Post incorporation after five years of hui the Proprietors of Taheke 8C & Adjoining Blocks and neighbouring Okere Incorporation were created. There were reasons for this step not least of all was to protect the land from confiscation pursuant to the Thermal Springs Act 1881, and the Scenery Preservation Act 1953 underpinned by the Fenton Agreement 10 owner only rule. Taheke still lives with the legacy of those pieces of legislation.
c. Today in the 21st century Taheke 8C land is Private Maori Freehold land governed by a Committee of Management that has met all cultural and legal requirements. In our situation as with the many other Maori land holding entities Taheke has both the rights and obligations that sit hand in glove with **private** land ownership whether Private Maori Freehold land or otherwise.
d. Taheke 8C and its beneficial owners are Ahi Ka - Kaitiaki - Manawhenua.
e. The history of Government intervention and the impact and effect of the NPSIB on Maori land is within scope of the Ministry's consideration of the effects of the NPSIB. Practically the Ministry would be in conflict with both legal tenet and confirmed Policy Process and Procedure were it to do so.

2.2. We make a number of recommendations with respect to the NPSIB in this submission and in the Specific Comments section where we respond to a number of the questions raised by the Ministry in their Discussion Document. By way of overview:

a. Maori land entities and Maori have the right to self determination under domestic and international law. The Ministry cannot ignore the obvious potential for barriers to that established principle under the proposed NPSIB. Where at all possible the right to self-determine their own aspirations and to develop their Maori land should be protected. *Taheke recommends that where there are barriers Maori land should be excluded or protected and grandfathered from the effects.*
b. *We recommend that the Ministry reconsider the use of Hutia Te Rito as the branding for the concepts proposed. We do not consider the use or context appropriate.*
c. *Taheke recommends that it be explicitly clarified in respect of each of the NPSIB that the terms "Tangata Whenua" and "Māori" encompass Māori land-owning trusts and incorporations as well for the purposes of consultation, consideration of advice and recommendations, and other Māori involvement provided for in these proposed reforms.*
d. Taheke vehemently **opposes** any attempt to insert the text of Te Tiriti in whole or in part into any government policy document or legislation WITHOUT any form of protection against redefinition, marginalisation or re-interpretation of such text. It is not needed in any case because the Treaty is refered to in the primary

legislation i.e. the RMA.

e. To avoid conflict with the National Policy Statement on Renewable Energy, *Taheke recommends that geothermal electricity generation as a matter of national significance is included as an exception in the NPSIB and states that Options 1 or 2 are preferred.*
f. We recommend that local government resource manawhenua and manamoana to participate in all environmental planning, implementation and management processes.
g. That government entities do not default to post settlement governance entities for engagement/consultation input or feedback to the detriment of manawhenua and manamoana. We have a relevant voice too.

2.3. Finally, we have read the submission to be filed by our geothermal partner Eastland Generation Limited and support its content. We have therefore concentrated on the issues that impact the Incorporation and specifically the development of their land as Maori freehold land.

GENERAL COMMENTS

3. Maori right to develop and to self-determine

3.1. The Ministry is aware that the Treaty of Waitangi recognizes Maori rights to self-determination both in 1840 and now. This is reinforced by caselaw where the Privy Council stated that the Treaty must be viewed as *a* ***living instrument capable of adapting to new and changing circumstances***[1]**.**

3.2. Maori self-determination is also reinforced by international conventions including the 1986 UN Declaration on the Right to Development and the UN Declaration on Indigenous Rights passed in 2007. Further the economic development of Maori land is a stated purpose of Te Ture Whenua Maori Act1993 which with its predecessors is the foundation of the Maori land trusts and Maori Incorporations. Taheke notes that this is not to marginalize Maori land entities for being statutory constructs. Maori, as they did before the arrival of Europeans have used and adopted these entities. They are retained for the betterment of their Maori beneficiaries and shareholders. Maori entities have a history and standing based upon decades of mandate and representation.

3.3. The 1986 Declaration acknowledges that there is a Human Right to Development and that embodies the principles of equality, non-discrimination, participation, transparency and accountability and international cooperation.

3.4. The 1986 Declaration made clear that:

> *"development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."*

[1] Privy Council decision in NZ Maori Council v AG [1987] 1 NZLR at 655-656

3.5. It also established that the Right of Development which:

> *"implies the full realization of the right of peoples to self-determination, which includes, ... the exercise of their inalienable right to full sovereignty over all their natural wealth and resources."* [2]

3.6. The 2007 Declaration reinforces the statements of the 1986 Declaration and states that member states (of which New Zealand is one) should support the:

> *"..control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs"*[3]

3.7. Taheke is a self-determining Maori incorporation. Like so many such entities it has not had the financial capacity to do so in a significant manner for many years due in no small reason by the successive governments and legislation such as the Thermal Springs Act 1881 which placed significant impediments and barriers to Maori development. However, that has not stopped Taheke from establishing the building blocks to develop and now as Taheke steps forward into the next chapter of its future it seeks only to be able to do what mainstream organisations have been able to do for over 100 years, without unreasonable restraint.

3.8. In the Discussion Document it is highlighted that due to restrictions caused by the NPSIB. Specifically, the document states:

> *"The proposed NPSIB requires regional councils and territorial authorities to work with landowners to identify SNAs. We are mindful that, due to historical limitations placed on Maori land, these lands are less likely to have been developed and more likely to have retained their indigenous cover. As a result, protections for SNAs could unfairly impact on Maori, and worsen disadvantages created by historic confiscation and loss of land.*
>
> *Large tracts of land were taken from Maori after the European colonization of Aotearoa New Zealand, and what now remains in Maori ownership is often remote and difficult to develop or use productively. This is compounded by barriers to the use of Maori land, which include complex ownership arrangements, restrictions on sale, lack of access to finance, inefficiencies of legal processes relative to general land, and difficulties in physically accessing land.*
>
> *While these factors are outside the scope of the proposed NPSIB, they are important context when making decisions on managing indigenous biodiversity that may impact the use and development of Maori land."*

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[2] UN Declaration on the Right to Development 4 December 1986.
[3] UN Declaration on Indigenous Rights 15 September 2007.

3.9. That cannot happen. Maori land and Maori Land Entities now face considerable risk of being unable to develop. Their lack of ability to develop prior should not pigeon hole nor prime Maori Land Entities including Taheke for requirements and restrictions to ensure the retention of all of the indigenous biodiversity that is on their land to the detriment of their development aspirations. Afterall it is easier for councils to require biodiversity to be retained on Maori land then it is to require the non-Maori farming neighbor to give up parts of their farm for wetlands, more the less pay the cost of conversion. Councils should not be allowed to take the path of least resistance as they have historically done, relegating Maori to subsistence uses on their land.

3.10. This should not be about statistics nor about the Councils meeting the expectations of Ministry review under the NPSIB. The importance of allowing Maori people and the entities that represent them, to finally pursue their opportunities to better their economic position cannot be understated. Not when the historical barriers to their development have often as not been put there by successive governments.

3.11. Further in being late to the development party Maori Land Entities will find themselves shouldering significant offsetting or compensation requirements, such requirements making projects potentially uneconomic or making partnerships less attractive. This would be an unreasonable consequence of the NPSIB. A consequence that cannot be allowed if our government is focused on improving the economic wellbeing of Maori and of adhering to the Treaty principle of self-determination and to its obligations under the UN declarations.

3.12. Finally, we do not agree with the presumption that the factors which directly affect Maori land development, the barriers both historically and potential and the specific effects therein under the NPSIB are outside of the Ministry's scope of consideration. Rather this is a causation argument with a clear line connecting the NPSIB as proposed and Maori land (including the potential effect of the national policy statement once in place upon Maori who wish to develop their land and resources).

3.13. We would suggest that a comparative example in RMA terms would be that set out in *Re Queenstown Airport Corporation Limited*[4]. In that case the Court reflected on the manner with which they would determine a designation for an airport extension in advance of further regulatory approvals. The Court stated:

> *"We have been careful to consider not only the risk to public safety arising out of the use of land, but to be satisfied that QAC <u>can still achieve its objective</u> for the NOR subject to any future restrictions that may be imposed to adequately mitigate those risks. "*

3.14. If we consider this statement by the Court the Ministry must be confident that the NSPIB can meet its objectives which under the current draft are subject to a two-pronged purpose. The purpose of the NPSIB is to:

"The purpose of this National Policy Statement is to set out the objectives and policies in relation to maintaining indigenous biodiversity and to specify what local authorities

[4] [2017] NZEnvC 46 refered to in Requiring Authority Opening Submission at para 33

must *do to achieve those objectives.*

3.15. We do not have to guess or extrapolate from that Purpose statement what the framework for both arms of the purpose (maintenance on one hand and guidance on the other) are. The objectives of the NPSIB are set out at Part 2 clause 2.1 and specifically include:

Objective 6 *to recognize the role of landowners, communities and tangata whenua as stewards and kaitiaki of indigenous biodiversity by:*

a. Allowing people and communities to provide for their social, economic and cultural wellbeing now and into the future;

3.16. Using the RMA comparative of the Brightline test in the Queenstown case the purpose and objective in this instance are clear and reflect a need to recognize the stated objective of Maori land owners rights to economic betterment. The Ministry must be confident that the NPSIB can meet its objectives – in this case Maori economic development can in fact be met. The evidence of the bases for Maori economic development, in some cases historical in context and in others clearly identified barriers which the Ministry has stated they are aware of, is within the scope of determining as a matter of principle and good policy, if this objective can be met. The full picture should not be ignored.

3.17. Further it is well stated law and policy that, compliance with domestic law including compliance with the Bill of Rights Act and the Treaty of Waitangi and international convention are requisite components and checks in the policy process including the establishment of secondary legislation such as regulations and national policy statements. On that basis the Ministry cannot ignore the obligations owed under the Treaty and UN Declarations as set out above simply by ruling their basis and the implications of the NPSIB on Maori land as outside of scope.[5] Rather the impacts and barriers created for Maori land and Maori Land Entities and the need to mitigate or avoid them should be one of the key considerations for the Ministry.

4. Taheke 8C's Development Activities: Geothermal and Land Interests

4.1. Environment Bay of Plenty Regional Council and Rotorua Lakes Council are aware of the work that Taheke has undertaken in order to develop our land including the geothermal resource on and under Taheke land. Fundamental to this development is the ability to undertake activities on our land to sustainably access the resource.

4.2. Over and beyond the commercial value of these natural resources, the shareholders and tangata whenua that comprise Taheke 8C have long held, and will continue to hold, manawhenua in these lands. Taheke is committed to preserving these taonga, and continuing to exercise their tino rangatiratanga and kaitiaki responsibilities in this regard. The Government's proposed NPS-IB may directly affect Taheke 8C's ability to carry out these responsibilities. It is on this basis that Taheke 8C makes this submission.

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[5] Cabinet Office Manal 2017 at Section 7.65 (In respect to primary legislation) and 7.91 (regulations). CabGuide re RIS content and Cabinet paper content.

SPECIFIC COMMENTS

5. Recognising te ao Maori

Definitions: Hutia Te Rito

5.1. The Discussion Document states:

Hutia te Rito recognises the environment's intrinsic value as well as people's connections and relationships with it. The concept recognises our dependence on the environment comes with a responsibility to look after it; the health of the environment supports the health of people.

5.2. It is however fundamentally a concept built around an old whakatauki. One that is intrinsic and globally acknowledged on pae across the motu. One that does not mean just one thing to all nor was it contemplative of biodiversity in its construct – always this whakatauki has reinforced the value or whanau Maori – of the people.

5.3. While Taheke understands the desire to reflect common concepts Taheke questions whether the use of Hutia Te Rito in this context is correct, appropriate and culturally safe. Taheke does not think so. We argue that using a traditionally fundamental concept derived from a much longer and meaningful whakatauki to in effect "brand" the concepts promoted in the manner prescribed could very well result in the redefinition and marginalisation of tikanga and cultural identity.

5.4. Further Hutia Te Rito as a singular reference and frankly the whakatauki as a whole as traditional concepts and translations do not necessarily mean the same thing to every Iwi or Hapu. Taheke argues that as is so often the case when drawing from tikanga, whakatauki and from Maori to brand a policy with a Maori term such as Hutia Te Rito in the manner proposed cuts across tribal boundaries and assumes that nga iwi katoa agree with and support this definition as applied in the NPSIB. We would disagree.

5.5. Finally, if the intent is to use a whakatauki we question the use of this one. *He tangata, he tangata* has been a karanga for our people for generations. One which has recognized the importance of our people and the protection and development of our people. If the intent is to brand this policy with Hutia Te Rito then as with other parts of our submission we submit that the people must be to the fore. This does not seem to be the intent or thrust of the NPSIB, rather the people and Maori through the restriction and subsequent and further underutilization of their land for the benefit of biodiversity retention will suffer.

Definition: Tangata Whenua and Maori

5.6. Maori land-owning trusts and incorporations such as Taheke 8C provide ideal vehicles for Maori Shareholders to exercise their tino rangatiratanga and kaitiaki responsibilities

in respect of their taonga - including their land and freshwater. This is not to the exclusion of Iwi and Hapu interests but are innate in their own right and deserve recognition as Maori operating practically in the landscape. Their voice must be heard too.

5.7. Accordingly, Taheke 8C would like it recognised in the NPSIB, that for the purposes of consultation, consideration of advice and recommendations, and other Maori involvement provided for in these proposed reforms; the terms "Tangata Whenua" and "Maori" encompass Maori land-owning trusts and incorporations. This is discussed further below.

5.8. Question 5:

Does the proposed NPS-IB provide enough information on Hutia te Rito and how it should be implemented? Is there anything else that should be added to reflect te ao maori in managing indigenous biodiversity?

5.9. Taheke considers that it is important to set out the concepts that are intended to support the purpose of the NPSIB. We consider however that Part 3 Objectives and thereafter provide that foundation. Taheke is concerned that the Fundamental Concepts as branded as Hutia Te Rito confuse what would be a clear synergy between Purpose, Objectives and Policies under the NPSIB. We consider that the concept and detail should be reconsidered and perhaps provided as separate guidance rather then detail after the Purpose of the NPSIB.

6. Te Tiriti o Waitangi

6.1. With reference to Te Tiriti o Waitangi, Taheke believes that Te Tiriti o Waitangi is the underlying foundation of the Crown and Maori relationship. Yet Taheke goes a step further and asserts that despite the many breaches Te Tiriti o Waitangi is the founding document of Aotearoa/New Zealand. It is on this basis that Taheke **vehemently opposes** any attempt to insert the text of Te Tiriti in whole or in part into any government policy document or legislation WITHOUT any form of protection against redefinition, marginalisation or re-interpretation of such text.

7. Engagement by Councils with Maori and tangata whenua

7.1. Question 7 of the Discussion Document asks:

What opportunities and challenges do you see for the way in which councils would be required to work with tangata whenua when managing indigenous biodiversity? What information and resources would support the enhanced role of tangata whenua in indigenous biodiversity management?

7.2. We note that the NPSIB does contemplate engagement and it does contemplate consultation with tangata whenua. However as identified in the definitions

discussion above we wish to ensure that all relevant Maori are included in those definitions and by proxy the processes contemplated under the NPSIB. Unless that is clear then the fundamental problem will be whom the Councils choose to consult with and whom they choose to listen to.

7.3. Councils often prefer to limit interaction. Interaction is often in compliance with Treaty settlement obligations, not with those who are also representing Maori outside of the iwi hapu paradigm. When they consult, they go to their list of iwi and hapu and they stop there. As we have said Taheke like many other Maori Incorporations and Trusts is a Maori land holding entity. The Incorporation has been present on the ground since 1954 and has been responsible for meeting all obligations and holding the land secure for future generations. Yes, both the Taheke committee members and shareholders are Te Arawa Iwi, Ngati Pikiao hapu. However not *every* hapu member is a shareholder in Taheke, nor in fact do many of our shareholders necessarily engage or participate in the political roles and decisions of their iwi and hapu.

7.4. This is in contrast with Maori Land Entities and specifically Maori Incorporations which are required under TTWMA and under their founding documents to engage and to ensure that their shareholders are both informed and determine the vision and actions of their incorporations. They can and are actively involved and in many cases that involvement is the only meaningful "say" these Maori people have in Maori politic. As stated above this is not to the exclusion of Iwi and Hapu interests but are innate in their own right and deserve recognition as Maori operating practically in the landscape

7.5. It is on this basis that we would object to the focus exclusively on Iwi/Hapu to the exclusion of Maori land holding entities were the definitions of Maori and Tangata Whenua to ignore Maori land holding organisations such as ours.

7.6. Maori Land holding Incorporations and Trusts are the entities on the ground, they are the entities responsible for meeting all legislative requirements relevant to the land and they are the entities responsible for holding the land for their beneficial owners/shareholders. Maori land holding Incorporations and Trusts are the entities that make grants to their owners/shareholders in regard to education, health and our kaumatua/kuia. These grants are not made by the Hapu or Iwi. These grants are funded through income generated by Incorporations and Trusts from utilisation of the land. We are Ahi Ka, we are Kaitiaki, we are Manawhenua and as such we seek recognition in the NPSIB for our organisations and for our Maori shareholders.

7.7. If the Ministry is to meaningfully answer the question, they have raised they can do so by setting out clear instructions to Councils that they are to treat with Maori in all tenses of the word and not only with a few. You cannot "inform, resource, enhance

or support" us if we are not acknowledged and included.

8. Maori Aspirations

8.1. Question 8 in the Discussion Document contemplates the following:

"Local authorities will need to consider opportunities for tangata whenua to exercise kaitiakitanga over indigenous biodiversity, including by allowing for sustainable customary use of indigenous flora. Do you think the NPS-IB appropriately provides for customary use?"

8.2. Customary Use of indigenous biodiversity (flora and fauna) sustainably is in some instances intrinsic to Maori culture, however we seek clarification of its meaning. If speaking of matters such as the collection of mahinga kai or rongoa or the trapping and eating of native fauna we ask:

i) Who determines whether the kai is safe to harvest and eat?
ii) Who determines when the collection for customary use conflicts with other laws or limits? Who polices this at the coalface? For example, what if the fauna is endangered?
iii) Who is liable if the kai is contaminated and causes illness when eaten?

8.3. The reference to customary use implies it will be accessible to Maori. Access raises significant issues for bodies such as Taheke that own land adjacent to rivers and lakes and undertake activities abutting, in and on the river itself and the planting along it. It also ignores the issue of indigenous flora and fauna which may be on Taheke land. The NPSIB must also acknowledge that in some areas the proposed activities are not practically feasible and in other instances the legal obligations owed by landowners such as Taheke SC will restrict or prevent access to land or the river.

8.4. Specifically, notwithstanding oversight and policies in place in the absence of indemnification from those groups accessing the land for customary use on the basis that the NPSIB says they can (and possibly not even then) Taheke would be liable for any adverse conduct or hazard caused by a person accessing the river and or their land under the Health and Safety at Work Act 2015 and for any damage caused by a person to the interests or assets of any company legally entitled to be on our land.

8.5. Therefore, we ask:

i) Who approves access on to the land in these cases?
ii) Who is liable should an accident occur in terms of the Health & Safety at Work Act 2015?
iii) What rights do Maori land holding entities have as landowners to exclude persons attempting to gather mahinga kai or other rongoa for customary use in contravention of Taheke 8C's rights and the law?

7.6 In regard to Taheke we cannot support customary use rights identified in the NPSIB until the Incorporation receives legally binding assurances regarding

liability issues.

7.7 Further we note that Maori are not only interested in customary uses or as referenced in the Maori land questions in the Discussion Document we are not limited to papakainga and marae. Our aspirations are wider and as set out in our general comments the Ministry should acknowledge and protect our right to develop and meet those aspirations for our Maori shareholders. This is discussed further in the Maori land section.

9. Maori Land: Mapping

9.1. At Question 12 of the Discussion Document we are asked:

> *"Do you consider the ecological significance criteria in Appendix 1 of the proposed NPSIB appropriate for identifying SNAs? Why/why not?'*

9.2. In response you will see that at its core Taheke as kaitiaki wish to be able to move forward. Accordingly, they have spent the time and resources to create a Development Plan and to negotiate its inclusion into the current District Plan. One activity planned is an ecotourism development. It is planned to include a planting regime as part of preparing the preferred site for the development. This will include native planting. As part of our mediation of the district plan and the inclusion of the Development Plan it was agreed that once planted the area would not be identified as an SNA. This was because activities over time might require flexibility and there is little flexibility in SNAs now. The NPSIB will ensure there is less. Further under the NSPIB the area would not only be identified as an SNA Taheke having spent the money to plant would then have to offset or compensate if they sought to extend their eco-tourism development. No doubt there are other examples out there but the reality is that the NPSIB should allow for flexibility to ensure that in such instances negative and unintended consequences do not occur, otherwise there is little incentive to actually spend the money and plant native.

9.3. Question 13 of the Discussion Document asks:

> *Do you agree with the principles and approaches territorial authorities must consider when identifying and mapping SNAs? (see part 3.8(2) of the proposed NPSIB) Why/why not?*

9.4. Fundamentally Maori Land Entities are kaitiaki of their land and people. As such Taheke does not and has prevented draconian attempts to require access and control over our land. This in many cases has not stopped councils from hiring "consultants" who have either used other means to access our land (drones) or have made assumptions based on their presumed knowledge. If councils wish to engage with Maori Land Entities, they should do so with the intent of engagement not control and that should start with the NPSIB.

9.5. There is little benefit in allowing access if all it will cause is obstruction or years of cost and stress as organisations such as Taheke are forced to participate in plan change after plan change to ensure their right to develop their land is preserved.

9.6. Further while not related to Taheke, it notes and agrees with the comment made in the Ministry's RIS which states that there will be those that will be disincentivized to maintain the biodiversity they do have on their land if they consider it will do more harm then good to their future plans.

9.7. Engagement should be meaningful and should be based on goodwill. It should not be coercive and specifically not so for Maori land, we have seen enough of government coercion.

9.8. Question 14:

> *The NPSIB proposes SNAs are scheduled in a district plan. Which of the following council plans should include SNA schedules? Why?*

9.9. A common question in our submission is how will conflicts be dealt with between the NPS which clearly contemplates an overarching set of principles and the activities on the ground and specifically activities on Maori land? In this instance Taheke has a development plan in the district plan. Will the development plan be disrupted or be secondary to the proposed schedule with respect to SNAs (using the ecotourism matters raised above as an example)? Given the time and resources we have spent to try and ensure Taheke 8Cs land, Maori land is developed it is unreasonable to take that away by fiat.

10. Maori land: Managing adverse effects on biodiversity from activities on our land

10.1. Question 19 of the Discussion Document asks:

Do you think the proposed NPSIB provides the appropriate level of protection of SNAs? (see Part 3.9 of the proposed NPSIB) Why/why not?

10.2. From Taheke 8Cs experience SNAs are not only protected they are often protected to the detriment of development. As stated above in our General Comments section we consider that Maori have an inherent right to develop their land and this is and has the potential to be limited if not made impossible under the NPSIB. Particularly for those who are only starting to identify the potential of their land and who therefore may be the easy fish in the barrel to force to retain their pristine environment for the enjoyment of others but not for the benefit of the Maori Land Entities shareholder or beneficiaries. Being late to the party should not mean you cannot enter the door. Not when the door has been barred by government policy and legislation for much of the time. Prejudicial restrictions and decisions to detriment of Maori and their land cannot be allowed and the government still meet its obligations to Maori under the Treaty and the UN.

10.3. Question 20 states:

"Do you agree with the use of the effects management hierarchy as proposed to address adverse effects on indigenous biodiversity instead of the outcomes-based approach recommended by the Biodiversity Collaborative Group? Why/why not?"

10.4. We consider that whatever the mechanism it should:

a. Not prejudice Maori and the fair use and development of Maori land;
b. Not create more barriers by word or intent to development on Maori land including barriers to investment caused by unreasonably high offset or compensation costs.

10.5. Question 23 states:

Do you agree with the new activities the proposed NPSIB provides for and the parameters within which they are provided for? (See part 3.9(2)-(4) of the proposed NPSIB) Why/why not?

10.6. An example of "words" creating barriers is the use of "significant" contribution in Part 3.9(2)(d)(iv). As drafted, it is a subjective assessment determined by likely non-Maori of what is a significant contribution to "enhancing the social, cultural or economic wellbeing of tangata whenua". The determination of Maori aspirations should not be based on an external person's assessment of its significance nor should "significant" be used as the threshold to meet. If the activity is on Maori land it is contributing and it is doing so with the mandate of the shareholders or beneficiaries who are informed and required to approve the direction their trust or incorporation takes.

10.7. Question 24:

Do you agree with the proposed definition for nationally significant infrastructure? Why/why not?

10.8. Not all renewable electricity generation is connected to the national grid. In fact, it would seem more likely that in the future generation may also be localized. The reasoning being for example to:

a. manage any risk associated to a droppage on the wider national network by allowing for localized solutions;
b. a significant localized need that negates the need or requirement to connect to the national grid;
c. the possibility of barriers to access the national grid either with Transpower infrastructure or with local lines.

10.9. We therefore recommend that the definition is amended to allow for renewable electricity generation facilities whether national or local.

10.10. Question 25:

Do you agree with the proposed approach to managing significant indigenous biodiversity within plantation forests, including that the specific management responses are dealt with

in the National Environmental Standards for Plantation Forestry? (see Part 3.10 of the NPSIB) Why/why not?

10.11. Taheke has extensive forestry on its land. Its view, as with the geothermal is that the NPSIB should not conflict with other standards. This only creates confusion.

10.12. As stated in the Discussion Document the NESPF already has provisions for biodiversity within it. We consider that this is sufficient and the NESPF should take precedence in that case.

10.13. Question 26:

"Do you agree with managing existing activities and land uses, including pastoral farming, proposed in Part 3.12 of the NPSIB? Why/why not?"

10.14. As we have stated above activities and land uses on Maori land should not be detrimentally affected by the NPSIB. This includes in our view should Maori Land Entities wish to extend or further develop an existing activity.

10.15. Question 27:

Does the proposed NPSIB provide the appropriate level of protection for indigenous biodiversity outside SNAs, with enough flexibility to allow other community outcomes to be met? Why/why not?

10.16. As per above with respect to Maori land we should be able to responsibly develop our assets. If an SNA has been agreed and the activities which can be undertaken in and around it have been determined through a robust planning process then that should be sufficient.

10.17. Providing for further protections beyond the SNA and current planning processes will create significant uncertainty. Further it will empower Councils to potentially to "creep" out from the SNAs and encumbering landowners with further obligations. For Maori landowners this is particularly pertinent if councils wish to prevent them using what little land they may have left after they are forced to retain existing indigenous biodiversity on the basis of "protection".

10.18. Question 28:

Do you think it is appropriate to consider both biodiversity offsets and biodiversity compensation (instead of considering them sequentially) for managing adverse effects on indigenous biodiversity outside of SNAs? Why/why not?

10.19. If mitigations are required for effects of development then those mitigations

including offsetting and compensation should be allowed. However again the assumption should not be that retention of biodiversity will be at the cost of the opportunity to develop Maori land for the betterment of the owners. Weighting must be given to the needs of Maori and the sustainable use of their land.

10.20. Question 29:

Do you think the proposed NPSIB adequately provides for the development of Māori land? Why/why not?

10.21. Overall, we remain concerned that the NPSIB will create more barriers both physically and financially for Maori seeking to develop and utilise their land. We don't all want to have papakainga on the land. We don't all want marae on the land. We want the opportunities that non-Maori have had for over 150 years. We do not want to be pigeonholed into a noncommercial framework only. The Ministry must ensure that they are not creating another Treaty breach and failing to meet the clear directions of declarations that our government have signed up to. As indigenous peoples we have a right to self-determine and to be proactively supported rather then reverting back to the historic habit of placing barriers in our way and limiting us to community and subsistence activities. As stated in the land case the Treaty is a living instrument capable of evolving, so are Maori.

11. Geothermal Ecosystems

11.1. Question 32:

What is your preferred option for managing geothermal ecosystems? Please explain

11.2. Taheke prefers option 1 as proposed in the Discussion Document. However, if need we would also agree with option 2.

11.3. We refer to the comments made in paragraphs 3, 5 and 6 of the Preamble to the National Policy Statement for Renewable Electricity Generation 2011 ("NPSREG") and that geothermal is included in the definition of renewable electricity generation. We also note pursuant to Matters of National Significance at Page 4 of the NPSREG:

a. the need to develop, operate, maintain and upgrade renewal electricity generation activities throughout New Zealand; and
b. the benefits of renewable electricity generation are identified.

11.4. The NPSIB should not create real or artificial barriers to the identification and development of renewable generation such as that to be developed on Taheke land. Taheke has already engaged with both the Bay of Plenty Regional Council and Rotorua District Council. We have clear agreements with both set out in our development plan. We have resource consents currently for the investigation and utilization of the geothermal resource for power generation. The RMA and planning frameworks and requirements for our development have been worked through, mediated and agreed. This

includes provision for SNA and biodiversity. This good work should not be undone by the NPSIB. Flexibility is needed at a local level based on the field in question.

11.5. Taking this need for flexibility further we note that if the preference within the Ministry is to choose option 3, we consider that the arbitrary line between developed fields and conditional fields and the ability to remedy rather then avoid is also inflexible. By way of example the Taheke field is identified as a conditional development field. This is not withstanding the work Taheke has done to drill and investigate the field. This is also notwithstanding the intent to develop and establish a generation facility on the land as soon as possible. Option 3 draws a line where a local decision based on all the information on the field may not. Given the complexity of geothermal systems and the need for modeling and considerable technical assessment we just do not believe that an inflexible overarching policy in addition to the existing NPSREG is reasonable. Let the local authorities with the information to hand make an informed decision where to draw the line.

11.6. Question 33:

We consider geothermal ecosystems to include geothermally influenced habitat, thermo-tolerant fauna (including microorganisms) and associated indigenous biodiversity. Do you agree? Why/why not?

11.7. Again, we would say that these are technical questions better left to a localized response with information to hand. On the basis of "geothermally influenced habitat" an area of gorse which has grown near a geothermal spring could be deemed to be within that definition. That cannot be the intent?

11.8. Taheke and other developers are working with the local authorities who have been involved with geothermal for many years. Let the decisions be made locally and tailored specifically to the situation.

11.9. Question 36:

What level of residual adverse effect do you think biodiversity offsets and biodiversity compensation should apply to?

11.10. As above.

12. Maori Land Monitoring and implementation

12.1. As stated above we do not wish to see monitoring and review used as statistical mechanisms to force Maori land owners to retain biodiversity over development. It is unreasonable to expect this simply because these Maori Land Entities have not had the chance to develop their lands and often in such cases the biodiversity has remained simply because of that. It benefits the locals who may avoid mitigation and offsetting requirements for any of their activities on the basis of meeting a statistical percentage of

biodiversity per area (met by forcing Maori to retain the planting on their land) but does nothing for Maori development. We are not averse to monitoring nor review but Maori land should be recognized as a special case and not used to bolster councils' statistics so they look good to the Ministry and Minister when hitting targets.

12.2. Question 48:

"Do you agree with the proposed additional information requirements within Assessments of Environmental Effects (AEES) for activities that impact on indigenous biodiversity? (see Part 3.19 of the proposed NPSIB) Why/why not?"

12.3. The introduction of connectivity across landscapes is of a concern for Taheke. It is difficult to perceive how Maori can control or influence the actions of their neighbors. If they cannot then this requirement for connectivity is in itself a barrier that will likely inhibit development on Maori land, particularly so if the support of neighbors for this connectivity is required. The likely cost of gaining agreement and the required connectivity (e.g. shelterbelts for bats for example or wetlands for native flora along waterways) would likely be prohibitive for Maori. We would not support this being a specific requirement affecting the development of Maori land.

12.4. Question 55:

The indicative costs and benefits of the proposed NPSIB for landowners, tangata whenua, councils, stakeholders and central government are set out in the Section 32 Report and Cost Benefit Analysis. Do you think these costs and benefits are accurate? Please explain, and provide examples of costs/benefits if these proposals will affect you or your work.

12.5. Having considered the cost benefit analysis provided to Cabinet we consider that:

a. The assumption that much of the costs will sit with local authorities ignores the obvious impact on rates and the practical reality that cash strapped councils will pass such cost on as much as possible. Maori land owners will bear the brunt of much of this cost as local authorities seek to enter their land to find and map biodiversity.

b. Tangata whenua wish to participate in all processes related to their land. The analysis recognises that cost but does not adequately contemplate the cost. The NPSIB will add a further layer of cost and time to already limited resources. But if Maori don't participate in RMA matters affecting them, as history and current examples have shown it is to their detriment.

c. It woefully understates the likely cost for Maori and Maori land entities such as Taheke if the NPSIB is implemented as proposed.

12.6. The costs of the NPSIB to Maori have the potential to be significant, not the least of which is the cost to Maori of loss of investment. We do not think that creating expensive

barriers to development on Maori land is reasonable. In terms of real cost and worst-case scenarios we can give two examples from two activities to be implemented on Taheke land:

a. If the NPSIB is rolled out in full, with option 3 preferred for geothermal systems and allowing for councils to further protect biodiversity outside of SNAs on the basis of protection or with the requirement for significant offsetting and compensation to protect what are in effect gorse bushes in geothermal areas. Then the cost of developing may become too high. This could lead to a smaller development or the loss of investment. For Taheke the cost would be in the $millions were that to happen.

b. Equally Taheke is contemplating a small eco-tourism development overlooking the Kaituna River. Planting is contemplated including native. Agreement has been reached with both councils, that under the Taheke Development Plan this native planting will not be forced into an SNA framework This allows Taheke the freedom to plant in advance of final building planning and construction. If this protection is removed it will at best delay this planting and at worst be a disincentive to use native planting which is surely not what the Ministry wants? If the SNA mechanisms are deemed it be too hard it will disincentive Taheke to move forward and will likely limit likely partner or financial interest. While this is a small project the cost to Taheke:

    (i) Having protected their interests by completing the Taheke Development Plan and participating fully in the District Plan and Regional Policy Statement processes to entrench their intended activities would have a cost of over $100,000;

    (ii) The cost of trying to ensure they retain the protections they have in subsequent planning processes to include the NPSIB in plans would be an equivalent $100,000; and

    (iii) The cost of either not establishing the eco-tourism project or not finding a partner willing to work with Taheke on Maori land would be in the $hundreds of thousands over time in lost opportunity and revenue. The cost to the community in lost local employment and revenue would equally be significant.

12.7. Taheke is but one Maori land entity, consider the wider cost to Maori and the numbers could soar. There is a significant opportunity cost too for New Zealand as a whole if successive governments continue to place legislative barriers and costs to Maori utilizing their land. We consider that the Ministry has to reflect on this, the responsibility owed to Maori or at least the responsibility to not make things harder or worse for Maori as they set out to forge a development path should not be ignored.

13. Maori Land Statutory frameworks

13.1. Question 60:

Do you think there are potential areas of tension or confusion between the proposed NPSIB and other National Direction? Why/why not?

13.2. We have identified multiple concerns about likely conflicts with and confusion that the NPSIB either creates or will likely cause. Taheke considers that the Ministry should reflect carefully on the implications for Maori and their land and as much as possible remove that conflict or confusion. Equally with respect to geothermal systems taheke seeks option 1 or 2 allowing the TVZ to move forward under the existing framework and with the local information and knowledge to guide decisions. The NPSIB should not conflict or create barriers to the NPSREG.

"Ānei ngā kōrero o ngā kaitiaki tuturu o te Taheke 8C tiakina te whenua tiakina hoki ngā rawa hei oranga mō te hunga e whai panga ana i tēnei whenua."