He tono nā

Te Rūnanga o Ngāi Tahu

ki

MINISTRY OF HOUSING AND URBAN DEVELOPMENT
MANATU MŌ TE TIAO/MINISTRY FOR THE ENVIRONMENT

e pā ana ki te

PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT

October 2019
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1. EXECUTIVE SUMMARY

1.1. Te Rūnanga o Ngāi Tahu ("Te Rūnanga") welcomes the opportunity to comment on the discussion document ("Planning for successful cities") on a proposed National Policy Statement on Urban Development ("NPS-UD").

1.2. Te Rūnanga is supportive, in principle, of the general direction of change that is intended. We support the focus on offering affordability, access and quality, while functioning within environmental limits. We also support the general objective of the NPS-UD to ensure that growth is strategically planned and leads to well-functioning cities that contribute positively to people’s well-being.

1.3. Te Rūnanga welcomes the broader policy focus on how urban markets can perform better, by making room for growth and making sure growth pays for itself, and investing in transport to drive more efficient and liveable urban form.

1.4. Te Rūnanga is also in principle supportive of initiatives that help our local partner councils in discharging their responsibilities, and to achieve good urban outcomes. It is positive to see acknowledgement of the suite of regulations that would surround and interact with the NPS-UD. Consistency across these is critical, and they should be drafted, implemented and monitored to complement and support each other. This is necessary to ensure outcomes are achieved, but also to provide clarity to landowners and users.

1.5. Te Rūnanga stresses the importance of ensuring that all steps and content of any Crown policy is consistent with the Treaty of Waitangi ("the Treaty") and the principles upon which the Treaty was founded. Specifically, Te Rūnanga expects the Ministry of Housing and Urban Development and the Ministry for the Environment ("the Ministries") and their officials to undertake all aspects of their work programme in accordance with their obligations to Te Rūnanga as a Treaty Partner.

1.6. Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and to support the development of iwi members and the wider community within the Ngāi Tahu takiwā. How we ensure good urban outcomes for our smaller communities should remain a focus of policy makers.

1.7. The primary concerns of Te Rūnanga are as follows:

- The prioritisation of our Treaty partnership status and a focus on improved Treaty partner engagement during the policy development process;
- Meaningful provision for the voice of mana whenua throughout the strategic planning for our urban environments;
- The protection and prioritisation of Māori rights and interests is of paramount importance, particularly if there is an underlying Right of First Refusal over land or the site is of cultural significance to iwi;
- Our concern is that the current proposal is not sufficient to achieve the outcomes that are sought. In particular, in relation to improving alignment with...
transport and infrastructure options, and other related policy initiatives such as the proposed National Policy Statement on Highly Productive Land and the National Policy Statement for Freshwater Management.

- The NPS-UD generally provides greater detail about what to do, which is useful for implementing organisations. There are, however, key areas where the NPS-UD does not provide sufficient detail about how it should be undertaken. This puts the cost on implementing agencies to determine how to meet the requirements of the NPS-UD and creates the risk of regional differences in application.

- The evidence base is too narrowly focused on housing market indicators. Greater consideration should be given by central government to compiling and issuing a wider range of indicators aligned to the well-being framework and the provision of quality housing options for Māori.

2. **TE RŪNANGA O NGĀI TAHU**

2.1. Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and works to advocate for and protect the rights and interests inherent to Ngāi Tahu as mana whenua. Te Rūnanga consists of eighteen Papatipu Rūnanga who uphold the mana whenua and mana moana of their rohe.

2.2. Ngāi Tahu whānui comprises approximately 65,000 registered iwi members. The takiwā (region) of Ngāi Tahu in Te Waipounamu covers the largest geographical area of any tribal authority, see Appendix Two.

2.3. Te Rūnanga expects that this response be given the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 65,000 members.

2.4. Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

3. **INTERESTS IN THE PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT**

3.1. Te Rūnanga notes the following interests:

**Treaty Partnership**
- Te Rūnanga have an expectation that the Crown will honour the Treaty and the principles upon which the Treaty is founded.

**Kaitiakitanga**
- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in a wide range of urban development programmes that improve the health and wellbeing of Ngāi Tahu whānui.
- At all times, Te Rūnanga is guided by the tribal whakataukī:
“mō tātou, ā, mō ngā uri ā muri ake nei” (for us and our descendants after us).

**Whanaungatanga**

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and to ensure that the management of Ngāi Tahu assets and the wider management of resources supports the aspirations for economic and social development of iwi members.

3.2. The Te Rūnanga o Ngāi Tahu Act 1996 (“TRoNT Act”) provides for Ngāi Tahu and the Crown to enter into an age of co-operation. An excerpt is attached as Appendix One, as a guide to the basis of the post-Settlement relationship which underpins this response.

3.3. The Crown apology to Ngāi Tahu recognises the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.

3.4. With regards to the Ngāi Tahu takiwā, Section 5 of the TRoNT Act statutorily defines those areas “south of the northern most boundaries described in the decision of the Māori Appellate Court”, which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island (see map attached in Appendix Two).

4. **OVERALL RECOMMENDATIONS**

The following overall recommendations are made by Te Rūnanga:

4.1 **Section 2 – How the NPS-UD fits in**

“Planning has struggled with responding to growth pressures and timely provision of infrastructure, and has relied on overly restrictive regulation to manage environmental effects.” (P 15 of the NPS-UD)

- The Ministries should consider whether the NPS-UD is the right tool to address the issues identified in the discussion document in the quote above. The NPS-UD is limited in its ability to respond to infrastructure and transport issues. Progressing proposals for supporting initiatives needs to be a priority.

“The planning system has also struggled to ensure the voices of the community can influence planning. The concerns of tangata whenua are often not taken into account.” (P 15 of the NPS-UD)

- As set out below, Te Rūnanga is also concerned about the ability of the NPS-UD to create better outcomes from the Resource Management Act 1991 (“RMA”) system in relation to responding to other voices, including tangata whenua. This concern is based on recent Waitangi Tribunal findings in Stage 2 of its Wai 2358 inquiry on breaches of the RMA with respect to the Treaty Principles of Partnership, Participation and Protection (see for example, section 7.2.3.2 of the WAI2358 Stage 2 Report).
**Recommendations**

Te Rūnanga recommends that the Ministries:

- reconsider whether the NPS-UD is sufficient to address the issues identified in the discussion document; and
- consider the concern of Te Rūnanga about the RMA system being to respond to other voices, including tangata whenua.

4.2 Section 4 - Future Development Strategy

“The amendments ensure FDSs...are informed by issues of iwi and hapū and take into account relevant planning documents recognised by iwi authorities”. (P 21 of the NPS-UD)

Section 4 – Future Development Strategy (“FDS”) – P1A

- Māori need to be engaged early and often, at relevant points in the process, when councils begin planning and updating their FDSs.

Te Rūnanga note that Part 6 of the Local Government Act 2002 explicitly states the obligations of local authorities in relation to the involvement of Māori in decision-making processes. The RMA also provides explicitly for engagement with iwi and hapū. However, this must occur before the strategic directions have been set, and at relevant points in the ongoing process as mana whenua determine appropriate.

**Recommendation**

Te Rūnanga recommends that the Ministries ensure that Māori are engaged early and often, at relevant points in the process, when councils being planning and updating their FDSs.

4.3 Section 4 – Future Development Strategy – P1D

“how hapū and whānau aspirations for urban development on whenua Māori within their rohe will be take into account”. (P 24 of the NPS-UD)

- Te Rūnanga does not support P1D(g) in its current form and suggests it reads as follows – “how iwi and mana whenua aspirations for urban development on whenua within their rohe will be taken into account from a political, economic, social and cultural perspective.”

Treaty partnership means participation in both the co-design of culturally appropriate frameworks for key strategies, which will then be implemented with actual property developments. For Ngāi Tahu, this would apply in respect of future urban development strategy for all lands within the Ngāi Tahu takiwā.

**Recommendation**

Te Rūnanga recommends amending P1D(g) to better reflect the principles of Treaty partnership.
4.4 Section 5 – Making room for growth 02 and 03

- While it is useful for more guidance on the outcomes that are sought, Te Rūnanga is concerned about whether new definitions such as ‘quality urban environment’ will be able to be implemented in a way that meets the intentions of the NPS-UD.

The definition of ‘quality urban environments’ fails to refer to any of the broader elements of well-being. Further, the implementation is made more difficult by introducing objectives and policies in the NPS-UD that emphasise that amenity values can change over time.

What this means in practice is left for implementing organisations to determine. It is not clear what evidence base would be adequate to make robust decisions that appropriately implement the definition of quality urban environment, that give effect to the concept of changing amenity values, and that provide for the values and priorities of Ngāi Tahu for urban development in our takiwā.

**Recommendation**

Te Rūnanga recommends that key definitions in the NPS-UD are tested to ensure that they can be implemented to meet the intentions of the NPS-UD.

4.5 Section 6 – Evidence for good decision-making

- The data obligations are still too narrowly focused on housing market indicators.

Greater support from central government is required for the collection and dissemination of standardised indicators about city performance. These need to be wider than the simple housing market dashboard that is currently provided. This should naturally be aligned with Treasury’s Living Standards framework that would further reinforce the need to partner with iwi. This approach could integrate engagement with iwi and hapū, and other distinctively New Zealand dimensions, with tried and tested models from overseas, such as the Australian National Cities Performance Framework which covers liveability, sustainability, employment and infrastructure. This support would not negate the need for a local evidence base to inform future direction and decisions, but it would support an agreed understanding of the relative performance of our cities for discussions between central and local government.

The effective execution of the NPS-UD requires good quality data analytics to inform decision makers in order to make difficult trade-offs. For example, the trade-off between housing affordability and land use for food production. The NPS-UD does not currently provide local authorities with clear direction to arrive at the right balance for the greater good, and this should be addressed.

Ultimately, decision making is enhanced not only through better data analytics but also through the engagement of Ngāi Tahu as both Treaty partner and kaitiaki of the whenua in its takiwā. This reinforces the benefits of Māori participation in the co-
design and co-development of Future Development Strategies to (a) frame the problem accurately, (b) solve the problem with a focus on meaningful community outcomes, and (c) communicate and act on its results.

Recommendations

Te Rūnanga recommends that:

- Central government collects and disseminates a wider range of standardised indicators about city performance;
- The NPS-UD should include more emphasis on the need for quality data analytics, and provide give more guidance about how to make important trade-off decisions; and
- The NPS-UD makes meaningful provision for both the voice and participation of mana whenua throughout the urban development process.

4.6 Section 7 – Engagement on urban planning

- In general, such policies are supported but do not go far enough in a meaningful way to ensure that Ngāi Tahu have a proper role in decision-making. There needs to be explicit prioritisation of the Treaty partnership status as distinct from being just another ‘stakeholder’. Effective engagement will also need enhanced co-design mechanisms to ensure any policy direction is consistent with mana whenua values.

The reference to the amendments to ensure that FDSs are informed by issues of concern to iwi and hapū and take into account relevant planning documents recognised by iwi authorities is supported, but does not go far enough. Engagement ought to be mandatory as necessary to ensure that FDS processes are consistent with recent Waitangi Tribunal findings on breaches of the RMA with respect to the Treaty Principles of Partnership, Participation and Protection (see for example, section 7.2.3.2 of the WAI2358 Stage 2 Report).

There is a need to ensure meaningful provision for both the voice and participation of mana whenua throughout the urban development process. The proposed objectives and policies found on page 51 do not reinforce the following major point made by Te Rūnanga to the Kāinga Ora bill – the prioritisation of our Treaty partnership status as it pertains to “offering Māori opportunities to participate in urban development.”

The “discretion in participation” section is the weakest section in the entire NPS-UD and needs to be strengthened to reflect the governing Treaty Principles and our Treaty partnership status.

Te Runanga strongly supports the inclusion of governing operating policies that ensure participation of iwi in (a) strategic long-term planning; (b) the master planning process of substantial urban developments within their takiwa; and (c) the delivery of mutually beneficial outcomes (both economic and social) for our shared constituencies.
Recommendation

Engagement with iwi and mana whenua ought to be mandatory as necessary to ensure that FDS processes are consistent with recent Waitangi Tribunal findings on breaches of the RMA with respect to the Treaty Principles of Partnership, Participation and Protection
APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

The text of the apology in Māori is as follows:

1. Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoaka”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā:

2. ‘Koia nei te whakahau a tōu aroha i whiuia e koe e ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ʻorio ngā āhuatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ēngao.

3. Nā konei te Karauna i whakaee ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tōu whakaiti atu ai i nāianei i mua i ā rātou mokopuna.

4. E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhuatanga i takoto ki rito i ngā pukapuka ā-herenga whakaatu i āua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa no a rāua i haina te Tiriti, kāore hoki ia I whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.

5. E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā maua whenua whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.

6. E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga I te ngākau pono o roto i ngā tikanga i pūtaka mai i te mana o te Karauna. Nā ūtauwhakaaro kore a te Karauna i puaki mai ai tēnei pepeha a Ngāi Tahu: “Te Hapa o Niu Tirenī”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhuatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatupuranga heke iho. Te whakatauākī i pūtaka mai i āua āhuatanga: “Te mate o te iwi”.

7. E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri
at吐 ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te kohā hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.

8. E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtake mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaee ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki l hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai orangai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounumu me ērā atu tāonga i hiahia te iwi ki te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

9. E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia I whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto l ōna takiwā.

10. E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie I ngā hara kua whākina ake nei—otirā, ērā e taea i nālanei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.
Part One – Apology by the Crown to Ngāi Tahu

Section 6: Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown’s responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

2. “‘This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

3. The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

4. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu’s use, and to provide adequate economic and social resources for Ngāi Tahu.

5. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu’s use and ownership of such of their land and valued possessions as they wished to retain.

6. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tirenī!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb ‘Te mate o te iwi’ (‘The malaise of the tribe’).

7. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu’s loyalty and to the contribution
made by the tribe to the nation.

8. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

9. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

10. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of cooperation with Ngāi Tahu.
APPENDIX TWO: NGĀI TAHU TAKIWĀ

Ngāi Tahu Claim Area Definition

Indicative boundary only refer to Ngāi Tahu Claims Settlement Act 1998 for full description.