I MUA I TE PAE O TE PAPA ATAWHAI
KI TE ROHE O TE KĀHUI MAUNGA

BEFORE THE DEPARTMENT OF CONSERVATION
TONGARIRO NATIONAL PARK

UNDER The Conservation Act 1987

IN THE MATTER **An Application for a Concession, lease and license by Whakapapa Holdings Limited** to operate a ski field and associated activities and works on Mount Ruapehu within the Tongariro National Park

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SUBMISSIONS BY THE NGĀTI HĀUA IWI TRUST
REGARDING THE CONCESSION APPLICATION (118471-SKI)
BY WHAKAPAPA HOLDINGS LIMITED

Dated 7 February 2025

Chair and Vice-Chair of the Ngāti Hāua Iwi Trust
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Ngāti Hāua Iwi Trust

"*Puhaina Tongariro! E rere nei Awanui,*

Ko Te Wainuinu tēnā, na Ruatupua i mua e"

Tongariro erupts! The great river flows,

Tis the thirst quenching waters, belonging to Ruatupua of ancient times.

Submission

1. These submissions are filed by the Ngāti Hāua Iwi Trust (**Trust**) in relation to the Application for a concession, lease and license (118471-SKI) (**Application**) by Whakapapa Holdings Limited (**Applicant**). From the outset, the Trust take a neutral position with respect of the Application.

2. We are again involved in a poorly run and insufficient process related to the operation of a ski field on Ruapehu Maunga. Many of the issues the Trust has, go to the heart of the Treaty obligations held by the Department of Conservation (**DoC**) which continue to be side railed in the pursuit of non-DoC related functions and objectives. It is our view that DoC should be administering its functions and duties in a way consistent with section 4 of the Conservation Act 1987 (**Act**) and in line with the conservation purpose DoC is established under. In both this and the Pure Tūroa (**PTL**) concession processes, the opposite is true, and the prevailing result is an evaporated relationship between DoC and Ngāti Hāua.

3. Not only is this the antithesis of section 4 of the Act, but it is also repugnant to the relational framework established under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**Te Awa Tupua Act**) of which DoC has and continues to play a targeted role in. We **attach** our previous submissions on the role and function of DoC under these legislative frameworks and consider that submission applies here in its entirety.

4. Although these issues are not fully related to the substantive matters within the Application itself, they do signal that DoC has failed to comply with specific legislative requirements and duties, which lead to the very stark reality that there are sufficient grounds to decline the Application. Such an outcome may yet be avoided and our expectation (given where we are in the process) is that we play a key role in the drafting of the concession document itself.

5. In terms of the substantive matters in the Application, we have concerns about the use of Snow-Max as part of the artificial snow making process. As we have informed DoC in relation to the PTL concession, the use of Snow-Max is opposed based on its environmental impacts, particularly to water bodies and biodiversity. We direct DoC to ensure its use is prohibited in this case as was done in the PTL context. Other matters related to term of the Application, review periods and procedures, work approvals and other required reporting (including a Ngāti Hāua Impact Assessment) – although not proper – must now be dealt with through the concession drafting process itself. Again, our position on the nature and scope of the concession document can be garnered from our feedback on the PTL concession, which was recently provided to DoC again on 13 December 2024.

6. We are committed to engaging further with the Applicant but, also wish to speak to our submission at any hearings held for this kaupapa.

Dated 7 February 2025

Kuru Ketu, Environmental Manager
Ngāti Hāua Iwi Trust

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BEFORE THE DEPARTMENT OF CONSERVATION
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UNDER	The Conservation Act 1987
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SUPPLEMENTARY SUBMISSIONS BY THE NGĀTI HĀUA IWI TRUST

REGARDING THE CONCESSION APPLICATION (109883-SKI) BY PURE TŪROA LIMITED

Dated 25 February 2024

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Tis the thirst quenching waters, belonging to Ruatupua of ancient times.

Introduction and Executive Summary

1. These supplementary submissions are filed by the Ngāti Hāua Iwi Trust (**Trust**) in relation to the Application for a concession, lease and license (109883-SKI) (**Application**) by Pure Tūroa Limited (**Applicant**). This submission is filed in addition to the interim submissions filed on 9 February 2024 and expand on the issues/concerns the Trust has with the process conducted regarding the Application.

2. Having now met with the Department of Conservation (**DoC**), the Trust's current position is that there are serious procedural improprieties and consequent deficiencies with the Application that mean the Application fails to properly consider, apply and comply with the Conservation Act 1987 (**Conservation Act**) and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (**Te Awa Tupua Act**).

3. Therefore, the Trust considers that these failures provide sufficient grounds to decline the Application, for want of compliance. We further say that any grant of the Application would be inconsistent with the above-mentioned legislative frameworks.

4. We suggest the Application be returned/declined and proper process conducted by DoC and the Applicant to ensure proper consideration and compliance with the above but more importantly our kawa and tikanga.

Ko Wai Mātou / Ngāti Hāua

Ko Ruapehu te maunga
Ko Whanganui te awa
E rere kau mai te awanui
Mai te Kāhui Maunga ki Tangaroa
Ko te Awa ko au, ko au te Awa

5. Ngā hapū o Ngāti Hāua all share common whakapapa descent from ngā Tūpuna – Paerangi, Ruatupua and Hāua. Ngāti Hāua have 26 affiliated hapū within our area of interest (**see indicative map attached**):[1]

Ngāti Hāua	Ngāti Whati	Ngāti Tama-o-Ngāti Hāua	Ngai Turi
Ngāti Hauaroa	Ngāti Onga	Ngāti Ruru	Ngāti Hinetakuao
Ngāti Reremai	Ngāti Te Awhitu	Ngāti Hira	Ngāti Pareuira*
Ngāti Tū	Ngāti Wera	Ngāti Rangitauwhata	Ngāti Pikikotuku
Ngāti Hekeāwai*	Ngāti Hinewai*	Ngāti Te Huaki	Ngāti Tamakaitoa*
Ngāti Keu*	Ngāti Poutama*	Ngāti Whakairi	Ngāti Pareteho*
Ngāti Kura*	Ngāti Rangitengaue		

[1] We acknowledge hapū that have shared interests with other iwi as marked with an asterisk.

6. It is important to note that our whakapapa from Paerangi and Ruatupua is the rootstock for Ngāti Hāua connections within our rohe, particularly regarding Te Kāhui Maunga. Since their time (pre migration), the cascading whakapapa down to our people today, has maintained that whakapapa connection and kept alive our ahi kā. This is strengthened by the indivisible and inalienable relationship that we have with the Whanganui River, whose head waters begin on Te Kāhui Maunga.

The Trust

7. The Trust was established in 2001, to advance and advocate for the interests of Ngāti Hāua whānau, hapū and iwi within our customary rohe. Since its inception, the Trust has represented Ngāti Hāua in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 (**RMA**) purposes, and with respect to Ngāti Hāua interests in Te Kāhui Maunga and the Whanganui River. This includes engaging in Conservation Act processes, where our rights, interests and responsibilities are engaged.[2] When they are, we are guided by our Pou Tikanga:

   (a) **Ngāti Hāuatanga:** To ensure the survival of the Ngāti Hāua iwi identity.

   (b) **Riri Kore**: To ensure the continuity of Ngāti Hāua kawa and tikanga.

   (c) **Rongo Niu**: To hold the Crown to account.

   (d) **Rangitengaue**: Ngāti Hāua self-determination. Ngāti Hāua solutions for Ngāti Hāua people.

   (e) **Kokako**: Uphold our inherent right of kaitiakitanga.

   (f) **Tapaka**: Te Ara Whanaunga - Maintain the integrity of our relationship with others.

   (g) **Tamahina**: Make decisions based on ancestral precedent (kawa and tikanga) and values (Kaupapa).

Context and Background

Te Kāhui Maunga

8. Setting the right context requires the panel to understand that Ngāti Hāua view the entire Maunga as a whole and not as divided land parcels or areas of interest on which individual interests, like that of a concession holder, are refined to. This is an important conceptual and practical approach to the Maunga because of its status as our tupua and/or tupuna Maunga and not just as a volcano within a national park.

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[2] In 2016, NHIT received a formal mandate to negotiate and settle our treaty claims/grievances with the Crown. These negotiations are ongoing with an Agreement in Principle "*Te Whiringa Muka"* signed on 22 October 2022.

National Park status

9. Te Kāhui Maunga falls within the Tongariro National Park boundaries and is a national park under the National Parks Act 1980. It is New Zealand's oldest national park, recognised for its important cultural and spiritual associations as well as its outstanding volcanic features and priceless natural, historic and cultural heritage which is to be protected for future generations.[3]

World Heritage UNESCO status

10. The Tongariro National Park is also a United Nations Educational, Scientific and Cultural Organization World Heritage site (**UNESCO**), with dual world heritage status. First inscribed in 1990 for its natural values, it later (in 1993) also met the revised cultural values criteria for its cultural significance for Māori associated with the area and the spiritual links between this community and its environment.

11. Like the National Parks Act 1980 and the Conservation Act, UNESCO status provides a layer of protection for Te Kāhui Maunga at an international level.[4]

Existence and Knowledge of Ngāti Hāua Interests

12. The central context to these submissions is the whakapapa connection that Ngāti Hāua has to Te Kāhui Maunga which includes Mount Ruapehu. The existence of that whakapapa, and knowledge of the same is common and public information and includes various acknowledgements by third parties, including DoC, of our interests.

13. That said, and for completeness we have **attached** the 2013 Waitangi Tribunal Te Kāhui Maunga National Park District Inquiry Report Wai 1130 which sets out in expansive detail, evidence and findings regarding our interests and whakapapa connections to the Maunga. Importantly, Ngāti Hāua was extensively engaged in those proceedings, with various kaumatua, tohunga and members of our iwi participating and giving evidence. Of particular note, is the consistent evidence that Te Kāhui Maunga is central to our iwi identity.[5]

14. We also provide the above report on the basis that this hearing process was notified to us late on Tuesday 20 February 2024, limiting our ability to properly prepare a more detailed brief of evidence. Nevertheless, the kōrero provided in that process, of which is outlined in the Tribunal Report, is still tika. We would only add that, there is now a formal acknowledgment by the Crown of our relationship and interests in Te Kāhui Maunga as outlined in our Agreement in Principle *"Te Whiringa Muka"* dated 22 October 2022.

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3 National Parks Act 1980, s 4; and also see information retrieved from < https://www.doc.govt.nz/about-us/our-role/managing-conservation/categories-of-conservation-land/>

4 See the World Heritage Convention 1972.

5 Waitangi Tribunal, Te Kahui Maunga the National Park District Inquiry Report (Wai 1130) 2013.

Engagement with DoC on Whakapapa and Tūroa Ski Fields

15. The Trust have concerns with the way engagement continues to be problematic with respect to Te Kāhui Maunga. We refer to the original operations on the Maunga in the earlier 1950's, and the additional operations for related purposes in the 1970's through to today.[6] In each of the processes that lead to those operations occurring or the grant of related approvals/concessions, Ngāti Hāua were excluded and/or never consulted. This remains a significant grievance for our people and in our view has resulted in many of the issues with the operations on the Maunga and the relationship with DoC that we have experienced.

16. In 2022, the Trust was involved at a high level in direct discussion with DoC, other Crown agencies and the existing ski field operators about the future of ski field operations on Mount Ruapehu. Not only was that engagement demanding on our time and resources, but it also flowed over into wider discussions regarding the settlement negotiations for Te Kāhui Maunga. Rather than getting into the nature and content of this engagement (noting it evolved haphazardly and rapidly over the course of 2023) we make the point that we remained part of discussions with various Crown agencies regarding the Maunga (whether intentionally excluded or not).

17. When we were informed by letter dated 22 November 2023 from DoC (**attached**) that the Applicants intended to apply for a concession to operate a ski field, we informed DoC of our intention to be involved and responded to their letter on 18 December 2023 (**attached**) outlining many of the concerns we now raise in this forum.

18. One of the matters that we consider relevant is that contained within the DoC letter of 22 November 2023 is a request for what engagement might or should look like in this process and that there was an intention to look into that in good faith and consistently with section 4 of the Conservation Act. Not only did the Trust outline their expectations from both DoC and any potential operator on the Maunga at a hui with DoC on 23 November 2023, but we also set out in our December 2023 response a recommended course of action that would best align with the requirements of section 4 and those in the Te Awa Tupua Act.

19. Against that backdrop, we were surprised to see the Application publicly notified, more so given the significant deficiencies in information concerning our position. That surprise turned to frustration when we requested and subsequently reviewed the recommendation to publicly notify the application prepared by DoC (**attached**).

20. Over the course of mid-January 2024 through to early February 2024, the Trust undertook internal processes to reach a position on next steps. This resulted in the Trust filing our interim submission on 9 February 2024. On 20 February 2024, we were then made aware that a hearing had been set down for 22-23 and 26-27 February 2024. Not only was this notice late, but it reinforced the complete disregard for our interests on the Maunga and the concerns we had expressed to date.

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[6] We note that there have been different operators on the Maunga and that RAL took on the concession and operations in 2000.

Engagement with the Applicant

21. The Trust met with the Applicants on 21 December 2023. Given that meeting was confidential and without prejudice, we would direct the Panel to seek information from DoC and the Applicant as to why we had not been engaged earlier in this process.

22. We will say that, it is difficult to comprehend any lack of knowledge of our interests on the Maunga given much of the activity we have participated in related to the same (as outlined earlier).

The process to publicly notify the Application and its failings

23. The flawed approach to determining that the Application should be publicly notified is relevant context to why we say there are grounds for declining the Application at this stage on the basis of inconsistency with the relevant statutory obligations.[7]

24. We refer to the Recommendation to Publicly Notify the Concession Application: *Pure Tūroa Limited 109883-SKI* Report prepared by DoC (**PN Report**), in which DoC have set out the relevant statutory provisions for determining whether public notification can proceed. The PN Report states that DoC had assessed the Application as including all required information under section 17S Conservation Act and was ready for public notification. It went on to state that no issues arise about whether the application lacks required information (s 17SA); or is obviously inconsistent with the Conservation Act (s 17SB).

25. The PN Report provides a recommendation to publicly notify the Application that is contrary to the Conservation Act, specifically for the evaluative exercise for public notification purposes, for the following reasons:

    (a) The Application MUST include a description of the potential effects of the proposed activity and any actions proposed to avoid, remedy or mitigate adverse effects.[8] DoC are fully aware of Ngāti Hāua's interests , and have previously been involved in engagement with Ngāti Hāua regarding the Maunga. They are also aware of the interests Ngāti Hāua have regarding Te Awa Tupua, and as a member of Te Kōpuka,[9] are aware of the Te Awa Tupua Act and the directed relational approach required through that. An application must engage with and consider potential effects on Te Awa Tupua and Ngāti Hāua. As is plain from the Application there is no mention of Ngāti Hāua and/or an assessment of effects, despite the context noted here. This would amount to a deficiency in the Application, contravening section 17S(c)(i)-(ii) Conservation Act.

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7 We note that is rightfully a judicial review question or one that can be complained about to the Ombudsman, both of which the Trust is considering pursuing.

8 Conservation Act 1987, s 17S(c)(i)-(ii).

9 Te Kōpuka is a strategy group for Te Awa Tupua under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, ss 29-34.

(b) When applying for a lease or a license granting an interest in land, there must be sufficient information to satisfy DoC that, in terms of section 17U Conservation Act, it is both lawful and appropriate to do so. The relevant parts of section 17U provides that:

(i) Regard must be given to potential effects as outlined above. This may also include whether an environmental impact assessment is completed and that its contents appropriately address all aspects of the environment engaged by the Application including the cultural environment;

(ii) The Application must be consistent with the Conservation Act or the purposes for which the land concerned is held (being a national park); and

(iii) The Application is appropriate in the circumstances for the particular application having regard to section 17U as a whole.

It is unhelpful that the PN Report does not address how the matters in section 17S Conservation Act had been met in terms of sufficiency of information. Although the public notification evaluation is not a full assessment of the Application, it does set out clearly the mininum requirements which need to be metin terms of the required information. When coupled with DoC's knowledge of the interests and position of Ngāti Hāua, it is unclear how DoC did not return the application under section 17SA Conservation Act. The lack of information to even raise matters related to Ngāti Hāua is clearly not compliant in terms of section 4 Conservation Act and the Te Awa Tupua Act.

26. As outlined above, DoC had a clear discretion to return the Application for the following reasons:

(a) the Application lacked information about Ngāti Hāua interests and positions;

(b) given the lack of information, there is an inability to properly consider the potential effects of the Application including any proposed measures to avoid, remedy or mitigate those effects; and

(c) the lack of information meant DoC did not have the ability to properly discharge its section 4 Conservation Act and Te Awa Tupua Act obligations.

27. Notably, the Trust highlighted these issues directly to DoC prior to the public notice being issued.

The question to address

28. With that context in mind, the question that any decision maker will need to consider is –whether the context outlined above and the deficiency in information (and the numerous indications of the same) are such that any decision to grant the Application in these circumstances would be inconsistent with the Conservation Act, particularly section 4, and the Te Awa Tupua Act.

29. We start by saying that the onus to address that deficiency or provide that information does not fall to us to remedy. Hearing processes or even that of submission processes are no means for remedying such deficiencies.

30. We also note that, in light of the above, we are not in a position to take a position on the substance of the Application and the related proposed activities. Although similar concerns to others are held regarding environmental issues, term and review conditions, we are unable to address those in lieu of proper process, engagement and the necessary information, and will not engage in doing so where the statutory framework has clear grounds to decline in such a situation. Opposition or support for the project is only one way to assess the Application. Even where matters are raised in submissions and those are either responded to said to be addressed, the decision-maker must still be satisfied that the exercise of their discretion is sound in the circumstances, particularly taking into account the nature of DoC and conservation land that is a national park.

31. We accordingly set out our position regarding:

    (a) the importance of section 4 of the Conservation Act and Te Awa Tupua Act, including how they sit across this entire process and the decision-making powers yet to be exercised; and

    (b) how, when applied against the context and lack of information in the Application, provide grounds and rationale to decline the Application.

Te Awa Tupua Act

32. We understand that the applicability of Te Awa Tupua is an uncontentious point and that all parties accept the Te Awa Tupua Act is engaged in this process.[10]

33. Enacted in 2017, the Te Awa Tupua Act establishes a new legal framework that provides for the agreements in the Deed of Settlement Ruruku Whakatupua signed in August 2014.

34. Te Awa Tupua Act sets out a number of go towards addressing breaches of Te Tiriti o Waitangi by the Crown. Importantly, it establishes a new framework that includes a set of innate values called Tupua te Kawa that guide all decision making in respect of the Whanganui River. These are legal requirements are triggered by the Act. This aspect is also interconnected with and central to compliance with section 4 of the Conservation Act.

35. Because Te Awa Tupua is engaged by this Application, it was always expected that it would be given distinct recognition and provision so that breaches of Te Tiriti did not occur again. That is key, because in this process DoC (as a Crown Department) have responsibilities under the Treaty.

36. When it comes to DoC exercising its Conservation Act powers/duties/functions, they are directed by section 10 of the Legislation Act 2019 in the following terms:

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[10] Also see letter from Ngā Tangata Tiaki o Whanganui Trust to DoC dated 22 February 2024.

> **10 How to ascertain meaning of legislation**
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> (1) The meaning of legislation must be ascertained from its text and in the light of its purpose and its context.
>
> (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
>
> (3) The text of legislation includes the indications provided in the legislation.
>
> (4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

37. This also applies to the exercise of understanding how the provisions of the Te Awa Tupua Act might apply. The importance of understanding the Te Awa Tupua Act is essential and unavoidable. The nature of the Te Awa Tupua Act is also central to our discussion on the applicable provisions below.

How the Te Awa Tupua Act is engaged

38. Section 15(1)(a)(i) and (ii) Te Awa Tupua Act are thresholds for establishing whether Te Awa Tupua applies. Those sections state that:[11]

> (1) This section applies to persons exercising or performing a function, power, or duty under an Act referred to in Schedule 2—
>
> (a) if the exercise or performance of that function, power, or duty relates to—
>
> (i) the Whanganui River; or
>
> (ii) an activity within the Whanganui River catchment that affects the Whanganui River; and
>
> (b) if, and to the extent that, the Te Awa Tupua status or Tupua te Kawa relates to that function, duty, or power.

39. Firstly, the Application proposes activities that relate to the Whanganui River Catchment, including the Mangaturuturu River.[12] We understand this to be accepted for the purposes of section 15(1)(a)(ii). We would only add that the catchment area in our view is all encompassing of surface and ground water..[13]

40. Second, an appreciation of the meaning of the Whanganui River is critical to understanding whether or how an activity proposed in any application "relates" to the Whanganui River for the purposes of section 15(1)(a)(i) Te Awa Tupua Act.

41. Whanganui River takes on the meaning prescribed to it under sections 7 (interpretation), 12 (Te Awa Tupua recognition), 13 (Tupua te Kawa) and 71 (relationship between Whanganui Iwi and Te Awa Tupua). For Ngāti Hāua, those sections together provide that:

    (a) The Whanganui River is an interconnected whole comprising all the body of water known as the Whanganui River that flows continuously or intermittently from its headwaters to the mouth of the Whanganui River on the Tasman Sea and is located within the Whanganui River catchment; and all tributaries, streams, and other natural watercourses (such as ground water) that flow continuously or

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11 Schedule 2 lists the Conservation Act 1987 and the National Parks Act 1980 as applicable legislation for the purposes of s 15 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

12 See SO 469123 **attached**); also see Proposal Outline and Environmental Impacts Assessment, Appendix 1, pp 1 and 2.

13 Contrary to ss 7, 12, 13 and 71.

intermittently into the body of water described above and are located within the Whanganui River catchment; and all lakes and wetlands connected continuously or intermittently with the bodies of water referred to above; and all tributaries, streams, and other natural watercourses flowing into those lakes and wetlands; and the beds of the bodies of water described above.[14]

(b) The Whanganui River is one and the same with the people of Ngāti Hāua.[15]

(c) The Whanganui River is an indivisible and living whole incorporating its metaphysical and physical elements as understood by the mātauranga of Ngāti Hāua.[16]

42. Therefore, any proposal to occupy/use an area within the rohe of Ngāti Hāua which extends to the Whanganui River both physically or spiritually, draws in the protections and obligations of the Te Awa Tupua Act. In addition, where there is a physical connection between the water of Te Awa Tupua and the proposed operations or whether those proposed operations touch on the metaphysical elements of the awa. Again, this is the case for the Application.

43. The Whanganui River head waters commence in the Tongariro National Park, as well as many other headwaters for tributaries and natural water courses that flow into the main Whanganui River water body. The values associated with those waters are established through whakapapa with Ngāti Hāua (and other whanaunga iwi) and manifest physically and/or metaphysically. They can therefore be affected physically and/or metaphysically by an activity regardless of proximity, nature and extent. These matters must be recognised and provided for through Te Awa Tupua status and Tupua te Kawa as the Act provides.[17]

How the Te Awa Tupua Act can be determinative for declining the Application

44. Working through how and whether the Te Awa Tupua Act has been complied with is an important exercise that is a critical element of this process. As DoC is aware, Tupua te Kawa in particular directs a relational and good faith working relationship between those iwi/hapū at place and other parties like DoC and the Applicant.

45. This has not been done, and it is therefore open to any decision maker to decline the Application, with the sole determinative being inadequate provision for and engagement with Te Awa Tupua per section 15(5)(b) Te Awa

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14 See Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s7; and regarding groundwater inclusion under natural watercourses see the Soil Conservation and River Control Act 1941, s 2(1); also see the Land Drainage Act 1908, s 2 which carries a similar definition of watercourse; also see Section 59 of the Wellington Regional Water Board Act 1972 defines underground water as meaning natural water which is below the surface of the ground, the bed of the sea, or the bed of any lake or river or stream, whether the water is flowing or not and, if it is flowing, whether it is in a defined channel or not; and United Nations Watercourse Convention 1997 and United Nations Watercourse Convention 1997 Online User Guide, retrieve from < https://www.unwatercoursesconvention.org/the-convention/part-i-scope/article-2-use-of-terms/2-1-1-watercourse/>; and LAWA information retrieved from <https://www.lawa.org.nz/learn/factsheets/groundwater/groundwater-basics/>.

15 Refer to ss 13(c) and 71 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

16 The definition of Whanganui River highlights the need for the latter water bodies referenced in section 7 to be flowing into the former water bodies referenced in the definition. In line with indivisibility and a Ngāti Hāua/Te Awa Tupua interpretation, reference to "flowing" takes on both the physical flowing of water and the metaphysical flowing of mauri, wairua and mana.

17 Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s15(2)(a) and (b).

Tupua Act. That would also align with the reporting requirement of this panel under section 15(6) Te Awa Tupua Act.

46. As an aside, we would add that, had a better appreciation for the Te Awa Tupua Act occurred prior to the public notification evaluation process, the Applicants may have been afforded the opportunity to address this defect early on. DoC were fully informed at that time that this was the case.

Section 4 Conservation Act

47. Section 4 Conservation Act is one of (if not the) primary directives in the Conservation Act relating to the exercise of powers and duties under the Act. Notably, giving effect to Treaty principles must be done at every turn of the concession process.[18] That onus, in our view, sits squarely with DoC but also flows over into the responsibility of the Applicant.

48. The Supreme Court case of *Ngāi Tai ki Tāmaki Trust v Minister of Conservation* helpfully sets out the status and applicability of section 4.[19] Like that case, the Application falls within the scope of the customary rights and responsibilities that Ngati Hāua are entitled to exercise in accordance with tikanga as part of our rangatiratanga resulting from our whakapapa to Te Kāhui Maunga. These rights and responsibilities exist and are protected/given legal force through Treaty principles, the common law recognition of the relevance of tikanga and distinctly, the Te Awa Tupua Act.[20]

49. We rely on the following principles as a starting point for section 4:

(a) **Partnership:** The principle of partnership gives rise to the duty to act honourably and in utmost good faith. Referring to the settlement context, the Tribunal has highlighted that this duty requires the Crown to 'be fully informed before making material decisions affecting Māori'. Only decisions that are fully informed can be sound, fair, protective of Māori interests, and thus worthy of the Treaty partnership. To be fully informed, the Crown must have a sound understanding of 'the historical, political, and tikanga dimensions of mandate and overlapping [groups] and their interests'. As described in the *Ngāti Tūwharetoa ki Kawerau Crossclaims Report*, the activity of settling requires a 'sophisticated understanding' of the Māori world in general, and of the groups affected in particular. The Tribunal has acknowledged that this obligation, thus articulated, sets a very high standard for the Crown, but has emphasised it is 'appropriate, given what is at stake should those standards not be met.[21]

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18 In *Ngāi Tai ki Tāmaki Trust v Minister of Conservation* [2018] NZSC 122, at [48], The requirement to "give effect to" the principles is also a strong directive, creating a firm obligation on the part of those subject to it, as this Court noted in a different context in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*.

19 *Ngāi Tai ki Tāmaki Trust v Minister of Conservation* [2018] NZSC 122, at [47]-[55].

20 See *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board* [2021] NZSC 127, at [297]; and *Ngāti Whātua Orākei v Attorney General* [2022] NZHC 843, at [326]-[358].

21 Waitangi Tribunal *Hauraki Settlement Overlapping Inquiry Report* (Wai 2840, 2020), at pp 11-12.

(b) **Active Protection**: The Waitangi Tribunal has stated that the Treaty of Waitangi obliges the Crown not only to recognise the Māori interests specified in the Treaty but actively to protect them. The possessory guarantees of the second article must be read in conjunction with the preamble (where the Crown is "anxious to protect" the tribes against envisaged exigencies of emigration) and the third article where a "royal protection" is conferred. It follows that the omission to provide that protection is as much a breach of the treaty as a positive act that removes those rights".[22] The Waitangi Tribunal *Ngāwhā Geothermal Resources Report* expands on this as follows:[23]

> The duty of active protection applies to all interests guaranteed to Māori under article 2 of the Treaty. While not confined to natural and cultural resources, these interests are of primary importance. There are several important elements including the need to ensure:
>
> > that Māori are not unnecessarily inhibited by legislative or administrative constraint from using their resources according to their cultural preferences;
> >
> > that Māori are protected from the actions of others which impinge upon their rangatiratanga by adversely affecting the continued use or enjoyment of their resources whether in spiritual or physical terms;
> >
> > that the degree of protection to be given to Māori resources will depend upon the nature and value of the resources. In the case of a very highly valued rare and irreplaceable taonga of great spiritual and physical importance to Māori, the Crown is under an obligation to ensure its protection (save in very exceptional circumstances) for so long as Māori wish it to be protected ... The value to be attached to such a taonga is a matter for Māori to determine; and
> >
> > that the Crown cannot avoid its Treaty duty of active protection by delegation to local authorities or other bodies (whether under legislative provisions or otherwise) of responsibility for the control of natural resources in terms which do not require such authorities or bodies to afford the same degree of protection as is required by the Treaty to be afforded by the Crown. If the Crown chooses to so delegate it must do so in terms which ensure that its Treaty duty of protection is fulfilled. 'consultation', in the Treaty context, requires the Crown to engage in discussion with relevant groups before forming firm views of its own.

50. How protection occurs will be highly nuanced and driven by the context in which it is engaged. Only through meaningful partnership with Ngāti Hāua can the positive outcomes that benefit all involved be achieved as part of any Conservation Act process.[24] Treaty principles are non-linear and recognise more than just active protection as a concept, drawing on the contextual factors that give life to active protection in Treaty and tikanga terms. When applied in this process, active protection is critical. This is more so where the taonga in question is vulnerable or experiencing degradation.[25] Adverse effects in this context must be avoided at all costs and not just targeted at avoiding material harm.[26]

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22 Waitangi Tribunal *Manukau Report* (Wai 8, 1985), at p 70.

23 Waitangi Tribunal *Ngāwhā Geothermal Resources Report* (Wai 304, 1993), at p 100.

24 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC), at [9] line 34 and [21]; also see the discussion in *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93, at [90]-[124] and specifically [129]; *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whai Maia Ltd* [2020] NZHC 2768, at [69]; and *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 73, at [82].

25 We note that there have been environmental issues occur on the Maunga since the ski fields were operative in the 1950's.

26 See *Port Otago Ltd v Environmental Defence Society Inc.* [2023] NZSC 112.

51. Given the exclusion of our interests in this process, we see no need to delve into a detailed analysis of how those principles apply and how they have not been given effect to. In our view, it is sufficient to simply state that Ngāti Hāua have not been considered as a relevant polity to engage in this process at a formal and substantive level, which goes against the principles of partnership and active protection as expressed above. It is that exact exclusion that provides the grounds for decline of the Application because it is clear that Ngāti Hāua have not been considered and engaged with, amounting to no ability for the decision maker to:

(a) apply the Conservation Act consistently with the requirements of section 4 particularly assessing the effects,[27] appropriateness in the circumstances,[28] and lawfulness[29] of the Application against the relevant Treaty principles; and

(b) recognise and provide for Te Awa Tupua status and Tupua te Kawa in a way consistent with Te Awa Tupua Act.[30]

52. On that basis, we consider that the procedural failures identified above provide sufficient grounds to decline the Application, pursuant to section 17SB Conservation Act unless a resolution is struck between Ngāti Hāua, the Applicant and DoC. Where no resolution is reached, we submit that the Application obviously does not comply with, and is inconsistent with, the provisions of the Conservation Act, with the determining factors being inconsistency with the obligations of the Te Awa Tupua Act and section 4 Conservation Act.

Dated 25 February 2024

Kuru Ketu, Environmental Manager
Ngāti Hāua Iwi Trust

27 Conservation Act 1987, ss 17U(1),and (2)(a) and (b).
28 Conservation Act 1987, s17U(8).
29 Conservation Act 1987, s17U(3) and 17S(g)(ii)
30 Refer to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 15.