Ngāti Hāua Iwi Trust

SUBMISSIONS OF THE NGĀTI HĀUA IWI TRUST IN RELATION TO THE FAST TRACK APPROVALS BILL

19 April 2024

“**Unuunu te puru o Tūhua mā ringirngi te wai o puta**”

‘If you withdraw the plug of Tūhua, you will be overwhelmed by the flooding hordes of the North’
‘If you withdraw the plug of Tūhua, you empty the Whanganui River’

1.0 Introduction and Executive Summary

1.1 The Ngāti Hāua Iwi Trust (**Trust**) make these submissions in relation to the Fast Track Approvals Bill (**Bill**). We oppose the Bill in its entirety and have addressed the nature of our opposition below. There are principled issues that go to the heart of our substantive concerns with the Bill and the truncated procedural arrangements proposed. In summary, the Bill:

(a) Breaches tikanga and kawa, being pre-existing rights reaffirmed by Te Tiriti o Waitangi.

(b) Breaches the articles and arrangements under Te Tiriti o Waitangi and contravenes the commitments made through Treaty Settlement arrangements and the ethos of Treaty Settlements generally.

(c) Is undemocratic and unconstitutional, as it breaches fundamental constitutional conventions and principles such as the separation of powers and parliamentary supremacy; and

(d) If passed through its third reading, triggers constitutional checks and balances not previously exercised in New Zealand of which are available at law to be exercised in situations where Te Tiriti o Waitangi and/or the New Zealand Democracy are under imminent threat, as they are currently.

1.2 We have addressed each of the above issues in these submissions and request to be heard ā-tinana/in-person to present to the select committee.

2.0 Ko Wai Mātou

Ko Ruapehu te maunga

Ko Whanganui te awa

E rere kau mai te awanui

Mai te Kahui Maunga ki Tangaroa

Ko te Awa, ko au

Ko au, te Awa

2.1 Ngā hapū o Ngāti Hāua all share common whakapapa descent from Ngā Tūpuna – Paerangi and Ruatupua. Ngāti Hāua have the following 26 affiliated hapū within our area of interest:[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*

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

Ngāti Keu*	Ngāti Poutama*	Ngāti Whakairi	Ngāti Pareteho*
Ngāti Kura*	Ngāti Rangitengaue		

2.2 The Trust was established in 2001, to advance and advocate for the interests of Ngāti Hāua iwi, hapū and whānau within our customary rohe. Since its inception, the Trust has represented Ngāti Hāua iwi, hapū and whānau in Waitangi Tribunal processes, Treaty settlement negotiations, Local Council matters including as an iwi authority for Resource Management Act 1991 (**RMA**) purposes, Conservation Act processes and with respect to Ngāti Hāua interests in the Whanganui River. In 2016, the Trust received a formal mandate to negotiate and settle our treaty claims/grievances with the Crown. These negotiations are ongoing, with an agreement in principle signed in October 2022.

NHIT Objectives and Vision

2.3 In our day-to-day mahi, and when advocating for the interests of our people, the Trust are guided by our vision – *NHIT will act with the overarching vision that Ngāti Hāua will be a positive and responsible tribal nation with the capability to act and live as an iwi, that is vibrant, strong, robust, and prosperous; culturally, socially, environmentally, and economically*. To achieve that, NHIT are guided by and aim to give effect to our Pou Tikanga:

Ngāti Hāuatanga: To ensure the survival of the Ngāti Hāua iwi identity
Riri Kore: To ensure the continuity of Ngāti Hāua tikanga
Rongo Niu: To hold the Crown to account
Rangitengaue: Ngāti Hāua self-determination. Ngāti Hāua solutions for Ngāti Hāua people
Kokako: Uphold our inherent right of kaitiakitanga
Tapaka: Te Ara Whanaunga - Maintain the integrity of our relationship with others
Tamahina: Make decisions based on ancestral precedent (tikanga) and values (Kaupapa)

2.4 In line with our Pou Tikanga, we engage in this submission process to raise our concerns with the reckless approach to economic and environmental matters, the protection of which, really are at the core of New Zealand cultural norms.

3.0 Breaches of Tikanga, Kawa, Te Tiriti o Waitangi and Related Pre-exiting Rights

3.1 Our kawa and tikanga established pre-existing rights that were reaffirmed by Te Tiriti o Waitangi. There are fundamental values (kawa and tikanga) that provide both foundational and regulatory functions for environmental interactions. These center around mana i te whenua and the exercise of obligations that flow from that. Such pre-existing rights are held and protected by hapū, with their day-to-day exercise being a more dynamic practice depending on the context they exist in and relate to.

3.2 When these pre-existing rights are given their rightful space to flourish (as envisaged by Te Tiriti), they allow for proper efficiencies in Te Tiriti terms and for subsequent benefits to be experienced by the wider community/society. The added layer to the regulatory framework of tikanga Māori, are the commitments in Te

Tiriti and the reaffirmation of the pre-existing rights held by Māori, importantly Tino Rangatiratanga over whenua, wai, kainga and taonga. These pre-existing rights are whakapapa rights that go hand in hand with responsibilities.

What is the impact of the Bill?

3.3 The unfortunate reality is that the Crown has continued to operate in the "two version" state regarding Te Tiriti. This has meant that the English document (Treaty of Waitangi) has been interpreted and applied in conjunction with the te reo Māori document (Te Tiriti o Waitangi), reducing the Te Reo version and amplifying the English one to justify Parliamentary Authority. Where we find ourselves today as a nation, is that tikanga, kawa and Te Tiriti continue to be disregarded, or in the case of the Bill, invisibilised.

3.4 The Bill clearly omits and removes all reference to Te Tiriti o Waitangi, Treaty Principles and standard participation provisions that together ensure tikanga and kawa (and their associated values) are properly provided for as the overarching approach in the assessment framework/system established to analyse environmental use and to ensure compliance with Te Tiriti obligations. This inability for tikanga and kawa to be applied as an overarching direction or within a standard assessment framework under the Bill (simply because the Government has not allowed it through proper Te Tiriti recognition and provision) completely changes the contextual approach required when regulating the environment and any proposed use. It erases Māori pre-existing rights as well as the holders/protectors of the same, from any role or function in the evaluative exercise.

3.5 As a result of the above, any assessment of any project under the Bill will be flawed, inconsistent with Te Tiriti, kawa and tikanga, and breach the same if approved.

4.0 Undermining of Treaty Settlements Obligations and Ethos

4.1 As the select committee will be aware, the Treaty Settlement process was developed by the Crown as a mechanism for addressing grievances linked to breaches of Te Tiriti o Waitangi. That said, the process is a flawed one, with the Crown being both the designer and administrator of that process. However, this fact reinforces the Governments acceptance of the principled ethos behind a completed Treaty Settlement and the commitment made by the Crown through those, to not repeat such breaches again. This includes breaches acknowledged in some Treaty Settlements related to environmental degradation and destruction.

4.2 In the context of the Bill, we acknowledge that clause 6 requires all persons exercising functions, powers and duties to act in a manner consistent with Treaty Settlements. This wording is weaker than that in in the COVID-19 Recovery Fast-track Consenting Act 2020, because of the construction of other problematic clauses in the Bill that when read as a whole, will lead to poor interpretation in decision-making and consequential undermining of Treaty Settlements. We say this because:

(a) The Bill has removes reference to Te Tiriti or Treaty Principles. Although Treaty Principles are also a reductive approach to Tiriti obligations, they do provide some assistance within an evaluative environmental framework. Also, the sole reference to Treaty Settlements suggests they are perfectly

aligned to Te Tiriti. This is not the case. Te Tiriti is the foundation of rights at law for Māori, with Treaty Settlements acting as acknowledgements for the breaches of those rights and providing minimal redress to address the same. Treaty Settlements are not where we as Māori find out Tiriti rights. To that end, removing Te Tiriti's place in our environmental legal fabric also removes the rights and responsibilities of groups (like Ngāti Hāua) who are still working through the Treaty Settlement process or not in the settlement process at all.

(b) The purpose of the Bill focuses on promoting regional infrastructure and development and gives decision-making power to three Ministers. Clause 6 within the Bill is weak, particularly when looking at Schedule 4 Part 2 clause 32 of the Bill, which prioritises in terms of weighting, the purpose of the Bill over the purpose of the RMA for example. It is a "whole Act' approach to legislative interpretation and application (that will ultimately sit with the Joint Ministers) that goes against the Treaty Settlement obligations outlined in clause 6. This is important because how the Bill will be interpreted by the Joint Ministers will weigh heavily on their political will. That 'will' is already being invested in the single purpose of the Bill. That means Treaty Settlements and the related ethos behind them, will be subjugated to that purpose and erased from real consideration and application.

4.3 Against the above, the Treaty Settlements but also the commitments made by the Crown in Te Tiriti o Waitangi have been disregarded, reduced, and will lead to extensive destruction of our environment should this Bill pass.

5.0 Breach of the New Zealand Constitution

5.1 The Bill proposes an unprecedented decision-making process that places final decision-making powers on the Joint Ministers. Expert panels will have recommendatory powers only. In both cases, the Bill is fully aimed at promoting regional infrastructure and development on a regional or national scale. This means that normal specialized scrutiny through a decision of an expert panel or the Environment Court is lost, and decisions become political ones. This breaches key fundamental principles within our constitution such as:

(a) *The separation of powers*: This principle is aimed at ensuring proper democratic and constitutional checks and balances between the three branches of government. This separation underlines the powers, functions, constitutional duties, and processes that hold our fragile constitution together. Under the Bill, the Joint Ministers will bear all the decision-making power on environmental projects across a number of distinct legislative regimes. This is despite some of those regimes being designed to ensure a balance between activities and the protective mechanisms established at law, some of which include strong Treaty of Waitangi direction (like section 4 Conservation Act and Section 8 RMA). All of that is removed and refocused to allow the Joint Ministers to be the decision makers under the drivers of regional infrastructure and development. The chances of fairness in decision making and proper management of the decision-making role has been removed and provides substantive unprecedented powers that allow an overreach of the executive arm of the government, particularly with the assumption of substantive factual judicial or quasi-judicial functions.

(b) *Parliamentary Supremacy*: The principle of parliamentary supremacy gives the executive arm of government the ability to legislate its own powers. However, this principle only functions where conventions are upheld regarding law making processes and the scope of the powers are democratic. As noted earlier, the Bill gives the Joint Ministers authoritarian power and substantive judicial functions with limited appeal powers to the Courts. The process to legislate those powers (this process) has also been conducted behind closed doors, with the list of invited stakeholders being released the sme day submissions on the Bill are due. This could potentially be the list of parties given elevation and access to the fast-track processes under the Bill, highlighting the potential for conflicts of interests or devious procedural administration. Together, these give rise to an undemocratic and unconstitutional situation because the public are being denied conventional access to the legislative and consequential decision-making process, in favor of development.

5.2 These constitutional issues go deeper than we think and hit home when understanding the landscape being created to achieve unregulated development in New Zealand at the cost of the environment. The concern is that the Crown is removing all protections, all Te Tiriti rights and all necessary constitutional checks and balances in the exercise of power, in favor of corporate and economic aspirations.

Triggering constitutional checks and balances

5.3 Against that context, we want to draw attention to an area of constitutional law which the select committee should address as part of its report. The New Zealand constitution is broadly located but exists in Te Tiriti (first and foremost) and in principles of law (including tikanga principles) that ensure the stable administration of the three branches of government and the protection of rights. As noted throughout these submissions, the Bill is unconstitutional which gives rise to a situation of real constitutional crisis/concern, and the potential fracture of our democracy and constitution.

5.4 In situations like this, there remains a final check in power through the reserve powers held by the Governor-General. The Governor-General is the representative for the Crown in terms of the constitutional arrangement established by Te Tiriti (as discussed earlier and contributed to by other constitutional layers (like the magna carta). This makes the Governor-General a defender of the commitments made by the Crown under Te Tiriti from a constitutional perspective and charges the Governor-General with the responsibility to protect these constitutional arrangements and the democracy that flows from that. This role was clearly contemplated by the legislative provisions within the Constitution Act 1986 that provide such powers/check and balances.

5.5 The exercise of those powers (like declining to ascent to proposed legislation) have never been exercised in New Zealand. Where they have been exercised in other common-wealth jurisdictions, they have been under the appearance of a threat to the constitution, but without due process. In New Zealand, the reserve powers have been unnecessary to use because the need has arguably not arisen or because New Zealand's developed conventions are always followed.

5.6 We say that the circumstances of this Bill, and the context of this Governments general unconstitutional approach to Te Tiriti, will warrant a situation where the reserve powers are justifiably exercised. This is because:

(a) The removal of Te Tiriti and tikanga based provisions within the scheme of the Bill, reestablishes the colonial practice of Tangata Whenua erasure in legislation, creating new breaches of Te Tiriti and contravening Treaty Settlement arrangements/agreements/acknowledgments and their overall ethos.

(b) The conventions related to statutory processes have been ignored or altered to suit the political agenda of the day.

(c) The Bill gives overly enhanced powers to the Joint Ministers who have no expertise in environmental matters, and reduces the normal appeals process, including proper factual scrutiny of the substance of all proposed activities by the Environment Court.

(d) The Bill and this select committee process has or will breach constitutional rights and conventions.

5.7 If the Bill continues through its third reading, and the circumstances described above become available to justify the exercise of the reserve powers, then this will have detrimental impacts on the country and destabilise our democracy. There may also be other unforeseen impacts. On that basis, we request that the select committee report on the constitutional irregularities and related consequences of the Bill, and the potential imminent constitutional crisis outlined above.

6.0 Conclusion

6.1 Access to fast tracked approvals through flawed processes under the sole purpose of promoting development will have significant adverse effects on the environment and the people at place that depend, defend and whakapapa to it. We draw particular attention to the protections provided to the environment by tikanga and Te Tiriti and we reiterate the earlier submission that the Bill is and will cause harm that outweighs any economic benefits insistently referred to by the government.