TŪWHARETOA
MĀORI TRUST BOARD

Submission on:

Natural and Built Environment Bill and Spatial Planning Bill

February 2023

Contents

INTRODUCTION

1 This submission is made by the Tūwharetoa Māori Trust Board (**Trust Board**) on the Natural and Built Environment Bill (**NBE Bill**) and Spatial Planning Bill (**SP Bill**).

2 The Trust Board acknowledges the comprehensive submission on the Bills of the Freshwater Iwi Leaders Group (**ILG**), on behalf of iwi and hapū. We adopt the submission and expressly endorse specific submission points below.

3 The focus of the Trust Board's submission is on those provisions in the Bills that impact our rangatiratanga, customary rights and interests in natural resources, whenua and treasured taonga, and our existing resource management arrangements, including arising from our Treaty of Waitangi settlement legislation and unique ownership arrangements in respect of Taupō Waters.

4 Where our submission:

a. Includes request for retention or amendment of a provision of the NBE or SP Bills, the request incorporates consequential amendments necessary to give effect to its intent.

b. Proposes alternative drafting, new text is underlined and proposed deletions to current text are shown in strikethrough.

WISH TO BE HEARD

5 The Trust Board wishes to be heard in support of this submission.

TŪWHARETOA WHAKAPAPA, TIKANGA AND WAI MĀORI

Ko Tongariro te Maunga	Tongariro is the Sacred Mountain
Ko Taupō te Moana	Taupō is the Lake
Ko Tūwharetoa te Iwi	Tūwharetoa is the Tribe
Ko te Heuheu te Tangata	Te Heuheu is the Man

6 Ngāti Tūwharetoa hold mana whenua, kaitiakitanga and rangatiratanga over the Central North Island including the Lake Taupō Catchment and part of the Upper Waikato, Whanganui, Rangitikei and Rangitaiki Catchments.

7 Ngāti Tūwharetoa are the descendants of Ngatoroirangi, Tia and other tūpuna who have occupied the Taupō Region continuously since the arrival of the Te Arawa waka. Ngāti Tūwharetoa are linked by whakapapa to our lands and our taonga. This connection establishes our mana whenua, kaitiakitanga and rangatiratanga, including our right to establish and maintain a meaningful and sustainable relationship between whānau, hapū, marae and our taonga tuku iho.

8 As kaitiaki, Ngāti Tūwharetoa have an intrinsic duty to ensure the mauri and the physical and spiritual health of the environment (inclusive of our whenua and water resources) in our rohe is maintained, protected and enhanced.

9 For Ngāti Tūwharetoa, water comes from the sacred pool of our ancestor, Io. Tāne entrusted the guardianship of all the waterways to Tangaroa while Tāwhirimātea was assigned the guardianship over the atmospheric forms of water and the weather. These two guardians hold the mauri, the essential life forces, of these forms of water.

10 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us is Ranginui. The geographical pinnacle of Papatūānuku, within our rohe, is our maunga (mountains) including our esteemed

ancestor, Tongariro. To the north of Tongariro lies our inland seas, Taupō-nui-a-Tia and Rotoaira. Our mauri flows from our maunga through our ancestral awa (surface and underground streams and rivers) to our moana and to the hinterlands via the Waikato, Whanganui and Rangitaiki. They link us directly with our neighbouring iwi.

11 Ngāti Tūwharetoa assert our intergenerational custodial and customary right of tino rangatiratanga over the taonga in our rohe. Our tribal taonga include ownership of the bed, water column and air space of Lake Taupō, its tributaries, and the Waikato River from the outlet of Lake Taupō to Te Toka a Tia. They also include Te Kāhui Maunga (Tongariro National Park), the largest production forests in the North Island (Kaingaroa, Lake Taupō and Lake Rotoaira) and ownership of 51% of the whenua in the Taupō region.

TŪWHARETOA MĀORI TRUST BOARD

12 The Trust Board was established pursuant to the Māori Land Amendment Act 1924 and Māori Land Claims Adjustment Act 1926. The Trust Board later became a Māori Trust Board under the Māori Trust Boards Act 1955.

13 Te Trust Board administers a range of resource management arrangements and documents, including as arising through Treaty settlements, that reflect the importance of the Ngāti Tūwharetoa relationship with our taiao.

1992 and 2007 Deeds

14 By deeds with the Crown dated 28 August 1992 and 10 September 2007 the Trust Board is the legal owner of the bed, water column and air space of Lake Taupō, the Waihora, Waihāhā, Whanganui, Whareroa, Kuratau, Poutu, Waimarino, Tauranga-Taupō, Tongariro, Waipehi, Waiotaka, Hinemaiaia and Waitahanui Rivers (**Taupō Waters**), and the Waikato River to Te Toka a Tia, inclusive of the Huka Falls.

15 The Trust Board's relationship to Taupō Waters is unique. The Trust Board holds legal title as trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

Waikato River Deed and Upper Waikato River Act

16 The Trust Board is also a party to the Waikato River Deed with the Crown dated 31 May 2010 (**Upper Waikato River Deed**). The Crown and the Trust Board agreed to enter into the Waikato River Deed in recognition of "the interests of Ngāti Tūwharetoa in the Waikato River and its catchment and in Taupō Waters and to provide for the participation of Ngāti Tūwharetoa in the co-governance and co-management arrangements in respect of the Waikato River".[1]

17 The Waikato River Deed was given legal effect through the Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 (**Upper Waikato River Act**). The overarching purpose of the Upper Waikato River Act is to restore and protect the health and wellbeing of the Waikato River for present and future generations.[2]

18 Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato and Waipā Rivers (**Te Ture Whaimana**) is a product of the settlement agreements between the Crown, Ngāti Tūwharetoa and other Waikato and Waipā River Iwi. It is a statutory instrument,[3] and the

[1] Upper Waikato River Deed 31 May 2010, clause 8.

[2] Upper Waikato River Act, section 3.

[3] Given legislative effect through the Waikato and Waipā River Settlement Legislation: see also Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Maniapoto (Waipā River) Act 2012.

primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.[4]

Joint Management Agreements

Waikato Regional Council

19 The Trust Board has a joint management agreement (**JMA**) with the Waikato Regional Council relating to the co-governance and co-management of the Waikato River and activities within its catchment affecting the Waikato River, as well as Taupō Waters.

Taupō District Council

20 The Trust Board has a JMA with Taupō District Council regarding the administration of the RMA in relation to multiply-owned Māori land within the rohe of Ngāti Tūwharetoa.

TOPIC-BASED SUBMISSIONS ON THE NBE AND SP BILLS

Support for ILG submission

21 The Trust Board adopts the ILG submission, and wishes to particularly endorse the following submission points:

a. **Te Oranga o Te Taiao:** We support the ILG's request for retention of Te Oranga o te Taiao within the purpose. We agree that an amendment that elevates Te Oranga o Te Taiao to a foundational and interpretive concept, whether through application of a hierarchy as per Te Mana o Te Wai in the National Policy Statement for Freshwater Management 2020, or by requiring it to be expressly considered and addressed as a mandatory matter in all levels of the system, is necessary to ensure Te Oranga o te Taiao is reflected at the heart of the system.

b. **Purpose:** We support amendment to NBE clause 5 of the purpose section to *"the protection or, if degraded, restoration and enhancement"*. It accords with Te Ture Whaimana and with clause 15(1)(a) of the SPA Bill. Without this amendment, the rohe of Ngāti Tūwharetoa will have certainty of restoration and enhancement in parts of our rohe but not others. For example, the Trust Board can reasonably rely on Te Ture Whaimana in respect of the Upper Waikato River and its catchment, but that same expectation would have to be read in for Taupō Waters. That is not consistent with integrated management or the higher order expectation that these Bills will be transformational.

c. **Te Tiriti o Waitangi:** We support the retention of the mandatory requirement for all persons exercising powers and performing functions and duties under the Bills to give effect to the principles of te Tiriti o Waitangi. The expectation of the Trust Board is that this clause will be front and centre in the implementation of the Bills.

d. **Iwi and hapū rights and interests in freshwater:** A fundamental shortcoming of the proposed Bills is that the Government has again failed to deal with the issue of iwi and hapū rights and interests in freshwater. This continues to prejudice iwi and hapū, including Ngāti Tūwharetoa as owners of Taupō Waters. The prejudice can, and must, be lessened by including three safeguards in the Bills: (a) a direct role for iwi and hapū in resource allocation decision-making; (b) processes that actively promote resolution of iwi and hapū rights and interests; and (c) mechanisms to preserve opportunities for more equitable access of iwi and hapū to freshwater resources, upon resolution of iwi and hapū rights and interests.

[4] The obligation to give effect to Te Ture Whaimana is the strongest direction that Parliament has given in relation to any RMA planning document.

e. **Environmental Limits and Targets:** The NBE Bill process to set environmental limits and targets is inadequate. Setting limits and targets that merely maintain existing (possibly degraded) ecosystem integrity is not consistent with, and actively undermines, Te Oranga o te Taiao. This process must be recast, with the National Objectives Framework process forming the foundation of a revised section, adjusted to recognise and uphold Te Oranga o te Taiao, and with retention of Te Mana o te Wai where limits and targets relate to freshwater.

f. **National Māori Entity:** For the reasons outlined in the ILG submission, the Trust Board opposes the proposed National Māori Entity in its entirety and seeks its deletion. The National Māori Entity undermines Ngāti Tūwharetoa's rangatiratanga as mana whenua and Treaty partners, to be the voice on resource management matters affecting our rohe, including at a national level.

g. **National Planning Framework:** The centrality of the National Planning Framework (**NPF**) to the NBE system means iwi and hapū as Tiriti partners, including Ngāti Tūwharetoa, must have direct input into its development. We endorse the ILG submission that iwi and hapū must be invited to collaborate on NPF preparation and review. At a practical level (and reinforce our submission that the National Māori Entity is removed from the NBE Bill), the information iwi and hapū have about how we experience the RMA locally (such as the biodiversity example we describe below) must inform NPF development. A seven-member National Māori Entity will just not have that level of insight, and it is irresponsible to engage in preparation and review of such a critical document to the NBE system without it.

h. **Designations and Māori land:** We support the ILG's proposed amendments to the designations provisions as they relate to Māori land including expanding the definition of protected Māori land; the deletion of clause 525(7)(a) to ensure compulsory acquisition powers do not apply to Māori land in any circumstance; and adding a condition that any notice of requirement given over protected Māori land be accompanied by a written approval from the Māori landowner. These amendments ensure the term "protected Māori land" used in the NBE is not a misnomer.

i. **Duty to assist Regional Planning Committees in SP Bill –** We support the ILG's opposition to imposing a duty on iwi and hapū to assist Regional Planning Committees. The requirement will place an additional burden on iwi and hapū,[5] and could be used by RPCs to secure sensitive information and at place mātauranga Māori, free of charge. While the ILG's suggested relief is that iwi and hapū may determine whether information must be provided, we prefer the duty to assist not apply to iwi and hapū at all, by deleting SP Bill clause 64(1)(d). This does not mean that a request by an RPC cannot be made, which is the more appropriate starting point.

j. **Resourcing the Trust Board to participate in the system:** The resources required to support iwi entities both in the transitional phase (in Schedule 2 of each Bill) and following that phase when the Bills are fully operational, will be extensive. This must be accounted for, both through specific Bill provisions, and in successive budgets, to ensure that the reform succeeds.

Upholding Treaty Settlements: Upper Waikato River arrangements

22 The Trust Board has a long and detailed history of asserting rights to, and protecting, the wai and whenua within in our rohe, including Taupō Waters. The Trust Board holds legal title as

[5] Who may already be dealing with capacity shortfalls.

trustee and acts as kaitiaki for Taupō Waters. These fiduciary responsibilities over Taupō Waters to present and future generations underpin all our activities and aspirations.

23 More recently, our history also includes investing heavily to participate (together with the other River Iwi and the Waikato Regional Council) as co-governors and co-managers in the development of Plan Change 1 – a right accorded Ngāti Tūwharetoa through the Upper Waikato River Act – with the intent that the plan change realise the statutory vision in Te Ture Whaimana:

> Our vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

24 This innovative policy and governance approach is a product of the commitment and determination of Ngāti Tūwharetoa and all Waikato and Waipā River Iwi.

25 The River Iwi governance voice was absolutely critical to ensuring notified Plan Change 1 (while requiring refinement) represented a trajectory of change that reflected, rather than diluted or undermined, the expectations of the Waikato and Waipā River settlements for freshwater management. Those expectations, which for too long had been ignored by those in power, include:

a. Restoring and protecting the health and wellbeing of the Rivers is paramount - the aim must be to prevent further degradation of the Rivers.

b. Intergenerational responsibility.

c. Intergenerational timeframes, lag effects and the complexity of the problem are not defensible reasons to delay putting in place management interventions.

d. Maintaining the status quo will not contribute to achieving restoration outcomes, nor will the status quo prevent water quality from deteriorating further.

26 Planning processes originating in Treaty settlements, where statutory amendments have provided a clear role for iwi and hapū leadership in those processes, are generating innovative, future-focused, planning outcomes.

27 This is critical. It is why the Trust Board's JMA for the Waikato River, which was developed pursuant to sections 44 and 48 of the Upper Waikato River Act and sets out detailed arrangements for jointly developing RMA Planning Documents with the Waikato Regional Council, must not be undermined. (It is also why it makes sound planning sense for Reginal Planning Committees to reflect a 50/50 appointment model between the Crown/local government and iwi/hapū.)

28 The Trust Board opposes any Bill provisions that will have the effect of undermining these existing arrangements, as well as our ownership of Taupō Waters, but does support policies that build on, strengthen and enhance these arrangements.

29 As it currently stands, we consider that the Bill will undermine these arrangements.

30 At a minimum, the transitional provisions in Schedule 2 of each Bill must provide sufficient flexibility to substantially modify the standard position in the Bills, where necessary to give effect to the Upper Waikato River Act and associated JMAs. Otherwise, our settlement risks being retrofitted to fit within the new regime, rather than accommodated to honour the Crown's commitments to uphold Treaty settlements. That will be a breach of Te Tiriti o Waitangi.

31 **Relief sought:** The relief required to ensure that the transitional provisions in both Bills include the mechanisms necessary to properly reflect the arrangements in our settlement legislation are:

a. Amendments to Schedule 2 of the NBE Bill are required, and should be duplicated and adopted in the SP Bill, where relevant:

i. Clause 3(1): *"A person exercising a power or performing a function or duty under this Act must:*

(a) give a Treaty settlement, the NHNP Act, or other arrangement an effect that is the same or equivalent as it has in relation to the Resource Management Act 1991.

(b) in relation to subpart 8 of Part 5 of this Act, act in a manner that is consistent with Treaty settlements.

ii. Amend clause 4(3)(i) and add a new clause 4(3)(ii) as follows:

(i) amend the relevant party's Treaty settlement Act or the NHNP Act; and/or

(ii) amends this Act; and

(iii) is in a form that has been agreed by the relevant party.

iii. Add *Clause 7: Regulations to modify other processes under this Act*

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that:

(a) uphold the integrity intent and effect of a Treaty settlement through region-specific transitional arrangements;

(b) modify how any process in this Act applies to reflect a region-specific resource management process in a Treaty settlement Act.

(2) The Minister must not recommend the making of regulations under this clause unless the Minister is satisfied that the regulations are consistent with the purpose of this schedule.

(3) Regulations made under this clause are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

b. Amend NBE clause 2(7)(c) as follows: *"in the absence of that enactment or those agreements, 3 years has elapsed since the date on which this Act received the Royal assent."*

c. The Crown must adequately resource Trust Board participation in the Schedule 2 processes of the NBE and SP Bills, which is necessary because of Crown action.

Te Ture Whaimana

32 Te Ture Whaimana has led to a change in the interpretation of the provisions of Part 2 of the RMA for the purposes of the Waikato Region.[6] As such, it is appropriate that it is one of the few Treaty settlement provisions that has been incorporated into the Bills. We support its retention in the Bills, but an amendment to the SP Bill is required to properly reflect the original intent and effect of the Waikato and Waipā River Acts.

33 NBE Bill clause 35(a) states that Te Ture Whaimana prevails over any inconsistent provision in the NPF. However, an equivalent provision is not adopted in the SP Bill. This must be corrected. It does not matter that the NPF is established in the NBE Bill rather than the SP Bill. The SP Bill includes a range of references to the NPF, including that a Regional Spatial Strategy must give

[6] *Puke Coal Ltd v Waikato Regional Council* [2014] NZEnvC 223 at [133] and [143] – [146].

effect to the NPF to the extent directed, and otherwise be consistent with the NPF.[7] This warrants reference to Te Ture Whaimana prevailing over the NPF in the SP Bill.

34 **Relief sought:** An amendment is required to make clear that Te Ture Whaimana prevails over the NPF. For consistency, we request that SP Bill clause 21 is replaced with NBE clause 35, as the clauses are the same in all other respects.

Regional Planning Committees

35 The Trust Board supports the Freshwater ILG submission regarding Regional Planning Committees, namely:

a. Regional Planning Committees must reflect a 50/50 appointment model between the Crown/local government and iwi/hapū.

b. The appointment of Māori representatives to Regional Planning Committees should be the right of iwi and hapū only, as the mana whenua of a region and in accordance with the whakapapa-based relationship we have with natural resources and other environmental taonga at place.

c. The mechanisms for appointment should be determined by iwi and hapū in accordance with local kawa and tikanga.

d. The Crown must adequately resource iwi and hapū to participate in the NBE Schedule 8 process.

36 For the Trust Board, the co-management and co-governance arrangements in respect of the preparation, review, change or variation of resource management planning documents under the Upper Waikato River Act, necessitate a Ngāti Tūwharetoa appointment to the Waikato Regional Planning Committee.

37 **Relight sought:**

a. We propose the following new clauses be the foundation of a new appointment process in Schedule 8:

1 Establishment and membership of regional planning committee
(1) This clause establishes a regional planning committee for each region.
(2) Each regional planning committee:
(a) must include an equal number of—
(i) local authority representatives; and
(ii) mana whenua representatives.
(b) may include 1 member appointed by the responsible Minister to participate in the functions of the committee under the Spatial Planning Act 2022.

2 Method of appointing mana whenua representatives to regional planning committee
Iwi and hapū whose rohe is within the region must appoint mana whenua representatives to the regional planning committee in accordance with local kawa and tikanga.

b. To provide for our settlement arrangements, that Ngāti Tūwharetoa is expressly provided for in appointments to the Waikato Regional Planning Committee.[8]

[7] SP Bill clauses 15(1)(d) and (e).
[8] This submission is not intended to negate a Ngāti Tūwharetoa appointment on other Regional Planning Committees within our rohe, the appintment of which would be the subject of proposed new clause 2 above.

Biodiversity Provisions and relationship to NPF

38 The impact of biodiversity provisions[9] are a particularly critical issue to the Trust Board and Ngāti Tūwharetoa entities.

39 Ngāti Tūwharetoa entities are not opposed to the protection of biodiversity, and, where it has been significantly lost, its restoration. However, our experience is that the disproportionate impact and burden of these provisions falls on Ngāti Tūwharetoa whenua, when the irony is it can only do so because, as kaitiaki of our whenua, Ngāti Tūwharetoa landowners have maintained biodiversity on our whenua while other landowners have not.

40 We are also concerned to ensure that Ngāti Tūwharetoa landowners are not further restricted in the use of our whenua, particularly given historic impediments to effective use of Māori-owned whenua (and associated contemporary effects[10]). Ngāti Tūwharetoa landowners should not be penalised again, nor should we be expected to forgo the development of our whenua, to offset the actions of other landowners that have resulted in the diminished state of biodiversity locally and nationally.

41 The Trust Board and our Tūwharetoa Forest Trusts have been seeking to engage with the Government on the National Policy Statement for Indigenous Biodiversity (**Indigenous Biodiversity NPS**) on behalf of Ngāti Tūwharetoa landowner interests (comprising over 250,000 hectares of Māori land and representing over 51% of whenua in the Taupō District),[11] so that the Government can understand:

a. The heavy impact such regimes have on regions where Ngāti Tūwharetoa whenua has, against all odds, been retained in Ngāti Tūwharetoa ownership.

b. Ngāti Tūwharetoa's unique arrangements, which require a sophisticated approach, including deference and respect for existing management arrangements in Taupō Waters. For example, pursuant to the RMA, in its recent district plan change significant natural areas (**SNAs**) had been identified by the Taupō District Council within Taupō Waters, undermining existing management arrangements that arise from the 1992 and 2007 Deeds between the Crown and Ngāti Tūwharetoa, including the Management Plan for Taupō Waters.

42 In that regard, the Trust Board supports the retention of the package of NBE provisions that protect biodiversity while permitting the NPF to specify exemptions relating to activities in:[12]

(a) significant biodiversity areas for activities on Māori land or on other land required to facilitate the activities on Māori land; and

(b) areas of highly vulnerable biodiversity for activities on Māori land.

90. We signal that exemptions on Ngāti Tūwharetoa-owned land are relevant and warranted in the rohe of Ngāti Tūwharetoa.

43 This package of provisions strikes an appropriate balance, but they only do so if there is effective iwi and hapū, including Ngāti Tūwharetoa, collaboration in the development of the NPF. Our perspectives must inform how the Indigenous Biodiversity NPS is carried through into the NPF.

[9] NBE Bill Clauses 61 to 67 and 555 to 567 concern the protection of places of national importance, including places of significant biodiversity and areas of highly vulnerable biodiversity.

[10] Historical impediments include customary tenure in the nineteenth century, public works, rating law, Te Ture Whenua Māori Act, and confiscation. Some impediments or their effects continue currently, including issues of governance, fragmentation and compliance with central and local government regulations such as regional and district plans.

[11] Including 67 Māori land trusts and incorporations as well as whānau landowners.

[12] NBE Bill Clauses 64–67 and 564.

44 **Relief sought:**

a. Retain the package of NBE provisions that protect indigenous biodiversity while permitting the NPF to specify exemptions.

b. Amend the NPF provisions to confirm that iwi and hapū must be invited to collaborate on NPF preparation and review.

Joint Management Agreements

45 We agree with the Freshwater ILG's submission seeking:

a. Deletion of the provisions prohibiting a regional planning committee from entering into a JMA that provides for final approval of a plan to be given jointly. The reference is included in NBE Bill clauses 651 and 656(3). The Freshwater ILG submission makes the point in respect of clause 651, but it applies equally to clause 656(3).

b. Deletion of clause 657, which permits a local authority or regional planning committee to perform a function, power or duty by itself if a decision is required before the parties are able to do so together.

46 The policy intent of the NBE provisions is not aligned with the following provisions of the Upper Waikato River Act:

a. Section 48(2)(d) of the Upper Waikato River Act, which involves participating in decisions on an RMA planning document.

b. Section 57 of the Upper Waikato River Act, which limits when a local authority may carry out a function on its own account to situations where an emergency situation arises or a statutory timeframe for the carrying out of the function or the exercise of the power is not able to be complied with under the JMA. This represents a more appropriate limitation than the broad nature of NBE clause 657.

47 While these are bespoke arrangements for which a carve-out has already been made and the NBE Bill will not affect, no robust reasons have been provided for:

a. Unilaterally taking final approval of a plan off the table for NBE Bill JMAs, and there is good reason to retain it, particularly when read against the minimum (and minority) provision for Māori representation on Regional Planning Committees in the current Bill draft.

b. Maintaining the same broad ability (through NBE clause 657) for Councils to act unilaterally as provided for in RMA section 36C, in light of the policy intent to "remove unnecessary barriers to their use". That is ultimately about enabling their use by iwi and hapū parties, which is undermined by NBE clause 657 in its current form.

48 **Relief sought:** That NBE Bill clauses 651, 656(3) and 657 are deleted from the NBE Bill altogether. In the alternative in respect of clause 657, that the clause is replaced with the language in section 57 of the Upper Waikato River Act.

Iwi Management Plans

49 The Trust Board supports elevation of the weighting to be given to iwi and hapū planning documents in NBE clause 107 and SP clause 24 to "have particular regard to", while advocating for "recognise and provide for".

50 An amendment is required to SP Bill clause 24(2)(c), which only refers to having particular regard to iwi and hapū planning documents when "preparing" regional spatial strategies.[13]

[13] In relation to the SP Bill, we acknowledge that the term "change" has been abandoned, and any change is likely to occur as a result of a review.

51 RMA section 61(2A)(a), which concerns regional policy statements (the current closest equivalent to Regional Spatial Strategies), applies when preparing and changing a regional policy statement. As a bottomline, as the proposed equivalent to RMA section 61(2A), SP Bill clause 24(2)(c) must also apply when "changing" a Regional Spatial Strategy.

52 However, we say that our settlement arrangement, which requires our environmental plan to be "had particular regard" when "preparing, reviewing or changing" an RMA planning document,[14] is more appropriately the default provision for these clauses. It provides appropriate recognition for iwi planning and local authority documents across all planning scenarios.

53 **Relief sought:**

a. Retain elevation in NBE clause 107 and SP clause 24 of at least "have particular regard to". Consider a further elevation to "recognise and provide for".

b. As a bottomline, amend SP Bill clause 24(2)(c) to confirm that particular regard must be had to iwi and hapū planning documents when "changing" a Regional Spatial Strategy.

c. As a preferred planning approach, amend NBE clause 107 and SP clause 24 as follows:

107 Considerations relevant to preparing*, reviewing* and changing plans

Matters to which regional planning committee must have particular regard

(1) In addition to the matters to be included in plans under **sections 102, 103, and 105**, a regional planning committee must have particular regard to—

…

(c) any relevant planning document recognised by an iwi authority or 1 or more groups that represent hapū.

24 General considerations: instruments

(1) A regional planning committee must comply with this section in preparing*, reviewing and changing* a regional spatial strategy.

Matters to which regional planning committee must have particular regard

(2) The regional planning committee must have particular regard to the following, to the extent relevant to the regional spatial strategy:

…

(c) any planning document recognised by an iwi authority or 1 or more groups that represent hapū.

SPECIFIC COMMENTS ON SPATIAL PLANNING BILL

54 The Trust Board provides the following specific points of submission on the SP Bill.

Purpose of the SP Bill

55 The Trust Board supports linking the purpose of the NBE Bill into the purpose of the SP Bill, at clause 3. It is integral to system effectiveness that the purpose clauses of both Bills are consistent, to achieve outcomes that recognise and uphold Te Oranga o te Taiao.

56 The Trust Board considers it is reasonably necessary to include a direct reference to environmental limits and targets as new clause 3(a)(iii). This is because it should be made explicit that any "use and development of the environment" that is signalled through a Regional Spatial Strategy, must comply with limits and targets.

[14] Upper Waikato River Act, section 42(1).

57 The Trust Board supports the second arm of the purpose statement in clause 3(b) to achieve system efficiency and effectiveness by integrating the functions of related planning legislation. In respect of spatial planning, the integration of functions across different legislation was absent from the RMA.

58 **Relief sought:** Amend clause 3(a) to read:

> *(a) Assist in achieving—*
>
> *(i) the purpose of the **Natural Built Environment Act 2022**, including by recognising and upholding Te Oranga o te Taiao; and*
>
> *(ii) the system outcomes set out in that Act; and*
>
> *(iii) <u>the environmental limits and associated targets</u>.*

Iwi and hapū responsibilities in relation to Te Taiao

59 The Trust Board supports the retention of clause 7 of the SP Bill with the amendments proposed by the ILG submission.

60 The Trust Board considers clause 7 is integral to the successful implementation of the SP Bill, particularly as it relates to the content of any Regional Spatial Strategy and the determination of 'key matters' and 'other matters of significance 'under clauses 17 and 18 respectively. The practical application of clause 7 means that Ngāti Tūwharetoa expect to actively participate in the process to prepare the Regional Spatial Strategy as it applies to our rohe, including through making decisions as part of the Regional Planning Committee.

61 The Trust Board notes that there is considerable overlap between SP Bill clause 5 and clause 7 as they relate to the co-governance and co-management mechanisms set out in the Upper Waikato River Act, the Ngāti Tūwharetoa Claims Settlement Act 2018 and the Ngāti Tūrangitukua Claims Settlement Act 1999.

62 **Relief sought:** Retain clause 7 of the SP Bill with the amendments proposed by the ILG submission.

Key matters, other matters and linkages to NBE Bill system outcomes

63 The Trust Board notes the strategic direction set out in the Regional Spatial Strategy is reliant on the "key matters" listed in clause 17 and "other matters" listed in clause 18, to the extent the Regional Planning Committee considers they are of strategic importance. In reading clauses 15-18 together with Schedule 4, the preparation of a Regional Spatial Strategy is predicated on having robust information that would enable the Regional Planning Committee to identify, for example, "areas that may require protection, restoration, or enhancement".[15]

64 The Trust Board understands the intended roll out and sequencing of the plan-making provisions of the NBE and SPA Bills means it is highly likely that 1st generation Regional Spatial Strategies will be prepared with incomplete and variable information that is unlikely to satisfy the tests of clause 5 of the NBE Bill. For example, the implementation by existing plans of clauses 6(e), 7(a) and 8 of the RMA is variable in the Ngāti Tūwharetoa rohe and cannot be automatically relied upon by the Regional Planning Committee as a proxy for the requirements of clause 17(1)(b) of the SP Bill or clauses 5(e), (f) or (g) in the NBE Bill.

65 Similarly, the Trust Board is concerned that, in the absence of robust and complete information, a Regional Planning Committee may rely on their interpretation of iwi and hapū management plans. The problem is that these plans were prepared by iwi and hapū under the RMA and Local Government Act 2002 framework and, in most cases, will not have adequately contemplated

[15] Refer section 17(1)(a).

the questions being posed by the new Bills, for example in respect of upholding Te Oranga o te Taiao.

66 **Relief sought:** To mitigate this risk, the Trust Board suggests:

a. The requirements of SP Bill clause 2 of Schedule 1 are strengthened to include mandatory review of the adequacy of existing information in RMA plans including where gaps in information exist for system outcomes and key matters other than environmental matters. Amend clause 2(4) of Schedule 1 to read:

> (4) In doing so, the regional planning committee ~~need no~~ must ensure the information complies with **section 28.**
>
> ~~(a) comply with **sections 24 to 28**; and~~
>
> ~~(b) have regard or respond to any submission or other comment received on the information during the process for preparing the strategy.~~

b. The Trust Board also believes a consequential amendment is required at SP Bill clause 2(4) of Schedule 4 to identify known information gaps. Amend clause 2(4) of Schedule 4 to insert new (b) to read:

> (4) A draft evaluation report must contain—
>
> (a) a reference to, and short summary of, each piece of key evidence considered by the regional planning committee in preparing the draft regional spatial strategy; and
>
> (b) a summary of the known information gaps; and

Misalignment of reform implementation and review of Regional Spatial Strategies

67 Related to the above point, the Trust Board is concerned that the implementation of the NBE Bill and SP Bill poses a significant risk to upholding Te Oranga o te Taiao within the rohe of Ngāti Tūwharetoa and the restoration and protection of the health and wellbeing of the Waikato River and its catchment.

68 There will be no operative NBE Plans in existence when the 1st generation Regional Spatial Strategy is prepared for the Waikato Region. This means the Regional Planning Committee, in preparing the Regional Spatial Strategy in accordance with SP Bill Schedule 4, will be largely reliant on information held in existing RMA plans. The problem is this information is of variable quality and has not fully implemented key parts of the sections 6, 7 or 8 of the RMA.

69 There is a risk that the Regional Planning Committee will simply roll over existing information into the 1st generation Regional Spatial Strategy and the information deficits and existing problems will be transferred into the new regime and locked in place. These risks are further complicated by uncertainty around:

a. How the co-governance and co-management arrangements set out in the Upper Waikato River Act apply to the preparation of Regional Spatial Strategy and NBE plans in the rohe of Ngāti Tūwharetoa rohe, including through the composition of the Regional Planning Committee.

b. How the Joint Management Agreement, currently between Ngāti Tūwharetoa and local authorities will operate with the Regional Planning Committee, including the role of the joint working party, templates for joint decisions with the Regional Planning Committee/local authority on draft plans.

c. How 1st generation Regional Spatial Strategies will "provide" for all of the system outcomes under clause 102(2)(d) of the NBE Bill.[16]

d. Whether NBE plans will "set" at place environmental limits and associated targets under clause 39(b)(ii) of the NBE Bill, or are merely a vehicle to "achieve" environmental limits under clause 102(2)(c) of the NBE Bill and the NPF.

70 The Trust Board considers a mandatory 5-year review of 1st generation Regional Spatial Strategies should be inserted into the SP Bill. The 5-year review would sit alongside the existing Ministerial directed review, the mandatory 9-year review and, in conjunction with the amendments suggested above, provide some comfort that the risks of sub-optimal implementation of the Bills and low quality or inaccurate existing information could be managed.

71 **Relief sought:** Insert new SP Bill clause 46A:

> **Regional spatial strategies must be reviewed if there are known information gaps**
>
> (1) <u>If, when preparing a regional spatial strategy, Natural Built Environment Plans covering the entire region are not operative, a regional planning committee must review its regional spatial strategy 5-years after it becomes operative.</u>
>
> (2) <u>If, following the review, the regional planning committee decides that an amendment to the regional spatial strategy is required, the committee must amend the strategy using the process under **section 30**.</u>

Identification of infrastructure corridors on Māori land

72 The Trust Board does not support the ability of Regional Planning Committees to make unilateral decisions under SP Bill clause 27(3) to identify protected Māori land as the potential location for infrastructure or infrastructure corridors, networks, or sites.

73 The Trust Board believes that, in discharging its functions under clauses 27(2)(a) and (b), the Regional Planning Committee should not be identifying protected Māori land for the above purposes. The only exception could be where the location of infrastructure and infrastructure corridors on protected Māori land is approved by those landowners. In these cases, the approval of those landowners must be conveyed to the Regional Planning Committee through the process to prepare the Regional Spatial Strategy.

74 The Trust Board considers the heading of clause 27 is misleading and should be amended to refer to the potential for location of infrastructure or infrastructure corridors, networks, or sites on Māori land.

75 Relief sought: Amend clause 27(3) to read:

> ~~**Identification**~~ <u>**Potential location**</u> **of infrastructure or infrastructure corridors, networks, or sites on Protected Māori land**
>
> …
>
> (3) **Subsection (2)** does not prohibit a regional spatial strategy from identifying protected Māori land as a potential location <u>where approval has been obtained from the owners of that land.</u>

[16] Including but not limited to system outcome 5(e), "the recognition of, and making provision for, the relationship of iwi and hapū and the exercise of their kawa, tikanga (including kaitiakitanga), and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga".

Ministerial powers to investigate and direct actions

76 The Trust Board supports the Ministerial powers to require information in clause 58, investigate and recommend in clause 59, and direct other action be undertaken in clause 62 of the SP Bill.

77 The Trust Board considers it is necessary to provide the Minister with discretionary powers to investigate the performance of a Regional Planning Committee or local authority in exercising any of its powers, functions, or duties under the Act, including failure or omission to exercise any of those powers, functions, or duties. The Trust Board also agrees that the Minister should have available powers to direct the Regional Planning Committee or local authority to take specific actions, if in the view of the Minister, the Regional Planning Committee or local authority has not exercised or performed the power, function, or duty to the extent that the Minister considers necessary to achieve the purpose of the Act.

78 The expectation of the Trust Board is the Minister would be open to receiving advice from Tiriti partners regarding the failure or omission of a Regional Planning Committee to exercise or perform any its powers, functions, or duties under the Act.

79 The requirement for the Regional Planning Committee or local authority to publish the response to the Minister including related milestones, timeframes or monitoring, is supported by the Trust Board.

80 **Relief sought:** Retain clauses 59 - 62 of the SP Bill.

Regulation-making powers

81 The Trust Board understands clause 68 of the SP Bill provides wide ranging use of regulation making powers for the Minister to, among other matters, prescribe how an implementation plan must be set out, the methodology used to prepare evaluation reports and generally provide for anything that is reasonably necessary to implement the Act.

82 The Trust Board accepts the Minister needs to have an ability to make regulations that expedite the resolution of specific problems with the preparation of a Regional Spatial Strategy, and how implementation plans and agreements are operationalised. However, the framing of SP Bill clause 68(2) means that the Minister only needs to consult with the Regional Planning Committee and does not need to engage with Ngāti Tūwharetoa on regulations that may affect our rohe.

83 Notwithstanding the Trust Board's concerns with the composition of the Regional Planning Committee, excluding Ngāti Tūwharetoa from the construction of a draft regulation that may affect the Ngāti Tūwharetoa rohe would not give effect to the principles of Te Tiriti[17] or recognise and provide our Ngāti Tūwharetoa mana in relation to te taiao.[18] The expectation of the Trust Board is that the Minister would engage with Ngāti Tūwharetoa at the same time as consulting with the Regional Planning Committee under clause 68(2) in the construction of any draft regulation.

84 For the purpose of clarity, the Trust Board reiterates that the National Māori Entity is not a proxy for engagement with Ngāti Tūwharetoa on any matter that relates to the Ngāti Tūwharetoa rohe including the use of regulation making powers under clause 68 of the SP Bill.

85 **Relief sought:** Amend clause 68(2) to read:

> (1) …
>
> (2) Before making a recommendation under **subsection (1)**, the Minister must consult—

[17] SP Bill clause 5.

[18] SP Bill clause 7, as amended by the ILG submission.

(a) iwi and hapū whose rohe is affected by the regulations; and

(b) any regional planning committee that the Minister considers is likely to be affected by the regulations.

When first Regional Spatial Strategies must be notified

86 The Trust Board believes that, where a Regional Spatial Strategy notification date is set on the recommendation of the Minister as per clause 1(2) of Schedule 1, they should have to consult with iwi and hapū as well as the Regional Planning Committee.

87 Not providing for consultation does not give effect to clauses 5 and 7 of the SP Bill and is inconsistent with the co-management and co-governance arrangements in the Upper Waikato River Act.

88 The need for such a requirement is made clear by clause 3(4) of Schedule 4, which requires an appointing body to apply for "an opportunity" to obtain a pre-notification version of a Draft Regional Spatial Strategy at least 3-months before it is publicly notified.

89 There is a risk that the Trust Board would not even have an opportunity to make an application to the Regional Planning Committee, because there is no requirement on the Regional Planning Committees or the Minister to make known to interested parties[19]the date of public notification for the Draft Regional Spatial Strategy in advance of the 3-month application period. The Trust Board considers that this was clearly not the intention of the SP Bill and could be easily resolved by amending clause 4 of Schedule 4.

90 The Trust Board also considers that a Regional Planning Committee should provide notice of when the draft Regional Spatial Strategy is to be publicly notified no less than 6-months before the date established under clause (1) of Schedule 1.

91 **Relief sought:**

Amend clause (3) of Schedule 1 by inserting new (a) to read:

(3) Before making the recommendation, the Minister must consult—

(a) iwi and hapū whose rohe is within, or adjacent to, the region;

(b) the regional planning committee (or its appointing…

Amend clause 4 of Schedule 4 by inserting new (a) to read:

A regional planning committee must—

(a) Give public notice of the date of public notification of the draft regional spatial strategy no less than 6-months prior to the date established under clause 1 of Schedule 1; and

Consideration of Māori land in the preparation of Draft Regional Spatial Strategies

92 The Trust Board broadly agrees with the mandatory direction for the Regional Planning Committee to prepare a Draft Regional Spatial Strategy and, as part of the spatial planning process, develop scenarios that are relevant to assessing how the region may grow, adapt or otherwise change in a 30-year timeframe.

93 At this time, there is no requirement in SP Bill clause 16(1)(c), clause 17(1), clause 18(1) or Schedule 4, clause 2(2) that provides any certainty to the Trust Board that a Regional Planning Committee would consider the development aspirations for whenua Māori within the Ngāti

[19] Refer clause 1 of Schedule 4.

Tūwharetoa rohe, including lands returned to Ngāti Tūwharetoa through Te Tiriti settlement processes.

94 In the absence of specific direction in subpart 2 and Schedule 4, there is a risk the Regional Planning Committee may not consider Māori land as 'strategically important'. Given the historical impediments to developing Māori land, particularly when compared to general land, the Trust Board believes that there should be a mandatory requirement for the Regional Planning Committee to engage with the owners of Māori land to fully understand the aspirations for whenua Māori. Where those landowners agree, the RPC should then include this land in the preparation of scenarios that will fundamentally inform the Draft Regional Spatial Strategy.

95 The Trust Board supports the preparation of a draft evaluation report. Where the future development of whenua Māori is signalled through the Draft Regional Spatial Strategy, the content of the evaluation report must be co-developed by representatives of owners of that whenua and the Regional Planning Committee.

96 While the Trust Board is generally supportive of any provision that enables Māori participation in determining the matters to be included in the Draft Regional Spatial Strategy, it is largely unclear how the status of Ngāti Tūwharetoa as a Tiriti partner will be given effect through this process. Notwithstanding the overarching concerns of the Trust Board regarding how existing settlement arrangements will be upheld, the practical application of Schedule 4 clause 2(2) means that the Trust Board will have the same status as an industry body. Such an outcome fundamentally undermines the intent of the settlement arrangements in the rohe of Ngāti Tūwharetoa and is opposed by the Trust Board.

97 **Relief sought:** The SP Bill should be amended to:

a. give effect to the co-management and co-governance arrangements within the Waikato River catchment including the practical implementation of s48 of the Upper River Act;

b. recognise that Māori land is a taonga tuku iho for the owners of the land, including Taupō Waters;

c. enable the rights and interests of owners of Māori land to retain, control, utilise, and occupy that land for the benefit of present and future generations;

d. create a mandatory duty on the Regional Planning Committee to engage with the owners of Māori land, including land returned to iwi and hapū through Te Tiriti settlement processes, and where agreed by those landowners, include that land in the preparation of scenarios to inform the Draft Regional Spatial Strategy;

e. provide iwi and hapū with access to the draft evaluation report as a mandatory requirement.

Feedback on Draft Regional Spatial Strategies

98 The Trust Board expects that the Draft Regional Spatial Strategy and all accompanying documentation, including any scenarios prepared under clause 2(3)(a) of Schedule 4 and the draft evaluations report, will be made available for review by the Trust Board without the need to request the documents through an appointing body.

99 As outlined above, at this time, an "appointing body" must make an application to the Regional Planning Committee to apply for the "opportunity" to review a draft Regional Spatial Strategy no less than 3-months prior to the public notification of the Draft Regional Spatial Strategy. The Trust Board considers the application process in Schedule 4 clause 3(1) is inappropriate and represents a fundamental shift away from clause 4A of Schedule 1 of the RMA, where the local

authority —preparing the plan— must provide that plan to iwi authorities and then have particular regard to any feedback from the iwi authority.

100 The Trust Board is also concerned that any request to review the Draft Regional Spatial Strategy would not necessarily include the draft evaluation report or scenarios to inform the content of the Regional Spatial Strategy prepared under Schedule 4 clause 2(3)(a). It is essential that the Trust Board views the draft evaluation report and scenarios that were employed to prepare the draft Regional Spatial Strategy.

101 Additionally, the Trust Board is concerned that clause 3(2) of Schedule 4 works to constrain any feedback to just the identification of errors and any risks that may arise in implementation or operation of the Regional Spatial Strategy. The Trust Board should not be constrained in our feedback on the Draft Regional Spatial Strategy or the draft evaluation report and scenarios that were employed to prepare the draft Regional Spatial Strategy.

102 As a final point, for the reasons identified in the ILG submission, we fundamentally oppose appointing bodies and advocate for a reference to iwi and hapū.

103 **Relief sought:** Amend clause 3 of Schedule 4 to read:

> (1) A regional planning committee must~~, at the request of an appointing body,~~ provide iwi and hapū with an opportunity to review a draft regional spatial strategy, draft evaluation report and scenarios prepared under c2(3)(a).
>
> (2) The purpose of a review is to allow iwi and hapū to—
>
> (a) familiarise itself with the content of the draft strategy including the draft evaluation report and scenarios prepared under **clause 2(3)(a)**; and
>
> (b) identify any errors and omissions, including identifying risks in the implementation or operation of the draft strategy
>
> ~~(c) identify any risks in the implementation or operation of the draft strategy~~
>
> (4) Iwi and hapū must provide any feedback on the draft strategy within the time frame for the review.
>
> ~~(a) request an opportunity to review the draft strategy at least 3 months before the date on which the draft is to be notified under clause 4; and~~
>
> ~~(b) provide any comments on the draft strategy within the time frame for the review~~
>
> (5) The regional planning committee—
>
> (a) Must have particular regard to feedback from iwi and hapū received under subclause (4); and
>
> (b) May amend the draft strategy ~~in response to any comments received under subclause (4)(b)~~; and
>
> (c) …

Hearings for the preparation of Regional Spatial Strategies

104 The Trust Board is deeply concerned by the absence of a mandatory hearing process in Schedule 4 for any Regional Spatial Strategy and considers that this removes a legitimate opportunity for Ngāti Tūwharetoa to participate in the plan preparation process and to influence the outcome of the Regional Spatial Strategy.

105 The Trust Board has significant experience participating in the RMA Schedule 1 process to prepare regional policy statements and regional and district plans. This has included providing

expert technical advice in support of Trust Board, hapū, marae and landowner submissions, and facilitating expert advice by pūkenga with a deep understanding of Ngāti Tūwharetoa tikanga and mātauranga at place.

106 Our experience with the RMA suggests an independent hearing panel is the most appropriate method for giving meaningful effect to the various settlement arrangements in the Ngāti Tūwharetoa rohe. In particular, the Ngāti Tūwharetoa JMA and the Waikato River Authority role in appointment of commissioners on any hearing panel for the Waikato River catchment.

107 The Trust Board notes that Schedule 4 clause 7(1) places significant emphasis on the submission process for challenging the accuracy or validity of a draft evaluation report but that is an inadequate substitute for a hearing. The current drafting of Schedule 4 suggests that the Regional Planning Committee can make these decisions behind closed doors. An Independent Hearing Panel must be appointed.

108 **Relief sought:** The Trust Board strongly requests NBE Bill Schedule 7 Part 3 replaces Schedule 4 clauses 5, 6 and 7.

CONTACT

109 Please direct all communications to the Trust Board in relation to this submission to Peter Shepherd, Natural Resources Manager at peter@tuwharetoa.co.nz.