



TŪWHARETOA
MĀORI TRUST BOARD

Submission on:
Principles of the Treaty of Waitangi Bill

6 JANUARY 2025

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INTRODUCTION

- 1 This submission on the Principles of the Treaty of Waitangi Bill (the **Bill**) is made by the Tūwharetoa Māori Trust Board (**Trust Board**).

WISH TO BE HEARD

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

CONTACT

- 3 Please direct all communications in relation to this submission to the Trust Board to:

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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

- 4 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.
- 5 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.
- 6 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.
- 7 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.
- 8 For Ngāti Tūwharetoa, our rohe of the Central North Island forms part of our ancestor Papatūānuku. The universe and atmosphere above and around us are 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.
- 9 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

- 10 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.
- 11 While the Crown-Trust Board relationship is not limited to the below arrangements, the Trust Board is in the unique position of having recorded arrangements with the Crown both outside of (in the case of the 1992 and 2007 Deeds) and within (in the case of the Upper Waikato River settlement) a Treaty settlement context.

1992 and 2007 Deeds

- 12 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.
- 13 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

- 14 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
- 15 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
- 16 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 primary direction setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the Waikato and Waipā Rivers.⁴

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.

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.

PRINCIPLES OF THE TREATY OF WAITANGI BILL

- 17 The Bill seeks to redefine the Treaty of Waitangi principles in accordance with existing ACT Party policy; an attempt to replace over 50 years of jurisprudence which has developed our current understanding and application of the Treaty / te Tiriti o Waitangi.
- 18 The proposed principles are summarised as follows:
- a. Principle 1: the Government of New Zealand has **full power to govern**, and Parliament has **full power to make laws**. They do so in the **best interests of everyone**, and in accordance with the rule of law and the maintenance of a free and democratic society.
 - b. Principle 2: the Crown **recognises the rights that hapū and iwi had when they signed the Treaty/te Tiriti**. The Crown will respect and protect those rights. Those rights differ from the rights everyone has a reasonable expectation to enjoy only when they are specified in Treaty settlements.
 - c. Principle 3: **everyone is equal before the law** and is entitled to the equal protection and equal benefit of the law without discrimination. Everyone is entitled to the equal enjoyment of the same fundamental human rights without discrimination.
- [emphasis added]*
- 19 The Trust Board understands that the purpose of the Bill is to define Parliamentary intent when interpreting legislation to which the Treaty principles might ordinarily be considered relevant.

POSITION

- 20 The Trust Board strongly opposes the Bill in its entirety because it:
- a. Threatens Ngāti Tūwharetoa rangatiratanga, as protected under Article 2 of te Tiriti.
 - b. Represents a significant constitutional breach.
 - c. Attempts to redefine the principles of te Tiriti, disregarding decades of established jurisprudence and creating legal uncertainty.
 - d. Undermines Ngāti Tūwharetoa-Crown relationships (and Māori-Crown relationships generally), including by:
 - i. Ignoring our non-Treaty settlement relationship as set out in the 1992 and 2007 deeds, which enshrine collaborative frameworks for the governance and protection of Taupō Waters; and
 - ii. narrowing the Crown's obligations to Ngāti Tūwharetoa, reducing commitments to Treaty settlements, thereby ignoring the ongoing and dynamic nature of the Ngāti Tūwharetoa-Crown partnership.
 - e. Risks fundamentally changing the nature of the partnership between Ngāti Tūwharetoa and the Crown, as affirmed in existing Tiriti principles and te Tiriti itself.
 - f. Fails to reflect the integrity, intent and effect of the Trust Board's Upper Waikato River settlement.
 - g. Creates societal division by fostering misinformation, racism, and divisive rhetoric, further marginalising Māori communities.
 - h. Breaches the Crown's obligation to act in partnership and fosters mistrust, having chosen deliberately not to engage with Ngāti Tūwharetoa and other iwi/hapū in the Bill's development.

SPECIFIC CONCERNS REGARDING THE BILL

- 21 The Trust Board holds serious concerns about the Bill’s implications for the Crown’s ongoing obligations to Ngāti Tūwharetoa under Te Tiriti o Waitangi and the constitutional integrity of Aotearoa New Zealand. By attempting to narrow the interpretation of Treaty principles and limit the Crown’s obligations to Treaty settlement terms, the Bill ignores the integrity, intent and effect of the Ngāti Tūwharetoa-Crown relationship, threatens Ngāti Tūwharetoa rangatiratanga, undermines decades of jurisprudence, and fosters societal division. The Bill is both a procedural and substantive breach of the principles of Te Tiriti o Waitangi, and te Tiriti itself. These concerns collectively highlight the fundamental flaws in the Bill and the harm it poses to the Ngāti Tūwharetoa-Crown relationship, constitutional law, and the principles of partnership, equity, and active protection that underpin te Tiriti.
- 22 As identified by the Waitangi Tribunal in its report on this Bill, *Ngā Mātāpono/The Principles*:⁵
- a. “Principle 1, the Principle of Civil Government, misinterprets the kāwanatanga granted to the Crown in 1840, which is not an unbridled power restrained only by its own sense of what is in the best interests of everyone.”
 - b. “Principle 2 does not reflect the text or meaning of article 2, and would instead seriously damage tino rangatiratanga. It would abrogate rights of Māori that article 2 guaranteed and protected, and revoke the promises and guarantees the Queen made to Māori in 1840. It would trample the mana of the Treaty/te Tiriti and of all Māori underfoot.”
 - c. “Principle 3, the ‘right to equality’, bears no resemblance to the texts and meaning of article 3. The Crown’s promises were made to Māori, not ‘everyone’. The right to equality was important but was only one of the rights promised to Māori as the rights and privileges of British subjects. The Queen’s protection, from which the principle of active protection is partly derived, has been left out of Principle 3 ... Equality without equitable treatment does not capture the promises made in article 3 or the meaning of the Treaty / te Tiriti as a whole.”

The Bill undermines Ngāti Tūwharetoa-Crown relationships

- 23 The Bill’s approach fundamentally undermines Ngāti Tūwharetoa-Crown relationships by narrowing the interpretation and application of te Tiriti principles, thereby failing to fully uphold the Crown’s obligations and partnership.

Impact on Taupō Waters

- 24 The Trust Board’s 1992 Deed with the Crown directly references te Tiriti. The agreement was made between the Crown and Ngāti Tūwharetoa “in accordance with the spirit and intention of the Treaty of Waitangi **as they are now understood**” to manage and administer Taupō Waters in partnership.⁶ The 2007 deed formalised this partnership. These deeds were an important marker of a dynamic and ongoing partnership between the Trust Board and the Crown; they symbolised the mutual respect and acknowledgement of our taonga, Taupō Waters, and of each other as parties.
- 25 Principle 2 of the Bill, which only recognises the rights Ngāti Tūwharetoa had when we signed te Tiriti, is directly at odds with the above text confirming it is the spirit and intention of te Tiriti

⁵ *The Interim Report of the Tomokia Ngā Tatau o Matangireia – The Constitutional Kaupapa Inquiry Panel on The Crown’s Treaty Principles Bill and Treaty Clause Review Policies* Wai 3300, pre-publication 2024 at xv and xvi.

⁶ Lake Taupo Deed 28 August 1992, clause 1.13.

“as they are now understood” (i.e in 1992, or in modern day) that applies to the Crown-Ngāti Tūwharetoa relationship regarding Taupō Waters. Further, the additional limitation in Principle 2 that iwi and hapū rights differ from the rights of others in Aotearoa only when they are specified in Treaty settlements undermines the Taupō Waters arrangements. Principle 2 is a fundamental breach, in bad faith, of the Taupō Waters arrangements between the Trust Board and the Crown.

- 26 It is well understood that Treaty settlements cannot be relied on or used as a proxy for iwi and hapū rights and interest more generally. In fact, in the Upper Waikato River Deed the Crown and Trust Board expressly acknowledge that the co-governance and co-management arrangements do not affect any rights and interests that Ngāti Tūwharetoa may have arising under Te Tiriti o Waitangi or its principles.⁷
- 27 The Taupō Waters agreement makes abundantly clear that Treaty settlements do not contain or address all the rights guaranteed in Article 2 of te Tiriti. The Bill’s principles dismiss these and other Ngāti Tūwharetoa enduring rights and responsibilities. The approach is unconscionable.

Impact on Upper Waikato River Settlement

- 28 The Trust Board’s Upper Waikato River Settlement, and associated Waikato and Waipā River settlements (the **River Settlements**) that guide the integrated, holistic and coordinated approach to river governance and management, are sacrosanct.
- 29 While clauses 6 and 8 of the Bill purport not to affect rights under Treaty settlements, including the Waikato and Waipā River Acts, the remainder of the Bill has the ability to negatively affect the Waikato and Waipā River Settlements.
- 30 For example, in practice, we are concerned that Principle 3 will disregard Treaty rights and protections under the guise of equality.
- 31 The consequences of the Bill for Treaty settlements have not been carefully considered. The Bill is inconsistent with the spirit and intent of the River Settlements, as it undermines the integrity of the system in which the settlements operate. The Bill will undermine positive post-settlement behaviours and send signals that cool and temper relationships and good practice.

Failure to engage with Ngāti Tūwharetoa

- 32 The Crown’s failure to consult Ngāti Tūwharetoa and other iwi and hapū during the development of the Bill represents a fundamental breach of its obligations under Te Tiriti to act in partnership, and of the Upper Waikato River Deed. The Deed states that “when developing policies or laws impacting on the Waikato River or Lake Taupō, or affecting use rights in relation to the Waikato River or Lake Taupō (including in relation to water), it will engage with the Board to ensure such policies and laws are implemented in accordance with the requirements of co-management”.⁸
- 33 As identified above, this Bill has far-reaching implications for the Waikato River and Taupō Waters arrangements, let alone iwi and hapū rights more generally. The Crown’s exclusion of Ngāti Tūwharetoa and other iwi and hapū in that context is alarming. The impact of this exclusion is profound, eroding trust and undermining the Ngāti Tūwharetoa-Crown relationship.

⁷ Deed at clause 11(c)(d).

⁸ Deed at clause 12(d).

RECOMMENDATIONS

- 34 The Trust Board strongly opposes the Bill in its entirety.
- 35 Abandoning the Bill in its entirety is the only viable course of action.
- 36 The Trust Board urges the Select Committee to:
 - a. Recommend that the Bill does not proceed to the second reading.
 - b. Advise the Crown to adopt meaningful engagement with iwi and hapū at all stages of legislative development.
 - c. Ensure that future legislative proposals uphold tino rangatiratanga, reflect the spirit and intent of Treaty settlements and foster equitable Crown-Māori relationships.
 - d. Establish safeguards to ensure ongoing compliance with te Tiriti and its principles as they are currently understood.