

Te Ture Whenua Māori Bill

c/o Te Puni Kokiri

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Re: Submission – Exposure Draft Te Ture Whenua Māori Bill

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Introduction

1. In June 2015 Te Ture Whenua Ministerial Advisory Group (“the Advisory Group”) released the Te Ture Whenua Māori exposure Bill (“TTWM Bill”) and the Te Ture Whenua Māori Reform Consultation Document (“the Consultation Document”). This represents the most significant reform of Māori land legislation since the enactment of the existing Te Ture Whenua Māori Act 1993 (“TTWM Act”),
2. This is Whangarei District Council’s (“Council”) submission on the TTWM Bill and the Consultation Document.
3. If required Council representatives would welcome the opportunity to meet with the Advisory Group to discuss this submission and provide any assistance that it is able to offer to support the work of the Advisory Group.
4. This submission has been approved by the Council Planning Committee Chair 16 July 2015.
5. This submission is structured as follows:
 - Background – provides brief context around Whangarei District and Council’s papakainga policy.
 - Summary of Council’s position – outlines Council’s general position regarding Māori land development and the reasons for making this submission.
 - Crossover with other legislation – examines Council’s concerns with the overlap between the TTWM Bill and other legislation that affects Council, in particularly the Resource Management Act 1991.
 - Role of the Māori Land Service – discusses Council’s aspirations for the role of the MLS.
 - Financial Considerations – identifies additional financial considerations that create significant barriers to Māori land development.

Background

6. The Whangarei District has a significantly larger Māori population than the national average. The latest 2013 Census figures show Whangarei's Māori population making up 26.2% of its population (compared to 14.9% nationally).
7. Approximately 14,350ha (5%) of the Whangarei District's total 285,000ha is "ancestral Māori land" and falls within the jurisdiction of the Māori Land Court under Te Ture Whenua Māori Act 1993. The land is held in 868 individual parcels, at an average size of 16.76 hectares (with a median of 1.56 hectares). Virtually all of this land is situated outside of urban areas, with concentrations in the western fringes of the district, and along the eastern coastline of the district (Refer **Figure 1** for the Distribution of Māori land parcels in Whangarei District).
8. Council acknowledges the importance of Māori land for the wellbeing of not only our Māori population, but the general population of the District. As such Council is supportive of the intent of the TTWM Bill, which generally appears to support the retention and use of Māori land by its owners, empower Māori land owners to pursue their aspirations for their land and enable Māori land owners to make decisions without needing Māori Land Court ("MLC") approval.

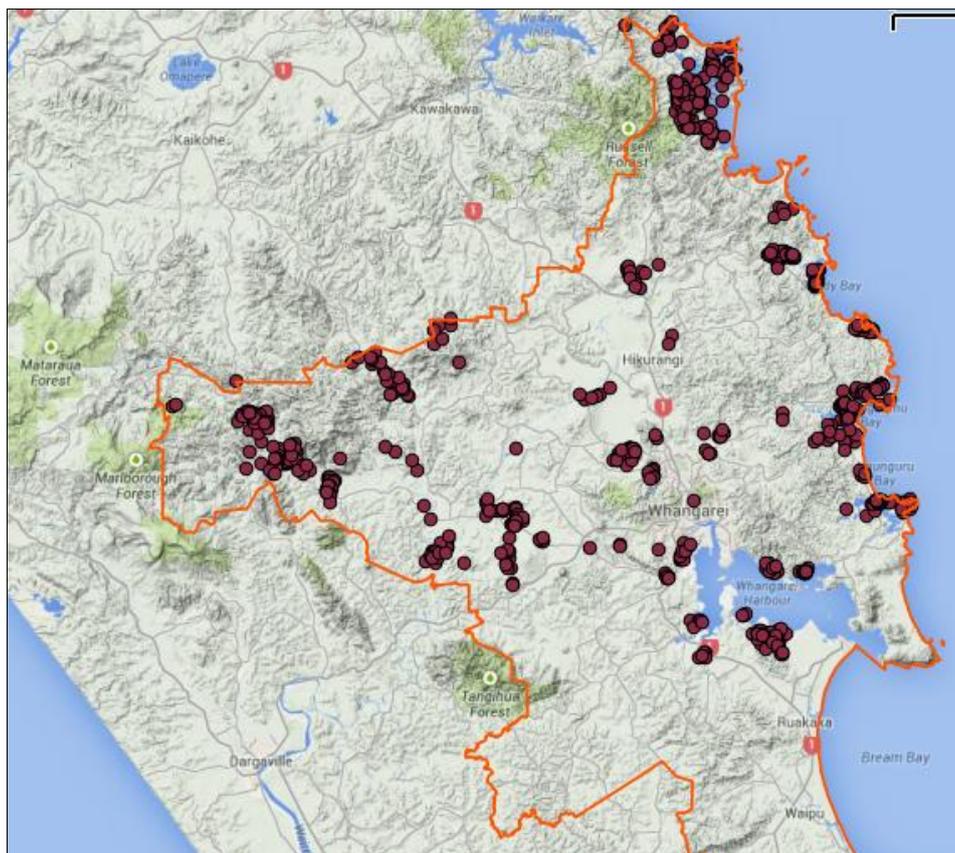


Figure 1 – Distribution of Māori Land parcels in Whangarei District.

9. Since 2009 Council has been working on a papakainga policy for the Whangarei District. The first step was the introduction in April 2011 of objectives and policies in the District Plan promoting papakainga development on ancestral Māori land. Since mid 2014 Council has been working on phase 2 of the papakainga policy which aims to create more permissive activity statuses (e.g. removing the need for resource consents) for papakainga developments on Māori land. Provisions were put out for consultation with iwi, hapu and other stakeholders in December 2014, and Council looking to formally

notify provisions later this year. The draft provisions look to link activity statuses to the level of oversight from the MLC and the relevant provisions in the TTWM Act. Accordingly the release of the TTWM Bill is of particular interest to Council in its aspiration to notify this plan change.

Summary of Council Position

10. Whangarei District Council:

- Understand that Māori land is considered a “taonga tuku iho” and should be retained in Māori ownership;
- Supports the utilisation of Māori Land and understand that there is a desire amongst Māori in Whangarei to use their lands and;
- Believes that decision making and management of Māori land should remain with Māori land owners wherever possible.

11. This submission is being made to:

- Assist the achievement of objectives set out in key strategic Council documents;
- Support the interests of Māori in Whangarei in relation to the utilisation and retention of Māori land and;
- Provide some comment on Council’s experience with Māori land owners in the Whangarei District.

12. Council staff attended one of the consultation hui for the TTWM Bill and Consultation Document on 4th June 2015. It was apparent that there was a lack of understanding amongst whanau regarding what the TTWM Bill meant and there were requests to extend the consultation period to allow more robust feedback. Council supports the decision by the Advisory Group to push out the consultation period by a further 5 weeks to 7th August 2015.

Cross over with other legislation

13. The Consultation Document is silent on the relationship between the TTWM Bill and other legislation, namely the Resource Management Act 1991, Local Government (Rating) Act 2002 and the Local Government Act 2002.

14. Council experience has highlighted that there is a definite tension between the TTWM Act and the RMA in particular. Council staff attended a workshop (“the MLC Workshop”) on the TTWM Bill with MLC representatives and representatives from other local authorities on 9th July 2015. The overlap between the RMA and TTWM Bill was a key topic, and it is understood from those conversations that the Advisory Group is working on a response to questions regarding the overlap. At the time of completing this submission, Council has not received a response on this matter.

15. Council’s understanding is that the TTWM Bill is designed in part to empower Māori land owners to pursue their development aspirations for their land. However the RMA, and in particular District Plans and resource consenting process provide a significant barrier to the ability of Māori to develop their land. Council firmly believe that any consideration of the TTWM Bill needs to consider the overlap with the RMA.

16. This does not mean that Council support the TTWM Bill essentially “trumping” all of the relevant provisions of the RMA, but rather consideration needs to be given to how the two pieces of legislation interact. Presently our experience is that the TTWM Act and MLC processes give certain expectations to Māori land owners that are not necessarily endorsed by RMA processes. This creates disillusionment and ultimately stifles the ability of Māori land owners to develop their whenua in accordance with their tikanga.
17. More specifically there is conflict between the reference to hapu in the TTWM Act and “iwi authorities” in the RMA. The existing TTWM Act and proposed Bill generally refer to hapu. However iwi authority is generally referred to in the RMA (hapu is referred occasionally to but not defined). Iwi authority is defined in section 2 of the RMA as:

“the authority which represents an iwi and which is recognised by that iwi as having authority to do so ”
18. For example section 33 of the RMA states that a transfer of powers can occur to “iwi authorities.” However it is not clear whether hapu can be considered an “iwi authority” under the RMA. This has created tension in the Whangarei District as we are seeking to incorporate transfer of power provisions into our papakāinga plan change discussed previously. This is particularly difficult as Whangarei and Te Tai Tokerau are largely “hapu based” and there is a desire amongst hapu to exercise a transfer of powers in relation to the development of their ancestral lands administered under TTWM Act. It would be useful for consistency between the two legislation in the reference to hapu and iwi authorities. Council’s position is that both hapu and iwi authorities need appropriate recognition in the legislation.
19. The possibility of a National Policy Statement (NPS) under the RMA for Māori Land Development was discussed in the MLC Workshop and was signaled as an option. Council are supportive of further investigation into the possibility of an NPS, but caution that any NPS should be high level, and not too specific as each district / region is unique and needs the ability to be flexible in catering for its specific context. The NPS could be drafted to set the key principles for Māori Land Development that relate to the intentions and aspirations of the TTWM Bill. Any NPS should be done with strong engagement with iwi, hapu, whanau and local government. Council would welcome the opportunity to participate in any further discussion regarding an NPS on Māori Land Development

Recommendations:

- a. That the Advisory Group provide a definitive response regarding the crossover between the TTWM Bill and other pieces of legislation, in particular the RMA. Council’s position is that no one piece of legislation should necessary overrule the other in every instance, but where conflict arise it should be clear which piece of legislation takes precedence.
- b. That consistency is achieved between the reference to, and recognition of, both hapu and iwi authorities across the legislation.
- c. That the Advisory Group endorse further investigation into the possibility of a NPS for Māori Land Development. The NPS should establish the key principles for Māori land Development and not be too specific. Iwi, hapu, whanau and local government should be specifically engaged.

Role of the Māori Land Service

20. The creation of the Māori Land Service (MLS) is a significant feature of the TTWM Bill and the Consultation Document. While some information is provided it is apparent that the exact role of the Māori Land Service has not been finalised.
21. In principle Council believe that the Māori Land Service appears to be an effective option. When considering papakāinga applications or general requests to develop on ancestral Māori land, Council experience is that Māori land owners are required to liaise with a large number of central and local government agencies. Feedback from the papakāinga plan change highlights that this represents a significant barrier to Māori land owners wishing to develop their whenua. Many of these organisations have different roles in the wider process of Māori land development and do not necessarily communicate with one another. Māori land owners are thus required to navigate their way through unique processes with limited understanding of the technical requirements. From a “whole” government perspective this does not represent effective customer service.
22. Council believe that the MLS could be the “spider at the centre of the web.” It should be a “one stop shop” that is relationship and customer service focused. It should be the advisory service at the centre of it all which has the relationships, contacts and technical understanding to communicate with various government agencies. In an ideal situation Māori land owners should be delegated a “liaison officer” (or something similar) from within the MLS. The liaison officer should take responsibility for understanding the land owners’ aspirations for their whenua and be able to communicate the requirements of various agencies at one source. This will save time, money and significant confusion for many Māori land owners and also help avoid the unnecessary duplication of services in government agencies.
23. Other government agencies would have a role to play in terms of identifying key contacts and establishing relationships with MLS staff. Council is willing to participate in this process and would welcome further involvement in the design of the MLS.
24. It is understood from the MLC Workshop that there will be a transition period for the MLS becoming operative of 3-5 years from the TTWM Bill being enacted. This appears to be a realistic timeframe, but the question arises – what will happen in the interim? It is important that the transition from existing service providers to the MLS is managed effectively to avoid the unnecessary delay of Māori land development projects. The Advisory Group should release more information regarding the proposed transition from the current model to the MLS model.

Recommendations:

- a. That the MLS be designed to provide a key advisory service for Māori Land owners wishing to develop their land.
- b. That the Advisory Group release more information about the transition from existing services to the MLS. The transition should be managed to avoid any unnecessary stalling of projects to develop Māori land.

Financial Considerations

25. The costs associated with the physical development such as the construction of sewerage, stormwater, power, phone connection, roading etc. provide a significant barrier to the viability of the development of Māori land. This is particularly apparent in Whangarei and Tai Tokerau, where the majority of ancestral Māori land is located in isolated un-serviced rural areas. Legal and compliance costs associated with requirements for building and resource consents can further add to development costs. Together these significant costs can render some projects unaffordable unless the owners have the capital to fund upfront development costs.
26. Council understands that more funds have been put aside in the Governments 2015 budget for the development of Māori land through kainga whenua infrastructure grants and Māori housing grants. Council support more money being invested in this area at the national level, but question whether it is actually enough. The costs discussed above are significant and often appear to be the major stumbling block for whanau considering development options on their whenua. Any legislative change needs to be matched by an increase in ongoing funding for Māori land development projects in the Governments' budgets.

Recommendation:

- a. That the Government commit to further ongoing funding for specific projects promoting the development of ancestral Māori land.

Conclusion

27. Overall Council supports the intention of the TTWM Bill but reiterates the key recommendations discussed above regarding the crossover with other legislation, the role of the MLS and financial considerations. Council look forward to working with the Advisory Panel in progressing the discussion on what is an important issue for the Whangarei District, Tai Tokerau and Aotearoa.