Te Tumu Paeroa
Office of the Māori Trustee
PO Box 5038
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New Zealand

31 October 2023

Tēnā koe

Please find attached, the Māori Trustee's evidence for the Proposed Te Tai o Poutini Plan Hearing Topics 1 and 2.

Introduction:

Tēnā koutou,

Sonya Rimene and Ngahuia Huirama will appear on behalf of the Māori Trustee, Dr Charlotte Severne.

Dr Severne thanks the Hearing Panel for the opportunity to speak to the Māori Trustee's submission on the proposed Te Tai o Poutini plan (**Proposed Plan**).

The Māori Trustee wishes to first acknowledge Poutini Ngāi Tahu as the mana whenua of this rohe.

She also wishes to acknowledge that, on reflection, the intention behind the Māori Trustee's submission could have been expressed clearer.

The intention was to clarify that there are Māori who whakapapa to and own Māori freehold land within the West Coast who will almost certainly affiliate to Ngāi Tahu but may not be registered members of Poutini Ngāi Tahu and to emphasise that there is no reason to deny them the same consent pathway as registered members to develop papakāinga on their lands.

The Māori Trustee agrees with the Section 42A officers that papakāinga are a "type of residential development that acknowledges the particular connection of the people who will reside there with the land on which it is located".

What the Māori Trustee does not agree with is the assumption in the Section 42A Report that only registered members of Poutini Ngāi Tahu have an ancestral connection with Māori land, or the drafting which results in owners of Māori freehold land who are not registered members to Poutini Ngāi Tahu not having access to the same consenting pathways as registered members.

The Māori Trustee considers that placing this additional requirement on Māori who whakapapa to Māori freehold land is unprincipled and inconsistent with the Māori Land Act - Te Ture Whenua Māori Act 1993 and the Resource Management Act 1991 (**RMA**).

In the remainder of this short presentation, the Māori Trustee would like to briefly explain what Māori freehold land is and how Māori freehold landowners came to be owners through whakapapa to the land. We will clarify why granting those landowners the ability to develop their lands is in accordance with Part 2 of the RMA and the preamble to Te Ture Whenua Māori Act 1993. This will briefly highlight some key points from the legislation which the Māori Trustee says are inconsistent with restricting papakāinga consenting pathways to registered members of Poutini Ngāi Tahu.

Background to Māori Freehold Land:

Section 129(2)(b) of Te Ture Whenua Māori Act 1993 defines Māori freehold land as "…land, the beneficial ownership of which has been determined by the Maori Land Court by freehold order".

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The Māori Land Court has been involved in determining land as Māori freehold land since as far back as 1865. This occurs through evidence inquiry within Court proceedings where the Court considers who the original Māori owners of the land are and recognises their whakapapa connection to the land.

The Court must keep an ownership list of the current owners of Māori freehold land and, when owners die, their descendants or closest relatives succeed to their interests in the land. Generally only blood relatives of owners can succeed to interests in Māori freehold land, in recognition of the whakapapa connection of owners. Only the Māori Land Court can vest interests in successors, once it is satisfied that the succession abides by those limits.

Currently there are approximately 27,600 parcels of Māori freehold land in Aotearoa (1.41 million ha) with approximately 4 million separate ownership interests. The Māori Trustee administers as trustee or agent, approximately 90,000 ha of Māori freehold land on behalf of about 100,000 Māori landowners, including across the West Coast. The average number of owners of a single parcel of Māori freehold land is about 110 owners.[1]

Te Ture Whenua Māori Act 1993 Considerations:

The right of owners of Māori freehold land and other owners of Māori land to occupy develop and utilise their land for the benefit of its owners, their whānau, and their hapū is protected by Te Ture Whenua Māori Act 1993.

The English version to the Preamble to the Act reads:

> *Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles.*

RMA considerations:

We now briefly address the Panel on considerations under the RMA. First in connection with:

Part 2 Matters – Section 6(e)

The RMA requires that territorial authorities change their plans in accordance with the Part 2 provisions.[2] Part 2 requires territorial authorities to recognise and provide for "**the relationship of Maori and their culture and traditions with their ancestral lands**, water, sites, waahi tapu, and other taonga" [emphasis added] as a matter of national importance.

Therefore, the Proposed Plan must recognise and provide for the relationship between Māori and their ancestral lands.

The Māori Trustee considers that this includes owners of Māori freehold land who have had their whakapapa connection to their ancestral lands confirmed by Māori Land Court order when they became owners of Māori freehold land. The Committee is not currently fully recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands by limiting the benefit of consenting pathways to develop papakāinga to registered members of Poutini Ngāi Tahu.

Higher Order RMA Instruments Include Broad Definition of Papakāinga

[1] Source: Māori Land Update June 2022. Produced by Māori Land Court.
[2] Section 74.

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We further note that, while neither the RMA nor the National Planning Standards define papakāinga, higher order RMA instruments point towards a broad definition of papakāinga.

For instance, the National Coastal Policy Statement defines a Papakāinga Development as a "Development of a communal nature on ancestral land owned by Māori". Similarly, the National Policy Statement for Indigenous Biodiversity in clause 3.18 discusses papakāinga in the context of 'specified Māori Land' which is defined to include Māori customary land and Māori freehold land. Finally, the National Environmental Standards for Plantation Forestry define papakāinga as:

a traditional layout of residential accommodation where dwellings are erected to exclusively house members of a whānau, hapū, or iwi, on land that is owned by the whānau, hapū, or iwi, and is Maori land within the meaning of section 4 of Te Ture Whenua Maori Act 1993 (including Māori customary land and Māori freehold land)

The definition of papakāinga in higher order RMA instruments is therefore broad and includes Māori freehold landowners. The Proposed Plan should be consistent with this national direction as it is the best way to achieve the aims of Part 2 of the RMA. This emphasises the need for a definition of papakāinga that includes Māori freehold landowners.

Papakāinga Rules Throughout Proposed Plan

The Section 42A officers noted that the inclusion of the term papakāinga in the POU – Poutini Ngāi Tahu chapter poses difficulties for expanding the definition of papakāinga to include Māori landowners who are not registered members of Poutini Ngāi Tahu.

The Māori Trustee says that, while the POU-O2 objective relating to papakāinga is in the POU chapter, the rules to give effect to it are in other chapters including the Mixed Use, Residential, General Residential, Large Lot Residential and Rural zone chapters.

Further, as noted above, many of the owners of Māori freehold land will likely have connections to Poutini Ngāi Tahu though they may not be registered members.

Accordingly, we do not consider that the location of the POU-O2 objective within the Proposed Plan poses a barrier to clarifying that owners of Māori freehold land will also be able to develop papakāinga on their ancestral land through the same consenting pathway.

Closing Remark

The Māori Trustee's concern with the Proposed Plan as it relates to papakāinga consenting pathways is a narrow but important one. It is simply about clarifying within the Proposed Plan that owners of Māori freehold land have a consenting pathway to develop papakāinga on their ancestral lands regardless of whether they are registered members of Poutini Ngāi Tahu.

This is about recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands as a matter of national importance under the RMA and meaningfully facilitating the right of owners of Māori freehold land to occupy develop and utilise their land for the benefit of its owners, their whānau and their hapū as protected by Te Ture Whenua Māori Act 1993.

The Māori Trustee notes that similar issues arise regarding providing for the ancestral relationship of Māori freehold landowners to their lands under topics 10, 12, 17 and 21 (that will be dealt with in further hearing streams).

While this submission primarily focusses on providing for that relationship through the provisions for consenting papakāinga, the Māori Trustee notes that this relationship should also be provided for in other similar provisions within this topic, in particular those that directly address the relationship of Māori with their ancestral lands, such as POU – P9.

Once again, the Māori Trustee thanks the Panel for the opportunity to address it.