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Committee Secretariat
Local Government and Environment
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Tēna koe

Ngāti Awa Submission to the Environment Protection Authority Bill

This is the submission of Te Runanga o Ngāti Awa.

Te Runanga o Ngati Awa is a settled iwi in the Bay of Plenty.

Te Runanga o Ngati Awa was reconstituted under Te Runanga o Ngati Awa Act 2005.

The Ngati Awa Claims Settlement Act 2005 and the Ngati Awa Deed of Settlement also refer as these contain schedules and requirements for consultation with Ngāti Awa on matters affecting statutory areas.

These legislative requirements came into effect on 26 October 2005.

Te Runanga o Ngati Awa is the Ngati Awa Governance Entity representing 22 hapu comprising over 18,000 registered hapu and whanau members affiliated to Ngati Awa iwi.

Ngāti Awa people are tangata whenua, kaitiaki, landowners and ratepayers in the Whakatane, Kawerau and parts of the Opotiki and Taupo districts and at Motiti Island.

Ngāti Awa is a major stakeholder in the Whakatane town and district, with landholdings and sites of significance in those other districts and at Motiti Island.

Ngāti Awa regularly works alongside its neighbour iwi and local and regional authorities in environmental matters.

It is also secretariat for Te Hono o Mataatua (the Mataatua Assembly) and also provides a venue for the administrative activities of the Mai Nga Kuri a Whareki Tihirau Fisheries Forum.

Ngāti Awa believes it has developed a simple and streamlined process for the preparation of assessments that can contribute to the decision-making of regulatory authorities. The key issues affecting this methodology are:

- Lack of certainty that costs incurred by Ngāti Awa in the making of assessments will be recoverable from the consent applicant
- Expectations that such assessments should be prepared at the cost of the Ngāti Awa assessors
- Lack of capacity of Ngāti Awa to sustain the assessment process when applicants fail to cover the costs of Ngāti Awa facilitation of consultation and preparation of written reports to inform the Assessment of Environmental Effects lodged with consent authorities
- Potential for persons other than mandated representatives of Ngāti Awa to assess cultural impacts of proposed activities on Ngāti Awa statutory areas and other areas of significance to Ngāti Awa, without engaging with Ngāti Awa.

In terms of the development of the Environmental Protection Authority Bill and the proposed establishment of a 'Māori Advisory Board' it is important that legislation is developed that ensures:

- Ngāti Awa is engaged in the process affecting natural resources and places of significance to Ngāti Awa
- Ngāti Awa procedures are used in the making of its assessments
- Local, regional and national authorities develop integrated processes for assessing change and development within the Ngāti Awa rohe with Te Runanga o Ngāti Awa
- Statutory agencies foster the capacity of Ngāti Awa to engage in the development of regulatory instruments affecting the Ngati Awa rohe by discussing with Te Runanga o Ngati Awa the means by which that capacity can be fostered by the statutory agency.

These submissions are consistent with other submissions, planning instruments and kaitiakitanga practice Ngati Awa has used elsewhere.

They reflect Ngati Awa policy, methods of implementation and practices (subject to resource, human capacity and time).

Submissions are also consistent with Bay of Plenty regional policy and planning instruments that many Ngati Awa people have contributed to developing over the years. We recommend that those planning instruments be examined as we consider there have some merit which could assist the legislative framework being developed by New Zealand Government.

Ngāti Awa wishes to be heard.

Environment Ngati Awa

Subsequent to settlement Te Runanga o Ngati Awa established an environmental unit, Environment Ngāti Awa, which provides advocacy and support for the active exercise of kaitiakitanga by Ngati Awa hapu coalitions, hapu, Maori land trusts, whanau and people.

Te Runanga o Ngāti Awa employs one manager and provides for the commissioning of one consultant to facilitate for the preparation of written cultural impact assessments (CIA) and responses to applications for resource consents for proposed activities that may actually or potentially affect statutory areas and other natural resources of significance to Ngāti Awa.

Since 2005 Environment Ngāti Awa has processed more than 800 applications for resource consent, including suites of consents relevant to activities for:

- The recovery of the township of Matata from a natural disaster in May 2005
- Tasman Mill consents at Kawerau
- Fonterra (Edgecumbe)
- Mighty River Power Kawerau Geothermal Power Station
- TrustPower Ltd Matahina Hydro electric Power Scheme.

Applicants are encouraged to confirm in writing that they will cover costs associated with those assessments prior to assessments being prepared.

To achieve compliance with iwi planning instruments Environment Ngāti Awa is obliged to engage with elected hapu representatives, pukenga (i.e. cultural experts from Ngati Awa on whom Ngāti Awa relies to know most about the relationships, culture, traditions and values attributed to places of significance to Ngati Awa people) and ngā uri o ngā hapu o Ngāti Awa.

This domestic engagement reflects Ngāti Awa tikanga and kawa and provides the means by which Ngāti Awa responses and cultural impact assessments can focus on environmental effects by identifying consent conditions and advice notes that Ngati Awa people would recommend to consents authorities.

In this way Ngāti Awa demonstrates how it can add value to statutory decision-making while also providing Ngāti Awa people with the ability to demonstrate the ethic and exercise of kaitiakitanga via their contributions to the cultural impact assessments and responses distributed in its iwi name.

This is one of the most important ways that decisions that bring change and development to our rohe are informed by the assessments of Ngati Awa people¹.

It also provides a benchmark against which our own developments are measured.

Ngāti Awa is keen to discuss these submissions further with staff and members of the Parliamentary Select Committee.

Proposed Legislative Framework

We believe that the proposed legislative framework has potential to lay out solutions for issues that affect Maori capacity to engage in assessing applications and planning instruments administered by ERMA and other statutory agencies including local and regional authorities.

Such legislation is likely to be 'open-textured' in ways similar to that of the Resource Management Act, which will provide opportunities for iwi and hapu to develop processes that contribute texture to that legislative framework from their various positions. This will enable iwi and hapu that are at various stages of readiness to engage in the statutory process.

¹ Involving pukenga, kaumatua, hapu delegates, uri, whanau, and where necessary or appropriate Ngāti Awa affiliated Maori Land Trusts and neighbour iwi in the Ngāti Awa assessment process

We acknowledge a user pays regime exists within New Zealand and propose that any new legislation must ensure that applicants for consents initiate a process that requires specialist comment from Maori² to be contributed into the statutory decision making process. Likewise we believe further dialogue is required to resolve issues relating to the costs incurred by iwi and hapu in their engagement as cultural assessment specialists in the development of planning instruments affecting their rohe.

Consents Process

In its decision-making local and regional government and ERMA, (like other statutory regulators) must recognise and provide for Maori relationships in their decision-making.

Establishing a legislative framework that ensures Maori are engaged in assessing activities and contributing to decision-making will be important to achieve.

ERMA, like other statutory agencies, relies on informed written reports from Maori which help the consent authority to demonstrate how it has met its obligations to recognise and provide for Maori relationships, culture and traditions associated with natural resources and places of significance in its decision-making.

There are several points to emphasise here:

1. Only Māori can determine their relationships and their culture and traditions with their ancestral taonga
2. Only Māori can determine the extent to which places or resources are significant to them
3. Māori rely on people (pukenga) they have identified as being cultural experts to be involved in the assessment process
4. Māori should not be expected to contribute assessments of consent-able activities at the cost of the assessor.

Ngāti Awa considers the best information it can contribute to consents decision's is a specialist assessment that is made with those Māori people with relationships with those places and resources who are working in an integrated fashion together, with their iwi authorities.

Issues arise when applicants fail to cover the costs associated with the making of cultural impact assessments. Given applicants will supply these assessments to consent authorities as evidence of consultation and as a means of informing the councils recommending officers of the consent conditions and advice notes recommended by Ngati Awa, we strongly believe these costs should be borne by the applicant because it is they who initiate the application and benefit from its achievement.

As an iwi authority that routinely assesses consents handled by regional and district councils in the manner briefly described above we strongly believe there is a need for central government to develop legislation that requires regulatory authorities to foster the capacity of Maori, particularly in kaitiakitanga units within iwi authorities.

² Māori people with relationships with natural resources that are the subject of proposals for change or development or proposed new regulation.

Legislation that enables consent authorities to issue sections 92 requests for further information, in particular the outcomes of consultation with Māori will provide one means of fostering that capacity.

Likewise legislation that enables consent authorities to return poorly prepared consent applications to applicants with advice that the outcomes of consultation with Māori should also be submitted with the Assessment of Environmental Effects, will also provide a means for applicants and Māori assessors to discuss the proposed activity and its actual and potential adverse environmental effects, for the purpose of identifying consent conditions and advice notes where these can mitigate those effects. This provides a 'solutions based' focus for all parties, and also ensures that where an adverse effect is unable to be mitigated, or is no more than minor, both the applicant and Māori assessors are informed early, therefore afforded time to consider alternatives that will avoid a resource consuming litigious process.

Developing legislation that will enable statutory organisations to meet their obligations to recognise and provide for Maori relationships in statutory decision-making is called for.

Such legislation could provide for Maori to contribute to decision-making via a process administered by their iwi authorities, without requiring those iwi authorities to invest the little private funding they may have accumulated from management of the iwi land or settlement funds to a statutory process that statutory agencies are obliged to demonstrate compliance with.

Such a scenario would also provide government with opportunities to reinvest state funds directly back into the Maori communities via iwi authorities like Te Runanga o Ngati Awa which are longstanding entities that have been established and then re-established by their communities to assist change management decision-making.

Comments on Proposed ERMA Policy

Some concepts promoted in the ERMA material are really welcome and are the topic of further discussion desired by Ngāti Awa. Ensuring Maori are 'engaged' rather than simply 'consulted', reference to the 'outcomes of consultation', 'triggers', 'impacts', which beg assessments from Maori, and recognises that impacts (and values) can be tangible and/or intangible are all supportable features of the proposed policy because they will more easily recognise and provide for the relationships of Maori and their culture and traditions etc in statutory decision-making.

It is essential that these principles are given effect through implementation methods that include Maori people.

Policy and implementation methods are needed that foster the capacity of Maori to prepare assessments that contribute to ERMA and other statutory decision-making processes.

Principal Policy Requirement

On page 1 of the ERMA material both 'principal' (in the heading) and 'principle' (in the first line) are used. Both meanings are relevant individually and relevant together (as below) so there is a complex ambiguity that requires clarification please.

Subjective Concepts

The existing ERMA wording points to ‘triggers’ and other subjective concepts like ‘significance’ and ‘impact’, - ‘tangible and intangible impacts, concepts and values all of which need to be informed by Maori before they can be recognised and provided for in a consenting context.

We must emphasise that Maori need resource to engage in domestic discussions in the preparation of assessments that contribute to statutory decision-making.

We cannot sustain the level of investment we are being required to make in responding to initiatives of others.

We cannot sustain the level of investment we are being asked to make in providing free advice about consents applications to statutory organisations to which we already contribute rates, in order that they may meet their obligations under the HSNO, Conservation, Resource Management, Local Government legislation and now Ngāti Awa statutes, to mention a few.

Processes that assist applicants to engage with Maori people that are mandated and relied upon by their hapu and iwi to know most about their ancestral relationships are needed.

These assessment processes work best when they are managed within organisations that are established by those Maori people.

Here is an attempt at an alternative ‘principal policy requirement principle’ for the proposed policy for engaging with Maori for HSNO applications.

The principal requirement is that consent decisions requiring HSNO Act approval will engage with Maori (in our case Te Runanga o Ngati Awa) in order to recognise and provide for the relationships of iwi, hapu, whanau and uri and their culture and traditions with their ancestral lands, waters, sites, waahi tapu, valued flora and fauna, air and other taonga.

Ngati Awa whanau, hapu and iwi determine how they will respond to requests for assessments of applications for activities that involve hazardous substances and new organisms proposed for their rohe and taonga.

The engagement description in the draft ERMA policy is encouraging.

It’s important that the efforts of Maori to consult domestically are valued as these are the most essential contributors to assessments that will inform statutory decisions. It is this process that is often left to Maori to afford yet the record of this domestic consensus seeking is the most significant evidence that can be delivered to a statutory regulator or Environment Court when an issue arises.

Identifying the tangata whenua groups to be engaged: Regional Representation

The idea of establishing regional representation of tangata whenua groups is considered sound, however the detail as to who, how, what and when such appointments would be made must be discussed with iwi and hapu and must also take account of the acknowledgements and protocols held by settled iwi.

The key issues will be ensuring that the processes of engagement are effective and efficient for both parties being engaged.

Outcomes of Significance to Maori

The environmental outcomes identified in the draft ERMA policy are supportable however we enquire whether the format in which they are laid out in the discussion document indicates a hierarchical weighting system.

Do Environmental Outcomes warrant greater weight than Cultural Outcomes? If so then we would assert that there are two further criteria streams to be recognised in the environmental outcomes list including:

- Other cultural heritage resources of significance to Maori (being the relationships of Maori with the resource proposed for change, development of potential adverse effects)
- Other cultural heritage relationships of significance to Maori (being relationships between neighbour iwi and neighbouring hapu in respect to commonly held resources such as rivers, harbours, the ocean, coastline and air).

Concluding Remarks

The concepts surrounding 'engagement', 'triggers', 'levels of significance', and 'outcomes' is welcome but MUST be wielded through integrated means that involve Maori with relationships with natural resources, or for proposed planning instruments and regulation.

In Ngāti Awa's case the tests when determining readiness for distribution of assessments and responses to consent authorities, consultants, applicants, the Historic Places Trust and neighbour iwi is made domestically by considering the extent to which Ngāti Awa pukenga, hapu representatives, uri and the executives of Te Runanga o Ngati Awa are satisfied and *comfortable* with the wording that forms their contributions to decision-making.

Applicants must be clear that when they seek the response of Maori to submit to the consent authority, they are asking Maori to use their time and resource to produce specialist written advice that will inform the regulatory authority's decision-making.

Te Runanga o Ngati Awa wishes to be heard.

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Kia ora,

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