TAHEKE 8C

The Proprietors of Taheke 8C and Adjoining Blocks (Inc)
Toitu te whenua he oranga whakatupuranga

12 August 2015

Te Ture Whenua Māori Bill
c/o Te Puni Kōkiri
P.O Box 3943
Wellington

Tena koe te Minita

Purpose

1. The purpose of this submission is to set out the significant concerns the Committee of Management ("**Committee**") of The Proprietors of Taheke 8C & Adjoining Blocks Incorporation ("**Taheke 8C**") has with respect to the proposed Te Ture Whenua Bill ("**Bill**").

Support for this Submission

2. We have met with a number of other Ngati Pikiao Land Trusts and Incorporations. We have set out our concerns as set out in this submission. Those Maori entities are fully supportive of the submission Taheke 8C is providing and like Taheke 8C they seek preferably to be grandfathered from the negative effects of the Bill or if this is not preferred to have the matters relating to them clearly set out in the bill in a single Part to which they can refer. Emphasis should be upon streamlining and reducing the compliance costs for Maori entities and Maori owners, the Bill as drafted does neither of those things. The entities in support are:

    - Paehinahina Mourea Trust
    - Tautara Matawhaura Trust
    - Waerenga E & W Incorporation
    - Ruahine & Kuharua Incorporation
    - Te Karaka 2E & Adjoining Blocks Incorporation
    - Te Tahuna Trust
    - Te Karaka 1B2B2 & 1A

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- Otamarakau Farm Trust
- Pukahukiwi Kaokaoroa Incorporation
- Whakapoungakau 4K2A, 4K2C, 5B5A Aggregated Trust

We have attached 1-page profiles of the supporting organisations that have been able to provide their profiles given time constraints. Like Taheke 8C they have grave concerns regarding the Bill.

Background

3. Taheke 8C was established by the Māori Land Court in 1954, following the winding up of Taheke 3D Incorporation. The winding up of Taheke 3D Incorporation was a complex and complicated process that took five years. Taheke 8C and its neighbour The Proprietors of Okere 1B No.3C, No.3 and Adjoining Blocks (Inc.) received the lands available from the old incorporation and land released from the then Department of Māori Affairs. This too was a protracted process that involved numerous meetings of owners and Maori Land Court hearings. Taheke 8C gained not only land it also became responsible for a portion of its predecessors development debt. Taheke 8C worked its way out of that debt and has a history of developing and utilizing its land for the benefit of its shareholders.

4. In the present day, the governance of Taheke 8C is undertaken through the Committee in accordance with its constitution and the Te Ture Whenua Māori Act 1994. Taheke 8C constitution is based upon Schedule 1 of the Māori Incorporations Constitution Regulations 1993. It was amended by resolution of shareholders on 12 December 2009 and filed with the Māori Land Court on 17 December 2009. The Committee of Management has the following powers:

> *The Committee of Management has full capacity in the discharge of the obligations of the incorporation in the best interests of the shareholders, to carry on or undertake any business or activity, do any act, or enter into any transaction and for these purposes full rights powers and privileges.*

5. The Vision, Mission and Values of Taheke 8C are:

> *Vision*
> *To be a top performing Māori Land Incorporation by protecting the interests of shareholders and future generations while focusing on the sustainable development of our resources.*
>
> *Mission*
> *The mission of Taheke 8C is to retain ownership of the land while maximizing opportunities to create and maintain a profitable environment for the benefit of the shareholders.*

Value
We will base all our actions on the following values: Mana Whenua, Accountability, Consultation, Transparency, and Fiduciary Obligations.

6. The current Committee members are Chairperson: Tawhiri Morehu, Committee Members: Fred Te Uru o Te Whetu Whata, William Vercoe, Taiwhanake Eru-Morehu, Atikini Taiatini, and Carol Hackett.

7. Taheke 8C has 1201 registered shareholders/owners. Taheke 8C also retains a General Manager; Ms. Sandra Eru, one administration staff member and one Farm Manager. Taheke 8C also utilises the services of Perrin Ag Farm Consultants, PF Olsen Forest Consultants, GHA Accountants, Cheal Surveyors and Lovell & Associates Ltd Solicitors.

8. Shareholders receive regular updates of the activities occurring utilizing Taheke 8C resources. This occurs through the Taheke website and through the comprehensive information provided at the Taheke 8C Annual General Meeting. The Shareholders as with the Committee are resolved to develop the assets of Taheke 8C. Mandate has been given and is annually renewed to undertake the development of activities and projects. The Committee's approach as stated in the Taheke 8C values is to be accountable, consultative and transparent in its dealing with shareholders and with the community.

9. Taheke 8C operates both farming and forestry on its land and has done so for many years. It has a land base of 1193 hectares with approximately 566 hectares currently in pre 1991 forestry. The forests are currently being harvested by the forest license holders and replanting is being undertaken by Taheke 8C in compliance with the Climate Change (Forestry Sector) Regulations 2008. In some instances where projects have been identified land, which was in forestry, is being purchased out of the climate change regime.

10. The Committee and its General Manager are experienced in identifying, planning and implementing a large-scale project negotiation. They have done so on the basis of long term planning and feasibility assessments to determine the most appropriate options for the development of their resources. One example of such development involved Taheke 8C identifying options for the development of the geothermal resource under their land. Taheke 8C undertook a full procurement process and negotiation when it determined to develop its geothermal resources. This culminated in the assessment of tenders from a range of geothermal developers. Contact Energy was finally chosen and a Project Agreement negotiated. The Taheke geothermal partnership between Taheke 8C and Contact has been operating for 4 years. Taheke 8C participates at a governance and management level in that project.

11. Taheke 8C are now establishing the building blocks for further development of their land assets and utilization of the geothermal heat. They are also identifying and working with third parties to diversify the activities undertaken on their land.

12. The Committee is therefore deeply concerned that this Bill is intended to repeal the Te Ture Whenua Maori Act 1993 ("**Act**"). The Act was a hard won piece of legislation which over time has shielded Maori owners from the loss of land and provided them with the opportunity to develop their assets to the point where a number of Incorporations and Trusts are now starting to truly reap the rewards. The Bill as currently drafted will unwind or remove many of those protections.

13. Taheke 8C questions what is the problem or problems that is or are being resolved by the Bill? The Bill seems to attempt to fix issues that may or may not exist or to use the colloquial; to smash a walnut with a sledgehammer. This may reflect the process by which it was created following a first principles approach. As discussed in our consultation section further below when 'consulted' hui participants were advised that whatever their perspective, the Bill would proceed. Failing to adequately consult and listen to the concerns of those directly affected by legislation will make this Bill difficult to maintain and lead to subsequent amendments. Currently it is not clearly drafted and will cause greater difficulty and compliance costs for those affected by it.

14. We therefore make the following observations and recommendations below. We use certain examples of proposed changes in our commentary. There are other examples however we have limited to one or two to depict our concerns. Specific comments relating to clauses in the Bill are set out in the table **attached** to this document.

Legislative Options

15. Taheke 8C are of the view that we should not lose the many benefits which have come with the Act. Rather the preference would be to amend the Act to deal with clearly identified problems rather then implementing a new Bill and facing the uncertainty of new terms, and processes in total. This would enable Maori entities and owners to work through amendments while retaining the certainty of the existing regime sitting behind.

16. If this is not preferred then we suggest the Bill should be redrafted to clearly provide the protections that were intended for Maori land, owners and entities. As you will see below we consider that the Bill as drafted in many instances takes away those protections with little value to Maori owners or the entities that represent them.

Use of Maori terms

17. We question the use of Maori terms within the Bill. By way of example we raise the use and definitions of "kaitiaki" in the Bill. A kaitiaki is a protector of the land and resources. It can be a person it can be a creature connected with the people of the land or waters to which it connects. The concept includes terms constructed in tikanga including "ahi kaa" "whenua rahui" and most importantly "whakapapa" and "mana whenua".

18. There are two definitions of Kaitiaki in the Bill, which is in itself confusing. The first definition is seemingly the noun with the second definition providing the adjective.

> ***kaitiaki,*** *in relation to a governance body, means—*
> *(a) if the body is Public Trust or a Māori Trust Board, a member of the board of the body:*
> *(b) if the body is the Māori Trustee, the Māori Trustee:*
> *(c) if the body is a board of trustees, a trustee:*
> *(d) in any other case, a person occupying a position in the body that is comparable with that of a director of a company*
>
> and
>
> ***kaitiaki*** *is someone who exercises guardianship or trusteeship*

19. This concept of kaitiaki has been extended beyond the traditional definition to include trust like duties. This is not an appropriate use of the term. It creates the risk of confusion and ignores the core concepts in tikanga upon which kaitiaki is founded. Taheke 8C does not consider it appropriate to insert terms based upon tikanga which will through drafting place them at risk of assessment and determination by the court system. It is noted that the Bill requires the issue of tikanga to be determined on the basis of "evidence" (section 9). We question how the rules of evidence would be applied and strongly oppose placing concepts of tikanga in such fora. We recommend that consideration is given to this term and to others to determine if they are in fact fit for purpose and appropriate in terms of tikanga. We also suggest that the rules of evidence should not be strictly applied to matters of tikanga.

Corporate Maori Entities

20. Taheke 8C and the Maori entities that support this submission are corporate Maori entities. Like many such entities, Taheke 8C is actively developing its assets to provide better returns to its shareholders. It is

operating in a commercial world and is mandated to do so by the current Act and by its shareholders. Taheke 8C considers it and other similar Ngati Pikiao corporate Maori entities should be enabled not prevented from progressing their work to date and the developments they seek to undertake in the future. It would be Taheke 8Cs preference to have such corporate Maori entities grandfathered under the Bill to enable them to continue with the structure they have and which their shareholders understand and operate under. As discussed further below they do not consider that 3 years is sufficient time to undertake the transition proposed and see little value and more confusion created by the Bill as drafted. It would be their preference that they not be forced into unnecessary costs of trying to comply with the Bill and its transition processes. Those costs could be better used to develop the asset base as approved by their shareholders.

21. The Bill attempts in a piecemeal way to reflect the type of entities that may be required in the modern world to manage Maori land resources. However where the Act had a clear framework for incorporations and trusts the Rangatopu provisions as they combine trust and corporate frameworks, are far from clear and are likely to create confusion. Both in their establishment and with the expected transition procedures in the schedules.

22. We would recommend that at least one of the two primary purposes in the Act is retained clearly as a purpose in the Bill. As the Associate Minister of Economic Development and the Minister of Maori Development we suggest that Minister Flavell should at the forefront of a Bill propose "Economic Development". Many Maori have moved on from passively managing the land, letting it be grazed by others. They seek a return from the land and understand the importance of economic development for the benefit of owners. This is reinforced as many owners are now living away from the land, often overseas.

23. By placing Economic Development at the forefront of the Bill as it has been under the Act recognizes the desire of most owners and provides direction to both Kaitiaki and the courts. It should in our view be retained as a reflection of a modern Maori land management structure.

24. If our recommendation that Maori Corporate entities are grandfathered completely is not accepted then we would also recommend that all matters relating to corporate Maori entities are set out in a separate Part of the Bill. It is Taheke 8Cs preference that if the Bill is to progress that their obligations are clearly set out and are easily read and interpreted, currently that is not the case. Based on the current Bill and other legislation we would recommend:

    a. **Acceptance and recognition of Maori owners rights to operate commercially and to have all the associated benefits:** The Companies Act provide directors duties, which are often distinct from trust duties. They reflect the desire of

shareholders to benefit from their membership. While the Bill may wish to provide for greater protections for the minority shareholders than the Companies Act and impose greater reporting responsibilities. Maori owners should have the right to pursue commercial ventures.

We recommend provision for a separate section of the Bill providing for commercial Maori entities, directors duties and shareholder and minority shareholder protections.

b. **Retention of "Incorporation" and "Trusts":** Mainstream investors, banks and other organisations, which interact with Maori organisations understand "Incorporation" and "Trust" just as they understand "Limited" in the corporate sense. There is jurisprudence relating to each. Creating a new name for an entity which has body corporate status will create confusion and cost as third parties will undertake further due diligence to understand what it is they may be contracting with.

We recommend that the corporate Maori entities retain the word "Incorporation" or "Trust" within their titles.

c. **Retention of existing Maori Authority tax benefit:** Currently certain Maori entities are entitled to a reduced income tax rate as Maori Authorities. While not currently clear we would seek to ensure that right and benefit is retained under the Bill. It is also likely that there are other benefits available to Maori entities under other enactments. We would seek that they are retained and enshrined in this Bill.

We recommend that Maori entities under the Bill retain the ability to be a Maori Authority for the purposes of income tax as well as any other benefits under other enactments currently available to Maori entities under the Act.

d. **Clarification of kaitiaki duties**: The duties the Kaitiaki are required to meet are not clear. Consider section 191 and section 225(b)(i) together. Some but not all trust duties are explicitly owed under section 191. However the court can hold kaitiaki to account requiring them to comply with duties under "any enactment, rule of law, rules of court, or court order (to the extent that the duty relates to the role of kaitiaki under this Act). This discretion owed to the court substantially increases the duties owed by kaitiaki without expressly stating all the duties owed. In the absence of legal advice kaitiaki will easily fall foul of section 225(b)(i).

We recommend that ALL the duties owed by Corporate Maori be set out in a part of the Bill relating to them. With corporate entities the duties may be more company like and

with trusts they will have the trust duties. Whatever the case those duties as are set out should be the ones that the courts assess directors and trustees by, not those of other enactments.

e. **Higher thresholds for applications affecting corporate Maori entities:** While we understand an intent of the Bill is to give Maori landowners greater rights to participate in the management of their land. It would seem that a number of provisions go too far and have the effect of enabling a few disgruntled owners to either take land or create significant cost for Maori entities and to disrupt the actions and decisions of the elected kaitiaki. This cannot be an appropriate framework to enable Maori entities to develop assets on behalf of all their shareholders. It is divisive and has the potential to prevent development not enable it. One such example is the enabling of one owner to make an application to remove blocks from Rangatopu. That one person does not have to consult with anyone else and or seek mandate for their application? Thereafter a group of 6 out of 10 owners can give authority to remove the block ignoring say thousands of other owners. We note that the same thresholds are in the Bill for:
   i. Establishing a whenua tapui (discussed further below); and
   ii. Decision making processes under the Bill.

   We recommend that the thresholds for making both an application affecting a corporate Maori entity and for a meeting approving the removal of land or establishment of a whenua tapui (if applicable) be commensurate with the size of the shareholding or beneficiary base in the corporate Maori entity.

f. **Retain the shareholding structure:** Currently it is proposed that shares in Maori Incorporations become undivided interests in Rangatopu. We do not believe our owners will support this change at all. This is a step back and will limit their ability to transfer those interests as they see fit to their children and other family members. See further discussion below.

   We strongly recommend that the shares structure is retained for corporate Maori entities.

g. **Increase the thresholds and reduce the compliance costs of decision making processes:** once initiated the process as drafted will cause significant compliance costs for Maori entities:
   I. where the rangatopu then has to hold a meeting a month later; and
   II. pay to advertise the meeting and make the proposal made available to owners; and

III. pay to have the meeting and voting systems in place.

One owner who initiates the process (for example they may be disgruntled because for example they were not successfully elected notwithstanding a proper process having been conducted), can put a proposal forward without talking to any other owners or seeking mandate from anyone else. Further there is nothing in the Bill stopping that owner from making another proposal a month or two after if they don't get their way in the process prior. Costing the rangatopu all over again.

We recommend that the decision-making processes as with the other thresholds discussed above be increased to reflect the size of the shareholding in or the beneficiary/shareholder base of the corporate Maori entity.

h. **Removal of the requirement that land asset sales be used to buy more Maori land:** in an ever more commercial environment many of the overtly trust like obligations and duties may not naturally fit. However they are prescriptive requirements under the Bill and cannot be ignored. A number of the restrictions created under the Bill are not warranted and fail to reflect the commercial reality of what these entities may wish to do. For example the Bill requires Rangatopu to use the proceeds of sale of land to purchase more land, which must then be converted to Maori land? Subject to meeting the obligations agreed by the owners in the governance agreement we suggest that Rangatopu should be able to use the proceeds of sale for other investments not just the purchase of land.

We recommend that the requirement that land asset sale proceeds be used to buy more Maori land be removed for corporate Maori entities.

i. **Make the Bill more user friendly and readable:** All existing Maori incorporations and trusts will have to hire lawyers and consultants to work through this Bill to understand how it effects them. The Bill as drafted is difficult to read requiring cross-referencing across the Bill and Schedules. This will not be easily done and there is a risk that obligations and processes will be missed leading Maori entities to be in breach of their obligations under the Bill.

Notwithstanding the use of the standard agreement template (which isn't provided with these consultation documents) Maori entities will still need to get advice to understand how to operate under the Bill and the obligations they will face under their new constitutional documents. Further Maori entities will be required

to draft land management plans among others and update registers. Small Maori entities are unlikely to have had to meet such obligations before and are likely to find it difficult to comply with and meet the costs associated with completion and approvals.

We recommend that the Bill is recast to enable easier reading and interpretation for the "kaitiaki" who will be required to comply.

j. **Reduce Compliance Costs:** Has TPK and the Minster undertaken a review of the compliance costs created by this bill for owners and Maori entities? We question whether small or medium sized trusts or incorporations can afford to meet the compliance costs of all the proposed processes under the Bill?

We recommend that the Ministry undertake a full cost benefit analysis of the costs associated with compliance with this Bill for both landowners and Maori entities. We recommend those details are made public before the Bill is introduced into the house.

Whenua Tapui

25. Taheke 8C is deeply concerned about the Whenua Tapui provisions and the impact they could have upon the structure of existing Maori entities. We understand the desire to provide protections for areas of cultural significance. However the definitions of potential whenua tapui are far broader. They include:
    i. building site – sites are not limited to papakainga housing;
    ii. landing place – this could mean jetties or stretches of water side property;
    iii. a spring, well, catchment area or other source of water supply – is this limited to freshwater or are geothermal resources included?
    iv. a timber reserve – native only or existing planted forests?
    v. A place of scenic interest.

26. We question the legitimacy of some of these headings and the lack of limitations upon them. A catchment area for example is a well-known resource management term and such an area can stretch for significant distances. Would a Whenua tapui placed over a catchment area in effect take Maori land from many Maori entities simply because they are in that catchment area? If limited to a landowners land rights in the catchment area how would this small area protect the entire catchment?

27. These headings have the potential to be commercial sites represented as cultural through a whenua tapui application. We note also if the whenua tapui are supposed to be retained in reserve like status why

does the Bill allow the new administering bodies to lease and license the land? Appropriate uses such as marae or urupa would not require such a power.

28. Given the minimal thresholds for seeking and approving a Whenua Tapui under the Bill a few owners will therefore be able to remove these sites from Rangatopu and then lease and license the commercial rights. This will inhibit the activities of Maori entities who will be fearful that in entering commercial arrangements and spending money and taking on obligations that they will lose said land to a whenua tapui application and another administering body who will then seek to benefit from the development and work of the previous holding Maori entity.

29. For Taheke 8C which is sited on a geothermal reservoir, have existing contractual obligations and have geothermal wells on their land, these provisions could be catastrophic. Further the provisos provided under the Bill are not sufficiently clear or helpful and give little confidence to Taheke 8C. Land held by a Maori entity under a governance agreement is excluded under section 30(2)(a). However the same section refers the reader to section 181, which enables landowners to remove land from the administration of a Rangatopu. Basically a large red flag promoting removal by owners. The threshold for removal of land is (as with the Whenua Tapui provisions); low.

30. The further proviso at section 30(2)© states that land leased or licensed cannot become whenua tapui where said lease or license is inconsistent with the purpose for which the land is to be reserved. This provision seems to suggest that where for example land is leased for geothermal purposes and the whenua tapui application seeks to remove the land because it retains a geothermal well or is situated upon a geothermal catchment area that the application could be allowed, notwithstanding the lease, because it is consistent with the purpose of the whenua tapui. A new administering body could then seek to agree a commercial lease with the existing developer or generator on their preferred terms for the benefit of a smaller group of beneficiaries than the larger Maori entity and there would be nothing a Maori entity like Taheke 8C could do. Rather Taheke 8C would be in breach of its contractual obligations and its shareholder (excluding those who benefit from the whenua tapui) would be significantly worse off, yet all shareholders through Taheke 8C have spent the time and resources getting to the point of benefiting from that asset. Nor is there a time limit for applying for whenua tapui status. It could happen at the point that wells are drilled and commercial activities are underway. All at considerable expense. Is that the intention of Whenua Tapui? That's not our understanding of the purpose of a reserve nor the overarching purpose of the Bill.

31. We also note that there is no clarity as to the status of the "administering body". Is it to be a rangatopu? Is it obligated to meet the

same obligations and criteria for director appointments etc. that Rangatopu will be?

32. During the consultation process the question was asked who might be appointed as an administering body and examples were the Maori Trustee and an Accounting Firm. We cannot see how an accounting firm would reflect the interests and tikanga of a reserve, rather we would expect that it would seek the most commercial arrangement possible to ensure the firm would be paid for its services. We see the potential for an inherent conflict of priorities and potential interest in such an arrangement.

33. Finally we ask whether the Whenua Tapui will replace the Maori reservations provided under the current Act? Maori reservations are not subject to local authority rate payments. Will this continue with Whenua Tapui?

34. These points as with the ones above simply reinforce Taheke 8Cs concerns that these provisions could be used to the significant detriment of commercial Maori entities and the majority of their shareholders.

We recommend that the Bill be amended to:

a. ***remove Corporate Maori entities from the jurisdiction of the Whenua Tapui provisions in the Bill.***
b. ***Clarify the criteria for an administering body to allow for rangatopu and to ensure the same high thresholds of competency as is required for rangatopu.***
c. ***Ensure that Whenua Tapui is not subject to local authority rates.***

Usurpation of Property Rights

35. As discussed above it would seem the intent of the Bill is to remove the concept of shareholding and or the rights of large shareholders to determine how they wish to use their shareholding. However this intent is not overtly stated in the Bill rather it is referred to in the transition schedule. Specifically:

> *2. Existing Māori incorporations continue as rangatōpū*
> *(1) On the commencement date,—*
>
> *(e) the shares in the incorporation continue as undivided interests in the Māori freehold land managed by the rangatōpū.*
>
> *3 Rights of shareholders of existing Māori incorporations preserved during transition period*
> *(1) During the transition period for a rangatōpū that continues an existing Māori incorporation under* clause 2,—

(a) the rangatōpū must continue to maintain a share register in accordance with section 263 of Te Ture Whenua Māori Act 1993, which applies as if it had not been repealed by this Act and as if—

(i) the requirement to have a share register were a requirement to have a register of owners; and

(ii) any reference to shares were a reference to undivided interests in the Māori freehold land managed by the rangatōpū under the transitional agreement; and

(iii) any reference to shareholders were a reference to the owners of the undivided interests in the Māori freehold land managed by the rangatōpū under the transitional agreement; and

(b) the shareholders in the existing Māori incorporation continue to have the same rights and entitlements in respect of the rangatōpū and the asset base as they had in respect of the incorporation and its operations under Part 13 of Te Ture Whenua Māori Act 1993 and the Māori Incorporations Constitution Regulations 1994.

(2) If the rangatōpū updates its transitional agreement as described in clause 7(1)(a), the rangatōpū must ensure that the updated governance agreement that replaces the transitional agreement does not materially alter the rights and entitlements of a person who was a shareholder in the incorporation.

36. While there is an attempt through clauses 3(1)(b) and 3(2) to retain rights it is not clear:
    a. Given the intent of this Bill is to replace and therefore repeal the Act and regulations it seems likely that the protections for shareholders under clause 3(1)(b) will extend only until the Maori entity transitions or the 3 year transition period expires.
    b. Clause 3(2) is not clear whether the rights and entitlements referred to and to be enshrined in the transitional agreement will be those from the Act or those already referred to in the Maori entity's existing constitutional documents.
    c. Neither clause will protect the retained rights and obligations of those shareholders should they conflict with the Bill.

37. Shareholders are not being asked to change their shares to undivided interests. Nor do we believe our shareholders would agree to this change. It is acknowledged law and common law that People are entitled to the peaceful enjoyment of their property. The law actively protects property rights. The Crown should not take a person's property without good justification. Should this occur via the Bill it will also be a breach of the Treaty of Waitangi.

Again we recommend that as part of drawing all matters relating to corporate Maori entities into a single Part of the Bill we seek the retention of shares as set out in the Act and the powers and rights attributable to them.

Impact of Succession and other rules upon Maori Land owners

38. It is Taheke 8Cs view that if the intent of the Bill is for owners to have more choice then as drafted the Bill does not in a number of instances provide that choice, rather it imposes more obligations and costs upon owners. Taheke 8C are deeply concerned that their shareholders who will be expected to comply with these obligations will be seriously disadvantaged:

a. If we consider the process of partitioning a piece of a block under the Bill owners will have to undertake a resource consent process if they want to partition land. Partitioning often happens for example where landowners wish to be able to put a house on it for one of their children. Partitioning enables the child to apply for mortgage finance as the owner. To treat the partition as a subdivision will be prohibitive as:

   I. around the country many councils are enforcing strict rules and conditions on sub division. For Maori land often with little land value this will be a prohibitive effect.

   II. Further much of Maori land is in rural areas with set subdivision block sizes. The impact of fragmentation may mean the size of the land that can be partitioned is well below the sub division rules. This will in effect limit the development of land and opportunities of Maori to use the land for housing.

   III. No local authority is going to undertake this role for free and consents (even non notified) cost thousands for the consent applicant.

   IV. Finally it is inappropriate for a local authority to "decide" conditions for a partition order. The Court will have no discretion. Local authorities should not in effect have judicial authority. Rather they should have recommendatory powers only.

b. A further example of the increased costs is the full tender process identified at sections 80 and 81 should a landowner wish to sell a parcel of Maori land. This preferential tender process, which will require advertising and which may or may not lead to a sale. But will incur significant cost for the landowner. There should be allowances for instances where for example:

   I. The land is to be sold to a child of the land owner; or

   II. The land is so small or the value of the land is such that to undertake the tender process would be more than the property itself is worth.

c. many Maori do not have wills. While in that instance it may be appropriate upon the death of a person who is intestate to place their interests into a whanau trust that should not be a matter of legislation (s233(2)), rather it should be up to the beneficiaries. Further to define the purposes of the trust as if they were a charitable entity is also not appropriate. This again is a matter that should be left to the court and family discretion.

39. There are a number of other examples we could use. The effect of the Bill is to limit not enhance the actions Maori land owners can take with respect to their land interests. Further Maori entities such as Taheke will be at the forefront of trying to assist their shareholders through this Bill and its implications for them. We would not have those shareholders significantly disadvantaged by the limits and costs associated with these changes. As with other parts of our submission we ask whether officials have undertaken a cost benefit analysis of the compliance costs Maori land owners will face under the Bill and if so we would ask that this information be released before the Bill is introduced to allow consideration.

We recommend that the Bill:

- ***a. is amended to provide for less costly mechanisms for Maori land owners to utilize their land including excluding partitioning from subdivision rules and resource consent.***
- ***b. Is amended to provide more discretion to successors of interests and the courts at the point of succession and intestacy.***
- ***c. Is assessed for costs and benefits and specifically the compliance costs, which Maori landowners will face should it be enacted. That information to be released publicly before the introduction of the Bill.***

Maori Land Court Jurisdiction

40. Taheke 8C question the need to strip the Maori Land Court of so many of its responsibilities. The court is a safe pair of hands to hold the information it retains and people understand where they must go and what is required to sort out matters relating to their land interests. It's not perfect but people understand it and the compliance costs for owners are less than they will be through the new Bill. Under the Bill there will be:
    a. One entity that holds land records and assists with succession. That entity we understand will also issue panui and advertise meetings where required;
    b. Another entity that will hear disputes

c. The court as the arbiter of final recourse (if possible).

We see little need for the separation of duties and the incumbent compliance costs, which will occur.

41. Further the Bill does not clarify that the Chief Executive is the Chief Executive of Te Puni Kokiri. It could be LINZ or any Crown entity over time. The ownership records and history of the blocks are taonga now. The only place often where you can find important histories and whakapapa from early times relating to the land. They should not be held by government agencies that do not understand the cultural significance of them?

42. The Maori Land Court has regional offices or at least people can access them. Can the Minister guarantee (when TPK has been restructured a number of times) that people will always be able to access the information they need under this Bill? If not the Maori Land Court, then rather then establishing a disputes resolution service (see comments below) a body within the court or independent of it with Maori input and overview should be established to hold the records.

43. Why establish a disputes resolution service instead of using the court? Is the Minister sure that the proper balance between tikanga and natural justice has been met under the Bill?

d. Why is it not clear in the disputes process that the Kaitakawaenga will require legal skills?
Under section 296(3) people could lose their legal right to go to the court (except for enforcement issues) if they agree to terms during this process. Given the risk of people attending without legal counsel, not understanding the implications and the lack of a cooling off period under the Bill, people need to be properly advised and the bill requires the Kaitakawaenga to tell them. At the moment they are required to have cultural and or reo skills.

e. Given the process above the owners will be more likely to take legal counsel and this will increase compliance costs for owners.

f. Given the skills needed within the disputes process what is wrong with the current court process and is there a need for this new disputes process and its incumbent risks?

g. The Bill does not recognise that the majority of disputes are between whanau members. Establishing a disputes resolution service will not resolve the issue and has the risk of relatives adjudicating disputes between relatives (given one of the criteria for Kaitakawaenga is understanding of hapu tikanga) and creating the perspective of conflict. The most appropriate forum for all disputes to be dealt with is before a Judge in the Maori Land Court.

44. Why are panui now issued by the Chief Executive? This process will create double handing with the court now being responsible for accepting that the CE has appropriately advertised? Is there likely to

be conflict if the court is of the view that panui have not been properly dealt with?

45. Has as an assessment been done of the cost benefits of the proposals in the Bill and specifically of the compliance costs of all these new services and obligations? Why create costs that may not be necessary or effective or, which the court staff could undertake or maintain? If so can this information be released publically prior to the Bill being introduced?

46. Ultimately Taheke 8C do not see the need to for the changes proposed. The current system is known and understood and Maori owners and entities know where to go to have all matters relating to Maori land dealt with. We do not see the need to strip the court of the responsibilities it has. Nor is there in our view a basis for the not inconsiderable costs, which will be incurred to create these new systems.

We recommend that the jurisdiction of the Maori Land Court is maintained with respect to the management of Maori land.

Subjugation to other legislation

47. The Bill combines pieces of other legislation.
    a. the Companies Act for the criteria for director appointments
    b. Official Information Act for withholding information
    c. the RMA.

48. We question whether all the issues and implications have been considered when including them? There is a considerable risk that the Bill will be subjugated to other legislation, in contrast to the existing Act, which has acted as a safeguard for Maori land. Of particular concern is the interaction between this Act and the RMA. By way of example section 27(6) of the Bill states:

> *In this section,—*
> *(a) **RMA** means the Resource Management Act 1991:*
> *(b) a term that is not defined by this Act, but is defined by the RMA, has the meaning given by the RMA.*

49. We ask whether all the definitions in the RMA and the case law relating to them were considered before section 27(6) was inserted into the Bill? This section has the potential for unintended consequences with subsequent amendments to the RMA having primacy over the application of this section and the Bill. Amendments made in the absence of consideration of their application to the Bill or the implications for Maori land owners. That is in our view bad in policy and law.

50. Further in removing land retention as a purpose Maori landowners lose a key protection mechanism. In fact in removing it and introducing sections, which enable the easier alienation of land there is a significant risk that owners will lose land by legislation and without their agreement. One such example is the enabling of the taking of land through esplanade strips under the Bill and the RMA.

> *87 Agreement to certain dispositions of parcels under enactments*
> *(1) This section applies to a disposition in relation to all or part of a parcel of Māori freehold land that—*
> *(a) may be made or agreed to under an enactment other than this Act; and*
> *(b) is not restricted by another provision in this Part.*
> *(2) The disposition may be made or agreed to, but only in accordance with this section.*
> *(3) The disposition must be agreed to—*
> *(a) by the governance body, if the land is managed under a governance agreement; or*
> *(b) by a 75% majority of all of the owners of the land, in any other case.*
> *(4) The disposition must be conditional on the court making an order of confirmation that it complies with the requirements of this Act.*
> ***(5) This section applies, for example, to the making of an agreement to create an esplanade strip over land under section 235 of the Resource Management Act 1991.***

51. Taking Maori land for esplanade strips is not currently allowed under the Act and under jurisprudence. Taheke 8C, through its appeal to the Proposed Rotorua District Council District Plan have ensured that under the proposed Rotorua District Plan that it is clearly articulated that the rules relating to esplanade strips do not apply to Maori multiply owned land. Section 87 takes that protection away and in fact enables land to be taken via agreement. Councils will look to this clause to enable plans to provide for such arrangements rather then excluding Maori land completely.

We recommend that:

a. ***the Bill is revised to ensure its independence from other legislation.***
b. ***Section 85 is deleted and the status quo of protecting and retention of Maori land from taking by councils for esplanade strips is enshrined.***

Process: Consultation

52. There are many more aspects and issues the Bill has either failed to address or is causing. We have reflected specific questions and implications in the **attached** Specific Comments Table. We raised a number of them at the consultation hui held on 22 June 2015 in

Rotorua. Feedback to the hui participants from the panel was that whatever we said or submitted on would not stop the Bill from being introduced – a fait accompli. Given the Maori Party's stance on proper consultation we find this approach to the Ministers Bill to be unconscionable. Given the significant concerns we are raising we would ask neigh expect that our submissions would be given the weight they deserve given Taheke 8C and its shareholders will be directly and (if introduced as is) detrimentally effected by this Bill.

53. Nor did the consultation hui directly reflect on some of the significant issues in the Bill (for example the change of shares to undivided interests). Given the complexity of the Bill we consider this again is a dereliction of the duty owed by the Minister to Maori who should be enabled to understand the true impact of the Bill upon them.

Final Recommendations

54. We ask the Minister given the significance of the Bill to the Maori entities and Maori people to reconsider the Bill and its intent. We believe that should the Minister wish to proceed with the Bill it will need to be substantially redrafted and in its redrafted state should then be consulted upon and further submissions sought. The Bill is that important and should not be rushed. As drafted currently it is complex and we fear that all the issues it raises have not been appropriately addressed.

55. In respect to Maori Incorporations and Trusts (particularly those operating large commercial projects and or undertaking significant commercial contracts and developments on their land) we believe they should be grandfathered from the provisions of the Bill. Three years is not long enough to enable them to comply and the risk to existing commercial arrangements of the uncertainty created by the Bill is significant. We note that the standard agreement has no timeline for completion via regulation and the delay could eat deeply into the 3-year deadline. Further Maori Incorporations and Trusts should be excluded completely from the whenua tapui provisions (which themselves should be limited to cultural sites such as marae and wahi tapu). Approval and implementation thresholds relating to removal of land and disputes processes should also be higher and reflective of Maori Incorporations and Trusts with significant shareholder/owner numbers.

56. Finally we note that it was stated both at the consultation hui and in media information that the Bill would be introduced in or near October 2015. We reiterate that we consider that the Bills introduction in that time would be inadvisable and rushed. One need only look to the passage of the Foreshore and Seabed Act to see that legislation pushed through without due consideration is not appropriate. We should not repeat those mistakes.

57. The timing of proposed introduction is also unhelpful as Select Committee will either require submissions over or during the Christmas period with hearings potentially in the early new year or the committee will have to seek an extension to the standard parliamentary reporting timeframe. As is well known November is often the period where Maori entities hold their Annual General Meetings, which take up significant time and resources to prepare for. Thereafter the Christmas and New Year period is a difficult time to try and complete such significant tasks incorporating consultation with owners included. On that basis it would be preferable if introduction were delayed till early 2016 so that the select committee process could be completed in the first half of 2016 and Maori entities and their shareholders and beneficiaries could appropriately participate in the process.

Nāku noa nā

Sandra Eru
General Manager

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
Purpose of the Act	Section 2: Has removed economic development as a purpose	This is a watering down of the Act placing a greater emphasis on trusteeship rather then commercial development. With the removal of incorporations as well there is no provision in the purpose for the choice of owners to have commercial entities developing their lands ***Recommendation: Re insert economic development into the purpose***
	The purpose of this Act is to empower and assist owners of Maori land to retain their land for what they determine is its optimum utilization.	"what they determine" – what if not all owners agree? The removal of economic development which is a well known term replacing with optimum development which is not will lead to confusion and greater likelihood of litigation as owners argue what is the most optimum use. ***Recommendation: Re insert economic development into the purpose***
Achieving purpose	Section 4(1) A person who exercises a power or performs a function or a duty under this Act must do so, as far as possible, to achieve the purpose of this Act	"as far as possible" is far to general and can be ambiguously read ***Recommendation: delete "as far as possible"***
Maori version prevails	Section 3 The English version explains the purpose of this Act in English, but the Maori version prevails and is not affected by the explanation	The English version should be an exact reference to the Maori version. Why are we creating the potential for litigation over differing translations?

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		Recommendation: Ensure that both versions are the same or where there are differences that are clarified.
Recognising principles	Section 4(2) In seeking to achieve that purpose, the person must recognize the principles of this Act. Section 4(4) sets out the English principles	The principles are not clear - How will tikanga guide matters? What matters? - How will sub section (d) marry with other legislation which will conflict i.e. will not allow development? (D) gives the owners the "right" to develop. ***Recommend clarity of principles***
Maori version prevails	Section 4(5) The English version explains the principles of this Act in English, but the Maori version prevails and is not affected by the explanation	The English version should be an exact reference to the Maori version. ***Recommendation: Ensure that both versions are the same or where there are differences that they are clarified.***
Interpretation	**Asset Base** – means the Maori Freehold land, investment land and other assets and liabilities managed by a governance body under a governance agreement	Includes all assets and potentially places the same obligations as those for Maori land on them whether Maori land or not? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities. Recommend that the Asset base subject to the Bill be limited to Maori land assets.***
	Chief Executive	The definition means that in the future it could be the chief executive of LINZ or other as opposed to one with Maori specific experience such as TPK.

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		Recommend that the land information be retained in the Maori land Court or an entity specifically Maori based.
	Descendent	Includes Whangai: Not all hapu or Maori entities provide for whangai. Therefore imposing it upon them will limit the application of the Bill to such groups ***Recommend discretion be provided for the inclusion of whangai.***
	Governance agreement	How does the governance agreement interact with the Act? Particularly when the asset base is not all Maori land? Why are all assets potentially placed in a trust type scenario of risk versus pure commercial. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
	Investment land	As above asset base includes non Maori land potentially ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities and that such entities and their shareholders have the ability to determine their own investment decisions to determine the best use of resources without limitation by the Bill.***
	Kaitiaki (d) …comparable with that of a director of a company	"comparable" so what are the differences?

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		See submission re the misuse of the word Kaitiaki. ***Recommend that*** ***a. a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities including directors duties and definitions*** ***b. Maori terms are defined appropriately and not defined beyond their cultural definition***
	Maori Land Register	Held by the chief executive so matters relating to succession and whakapapa could be held by a non Maori organization ***See Chief Executive recommendation***
	Maori Trustee	Given the emphasis on Maori terms why isn't the Maori name for the Maori trustee used? ***Recommend refer to the Maori name for the Maori Trustee***
	Rangatopu	A Rangatopu becomes a body corporate once certified. How do you ensure mainstream understand this as no "Ltd" or Incorporated etc. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities. Retain the word Incorporation for commercial entities***
	Wahi tapu and Wahi tupuna	Definitions are referenced to the Heritage NZ Act. However this will mean that should that definition be changed in that Act it will immediately change in this one without potentially consideration of the impact upon the owners and entities operating under this

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		Bill. It is preferable that the definitions are clearly stated without reference to another piece of legislation. ***Recommend that this Bill is not subjugated to other legislation and stands in its own right. These Maori terms if used should be defined appropriately in the Bill.***
Explanation of Maori Terms	S6(1)(b)	Why given the purposes and principles conflict clauses why di the English definitions override the Maori ones? Kaitiaki and Rangatopu are repeated with different definitions to the English section. ***Recommend avoiding confusion the terms should be defined once.***
	Kaitiaki	Is defined as "someone…" This is bad drafting. Should refer to a "person" not "someone" Placing trustee obligations on potentially commercial entities. Kaitiaki and Rangatopu are repeated with different definitions to the English section. ***Recommend that*** ***a. a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities including directors duties and definitions*** ***b. Maori terms are defined appropriately and not defined beyond their cultural definition*** ***c. "someone" is replaced with "person"***

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
	Rangatopu	Why include a second definition? ***Recommend a single definition to avoid confusion***
Evidence of applicable tikanga Maori	Determined on the basis of evidence	So the rules of evidence apply? How will this work with tikanga and again is it appropriate for courts to adjudicate tikanga? ***Recommend that tikanga is allowed to be provided for in non evidential means to manage issues of hearsay etc.***
Court may change status of Maori Customary land to Maori freehold land	(3)(a) CE must at court direction notified and held a meeting of the owners	Why is the CE holding meetings? There is a disconnect with the Court assessing the CEs processes The CE could be of a non-Maori organization how will they hold meetings for Maori owners? We note that panui are still referred to in respect to establishment of whenua tapui why are there two forms of notification? This will create confusion. ***Recommend that meetings should be co ordinated though the Court***
	(3)(b) simple majority	should only a simple majority of the owners of the land who attend the meeting be the minimum required to pass such a resolution for a land status change? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities. Recommend that this clause is reconsidered and appropriate percentage thresholds provided for to protect***

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		owners
	(6) changing land to Maori freehold becomes subject to Land Transfer Act 1952	What are the Implications of this? Who bears the costs and what are they? ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
Meaning of owner	S8	The definition does not include parties with undivided interests. Please include a definition ***Please clarify***
Court may change status of Māori customary land to Māori freehold land	S16	Currently Maori customary land is exempt from local authority rates. Will this continue under this regime? ***Please clarify***
	S22(d)	Exchange of land in accordance with s82. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities and that such entities and their shareholders have the ability to determine their own investment decisions to determine the best use of resources without limitation by the Bill.***
How land ceases to be Māori freehold land	S25(1()e) another Act expressly provides that land ceases to be Maori land	How does this provide for retention of Maori land? This Bill should be the only means of changing status? What acts are they referring to?

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Issue	Draft Bill	Comment
		Please provide clarification
Land ceases to be Maori Freehold land by declaration	S26(5)	Partitioning must go through a resource consent process before order is given. Many plans prohibit subdivision under plans in rural areas and or the size of the lot is larger. This requirement will in many cases make impossible to partition blocks for use by owners. Cost prohibitive. How does this improve things for Maori Owners? As with s27 below requiring the Court to defer to the decision of the local authority in respect of conditions is usurping the Courts power and is not appropriate. Local council should only be able to make recommendations thereby retaining the courts unfettered inherent jurisdiction. ***Recommend*** • ***an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.*** • ***That partitioning not be treated as a sub division and be subject to the RMA***
Local Council determinations re partition applications	S27	References are made to Local Authorities "deciding" and "determining" conditions on a partition order to be made by the Court. This is not appropriate and usurps the power of the court. A local authority should only make recommendations to the Court, which will have overall jurisdiction to determine the

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		appropriateness of an application. **Recommend that the Court retains its power over activities relating to Maori land and that local councils retain only recommendatory powers.**
RMA definitions	S27(6)(b) a term that is not defined by this Act, but is defined by the RMA, has the meaning given by the RMA	Impact of having RMA definitions referred to in this Bill? Clause does not limit to those in this Bill. ***Recommend that the Bill be revised to ensure its independence from other legislation.***
Whenua Tapui	S 28 Definitions	Very broad including - A bathing place - building site - a landing place - a spring, well, catchment area or other source of water supply - a timber reserve - a place of cultural or historical interest - a place of scenic interest - a place of special significance according to tikanga Maori - any other place stated in the declaration The impact is that a whenua tapui is that the land can be placed in the hands of an administering body ***Recommend that the definitions of whenua tapui are limited to marae, urupa and other such cultural sites***
Application for court order declaring private land reserved	s29 and 36	There is no definition of administering body. How will an administering body be determined as fit for purpose? What are

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
as whenua tāpui and Administering bodies		the criteria? What are its powers? Are they limited to those defined in the Act? Who takes oversight? Are any entities specifically excluded? At the very least criteria should include the requirement that governors must not be subject to any of the disqualifications set out in section 214(3). ***Recommend that a definition is provided for administering bodies and that either section is extended to cover all matters relating to administering bodies so that it is clear what they can do.***
Court must be satisfied of matters and consider submissions for whenua tapui on private land	S31(3)©	Subsection © requires agreement by the owners of the land . However there is nothing in this section for the establishment of new whenua tapui that sets thresholds for agreement by owners. Rather it is submission to the courts that will set out agreement or otherwise. However direct notification will not occur unless you are primarily listed on the application. It will not be in the applicant's interest to list people opposed to the application. This includes an obligation to notify Rangatopu if the land has been removed via this Bill. The Court then determines on the submissions to hand there is no obligation to hold a hearing. We note also matters such as protection from paying local authority rates, which are provided to urupa etc. now are not covered under this section. We suggest that it is clarified either in the Bill or relevant local government legislation that this benefit is extended to whenua tapui.

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Issue	Draft Bill	Comment
		Recommend that: ***a. a more transparent means is identified to enable all owners to be notified and participate*** ***b. Rangatopu who have had land removed or are affected by land applicable to a whenua tapui application should automatically be directly notified of the right to make submissions*** ***c. there should be thresholds of owner support set out for new whenua tapui*** d. ***a hearing should be required rather then deciding just on submissions.*** ***e. Ensure that Whenua Tapui is not subject to local authority rates.***
	S31(6)(d)	Why is the means of notification "panui" in this part and in others the CE must notify? Why are there two methods of notification in the BIll, which will cause confusion for owners who will not know which to keep updated by. Preference would be for one method via panui, which is well known by owners and Maori entities. ***Recommend that the Bill have one form of notification to Maori owners via the Court.***
Court order relating to **existing** whenua tapui	s34(5)© and (d)	The minimum required for approval was - at least 10 beneficiaries attending the meeting - the application is agreed by a simple majority of beneficiaries attending the meeting - 6 people could in effect carry the vote to transfer a piece

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Issue	Draft Bill	Comment
		of Maori land to the whenua tapui status and the administration of another entity Further we note that the administering body must notify and hold meetings. What is the minimum threshold for notification, whom must they notify? These things should be spelt out to protect objecting owners. We note also matters such as protection from paying local authority rates, which are provided to urupa etc. now are not covered under this section. We suggest that it is clarified either in the Bill or relevant local government legislation that this benefit is extended to whenua tapui. ***Recommend that the Bill be amended to:*** ***a. remove Corporate Maori entities from the jurisdiction of the Whenua Tapui provisions in the Bill.*** ***b. Clarify the criteria for an administering body to allow for Rangatopu and to ensure the same high thresholds of competency as is required for Rangatopu.*** ***c. Ensure that the requirements for notification by administering bodies is clearly spelt out in the Bill.*** ***d. Ensure that Whenua Tapui are not subject to local authority rates.***
Effect of declarations about whenua tapui	S35(3)©	Subsection 3 gives an owner the right to enter whenua tapui at any time subject to restrictions. Sub clause © enables any

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Issue	Draft Bill	Comment
		"reasonable conditions or restrictions" imposed by the administering body – reasonable to whom? Should this be limited to conditions prescribed by law? Alternatively should the presumption be that owners could not access the land without the approval of the administering body? Is s35(3) too broad and is there a risk under health and safety legislation and other obligations and therefore liability for the administering body? ***Recommend that consideration be given to this clause and its practical application.***
	S35(3)(d) The land remains affected by any lease, license or easement that affected it immediately before the reservation See also s37	How does this work: a. when the lease for example was held by one Maori entity as lessor and the administering body is another entity. b. Particularly if the lease agreement does not allow for assignment? c. What if the administering body does not want to take up all the obligations of the current lessor? d. How does this work if the term for the existing lease is longer then 14 years, which is as long as an administering body has the power to lease? e. Have the rules relating to privity of contract been considered in the drafting of this clause? ***Please clarify***
Administering Bodies	S36 and s29	See comments and recommendations re section 29 and the need to ensure that all relevant details and restrictions are set out in the Bill.

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Issue	Draft Bill	Comment
Administering body may grant a lease or license	S37(1) The administering body of a whenua tāpui may grant a lease or an occupation lease or license to any person over all or part of the land or any building on the land for the purpose of carrying out any activity, trade, business, or occupation.	We suggest that cultural sites such as urupa and marae should be specifically excluded from this clause. Frankly if a piece of land is of sufficient cultural significance to become a whenua tapui why should the administering body have such wide ranging powers to alienate it through lease or license? See also comment above re s35(3)(d). ***Recommend the administering bodies powers to lease or license are restricted.***
Reservation and disposition of whenua tāpui	S38(2)© a disposition of an individual freehold interest in the land separately from the other individual freehold interests in the land.	Why can the owners of a whenua tapui retain individual interests while a third party administers the land? Yet existing shareholders in Maori incorporations will be forced to retain undivided interested once the bill is enacted? ***Recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***
Examples of multiple owners of parcel of Maori freehold land	s39(1)	Typical examples – what are atypical examples How are undivided interests such as those that existing shareholders in Maori Incorporations to be dealt with? All examples including undivided interests should be clearly explained and defined. ***Recommend that officials clarify and include all examples including undivided interests*** ***Recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***

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Issue	Draft Bill	Comment
Presumption of tenancy in common and equal sharing where multiple owners	S40 and s40(1)(b)	How does this work? If a current shareholder in a Maori incorporation has multiple shares how does sub clause (b) affect those shares. Are you effectively saying those shares reduce down to one beneficial interest and therefore one equal share in the land? ***Recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***Please clarify***
Right of Owners	S41(1)(b) and s41(2)(a)	We recognize that sub section 1 relates to land not held by a governance body. However unless the governance body knows to clarify their obligations within their governance agreement they will be caught by sub clause (1). How can one ensure that landowners are informed of "all matters relating to the land"? At what point does the onus fall to the landowners to keep informed? Further how is a landowner to be "recognized and acknowledged as an owner? Who is to provide that recognition and acknowledgment and what are sufficient to comply with this requirement? **Please provide clarification and *we recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities. This would include such considerations as set out in s41(1) and (2).***
Right of Owners	s41(2)(b) court can hold proceeding without holding a formal sitting or without	We question whether this provision breaches the laws of Natural justice and the right to be heard.

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Issue	Draft Bill	Comment
	hearing	***Please clarify***
	41(3) subsection 1 does not limit or affect other rights that owners may have at law or in accordance with tikanga Maori	What other rights and tikanga? How can subsection 1 be submissive to this clause? ***Please clarify***
Conversion to collective ownership of Māori freehold land	S42	How does collective ownership differ from placing land under a governance body? ***Please clarify***
Effect of conversion to collective ownership	S43	How does s43 work including with respect to undivided interests and subsection (2), which extinguishes all beneficial interests in the freehold estate of the land? ***Please clarify***
Collective owner has no separate interest	S44(1) A collective owner of a parcel of Māori freehold land has no interest in the land that can be dealt with separately from the interests of the other collective owners.	Is this what an undivided interest is? Is this the impact of having an undivided interest i.e. the inability to sell or transfer? ***Recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***Please clarify***
Decisions by specified majority of owners of Maori freehold land	S45	Very complicated processes referencing other sections and schedules. The participation thresholds in subsection (4) should be moved to a separate part for Maori entities and or the definitions

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		section as it lost in the detail of the Bill and this sub section sets out a significant set of thresholds for both the Act and governance agreements. These thresholds should be consistently used including when owners wish to apply for removal of land, whenua tapui and decision making processes to ensure that owners have the mandate to make such applications and to reduce vexatious and costly applications for Maori entities. ***Recommend that:*** ***a. a separate Part of the Bill is drafted to provide for all provisions relating to commercial Maori entities.*** ***b. Thresholds should be consistently used in the Bill for actions and applications affecting Maori entities to avoid vexatious actions and unreasonable compliance costs*** ***c. the Bill is recast to enable easier reading and interpretation for the governors who will be required to comply.***
Minor cannot vote on decisions and is ignored in calculations about decisions	S46	It is unreasonable that minor's interests are completely ignored. Consider providing mechanisms for court-approved representation where minors have significant interests in land and require those interests to be protected.
Voting for individual freehold interest owned by joint tenants	S47(1) and (2) and s51	In the example provided one joint tenant can vote for the other joint tenant who may not be in attendance and who may disagree with the vote cast. In that instance it is not covered by the exclusion of vote due to conflict as the other person is not there to state their opposition. Under s51 the vote made binds

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Issue	Draft Bill	Comment
		both joint owners. We consider this could lead to litigation as normally a non-participating person bound under s51 has control of his or her own interest. They have just chosen not to exercise it. In this example someone is exercising their half interest without their agreement and they are not there to protect their interest. ***Recommend the nexus between s47 (1) and (2) and s51 is reconsidered.***
Voting definitions	S48-50	As with s45(4) the definitions in these sections should be moved to a separate part for Maori entities and or the definitions section as they are lost in the detail of the Bill and these section sets out a significant definitions that governors will need to understand. ***Recommend that:*** ***a. a separate Part of the Bill is drafted to provide for all provisions relating to commercial Maori entities.*** ***b. These definitions should either go into the definitions section and or the separate part for Maori entities***
Simple majority of participating owners where votes have equal weight	S50 (2) In a vote to which this section applies, if the parcel or an individual freehold interest is held by the trustees of a whānau trust or other trust (other than a governance	It is not appropriate to reference owners making decisions as if they were trustees. This in effect creates an agency situation and the owners then may owe trust duties for those decisions. Consider the law relating to being "deemed" director. ***Recommend this clause is amended.***

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Issue	Draft Bill	Comment
	body), each of the beneficiaries of the trust is treated as an owner of the parcel or interest in place of the trustees for the purposes of voting.	
Effect of decisions	S51	Decisions made on the basis of 45-50 are binding on those that don't attend. This places a significant emphasis on the notification provisions and ensuring that all parties have the opportunity to participate. Different methods of notification are confusing. One form of notice from one entity should be provided for. ***We recommend that there is a consistency for how and who will provide notices.***
Owner of Māori freehold land may establish whānau trust	S52(2)	Why are the purposes of a whanau trust defined in the Bill as charitable purposes. Should this not be at the discretion of the owners and whanau? ***Recommend you remove this sub clause and allow the purposes to be defined by the owner and whanau***
Whānau trust (operational while owner living) and Whānau trust (operational on death of owner)	S53(1) and 54(1)	Both provisions provide for those who may be included in a whanau trust. There is no provision after the option at sub clause © in each. Are you saying that if the owner can't comply with even sub clause © then they can't establish a whanau trust? If so this should be clearly stated or a discretion should be

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Issue	Draft Bill	Comment
		provided for other circumstances. ***Recommend that this clause is extended to provide for a discretion or clarified that an owner cannot establish a whanau trust unless they comply with these sections***
Trustees of whanau trusts	S56(3)(b) at all times keep beneficiaries informed about the affairs of the trust and any matters affecting the trust property;	How can a trustee keep beneficiaries informed at all times? Reasonableness should be included in this clause to protect the trustees. ***Recommend that this clause be amended to provide for reasonableness not at all times.***
Overview of governance body's agreement	78(1)	Wordy could be better drafted
	78(2)	Section reference missing
	78(3)	The subsection refers to permissive rather then requiring language Sub section (b) refers to the default decision process which is onerous
Sale of parcel	79(b)	Allows for sale under s83 where the governance body has no reasonable prospect of obtaining the required level of owner agreement – where the body can apply for a declaration How is reasonable prospect to be defined? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori***

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Issue	Draft Bill	Comment
		entities.
Sale of parcel In ordinary cases	80(2)	The preferential tender process is a full tender requiring advertising. This will be cost prohibitive for small owners who wish to sell. For a governance body they must have the expertise to negotiate their own terms of sale or the tender process ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
	80(5) If there is a sale it must be conditional upon either the court making an order or otherwise be agreed as unconditional within 9 months after the decision is made.	So if you don't get it done within the 9 months what then? You have to go through the whole process again? See s6) ***Please clarify*** ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
	80(6)	So if the tender doesn't produce a sale then the seller can sell to any other person as long as they do so within the 9 month period? What happens after 9 months? ***Please clarify*** ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
Tender process	81	This process will be expensive and time consuming for a small owner. Seems to be counter intuitive if the intent is to give

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Issue	Draft Bill	Comment
		owners more choice and control. The cost will stop them doing anything. ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
Order declaring that land ceases to be Maori freehold land on sale or exchange by governance body	83	Complicated process, which has governance bodies going from one end of the act to the other. Further there is an open-ended provision for "any other necessary modification" which leaves open other processes to be required. That will cause confusion and is not clear as to obligations. ***Please clarify*** ***Recommend an assessment is undertaken of the costs and benefits to Maori owners of activities under the Bill and that information is made public before the Bill is introduced.***
Other requirements	84	Again complicated for smaller organisations having a land management plan etc.
	84(3)	Requirement that if sell land must use proceeds to buy land and must change status if required to Maori freehold land. This is counter intuitive to the right of owners to develop their resources. Lands are sold for capital and Maori should not be limited bar what is agreed in the governance agreement ***Recommend that the requirement that land asset sale proceeds be used to buy more Maori land be removed for corporate Maori entities.***

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Issue	Draft Bill	Comment
Agreement to certain dispositions of parcels under enactments	87(5)	Dispositions' involving other acts not restricted by this act. The example used is esplanade strips over land under the RMA. This runs contra to what is agreed under the RDC and a negative for Maori land retention ***Recommend that Section 85 is deleted and the status quo of protecting and retention of Maori land from taking by councils for esplanade strips is enshrined.***
Disposition of individual freehold interest and Exchange of individual freehold interest	S119 and 120	Where in the Bill is it clear what undivided interests are and whether they can be disposed of? If as it seems likely they cant be disposed of then this will have a significant impact on shareholders in current Maori incorporations and trusts whose interests will become undivided interests upon the enactment of this bill. ***Recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***
Disposition of individual freehold interest and Exchange of individual freehold interest	S119(2)(b) and 120(1)	Reference is made to exchange for "something else" this is not clear language and s120(2)-(6) make it clear the something else is land so the clause should say that. ***Recommend these clauses be amended to clarify what something else is.***
Gift by will of entitlements arising from ownership	S133 A disposition by will of a parcel of Māori freehold land, or an individual free- hold interest in Māori freehold land, may be made subject to a	Again no reference to undivided interest. Is this omission effectively saying that undivided interests do not equate to "ownership" and or at least cannot be disposed of by will? ***Please clarify*** ***Recommend landowners in Maori incorporations and trusts***

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Issue	Draft Bill	Comment
	gift...	***retain shares and all rights accorded to them.***
Court may appoint administrative kaiwhakarite	S134(1)(a) to oversee a governance body's preparation and implementation of a full distribution scheme under section 207	Why would they be appointed for the preparation of a full distribution scheme? Should it not be if the scheme is to be created at the point of distribution? ***Please clarify***
Governance body holds asset base on trust	162	Holds assets on trust – as opposed to directors duties Must be managed in accordance with the governance agreement Normally would have a provision saying must be in accordance with the Act as well Also no provision for conflicts between Act, governance agreement and trust duties ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Rights of owners in respect to asset base	163(1)©	Distribution of profits or through a distribution scheme only. What about other things like grants and scholarships? Is this covered by (2) ? ***Please clarify***

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Issue	Draft Bill	Comment
Process of appointing governance body	164(2)	A simple majority of those in attendance at a meeting can establish a Rangatopu would seem a small number. ***Recommend that a larger threshold based on percentages be provided for.***
Additional process requirement if owners establish Rangatopu	165(1)(a) and (2)	Owners decide if private trust or body corporate – yet all Rangatopu have trust obligations? Under (2) if a body corporate kaitiaki must meet director criteria either under another act e.g. companies act or under s214. This could create confusion. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Additional process requirements if owners appoint existing Rangatopu as governance body	166	Note the governance agreement must be completed in accordance with existing governance agreement i.e. the Taheke 8c constitution in consultation with incoming owners What if not all owners agree? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Registration of governance agreement	175-176	Similar process to Companies act. We note that this includes the right of the CE to reject a name if it's similar to another Rangatopu or other entity. How would one deal with multiple entities with iwi or hapu names included?

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Issue	Draft Bill	Comment
		Please clarify
Governance certificate	177	Must identify the Maori freehold land managed under the agreement. Does the certificate have to be updated each time land is added? If so this could be compliance prohibitive for large organisations developing a wide-ranging portfolio. This is not a requirement for companies, why is it required for Maori entities? ***Please clarify and consider reducing to a certificate of incorporation as per the Companies Act.***
Owners of Maori Freehold land may revoke governance body's agreement for that land	181	75% of the owners who participate in making the decision can revoke and if it relates to all the land under a governance agreement this starts the process of cancelling the governance agreement. Threshold is far too low. ***Recommend amending thresholds. Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Impact of cancellation	183	Between the time of application of cancellation and cancellation nothing bar appropriate bank payments can be done by the existing kaitiaki without the approval of the court or an appointed person This is a cumbersome process. Suggest consideration is given to how this will work in practice for a large corporate entity ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***

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Issue	Draft Bill	Comment
Powers duties and responsibilities of the governance body	190	Quite broad and at times onerous obligations. Far more then standard trust obligations. How does one determine if one does not or is **not likely** to create a **substantial** risk of **serious** loss to the owners?? How does one maximize engagement of the owners with the governance body? ***Please clarify***
Powers duties and responsibilities of kaitiaki	191	Trust duties but not all of them e.g. acting on advice etc. is not included. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Status of contracts and other instruments	195-197	Binds Rangatopu to pre-existing contracts and instruments and prevents third parties from using the transfer as a basis for termination. How will this work with whenua tapui provisions and the transfer of some blocks under contract and not others? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Requirements if governance body sells or exchanges parcel of Maori freehold land	199	Again the issue of freedom to determine – see subsection (2) and requirement that proceeds from sale of land be used to buy replacement land. Also have to update the governance agreement and the register with the CE to note new Maori land. This will create greater compliance obligations and is not an

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Issue	Draft Bill	Comment
		obligation faced by other mainstream entities including private trusts. Therefore why are Maori entities being forced to have such obligations? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Requirements for Allocation Scheme	201	This is part of a process to alienate the land from the larger land owning entities. The allocation scheme identifies the land blocks and who the land owners are rather then dealing in common shares ***Strongly recommend that landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***
Requirements for a land management plan	202	If required under the governance agreement then a governance body must have a land management plan. It is difficult to see how a smaller land trust or incorporation will be able to comply with these compliance obligations. ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
Unpaid distributions	S205 The amount of an unpaid distribution is a debt payable by the governance body to the	Will require accounting advice. Note s206 requires reporting to CE of any unpaid distributions 12 months after distribution date

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Issue	Draft Bill	Comment
	owner entitled to receive the distribution or to the owner's successor in title. 206 reporting of unpaid distributions	and at the end of each financial year. ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced. Preference would be for single annual reporting if at all. Preference would be for Maori entity to hold and make available this information rather then reporting.***
Obligation to prepare full distribution scheme	207-208	This seems to be a component of disestablishing the trusts and incorporations. How will this work in practice? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Obligations to prepare partial distribution	209-210	As above this is the means by which small owners will get distributions for individual blocks. There is nothing requiring them to pay for the block. Further how will this work if the block is a replacement block which the governance body has brought and paid for using funds from the sale of another block? ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities and that emphasis is given to protecting larger entities from being torn apart using such clauses.*** ***Please clarify***

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Issue	Draft Bill	Comment
Process once court confirms distribution scheme	211-213	As above and the process gives no right to the entity to object. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Requirements for Kaitiaki	214	Along lines of companies act directors appointment criteria. All entities including administrative bodies for whenua tapui should be required to comply with this criteria. ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
Court may appoint kaitiaki	216 (1)(b) a creditor of the Rangatōpū:	Why is a creditor able to be appointed as a kaitiaki? We do not consider this to be appropriate and should be deleted. ***Recommend delete s216(1)(b)***
Rangatopu must maintain interests register	217-218	Register has to be maintained and an annual declaration is required. Interests reflect all interests not just interests in the blocks held by the Rangatopu. We question if this interests register is too wide and if it should be restricted to the interests held in the land managed by the Rangatopu.

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Issue	Draft Bill	Comment
		Recommend that the scope of this clause be reduced.
Requests for information	220	Have to provide enough information to enable the owners to participate effectively – subjective Requests have to be reasonably specific and the governance body is expected to help the owner make their request. At whose cost? Information can be redacted pursuant to s221 There are a number of subjective tests in this clause. This clause should be tightened to prevent vexatious requests, which are costly to comply with. The section should enable the Maori entity to charge reasonable costs of the land owners requesting the information ***Recommend that:*** ***a. the clause is drafted to remove subjective tests*** ***b. that the Maori entity has the right to charge reasonable costs for providing the information.***
Reasons for withholding	221	Basically an Official information process. Subsection © should also refer to cost ***Recommend inserting "or cost" at the end of the sentence at subsection ©***
Matters relating to investigation	223	Security can be sought from the applicant and costs can be sought from the governance body, an owner or any other person for the investigation or court inquiry. Note it does not refer to the applicant in that list. Further any other person could

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Issue	Draft Bill	Comment
		be difficult to require if that person has not had the right to participate in the proceeding or be heard. ***Please clarify***
Court may disqualify kaitiaki	225	(b)(i) notwithstanding that the duties were defined already this clause now creates an obligation on kaitiaki to comply with duties under "any enactment, rule of law, rules of court, or court order (to the extent that the duty relates to the role of kaitiaki under this Act). " – what does that mean and it could mean anything? ***Recommend that*** ***a. as with s191 the duties owed by a kaitiaki should be clearly set out to avoid confusion.*** ***b. that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.***
Jurisdiction of court	226	Relates to trusts – says that with trusts the Court has all the powers and authorities of the high court and the Trustee Act – question is by specifically stating this re trusts does that mean those acts and powers don't extend to Rangatopu who aren't trusts e.g. incorporations? ***Please clarify***
Processing of application	235	Applications have to be notified. The CE must advertise a summary of the application at least 3 times in the daily newspapers and a newspaper in the local region. The cost will be prohibitive will this be recouped by the CE from the applicant

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Issue	Draft Bill	Comment
		or the Maori entity? Further how does this connect with the requirement for panui in other parts of the Bill. Preference would be for one mechanism for notice so that there is no confusion. ***Recommend*** ***a. an assessment is undertaken of the costs and benefits to the Crown, landowners and Maori entities of activities under the Bill and that information is made public before the Bill is introduced.*** ***b. That consistency of notice is provided in the Bill***
Declaration of application where objection received	236	The matter is referred to the "Maori land dispute resolution service"? who are they and who will be responsible for them? What will the criteria be for participating? Why move away from the court, which is already set up for this? ***Recommend such powers be retained in the Court.*** ***Recommend an assessment is undertaken of the costs and benefits to the Crown, landowners and Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
Notice to owners of Maori Freehold Land	285(3)	Notice by registrar to Maori owners – given to all owners at the contact details held by the court. How does this relate to the advertising required in other parts of the bill? ***Recommend***

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Issue	Draft Bill	Comment
		a. an assessment is undertaken of the costs and benefits to the Crown, landowners and Maori entities of activities under the Bill and that information is made public before the Bill is introduced. ***b. That consistency of notice is provided in the Bill***
DR interpretation	289	Should include the Maori Land Disputes service but doesn't. So how do they participate if they are created? Again what criteria will be used to appoint? ***Please clarify***
CE to provide dispute resolution service	290	Is this the MLDRS referred to earlier? ***Please clarify***
Role of Kaitakawaenga	292-293	Concern that no provision for specialist expertise bar tikanga and reo e.g. commercial or Maori land legal expertise. A real concern with the agreements can be made binding and there is no recourse to the courts bar enforcement. Significant risk that if there are no legal experts this could lead to injustice Also must be guided by the tikanga of the local hapu. What if there are no such persons available? This could mean people who are not fully cognizant of their tikanga in a vulnerable situation and open to bullying to gain agreement. See further comments below ***Please clarify***

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Issue	Draft Bill	Comment
Conduct of dispute resolution process	294	How will this process work? If parties are not there the Kaitakawaenga can still express their views on the substance of the matter affecting the non-attending person? ***Please clarify***
Successful dispute resolution outcome	296 The kaitakawaenga must— (a) explain to the parties the effect of subsection (3); and (b) on being satisfied that the parties, knowing the effect of subsection (3), affirm their agreement,— (i) record and sign the agreed terms of resolution; and (ii) deliver the signed record of the agreed terms of resolution to the chief executive. (3) On the signing by the kaitakawaenga of the agreed terms of resolution,— (a) those terms are final and binding on, and enforceable by, the parties; and (b) except for enforcement purposes, no party may seek	Why is it not clear in the disputes process that the Kaitakawaenga will require legal skills? a. Under section 296(3) people could lose their legal right to go to the court (except for enforcement issues) if they agree to terms during this process. Given the risk of people attending without legal counsel, not understanding the implications and the lack of a cooling off period under the Bill, people need to be properly advised and the bill requires the Kaitakawaenga to tell them. At the moment they are required to have cultural and or reo skills. Given the process above the owners will be more likely to take legal counsel and this will increase compliance costs for owners. b. Given the skills needed within the disputes process what is wrong with the current court process and is there a need for this new disputes process and its incumbent risks? c. The Bill does not recognise that the majority of disputes are between whanau members. Establishing a disputes resolution service will not resolve the issue and has the risk of relatives adjudicating disputes between relatives (given one of the criteria for Kaitakawaenga is understanding of hapu tikanga) and creating the

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Issue	Draft Bill	Comment
	to bring those terms before a court, whether by action, appeal, application for review, or otherwise.	perspective of conflict. The most appropriate forum for all disputes to be dealt with is before a Judge in the Maori Land Court. ***We recommend that the jurisdiction of the Maori Land Court be maintained with respect to the management of Maori land.***
Schedule 1 Transitional and related provisions		
Interpretation clause 1	Standard agreement	Will be a governance agreement template provided in the regulations – to come. When is this template expected given the 3-year transition period? ***Please clarify***
	Transition period	This period ends either - when the updated governance agreement is registered - when the transitional or standard agreement is registered - 3 years from the commencement date of the new Act There is so much to be done in that period. 3 years is probably not long enough. We note that under the Maori Fisheries Act iwi were given 5 years to transition, which is a more appropriate timeframe. Further discretion should be given to seek a further extension from the court in extenuating circumstances. ***Recommend that:*** ***a. the time for transition is extended to 5 years*** ***b. a discretion is provided to apply to the court for an***

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Issue	Draft Bill	Comment
		extension of the transition period
Existing Maori Inc. continue as Rangatopu	Clause 2(1)	What impact does the transfer to undivided interests have? What is wrong with having shares?? Why can't a commercial entity be established under this bill, which allows for shares? No reference to tax status and retention of Maori authority status. ***Recommend that a separate Part of the Bill be drafted to provide for all provisions relating to commercial Maori entities.*** ***Strongly recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***
	Clause 2(2)	Unclaimed dividends become an unpaid distribution for the purpose of this Bill. What does this mean for Maori incorporations and their tax liability? Note s205 of the Bill. This will have a considerable compliance cost potentially for Maori entities. ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
	Clause 2(3) and (4)	What happens to those Maori Incorporations who are not included in sub clause 3? ***Please clarify***

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Issue	Draft Bill	Comment
Rights of shareholders of existing Maori Incorporations preserved during transition period	Clause 3(1)(a)(ii) the requirement to have a share register were a requirement to have a register of owners;	So shareholders become owners? How does this deal with shareholders with multiple shares? See earlier questions through the Bill. It would seem that in becoming owners of undivided interests, shareholders are losing significantly. ***Strongly recommend landowners in Maori incorporations and trusts retain shares and all rights accorded to them.***
	Clause 3(1)(b) and clause 7(4)	While in transition shareholders retain the same rights and entitlements as they had under the Act. Those rights and interests and the sections relating to them under the Act should be clearly stated in this section to ensure that the Rangatopu does not miss any and breach this clause. Further how does this clause interact with other rights and restrictions under the Bill. Clause 7(4) states that if in conflict with the Bill then the Bill prevails. So it is fundamental that the Bill sets out the rights that are preserved under this and clause 3(2) below. ***Strongly recommend that*** ***a. landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***b. All right and interests to be preserved under this clause and clause 3(2) be set out in this Bill*** ***c. If not then clause 7(4) should specifically exclude those rights from subjugation to the Bill if in conflict***
	Clause 3(2)	Rights and interests maintained during transition. Clause 3(2)

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Issue	Draft Bill	Comment
		requires that the updated governance agreement must not materially alter the rights and entitlements of a person who was a shareholder in the incorporation. But what is the transfer to undivided share if not a material alternation of rights and what if the requirements of the bill that must be included in the governance agreement are material? Why are those provisions not all included in this schedule rather then referring to an Act, which will have been repealed? ***Strongly recommend that*** ***a. landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***b. All right and interests to be preserved under clause 3(1) and clause 3(2) be set out in this Bill*** ***c. If not then clause 7(4) should specifically exclude those rights from subjugation to the Bill if in conflict***
Existing ahu whenua or whenua tōpū trusts continue: trustees become governance bodies	Clause 4(1(d)	Should a Maori incorporations be trustee in its own right it becomes an existing statutory body for the purposes of this clause. This is confusing and should be better clarified as to what this means for the Maori incorporation and the trust. ***Please clarify***
Governance body must, within 3 years, update or confirm transitional agreement or adopt standard agreement	Clause 7	As stated above we consider 3 years to be insufficient time. ***Recommend that:*** ***a. the time for transition is extended to 5 years*** ***b. a discretion is provided to apply to the court for an***

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Issue	Draft Bill	Comment
		extension of the transition period
	Clause 7((3) and 4) (3)A transitional agreement is not invalid by reason only that it does not comply with Schedule 3. (4) However, if a transitional agreement is confirmed and registered as a governance agreement, any part of the agreement that is inconsistent with Schedule 3 or any other provision of this Act is invalid and ceases to apply.	This is a significant clause and if you consider the impact on existing rights and interests which are being grandfathered under clause 3 there is the risk that conflicts between bill and governance agreement I respect to those rights will lead to significant disadvantage to existing shareholders. So it is fundamental that the Bill sets out the rights that are preserved under clause 3 to protect them ***Strongly recommend that*** ***a. landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***b. All right and interests to be preserved under this clause and clause 3(2) be set out in this Bill*** ***c. If not then clause 7(4) should specifically exclude those rights from subjugation to the Bill if in conflict***
Consequences if fail to update or confirm transitional agreement or adopt a standard agreement within 3 years	Clause 10	Impact is the standard template replaces transitional and that will be the registered document Note none of the approvals are required of owners if a standard template is used because of time expiry the CE must register and issue a replacement governance certificate. It would be preferable that in that instance rather then a default that the Rangatopu be required to go to the court or that the transitional agreement which will be required to provide for such matters as shareholders rights be the preferred default. A standard

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Issue	Draft Bill	Comment
		template may not provide for those matters, which will place the Rangatopu in breach of clause 3 of this schedule. ***Strongly recommend that*** ***a. landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***b. That where shareholders rights are to be included in a transitional agreement that agreement should be the default should the Rangatopu not be able to register within the transition period.*** ***c. the time for transition is extended to 5 years*** ***d. a discretion is provided to apply to the court for an extension of the transition period***
Other trusts of Maori land not affected	Clause 13	What other trusts would be covered by this clause? ***Please clarify***
Existing Maori Reservations become Whenua Tapui	Clause 16	How does this clause interact with those in the Bill? ***Please clarify***
Schedule 2 Default decision making process for decisions requiring agreement of owners of Maori freehold land		
When decision making process applies	Clause 1	If the act or a governance agreement requires - a decision be agreed by a majority of the owners of Maori freehold land; and - a decision be made in accordance with the process set out in this schedule

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Issue	Draft Bill	Comment
		Are there any other instances? Given it's a default process can the Rangatopu contract out of this section via the governance agreement should the owners choose? ***Recommend that more flexibility be given to Rangatopu to contract out of these provisions.***
Decision making process	Clause 2	The threshold is too low 1 or more persons can commence a decision making process. The person making an application should be required to seek mandate from other owners and have their support before incurring cost for the governance body. ***Recommend that*** ***a. more flexibility is given to Rangatopu to contract out of these provisions*** ***b. that the threshold for making a application under this schedule is higher then 1 person requiring support from other owners in line with the percentage size of the Rangatopu***
Governance body or chief exec to arrange meeting of owners	Clause 10	1 month must hold meeting information relating to the proposal, must have publically notified. To reduce cost the meeting if possible should be held at a standard AGM. We would suggest that if 6 months from an AGM that the proposal be heard at the AGM and if more then 6 months from the next AGM that a SGM is called. In the instance of a vexatious person the governance body could face the cost of calling a meeting of owners every other month. ***Recommend that***

Table 1: Overview Table of Review of Te Ture Whenua Policy and Draft Bill

Issue	Draft Bill	Comment
		a. ***more flexibility is given to Rangatopu to contract out of these provisions*** b. ***that meetings of owners where possible align with standard AGMs*** c. ***an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
Meeting of owners	Clause 11	Mechanisms for attending meeting include via telephone or internet based communications technology. Compliance costs? Quorum set in clause 11(2). Threshold definitely higher, which is good. Can they be aligned with other parts of the Bill requiring participation thresholds. ***Recommend*** a. ***an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.*** b. ***That the quorum provision be considered for other parts of the Bill***
Voting	Clause 12	Includes voting at the meeting, by post or email to returning officer or by using electronic voting system – compliance cost? ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that***

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		information is made public before the Bill is introduced.
Schedule 3 Governance Agreements		
Form of Governance Agreement	Clause 1(2) and (3) (2)The agreement must be signed and dated by, or on behalf of, the body and the owners of the Māori freehold land. (3) However, if the agreement is a standard agreement that replaces a transitional agreement under clause 10 of Schedule 1,— (a) sub clause (2) does not apply; and (b) the agreement must be signed and dated by the chief executive.	It is not appropriate that owners should not get a say on the governance agreement simply because they ran out of time. There should be a provision for a review by the court and amendments to be made in accordance with the owner's views or something to that effect. ***Recommend that:*** ***a. the time for transition is extended to 5 years*** ***b. a discretion is provided to apply to the court for an extension of the transition period*** ***c. a requirement that a review be held of the standard template if it us used as a default***
Details of parties to governance agreement	Clause 2(2)	Changes to details must be notified to the CE within 5 working days. This is too short a time and will likely lead to breach.

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		Recommend time frame is extended to 30 working days
Provisions relating to decision making	Overall Clauses 5-10	These clauses seem at times to differ from the earlier sections relating to thresholds in the bill. Hard to see how the higher thresholds in Schedule 3 reflect thresholds for example revoking governance agreement over parcels of land. Will require a lot of careful drafting when updating the governance agreement and incur significant compliance costs. ***Recommend an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.***
Governance Agreement may specify decision making processes	Clause 6(1)	It would be preferable to give Maori entities discretion as it relates to the decision-making processes in schedule 2 as drafted. See discussion in schedule 2 part of this table ***Recommend*** ***a. an assessment is undertaken of the costs and benefits to Maori entities of activities under the Bill and that information is made public before the Bill is introduced.*** ***b. That discretion is given to Maori entities to contract out of schedule 2 decision making processes as drafted currently***
Governance agreement must require minimum level of	Clause 7(1)(b) a decision to enter into a major transaction,	It is preferable not to refer to other Acts and to have a bill, which reflects all matters for ease of reading for laypeople. Further

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owner agreement for some decisions	which, for the purpose of this clause, has the meaning given in section 129 of the Companies Act 1989, except that references in that section to the assets of a company must be read as references to the asset base managed under the governance agreement. Section 129 major transaction, in relation to a company, means: (a)the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or (b)the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or (c)a transaction that has or is likely to have the effect of the	there should be discretion for those entities that wish to have a higher or lower threshold requiring a major transaction vote. ***Recommend that*** ***a. the clause is amended to set out the major transaction thresholds required*** b. ***that discretion is given to allow entities with the approval of owners to set their own major transaction threshold***

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	company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the company's assets before the transaction.	
	Clause 7(3)minimum levels of owner agreement	The table as drafted removes percentages based on shareholding replacing with owners. How will this reference with clause 3 of Schedule 1, which protects the rights of shareholders? We have recommended that those rights be set out in the Bill and given the implications of this clause if they are not included they will not apply. ***Strongly recommend that*** ***a. landowners in Maori incorporations and trusts retain shares and all rights accorded to them.*** ***b. All right and interests to be preserved under this clause and clause 3(2) of schedule 1 be set out in this Bill*** ***c. If not then clause 7(4) of schedule 1 should specifically exclude those rights from subjugation to the Bill if in conflict*** ***d. That clause 7(3) of schedule 3 provide for shareholder thresholds and not just owners.***

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Issue	Draft Bill	Comment
Governance agreement may authorise some things that would otherwise be prohibited	Clause 9 (1)(a) lease Māori freehold land to the governance body, or to an entity control- led by the governance body (see section 108(5)):	Why would this be prohibited? It is not uncommon in commercial transactions for assets such as leases to be held by subsidiaries for various reasons. ***Please clarify***
Governance Agreement must specify certain matters	Clause 11	Why would the interest's register have to be specifically reported upon at an AGM? Agree it should be available to owners at the office of the Rangatopu but don't see the necessity to report on it. ***Please clarify***
Rangatōpū governance agreement must specify how kaitiaki will be appointed if Rangatōpū manages more than 1 parcel of Māori freehold land Rangatōpū governance agreement may specify level of owner agreement required for decision to appoint Rangatōpū	Clauses 14 and 15	Clause 14 requires 75% majority of owners participating in making the decision to appoint a kaitiaki. Clause 15 provides for a minimum of a simple majority of owners participating to appoint a kaitiaki notwithstanding hat the title of the clause refers to appointing Rangatopu" ***Please clarify***
Special requirements for governance agreements of	Clause 17(2) If the Rangatōpū that is a party to the agreement	It is preferable not to refer to other Acts and to have a bill, which

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existing Māori incorporations continued as Rangatōpū	was formerly an existing Māori incorporation constituted under section 21 of the Māori Purposes Act 1975, the agreement must— (a) give effect to section 21(3) to (5) of the Māori Purposes Act 1975; or (b) be read as if it complies with paragraph (a). Section 21 relates to Rangatira Blocks	reflects all matters for ease of reading for laypeople. **Please clarify**

Paehinahina Mourea Trust

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Paehinahina Mourea Trust is an Ahu Whenua Trust constituted in 1973, incorporating all or part of the Paehinahina, Taheke 2, Mourea Papakainga, Pungarehu and Whakapoungakau blocks.

It was handed back to the owners by the Maori Land Board, having been farmed for many years, with an accumulated debt of some $190,000.

Trustees were appointed in 1973 and there have been many trustees acting for the trust since 1973.

The current trustees are Barnet Vercoe (Chair), Willie Emery, Parehuia Aratema, Pirihira Fenwick and Ngaroma Grant. The trustees operate effectively as a group and operating under its existing trust order, have successfully managed the trust's assets for the benefit of its 4300 shareholders. The trustees now manage a diversified portfolio of investments of some $7m comprising the original whenua, commercial property, investment portfolios and bank deposits.

Annual income is in the order of $400,000 from forestry rental, commercial rental, mining royalties and investment income. The trust will derive future additional harvest revenues from a significant investment in its own forest.

Distributions to shareholders and to the Trust's separately constituted Charitable Trust comprise around $200,000 pa.

The trust has a working Strategic Plan and Statement of Investment Purposes and Objectives to guide the future development of the trust business and social activities.

WHAKAPOUNGAKAU 4K2A, 4K2C, 5B5A AGGREGATED TRUST

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NEW ZEALAND

Phone (07)3457529
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August 4, 2015

The General Manager
The Proprietors of Taheke 8C and Adjoining Blocks Incorporated
P O Box 10097
Rotorua Mail Centre 3046
ROTORUA

Tena koe Sandra

RE: Support of the Taheke 8C Inc. Submission to the Proposed Changes to the Te Ture Whenua Bill

This letter acts as formal support from the Whakapoungakau 4K2A, 4K2C1 AND 5B5A (Aggregated) Ahu Whenua Trust of the submission by Taheke 8C Incorporated to the Minister of Justice concerning the proposed changes to the Te Ture Whenua Bill currently being undertaken by Parliament.

The Whakapoungakau 4K2A, 4K2C1 AND 5B5A Aggregated Trust was established as an Ahu Whenua Trust in November 2000 after previously being managed and administered by the Maori Trustee. Aggregation of the three blocks occurred in 1984 with the objective being that surrounding blocks would join the aggregation to further develop their whenua for the benefit of their beneficial owners. It has 5 responsible trustees who manage and govern 213.9066 hectares of which most is planted in exotic tree species owned and maintained by the owners. The Trust has a Joint Venture Forestry Agreement with a neighboring block. The Trust has approximately 5 ha set aside as Maori Reservation for the purposes of urupa and timber reserve. Grazeable land is under lease and rateable. The Trust is registered with the Emissions Trading Scheme.

The Trust has held regular owner meetings, and reported to the Maori Land Court as required under its Trust Order, the next review due in 2018.

The Whakapoungakau 4K2A, 4K2C1 AND 5B5A (Aggregated) Ahu Whenua Trust has continued to grow the asset base for its owners under the current Te Ture Whenua Maori Land Act 1993. The Act has not been a barrier or restriction on development or progress. To this end the Trust has very real concerns regarding the proposed changes to the Te Ture Whenua Maori Act 1993 and supports and endorses the submission being presented by Taheke 8C Incorporation.

Naku, noa na

Helen Crawford
Chairperson
Whakapoungakau 4K2A, 4K2C, 5B5A Aggregated Trust.

RUAHINE & KUHARUA INCORPORATION

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Pukeroa Oruawhata House
2/1176 Amohau Street, Rotorua

P.O. Box 12003
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3rd August 2015

The General Manager
The Proprietors of Taheke 8C and Adjoining Blocks Incorporated
P O Box 10097
Rotorua Mail Centre 3046
ROTORUA

Attention: Sandra Eru

Tena koe Sandra

Support for Taheke 8C Inc. Submission for the Proposed Changes to Te Ture Whenua Maori

This letter acts as formal support from the Committee of Management of Ruahine and Kuharua Blocks Incorporated, of your submission to the Minister of Justice concerning the proposed changes to Te Ture Whenua Maori currently being undertaken by Parliament.

The Ruahine and Kuharua Incorporation of today was established by the Maori Land Court on 17 July 1957 and 8 March 1965 which bought together five Maori freehold blocks under one Governance structure. The governance of Ruahine Kuharua Incorporation is undertaken through the Committee in accordance with its constitution and the Te Ture Whenua Māori Act 1993. The Incorporations Constitution is based upon Schedule 1 of the Māori Incorporations Constitution Regulations 1994 and does not restrict the Committee of Management to utilizing any of the powers that are contained within it.

The current Committee of Management of Ruahine and Kuharua Incorporated comprises of six members; Mr Fred Whata (Tiamana) and Messrs.' Pirihira Fenwick, Napi Waaka, Wiremu Keepa, Raukawa Manahi and John Fenwick holding kaitiakitanga responsibilities for over 315 shareholders and beneficiaries.

The business of Ruahine and Kuharua Incorporation has historically involved the protection and maintenance of its primary assets, they being the whenua and the exotic pine forests invested within. The land area under pine forest plantation is approximately 350 hectares contained upon the five blocks which do not share commonality of boundary. Until recently, forestry rental has been the only source of income, however, in November 2011, the Incorporation entered into an agreement with a neighbouring Maori Incorporation and the then state owned electricity power generator Mighty River Power, to develop a possible geothermal power scheme on the Taheke geothermal field.

Since the Incorporation's creation in 1965, successive Committees of Management have ensured that the Incorporations assets have been protected and administered to provide the optimum benefits to its shareholders.

The 2015 Committee of Management, have after researching and reviewing the proposed bill, (in its current draft form) very real concerns about how the bill is structured and defined. The research has shown that there is a very high degree of confusion surrounding the interpretation of many of the sections within the draft bill and that it is intended to replace Te Ture Whenua Maori Act 1993 in its entirety.

Pukahukiwi Kaokaoroa

4 August 2015

Te Ture Whenua Maori Bill
C/- Te Puni Kokiri
PO Box 3943
WELLINGTON

To whom it may concern,

Re: Support for the Taheke 8C & Adjoining Blocks Submission to the Proposed Te Ture Whenua Maori Bill

Pukahukiwi Kaokaoroa No 2 Block Incorporation (**"Pukahukiwi"**) supports without reservation, Taheke 8C's submission to the proposed Te Ture Whenua Maori Bill.

Pukahukiwi is a Maori owned and operated agri-forest operation located on state highway 33 approximately 17 kilometers north-east of Rotorua.

The block was established in 1955 as a Maori Incorporation under the Maori Affairs Act 1953 and has its early history based in the Land Development schemes of Sir Apirana Ngata in the mid 1930's.

As is typical of many Maori blocks of this type, the management structure comprises a group of Trustees elected by beneficiaries at an annual general meeting. The Trustees have relatively wide powers to essentially manage the business.

Pukahukiwi currently owns & operates a 1,200 cow Dairy Farm in partnership with its neighbor, Waerenga East & West Incorporation. We have also planted 150 hectares of non productive land in pinus radiata and native totara trees.

We share the same concerns as set out in the submission and believe that parts of the Bill will be detrimental to Maori entities in general.

Nāku, noa nā

Laurence Tamati
Chairman

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5 August 2015

The General Manager
The Proprietors of Taheke 8C and Adjoining Blocks Incorporated
P O Box 10097
Rotorua Mail Centre 3046
Rotorua

Tena Koe Sandra,

This letter acts as formal support from The Committee of Taheke 8C and Adjoining Blocks Incorporated, for your submission to the Minister of Justice concerning the proposed changes to the Te Ture Whenua Maori Land Act.

Te Karaka No. 2D No.28, Te Karaka No.2E, Te Karaka No. 2F, Te Karaka No.2G, Okere No.1C No. 3A, Te Karaka 2A, No.10, Te Karaka No.2B and Te Karaka No.2C were incorporated under the Maori Affairs Act 1953 Section 271 as Te Karaka No.2E and adjoining Blocks (the Incorporation) on 6th September 1955.

The current Committee of Management are - Sir Toby Curtis, Paul Hakopa, Fred Lindsay Whata and Fred Whetu Whata

The Incorporation currently has 147 shareholders and beneficiaries.

The Incorporation comprises land of 129.0129 hectares on State Highway 33. The land was planted in radiata pine and eucalyptus which was maintained initially by Fletcher Forestry and then Viking Global NZ Limited until May 2014.

There is also a family Urupa on the land that the Incorporation is mindful of the need for maintaining.

The Committee of Management is concerned with the current draft form of the proposed bill intended to replace the Te Ture Whenua Maori Act 1993 and endorses Taheke 8C and Adjoining Blocks Incorporated in its submission.

Yours faithfully,

pp James CA .
Committee of Management
Fred Whata
Chairman