

He tono nā



Te Rūnanga o NGĀI TAHU

ki te

MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

e pā ana ki te

**PLANT VARIETY RIGHTS ACT 1987 REVIEW – CONSULTATIONS ON EXPOSURE
DRAFT OF REGULATIONS AND PROPOSED FEES**

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1. INTRODUCTION

- 1.1 As a Te Tiriti o Waitangi (**Te Tiriti**) partner, Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) welcome the opportunity to respond to the Ministry of Business, Innovation and Employment's (**MBIE**) exposure draft of the Plant Variety Rights (**PVR**) Regulations 2022 (the **exposure draft**).
- 1.2 Te Rūnanga has reviewed the exposure draft and acknowledge the intent of this kaupapa as predominantly relating to fees, procedural and evidential requirements.
- 1.3 This response from Te Rūnanga focuses on Regulation 6 (the list of non-indigenous species of significance), and MBIE's comments on the issue of defining 'taonga species'.

2. TE RŪNANGA O NGĀI TAHU

- 2.1 This response is made on behalf of Te Rūnanga. Te Rūnanga is statutorily recognised as the representative tribal body of Ngāi Tahu Whānui and works to advocate for and protect the rights and interests inherent to Ngāi Tahu as mana whenua. Ngāi Tahu Whānui comprises over 74,000 registered iwi members. The Takiwā of Ngāi Tahu in Te Waipounamu covers the largest geographical area of any tribal authority, see **Appendix One** (Ngāi Tahu Takiwā).
- 2.2 Te Rūnanga encompasses eighteen Papatipu Rūnanga, who uphold the mana whenua and mana moana of their rohe. Papatipu Rūnanga as mana whenua are the only people who can describe the values and aspirations of the species, they hold dear.
- 2.3 Accordingly, Te Rūnanga expects the Crown to recognise the status and weight of Ngāi Tahu Whānui and the extent of the Ngāi Tahu Takiwā in all matters affecting those species subject to Ngāi Tahu rangatiratanga.
- 2.4 Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui "for all purposes", Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

3. TE TIRITI O WAITANGI AND PARTNERSHIP

- 3.1 The contemporary relationship between the Crown and Ngāi Tahu is defined by three core documents; Te Tiriti o Waitangi, the Ngāi Tahu Deed of Settlement 1997 (**the Deed of Settlement**) and the Ngāi Tahu Claims Settlement Act 1998 (**the Settlement Act**). These documents form an important legal relationship between Ngāi Tahu and the Crown and entrench the Tiriti partnership.
- 3.2 Of significance, the Crown apology to Ngāi Tahu (**Appendix Two**) recognises and confirms Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Ngāi Tahu Takiwā.

- 3.3 The Deed of Settlement and Settlement Act marked a turning point in the relationship between the Crown and Ngāi Tahu, with the Crown apology noting the Crown's intent to "enter into a new age of co-operation with Ngāi Tahu". The Crown apology therefore acts as a guide for the basis of the post-Settlement relationship between Ngāi Tahu and the Crown, alongside the mutual obligations of Te Tiriti partnership.
- 3.4 The Deed of Settlement and Settlement Act acknowledges the special relationship Ngāi Tahu has with the natural environment (including whenua). Of particular importance for this response, the Crown also acknowledges, at section 288 of the Settlement Act, "the cultural, spiritual, historic, and traditional association of Ngāi Tahu with the taonga species". Taonga species is defined in section 287 of the Settlement as "the species of birds, plants, and animals described in Schedule 97 found within the Ngāi Tahu claim area".

4. TE RŪNANGA RESPONSE TO PLANT VARIETIES ACT 1987 REVIEW – EXPOSURE DRAFT OF REGULATIONS

- 4.1 The Waitangi Tribunal found that Te Tiriti o Waitangi guarantees tino rangatiratanga over taonga species (or mātatūranga Māori relating to taonga species) and that Māori have a special relationship – a kaitiaki relationship - with these taonga species.
- 4.2 Te Rūnanga expects that Ngāi Tahu rangatiratanga within the Ngāi Tahu Takiwā (as recognised in the Settlement Act) will remain at the forefront of amendments to the PVR Act, the subsequent regulations and decisions made on PVR applications within the Ngāi Tahu Takiwā, or where plant material is sourced from within the Ngāi Tahu Takiwā.
- 4.3 Aligned with the previous response in support of the Māori Plant Varieties Committee (the **Committee**), Te Rūnanga acknowledges the Committee's role to support the work of the Commissioner. Te Rūnanga expect that Ngāi Tahu will have a position on the Committee to ensure that Ngāi Tahu continue to exercise their rangatiratanga and kaitiakitanga within the Ngāi Tahu Takiwā.

Regulation 6: Non-indigenous species of significance

- 4.4 The exposure draft of the new PVR regulations sets out a list of non-indigenous plant species of significance. Any PVR application that relates to a plant variety on this list will be subject to Committee review, to "recognise and protect kaitiaki relationships".
- 4.5 Te Runanga support the proposal that non-indigenous plants could be subject to Committee review. This is because kaitiaki relationships of Ngāi Tahu Whānui extend beyond indigenous species.
- 4.6 Te Rūnanga acknowledges that the draft guide explains that the list of non-indigenous plant species of significance is not exhaustive, and more species may be added to the list if they meet the definition in the Bill. However, this list is inherently limiting and therefore pre-determines the kaitiaki relationship of the

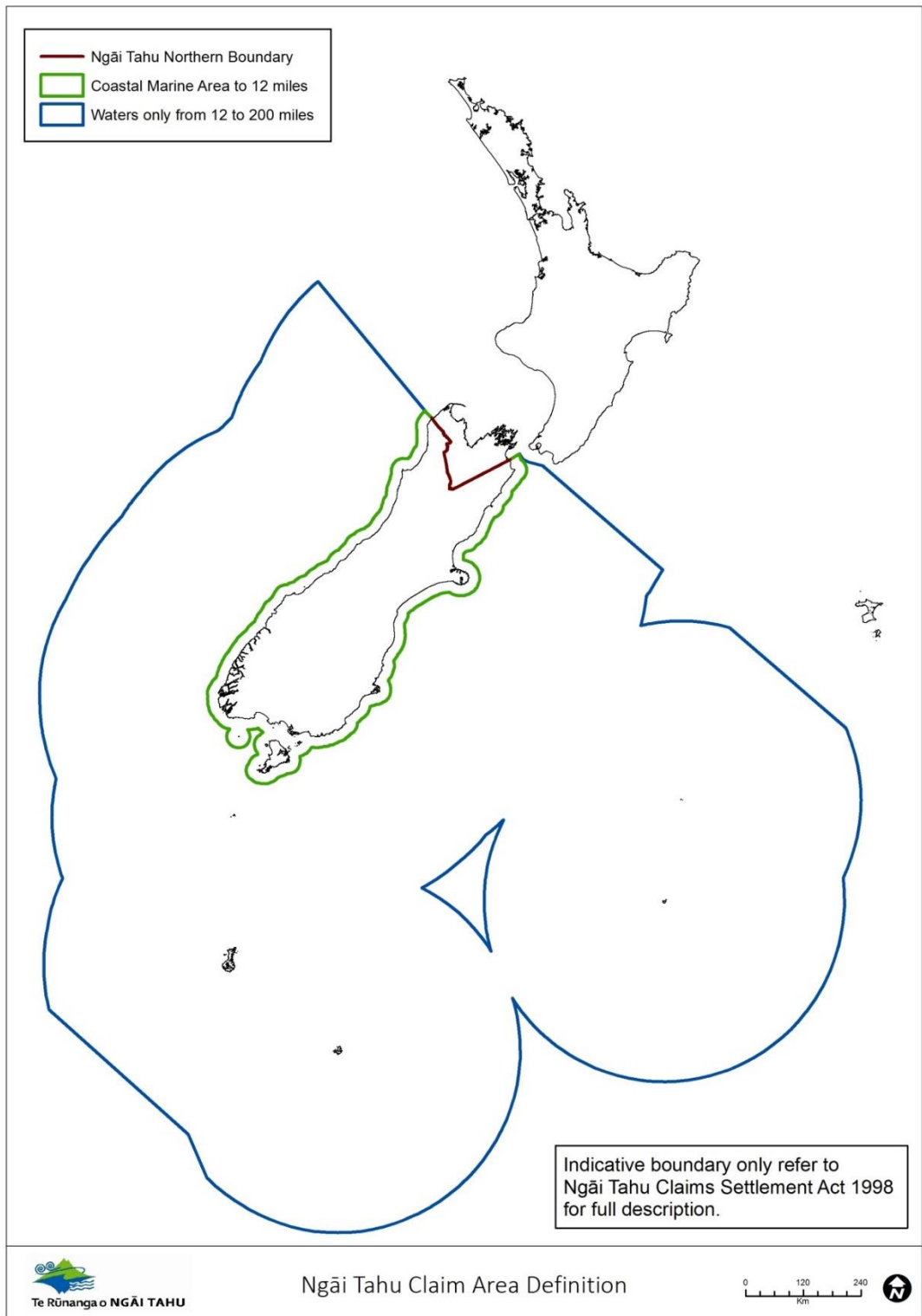
Ngāi Tahu Whānui as being restricted to those non-indigenous species set out in Schedule 2 of the PVR Regulations 2022. Such restriction does not enable the fulfilment of the Crown's Tiriti obligations and conflicts with the Crown's recognition of Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui (see **Appendix Two**).

- 4.7 Te Rūnanga acknowledges that Regulation 6 has already been approved by Cabinet and that the definition of non-indigenous plant species of significance is not subject to consultation at this time. The process for consultation has not, however, provided sufficient time and resource for Te Rūnanga to consult with Papatipu Rūnanga and therefore make an informed response about non-indigenous plants of significance within the Ngāi Tahu Takiwā.
- 4.8 As conveyed above in paragraph 4.2, when granting any PVR application in the Ngāi Tahu Takiwā, or where plant material has been sourced from the Ngāi Tahu Takiwā (irrespective of whether it qualifies for the additional provisions under Part 5 of the Bill), Te Rūnanga expects the Crown to uphold Ngāi Tahu rangatiratanga and adhere to its obligations as a Tiriti Partner throughout the decision-making process.

Defining taonga species

- 4.9 The Guide to the proposed new PVR Regulations (the **Guide**) discusses the issue of defining "taonga species", stating that it is challenging for MBIE to define "taonga species" because the scope of the PVR regime is too narrow for this question to be comprehensively addressed.
- 4.10 While Te Rūnanga agree that MBIE should not define "taonga species" for the purpose of the PVR Bill, Te Rūnanga notes that the Guide suggests an intention to further define taonga species.
- 4.11 As set out at paragraph 3.2 above, Crown has acknowledged the cultural, spiritual, historic and traditional association of Ngāi Tahu with taonga species in the Settlement Act which defines taonga species as "*the species of birds, plants, and animals described in Schedule 97 found within the Ngāi Tahu claim area*". On this basis, any efforts to statutorily define taonga species must not undermine, or be inconsistent with, the existing recognition of the special association Ngāi Tahu has with taonga species, as provided for in the Settlement Act.
- 4.12 Te Rūnanga expects MBIE, the PVR Review and the wider Crown response to the Wai 262 report to engage with Ngāi Tahu directly on recommendations and decision-making relating to taonga species within or sourced from the Ngāi Tahu Takiwā.

APPENDIX ONE: NGĀI TAHU TAKIWĀ



APPENDIX TWO: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

The text of the apology in Māori is as follows:

1. Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoakā”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhukatanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā: ‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhukatanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’ Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.
2. E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhukatanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.
3. E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.
4. E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtake mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhukatanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakatapuranga heke iho. Te whakataua ki i pūtake mai i aua āhukatanga: “Te mate o te iwi”.
5. E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.
6. E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtake mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia

rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

7. E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.
8. E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāianei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown’s responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

2. The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.
3. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu’s use, and to provide adequate economic and social resources for Ngāi Tahu.
4. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu’s use and ownership of such of their land and valued possessions as they wished to retain.
5. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tirenī!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several

generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

6. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.
7. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.
8. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.
9. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu."