# WAKATŪ INCORPORATION

SUBMISSION ON THE EXPOSURE DRAFT OF THE PROPOSED PLANT VARIETY RIGHTS REGULATIONS

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Submitter details:

Wakatū Incorporation, Nelson

Contact details:

Kerensa Johnston, Chief Executive, Kerensa.Johnston@wakatu.org.

Wakatū House,
Montgomery Square,
PO Box 440, Nelson.

03 546 8648

Introduction

1. This submission on behalf of Wakatū Incorporation (**Wakatū**) is on the exposure draft of the proposed Plant Variety Rights (PVR) Regulations (Proposed Regulations).

2. This submission includes overarching and specific submissions on the Proposed Regulations and the Discussion Document.

3. We look forward to engaging further in these matters.

## Ko wai mātou? Who are we?

4. Wakatū is a Māori Incorporation pursuant to Te Ture Whenua Māori Act 1993. Based in Whakatū (Nelson), New Zealand, Wakatū has approximately 4,000 shareholders who are those families who descend from the customary Māori land owners of the Whakatū, Motueka and Mohua (Golden Bay) Regions – Te Tauihu.

5. Wakatū has an intergenerational 500 year vision - Te Pae Tawhiti - which sees us through to 2512.[1] It is a declaration of our fundamental values, common goals and guiding objectives that will ensure our success and create a strong identity now and in the future. At the heart of Te Pae Tawhiti is our overarching purpose which is to preserve and enhance our taonga for the benefit of current and future generations.

6. Wakatū grew from $11m asset base in 1977 to a current value of over $300m. Whenua is the foundation of our business with 70% of assets held in whenua (land) and waterspace. We manage a diverse portfolio from vineyards, orchards to residential properties, large retail developments, office buildings, marine farms and waterspace. Wakatū owns, on behalf of its shareholders, both Māori land and General land.

[1] Te Pae Tawhiti is available online at https://www.wakatu.org/te-pae-tawhiti.

7. Kono is our food and beverage business focused on high quality beverages, fruit bars, seafood products, pipfruit and hops. We understand that innovation and adaptability is the key to our success.

8. Auora is that part of our organisation which is focused on innovation, particularly new ingredients, new products and new business and service models.

9. Our whānau and our businesses are located primarily in our traditional rohe, Te Tauihu – the top of the South Island.

10. In short, our purpose is to preserve and enhance our taonga, for the benefit of current and future generations. Our submission on the Proposed Regulations is made with that at the forefront of our minds.

11. We have included further detail in an Appendix to this submission which sets out who we are in further detail. We have provided this information to the Ministry of Business, Innovation & Employment (MBIE) previously but provide it again for completeness.

Prior involvement in the reform of the Plant Variety Rights Act 1987

12. Wakatū has made the following recent submissions in relation to the Plant Variety Rights Act 1987 reform (Reform):

- Issues Paper in December 2018.
- Options Paper in September 2019.
- Discussion Paper in October 2020.
- Plant Variety Rights Bill 2021 (PVR Bill).

- Consultation Paper on the proposed regulations in 2021.

## Structure of our submission

13. Our submission largely focuses on the non-indigenous species of significance (NISS) list contained in Schedule 2 of the Proposed Regulations.

14. However, we also provide some further comments regarding the Reform overall and the technical aspects of the Regulations.

## Overarching submissions

15. Māori are kaitiaki of the natural world; we are connected to the natural world through whakapapa. Within our kaitiaki responsibilities, we are also part of industry. This places Māori in a unique position to, among other things, carry over kaitiaki responsibilities into industry best practice. The Government's reform needs to recognise the multi-faceted rights and responsibilities that Māori hold.

16. Wakatū is committed to this kaupapa and the broader issue of intellectual property laws and the protection of mātauranga Māori. Wakatū is actively participating in a range of fora in this regard including being actively involved in the Ngā Taonga Tuku Iho conference held in Nelson earlier in 2018, lobbying the Government following that conference and commissioning research on these matters.

17. Wakatū supports the continued focus on ensuring the Crown's obligations, both procedural and substantive, under Te Tiriti are met through this Reform. Our comments and suggestions are aimed at ensuring that the Reform's objectives with respect to Te Tiriti are met.

18. Despite a renewed focus on the Crown's Te Tiriti obligations, the Reform overall is inherently limited. There is a broader constitutional conversation that needs to occur in parallel to reform such as this. The place of Te Tiriti,

and the rights and responsibilities of Māori that are guaranteed by Te Tiriti, need to be properly considered and given effect to by the Crown. The current Governmental arrangements do not reflect a true partnership.

19. Wakatū also acknowledges the importance of the Reform generally seeking (in part) to respond to Wai 262.[2] While we note that the proposed PVR Bill does respond to aspects of the recommendations in Wai 262, we note that there is still a broader constitutional conversation that needs to occur. We note that a key part of the Wai 262 claim was seeking a review of constitutional issues (as noted above at [17]), with an emphasis on recognition of a true partnership and real shared decision making between Māori and the Crown. The long-term vision of the claimants being 'Māori control over things Māori'.

20. In Wai 262, Māori sought a new system and associated legislation, which is required to protect and promote taonga species. Notwithstanding this vision, the Government has chosen to instead tinker with the framework overall. Wakatū considers this problematic because we are tinkering with a system that is unable to achieve what Māori want and therefore is unable realise the vision in Wai 262. To achieve this vision, we need to look at the whole system and design a truly constructive (fully inclusive) framework. As such, the Government risks continued breaches of Te Tiriti until the entire intellectual property framework is overhauled with something that truly reflects the partnership envisioned by Te Tiriti and espoused in Wai 262.

21. We note further that the Government launched its whole of Government response to Wai 262 in 2019 – Te Pae Tawhiti – to discuss the long, outstanding issues raised by Wai 262 and Ko Aotearoa Tēnei.[3] While positive, Te Pae Tawhiti does not fully engage in the broader constitutional

[2] Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and identity* (WAI 262, 2011).
[3] Te Puni Kōkiri (2019) *Wai 262 – Te Pae Tawhiti The role of the Crown and Māori in making decisions about taonga and mātauranga Māori.*

issues raised in the Wai 262 claim. Further, the Government's proposed work programme under Te Pae Tawhiti appears to have gone quiet, with very little publicly available information available since 2020. We appreciate the impact of the Covid-19 Pandemic, however, Wakatū would expect this whole of Government response to have reinitiated with the PVR Bill and development of the Regulations.

22. Wakatū has urgent concerns about the need to embed domestic protections in law and policy. The Waitangi Tribunal made some recommendations in that regard in its *Ko Aotearoa Tēnei* report.

23. Another key aspect of the Government's Treaty obligations concerns various Treaty settlement legislation. Treaty settlement legislation often identifies relevant taonga species relevant to the particular hapū / iwi. This may be particularly relevant in terms of the definition of NISS and the proposed exhaustive NISS list to be included in the Proposed Regulations. However, the PVR Bill is silent on how taonga species contained in Treaty settlement legislation will be treated. Wakatū considers that such taonga species must be considered under the PVR Bill's regime, and in particular provision must be made for access to, and protection and use of, taonga species contained within Treaty settlement legislation. If such provision is not made, the Government will unlikely discharge its Te Tiriti obligations.

24. Wakatū would also like to discuss the benefits of the Nagoya protocol and records its disappointment again that the protocol appears to continue to be outside of the scope of this Reform. The Nagoya Protocol is directly related to the issues the PVR Bill is aiming to address and further consideration needs to be given to its importance alongside the PVR Bill and any further related reform.

25. There needs to be continued engagement moving forward through the Reform. We look forward to being engaged further before the PVR Bill is enacted.

Specific submissions

*Non-Indigenous Species of Significance*

26. Non-Indigenous Species of Significance (NISS) is defined as a plant species:

- believed to have been brought to New Zealand before 1769 on waka migrating from other parts of the Pacific region; and

- listed in the regulations as a non-indigenous plant species of significance.

27. Wakatū notes that the NISS list contained in Schedule 2 of the Proposed Regulations reflects the list proposed in the Consultation Paper Review of the Plant Variety Rights Act 1987: Proposed Regulations (Consultation Paper), which is an *exhaustive* list of 10 species that were identified as having arrived on the migrating waka, namely:

| | **Common Māori name** | English and/or Botanical names |
|---|---|---|
| 1. | Kuru | Breadfruit, Artocarpus altilis |
| 2. | Hue | Gourd, calabash, *Lagenaria siceraria* |
| 3. | Aute | Paper-Mulberry, *Broussentia papyrifera* |
| 4. | Karaka/Kōpi | *Corynocarpus laevigata* |
| 5. | Paratawhiti/Paraa | *Marrita fraxinea* |
| 6. | Perei | *Gastrodia cunninghami* and *Orthoceras strictuum* |
| 7. | Kūmara | *Ipomoea batatas* |
| 8. | Taro | *Colocasia esculenta* |
| 9. | Tī pore | Pacific Cabbage Tree, *Cordyline fruticosa* |
| 10. | Whikaho | Yam, *Dioscorea species* |

28. Wakatū engaged in consultation on the Consultation Paper and provided a submission that noted we do not support an exhaustive list and that we consider an open list that can adapt and change to the circumstances is preferable. While we appreciate there are challenges with having an open list, we consider there will be more issues with a closed list. Further, as discussed above, we consider that some of the challenges with a closed list reflect the approach to reform, being to tinker with a system that is not fully inclusive for Māori and does not provide for that envisioned in Wai 262.

29. The Tribunal in Wai 262 provided guidance on how to address any such issues, noting that the most important aspect is to ensure that we can identify someone with the requisite mātauranga to be able to recognise the interaction between people and species, that would be evidence of that relationship. Example of sufficient evidence would include karakia, waiata, whakataukī and whakairo (carving).

30. Given our previous submission on our lack of support for the proposed closed list, we record our disappointment that notwithstanding our submissions, the Government has proceeded with the closed list originally proposed. We also note that we understand our submissions reflect a number of submissions provided by key Māori organisations / entities and as such, we consider the decision to proceed as originally proposed reflects a lack of good faith on behalf of the Government when consulting with Māori regarding the NISS list.

31. As such, **Wakatū** does not support the closed NISS list.

32. As noted in our previous submission, we consider that if an exhaustive list remains, it should be extended beyond simply species that have arrived here from originating waka. Waka were not the only means of movement

taonga species. Other examples of taonga species movement include evidence of gifting of taonga species between iwi, hapū and whānau, as well as hekenga (migration) of iwi. This latter example is particularly relevant for the customary owners of Te Tauihu, as we migrated from Taranaki in a number of hekenga (migrations) to settle in Te Tauihu. As such, we recommend that the general approach to taonga should be to leave it with iwi, hapū and whānau to determine themselves.

33. Given the ramifications of a closed list, it is incumbent on the Crown to ensure it identifies all the potential species through adequate consultation and engagement. As such, we consider the list may provide a suitable starting point but further work is required regarding the option of an open list or in the very least extending the definition from taonga species coming from the originating waka.

34. Wakatū notes that one option for the list could be empowering the Māori Plant Varieties Committee (**Māori PVR** Committee) to amend and adapt the list of NISS after considering the views of iwi, hapū and whānau, which would provide the necessary safeguards around establishing kaitiaki relationships.

35. Wakatū also notes that it is important, where a list is prescribed, that list can encompass the development of new species from a taonga species as although a developed species may result in a new species, it's whakapapa must be recognised adequately.

36. Finally, we note that the focus on species may result in specific taonga being excluded. One particular example includes Māori potatoes, which are cultivars. As such, these potatoes would not be captured by the taonga species list notwithstanding general recognition of their importance as taonga. Further work must be undertaken to ensure the definition of NISS does not exclude taonga.

37. The Guide to the Proposed Regulations (Guide) notes at page 3 that Cabinet agreed (notwithstanding submissions to the contrary) to keep the list of non-indigenous species of significance as set out in the Consultation Paper and that this list can be amended in the future (by making change to the regulations) where subsequent species were shown to meet the definition in the PVR Bill (i.e., where subsequent research identifies other taonga species that came on the migrating waka). As noted in our previous submission, while we appreciate this sentiment, the reality is that once prescribed in the regulations it will be difficult to amend. Further, the list is still confined to the definition of NISS in the PVR Bill, which is tied to species brought on migrating waka, which as discussed above, does not adequately acknowledge the other ways species can be considered taonga or significant to Māori. As such, we prefer an approach that is far more flexible and does not risk codifying a list that does not encompass the full breadth of taonga species.

38. The Guide also notes that the scope of the PVR regime is too narrow for the issue of defining 'taonga species' to be comprehensively addressed, and therefore it is better considered as part of Te Pae Tawhiti, the response to the Wai 262 report. If subsequent work settles on a more comprehensive definition of taonga species, the Guide notes further that the approach taken in the PVR Bill and these regulations can be revisited. Again, we reiterate our comments at [21] and the importance of Te Pae Tawhiti for this reform. As such, we consider the Government's approach to progressing reform that directly relates to Te Pae Tawhiti risks further Te Tiriti breaches and that the preferred approach would have been to continue to progress Te Pae Tawhiti in advance of further reform to the PVR Bill and the Proposed Regulations.

39. **<u>Wakatū recommends:</u>**

- the general approach to taonga should be to leave it with iwi, hapū and whānau to determine themselves;

- either the NISS definition:
    - be open (rather than exhaustive); or
    - be broadened to include taonga species gifted between iwi or brought during hekenga; and
- the list or definition be broadened in a way that enables cultivars such as Māori potatoes and other such taonga to be included; and
- further consultation is undertaken with Māori and the NISS definition is not adopted without the prior agreement of Māori.

*Commencement of the NISS*

40. The Proposed Regulations are due to come into force on 1 September 2022, with the intention that the PVR Bill also come into effect in September 2022. While the Treaty provisions in the PVR Bill come into effect the day after the PVR Bill receives Royal Assent, subpart 3 of Part 5 of the PVR Bill, being those sections that provide for the procedures relating to applications to the Māori PVR Committee, do not come into force until two years after the PVR Bill receives Royal Assent (unless brought into force earlier by an Order in Council).

41. Wakatū supports the NISS entering into force along with the non-Treaty provisions of the PVR Bill. However, we do not support the delay for subpart 3 of Part 5 of the PVR Bill. The Consultation Paper noted this was necessary to give time to form the Committee, to prepare guidelines for breeders and kaitiaki, and to allow plant breeders working with these species time to adapt their processes to the new requirements in the Bill. In our submission on the PVR Bill we questioned this reasoning and the need for such a long time.

42. While Wakatū appreciates the need for breeders to have sufficient time to understand their obligations, we consider that the need for such a long time is overstated. The infrastructure required to support the passage of the PVR Bill, including the Committee, is already in place, the report on the PVR Bill was available on 19 November 2021, and consultation on this regime has been ongoing for a number of years. Therefore, Wakatū considers breeders are aware of their potential obligations under the PVR Bill, notwithstanding that they may not know how to execute those obligations immediately. As such we consider the time delay of potentially two years is problematic and the shortest time possible to allow breeders to understand their obligations should be chosen.

43. In our submission on the Consultation Paper, we submitted that at the very minimum the Government should include and impose interim measures that also prohibit the progression of applications that may impact on kaitiaki relationships for the period of time that the Māori PVR Committee's powers remain inactive to safeguard kaitiaki. Our position on this point remains. In particular, Wakatū is concerned that a delay in commencement may result in mass applications being made by breeders seeking to circumvent the powers of the Māori PVR Committee, which could impact the ability of the Government to discharge its Treaty obligations to Māori and in particular the duty to actively protect Māori (and our relationships with our taonga).

*Specific Regulations*

44. Wakatū notes at the outset that the stated aims of the Proposed Regulations, as noted at [18] of the Consultation Paper did not include the aim to uphold Te Tiriti. While this may be implied, we consider that this should be front and centre of every aspect of the Reform. Further, we note that given the renewed focus in the PVR Bill, it is essential that the Proposed Regulations appropriately reflect the need to uphold Te Tiriti.

45. We also note that aside from Schedule 2 of the Proposed Regulations, there do not appear to be any regulations addressing Part 5 matters. We assume that this is because those sections will not come into force for another two years and therefore regulations addressing those matters will be delayed. As noted above, Wakatū does not support a delay of two years as consider the reasons noted for the delay are overstated. Further, we consider regulations address Part 5 matters should also be considered early on regardless of whether there will be a delay of their use to ensure that there is sufficient time to engage and seek feedback from Māori.

*Documents in Māori*

46. Wakatū supports Proposed Regulation 22 that notes all documents must be in English or Māori, which further provides that where a document is filed in Māori, a verified translation must be filed if requested by the Commissioner. While Wakatū supports this Proposed Regulation, we query the requirement for a *verified* translation and seek further clarity regarding what this entails and the reasoning for this requirement.

*Timeframes*

47. Any prescribed periods must reflect any new obligations to engage and consult with Māori in respect of NISS. While we appreciate the need for expediency and certainty, as well as limiting undue delay, there must be sufficient time provided to engage adequately with Māori where kaitiaki relationships are concerned.

*Growing trials*

48. Wakatū does not support Proposed Regulation 42 in its current form, which concerns clause 47 (Growing Trials) in the PVR Bill. The PVR Bill requires growing trials to be conducted in accordance with any prescribed

requirements. Proposed Regulation 42 sets out those prescribed requirements, which are that the Commissioner must impose conditions to be complied with by those conducting the growing trial relating to:

a. the location and timing of the growing trial;

b. the trial design;

c. the varieties to be included in the growing trial;

d. how the growing trial will be overseen and by whom; and

e. any other conditions necessary to ensure that the growing trial is undertaken in a manner that is satisfactory to the Commissioner.

49. Wakatū considers that any growing trial must, where kaitiaki relationships are concerned, include the input of the relevant kaitiaki. While we appreciate this could be caught by Proposed Regulation 42(e), we consider this must be noted explicitly.

50. Further, Wakatū does not support the Commissioner's powers to set the conditions of a growing trial or having sole discretion to select a report from the overseas trial under Proposed Regulation 43. Wakatū considers there should be agreement between the Commissioner and the applicant, and where relevant the kaitiaki.

51. Wakatū notes that any use rights (e.g. grants of compulsory licences) must consider the impact on kaitiaki relationships where relevant. This is something that has not been addressed in the PVR Bill and therefore it has not been addressed in the Proposed Regulations and as such presents a gap in the legislative scheme as impacts on kaitiaki relationships must be considered at all stages of the process.

## Conclusion

52. The current Reform represents an opportunity but also carries inherent risk. These risks are in large part due to the fact the Government is attempting to 'tinker' with an existing framework rather than creating a framework that can and does support the recommendations in Wai 262. As such, Wakatū urges the Government to take careful measures to ensure that its obligations under Te Tiriti o Waitangi, and to respect kaitiaki relationships, are upheld.

53. Currently, there are very few domestic legal protections in place to protect the cultural and commercial value of our taonga and those that do exist are weak – this is a significant concern, which impacts on our cultural responsibilities as kaitiaki, as well as on the commercial opportunities our whānau and hapū communities may wish to exercise with respect to their taonga and resources. These matters need to be addressed by the Government as a matter of urgency. Our submissions are targeted at those matters.

54. Thank you for the opportunity to participate in this process.

*Ngā mihi nui,*

Kerensa Johnston,
Wakatū CEO

# APPENDIX

## A brief customary history of the Nelson and Tasman District

1. In the 1820s and 1830s, mana whenua then living in Te Tauihu were conquered by tribes from the North Island, including Ngāti Rārua, Ngāti Awa (now known as Te Ātiawa), Ngāti Tama and Ngāti Kōata. This tribal grouping is known as Ngā Tāngata Heke – the people of the Heke. The Heke were the series of migrations back and forth from the north to the south, including to Te Tauihu, in the early 19th century from the Kāwhia and Taranaki coasts. These migrations are remembered in the collective memory of the people as a series of named Heke.

2. By 1830, it was established that the hapū who held Māori customary title or mana whenua in Nelson, Tasman Bay and Golden Bay were the descendants of the four Tainui-Taranaki iwi of Ngāti Koata, Ngāti Rārua, Ngāti Tama and Te Ātiawa.

3. The four Tainui-Taranaki iwi in western Te Tauihu are recognised as the mana whenua on the basis of acquiring Māori customary title through a combination of take (raupatu (conquest) and tuku (gift)) and ahi kā roa (keeping the fires alight, by occupation or in other recognised ways). Over time, the whakapapa of the migrant iwi from the north became, as the Waitangi Tribunal has put it, 'embedded in the whenua through intermarriage with the defeated peoples, the burial of placenta (whenua) and the dead, residence, and the development of spiritual links.'[4]

4. From the time of the heke onwards, Māori customary title manifested itself in western Te Tauihu (Nelson, Tasman Bay and Golden Bay) as an exclusive right to land, with the power to exclude others if necessary, with the ability to dictate how land and resources was used and accessed.

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4 Waitangi Tribunal, *Te Tauihu o Te Waka a Maui*, vol III, 1366.

5. Ngāti Rārua, Te Ātiawa, Ngāti Tama and Ngāti Koata did not move to Te Tauihu en masse, but particular whānau and hapū, or sections of particular whānau and hapū, from those iwi settled in a staged series of migrations, with land allocated in various locations as different groups arrived.

6. The pattern of mana whenua in Te Tauihu was dictated by the pattern of settlement, in which each kāinga (village) was established around a chief or chiefs and each kāinga was home to extended whānau, with most residents at each kāinga related by blood or marriage. The whānau or hapū (an extended whānau or cluster of whānau could equally be described as a hapū) tended to establish themselves at locations where their neighbouring communities were relatives and/or close allies.

7. By 1840, whānau or hapū belonging to the four Tainui Taranaki iwi were established in Nelson, Tasman Bay and Golden Bay as the mana whenua.

The arrival of the New Zealand Company

8. When the New Zealand Company ("NZ Company") arrived in the South Island in 1841, rangatira [tribal leaders] representing the families of those whānau or hapū who held mana whenua and who were resident in western Te Tauihu negotiated with Captain Arthur Wakefield of the NZ Company and agreed to welcome European settlement in parts of the Nelson, Motueka and Golden Bay area.

9. One of the main reasons for this agreement, from the Māori perspective, was to promote trade relationships between European settlers and Māori for mutual benefit, bearing in mind that tribes of Te Tauihu had already had several decades of contact with European traders prior to 1841.

10. According to the arrangements a major benefit promised by the NZ Company when it entered into what it called 'Deeds of Purchase', was that the resident Māori and their families who held mana whenua in the

relevant parts of western Te Tauihu (Nelson, Motueka and Golden Bay), would be entitled to retain all existing Māori settlements, including urupa, wāhi tapu and cultivated land, and in addition reserves would be set aside comprising one-tenth of the land purchased. These additional land reserves became known as the Nelson Tenths Reserves ("Tenths Reserves").

11. As a result of the negotiations between the NZ Company and tāngata whenua, the Crown issued a grant in 1845 which extinguished Māori aboriginal (or customary) title over 151,000 acres in Nelson and Tasman (the Nelson settlement). The 1845 Crown Grant excluded all existing Māori settlements, including urupa, wāhi tapu and cultivated land, along with one-tenth of the total area of land acquired for European settlement (15,000 acres).

12. The Crown intended to hold the Tenths Reserves on trust on behalf of and for the benefit of the tāngata whenua who were those families who held Māori customary title to the 151,000 acres in the 1840s.

13. Despite the guarantees and the provisions stipulated in the 1845 Crown Grant, the Crown failed to reserve a full one-tenth of land or exclude settlements, urupa, wāhi tapu and cultivated land from European settlement.

14. On completion, the NZ Company's Nelson Settlement comprised approximately 172,000 acres, although it is likely a much larger area of approximately 460,000 acres was eventually acquired by the Crown.

15. As at 1850, the Nelson Tenths Reserves comprised only 3,953 acres (this figure does not include the designated Occupation Reserves).

16. Between 1841 and 1881, Crown officials administered the Tenths Reserves and the occupation reserves on behalf of the original owners. From 1882, the Public Trustee administered the estate.

Identifying the original land owners

17. In 1892 – 1893, the Native Land Court undertook an inquiry to ascertain who owned the land in Nelson, Tasman Bay and Golden Bay prior to the transaction with the New Zealand Company. The reason for this inquiry was to determine the correct beneficiaries of the Tenths Reserves trust.

18. The Native Land Court Judge (Judge Alexander MacKay) considered that the "New Zealand Company Tenths" (as he called them) had been set aside in accordance with the NZ Company's stipulation in the Kapiti Deed that it would hold a portion of the land on trust, and accordingly he decided that to ascertain those persons with a beneficial interest "it was necessary to carry back the inquiry to the date the land comprised in the original Nelson Settlement was acquired by the Company".

19. The Court's ruling determined the ownership of the 151,000 acres "at the time of the Sale to the New Zealand Company", with the ownership of the four hapū – Ngāti Koata, Ngāti Tama, Ngāti Rārua and Ngāti Awa - broken down according to each of the areas awarded by Commissioner Spain in 1845 (Nelson district, 11,000 acres; Waimea district, 38,000 acres; Moutere and Motueka district, 57,000 acres, and Massacre Bay, 45,000 acres).

20. The Judge's ruling included a determination:

> That although the Reserves made by the Company were situated in certain localities the fund accruing thereon was a general one in which all the hapus who owned the territory comprised within the Nelson Settlement had an

interest proportionate to the extent of land to which they were entitled, at the time of the Sale to the Company.

21. The Court requested each of the hapū so entitled to provide lists of the persons who were the original owners of the land at the time of the New Zealand Company's arrival and their successors.

22. Importantly, therefore, the 1893 lists were not drawn up by the Native Land Court, but by the people. The evidence of how this was done is consistent with a tikanga Māori style process where the lists were debated and revised until consensus is reached.

**The Crown's management of the land**

23. From 1842 until 1977, when the original owners regained control of their lands, the Crown held the Tenths Reserves and occupation reserves in trust and managed it on behalf of its owners.

24. From 1882 onwards, the Public Trustee, Native Trustee and Maori Trustee administered the Tenths Reserves and occupation reserves on behalf of the original owners and their descendants. During this period, a great deal of land was either sold or taken under public works legislation - in many cases without the owners' consent and without compensation for the loss.

25. A clear example of the Crown's mismanagement during this period is illustrated by the imposition of perpetual leases on the Tenths Reserves and occupation reserves. By way of legislation, the Crown imposed perpetual leases on the land, which for example, allowed for 21-year rent review periods, rents below market value, and perpetual rights of renewal for lessees. In practice this meant the Māori owners could not access or use their land, nor did they receive adequate rent for leasing the land. The problems associated with the perpetual lease regime continue to impact

adversely on the submitters' land, despite some legislative changes in 1997.

26. In the period to 1977, as a result of the Crown's mismanagement, the Tenths Reserves estate was reduced to 1,626 acres.

**Proprietors of Wakatū (Wakatū Incorporation)**

27. By the 1970s, the descendants of the original owners were lobbying for the return of their land to their control and management. This led to a Commission of Inquiry (the Sheehan Commission) into Māori Reserved Lands.

28. Our establishment was the result of recommendations made by the Sheehan Commission of Inquiry that the Tenths Reserves should be returned to the direct ownership and control of Māori. This recommendation was implemented by the Wakatū Incorporation Order 1977, which according to its explanatory note constituted "the proprietors of the land commonly known as the Nelson-Motueka and South Island Tenths".

29. The land vested in Wakatū Incorporation comprised the remnants of the Tenths Reserves and occupation reserves and the beneficial owners of the land were allocated shares in the same proportion as the value of their beneficial interests in the land transferred.

30. With a few exceptions, those beneficial owners were the descendants of the 254 tūpuna identified as beneficial owners by the Native Land Court in 1893. Wakatū can therefore trace the genesis of a large portion of the land in its estate back to the initial selection of the Tenths Reserves in 1842.

## **Wakatū** Incorporation today

31. Wakatū is the kaitiaki and legal trustee of the remnants of the Tenths Reserves and occupation reserves. Wakatū Incorporation is responsible for the care and development of the owners' lands.

32. The Incorporation represents approximately 4000 Māori land owners in Nelson, Tasman Bay and Golden Bay. Apart from the Crown and local authorities, Wakatū is one of the largest private landowners in the Nelson/Tasman regions.

33. Since 1977, the owners of Wakatū have built a successful organisation that has contributed to the economic growth of the Tasman District and the economic, social and cultural well-being of the descendants of the original owners.

34. Wakatū Incorporation's primary focus is based around its management and use of the ancestral lands of the owners for their cultural and economic sustenance. Today, this comprises a mixture of leasehold land, commercial land and development land.

35. Wakatū has interests in horticulture, viticulture and aquaculture (Kono NZ LP) throughout the Tasman and Nelson District as well as in other parts of New Zealand.

36. The principles and values of Wakatū Incorporation are reflected in its guiding strategic document – Te Pae Tāwhiti.

## Further information

37. A full history of the lands administered by Wakatū Incorporation, along with Ngāti Rārua Ātiawa Iwi Trust, Rore Lands, and other whānau and iwi trusts, who own land in the Nelson and Tasman region is set out and

discussed more fully in the Waitangi Tribunal, Te Tau Ihu o te Waka a Maui report. Also see www.Wakatū.org.nz for further information.