Submission to the Te Ture Whenua Bill and the Land Service

Not One Acre More

Te toto o te tangata, he kai; te oronga o te tangata, he whenua

Submission

The closing date for submissions is 10am Friday 7 August 2015.

Name:	Rihari Dargaville- Chairman Taitokerau District Māori Council
If this submission is made on behalf of an organisation, please name that organisation here:	TAITOKERAU DISTRICT MĀORI COUNCIL

1. **The Taitokerau District Māori Council oppose the Te Ture Whenua Māori Bill 2015 as a descendants of distinguished Tupuna who served in A Coy of the 28th Māori Battalion, who were instrumental in the protection of Māori lands. This Bill does not honour their legacy.**

2. **The Taitokerau District Māori Council oppose the Te Ture Whenua Māori Bill 2015 (the Bill) because it reverses all the hard work completed by Dame Whina Cooper, Ngā Tamatoa, and those who began the journey of protecting our lands when they completed the great Māori Land March 1975.**

3. TTDMC oppose the Bill because it reverses the work of some of our most distinguished leaders such as Sir Graham Latimer and Sir Henare Ngata who were the instigators of drafting the template for Te Ture Whenua Māori Act 1993 (the 1993 Act). The 1993 Act took 20 years to finalise.

4. This Bill is contrary to the Findings of the stage one report; **Te Wakaputanga stating emphatically Ngapuhi did not cede their Rangatiratanga to the Crown**

- Is contrary to the Te Tiriti/Treaty of Waitangi;
- Is contrary to the Declaration on the Rights of Indigenous Peoples;
- Fails to respect our land as a taonga tuku iho;
- Does not accommodate tikanga;
- Is not simpler than the current law
- Does not provide better support for owners;
- Is discriminatory and contrary to the NZ Bill of Rights Act 1991 and the Human Rights Act 1990; and • Is simply very bad law.

5. **The Taitokerau District Māori Council** opposes this Bill because of the rushed process of the consultation used to progress this Bill. Less than one week before their consultation hui started the Minister and his Ministerial Advisory Group headed by Kingi Smiler dropped a discussion booklet 65 pages long and a Bill with 422 clauses and 6 schedules on Māori and then asked us to answer questions in groups at consultation hui.
6. These groups were facilitated by people who themselves had not read the Bill, nor did they understand the current 1993 Act (unless they were Māori Land Court staff). There is no way you could suggest that the Bill is simpler, that it is better law, that it will ensure better support and result in better outcomes. For most of us, the only outcome it will result in is the loss of our taonga tuku iho – so what happened to "Na matou te whenua"? In addition, how can the Crown argue the new system will be simpler when the Bill has 422 clauses while the 1993 Act only has 362 sections and we have not even seen the regulations as yet?

7. **The Taitokerau District Māori Council** reject the suggestion in the Crown's discussion document Te Ture Whenua Māori Reform" at page 10-11 that this Bill represents the views of Māori as none of the reports referred to from 1993-2014 suggested that the current 1993 Act be repealed. Only the Review Panel led by Matanuku Mahuika 2012-2014 suggested a total repeal and they did not consult

people about that. While there are issues with the 1993 Act, most of those can be addressed through simple amendment.

8. **The Taitokerau District Māori Council** oppose this Bill because it will not result in better support for owners, rather it reverses the onus of assistance for owners, to one where they will have to meet all the onerous costs associated with the transitional arrangements and new transactions. Large trusts and incorporations can absorb these costs but small to medium trusts and incorporations will struggle. All will need advice from lawyers and accountants but not all can afford it.

9. **The Taitokerau District Māori Council** oppose this Bill because it discriminates against Māori whanau, hapu as it allows others to readjust their property rights in a manner no other property owner in New Zealand must suffer without the full protection of the law that can be enforced in a Court. (See Part 4 regarding partitions, boundary adjustments, exchanges, amalgamations, aggregations) It will allow sale to people not of the same whakapapa as an owner to purchase the land (clause 76) and allow long term leasing for up to 99 years (nearly 4 generations of exclusion from the land – See clause 108). While the Māori Land Court will continue to have a role, that role is restricted to making sure that those who want to do these things to our taonga, have followed the procedure in the Act. Where the procedure is followed, the decisions cannot be challenged. That is to be compared to the 1993 Act which requires the Court to consider all our interests.

10. **The Taitokerau District Māori Council** oppose this Bill because the limited protections currently in the 1993 Act will be taken away and land owners or their rangatōpū will be free to sell or long-term lease our taonga tuku iho whenever they like, so long as they (or more likely their lawyers, accountants and valuers) know the procedures well enough and they can get away with it. We note for example Schedule 3 clause 7 requires that governance agreements make provision for a minimum level of owner agreement - a simple majority - to enter into a "major transaction" with that term defined by the Companies Act. Counsel advises that can mean the sale of land. Thus a governance agreement can facilitate sale even easier than where there is no governance agreement or body over the land.

11. **The Taitokerau District Māori Council** oppose this Bill because it will give the CEO of LINZ (and possibly the CEO of TPK) subject to the directions, whims and ideologies of the Government of the day, the authoritative record on our lands through control of the Māori Land Register (ML Register and see Part 8). I know it will be LINZ that will be the lead agency of the Māori Land Service with assistance from TPK, because TPK does not have the data capability to store the information that will have to go on the ML Register. So people who are not Māori and do not understand will control our land information. There is no Māori Land Service established by the Bill.

12. **The Taitokerau District Māori Council** oppose the Bill because the 160 odd experienced staff situated in 7 registries of the Māori Land Court focused on our land, will be gutted in favour of inexperienced staff at LINZ offices centralised to Hamilton and Christchurch. TPK will pick up the receptionist function,

concentrating instead on "connectivity" with investors and others that can develop our lands and may receive our applications to process to LINZ. It is not at all clear which Government agency will manage the list of kaitakawaenga or who gets to appoint managing kaiwhakarite. Owners, it appears, will have to meet the costs for the on-going use of the Māori Land Service. LINZ after all runs a user pays system. Under the 1993 Act you merely pay the application fee and all the searching and preparation for uncomplicated matters are provided by the Registry staff of the Māori Land Court.

13. **The Taitokerau District Māori Council** oppose the Bill because it will result in poor urban Māori and poor rural Māori losing their land through the many provisions in the Bill that require they attend meetings (either in person, by proxy, or by some electronic means) or potentially have their beneficial interests (shares) lost to those who "participate" or to a rangatōpū (private trust or body corporate directed by kaitiaki who are defined as trustees or people with positions "comparable to those of a director of a company" clause 5) or to a hapū or iwi authority (see definition of preferred entity clauses 76 (2)(a) & (b) and cross reference to clause 5 definition of representative entity). All of this will take away the property rights of our poorest people and favour those with money to participate.

14. **The Taitokerau District Māori Council** oppose this Bill because it fails to protect the last remaining 5% of Māori land in this country by changing the principles in the 1993 Act focused on the land as a collective asset held by an owner, and those connected by whakapapa and tikanga. It does so by watering down the protections currently in the Preamble and section 2. It does this by making it clear at clause 20 that any estate or interest (eg shares) in Māori freehold land may be disposed of in the same way as private land that is not Māori land, unless prohibited or restricted by the Bill. Given that this Bill allows sale by a range of people and long term leases, sale and leasing becomes an easier option for owners. This will inevitably lead to land loss. It also changes the manner in which the purpose and principles of the Bill are to be applied as I explain below.

15. **The Taitokerau District Māori Council** note that on 28-29 August 2014,**"<u>Note iwi chairs do not speak for Hapu Ngapuhi</u>)** the Iwi Chairs' Forum met at Tuahiwi Marae in North Canterbury. In relation to the reform proposals developed by Minister Chris Finlayson, and John Grant the hui unanimously passed the following seven resolutions put :

- *1. The Constitutional Iwi Leadership Group consider including in its brief: (i) the challenge that NZ legislation is built on a flawed process and a challenged view of the government's right to make laws in this country, and (ii) the request for an independent panel of experts to address the interpretation of Te Tiriti o Waitangi and the Treaty of Waitangi and outline what that means in terms of Māori rights and how law should be made in this country.*

- *2. The Tiriti and the unique status of Māori land as "Taonga Tuku Iho" being fully reinforced in the Ture Whenua Māori Hou ("Ture Hou") beyond the*

preamble of the 1993 Act, with the Ture Hou being the tuakana of all legislation dealing with Māori land.

- *3. The legislation relating to the rating, valuation and access (land locked and zero servicing) to Māori land being addressed at the same time as the Ture Hou...*

- *4. The inclusion of provisions in the Ture Hou to enable the ability for all Māori land owners within a hapu or rohe to make their own laws in accordance with their tikanga.*

- *5. Increasing the jurisdiction of the Māori Land Court, through the Ture Hou, as the specialist Court for all Māori land related issues and legal issues involving Māori, including concurrent jurisdiction with the District Court (for civil matters), Family Court (wills/succession) and Environment Court (including recommendation 3 above); jurisdiction to act as the Land Valuation Tribunal for Māori land; Requiring Authority powers for landlocked land and the jurisdiction to remove unused designated/paper roads or public works.*

- *6. Te Tumu Paeroa being restructured, through the Ture Hou, to (1) have an Iwi appointed Board with a repatriation focus and (2) to be the agency to implement the Ture Whenua Māori Hou with all financial savings over the 5 year transition period being put back in to implementation.*

- *7. A commitment from the government to 3 levels of resourcing for Māori land owners (1) zero transition costs for Māori land owners (2) addressing landlocked lands (creating legal access; water and power), legally forced and continually objected to land amalgamations, and the removal of paper roads and other redundant public works designations (3) $3b investment over 3 years (as per the 2013 MPI report) and/or the financial instruments which enables Māori land owners to establish legal entities and develop their lands in the way that is optimum to them and consistent with their tikanga (including passive uses like urupā, wahi tapu, manuka honey, conservation, tourism etc.).”*

16. The Taitokerau District Māori Council oppose the Bill because no other legislation such as the Māori Trustee Act (Te Tumu Paeroa) nor the Rating legislation is being amended by this Bill. Nor is the $88 million needed to develop our assets to reach the $3 billion approximate potential of our lands and forests going to be transferred from the Crown through Ministry of Primary Industries. No budget announcements or Government forecasts have indicated that this will happen. We are being directed into accepting this Bill with a carrot that is nowhere to be seen. Not even the banks will give the security for the sums needed for development without some mortgage or charge. Thus owners or their governance groups will come under pressure to offer up their land as collateral and this Bill will make it easier for them to do this. That will ultimately mean more land sales or 99 year leases.

17. The iwi leaders wanted Te Tumu Paeroa restructured. Unfortunately, the Māori Trustee has been a central figure in helping LINZ and Ministry of Primary Industries

develop their programmes around the reform policies. In addition, no resourcing other than a $12.4 million budget night announcement allocated to the Ministry of Business Innovation and Employment has been transferred to Māori. That money is to be applied to something called a "Māori Land Network" and/or programmes to improve the productivity of Māori land in remote rural areas, but all of which is controlled by the Crown.

18. The Taitokerau District Māori Council oppose the Bill because it was not initiated by Māori but by the Government, LINZ, Ministry of Primary Industries, Ministry of Business Innovation and Employment and the Attorney-General Chris Finlayson aided by John Grant (non-Māori official who drafted the Bill and is the only person who understands it). I note the current Ministerial Advisory Group headed by Kingi Smiler had not read the detail of the Bill during the many consultation hui of June 2015 as John Grant was required to answer detailed questions on it. So why is the Minister and his Group promoting a Bill they do not even understand and the only person who does, has little or no understanding of Tikanga Māori?

19. The Taitokerau District Māori Council oppose the Bill because it does not support a law change that would see the strength of the protections for Māori land as a taonga tuku iho be enhanced by any Bill. The Bill does not do this in terms of Resolution 2. That is because clause 3-4 set out the purpose and principles of the Bill. These are to be compared to the Preamble and s 2 of the 1993 Act. The Preamble of the 1993 Act has to pervade the entire Act and that provides that Te Tiriti/Treaty applies, that our land is a taonga tuku iho, and that it must be retained for utilisation by Māori.

20. This reminds us of s 5 of the Resource Management Act 1991. Section 5 is the purpose of the RMA and sections 6-8 deal with relationships of Māori with their ancestral lands, their kaitiakitanga and the Treaty of Waitangi. All those things are secondary to the purpose of sustainable management of the environment in section 5. That is why we as Māori, most of the time, loose so many cases in the Environment Court.

21. This Bill sets up the same scheme as the RMA. Clause 3 states the main purpose is the "empower and assist owners of Māori land to retain their land for what they determine is its optimum utilisation." Contrast that with clause 4 and the principles which merely have to be recognised. All people exercising powers and functions under the Bill have to give effect to the purpose of the Bill in clause 3. In seeking to achieve this purpose, they need only recognise the principles. So the Te Tiriti/Treaty, rangatiratanga, tikanga and the fact that land is a taonga tuku iho by virtue of whakapapa need only be recognised. That's like saying today we must recognise that the sky is blue. In this manner the Government can then ensure that the way the Act is interpreted fits with their economic objective and that is to free our land up for sale and long term lease.

22. The Taitokerau District Māori Council oppose this legislation because it does not achieve what I wanted for our taonga tuku iho. Land is not there just for the owners who own it today – they hold it as a taonga tuku iho. Nō matou te whenua ake tonu ake tonu, does not mean I can do anything I like with my land. It means that I care for

it for future generations. I am a kaitiaki – not a company director. But this Bill and its ethos ensures that owners can act with limited to regard to what is the duty of all of us to protect what little land we have left. He whakaaro pakeha tēnei!

23. **The Taitokerau District Māori Council** oppose this Bill because the procedures in the Bill should accommodate tikanga but they do not. Rather the Bill will impose on all governance bodies (rangatōpū a standard legal structure – being a body corporate or trust. All current trusts and incorporations holding 80% of our land will come under pressure to become these new entities. It will require uniform procedures as to meetings and voting, and it will require a standard governance agreement for most governance bodies (see Parts 5-6 and Schedules 1-3). How can such uniformity and standardisation give effect to tikanga? It cannot! Rangatōpū whose kaitiaki (nice cultural misappropriation of a Māori word) are defined in clause 5 will now be persons occupying a position as kaitiaki trustees or people comparable to that of company directors. Even new Māori reservations (now Whenua Tāpui) that may be set aside for marae and urupa will be body corporates with lifetime administrators unless removed or replaced (see clause 36). This corporatizes our lands. Why corporatize our marae and urupa?

24. **The Taitokerau District Māori Council** oppose this Bill because it requires governance agreements, land management plans, allocation schemes and distribution schemes resulting in far more paper work than ever needed under the 1993 Act. In addition, LINZ and TPK will get to see much of this paper work so will be able to identify what lands are "free" for development where the owners are not active. Thus the CEO under Part 5 can now appoint a managing kaiwhakarite to manage our lands and those who can be appointed are the Māori Trustee, natural persons, and body corporates (that would include iwi authorities, companies etc).

25. **The Taitokerau District Māori Council** oppose the Bill because it changes the definition of the preferred classes in 1993 Act. That definition is restricted to people related by blood associated to an owner or associated in accordance with tikanga to the land. The new Bill creates two new terms called the preferred class of recipients and preferred entities. The preferred recipient class includes the immediate family of an owner. Immediate family is defined in clause 5 as those in a close relationship with an owner, including whāngai, spouses, de-facto partners, civil union partners, step-children, step-brother and sisters and on and on the list goes. Preferred entities are rangatōpū or other representative entities. These are defined in clause 5 as entities that represent a hapū or an iwi and is recognised by the member as having authority to represent them. On a sliding preferential scale (see Part 4) for sale, these people or entities can tender for land in a preferential tender process. In this way our lands may be sold because any of these people, rangatōpū, hapū, or the iwi could take over our land - cheaply. Under the 1993 Act they could still tender but not under the preferential system. All this is doing is setting us up to fight each other.

26. **The Taitokerau District Māori Council** oppose this Bill because the participating owner model in Part 3 and Schedule 2 is time consuming and expensive (eg in terms

of the requirements to always have a meeting on every proposal and in terms of advertising). The costs alone for advertising are crippling as they require 3 x advertising in 4 main city daily newspapers and 3x in local daily newspaper and advertising on a web-site. Small and medium size trusts and incorporations can't afford this. In addition, even if a proposal fails due to lack of requisite numbers for attendance or lack of numbers for voting, the default procedure can be used to get what a governance body wants anyway – sale, exchange etc.

27. **The Taitokerau District Māori Council** oppose the Bill because, subject to any governance agreement, it equalisers voting power for simply majority votes, thereby adjusting peoples' property rights and expectations. So if you are 60% shareholder your vote will be worth the same as a person holding 0000.5 of a share and trustees and beneficiaries of whanau trusts can now vote. (Part 3 and Schedule 2 cl 45).

28. **The Taitokerau District Māori Council** oppose this Bill because the Minister of Māori Development will no longer recommend the appointment of judges, only the Attorney-General will (clause 395). So we will have a non-Māori Minister deciding who should be judges on a Court that administers our land. Given the experience so far, we know that means the appointment of judges this Government likes.

29. **The Taitokerau District Māori Council** oppose the Bill because it will be easier to loose beneficial interests (shares) held on the Māori Land Court record as those will now have to be manually transferred to the new ML Register. See Part 1 and Part 8 on what has to go on the Register. I understand that there are approximately 2 million of those interests or property rights.

30. **The Taitokerau District Māori Council** oppose the Bill because whānau trusts will now be forced on all successors where a person dies with no will. To avoid that consequence I will have to see a lawyer to make a will at approximately $400-$500. How many poor people can afford this? Furthermore, under Part 3 whānau trusts will be declared by trust deed and provisions can be included that allow land to be sold (clause 53). These trusts can now also be set aside for the immediate whanau of the owner. Such people will have the same voting rights as the trustees to vote at meetings. Then if I get sick before I die a kaiwhakamarumaru can be appointed and subject to their terms of appointment that person may have the ability to sell my land (clause 68).

Conclusion

31. This Bill is so flawed and Taitokerau recommend that the Minister of Māori Development withdraw it and the current Te Ture Whenua Act 1993 remain.

32. Resolutions of duly notified meeting of the Taitokerau District Māori Council held at Otangarei marae on 3rd August 2015 :

RESOLUTION 13030815

THAT the urgency applications and submissions be confirmed and filed.

Moved Waiomio Māori Committee
Seconded Whangarei Māori Executive Committee. Carried.

RESOLUTION 14030815

THAT the Minister of Māori Development be notified that Tai Tokerau District Māori Council and its affiliate Māori Committees and Māori Executive Committees oppose the review of the Ture Whenua Act in its totality.

Moved Te Kete Tamariki Nukutawhiti
Seconded Ngati Manawa Te Hauauru. Carried.