

## Submission

**To:** Committee Secretariat  
Justice Committee  
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**By:** Northland Regional Council  
**On:** Principles of the Treaty of Waitangi Bill

### 1. Introduction

- 1.1. Northland Regional Council (NRC) appreciates the opportunity to submit on the *Principles of the Treaty of Waitangi Bill* (the Bill). NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the wellbeing of its people and communities.
- 1.2. NRC's relationships and partnerships with Māori are critical to achieving our shared objectives and aspirations in the region and the Bill would create a major barrier to achieving these outcomes.
- 1.3. NRC's key submission points are summarised below:
  - NRC supports the findings and recommendations of the Waitangi Tribunal Interim Reports WAI 3300 and the recommendations of the Regulatory Impact Statement titled [Regulatory Impact Statement: Providing certainty on the Treaty Principles](#).
  - The Bill if enacted will create significant legal uncertainty, resulting in protracted litigation and cost. This would have the opposite effect of its stated purpose of providing certainty and clarity. Such uncertainty would affect not just the Crown but also local government, and would very likely frustrate efforts to achieve local social, economic and environmental aspirations in partnership with Māori. These partnerships are vitally important for the wellbeing of Northlanders across a wide range of matters (including economic development, biosecurity and freshwater resources).
  - NRC is committed to giving effect to Te Tiriti o Waitangi and to being an active Te Tiriti partner to ensure that tāngata whenua have a long-term influential role in decision-making and planning for the region. The Bill, if enacted, would

undermine these commitments, and would have considerable detrimental impacts on the ongoing implementation of key projects conducted in partnership with iwi and hapū in Te Taitokerau Northland.

- Existing laws, such as the Resource Management Act 1991 and Local Government Act 2002, require councils to respectively “take into account” or “recognise and respect the Crown’s responsibility to take appropriate account of” the principles of Te Tiriti o Waitangi. These have been defined and elaborated through several decades of court jurisprudence, Waitangi Tribunal findings, and the actions of successive governments. NRC considers that the narrow definitions proposed in the Bill would create conflicts of law, lead to legal challenges, and increase legal uncertainty and operational complexity, resulting in increased costs and workloads for councils and our communities.
- NRC is committed to supporting Māori representation. The Bill’s provisions risk marginalising Māori voices in council decision-making, contrary to the Crown’s Treaty obligations, existing Treaty Settlements and Statutory Acknowledgements, and council’s commitments.
- NRC submits that the Bill is an attempt to address a “problem” that does not exist. The existing principles as developed by the courts and Waitangi Tribunal are clear, workable and judicially sound; therefore, the Bill should be abandoned as soon as practicable.

## 2. Submission points

### 2.1. Damage to Māori-Crown and Māori-local authority relations

- 2.1.1. NRC sees significant risk that the Bill, if enacted, will damage relations between Māori and the Crown to the detriment of Aotearoa NZ as a whole, with potential flow-on impacts for relationships between local government and tāngata whenua. These impacts would likely be significant, as local authorities are directly engaged in implementing Treaty principles in partnership with tāngata whenua. Accordingly, the Bill, if enacted, will directly and negatively impact NRC’s relationships with tāngata whenua.
- 2.1.2. NRC is committed to working in partnership with Māori and giving effect to our responsibilities to tāngata whenua under Te Tiriti o Waitangi. This is a matter of great importance to NRC, and to iwi, hapū, whānau and communities across Te Taitokerau Northland. We have worked with tāngata whenua to develop *Tāiki ē*. This strategic guiding document reflects the council’s long-term commitment to upholding and growing Te Tiriti partnerships and collaborative progress in the region.

2.1.3. The Bill, if enacted, would undermine these commitments, and would have considerable detrimental impacts on the ongoing implementation of key projects and programmes conducted in partnership with iwi / hapū in Te Taitokerau Northland — many of these initiatives would not be possible in the absence of partnership with Māori.

## 2.2. Other implications for NRC

2.2.1. The Bill, if enacted, would:

- **Undermine statutory requirements for Māori engagement and co-management:** This includes existing statutory bodies such as Te Oneroa-a-Tōhe Board and Kaipara Moana Remediation Joint Committee (both jointly governed by iwi and councils) — where both the Crown and councils, as well as tāngata whenua are committed to working in partnership to benefit the environment and community as a whole.
- **Undermine existing partnerships with iwi and hapū:** NRC has entered into numerous partnerships with iwi and hapū, including formal agreements (e.g. Mana Whakahono ā Rohe) and informal arrangements (e.g. working together on individual projects and programmes such as monitoring and ecosystem restoration). All these existing partnerships would risk being undermined if the Bill were to be enacted.
- **Create legal and operational uncertainties for NRC:** Given the fundamental nature of Te Tiriti, the Bill has the potential to a) impact upon various statutes which govern council's mandate and operations, creating uncertainty, and b) to precipitate potential legal challenges to plans and policies being developed by NRC under the various pieces of legislation. The Bill, if enacted, therefore exposes councils to legal and financial risks.

2.2.2. These impacts would make it more difficult for NRC to fulfil our commitments to Māori and comply with national and regional obligations, potentially disrupting governance frameworks that are founded on the current interpretation of Treaty principles.

## 2.3. Regulatory Impact Statement

2.3.1. The Regulatory Impact Statement (RIS) for the Bill identified the following risks and issues:

- **Erosion of Māori Rights:** The Bill would reduce Māori rights to those explicitly defined by legislation, contradicting tino rangatiratanga and the distinct status of Māori as the indigenous people of Aotearoa. The referendum required to enact this Bill, should it be passed, risks imposing the will of a non-Māori majority on Māori, who are the most likely to be affected by the Bill.

- **Uncertainty in Constitutional Arrangements:** The Bill disrupts a) established jurisprudence about the effects of the Treaty principles developed over years of informed debate and consideration by the courts and the Waitangi Tribunal, as well as the actions of successive governments; and b) the constitutional status of Te Tiriti itself, introducing unpredictability in Treaty-related decision-making.
- **Social Cohesion Risks:** The lack of consultation with Māori in the development of the Bill is likely to leave Māori feeling alienated and excluded from meaningful participation in the direction of Aotearoa’s constitutional arrangements, and the ensuing debate could generate further division and threaten social cohesion, which will have negative impacts mostly on Māori.
- **Crown-Māori Relations:** The Bill risks undermining progress made in restoring the Māori-Crown relationship through Treaty settlements and other measures, because the Bill could be seen as an attempt to unilaterally limit the rights and obligations created by Te Tiriti, without engaging the Treaty partner, and could have flow-on effects into other parts of the relationship.

The RIS recommended maintaining the status quo, whereby the courts and the Waitangi Tribunal would continue to articulate the meaning of the Treaty principles in line with the existing legislation and practice. The status quo provides a higher degree of certainty about what the Treaty principles are and how they operate in New Zealand law, and preserves space for future engagement with iwi and hapū about Aotearoa New Zealand’s constitutional arrangements, in a process that prioritises public engagement, social cohesion, transparency, and the legitimacy of the outcome.

2.3.2. NRC agrees with the findings of the RIS, noting that specified timeframes and procedural limitations have meant that the RIS itself has been limited in scope.

## **2.4. Urgent Waitangi Tribunal inquiry (WAI 3300)**

2.4.1. The key findings in the Interim Reports of the urgent Waitangi Tribunal inquiry WAI 3300 on the Bill are summarised below:

- **Policy development of the Bill has purposefully excluded any consultation with Māori**, breaching the principle of partnership, the Crown’s good-faith obligations, and the Crown’s duty to actively protect Māori rights and interests.
- **The policy is not evidence-based**, has not been adequately tested or consulted upon, and fails regulatory standards.
- **The proposed content of the Bill does not reflect the texts or meaning of the Treaty/Te Tiriti and breaches existing Treaty principles.**
  - Principle 2 in the Bill is a breach of the principles of tino rangatiratanga, kāwanatanga, partnership, and active protection.

- Principle 3 does not reflect the meaning of article 3 of Te Tiriti, and breaches the principles of partnership, equity, and active protection.
- **The Bill would extinguish tino rangatiratanga** and end the distinct status of Māori as the indigenous people of Aotearoa New Zealand, particularly prejudicing Māori.
- **Introducing the Bill would prejudice Māori by further damaging the Māori– Crown relationship**, even if the Bill were not enacted. Māori would also feel the brunt of the social disorder and division caused by its introduction and the select committee process.

The Tribunal recommended that the Bill be abandoned, stating enactment of the Bill, “would be the worst, most comprehensive breach of the Treaty in modern times”.

2.4.2. NRC agrees with the Tribunal’s WAI 3300 findings.

### 3. Relief sought

- 3.1. NRC seeks abandonment of the Bill as soon as practicable.
- 3.2. NRC wishes to speak to this submission.

Signed on behalf of Northland Regional Council



Tui Shortland

**Deputy Chair – Northland Regional Council**

**Dated:** 10 December 2024