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Tēnā koutou,

## **NZAA SUBMISSION ON THE PRINCIPLES OF THE TREATY OF WAITANGI BILL**

### *Submitter details*

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The New Zealand Archaeological Association welcomes this opportunity to provide feedback on the Principles of the Treaty of Waitangi Bill (**the Bill**).

The key points of our submission are summarised below.

1. The NZAA opposes the Bill
2. The Bill, if enacted, threatens Māori rights of kaitiakitanga over their 'taonga katoa', including cultural heritage places, objects, and knowledge. These rights are currently enshrined within various pieces of legislation which recognise and provide for the protection of historic or cultural heritage places and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The erosion of these rights will have a major adverse impact on the protection and management of Aotearoa's cultural heritage, significant to all New Zealanders.
3. The NZAA recommends that the Bill be withdrawn.

### The New Zealand Archaeological Association

The New Zealand Archaeological Association (**NZAA**) is the national organisation for archaeology with a membership of over 460 individuals, spanning professionals, amateurs, students, organisations, businesses, and institutions involved or interested in Aotearoa / New Zealand's archaeology and history. Our objectives are to promote and foster research into the archaeology and history of Aotearoa / New Zealand. Above all we encourage the protection of archaeological sites.

Archaeological sites and features contain unique and irreplaceable evidence of the human history of Aotearoa / New Zealand. Archaeological research studies all periods of Aotearoa's history and provides details about aspects of people's daily lives, such as what people ate, the tools they used and how their houses were constructed. These details are not always captured by traditional, oral, or recorded histories but are vital for understanding past environments, economies, and lifestyles. The archaeology and history of New Zealand is significant on national and international levels. Aotearoa / New Zealand occupies a unique place in the world due to relatively recent habitation by humans, the earliest of those being the Polynesian ancestors of Māori. Therefore Aotearoa / New Zealand's cultural heritage, specifically through archaeological practice is uniquely placed to examine a story of adaptation and development of a distinctive cultural identity.



### Protection of Aotearoa's Cultural Heritage

Places of cultural heritage value, including archaeological sites, contribute to identity, and economic and cultural well-being at national and local community levels. These sites and places also provide essential information to our understanding of our past and are critical elements of our built, natural and cultural environments, and contribute majorly to New Zealand's tourism economy.

A proactive approach needs to be taken to effectively manage our cultural heritage. The destruction, damage or modification of archaeological sites and landscapes should be avoided wherever possible and positive cultural heritage outcomes sought to have a more sustainable approach to the protection of cultural heritage. Cultural heritage (particularly archaeological sites) cannot be replaced — once damaged or destroyed, they are gone forever.

When avoidance of archaeological sites is not possible, provisions to minimise and mitigate the effects of the damage are required, and the loss of any archaeological data must be recorded, following archaeological best practice. The information resulting from this work should be made publicly available, particularly for those groups whose cultural heritage sites have been affected.

The management of archaeological sites with Māori cultural associations must involve tāngata whenua to ensure that cultural, spiritual and traditional values are identified, recognised and provided for. The NZAA recognise the importance of giving effect to the principles of Te Tiriti o Waitangi and te ao Māori to achieve this. Archaeological methods and practice are inherently multidisciplinary and include the collaboration between archaeologists and Māori descendant communities to share knowledge from an archaeological science and te ao Māori or hapū Māori perspective. For example, through the recognition of mātauranga (traditional knowledge), gathered and built up through relationships with the whenua over hundreds of years. The understanding and application of these diverse values and world views, strengthen and benefit the knowledge and experience of all New Zealanders.

We believe that it is crucial to work alongside Māori to facilitate the management of our natural resources and cultural heritage, particularly within a resource management framework to ensure the endurance and on-going protection of these important places, many of which are also wāhi tapu or wāhi tupuna, or part of important cultural landscapes.

### Feedback on the Principles of the Treaty of Waitangi Bill

In relation to the Treaty of Waitangi Bill, there are four key areas central to our submission with a focus on how Māori cultural heritage is identified, recorded, protected and conserved under current legislative frameworks. These are outlined below.

#### **1. Limitation of Māori rights of kaitiakitanga:**

The Bill protects the rights of hapū and iwi Māori only to the extent that these rights do not exceed those of other New Zealanders, unless specified under Treaty Settlements (Section 6, Principle 2). This limitation undermines the unique status of Māori as tāngata whenua, whose preexisting distinct rights over 'taonga katoa' were recognised under Article II of Te Tiriti, including cultural heritage places, objects, and knowledge. These rights are currently enshrined in various pieces of legislation such as the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA), the Conservation Act 1987, and the



Resource Management Act 1991, as well as the United Nations Declaration on the Rights of Indigenous Peoples (2007).

The Bill threatens to erode the legislative basis for these rights, thereby disestablishing government policies and frameworks that require cultural impact assessments, iwi management plans, and the recognition of tāngata whenua as 'interested parties' in the Heritage New Zealand Pouhere Taonga (HNZPT) archaeological authority processes (HNZPTA s44–45). This includes their right of appeal to authority and consent conditions, the inclusion of tāngata whenua in authority conditions, and the requirement for tikanga (Māori customs) to be observed in these conditions.

The Bill will negate the special rights and privileges that recognise the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga, which is a recognised by the Crown as a matter of national importance (Resource Management Act 1991, section 6(e)), specifically in the practice of archaeological research and cultural resource management archaeology. This impacts the the concept of ongoing care of the environment including cultural heritage sites through relational concepts such as kaitiakitanga, whakapapa, mauri and tapu exercised through tikanga and kawa. The effects of colonisation have disconnected many Māori from their turangawaewae (their positionality) and the physical act of interacting with wāhi tūpuna (ancestral sites), taonga tūturu, and the archaeological information that may be able to be provided can play a significant role in reconnecting descendants with their tūpuna and whenua. Māori involvement in archaeological practice at Māori sites is an opportunity to provide a step to heal the injustices of colonisation, while ensuring tāngata whenua voices are heard.

## **2. Loss of co-governance provisions:**

The Bill threatens the existence of current co-governance models between Māori leadership and the Crown as afforded under the principles of Te Tiriti. For example, section 10 of the HNZPTA ensures at least three members of the Board of Heritage New Zealand Pouhere Taonga are experts in te ao Māori and tikanga Māori. Meanwhile, section 26 of the HNZPTA establishes the Māori Heritage Council, which has broad functions (section 27) specific to the recognition, identification, protection, preservation, and conservation of Māori cultural heritage in ways that are kaupapa Māori driven, recognise mana mōtuhake (independence) and follow local tikanga and kawa. Similar provisions of co-governance are established in the Conservation Act 1987 in the establishment of Conservation Board Membership, and delegation of local authority powers under the Resource Management Act 1991. These provisions for co-governance of the way Māori cultural heritage is managed in uniquely Māori ways following local tikanga and the mana of tāngata whenua are essential to achieve the principles of partnership and participation between Māori and the Crown.

We consider the Bill threatens the foundation of these forms of co-governance of Māori cultural heritage and may lead to Māori being even less represented at the decision-making table and decisions being made about Māori cultural heritage that are inconsistent with tāngata whenua perspectives and values.



### **3. Exclusion of Non-Historical Settlements:**

The Bill restricts the extension of Māori rights beyond those of other New Zealanders to historical Treaty settlements only (section 6, Principle 2, subpart 2). This exclusion neglects the importance of ongoing claims and settlements that reaffirm Māori rights. For instance, the Wai 262 claim addresses the protection of Indigenous knowledge and data as taonga (treasures) going beyond protections of international property law. The claim is supported by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007. By not recognizing these ongoing claims, the Bill undermines the progress made in protecting Māori cultural heritage and makes it less likely for New Zealand to remain a signatory to UNDRIP — further eroding Indigenous Peoples' rights.

### **4. Protection of Māori Heritage Places and Objects:**

Current legislative provisions provide measures for the recognition and protection of Māori cultural heritage places and objects, including archaeological sites and materials recovered thereof. For example, section 13 and 14 of the HNZPTA provides for the listing of significance wāhi tūpuna, wāhi tapu and wāhi tapu areas on the Rārangi Kōrero/ New Zealand Heritage List, which recognise unique relationships of tāngata whenua to their important heritage places. The Act also provides for unique support processes and decisions to the Board of HNZPT and the Māori Heritage Council for sites and places of interest to Māori.

Further, the RMA provides for the protection of historic heritage places from inappropriate use, subdivision or development. The definition of historic heritage recognises those places of archaeological and cultural value and includes sites of significance to Māori (including wāhi tapu). Mechanisms for protection can include scheduling of places in regional or district plans, through heritage orders or under a Mana Whakahono ā Rohe (iwi participation arrangement). Under the RMA provisions also encourage Māori participation in the management of natural and physical resources and requires the consideration of Māori values, culture and tradition in resource management decision making.

Provisions under the Protected Objects Act 1975 that are designed to protect taonga tūturu (Māori cultural objects). These provisions include funding for the conservation of taonga Māori. Without these protections, there is a risk that significant cultural objects could be neglected or inadequately preserved, further diminishing the cultural heritage of Māori. Correct and proper care of taonga tūturu/ artefacts is basic international archaeological practice.

The Bill threatens the uniquely hapū-based ways of identifying, recording, protecting and conserving Māori cultural heritage places and objects. These places and objects that are unique to Aotearoa New Zealand and foundational to tāngata whenua identities, and cultural and economic well-being are at risk of being neglected under compromise to the values of the majority.

#### Recommendation on the Principles of the Treaty of Waitangi Bill

From the points raised above, the NZAA recommends the Bill is withdrawn in its entirety.