T E R U N A N G A O T E R A R A W A

28 South Road, P.O. Box 361, Kaitaia 0441

14 November 2008

Rob Robson
Manager, Petroleum and Minerals Policy
Ministry of Economic Development
PO Box 1473
Wellington
By email: rob.robson@med.govt.nz

Tēnā koe Rob,

RE: SUBMISSIONS – "PROPOSED BLOCKS OFFER – OFFSHORE NORTHLAND"

Our Organisation

1. Te Rūnanga o Te Rarawa (the Rūnanga) is the iwi authority representing the interests of the marae and hapu that make up the iwi of Te Rarawa. The Rūnanga is made up of one Trustee and one alternate Trustee for each of the 23 affiliated hapu marae in the rohe of Te Rarawa. The Rūnanga meets on the third Wednesday of the month in Kaitaia. It elects an Executive that meets monthly with the Executive Officer to oversee the Rūnanga day-to-day operations. The Executive reports monthly to the Rūnanga. The Rūnanga offices are based in Kaitaia and it employs more than 50 staff.

Background

2. This submission follows the Ministry of Economic Development (the Ministry) consultation meeting in Kaitaia on 6 November 2008 which we attended along with interested parties from a number of local hapū and iwi groups.

Acknowledgments

3. We wish to acknowledge your comments apologising for the Ministry not having met and consulted with Te Hiku o Te Ika iwi sooner. We also note your remark that the meeting was consistent with the Ministry's desire to consult with hapū and iwi in order to bring meaningful expression to our mana over the areas affected by the Proposed Petroleum Permit Blocks Offer (PBO).

4. Having said that, there are issues concerning "meaningful expression to our mana" which go to the heart of Crown minerals policy. We therefore recognise that the PBO process itself will be unable to address some of our issues. We hope, nonetheless, that you will convey our submissions in their entirety to the Minister.

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5. Our submissions below are basically consistent with those made at the consultation meeting on the 6th.

Our Rights and Interests – Manawhenua

6. The hapu of Te Rarawa hold manawhenua (authority) rights and interests over our traditional territories described as the area from Hokianga to Maungataniwha, north through Victoria Valley river to Maimaru, across from Awanui Bridge west to Hukatere at Te Oneroa a Tohe (Ninety Mile Beach), then south to Mitimiti and Hokianga. More specifically, this manawhenua includes the takutaimoana (foreshore and seabed) adjacent to our traditional rohe as described above.[1]

7. The takutaimoana is indivisible from the whenua (or 'dry' land) it adjoins, and includes:

   a. The canoe trails that stretch out to and beyond Te Tarenga a Rawhaki ("the Continental Shelf);

   b. The subsoil, bedrock, and other matters below the areas described including those not yet discovered; and

   c. All natural resources, as defined in section 2 of the Conservation Act 1987 within, above and below the areas described.

8. Te Oneroa a Tohe also holds a particular significance to all iwi of Te Hiku o Te Ika and, dare we say it, nationally as Te Ara Wairua, or the spiritual pathway to Te Rerenga Wairua (the final departing place of the spirits).

9. The Crown has already recognised that the mana tuku iho of Te Rarawa in relation to the public foreshore and seabed within its rohe is[2]:

   a. Unbroken, inalienable and enduring; and

   b. Held and exercised by the hapū of Te Rarawa as a set of collective rights.

10. The Ministry may wish to note that based upon the manawhenua of the hapu of Te Rarawa, the Rūnanga is currently involved in a number of matters to which the Proposed Block Offer (PBO) relates, including:

    a. Direct historical claims settlement negotiations with the Crown;

    b. Te Hiku o Te Ika Regional claims settlement negotiations with the Crown (including the development of a five-iwi management regime for Te Oneroa a Tohe);

    c. Foreshore and Seabed Act 2004 negotiations with the Crown; and

    d. WAI 262 Flora and Fauna / Mātauranga Māori Waitangi Tribunal Inquiry (Te Rarawa being a claimant to the claim).

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[1] Te Rarawa recognises that other iwi also claim manawhenua over certain areas, and that in parts Te Rarawa's rights and interests may not be exclusive. A process is being developed in the Hiku Forum to address shared manawhenua issues.

[2] Refer to clause 5, Foreshore and Seabed Terms of Negotiation between Te Rūnanga o Te Rarawa and the Crown, http://www.justice.govt.nz/foreshore/negotiations/te-runanga-o-te-rarawa/terms.html .

11. In the context of the activities in 10. above, therefore, Te Rarawa's point of departure is that we hold manawhenua rights and interests over those lands and resources within our traditional territories, which we have not relinquished.

Giving Effect to Te Rarawa Rights and Interests re Resources Affected by the PBO

General

12. We know that the Crown is presently constrained by legislation, policy and a lack of effective constitutional arrangements[3] which prevents it from giving effect to Te Rarawa petroleum rights and interests. While we recognise the Crown's actions which go some way to rectifying the situation,[4] these actions do not go far enough. We ask that the Crown takes more meaningful steps to address this shortcoming, and request that the Crown re-engage in a focussed dialogue with Te Rarawa on these issues.[5]

13. In the context of Te Rarawa opposition to Crown assertions of ownership over our lands and resources, we make the following submissions.

PBO Process

14. The PBO concerns not only the petroleum, but also the environment, any other natural resources and areas of cultural significance (e.g. Te Ara Wairua) affected by the PBO-related activity. The Rūnanga wishes to ensure that, to the greatest degree possible, Te Rarawa's rights over and interests in all those lands and resources are given effect to, including:

    a. Our kaitiakitanga rights and obligations to protect the environment;

    b. That our free, prior and informed consent is obtained before any exploration or extraction activity takes place; and

    c. That we benefit appropriately from any approved extraction.

15. In terms of increasing our control and influence through the PBO tender process, we recognise that Te Rarawa essentially has three options:

    a. Te Rarawa tenders a Work Program Bid ourselves (a very difficult option for the iwi given the nature and degree of technical, capital and financial resources required);

[3] E.g. entrenchment of guarantees to Māori under Te Tiriti o Waitangi.
[4] E.g. ref Crown involvement in activities listed in para 10. above.
[5] We note that the release of the Waitangi Tribunal WAI 262 Report, hopefully in the new year, may trigger a process for Māori-Crown dialogue. However, there are a number of other contexts under which the Crown could initiate engagement with Māori, perhaps for example around the Government's position on the United Nations Declaration on the Rights of Indigenous Peoples. A review of the New Zealand policy on the DRIP might be especially timely, given that our Government may soon be facing the somewhat embarrassing reality of being the only UN state opposing the DRIP (as the newly-elected United States President, Barak Obama, is reported as having made statements signally a change to US support for the Declaration).

b. Te Rarawa enters a Joint Venture with an applicant (e.g. mining company) and/or other iwi or third party – or a combination of parties to submit a bid; or

c. Te Rarawa waits until the successful bidder/s are known, and approaches them to establish a Joint Venture.

Relationships, and Engagement

16. With regard to any bidding options, we consider that Te Rarawa should not have to compete with anyone else for what we believe is already ours. At the very least, the Crown should follow policy precedents already established (e.g. re fishing quota, aquaculture management areas, etc), with regard to a direct allocation of resources to Māori.

17. Similarly, while we note that a percentage of the profits or some other benefiting arrangement can be negotiated with third parties, matters concerning ownership, use, access to, management of and benefits deriving from those resources are rightly for the partners to Te Tiriti o Waitangi – Māori and the Crown – to discuss (or in our case, Te Rarawa and the Crown). Te Rarawa should be able to negotiate with the Crown an agreed allocation of the benefits (royalties or otherwise) of extracted petroleum *as of right*. It is objectionable to expect that Māori should have to go 'cap in hand' and negotiate with third parties over our own resources. More objectionable still is that the Crown policy is to maintain a 'hands off approach' to those negotiations, while at the same time encouraging Māori to negotiate with potential PBO bidders in the knowledge that the negotiating power will favour the non-Māori parties.[6]

18. Te Rarawa supports the need for local iwi to have strong working relationships with all stakeholders involved (including the successful bidders), but even the Crown has stated that it cannot force mining companies to strike up relationships with iwi. This is why Te Rarawa stresses that the primary relationship should be Te Tiriti relationship between Te Rarawa and the Crown. This buffers Te Rarawa from risks associated with third party relationships.

Amendments to PBO

19. In the meantime, and in the absence of the Crown agreeing to establish with Te Rarawa the primary Tiriti relationship as set out above, the Rūnanga makes the following submissions.

20. The Rūnanga had requested at the consultation meeting on the 6th that *the PBO* include a clause advising potential bidders to engage with Te Rarawa before submitting bids. The Crown has since advised that the blocks offer notice, which is to be gazetted, must apply to all iwi/hapu in the Auckland and Northland regions and *should not be seen to single out particular iwi/hapu*. Therefore, a commercial venture that an applicant may enter into with a particular iwi/hapu is not something

[6] Te Rarawa holds this concern despite an awareness of motivations mining companies may have to engage with and negotiate acceptable arrangements with iwi in order to avoid trouble on the ground (which could translate into a bottom line negative effect on their profits).

that the Crown can properly take into consideration in deciding to whom it will award a permit.

21. In that respect,[7] the Rūnanga supports the following PBO measures, that:

Engagement

a. The Ministry advises any potential bidder[8] (as opposed to including a requirement in the PBO document itself) that they should engage with Te Rarawa as an iwi which holds manawhenua in the area (and for other reasons as set out above in this submission, including that Te Rarawa may also wish to enter into a relationship of a commercial nature with the potential bidder);

b. On award of the Blocks, the Ministry write to the successful bidder(s) (and copy to the Te Rarawa) advising the same - that the permit holder should engage with Te Rarawa (for the reasons referred to in 21. a. above);

Human Rights Audit

c. Bidders are required to include in their block bid information regarding their 'human rights record' – in particular, the effect their activities and past dealings have had on indigenous peoples; and

d. As part of the selection process, the Crown supplement the information in 21.c. above by undertaking a 'Human Rights Audit' on the bidders, and that this be a factor to be sufficiently weighted and taken into account when selecting the successful tenders.

22. We look forward to the Minister's response to our submissions, and to staying in contact with you regarding this and other exploration and mining matters in the future.

Naku noa,

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Te Runanga o Te Rarawa

[7] And recognising also the submission made at the consultation meeting by Mr R Porter that Te Rarawa be provided with a say in development because of long term effects that, if left determined by outsiders, could be detrimental.

[8] A person who approaches the Ministry with an expression of interest in the blocks offer.