
He tono nā

Te Rūnanga o Ngāi Tahu

Ki

The Ministry of Economic Development

e pā ana ki ngā

**Proposals for the Operation of the Managed
Spectrum Park in the 2.5 GHz band**

18 July 2008

**Submission
To the Ministry of Economic Development
On the Proposals for the Operation of the Managed Spectrum Park in the 2.5 GHz band
18 July 2008**

This submission is presented on behalf of:

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1. EXECUTIVE SUMMARY

- 1.1 This submission presents the views of Te Rūnanga o Ngāi Tahu (Te Rūnanga) on the Ministry of Economic Development's ("the Ministry") discussion paper *Proposals for the Operation of the Managed Spectrum Park in the 2.5 GHz band* ("the Discussion Paper.") Te Rūnanga is pleased to have the opportunity to comment on the proposals.
- 1.2 Te Rūnanga notes, however, that no direct consultation has been undertaken with Te Rūnanga on the proposed Managed Spectrum Park ("MSP"). Nor was there direct correspondence from the Ministry notifying Te Rūnanga of the above discussion paper and the submission deadline date of 18 July 2008.
- 1.3 In November last year, the Government made decisions concerning the use and allocation of radio spectrum in the 2.3 GHz and 2.5 GHz bands. These announcements followed consideration of responses to a discussion paper issued in August 2007. Te Rūnanga was unaware of and therefore not in a position to make detailed submissions on the wider policy matters raised in the August 2007 discussion paper.
- 1.4 Accordingly, Te Rūnanga has not been able to give full consideration to the issues raised by the Discussion Paper and the implications of the MSP to Ngāi Tahu Whānui. Te Rūnanga is still in the process of exploring a range of opportunities for future involvement with radio spectrum activities. Therefore, whilst we offer the comments below, we reserve our right to develop and evolve our views on the MSP in the future.
- 1.5 Te Rūnanga o Ngāi Tahu supports the Government's policy objectives in setting aside 2.5 GHz spectrum for a proposed Managed Spectrum Park.
- 1.6 The MSP will go some way to enabling South Island communities to take advantage of technological developments and community led initiatives to harness the power of high-speed broadband for social, community and economic development, as intended by the Government's Digital Strategy.
- 1.7 Whilst the nature and scope of Te Rūnanga participation in the MSP has yet to be determined, Te Rūnanga wishes to ensure that any proposals do not impinge on any future uses and opportunities presented by the MSP.
- 1.8 Rather than being merely a content provider and consumer, the MSP provides Te Rūnanga with an opportunity to become a provider of wireless services in Te Waipounamu and to play an active role in the telecommunications sector.
- 1.9 In this regard, the proposed geographical limitation restricting right holders within the MSP to operate in no more than ten contiguous Territorial Authorities adversely affects Te Rūnanga. Such a restriction will prevent Te Rūnanga from providing effective wireless services across the entirety of the Ngāi Tahu takiwā (as defined in the Te Rūnanga o Ngāi Tahu Act 1996).

2. TE RŪNANGA O NGĀI TAHU

Te Rūnanga o Ngāi Tahu

- 2.1 Te Rūnanga, the tribal representative body of Ngāi Tahu Whānui, is a body corporate established on 24 April 1996 under section 6 of the Te Rūnanga o Ngāi Tahu Act 1996 (the Act).
- 2.2 Section 3 of the Act states:
“This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provision of this Act”
- 2.3 Section 15 of the Act states:
(1) Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.
(2) Where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngāi Tahu Whānui, be held with Te Rūnanga o Ngāi Tahu.
- 2.4 In paragraph 7 of section 6 of the Ngāi Tahu Claims Settlement Act 1998 (“the NTCSA”) (recording the Crown’s apology) Ngāi Tahu is recognised “as the tangata whenua of and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui”.
- 2.5 It has therefore been clearly affirmed in statute that Te Rūnanga is the sole representative of Ngāi Tahu Whānui, the iwi that is tangata whenua within the Ngāi Tahu Takiwā.

Collective Voice

- 2.6 Te Rūnanga, by virtue of its statutorily recognised position as the representative tribal body of Ngāi Tahu Whānui, makes this submission on behalf of the Ngāi Tahu tribal collective. Te Rūnanga is constituted as the kaitiaki of the tribal interest through its Charter adopted on 21 August 1993.
- 2.7 The attention of the Select Committee is respectfully drawn to the special status of Te Rūnanga. Te Rūnanga notes that this submission should not be treated as a single submission, in the manner customarily adopted by Select Committees, but should be accorded the status and weight due to the tribal collective, Ngāi Tahu Whānui, which it represents.
- 2.8 There are currently close to 42,800 Ngāi Tahu Whānui who have registered on the roll in accordance with section 8 of the Te Rūnanga o Ngāi Tahu Act 1996 and this number is growing rapidly.
- 2.9 Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own submissions to the Select Committee.

3. ELIGIBILITY CRITERIA FOR THE MSP - GEOGRAPHICAL CRITERIA

- 3.1 Te Rūnanga agrees with the Ministry's proposal to prohibit holders of nationwide management rights in 2.3 GHz and 2.5 GHz spectrum from participating in the MSP. We believe this aligns with the Government's policy objective of facilitating increased wireless broadband initiatives by local communities.
- 3.2 However, under the proposed "Option 3" criteria applicants under the MSP regime would face a geographical restriction wherein right holders would only be able to provide services to a maximum of ten contiguous city and district council areas (paragraph 20(c) of the Discussion Paper).
- 3.3 Whilst a geographic restriction understandably seeks to prevent market competition with larger nationwide management right holders, Te Rūnanga is of the view that such a restriction will adversely affect the ability of Te Rūnanga to utilise the MSP to meet the economic, social and cultural needs of Ngāi Tahu living throughout its takiwā in Te Waipounamu. This restriction may impact on future broadband opportunities that Te Rūnanga might be able to seize for the benefit of its constituent communities.
- 3.4 Given Te Waipounamu's geography and, specifically, the significant distances between population centres, wireless-based networking solutions will become increasingly significant over time for Ngāi Tahu Whānui. These wireless solutions hold much potential in advancing Ngāi Tahu's cultural objectives, such as the Kotahi Mano Kāika 2025 language strategy and also as a means of facilitating greater economic transformation among Ngāi Tahu Whānui.
- 3.5 The Ngāi Tahu takiwā includes 22 territorial authorities across a range of diverse and often remote communities – stretching from Kaikōura to Stewart Island, from Buller to Fiordland. Within this takiwā, Ngāi Tahu cultural, political, social and economic activity is centred on Te Rūnanga's 18 constituent Papatipu Rūnanga.

- 3.6 A geographic restriction under the MSP regime of 10 contiguous territorial authorities would prevent Te Rūnanga from providing wireless services - with distinct Ngāi Tahu content – to all of its constituent Ngāi Tahu communities within the takiwā. Thus, opportunities that might arise from participation in the MSP via potential wireless broadband, television or data sharing services provided by Te Rūnanga would be fragmented and possibly confined to only some Ngāi Tahu communities.
- 3.7 Furthermore, Te Rūnanga’s assets and economic interests span the breadth and length of the Ngāi Tahu takiwā. The proposed geographic limitation would restrict co-ordinated and widespread application of Ngāi Tahu led wireless broadband services to all of Te Rūnanga’s diverse commercial interests.
- 3.8 Te Rūnanga wishes to preserve, so much as possible, the potential benefits of the MSP for Ngāi Tahu Whānui. We note that under the proposed MSP regime the Ministry would retain some discretion in approving applications that might not comply with the eligibility criteria - such as the geographical restriction on service provision. Given the unique nature and size of its takiwā, and the opportunities afforded by the MSP to advance Ngāi Tahu language, culture and economic well-being, any future application from Te Rūnanga to participate in the MSP may well seek to provide services to iwi members across the Ngāi Tahu takiwā. We would welcome further clarification from the Ministry on this point.
- 3.9 In the event that the geographical restriction is applied to any future Te Rūnanga application for the MSP, a series of related applications from individual Papatipu Rūnanga would then be required in order for Ngāi Tahu Whānui to acquire the capacity to deliver takiwā-wide wireless services. Such a scenario would lead to increased administrative and resourcing costs, and in many respects would act as an unfair barrier to entry for a streamlined and efficient Ngai Tahu Whānui role in the MSP. This scenario would also raise significant administrative, resourcing and compliance issues for Papatipu Rūnanga. We would argue that the proposed geographical restriction would be contrary to the Government’s stated goals for the MSP, particularly efficiency and flexibility.
- 3.10 However, the proposed MSP provisions prohibit applicants from being “associated persons” as defined in terms and conditions for local FM radio broadcasting licences. Paragraph (i) of that definition states that an “associated person” includes a scenario where “person A and person B are acting, or propose or are likely to act (in the Chief Executive’s sole opinion), jointly or in concert in relation to a Business”. This definition if adopted would seem to therefore prohibit any application from two or more Papatipu Rūnanga that relates to a collective business initiative, such as might be expected for a Ngāi Tahu led takiwā-wide wireless service.

- 3.11 Accordingly, we would argue that the proposed geographical restriction would be contrary to the Governments stated goals for the MSP, particularly efficiency and flexibility. The current geographical limitation, in conjunction with the associated person prohibition would appear to stifle the aspiration of Ngāi Tahu Whānui to establish a takiwā-wide service using the MSP.
- 3.12 Therefore, under the current proposed eligibility criteria, Te Rūnanga is uncertain that its participation in the MSP as a service provider will result in the capacity to deliver wireless services and unique thematic content to all of its constituent communities. Indeed, a proposed geographic restriction based on contiguous territorial authority boundaries would appear to disadvantage Ngāi Tahu Whānui by virtue of its distinct geographical customary takiwā.
- 3.13 Recommendations:**
We request that the Ministry consider amending the MSP proposals to the extent that :
- a. The geographical limitation of ten Territorial Authorities not be applied to iwi, as it may prevent provision of coordinated iwi-wide services to tribal members, particularly for those iwi with large takiwā/rohe such as Ngāi Tahu;
 - b. Alternatively, that the Ministry provide greater flexibility in assessing iwi applications to the extent that there be no requirement that the ten territorial authority areas be contiguous. This would allow iwi to determine the extent of the services provided by them, should they be in a position to develop the required transmission infrastructure in desired areas, which are spread out across their takiwā/rohe.

4. LIMITS ON BANDWIDTH APPLIED FOR BY APPLICANTS

- 4.1 As the MSP is a relatively new and untested regime – both globally and nationally – the first round of applications will undoubtedly provide greater insight on effectiveness of the regime in meeting the Government’s objectives under the Digital Strategy. Consequently, it may take some years to arrive at a robust, functional and widely-supported MSP regime.
- 4.2 Accordingly, Te Rūnanga supports, at least initially, no restrictions on the quantity of bandwidth that applicants may seek. The proposed lot system, the requirement for negotiation among applicants and the lower costs of entry may well prove to be effective in mitigating the threat of MSP monopolies in the regions.

5. RIGHTS AND OBLIGATIONS OF “REQUESTORS”

- 5.1 At this stage, without the benefit of further consideration of the issue or further insight on how each option of the three options would work, Te Rūnanga is not in a position to support any one particular option. Each option has its own respective merits or shortcomings.

- 5.2 The “no rights” approach would allow for greater protection of right holders interests and would provide the certainty required to encourage local investment in relevant infrastructure and operational support services. This approach would also discourage an environment of protracted mediation or litigation arising from negotiation difficulties, as well as providing greater certainty for consumers and regional economies.
- 5.3 Te Rūnanga believes that the proposed “use it or lose it” provisions will give the Ministry sufficient scope to prevent inefficient use of spectrum or the risk of “stockpiling” by right holders for competitive advantages.
- 5.4 However, the options for mediation and arbitration may also be of benefit to Te Rūnanga should it seek to obtain more spectrum within the MSP. A "no rights" approach under the MSP provisions would make it difficult for Te Rūnanga to do anything other than try to negotiate with other applicants to obtain access to more spectrum rights, whereas the other two options would allow recourse to mediation or arbitration. Those two latter options might also, however, work against Te Rūnanga, in the event that a “requestor” seeks to obtain some of Te Rūnanga’s spectrum.
- 5.5 As the MSP is a new concept to New Zealand, this issue is one of the “unknowns” that might only be fully understood after the MSP has been up and running for a few years. The issue is one that will require a prudent balancing of commercial certainty (over the protection afforded by a right holder’s license) with the flexibility to evolve and grow services over time in the regional market.

6. MSP CHARGES AND FEES

- 6.1 Te Rūnanga agrees with the proposed formula for calculating resource rentals. At this stage, we do not consider that the proposed fees will be too onerous or prohibitive in encouraging MSP participation by new and diverse stakeholders.

6.2 However, we would recommend that the Ministry undertake a review of charges after the first two years of the MSP to ascertain whether or not the rentals (and administrative fees) have been a significant barrier to entry for not-for-profit community stakeholders.

6.3 Recommendation:

That the Ministry undertake a review of charges after the first two years of the MSP to ascertain whether or not the rentals (and administrative fees) have been a significant barrier to entry for not-for-profit community stakeholders.

7. DURATION OF LICENSES

7.1 To promote greater regional investment in transmission infrastructure and support long term strategic planning, Te Rūnanga would like to see an extension of the license duration from six to at least 10 years, with a similar right of renewal as that currently proposed.

7.2 We believe that a longer duration for licenses would be more attractive to potential investors of regional service delivery and transmission. Under the current proposals, there is no guarantee that any license granted will extend beyond six years. Te Rūnanga is of the view that such a short term would discourage investment in local and regional infrastructure and in new technologies. A longer term, with rights of renewal, would also promote greater regional enterprise and innovation, as potential applicants would be able to find more investment capital to develop local infrastructure – rather than having to rely on the transmission services of larger incumbents.

7.3 Recommendation:

That the license duration be extended from six to at least 10 years, with a similar right of renewal as that currently proposed.

8. CONCLUSION

8.1 Given the limited broadband “backbone” available in many isolated Ngāi Tahu communities in Te Waipounamu the expansion of wireless broadband services will provide a critical tool for achieving Ngāi Tahu cultural, social and economic goals. The MSP will provide Te Rūnanga with opportunities to play an active role in the development of wireless technologies and to continue in making a significant contribution to the South Island economy. We believe that the MSP will also promote lower prices for high speed internet services, particularly for those in disadvantaged, rural communities.

8.2 Apart from our concerns noted above, Te Rūnanga supports the proposed design options for the operation of the MSP. The MSP will provide Te Rūnanga with greater opportunities to ensure that all Ngāi Tahu Whānui communities will be able to benefit from affordable, high speed internet access. Such access, particularly in previously marginalised rural Ngāi Tahu communities, will fuel and support greater productivity and Ngāi Tahu advancement in the global economy.

9. CONTACT DETAILS

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