



WAIRARAPA MOANA
nurturing our taonga



Wairarapa Moana Inc win \$1 billion resumption order for Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua

Tēnā Koutou

The Waitangi Tribunal has now released its preliminary determinations report on the Wai 85 and Ngāi Tūmapūhia-ā-Rangi (Wai 429) resumption applications.

In its preliminary determinations report the Tribunal indicates support for resumption of the Maraetai power station land and improvements at Pouākani and forest land at Ngāumu. However, it favours the resumption of these assets to an entity that represents all of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua, even though not everyone has whakapapa to those lands or was party to our claims.

The Pouākani land and improvements, and Ngāumu land, have a combined value from \$800 million to \$1.2 billion that could be returned to Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua.

This pānui provides you with an update, and summarises the Tribunal's preliminary determinations report.

WMI Committee of Management comments on the Report

As it has only been a matter of days since the Tribunal released this Preliminary report, WMI Committee will be taking some time to consider this report, options, and next steps.

We thought it important though to provide WMI owners with an update.

We acknowledge this is not the outcome we were seeking for WMI owners because the Tribunal has indicated that the land should be returned to a "Trust" representing Ngāti Kahungunu ki Tāmaki Nui-ā-Rua. This could be, but is not necessarily the current Settlement Trust.

WMI leadership and your commitment as WMI owners to take the Waitangi Tribunal action despite fierce and constant opposition from the Settlement Trust, the Crown, and Raukawa, means that we have created the potential for all of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua to receive a significantly better Treaty settlement than the \$97 million package negotiated and recommended by our Iwi negotiators in the Settlement Trust.

WMI has provided both the compelling and expert economic evidence and legal argument to achieve the current outcome from the Tribunal and, if we remain steadfast and the pathway going forward is carefully navigated, Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua could achieve a Treaty settlement that our tipuna, and all those who put in the hard work throughout this very long Treaty settlement journey, would be proud of.

That value is "at risk", since the Tribunal needs to be satisfied that resuming such nationally-significant assets can be achieved without causing major disruption or risk, and the Crown may seek to overturn the Tribunal's preliminary determinations. This process is therefore far from over, and WMI is conscious of the duties – owed to potential resumption beneficiaries by both WMI and the Settlement Trust – not to dissipate the unprecedented opportunities created by the Tribunal's preliminary determinations.

It is of critical importance in this next stage, that we do not sell ourselves short and the WMI Committee will continue to advocate for the best outcome for WMI shareholders and Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua Iwi. We have already engaged hydro electricity expert witnesses to assist us in securing and protecting the possible value available from resumption.



Here is a short summary of the key points:

- **The connection between the claims and the land**

Our claim, Wai 85, is about the Crown’s compulsory acquisition in the 1940s of 787 acres of land at Pouākani on which the Maraetai Power Scheme now sits, and the Crown’s numerous related Treaty breaches. These breaches were noted in chapter 7 of the Waitangi Tribunal’s Wairarapa ki Tararua Report. The Waitangi Tribunal again acknowledges in their preliminary determinations our specific and well-founded claim.

They however also conclude in their preliminary determinations, that all other well-founded claims about the loss of land, in breach of the Treaty, in Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua, also “relate to” the land at Pouākani and Ngāumu.

WMI disagree with this conclusion but acknowledge the enormous benefit that it potentially creates for Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua.

- **The prejudice suffered**

As part of this process the Tribunal has sought to determine whether the prejudice we suffered as a people warrants the return of land and assets valued upward of \$1.2 billion.

The Tribunal concludes that there is proportionality (losses) between the prejudice suffered by all of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua and the value of the lands at Pouākani and Ngāumu.

- **Should the land (Pouākani and Ngāumu) be returned to Māori ownership**

The Tribunal concludes that the land and improvements should return to Māori ownership.

The significance of this conclusion cannot be understated. This is the first time the Tribunal has chosen to use its powers of binding recommendation to require the Crown to return such valuable assets to Māori claimants. The value of these assets far surpasses any value normally secured through negotiated Treaty settlements. This opportunity was created by the applications by WMI in relation to the Pouākani land and improvements, and Ngāi Tūmapūhia-ā-Rangi in relation to Ngāumu.

- **To whom should the land be returned?**

The Tribunal states that the Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua Settlement Trust has the attributes that make it an appropriate recipient entity.

The Tribunal, however, has not endorsed the Settlement Trust as being that entity.

It states that a process is required to allow all of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua to determine whether this is the entity that should be the potential recipient of what are very significant and valuable assets.

- **WMI Owners**

The Tribunal states that it believes that WMI should get a “top up of compensation”, but not the return of the land. The WMI Committee is committed to ensuring that any such top-up is as substantial as possible.

In the view of the Tribunal the value of the Pouākani land and improvements is not proportionate to the prejudice owners have suffered as a result of Crown actions.

WMI also disagree with this conclusion and believe that there was ample evidence before the Tribunal which showed that the return of the land at Pouākani would be proportionate.

- **Mana whenua interests at Pouākani**

With respect to Tūwharetoa and Raukawa, the Tribunal acknowledge their arguments opposing the return of the Pouākani lands to Wairarapa Māori.

The Tribunal also noted that these iwi have all concluded Treaty settlements with the Crown. The Tribunal said that, legally, it is unable to recommend the return of the Pouākani land to Tūwharetoa and Raukawa. It also did not agree that the objections by Tūwharetoa and Raukawa should prevent the return of the Pouākani land.



I want to take this opportunity to say thank you again for the support you have given your Executive Committee and will advise shareholders on our next steps once these have been determined.

The Committee is disappointed that the Incorporation and the broader whānau associated with the lands at Pouākani (and therefore Wairarapa Moana) are not identified by the Tribunal as the direct recipients of the lands taken from our tīpuna. We will therefore be considering what further steps we might take in response to the Tribunal’s preliminary determination.

However, we also recognise the enormous opportunity we (and Ngāi Tūmapūhia-ā-Rangi) have created for Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua. We are committed to ensuring this opportunity is achieved to the fullest.

In these extraordinary times we all need to unite to survive the Covid 19 crisis and keep our whānau well and ensure we follow the guidelines on www.covid19.govt.nz to keep safe.

*Kia kaha, kia manawanui.
Me tiaki tātou i a tātou anō.
Nāku noa, nā*

Kingi Winiata Smiler
Chairman
Wairarapa Moana Incorporation

Background

In the February 2020 Mailer we provided an update on the process for advancing our Wai 85 claim in the first half of 2020.

- December 2019 to 12 March 2020**
Direct discussions between all parties to try and reach an agreed settlement.
- 13 March 2020**
Tribunal to release a First Report (Initial Report) with its high level views on the applications before it (this step only occurs if agreement between the parties has not been reached at this point).
- By 28 April 2020**
All parties to update the Tribunal on progress with settlement discussions and determination of the terms and conditions and any issues with the practical transfer for the return of the land with Mercury and others.
- Week of 4 May 2020**
Conference with the Tribunal to set the timetable for any further evidence that may be required for the Tribunal to issue its Final Report.
- Mid June 2020**
Further hearing to receive further evidence and submissions.

December 2019 to March 2020

The expectation of the Waitangi Tribunal has been that parties will work together to try and reach an agreement. Over the last few months that is exactly what we have been doing, without success.

We have also dealt with an injunction lodged with the High Court to stop the release of the initial Waitangi Tribunal report by Mercury NZ Limited (which owns the Maraetai Power Station which is on the Pouākani lands). Wairarapa Moana Incorporation (WMI) opposed this application and provided the bulk of the legal submissions to the High Court on this matter. We were pleased that Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua Settlement Trust also opposed this application and supported our position.

On 23 March 2020, the High Court released its decision, declining the application by Mercury NZ Limited. This decision paved the way for the Waitangi Tribunal to release its “Preliminary Determination”.

This occurred on Tuesday 24 March 2020.