

The Treasury

Release of Submissions: Consultation on the Waitangi Tribunal's “Shares Plus” Proposal

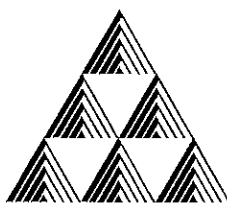
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MANIAPOTO MĀORI TRUST BOARD

Submission on the "Shares Plus" proposal

Introduction

1. This submission is made on behalf of the Maniapoto Māori Trust Board (the **Trust Board**) on the "Shares Plus" concept, as described in a letter from Ministers English (the **Shares Plus Proposal**), Ryall and Finlayson, dated 5 September 2012.
2. The Trust Board is a Māori Trust Board under the Māori Trust Boards Act 1955. It was established as a Māori Trust Board pursuant to the Maniapoto Māori Trust Boards Act 1987 to represent the people of Ngāti Maniapoto. Ngāti Maniapoto is one of the iwi of the Tainui Waka. As at the last census (2006) Ngāti Maniapoto had a population of 33,627. The traditional territory of Ngāti Maniapoto incorporates the area in and around the King Country, including the Kawhia Harbour and the broader coastal area from Raukumara in the north to Waipungau Stream and Taumarunui in the south and the Wharepuhunga and Hauhungaroa ranges in the East.
3. The Trust Board has significant interests in the areas in which Mighty River Power, Genesis and Solid Energy undertake their activities. Ngāti Maniapoto interests include the whole of the Waipa River which is the principal tributary into the Waikato River. Ngāti Maniapoto also has significant interests in the Whanganui River catchment, Mokau River Catchment and the Kawhia Harbour.
4. The Treaty of Waitangi claims of Ngāti Maniapoto are scheduled to be heard by the Waitangi Tribunal as part of the Rohe Potae Inquiry, commencing November 2012. Ngāti Maniapoto has also entered into a Deed with the Crown which will see the Upper Waipa River incorporated within the co-governance and co-management arrangements for the Lower Waipa and Waikato Rivers. The legislation to give effect to this Deed was passed on 28 March 2012.
5. The Trust Board has been actively engaging with the Crown in relation to the mixed ownership model (the **MOM Proposal**), in respect of which the Shares Plus concept was developed, since February this year. The Trust Board made a submission on the original Consultation Document on the MOM Proposal and the subsequent MOM Bill.

Summary of position

6. The Shares Plus Proposal was proposed by the Waitangi Tribunal in the Tribunal's consideration of the relatively narrow question of the effects of the MOM Proposal on Māori rights and interests in freshwater and geothermal resources. The Shares Plus Proposal was set out in the Tribunal's interim report in its Freshwater and Geothermal resources inquiry (the **Interim Report**). Given the scope of the inquiry, and the stages into which the inquiry has been split, the Tribunal did not consider in detail the question of



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how best to recognise and provide for Māori rights and interests in freshwater and geothermal resources. However, the Trust Board supports the Waitangi Tribunal's findings set out in the Interim Report in relation to Māori/Ngāti Maniapoto having interests and proprietary rights in freshwater.

7. The Board's response is based on the scenario where the Government's proposed sale of SOE assets, proceeds towards implementation. This response must not be misconstrued as supporting the Government's SOE asset sales program. However, if the sales are inevitable (as it appears they are) the Trust Board supports the Waitangi Tribunal's Shares Plus Proposal on the understanding that there is much more work required generally to ensure that Maori/Iwi rights and proprietary interests in freshwater and other natural resources are protected and maintained.
8. In summary, it is the Trust Board's position that the Shares Plus Proposal needs to be seen as part of, and considered alongside, the broader issue of Maori/Iwi rights and proprietary interests in freshwater and geothermal resources. Accordingly:
 - (a) The Trust Board recommends that the Shares Plus Proposal be adopted in principle as an option for iwi that wish to have their rights and interests in freshwater partially recognised through participating in, and benefiting from, the operations of Crown-controlled commercial enterprises that use freshwater.
 - (b) However, Shares Plus must not be the only mechanism to recognise Māori rights and interests in freshwater and the Crown should prioritise engagement with Māori to agree an appropriate framework to recognise and provide for Māori rights and interests in freshwater.
 - (c) Final views on the Share Plus concept will be reached as part of the broader engagement on the framework to recognise and provide for Māori rights and interests in freshwater.
 - (d) In agreeing the final form of any Shares Plus Proposal the Crown and Māori will need to discuss:
 - (i) amending the constitutions of the MOM companies prior to each IPO to enable directors of those companies to act in the best interests of the appointing shareholder;
 - (ii) the possibility of entering into voting agreements in respect of the Crown residual shareholding in the MOM companies; and
 - (iii) the possibility of the Crown retaining sufficient shareholdings in the MOM companies to ensure that the Crown is not required to buy back MOM company shares following an IPO to give effect to the Shares Plus Proposal.
9. Finally, the Trust Board objects to the short timeframe that the Crown has allowed for the process around 'Shares Plus' – this is not consultation. The requirement to respond to the Shares Plus Proposal, particularly before the release of the final Waitangi Tribunal Report on the Freshwater and Geothermal Resources Claim, is unfair and disadvantageous to Ngāti Maniapoto and other iwi.

Shares Plus - a response to MOM Process - the need for a broader framework

10. As noted above, the Shares Plus Proposal was developed by the Waitangi Tribunal in its consideration of the relatively narrow question of the effects of the MOM Proposal on Māori rights and interests in



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freshwater and geothermal resources. However, the Tribunal accepted that the Shares Plus Proposal could, if properly crafted, give Māori enhanced power in the companies that control, use and profit from, their taonga.

11. In the Trust Board's submission, the Government needs to note two important points when considering the Shares Plus Proposal:
 - (a) First, the Shares Plus Proposal must be assessed in light of the Tribunal's focus. "Shares Plus" was never intended to represent the best and only method by which Māori rights in freshwater ought to be recognised.
 - (b) Second, the Shares Plus Proposal represents a response to the likely impact of the MOM process on Māori rights and interests in freshwater. It is therefore a specific suggested response to this particular circumstance.
12. Because of its limited focus there are some important matters the Shares Plus Proposal does not address, or even seek to address. For example:
 - (a) Shares Plus would not provide Māori with a voice on issues such as freshwater quality and associated habitat.
 - (b) Shares Plus would not provide Māori with a voice on allocation issues.
 - (c) Shares Plus would not provide Māori with a voice on the management of the freshwater resource generally. It would only provide a voice on how the resource is used by the particular MOM company.
13. The Shares Plus Proposal can at best only be part of the broader framework for dealing with Māori rights and interests in freshwater. In order to properly assess the Shares Plus Proposal it would be necessary to understand how the Proposal fits into the broader framework to recognise and provide for Māori rights and interests in freshwater. This framework should therefore be developed alongside any Shares Plus Proposal and the final position on the proposal determined once that broader framework is known.
14. Along with a broader framework, if the Shares Plus concept is adopted, it must form part of a wider suite of mechanisms that collectively recognise and provide for the broad range of Māori rights and interests in freshwater.
15. Until the wider suite of mechanisms are developed with a reasonable degree of certainty, it is difficult to properly assess the Shares Plus concept. For example, some of the benefits of the Shares Plus concept (such as decision-making rights in relation to the management of freshwater resources used by the MOM companies) could be provided for in other proposed mechanisms (such as a new regulatory framework regarding freshwater).
16. The Trust Board acknowledges that it may take some time to develop a wider suite of mechanisms to address Iwi rights and interests in freshwater and it may be challenging to do so prior to the planned IPO for Mighty River Power (during March to June 2013). However, the Trust Board considers it is



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premature at this stage to discount completely any option, including the Shares Plus concept. In good faith, the reasonable course of action at this point is to keep all options open for discussion.

Can the Crown provide the “Shares Plus” benefits after an IPO?

17. The Crown has suggested that it could provide many of the aspects of the Shares Plus Proposal after an IPO. This may be correct to a point, although the Shares Plus Proposal is not specific about how this might occur.
18. The Trust Board therefore seeks further information from the Government on the:
 - (a) ability of the Crown to “buy back” MOM company shares in the market, particularly in light of the Stock Exchange Listing Rules and the Takeovers Code; and
 - (b) ability of the Crown to enter into voting agreements after a MOM company IPO, particularly in relation to the Listing Rules.
19. If there are likely to be difficulties for the Crown to “buy back” MOM company shares the Crown ought to consider retaining sufficient shareholdings in the MOM companies to give effect to the Shares Plus concept. Those shares can be sold at a later date if they are not required.

Conclusion

20. The Trust Board is committed to the Treaty relationship with the Crown and looks forward to continued and meaningful discussion about these issues.
21. The Trust Board would welcome the opportunity to discuss these submissions directly with responsible Ministers and Crown officials.

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