

The Treasury

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

Release Document

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NGĀTI RANGI TRUST

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5 o Hiringa-ā-Nuku (October) 2012

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Tēnā koutou e ngā Minita

RE: MIXED OWNERSHIP MODEL COMPANIES: CONSULTATION ON "SHARES PLUS" – NGĀTI RANGI RESPONSE

Tēnā koe otirā tātau me ngā tini āhuatanga o te wā. Inā, ko te hunga kua ngaro tērā pea ko te hoia i toromi i Moawhango i huri hei ika mō te kaupapa nei e pā ana ki te wai. Huri atu te pō, nau mai te ao.

Please find attached the submission from the Ngāti Rangi Trust (the "Trust") Chair, Kemp Dryden for and on behalf of Ngāti Rangi iwi and the Trust.

If you or your officials wish to make contact this can be initially done through our Pou Arahi (Executive Manager):

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Kei runga mātau i te tatari me te whakarongo.

Heoi anō

Chaana Morgan
Kaikōkiri Kaupapa & Secretary for Ngāti Rangi Trust

Kākā te Whare Toka o Paerangi, kākā hoki ko au
I am the eternal flame of the House of Stone of Paerangi



TO:	Hon Bill English, Minister of Finance Hon Tony Ryall, Minister for State Owned Enterprises Hon Christopher Finlayson, Attorney-General
FROM:	Kemp Dryden, Chair, Ngāti Rangi Trust
SUBJECT:	"Shares Plus" Consultation
DATE:	5 October 2012

PURPOSE

1. This submission is made for and on behalf of the Ngāti Rangi Trust ("Trust") in response to the government's consultation letter dated 5 September 2012 regarding the "Shares Plus" concept ("Shares Plus Concept"), which arose in the Waitangi Tribunal's Interim Report on the Wai 2358 - National Freshwater and Geothermal Resources claim ("Wai 2358 Claim").

EXECUTIVE SUMMARY AND RECOMMENDATIONS

2. The Trust remains opposed to the partial sale of State Owned Enterprises ("SOEs") and Mixed Ownership Model ("MOM") proposal.
3. Ngāti Rangi has yet to complete the negotiations with the Crown in respect of Ngāti Rangi's rights and interests in waterways, including in respect of the Tongariro Power Development Scheme diversion, and use of Ngāti Rangi waters by Genesis Energy and Mighty River Power.
4. Without prejudice to the Trust's overall opposition on the MOM proposal, the Trust makes the following recommendations on the Shares Plus Concept:
 - a) The Trust considers that any discussion of redress or rights recognition in respect of Ngāti Rangi's proprietary interests in its waterways must be undertaken in a comprehensive and holistic manner, which may include discussion of aspects of the Shares Plus Concept, as well as broader considerations such as control, management and governance issues in respect of waterways.
 - b) The Trust considers that Ngāti Rangi's rights in waterways cannot be addressed meaningfully or adequately in a rushed and piecemeal manner, as seems to be the case with the current Shares Plus Concept and associated consultation process. Any assessment of the Shares Plus Concept can only be adequately undertaken in conjunction with consideration of a broader redress framework for freshwater and geothermal resources. It is unfair and indeed hardly good faith to expect the Trust to engage in the manner currently expected in respect of matters of such enduring significance to all uri of Ngāti Rangi.

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- c) As a result, the Trust considers that the Crown ought to provide an undertaking to preserve its ability to provide redress in the form contemplated by the Shares Plus Concept after an IPO. The Trust is not convinced by the reasoning put forward by the Crown on its ability to provide equivalent redress after an IPO.

NGĀTI RANGI ORIGINS

5. Ngāti Rangi is an ancient pre-migration tribe based at the foot of Mount Ruapehu. Ngāti Rangi is one of the iwi associated with the Whanganui Confederation. There are 14 marae registered to Te Kāhui o Paerangi, the Ngāti Rangi rūnanga, and there are approximately 8,000 uri. The Trust was established in 1991 and is the formal representative body for Ngāti Rangi. The Trust is currently seeking a mandate to negotiate the settlement of Ngāti Rangi's historical Treaty of Waitangi claims.
6. The mana and tapu of Mount Ruapehu is replicated through the land, water, flora, fauna and uri (descendants) of Ngāti Rangi. This divine connection imbues responsibility to Ngāti Rangi to care for these natural resources. This connection is highlighted in the tribal proverb:

Kākā te Whare Toka o Paerangi, kākā hoki ko au
I am the eternal flame of the House of Stone of Paerangi

7. The House of Stone of Paerangi is the tribal metaphor for Mount Ruapehu and the metaphor incites responsibility and obligation upon Ngāti Rangi. As we are part of the maunga, we are therefore part of the natural resources associated with the maunga, including those natural resources that are utilized for power generation, especially water. The mana and tapu of the maunga, whenua, wai and other parts of the taiao (natural world) are passed to us as the original inhabitants, descendants of these environs. Ngāti Rangi uphold this mana and tapu as kaitiaki and kaiwhakahaere.
8. It is the mana and tapu of the various forms of water that dictate our practices as a contemporary society, as in past times. The key practices that Ngāti Rangi is expected to uphold are, although by no means exhaustive:
- Waterways in our rohe are maintained to feed Ngāti Rangi and ensure continuous flow to downstream tribes;
 - Waterways are not altered so as to ensure that Ngāti Rangi and downstream tribes are not affected;
 - Waterways are not polluted; and
 - Waterways are utilised in a culturally sustainable manner

NGĀTI RANGI RIGHTS AND INTERESTS IN WATERWAYS

9. Ngāti Rangi's rohe includes a number of major hydro resources greatly affected by hydro-electricity generation, particularly by the activities of Genesis Energy Ltd, Mighty River Power Ltd and Meridian Energy Ltd. Particular hydro-electricity structures of significance located in Ngāti Rangi's rohe include the Wāhianoa Aqueduct, Mangaio Tunnel and Micro Hydro Power Station and Moawhango Dam.

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10. Since its establishment the Ngāti Rangi Trust has acted as an umbrella for Ngāti Rangi claimants and their claims to the Waitangi Tribunal. The Ngāti Rangi claims as a collective of claims include particular reference to Crown breaches of the Treaty of Waitangi in relation to wai. From 2005 to 2009 Ngāti Rangi was an active participant in the National Park District Inquiry and the Whanganui District Inquiry in the Waitangi Tribunal. During the National Park District Inquiry, hearings were held in the Ngāti Rangi rohe focusing specifically on the Tongariro Power Scheme and its impacts on Ngāti Rangi and other affected iwi. Ngāti Rangi is still awaiting the findings of the Waitangi Tribunal in respect of these inquiries. Ngāti Rangi remains an interested party in the Taihape District Inquiry.
11. For many years, Ngāti Rangi has consistently opposed the presence of the hydro electric structures in the Ngāti Rangi rohe and has been working to reduce and rectify the impact of these structures on our waterways. Most recently (2003-2009), the Trust was party to extensive litigation in the Environment Court, High Court, Court of Appeal and Supreme Court in opposition to resource consents sought by Genesis Energy Ltd in respect of the Eastern Diversion of the Tongariro Power Scheme.
12. Ngāti Rangi, through the Trust, has interested party status in the Wai 2358 proceedings. A Ngāti Rangi claimant independently of the Trust lodged support for the New Zealand Māori Council and actively participated in Stage One of the Wai 2358 proceedings.
13. Ngāti Rangi considers our mana and kaitiakitanga relationship with our waterways to be akin to a right of ownership or proprietary interest in these resources. This position has been expressed by Ngāti Rangi in the Waitangi Tribunal and in the courts, and is supported by the recent findings of the Tribunal in its interim Wai 2358 report. The Trust therefore considers that particular and individualised engagement by the Crown on Ngāti Rangi's rights and interests in waterways is warranted.

THE FINDINGS OF THE WAITANGI TRIBUNAL

14. As an initial point, the Trust notes that the Shares Plus Concept is directed at the discrete issue of the effects of the partial sale of SOEs and the MOM proposal on Māori rights and interests in freshwater and geothermal resources. As part of that Inquiry, the Tribunal is yet to consider the question of how to recognise and provide for Māori rights and interests in freshwater and geothermal resources as part of a comprehensive and contemporary national framework.
15. The Trust is given some comfort by the Crown's commitment in its closing submissions in Stage One of the Wai 2358 Inquiry to broader co-governance and co-management redress as an important part of rights recognition in respect of waterways. In addition, the Trust is supportive of the Tribunal's further findings on the potential use of shares as part of a package of redress to provide for Māori proprietary rights and interests in freshwater and geothermal resources. In particular, the Trust notes and endorses the following passage of the Tribunal's findings:

...Further, we accept the Crown's submission that co-governance and co-management of water resources will be an important component of rights recognition. The Crown is correct to emphasise that tino rangatiratanga requires arrangements of this sort.

...But as will be clear from our analysis in chapters 1 and 2, there is a commercial and property right dimension to the present claim. The protection of property rights is at the core of the English version

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of Article 2 of the Treaty. The Crown's preferred options for rights recognition fall short of the Treaty guarantees in three ways :

- .. they will not recognise or give effect to Maori residual proprietary rights where that is possible (or compensate for their loss where it is not) ;
- .. they will not provide for the holders of those rights to obtain a commercial or economic benefit from their residual proprietary rights ; and
- .. they will not provide for the Treaty development rights of Maori in their water bodies...

We are not making findings as to the framework for rights recognition at this stage of our inquiry, but we do find that any framework will need to deliver on these three important aspects of the rights. For that reason, we find that the Crown cannot ignore the option of using shares in the power-generating MOM companies in partial recognition of these rights, where that is what Maori want...¹

OPPOSITION TO THE MOM PROPOSAL

16. The Trust remains opposed to the partial sale of SOEs and to the MOM proposal. Ngāti Rangī's rights and interests in respect of the Tongariro Power Development Scheme diversion, and use of waters by Genesis Energy and Mighty River Power, are yet to be addressed and resolved through the negotiation process. As set out above, Ngāti Rangī has long opposed the diversion of waterways for hydro-electricity generation in the Ngāti Rangī rohe and has long held settlement aspirations to address these issues.
17. The Trust considers that the partial sale of SOEs will affect the Crown's ability to engage adequately on the full extent of Ngāti Rangī's rights and interests, when the time arrives for such a discussion.

THE 'SHARES PLUS' CONCEPT

18. Ngāti Rangī's views on the Shares Plus Concept were put to the Hon. Bill English at the consultation hui held in Whanganui on 19 September 2012. In summary, the Trust's position is that:
 - a) The Trust considers that any discussion of Ngāti Rangī's rights and interests in waterways cannot be undertaken in either a rushed or piecemeal manner. The Trust considers that such a discussion ought to be undertaken comprehensively as part of Ngāti Rangī's Treaty of Waitangi settlement negotiations, as well as as part of a broader discussion around a framework for water rights recognition. This comprehensive discussion will include cultural, environmental and social considerations, as well as commercial considerations (of the kind envisaged by the Shares Plus Concept). Such a discussion can only occur with the benefit of the final reports of the National Park Inquiry in particular, as well as the Wai 2358 National Freshwater and Geothermal Resources Inquiry.
 - b) If the partial sale of SOEs and the MOM proposal is to proceed, the Trust considers it essential that the Crown preserves its ability to provide redress in the form contemplated by the Shares Plus Concept. The Shares Plus Concept is certainly not the only form of redress by which Māori rights and interests in freshwater may be recognised, which ought also to

¹ Interim Report of the Waitangi Tribunal in the Wai 2358 National Freshwater and Geothermal Resources Inquiry, para 3.8.1.

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include, as conceded by the Crown in the Wai 2358 proceedings, co-management or co-governance arrangements in respect of waterways. Indeed, the Shares Plus Concept may not be considered appropriate or acceptable redress by all iwi. Ngāti Rangī for instance has not at this point in time reached a position on the acceptability of the Shares Plus Concept or aspects of it as part of a broader redress package. However, what is important is that the Crown **preserves** its ability to provide such redress until this conversation is able to occur. The preservation of the Crown's ability to provide redress may require the Crown to sell less than 49% of the SOE shares, reserving a percentage for Māori to settle their proprietary interest in wai.

- c) As a final point, the Trust notes that it is difficult at this stage to undertake a robust analysis of the Shares Plus Concept, as requested by the Crown. This is because any such assessment can only be adequately undertaken in conjunction with consideration of a broader redress framework for freshwater and geothermal resources. It is only through such an assessment that the benefits or otherwise of the Shares Plus Concept can be appropriately weighed by Ngāti Rangī and considered against other components of a broader framework.

A Framework for Freshwater

- 19. Ngāti Rangī notes that the Tribunal is yet to begin Stage Two of its inquiry in to the Wai 2358 Claim. Ngāti Rangī will be seeking to participate in the development of the framework through all relevant forums, including through the Iwi Leaders Group, the Land and Water Forum and any new opportunities that may arise.
- 20. Ngāti Rangī emphasises that the consultation on Shares Plus is taking place without the full picture being considered, with the framework for dealing with Māori proprietary rights in water being an essential part of this.

THE CROWN POSITION – ABILITY TO PROVIDE REDRESS AFTER AN IPO

- 21. The Crown has suggested that it could provide many of the aspects of the Shares Plus Concept after an IPO. With all due respect, the Trust is not convinced by this proposition. However, in the short timeframe available the Trust has not been able to reach a final view on the technical reasons raised by the Crown in its correspondence.
- 22. For instance, despite the Crown's conceptual views on its ability to provide rights redress equivalent to that contemplated by the Shares Plus Concept after an IPO, the Trust is of the view that there may in fact be difficulties arising if the Crown were required to "buy back" MOM shares in order to provide appropriate redress to affected iwi. In particular, the Trust considers that such action may in practice have a potential impact on share values and/or may be difficult and possibly unacceptable to a government of the day. For instance, the Crown's current policy of refusing to buy back properties for use in historical Treaty settlements is reflective of a similar position. If the Trust is to rely on the government position as set out in the Crown's Shares Plus correspondence, it would require further information from the Crown on this issue, as well as undertakings from the Crown in respect of future courses of action.

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GOOD FAITH ENGAGEMENT

23. At this point, the Trust has not had adequate time nor resources to undertake a thorough analysis of the issues raised by the Shares Plus Concept or to discuss these matters comprehensively with all uri of Ngāti Rangi. For instance, the Crown has sought submissions on matters such as the Crown's ability and capacity after an IPO to provide mechanisms for providing Maori with a voice and/or commercial interests in the relevant resources and specific rights and powers in relation to the MOM companies that may be delivered by the Shares Plus Concept.
24. The Crown must appreciate that these are complex commercial matters, which must also be considered against cultural considerations. In the Trust's view it is unfair and unreasonable of the Crown to expect an unsettled iwi such as Ngāti Rangi to be able to undertake such an analysis and process in the manner and time provided. As indicated above, these are matters which need to be considered and analysed as part of a broader framework of rights redress and as part of a considered and deliberate settlement package for Ngāti Rangi.

CONCLUSION

25. Should there be further consultation or discussion on these matters, Ngāti Rangi wishes to be heard as an iwi with significant interests in the activities of the electricity-generating SOEs.
26. Ngāti Rangi is committed to dialogue with the Crown and to the undertakings embodied in the Treaty of Waitangi. We are confident that our commitment to working together will lead to enduring solutions for Aotearoa – New Zealand.

Heoi anō



Kemp Dryden
Chair – Ngāti Rangi Trust