

The Treasury

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

Release Document

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He tono nā



Te Rūnanga o NGĀI TAHU



ki a

**HON BILL ENGLISH, MINISTER OF FINANCE
HON TONY RYALL, MINISTER FOR STATE OWNED ENTERPRISES**

e pā ana ki te

**MIXED OWNERSHIP MODEL COMPANIES
CONSULTATION ON "SHARES PLUS" PROPOSAL**

5 October 2012

246/400

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APPENDIX ONE – *Te Rūnanga presentation to consultation hui*

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EXECUTIVE SUMMARY

As previously stated Te Rūnanga o Ngāi Tahu (Te Rūnanga) has no position on merits or otherwise of the Government's intention to proceed with the Mixed Ownership Model and to sell down up to 49% of certain State Owned Enterprises. However, Te Rūnanga, and before it the Ngāi Tahu Māori Trust Board has always advocated that these assets within the rohe of the respective iwi should be available for the settlement of their claims under the Ti Tiriti o Waitangi.

In relations to the concept of "shares plus" which was advanced by the Waitangi Tribunal as a potential redress option for the resolution of rights and interests in water Te Rūnanga makes the following observations:

- a) Ngāi Tahu whānui have exclusive and extensive rights and interests in all of the water-bodies within the Ngāi Tahu Takiwā;
- b) The Waitangi Tribunal described the "shares plus" redress option as being not "fungible". That is, there is no equivalent redress that can substitute for "shares plus". This concept is equally applicable to iwi rights and interests in their own water bodies, eg the rights and interests of Ngāi Tahu Whānui cannot be subsumed into or recognised by redress, including shares (or even "shares plus") in a company operating on a few water bodies let alone in water bodies in another tribal area.
- c) One of the relevant companies which operates within the Ngāi Tahu Takiwā (Meridian Energy) has no hydro generating facilities outside of the Ngāi Tahu Takiwā and therefore we do not accept that any other iwi or Māori grouping should have any influence over the operation of Meridian Energy if the basis of the influence is related to rights and interests in water;
- d) Genesis Energy operates pre-dominantly outside of the Ngāi Tahu Takiwā, but to the extent it does have hydro generating facilities within the Ngāi Tahu Takiwā we do not accept that any other iwi or Māori grouping should have any influence over the operation of Genesis within our rohe if the basis of the influence being related to rights and interests in water located in our rohe; and
- e) Mighty River Power does not operate within the Ngāi Tahu Takiwā and therefore Te Rūnanga's views on "shares plus" should not be taken to over-ride the representations of those iwi with an interest in the operations of Mighty River Power.

In conclusion, Te Rūnanga does not believe that the "shares plus" proposal is adequate or appropriate to meet the rights and interests in freshwater of Ngāi Tahu Whānui and supports the ongoing discussion via the iwi leaders group to look for a solution which will provide a national framework that allows for regional solutions.

I) TE RŪNANGA O NGĀI TAHU

1. This response to the document entitled *Mixed Ownership Model - Consultation on "Shares Plus" proposal* (the consultation document) is made on behalf of Te Rūnanga. Te Rūnanga is statutorily recognised as the representative body of Ngāi Tahu Whānui and was established as a body corporate on 24th April 1996 under

section 6 of Te Rūnanga o Ngāi Tahu Act 1996. We note for the record the following relevant provisions of that legislation:

Section 3 states:

This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.

Section 15(1) states:

Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.

The Charter of Te Rūnanga o Ngāi Tahu (adopted in 1993) constitutes Te Rūnanga as the kaitiaki of the tribal interest. In particular, it is noted that no national or pan-Māori body has a mandate to represent Ngāi Tahu.

2. Te Rūnanga requests that this response is accorded the status and weight of the tribal collective, Ngāi Tahu Whānui, currently comprising over 48,000 members registered in accordance with section 8 of the Act.

II) TE RŪNANGA INTERESTS: THE MIXED OWNERSHIP MODEL AND “SHARES PLUS”

The interests of Te Rūnanga in respect of the proposed legislation for the extension of the mixed ownership model and “shares plus” derive from two inter-related sources:

- a) Treaty Relationship – Te Rūnanga has an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty), and the principles distilled from it, in all its actions. This is true both as a matter of general principle and more particularly as a result of the re-affirmation of the Treaty partnership between Ngāi Tahu and the Crown effected by the settlement of the historic claims of Ngāi Tahu in 1997. The Crown apology to Ngāi Tahu, contained in the Ngāi Tahu Claims Settlement Act 1998 includes commitment from the Crown to enter into a ‘new age of cooperation with Ngāi Tahu’, acknowledging the Treaty principles of partnership, active participation in decision-making, and recognition of rangatiratanga.
- b) Kaitiakitanga – As noted above, substantial energy generating assets owned by three of the four companies in question are located in the Takiwā of Ngāi Tahu. In keeping with the kaitiaki responsibilities of Ngāi Tahu Whānui, Te Rūnanga has an abiding interest in ensuring sustainable management of the natural resources found in that Takiwā. Ngāi Tahu maintain a vital interest in ensuring that those companies, as significant users of those resources, do so in a manner that not only meets regulatory standards, but international best practice.
- c) Exclusive relationship to particular assets and water bodies - Substantial energy-generating assets of two of the three SOE’s in question are located within the Takiwā of Ngāi Tahu. Te Rūnanga has extensive and exclusive rights and interests in all of the freshwater bodies which are located within the Ngāi Tahu Takiwā including the relatively few water bodies which are utilised by Meridian Energy and Genesis Energy.

- d) Meridian Energy - Te Rūnanga would draw to your attention that all of the current water generating assets of Meridian Energy are located within the Ngāi Tahu Takiwā and as such it is considered that no other iwi or claimant group could legitimately make a claim to the water generating assets of that particular company in the context of a claim to rights and interests in freshwater.
- e) Te Rūnanga notes that the Ngāi Tahu Deed of Settlement 1997 and the Ngāi Tahu Claims Settlement Act 1998 also contain provisions relevant to the Crown treatment of these assets.

III) BACKGROUND TO TE RŪNANGA POSITION ON THE CONCEPT OF "SHARES PLUS"

1. The current consultation is asking Te Rūnanga to respond to an option for redress described as "shares plus" which was raised by the Waitangi Tribunal in its interim report on claims to freshwater and geothermal resources dated 24th August 2012. Te Rūnanga understands that the Tribunal identified this option as the only redress which would not be available to the iwi claimants seeking redress in respect of rights and interests in freshwater and geo-thermal power post the sale of certain state owned assets.
2. It should be noted that Te Rūnanga does not have a formal position on the merits of the Government's intention to extend the Mixed Ownership Model to the four companies in question. This is an issue on which iwi members and others in the community hold divergent views. Te Rūnanga has always supported the use of such assets in the settlement of the historical Treaty of Waitangi claims of iwi where the assets occur within their rohe. Therefore, the views expressed by Te Rūnanga in this response to the consultation document focus on whether the proposed "shares plus" would be appropriate to give effect to the rights and interests of iwi in freshwater and in particular the rights and interests in freshwater of Ngāi Tahu Whānui.
3. Te Rūnanga acknowledges that there is an obvious link between hydroelectric and geothermal energy generation assets and the Treaty-guaranteed rights of iwi and hapū with respect to freshwater, in all its forms. In common with other iwi, Ngāi Tahu maintains that it has rights and interests in this regard which are extant and have never been extinguished.
4. Te Rūnanga also supports the right of all iwi and hapū to pursue their rights in the courts and the Waitangi Tribunal in whatever way, and at whatever time they see fit. However, the concept of any national or pan-Māori claim is roundly rejected. Te Rūnanga does not believe a mandate exists for any such action and, certainly, none has been given by Ngāi Tahu.
5. The position of Te Rūnanga will be that if such a claim is to be taken which would affect all iwi interests then we would want to be separately represented. Te Rūnanga has maintained a watching brief only in respect of the claims presented to the Waitangi Tribunal which led to the "shares plus" recommendation.

IV) WHAT IS "SHARES PLUS"?

1. The Waitangi Tribunal in formulating its "shares plus" proposal did not fully explore the concept of "shares plus" other than to indicate this could give iwi / Māori an

enhanced role in directing the relevant company. This is presumably to give a greater input into the use of the water for power generation and other uses under the control of the relevant company otherwise it would lose the nexus between the rights and interests and the redress which is proposed.

2. The key flaw in the Tribunal's approach is that this would not address the wide range of issues iwi and hapū have on all of their water bodies not just those where the power companies operate. Nor would it provide options for dealing with all of the other holders of resource consents on those same water bodies. More importantly, it does not answer to how this concept would be of any benefit at all to iwi and hapū who do not have power generators operating within their rohe.
3. Although not explicitly explored by the Waitangi Tribunal, there has been a suggestion that "shares plus" could form part of a pan-iwi settlement with the shares being dealt with by some form of pan tribal enterprise akin to the Fisheries Commission. Te Rūnanga rejects such a proposal as being over-simplistic and as turning iwi rights and interests in water into a mere commodity.
4. The Waitangi Tribunal described the "shares plus" redress option as being not "fungible". That is, there is no equivalent redress that can substitute for "shares plus". This concept of what is fungible and what is not fungible is equally applicable to iwi rights and interests in their own water bodies. The "shares plus" proposal fails to grapple with the fundamental question as to how iwi and hapū would be empowered to exercise their rights and responsibilities in relation to the waters of their respective areas in a manner which gives effect to their enduring relationship to the very waters that are interwoven with their respective whakapapa. Those rights and interests are not fungible and cannot be replaced by shares (with or without the plus).

V) TE RŪNANGA POSITION: THE CONCEPT OF "SHARES PLUS"

1. Te Rūnanga prepared a briefing paper for Ngāi Tahu Whānui and its members the 18 Papatipu Rūnanga. After setting out the background to the consultation document the key questions that emerged were these -
 - a) How will the rights and interests of iwi be recognised?; and
 - b) whether shares plus – or even shares without the plus – will provide an enduring or a practical solution to the recognition of the rights and interests of Ngāi Tahu in all of the water bodies of importance to them?
2. Te Rūnanga acknowledges that the iwi has received redress for our historical claims and this included compensation for any wrongs done by the Crown prior to 1992 in relation to freshwater as well as other matters. However, the settlement did not extinguish our customary rights which were specifically preserved. This includes our rights and interests in water. Te Rūnanga is actively working with other iwi to establish a national framework that gives meaningful recognition of our rights, interests and responsibilities.
3. Te Rūnanga supports the pursuit of our rights and interests through direct engagement with the Crown via the Iwi Leaders Group and the Land and Water Forum. These discussions are not about historical breaches of the Treaty, they are about establishing the platform for the future.

4. Key issues for Ngāi Tahu continue to be:
 - a) Water quality
 - b) Sustainable use
 - c) Sensible regime for allocation
 - d) Retention/restoration of customary waterways
 - e) Fair and equitable consideration for iwi when it comes to economic benefits
 - f) Appropriate Treaty partner influence over management/governance of freshwater.
5. Te Rūnanga does not believe these objectives will be met through a shareholding in one or two power companies even if the shares do give more say over how those companies operate. All of our water bodies within the Ngāi Tahu Takiwā are important to us, not just those where the power companies are situated.
6. How the residual rights and interests of all iwi should be recognised is part of an on-going dialogue between the Crown and the Iwi Leaders Group. As was stated by Sir Tumu Heuheu at the recent hui at Turangawaewae,

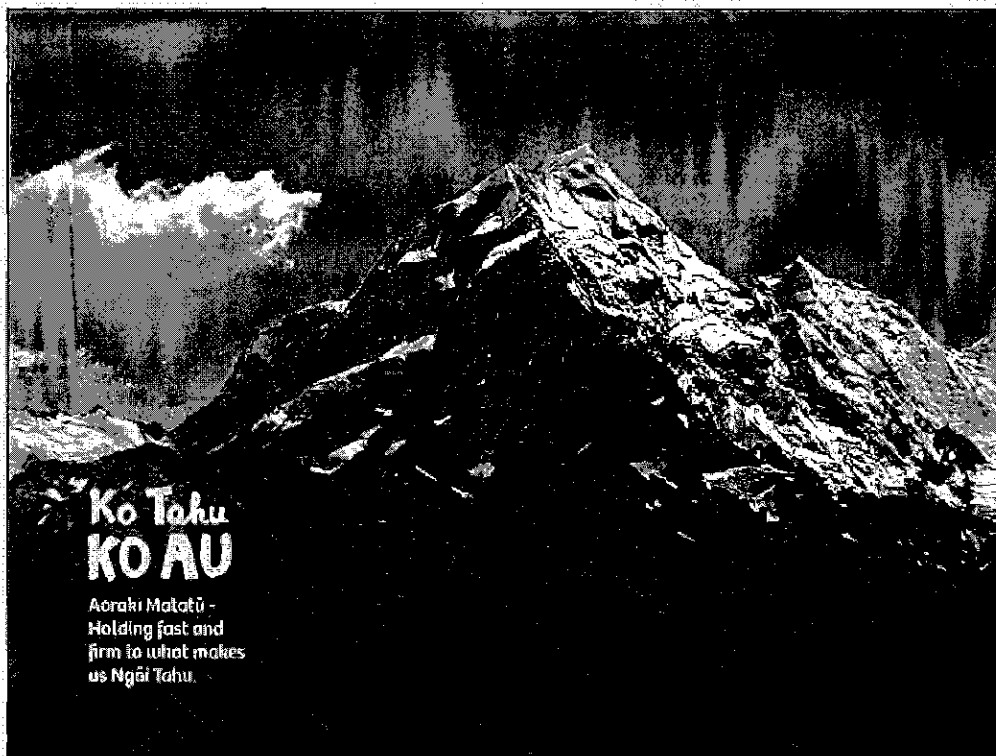
"... the engagement we are having with the Crown is not just about our rights, it is also about our responsibilities, and it is about the mechanisms by which we can give effect to our responsibilities – to exercise kaitiakitanga – now and into the future.

The solutions we are seeking must be capable of being meaningful to the people of every marae and for waters of importance to them. This means that there must be a range of mechanisms which are capable of being applied to every water body whether it is a spring, aquifer, river, lake swamp – whether that water body is in Te Tai Tokerau or in Murihiku.

What the iwi leaders group have been advocating for is the tools which our people need to give effect to the concepts of Mana Atua – Mana Tangata – first we look after the water and then the well-being of the people will follow."

VI) CONCLUSION

1. Te Rūnanga does not support the concept of "shares plus" as a mechanism for providing redress for the rights and interests of Ngāi Tahu Whānui within the Ngāi Tahu Takiwā for the reasons given above.
2. Te Rūnanga does support the Crown and interested iwi working together to ensure all iwi, including those who are yet to settle to have an opportunity to own shares in these assets as part of their historical settlements.
3. Te Rūnanga supports the pursuit of our rights and interests through direct engagement with the Crown via the Iwi Leaders Group and the Land and Water Forum.



Mihimihi

Thank you for coming and for giving Ngāi Tahu a chance to speak to you in person about the concept of "Shares Plus".

But before we get to "Shares Plus" I want to take some time to put this discussion into a Ngāi Tahu context.

In my view the decision taken by the Government to partially sell down some State Owned assets, three of which happen to be power companies, has diverted our attention away from the bigger picture.

We need to be discussing how every iwi, and all of their rūnanga, hapū or marae can have an equitable opportunity to participate at all levels relating to the control, management and use of all of the waterbodies in their areas.

If we focus on only those waterbodies that happen to have a state owned power station associated with the waters then we are neglecting our duty to look after all of our water bodies.



When we ask the question – who is Ngāi Tahu the answer is simple but it has many layers.

We are the uri of our tupuna – we are the people of Te Waipounamu – we have inherited a whakapapa relationship to our lands, our waterways and all of the natural resources within our takiwā.

These resources have sustained past generations of Ngāi Tahu, culturally, spiritually and economically – and it is our dream they will also sustain our future generations.

These whakapapa relationships come with both rights and responsibilities.

Ngāi Tahu is also the Treaty partner – and together we have the challenge of how to give effect to our collective rights and responsibilities in a modern context.

Our consideration of how to respond to that challenge may help us as an iwi to respond to the concept of “Shares Plus”.



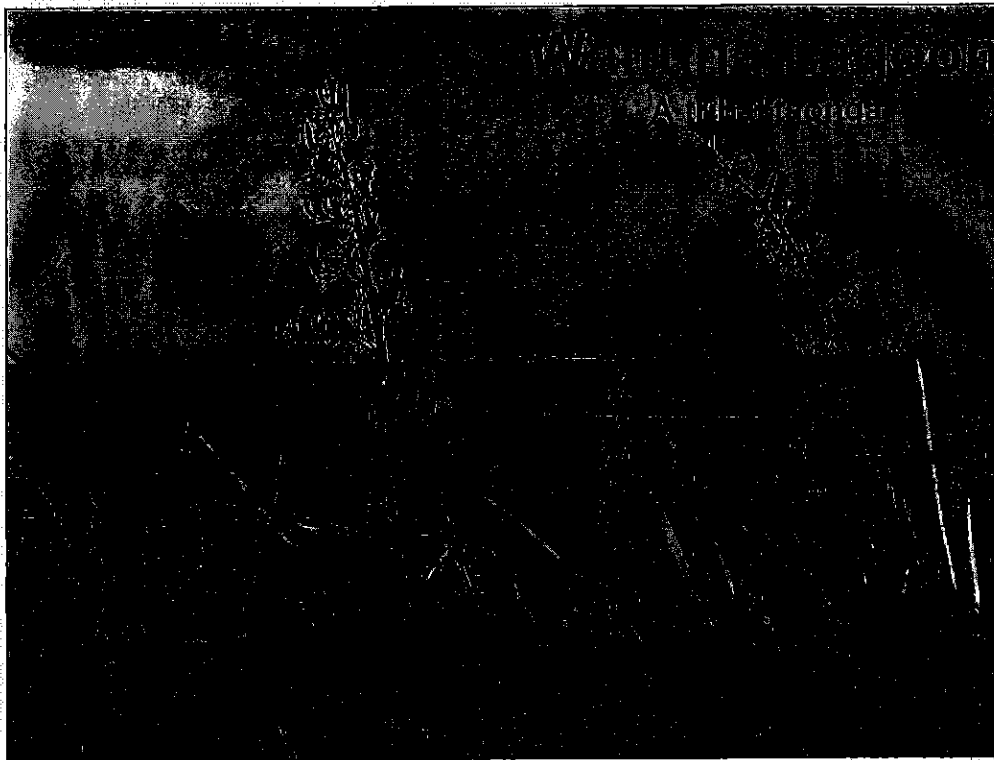
I want to take you on a short journey.

The Ōaro River fed my family through the depression, through the war and still feeds us today.

My hapū is passionate about the river and we exercise our rangatiratanga in a way that is tangible for our people and involves everyone, from kaumātua to tamariki.

As an example, right now we are working with Environment Canterbury staff to restore the river mouth. It is one of many partnerships we are building.

It is aimed at a step-by-step improvement of our important mahinga kai and even involves wānanga where we work with ECan to discuss weed control and future maintenance for the area – so that skills are not lost – and knowledge, including new scientific knowledge, can be passed on.



Waituna Lagoon

In the deep south Te Hāpua Waituna is another Ngāi Tahu taonga and a traditional source of mahinga kai, providing staple foods like pārerā (grey duck), tuna (eels) and hao (eel).

At Waitangi Day this year, Awarua Rūnanga ūpoko, Tā Tipene O'Regan told visitors to Te Rau Aroha Marae in Bluff that the ecological health of Te Hāpua Waituna was linked to the very core of our tribal health.

"If we didn't have wetlands like Te Hāpua Waituna, we wouldn't be able to put food on the table. It's not just about restoration of Mother Nature. These principles are a central component of who we are as a people."

Tipene made the point that Ngāi Tahu has gone to a lot of trouble to protect customary rights as guaranteed under the Treaty of Waitangi and it is important to continue to exercise those customary rights and mana over tribal taonga such as Waituna Lagoon.

Today our four Murihiku rūnanga and Environment Southland are leading the charge to prevent the lagoon from flipping into a toxic state.



Te Waihora

Te Waihora is New Zealand's fifth largest lake. About 20,000 hectares, with approximately 75 kilometres of shoreline.

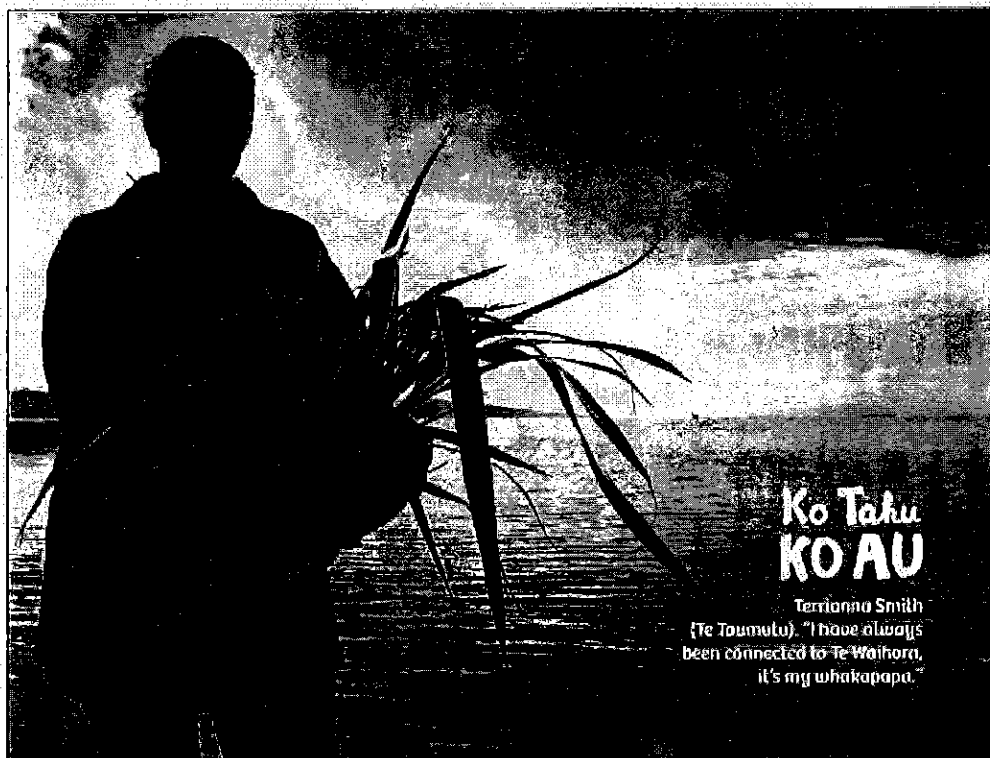
The ancient name for Te Waihora is 'Te Kete Ika o Rākaihautū'— meaning the 'fishing basket of Rākaihautū, our exploring ancestor.

It is a Ngāi Tahu taonga.

Sadly, Te Waihora is also New Zealand's most polluted lake. 150 years of poor land drainage, land use management and development practice has degraded Te Waihora to its current state.

One of our kaumātua (elders) Auntie Ake grew up at Te Waihora and she has witnessed the dramatic change that has happened in just one lifetime. Auntie Ake is 87-years-old and when she was a child she could see all the fish in the water. "Now you can't see anything in the lake, the water is too murky and it smells."

But things are looking up for our Te Waihora whānau.

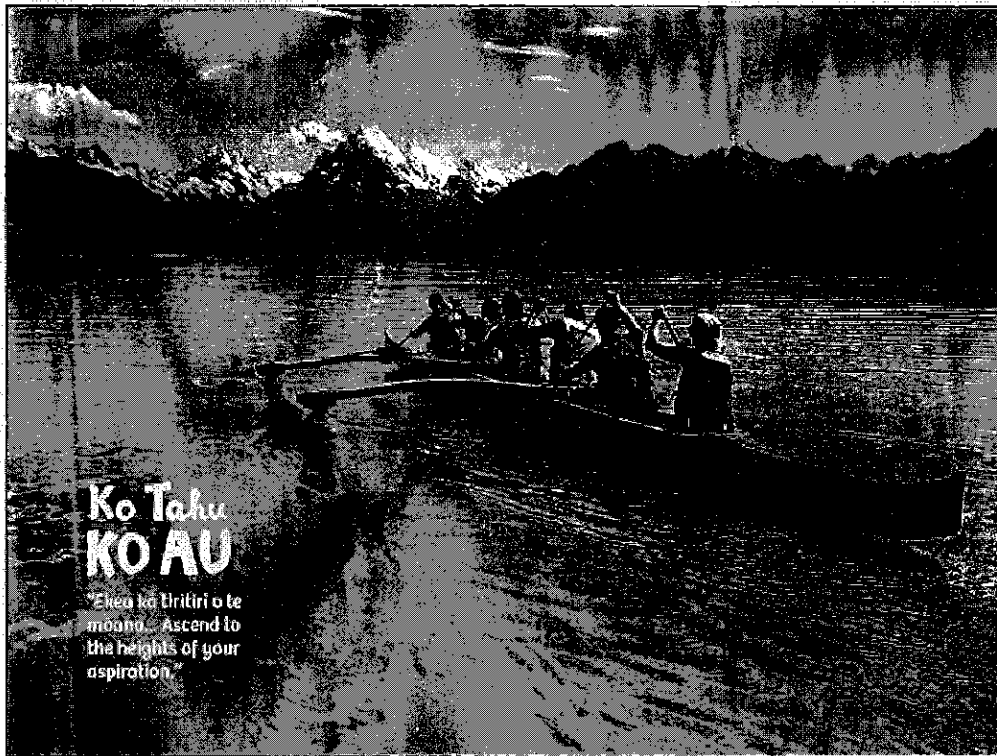


We have now signed a co-governance relationship with Environment Canterbury to shape a model to begin making changes to improve the health of the lake.

The co-governance model is designed to be a committed, enduring and quality relationship which is resilient enough to weather the short-term political cycles that can undermine the effectiveness of many organisations today.

There has been funding from the Crown to begin our work, but we were working before the new money and we will keep working even when that is all gone.

It will be our people on the ground who make the greatest difference, it will be their energy, their determination at every step that sees a turn for the better in the health of Te Waihora.

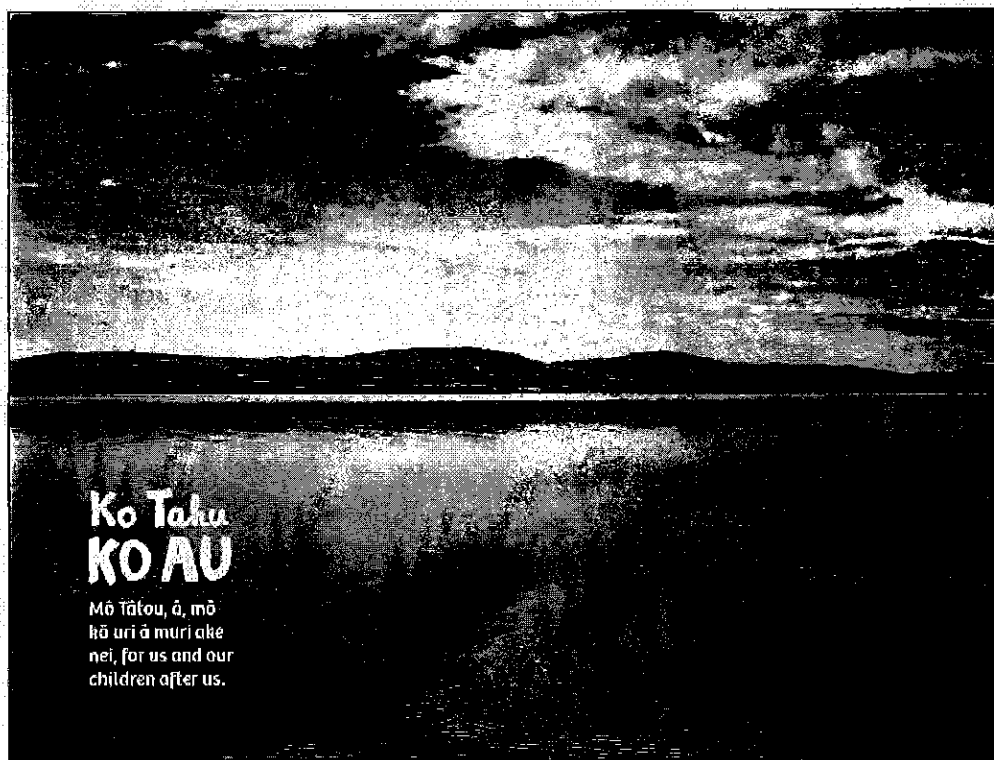


Turning now to "Shares Plus".

It is a seductive idea that via a "Shares Plus" regime Ngāi Tahu could have something akin to a veto right over how Meridian and/or Genesis operate within the Ngāi Tahu Takiwā – clearly they operate in areas of significant importance to Ngāi Tahu.

But we have hundreds if not thousands of examples of waterbodies within our takiwā each with their own stories – none of the examples I have covered tonight have a State Owned power company anywhere in sight and that is true for most of our waterbodies.

There are tens of thousands of resource consents that affect our waters – there are other power generators, irrigators and on it goes....

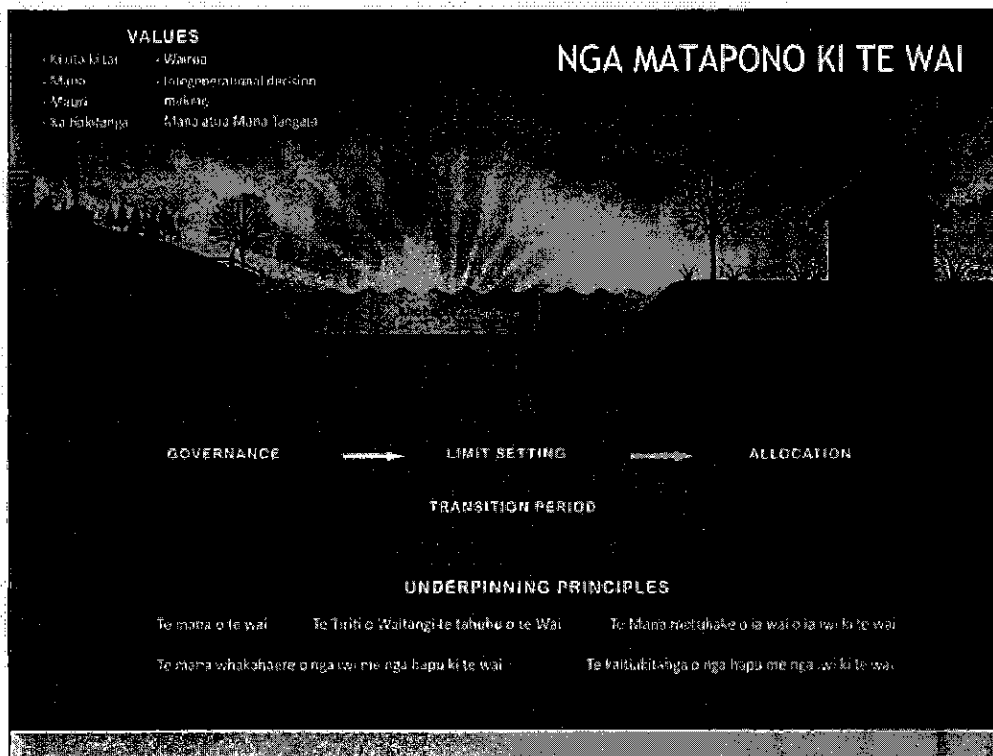


The key issues for Ngāi Tahu continue to be: water quality; sustainable use; sensible regime for allocation; retention/restoration of customary waterways; fair and equitable consideration for iwi when it comes to economic benefits; appropriate Treaty partner influence over management/governance of freshwater.

So our questions are how would "Shares Plus" be of benefit to Te Waihora, Ōaro or Waituna? Or for that matter any of our other precious water taonga that I have not had time to mention?

How would "Shares Plus" recognise the kaitiaki role of our Papatipu Rūnanga - who today are in partnership with many organisations throughout the takiwā on the restoration programme for our streams, rivers and lakes?

Our issue is that we do not see how the supposed benefits of "Share Plus" could give effect to rights and interests of Ngāi Tahu whānui across our takiwā.

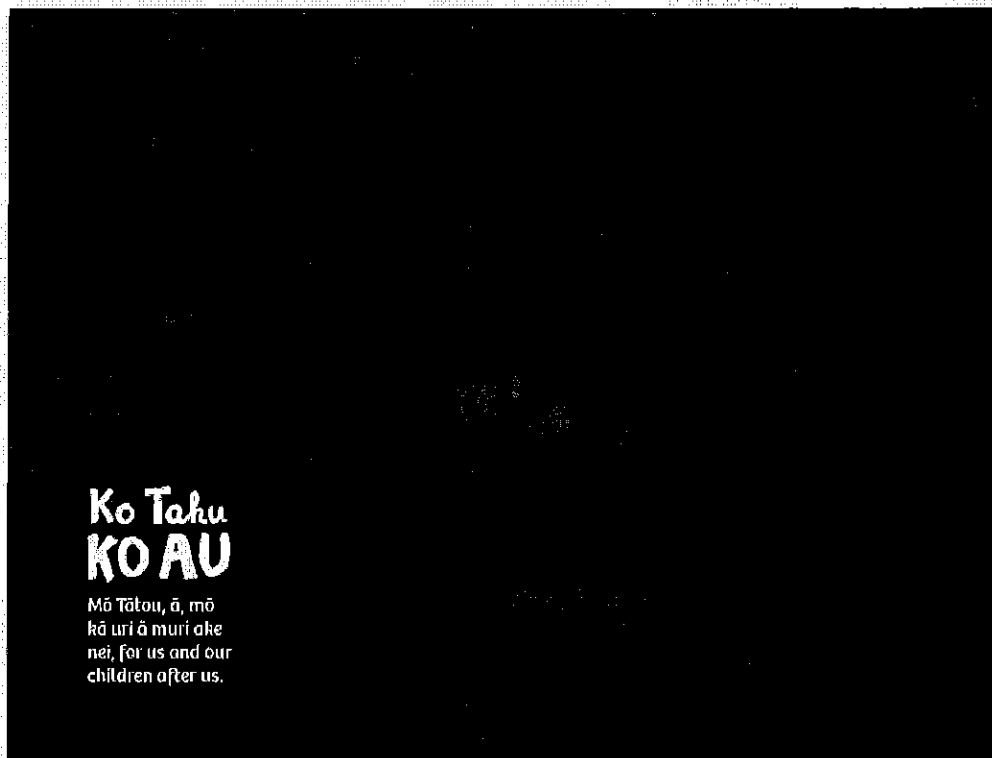


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As was stated by Sir Tumu Heuheu at the recent hui at Tūrangawaewae, *"... the engagement we are having with the Crown is not just about our rights, it is also about our responsibilities, and it is about the mechanisms by which we can give effect to our responsibilities – to exercise kaitiakitanga – now and into the future."*

The solutions we are seeking must be capable of being meaningful to the people of every marae and for waters of importance to them. This means that there must be a range of mechanisms which are capable of being applied to every water body whether it is a spring, aquifer, river, lake swamp – whether that water body is in Te Tai Tokerau or in Murihiku.

What the iwi leaders group have been advocating for is the tools which our people need to give effect to the concepts of Mana Atua – Mana Tangata – first we look after the water and then the well-being of the people will follow."



For Ngāi Tahu we continue our work with our partners here in Te Waipounamu to clean-up our local waterways, lakes and lagoons.

We work with our communities and our councils for win-win outcomes.

At a national level we are working with others in the Land and Water Forum process as well as via the Iwi Leaders' engagement with the Crown.

Ngāi Tahu has placed our faith in these processes – we are expecting enduring outcomes that befit the mana ki te mana outcomes that come from a respectful dialogue between Treaty partners.

